



BRIEFING PAPER

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Brexit: red lines and starting principles

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Summary

In speeches in January, a White Paper in February 2017 and the Article 50 letter of notice, the UK Prime Minister and Secretary of State for Exiting the EU set out their aims for the Brexit negotiations and for the UK's future relations with the EU after it has left. The UK would be global in all its endeavours, would cooperate with its EU neighbours and would like as frictionless a departure and as smooth a transition as possible.

The European Council published guidelines setting out a broad framework for the negotiations and the European Parliament adopted a resolution on the negotiations and the UK's future relationship with the EU – which must not be more beneficial outside the EU than in it. The Commission adopted detailed negotiating directives, which flesh out the guidelines.

The views of the EU institutions coincide with the Government's in some respects – the need for legal certainty and for continuing security cooperation, the importance of agreeing EU and UK citizens' rights, and settling the Ireland/Northern Ireland border question, for example. The previous Government also accepted the EU's insistence that membership of the Single Market would entail accepting free movement of people; the UK would therefore not seek membership of either the Single Market or the EU customs union.

But there have also been areas of potential disagreement. One is whether the withdrawal agreement and an ambitious free trade agreement should be negotiated alongside each other, which is what the UK wanted. The guidelines and negotiating directives, on the other hand, provide for a phased approach to the negotiations; discussion of a future UK trade relationship with the EU will take place only if "sufficient progress" has been made in settling priorities in the first phase. The EP resolution also insists on a phased approach and that the future relationship agreement be concluded with the UK as a third state after Brexit.

One noteworthy difference between the previous Government's earlier statements and the Article 50 letter is that the notice letter does not reflect the Government's earlier readiness to walk away from the EU with no agreement if the outcome of the negotiations is unsatisfactory. The Article 50 letter emphasised the need to avoid a no-deal scenario and a "hard Brexit".

The election on 8 June, in which the Conservatives lost their majority in the House of Commons, may yet change the Government's negotiating position in some areas. The Chancellor, Philip Hammond, has said the UK will leave the EU "via a slope not a cliff-edge" - a no deal outcome must be avoided. But he also confirmed that the UK would leave the Single Market and the customs union.

There have been suggestions that a Conservative alliance with the Northern Ireland Democratic Unionists – details of which are not yet known - might give rise to a 'softer' Brexit than previously envisaged.

The Brexit negotiations formally opened on 19 June 2017. Both parties are committed to being transparent about the negotiations, but as yet there is more evidence of EU than UK transparency.

This paper summarises key points in the EU and UK starting positions as the Brexit negotiations begin. References to "both parties" are to the two main negotiators – the European Commission and the UK Government.

1. United Kingdom

1.1 Prime Minister's Lancaster House speech

Theresa May, in her Lancaster House speech, 17 January 2017, [The government's negotiating objectives for exiting the EU](#), set out 12 principles to guide the UK:

- Providing certainty and clarity
- Taking control of own laws
- Strengthening the Union
- Protecting UK's historic ties with Ireland and maintaining Common Travel Area
- Controlling immigration
- Securing rights for EU nationals in UK and UK nationals in EU
- Protecting workers' rights
- Ensuring free trade with European markets
- Securing new trade agreements with other countries
- Ensuring UK's pre-eminence in science and innovation
- Cooperating in fight against crime and terrorism
- Delivering a smooth, orderly Brexit

1.2 White Paper, February 2017

A White Paper in February 2017, [The United Kingdom's exit from, and new partnership with, the European Union](#), elaborated on the earlier speech. Its negotiating aims were:

- Engaging constructively and respectfully, in spirit of sincere cooperation.
- Putting UK citizens first.
- Aiming for comprehensive agreement with EU
- Minimising disruption and giving as much certainty as possible.
- Emphasis on UK's relationship with Republic of Ireland and importance of Northern Ireland peace process.
- Beginning technical talks on detailed policy areas quickly, but prioritising the biggest challenges.
- Continuing to collaborate to advance and protect shared European values.
- Ending jurisdiction of EU Court in UK, but honouring international commitments and following international law.
- Recognition that future relationship agreement will need dispute resolution mechanisms.

- Devolved Administrations to be fully engaged, and specific interests of Scotland, Wales and Northern Ireland, and other parts of England secured.
- Government to work with Irish Government and Northern Ireland Executive on issues concerning economic, social and political context of land border between Northern Ireland and Ireland.
- Free Movement Directive will not apply and migration of EU nationals will be subject to UK law. New system will allow UK entry to brightest and best, students, academics; may be phased implementation so businesses can prepare for new arrangements.
- Prioritising securing status of EU citizens already living in UK and of UK nationals in other Member States.
- Continued protection of workers' rights to give certainty and continuity to employees and employers.
- Prioritising trade in goods and services, including financial services, between UK and the EU, but not membership of Single Market and no aim to adopt model adopted by other countries (EEA); working with BSI on future relationship with European Standards Organisations.
- Leaving EU means leaving EURATOM, but UK wants to collaborate with EU partners in science, research and nuclear energy.
- Prioritising maintaining positive environment for businesses, investors and consumers, stability of data transfer.
- A mutually beneficial new customs arrangement.
- No more UK contributions to EU Budget, but will make appropriate contribution to any EU programmes in which UK participates.
- Commitment to cooperation on cyber security and fight against terrorism.
- No deal for the UK is better than a bad deal.

