



## BRIEFING PAPER

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# Revisions to the Political Declaration on the framework for future EU-UK relations

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## Summary

The revised [Political Declaration](#) (PD) on the future EU-UK relationship agreed on 17 October 2019 changed the previous version agreed in November 2018 in a number of ways. Among the revisions in the new PD, references to building on provisions in the November 2018 Withdrawal Agreement (WA) relating to the envisaged UK-EU single customs territory and the level playing field provisions that came with it (common standards in employment, environmental, state aid and competition policy) have been removed. These provisions are also no longer in the WA.

References to close UK alignment with EU rules and to a trading relationship that is “as close as possible” are also removed. The revised PD also no longer proposes building on the dispute resolution and enforcement arrangements set out in the WA.

## The November 2018 Political Declaration

The [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#) was agreed by the UK and EU on 25 November 2018 alongside the Withdrawal Agreement (WA).

The Political Declaration (PD) fulfils a requirement in Article 50 of the Treaty on European Union (TEU) that the withdrawal agreement (or “divorce settlement”) with a leaving Member State must take account of “the framework for its future relationship with the Union”.

The 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.

There is nothing to preclude the UK and the EU in the future agreeing a relationship framework that goes beyond the parameters set by the PD. Alternatively a looser arrangement could be agreed.

The Political Declaration (PD) outlined a set of commitments on a proposed future agreement on the UK-EU relationship and provided some parameters for the future negotiations. It was 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

### Economic Partnership

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

It said that 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. The PD also referred to the development of an independent trade policy by the UK.

**Trade in goods:** The PD said that the economic partnership should maintain the current situation of no tariffs or quotas on trade in goods between the UK and EU. A range of outcomes for checks and controls would be possible, depending on the final design of the customs and regulatory arrangements.

**Trade in services:** The PD left the settlement of trade in services and investment open for future EU-UK negotiations. It built on the premise that the UK leaves the single market for services and pursues regulatory autonomy. However, it said the UK and the EU would aim at a level of services liberalisation well beyond the current commitments under the World Trade Organization (WTO) and existing free trade agreements (FTAs).

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

**Financial services:** The future basis of cooperation would be 'equivalence' which is different, and less extensive, than the current system of passported services.

## Security Partnership

### **Law enforcement and judicial cooperation in criminal matters:**

The future relationship would 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.

**Foreign policy and defence:** The PD referred to the need for 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.

## 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 would be based on the dispute resolution mechanism in the Withdrawal Agreement.

## Forward Process

The PD commits the UK and EU to begin the formal negotiations on the future relationship as soon as the UK leave the EU, and endeavour to have a new relationship framework in place by the of 2020 (the scheduled end of the transition period provided for in the Withdrawal Agreement).

## Revised Political Declaration, 17 October 2019

On 17 October 2019 a revised [Political Declaration](#) (PD) agreed by UK and EU negotiators was published, alongside a revised [Withdrawal Agreement](#) (see Commons Library Briefing 8713, [The October 2019 EU UK Withdrawal Agreement](#)). This made a number of changes to the previous PD, reflecting a change of approach from the UK Government.

Notably, changes to the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement (WA) are reflected in the revised PD. The changes in the Protocol eliminate the 'backstop' provisions which could have kept the whole of the UK in a single customs territory with the EU for an indefinite period. Consequently, the provisions in the protocol are no longer referred to in the revised PD as a basis on which to develop future co-operation between the UK and the EU.

Revisions to the PD also reflect a change in the UK Government's position on alignment with EU rules. This was signalled in Boris Johnson's letter to European Commission President Jean-Claude Juncker on 2 October. The Prime Minister described the backstop "as a bridge to a proposed future relationship with the EU in which the UK would be closely integrated with EU customs arrangements and would align with EU law in many areas". He said that this proposed future relationship is not the goal of the current UK Government.

Among the revisions to the PD are the following:

### **Economic Partnership**

- All references in the previous PD to a "free trade area" have been replaced with a Free Trade Agreement.
- References in the previous PD to building upon the single UK-EU customs territory (as provided for by the backstop provisions) have been removed.
- Linked to the removal of references to the single customs territory, the new text acknowledges that Rules of Origin (which determine the country of origin of goods for tariff purposes) will resurface between the UK and the EU.
- An Article providing for consideration of UK alignment with EU rules has been removed.
- Paragraph 24 on customs now also explicitly references VAT matters.

