



BRIEFING PAPER

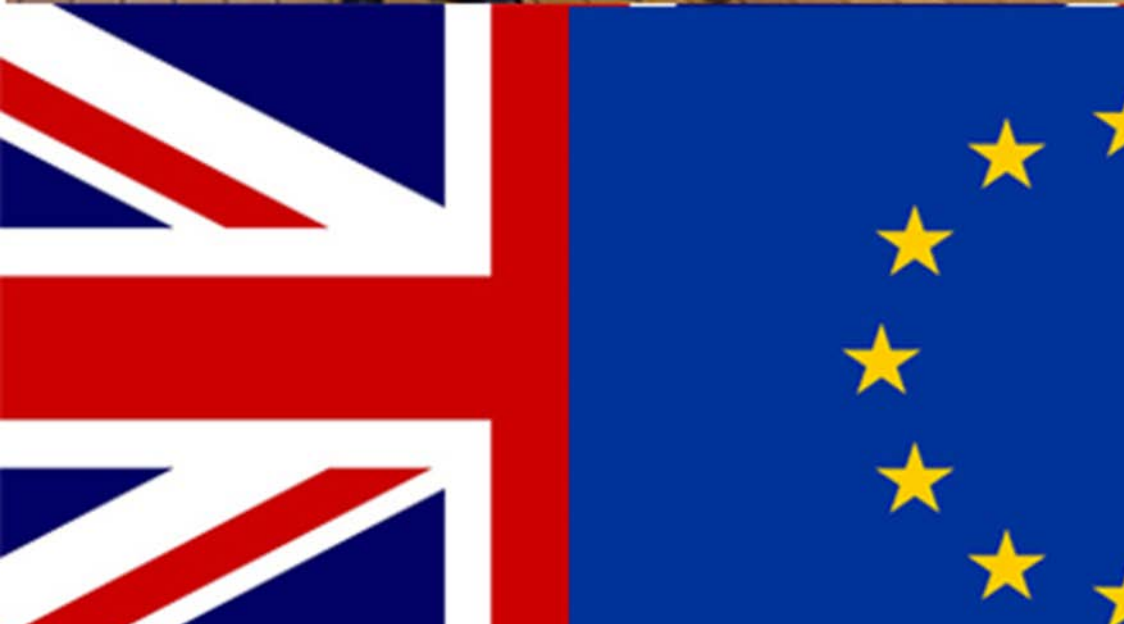
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Brexit: the October negotiations

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Summary

The fifth round of Brexit negotiations ran from 9 to 12 October. Some progress was made in the areas of citizens' rights and the Irish border, but not on the 'divorce bill'. The Secretary of State for Exiting the EU, David Davis, maintains that many issues can only be discussed in the context of the UK's future relations with the EU.

Financial settlement

The EU negotiator, Michel Barnier, spoke of "deadlock" in discussions on the UK's financial settlement, since David Davis had not elaborated on the Prime Minister's promise in Florence that the other EU Member States would not lose out as a result of Brexit.

Citizens' rights

Family reunification and social security

Both sides had already agreed to protect pensions, existing health care rights and the future social security costs of EU citizens living in the UK and UK nationals living in other EU States. But there remain "diverging views" on the specific terms of family reunification and the "export" of social security benefits after Brexit.

Onward movement

In round four the UK asked the EU to provide for UK citizens living in the EU to retain free movement rights to other EU States after Brexit, and said EU citizens with "settled status" in the UK would have a guaranteed right of return if they lived abroad for a prolonged period. In round five the EU did not agree to match the UK proposal.

Administrative procedure

In the September round the UK set out proposals on EU citizens in the UK applying for 'settled status' after Brexit, including a simplified, low cost procedure to allow EU and UK citizens to assert their rights. There is still no definite agreement on this.

Northern Ireland border

The negotiators announced progress on agreeing the joint principles on the continuation of the Common Travel Area and mapping out areas of cooperation that operate on a North South basis.

Governance issues

'Direct effect' for withdrawal agreement

Michel Barnier said the negotiators "continue to work on the tools and precise mechanism that will translate this into action".

Court of Justice of the EU

The two sides disagree on how the rights of EU citizens in the UK will be enforced; the EU wants the CJEU to do this, while the Government says the UK legal system will do it. Michel Barnier insists the CJEU will be

involved in enforcing the future rights of EU citizens. They have not yet found a compromise model that would resolve these issues.

Other developments

The prospect of a 'no deal' scenario is back on the agenda and the Government has been questioned about its preparations for this eventuality.

The timing and legal framework of a transition or implementation period have been raised in Parliament, but are not yet on the negotiating agenda.

The Government published two papers on the UK's future relations with the EU; one about a future trade relationship and the other a future customs arrangement.

The UK and EU have written a joint letter to the WTO setting out a proposed way forward on the issue of tariff rate quotas.

EU-27 ministers have discussed the relocation of the two UK-based EU agencies, following the Commission's assessment of the 27 bids.

October European Council

As expected, the other EU Member States did not think "sufficient progress" had been made so far to move the negotiations on to a discussion of the UK's future relations with the EU. However, the European Council looked towards discussing a transitional period and invited the Council (Article 50) and the EU negotiator to "start internal preparatory discussions".

1. What went on in round five?

The fifth round of negotiations ran from 9 to 12 October. The negotiating teams of Michel Barnier and David Davis continued to discuss the three priority issues in phase one on which a move to phase two depends: citizens' rights, the financial settlement and the Irish border, as well as other separation issues.

1.1 Prime Minister updates Parliament

On 9 October, just as the fifth round was opening, Theresa May [updated](#) Parliament on what the Government wants from Brexit. The main points were:

- The UK will leave the single market and customs union.
- The UK will not adopt an existing model for its relationship with the EU (e.g. EEA membership); there will be a "unique and ambitious economic partnership" and an "unequivocal commitment to free trade and high standards".
- There will not be a Canadian-style free trade agreement (but Michel Barnier says the UK can expect a trade deal like the EU-Canada one).
- The UK is committed to maintaining Europe's security and will help combat "armed aggression, terrorism and natural or manmade disasters"; the UK is looking for a "bold new strategic agreement" on security.
- The EU and the UK will need a "strictly time-limited" period of implementation (around two years) during which "access to one another's markets should continue on current terms and Britain also should continue to take part in existing security measures". This can be agreed under Article 50.
- EU citizens coming to Britain in this period will be subject to a registration system and "new rules ... on long term settlement".
- EU budget issues "can only be resolved as part of the settlement of all the issues that we are working through". The UK will honour commitments made during EU membership and contribute to a "fair share of the costs involved".
- The Government is preparing for "every eventuality" regarding the outcome of negotiations.

