



BRIEFING PAPER

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Brexit: the financial settlement - in detail

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Summary

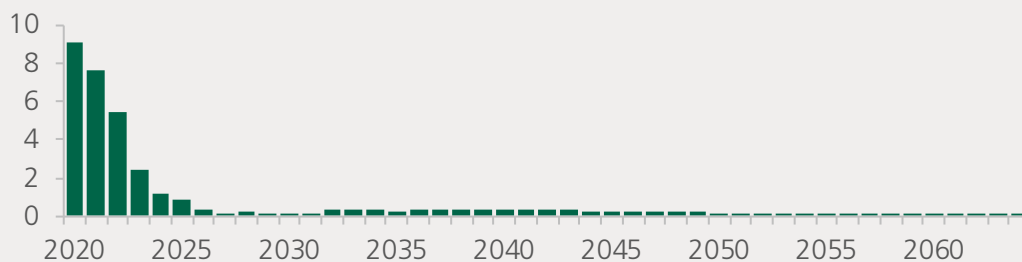
This briefing takes a detailed look at the financial settlement. As well as setting out the components of the settlement it also covers topics such as the settlement's origins, negotiations and the legal form it takes in the Withdrawal Agreement. A shorter briefing [Brexit: the financial settlement - a summary](#) covers what the settlement is and how much it might cost.

In the financial settlement (the settlement), the UK and EU have set out how they will settle their outstanding financial obligations to each other. The obligations arise out of the UK's participation in the EU Budget and broader aspects of its EU membership.

The settlement says which financial commitments will be covered, the methodology for calculating the UK's share and the payment schedule. The settlement is part of the Withdrawal Agreement, which is the legally binding treaty setting out the negotiated terms of the UK's departure from the EU.

There is no definitive cost to the settlement. The final cost to the UK will depend on future events such as future exchange rates and EU budgets. The Office for Budget Responsibility estimate that the net cost to the UK may be £34 billion.

Estimated path of settlement payments, £ billion



Underlying principles

The UK and EU agreed some principles for the settlement:

- no EU Member State should pay more or receive less because of the UK's withdrawal from the EU;
- the UK should pay its share of the commitments taken during its membership; and
- the UK should neither pay more nor earlier than if it had remained a Member State. This means that the UK will make payments based on the outturns of EU budget.

What is included in the settlement?

Broadly speaking, the settlement can be split into three components:

- **During the transition period**, until the end of 2020, **the UK will pay into the EU Budget** almost as if it were a Member State. The UK will also **receive funding from EU programmes** – such as structural funding – as if it were a Member State.
- EU annual budgets commit to some future spending without making payments to recipients at the time. The commitments will become payments in the future. **The UK will contribute towards the EU's outstanding commitments** as at 31 December 2020. Recipients in the UK will also receive funding for outstanding commitments made to them.

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- The UK will **share the financing of some EU liabilities** as at the end of 2020, and any materialising contingent liabilities, **and will receive back a share of some assets**. The pensions of EU staff are likely to be the most significant liabilities for the UK, while the most significant item being returned to the UK is the capital it paid into the European Investment Bank (EIB).

Not everything in the settlement fits neatly into these three components. For instance, the UK has agreed to continue to contribute to the EU's main overseas aid programme – the European Development Fund – until the current programme ends. This programme is funded directly by Member States, rather than through the EU Budget. The UK's contribution counts towards its commitment to [spend 0.7% of national income on overseas aid](#).

The Office for Budget Responsibility (OBR) estimate that the UK will make £34 billion of net payments in the settlement

Estimated cost of the settlement and its components, £ billion

	Payment period	£ billion
UK participation in EU Budget 2020 (net)	2020	10.1
Reste à liquider	2021-2028	18.9
Other net liabilities	2020-2064	5.1
Total	2020-2064	34.1

Sources: OBR. [Economic and fiscal outlook – March 2021](#) supplementary fiscal tables 3.14 & 3.13

Negotiations and ratification: the timeline

- June 2017. The European Commission set out what it expects from the settlement in a [position paper](#).
- June – November 2017. The settlement is negotiated in the first phase of Brexit negotiations, along with other separation issues such as citizen's rights and the Ireland/Northern Ireland border. Broadly speaking, financial settlement negotiations focus on the Commission's position paper.
- December 2017. A political agreement is reached on the financial settlement. It is published in a [joint report](#) along with the agreement reached on other separation issues.
- November 2018. A Withdrawal Agreement is agreed between Theresa May's Government and the EU. The Withdrawal Agreement (WA) sets out, in legal terms, how the financial settlement will be calculated and administered. It also sets out the practicalities for payments between the UK and EU after 2020.
- October 2019. Boris Johnson's Government negotiates and publishes a revised Withdrawal Agreement. There are no changes to the financial settlement.
- January 2020. The European Union (Withdrawal Agreement) Act 2020 becomes UK law. The European Parliament gives its consent to the Withdrawal Agreement. This means that the financial settlement becomes legally binding. The UK leaves the EU.

1. What's it all about?

In the financial settlement (the settlement), the UK and EU have set out how they will settle their outstanding financial obligations to each other. The obligations arise out of the UK's participation in the EU Budget and broader aspects of its EU membership.

The settlement was agreed during withdrawal negotiations and is part of the Withdrawal Agreement, which is the legally binding treaty setting out the negotiated terms of the UK's departure from the EU.

The settlement was negotiated during the first phase of withdrawal negotiations alongside other separation issues such as citizens' rights and the Irish border.¹

During the first phase of negotiations the UK and EU established the components of the settlement and how the UK's share would be calculated. Negotiations didn't set the amounts to be paid but did set the method for calculating payments. An agreement in principle was reached, alongside the other separation issues, and published in a [joint report](#) on 8 December 2017.

The political agreement reached on settlement was turned into legal text in the [Withdrawal Agreement](#) (WA). The WA became legally binding once it was approved by the UK Parliament and European Parliament. The UK left the EU on 31 January 2020.

Box 1.1: Paying to participate in EU programmes after Brexit

The UK is continuing to participate in some EU programmes after the end of the transition period (from 1 January 2021). The UK-EU Trade and Cooperation Agreement covers the future UK-EU relationship and says that the UK will continue to participate in the following EU programmes:

- Horizon Europe – the EU's research and innovation programme
- Euratom Research and Training programme
- International Thermonuclear Experimental Reactor (ITER) – the fusion test facility currently under construction in the South of France
- Copernicus – EU satellite system for monitoring the Earth.

The UK will make financial contributions to take part in these programmes. The contributions are not part of the financial settlement. The financial settlement deals with outstanding financial commitments arising from the UK's membership of the EU. The contributions for taking part in EU programmes are part of the future relationship.

The financial contribution will be calculated on:²

- a contribution based on the wealth of the UK (proportion to its GDP) in comparison with the wealth of the EU.
- a participation fee, covering the administrative costs of organising the system of EU programmes.
- in addition, for Horizon Europe, a standard adjustment mechanism ensuring a balance between UK contributions and the benefits for its entities, through specific corrective measures.

¹ The financial settlement was discussed under the heading of the 'single financial settlement' during the first phase.

² European Commission, [Questions & Answers: EU-UK Trade and Cooperation Agreement](#), 24 December 2020

2. The political agreement

On 8 December 2017, the European Commission (the Commission) and the UK Government published an agreed methodology for calculating the settlement. The details were included in a [joint report](#) agreed by the Commission and the UK on progress during the first phase on negotiations.

The joint report – which also covers other ‘separation issues’ such as citizens’ rights and the Irish Border – allowed the Commission to recommend to the European Council (the leaders of EU Member States) that sufficient progress has been made in the first phase of negotiations. Subsequently, the European Council agreed that ‘sufficient progress’ had been made and that negotiations should move onto transitional arrangements and the future EU-UK relationship.³

The joint report was an “agreement in principle” on the whole package as opposed to individual elements. The settlement only became legally binding once it formed part of the ratified Withdrawal Agreement.⁴

Box 2.1: The EU institutions

European Council

The European Council is the highest-level decision-making forum in the EU, consisting of the heads of state or government of the Member States, together with the Presidents of the European Council and the European Commission. The European Council gives the EU its ultimate political direction.

European Commission (the Commission)

The European Commission is the executive of the EU: it proposes legislation and implements policy within the competences laid down by the EU Treaties. The Commission has the following general functions: policymaking; Treaty guardianship; policy implementation and delegated powers; management of EU funds; representation in trade negotiations and other agreements with third countries.

The Council of the European Union (the Council)

The Council is made up of ministers of the governments of Member States. It is one of the two principal legislative and decision-making bodies of the EU, along with the European Parliament.

European Parliament

The European Parliament is the assembly of elected representatives of EU citizens. The representatives are known as Members of the European Parliament (MEPs). The European Parliament debates and passes law; scrutinises other EU institutions; and debates and adopts the EU’s budget.

³ European Commission, [COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN COUNCIL \(ARTICLE 50\) on the state of progress of the negotiations with the United Kingdom under Article 50 of the Treaty on European Union](#), 8 December 2017; European Commission, [Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union](#), 8 December 2017

⁴ Ibid, [para 4 - 5](#)

2.1 What was agreed?

A methodology for calculating the financial settlement is agreed in the joint report. The underlying principles are that:⁵

- no EU Member State should pay more or receive less because of the UK's withdrawal from the EU;
- the UK should pay its share of the commitments taken during its membership; and
- the UK should neither pay more nor earlier than if it had remained a Member State. This implies that the United Kingdom should pay based on the actual outcome of the budget

The final point means that the UK will not be required to make any payments earlier than would have been the case if it had remained a Member State, unless agreed by both sides.

For instance, as discussed below, the UK will contribute towards the pensions of EU employees. The payments to EU employees are made annually in the EU's budgets and the UK will make annual contributions towards these costs. The Office for Budget Responsibility (OBR) – the UK's public finances watchdog – expects annual payments to go on until the mid-2060s.⁶⁷

UK participation in EU 2020 budget

Payments to the EU Budget

The UK will contribute to, and participate in, the 2020 EU Budget, as part of the transition period. Any changes made to the budget or its financing after the withdrawal date will not apply to the UK, and the UK will not be obliged to contribute to any additional funding beyond what is set out in the Withdrawal Agreement.

EU Budgets are subject to corrections or adjustments after the year is over. The UK will take part in any revenue adjustments relating to the 2020 EU Budget. Any amounts to be returned to, or returned by, the UK will be calculated as if the UK remained in the EU. The agreement says that the UK and EU may consider simplifying the adjustment process in the second phase of negotiations

The UK's rebate (see [Box 4.5](#)) continues to apply in 2020.