- **Level Playing Field for Open and Fair Competition:** Paragraph 77 on level playing field provisions has been rewritten and is significantly more detailed. This relates to the removal of the backstop provisions in the WA which previously included level playing provisions alongside the envisaged single customs territory. The November 2018 PD said that these WA provisions – aimed at preventing non-regression of standards in relation to taxation, environmental protection, employment, and state aid and competition policy - would be built upon for the future relationship. The new text calls for robust commitments to prevent distortions of trade given the UK’s close geographical proximity to the EU. The precise nature of commitments would be commensurate with the scope of the future relationship.

### Security Partnership

- **Law enforcement and judicial co-operation in criminal matters:** The text is identical apart from the removal of a reference to the Court of Justice of the EU (CJEU) in interpreting EU law with respect to dispute resolution. However, it refers to later Articles in the PD that do reference the CJEU’s role in this respect.
- **Foreign Policy, Security and Defence:** additional text to stress that UK involvement in Common Security and Defence Policy operations would be without prejudice to UK sovereignty and the autonomy of EU decision-making, and that the UK will maintain the right to determine how it will respond to invitations to participate.
- Revision of existing text on collaboration regarding research and industrial co-operation between the UK and EU to protect the effectiveness of Armed Forces. The UK will consider the extent to which it is possible, rather than agree to enable it to the extent possible.

### Institutional and Other Horizontal Arrangements

- Removal of references to continuing the arrangements set out in the Withdrawal Agreement regarding dispute resolution and enforcement.
- Less specific language on enforcement and dialogue, so that this will be at “appropriate levels” rather than at “summit, ministerial and technical level” as envisaged in the November 2018 PD.
- A new provision on dispute settlement to provide for expedient problem-solving through a “flexible mediation mechanism”. This would be without prejudice to the dispute settlement mechanisms provided for under the PD involving the Joint Committee and independent arbitration panel.
- Revised language relating to the role of the CJEU, including a new stress on the CJEU not being involved where there is no EU law to be interpreted.
- Revised language on remedies and financial compensation where either of the parties fail to comply with the outcome of the arbitration process.

### **Forward Process**

- New wording making clear that the European Commission is ready to propose provisional application of relevant parts of the future relationship, where the relevant legal frameworks and practices are there.
- Less specific language on future high-level meetings. Rather than these being every six months (as provided for in the November 2018 PD) only a single meeting is explicitly identified as taking place. This will be in June 2020.



# 1. How we got here

## 1.1 Article 50 and the initial negotiations

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 withdrawing Member State as a ‘third country’.

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 the one that has recently come into force 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)).<sup>1</sup>

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, Prime Minister 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”.

The December 2017 [joint UK-EU report](#) included a commitment to preventing the emergence of a hard border between Northern Ireland and Ireland. 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. A Norway style model (EEA membership) would also not on its own be sufficient to prevent a hard border. However, combined with agreement of a UK-EU customs union (Norway plus), as [mooted](#) by Mr Barnier and others, it would do so.<sup>2</sup>

In July 2018, the UK Government adopted the ‘Chequers’ plan which formed the basis of the Government White Paper [on the future](#)

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<sup>1</sup> The EU plus Norway, Iceland and Lichtenstein.

<sup>2</sup> See Commons Briefing Paper 08483 [Brexit: proposals for the future UK-EU relationship](#)

[relationship between the United Kingdom and the European Union](#).<sup>3</sup>

Chequers proposed that after Brexit the UK would follow a 'common rulebook' with the EU in relation to EU rules enabling frictionless trade in goods and agri-foods. 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.

After rejecting the EU proposal of a Northern Ireland-only 'backstop', which Mrs May [said](#) would "not respect that Northern Ireland is an integral part of the United Kingdom", the Government [proposed](#) a UK-wide solution which would involve the UK staying in a single customs territory with the EU until a more permanent agreement was reached on future UK-EU relations. This was agreed with the EU as part of the Ireland/Northern Ireland protocol of the Withdrawal Agreement in November 2018.

## 1.2 The November 2018 Withdrawal Agreement and Political Declaration

The UK and EU 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 Withdrawal Agreement (WA) at a special European Council meeting on 25 November.

The PD outlined a set of commitments on a proposed future agreement on the UK-EU relationship and provides some parameters for the future negotiations.<sup>4</sup> It referred to the ending of free movement of people between the UK and EU, which would appear to rule out EEA/Single Market membership, and the development of an independent trade policy for the UK, which would appear to rule out a permanent UK-EU customs union.

