



## BRIEFING PAPER

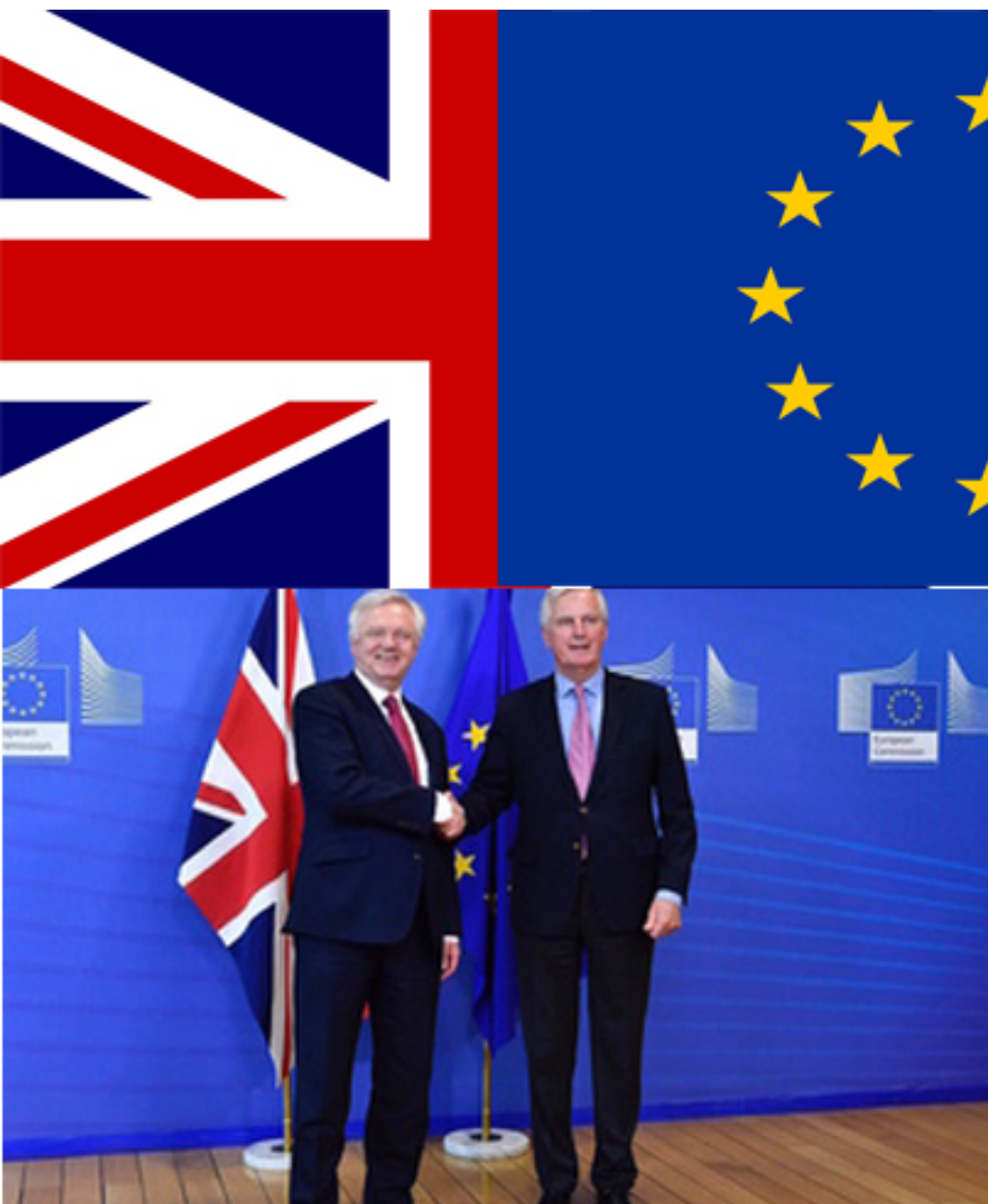
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# Brexit: the July negotiations

By Arabella Lang, Terry McGuinness and Vaughne Miller

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Contributing Authors: John Curtis, Matthew Keep

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## Summary

The UK and EU have now held the second round of negotiations on the UK's withdrawal from the EU. The four days of talks in Brussels in July – largely between officials – were about understanding each other's positions.

Both sides reported some progress, and a 'technical note' shows the points of agreement and disagreement between them on the issue of citizens' rights. The two sides agreed that citizens' rights is a priority for both of them and there were some areas of convergence. There is broad agreement on which EU citizens and family members of EU citizens should be protected, but areas of disagreement include how to guarantee these rights, the rights of future family members, and the exporting of certain social benefits.

But little else was published after this round, and there have been no more announcements on what documents either the European Parliament or the UK Parliament will get on the negotiations. The UK negotiator and Secretary of State for Exiting the EU, David Davis, will not be able to update Parliament on any progress until September.

The EU negotiator, Michel Barnier, would like "clarification" at the third round of talks in August on the financial settlement, citizens' rights and Ireland. There appears to be little change in the areas that most divide the two sides, such as the financial settlement and the role of the Court of Justice of the EU (CJEU).

The UK Government has acknowledged that the UK has financial obligations to the EU that will survive its withdrawal, and vice versa, and that they need to be resolved. But David Davis has not publicly said which obligations the Government recognises.

The UK may be moving towards accepting some kind of continued role for the CJEU during a transition period, and the EU may be moving towards accepting something like the EFTA court, even for disputes over citizens' rights. But this discussion still has a long way to go.

The only public points made on progress in the talks about Irish border issues were that both parties were committed to preserving the Common Travel Area and the Good Friday Agreement, and that more work was needed. Neither side has published a position paper on these issues.

There were some developments in the UK Government's potential approach to transition arrangements. Much publicised cabinet divisions - how long they might last and whether they would include free movement - appeared to be diminishing. But at the end of July the Prime Minister's office confirmed that free movement would end in March 2019.

Although the UK cannot enter into new trade agreements with third countries until it has left the EU, the Government has been talking to other governments – including the US, Australia, New Zealand, India and Turkey - about future bilateral agreements.

Three more negotiating rounds are scheduled before the European Council has its first opportunity on 19-20 October to consider whether 'sufficient progress' has been made to move on to the next phase of the negotiations, which could include a discussion of the UK's future relations with the EU and transitional arrangements.

# 1. What happened in round 2?

## 1.1 Four days of talks

The first four days of substantive Brexit negotiations – round 2 of phase 1 of the talks – took place in Brussels from 17 to 20 July 2017.

The second formal round of negotiations was intended to identify the similarities and differences between the two sides' positions. The first round, in June 2017, had concentrated on organisational matters, such as the timeline of the negotiations (summarised in the 'Background' section at the end of this briefing paper).

Most of the talks in the second round were between officials on the negotiating teams. They were [listed](#) as:

- coordinators' meetings (Sabine Weyand for the EU and Olly Robbins for the UK), which would include the Irish border issues; and
- negotiating groups (in the first round, negotiating groups were established on citizens' rights, the financial settlement, and 'other separation issues').