1.3 Article 50 letter on intention to withdraw

The Prime Minister's [notice of withdrawal letter](#), 29 March 2017, summarised some of the Government's earlier aims:

- The process should deliver objectives in fair and orderly manner and avoid disruption.
- UK will negotiate as one UK, taking account of devolved interests.
- UK seeks "deep and special partnership" with EU in economic and security cooperation.

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- Failure to reach agreement would weaken cooperation in fight against crime and terrorism; this outcome should be avoided
- UK will help make sure Europe is strong and prosperous.

The Prime Minister outlined seven principles to help make the process smooth and successful, most of which reiterated her Lancaster House proposals:

- Constructive and respectful engagement in spirit of sincere cooperation
- Put citizens first
- Aim for a comprehensive agreement
- Minimise disruption and give certainty if possible
- Pay attention to UK's 'unique' relationship with Ireland and importance of Northern Ireland peace process
- Begin technical talks soon and prioritise biggest challenges
- Work towards protecting shared European values

There was no mention of Theresa May's apparent readiness to walk away from the negotiations with no agreement if the outcome is not satisfactory. The Article 50 letter emphasised the need to avoid a no-deal scenario.

The Prime Minister wanted to negotiate the withdrawal agreement and the future partnership alongside each other. The EU insists that future relations will only be discussed in phase 2 of the negotiations, if "sufficient progress" has been made in phase 1, and that a future trade or partnership agreement can only be concluded and finalised after Brexit.

In practice, discussions about withdrawal will inevitably involve some consideration of the future EU-UK relationship and probably transitional arrangements.

1.4 Chancellor's Mansion House speech

On 20 June the Chancellor, Philip Hammond, gave the annual Mansion House speech about the state of the UK economy. He outlined to his City audience what he expected from the Brexit negotiations:

Trade

A priority will be "maintaining our strong trade links with European markets after we leave the EU, as well as seeking out new opportunities for trade and investment with old friends and fast growing emerging economies alike".

Agreeing "a bold and ambitious free-trade agreement with our EU counterparts that covers both goods and services".

European Investment Bank

“In the long-term, it may be mutually beneficial to maintain a relationship between the UK and the EIB after we leave the EU”.

Migration

The Government seeks to “manage migration”, not to “shut it down”.

Transitional arrangements

The UK will negotiate “mutually beneficial transitional arrangements to avoid unnecessary disruption and dangerous cliff edges”.

“... we’ll almost certainly need an implementation period, outside the Customs Union itself, but with current customs border arrangements remaining in place, until new long-term arrangements are up and running”.

Customs

The UK needs “frictionless customs arrangements to facilitate trade across our borders”.

Irish border

Keeping the land border on the island of Ireland “open and free-flowing”.

Financial services:

The Chancellor outlined three aspects of this priority for the UK:

“First, we will need a new process for establishing regulatory requirements for cross-border business between the UK and EU. It must be evidence-based, symmetrical, and transparent. And it must reflect international standards.

Second, cooperation arrangements must be reciprocal, reliable, and prioritise financial stability. Crucially they must enable timely and coordinated risk management on both sides.

Third, these arrangements must be permanent and reliable for the businesses regulated under these regimes”.

2. European Union

2.1 European Council

The European Council's [Guidelines](#), published on 29 April 2017, define a framework for negotiations under Article 50 TEU:

Core principles

- UK should be a close partner in the future
- Any agreement with the UK will be based on a balance of rights and obligations, and ensure a level-playing field.
- Preserving the integrity of the Single Market excludes participation based on a sector-by- sector approach
- A non-EU Member without the obligations of a Member State cannot have the same rights and benefits as a Member State
- The four freedoms are indivisible and there can be no 'cherry picking'.
- The Union's overall objective will be to preserve its interests, those of its Member States, citizens and businesses
- There will be a phased approach giving priority to an orderly withdrawal
- The Union will act as one, will be constructive and will strive to find an agreement
- There will be no separate negotiations between individual Member States and UK on withdrawal matters
- The main purpose will be to ensure the UK's orderly withdrawal so as to reduce uncertainty and minimise disruption
- The two-year timeframe set out in Article 50 TEU ends on 29 March 2019

First phase

- Settle disentanglement of UK from EU and from rights and obligations UK derives from commitments as a Member State;
- Provide as much clarity and legal certainty as possible to citizens, businesses, stakeholders and international partners on immediate effects of UK's withdrawal from EU;

Second phase

- Overall understanding on framework for future relationship could be identified
- Preliminary and preparatory discussions held once sufficient progress has been made in first phase on reaching satisfactory agreement on arrangements for orderly withdrawal
- To "extent necessary and legally possible", negotiations may also determine transitional arrangements which are in the interest of the EU, and which may "provide for bridges towards

the foreseeable framework for the future relationship". These should be "clearly defined, limited in time, and subject to effective enforcement mechanisms".