UK participation in funding programmes

The UK will continue to participate in EU programmes funded from the 2014-2020 budget plan (MFF 2014 – 2020; see [Box 4.2](#)) until they close. The UK and UK beneficiaries will be required to respect all relevant EU legal provisions including co-financing.

⁵ These principles are laid out in the [communication from the Commission to the Council on the state of progress of the negotiations with the United Kingdom under Article 50 of the Treaty on European Union](#), 8 December 2017

⁶ OBR, [Economic and fiscal outlook – March 2021](#), supplementary table 3.13

⁷ [Article 142\(6\)](#) of the Withdrawal Agreement allows for the UK to pay its outstanding pension liability earlier if it wishes.

EU programmes take two forms – funding is either provided to the UK Government to manage, or funding is allocated directly to beneficiaries by the Commission.

The funding allocated directly by the Commission is largely through Horizon 2020 – the EU’s research and innovation programme. The OBR forecasts that the UK beneficiaries will receive around €2 billion from the Commission in 2020, although it isn’t clear how much was received by the UK as a Member State.⁸

The Library briefing [Brexit: UK Funding from the EU](#) has more on EU funding programmes.

EU Budget outstanding commitments (reste à liquider)

In their annual budgets the EU commit to some future spending without making payments to recipients at the time. The commitments will become payments in the future. The EU refer to outstanding commitments as *reste à liquider* (RAL). The UK will contribute towards the financing of the RAL outstanding at 31 December 2020 and any carried over from the 2020 budget.

The total applicable RAL will be adjusted to account for the actual amount implemented. An adjustment will be made for decommitments – commitments that are cancelled as they are not going to be converted into payments – and assigned revenues, which are largely revenues from non-EU countries to EU programmes.

The OBR estimate that the EU’s post-2020 EU budget RAL will be around €296 billion, after decommitments.⁹ The figure is uncertain. Some of the RAL will be receipts owed to the UK.

The OBR estimate that the UK will make net RAL payments of £19 billion, between 2021 and 2028.¹⁰

Liabilities

The UK will share the financing of the EU’s liabilities incurred before 31 December 2020. Liabilities with corresponding assets will be excluded as will assets and liabilities related to the spending and financing of the EU Budget (see [Box 4.2](#) and [4.3](#)). Payables and accrued charges, which largely relate to farming subsidies, aren’t to be included. [Box 2.2](#) lists the excluded assets and liabilities.

In its original [position paper](#) the EU expected payables and accrued charges to be included in the settlement (see page 25). However, as the UK will be contributing to the EU Budget during the transition period, and payables and accrued charges relate to the operation and financing of the Budget, they are not included.

⁸ OBR. Economic and fiscal outlook – March 2018, [Annex B](#)

⁹ OBR. [Economic and fiscal outlook – March 2021](#), supplementary table 3.12

¹⁰ OBR. [Economic and fiscal outlook – March 2021](#), supplementary table 3.13

The pensions and other benefits of EU employees are the most significant liabilities included in the settlement. Like the UK civil service pension scheme, the EU's pension scheme is unfunded and operates on a 'pay-as-you-go basis', which sees costs being covered by the EU Budget as they arise. It is likely that the UK will contribute towards these pensions over many years as the UK will only make payments as and when the cost enters the EU Budget.¹¹

The OBR estimate that the UK will have contributed around £12 billion to EU pensions through the financial settlement once the final payment is made. There is uncertainty over this estimate which will be affected by future events including salaries and mortality rates.¹²

Box 2.2: Assets and liabilities excluded from the financial settlement

The joint report provides a list of the assets and liabilities that would not be included in the financial settlement.

Assets

- EU financial assistance loan assets and the associated balance sheet liabilities
- assets corresponding to property, plant and equipment and provisions related to the Joint Research Centre nuclear sites dismantlement
- lease-related obligations and all provisions other than in respect of fines, legal cases and financial guarantee liabilities
- intangible assets and inventories
- assets and liabilities relating to the management of foreign currency risk
- accrued and deferred income
- assets relating to EU space programmes (EGNOS, Galileo & Copernicus) are not part of the financial settlement. The UK's past contribution to the financing of space assets could be discussed in the context of possible future access to the services offered.

Liabilities related to the budget and its financing

- Outstanding pre-financing advances
- Receivables
- Cash
- Payables, and accrued charges including those related to EAGF or already included in the budgetary RAL will not be included for the calculation of liabilities

¹¹ [Article 142\(6\)](#) of the Withdrawal Agreement would allow for the UK to request to pay its outstanding pension liability earlier if it wishes.

¹² OBR. [Economic and fiscal outlook – March 2021](#), supplementary table 3.14

Contingent liabilities

The UK will remain liable for its share of the EU's contingent liabilities as established at the date of withdrawal. Contingent liabilities are potential liabilities that may occur depending on the outcome of an uncertain event in the future. These liabilities include those which relate to financial operations – for instance for financial guarantees given on loans and financial assistance programmes – and legal cases. [Box 4.4](#) discusses an example of a contingent liability.

HM Treasury and the European Commission deem these contingent liabilities to be remote, which means they think it unlikely that they will result in a future cost.¹³

For those contingent liabilities related to financial operations, the UK's liability will only be affected by decisions adopted before the date of withdrawal.

For contingent liabilities related to legal cases as a result of participation in the budget, programmes and policies, the cut-off date will be 31 December 2020.

If any contingent liabilities are triggered, the UK will receive any subsequent recoveries from meeting those liabilities. The UK will also receive its share of paid-in guarantees when the financial operations associated with some contingent liabilities decline.

The UK's share

The financial commitments discussed above are accounted for on an EU-wide basis. The joint report says that the UK's share of these commitments will be based on the UK's percentage share of total contributions to the EU Budget over 2014 – 2020.

The exception is the UK's continued participation in the 2020 EU Budget – here there is no need to calculate a UK share.

In its original [position paper](#) on the settlement the EU expected the UK's share to be calculated using the same approach, but covering the period 2014 – 2018. It is thought that including contributions in 2019 and 2020 may make the UK's percentage share lower.¹⁴ This is because the pound weakened against the euro following the EU referendum result and has remained at a lower level since. This makes the UK economy appear relatively smaller and means the UK will make relatively smaller contributions to the EU Budget.

The OBR estimates that the UK's share over 2014 – 2020 may be 12.3%.¹⁵

Contingent liabilities are potential liabilities that may occur depending on the outcome of an uncertain event in the future. They relate mainly to financial guarantees given (on loans and financial assistance programmes) and to legal risks. They are unlikely to result in future payments.

¹³ The size of the remote contingent liabilities are shown in [Table E.3](#) of HM Treasury's EU finances report.

¹⁴ FT, [Britain prepares case to cut Brexit divorce bill](#), 17 November 2017

¹⁵ OBR, [Economic and fiscal outlook – March 2021](#), supplementary table 3.10

The currency of payments

Except for the UK's participation in the 2020 EU budget, which will be made as if a Member State and paid in sterling, the settlement will be drawn up and paid in euro. This means that the UK's actual contribution in pounds will be contingent on the future exchange rate.

2.2 Areas outside of the EU Budget

European Investment Bank

EU Member States are members of the European Investment Bank (EIB). As an EIB member the UK agrees to provide €39 billion of the EIB's capital, which is known as unpaid, or callable, capital. The UK also has €3.5 billion of paid-in capital with the EIB.¹⁶

The UK will provide a guarantee to the EIB equal to its callable capital – an amount the UK currently agrees to provide if required. This guarantee will decrease as EIB loans associated with it decrease.

On withdrawal from the EU the UK stopped being a member of the EIB. The UK's €3.5 billion of paid-in capital will be repaid to the UK in annual instalments until 2031. Payments began on 15 October 2020.^{17,18} The UK's paid-in capital will be replaced by an additional callable guarantee.

The Library briefing [European Investment Bank](#) has further information.

European Central Bank

The UK will be reimbursed for its paid-in capital of €55 million in the European Central Bank. The paid-in capital will be returned to the Bank of England after the UK's withdrawal.

European Development Fund (EDF)

The EDF is the EU's main instrument for providing development aid overseas. The EDF is broken down over time into 'EDF funds'. The EDF is outside of the EU Budget and the UK contributes to the fund. UK contributions are treated overseas aid and count towards the UK's [target for overseas aid spending](#) of 0.7% of Gross National Income.

The UK will remain part of the EDF until the close of the 11th EDF fund. The 11th EDF is running between 2014 and 2020. The UK will honour its share of the total commitments made under this EDF and the payments related to its share of the outstanding commitments made under

¹⁶ The UK will also receive a share of the net asset of the European Coal and Steel Community in liquidation and of the European Investment Fund decided before the withdrawal date, as the financial operations supported by these mature.

¹⁷ [PQ 155022 \[European Investment Bank: Repayments\], 1 March 2021.](#)

¹⁸ In the original approved Withdrawal Agreement a payment was due in 2019, but the UK hadn't left. On 12 June 2020 the Withdrawal Agreement Joint Committee [adopted a decision](#) to amend such errors in the agreement. The first payment of €300 million will be made on 15 October 2020, which will be followed by ten annual payments of equal size. A final payment of €196 million will be made on 15 October 2031.

previous EDFs. The Treasury expects the UK to make £2.9 billion of payments to the EDF, with payments ending in 2026.¹⁹

The UK has a share of the EDF's Investment Facility (around £0.4 billion).²⁰ This funding will be returned to the UK as the investments end.

For further information on the EDF see the European Parliament Research Service's briefing [European Development Fund](#).

Facility for Refugees in Turkey and EU Trust funds

The UK will honour the commitments it has made on the Facility for Refugees in Turkey and the European Union Emergency Trust Fund. These contributions – worth roughly £146 million²¹ – also count towards the UK's overseas aid target.

The [Facility for Refugees in Turkey](#) was established as part of a wider framework to address the migration crisis. The Facility focuses on humanitarian assistance, education, migration management, health, infrastructure, and socio-economic support.

EU Trust Funds are development tools that pool together resources from different donors in order to enable an EU response to an emergency or post-emergency situation. The European Parliament Research Service's briefing [EU Trust Funds for external action: First uses of a new tool](#) has more on the EU's trust funds.