The only scheduled meetings involving the 'principals' – Michel Barnier and David Davis – were a fifteen-minute bilateral on the Monday morning and the closing plenary on the Thursday.

## 1.2 Two final statements

Both [Michel Barnier](#) and [David Davis](#) gave statements at a press conference<sup>1</sup> when the second round of negotiations finished on Thursday 20 July.

For all of the negotiating topics bar one, these statements gave the only official indication of what happened in the talks. They included little detail, but both statements suggested that there had been some progress in understanding each other's positions. For instance:

- Barnier: 'I said last week that I wanted to identify the points where we agree and the points where we disagree. This was possible this week for the issues on which there was a clear British position.' He said clarification would be needed in August on the financial settlement, citizens' rights and Ireland (the Common Travel Area and Good Friday Agreement).
- Davis: 'All in all, the second round of negotiations have given us a lot to be positive about. And they have also highlighted the need for both sides to demonstrate a dynamic and flexible approach in the way we approach these challenges. We have conducted this round constructively and at pace, and I hope this is a model we can continue going forward.'

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<sup>1</sup> European Commission Audiovisual Services, [Visit of David Davis, British Secretary of State for Exiting the European Union, to Michel Barnier: joint press conference](#), 20 July 2017.

On the financial settlement, David Davis said both sides recognised “the importance of sorting out the obligations we have to one another, both legally, and in the spirit of mutual cooperation”, and the need for “flexibility from both sides”.

### 1.3 One ‘technical note’

The only detailed document to emerge from the negotiations so far is a [Joint technical note on EU-UK positions on citizens' rights after second round of negotiations](#), published on 20 July.

Prepared by the Commission’s Article 50 Taskforce, it consists of a table of 44 specific points for discussion on citizens’ rights. It shows in green where the UK and EU positions converge, in red where they diverge, and in yellow ‘where further discussion is required to deepen understanding’. Significantly more areas show as green than as red or yellow – but some of the thorniest issues, such as bringing in future family members and how to enforce rights, are red.

Two points – the recognition of professional qualifications and other economic rights – will be discussed later, and the role of the CJEU, which crosses most areas of the negotiations, will be discussed in a separate Governance Group. The Commission published a [position paper on governance](#) on 12 July.<sup>2</sup>

This technical note is discussed in more detail below in the section on citizens’ rights.

No equivalent document has been published for any other area of the negotiations.

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<sup>2</sup> This paper is summarised in Commons Briefing Paper 8017, [Brexit: the talks begin](#), 12 July 2017.

## 2. What didn't happen?

### 2.1 No more papers

Since the second round of negotiations finished, there has been no further official description of what happened in the negotiations.

Nor have any further position papers been published by either side.

Some confidential information on the negotiations might have gone to the European Parliament's Brexit steering group, or to UK opposition leaders on Privy Council terms. But the steering group made no reference to further information in its [statement](#) on the second round of negotiations.

There have been no more announcements on what documents either the European Parliament or the UK Parliament will get on the negotiations. When giving [evidence to the House of Lords EU Select Committee](#) on 11 July 2017, David Davis said that would report back to the House of Commons after each negotiating round, but, as he also said: "Recess does not necessarily allow that". The House rose on 20 July, so he will not be reporting to Parliament until September (Q 3).

Mr Davis had not thought about how to keep Select Committees informed about the negotiations (Q 2).

### 2.2 Irish border?

Michel Barnier, speaking at a press conference on 20 July, gave an update on how discussions on the Irish border had progressed and called for more clarification of the UK position:

On Ireland, we had a first discussion on the impact of Brexit on two key subjects: the Good Friday Agreement and the Common Travel Area.

We agree that the important issue of the Good Friday Agreement, in all its dimensions, requires more detailed discussions. In particular, more work needs to be done to protect North-South cooperation between Ireland and Northern Ireland.

Today, that cooperation is embedded in the common framework of EU law and EU policies.

We need to better understand how the UK intends on ensuring the continuation of this cooperation after Brexit.

We also agreed that the UK should clarify in the next session how it intends on maintaining the Common Travel Area after leaving the EU.<sup>3</sup>

David Davis said the coordinators had had "a good discussion", adding:

Both sides remain committed to the Good Friday Agreement and [...] achieving a flexible and imaginative solution to address the unique circumstances around the border, and particularly on the north/south dimension of the Agreement.

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<sup>3</sup> ['Speaking points by Michel Barnier at the press conference following the second round of Article 50 negotiations with the United Kingdom'](#), European Commission, 20 July 2017.

These include the mechanisms we have discussed to preserve the Common Travel Area and the rights associated with it.<sup>4</sup>

While there is little progress to report on the substantive issues of the Irish border, there have been several remarks by Irish and Northern Irish politicians in the last few weeks which underline the complexities that need to be overcome.

Speaking to the Irish broadcaster RTÉ, Ireland's Foreign Minister Simon Coveney was sceptical about how far technical solutions could solve the problems of avoiding a hard border:

What we do not want to pretend is that we can solve the problems of the border on the island of Ireland through technical solutions like cameras and pre-registration and so on.

That is not going to work.<sup>5</sup>

He went onto say,

Any barrier or border on the island of Ireland in my view risks undermining a very hard-won peace process and all of the parties in Northern Ireland, whether they are unionist or nationalist, recognise we want to keep the free movement of people and goods and services and livelihoods.<sup>6</sup>

This built upon remarks Mr Coveney made on 23 June 2017, which suggested that from his government's point of view, Northern Ireland staying in the Customs Union could provide part of the solution to the Irish border issue:

Ireland's staying in the Customs Union. So if we're going to avoid a hard border between Northern Ireland and Ireland, there needs to be some relationship with the Customs Union and common market that allows Northern Ireland to be able to operate the way that it does today.<sup>7</sup>

The Irish Taoiseach (Prime Minister) Leo Varadkar, in remarks to the press on 28 July, supported his Foreign Minister's stance and put the emphasis on the British Government suggesting technological fixes for trade across the border:

As far as this government is concerned, there shouldn't be an economic border. We don't want one. It's the United Kingdom, it's Britain that has decided to leave and if they want to put forward smart solutions, technological solutions for borders of the future and all of that, that's up to them.<sup>8</sup>

A spokesman for DExEU reiterated the position the Government expressed before the negotiations that it did not wish to see any barriers between Northern Ireland and the rest of the UK:

As we have always been clear, our guiding principle will be to ensure that – as we leave the EU – no new barriers to living and

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<sup>4</sup> [‘David Davis’ closing remarks at the end of the second round of EU exit negotiations in Brussels](#), Department for Exiting the European Union, 20 July 2017.

<sup>5</sup> [‘Brexit: Coveney says ‘tech alone will not solve border issue’](#), BBC News, 17 July 2017.

<sup>6</sup> Ibid

<sup>7</sup> [‘Irish government demands special status for Northern Ireland after Brexit and invisible border’](#), Belfast Telegraph, 23 June 2017.