1.2 David Davis on progress in round five

Closing remarks

In his [closing remarks](#) on 12 October, David Davis was optimistic about aspects of round five: the negotiating teams had developed "an increased sense of shared political objectives". He conceded there was still "much work to be done", but they had "come a long way" and "significant progress" had been made since June. Mr Davis outlined where he thought progress had been made in the three priority areas

and where “creative solutions” could be found. On citizens’ rights, he thought the talks had “brought us even closer to a deal that gives citizens rights to the legal certainty that they deserve”. He spoke about the “critical guiding principles which both sides recognise” as necessary for an agreement on the Irish border issues, and of working towards a “common understanding on possible commitments and undertakings necessary to effectively protect the Good Friday (Belfast) Agreement in all its dimensions”.

On the financial settlement he referred to the Prime Minister’s “significant statements” in Florence, and said there had been a “rigorous examination of the technical detail where we need to reach a shared view”. But he insisted that at this stage the discussion was not about “agreeing specific commitments” – i.e. a sum of money that the UK would be prepared to pay the EU.

On other separation issues, he noted progress in a range of matters, but said some issues were “dependent on discussions on our future relationship”. He emphasised this in his conclusions: “I make no secret of the fact that to provide certainty we must talk about the future”.

He hoped that at the October European Council the other Member States would “recognise the progress we have made, and take a step forward in the spirit of the Prime Minister’s Florence speech”. By this he meant moving on to a discussion of future relations.

Statement in Parliament

On 17 October David Davis made a [statement](#) on the progress of the Brexit negotiations. He thought a new dynamic (since Florence) and a momentum had been maintained during the October talks, but that “there is still some way to go to secure a new partnership”. His comments on progress in the priority areas confirmed his closing remarks in Brussels on round five.

He concluded with two comments on the sequencing of the negotiations contained in the [negotiating directives](#) of 22 May, to which the UK Government has consistently objected:

- “We all have to recognise that we are reaching the limits of what we can achieve without consideration of the future relationship”.
- “Let me be clear that sufficient progress, and the sequencing of negotiations, has always been an EU construct, not the UK one”.

1.3 Michel Barnier on progress in round five

In his [press statement](#) on 12 October, Michel Barnier said the Florence speech had “given these negotiations much needed momentum”, that in round five they had “worked constructively” and “clarified certain points. But without making any great steps forward”. He spoke of a “common goal: the desire to reach an agreement on the UK’s withdrawal and to outline our future relationship, when the time comes”. He confirmed that the EU and the UK shared “the same

objectives” in the three priority areas, and that they would “honour at 28 the commitments taken at 28” – including the EU conditions for moving onto a discussion of future relations. He outlined where progress had been made in the key areas, where divergences remained, and where there was deadlock. Mr Barnier concluded, as expected, that he was not able to recommend to the Council the opening of discussions on the future relationship.

Mr Barnier added some words on the question of whether the EU would be “ready to make concessions”. The answer was a definite no:

We will not ask the UK to “make concessions”. The agreement that we are working towards will not be built on “concessions.”

This is not about making “concessions” on the rights of citizens.

This is not about making “concessions” on the peace process in Northern Ireland.

This is not about making “concessions” on the thousands of investment projects and the men and women involved in them in Europe.

In these complex and difficult negotiations, we have shared objectives, we have shared obligations, we have shared duties, and we will only succeed with shared solutions. That is our responsibility.

But he conceded that since the Prime Minister’s Florence speech – not formally part of the negotiations - there was a “new dynamic”, and he was “convinced that with political will, decisive progress is within our reach in the coming weeks”.

1.4 Comment on round five

In spite of a degree of progress acknowledged by the negotiators, press comment on the outcome of the negotiations was critical - of the UK for not putting more on the table, and of the EU for being inflexible. Most reports concluded that not much had been achieved in round five.

Politico described the first phase of the negotiations as a ‘tragicomedy’.¹

The *Financial Times* acknowledged progress in aspects of citizens’ rights, but noted that the discussions had “made no dent on the biggest outstanding issues”.²

Aarti Shankar wrote in *The Telegraph*, 12 October, that little progress had been expected in round five, but the EU should compromise on “sufficient progress” and allow talks to move forward.³

The *Financial Times* commented on a view expressed by EU officials that speeches and promises were not enough - “We have to look at what is actually being put on the table in Brussels. And on the latter we have seen no movement”.⁴

¹ [Politico, 12 October 2017](#)

² [Financial Times, 12 October 2017](#)

³ [The Telegraph, 12 October](#)

⁴ [Financial Times, 13 October 2017](#)

2. Progress in priority areas

2.1 Citizens' rights

Turning to the issue of citizens' rights in his [post-round five statement](#), Michel Barnier started with a reminder that the parties share common objectives. He promised to continue to work to "translate these into reality":

1. That the Withdrawal Agreement has direct effect, which is essential to guarantee the rights of all citizens in the long-term.
2. That the interpretation of these rights is fully consistent in the European Union and in the United Kingdom.

According to Mr Barnier the round concluded without the parties "making any great steps forward". The outstanding issues on citizens' rights remain the same: the future role of the Court of Justice of the European Union (still seen by the EU as the best means of guaranteeing consistent application of citizens' rights); the right of EU citizens in the UK to bring current and future family members to live with them in the UK; and the export of certain social security benefits (including child benefit claimed in the UK for children resident in other Member States).

Mr Barnier closed his summary of the divergence on citizens' rights by highlighting the promise by the UK Government to put in place a simplified procedure for citizens to assert their rights. He promised to give the practical details attentive study.

David Davis struck a more optimistic tone in his [statement](#) to the House of Commons on 17 October. He emphasised the agreement reached thus far:

And we should also not lose sight of the fact that we have made significant progress in this area since June. We have reached agreement on:

- the criteria for residence rights;
- the right to work and own a business;
- social security rights;
- rights for current family members;
- reciprocal health care rights;
- the rights of frontier workers;
- and the fact that the process for securing settled status in the UK will be streamlined and low cost.

On the issues yet to be resolved, the Secretary of State reported that the parties have explored a number of solutions. He did not touch upon the disagreement on the role of the Court of Justice but listed other issues on which the parties have yet to come to agreement:

But, of course, there are still some issues outstanding for both sides, including the right:

- to continue to enjoy the recognition of professional qualifications;

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- to vote in local elections;
- The right to onward movement move as a UK citizen already resident in the EU27;
- the right to return;
- the right to bring in future family members;
- the right to export a range of benefits.