2.3 What's the cost of the settlement?

In March 2021, the OBR estimated that the net cost of the settlement is around £34 billion.²²

Estimate of the settlement and its components		
£ billion		
	Payment period	£ billion
UK participation in EU annual budgets to 2020 (net)	2020	10.1
Reste à liquider	2021-2028	18.9
Other net liabilities	2020-2064	5.1
Total	2020-2064	34.1

Sources: OBR. [Economic and fiscal outlook – March 2021](#) supplementary tables 3.14 & 3.13

¹⁹ NAO. Exiting the EU: The financial settlement – follow-up report, November 2018, [para 2.3](#)

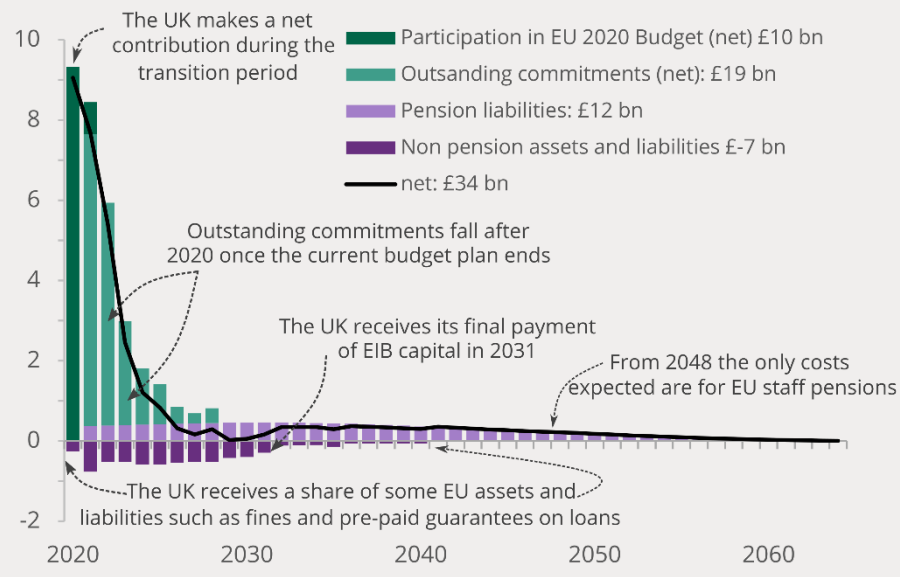
²⁰ op cit, [para E.53](#)

²¹ ibid, [Table E.4](#)

²² OBR. [Economic and fiscal outlook – March 2021](#), supplementary table 3.13

The OBR estimate that around 75% of the net cost of the financial settlement will have been paid by the end of 2024

OBR estimates of the annual path of the financial settlement, £ billions



Sources: OBR, [Economic and fiscal outlook – March 2021](#) supplementary tables 3.14 & 3.13

Before the UK's departure from the EU was delayed – through extensions to Article 50 – both the Government and Office for Budget Responsibility (OBR) estimated the settlement's cost at around £35 billion-£39 billion. As the UK left the EU later than previously assumed it made more payments to the EU as a Member State, rather than through the financial settlement (during the transition period). The net effect on the UK's EU contributions after 29 March 2019 is zero.

There is further information in the Library Insight [How does extending Article 50 affect the UK's financial settlement with the EU?](#)

It is difficult to estimate the cost

It isn't possible to put definitive figures on the cost of the settlement as it depends on future events such as the exchange rates and actual budgets of the EU, as was explained by a Treasury official:

....it is impossible to put a definitive number on the settlement.

When we agreed the financial settlement in December, one of the important principles we secured was that we will only pay for things if they are based on out-turns. So we will meet commitments made during the period of our membership, but in Europe, as in other budgetary systems, not all commitments turn into spending. So we will only pay for things based on out-turn data, and we will not know that out-turn data until well into the future.

So it is impossible to put a definitive number on the settlement...²³

²³ European Scrutiny Committee, Oral evidence: EU withdrawal, HC 763, [Q185](#)

OBR estimate (March 2021)

Since March 2018, the Office for Budget Responsibility (OBR) – the UK’s public finances watchdog – has produced an estimate of the settlement alongside its economic and fiscal forecasts. Its latest estimate of the net cost of the settlement is £34.1 billion.²⁴

The OBR expect payments to be made over a 46-year period ending in the 2060s, with much of the cost coming in the early years. The OBR estimate that by the end of 2023 over 70% of the net payments will have been made. They estimate payments after 2031 will average around £200 million a year.

[Annex B](#) of the OBR’s March 2018 forecast discusses the settlement in detail. The OBR has updated its estimate since, but the March 2018 document has the best explanation of its approach. The OBR’s latest estimate is broken down, year by year, in [an excel spreadsheet](#) accompanying this briefing paper. It can be found on this briefing’s landing page.

In July 2020, HM Treasury estimated the net cost of the settlement at £30.2 billion.²⁵ Different assumptions and data have been used by the OBR and HM Treasury to produce their estimates. For instance, the OBR uses a forecast of future exchange rates and HM Treasury use a discounted valuation of the UK’s EU pension liabilities.²⁶

The Government’s estimate (December 2017)

In December 2017, when the original agreement on the financial settlement was reached, the Treasury estimated the settlement at around £35 billion- £39 billion,²⁷ assuming an exit date of 29 March 2019.

HM Treasury’s estimate of the settlement

	Payment period	£ billion
UK participation in EU annual budgets to 2020	2019-2020	15-16
Reste à liquider	2021-2026	19-20
Other net liabilities	2021-2064	2-4
Total	2019-2064	35-39

Source: NAO. Exiting the EU: The financial settlement, Figure 1

The National Audit Office (NAO) examined the reasonableness of the Treasury’s estimate of the settlement’s cost. The NAO found the estimate to be reasonable based on the parameters set by the Treasury,

²⁴ OBR. [Economic and fiscal outlook – March 2021](#), supplementary table 3.13

²⁵ HM Treasury. European Union Finances 2019, July 2020, [paras E.22-E.24](#)

²⁶ HM Treasury. European Union Finances 2019, July 2020, [paras E.35-E.36](#)

²⁷ [HC Deb 11 Dec 2017:c25](#)

but that the actual value was uncertain because it depends on future events, including:²⁸

- the UK's economic performance relative to EU Member States, which will determine the UK's contribution to the EU Budget in 2019 and 2020;
- whether the UK continues to receive EU receipts at the same rate. The NAO said that it is possible "that the UK's revenues from the EU may change in the context of EU withdrawal."
- the impact of future events on the EU's pension liabilities. The current estimate of EU pension liabilities is based on assumptions about future events such as mortality rates, salary increases and discount rates. If any of these turn out to be different from assumed, then actual payments for EU pensions will be different from the Treasury's estimate;
- the future exchange rate.

The NAO made some further points about the Treasury's estimate:²⁹

- it includes receipts that go directly from the Commission to the private sector. This means that the Treasury's estimate is not the same as the payments and receipts that will be recorded in the public sector finances;
- it does not include the £2.9 billion that the UK is expected to contribute to the European Development Fund after the UK leaves the EU. The Treasury excluded this cost as the EDF is not part of EU Treaties and sits outside of the EU Budget;
- it does not include contingent liabilities. The Treasury and the Commission believe these liabilities to be remote, so they don't expect them to lead to future payments.

The Public Accounts Committee (PAC) also considered the settlement,³⁰ following the NAO's report. The PAC's views largely echoed those of the NAO, with the headline finding that the final cost of the settlement is uncertain.

The PAC reported that the UK's financing share – described as the [UK's share](#) above – is the main area of uncertainty according to the Treasury. The financing share depends on a range of factors such as the UK's relative economic performance and a final figure will not be known until 2020 audited EU accounts are published in 2022.

The PAC said that the Treasury has not conveyed the uncertainty attached to the settlement's value to Parliament or the taxpayer. They also made the wider point that the financial settlement only includes the cost of meeting the obligations set out in the settlement. There may be

²⁸ NAO. Exiting the EU: The financial settlement, [paras 11-22](#)

²⁹ *ibid*

³⁰ House of Commons Committee of Public Accounts, Exiting the EU: The financial settlement, HC 973, 27 June 2018

other costs associated with the UK withdrawing from the EU and its future relationship with the EU.

The Treasury explained to the PAC why it hadn't included payments to the EDF in its estimate of the settlement. The commitments are part of the UK's legal obligation to spend 0.7% of Gross National Income on overseas aid and if this budget was not spent through the EDF, the Government would be required to spend it through another route.

3. The Withdrawal Agreement

Both Theresa May's Government and Boris Johnson's Government negotiated and agreed a Withdrawal Agreement with the EU. The financial settlement was the same in both agreements.

[Part 5](#) of the [Withdrawal Agreement \(WA\)](#) turns the political agreement reached on the financial settlement into legal text. It includes how each component of the settlement shall be calculated and administered. It also sets out the practicalities for UK payments to the EU after 2020.

The Withdrawal Agreement has been ratified and is now a legally binding international treaty.

Parts of the financial settlement require UK legislation. These provisions are included in [The EU \(Withdrawal Agreement\) Act 2020](#).

3.1 The financial settlement in the Withdrawal Agreement

Part 5 of the WA turns the political agreement reached on the financial settlement into legal text.³¹

UK participation in Union annual budgets to 2020

During the transition period until 31 December 2020, the UK will continue to contribute to, and participate in, the EU Budget. The UK will make contributions to the EU Budget as if it were still a Member and will continue to receive funding from EU programmes funded from the current budget plan ([Multiannual Financial Framework 2014-2020](#))

Article 135 sets out that the UK's contribution to and participation in the EU Budget will be in accordance with the rules set out for the transition period.³² Article 135(2) says that any changes made to how the EU Budget is spent or financed adopted after the date of withdrawal will not apply to the UK. This notably keeps the UK rebate in place during the transition period.

Contributions to the EU Budget are subject to corrections or adjustments after the year is over. Article 136 says that this process shall apply to the UK after 31 December 2020 for the financial years up to 2020 and sets out how this process would work. Article 136(3) allows for the UK to attend meetings of EU committees that could impact on resource corrections or adjustments. UK representatives can attend upon invitation, on a case-by-case basis, without voting rights. Article

³¹ On 12 June 2020 the Withdrawal Agreement Joint Committee [adopted a decision](#) (decision No 1/2020) to correct errors and omissions in the Withdrawal Agreement, which included some related to the financial settlement. They are technical in nature and don't alter what the UK will pay the EU. Further analysis is available in the European Scrutiny Committee's [Twelfth Report of Session 2019-21](#).

³² Technical amendments were made to Article 135 in Joint Committee [decision No 1/2020](#) (see footnote 32 in this briefing for more)

136(3) also says that corrections or adjustments based on revisions to VAT or GNI – which can be significant³³ – will be time limited.

Article 141 says that the UK shall receive a share of EU-levied fines decided before 31 December 2020 and collected by the EU. This excludes fines that have already been included as part of EU Budget revenue.