<sup>8</sup> [Leo Varadkar: Ireland will not design a hard border for Brexit](#), The Times, 29 July 2017.



doing business within the UK are created. Therefore we cannot create a border between Northern Ireland and Great Britain.

We aim to have as frictionless and seamless a border as possible between Northern Ireland and the Republic of Ireland, and we welcome the European Council's recognition that flexible and creative solutions will be required.<sup>9</sup>

Nigel Dodds, Deputy Leader of the DUP, was quoted by the Times as saying that any border that restricted trade between the UK and Northern Ireland was "non-negotiable", adding "it is good that the UK government swiftly and forcefully debunked any notion of internal borders within the UK".<sup>10</sup>

Sir Jeffrey Donaldson, another DUP MP, added that not only would this solution have economic consequences; it would also, in his opinion, have significant political consequences:

In addition to the economic detriment there are also the political consequences. Frankly it would be a breach of the Good Friday agreement if such an arrangement were to be proposed because it is contrary to the principle of consent.<sup>11</sup>

## 2.3 Financial settlement?

In the week before the second round of negotiations, the UK Government recognised that the UK has financial obligations to the EU that will survive the UK's withdrawal, and vice versa, and that they need to be resolved.<sup>12</sup>

The UK Government has not publicly said precisely which obligations they recognise. Instead David Davis's approach was to challenge the EU's proposals:

For something like the financial paper, we will go through it in session and debate it with the Commission. At the end, we may well publish an alternative proposal, but at the moment the proper approach, to get the right outcome in the negotiation, is to challenge what it is doing.<sup>13</sup>

Michel Barnier's statement after the second round of negotiations made a few points on the financial settlement:

- negotiations had focussed on a detailed legal analysis of the EU's position on which financial obligations should be included the settlement
- by recognising that obligations exist the UK has made it possible for the two sides to engage in identifying the specific obligations to be settled
- clarification of the UK's position is indispensable to negotiate and achieve 'sufficient progress' on the settlement.

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<sup>9</sup> ['Frustrated Leo Varadkar attacks Brexiteers on border issue'](#), Irish Times, 29 July 2017.

<sup>10</sup> ['Border row escalates as DUP attacks Taoiseach'](#), The Times, 31 July 2017.

<sup>11</sup> ['Border row escalates as DUP attacks Taoiseach'](#), The Times, 31 July 2017.

<sup>12</sup> [HC Deb 13 July 2017:c15-16WS](#)

<sup>13</sup> House of Lords Select Committee on the European Union, [Uncorrected oral evidence: David Davis evidence session](#), 11 July 2017.



David Davis's statement referred to 'robust but constructive talks' on the financial settlement:

On financial settlement, we both recognise the importance of sorting out the obligations we have to one another, both legally, and in the spirit of mutual cooperation.

We have had robust but constructive talks this week.

Clearly there is a lot left to talk about, and further work before we can resolve this. Ultimately getting to a solution will require flexibility from both sides.

But as Michel said, we shouldn't expect incremental progress in every round.

At the end of the week's negotiations, the [BBC](#) reported a Downing Street spokesman as saying that there are no plans to produce a position paper on the financial settlement.

## 2.4 Other withdrawal issues?

After the second round, both sides referred to progress on the 'other withdrawal issues', but without any detail.

Michel Barnier said there had been an 'exchange of views' on those issues, and that "the experience of [the second round of negotiations] shows that we make better progress when our respective positions are clear".

David Davis said there had been 'progress on a range of issues' – Euratom; legal cases pending before the European Court of Justice and administrative procedures before Union institutions; and goods on the market.

## 2.5 ECJ / dispute resolution?

The complex issue of which body or bodies should resolve the various different kinds of dispute that will emerge from Brexit<sup>14</sup> is still far from being resolved.

However, the UK may be moving towards accepting some kind of continued role for the CJEU during a transition period (see below). And the EU may be moving towards accepting something like the EFTA court<sup>15</sup> even for disputes over citizens' rights. Michel Barnier hinted at this in his [evidence](#) to the Lords EU Committee on 12 July 2017:

there is an implementation of this kind of law in the countries of the EEA. Norway and Iceland have accepted specific jurisdiction, which is backed up by the European Court of Justice, and there has been no contradiction between the two. That is my example to you.

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<sup>14</sup> See section 6.6 of Commons Library briefing paper, [Brexit: the talks begin](#).

<sup>15</sup> Judges of the EFTA Court sit independently of the EU Court of Justice, but mirror its jurisprudence when handling questions of EU law. Their judgments aren't formally binding on the courts of participating EEA states (which are Iceland, Liechtenstein and Norway). See Matthew Holehouse, '[UK mimics EFTA rules in search for Brexit court fix](#)', MLex Market Insight, 26 July 2017.

Guy Verhofstadt and the EP steering group have an interesting formulation which also hints at the EFTA court model:

the European Parliament wants the Withdrawal Agreement to be directly enforceable and to include a mechanism in which the European Court of Justice can play its full role.<sup>16</sup>

The joint technical note on citizens' rights that was published after the second negotiating round states that questions around dispute resolution will be addressed by a 'governance group' – perhaps a sub-group of the 'other withdrawal issues' negotiating group.

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<sup>16</sup> ['Brexit: Statement by Guy Verhofstadt and the EP Brexit Steering Group'](#), European Parliament press release, 25 July 2017.

### 3. Comment on round 2

Writing for the non-partisan think-tank 'UK in a Changing Europe' on 24 July 2017, [Dr Simon Usherwood](#) of the University of Surrey said that the negotiations so far showed that 'Brexit is complex' and that 'decisions in one area are shaped and will shape what happens in other areas'.

A report from [FTI Communications](#) suggested that progress had been made on citizens' rights, but that 'more divergence than convergence' could be seen on the financial settlement.

[Politico](#) commented that "Instead of proposing their own methodology for the financial settlement, U.K. negotiators spent this week quizzing the EU side about its proposal".

Several reports suggested the UK was not taking the talks seriously, not least because David Davis left early. A [EurActiv](#) report implied that the UK was unprepared and inflexible: "both sides could not even start sketching out the bare bones of a compromise as Britain came to Brussels empty handed".

Many commentators highlighted Michel Barnier's view that the UK should provide more detail of its objectives. For example, after a week of interviews in Brussels, [Dr Nicola Chelotti](#) said:

"What does the UK really want in the Brexit negotiations?" is a common and increasingly frustrating concern among EU representatives. EU officials are, at the moment, as unclear as external observers on the UK's ultimate objectives. Despite being the primary interest of UK negotiators, this lack of clarity (or information) is particularly acute in relation to the kind of association that the UK wants to obtain after March 2019. Soft or hard Brexit? Canada-deal plus or minor? A free trade agreement? No deal? A transition period?

[Fabian Zuleeg](#) of the European Policy Centre think-tank wrote that the UK's internal discussions are missing 'a real appreciation of the view from the other side of the channel':

To have any chance of a successful conclusion of the negotiations, the UK must now address the myths and misconceptions of the EU27's position. There needs to be a recognition that there will be little give from the other side of the channel. Only if the UK is willing to make significant concessions, is a viable deal possible. Even a transition deal will require the UK to accept the EU27's conditions.