- A time-limited prolongation of EU acquis would mean existing EU regulatory, budgetary, supervisory and enforcement instruments and structures would apply

Agreement on arrangements for 'orderly withdrawal'

- Priority to agree reciprocal guarantees on status and situations of EU and UK citizens/their families, affected by Brexit. Such guarantees must be "enforceable and non-discriminatory".
- Legal vacuum and uncertainty once Treaties cease to apply to UK must be avoided and addressed.
- Single financial settlement should ensure that EU and UK respect obligations undertaken before Brexit; settlement should cover legal and budgetary commitments and liabilities, including contingent liabilities.
- Regarding Good Friday Agreement, there should be "flexible and imaginative solutions" to avoid a hard border between the UK and Ireland, while respecting integrity of EU legal order; EU should recognise existing bilateral agreements and arrangements between UK and Ireland which are compatible with EU law.
- Regarding UK Sovereign Base Areas in Cyprus, bilateral arrangements between UK and Cyprus should be respected if compatible with EU law (especially regarding EU citizens resident/working in Sovereign Base Areas).
- EU with 27 Member States will continue to have rights and obligations of EU with 28 Member States regarding international agreements. But UK will no longer be covered by agreements concluded by EU or by Member States or both (i.e. mixed agreements).
- UK should honour its share of international commitments under EU membership; there should be 'constructive dialogue' with UK on a possible "common approach towards third country partners and international organisations".
- EU agencies and facilities based in UK should be transferred.
- There should be legal certainty and equal treatment regarding any UK cases pending before Court of Justice of EU and any administrative procedures pending before European Commission and EU agencies on Brexit day; need for arrangements to address "possibility of administrative or court proceedings to be initiated post-exit for facts that have occurred before the withdrawal date".
- Withdrawal agreement should include dispute settlement mechanisms for its application and interpretation, and

institutional arrangements allowing for measures to deal with unforeseen situations.

Preparing for framework for future EU – UK relationship

- Relationship between EU and non-Member State cannot offer same benefits as EU membership, but there should be mutually beneficial “strong and constructive ties” which go beyond trade, and other partnerships, e.g. in fight against terrorism and international crime, security and defence. These partnerships must include enforcement and dispute settlement mechanisms that do not affect EU autonomy.
- European Council is prepared to work towards an ambitious free trade agreement with UK, to be concluded after Brexit; this agreement cannot amount to participation in Single Market; it must ensure level playing field regarding competition and state aid and include safeguards against unfair competitive advantages (e.g. through fiscal, social and environmental dumping).
- Future agreements between the EU and UK cannot apply to Gibraltar without agreement between the UK and Spain.

The European Council endorsed the procedural arrangements set out in the [statement](#) of the 27 Heads of State and Government on 15 December 2016.

2.2 EU Council and Commission

On 22 May the General Affairs Council (Article 50), meeting as the EU27, adopted a [decision](#) of 15 May addressed to the Commission, authorising the opening of Brexit negotiations with the UK and formally nominating the Commission as EU negotiator. The texts were based on a [Commission recommendation](#) of 3 May 2017, in accordance with Article 218(3) of the Treaty on the Functioning of the European Union (TFEU).

The Council also adopted [negotiating directives](#) set out in the [Annex](#) to the decision, a decision of 15 May to establish an ad hoc Working Party on Article 50, to be chaired by the General Secretariat of the Council, and [Guiding principles for transparency](#) in the negotiations.

The negotiating directives build on the Guidelines:

- Issues necessary for an orderly withdrawal of the UK are identified, including citizens’ rights, the financial settlement and the situation of the Ireland/Northern Ireland border and the peace agreement.
- There must be as much clarity and legal certainty as possible in the first phase; when “sufficient progress has been achieved”, the negotiations will proceed to the next phase, which could include transitional provisions and future relations.

- An agreement on a future EU – UK relationship can only be concluded once UK leaves EU and becomes a third country, but discussions on a framework for future relationship could start during second phase of the negotiations.
- Citizens' rights are top priority. There must be guarantees to protect rights of EU and UK citizens and their family members affected by Brexit. Such guarantees should be reciprocal and based on equal treatment among EU27 citizens and compared to UK citizens. This should include right to permanent residence after five years of legal residence, and should cover workers, self-employed persons, students and other inactive persons, frontier workers and their families.

