



BRIEFING PAPER

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The Political Declaration on the Framework for Future EU-UK Relations

By Library Subject
Specialists

Contents:

1. How we got here
2. The legal status of the Political Declaration
3. Part I: Initial Provisions
4. Part II: Economic Partnership
5. Part III: Security Partnership
6. Part IV: Institutional & other Horizontal Arrangements
7. Part V: Forward Process



Contents

Summary	4
1. How we got here	8
1.1 EU and UK proposals during the negotiations	8
1.2 The final Political Declaration	10
2. The legal status of the Political Declaration	11
Not legally binding but with political weight	11
What are “best endeavours”?	12
3. Part I: Initial Provisions	14
3.1 Core values and rights	14
3.3 Participation in EU programmes	15
4. Part II: Economic Partnership	17
4.1 Summary	17
4.2 Background	18
4.3 Objectives and principles	20
4.4 Goods	21
4.5 Services and investment	25
4.6 Financial services	29
4.7 Digital	31
4.8 Capital movements and payments	32
4.9 Intellectual property	33
4.10 Public procurement	33
4.11 Mobility and social security	37
4.12 Transport	38
4.13 Energy	41
4.14 Fishing opportunities	43
4.15 Global cooperation	46
4.16 Level playing field for open and fair competition	47
5. Part III: Security Partnership	50
5.1 Foreign policy and defence	53
5.2 Space	56
5.3 Development cooperation	57
5.4 Cyber security	57
5.5 Civil Protection	58
5.6 Health Security	59
5.7 Counter-terrorism and countering violent extremism	59
5.8 Classified and sensitive non-classified information	59
6. Part IV: Institutional & other Horizontal Arrangements	61
6.1 Structure	61
6.2 Governance	61
7. Part V: Forward Process	64

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Summary

The Political Declaration

On 22 November 2018 the negotiators agreed a [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), which expanded on and replaced the earlier 'outline' political declaration of 14 November. The Declaration was endorsed by EU leaders at a special meeting of the European Council on 25 November 2018.

Legal status

The Political Declaration (PD) is not a binding legal document and it is unlikely that it will bind the parties to anything beyond a commitment to negotiate for a future relationship in good faith, which is set out in **Article 184** of the Withdrawal Agreement.

Structure

The PD is structured in five parts:

Part I: Basis for Cooperation

Part II: Economic Partnership

Part III: Security Partnership

Part IV: Institutional and other Horizontal Arrangements

Part V: Forward Process

Part I: Basis for Cooperation

This section establishes that the future relationship should be based on the shared EU and UK values and principles such as respect for human rights, democracy, the rule of law, working together globally, and the non-proliferation of nuclear weapons. It includes the UK's commitment to respect "the framework" of the European Convention on Human Rights (rather than the European Convention itself) and the EU's and the EU27's commitment to the EU's Charter of Fundamental Rights.

It includes a mutual commitment to "ensuring a high level of personal data protection" to facilitate data flows, and an EU intention to start work on adequacy decisions on the UK's data framework "as soon as possible" after Brexit, "endeavouring" to adopt decisions by the end of 2020. There is also an intention that the UK will seek and the EU will grant, where legally possible and with a UK financial contribution, UK participation in EU programmes in areas such as science and innovation, youth, culture and education, overseas development, external action, defence capabilities, civil protection and space.

Part II: Economic Partnership

The PD calls on the UK and EU to agree an ambitious, wide-ranging future economic partnership. It leaves many details to be decided during future negotiations and keeps a range of options open.

The future relationship will encompass a free trade area and cooperation in particular sectors where this is in the parties' mutual interest. The economic partnership will cover trade in goods, trade in services and investment, and a number of sectors including financial services, digital, transport, energy and fishing. There are also sections on movement of people and on procurement. Some of these are described below.

Trade in goods

The economic partnership should maintain the current situation of no tariffs or quotas on trade in goods between the UK and EU. Customs arrangements should “build and improve on” the single customs territory set out in the Withdrawal Agreement. At the same time, the PD refers to the UK having an independent trade policy.

The PD refers to a trading relationship which is “as close as possible”. There are no references to ‘frictionless’ trade or a ‘common rulebook’ for trade in goods, which were prominent features of the Chequers agreement. A range of outcomes for checks and controls are possible, depending on the final design of the customs and regulatory arrangements. The importance of avoiding a hard Irish border is reiterated, with a commitment to considering technological solutions to the Irish border issue (although no specific solutions are proposed).

Trade in services

The PD leaves the settlement of trade in services and investment open for future EU-UK negotiations. It builds on the premise that the UK leaves the single market for services and pursues regulatory autonomy. On services and investment, the UK and the EU have an ambition to go well beyond the current commitments under the World Trade Organization (WTO) and existing free trade agreements (FTAs). The Government has noted that the principles agreed for services offer the UK the flexibility and regulatory autonomy needed.¹

The PD also sets out principles of market access and non-discrimination, as well as broad terms of regulatory autonomy and cooperation.

Public procurement

The PD suggests that the UK and EU will open additional public procurement markets beyond those they are committing to opening up via the WTO Government Procurement Agreement. The UK and EU may agree other measures that would encourage the two markets to be open to each other in practice. There will be mechanisms for reviewing and remedying breaches of the procurement rules.

Financial services

The PD recognises the interdependence of financial services across boundaries and the common interest in honest and sound markets and fair competition within them. To that end it highlights the need for continuing close cooperation between different regulators and regimes.

¹ HM Government, summary slides on [The Withdrawal Agreement and Outline Political Declaration on our Future Relationship with the EU](#), p35; HM Government, [Explainer for the Political Declaration](#), 25 November 2018, paragraph 31

The future basis of cooperation will be 'equivalence' which is different, and less extensive, than the current system of passported services.²

Part III: Security Partnership

Law enforcement and judicial cooperation in criminal matters

The future relationship will cover arrangements across three areas: data exchange; operational cooperation between law enforcement authorities and judicial cooperation in criminal matters; and anti-money laundering and counter terrorism financing.

There will be arrangements for exchanges of Passenger Name Record (PNR) data, DNA, fingerprints and vehicle registration data (Prüm) and extradition arrangements; data-sharing arrangements for wanted and missing persons, exchange of criminal records and cooperation between the UK and Europol and Eurojust.

Foreign policy and defence

The PD reiterates many of the principles of future cooperation in foreign policy and defence already agreed in the negotiations, such as the need for "close, flexible and scalable cooperation" that respects the autonomy of both Parties; structured consultation between the UK and EU at different levels; the exchange of information, and the need for "close cooperation in Union-led crisis management missions and operations, both civilian and military". But there is limited detail on how such principles will be delivered. While the language of the Declaration suggests a degree of compromise in certain areas, such as operational planning and defence industrial cooperation, it is unclear what either side has ceded or achieved in that discussion and what is left to be resolved once formal negotiations on the future security partnership commence.

Part IV: Institutional and Other Horizontal Arrangements

An overarching institutional framework will be underpinned by mechanisms for dialogue and arrangements for setting the direction and implementing the future relationship. Dispute resolution will be based on the dispute resolution mechanism in the Withdrawal Agreement.

Part V: Forward Process

Once the WA is concluded and before the UK leaves the EU, preparatory work will begin for the formal negotiations on the future relationship. The priority will be to find alternative, permanent arrangements for ensuring there is no hard border between Northern Ireland and Ireland.

Negotiations to conclude (ratify) the legal agreement(s) will begin as soon as the UK is a third country (30 March 2019) and both parties have

² In the context of the regulation of financial services, if a company is authorised to carry out activities in one EU Member State, it can apply for a 'passport' to do business throughout the EU without needing further authorisation.

committed to “best endeavours” to ensure the future relationship enters into force by the end of the transition period.

Before withdrawal

Between the approval of the PD and the UK’s exit from the EU, both parties will engage in preparatory organisational work in order to enable formal negotiations on the future partnership to commence rapidly.

After withdrawal

A procedure for EU negotiation of agreements with third countries is set out. After formal negotiations are launched the UK and EU will negotiate in parallel agreements on the future relationship.

Review

The UK and EU will convene a high-level conference every six months after the UK’s departure “to take stock of progress and agree, as far as is possible between them, actions to move forward”.

Terminology and documentation

In this paper the negotiated [Withdrawal Agreement](#) endorsed by EU leaders on 25 November is abbreviated to **WA**, and the [Political Declaration](#) setting out the framework for the future relationship between the European Union and the United Kingdom is abbreviated to **PD**. Earlier drafts of these documents are referenced as such.

UK Government documentation

[Explainer](#) for the Political Declaration setting out the framework for the future relationship between the United Kingdom and the European Union, 25 November 2018

[Slides](#) on the Withdrawal Agreement and Political Declaration, 25 November 2018

Commons Library Briefing Papers

All Brexit-related briefing papers are available on the Parliamentary website at [Brexit: research and analysis](#).

Other papers of relevance to the Withdrawal Agreement

Commons Briefing Paper 8453, [The UK’s EU Withdrawal Agreement](#), 30 November 2018

Commons Briefing Paper 8451, [Brexit deal: Economic analyses](#), 4 December 2018

Scottish Parliament Information Centre (SPICe), [The UK’s Departure from the European Union - An overview of the Withdrawal Agreement](#), 26 November 2018

SPICe, [The UK’s Departure from the European Union - An overview of the Political Declaration](#), 28 November 2018

1. How we got here

1.1 EU and UK proposals during the negotiations

Two options on offer from EU

Article 50 of the Treaty on European Union (TEU) requires that the withdrawal agreement concluded with a leaving Member State must take account of “the framework for its future relationship with the Union”. Detailed provisions on the future relationship will be the subject of one or more agreements between the EU and the leaving state as a ‘third state’.

Since the UK and the EU embarked on the Brexit negotiations, the EU’s offer on the future UK-EU relationship has been presented as a binary choice between a conventional Free Trade Agreement (FTA), similar to that recently negotiated between the EU and Canada (CETA), or a Norway-style relationship with the EU whereby the UK remains a part of the EU Single Market (possibly as a member of the European Economic Area (EEA)).³

EEA membership or a Norway style arrangement would require the UK to implement and comply with EU Single Market rules (without any decision-making role in formulating these rules) including freedom of movement and make financial contributions to the EU. In a Canada-style relationship the UK would not have to adopt Single Market rules in the same way, but while nearly all tariffs relating to trade in goods and tariffs are eliminated in CETA, non-tariff barriers to trade remain and Canadian access to the EU for services is far more restricted than within the Single Market.

In her Florence [speech](#) in September 2017, Theresa May said a Canada-style agreement would not benefit either the EU or UK economy. The EU’s Chief Brexit Negotiator Michel Barnier said that if the UK wanted to go further than the Canada-type agreement, it needed to look to other models currently on the table, such as the Norway one. But he [insisted](#) it would not be possible “for a third country to have the same benefits of the Norwegian model but the limited obligations of the Canadian model”.

A Government [impact assessment](#) of the impact of Brexit (published by the Exiting the EU Select Committee in March 2018), [indicated](#) that if the UK and EU negotiated a Canada-style free trade deal, UK GDP in 15 years’ time would be 4.8% lower than it otherwise would be, compared to 1.6% lower under a Norway-style EEA membership model (a Norway plus customs union was not modelled) and 7.7% lower under World Trade Organization (WTO) rules. Almost identically, a Government economic analysis of Brexit published on 28 November 2018 modelling

³ The EU plus Norway, Iceland and Lichtenstein.

a hypothetical FTA, the EEA model and a 'no deal' WTO model concludes that the GDP impacts of these options over 15 years would be a reduction of 4.9%, 1.4% and 7.7% respectively.

UK 'red lines' and EU response

A Canada-type deal has been promoted by those who support Brexit and looser ties with the EU, as well as by those who had supported remain or want close ties with the EU but think other options would not properly implement the referendum result. This model would not require free movement of people or a financial contribution to the EU; it would not subject the UK to the jurisdiction of the Court of Justice of the EU (CJEU) and (unlike a customs union with the EU) it would enable the UK to pursue its own independent free trade policy. These were all 'red lines' identified by Prime Minister Theresa May in her [Lancaster House speech](#) setting out the UK's negotiating objectives for exiting the EU in January 2017.

Mr Barnier showed [slides](#) to EU leaders at the European Council meeting in December 2017 indicating how the UK's 'red lines' ruled out the various other models on the table, pointing to a deal similar to the EU's agreement with Canada as the remaining option. Commission [slides](#) in May 2018 suggested the EU was offering the UK a Canada-style free trade agreement alongside internal security cooperation (including police and judicial co-operation), foreign, security and defence co-operation, and other policy matters. But this type of deal would probably mean checks to ensure goods met EU regulatory requirements (not necessary in the Single Market) and customs controls (checking the origins of goods; not necessary within the EU customs union) at the UK-EU border, most significantly at the Ireland-Northern Ireland border.

Northern Ireland 'backstop' and Chequers proposals

In the December 2017 [joint UK-EU report](#) on progress in the first phase of Brexit negotiations, the UK Government committed to ensuring alignment with the rules of the Single Market and customs union in order to prevent the emergence of a hard border between Northern Ireland and Ireland if it were not possible to achieve this through the overall EU-UK relationship (the Northern Ireland 'backstop'). The EU offer of a CETA-type free trade agreement would require special arrangements to be put in place for Northern Ireland to prevent a hard border. Some form of controls for customs and regulatory compliance would be necessary but this would breach both UK and EU red lines.

In July 2018, the UK Government agreed the 'Chequers' plan which forms the basis of the Government White Paper [on the future relationship between the United Kingdom and the European Union](#).⁴ Chequers proposed that after Brexit the UK would follow a 'common rulebook' with the EU in relation to EU rules enabling frictionless trade

⁴ For information on the White Paper, see House of Commons Library briefing paper, CBP 8387 [The Brexit White Paper on future relations and alternative proposals](#), 28 August 2018.

in goods and agricultural, food and fisheries products. This would be combined with 'a facilitated customs arrangement' (FCA) with the EU whereby the UK would collect tariffs on behalf of the EU for goods entering the UK destined for the EU, while applying a separate trade and tariff regime for goods intended for the UK market. The Government said this would eliminate the need for both regulatory and customs check between Northern Ireland and Ireland and prevent a hard border emerging. But the EU indicated that this proposal was largely unacceptable, and it was also opposed by several Conservative MPs and the opposition parties.

On 15 October 2018, Theresa May [told](#) the House of Commons that she had proposed a UK-wide solution which would involve the UK staying in a customs union with the EU until a more permanent agreement was reached on future UK-EU relations. However, the future relationship would still need to include arrangements to prevent a hard border emerging between Northern Ireland and Ireland and it was unclear what these would be. The EU indicated that it also wanted to retain a Northern Ireland-only backstop as a back-up to the UK-wide customs back up.

1.2 The final Political Declaration

The parties negotiated an 'outline' Political Declaration (PD) on the framework for the future relationship, which was published with the draft withdrawal agreement on 14 November 2018. This was fleshed out to become a 26-page [document](#) to be agreed alongside the WA at a special European Council meeting on 25 November. The 'Meaningful Vote' in the UK Parliament will be on both the draft WA and the PD.

The actual EU-UK agreement on future relations will be the subject of negotiations during the transition period, when the UK will be a third state negotiating on its own behalf. Article 184 of the draft WA calls on the EU and UK to:

... use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the political declaration of [DD/MM/2018] and to conduct the relevant procedures for the ratification or conclusion of those agreements, with a view to ensuring that those agreements apply, to the extent possible, as from the end of the transition period.

2. The legal status of the Political Declaration

Not legally binding but with political weight

Significant debate has taken place about the nature of the Political Declaration and what its legal status will be. Those who believe the PD is a *legal* commitment can point out that it is 'part of the package' that also includes the Withdrawal Agreement, and as the WA itself is clearly intended to be binding, anything attached to it will also be binding, regardless of what it is called. A further argument put forward is that **Article 184** of the WA, quoted above, explicitly commits both parties to pursuing what is set out in the Political Declaration.

However, the wording of Article 184 of the WA suggests that rather than a binding commitment, the PD sets out a *framework* for future action (as required by Article 50(2) TFEU). It commits both parties to engage in negotiations and to "use their best endeavours, in good faith", to achieve what is set out in the PD – but it does not declare that both parties are bound to what is *in* the PD.