## 4. Citizens' rights and free movement

### 4.1 Statements following the second round of negotiations

At the conclusion of the second round of negotiations, Michel Barnier reiterated that protection of citizens' rights is a priority for both the EU and UK.<sup>17</sup> However, he confirmed there is a "fundamental divergence" on how best to guarantee these rights and on the rights of future family members and the exporting of certain social benefits.

Mr Barnier said the UK Government's White Paper setting out the details of its offer for EU citizens in the UK had allowed for the identification of 'points of convergence and points of divergence'.<sup>18</sup> The reasons for these disagreements would be the focus of the third round of negotiations, he said. He promised that such scrutiny would be conducted with both parties mindful of their common objective of ensuring that EU27 and British citizens continue to live like they do today. However, he warned that the EU will need clarification from the UK as to its stance on citizens' rights before the third round of talks commences.

David Davis agreed on the importance of citizens finding legal certainty in the withdrawal agreement.<sup>19</sup> He expressed optimism, citing the progress made in identifying areas of agreement on citizens' rights and the issues on which further discussion is needed. He announced the publication of a joint paper setting out the areas of convergence in the EU and UK positions and of the issues that will feature in later rounds of negotiations.

A statement issued by the European Parliament's Brexit Steering Group following a meeting with Michel Barnier on 25 July 2017 disclosed no dilution of its position on citizens' rights.<sup>20</sup> Describing the protection of rights as a "core mission of the European project" the MEPs promised the EP will "continue to push for full rights" for those EU and UK citizens currently exercising their free movement rights:

The European Parliament specifically seeks to fully safeguard the rights concerning family reunion, comprehensive healthcare, voting rights in local elections, the transferability of (social) rights, and the rules governing permanent residence (including the right

<sup>17</sup> European Commission, [Speaking points by Michel Barnier at the press conference following the second round of Article 50 negotiations with the United Kingdom](#), 20 July 2017.

<sup>18</sup> The Government's offer for EU citizens in the UK and stance on the rights and status of British citizens in the EU27 is published on the GOV.UK website: [Safeguarding the position of EU citizens in the UK and UK nationals in the EU](#). For an overview of the Government's proposals see section 5 of the Library briefing paper [Brexit: what impact on those currently exercising free movement rights?](#) (CBP 7871, 11 July 2017).

<sup>19</sup> Department for Exiting the European Union, [David Davis' closing remarks at the end of the second round of EU exit negotiations in Brussels](#), 20 July 2017.

<sup>20</sup> European Parliament news item, [Statement by Guy Verhofstadt and the EP Brexit Steering Group](#), 25 July 2017.

to leave the UK without losing this status). Simultaneously, we seek to avoid an administrative burden for citizens and want proposals which are intrusive to people's privacy off the table, e.g. proposed systematic criminal checks.

On the question of legal certainty and future enforcement of rights, the Steering Group confirmed the EP wants the withdrawal agreement to be directly enforceable with a "full role" for the EU Court of Justice.

## 4.2 The EU and UK positions on citizens' rights - areas of convergence and divergence

The [joint paper](#) comparing and contrasting the EU and UK positions on citizens' rights identified six topics:

- Personal scope (i.e. the people affected by the end of free movement to and from the UK)
- The nature of the agreement (i.e. its status in law, monitoring of compliance, enforcement of rights and the relevance of EU law)
- Residence (i.e. acquiring and losing rights of residence and administrative procedures)
- Social security coordination
- Professional qualifications (i.e. recognition of such qualifications)
- Other economic rights

### Personal scope

There is broad agreement on which EU citizens and family members of EU citizens should be protected under the withdrawal agreement. Both parties also agree on protecting the rights of EU citizen children to pursue education in their host state.

The UK does not accept that the EU law rights of EU27 citizens in the UK should continue post-Brexit. Nor is there agreement on the issue of the rights of posted workers – those employees sent by their employers to carry out services in another EU Member State on a temporary basis. A major divergence relates to the rights of future family members who join EU27 citizens in the UK after the date of UK withdrawal. The UK maintains that current EU law rights should not be preserved and that there must be equal treatment between EU27 and British citizens as regards the rules for family visas for non-EU nationals.

Clarification is sought from the UK as to the cut-off date for determining which EU citizens can avail of the withdrawal agreement protections; its position on frontier workers (those who live in one EU Member State and work in another, returning home daily or weekly); and the rights enjoyed by children born to EU citizens after the date of the UK withdrawal.

### Nature of the agreement

Both parties agree the withdrawal agreement will be an international treaty, creating binding obligations in international law.

The EU and UK disagree on how individual citizens should enforce their rights. Whereas the EU takes the view that the provisions of the agreement must be directly effective and enforceable through the domestic courts of the EU27 and UK, the UK maintains that rights in UK law should be enforceable only through the UK judicial system and without the withdrawal agreement having direct effect. Although the UK Government opposes any future role for the Court of Justice of the EU, the joint paper states the role of the CJEU is one for future discussion in the Governance Group.

### **Residence**

The EU proposes maintaining EU law requirements relating to migrants' residence rights in other Member States. The UK on the other hand is prepared to overlook EU laws requiring 'economically inactive' migrants to have policies of comprehensive sickness insurance cover, or that workers must be in 'genuine and effective work'. There appears to be agreement on temporary residence post-Brexit for those yet to acquire permanent residence rights.

There is agreement on the loss of rights of residence should citizens be absent from their host state for a period of two years, but whether the UK will offer a more flexible approach to those with strong ties to the UK to take account of overseas study or postings, is contingent on the EU27 offering similar guarantees to their British citizen residents. The EU and UK largely agree on what constitutes continuity of residence.

The effect of criminality post-Brexit marks a divergence: the EU states that the exclusion of an EU27 or British citizen convicted of a crime should remain governed by the terms of the Citizens' Rights Directive (Directive 2004/38); the UK wants its domestic deportation laws to apply to EU citizen criminals in the UK.

There is agreement on the need for identification documents to prove that a migrant enjoys the status bestowed by the withdrawal agreement, and also on the fee to be charged for such documents (no fee, or one not exceeding that imposed on the host state's own nationals when applying for similar documents).

Both the EU and UK agree that those with rights under the withdrawal agreement should enjoy those rights for their lifetimes. There is also convergence on ensuring equal treatment as to social security, social assistance, health care, employment, education and training, and tax advantages. There is, however, divergence on the issue of voting rights.

There is disagreement over administrative procedures and the status of permanent residence documentation. For the EU, any EU or British citizen who lawfully resided in a Member State other than their own for a continuous period of five years automatically acquired a right of permanent residence in their host state. Such migrants ought to be considered legally resident even if they have not yet applied for documentary proof of their residence rights. For the UK, EU laws will

end in the UK upon exit from the Union and all EU citizens in the country will have to apply for its proposed new 'settled status', which will confer rights under UK law. Also, while the EU opposes systematic criminal checks on EU27 citizens in the UK, the UK Government takes the view such checks are necessary to assess whether applicants for settled status meet the conduct criteria.