Protection should include residence rights and free movement, and associated rights (e.g. health care, sickness, maternity and paternity benefits, pensions and invalidity benefits, recognition of diplomas and qualifications). All rights should be protected for the lifetime of the persons concerned.

Jurisdiction of the Court of Justice of the EU (CJEU) should continue for rights that citizens currently have under EU law.

- There must be a single financial settlement in Euros and the UK must honour its share of all obligations undertaken as a Member State. UK should fully cover specific costs related to withdrawal (e.g. relocation of EU agencies currently based in UK).

Withdrawal agreement should include calculation of total amount and schedule of payments, and rules and arrangements to address specific issues. Calculation should be based on official consolidated annual EU accounts, supplemented if necessary by interim accounts.

- Withdrawal agreement must not undermine objectives and commitments of Good Friday Agreement. Negotiations should avoid a hard border, while respecting EU law. Agreement must address issues such as cross-border transit of goods.
- There must be arrangements to address situation of goods already on the market on Brexit day, e.g. if a product is already lawfully placed on the Single Market before Brexit, it should continue to be available on the market or put into service after that date in both the UK and EU27.
- Other areas where there may be a need to reduce uncertainty or avoid a legal vacuum, such as trade in services, will be covered in future negotiating directives.
- There must be arrangements for judicial proceedings pending before CJEU (e.g. on state aid) on Brexit day involving the UK, UK natural and/or legal persons (including preliminary references): CJEU should be able to adjudicate in these proceedings, and its rulings must be binding on UK. For aspects

of withdrawal agreement not relating to extending EU law, an “alternative” form of arbitration could be possible.

- There must be arrangements for ongoing administrative procedures in the EU institutions, bodies, offices and agencies concerning the UK (e.g. infringement proceedings, state aid) or, where applicable, concerning UK natural or legal persons;
- There must be arrangement to protect rights and interests of those living in UK Sovereign Base Areas, Akrotiri and Dhekelia in Cyprus, which are British Overseas Territories.
- The Council Guidelines on any future agreements between UK and EU with regard to Overseas Countries and Territories must be respected.
- New sets of negotiating directives will be issued once European Council decides sufficient progress has been made in first phase to proceed to second phase.

2.3 European Parliament

Under Article 50 TEU the European Parliament (EP) must approve the withdrawal agreement before it is concluded by the Council. On 29 March the EP's Conference of Presidents¹ endorsed a [motion for a resolution](#) drawn up by group leaders and the Constitutional Affairs Committee, in which they set out conditions for EP approval:

- Fair treatment of EU-27 citizens, reciprocity and non-discrimination between UK citizens living in EU and EU citizens living in UK.
- UK must continue to enjoy its rights and respect its obligations under EU Treaties until it leaves, including financial commitments under current EU long-term budget.
- Until it leaves, UK must continue to accept the four freedoms, the jurisdiction of EU Court of Justice, budgetary contributions and adherence to EU's common trade policy.
- UK must adhere to principle of 'sincere cooperation' in negotiations on EU legislation in other policy areas until it leaves.
- UK should not have a better status outside the EU than inside.
- Future relationship between EU and UK could be an association agreement: this would mean respecting EU standards in areas of the environment, climate change, fighting tax evasion and avoidance, fair competition, trade and social policy.
- Border between Northern Ireland and the Republic of Ireland must be addressed.

¹ The leaders of four EP political groups: Guy Verhofstadt (ALDE Group), Manfred Weber (PPE Group), Gianni Pittella (S&D Group), Philippe Lamberts/Ska Keller (Verts/ALE Group) and Danuta Hübner, Chair of the Committee on Constitutional Affairs.

- Talks can start on transitional arrangements of up to three years based on a framework for future relationship between EU and UK, but only if and when good progress has been made towards the withdrawal agreement.
- A future relationship agreement can only be concluded once the UK has left the EU.
- The negotiations cannot involve any trade-off between internal and external security, including defence co-operation, and the UK's future economic relationship with the EU.

3. Have positions changed?

3.1 Parallel or sequenced negotiations?

At the start of the negotiations, both the EU and the UK sides have compromised on their initial positions on Brexit talks. The EU is no longer insisting on a hard sequencing, in which there is no discussion of a future relationship until the 'divorce' is settled. But the EU's position is still conditional: "preliminary and preparatory discussions" on a future relationship with the UK can be made if "sufficient progress" is achieved on the withdrawal agreement.

The UK Government wanted a withdrawal agreement and a future relations agreement to be discussed in parallel.² The Brexit Secretary, David Davis, [told](#) Robert Peston on 14 May 2017 that the Government found "wholly illogical" the EU insistence that the financial settlement and the Irish border should be in the first phase of talks. The Government has since acquiesced in the EU's conditional, phased approach.