This Declaration on the future relationship is not the first 'Political Declaration' produced by the EU. Examples of previous political declarations can be found in a wide variety of policy fields. Recent 'political declarations' have covered subject areas such as the EU's migration policy⁵ and environmental policy.⁶

Declarations published by the Council also follow a similar format to those 'political declarations'. Among these are statements made by the European Council about the direction of travel of the EU⁷ and various statements by the High Representative on developments in foreign affairs.⁸

A declaration is not a formal EU law instrument under the EU Treaties. Declarations are understood to be not legally binding, but they do have political weight. Recent political declarations in the field of energy cooperation are illustrative in this regard, as they end with a disclaimer:

This document records a political intent alone. It is not intended to establish any new legal commitments or to replace or modify any existing legal obligations, nor is it meant to prejudge in any way an outcome of discussions on the governance system for the Energy Union.⁹

⁵ See, e.g., Valletta Summit, 11-12 November 2015, [Political Declaration](#)

⁶ See, e.g. Valletta 18 May 2017, [Political Declaration on Clean Energy for the EU Islands](#)

⁷ See, e.g. [The Rome Declaration](#): Declaration of the leaders of 27 Member States and of the European Council, the EP and the European Commission, 25 March 2017

⁸ See, e.g. [Declaration](#) by the High Representative on behalf of the EU concerning the political situation in the Republic of the Congo following the presidential election, 7 April 2016

⁹ The [Political Declaration on energy cooperation between the North Seas Countries](#) contains a similar but less detailed disclaimer.

DExEU Under-Secretary Suella Braverman, during evidence to the Exiting the EU Committee, described the political declaration in the following terms:

It will be the starting point for our future framework. That can be, and hopefully will be, very detailed. We have seen political declarations that have paved the way for other treaties and free trade agreements in the past. The Canada free trade agreement with the EU is an example. The Canada scoping group, in 2009, was a precursor, a political declaration setting out the framework in detail of what that relationship would look like, followed by the legal text underpinning that free trade agreement. It is not unusual. We want to ensure that parliamentarians have enough information, so that everybody can make an informed decision.¹⁰

The text of the PD itself, analysed in detail below, also makes clear that it is a document that contains a number of *aims* for negotiations, rather than commitments; it is what the parties *envisage* the future relationship will look like, given their “best endeavours”.¹¹ It appears that the PD sets out a framework which, per Article 184 of the WA, both the UK and the EU will genuinely attempt to transform into binding agreements.

What are “best endeavours”?

As the political declaration itself is not a legally binding commitment, questions have been raised as to the extent to which the EU is ‘bound’ to engage in future relationship negotiations. Article 184 of the WA sets out the only binding promise relating to those negotiations.

How this would be enforceable is difficult to see, however, because it would require an assessment of what negotiating in ‘bad faith’ or without ‘best endeavours’ would look like.

A possible comparison is that of CJEU rulings on whether MS comply with the principle of sincere cooperation in Article 4(3) TEU (the EU’s ‘good faith’ principle, not dissimilar from Article 5 of the WA). A failure by a Member State to engage in the Commission’s infringement proceedings (by, e.g., providing evidence and responding to questions) has been found by the CJEU to breach sincere cooperation, and this is likely to be the type of standard the panel would have to consider.

In giving evidence to the Exiting the EU Committee, Dr Holger Hestermeyer has a similar reading of what ‘bad faith’ engagement with an exit from the Northern Ireland ‘backstop’ request would look like:

Article 20 has a joint review so, yes, there is no unilateral decision, but it also stipulates a goal. It says, “The Union or the United Kingdom considers that this protocol is, in whole or in part, no longer necessary to achieve the objectives set out in article 1(3)”. There has been some discussion among experts. I tend to believe there is a good faith obligation to look at this honestly so that, if you have clear evidence that we now have the tools, I would

¹⁰ Exiting the EU Committee [Oral evidence: The progress of the UK’s negotiations on EU withdrawal](#), 23 May 2018

¹¹ Unlike the WA, which frequently states what the parties ‘shall’ do, the PD sets out what they ‘should’ do. ‘Should’ is mentioned 126 times in the document. ‘Will’, which in treaty language is somewhat less imperative than ‘shall’, occurs 70 times.

argue that the European Union would be in breach of its good faith obligation if it said, "Do you know what? We will not even look at it". Of course, you will have a lot of borderline situations where you would defer to the judgment of the parties, so you would have to have clear evidence.

If the EU has engaged in future relationship negotiations in 'good faith' by attending meetings, drafting proposals, responding to questions, etc, it is unlikely that it will be found to have violated Article 184; the provision promises a genuine effort to negotiate, but not a particular outcome, which is also reflected in the language of the Political Declaration.

3. Part I: Initial Provisions

3.1 Core values and rights

The UK is a signatory to the [European Convention on Human Rights](#) and accepts the jurisdiction of the European Court of Human Rights (ECtHR) in Strasbourg to hear cases not otherwise resolved in domestic courts.

Paragraphs 6 and 7 identify core values and rights that should underpin the future relationship, namely respect for and safeguarding of human rights, democratic principles, the rule of law and support for non-proliferation.

According to paragraph 7, the future relationship should incorporate the UK's "commitment to respect the framework of the European Convention on Human Rights (ECHR)". Paragraph 83 goes further, saying (among other things) that:

[The future security relationship] should also be underpinned by long-standing commitments to the fundamental rights of individuals, including continued adherence and giving effect to the ECHR.

The EU and its Member States on the other hand will "remain bound by the Charter of Fundamental Rights of the EU".

This wording can be contrasted with that of the [outline political declaration](#) published alongside the Withdrawal Agreement on 14 November. This referred to reaffirmation of the UK's "commitment to the [ECHR], and the Union's and its Member States' to the Charter of Fundamental Rights of the Union".

The change, to "respecting the framework", may reflect a desire to retain greater flexibility with respect to the UK's future participation in the ECHR.¹² The 2017 Conservative manifesto indicated that the party would not seek to repeal or replace the Human Rights Act while the process of Brexit was underway, but would consider "our human rights legal framework" when the process of leaving the EU concludes. It further committed to remaining signatory to the ECHR "for the duration of the next parliament".¹³

Any future treaty on the future relationship could include some form of 'legal linkage' between the UK's adherence to the ECHR (whether in whole or in part) and other provisions. This will be ultimately a matter for the negotiating parties.

On 5 December the House of Lords European Union Committee published a report on the WA and PD which welcomed the reference to shared values and the maintenance of human rights and fundamental freedoms but called upon the Government to "explain the significance,

¹² References to the ECHR were also changed in the context of internal security cooperation (see below).

¹³ [The Conservative and Unionist Party Manifesto 2017](#)

if any, of the reference to the UK's commitment to the 'framework' of the ECHR, rather than to the ECHR itself".¹⁴

Subsequently the Chair of the EU Lords Select Committee, Lord Boswell, wrote to the Lord Chancellor requesting further clarification:

What accounts for these drafting changes, and what do they mean in practice? Does the Government intend to bring forward plans to break the formal link between the UK courts and the European Court of Human Rights after Brexit?¹⁵

3.2 Data protection

The PD notes that the continued free flow of personal data is an "important underpinning feature of the future relationship for both economic and security purposes" and that the UK and EU "have a shared commitment to high personal data protection standards".¹⁶

The European Commission will start work on an [adequacy decision](#) on the UK's data framework "as soon as possible" after withdrawal from the EU. The Commission will "endeavour" to reach a decision by the end of the implementation period. In the same time frame, the UK will take steps to facilitate the flow of personal data from the UK to the EU. These arrangements will not affect the UK's or the EU's autonomy over their own data protection rules.¹⁷

3.3 Participation in EU programmes

After 31 December 2020, the UK will no longer participate in EU programmes as though it were a Member State.¹⁸ The Government has repeatedly said that the UK may wish to continue to participate in some EU programmes as a third country and would make an ongoing contribution to cover its share of the costs involved.¹⁹

In the PD the UK and EU agree to establish principles, terms and conditions for the UK's future participation in EU programmes, in areas such as science and innovation, youth culture, and education, overseas development and external action, defence capabilities, civil protection and space (**paragraph 11**). The UK's participation in these programmes will be subject to the conditions set out in the EU's rules for each of its programmes, including how the UK will make financial contributions. The EU is currently deciding on the new regulations for its programmes which will be in operation from 2021.

The PD also says the UK's participation in the European Research Infrastructure Consortiums (ERICs) will be explored (**paragraph 12**)²⁰ and that the UK and EU have a shared commitment to deliver a future programme to support peace and reconciliation and to promote

¹⁴ [Brexit: The Withdrawal Agreement and Political Declaration](#), House of Lords EU Scrutiny Committee, 5 December 2018, para 197

¹⁵ [Letter from Lord Boswell to Rt Hon David Gauke MP](#), 19 December 2018

¹⁶ [Political Declaration](#), para 8

¹⁷ PD, para 9

¹⁸ This will be the case even if the transition period is extended.

¹⁹ [PM's Florence speech: a new era of cooperation and partnership between the UK and the EU](#), 22 September 2017

²⁰ European Parliament, [European Research Infrastructure Consortiums](#)

economic and social progress in Northern Ireland (known as PEACE PLUS) (paragraph 13).²¹

Box 1: Third country participation in EU programmes

Non-EU countries, who have some relationship with the EU, already take part in some of the Commission's funding programmes. For instance, Turkey – a candidate country for EU membership – [participates](#) in programmes including [Horizon 2020](#), [Erasmus+](#), [Creative Europe](#), [COSME](#), [EaSI](#).²² Norway – a member of the European Economic Area (EEA) – participates in [at least 12 EU programmes](#).²³

Non-EU countries often contribute to European Commission programmes they participate in on the basis of the relative size of their national income. Beyond financial contributions, the Commission may have other requirements for some programmes, such as an agreement on free movement of people. For instance, Switzerland's participation in Horizon 2020 – the EU research and innovation programme – covered only part of the programme until it met the EU's requirements on free movement of people.²⁴

The following Library briefings include more information on third country participation in EU programmes:

- [Brexit: UK Funding from the EU](#) (section 6), 28 November 2018
- [Brexit Unknowns \(update\)](#) (section 7.2), 26 September 2018

3.4 The European Investment Bank

On withdrawal from the EU the UK will no longer be a member of the European Investment Bank (EIB) as only Member States can be members.²⁵ The Political Declaration notes that the UK intends to explore options for a future relationship with the EIB (**paragraph 15**).

²¹ See EP [Factsheet on Northern Ireland PEACE programme](#) for more information.

²² Turkey – European Union Association, [EU Programmes and Agencies to which Turkey Participates](#)

²³ Norway mission to the EU, [Norway's participation in EU programmes and agencies](#)

²⁴ See also page 32 of Library briefing [UK Funding from the EU](#).

²⁵ For more on the EIB, see page 30 of the Library briefing [UK Funding from the EU](#).

4. Part II: Economic Partnership

4.1 Summary

The Political Declaration calls on the UK and EU to agree an ambitious, wide-ranging future economic partnership. It leaves many details to be decided during future negotiations and keeps a range of options open. The future relationship will encompass a free trade area and cooperation in particular sectors where this is in the parties' mutual interest. The economic partnership section of the Political Declaration covers trade in goods, trade in services and investment, and a number of sectors including financial services, digital, transport, energy and fishing. There are also sections on movement of people and on procurement.

Trade in goods

On trade in goods, the economic partnership should maintain the current situation of no tariffs or quotas on trade in goods between the UK and EU. Customs arrangements should "build and improve on" the single customs territory set out in the Withdrawal Agreement. At the same time, the Declaration refers to the UK having an independent trade policy.

The Political Declaration refers to a trading relationship which is "as close as possible". There are no references to frictionless trade or a common rulebook for goods trade which were prominent features of the Chequers agreement. A range of outcomes for checks and controls are possible, depending on the final design of the customs and regulatory arrangements.

The importance of avoiding a hard Irish border is reiterated. There is a commitment to considering technological solutions to the Irish border issue, although no specific solutions are proposed.

Trade in services

The Political Declaration leaves the settlement of trade in services and investment open for future negotiations between the UK and the EU. It builds on the premise of the UK leaving the single market for services and pursuing regulatory autonomy. The Declaration reiterates that on services and investment, the UK and the EU have an ambition to go well beyond the current commitments under the World Trade Organization (WTO) and existing free trade agreements (FTAs). The Government believes that the principles agreed for services offer the UK the needed flexibility and regulatory autonomy.²⁶

The Political Declaration further sets out the principles of market access and non-discrimination, as well as some broad terms of regulatory autonomy and cooperation.

²⁶ HM Government, summary slides on [The Withdrawal Agreement and Outline Political Declaration on our Future Relationship with the EU](#), p35, HM Government, [Explainer for the Political Declaration](#), paragraph 31

Public procurement

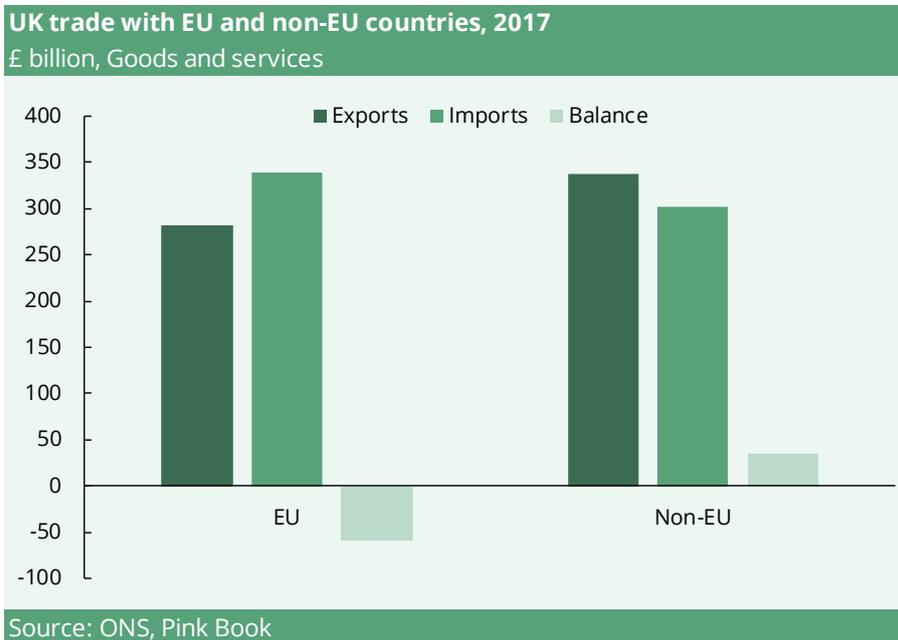
The Political Declaration suggests that the UK and EU will open some additional public procurement markets, beyond those they are committing to open up via the WTO Government Procurement Agreement. The UK and EU may agree other measures that would encourage the two markets to be open to each other in practice. There will be mechanisms for reviewing and remedying breaches of the procurement rules.

4.2 Background

Statistics on UK-EU trade (all figures for 2017)

Goods and services combined

- The UK exported £281 billion to the EU and £337 billion to non-EU countries
- Of UK exports to the EU, 58% were goods and 42% services
- The EU accounted for 46% of UK exports
- The UK imported £339 billion from the EU, 53% of all imports
- The UK had a trade deficit of £58 billion with the EU and a surplus of £36 billion with non-EU countries



UK trade with EU and non-EU countries 2017					
Goods and services					
	Exports		Imports		Balance
	£ billion	%	£ billion	%	£ billion
EU	281	45.5%	339	53.0%	-58
Non-EU	337	54.5%	301	47.0%	36
Total	618	100.0%	641	100.0%	-23

Source: ONS

Trade in goods

- The UK exported £164 billion of goods to the EU and £175 billion to non-EU countries
- The EU accounted for 48% of UK goods exports
- The UK imported £259 billion of goods from the EU and £217 billion from non-EU countries
- The UK had a deficit on trade in goods of £95 billion with the EU and a deficit of £42 billion with non-EU countries

UK trade with EU and non-EU countries 2017					
Goods only					
	Exports		Imports		Balance
	£ billion	%	£ billion	%	£ billion
EU	164	48.4%	259	54.4%	-95
Non-EU	175	51.6%	217	45.6%	-42
Total	339	100.0%	476	100.0%	-137

Source: ONS

Trade in services

- The UK exported £117 billion of services to the EU and £162 billion to non-EU countries
- The UK imported £81 billion of services from the EU and £84 billion from non-EU countries
- The UK had a surplus on services trade of £36 billion with the EU and a surplus of £78 billion with non-EU countries

UK trade with EU and non-EU countries 2017					
Services only					
	Exports		Imports		Balance
	£ billion	%	£ billion	%	£ billion
EU	117	41.9%	81	48.9%	36
Non-EU	162	58.1%	84	51.1%	78
Total	279	100.0%	165	100.0%	114

Source: ONS

The Chequers White Paper

The UK Government published a [White Paper](#) on future UK-EU relations in July 2018.²⁷ This followed a meeting of the Cabinet at Chequers on 6 July 2018 and became known as the Chequers plan. The outcome of that meeting was summarised in a [three page document](#) released by the Government.