One further area of disagreement relates to whether British citizens in the EU27 should be free to move around the bloc and change their country of residency. The UK Government calls for such freedom, whereas the EU believes the rights of British citizens should be protected only in the Member State of which they were a resident at the time of the UK's exit from the EU.

### **Social security coordination, recognition of professional qualifications, and other economic rights**

Many of the issues arising under the topic of social security coordination remain subject to consideration and further negotiation. Recognition of professional qualifications and protection for other economic rights remain to be discussed.

### **Croatia wants assurances**

Croatia joined the EU in July 2013, but Croatian citizens do not currently have the right to live and work in the UK because the Government applied temporary restrictions on free movement until the end of June 2018, with the possibility of a two-year extension.

The Croatian Prime Minister, Andrej Plenković, is reported to be seeking assurance that Croats can live and work in the UK from July 2018, so that they will benefit from citizens' rights guarantees in the withdrawal negotiations.<sup>21</sup> A two-year extension of the free movement restrictions until end of June 2020 could mean Croatian citizens not being entitled to free movement benefits in the UK.

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<sup>21</sup> [Politico Pro, 25 July 2017](#), updated 27 July 2017.



## 5. Other developments

### 5.1 Transitional arrangements

#### Developments in the UK cabinet

Perhaps the most significant shift in the UK position has been that many UK Ministers from both the 'leave' and 'remain' camps appear to accept the need for a time-limited transitional period after Brexit Day. However, there is less agreement about what this period might look like or how long it might last, and no new policy for a transition has been published.

The UK has long recognised the need for some sort of phasing after Brexit day. Theresa May's [letter triggering Article 50](#) envisaged a withdrawal agreement and a 'deep and special partnership' being agreed within two years, with 'implementation periods' to avoid a cliff edge:

In order to avoid any cliff-edge as we move from our current relationship to our future partnership, people and businesses in both the UK and the EU would benefit from implementation periods to adjust in a smooth and orderly way to new arrangements. It would help both sides to minimise unnecessary disruption if we agree this principle early in the process.

The [Brexit White Paper](#) said this would not amount to an unlimited transitional status:

For each issue, the time we need to phase in the new arrangements may differ; some might be introduced very quickly, some might take longer. And the interim arrangements we rely upon are likely to be a matter of negotiation. The UK will not, however, seek some form of unlimited transitional status. That would not be good for the UK and nor would it be good for the EU.

But in late July a new consensus in the cabinet was reported to have emerged in favour of a transition period involving more continuity, and lasting up to three years after leaving the EU in March 2019 (i.e. ending before the next general election is scheduled, in June 2022). On the BBC Breakfast programme on 31 July, the Health Secretary, Jeremy Hunt, said he "didn't recognise" the picture of Cabinet divisions on Brexit, and that the Cabinet is "completely united" on Brexit making Britain "more global, and not more insular". However, later on BBC Radio 4's Today programme, he said there were some ministerial differences.<sup>22</sup>

A series of statements and comments in July shed light on how thinking appeared to be developing in the Government:

- 10 July: the [Prime Minister's official spokesman](#) confirmed that the UK could remain subject to the CJEU's jurisdiction 'for a limited time' during a transitional period.

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<sup>22</sup> Reported in The Guardian online, 31 July 2017, [Cabinet united on avoiding Brexit 'cliff edge' departure, says Hunt](#).

- 11 July: David Davis, giving evidence to the [Lords EU Committee](#), considered that all the deals could be negotiated by March 2019, but that an 'implementation stage' or 'transition phase' would be needed for the benefit of French, Belgian or Dutch customs.
- 13 July: International Trade Secretary, [Liam Fox](#), said he'd be 'very happy' with a transitional arrangement that lasted a few months.
- 21 July: Environment Secretary [Michael Gove](#), answering questions after a speech in Surrey, said that there would be a 'pragmatic approach' to an implementation period, with migration policy 'shaped by what's in the interests of our economy, consistent with recognising the instruction the British people gave us last year'.
- 23 July: [Liam Fox](#) on the Andrew Marr Show suggested that transitional arrangements could last two years, and said the important thing was that they ended by 2022 (the latest date for the next general election).
- 24 July: [Liam Fox](#), answering questions after a speech at the American Enterprise Institute, said: 'There's a growing consensus amongst the Cabinet that we will leave the European Union but we will have a transition and implementation phase where we're outside European law but voluntarily would choose to keep a number of rules as part of the *acquis* to give our businesses in particular and our inward investors the stability to understand what the new environment is going to look like. Because it would be nice to think we could get a full free trade agreement by the time we get to March 2019, but that would be an optimistic view of recent free trade agreements.'
- 24 July: Chancellor [Philip Hammond](#) told business leaders he wants to negotiate a simple "off-the-shelf" transition deal with the EU to maintain current trading relations for at least two years after Brexit. He wanted a "'standstill' transition leaving companies with full access to the single market and customs union, followed by a further 'implementation phase' while a new, UK-specific trade accord is put in place".
- 27 July: the Immigration Minister, Brandon Lewis, told Radio 4's Today programme that free movement would end in March 2019. But the same day, the Home Secretary, [Amber Rudd](#), said 'I also want to reassure businesses and EU nationals that we will ensure there is no "cliff edge" once we leave the bloc'. The text of her [letter](#) commissioning a study on the impact of EU migration, also published that day, similarly refers to a transition phase with no cliff-edge, and implied that the main difference from now would be that new arrivals from the EU would have to register.
- 28 July: the Chancellor, [Philip Hammond](#), told Radio 4's Today programme that 'there's a broad consensus that this process has to be completed by the scheduled time of the next general election, which is in June 2022' and that there should be no 'cliff edges' – 'many things will look similar' on Brexit day (when the UK is no longer bound by EU law and treaties).<sup>23</sup> His comment

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<sup>23</sup> Quoted in '[Philip Hammond: Brexit transitional deal will last three years "at the most"](#)', Politics Home, 28 July 2017.

that new trade deals might not come into force during the transitional period implies that the UK would still be part of the customs union then.

- 30 July: [Liam Fox](#) told the Sunday Times that the cabinet had not agreed that free movement of people for up to three years after Britain leaves the EU will be part of a Brexit transition deal: 'If there have been discussions on that, I have not been party to them ... I have not been involved in any discussion on that, nor have I signified my agreement to anything like that' (Fox is not a member of the cabinet committee on the Brexit negotiations).
- 31 July: [Jeremy Hunt](#), the Health Secretary, reiterated that a transition period could last for up to three years after Brexit in 2019 and had to be complete by the time of the next general election.
- 31 July: the Prime Minister's office [confirmed](#) that free movement would end in March 2019.

## A new battleground?

Those who support a transition period see it as necessary to avoid a cliff-edge, because of the scale of the complexities and practical arrangements needed to negotiate and/or implement a new relationship with the EU and other countries.

But there is a political imperative to ensure that it is time-limited, so that it isn't seen as continuing EU membership 'by the back door' and therefore not respecting the outcome of the referendum last June. There is also disagreement over the extent to which EU rules and procedures – such as customs, trade, free movement and CJEU jurisdiction – should continue during the transition period.