UK participation in EU programmes in 2020

Article 137 sets out that the UK's participation in EU programmes will be in accordance with the rules set out for the transition period until 31 December 2020.³⁴ The UK shall be able to participate in programmes – and receive funding from them – under the current 2014-2020 budget plan and previous budget plans. However, the UK will not be part of direct payments for farmers in 2020.

The UK shall only be eligible for programmes provided that the relevant instruments were established by the EU prior to the date that the WA comes into force (Article 137(2)).

Article 138 lays out the EU laws the UK must adhere to while still receiving funding from EU programmes and sets out the UK's relationship with the programmes during the transition period. Article 138(3) says that the UK will be able to attend meetings of EU committees that assist the Commission on the implementation and management of EU programmes. UK representatives will attend upon invitation, on a case-by-case basis, without voting rights.

EU budget outstanding commitments (reste à liquider)

In their annual budgets the EU commit to some future spending without making payments to recipients at the time. The commitments will become payments in the future. The EU refer to outstanding commitments as *reste à liquider* (RAL).

The UK will contribute towards the financing of the RAL outstanding at 31 December 2020, less the amount of RAL due to the UK. The RAL will be adjusted to account for the actual amount implemented. An adjustment will be made for decommitments – commitments that are cancelled as they are not going to be converted into payments – and assigned revenues, which are largely revenues from non-EU countries to EU programmes.

Article 140(1) says that in addition to the EU's outstanding commitments on 31 December 2020, the UK will contribute to commitments made in 2021 that were carried over³⁵ from the 2020 Budget. It also says that the outstanding commitments won't include

³³ For instance see the Library Insight [The UK's EU surcharge](#), November 2014

³⁴ Technical amendments were made to Article 137 in Joint Committee decision No 1/2020 (see footnote 32 in this briefing for more)

³⁵ This is an exception to the principle of annuality in the EU Budget in so far as appropriations that could not be used in a given budget year may, under very strict conditions, be exceptionally carried over for use during the following year.

those related to areas where the UK has an opt out, or those areas that are financed by specific revenues (assigned revenues).³⁶

Articles 140(2), 140(3) and 140(4) set out how future payments for outstanding commitments shall be calculated and administered. Article 140(5) provides that the UK can make a lump sum payment to cover its outstanding commitments. After 31 December 2028, the UK can request that the EU make an estimate of what the UK has left to pay, and the UK can choose to pay this in advance.

Liabilities

The UK will share the financing of the EU's liabilities incurred before 31 December 2020. Liabilities with corresponding assets will be excluded as will assets and liabilities related to the spending and financing of the EU Budget (Article 142 (1)).

Pensions and other benefits of EU employees are the most significant liabilities included in the settlement (Article 142 (2)). Like the UK civil service pension scheme, the EU's pension scheme is unfunded and operates on a 'pay-as-you-go basis', which sees costs being covered by the EU Budget as they arise.

Article 142(3) to Article 142(6) sets out how the outstanding liabilities will be calculated and administered. Article 142(6) allows for the UK to pay its outstanding liabilities relating to EU staff (pensions and Joint Sickness Insurance Scheme) early. The UK can request that the EU make an estimate of what the UK has left to pay, and the UK can choose to pay this in advance in several instalments.

Contingent liabilities

Contingent liabilities are potential liabilities that may occur depending on the outcome of an uncertain event in the future. The UK will remain liable for its share of the EU's contingent liabilities as established at the date of withdrawal. Both the Treasury and European Commission deem that it is unlikely that each of these liabilities will result in a future cost.

Most of the EU's contingent liabilities relate to financial operations – for instance for financial guarantees given on loans and financial assistance programmes – and would only be called upon in the case of a borrower default. The EU's other contingent liabilities primarily relate to legal cases.

The UK will receive back its share of any unused guarantees related to these liabilities and subsequent recoveries following the triggering of the guarantees for such loans.

Contingent liabilities for loans related to financial assistance and the EIB

Article 143 sets out how contingent liabilities relating to loans for financial assistance, financial operations managed by the EIB (such as

³⁶ For more on assigned revenues see European Parliament Research Service's, [Assigned Revenue in the EU Budget](#)

the European Fund for Strategic Investment) and the European Fund for Sustainable Development will be calculated and administered.³⁷ This includes how provisioning – recognising in the budget that a past event is more likely than not to mean a future liability – will work. Article 143 sets out that the UK will receive back its share of unused provisioning and any amounts recovered by the EU from those defaulting on loans.

Liabilities arising from financial instruments of EU programmes

Article 144 sets out how liabilities arising from financial instruments of EU programmes shall be calculated and administered, including where the EU may be liable to make some payments to the UK for unused provisions or recoveries from defaulters.³⁸

Contingent liabilities related to legal cases

Article 147 states that in each year the EU shall let the UK know of any payments arising from legal proceedings and the UK's share of any subsequent recoveries.

European Investment Bank

On withdrawal from the EU the UK will no longer be a member of the European Investment Bank (EIB). The UK's €3.5 billion of paid-in capital will be repaid to the UK in twelve annual instalments starting from October 2020.³⁹ Article 150(4) says that starting from 15 October 2020, the UK will receive eleven instalments of €300 million and a final instalment of €195.9 million. Should any liabilities be triggered, then the UK will still be liable for its share of the paid-in capital. In other words, the paid-in capital will be replaced by a callable guarantee.

Article 150 sets out that the UK shall remain liable for financial operations approved by the EIB before the WA enters into force and explains how this liability will be managed in the future. The UK shall provide a guarantee to the EIB equal to its current callable capital – an amount the UK currently agrees to provide if required. This guarantee will decrease as EIB loans associated with it decrease. Article 150(6) sets out how any triggered liabilities will be dealt with.

Once the WA enters into force, including during the transition period, the UK will not be eligible for new funding from EIB reserved for Member States. Any projects approved by the EIB prior to the WA entering into force can proceed as approved (Article 151).

The Library briefing [European Investment Bank](#) has further information.

³⁷ Technical amendments were made to Article 143 in Joint Committee [decision No 1/2020](#) (see footnote 32 in this briefing for more)

³⁸ Technical amendments were made to Article 144 in Joint Committee [decision No 1/2020](#) (see footnote 32 in this briefing for more)

³⁹ In the original approved Withdrawal Agreement a payment was due in 2019, but the UK hadn't left. On 12 June 2020 the Withdrawal Agreement Joint Committee [adopted a decision](#) to amend such errors in the agreement. The first payment will be made on 15 October 2020 and the last on 15 October 2031.

European Central Bank

At January 2015 the UK had €0.06 billion (€56 million) of paid-in capital in the ECB.⁴⁰ The paid-in capital will be returned to the Bank of England after the UK's withdrawal (Article 149).

European Coal and Steel Community

Article 145 states that the EU will make five payments to the UK for its share of the liquidated net assets of the European Coal and Steel Community on 31 December 2020. Five equal payments will be made on 30 June of each year starting on 30 June 2021.

The UK can continue to be awarded funding from the EU's "Research Fund for Coal and Steel" (RFCS) until the end of the transition period on 31 December 2020. The Fund's total annual budget is small at around €40 million.⁴¹

European Investment Fund

Article 146 states that the EU will make payments to the UK for its share of the capital paid into the European Investment Fund (EIF) by the EU. The EIF is part of the EIB group and provides risk finance to benefit small and medium-sized enterprises (SME). Five equal payments will be made on 30 June of each year starting on 30 June 2021.

European Development Fund

The EDF is the EU's main instrument for providing development aid overseas. The EDF is broken down over time into 'EDF funds'. The EDF is outside of the EU Budget and the UK contributes to the fund.

The UK will remain part of the EDF until the close of the 11th EDF fund. The 11th EDF is running between 2014 and 2020. The UK will honour its share of the total commitments made under this EDF and the payments related to its share of the outstanding commitments made under previous EDFs. Article 152 sets this out in legal terms. The UK's committed to the EDF is estimated at approximately £2.9 billion; the payments for which also contribute to its target of spending 0.7% of GNI on overseas aid.

Article 152(2) says that the UK may participate, as observer, without voting rights, in the EDF Committee and the Investment Facility Committee.

The UK has a share of the EDF's Investment Facility. This funding will be returned to the UK as the investments end. Article 152(4) says that the UK will be reimbursed using the same method as for [financial instruments arising from EU programmes](#). Article 153 sets out that funding not committed or decommitted under the 10th EDF or previous EDFs shall not be reused.

⁴⁰ ECB, [Capital subscription](#)

⁴¹ Technical amendments were made to Article 145 in Joint Committee [decision No 1/2020](#) (see footnote 32 in this briefing for more)

Facility for Refugees in Turkey and EU Trust funds

The UK will honour the commitments it has made on the [Facility for Refugees in Turkey](#) and the [EU Emergency Trust Funds](#). Article 155 sets out that this commitment extends to any future EU Emergency Trust Fund created before the WA comes into force.

Article 155(2) allows the UK to participate, as a third country, in bodies related to the Facility for Refugees in Turkey.

Defence related agencies

Article 156 says that during the transition period the UK will continue to contribute to the funding of several defence-related agencies, including the European Defence Agency, and any CSDP operations. That funding continues on the same basis as at present.⁴²

Article 157 says that beyond 31 December 2020 the UK will be required to pay (by June 2021) its share of the pension liabilities for personnel of the EDA and other defence-related agencies, if it has not already done so by the end of the transition period.

Other key aspects of the settlement

The UK's share

Once the transition period ends, the UK will share the EU's outstanding commitments, liabilities and contingent liabilities according to its calculated share. Article 139 says that the UK's share of these commitments should be based on the UK's percentage share of total contributions to the EU Budget over 2014 – 2020.

The currency of payments

Except for the UK's participation in the 2020 EU Budget, which will be under the current arrangements and paid in sterling, the settlement will be drawn up and paid in euro (Article 133). This means that the UK's actual contribution in pounds will be contingent on the future exchange rate.

Payments after 2020

Article 148 proposes the practicalities for payments between the UK and EU after 2020, setting out, for instance, when payments will be made and the exchange rate that will be used. Payments will have reference dates of 30 June and 31 October each year. In advance of the reference dates, the EU will inform the UK of the required payments, which will be made in four equal monthly instalments for payments with a reference date of 30 June or eight equal monthly instalments for payments with a reference date of 31 October.

⁴² CSDP operations are financed through the [Athena mechanism](#) ; while contributions to the EDA budget are made by Member States according to a GNI-based formula, whereby contributions are proportional to the share of each Member State's GNI within the total GNI aggregate of the participating states.

Auditors

Article 134 says that the UK can appoint auditors to assure the implementation of the financial settlement. The EU will provide the auditors with information and assistance to help them complete their task.