The White Paper proposed that the economic partnership include the following elements:

- A common rulebook for goods including agri-food. This would cover only those rules required for frictionless trade at the border. The UK would commit by Treaty to ongoing harmonisation with relevant EU rules. The UK Parliament would be free not to maintain harmonisation in the future but this would be in the knowledge that there would be consequences (for market access, for example).
- UK to participate in EU agencies which provide authorisations for goods in heavily regulated sectors, such as the European Chemicals Agency and the European Aviation Safety Agency.
- A new Facilitated Customs Arrangement (FCA), introduced in phases, removing the need for customs checks/controls between the UK and the EU “as if they were a combined customs territory”. The UK would apply the EU’s tariffs and trade policy for goods destined for the EU and its own trade policy for those destined for the UK market.
- No tariffs on goods trade between the UK and EU.
- Regulatory freedom for services, recognising that this will lead to reduced access for the UK and EU to each other’s markets.
- A new framework allowing UK and EU citizens to continue to travel to each other’s countries, and businesses and professionals to provide services – in line with those the UK might wish to offer other close trading partners in future.
- Measures that guarantee an open and fair trading environment, through, for example, common rules on state aid and agreement to maintain high standards in areas such as the environment and employment.

4.3 Objectives and principles

The Political Declaration notes the importance of the UK-EU trade relationship and the integrated supply chains which have developed between them. It sets out the UK and EU’s aim of agreeing:

to develop an ambitious, wide-ranging and balanced economic partnership. This partnership will be comprehensive, encompassing a free trade area as well as wider sectoral cooperation where it is in the mutual interest of both Parties.²⁸

²⁷ HM Government, [The future relationship between the United Kingdom and the European Union](#), Cm 9593, July 2018

²⁸ Paragraph 17

The economic partnership will involve provisions on a level playing field and fair competition. At the same time, the UK and EU will have “autonomy” to regulate their economies “according to the levels of protection each deems appropriate in order to achieve legitimate public policy objectives.”²⁹

This section of the Political Declaration also refers to important objectives for the UK and EU:

It should facilitate trade and investment between the Parties to the extent possible, while respecting the integrity of the Union's Single Market and the Customs Union as well as the United Kingdom's internal market, and recognising the development of an independent trade policy by the United Kingdom beyond this economic partnership.³⁰

The document reiterates the parties' wish to replace the Northern Ireland backstop with alternative arrangements which ensure, on a permanent basis, the absence of a hard border in Ireland.

4.4 Goods

Under **paragraph 24** provision will be made to tackle Sanitary and Phytosanitary (SPS) barriers that build on and go beyond WTO agreements (see Regulatory aspects, below). More generally under **para 28** there will be a spectrum of possible outcomes for the administration of rules and checks, taking into account how far the EU and UK are in regulatory alignment and the development of facilitated trade arrangements. The EU and UK will recognise each other as single entities for SPS measures but rules could be applied regionally (such as to the island of Ireland potentially) if appropriate, based on epidemiological information for a consignment.

Objectives and principles

The Declaration refers to “a trading relationship on goods that is as close as possible”.³¹ However, it goes on to note that after Brexit, the UK and EU “will form separate markets and distinct legal orders.” There is an explicit reference to “customs procedures and checks”:

Moving goods across borders can pose risks to the integrity and proper functioning of these markets, which are managed through customs procedures and checks.³²

The UK and EU aim to create a free trade area, “combining deep regulatory and customs cooperation, underpinned by provisions ensuring a level playing field for open and fair competition.”³³

Tariffs

There should be no tariffs or quotas on UK-EU trade in any sector. In addition, there should be “ambitious customs arrangements that ...

²⁹ Paragraph 18

³⁰ Paragraph 17

³¹ Paragraph 20

³² Paragraph 21

³³ Paragraph 22

build and improve on the single customs territory provided for in the Withdrawal Agreement”³⁴ (i.e. the Northern Ireland backstop).

Regulatory aspects

The Declaration notes that the UK and the EU will preserve regulatory autonomy. Having said that, they will put in place provisions which avoid unnecessary barriers to trade. Regulatory approaches should be “compatible to the extent possible”. The UK and EU will agree provisions on “Technical Barriers to Trade” (i.e. product regulations) and SPS measures (i.e. those relating to food safety and animal and plant health). These should go further than the relevant World Trade Organization agreements. The EU and UK will recognise each other as single entities for SPS measures but rules could be applied regionally (such as to the island of Ireland potentially) if appropriate based on epidemiological information for a consignment.

The UK and EU will explore the possibility of UK cooperation with EU agencies such as the European Medicines Agency, the European Chemicals Agency³⁵ and the European Aviation Safety Agency.³⁶

The UK “will consider aligning with Union rules in relevant areas.”³⁷

Customs

The UK and EU “will put in place ambitious customs arrangements ... making use of all available facilitative arrangements and technologies”.³⁸ There is a specific reference to technology being considered in developing permanent arrangements for avoiding a hard border in Ireland.³⁹

Implications for checks and controls

The UK and EU will take into account the UK’s commitments on customs and regulatory cooperation when applying checks and controls. The parties wish to be as ambitious as possible in this area to facilitate trade in goods. There is a recognition that there could be a range of possible outcomes.

The Government’s Explainer says:

The UK has put forward proposals that would enable frictionless trade to be achieved outside the Customs Union and Single Market. That is not something that is accepted by everyone in the EU, but the UK has the ability in the future negotiations to continue to work for its objective of achieving frictionless trade.⁴⁰

The Declaration makes clear that steps could be taken to minimise these checks:

³⁴ Paragraph 23

³⁵ For more on this, see Library briefing, [Brexit and chemicals regulation \(REACH\)](#)

³⁶ For further information on EU agencies and UK options for participation, see Commons Briefing Paper 7957, [EU Agencies and post-Brexit options](#), 28 April 2017.

³⁷ Paragraph 25

³⁸ Paragraph 26

³⁹ Paragraph 27

⁴⁰ HM Government [Explainer](#), 25 November 2018, paragraph 30

The Parties envisage that the extent of the United Kingdom's commitments on customs and regulatory cooperation, including with regard to alignment of rules, would be taken into account in the application of related checks and controls, considering this as a factor in reducing risk. This, combined with the use of all available facilitative arrangements as described above, can lead to a spectrum of different outcomes for administrative processes as well as checks and controls, and note in this context their wish to be as ambitious as possible, while respecting the integrity of their respective markets and legal orders.⁴¹

Comment on trade in goods provisions

The Political Declaration reaffirms the parties' objectives, such as the integrity of the Single Market and the customs union and the indivisibility of the four freedoms on the EU side.⁴² The UK's objectives of preserving its own internal market (i.e. trade between Great Britain and Northern Ireland) and developing an independent trade policy beyond the economic partnership with the EU are set out in Paragraph 17.

Political Declaration leaves options open

A number of commentators have pointed out that the PD is aspirational and leaves many of the details to be filled in later.⁴³ Paragraph 28, for example, refers to "a spectrum of different outcomes for administrative processes as well as checks and customs controls".

A leader in the *Times* said that it was "designed to allow anybody to read into it what they want".⁴⁴ Martin Sandbu of the *Financial Times* wrote:

You want a very close relationship? Something like Norway's single market membership with a permanent customs union on top? Well, the political declaration allows for that. Or do you prefer a hard break, Canada-style? That is possible too, so long as it is done in a way by which the EU retains control over its own economy even without physical border infrastructure on the island of Ireland, which both sides have promised to avoid. That means more checks on goods shipped from Great Britain into Northern Ireland.⁴⁵

Comparison with Chequers

The PD reaffirms the objective of a UK-EU free trade area in goods:

However, with a view to facilitating the movement of goods across borders, the Parties envisage comprehensive arrangements that will create a free trade area, combining deep regulatory and customs cooperation, underpinned by provisions ensuring a level playing field for open and fair competition.⁴⁶

The July 2018 White Paper had also proposed a free trade area:

⁴¹ PD, paragraph 28

⁴² Paragraph 4

⁴³ See, e.g. *BBC News*, [What's in the political declaration?](#) [Reality check], 22 November 2018; Institute for Government, [UK-EU Future Economic Partnership](#), 22 November 2018

⁴⁴ *The Times*, [End of the beginning](#) [leader], 23 November 2018

⁴⁵ *Financial Times*, [A perfectly predictable Brexit](#) [Free lunch column], 26 November 2018

⁴⁶ PD paragraph 22

In designing the new trading relationship, the UK and the EU should therefore focus on ensuring continued **frictionless access at the border to each other's markets for goods**.

To deliver this goal, the Government is proposing the establishment of **a free trade area for goods**.

This free trade area would **protect the uniquely integrated supply chains and 'just-in-time' processes**⁴⁷

A number of commentators have suggested that the PD means the Chequers proposals have been dropped. The reference to the indivisibility of the four freedoms in paragraph 4 suggests that the Chequers idea of being only in the Single Market for goods has been rejected by the EU. Writing on the *MLex* website, Matthew Holehouse said:

Chequers is dead.

The political declaration on the UK's post-Brexit relationship with the EU is stuffed with vague aspirations and warm words, but on one front it's unambiguous: UK prime minister Theresa May's bid to find a "bespoke" model between the binary options of the single market or a conventional free-trade deal has failed.⁴⁸

Similarly, *Sky News* reported Cabinet sources as saying that the PD had dropped the aim of frictionless trade and "so has dropped Chequers, leaving the government heading towards a more straightforward trade deal with room for third party free trade deals".⁴⁹

On the other hand, the Institute for Government's view is that the Chequers proposals have not been ruled out by the PD, although other outcomes, such as a Canada-style free trade agreement, would also be consistent with it.⁵⁰

"Improving on" the single customs territory

The Political Declaration proposes "ambitious customs arrangements" which "build and **improve on** the single customs territory [between the UK and EU] provided for in the Withdrawal Agreement" (bold added).⁵¹ The Government has also said that this will recognise "the development of the UK's independent trade policy beyond the partnership with the EU".⁵² As *Politico* commented:

That will be controversial with U.K. Brexiteers because it suggests that customs arrangements included in the Northern Ireland backstop will form the basis for the future relationship — providing severe restrictions on any future trade deals.⁵³

The Political Declaration makes a number of references to the UK having an independent trade policy after Brexit.⁵⁴ The *Financial Times* noted that the path to an independent trade policy "is one of the most

⁴⁷ HM Government [White Paper](#) on future relations, Cm 9593, July 2018, p7

⁴⁸ MLex 'Comment: Brexit declaration sends May's Chequers plan to the grave', 22 November 2018

⁴⁹ *Sky News*, [Brexit deal negotiations: Why the government has stopped talking up 'frictionless' trade](#), 23 November 2018

⁵⁰ Institute for Government, [UK-EU Future Economic Partnership](#), 22 November 2018

⁵¹ PD paragraph 23

⁵² HM Government, [Explainer](#), 25 November 2018, paragraph 22

⁵³ *Politico*, [UK, EU agree draft plan for post-Brexit ties](#), 27 November 2018

⁵⁴ See PD, paragraphs 4 and 17

ambiguous and contradictory parts of the political declaration". It pointed out that the PD refers to building on and improving the single customs territory. This "would restrict Britain's ability to sign comprehensive trade deals with countries outside the bloc".⁵⁵ President Trump suggested that the UK's deal with the EU could harm the UK's chances of a trade deal with the US.⁵⁶ President Trump's view was rejected by the Prime Minister.⁵⁷

Technology and the Irish border

Paragraph 27 says that facilitative arrangements and technologies will be considered in finding permanent alternative arrangements for ensuring there is no hard border in Ireland. Brexiteers have argued that technology should be the way to solve the Irish border issue.⁵⁸ No specific technologies are proposed, however. Many are sceptical about whether technological solutions are currently available. For example, in its report on the Irish border, the Northern Ireland Affairs Committee concluded:

we have had no visibility of any technical solutions, anywhere in the world, beyond the aspirational, that would remove the need for physical infrastructure at the border.⁵⁹

4.5 Services and investment

Objectives and principles

The UK and the EU state their aim is to "conclude ambitious, comprehensive and balanced arrangements on trade in services and investment in services and non-services sectors, respecting each Party's right to regulate". The level of trade liberalisation both envisage will "go well beyond" the current World Trade Organization (WTO) commitments and build on recent EU Free Trade Agreements (FTAs).⁶⁰

The WTO commitments on services mentioned in the Political Declaration refer mainly to the WTO General Agreement on Trade in Services (GATS), which creates a system of international rules for trade in services. The GATS also allows countries to conclude reciprocal FTAs which go further and deeper in services liberalisation than their general commitments under GATS, provided those FTAs cover a substantial number of sectors, a substantial volume of mutual trade and do not *a priori* exclude any mode of service supply.⁶¹ Under GATS, there are four different ways services can be traded internationally — known as the four modes (see Box 2).

⁵⁵ *Financial Times*, [Brexit political declaration: what you need to know](#), 22 November 2018

⁵⁶ *BBC News*, [Brexit: Trump says May's Brexit plan could hurt UK-US trade deal](#), 27 November 2018. See also *BBC News*, [Is Trump right about the Brexit deal?](#) 27 November 2018

⁵⁷ *Guardian Politics Live*, 27 November 2018 (see 13.01)

⁵⁸ *Financial Times*, [Brexit political declaration: what you need to know](#), 22 November 2018

⁵⁹ Northern Ireland Affairs Committee, [The land border between Northern Ireland and Ireland](#), 16 March 2018, HC 329, paragraph 82

⁶⁰ PD paragraph 29

⁶¹ Article V:1(a) [GATS](#)

Paragraph 29 also states that future cooperation on services and investment will build on recent EU FTAs with other countries. In recent years the EU has concluded several trade deals covering services and trade-related investment measures. For example, the [EU-Canada Comprehensive Economic and Trade Agreement \(CETA\)](#) and the [EU-South Korea FTA](#) are more ambitious in liberalisation of services and investment than older EU FTAs. Also the [EU-Japan FTA](#) and the [EU Singapore FTA](#), which are expected to enter into force shortly, contain provisions on services and investment, which to various degrees, go further than GATS commitments.⁶²

Box 2 GATS four modes of supply of services

The WTO General Agreement on Trade in Services (GATS) aims to remove barriers to trade in services by encouraging countries to adjust their domestic laws and regulations which restrict foreign providers from offering services on their markets. GATS defines services depending on the way they are traded internationally — known as the four modes:

- **Mode 1 Cross-border supply**
The service crosses the border, but neither consumer nor supplier does so (a service is provided over a telephone, internet or postal channels, for example consultancy or market research reports, distance training);
- **Mode 2 Consumption abroad**
The consumer consumes the service while abroad (a tourist or a patient receives a service abroad; a ship is serviced in a foreign port);
- **Mode 3 Commercial presence**
Refers to foreign investment (a company, (a bank, a hotel chain, a construction company) establishes a branch or a subsidiary and supplies services in another country);
- **Mode 4 The service provider crosses the border**
Involves migration and presence of natural persons (an independent consultant or an architect goes to another country to work on a project; a law firm sends employees to run a project).⁶³

In line with Article V of the GATS, the UK and the EU confirm their intention to prevent “substantially all discrimination” in the covered sectors, though leaving themselves room for exceptions and limitations.⁶⁴

Following the GATS Article V requirement, the future agreement on services will have to cover a substantial number of sectors. The PD mentions a few mutually agreed priorities (professional and business services, telecommunications services, courier and postal services, distribution services, environmental services, financial services, transport services)⁶⁵ but the future cooperation would have to go further than that. This precludes individual sectoral trade agreements outside an FTA, covering just telecoms, for example. Evidence suggests though that the scope of FTA sectoral coverage is not strictly enforced.⁶⁶

⁶² Investment protection with Japan and Singapore is covered by separate agreements.

⁶³ WTO, GATS training model: 1.3 Definition of Services Trade and Modes of Supply [online, accessed 28 March 2018]

⁶⁴ PD paragraph 30

⁶⁵ Ibid

⁶⁶ For more on compatibility with WTO rules see Library Briefing 8384, [Future trade with the EU: Mutual recognition](#), 8 October 2018, p33 and HL EU Committee, [Brexit: trade in nonfinancial services](#), HL Paper 135, paragraph 57.