Former Foreign Secretary, William Hague, said the Chancellor's plan for a transitional period of up to three years after March 2019 along the lines of an existing "off-the-shelf" model, such as staying in the European Economic Area (EEA), was the best way of trying to rescue Brexit from becoming "the greatest economic, diplomatic and constitutional muddle in the modern history of the UK".<sup>24</sup>

But the former Deputy Prime Minister, Nick Clegg, is not convinced that a transitional period will be useful: "I see little reason to think that more time will help. Just because a football team holds out for a nil-nil draw and gets an additional 30 minutes, there is no guarantee that they will not still mess up in extra time".<sup>25</sup>

David Allen Green (EU commentator and lawyer) thinks transitional arrangements "will become the new battleground of Brexit, and indeed

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<sup>24</sup> Daily Telegraph, [World leaders asked for months how we would get around Brexit. Chancellor's transition plan can keep it on track](#), 1 August 2017; [Guardian, 1 August 2017](#).

<sup>25</sup> Financial Times, [Shape the contours of Brexit Britain's final destination](#), 1 August 2017.

may even become as controversial as the question of membership itself".<sup>26</sup> He identified five major issues:

- Transitional arrangements are in the gift of the EU, not the UK.
- They can be reversible; they delay a "clean break" and Brexiteers might think they could lead to "transition back again to EU membership".
- "Different aspects of the UK's practical departure from the EU will sail at different speeds. Some journeys may take months, and others may take years. The Department for Exiting the European Union estimates that there are 57 policy areas affected by Brexit: it is not unthinkable, therefore, that there could be 57 varieties of Brexit".
- They "are not bound to go smoothly". If one element causes problems, "there is a risk that the wider endeavour could become discredited or fall into disrepute", possibly triggering calls to reverse Brexit.
- EU law will and policy will have to continue, which "(inherently) means the powers of the various EU institutions will endure, including that of the European Court of Justice". So what will happen if there are disputes?

## Many questions arise

Many questions about the transition period arise, including:

- Would its purpose be to allow more time to negotiate the future relationships, or to implement what had already been agreed?
- If the former, would the UK seek to avoid cliff-edges by continuing existing EU trading arrangements under a transition treaty, or would it call for bespoke arrangements?
- To what extent would freedom of movement, application of EU laws and budget payments have to continue in order to obtain the desired trading arrangements?
- Would different aspects of the transitional arrangements last for different lengths of time?
- Would the transition period be subject to continuing negotiations on the UK's future relations with the EU?
- Would a further implementation period be required once those relations were agreed?
- What would happen if there was no future relations agreement within the transitional period?
- How would the EU (Withdrawal) Bill/Act be affected?

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<sup>26</sup> David Allen Green's blog, [Brexit in name only and the politics of transition](#), Financial Times, 1 August 2017.

## The EU's position

Whatever the UK proposes for a transitional arrangement will be subject to negotiation and agreement with the EU.

The EU insists that the UK cannot 'cherry-pick' the EU measures it wants to keep, and that the UK will not achieve a better deal outside the EU than it currently has as a Member State. Michel Barnier told the Committee of the Regions in March:

A certain number of transitional arrangements may be necessary. It is too early to say. In any case, these possible arrangements must be supervised by European law and its associated legal system. Their duration will be strictly limited. They cannot be equivalent to any form of cherry-picking of the Single Market.<sup>27</sup>

Giving [evidence to the Lords EU Committee](#) in Brussels on 12 July, Michel Barnier envisaged different periods of 'phasing out' current arrangements and 'phasing in' new ones, requiring 'several years'. He said there might be a "short transition period", and by "short", he meant "not unlimited, not open-ended. "Short" means that there is a framework, a timeframe". He also repeated the EU's position on the role of the CJEU during a transitional period:

All that I can say—and I can say this in the name of the EU—is that during that period we will maintain, in relation to the internal market, the regulatory architecture and supervision of the Court of Justice.

## Scheduling

When to negotiate transitional arrangements is another challenging issue. 'Transition' suggests at least some agreement on what future relationship is being moved towards – but the Commission currently has no mandate to negotiate the future relationship, and cannot conclude an agreement on it until the UK has left the EU. Furthermore, negotiating and ratifying such an agreement could take a long time. Liam Fox has said it would be "optimistic", given recent experience, to think a free trade agreement with the EU could be concluded by the time of Brexit in March 2019.<sup>28</sup>

Mr Barnier said in early July that transitional measures would be agreed towards the end of the negotiations: "Once we have a clearer picture of the form [the new EU-UK] new relationship will take, we will be able to discuss the possibility of transitional measures".<sup>29</sup>

Yet business leaders have told the Government that they need to know about transition arrangements in the next few months as they will need to make their decisions long before Brexit day.

David Davis told the [Lords EU Committee](#) on 11 July 2017 that he wants to accelerate discussions on the transition period as much as possible:

What has not yet become clear—it is quite difficult, logically, to disentangle—is how we can reasonably bring to the front of the

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<sup>27</sup> Michel Barnier, [speech](#), plenary session Committee of the Regions, 22 March 2017.

<sup>28</sup> Dr Liam Fox, [speech](#), American Enterprise Institute, 24 July 2017.

<sup>29</sup> Michel Barnier, [speech](#) at European Economic and Social Committee, 6 July 2017.

discussion the issue of transition. It is quite hard to know what transition looks like unless you know the beginning and the end.

Furthermore, the transition arrangements are connected to the financial settlement – for example, payments could be continued through that period.

However, the Financial Times suggests there may be a down-side to discussing the transition early on:

If the two sides agree a transition deal early to comfort businesses, it may remove the urgency from the pre-Brexit trade talks with the EU.<sup>30</sup>

## 5.2 Preliminary trade talks with non-EU countries

Brexit will mean the UK will negotiate its own trade deals with other countries. As the Brexit negotiations continue, the UK is beginning to explore its options for future trade relations. The UK cannot enter into new trade agreements with third countries while it is still in the EU, but ministers have held meetings with governments in countries where they would like future bilateral trade agreements.

In February 2017 the Government said that nine working groups had been set up with potential partners: Australia, China, India, New Zealand, Norway, South Korea, the Gulf Co-operation Council, Turkey and Israel.<sup>31</sup>

### WTO

Although future trade relations are not yet on the agenda, there are reports that the two sides are already discussing a “joint approach [...] on all the aspects of the divorce, with regard to the WTO”.<sup>32</sup>

The joint approach would address aspects of the EU’s WTO membership terms, known as its WTO “schedules”, that are not easily split between Britain and the other 27 EU members: agricultural tariff quotas, agricultural subsidies and commitments on services trade. [...]

The joint approach would also deal with Britain’s wish to join the WTO’s Government Procurement Agreement, which liberalises access to procurement markets between signatories. The EU is a member of the agreement but Britain is not.