Mr Davis claimed that the UK proposals on many of these issues “go further and provide more certainty than those of the Commission”.

He expanded on the process by which EU citizens in the UK can apply for the proposed settled status:

...while there will be a registration process, the administration process will be completely new, streamlined, and - importantly - low-cost.

Furthermore, any EU citizen in the UK already in possession of a permanent residence card will be able to exchange it for settled status in a simple way. They will not need to go through the full application process again.

The tests associated with this process will be agreed and set out within the Withdrawal Agreement. As a result of our productive discussions, the Commission is also able to offer similar guarantees in return for those British citizens in the European Union.

In her [post-European Council statement](#) to the House of Commons, the Prime Minister described the UK and EU as “united on the key principles” and within “touching distance of a deal” on the issues outstanding. On applications for settled status she said the cost will be no more than that of a UK passport.

On 26 October 2017 the [Guardian](#) reported that Boris Johnson had issued the firmest statement yet made by a Government minister on the rights of EU citizens in the UK whilst attending a meeting of the Belvedere Forum on Polish-UK relations. The paper reported that the Foreign Secretary told the gathering on 17 October “Your rights will be protected whatever happens”. The Foreign Office told the [Guardian](#) that Mr Johnson was simply reiterating the Government’s determination to achieve agreement with the EU on citizens’ rights.

2.2 Financial settlement

Negotiations up to October

In June 2017 the European Commission [published a paper](#) that set out its position on the financial settlement (the settlement).⁵ The Commission paper fleshed out the European Council’s wishes regarding the settlement as laid out in its [negotiating directives](#) – Michel Barnier’s mandate for negotiations.⁶

⁵ European Commission. [Position paper transmitted to the UK: essential principles on the financial settlement](#), 12 June 2017

⁶ The Council of the European Union, [Negotiating directives for Article 50 negotiations](#), 22 May 2017

The UK Government has not published a formal response to the Commission's position paper and has not set out a detailed view on the settlement. The Government has offered to make payments sufficient, so that no Member State is made financially worse off by the UK's withdrawal in 2019 or 2020. The Prime Minister has also pledged that "the UK will honour its commitments made during the period of our membership".⁷ However, in the negotiations the UK has been unable to identify which commitments it is willing to honour.

In general, negotiations on the settlement have been technical, focusing on a detailed line-by-line, and at times legal, analysis of the EU's position on which financial commitments should be included in the settlement.

October negotiations

The October round saw further discussions on technical aspects of the settlement, with no negotiation over which financial commitments are to be included in the settlement. In the closing press conference David Davis said that the UK is not in a position 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.⁸

David Davis's comments echo his previously expressed view that a conclusion on the settlement will only be reached alongside talks on the future EU-UK relationship.⁹ He called for the European Council to recognise progress made generally 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 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.¹⁰

With deadlock on the settlement, and outstanding issues in other areas of the first phase of negotiations, Michel Barnier said that he currently could not recommend that negotiations 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's European Council:

⁷ [PM's Florence speech: a new era of cooperation and partnership between the UK and the EU](#), 22 September 2017

⁸ [David Davis' closing remarks at the end of the fifth round of EU exit negotiations in Brussels](#), 12 October 2017

⁹ [David Davis' opening remarks at the start of the fourth round of EU exit negotiations](#), 25 September 2017

¹⁰ European Commission, [Press statement by Michel Barnier following the fifth round of Article 50 negotiations with the United Kingdom](#), 12 October 2017

...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. ¹¹

2.3 Border between Ireland and Northern Ireland

David Davis and Michel Barnier gave very similar accounts of the conduct of the latest negotiating round. Both announced that they had made progress in the following areas:

- The joint principles on the continuation of the Common Travel Area.
- Mapping out areas of cooperation that operate on a North South basis.

They agreed that there was more work to do on building a “fuller picture of the challenges to North-South cooperation”, which stem from the UK leaving the EU. ¹²

Mr Barnier added that the two sides agreed that “the six principles proposed by the EU in September would guide our work on protecting the Good Friday Agreement in all its dimensions”, ¹³ which David Davis said would lead to work starting on a “common understanding on possible commitments and undertakings necessary to effectively protect the Good Friday (Belfast) Agreement in all its dimensions”. ¹⁴

The Prime Minister, in her statement to the House on 23 October on the European Council meeting, said there had been “significant progress” on the issue of the Irish border. She summed up the areas of agreement:

The Belfast agreement must be at the heart of our approach and we have clearly agreed that the unique circumstances across the whole of the island of Ireland will require specific solutions.

There will not be any physical infrastructure at the border and we have also developed joint principles to ensure the continuation of the Common Travel Area.

These principles will fully preserve the rights of UK and Irish nationals to live, work and study across these islands – and protect the associated rights to public services and social security.

¹¹ European Commission Audiovisual services, [Press conference following the 5th round of Article 50 negotiations](#), 12 October 2017

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

¹³ *Ibid*

¹⁴ Department for Exiting the European Union, [‘David Davis’ closing remarks at the end of the fifth round of EU exit negotiations in Brussels’](#), 12 October 2017

No UK or Irish national will need to apply for settled status anywhere in the Common Travel Area at any stage in order to protect their entitlements.

And to provide legal certainty, the joint principles we have developed recognise that the Withdrawal Agreement should formally acknowledge that the UK and Ireland will continue to be able to uphold and develop these bi-lateral arrangements.¹⁵

On 25 October, David Davis updated the Exiting the European Union Select Committee on progress at the negotiations. He pointed to the time needed to put customs procedures and border controls in place in Northern Ireland as one of the reasons why the Government see a transition period as necessary.¹⁶ He also emphasised that talks on the future relationship between the UK and the EU are required for there to be significant progress on how the border will operate:

[...] The withdrawal agreement includes citizens' rights, which I think we will get to a conclusion on. For Northern Ireland, the next stages require the onward relationship to be resolved. These are things like the north/south strands. There are about 142 of them. They include things like the single energy market for Northern Ireland and the Republic of Ireland, and we cannot deal with that until we know what we are doing on that basis, and border issues, which will be affected by whatever conclusion we get to on customs agreement and free trade agreement.¹⁷

Asked about the effect of a 'no deal' scenario on the border, David Davis emphasised the differences in jurisdiction which already exist, and also seemed to suggest that a customs arrangement that gave exemptions to smaller firms would increase the incentives for smuggling, which would see potential losses for the UK Exchequer:

The first thing to say, Mr Chairman, is remember there is a border. It is a fiscal border, in a sense. There are different levy arrangements and tax arrangements, north and south. Indeed, I understand that there is a degree of smuggling that goes on now, so there is a border there now, in the first instance. We wrote up some of the mechanisms we have in mind in one of our 14 papers this summer including, as I mentioned earlier, a much bigger use of authorised economic operators, the use of exemptions for small firms and so on. There may be some ANPR on strategic roads back from the border, not at the border. There are two sides to this, which means the European Union also has to agree with the Irish Republic that they can do similar things. I make no bones about it: there will be a fiscal loss on it. There will be a tax loss, because it will be quite expensive, though nothing like as expensive as other things¹⁸

Asked specifically by the Committee Chair Hilary Benn if the Republic of Ireland and the EU believe that there can be no border and no physical infrastructure in the event of there being no deal, Mr Davis replied:

¹⁵ Prime Minister's Office, '[PM's statement on October European Council](#)', 23 October 2017

¹⁶ Exiting the European Union Committee, [Oral evidence: The progress of the UK's negotiations on EU withdrawal inquiry](#), 26 October 2017, HC 372, Qu 32

¹⁷ Exiting the European Union Committee, [Oral evidence: The progress of the UK's negotiations on EU withdrawal inquiry](#), 26 October 2017, HC 372, Qu 144

¹⁸ Exiting the European Union Committee, [Oral evidence: The progress of the UK's negotiations on EU withdrawal inquiry](#), 26 October 2017, HC 372, Qu 148

I think the Republic of Ireland takes that view. There has been a change of Government, and we have not really had time to settle down with the new people, although the Prime Minister has seen the Taoiseach twice, I think. The Commission shows a certain degree of scepticism, but we have taken the view bluntly that this is going to be completely dependent on what the future arrangements are. We will need to talk through them once we get to that point. We have not had time to do the detail of that yet.

Finally, the Secretary of State acknowledged the impact the lack of an Executive in Northern Ireland was having on discussions on Brexit in the Joint Ministerial Council (JMC).¹⁹

Since the end of the latest negotiations the Irish Prime Minister has also made statements to the press on the Irish border issues. In an interview with BBC Northern Ireland's Spotlight programme, Leo Varadkar emphasised the flexibility that his European partners were showing in approaching the border issue, saying "there is a willingness to be flexible, to bend the rules for Northern Ireland". He added that when he spoke to other leaders, such as France's President Macron and Germany's Chancellor Merkel, there was a "real understanding that Northern Ireland is unique. That this is a special place. That the peace is still fragile, and the peace is still young [...] And because of that there will be enormous flexibility shown towards Northern Ireland".²⁰

A few days later, on 19 October, during the meeting of the European Council, Mr Varadkar said the UK government needed to provide "a lot more detail" on how it intends to avoid a hard border after Brexit. He said the UK had used "all the right language" but that was not sufficient.²¹

2.4 Other separation issues

These include nuclear safeguards, civil judicial co-operation and privileges and immunities.

David Davis insists that some issues in these areas are dependent on the future relationship discussions.

¹⁹ Exiting the European Union Committee, [Oral evidence: The progress of the UK's negotiations on EU withdrawal inquiry](#), 26 October 2017, HC 372, Qu 111

²⁰ ['Europe will bend rules for NI' on Brexit – Varadkar](#), BBC News, 17 October 2017.

²¹ ['Brexit: More detail needed on plan to avoid hard border'](#), BBC News, 19 October 2017

3. Other Brexit developments

3.1 'No deal' reappears on the agenda

In October the issue of a 'no deal' Brexit reappeared on the agenda. David Davies told the House of Commons on 17 October that "The maintenance of the option of no deal is both for negotiating reasons and for sensible security".

Could Parliament veto a 'no deal' Brexit?

The balance of legal opinion at the moment seems to be that if Parliament voted against leaving the EU with no withdrawal agreement or transition agreement in place, this vote could only have political, not legal, effects.

Now that Article 50 TEU has been triggered, the EU Treaties will automatically cease to apply to the UK after 29 March 2019 **unless**:

- a withdrawal agreement is concluded with a later date; or
- the UK and EU agree unanimously to extend the 2-year Article 50 period; or
- the UK unilaterally withdraws its Article 50 notification (no-one knows whether this is legally possible).

A Parliamentary vote against leaving with no withdrawal or transitional deal might influence the UK Government's actions in relation to any of these options but it could not determine it.

This position has been set out most fully by Professor Mark Elliott in a recent blog post: [Can Parliament block a 'no deal' Brexit?](#) (16 October 2017). Other commentators such as Simon Usherwood and David Allen Green have similar views.

The EU (Withdrawal) Bill

A number of amendments to the European Union (Withdrawal) Bill have been tabled that seek to explore this issue. For example, Amendment 53 stipulates that the European Communities Act 1972 could not be repealed before Parliament had agreed to a new treaty establishing a future relationship between the UK and EU. However, this would not mean that the UK remained a Member State of the EU – Article 50 would still operate to mean that the EU Treaties ceased to apply to the UK.

3.2 Transitional arrangements

Timing

In her [Florence speech](#), the Prime Minister reiterated her call for an 'implementation period', and said it should last for about two years:

As I said in my speech at Lancaster House a period of implementation would be in our mutual interest. That is why I am proposing that there should be such a period after the UK leaves the EU.

Clearly people, businesses and public services should only have to plan for one set of changes in the relationship between the UK and the EU.

So during the implementation period access to one another's markets should continue on current terms and Britain also should continue to take part in existing security measures. And I know businesses, in particular, would welcome the certainty this would provide.

The framework for this strictly time-limited period, which can be agreed under Article 50, would be the existing structure of EU rules and regulations.

There are questions about when an implementation or transitional agreement would be negotiated. Many businesses have been calling for it to be agreed by the end of 2017, to allow them to plan for the future. But the EU had originally planned for it to be discussed towards the end of the negotiations (as yet the Commission has no mandate to negotiate transitional arrangements, although they are foreseen in the Council's April 2017 negotiating guidelines). And the UK has also argued that as it would be a transition to a future relationship, that future relationship needs to be known before agreeing transitional arrangements.

In [evidence](#) to the Commons Brexit Committee on 25 October 2017, David Davies said that he wanted initial agreement on transition in the first quarter of 2018. This did not appear to be dependent on reaching agreement on future relations, which he said could be achieved within 12 months.

EU legal issues

It is likely that at least some transitional arrangements could be based on Article 50 TEU. [The European Council's Article 50 guidelines](#) appear to envisage this when they say:

To the extent necessary and legally possible, the negotiations may also seek to determine transitional arrangements which are in the interest of the Union and, as appropriate, to provide for bridges towards the foreseeable framework for the future relationship in the light of the progress made. Any such transitional arrangements must be clearly defined, limited in time, and subject to effective enforcement mechanisms. Should a time-limited prolongation of Union acquis be considered, this would require existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures to apply.