Market access and non-discrimination

The UK and the EU aim to offer market access to service providers and investors without discrimination, based on national treatment under host state rules. The principle of non-discrimination will also be applied with respect to freedom of establishment: UK businesses establishing commercial presence in EU Member States will not be discriminated against, and the UK will not discriminate against EU businesses establishing themselves in the UK.⁶⁷

The principle of national treatment implies that imported and local services are treated equally in a country's market. EU FTAs generally assume that host state rules apply (as opposed to the Single Market, where there is more freedom to operate across borders in many sectors). Openness of the services market under an FTA would be greater than that under GATS alone, but less than that under the Single Market.⁶⁸

The Government's Explainer states:

Under these arrangements UK businesses will face substantially the same rules in Member States as local businesses, and vice versa. They will not face discriminatory barriers, unless otherwise agreed.⁶⁹

Paragraph 31 notes that a future agreement will address performance requirements which could be imposed on investors, such as requirements on technology transfer or local employment.⁷⁰

Regarding services and investment related migration, the arrangements "should allow for the temporary entry and stay of natural persons for business purposes in defined areas".⁷¹ This reflects the UK Government's intention to allow and regulate migration which supports trade in services and investment. For example, natural persons would be able to enter or temporarily move to the EU in order to provide services; firms would be able to transfer employees between offices in the UK and the EU for their business.⁷² These are known as GATS mode 4 arrangements.

Regulatory aspects

Paragraph 33 refers to the intention to cooperate on regulation, making it transparent, efficient and compatible to the extent possible, and aiming to avoid unnecessary regulation.⁷³

According to the PD, regulatory autonomy of both the UK and the EU will be preserved.⁷⁴ The Government has emphasised that this flexibility on services regulation is important for the UK's services-based economy.

⁶⁷ PD paragraph 31

⁶⁸ European Commission, [Slides on Internal EU27 preparatory discussions on the framework for the future relationship: Services](#), 6 February 2018

⁶⁹ HM Government, [Explainer](#), 25 November 2018, paragraph 34

⁷⁰ Paragraph 31

⁷¹ Paragraph 32

⁷² HM Government, [White Paper on future EU-UK relations](#), Cm 9593, 12 July 2018, paragraph 65

⁷³ PD paragraph 33

⁷⁴ Ibid

It has noted that coordination of regulatory approaches will follow the best practice in FTAs.⁷⁵

Further, the UK and the EU will agree so-called ‘disciplines’ on domestic regulation. The disciplines refer to certain limits to their freedom to set domestic standards which countries accept in trade negotiations. There will be horizontally applied disciplines (across all sectors), such as on licensing procedures. Other arrangements will be agreed for specific sectors like telecoms, financial services, delivery services and international maritime transport.⁷⁶

In certain areas of mutual interest, a framework will be developed for regulators to exchange information and best practices.⁷⁷

There will also be arrangements for certain professional qualifications, so that professionals would be able to practise using a qualification from either the UK or the EU. The PD leaves open which professions will be covered “in the Parties’ mutual interests”.⁷⁸

Comparison with Government’s proposals

In its July [White Paper on The Future UK-EU Relationship](#), the Government proposed new arrangements for services, based on the principles of international trade and the examples of existing EU trade agreements.⁷⁹ At the same time, it accepted that the regulatory flexibility the UK is seeking would prevent the UK and the EU from having current levels of access to each other’s market.⁸⁰ Those general principles are carried forward in the PD.

The UK proposed to commit to national treatment of service providers and investors, “with any exceptions kept to a minimum”.⁸¹ This wording is not in the PD, which refers instead to “providing for the absence of substantially all discrimination in the covered sectors, with exceptions and limitations as appropriate”,⁸² indicating potential future discussions on restrictions for sectors which the EU might consider sensitive.⁸³

Further, the UK proposed ambitious provisions on mutual recognition of professional qualifications, covering the same range of professions as the existing Directive on mutual recognition and ensuring predictable and proportionate arrangements for professionals who will have to demonstrate that they meet the necessary requirements.⁸⁴

⁷⁵ HM Government, [Explainer](#), 25 November 2018, paragraphs 36-37

⁷⁶ Paragraph 34

⁷⁷ Paragraph 35

⁷⁸ Paragraph 36

⁷⁹ HM Government, [White Paper on future UK-EU Relations](#), paragraphs 48-52

⁸⁰ Ibid, paragraph 48

⁸¹ Ibid, paragraph 52

⁸² Paragraph 30

⁸³ European Parliament Research Service, [The future partnership between the EU and the UK Negotiating a framework for relations after Brexit](#), September 2018, PE 628.220, p95

⁸⁴ HM Government July White Paper, paragraph 55

The UK also proposed supplementary provisions for professional and business services, such as permitting joint practice between the UK and the EU.⁸⁵

On these two aspects, the Political Declaration is not explicit, leaving room for future negotiation.

Commons Library Briefing [Brexit: new guidelines on the framework for future EU-UK relations](#) (chapter 2.6) compares trade in services under the Single Market rules versus a GATS regulated FTA.⁸⁶ But nothing in the PD precludes the UK and the EU from pursuing deeper integration in services than under the current FTAs.

4.6 Financial services

The PD recognises the interdependence of financial services across boundaries and the common interest in honest and sound markets and fair competition within them. To that end it highlights the need for continuing close cooperation between the different regulators and regimes. For background information, see Commons Library Briefing Paper 7628, [Brexit and financial services](#), 23 August 2018.

The future basis of cooperation will be 'equivalence', and each authority is required to establish frameworks under which equivalence can be judged. An article in *Bloomberg* on the issue of equivalence included comments from the former UK Commissioner Hill about what is involved in equivalence decision making:

What's involved in an equivalence decision?

[Equivalence](#) refers to the European Commission's recognition that a country's rules and oversight of specific business lines are as tough as its own. This allows the EU to rely on firms' compliance with those frameworks, reducing overlaps on both sides as well as reducing capital costs for EU companies exposed to equivalent third countries.

Most EU financial-services acts contain provisions for equivalence, including the updated markets rules known as MiFID II, which [come into effect](#) in 2018. Equivalence is also possible for some purposes in the EU's bank capital rules and in Solvency II, which governs the insurance industry.

How does it work?

To see how equivalence works, take the recent agreement the commission struck with the U.S. Commodity Futures Trading Commission on central counterparties.

EU law, in this case the [European Market Infrastructure Regulation](#), allows companies based outside the bloc to "provide clearing services to clearing members or trading venues" set up in the EU on two main conditions. First, the commission has to determine that the country's legal and supervisory systems are an "effective equivalent" to those in the EU; second, the company must be recognized by the bloc's markets regulator.

⁸⁵ Ibid, paragraphs 56-57

⁸⁶ Commons Library Briefing [Brexit: new guidelines on the framework for future EU-UK relations](#), 8289, 19 April 2018, chapter 2.6

The deal with the CFTC, [announced](#) in February, enabled companies such as Chicago-based CME Group Inc. to continue providing services to EU firms. Without it, traders would have faced higher EU capital requirements to clear swaps, futures and other derivatives in the U.S.

How long can equivalence talks take?

While the EU's equivalence talks with the CFTC were successful, they dragged on for nearly four years even though at issue was "one tiny subset of the whole financial services sector landscape," as Jonathan Hill, the EU's former financial-services chief, said in June. What's more, this was a case in which both sides "wanted to conclude it quickly," he said.

"The bureaucratic process of gaining equivalence is complex," said [Edward Chan](#), banking partner at Linklaters LLP in London. The process is "likely to take a minimum of six months upon exit," he said. The European Commission is under "no obligation" to grant equivalence, and "the decision can be time-bound and reversed, so, although it is not meant to be a political process, it is likely that political considerations will influence this decision."⁸⁷

A 2016 report from [Open Europe](#) explains the political process underlying the granting of equivalence:

In theory, having been a member of the EU, the UK would have no problem obtaining equivalence on day one after Brexit. However, if EU regulations change over time the UK would have to adapt its own legislation to maintain continued market access for its financial services sector. This could become increasingly challenging if in future, with the UK no longer involved in the law-making process, the EU takes a more protectionist approach to financial regulation. Although in that scenario being able to diverge from onerous regulations may in fact prove a competitive advantage for the UK, even if access is lost.

It is worth noting that the European Commission has never actually withdrawn an equivalence decision due to divergence of regulation. While it is a relatively new concept, this is still important. The Commission has, however, withheld the granting of equivalence for both technical and political reasons. Overall, equivalence is therefore a far more piecemeal approach than the passport.

In the PD UK and EU bodies are required to act transparently in respect of their decision making and determination of regulatory outcomes. But however tempered it might be by 'transparency', an equivalence regime does give unilateral say to either side and there is nothing in the PD to suggest that the EU is looking at any sort of 'equivalence plus' towards the UK - which it might have hoped for, given its unique position.

In its [EU Withdrawal Impact Assessment](#) the FCA included the following comments about equivalence, and how it might apply and evolve in future:

The UK and EU will both have the ability and common interest to find each other's regimes equivalent post exit, facilitating market access across a range of sectors. The declaration appropriately

⁸⁷ [Bloomberg, Banks in U.K. Eyeing EU Market May Find Equivalence Cold Comfort](#), 31 August 2016

recognises that this must be in the context of both sides retaining autonomy over the exercise of their equivalence regimes. Therefore, equivalence assessments will need to be based on equivalence of outcomes as opposed to identical rulebooks. It will also be necessary to consider carefully the process and scope of equivalence as it currently exists, to ensure that it provides an adequate framework for cross border business in the future. We believe that there is substantial scope for development and improvement of the framework.

The declaration also provides for close and structured supervisory and regulatory engagement, and the possibility for an enhanced relationship compared to a standard third country position. The FCA is committed to close cooperation with EU counterparts. If implemented, this could make it easier for us to continue to meet our objectives, and help manage cross border risks by ensuring that they can be identified early and managed effectively.⁸⁸

4.7 Digital

The Digital section of the PD addresses trade, fair and equal access to telecommunication networks, and collaboration on emerging technologies.

On trade (**paragraph 40**), the parties aspire to “facilitate electronic commerce, address unjustified barriers to trade by electronic means, and ensure an open, secure and trustworthy online environment”. Two examples of barriers to electronic trade are mentioned: requiring authorisation for a service to be provided electronically, and “unjustified data localisation requirements”. The paragraph notes that these facilitations “will not affect the Parties' personal data protection rules” (for more information on data protection, see section 3.2).

On access to networks (**para 41**), the aim seems to be to ensure that telecom companies can continue to access the parties' public telecommunication networks to provide services. A UK-based example might help clarify. Because only two large players (BT and Virgin Media) own most of the UK physical broadband networks, regulations ensure that competitors can access BT's network to sell their own services. So other broadband providers, such as TalkTalk and Sky, offer services over BT's network infrastructure.

Paragraph 42 is an ambition to collaborate on emerging technologies in digital. TechUK, a body that represents tech companies, commented:

While it does not make any clear decisions about the level of alignment on digital services in general, it is good to see clarification that both sides wish to protect against barriers to trade such as data localisation, and to create an open online environment for both businesses and consumers.

In addition, techUK welcomes the statement that the negotiations will ensure fair and equal access to telecommunications networks and services. This was in the Chequer's White Paper but not in the original draft of the Declaration. While it remains unclear how this will work in practise, its inclusion is a step in the right direction.

⁸⁸ Financial Conduct Authority [EU Withdrawal Impact Assessment](#), November 2018

It is also positive to note that language within the Chequer's White Paper which expressed the desire for increased flexibility around the rules governing digital services, even if that reduced market access, has not been included within the Declaration.⁸⁹

4.8 Capital movements and payments

The EU defines 'capital movements' in Annex I of [Directive 88/361/EEC](#), 'Nomenclature of the Capital Movements Referred to in Article 1 of the Directive'. The capital movements that Article 1 of the Directive fully liberalises include (but are not limited to):

- foreign direct investment (FDI), e.g. setting up or buying a company;
- investment in real estate, e.g. buying houses;
- securities investment, e.g. buying shares, bonds, bills or unit trusts;
- admission of securities to the capital and money markets, e.g. listing shares on the stock exchange;
- commercial and consumer lending and borrowing;
- other operations with financial institutions, e.g. current and deposit accounts;
- transfer of financial assets of any kind.

Free movement of capital is one of the 'four freedoms' of the Single Market. When it entered into force in 1994, the [Treaty of Maastricht](#) prohibited all restrictions on capital movements and payments across all borders.

Paragraph 43 of the PD aims to continue the free movement of capital between the UK and the EU:

The Parties should include provisions to enable free movement of capital and payments related to transactions liberalised under the economic partnership, subject to relevant exceptions.

Two comments are worth making. First, it is not clear what the practical implications of paragraph 43 are for the EU, if any. The EU's free movement of capital goes beyond the boundaries of the Single Market, unlike the other Treaty freedoms.⁹⁰ [Article 63](#) of the *Treaty on the Functioning of the European Union* prohibits all restrictions on capital movements and payments, not only within the EU but also between Member States and the rest of the world. Therefore, the EU's position on capital movements vis-à-vis the UK would not change, regardless of the provisions in the final Brexit deal or a lack thereof. The UK as an EU Member State currently allows the free movement of capital with the wider world too.

The second comment is that paragraph 43 is not a commitment to protect the current breadth and depth of capital flows between the UK and the EU after Brexit. The free movement of capital does not, in and

⁸⁹ techUK, [Brexit: A declaration of intent](#), 23 November 2018

⁹⁰ See EC, [Capital movements: International relations](#), accessed 26/11/2018

of itself, authorise the underlying activities to take place across borders. Most of the activities listed above are highly regulated and often make a distinction between the rights of EU and 'third country' entities (for example, EU-based financial services providers often have automatic 'passporting' rights to provide their services in any EU country, whereas non-EU firms do not). Future barriers to UK firms providing these services to EU clients (and vice versa) would not come from restrictions on capital movements, but from a lack of mutually-recognised regulatory authorisation. Therefore, the continuation of these activities across the EU-UK border will depend in large part on the new equivalence regime for financial services, rather than the free movement of capital (see section 4.6 of this paper for an outline of provisions for equivalence).

Similarly, many countries have laws that disadvantage or limit the freedom of overseas actors in a number of capital transactions, such as blocking certain takeovers on national security grounds or charging additional tax on buying or holding property. The UK could face such disadvantages outside the EU, although the scale or extent will depend on the details of the final future relationship agreement.

4.9 Intellectual property

The Government published a [guide](#) on "the future of intellectual property laws following the decision that the UK will leave the EU" and in the Chequers plan proposed continued UK participation in the unitary patent system and the Unified Patent Court.

The PD envisages in **paragraph 117** the protection of rights going beyond the standards of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and World Intellectual Property Organization (WIPO) conventions. The PD Explainer suggests that this will provide a "range of protections, for example in relation to trademarks, designs and patents".⁹¹

The PD also mentions the preservation of certain rights under copyright law, including the *sui generis* right in databases (a form of IP right that applies to certain databases under EU law) and the Artist's Resale Right (an EU IP right entitling artists to receive royalties on the resale of their works), and arrangements to provide protection for Geographical Indications.

4.10 Public procurement

At present the UK applies a range of EU rules in relation to public procurement. UK and EU public procurement markets are generally open to each other.

The UK is in the process of joining the WTO Government Procurement Agreement (GPA) as an independent member. UK membership would mean that the UK and the EU continue to open up certain of their public procurement markets to each other (and to other countries).

⁹¹ HM Government Explainer, 25 November 2018, para 50

The PD suggests that the UK and EU will open further markets (beyond those committed in the GPA), and may agree other measures that would encourage the two markets to be open to each other in practice. There will be mechanisms for reviewing and remedying breaches of the procurement rules.

Background

The current situation

Most public procurement in the UK is currently subject to a range of EU-derived rules: EU Treaty principles along with EU Directives and the UK regulations that implement them. The Directives and regulations contain detailed rules that apply to much procurement above certain thresholds.

WTO Government Procurement Agreement

The UK is currently in discussions to become an independent member of the Government Procurement Agreement (GPA). The GPA is a voluntary (plurilateral) agreement between the EU and 18 countries to open up public procurement markets to each other under the WTO.⁹²

Under the GPA, many higher value public sector procurement opportunities must be opened up to suppliers in certain other countries (the parties to the agreement), and this procurement must be subject to open, fair and transparent conditions of competition.

For procurement that it covers, the GPA's general rules and obligations guarantee:

- national treatment and non-discrimination – in other words, public authorities must treat potential suppliers from all parties equally;
- minimum standards regarding national procurement procedures;
- transparency of procurement-related information.⁹³

The UK is currently a part of the GPA only through its EU membership. The Government is taking steps intended to ensure that the UK continues to be part of the GPA – becoming an independent member – as the UK leaves the EU. The UK's accession was agreed in principle by all parties in November 2018.⁹⁴

The Library briefing [Brexit: public procurement](#) has more information on the GPA.