Specialised Committee

A specialised Committee on the financial provisions is established in Article 165(1(f)). The Committee, which will be in addition to the Joint Committee that governs the whole WA, will include representatives of the EU and the UK.

Allowing for an extension to the transition period

The transition period was conceived as a bridging period while the UK and EU negotiate a new relationship. There was provision in the Withdrawal Agreement for the transition period to be extended for one or two years (Article 132). The period wasn't extended.

If an extension had been required, its terms would have been decided by the Joint Committee overseeing the WA's implementation and application. The Joint Committee is made up of representatives from the UK and EU.

The Joint Committee would have agreed the particulars of the UK's financial contributions during an extended transition period. The Joint Committee would have agreed both the amounts – considering the UK's status during the period – and the schedule for making payments.

If the transition period had been extended, the UK: would have been treated as a third country for EU programmes under the next budget plan; would not have contributed to the EU Budget as if it were a Member State (the EU's [own resources](#) regulation would not have applied to the UK); would not be part of the EU's [Common Agricultural Policy](#), but there would have been some constraints over the amount of direct support the UK could provide for agriculture.

3.2 Legislating for the Withdrawal Agreement in the UK

The Withdrawal Agreement required UK legislation to implement it in domestic law. The Government introduced the [EU \(Withdrawal Agreement\) Bill 2019-20](#) (the Bill) on 19 December 2019. [The European Union \(Withdrawal Agreement\) Act 2020](#) became law, having received Royal Assent, on 23 January 2020.

The Act establishes the financial authority for the UK Government to make financial settlement payments to the EU. It also includes other related financial provisions.

What does the Act say about the financial settlement?

Payments to the EU

The Act establishes how the UK will make its financial settlement payments to the EU.

Until 31 March 2021, financial settlement payments will be made directly from the Government's main bank account (the Consolidated Fund) without the need for Parliament's annual approval. This direct payment method is known as a [standing service](#) provision. This is the way that the UK currently makes its payments, as a Member State, to the EU, under the European Communities Act 1972.

If it wished, the Government could also make payments out of the account it usually uses for its borrowing and lending (the National Loans Fund).

This will change after 31 March 2021, when most financial settlement payments will become part of Parliament's annual process for approving Government spending (each year Parliament's authorisation is required for most government spending through the [Estimates process](#)). The exceptions relate to financial settlement payments that arise from the customs duties and sugar levies collected by the UK on the EU's behalf.

The Government has not explained why it would like the standing service provision to end after 31 March 2021. Around two-thirds of the UK's net payments could still be due after 31 March 2021. When Theresa May's Government set out how it would legislate for the financial settlement (in its [White Paper](#)) it said that it would use a standing service provision and no time limit was mentioned. As the size of payments will vary, May's Government reasoned that making financial settlement payments would require flexibility, which is better provided through a standing services provision.

Seeking annual approval from Parliament potentially opens the payments up to more scrutiny but introduces the possibility that the spending might be voted down or amended by the House of Commons. However, the UK would still be required to meet its legal obligations under the financial settlement.

The [European Union \(Withdrawal Agreement\) Bill 2019](#) (the Bill introduced before the 2019 General Election) included a provision that would have allowed a Minister (after getting Parliament's approval) to amend the date when the standing service ends (31 March 2021).⁴³ This provision wasn't included in the subsequent Bill and the Act does not allow Ministers to change the date. Previously, when they were proposing to allow for Ministers to change the date, the Government believed that "the House of Commons should have the option to choose this, rather than rely on an annual process involving multiple votes, which cannot extinguish or effect the international legal obligations on the UK."⁴⁴

⁴³ This was [Clause 20\(7\)](#) in the European Union (Withdrawal Agreement) Bill 2019.

⁴⁴ Memorandum concerning the Delegated Powers in the EU (Withdrawal Agreement) Bill for the Delegated Powers and Regulatory Reform Committee, October 2019, [para 217](#)

Payments to the UK from the EU

The Act states that EU payments to the UK will be paid into the Consolidated Fund or, if the Government wishes, the National Loans Fund. This includes capital the UK paid into the European Investment Bank, which is being returned.

Areas subject to other legislation

The financial settlement includes some items whose financial provisions are already established in other legislation. Where this is the case, the Act says that these provisions will prevail. For example, the financial settlement commits the UK to fulfil obligations to the European Development Fund, the European Union Emergency Trust Fund and the Facility for Refugees in Turkey. The financial authority for payments to these comes from the International Development Act 2002 and this will continue to be the case.

What other financial provisions are in the Act?

Some of the financial provisions in the Act cover areas other than the financial settlement.

The Act establishes that spending incurred under it, but not related to the financial settlement, will be provided by Parliament. This means that such spending will be part of Parliament's annual approval process for government spending; the [Estimates process](#).

The Act also allows Ministers, government departments and appropriate devolved authorities to carry out the spending required to prepare for anything that can be done through the Bill's delegated powers, before the provision is made. Without the clause some spending, for instance on preparing for a new body established by secondary legislation under the Act, may be not be allowed until the secondary legislation has been made.

What does the Act not do?

Payments during the future UK-EU relationship

Only payments arising directly from the financial settlement are authorised by the Act. It doesn't cover payments relating to any future agreements between the UK and the EU. For example, the Act doesn't authorise payments the UK will make to participate in EU programmes such as Horizon Europe (see Box 1.1).

Set out scrutiny arrangements

[Theresa May's Government suggested](#) using the Act to ensure that the Government provides regular updates to Parliament on the financial settlement, including how much remains to be paid in the future. Such scrutiny arrangements aren't included in the Act. This doesn't necessarily mean that Parliament won't be updated on the payments. The Treasury [currently presents information](#) to Parliament on the UK's

financial relationship with the EU and the Government says that they will continue to do so.⁴⁵

Box 3.1: What would have happened if the UK had left without a Withdrawal Agreement?

Before the Withdrawal Agreement was ratified there was a possibility that the UK might leave the EU without an agreement (often described as 'no-deal'). If this had happened the political agreement reached on the financial settlement would not have been legally binding. When this was a possibility, there was speculation about what would happen to the outstanding financial commitments between the UK and EU.

It seems likely that politics and the appetite for an ongoing EU-UK relationship would have dictated the extent to which the two parties honoured the financial settlement, possibly in an alternative negotiated financial settlement.

The UK Government recognised that it had outstanding financial commitments to the EU and that not honouring these would have seen the UK being regarded as an unreliable partner.⁴⁶

The EU believed that a no-deal Brexit should not have affected the agreed principle that financial commitments needed to be honoured.⁴⁷ They expected an alternative financial settlement to be agreed "in a future international agreement" between the UK and EU.⁴⁸ The EU said that honouring the settlement would have been a "precondition" for further talks on a future economic partnership.⁴⁹ The EU adopted contingency measures to allow the UK to pay into the 2019 and 2020 EU Budget in the case of a no deal departure, if the UK so wished.⁵⁰

There was debate over the legal status of the UK's outstanding commitments. The arguments are summarised in [Chapter 3](#) of the House of Lords EU Committee Report, [Brexit: the financial settlement](#).

⁴⁵ [EU Budget: Contributions:Written question - 13508](#)

⁴⁶ [HL Deb 3 Sep 2019 c987-988](#); [HC Deb. 3 December 2018 c570](#); [HC Deb. 3 December 2018 c570](#); Treasury Committee, Oral evidence: Budget 2018, HC 1606, [Q290-292](#).

⁴⁷ This is reflected, for instance, in the [introduction to withdrawal agreement](#) agreed by the 27 Member States and the United Kingdom government.

⁴⁸ European Commission. [Proposal for a Council Regulation on measures concerning the implementation and financing of the general budget of the Union in 2019 in relation to the withdrawal of the United Kingdom from the Union](#)

⁴⁹ European Commission. COM (2019)195, "[Addressing the impact of a withdrawal of the United Kingdom from the Union without an agreement: the Union's coordinated approach](#)" (10 April 2019).

⁵⁰ [COUNCIL REGULATION on measures concerning the implementation and financing of the general budget of the Union in 2019 in relation to the withdrawal of the United Kingdom from the Union](#); European Scrutiny Committee, First Report of Session 2019/20, 16 October 2019, [para 1.5](#)

4. June – December 2017: the negotiations

The joint report of December 2017, and the European Council's view that it reflected that sufficient progress had been made, brought the first phase of Brexit negotiations to a close. The financial settlement was one of the key issues addressed during these negotiations.

Broadly speaking, the negotiations focused on a European Commission [position paper](#) on the financial settlement.

4.1 The EU's position

A [paper published](#) by the European Commission, in June 2017, set out its position on the financial settlement.⁵¹ The Commission's paper fleshed out the European Council's wishes regarding the settlement as laid out in its [negotiating directives](#), which is the mandate for the EU negotiators.⁵²

Michel Barnier, the European Commission's Chief Negotiator, said that the EU expected the financial commitments undertaken by 28 Member States (including the UK) to be honoured by all 28, not just the remaining 27.

Box 4.1: The EU institutions

European Council

The European Council is the highest-level decision-making forum in the EU, consisting of the heads of state or government of the Member States, together with the Presidents of the European Council and the European Commission. The European Council gives the EU its ultimate political direction, which it does by adopting 'conclusions' at the end of its meetings. The European Council has no powers to pass laws.

European Commission (the Commission)

The European Commission is the executive of the EU: it proposes legislation and implements policy within the competences laid down by the EU Treaties. There are 28 members, one from each Member State, known as Commissioners. The Commission has the following general functions: policymaking; Treaty guardianship; policy implementation and delegated powers; management of EU funds; representation in trade negotiations and other agreements with third countries.

The Council of the European Union (the Council)

The Council is made up of ministers of the governments of Member States. It is one of the two principal legislative and decision-making bodies of the EU, along with the European Parliament. It shares responsibility with the Parliament for setting the EU's annual budget. It is headed by a rotation of Member States which act as its President, otherwise known as the Presidency of the Council of the EU. The composition of the Council varies according to the business under discussion. For example, the Economic and Affairs (Ecofin) Council gathers finance ministers to discuss economic policy.

European Parliament

The European Parliament is the assembly of elected representatives of EU citizens. The representatives are known as Members of the European Parliament (MEPs). The European Parliament debates and passes law; scrutinises other EU institutions; and debates and adopts the EU's budget.

⁵¹ European Commission. [Position paper transmitted to the UK: essential principles on the financial settlement](#), 12 June 2017

⁵² The Council of the European Union, [Negotiating directives for Article 50 negotiations](#), 22 May 2017

Why does the EU expect the UK to make a settlement?