The PD is non-binding (see section 2). The PD does not preclude the UK and EU moving beyond its parameters and negotiating a deeper relationship in the future. Alternatively, a looser arrangement could be agreed.

Paragraph 138 of the PD stated that once the WA has been approved by the UK and EU, preparatory work would begin on negotiations for the future relationship with both parties committed to "best

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<sup>3</sup> 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.

<sup>4</sup> See House of Commons Library Briefing Paper CBP8454, [The Political Declaration on the Framework for Future EU-UK Relations](#), 3 December 2018

endeavours” to ensure the future relationship enters into force by the end of the envisaged post-Brexit transition period (the end of 2020 or end of 2022 at the latest if the transition is extended). The priority would be to find alternative, permanent arrangements to ensure there is no hard border between Northern Ireland and Ireland.

### 1.3 The WA and PD are rejected by the House of Commons

The WA and PD agreed in November 2018 were together rejected twice by the House of Commons, on 15 January and 12 March 2019. The second defeat came after the Government had [agreed](#) new supplementary texts with the EU<sup>5</sup>, giving assurances over the EU’s commitment to negotiate a future agreement to replace the backstop.<sup>6</sup>

These included a Joint Statement supplementing the Political Declaration reaffirming the commitment to “negotiate expeditiously” the future relationship framework referred to in the PD, and to prioritise negotiations on finding alternative arrangements to replace the backstop. The [Joint Statement](#) also noted the UK’s intention to ensure non-regression from EU social and employment and environmental standards and to provide Parliament the opportunity to consider future changes in EU law in these areas.

The European Council stated at the December 2018 European Council, and EU leaders continued to reiterate the position that the WA was [“not open for renegotiation”](#). Following the approval of the supplementary texts on 11 March European Commission President Jean-Claude Juncker [said](#): “There will be no further interpretations of the interpretations; and no further assurances of the re-assurances”. Mr Juncker and other EU representatives and leaders did however indicate [“openness”](#) to revising the Political Declaration to be more specific and “ambitious” with regard to the nature of the future UK-EU relationship.

The Government sought approval of the WA for a third time (this time without the PD) on 29 March but it was rejected by the House of Commons again. This meant that the UK was unable to leave the EU on the originally envisaged date of 29 March 2019. Following a European Council agreement to extend the Article 50 period for the first time on 21 March, there was a second agreement to delay Brexit on 10 April. The second Article 50 extension provided for a default Brexit date of 31 October unless the WA was ratified earlier.

While the backstop was particularly contentious for the Conservative MPs and the Democratic Unionist Party (DUP), the Labour Party cited concerns about the content of the PD and the absence of legally binding commitments for the future relationship. In a [letter](#) to the Prime Minister on 6 February, the Labour leader Jeremy Corbyn called on the Government to enshrine five changes to the PD in law in order to secure

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<sup>5</sup> For further details on what the backstop entails see House of Commons Library Insight, [The backstop explained](#), 12 December 2018.

<sup>6</sup> See House of Commons Library Briefing Paper CBP8525 [The ‘Strasbourg package’](#), 13 March 2019.

Labour support for a Withdrawal Agreement. These would include a permanent and comprehensive UK-wide customs union; close alignment with the EU Single Market, underpinned by shared institutions and obligations; and dynamic alignment on rights and protections. Prior to the second Article 50 extension request in April, the Government initiated cross-party talks with the Labour party to find a way forward.

On 21 May, the Theresa May made a [statement](#) announcing her plan to introduce the Withdrawal Agreement Bill, in order to implement the WA. This followed the end of talks with the Labour party without agreement. Mrs May said that there would be votes during the passage of the Bill on compromise options of a temporary customs union with the EU, and on whether to put the WA to a confirmatory referendum. Following opposition from within the Government and among Conservative MPs to this plan, Mrs May [announced](#) her resignation as leader of the Conservative party, also stepping down as Prime Minister.

### 1.4 The Johnson Government

In his [statement on 25 July on 'Priorities for Government'](#), the new Prime Minister Boris Johnson pledged that the UK would leave the EU by 31 October. He said that his preference would be to leave the EU with a deal, and that he would “work flat out to make it happen”. However, he said that it was clear that this could not be on the basis of the Withdrawal Agreement (WA) negotiated by Theresa May’s Government, and particular the provisions of the WA protocol on Ireland/Northern Ireland.