In practice, it is inevitable that the two negotiations will overlap to some extent, because it will be impossible to discuss the terms of withdrawal without considering their future implications for the EU and the UK, both in terms of a transitional and a long-term relationship.

3.2 Good deal, bad deal, no deal?

In her Lancaster House speech in January 2017 Theresa May said "no deal for Britain would be better than a bad deal". This view seems to have changed.

Both the EU and the UK understand that the negotiations could collapse, but both acknowledge the importance of an orderly withdrawal and a framework for a future relationship based on a withdrawal agreement. The Chancellor, Philip Hammond, confirmed this approach in an interview with Andrew Marr on 18 June, when he had said that no deal at the end of the Brexit negotiations would be a "very, very bad outcome for Britain", and in his Mansion House [speech](#) on 20 June, when he said transitional arrangements would be needed to "avoid unnecessary disruption and dangerous cliff edges".

Both parties agree that the outcome of the negotiations must be mutually beneficial, but while David Davis speaks of a "deep and special partnership between the UK and the EU" and a "deal like no other in history", the EU has made clear that it will not offer the UK a deal in which it enjoys similar benefits to EU membership. Michel Barnier insists that EU membership must remain the most advantageous status and the EP has said it will not consent to any agreement which contradicts this.

No deal would be a "very, very bad outcome for Britain, but there is a possible worse outcome and that is a deal that is deliberately structured to suck the lifeblood out of our economy over a period of time".

Chancellor Philip Hammond, [interview](#) with Andrew Marr, 18 June 2017

² [Conservative and Unionist Party Manifesto 2017](#), 18 May 2017, p.36.

3.3 What type of agreement?

The phased approach raises issues of timing and, depending on the type of agreement, procedures for adoption, ratification and entry into force.

The Article 50 withdrawal agreement requires a strong (or 'super') Qualified Majority in the EU Council (20 out of 27 Member States) and not necessarily national ratification. But if the future relations agreement is a complex 'mixed' agreement,³ it is likely to need national ratification as well as EU agreement by QMV. It could take years for all Member States to ratify such an agreement.

Will the Government aim for straightforward Free Trade Agreement (FTA), exclusive EU competence and probably QMV in the Council, but without national ratification? Given that the Government wants a "bold and ambitious free trade agreement" with the EU, it seems likely that the future relations agreement will turn out to be mixed. Mixed agreements can take years to ratify, and there are recent examples of them making very slow progress or being stalled.⁴

An EU – UK Association Agreement would require unanimity in the Council (Article 218 TFEU), EP consent and national ratification – again, could delay or prevent entry into force.

Both parties want more than just a trading relationship, but any suggestion of a link between security co-operation and trade, which some read into the Prime Minister's Article 50 letter, has been rejected by the EU.

Both parties acknowledge that a future trade deal will require a dispute settlement mechanism to enforce trade rules, but this may be another difficult area for the UK negotiators. David Davis has rejected any suggestion that the CJEU should adjudicate over the rights of EU citizens in UK after Brexit. How would he deal with continuing EU monitoring of the UK for non-compliance with transitional provisions or a trade agreement, or the jurisdiction of the CJEU and the possibility of sanctions?

Views were divided over whether the UK could continue to apply mixed EU external agreements it had ratified or acceded to while in the EU. The EU has made clear that the UK will no longer be covered by agreements concluded by the EU or by Member States or both (i.e. mixed agreements). It looks as if the UK will therefore have to conclude agreements with current third states after it leaves.

3.4 In or out of the Single Market and customs union?

Michel Barnier has made clear that the EU's four freedoms (of movement throughout the EU for people, goods, capital and services) are indivisible. There was a shared understanding that the UK would not

David Davis: "It's vital that the deal we strike allows both the UK and the EU to thrive, as part of the new deep and special partnership we want with our closest allies and friends".

Department for Exiting the EU [press release](#), 18 June 2017

³ A mixed agreement includes provisions on policies that are in the EU's competence and others that are Member States' competence.

⁴ The EU-US Transatlantic Trade and Investment Partnership, for example.

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have full access to the Single Market without agreeing to the free movement of people. Before the UK general election, the Government was resolved on this point, but since losing its majority in the Commons and heading towards a “confidence and supply” arrangement with the Northern Ireland Democratic Unionist Party (DUP), some believe there is now a question mark over this position.

Although the DUP supports Brexit, it also wants to avoid a hard border with the Republic of Ireland and its [election manifesto](#) called for “the best deal for Northern Ireland, recognizing that we share a land frontier with the Republic and the particular circumstances of our unique history and geography”. It also wants a comprehensive free trade agreement with the EU and “customs arrangements which facilitate trade with new and existing markets”.

What this will mean for the Brexit negotiations remains to be seen. Some commentators believe the DUP influence could mean a ‘softer’ Brexit than hard line Brexiteers would like. DUP leader, Arlene Foster, wants a “sensible Brexit” and a “frictionless border”, and her party manifesto called for “customs arrangements”. She does not want a ‘hard Brexit’ but neither has she said the UK should remain in the EU customs union.