Both the EU and the UK appear to be proceeding on this basis, as David Davies [told](#) the Brexit Committee on 25 October 2017.

Transitional arrangements could be included in a single Withdrawal Agreement, or could be in a separate agreement. Article 50 does not preclude multiple agreements.

But Article 50 makes no explicit reference to transition, and the issue has yet to be tested. There is [no clear agreement among the EU 27](#) Member States on whether and on what terms they would agree to a transition: it would need to be agreed in a separate negotiating mandate. And only the CJEU could make a binding determination of

exactly what transitional arrangements could be based on Article 50 and what would need a different legal basis (such as Article 218 TFEU).

The question is important because an Article 50 agreement requires Qualified Majority Voting (QMV) in the Council but Article 218 agreements require unanimity – and possibly national ratification (if classified as a ‘mixed’ agreement – see below). A single agreement could have more than one EU legal base.

[Kenneth Armstrong et al.](#) have set out some of the considerations:

The more that [a transitional] agreement merely perpetuates membership subject to minor modifications, the less easy it is to characterise as a ‘withdrawal’ agreement within the meaning of Article 50.

Transition might instead be achieved through a separate ‘association agreement’ under Article 218 of the Treaty on the Functioning of the European Union. This would allow many of the obligations of membership to lapse, but some form of free trade agreement to be continued. Yet an agreement under Article 218 would require unanimity among the other Member States and the consent of the European Parliament.

Once the UK leaves the EU, the EU Treaties would not apply directly to the UK. However, a transitional agreement could in theory specify that the EU Treaties applied in whole or in part to the UK, with any specified modifications. But as a [CEPS study](#) argues, there would be many complexities:

Providing for such a transitional regime in an initial withdrawal agreement would, however, open a procedural and legal Pandora’s box. First, the withdrawal agreement would have to regulate the participation of the UK in the EU institutions and its continued contributions to the EU budget. While participation in the Council and European Council may prove reasonably straightforward, participation in other institutions, particularly the European Parliament and the Court of Justice, could be more difficult. Should the UK keep the right to have members of the European Parliament during the transitional period? Furthermore, what would be the involvement of UK representatives in EU agencies and advisory bodies? On the one hand, insofar as it would be bound by a range of existing key policies and, quite possibly, the bulk of EU single market regulation, restricting participation in the representative bodies would undermine the EU’s principle of representative democracy. On the other hand, to guarantee such participation could be highly disruptive for the Union.

Another crucial issue is the role of the Court of Justice during the transitional period. Indeed, the most significant legal question that a bespoke transition raises is whether the UK would continue to be bound by EU law directly during the transitional phase. If it were to remain in the internal market and customs union, surely the EU would expect the UK to do so. That, however, is difficult to marry with the fact that the UK has already taken steps to sever links with EU law and end the jurisdiction of the Court of Justice. For instance, in a recent paper, the UK government highlighted that the Court’s jurisdiction in the UK would cease at the point of exit from the EU, not at the end of a transitional phase (or, in any case, without clarifying whether a transition would qualify as exit for the purposes of UK law or not).

UK legal issues

Whether or not the European Union (Withdrawal) Bill (EUW Bill) could remain unamended and fully in force during a transition agreed with the European Union will depend on the precise nature of the transitional agreements. As these are not yet known, it is very difficult to know whether the Bill as currently drafted could coexist with such transition.

Once any withdrawal agreement and transitional arrangements are agreed, there will be a range of options for domestic implementation. The legislative strategy chosen will depend on a number of factors, which will be likely to include:

- the content of the agreement and any transitional arrangements;
- whether new EU laws during the transition period would apply to the UK;
- the time available to legislate;
- whether or not the agreement requires provisions that are constitutional in nature; and
- the content of other “Brexit Bills” enacted before exit day.

The power in the EUW Bill to set multiple exit days could be used, for example, to mean that clauses 5 and 6 of the EUW Bill (exceptions to savings and incorporation and interpretation of retained EU law) come into force at the end of the transition period.

It should also be noted that either of these options could be combined with a free-standing Act of Parliament dedicated to implementing the withdrawal agreement. This option was recently discussed by Dominic Grieve MP in an interview to the Conservative Home blog, in which he set out a similar view on the need for further legislation once the details of the withdrawal agreement are known:

Grieve: “What role does Parliament have in the final deal? The reality is that the Government is almost certainly going to need a further statute to get us out at the end. I’m absolutely convinced of it. It won’t be possible, because they are going to want to dot the “i”s and cross the “t”s about the future arrangements.”

ConHome: “Which haven’t been settled yet.”

Grieve: “Which haven’t been settled yet. So I find it very difficult to give the Government a blank cheque with this Bill. At some point when we have a deal we will need to vote on it. In my opinion we will need a short piece of primary legislation.

“The risk otherwise for the Government is that someone like Gina Miller challenges it again in the Supreme Court, which is the last thing the Government wants”.²²

Further, other primary legislation designed to prepare for Brexit could be used by the Government to implement the withdrawal agreement. Such

²² Conservative Home, [Interview: Dominic Grieve. Brexit is an “unBritish” revolution – and how he will work to improve the EU Withdrawal Bill](#), 20 September 2017

legislation, or indeed any withdrawal agreement Act, would not necessarily have to expressly amend the EUW Bill.

3.3 UK future relations white papers

Before the October round of negotiations, the Government published two papers, both on the UK's future relations with the EU.

- [Preparing for our future UK trade policy](#), 9 October 2017
- [Customs Bill: legislating for the UK's future customs, VAT and excise regimes](#), Cm 9502, October 2017 (a Future Partnership Paper on customs had also been published in August).²³

Bills on customs and trade were announced in the 2017 Queen's Speech.

Trade White Paper

The trade White Paper sets out the Government's approach to establishing the UK's independent trade policy after Brexit. Many aspects of trade policy are currently carried out by the EU. After Brexit these will become the responsibility of the UK and legislation is needed in certain areas.