The text of the Political Declaration

⁹² The [Government Procurement Agreement](#) is a WTO plurilateral agreement – in other words one that is optional for WTO members. The current [parties](#) to the GPA are: Armenia, Canada, the EU, Hong Kong, Iceland, Israel, Japan, South Korea, Liechtenstein, Moldova, Montenegro, Netherlands with respect to Aruba, New Zealand, Norway, Singapore, Switzerland, Taiwan, Ukraine and the United States. Ten more WTO members are in the process of acceding, including China and Russia. Coverage of the agreement varies by party / pair of parties.

⁹³ WTO Integrated Government Procurement Market Access Information (e-GPA) Portal, [The Agreement in brief](#) [online, accessed 27 November 2018]

⁹⁴ [Tweet from Julian Braithwaite, UK ambassador to the WTO](#), 27 November 2018

The PD talks about the UK and EU mutually opening further markets, agreeing standards on transparency and procedures, and making available remedies and review procedures for breaches of procurement rules.

Beyond these, it is worth noting that ease of access to public procurement markets depends on factors that influence ease of access to markets more generally – for example checks and controls for goods or the ability to offer services across borders. These are covered elsewhere in the Political Declaration.

Opening up markets

The PD says that both sides should “provide for mutual opportunities in the Parties’ respective public procurement markets beyond their commitments under the WTO Government Procurement Agreement”.

In the UK a lot of higher value public procurement would be covered by the Government Procurement Agreement. The gaps are:

a few utility sectors, coverage of private utilities, the defence sector, some services, (possibly) concessions, and certain private contracts subsidised by government.... However, some of these differences are of limited importance in the UK context.⁹⁵

These areas are covered at present by EU Directives and the UK regulations that implement them.

The GPA also does not include lower value procurement, below the thresholds above which the current EU Directives apply (for example the threshold that applies for 2018 in the UK is £118,133 for goods and services for buyers in central government).⁹⁶ A future trade agreement could allow for access to some or all of this lower value procurement. At present, EU Treaty principles such as transparency and non-discrimination apply to much public procurement of this level.⁹⁷

There are policy trade-offs here. Like the rules that come with EU membership and GPA membership, commitments to mutually open up markets limit domestic policy choices – for example they limit the government’s ability to award contracts solely to British suppliers. However, they ensure that certain public procurement opportunities are opened up to potential suppliers in other countries, potentially leading to better value for money for the public sector in the UK, and they also open up opportunities for UK businesses to sell to the public sector in other countries.

⁹⁵ Summary to Chapter 4 of Sue Arrowsmith, [Consequences of Brexit in the area of the public procurement](#), April 2017 – the chapter has a more detailed description of these gaps. See also Chapter 23: Brexit and Public Procurement of Sue Arrowsmith, *The Law of Public and Utilities Procurement: Regulation in the EU and UK*, Volume 2 (Third Edition, 2018)

⁹⁶ This is the lowest of the thresholds that currently apply to the UK. The [thresholds](#) vary by buyer type and depend on what is being bought – they are considerably higher for construction (works).

⁹⁷ It is generally only in the case of a contract value being so small, or the service being so niche, that the contract ‘would be of no interest to economic operators located in other Member states’, where the principles would not apply – according to Commission Interpretive Communication, [Application of the procurement directives](#) (August 2006).

Standards on transparency and procedures

The PD contains a pledge to commit “to standards based on those of the GPA ensuring transparency of market opportunities, public procurement rules, procedures and practices” (**para 49**).

The rules in the current EU Directives and the UK implementing regulations are generally more specific and detailed than those in the GPA.

Common standards on transparency, rules, procedures and practices could encourage the two markets to be open to each other in practice.

At the most extreme end, this could mean the UK continuing to follow all or most of the processes in the EU Directives for higher value procurements. Alternatively, there could be agreement on a smaller set of common standards:

for example, through rules on modifications to concluded contracts, rules on arrangements between public bodies, rules on framework agreements and other recurring purchasing arrangements, and rules to address some of the differences in the area of qualifications (criteria, evidence and use of EU tools, such as e-Certis [the EU’s online certification database])⁹⁸

An agreement on common approaches to transparency might mean, for example, UK procurement opportunities continuing to be advertised in the EU’s Official Journal (OJEU).⁹⁹

There are policy choices here – the bureaucracy of public procurement processes is a common complaint and the more the UK commits to certain common processes, the less potential it has for creating an improved alternative approach for buyers and/or suppliers. It has however been argued that the potential for improvement may be limited.¹⁰⁰

On the EU side, at least for procurement that falls under the GPA (i.e. certain higher-value procurement), the EU will need to continue to make current award procedures and remedies available to UK suppliers.¹⁰¹

Review and remedies

The PD states (**para 49**) that the “the Parties should address the risk of arbitrary behaviour when awarding contracts, and make available remedies and review procedures, including before judicial authorities”.

Current EU Directives and UK implementing regulations contain rules for review and remedies. These give companies ways to object to breaches of the procurement rules – including, in the UK, through the High Court / Court of Session. There are a number of potential remedies, including

⁹⁸ Summary to Chapter 4 of Sue Arrowsmith, [Consequences of Brexit in the area of the public procurement](#), April 2017

⁹⁹ Formally they are now published by the Publications Office of the European Union

¹⁰⁰ Telles and Sanchez-Graells, [Examining Brexit through the GPA’s Lens: What next for UK public procurement reform?](#) *Public Contract Law Journal*, 47(1), 1-33.

¹⁰¹ This follows from the GPA’s national treatment requirements, as noted in Chapter 23: *Brexit and Public Procurement* of Sue Arrowsmith, *The Law of Public and Utilities Procurement: Regulation in the EU and UK*, Volume 2 (Third Edition, 2018).

those that allow a breach of the rules to be corrected (for example by delaying the award of a contract) and those that provide compensation.

The GPA also requires that suppliers be able to challenge breaches through domestic law, but the requirements in the GPA are less strict than those in the current EU rules.¹⁰² A future agreement might fill some of the gaps between the GPA and the EU rules.

Another possible area for agreement could be some kind of additional enforcement mechanism. In the current system, the European Commission enforces EU procurement law, including by bringing cases to the CJEU – it has done this actively over the past decades.¹⁰³ It is not yet clear what, if anything, will replace this in the UK after Brexit.

4.11 Mobility and social security

The PD provisions suggest the following:

- The end of free movement between the UK and the EU;
- Mobility based on non-discrimination and reciprocity including visa free travel for short-term visits;
- Temporary entry and stay for business purposes in defined areas which “should not be nullified by the right of either Party to apply their respective laws, regulations and requirements regarding entry, stay and work”;
- Consideration of conditions of entry and leave for research, study, training and youth exchange;
- Facilitating transit through borders for legitimate travel;
- Continued application of international family law instruments to which the UK or Member States are party;
- Judicial co-operation on matrimonial, parental responsibility and other related matters.

The PD also confirms that such proposals are without prejudice to the Common Travel Area.

The Government’s [Explainer](#) further states:

The UK will not discriminate between individual Member States — meaning the UK will treat all Member States in the same way. The agreement will apply equally to all Member States and therefore the UK expects there should be no difference between them in their treatment of the UK where the international agreement applies. The agreement on mobility will be based on reciprocity

¹⁰² Chapter 23: Brexit and Public Procurement of Sue Arrowsmith, *The Law of Public and Utilities Procurement: Regulation in the EU and UK, Volume 2* (Third Edition, 2018). Challenge is also possible at the international level in relation to the GPA. WTO Dispute Settlement can be used for complaints about how parties are implementing their commitments under the GPA, but only states (parties) can bring complaints against each other. This mechanism has however only been used three times. See WTO, [GPA: Dispute Settlement](#) [accessed 27 November 2018]

¹⁰³ Chapter 23: Brexit and Public Procurement of Sue Arrowsmith, *The Law of Public and Utilities Procurement: Regulation in the EU and UK, Volume 2* (Third Edition, 2018).

between the UK and the EU, so where the UK takes a commitment the EU will do likewise.¹⁰⁴

Illegal migration

Paragraph 116 set outs an intention for cooperation on illegal migration. It includes:

- The UK working with Europol against immigration crime
- The UK working with the European Border and Coastguard Agency
- ‘Dialogue on shared objectives and cooperation’

For more information on the UK’s future relationship with Europol, see section 5.1 of this paper.

Social security

The PD states that, given the UK’s decision that in principle free movement of persons will no longer apply, the UK and the EU should establish “mobility arrangements based on non-discrimination between the Union’s Member States and full reciprocity” (**paragraph 51**).

It adds that, among other things, “The Parties also agree to consider addressing social security coordination in the light of future movement of persons” (**para 54**). Given the commitment to non-discrimination between Member States, this would entail a single social security agreement between the UK and the EU as whole, rather than bilateral agreements with individual Member States.

In its July 2018 White Paper the Government said that reciprocal social security arrangements – covering among other things uprating of state pensions, reciprocal healthcare for pensioners, continued participation in the European Health Insurance Card scheme and cooperation on planned medical treatment – would be important for UK nationals who want to live, work or retire in the EU in the future.¹⁰⁵ The Government’s [Explainer](#) on the PD states that the UK is “still seeking commitments in specific areas such as uprating of state pensions and reciprocal healthcare, including [EHIC], to ensure that UK citizens living in the EU, in future, continue to benefit from their pension entitlements and associated healthcare”.¹⁰⁶

4.12 Transport

The PD addresses aviation, road, rail and maritime modes of transport separately.

Overall, the UK appears to have achieved two of its main goals: a commitment to a comprehensive aviation agreement and an agreement to provide for the continued flow of goods and people by road and rail. However, questions remain about the UK’s future relationship with the European Aviation Safety Agency (EASA), what documentation UK

¹⁰⁴ HM Government, [Explainer](#), 25 November 2018, para 56

¹⁰⁵ HM Government, White Paper on future UK-EU relations, para 89

¹⁰⁶ HM Government Explainer, para 60

nationals will require when driving in the EU27 and how far mutual recognition of standards will extend in the rail and maritime sectors.

Aviation

On aviation the PD commits the parties to ensuring passenger and cargo air connectivity through a Comprehensive Air Transport Agreement (CATA), to cover:

- market access and investment;
- aviation safety and security;
- air traffic management; and
- provisions to ensure open and fair competition, including appropriate and relevant consumer protection requirements and social standards.

The parties “should make further arrangements to enable cooperation with a view to high standards of aviation safety and security, including through close cooperation between EASA and the United Kingdom's Civil Aviation Authority (CAA)”.¹⁰⁷

This is largely as expected based on previous statements, including the European Council's March 2018 [negotiating guidelines](#). However, there is one significant matter where the UK does not appear to have achieved a stated aspiration. The PD proposes “close cooperation” but appears to rule out UK participation in the EASA after Brexit. The Prime Minister said on 2 March 2018:

We want to explore with the EU, the terms on which the UK could remain part of EU agencies such as ... the European Aviation Safety Agency. We would, of course, accept that this would mean abiding by the rules of those agencies and making an appropriate financial contribution.¹⁰⁸

The subsequent White Paper reiterated this:

... the UK will seek participation in EASA. In addition to ensuring that manufacturers should only need to undergo one series of tests in either market, this would also support collective work on aviation safety, reducing regulatory barriers for businesses and ensuring continued high standards for safety across Europe.¹⁰⁹

Road transport

On road transport the PD commits the parties to ensuring “comparable market access” for freight and passenger road transport operators:

... underpinned by appropriate and relevant consumer protection requirements and social standards for international road transport, and obligations deriving from international agreements in the field of road transport to which both the United Kingdom and the Union and/or its Member States are signatories, notably concerning conditions to pursue the occupation of a road transport operator, certain conditions of employment in

¹⁰⁷ PD, paras 60-61

¹⁰⁸ Prime Minister's [speech](#) on UK's future economic partnership with the EU, 2 March 2018

¹⁰⁹ DExEU, [The future relationship between the United Kingdom and the European Union](#), Cm 9593, 12 July 2018, para 131

international road transport, rules of the road, passenger carriage by road and carriage of dangerous goods by road.¹¹⁰

It also states that the Parties “should consider” complementary arrangements to address travel by private motorists.¹¹¹

This is largely as expected, based on previous statements including the European Council’s March 2018 [negotiating guidelines](#). Although it is in general language, it would appear to be within the spirit of the UK’s aspirations as set out in the White Paper, to “explore options for reciprocal access for road hauliers and passenger transport operators” and to ensure that UK hauliers in particular are not faced with new burdens for transport of goods between the EU27 and the UK.¹¹²

The PD states that the parties will “explore options for reciprocal ... arrangements for private motoring”.¹¹³ This leaves UK private motorists with uncertainty as to what documents they would need to travel to/in the EU27 after Brexit, including driving permits and insurance.

Rail transport

On rail transport the PD commits the parties to establishing bilateral arrangements, as appropriate, for cross-border rail services, including on the island of Ireland and through the Channel Tunnel.¹¹⁴

This is as expected given the UK’s stated position in its White Paper and subsequent documents, and appearances by Ministers before various Parliamentary committees.¹¹⁵

It does not, however, give any commitment regarding mutual recognition of standards, driver and operator licensing or safety certification. Nor does it mention any aspiration on either side for the UK to apply EU legislation on rail structures and organisation or on market access.

Maritime transport

On maritime transport the PD recognises that passenger and cargo connectivity in the maritime transport sector will be underpinned by the international legal framework. It requires the parties to make “appropriate arrangements on market access” for international maritime transport services and:

... facilitate cooperation on maritime safety and security, including exchange of information between the European Maritime Safety Agency (EMSA) and the United Kingdom Maritime and Coastguard Agency (MCA), consistent with the United Kingdom’s status as a third country.¹¹⁶

This reflects the UK’s acknowledgement in the White Paper of the international nature of shipping and its commitment to “continue

¹¹⁰ Op cit., PD para 62

¹¹¹ Ibid.

¹¹² Op cit., HM Government White Paper, July 2018, para 134

¹¹³ Ibid.

¹¹⁴ Op cit., PD para 63

¹¹⁵ Op cit., HM Government White Paper, July 2018, para 136

¹¹⁶ Op cit., PD paras 64-65

cooperating closely with both the EU and the EMSA, including sharing information on safety and to counter pollution".¹¹⁷

Given the commitment to cooperation with EMSA, this may signal movement towards mutual recognition of seafarer certificates of competency, but this is not guaranteed and is nowhere explicitly stated.

Further information on Brexit & transport can be found in the [Commons Library briefing paper CBP 7633](#), 8 November 2018.

4.13 Energy

Electricity and gas

The UK is currently part of the EU internal energy market (IEM). The IEM allows harmonised, tariff-free trading of gas and electricity across Europe (through interconnectors). For more information, see the Library briefing paper on [Brexit: Energy and Climate Change](#).

Under PD **paragraph 66** the parties "should cooperate" on electricity and gas supplies based on "competitive markets and non-discriminatory access to networks". **Paragraph 67** states that the parties "should establish" a framework to facilitate cooperation between network operators. The text refers specifically to the European Networks of Transmission System Operators (ENTSO) which contribute to determining IEM rules, but omits the Agency for the Cooperation of Energy Regulators (ACER), which also contributes to rule development. The PD states that the framework should include mechanisms to ensure "security of supply" and "efficient trade over interconnectors over different timeframes". Whether this "cooperation" would equate to the UK retaining access to the IEM will be subject to the outcome of the negotiations on the future partnership.

As part of the development of the IEM, trade across electricity interconnectors is increasingly integrated via 'market coupling'. Market coupling uses an algorithm to set prices and trading volumes across interconnected markets. Markets are said to be coupled when interconnector capacity and electricity are sold in a single market transaction, whereas in uncoupled markets these are sold separately. Market coupling is a more efficient means of trading, which reduces system costs. GB is currently coupled to north-west Europe and the island of Ireland in the 'day-ahead market' (referring to electricity that is bought and sold a day ahead of delivery). Work is underway to couple the 'intra-day' markets (for electricity that is sold between an hour and 24 hours ahead of delivery). The exact 'timeframes' of trading and extent of market coupling that the UK will have in future will be subject to the outcome of the negotiations on a future partnership.

Civil Nuclear

The UK Government has repeatedly said it wants a "close and effective" association with Euratom in future.¹¹⁸ Further information is available in

¹¹⁷ Op cit., HM Government White Paper, para 135

¹¹⁸ HCWS3999, [Energy Policy](#), 11 January 2018

the Library briefing paper on [Euratom](#), and on [Brexit: Energy and Climate Change](#).

The PD contains provisions for future negotiation relating to a Nuclear Cooperation Agreement, research and training, and information on the supply of medical radioisotopes.