The Scottish Government, on the other hand, published [compromise proposals](#) in December 2016 which aim to keep the UK in the Single Market and customs union. First Minister Nicola Sturgeon has [called for](#) a pause in Brexit negotiations to “build a cross party, all government approach to Brexit that will protect all of our interests at this highly uncertain time”.

In his Mansion House [speech](#) the Chancellor spoke of a “frictionless customs arrangement to facilitate trade across our borders”, and he was optimistic that jobs and trade could benefit from Brexit:

I am confident we can do a Brexit deal that puts jobs and prosperity first, that reassures employers that they will still be able to access the talent they need, that keeps our markets for goods and services and capital open, that achieves early agreement on transitional arrangements, so that trade can carry on flowing smoothly, and businesses up and down the country can move on with investment decisions that they want to make, but that have been on hold since the Referendum.

His warning that the negotiations would “get tougher” could underestimate the difficulties ahead, bearing in mind the EU position that the UK should not benefit from not being in the EU.

On 19 June after the first meeting between Michel Barnier and David Davis, Mr Barnier thought a “fair deal” was possible for both the EU and the UK, “and far better than no deal”. He reiterated the pledge that the EU would “work all the time with the UK and never against the UK. There will be no hostility on my side. I will display a constructive attitude firmly based on the interests and support of the 27”. He also said he was “not in a frame of mind to make concessions, or ask for concessions. It’s not about punishment, it is not about revenge”.

It remains to be seen how or if these two positions can be reconciled.

3.5 Priorities for the negotiations

Citizens' rights

Both parties agree on the need to settle the issue of EU citizens' rights as a priority. Earlier UK suggestions about restricting the residency rights of recently arrived EU citizens as soon as Article 50 was invoked were abandoned, under EU pressure to allow the current status of EU citizens in the UK to continue. The Government is reported to have plans for a "very generous" offer on rights for the estimated three million EU citizens living in the UK.

On 12 June the Commission Task Force preparing for the negotiations published a position paper, [Essential Principles on Citizens' Rights](#), which include the detailed requirements of the principles set out in the negotiating directives.

After the first Brexit meeting on 19 June, David Davis [stated](#) that on this issue "there is much common ground". He said the Prime Minister would shortly update EU leaders on the UK's approach to this issue at the European Council, and the Government would publish a detailed paper outlining the UK's offer on 26 June. He would also brief members of other parties on [Privy Council](#) terms (i.e. on a confidential basis – but not all opposition leaders are on the Privy Council), and Parliament more generally.

The divorce bill

The financial settlement formula is a negotiating priority and both parties agree that there will be costs. Reports on the UK 'bill' for Brexit range from €15 billion to €100 billion (£84bn). The figure has not yet been officially calculated, but on 12 June the Commission published a position paper, [Essential Principles on Financial Settlement](#), setting out its methodology for the calculation.

The figures relate to outstanding EU Budget commitments, pension liabilities, loan guarantees and other spending commitments.

The [Conservative and Unionist Party Manifesto 2017](#) spoke of determining "a fair settlement of the UK's rights and obligations as a departing member state, in accordance with the law and in the spirit of the UK's continuing partnership with the EU". But the estimates currently being reported are much higher than the UK believe the settlement should be.⁵

For the EU the final settlement is not an exit bill, but is about "settling the accounts" – paying for commitments the UK has already made as an EU Member State for years to come.

David Davis has said the UK will take its responsibilities seriously and discuss "in detail what the rights and obligations are"; that the UK would meet its international obligations, but that there would be

⁵ The 'divorce bill' is discussed in section 3.1 of the Commons Library briefing 7886, [The UK's contribution to the EU budget](#), 12 June 2017.

“international obligations including assets and liabilities and there will be the ones that are correct in law, not just the ones the Commission want”.⁶

Agreement on the final bill could be difficult.

The Irish border

The future of the open border between the Republic of Ireland and Northern Ireland and maintaining the peace process were flagged up early on as major concerns for the EU and the governments of the UK, Northern Ireland and the Republic of Ireland. All parties agree that Brexit should not result in a hard border which would reintroduce customs and immigration checks and regulatory standards.

Some commentators believe the only way to achieve this is for the UK to stay in the Single Market and customs union, which the Government has ruled out. Resolving this contradiction will be difficult, but there are positive indications that the EU will be flexible in its approach, and prepared to diverge from existing practice in order to achieve this.

Michel Barnier [told](#) the Joint Houses of the Oireachtas on 11 May that nothing in the negotiation “should put peace at risk”. The EU27, he said, were “very clear that the Good Friday Agreement must be respected in all its dimensions”. The UK Government has assured Parliament that “One of our highest priorities in these negotiations and in our whole strategy for the UK’s exit from the EU is to secure the soft border that exists, to make sure that there is no return to the hard borders of the past”.⁷

Ireland’s new Taoiseach, Leo Varadkar, met Theresa May on 19 May. They agreed that there should be no economic border between the south and the north after Brexit.