The EU said that the UK must honour its share of the financial commitments undertaken while it was a member of the EU. For instance, the UK agreed to the EU's spending plans (see Box 4.2) and committed to funding them by agreeing revenue raising measures (see Box 4.3), and the EU believes these commitments should be met.

On the same basis, the EU said that the UK should continue to benefit from EU funding programmes until the programmes close. This means the UK continuing to receive funding in areas such as economic development, agriculture and research and innovation until the current funding period ends. Continued participation would require the UK to obey the EU's legal rules for the programmes.

Box 4.2: EU spending plans: multiannual financial frameworks

The EU plans its spending over seven-year periods through the Multiannual Financial Framework (MFF).⁵³ The MFF broadly sets out maximum EU spending across different categories. It also sets an overall maximum for actual payments the EU can make in a year.

The MFF provides a framework through which the annual budgets are negotiated. It aims to ensure that the EU's spending evolves in line with its policies.

The MFF is negotiated by the European institutions and requires unanimous agreement at the European Council – which means each Member States' head of government must agree to it – and agreement by the European Parliament. It is [laid down in a Council Regulation](#).

MFF 2014-2020 allows the EU to commit to spend up to €960 billion over the period and make payments of €908 billion (in 2011 prices). This spending is equivalent to around 1% of the Gross National Income (GNI) of the whole EU.

The [regulations](#) for most of the EU's spending programmes are adopted alongside the MFF. These legal bases provide a reference amount of money to be spent on the programme over the period.

Further details are available in the Library briefing [A guide to the EU budget](#).

Box 4.3: Raising the EU's revenue: The Own Resources Decision

The Own Resources Decision (ORD) lays out how Member States contribute to the EU Budget. The regulation is negotiated at the same time as the Multiannual Financial Framework (MFF) but the two are set out in different regulations.

The [current ORD](#) says that Member States should contribute: through the custom duties and sugar levies they collect; a share of their adjusted VAT-base; and, a share based on their national income.

The ORD also includes the UK's rebate and other correction mechanisms for Member States.

Further details are available in the Library briefing [A guide to the EU budget](#).

What should the settlement cover?

Broadly speaking the EU wanted the settlement to include:

- the UK's participation in the EU Budget

⁵³ The MFF must cover a period of at least five years.

- termination of the UK's membership of EU bodies and institutions, such as the European Investment Bank
- the UK's participation in specific EU funds and facilities, such as the [facility for Refugees in Turkey](#).

[Annex 1](#) of the EU's position paper provides an indicative list of over 70 bodies and funds to be included in the settlement.

The most significant commitments are those arising from the UK's participation in the EU Budget. Of particular significance are the spending committed in the EU Budget but not yet paid to recipients – often described as 'reste à liquider' – and the outstanding funding agreed for EU spending programmes in the current budget period.

Which parts of the EU Budget were included in the position paper?

The EU believes that the UK's approval of EU spending plans and revenue raising measures commits it to providing funding for the financial commitments arising from the EU Budget.

Below are the five types of financial commitment that the EU expected the UK to contribute to, along with a short description of each.

(1) EU Budget outstanding commitments (reste à liquider)

In their annual budgets the EU commit to some future spending without making payments to recipients at the time. The commitments will become payments in the future. The EU refer to outstanding commitments as *reste à liquider* (RAL).⁵⁴

(2) Financial programming, 2014 to 2020

When the EU agreed its spending for 2014 – 2020 it adopted regulations setting out the rules and amounts allocated to individual spending programmes. Programmes covering areas such as economic development, skills, cohesion, agriculture and asylum and migration all have regulations setting out rules and allocated amounts. The spending under these programmes has been legally committed by the EU – through EU regulations – to provide certainty for the recipients.

The EU's [position paper](#) on the settlement lists close to 70 programmes whose spending has been agreed through regulations – the EU expected the UK's settlement to cover a share of the outstanding spending of these programmes.⁵⁵

(3) Liabilities which are not balanced by corresponding assets

Liabilities are, generally speaking, obligations to pay for something. The EU's position paper said the settlement should include EU liabilities recorded in the EU's accounts which are not balanced by corresponding

⁵⁴ From the French for 'yet to be paid'.

⁵⁵ European Commission, *Essential Principles on Financial Settlement*, 12 June 2017, [Annex 2](#). The regulations are available from the [European Commission's website](#).

assets, such as pensions and other employee benefits.⁵⁶ Below we discuss the specific liabilities listed in the position paper.

Pensions and other employee benefits

This covers the costs of providing pensions and other benefits to EU employees. Like the UK civil service pension scheme, the EU's pension scheme is unfunded and operates on a 'pay-as-you-go basis', which sees costs being covered by the EU Budget as they arise.

Provisions

Provisions are amounts arising from past events that will probably have to be paid by the EU Budget in the future. Over two-fifths of the EU's provisions are for the decommissioning of nuclear sites.⁵⁷

At the end of 2018, the EU's liabilities for provisions stood at €4.1 billion.⁵⁸

Financial liabilities not related to borrowings

At the end of 2018, the EU's financial liabilities not related to borrowings stood at €2.0 billion.⁵⁹ The majority relate to finance lease liabilities.

Payables and accrued charges other than RAL

Payables are largely unpaid cost claims from grant beneficiaries or other EU funding. They include refunds owed to Member States on their financial contributions to the EU Budget.

At the end of 2018, the EU had around €95 billion of payables and accrued charges. It isn't clear which of these aren't included in RAL: our interpretation of the EU's accounts suggest that the EU has around €46 billion of payables and accrued charges other than RAL.⁶⁰

(4) Contingent liabilities

Contingent liabilities are potential liabilities that may occur depending on the outcome of an uncertain event in the future. They relate mainly to financial guarantees given (on loans and financial assistance programmes) and to legal risks.

HM Treasury and the European Commission deem these contingent liabilities to be remote, which means they think it unlikely that they will result in a future cost.

⁵⁶ Further examples are provided on [page 3](#) of the Single Financial Settlement position paper.

⁵⁷ European Commission, [Consolidated accounts of the European Union and Financial Statement Discussion and Analysis](#), June 2019, [note 2.10](#)

⁵⁸ *ibid*

⁵⁹ European Commission, [Consolidated accounts of the European Union and Financial Statement Discussion and Analysis](#), June 2017, [note 2.11](#)

⁶⁰ This estimate is based on EAGF payables (€14.8 billion), own resources payables (€0.8 billion), sundry payables (€0.6 billion), EAGF accrued charges (€29 billion)

HM Treasury estimates that UK's share of EU contingent liabilities was £10.6 billion at 31 March 2020.⁶¹

Box 4.4: Example of a contingent liability in the EU Budget The European Financial Stabilisation Mechanism

The European Financial Stabilisation Mechanism (EFSM) was created in 2010 as a temporary fund to provide loans to EU Member States in financial difficulty. The EFSM used the EU Budget as a guarantee to borrow money on financial markets, which it then subsequently lent to countries who require the funding. The EFSM is no longer used to fund new loans, but the outstanding loans still exist.

If the countries who receive EFSM loans fail to repay them, then the EU Budget bears the cost. If, as a result of this, additional money is required to fund the EU Budget, further contributions from EU Members may be required. This is where the UK currently has a contingent liability.

(5) The specific costs related to the withdrawal process

This would include, for example, the cost of moving any EU agencies that must leave the UK following its withdrawal.

What sources should be used?

The EU proposed that its audited consolidated accounts should be used for determining the EU's RAL, liabilities and contingent liabilities at the time of UK withdrawal. The EU also suggest that the latest updated financial programming should be used for determining outstanding financial commitments for spending programmes up to 2020.

How should the UK's share be calculated?

The sources that the EU propose should be used for quantifying the outstanding commitments only show totals for the EU – they don't provide shares for each Member State.

The EU proposed that the UK's share of financial commitments should be based on the UK's percentage share of total contributions to the EU Budget over 2014-2018. The UK's rebate (see Box 4.5) would be included when determining the UK's share of contributions to the EU Budget. This suggests a UK share of around 13%.⁶²

The EU proposed that the UK's payments shall be established and paid in euros.

Box 4.5: The UK's rebate

The UK receives a rebate on its net contribution to the EU Budget. The rebate was introduced to address the issue of the UK making relatively larger net contributions than other Member States. When the rebate was introduced, in 1985, the UK received relatively little from the EU Budget: it had a small agricultural sector, but most EU spending went on agriculture. At the same time the UK made relatively large contributions to the budget, despite being among the less well-off Member States at the time.

How does the rebate work?

Broadly speaking the formula used means that the UK's net contribution is reduced by 66% relative to what it would be without rebate. However, certain parts of the EU's spending are excluded from the

⁶¹ HM Treasury. Consolidated Fund Account 2019-20, September 202, [page 13](#)

⁶² European Commission, [Budget on line](#)

deduction including EU overseas aid, and non-agricultural spending in Member States that joined the EU after April 2004.

The basic concept of the rebate has remained the same since its inception, but changes to its calculation have been made over time as the EU and its methods for raising revenues have changed. The changes aim to keep the calculation similar to what it would have been had the overall system not changed since 1985.

The European Commission calculates the rebate based on its estimates of the likely outturn for payments from the budget in-year and its estimates of Member States' contributions to the budget. These are then corrected in light of actual outturn figures. Corrections may be made up to three years after the year to which the rebate relates, after which a final reckoning is made in the fourth year. The rebate is deducted from the UK's contribution a year in arrears.

The Library briefing [The UK's contribution to the EU Budget](#) has more on the rebate.

Should there be a one-off payment?

The EU didn't want a single payment, they wanted series of payments staggered over time. The EU said that a schedule of payments should "aim at mitigating the impact of the United Kingdom withdrawal on the budget for the Union and on its Member States."⁶³

The EU said that the schedule would be established in phase 2 of Brexit negotiations.

What about areas outside of the EU's Budget?

As discussed previously, the EU expect the settlement to cover some areas that aren't part of the EU Budget. The EU's position paper proposed that the settlement should also cover the termination of the UK's membership of bodies established in the EU's Treaties (such as the European Investment Bank) and the UK's participation in specific EU funds and facilities.

European Investment Bank (EIB)

When the UK joined the EU, it paid capital into the EIB to become a shareholder in the bank. Once the UK leaves the EU it will cease being a member of the EIB. The EU proposed that the UK's capital in the EIB be paid back once all the EIB's outstanding loans, at the time of UK withdrawal, have concluded.

At the end of 2016, the UK had €3.5 billion of paid-in capital in the EIB.⁶⁴

European Central Bank (ECB)

The UK also has capital in the ECB. The EU proposed that the UK's capital should be reimbursed on withdrawal in line with the payment profile established for the single financial settlement.