The EU and the UK plan to put forward a joint proposal for reform of the terms of their WTO membership in September or October. According to Politico, the Commission’s deputy chief negotiator Sabine Weyand briefed senior EU diplomats on three possible options:

The first option would be to maintain the status quo by leaving all import quotas the same — an option Brussels does not favor as it

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<sup>30</sup> [“‘Status quo’ Brexit transition plan reflects cabinet power grab’](#), Financial Times, 27 July 2017.

<sup>31</sup> Department for Exiting the EU and Department for International Trade, [Brexit – the options for trade: Government response](#), 28 February 2017.

<sup>32</sup> Euractiv, [EU and Britain to present post-Brexit plan on WTO membership](#), 18 July 2017. See also Politico, [UK and EU broach thorny issue of post-Brexit trade rules](#), 18 July 2017.

would mean spreading Britain's share of each quota among the remaining 27 members.

The second option foresees Britain negotiating to take over a portion of the EU quota but only by changing very sensitive products such as beef and butter, a solution diplomats described as complicated to achieve. "The problem is finding an agreement on how to choose sensitive product lines and which ones you designate as sensitive," said an official who took part in the meeting.

The final option, preferred by Brussels, is to lower the EU quota and have Britain add a new quota itself.

This third option would aggravate London, where the government is keen to forge new trade deals with international partners after it has left the EU and does not want to be constrained by agreeing quotas before those negotiations begin.<sup>33</sup>

### UK-United States

On 24 July Liam Fox met US Trade Representative Robert Lighthizer for talks about future UK-US trade relations (they had also met in June to discuss future relations). They launched the US-UK Trade and Investment Working Group, which Mr Lighthizer expected to be "a key mechanism to deepen our already strong bilateral trade and investment relationship, and to lay the groundwork for our future trade relationship once the UK has left the EU".<sup>34</sup> Dr Fox set out the aims and ambitions of the Working Group:

As a priority, the working group will seek to provide stability, certainty and confidence for businesses on both sides of the Atlantic. Indeed, the first discussions will focus on providing commercial continuity as the UK leaves the EU.

But our ambitions are much wider. The working group is designed to provide a springboard, laying the groundwork for a comprehensive free trade agreement between our 2 nations post-Brexit – the start of a new and exciting chapter in our special relationship.<sup>35</sup>

Amid press reports on the possibility of American chlorine-washed chicken and hormone-fed beef exports to the UK, Dr Fox [said](#) on the BBC's Newsnight programme on 26 July that food safety decisions should be based on scientific advice and that the UK would not lower its animal welfare standards.

### UK-New Zealand and Australia

The Foreign Secretary Boris Johnson was in New Zealand at the end of July, where he too talked about a post-Brexit bilateral trade deal. The NZ Foreign Minister, Gerry Brownlee, said there was a "strong interest" in swiftly concluding a free trade agreement with the UK after Brexit, which would "bring our two countries close together".<sup>36</sup> They established a "people-to-people dialogue", which will be "convened at

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<sup>33</sup> Politico, [Brussels to break vow not to talk trade in Brexit talks](#), 17 July 2017; updated 20 July 2017.

<sup>34</sup> [Joint press release](#) by USTR Ambassador Lighthizer and Dr. Liam Fox, July 2017.

<sup>35</sup> Liam Fox, [speech](#), American Enterprise Institute, 24 July 2017.

<sup>36</sup> [BBC News, 25 July 2017](#).



officials' level at six monthly intervals" and "will complement the existing trade policy dialogue, and strategic dialogue on foreign policy".<sup>37</sup>

From New Zealand Boris Johnson went to Australia for the 9<sup>th</sup> annual Australia-UK Ministerial Consultations (AUKMIN).<sup>38</sup> He met Foreign Minister Julie Bishop, who said:

We are particularly keen to engage the United Kingdom more deeply in our region. In the Pacific, where we can work together on development assistance and economic growth and security. In Southeast Asia, where Britain has considerable interests. So we're talking about a more engaged Britain, post its exit from the European Union.<sup>39</sup>

But Australia also wants to begin talks with the European Commission on an EU-Australia free trade agreement, and Ms Bishop sought UK support for this. An editorial by Peter Hartcher of the Sydney Morning Herald thought "Little Britain has little to offer Australia".<sup>40</sup>

## EU third party agreements

The EU has concluded trade agreements with over 60 partners<sup>41</sup> and is currently negotiating one with Japan.<sup>42</sup> While the position is not entirely clear, the balance of evidence suggests that the UK will no longer benefit from these deals after Brexit.<sup>43</sup>

Mexico is one of around 30 non-European states with which the EU has or is negotiating an external agreement.<sup>44</sup> In a [speech](#) on free trade and bilateral trade and investment between the UK and Mexico on 27 July, Liam Fox and the Mexican Economy Secretary, Ildefonso Guajardo, launched an informal Trade Dialogue "aiming at discussing how to ensure that the preferential arrangements that the UK currently enjoys with Mexico remain in place as we leave the EU".

## 5.3 EU agencies in the UK

Member State leaders had already endorsed a procedure for relocating the two EU Agencies based in the UK – the European Medicines Agency (EMA) and the European Banking Authority (EBA),<sup>45</sup> and the EU published a position paper on [Issues relating to the Functioning of the Union Institutions, Agencies and Bodies](#) on 29 June.

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<sup>37</sup> [NZ Government press release](#), 25 July 2017.

<sup>38</sup> AUKMIN is the main forum for high level discussion of foreign policy, defence and security issues between Australia and the UK. Ministry for Foreign Affairs [Joint media release](#), 25 July 2017.

<sup>39</sup> RN Breakfast, [Julie Bishop interview with Fran Kelly](#), 27 July 2017.

<sup>40</sup> [The Sydney Morning Herald, 1 August 2017](#).

<sup>41</sup> See Commons Briefing Paper 7792, [List of EU trade agreements](#), 21 November 2016.

<sup>42</sup> The EU has also been negotiating with the US the Transatlantic Trade and Investment Partnership (TTIP), although the outlook for this agreement is uncertain.

<sup>43</sup> See Commons Library Briefing 7694, [Brexit: trade aspects](#), 4 July 2017.

<sup>44</sup> See European Commission [Trade Agreements](#) website.

<sup>45</sup> For further information on EU Agencies and Brexit, see Commons Briefing Paper 7957, [EU Agencies and post-Brexit options](#), 28 April 2017.

Bids for one or both Agencies were submitted by 31 July, with the aim of reaching a decision in the margins of the General Affairs Council (Article 50) in November 2017,<sup>46</sup> based on criteria [agreed](#) on 13 June.

There are 19 candidates for the European Medicines Agency and eight for the European Banking Authority.<sup>47</sup>

## 5.4 Lords Committee reports, evidence and inquiries

Although the Commons Select Committees have yet to be fully established following the general election, let alone start any inquiries or publish reports, the Lords Committees have already published reports, taken evidence, and announced new enquiries on Brexit.