So the challenge will be to find technical and practical solutions to the border question that satisfy all parties and preserve the peace process.

3.6 Transitional arrangements

Both parties acknowledge the need for period of adjustment, to allow the UK to implement new arrangements and for the EU to minimise disruption until a trade agreement is concluded. A limited transition period – the EP does not want this period to exceed three years - would mean the UK not severing all ties with the EU after the two-year negotiating period is up.

But the EU has made clear that if the UK has a gradual transition out of EU, it will have to make payments to the EU. The EU’s condition that “existing regulatory, budgetary, supervisory and enforcement instruments and structures” (e.g. the jurisdiction of the CJEU) would apply during a transition period is also likely to prove challenging for UK negotiators.

⁶ BBC News, [Brexit: UK and EU at odds over size of 'divorce bill'](#), 3 May 2017.

⁷ Robin Walker, [HC Deb 27 April 2017, c 1200](#).

3.7 Organisation and transparency

According to the agreed [Terms of Reference](#) for the negotiations, “for both parties the default is transparency”, and also “Both Parties will handle negotiating documents in accordance with their respective legislation”.

The EU has published details of the organisation of the negotiations and a transparency policy. It is less clear what the UK Government will do.

European Union

The EU plans four-week cycles for each topic of the negotiations:

- Internal preparation
- Exchange of views
- Negotiations at political level
- Feedback

The negotiating rounds will consist of plenary sessions and negotiating group meetings. The Commission has published details of the members of the [Task Force for the Preparation and Conduct of the Negotiations with the UK under Article 50 TEU](#).

The Terms of Reference set out the timetable, agenda and items for discussion in the first phase. Initial negotiating groups have been established on citizens’ rights, the financial settlement and other separation issues. There is a special procedure for the Ireland/Northern Ireland discussion, and additional working groups or subgroups may be established.

The Commission published its [transparency policy](#) for the negotiations on 22 May. The EU negotiator will act within the limits of EU law with regard to the protection of information as defined in Article 4(1) of [Regulation 1049/2001](#) (30 May 2001) on public access to EP, Council and Commission documents.

Within the limits of this Regulation, the Commission’s negotiating documents will be shared with EU Member States, the EP and the public, and published on the Europa site, [Negotiating documents on Article 50 negotiations with the United Kingdom](#).

These documents will include:

- Agendas for negotiating rounds
- EU position papers
- Non-papers⁸
- EU text proposals.

11. For both parties the default is transparency.

12. It is for the Party providing the information to state what, if any, restrictions should apply to their further distribution.

13. Any disclosure by either the United Kingdom or the European Commission of documents originating from the other Party will be subject to prior consultation of the originating party.

14. Both Parties will handle negotiating documents in accordance with their respective legislation.

[Terms of Reference](#) for the Article 50 TEU negotiations, 19 June 2017

⁸ Non-papers are usually informal discussion documents submitted in negotiations within the EU institutions.

In [Guiding principles for transparency in negotiations under Article 50 TEU](#), 22 May 2017, the EU Council sets out the EU's transparency regime.

TRANSPARENCY REGIME FOR DOCUMENTS ORIGINATING FROM 3rd PARTIES

DOCUMENTS ORIGINATING FROM 3rd PARTIES (OTHER INSTITUTIONS, BODIES, STAKEHOLDERS, etc.)			
Originator	Possible types of documents	Recipient	Disclosure
EU NEGOTIATOR (COMMISSION)	- Recommendation for Council Decision authorising the opening of negotiations and nominating Union negotiator - Recommendation for Council Negotiating Directives	Delegations via GSC	Made public by Union negotiator
	Negotiating documents: e.g. Agendas for negotiating rounds / EU position papers / non-papers / EU text proposals etc.	EU MS / EP / National Parliaments / UK	Made public by Union negotiator within the limits of EU law
	Background information / press material, etc.	General public	Made public by Union negotiator
MEMBER STATES (except UK)	Non-papers / position papers, etc.	Delegations and Union negotiator via GSC	Case-by-case assessment subject to prior agreement of Member State on possible disclosure, in accordance with applicable rules and exceptions under EU law

• **TRANSPARENCY REGIME FOR COUNCIL (Art.50) DOCUMENTS**

COUNCIL (Art.50) DOCUMENT			
Originator	Possible types of documents	Recipient	Disclosure
COUNCIL (Art.50) including GSC / ROTATING PRESIDENCY/ PREPARATORY BODIES (Art.50)	- European Council guidelines - Council decision authorising the opening of negotiations and nominating Union negotiator - Council negotiating directives ³	Delegations and Union negotiator via GSC	Public from the time of formal adoption
	Coreper (Art. 50), GAC (Art. 50) and European Council (Art.50) meeting agendas and convocations	Delegations and Union negotiator via GSC	Public
	Notes to WP/Coreper/GAC/EUCO(Art.50)/Documents with guidance for the Union negotiator and compromise proposals/Opinions from the Council Legal Service, etc.	Delegations and Union negotiator via GSC	Case-by-case assessment in accordance with applicable rules and exceptions under EU law