The White Paper set out the Government's aim for trade policy:

The United Kingdom has a long and proud history as a great trading nation and champion of free trade with all parts of the world. We want to maximise our trade opportunities globally and across all countries – both by boosting our trading relationships with old friends and new allies, and by seeking a deep and special partnership with the EU.²⁴

The White Paper said:

This paper is an early step in identifying the key elements of that trade policy. In order to ensure continuity in relation to our trade around the world and avoid disruption for business and other stakeholders, the UK needs to prepare ahead of its exit from the EU for all possible outcomes of the negotiations, and ensure that we have the necessary legal powers and structures to enable us to operate a fully functioning trade policy and pursue new trade negotiations.²⁵

The paper set out five components of the UK's future trade policy:

- Transparency and inclusivity
- Support for a rules-based global trading environment
- Boosting the UK's trade relationships
- Helping developing countries reduce poverty
- Ensuring a level playing field: trade remedies (such as policies against dumped imports) and trade disputes

²³ HM Government, [Future customs arrangements: A future partnership paper](#), 15 August 2017

²⁴ Department for International Trade, [Preparing for our future UK trade policy](#), Cm 9470, October 2017, p10

²⁵ Ibid, p5

It also listed the areas where the Government was intending to legislate:

We are introducing legislation (including a trade bill and a customs bill) that:

- Enables continuity in the UK's current trade and investment relationships;
- Enables the UK to implement obligations that arise under the Government Procurement Agreement (GPA) (the UK will need to be able to implement these obligations in order to join the GPA as an independent member in our own right);
- Creates a UK trade remedies framework that addresses unfair and injurious trade practices, or unexpected surges in imports, and is consistent with our World Trade Organization (WTO) obligations;
- Enables the UK to enforce or abide by the outcomes of international trade disputes;
- Creates a unilateral UK trade preferences scheme to enable the UK to continue to provide preferences that support economic and sustainable development in the world's poorest countries, as part of our wider development agenda; and
- Provides a gateway to facilitate the collection and sharing of data which the Department for International Trade requires as it takes on functions previously performed by the EU Commission. For example, in order for the Department for International Trade to collect the same data on intra- and extra-EU trade in goods as we do now.²⁶

The White Paper sought views on the Government's developing approach to trade policy, especially in the areas of inclusivity and transparency, unilateral trade preferences and trade remedies.

Customs Bill White Paper

The White Paper set out the background to a Customs Bill to be introduced later this year. The Bill will contain provisions to allow the UK to operate its own customs regime after Brexit, including any interim arrangements. The Bill will also cover VAT and excise issues.

The Government said it would be "guided by what delivers the greatest economic advantage to the UK".²⁷ The White Paper set out three strategic objectives:

- Ensuring UK-EU trade is as frictionless as possible
- Avoiding a hard border between Ireland and Northern Ireland
- Establishing an independent international trade policy²⁸

The White Paper set out how the Government was approaching legislation to establish a new customs regime. It said that this would implement the Government's preferred outcome – an agreement with

²⁶ Department for International Trade, [Preparing for our future UK trade policy](#), Cm 9470, October 2017, p11

²⁷ HM Treasury, [Customs Bill: legislating for the UK's future customs, VAT and excise regimes](#), Cm 9502, October 2017, p1

²⁸ Ibid

the EU. The White Paper said, however, that the Customs Bill will “provide for a range of possible outcomes”:

This White Paper therefore also sets out how the government would manage leaving the EU without an agreement on customs, in the event of no deal being reached.²⁹

New domestic legislation is required because rules governing customs are mainly in EU law which is directly applicable in the UK. New legislation is required to create a new customs regime for the UK, which needs to be in place by 2019. The White Paper said:

The authority to charge customs duty is currently contained in the European Communities Act 1972 (as amended), which will be repealed by the European Union (Withdrawal) Bill (EUWB). The EUWB will convert the body of existing EU law into domestic law and preserves the laws made in the UK to implement EU obligations. The powers in the EUWB to deal with deficiencies arising from withdrawal and to implement the withdrawal agreement cannot be used to impose or increase taxation, which includes customs duties, excise or VAT. Therefore, the UK will need new primary legislation, irrespective of any agreements reached between the UK and EU, to create a standalone customs regime, and to amend the VAT and excise regimes so that they can function effectively after the UK has left the EU.³⁰

The White Paper explained what the Customs Bill would contain:

The Bill will allow the government to create a standalone customs regime by ensuring that, among other things:

- The UK can charge customs duty on goods (including on goods imported from the EU).
- The UK can define how goods will be classified to establish the amount of customs duty due (known as the nomenclature).
- The UK can set and vary rates of customs duty, specify where goods are subject to quotas and where goods are relieved from duty.
- The UK can determine the additional territories forming part of a customs union with the UK.
- The UK can vary or suspend duty at import in certain circumstances.
- HMRC can request and collect tax-related information from declarants and store and share it as appropriate.
- The UK can establish a new UK tariff and set out additional tariff-related provisions, for example the tariff applicable to developing countries (unilateral preferences), and will have a new arm’s length body to conduct trade remedies investigations.³¹

²⁹ Ibid

³⁰ HM Treasury, [Customs Bill: legislating for the UK’s future customs, VAT and excise regimes](#), Cm 9502, October 2017, p11

³¹ HM Treasury, [Customs Bill: legislating for the UK’s future customs, VAT and excise regimes](#), Cm 9502, October 2017, p13

The White Paper sought views from businesses and consumers on a number of areas, including operational impacts, border processes and costs associated with the new customs arrangements.

3.4 UK/EU joint letter to WTO

On 11 October 2017 the UK and EU wrote a joint letter to the World Trade Organization (WTO) setting out a proposed way forward on the issue of tariff rate quotas (TRQs).³² These are particularly relevant to trade in agricultural goods. The EU's tariffs on agricultural goods are generally high. There is, however, a system of tariff rate quotas which allows a given volume of specified agricultural products to enter the EU market at reduced tariff levels. These TRQs apply to the EU as a whole and are set out in the EU's schedules at the WTO.

After Brexit the TRQs will have to be split between the UK and the EU-27. The UK/EU letter proposed splitting them based on where goods are consumed in the EU. This would mean the UK taking a relatively large share of the quota for New Zealand lamb, for example, due to the large amount consumed in the UK. In the letter, the UK and EU said that this approach would maintain the current level of market access available to other countries. They also said they wished to minimise disruption to trade for other WTO members.

A group of WTO members (Argentina, Brazil, Canada, New Zealand, Thailand, the US and Uruguay) wrote to the UK and EU objecting to this proposal, saying that it would not be consistent with the principle of leaving other WTO members no worse off. They also opposed changing the TRQs through 'technical rectification'. A technical rectification is quick and requires little negotiation. A 'modification' would mean more involvement of other WTO members.³³

The UK/EU letter also set out an approach to apportioning certain agricultural subsidies and the UK's continued participation in the WTO General Procurement Agreement (GPA).