⁶³ European Commission, Essential Principles on Financial Settlement, 12 June 2017, [pages 4 - 5](#)

⁶⁴ EIB, 2016 Financial Report, [Note H](#), April 2017

At January 2015 the UK had €0.06 billion (€56 million) of paid-in capital in the ECB.⁶⁵

Other areas outside of the EU Budget

Some EU spending is outside the EU Budget, from specific funds and trusts. The EU proposes that the UK continues to meet its outstanding commitments in the same fashion as it currently does in these cases. The UK would therefore continue to contribute to these areas as normal – in line with the specific rules and schedule for each – until they end. Below we briefly discuss the ‘other areas’ set out in the EU’s position paper.⁶⁶

European Development Fund (EDF)

The EDF is the EU’s main instrument for providing development aid overseas. The EDF is broken down over time into ‘EDF funds’. The Commission wants the UK to honour its commitments to all unclosed funds (8th – 11th EDF). The current EDF will run from 2014-2020.

For further information on the EDF see the European Parliament Research Service’s briefing [European Development Fund](#).

EU Trust Funds

These development tools pool together resources from different donors in order to enable an EU response to an emergency or post-emergency situation.

The European Parliament Research Service’s briefing [EU Trust Funds for external action: First uses of a new tool](#) has more on the EU’s trust funds.

Facility for Refugees in Turkey

The [Facility for Refugees in Turkey](#) was established as part of a wider framework to address the migration crisis. The Facility focuses on humanitarian assistance, education, migration management, health, infrastructure, and socio-economic support.

Will the UK continue to receive EU funding as part of the settlement?

The EU’s position paper said that if the UK contributes to the EU Budget’s outstanding commitments then it should continue to benefit from EU funding programmes until they close. Most programmes cover the period 2014 – 2020, but some spending is expected after 2020. Continued participation would require the UK to obey the EU’s legal rules for the programmes.

The EU’s programmes include those managed by the UK Government – such as structural and agricultural funding – and those managed directly

⁶⁵ ECB, [Capital subscription](#)

⁶⁶ The EU also expect the UK to contribute to the funding of the teachers it seconded to the European schools until 2020/21 and share all the financing obligations of agencies of the Council which are not financed by the EU Budget.

by the Commission through a competitive bidding process – such as the funding provided through Horizon 2020 for research and innovation.

4.2 The UK's public position

The UK made no formal response to the EU's position paper and did not set out its view in any detail. However, in September 2017 the then Prime Minister, Theresa May, suggested that the UK would meet commitments for the current EU budget plan (2014-2020) so that EU Member States would not be worse off as a result of the UK leaving. The Prime Minister also said that the "the UK will honour its commitments made during the period of our membership". The Prime Minister's pledge did not appear to extend to all potential commitments outside of the current budget plan. For instance, items such as pensions remained debatable, according to David Davis who was then Secretary of State for Exiting the European Union.

Prior to Mrs May's speech the UK Government had recognised that the UK has financial obligations to the EU, and vice-versa, and that they need to be resolved.

David Davis said that the UK would probe and challenge the EU's position on the settlement during negotiations, with a view to lowering the EU's position. While the UK probed the legal case for the settlement, Mr Davis said that the Government saw the issue as "more of a political principle, a political obligation, than a legal one."⁶⁷

Theresa May's letter triggering Article 50

On 29 March 2017, Prime Minister Theresa May sent a letter to Donald Tusk – the President of the European Council – giving notice of the UK's intention to leave the EU. The letter triggered Article 50 thereby starting the withdrawal procedure.⁶⁸ In this letter the Prime Minister said that the negotiations should determine a 'fair settlement' of the UK's obligations as a "departing member state, in accordance with the law and in the spirit of the United Kingdom's continuing partnership with the EU".⁶⁹ The Prime Minister went on to say that the settlement should be agreed alongside the terms of the future EU-UK relationship.

Article 50 was inserted into the European Union Treaty by the Lisbon Treaty in 2009. It allows a Member State to leave the EU and sets out a procedure for doing so.

2017 Conservative Manifesto

The Conservative Manifesto didn't go into more detail than Mrs May's letter to Donald Tusk:

We will determine a fair settlement of the UK's rights and obligations as a departing member state, in accordance with the

⁶⁷ Lords Select Committee on the European Union, [Uncorrected oral evidence Scrutiny of Brexit negotiations](#), 31 October 2017

⁶⁸ This is the letter which triggered Article 50. Article 50 of the Treaty on European Union was inserted into the European Union Treaty by the Lisbon Treaty in 2009. It allows a Member State to leave the EU and sets out a procedure for doing so.

⁶⁹ Prime Minister's letter to Donald Tusk triggering Article 50, 29 March 2017, [page 4](#)

law and in the spirit of the UK's continuing partnership with the EU.⁷⁰

Parliamentary statement: July 2017

David Davis went a little further than the Article 50 letter and the Conservative Manifesto. In [a statement](#) to the House of Commons, he recognised the UK has financial obligations to the EU, and vice-versa, and that they need to be resolved:

On the financial settlement, as set out in the Prime Minister's letter to President Tusk, the Government have been clear that we will work with the EU to determine 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 our continuing partnership. The Government recognise that the UK has obligations to the EU, and the EU obligations to the UK, that will survive the UK's withdrawal—and that these need to be resolved.⁷¹

Mrs May's Florence Speech: September 2017

In her Florence speech the Prime Minister said that the UK would honour commitments made during the period of its EU membership. The Prime Minister's speech was ambiguous about exactly which commitments would be honoured. It was clear, however, that the pledge would mean no remaining Member States being made worse off over the current EU budget plan (2014 – 2020) as a result of the UK's decision to leave:

But in this context [of a transition or implementation period] I am conscious that our departure causes another type of uncertainty for the remaining member states and their taxpayers over the EU budget.

Some of the claims made on this issue are exaggerated and unhelpful and we can only resolve this as part of the settlement of all the issues I have been talking about today.

Still I do not want our partners to fear that they will need to pay more or receive less over the remainder of the current budget plan as a result of our decision to leave. The UK will honour commitments we have made during the period of our membership.⁷²

The promise to honour commitments was made within the context of a proposed implementation or transition period after the UK leaves the EU.

David Davis was interviewed by the BBC's Andrew Marr following Mrs May's speech. He suggested that the UK would honour commitments made for the current EU Budget period, but whether they would do so for other liabilities – such as pensions – was still debatable.⁷³

⁷⁰ The Conservative and Unionist Party Manifesto 2017, [page 36](#)

⁷¹ [HC Deb.13 July 2017:c15-16WS](#)

⁷² [PM's Florence speech: a new era of cooperation and partnership between the UK and the EU](#), 22 September 2017

⁷³ [Andrew Marr Show, Interview with David Davis MP Secretary of State for Exiting the European Union](#), 23 September 2017

I mean things like pensions and other things – these are debatable to say the least, arguable to say the least.⁷⁴

4.3 The settlement in the first phase of Brexit negotiations

The first phase of negotiations

The first phase of negotiations largely focused on disentangling the UK from the EU. Besides reaching agreement on the settlement, other objectives for the first phase of negotiations included reaching agreements on citizens' rights, "other separation issues" and the Irish border.⁷⁵

Moving on to the next phase: making 'sufficient progress'

The EU would only allow Brexit negotiations to move on to discussing transitional arrangements and the future EU-UK relationship, including areas such as trade, once 'sufficient progress' had been made in the first phase of negotiations. Progress was therefore required on the settlement.⁷⁶

It was for the leaders of all the other EU Member States to decide on whether sufficient progress had been made on all areas of the first phase of negotiations.

How were the negotiations organised?

The UK's exit negotiations followed a phased approach starting with the priority objectives – citizens' rights, a financial settlement, "other separation issues" and the Irish border – and then moving on to the UK's future relationship with the EU once 'sufficient progress' was made in the first phase. It was for the other 27 EU Member States to decide whether sufficient progress had been made.

Generally speaking, negotiations in the first phase followed four-week cycles. The first two weeks in each cycle were for preparations, with officials from both sides meeting to establish negotiating positions. The third week was for negotiations between the chief negotiators Michel Barnier and David Davis. Week four was for reporting back on any progress to the governments of the EU27.

Negotiations took place as follows:

- Opening 19 June 2017
- Second round w/c 17 July 2017
- Third round w/c 28 August 2017
- Fourth round w/c 25 September 2017

⁷⁴ *ibid*

⁷⁵ European Commission, [Terms of Reference for the Article 50 Treaty on European Union negotiations](#), 19 June 2017

⁷⁶ The Council of the European Union, [Negotiating directives for Article 50 negotiations](#), 22 May 2017, para 19

- Fifth round w/c 9 October 2017
- Sixth round w/c 9 November 2017

The European Council – the leaders of EU Member States – met on 19/20 October. The European Council (the Council) was not able to conclude that ‘sufficient progress’ had been made in the first phase of negotiations. The Council called for negotiations to continue and build on progress in order for talks to move onto the second phase of negotiations.⁷⁷

Negotiations continued with a sixth round on 9 and 10 November. Subsequently, the Commission and UK negotiators had constant direct contact.

July round

In the week before July’s 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.⁷⁸

The UK Government did not publicly say which obligations they recognise. Instead David Davis said he would challenge the EU’s proposals during negotiations, and only after that might an alternative proposal be published by the UK.⁷⁹

After July’s negotiations Michel Barnier – the EU’s Chief Negotiator – made the following points on the financial settlement:⁸⁰

- 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.

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.

⁷⁷ European Council, [European Council \(Art. 50\) meeting \(20 October 2017\) - Conclusions](#), 20 October 2017

⁷⁸ [HC Deb 13 July 2017:c15-16WS](#)

⁷⁹ House of Lords Select Committee on the European Union, [Uncorrected oral evidence: David Davis evidence session](#), 11 July 2017.

⁸⁰ 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

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.⁸¹

At the end of the week's negotiations, the BBC reported a Downing Street spokesman as saying that there were no plans to produce a position paper on the financial settlement.⁸²

August round

Negotiations continued on the scale and scope of the payments for which the UK will be liable on leaving the EU, but little progress was made towards agreeing precisely which obligations would be included. The EU pressed the Government for a "clear position" on the UK's recognition of its "legal and moral" commitments to a financial settlement. At the opening press conference on 28 August, Michel Barnier stressed that "we need UK positions on *all* separation issues", an emphasis that David Davis apparently did not miss, given his response that "for the United Kingdom, the week ahead is about driving forward the technical discussions across all the issues – *all* the issues".