Nuclear Trade

The PD states in **para 68** that “the future relationship should include a wide-ranging Nuclear Cooperation Agreement” (NCA). These agreements facilitate trade and are a legal requirement for nuclear trade with some countries (Australia, Canada, Japan and the USA) but are not for Euratom. In addition, at present nuclear operators are required to obtain approval from the Euratom Supply Agency for nuclear trading contracts. As such, some existing contracts will need to be re-approved. The PD suggests provision for this: “the Parties note that the EURATOM Supply Agency intends to reassess in a timely manner the authorisations and approvals of contracts for the supply of nuclear material between Union and United Kingdom”.

Nuclear Research

At present, the UK cooperates with Euratom on nuclear research programmes, such as the Joint European Torus Project at the Culham Centre in Oxfordshire. Concerns have been raised about the future of these projects when the UK leaves Euratom,¹¹⁹ and the UK had said that it is a “priority to seek a close association to the Euratom Research and Training Programme as part of our future relationship with the EU”.¹²⁰ Under **paragraph 69** “the Parties take note of the [UK’s] intention to be associated with the Euratom research and training programmes”. This is part of the provision in Section II of Part I, on areas of shared interest.

Medical Radioisotopes

There has also been concern about the supply of medical radioisotopes (which are used for the diagnosis and treatment of various diseases) after the UK leaves Euratom. In addition to possible customs delays,¹²¹ there has been concern about leaving the Euratom Observatory¹²² which has had a role in managing supply chains during past shortages of radioisotopes. Although the PD does not specifically mention the Observatory, it does state “the Parties will cooperate through the exchange of information on the supply of medical radioisotopes”.

Carbon Pricing

¹¹⁹ House of Commons Business, Energy and Industrial Strategy Committee, [Leaving the EU: Implications for the civil nuclear sector](#), Second Report of Session 2017-19, 12 December 2017, p.19

¹²⁰ Department for Business, Energy and Industrial Strategy, [Euratom Exit Factsheet, Research and Development](#), June 2018

¹²¹ House of Lords Select Committee on the EU Home Affairs Sub-Committee, [Brexitom: the health implications of leaving Euratom, Oral Evidence](#), 22 November 2017, Q3

¹²² *Ibid*, Q4

The UK currently participates in the EU emissions trading system (EU ETS) under EU Directive 2003/87/EC.

Until the publication of the PD, the Government had not indicated its preference for carbon pricing in the UK after Brexit. The Government's July 2018 White Paper noted that a consistent approach to carbon pricing would be necessary if the UK were to continue to participate in the IEM, which, "for example, could be delivered by remaining in the EU's Emission Trading System".¹²³ Whether the UK will retain access to the IEM remains subject to negotiation (as noted under 'Electricity and gas' above). A PQ response in October 2018 provided the following summary of the Government's position and the range of options in relation to the EU ETS:

The Government is considering all factors in relation to the UK's future participation, or otherwise, in the EU Emissions Trading System (EU ETS), in consultation with stakeholders. A range of long-term alternatives are currently under consideration including continued participation in the EU ETS after 2020, a UK ETS (linked or standalone) or a carbon tax. We welcome input from stakeholders and we intend to share more details on policy design in due course [...]¹²⁴

Paragraph 72 of the PD states that the EU and the UK will consider cooperation on carbon pricing by linking a UK national greenhouse gas emissions trading system with the EU's Emissions Trading System. This is the first indication that there may be a UK ETS linked with the EU ETS in the future, rather than (for example) a standalone UK carbon tax or continued UK participation in the EU ETS.

This is not without precedent. Switzerland is not a participant in the EU ETS, but in November 2017 it signed an agreement (subject to ratification) to link its emissions trading system with the EU ETS.¹²⁵ More information on linking to the EU ETS, including potential benefits and conditions for linking, is available on the [Europa webpage on international markets](#). Further discussion of a UK carbon market and potential different options for the UK in relation to carbon pricing is set out in the Library Briefing Paper on [Brexit: energy and climate change](#) (Chapter 6).

4.14 Fishing opportunities

Linking fisheries access to future trade agreement

The maintenance of current arrangements for sharing fisheries resources after Brexit was referred to in the European Council's March 2018 [negotiating guidelines](#). This linked continued existing reciprocal access to fisheries to the proposal for a zero-tariff trade agreement:

Trade in goods, with the aim of covering all sectors, which should be subject to zero tariffs and no quantitative restrictions with appropriate accompanying rules of origin. In this context, existing

¹²³ HM Government, White Paper on future relations, para 140

¹²⁴ [PO 180187](#) [on EU Emissions Trading Scheme] 24 October 2018

¹²⁵ European Commission news, [EU and Switzerland sign agreement to link emissions trading systems](#), 23 November 2017 [accessed 23 November 2018]

reciprocal access to fishing waters and resources should be maintained.¹²⁶

The UK Government has consistently rejected the EU's position that access to fisheries should be linked to any future trade agreement. In the [Fisheries White Paper](#) the Government referred to the latter as "a separate question":

Access to markets for fisheries products will be agreed as part of our future economic partnership, just as with other goods and food products. This is separate to the question of fishing opportunities and access to waters, which consequently will be addressed separately, founded on the UK's legal status as an independent coastal state. This is consistent with fisheries agreements internationally, and with EU-third country precedents. Both the EU and UK have an interest in continued trade for the fisheries and wider seafood sector.¹²⁷

A fisheries agreement by 1 July 2020

The PD includes a reference to a future agreement on access and quotas. However, it merely links any agreement to the overall economic partnership, rather than setting it out as a requirement:

Within the context of the overall economic partnership, establishment of a new fisheries agreement on, *inter alia*, access to waters and quota share.

The Parties will use their best endeavours to conclude and ratify their new fisheries agreement by 1 July 2020 in order for it to be in place in time to be used for determining fishing opportunities for the first year after the transition period.¹²⁸

The date for concluding and ratifying any fisheries agreement is by 1 July 2020, which is before any future trade agreement would come into force. The PD also calls for "cooperation bilaterally and internationally to ensure fishing at sustainable levels" and refers to preserving regulatory autonomy when managing fisheries.

Fisheries, including fishing enterprises and coastal communities, were also referred to in the European Council's [minuted declaration](#) on the withdrawal agreement of 25 November 2018:

On the basis of its successive guidelines of 29 April 2017, 15 December 2017 and 23 March 2018, the European Council will demonstrate particular vigilance as regards safeguarding the rights and interests of citizens, the necessity to maintain ambitious level playing field conditions and to protect fishing enterprises and coastal communities.

This will apply both when assessing the implementation of the Withdrawal Agreement, if the backstop is to be operationalized, and when considering the future relationship, in particular in the field of environment regarding the alignment to European standards.

As recalled in the Withdrawal Agreement, a fisheries agreement is a matter of priority, and should build on, *inter alia*, existing

¹²⁶ European Council, [Draft guidelines](#), 7 March 2017

¹²⁷ Defra, [Fisheries White Paper](#), 4 July 2018

¹²⁸ PD, paras 75-76

reciprocal access and quota shares. Such an agreement should be negotiated well before the end of the transition period.¹²⁹

Industry concerns

The fishing industry expressed concern following the publication of the PD that despite the UK Government's stated position that the UK will be an independent coastal state, access to fisheries and trade continue to be linked. *Fishing News* reported:

But [the Political Declaration] has a severe downside in that it appears to link access rights of EU vessels to trade negotiations – something the industry is adamantly against – and commits the UK to remain in a customs union with the EU for at least the transition period, and possibly for much longer. [...]

SFF chief executive Bertie Armstrong said that unless all of the prime minister's commitments to the fishing industry were fulfilled, 'no deal' would be 'a more attractive option' than the agreed deal.

The NFFO said that in the next stage of talks, UK negotiators will need to be 'tough, astute and hard-nosed' to secure the benefits of Brexit.

NUTFA said the situation 'is a farce of epic proportions' and that businesses were 'desperate for some clarity'.¹³⁰

Concerns were also raised following a statement by President Macron of France, in which he linked agreement on various areas, including fisheries, to the use of the backstop plan. *BBC News* reported:

"We as 27 have a clear position on fair competition, on fish, and on the subject of the EU's regulatory autonomy, and that forms part of our position for the future relationship talks," he said.

The president implied that without sufficient progress on trade, the backstop plan to avoid a hard border in Ireland would have to be implemented, including a temporary customs union for the whole of the UK.

"It is a lever because it is in our mutual interest to have this future relationship," Mr Macron said.

"I can't imagine that the desire of Theresa May or her supporters is to remain for the long term in a customs union, but (instead) to define a proper future relationship that resolves this problem."¹³¹

A Downing Street spokesperson responded to this point specifically, as reported by *The Guardian* on 26 November:

"If the EU were not willing to engage in a genuine negotiation to replace the backstop with the future relationship or alternative arrangements, for example if it had closed its mind from the outset to the UK position on fisheries, that would put it in breach of its duty of good faith under the agreement, and we can refer

¹²⁹ European Council, [Special meeting of the European Council \(Art. 50\) \(25 November 2018\) - Statements for the minutes](#), 25 November 2018

¹³⁰ *Fishing News*, [Brussels links fisheries access to trade](#), 22 November 2018

¹³¹ BBC News, [Analysis: Macron's blunt Brexit warning to UK over fishing](#), 25 November 2018

this to independent arbitration,” the spokesman said at a briefing for journalists.¹³²

The French Minister of Agriculture, Didier Guillaume, also commented on the French position on fisheries:

The government is fully aware that the stakes of this negotiation for French fishing are high. It will be fully mobilized within the European framework and will be vigilant in defending the interests of French fishermen.¹³³

On the *Today Programme* on 28 November Chancellor Philip Hammond said he understood President Macron’s position, adding: “But what he said is actually slightly bizarre, because the backstop arrangement that he’s threatening to, quote, ‘keep us in,’ would give him no ability to access British waters”.¹³⁴

4.15 Global cooperation

Section 13 covers continuing global co-operation between the UK and EU. **Paragraph 77** refers to the importance of UK-EU co-operation in various international fora, including in the G7 and G20, “to address issues of shared economic, environmental and social interest” and where it is in their “mutual interest”.

The following policy areas on which co-operation could take place are identified:

- a. Climate change
- b. Sustainable development
- c. Cross-border pollution
- d. Public health and consumer protection
- e. Financial stability
- f. The fight against trade protectionism

More specifically, **paragraph 78** reaffirms the commitment of both the UK and the EU in their future relationship to international agreements to tackle climate change, including those implementing the United Nations Framework Conventions on Climate Change, such as the 2015 Paris Agreement which set out a plan to limit increases to global average temperature to below 2°C.

This could also involve co-operation to meet the UN Sustainable Development Goals, as mentioned later in the section on foreign policy, security and defence.

The Government’s July White Paper on future relations proposed that the UK and EU “seek to pool resources and exchange expertise to deliver the maximum impact from combined development assistance”.

¹³² The Guardian, [Downing Street hits back at Macron threat over Brexit fishing deal](#), 26 November 2018

¹³³ The Local Fr, [France vows to fight for French fishermen after London hits back at Macron](#), 26 November 2018

¹³⁴ *Politico Pro*, Philip Hammond hits out at Macron over 'bizarre' Brexit fishing threat, 28 November 2018

In terms of public health, though not specifically mentioned in the declaration this could entail future co-operation in the World Health Organization. On financial stability this could mean co-operation within the [Financial Stability Board](#), established by the G20 to promote stability in the global financial system and reform international financial regulation. On trade protectionism, this could mean co-operation between the UK and EU in relation to international negotiations to develop stronger international rules on market-distorting industrial subsidies and trade-distorting actions by state-owned enterprises, as signalled at the June 2018 [Quebec G7 meeting](#).

4.16 Level playing field for open and fair competition

Paragraph 79 is about the need for a 'level playing field' in the future relationship. Paragraph 79 states that the future relationship "must ensure open and fair competition" with regard to state aid, competition, social and employment standards, environmental standards, climate change, and relevant tax matters, "building on the level playing field arrangements provided for in the Withdrawal Agreement and commensurate with the overall economic relationship".

It states that the precise nature of the commitments in these areas will correspond with the "scope and depth of the future relationship", combining relevant EU and international standards and adequate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement.

The Ireland/ Northern Ireland Protocol in the WA commits the UK to maintaining a level playing field with the EU in relation to taxation, environmental protection, labour and social standards, and state aid and competition policy, should the backstop keeping the UK and EU in a single customs territory come into force at the end of the post-Brexit transition period.

This will require the UK to remain aligned with EU changes to competition and state aid rules, including updating where the EU does so, and to commit to not lowering environmental protection, and social and labour standards (non-regression). The UK commits to maintaining EU good governance principles on tax and continuing adherence to EU rules including those on information exchange and against tax avoidance practices that impact on the internal market, as well as the EU code of practice on business taxation.

These provisions reflect a concern on the part of the EU that the UK could gain a competitive advantage by deregulating in certain areas while continuing to maintain favourable access to the EU Single Market.

The EU's deputy chief Brexit negotiator Sabine Weyand [reportedly](#) told EU27 representatives following publication of the WA that the provisions in the Ireland/ Northern Ireland Protocol would act as a "starting point" for negotiations on the future relationship. The EU has also negotiated non-regression provisions (commitments not to reduce current levels of regulation) in recent trade agreements, for example

with Japan. However, the EU's March [guidelines](#) on the framework for future relations indicated that it will be seeking to go further in this regard, given the UK's geographical proximity and economic interdependence with the EU.

The March guidelines stated that the EU was ready "to initiate work towards a balanced, ambitious and wide-ranging free trade agreement (FTA) insofar as there are sufficient guarantees for a level playing field", and that "any agreement with the United Kingdom will have to be based on a balance of rights and obligations, and ensure a level playing field". The guidelines highlighted the UK's "geographic proximity and economic interdependence with the EU27" which meant that "the future relationship will only deliver in a mutually satisfactory way if it includes robust guarantees which ensure a level playing field". It went on:

The aim should be to prevent unfair competitive advantage that the UK could enjoy through undercutting of levels of protection with respect to, inter alia, competition and state aid, tax, social, environment and regulatory measures and practices. This will require a combination of substantive rules aligned with EU and international standards, adequate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement mechanisms in the agreement as well as Union autonomous remedies, that are all commensurate with the depth and breadth of the EUUK economic connectedness.

The Government's July White Paper addressed some of the EU's concerns. It proposed "reciprocal commitments that would ensure UK businesses could carry on competing fairly in EU markets, and EU businesses operating in the UK could do the same". This would include provisions guaranteeing an "open and fair trading environment" involving:

committing to apply a common rulebook for state aid, establishing cooperative arrangements between regulators on competition, and agreeing to maintain high standards through non-regression provisions in areas including the environment and employment rules, in keeping with the UK's strong domestic commitments.

The Prime Minister has indicated a willingness to commit to close alignment with the EU on state aid and competition in particular. For example, in her Mansion House speech in March, Mrs May stated:

As with any trade agreement, we must accept the need for binding commitments – for example, we may choose to commit some areas of our regulations like state aid and competition to remaining in step with the EU's.¹³⁵

The EU state aid regime is specifically targeted at creating a level playing field for businesses. As a general rule, state aid¹³⁶ is prohibited when it

¹³⁵ Prime Minister's Office, PM's Mansion House speech [On our future economic partnership with the European Union](#), 2 March 2018

¹³⁶ EU Member States sometimes intervene in their national economies by providing assistance to companies or industries using public resources. This can range from a government tax relief scheme for investors to a local authority giving a subsidy to a property developer. This type of assistance is called 'state aid' and is generally prohibited under the EU law (Article 107 of the TFEU).

threatens to distort competition and trade between Member States. Under certain conditions, the Commission can authorise state aid which helps achieve defined policy goals such as regional economic development or better environmental protection. State aid can also be allowed in crisis situations in certain sectors or to aid specific businesses. Successive UK governments have supported rigorous state aid controls.¹³⁷

Trade agreements between the EU and third countries include varying degrees of controls on state aid. In general though, the closer the market integration, the more state aid rules form part of the agreement.¹³⁸

With regard to non-regression on employment rights, the Trades Union Congress has called for a [binding guarantee](#) that employment rights in the UK will remain aligned to those of the EU, keeping pace with any changes made at the EU level. In her [Lancaster House speech](#) in January 2017, the Prime Minister said that “not only will the government protect the rights of workers set out in European legislation, we will build on them”.

With regard to environmental rules, during the passage of the *EU (Withdrawal) Act 2018* the Government committed to setting out a list of EU's environmental principles to be retained in the Environment Bill.

¹³⁷ Commons Library Briefing Paper 6775 [EU State Aid Rules and WTO Subsidies Agreement](#) contains more information on the application of EU state aid rules and the effects of Brexit.