### European Union Committee

[Scrutiny of Brexit negotiations](#), oral and written evidence, including from Michel Barnier, Sabine Weyand and Guy Verhofstadt; correspondence with Ministers

[Brexit: judicial oversight of the European Arrest Warrant](#), 27 July 2017, HL Paper 16

[Brexit: farm animal welfare](#), 25 July 2017, HL 15 2017-19

[Brexit: devolution](#), 19 July 2017, HL Paper 9

[Brexit: the EU data protection package](#), 18 July 2017, HL 7 2017-19

### Economic Affairs Committee

[Brexit and the Labour Market](#), 21 July 2017, HL 11 2017-19

For information on and links to all parliamentary publications on Brexit, see Commons Briefing Paper 7912, [Brexit: a reading list of post-EU Referendum publications by the UK Parliament and the Devolved Assemblies](#), updated 2 August 2017.

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<sup>46</sup> [Procedure leading up to a decision on the relocation of the European Medicines Agency and the European Banking Authority in the context of the United Kingdom's withdrawal from the Union](#), 22 June 2017.

<sup>47</sup> See Financial Times, [Contest to take EU agencies from London draws bids from 23 nations](#), 1 August 2017.

## 6. What will happen next?

### 6.1 Next negotiating round, 28 August

The third round of negotiations is due to begin on 28 August. Michel Barnier has said that it should be about 'clarification' – confirming what the two sides can agree on, and clarifying the reasons for areas of divergence.

Then there are two further negotiating rounds scheduled for September and October, before the next meeting of the European Council.

[Politico](#) reported on 27 July that David Davis and Michel Barnier "want to quicken the pace of Brexit negotiations by holding more frequent talks over the summer and autumn". But there has been no official confirmation of this.

### 6.2 European Council meeting, 19-20 October

The European Council's October meeting is its first opportunity to consider whether 'sufficient progress' has been made in the first phase of negotiations. If the answer is yes, discussions could move onto the second phase, which will include free trade, customs, justice and home affairs issues, and transition arrangements.

Michel Barnier [considers](#) that the UK needs to clarify its position on the financial settlement before the EU can judge whether sufficient progress has been made. There have been press reports suggesting he doesn't think enough progress will be made by October.<sup>48</sup> The UK, however, is "confident we will have made sufficient progress by October to advance the talks to the next phase".<sup>49</sup>

If the October European Council doesn't deem that there has been sufficient progress to move on in the negotiations, a decision is likely to have to wait until its next scheduled meeting, on 14-15 December.

The [European Parliament](#) has signalled that it will also make a judgment on sufficient progress, although it has no formal role in that decision:

The European Parliament cannot be clear enough that sufficient progress means progress across the board, and not just in one or two areas. The European Parliament will formally and in due time indicate when the point of 'sufficient progress' has been reached.

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<sup>48</sup> See for example '[EU "set to suspend Brexit trade talks" over lack of progress on divorce bill and citizens' rights](#)', Independent, 27 July 2017.

<sup>49</sup> DExEU spokeswoman, quoted in '[Early talks on post-Brexit trade deal "increasingly unlikely"](#)', Guardian, 27 July 2017.

## 7. Background: explaining the negotiations

After the UK triggered the Article 50 process on leaving the European Union at the end of March 2017, the European Council published guidelines for the negotiations, which were followed by a Council recommendation to the Commission setting out detailed negotiating directives.

The chief negotiators, David Davis for the UK and Michel Barnier for the EU (Commission Article 50 Task Force), met for the **first formal talks on 19 June**. This meeting focussed on agreeing the timing, structure and initial priorities of the negotiations. Terms of Reference were also adopted.

As the negotiations begin there are differences in the **starting positions** of the two parties on citizens' rights and the financial settlement, but agreement on the need to find a solution to the Irish border question so as not to jeopardise the peace agreement.

The negotiations will follow **four-week cycles** throughout the first phase, and dates have been set up to the week beginning 9 October 2017. For several weeks during this period neither the UK Parliament nor the European Parliament will be sitting.

The EU proposed a **phased approach** to the negotiations, starting with three priority areas – citizens' rights, a financial settlement and the Ireland/Northern Ireland border –moving on to the UK's future relationship with the EU if "sufficient progress" is made in these three areas. It is not clear what exactly is meant by this, which will be for the other 27 EU Member States to decide.

Reports maintain the UK and the EU would like to intensify the negotiations by holding **more frequent talks** over the summer and autumn. But the principal EU negotiator, Michel Barnier, insists this would depend on progress on agreeing the UK's financial settlement.

The principal **negotiators** are Michel Barnier and David Davis. EU negotiators are supported by the Council, the Committee of Permanent Representatives and the EU Presidency. UK officials include Oliver Robbins from the Department for Exiting the EU, and Sir Tim Barrow, the UK's top diplomat in Brussels (David Davis [said](#) over 90 UK officials went to Brussels for the July negotiating round).

There are joint negotiating groups of officials to tackle the first phase priorities, and a higher-level 'dialogue' on Ireland/Northern Ireland.

The **European Parliament** (EP) will not participate directly in the negotiations, but the requirement for its consent to any withdrawal agreement has given it a powerful voice. It has adopted a resolution on its position for the negotiations, and has appointed a Brexit negotiator, Guy Verhofstadt, as well as a 'steering group' of political group chairs.

The **UK Parliament** has no formal role in the negotiations and its consent is not formally required for any withdrawal agreement. It has no specific structures or procedures for scrutinising treaties, but will use parliamentary questions and debates as well as Committee inquiries and reports. It will also be dealing with all the domestic legislation required for Brexit. At the end of the negotiations, the Government has promised a vote on the withdrawal agreement, and Parliament could also choose to debate and vote on the final signed agreement before ratification, but it does not have to.

The UK's **devolved administrations** have no formal role in the negotiations. A Joint Ministerial Committee (EU negotiations) was established as a forum for them to discuss Brexit with the UK Government, but there have been calls for them to have a greater say in the negotiations.

Both the EU and the UK have made a commitment to **transparency** in the negotiations. However, the EU's policy is much more detailed, and it has so far published many more negotiating documents than the UK. David Davis has repeatedly promised to provide the UK Parliament with information matching what the EP receives. However, it is still not entirely clear whether, when or how the EP will receive information on Brexit, still less how the UK will match that.

At the same time as the negotiations, the UK will need to adjust **domestic legislation** for Brexit, through the current European Union (Withdrawal) Bill and other legislation. One of the tasks is to ensure that domestic legislation reflects the withdrawal agreement's rights and obligations before the agreement comes into force – even though this legislation will have to be debated while the negotiations continue. Giving Ministers wide powers to implement the withdrawal agreement will be controversial.

The agreement on initial negotiating groups shows that the **subjects for discussion** in phase 1 are citizens' rights, the financial settlement, the Ireland/Northern Ireland border, and 'other separation issues' including Euratom and the EU's third party agreements. Dispute resolution is a controversial topic that runs through all of these, with fundamental disagreement between the EU and UK on the role of the CJEU.

Discussion of a future relationship and any transitional arrangements must wait for phase 2, as the Commission has no mandate to negotiate them yet.

There is more detail in another Commons Library briefing paper, [Brexit: the talks begin](#).

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