3.5 Is the Government preparing for Brexit?

Government impact assessments

On 14 December 2016, in an oral evidence session to the Select Committee for Exiting the European Union, David Davis [said](#):

We are in the midst of carrying out about 57 sets of analyses, each of which has implications for individual parts of 85% of the economy. Some of those are still to be concluded. We have work still to be done on justice and home affairs, so there is a fair number of things still to do. It will be as soon as we are ready.

DExEU Minister David Jones [replied](#) on 23 May 2017 to a [letter](#) of 11 April 2017 from Green Party MEP for the South West, Molly Scott Cato,

³² [Letter](#) from UK Mission Geneva and European Union Permanent Mission to the WTO, to Permanent Representatives to the WTO, 11 October 2017. See also [letter](#) from Rt Hon Liam Fox MP to Rt Hon Hilary Benn MP, 16 October 2017

³³ Peter Ungphakorn, [UK, EU, WTO, Brexit primer – 2. Tariff quotas](#), 7 October 2017

about the Government studies. Mr Jones said that since the EU referendum

... the whole Government has undertaken a work programme to make sure that it is ready to begin negotiations from a position of strength. DExEU has conducted analysis of over 50 sectors of the economy.

On 11 October David Lammy and Seema Malhotra sent a [letter](#) to David Davis (signed by 120 MPs) calling on him to publish the studies.

It is not clear whether the Government will publish the results of the 57 studies, but there has been no indication that they intend to do so.³⁴

The Government's argument for not publishing its views on Brexit has been generally – although this is not stated in David Davis's evidence to the Brexit Committee or in the reply to Ms Scott Cato – that it does not want to reveal information which might harm its negotiating position in withdrawal and/or future relations negotiations. As David Davis [told](#) the Brexit Committee in December 2016, "We have got to be very careful about what we publish. I want to be as open as we can be, but we must be sure that we are not undermining our own position".

Concerns about a 'no deal' Brexit

The Home Secretary, Amber Rudd, [told](#) the Home Affairs Select Committee on 17 October that it would be "unthinkable" to leave the EU without a deal. But there appear to be differences of opinion in the Cabinet. The Foreign Secretary, Boris Johnson, said earlier this year that it would be "perfectly okay" if the negotiations collapsed. On 12 October he clarified this: "obviously we must make the right preparations as and when it is necessary for a no deal scenario", but added that if the Brexit negotiators failed to achieve a deal, Britain would "do very well".³⁵

Theresa May said in January in her Lancaster House speech that "no deal is better than a bad deal", but subsequently promoted the advantages of a withdrawal agreement. The Prime Minister has denied that the Government is "ramping up a no-deal scenario".³⁶

MPs have asked the Government if and how it is preparing for a possible no-deal scenario. The responses refer to contingency planning and a funding commitment. In her [statement](#) on 23 October on the European Council, Mrs May reminded the House that the Treasury had "set aside £250 million this year to be spent across Government Departments on preparing contingencies for every eventuality".

On 11 October, Theresa May [told](#) Iain Duncan Smith the Government were:

³⁴ The 'secret' analysis is reported in [Independent, 14 August 2017](#); Comment by David Lammy and Seema Malhotra in [The Times, 11 October 2017](#); [Guardian, 13 October 2017](#)

³⁵ [Politico, 19 October 2017](#)

³⁶ [HC Deb 11 October 2017, c 329](#)

... committing money to prepare for Brexit, including a no-deal scenario. [...] The Treasury has committed over £250 million of new money to Departments such as the Department for Environment, Food and Rural Affairs, the Home Office, Her Majesty's Revenue and Customs and the Department for Transport in this financial year for Brexit preparations. In some cases, Departments will need to spend money before the relevant legislation has gone through the House. The Treasury will write to Departments and to the Public Accounts Committee explaining this process shortly. Where money needs to be spent, it will be spent.

The International Trade Secretary, Liam Fox, told Henry Smith:

The best thing for the whole of Europe is for us to reach a deep and comprehensive agreement on trade. We are committed to doing so, and we hope that our European partners will commit to move on to the second stage of negotiations as soon as possible, not least to remove any uncertainty to businesses and workers across Europe. However, if we are unable to do so, the Government have already undertaken a wide range of contingency plans.³⁷

Peter Bone asked whether the Department would publish its plans for a no-deal situation before Christmas, to which Dr Fox replied:

Across Government we will make our contingency plans, but we continue to hope that the EU will come forward with a proper commitment to entering into the second part of the trade deal, as we think that is in our mutual interest.³⁸

On 12 October the SNP MP, Pete Wishart, [said](#) an "urgent debate" was desperately needed on "the consequences of a no-deal hard Brexit".

Already there are claims that that could cost up to £400 billion and suck 18% of GDP out of our economy. No country in history has ever considered committing economic self-harm on such a scale before. We need to know the Government's views about the costs, and the issue needs urgently to be debated.

Government ministers have answered questions about no-deal preparations in various policy areas:

Tariff rate quotas

In a [debate](#) on tariff rate quotas and the WTO (12 October), Liam Fox insisted good progress had been made on the division of tariff quotas, that a comprehensive agreement was "in the interests of all concerned", but that the Government were "preparing contingencies should there be no agreement, which is the only responsible thing for a Government to do".

Air travel

In a Lords debate on the Air Travellers' Organisation Licensing Bill on 11 October, Lord Callanan [assured](#) Peers that ATOL would continue and that Parliament would decide on any changes to be made, "deal or no deal"; and "The Government remain committed to strong consumer protection and will continue to be so after Brexit".

Disclosure of Information: [Written question - 105890](#)

Stephen Gethins, 6 October 2017

³⁷ [HC Deb 12 October 2017, c 432](#)

³⁸ [HC Deb 12 October 2017, c434](#)

To ask the Secretary of State for Exiting the European Union, with reference to the position paper, Confidentiality and Access to Documents, published on 21 August 2017, what assessment the Government has made of the potential effect of EU institutions refusing to provide guarantees on the use by the EU of information produced while the UK was an EU member state after the UK leaves the EU in the event that there is no deal.

Robin Walker, 13 October 2017

The UK's position is that official information and documents originating from the EU, the UK or another EU Member State produced or exchanged prior to withdrawal should continue to be protected as now. The EU position, as expressed in their paper on 'Issues relating to the Functioning of the Union Institutions, Agencies and Bodies,' is consistent with this. The EU and its Member States will continue to be bound by their current obligations on confidentiality and access to documents.

UK Trade with EU: [Written question - 901078](#)

Wera Hobhouse, 9 October 2017

To ask the Secretary of State for International Trade, what assessment his Department has made of how World Trade Organisation rules would affect UK trade in the event that the UK leaves the EU without a trade deal.