¹³⁸ Morris Schonberg, [Continuity or change? State aid control in a post-Brexit United Kingdom](#), *Competition Law Journal* 47, 2017, p54

5. Part III: Security Partnership

Part III of the PD concerns the proposed security partnership, covering law enforcement and judicial cooperation in criminal matters, foreign policy, security and defence, and thematic cooperation in areas of common interest.

The PD states (**para 84**) that the future relationship will cover arrangements across three areas:

- data exchange;
- operational cooperation between law enforcement authorities and judicial cooperation in criminal matters; and
- anti-money laundering and counter terrorism financing.

It notes that the UK will be a non-Schengen third country that does not provide for the free movement of persons, and that the scale and scope of the future relationship will depend on an appropriate balance being struck between rights and obligations, with a stronger and deeper partnership being contingent on the acceptance of stronger “accompanying obligations”. These obligations include the commitments the UK is willing to make to respect the integrity of the Union’s legal order and the role of the CJEU. It also requires (**para 83**):

... long-standing commitments to the fundamental rights of individuals, including continued adherence and giving effect to the ECHR, and adequate protection of personal data, which are both essential prerequisites for enabling the cooperation envisaged by the Parties.

The reference to “adherence and giving effect to the ECHR” suggests that securing an agreement on future security cooperation will require a firmer commitment to the ECHR on the part of the UK than the general requirement to “respect the framework of the ECHR” contained in the core values and rights provisions in **paragraph 7**.¹³⁹ This would be consistent with the EU’s position as presented in a set of slides on 18 June 2018 addressing [Police and judicial cooperation in criminal matters](#), in which it was proposed that the UK’s withdrawal from the ECHR, or failure to execute a judgment of the European Court of Human Rights (ECtHR), would activate a “guillotine clause” with respect to internal security cooperation.

However, the wording of this section changed after the outline PD published on 14 November (as did the reference to the ECHR in paragraph 7). The original draft referred to “continued adherence to the ECHR *and its system of enforcement*”. This drafting change may again reflect the UK Government’s desire to retain greater flexibility with respect to its future relationship with the ECHR and the jurisdiction of the ECtHR.

The Security Minister, Ben Wallace, said in a speech on 29 November 2018:

¹³⁹ See section 3.1 of this paper.

The Political Declaration sets out the scope and ambition for the future relationship we and the EU want to have on security post-transition, and which negotiators will use to deliver a legal agreement after we leave in March next year.¹⁴⁰

He went on to describe the deal as the “broadest security partnership in the EU’s history”.

The House of Lords EU Scrutiny Committee has welcomed the ambition by both sides to strike a “broad, comprehensive and balanced security partnership”, but noted that this may fall short of the Government’s ambition for a single comprehensive treaty covering all areas of security cooperation.¹⁴¹

The Home Affairs Select Committee published a report on 7 December 2018 expressing concern that the PD is “seriously lacking in detail and provides insufficient clarity about both the future security partnership and future arrangements at the border”. The Committee also expressed disappointment with the EU’s position that the UK cannot have access to a number of crucial security and policing mechanisms, and that the terms of the PD and WA will weaken the UK’s future negotiating position.¹⁴²

Data exchange

The PD makes specific reference (**para 86**) to arrangements for the exchange of Passenger Name Records (PNR) data and to DNA, fingerprints and vehicle registration data (matters currently covered by the so-called Prüm Decisions).

It makes no specific mention of SIS II or ECRIS,¹⁴³ but suggests (**para 87**) that the “Parties should consider further arrangements ... such as exchange of information on wanted or missing persons or objects and of criminal records ... that so far as technically and legally possible ... approximate those enabled by relevant Union mechanisms”.¹⁴⁴

The distinction between the measures specifically mentioned and those that are not may be intended to reflect current third country precedents. No non-EU, non-Schengen countries have access to SIS II; no non-EU country has access to ECRIS; Iceland and Norway have access to Prüm, while Switzerland and Lichtenstein have begun negotiations; and Australia, Canada and the US have PNR agreements with the EU.

In evidence to the Home Affairs Committee on 27 November, the Home Secretary stressed that although there was no specific mention of SIS II and ECRIS in the PD, these measures were not “out of scope” of the agreement, and that he remained confident of securing agreement on further access to data. However, he also noted that the UK had not had

¹⁴⁰ [Brexit security speech](#), Ben Wallace, 29 November 2018

¹⁴¹ [Brexit: The Withdrawal Agreement and Political Declaration](#), House of Lords EU Scrutiny Committee, 5 December 2018, para 267

¹⁴² [Home Office preparations for the UK exiting the EU](#), Home Affairs Select Committee, Twelfth Report of Session 2017-19, 7 December 2018, para 12

¹⁴³ The second generation Schengen Information System and the European Criminal Records Information System, the current mechanisms for exchanging information on wanted and missing persons and items and criminal records.

¹⁴⁴ PD para 87

access to SIS II before 2015, and that although it was “nice to have”, the country would still be safe without access to it.¹⁴⁵

The Committee expressed concern, however, that Home Office Ministers were not taking seriously enough the risks arising from losing these capabilities:

It is clear from the evidence we received that there can be no substitute for SIS II, and our previous reports highlighted the significant risks that would be created if we lose access to it. A failure to retain access to SIS II and ECRIS would be a significant downgrade of our policing and security capability at a time when cross border crime and security threats are increasing.¹⁴⁶

The Committee noted that access to SIS II in particular is likely to be difficult to negotiate, given that the UK was previously denied access to the Schengen Visa System on the basis that it does not participate in the migration aspects of Schengen, and the legal obstacles encountered with respect to recent data exchange agreements between the EU and the US and Canada.

Operational cooperation between law enforcement authorities and judicial cooperation in criminal matters

The PD makes specific mention (**para 88**) of ongoing cooperation via Europol and Eurojust. It also commits to establishing procedures for the efficient and expeditious surrender of suspected and convicted persons, as a replacement to the European Arrest Warrant. It acknowledges the need to address the potential obstacles to a third country gaining access to equivalent arrangements, namely the requirement of double criminality,¹⁴⁷ and exceptions for own nationals and political offences.

The Home Affairs Select Committee expressed frustration at the lack of detail on the UK’s future relationship with Europol, suggesting that:

If negotiations fail to deliver a bespoke arrangement ... that maintains existing capabilities, it will mean a security downgrade and a failure of the Government in achieving its objectives¹⁴⁸

The Committee also suggested that the Home Office was “overly-optimistic” about how easy it would be to negotiate a replacement for the EAW by the end of the transition period, particularly if the Government is seeking an alternative dispute resolution mechanism to the CJEU.¹⁴⁹

The PD also refers (**para 90**) to the Parties giving consideration to further cooperation measures, such as joint investigation teams, with a

¹⁴⁵ [Oral evidence session, The work of the Home Secretary, 27 November 2018](#)

¹⁴⁶ [Home Office preparations for the UK exiting the EU](#), Home Affairs Select Committee, Twelfth Report of Session 2017-19, 7 December 2018, para 41

¹⁴⁷ That is, that an extraditable offence is an offence in both jurisdictions concerned

¹⁴⁸ [Home Office preparations for the UK exiting the EU](#), Home Affairs Select Committee, Twelfth Report of Session 2017-19, 7 December 2018, para 26

¹⁴⁹ [Home Office preparations for the UK exiting the EU](#), Home Affairs Select Committee, Twelfth Report of Session 2017-19, 7 December 2018, para 33.

view to delivering measures approximate to existing mechanisms, “in so far as is technically and legally possible”.

Anti-money laundering and counter-terrorism funding

The PD states that the parties agree to support international efforts to address money laundering and terrorist financing, in particular through compliance with Financial Action Task Force standards.

5.1 Foreign policy and defence

The PD reiterates many of the principles of future cooperation in foreign policy and defence that had already been discussed and agreed,¹⁵⁰ such as the need for “close, flexible and scalable cooperation” (**para 94**) that respects the autonomy of both parties, structured consultation between the UK and EU at different levels, the exchange of information, and the need for “close cooperation in Union-led crisis management missions and operations, both civilian and military”.

However, the detail on how such principles will be delivered is limited. While the language of the Declaration would suggest a degree of compromise in certain areas such as operational planning and defence industrial cooperation, it remains unclear what either side has ceded, or achieved, in that discussion and what is left to be resolved once formal negotiations on the future security partnership commence.

Coordination of Foreign Policy

Given the shared values and interests of the UK and the EU, the need for close cooperation in external action has long been recognised and reflected in both parties’ negotiating positions. The PD reiterates that need for “ambitious, close and lasting cooperation”.

It envisages structured consultation and regular thematic dialogue in areas where close cooperation could contribute to the attainment of common objectives.¹⁵¹ Where appropriate, the UK may also be invited to participate in informal EU Ministerial meetings.

Coordination on security, consular provision and development projects in relation to third countries should also form part of the future relationship in order for both Parties “to support each other’s positions, deliver external action and manage global challenges in a coherent manner through agreed statements, demarches and shared positions”.

The PD also envisages close consultation and cooperation on sanctions (see below).

Military operations and planning

¹⁵⁰ The more recent negotiating positions of the UK and EU on defence matters is outlined in detail in section 11.2 Library Briefing Paper, 8408, [Brexit Unknowns \(update\)](#), September 2018

¹⁵¹ At Ministerial, senior official and working levels.

The PD commits to establishing a ‘Framework Participation Agreement’ (**para 101**) that will allow the UK to participate in CSDP missions and operations on a case-by-case basis, where it chooses to do so.

It suggests consultation and the exchange of information with the UK early on in the planning process for those CSDP operations “open to third countries” (**para 102**), which would intensify at “relevant planning stages” once the UK had indicated its intention to contribute. That degree of consultation and exchange of information would remain proportionate to the level of participation by the UK, although the Declaration acknowledges that it would also allow the UK “to best tailor its contribution and provide timely expertise” (**para 102**).

While the language is similar to that used by both sides in previous negotiating documents,¹⁵² the commitment to early consultation and information exchange would indicate a degree of compromise by the EU. However, it remains unclear whether that early exchange of information would include UK access to operational planning documents. Such a level of access would go far beyond current third-party arrangements and is something that the EU has long resisted.

Should the UK choose to become involved in any CSDP operation it would be entitled to participate in the Force Generation conference and the Committee of Contributors to enable the sharing of information. The secondment of staff to the designated Operational HQ would also be a possibility.

However, it remains the case that as a third country the UK would not have any decision-making rights with respect to the direction of the EU-led operation, regardless of its contribution, which would remain within the purview of the EU Member States. For many commentators the commitment of UK military capabilities to an operation over which the British Government would have no formal say, is an unacceptable compromise.

Defence Capabilities

The need for collaboration in capability development in order to achieve interoperability has already been acknowledged by both sides. The PD reiterates (**para 104**) that with a commitment to participation by the UK in European Defence Fund (EDF) projects,¹⁵³ collaboration in Permanent Structured Cooperation (PESCO) projects where invited to do so,¹⁵⁴ and projects under the remit of the European Defence Agency through the establishment of an Administrative Arrangement.¹⁵⁵

¹⁵² [Proposals presented by the EU](#) in June 2018 and in HMG July 2018 [White Paper](#).

¹⁵³ Proposals for third party involvement in the EDF are currently being discussed in the European Parliament, which the UK Government has previously suggested are too restrictive. Further detail is available in Library Briefing CBP 8216, [European defence: where is it heading?](#)

¹⁵⁴ More detail on the capability projects that come under the remit of Permanent Structured Cooperation (PESCO) is available in Library Briefing Paper 8149, [EU Defence: the Realisation of Permanent Structured Cooperation](#)

¹⁵⁵ Norway (2006), Switzerland (2012), Serbia (2013) and Ukraine (2015) have all concluded Administrative Arrangements that enable them to participate in EDA projects and programmes.

Such collaboration, particularly in EDF and PESCO projects, will however be subject to conditions set down in EU law, and the details of that third-party participation are currently being discussed within the EU's institutions.¹⁵⁶

Therefore, while any future security partnership may set out the principle of defence industrial collaboration, the terms of that involvement will continue to be determined by, and subject to, the procedures and decision-making autonomy of the EU. If the UK wishes to participate it will have to accept those terms.

Sharing of intelligence

The PD envisages (**para 105**) the sharing of intelligence on a "timely and voluntary basis as appropriate" between the relevant EU bodies and the UK, in particular in the field of counter-terrorism, hybrid and cyber threats and in support of CSDP missions which the UK is contributing to.

Sanctions

As an EU Member State, the UK imposes sanctions largely using the powers in the [European Communities Act 1972](#). The 2018 [Sanctions and Anti-Money Laundering Act](#) provides for creating sanctions regimes independently of the EU, although these new sanctions powers will not enter into force until exit day.¹⁵⁷ Unless transition temporarily preserves the ECA, the Sanctions Act powers will be needed to continue implementing EU sanctions, as the limited powers in the [Asset Freezing Act 2010](#) and the [United Nations Act 1946](#) would not be enough.

It remains UK policy that sanctions are far more effective for a country like the UK if they are imposed in conjunction with allies. The Government says UK support for European defence and security is [unconditional](#), and there is a clear desire to collaborate with European neighbours. Analysts point out that on two of the big foreign policy questions of the day, the UK has remained fully aligned with the EU. On the question of Iran, the UK is strongly opposed to the [US decision to leave the Joint Comprehensive Plan of Action](#) nuclear deal with Iran.¹⁵⁸ The UK has also aligned with EU partners in arguing against the US leaving the [Paris Climate Agreement](#).

Cooperation on sanctions policy during transition was envisaged in the March 2018 draft WA, and the Government's July 2018 White Paper [Legislating for the Withdrawal Agreement between the United Kingdom and the European Union](#) said:

¹⁵⁶ [Legislative proposals](#) establishing the European Defence Fund are currently in the European parliament; while PESCO participating states are due to formally agree the terms of third party participation in PESCO at the European Council meeting in December 2018. Further detail on both initiatives is available in Library Briefing CBP 8216, [European defence: where is it heading?](#)

¹⁵⁷ For further information on sanctions see Library briefing paper 8402, [The future of sanctions](#), 26 September 2018.

¹⁵⁸ ['Joint statement on the re-imposition of US sanctions on Iran.'](#) Foreign and Commonwealth Office press release, 6 August /2018

The UK and the EU will maintain regular dialogue and consultation on foreign, security and defence policy, and the consultation mechanisms agreed for CFSP during the implementation period will be an important part of maintaining our ongoing effective cooperation, including on sanctions policy.¹⁵⁹

The UK Government argues that sanctions policy will be closely coordinated with the EU rather than aligned, so a formal agreement to implement sanctions as created by the EU seems unlikely. Even if sanctions targets were in practice the same, methods of enforcement could differ.

The PD approach to sanctions (**para 100**) is based on consultation and cooperation:

Consultation on sanctions should include the exchange of information on listings and their justification, development, implementation and enforcement, as well as technical support, and dialogue on future designations and regimes. Where foreign policy objectives that underpin a specific future sanction regime are aligned between the Parties, intensified exchange of information at appropriate stages of the policy cycle of this sanctions regime will take place, with the possibility of adopting sanctions that are mutually reinforcing.

In her statement to the House of Commons, the Prime Minister said the UK would “continue to work together on sanctions against those who violate international rules or commit atrocities”.¹⁶⁰

The PD provision for “intensified exchange of information” where policy objectives are aligned is significant in that it suggests that the parties envisage developing certain sanctions regimes together, based on shared information. There is no mention, however, of any formalised consultation mechanisms or institutions.

When it comes to cooperation, “...the possibility of adopting sanctions that are mutually reinforcing” seems to fall short of any firm commitment to harmonised sanctions implementation where appropriate.

5.2 Space

The PD states at **paragraph 107** that the parties “should consider appropriate arrangements for cooperation on space”.

The focus of discussions about UK-EU cooperation on space during the negotiations was UK participation in the Galileo satellite navigation programme.¹⁶¹ The UK Government called for, among other things, unrestricted access to the Galileo programme information to the same extent as EU Member States, including the right to manufacture security sensitive receiver equipment.¹⁶² In June 2018 the European Commission

¹⁵⁹ [Paragraph 102](#)

¹⁶⁰ [HC Deb 22 November 2018, c1097](#)

¹⁶¹ For more information, see the House of Lords Library note, [Galileo Satellite System](#), 13 November 2018. For background on the UK’s participation in EU space programmes in general, see the European Scrutiny Committee, [Twenty-fourth report of session, HC 301-xxiii](#), 18 April 2018.