DOCUMENTS ORIGINATING FROM 3rd PARTIES (OTHER INSTITUTIONS, BODIES, STAKEHOLDERS, etc.)			
Originator	Possible types of documents	Recipient	Disclosure
UK	Documents originating from the UK (positions, draft proposals, non-papers, etc)/UK draft proposals for provisions of the withdrawal agreement	EU negotiator (shared with delegations via GSC)	Case-by-case assessment subject to prior consultation on possible disclosure, in accordance with applicable rules and exceptions under EU law
OTHER INSTITUTIONS BODIES AND STAKEHOLDERS	Documents originating from third parties (positions, draft proposals, non-papers, etc.)	EU negotiator and/or delegations via GSC	Case-by-case assessment subject to prior consultation with the author on possible disclosure, in accordance with applicable rules and exceptions under EU law

UK government

David Davis has committed to the principle of transparency, but it is not clear how this will work in practice.

The Department for Exiting the EU has [published](#) details of the UK's negotiating team, and some negotiating documents have already been published on the [UK Government](#) website and Parliament's European Scrutiny and Information Database.

The Government has said it will not give a blow-by-blow account of the negotiations, which it believes would compromise its negotiating strategy, but David Davis has said the UK Parliament will be kept "at least as informed as, and better informed than, the European Parliament",⁹ as long as this does not undermine the national interest. There have been calls for the UK's Devolved Administrations to be more involved in the negotiations.

Parliament will be deeply involved in scrutinising the negotiations and related legislation, although it has no formal role in treaty negotiations. Parliamentary committees, once they are up and running, will want to carry out inquiries into aspects of Brexit. MPs will be able to use the usual routes to question the Government about developments in the negotiations (parliamentary questions and debates - the Backbench Business and Petitions Committees are likely to initiate debates). But there has been no Government commitment to give Parliament any 'privileged' access to negotiating documents or to make regular statements on negotiating meetings, for example.

For further information on UK parliamentary scrutiny of Brexit, see Commons Briefing Paper 7884, [European Union \(Notification of Withdrawal\) Bill](#), 30 January 2017, and 7793, [Legislating for Brexit: the Great Repeal Bill](#), 2 May 2017.

⁹ [HC Deb 12 October 2016 c332](#).

4. Further reading

Prime Minister's [letter](#) to European Council President, Donald Tusk, announcing UK intention to withdraw from EU, 29 March 2017

[European Council Guidelines](#), 29 April 2017

[Council Decision](#) on 3 May 2017 authorised European Commission to open negotiations with the UK and [detailed negotiating directives](#).

EP Directorate General for Internal Policies, Policy Department A, Economic and Scientific Policy, [The Role and Powers of the European Parliament in the Brexit Process](#), June 2017

Council [Guiding principles for transparency in negotiations under Article 50 TEU](#)

Scottish Government press release, 14 June 2017, [First Minister writes to Prime Minister ahead of Brexit negotiations](#)

Institute for Government, [Brexit Explained: the Article 50 letter](#) and [Brexit Explained: Article 218](#)

Chatham House, [How Much Will Brexit Cost?](#) Professor Iain Begg, 30 May 2017

Egmont Royal Institute for International Affairs, [The European Union is exaggerating in its demands for Brexit, especially about the European Court of Justice's future role](#), Franklin Dehousse, 29 May 2017

European Commission - Fact Sheet, [Article 50 of the Treaty on European Union](#) – Q&A, 29 March 2017

Cm 9417, [The United Kingdom's exit from and new partnership with the European Union](#), February 2017

European Parliament Directorate General for Internal Policies, Policy Dept C: Citizens' Rights and Constitutional Affairs, [The Brexit Negotiations: an Assessment of the Legal, Political and Institutional Situation in the UK](#), March 2017

EP Policy Dept. Constitutional Affairs, [The Impact and Consequences of Brexit for Northern Ireland](#), Jonathan Tonge, University of Liverpool, 2017

Chatham House, [EU Citizens Back Their Leaders' Negotiating Stance on Brexit](#), 29 March 2017

Open Europe, 29 March 2017, [Open Europe responds to the triggering of Article 50](#), Aarti Shankar

Open Europe, 29 March 2017, Vincenzo Scarpetta, [Theresa May triggers Article 50 – what next?](#)

EurActiv 29 March 2017, [Gabriel: No 'UK rebate' in Brexit talks](#)

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