Greg Hands, 12 October 2017

Currently all UK trade with members of the WTO is subject to WTO rules. This will not change when the UK leaves the EU.

DIT will continue to contribute trade policy expertise to input into DExEU's preparations and negotiations with the EU.

We want the UK to have the greatest possible tariff and barrier-free trade with our European neighbours and also to be able to negotiate our own trade agreements around the world.

Employment: [Written question - 106673](#)

Jo Stevens, 9 October 2017

To ask the Secretary of State for Digital, Culture, Media and Sport, what estimate her Department has made of the potential effect of the negotiations on the UK leaving the EU resulting in no deal on the number of jobs in the technology, culture and heritage sectors in the UK; what the evidential basis is for that estimate; and if she will make a statement.

Matt Hancock, 12 October 2017

The Government are responsibly preparing for a range of outcomes to ensure we have a smooth exit from the EU. The Government is engaging with businesses in every sector and region of the UK economy in order to understand the challenges and opportunities that may impact them in the coming months and years.

Civil Service staff training

David Lammy, 9 October on what steps the Government has taken "to (a) employ and train staff and (b) acquire appropriate premises for a new cadre of regulators in the event that the UK leaves the EU without a deal".

Steve Baker [replied](#), 17 October 2017

Individual governmental departments are responsible for resourcing and accommodation decisions for all existing and any potential new Arms Length Bodies that fall within their remit. This includes those with regulatory functions. The Government will continue to plan for a range of scenarios and will be ready to take any necessary steps to ensure that we are ready for exit day.

Scottish Government

In the Scottish Parliament, the Minister for UK Negotiations on Scotland's Place in Europe, Michael Russell, said on 25 October:

Scotland's interests – and the interests of all who live and work here – would be best served by remaining in the EU, and if that is not possible, remaining within the Single Market and Customs Union.

If there was a 'no deal Brexit', the consequences would go from dreadful to catastrophic. The economic, social and reputational damage such an outcome would inflict would be excessive and unwarranted. More and more people across business and in our communities are expressing their concern at the damage being done to our economy and public services.

It is simply unacceptable that there is still so much uncertainty surrounding the rights of EU citizens in the UK. We urge the UK Government to reach agreement and give EU citizens here, and UK citizens in other EU countries, the certainty to which they are entitled.

The Scottish Government cannot nor ever will support a no deal outcome and I am pleased the Scottish Parliament has now backed this position.³⁹

Is the EU preparing for no deal?

According to Stefaan de Rynck (an advisor to Michel Barnier), the EU is making contingency plans, but is not anticipating a 'no deal' outcome:

We are preparing for it, that is for sure, at 27 [the other 27 EU states] but it is not a scenario that we in the negotiation room want to bring in that negotiation room.⁴⁰

3.1 Relocation of EU Banking Authority and Medicines Agency

The bidding process for the two UK-based EU agencies closed at the end of July. There were 19 offers to host the European Medicines Agency (EMA) and 8 for the European Banking Authority (EBA). The Commission assessed the bids on the basis of six criteria agreed by the other 27 Member States, and [published](#) its assessment on 30 September.

EU-27 ministers had a political discussion based on the Commission's assessment on 17 October 2017, and the final decision will be taken in the margins of the General Affairs Council (Art.50) on 20 November by a secret ballot of EU-27 ministers.

3.2 Prime Minister's letter to EU citizens in UK

On 19 October the Prime Minister published an [Open Letter](#) to EU citizens in the UK, in which she sought to reassure the roughly three million EU citizens living in the UK about their rights after Brexit. She

³⁹ [Wired-gov, 26 October 2017](#)

⁴⁰ [Politics Home, 26 October 2017](#); [BBC News, 26 October 2017](#)

outlined elements of the process that will allow them to stay in the UK and said agreement on these rights is “within touching distance”.

4. The October European Council

The European Council (Article 50) met on 19 – 20 October.

Sufficient progress thought to be unlikely

At the General Affairs Council on 17 October, the EU-27 agreed unanimously that ‘sufficient progress’ had not been made in the negotiations to move on. The wording of the draft European Council Conclusions echoed this view.

On 20 October the EU-27 [acknowledged](#) progress on citizens’ rights and “convergence on principles and objectives regarding protection of the Good Friday Agreement and maintenance of the Common Travel Area”. They noted that “while the UK has stated that it will honour its financial obligations taken during its membership, this has not yet been translated into a firm and concrete commitment from the UK to settle all of these obligations”. They called for work to continue in order to consolidate achievements and to be able to move on to phase two “as soon as possible”.

Insufficient progress confirmed

As expected, the EU-27 agreed that sufficient progress had not been made for a move to phase two. The December European Council will reassess progress. If sufficient progress has been made by then, the European Council will adopt “additional guidelines in relation to the framework for the future relationship and on possible transitional arrangements which are in the interest of the Union and comply with the conditions and core principles of the guidelines of 29 April 2017”.

The European Council also invited the Council (Art. 50) and the EU negotiator “to start internal preparatory discussions”. In line with the Conclusions, on 25 October the EU-27 began an internal discussion of a transition period and a post-Brexit EU-UK relationship. EurActiv reported that new draft guidelines will be drawn up over the next month for approval (or not) in December.⁴¹

4.1 What next?

On 16 October the Prime Minister and the President of the European Commission, Jean Claude Juncker, had issued a [joint statement](#) in which they reviewed progress in the negotiations “and agreed that these efforts should accelerate over the months to come”. However, no further negotiations have been scheduled. Matti Maasikas, Estonia’s Deputy Minister for European Affairs (Estonia holds the EU Presidency until December), implied that talks would continue. He [told](#) the General Affairs Council (Article 50) on 17 October: “I hope that the two months that we have until December will be sufficient time for sufficient progress”.

⁴¹ [EurActiv, 26 October 2017](#)

A further round could be inserted before the December European Council (6 November has been suggested, for example). According to reports, the EU has proposed dates to which the UK has not yet formally responded.⁴²

The Chair of the Treasury Committee asked David Davis ([Q 150](#)) what would change between now and the December Council to enable sufficient progress to “actually happen” in the key areas. He replied:

From now on, we are going to have to work very hard on concluding the citizenship element. That has huge political leverage among the 27. We are going to have to work in some fine detail on Northern Ireland, but there is a limit to what we can do there. We are already going through the money issues, not coming to decisions but getting common understanding of what they believe their legal basis is and what we believe it is. Then we will have to take it from there, but that is about as far as I can go without pre-rehearsing.

⁴² PoliticoPro, 26 October 2017

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