Referring to the UK's financial settlement, Michel Barnier said in his [statement](#) at the end of the negotiations "this week the UK explained that these obligations will be limited to their last payment to the EU budget before departure". He criticised this position by listing examples of commitments that the UK had made that extend past the UK's departure, including loan guarantees for Ukraine and funding for developing countries, and said "after this week, it is clear that the UK does not feel legally obliged to honour these obligations after departure".

David Davis's [response](#) did not directly address Mr Barnier's concern, except to acknowledge that "it is fair to say, across the piece, we have a very different legal stance". Mr Davis did, however, seek to emphasise that "the settlement should be in accordance with law and in the spirit of the UK's continuing partnership with the EU". His conclusion was that "we have succeeded in building mutual understanding, but it is also clear that there are still significant differences to be bridged".

In the Q&A following these statements, David Davis expanded on his position:

the European Union made a claim on the United Kingdom – on the United Kingdom taxpayer – for a large sum of money, unspecified but undoubtedly large, and on the basis of what it determined to be our legal obligations. And so the proper

⁸¹ [David Davis' closing remarks at the end of the second round of EU exit negotiations in Brussels](#), 20 July 2017

⁸² BBC, [Brexit: UK and EU at odds over 'exit bill'](#), 21 July 2017

approach to that is to go through line by line and see whether or not we believe those legal obligations are correctly codified.⁸³

He went on to say that “we’re a country that meets our international obligations... but those obligations have got to be well specified and they’ve got to be real. They don’t necessarily have to be legal – we also recognise moral obligations sometimes”.

Mr Barnier’s response was that:⁸⁴

...in order to make these discussions simpler, we set out a very precise list of commitments and accounts [referring to [the EU position paper](#) published before the first round of negotiations] that have to be resolved, that the 28 subscribed to and the 27 will not agree to having to pay on their own based on the current financial perspectives, and we have a list of all the legal bases underpinning these commitments.

September round

The September round was preceded by Mrs May’s Florence speech (see [section 3.1](#)). Broadly speaking negotiations focused on two areas arising from Mrs May’s Florence:

- the UK explained what was meant by Theresa May’s assurance that the UK’s departure would not make EU Member States worse off during the current budget plan. Michel Barnier reported that this reassurance was limited to 2019-2020.
- technical discussions were held on Theresa May’s pledge that “the UK will honour its commitments made during the period of our membership”. The UK is not yet ready to specify exactly which commitments the settlement should include.

David Davis felt that discussions on the UK’s financial commitments were ‘very constructive’.⁸⁵ Mr Barnier said that the discussions were ‘useful’. However, Mr Barnier also stated that for ‘sufficient progress’ to be reached on the settlement requires the UK to honour all of the commitments undertaken while it was a member of the EU.⁸⁶ On the Tuesday following the negotiations Mr Barnier told the European Parliament that ‘serious divergences’ still existed on the financial settlement.⁸⁷ At the 2017 Conservative Conference David Davis reiterated that the UK’s approach to negotiations would be to challenge the EU’s position.⁸⁸

At the start of September’s negotiations David Davis said that a conclusion on the financial settlement could not be reached in the first

⁸³ European Commission, [Press conference following the 3rd round of Article 50 negotiations with the UK](#), 31 August 2017

⁸⁴ *ibid*

⁸⁵ [David Davis' closing remarks at the end of the fourth round of EU exit negotiations in Brussels](#), 28 September 2017

⁸⁶ European Commission, [Press statement by Michel Barnier following the fourth round of Article 50 negotiations with the United Kingdom](#), 28 September 2017

⁸⁷ European Commission, [Speech by Michel Barnier at the Plenary Session of the European Parliament on the state of play of negotiations with the United Kingdom](#), 3 October 2017

⁸⁸ [David Davis' speech to 2017 Conservative Conference](#)

phase of negotiations. In Mr Davis's view the settlement could only be concluded "in the context of and in accordance with our new deep and special partnership with the EU";⁸⁹ in other words, alongside talks on the future EU-UK relationship. This view is at odds with the EU's expectations. The EU expects a methodology for the financial settlement to be agreed during the first phase of exit negotiations.

In the Q&A following the statements closing the September negotiations, Mr Barnier was asked about the link between the financial settlement and the UK-EU future relationship:

...there is no link, there is no possible link the way we see it, no possible link between that discussion [the second phase of negotiations on the UK-EU future relationship] and a discussion about separating the - the separations issues – and the commitments entered into the past.⁹⁰

October round

The October round saw further discussions on technical aspects of the settlement, with no negotiation over which commitments are to be included in the settlement. In the press conference at the end of October's negotiations David Davis said that the UK are not able to agree specific commitments and that "this can only come later":

In line with the process agreed at our last round of talks, we have undertaken a rigorous examination of the technical detail where we need to reach a shared view.

This is not a process of agreeing specific commitments - we have been clear this can only come later.

But it is an important step, so that when the time comes we will be able to reach a political agreement quickly and simply.⁹¹

David Davis' comments echo his previously expressed view that a conclusion on the settlement could only be reached alongside talks on the future EU-UK relationship. Mr Davis, speaking generally about the negotiations, called for the European Council to recognise the progress made and move negotiations forward. This would allow the ideas explored during the first phase of negotiations to be turned into 'concrete shared proposals'.

At the same press conference Michel Barnier said that talks on the settlement were 'at a deadlock' with the UK unable to clarify which financial commitments it agrees should be in the settlement.⁹²

With deadlock on the settlement, and outstanding issues in other areas of the first phase of negotiations, Michel Barnier said that he could not

⁸⁹ [David Davis' opening remarks at the start of the fourth round of EU exit negotiations](#), 25 September 2017

⁹⁰ European Commission Audiovisual Services, [Article 50 negotiations press conference Q&A](#), 28 September 2017

⁹¹ [David Davis' closing remarks at the end of the fifth round of EU exit negotiations in Brussels](#), 12 October 2017

⁹² European Commission Press Release, [Press statement by Michel Barnier following the fifth round of Article 50 negotiations with the United Kingdom](#), 12 October 2017

recommend negotiations to move onto the future EU-UK relationship. However, he was positive that the deadlock could be broken, and that sufficient progress could be achieved in time for December 2017's European Council:

...we are in a position of deadlock at the moment but I'm sure, as I said, with the necessary will and on the basis of the commitments entered into by Theresa May in Florence we can find a way out of this deadlock.

[...]

Slowly but surely over the next few weeks I will explore the way forward if there is the necessary will. I will explore ways of getting out of this deadlock we find ourselves in on the financial issues, with a view to making sufficient progress by the next European Council. Unfortunately we are not at this stage now.⁹³

2017 European Council October 19/20

Following its October 19/20 meeting the Council adopted conclusions on the exit negotiations.⁹⁴ On the settlement, the Council concluded that the UK had not yet turned its pledge to honour its financial commitments into "a firm and concrete commitment".

In general, the Council was not able to say that 'sufficient progress' had been reached in the first phase of negotiations. The Council called for negotiations to continue and build on progress in order for talks to move onto the second phase of negotiations. The Council would next address whether 'sufficient progress' had been made at its December 2017 meeting.

November round

Negotiations again focused on technical aspects of the settlement. In the press conference at the end of the negotiations, David Davis reported that "we have made substantial technical progress across all the issues that will need to be addressed".⁹⁵ Michel Barnier echoed this view, saying that November's negotiation had been about "deepening, clarification and technical work".⁹⁶

In general, Mr Davis said that the negotiations had drawn out areas where further political and technical discussions are required – presumably including areas of the settlement. Mr Davis' view was that political discussions will enable progress to be made.

Mr Barnier was clear that for 'sufficient progress' to be made the UK needed to specify which financial commitments it was prepared to include in the settlement. He re-iterated his view, expressed throughout

⁹³ European Commission Audiovisual services, [Press conference following the 5th round of Article 50 negotiations](#), 12 October 2017

⁹⁴ European Council, [European Council \(Art. 50\) meeting \(20 October 2017\) - Conclusions](#), 20 October 2017

⁹⁵ [David Davis' closing remarks after EU exit negotiations on 9-10 November](#), 10 November 2017

⁹⁶ European Commission, [Speech by Michel Barnier following the sixth round of Article 50 negotiations with the United Kingdom](#), 10 November 2017

the first phase of negotiations, that “this is an essential condition to reach sufficient progress in December”.

In the press conference Q&A, Michel Barnier confirmed press reports that he required clarifications on outstanding issues from the UK within two weeks in order to move negotiations onto the second phase in December.⁹⁷

Agreement reached?

On 20 November 2017, the media reported that a sub-committee of the UK Cabinet had reached agreement on expanding the commitments it is willing to include in the settlement.⁹⁸ The reports suggested that the agreement amounted to increasing the UK’s potential payment from around €20 billion to €40 billion, although at this point in negotiations it is a methodology for calculating the settlement that is being agreed, not actual financial figures.

In late November 2017 it appeared that an agreement-in-principle had been reached on the settlement between the UK and EU.^{99,100} No formal announcement was made.

Once a consensus had been reached on other separation issues, the UK and Commission were able to publish a [joint report](#) on the first phase of negotiations. The joint report is essentially an agreement in principle between the UK and Commission on the separation issues. The joint report allowed the Commission [to recommend](#) to the European Council that ‘sufficient progress’ has been made in the first phase.¹⁰¹ In turn, the European Council agreed that sufficient progress had been made, at its December 2017 meeting.¹⁰²

⁹⁷ European Commission Audiovisual services, [Press conference on the state of play of Article 50 negotiations with the United Kingdom](#), 10 November 2017

⁹⁸ [Theresa May’s cabinet agrees to pay more to break Brexit deadlock](#), *The Guardian*, 20 November 2017; [Brexit: UK ‘ready to pay more to the EU’](#), *BBC*, 21 November 2017; [Tory backlash as Boris Johnson and Michael Gove agree in Cabinet to increase £20bn Brexit divorce bill](#), *The Telegraph*, 21 November 2017

⁹⁹ [Exclusive: Britain and the EU agree Brexit divorce bill](#), *The Telegraph*, 29 November 2017

¹⁰⁰ [UK bows to EU demands with breakthrough offer on Brexit bill](#), *FT*, 29 November 2017; [UK could pay £50bn Brexit divorce bill after bowing to EU pressure](#), *The Guardian*, 29 November 2017; [Brexit: UK divorce bill offer worth up to 50bn euros](#), *BBC*, 29 November 2017

¹⁰¹ European Commission, [COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN COUNCIL \(ARTICLE 50\) on the state of progress of the negotiations with the United Kingdom under Article 50 of the Treaty on European Union](#), 8 December 2017; European Commission

¹⁰² [European Council \(Art. 50\) meeting \(15 December 2017\) - Guidelines](#)

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