¹⁶² HM Government, [Technical note: UK participation in Galileo](#), 24 May 2018.

stated that the UK could not participate in security sensitive aspects of Galileo and would be treated as a third party.¹⁶³ The Government has since committed £92 million to an 18-month programme to design a UK Global Navigation Satellite System, which it says will inform a decision on whether to create an independent system as an alternative to Galileo.¹⁶⁴

On 25 November 2018 *The Times* [reported](#) that an earlier draft of the political declaration contained a clause stating that the UK could stay in the Galileo programme but only as a “third party”. The article reported that Defence Minister Gavin Williamson insisted that the wording be removed because he “could not agree to the armed forces relying on a system over which it had no control but would still rely on bilateral contributions of £200m”.¹⁶⁵

5.3 Development cooperation

The PD includes foreign policy and international development as part of the “ambitious, broad, deep and flexible partnership” that the UK and EU have agreed will shape their overall future relationship.

There is repeated reference to dialogue, cooperation and the creation of mechanisms to facilitate such activities. There is also explicit reference to possible future UK participation in “Union programmes”, which could involve financial contributions. But the PD does not provide a detailed account of how the partnership will operate in these areas – this will be agreed in the course of the next phase of negotiations. The **Key paragraphs are 3, 11, 77, 80-81, 92-95, 108-109**. See also section 5.1 on defence and security cooperation.

5.4 Cyber security

The PD states that the UK and EU reaffirm their commitment to increased international cooperation to promote security and stability in cyberspace and agree to exchanging information on cyber incidents and threats.

It refers to “close cooperation” (**para 111**), particularly in regard to the EU [Computer Emergency Response Team](#), the [Cooperation group](#) established under the Security of Network and Information Systems (NIS) Directive and the [European Union Agency for Network and Information Security](#) (ENISA).

The National Cyber Security Centre is the UK’s single point of contact under the NIS Directive and represents the UK at the NIS Cooperation Group.¹⁶⁶ The NIS Directive was implemented in the UK through the

¹⁶³ European Commission, [Involvement in the EU's space-related activities \(slides\)](#), 13 June 2018

¹⁶⁴ BEIS, [Satellites and space programmes if there's no Brexit deal](#), 13 September 2018, accessed 28 November 2018.

¹⁶⁵ *The Times*, [Galileo satellites offer axed in cabinet Brexit rebellion](#), 25 November 2018.

¹⁶⁶ National Cyber Security Centre, [Introduction to the NIS Directive](#), 31 October 2018

Network and Information Systems Regulations 2018 which came into force in May 2018.¹⁶⁷

The Joint Committee on the National Cyber Security Strategy, in its [report](#) on the Cyber Security of UK Critical National Infrastructure published on 19 September, recommended that the “Government should prioritise maintaining access to the EU’s NIS Coordination Group and its workstreams to facilitate continued information-sharing and collaboration with EU Member States” .¹⁶⁸

5.5 Civil Protection

The July White Paper set out that the Government wished to remain in the EU’s civil protection mechanism as a third country.

The EU’s [Civil Protection Mechanism](#) enables Member States to coordinate their response to natural and man-made disasters within and beyond the EU. It covers all Member States, and Iceland, Montenegro, Norway, Serbia, Macedonia and Turkey all participate as third countries.

The Civil Protection Mechanism has been subject to review and negotiation at EU level. A new legislative instrument will be required for the mechanism for 2021 onwards; it was last updated in 2013. Proposals from the Commission are currently being considered to amend the current mechanism running to 2020 aimed at concerns around the capacity within it to deal with recent demands. The House of Commons European Scrutiny Committee have reported on the changes multiple times, including Government concerns, most recently on [12 September 2018](#).¹⁶⁹

The Government argued in the July White Paper that the UK has been “one of the most active countries in civil protection”, and that “between 2013 and 2017 the UK sent thousands of tonnes of assistance items and more than 1,200 experts for emergency responses”. It argued that participation supports “the security of citizens across Europe and more globally”.¹⁷⁰

The PD states (**para 114**) that the UK and EU will cooperate on civil protection in relation to natural or manmade disasters through the UK being a ‘participating state’ in the mechanism:

The Parties should cooperate in the field of civil protection in respect of natural or manmade disasters. This cooperation would be enabled by the United Kingdom’s participation in the Union’s Civil Protection Mechanism as a Participating State.

The Government’s Explainer says this clause allows the UK “to have the option to take part in the EU’s civil protection mechanism once it has

¹⁶⁷ [Network and Information Systems Regulations 2018](#)

¹⁶⁸ Joint Committee on the National Security Strategy, Cyber Security of the UK’s Critical National Infrastructure, Third Report of Session 2017–19, [HC1708](#), 19 November 2018, paragraph 60.

¹⁶⁹ European Scrutiny Committee, [The EU Civil Protection Mechanism: strengthening EU disaster management](#) (25th report of 2017-19), 25 April 2018 and [The EU Civil Protection Mechanism: strengthening EU disaster management](#) (38th report of 2017-19), 18 September 2018

¹⁷⁰ HM Government, July 2018 White Paper, section 21.4

been negotiated and agreed".¹⁷¹ It has not been explained how any specific agreement on participation in the mechanism will be made.

5.6 Health Security

The Government's July 2018 White Paper stated that it has worked "closely with EU partners to make sure systems and infrastructure are in place to protect citizens within the UK, the EU and beyond from health threats that do not recognise borders" and that "maintaining the ability to act in a similar way in the future is key to protecting citizens". It highlighted several areas where it wished to continue co-operating, such as with the European Centre for Disease Prevention and Control (ECDC) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), and said the co-operation should extend to relevant bodies in devolved areas.¹⁷²

The PD states that the "Parties should cooperate in matters of health security in line with existing Union arrangements with third countries". **Article 115** goes on to state that the parties "...will aim to cooperate in international fora on prevention, detection, preparation for and response to established and emerging threats to health security in a consistent manner".

According to the Government's Explainer, cooperation on health security between the UK and EU will happen "...according to the precedents set by third countries". Its example of international fora is the World Health Organisation.

5.7 Counter-terrorism and countering violent extremism

In **paragraph 117** the parties agree to cooperation on counter-terrorism, countering violent extremism and emerging threats, including sharing best practice and expertise; cooperation with intelligence analysis bodies and engaging in a close dialogue on emerging threats and capabilities.

The Home Secretary told the Home Affairs Select Committee in evidence on 27 November that the UK Government wants to increase cooperation with international partners on counter-terrorism, both in Europe and beyond. He stated that UK representatives attend regular meetings with allies across Europe as part of the Counter Terrorism Group, and that the UK would "remain part of many of these groups".¹⁷³

5.8 Classified and sensitive non-classified information

When the EU wants to exchange classified information regularly with a third country it negotiates arrangements for sharing and protecting

¹⁷¹ HM Government Explainer, para 125

¹⁷² HM Government July White Paper, section 21.5

¹⁷³ [Oral evidence session, The work of the Home Secretary, 27 November 2018](#)

classified information through a Security of Information Agreement (SolA).¹⁷⁴

The UK and the EU agree that the exchange of classified information is fundamental for future cooperation, especially in relation to security, but also in the context of economic cooperation.¹⁷⁵ **Paragraph 118** states that the UK and EU have agreed to conclude a SolA to give reciprocal guarantees for the handling and protection of classified information.

In addition to a SolA, the EU and UK may exchange sensitive non-classified information to support some key areas of the partnership, such as in sanctions cooperation.¹⁷⁶ **Paragraph 119** states that, where necessary, the UK and EU should set out the terms for the protection of sensitive non-classified information provided and exchanged between them.

¹⁷⁴ HM Government Explainer para 130

¹⁷⁵ Ibid, para 131

¹⁷⁶ HMG Explainer, *ibid*, para 132

6. Part IV: Institutional & other Horizontal Arrangements¹⁷⁷

6.1 Structure

The first section of Part IV makes clear that the ‘future relationship’ is envisaged as a ‘framework’ relationship, whereby there is an ‘overarching institutional framework’ but the details of the operation agreements in distinct policy areas will have to be worked out through the negotiations (**para 120**). If needed, however, separate governance structures can be provided for agreements in specific policy areas (**para 120**), and agreements concluded can also sit outside of the ‘framework’ if needed (and thus also have their own governance arrangements) (**para 121**). The Political Declaration notes that this framework relationship could ‘take the form of an Association Agreement’ (**para 122**) and should be reviewable (**para 123**).

If the future relationship takes the form of an Association Agreement, its EU legal basis will be Article 217 of the TFEU.¹⁷⁸ The majority of the EU’s existing association agreements are ‘mixed agreements’, thus involving both EU competences and Member State competences and requiring ratification not only by the EU, but by the individual Member States (and where constitutionally required, Member States’ regional parliaments). The most recent comprehensive ‘association agreement’ concluded by the EU has been the EU-Ukraine Association Agreement; negotiating directives for this Agreement were [adopted by the Council in 2007](#), and the negotiations were finalised, with the agreement signed but not ratified, in 2014. While the UK and Ukraine’s relationship with the EU to date are incomparable—in that one has identical regulations to date, the other did not—the ratification process of the agreement after its negotiation, [which commenced in 2014 and completed in 2017](#), may be comparable, and suggests that the Withdrawal Agreement’s ‘transition and implementation’ period until 2020 will not provide enough time to conclude the ‘future relationship’ agreements.

6.2 Governance

The provisions on governance of the future relationship are contained in the second section of Part IV. **Paragraph 124** sets out the overarching aim of both parties regarding governance:

In order to ensure the proper functioning of the future relationship, the Parties commit to engage in regular dialogue and to establish robust, efficient and effective arrangements for its management, supervision, implementation, review and development over time, and for the resolution of disputes and

¹⁷⁷ For an overview of the UK and EU positions insofar as known prior to the publication of the Political Declaration, see the Commons Briefing Paper [Brexiteer and Governance of the UK-EU Relationship](#) (14 September 2018).

¹⁷⁸ See [this](#) UK in a Changing EU explainer for further details on EU association agreements.

enforcement based on the arrangements provided for in the Withdrawal Agreement, in full respect of their own legal order.

Dispute settlement

Most interesting in **paragraph 124**, and reiterated in more detail in **paragraphs 132-135**, is the linkage between dispute settlement in the Withdrawal Agreement and dispute settlement in the future relationship. In summary, there will be two stages of dispute settlement regarding the future relationship:

- a. Informal discussions or formal discussions/consultation [paragraph 132] before the Joint Committee managing the agreements/future relationship [as established in paragraph 129]; and where this does not resolve the dispute in a 'defined period of time' -
- b. A reference to an independent arbitration panel, who will determine the outcome of the dispute in a binding manner, and who will be obliged to refer all questions of 'interpretation of Union law' to the CJEU for a binding ruling on the meaning of EU law. [Paragraph 133-134].

Paragraph 135 adds to this that where either party fails to comply with the binding outcome of the arbitration process, the other party is entitled to 'request financial compensation' or take safeguard measures, including the suspension of its obligations; but the proportionality of compensation requests or safeguard measures are also subject to arbitration.

This reflects a compromise between the EU's insistence on the autonomy of EU law, as discussed in detail in [this briefing paper](#), and the UK's insistence that a neutral body oversees dispute settlement in future EU-UK relations, rather than the CJEU being the 'appeal' court. However, it is not entirely clear that the compromise struck will satisfy the CJEU, as it may find that having an arbitration panel decide *when* matters of EU law need interpretation is itself an interpretation of EU law.

The remaining provisions in the second section of Part IV of the Political Declaration set out more detailed aims regarding 'strategic direction and dialogue', 'management, administration and supervision', and 'interpretation'.

On 'strategic direction and dialogue', **paragraphs 125-128** make clear that dialogue should take place at summit level, ministerial level, the technical (or civil service) level, and at the parliamentary level. The Parties 'should encourage civil society dialogue', though how this is to be encouraged is left unspecified.

Summit and ministerial level dialogue, per **paragraph 126**, should provide 'strategic direction and discuss opportunities' for further cooperation where desirable. At a ministerial/official level, paragraph 127 notes that there should be 'thematic dialogues', as often as necessary, relating to specific aspects of the future relationship agreement. In an analogy, the 'summit' meetings are akin to European Council meetings, where the 'ministerial/official' thematic meetings are akin to Council of Ministers meetings.

Paragraph 128 finally specifies that both parties ‘support’ the establishment of a dialogue between their respective Parliaments, as those parliaments see fit, with the purpose of sharing expertise and opinion on issues related to the future relationship. The wording suggests that the setup of inter-parliamentary dialogue will be left to the parliaments themselves to design.

On ‘management’, **paragraphs 129 and 130** establish a Joint Committee, with what appears to be very similar functions and abilities to those the Joint Committee of the Withdrawal Agreement has; they are set out in significantly less detail in the Political Declaration, however.

Finally, on ‘interpretation’, paragraph 131 states the following:

In full respect of the autonomy of the Parties’ legal orders, the Union and the United Kingdom will seek to ensure the consistent interpretation and application of the future relationship.

Some of this ‘consistent interpretation’ is guaranteed by the references to the CJEU set out in paragraph 134 – but in the absence of disputes about the future relationship, consistent application and interpretation of the agreements in *genera*/will fall to each Party separately. The EEA functions in a similar fashion, where its Joint Committee is charged with consistent application and updating of the EEA Agreement.

Exceptions and Safeguards

The final section of part IV of the Political Declaration sets out so-called exceptions and safeguards, meaning areas where the future relationship will never apply (exceptions) and where it may be temporarily suspended because of overriding concerns on the part of either party (safeguards). These are both fairly standard conditions in international agreements.

Paragraph 136 sets out the primary exception: ‘national security is the sole responsibility of the Member States of the Union and the United Kingdom respectively’. This means that even in areas where there otherwise would be cooperation and information sharing between the parties, either party can rely on a ‘national security’ exception to exclude cooperation and information sharing.

Paragraph 137, finally, indicates that where there are ‘circumstances of significant economic, societal or environmental difficulty’, either party can temporarily suspend its obligations under the future relationship agreement. The other party would be entitled to take so-called ‘rebalancing measures’, with the caveat that their proportionality would be challengeable before the arbitration panels established in para 133.

7. Part V: Forward Process

Part V sets out some general principles on how progress will be made in developing the Political Declaration and a structure for the negotiations on the future EU-UK relationship.

Paragraph 138 says that once the WA is concluded and before the UK leaves the EU, preparatory work will begin for the formal negotiations on the future relationship. The priority will be to find alternative, permanent arrangements for ensuring there is no hard border between Northern Ireland and Ireland.

Negotiations to conclude (ratify) the legal agreement(s) will begin as soon as the UK is a third country (30 March 2019) and both parties have committed to “best endeavours” to ensure the future relationship enters into force by the end of the transition period.

Before Withdrawal

Paragraphs 141 to 143 state that between the approval of the declaration and the UK’s exit from the EU, both parties will engage in preparatory organisational work in order to enable formal negotiations on the future partnership to commence rapidly.

This will involve identifying areas likely to require greatest consideration and drawing up a proposed schedule. Specific mention is made here, in terms of the former, of “elements related to the alternative arrangements for ensuring the absence of a hard border on the island of Ireland on a permanent footing”.

The logistical arrangements of the formal negotiations will also be considered.

After Withdrawal

Paragraph 144 refers to necessary steps being taken to begin formal negotiations under Article 218 TFEU. This Article lays down a procedure for EU negotiation of agreements with third countries, under which the Council of the EU authorises the opening of negotiations, adopts negotiating directives, authorises the signing of agreements and concludes them. The European Commission submits recommendations to the Council prior to the authorisation of negotiations. Association Agreements also require the consent of the European Parliament. The Parliament, Council, Commission and Member States can seek an opinion of the CJEU as to whether an agreement envisaged is compatible with the Treaties.¹⁷⁹

If, as is likely, the future agreement covers areas that go beyond the exclusive competences of the EU, it will need to also be approved by each of the Member States in accordance with their own constitutional approval or ratification procedures for international agreements. This is

¹⁷⁹ The EU process for negotiating and adopting trade agreements is explained in detail in the European Commission publication, [Negotiating EU trade agreements](#).

the case in so called [mixed agreements](#) where competence is shared between the EU and its Member States, and whereby international agreements are therefore concluded both by the EU and by the EU Member States.

After formal negotiations are launched, **paragraph 144** states that the UK and EU will also negotiate, in parallel, agreements needed to give the future relationship legal form.

Based on the preparatory work undertaken immediately before the UK's withdrawal, **paragraph 145** explains that the UK and EU will agree a programme including:

- a. The structure and format of the negotiation rounds; and
- b. A formal schedule of negotiation rounds.

Review Points

Paragraph 147 states that the UK and EU will convene a high level conference every six months following the date of the UK's departure from the EU "to take stock of progress and agree, as far as is possible between them, actions to move forward".

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