Talks with the EU began in early September. It was [reported](#) that the Prime Minister’s Brexit negotiator David Frost had told the EU that the UK wanted a “best in class free trade agreement” but that the UK did not want to be bound to level playing field provisions that go beyond the provisions the EU has in existing agreements with the likes of Canada and Japan. The EU has negotiated non-regression provisions (commitments not to reduce current levels of regulation) in these agreements. However, the EU’s March 2018 [guidelines](#) on the framework for future relations indicated that it would be seeking to go further in this regard, given the UK’s geographical proximity and economic interdependence with the EU. This relates to concerns in the EU that the UK would seek to compete economically with the EU by diverging on regulatory standards.

The Prime Minister’s proposals for an amended Ireland/Northern Ireland protocol were set out in a [letter](#) to Jean-Claude Juncker and an accompanying [Explanatory Note](#) on 2 October. In his letter to Mr Juncker, Mr Johnson explained that the removal of the backstop would also require a changed approach to the proposed future UK-EU relationship discussed in the PD. Notably, he signalled that the Government was no longer seeking the close alignment on EU regulation proposed under his predecessor as Prime Minister. Mr Johnson wrote:

Equally importantly in this context, the backstop acted as a bridge to a proposed future relationship with the EU in which the UK

would be closely integrated with EU customs arrangements and would align with EU law in many areas. That proposed future relationship is not the goal of the current UK Government. The Government intends that the future relationship should be based on a Free Trade Agreement in which the UK takes control of its own regulatory affairs and trade policy. In these circumstances the proposed “backstop” is a bridge to nowhere, and a new way forward must be found.

Mr Johnson’s letter called for the “finalisation of the necessary changes to the Political Declaration reflecting the goal of a comprehensive Free Trade Agreement”.

In explaining his proposals to the House of Commons on 3 October the Prime Minister [said](#):

The previous withdrawal agreement and political declaration would have permanently anchored the UK within the orbit of EU regulation and customs arrangements, and an indefinite so-called backstop provided a bridge to that vision of the future. This Government have a different vision: basing our future relationship with our European neighbours on a free trade agreement and allowing the UK to take back control of our trade policy and our regulations. We propose to amend the political declaration to reflect this ambition. Our proposals should now provide the basis for rapid negotiations towards a solution in the short time that remains.<sup>7</sup>

This changed UK Government approach to alignment with EU regulation was reflected in the revised PD agreed with the EU on 17 October.

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<sup>7</sup> HC Deb 3 October 2019 cc1383-1414

## 2. The legal status of the Political Declaration

### 2.1 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.

**Article 184** of the revised WA<sup>8</sup> states that the UK and EU shall

... 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 17 October 2019 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.

A further argument put forward is that **Article 184** of the WA 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 policy<sup>9</sup> and environmental policy.<sup>10</sup>

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 EU<sup>11</sup> and various

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<sup>8</sup> The only revision to this Article in the revised October 2019 WA is the change of date of the Political Declaration.

<sup>9</sup> See, e.g., Valletta Summit, 11-12 November 2015, [Political Declaration](#)

<sup>10</sup> See, e.g. Valletta 18 May 2017, [Political Declaration on Clean Energy for the EU Islands](#)

<sup>11</sup> 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

statements by the High Representative on developments in foreign affairs.<sup>12</sup>

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.<sup>13</sup>

During the negotiations on the WA in 2018, then DExEU Under-Secretary Suella Braverman 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.<sup>14</sup>

The text of the PD itself 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”.<sup>15</sup> 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.

## 2.2 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

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<sup>12</sup> 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

<sup>13</sup> The [Political Declaration on energy cooperation between the North Seas Countries](#) contains a similar but less detailed disclaimer.

<sup>14</sup> Exiting the EU Committee [Oral evidence: The progress of the UK’s negotiations on EU withdrawal](#), 23 May 2018

<sup>15</sup> 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.

'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 that would be considered.

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 (under the November 2018 WA) 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 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: Basis for co-operation

This section remains unchanged from the November 2018 Political Declaration (PD) in the revised October 2019 PD.

The 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 UK'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.

## 4. Part II: Economic Partnership

Both the November 2018 Political Declaration (PD) and the revised October 2019 PD propose to develop “an ambitious, wide-ranging future economic partnership”. Many of the details are left to be decided during future negotiations and a range of options is kept open.

A notable change in the revised PD is that all references to developing a free trade area are replaced with the goal of a Free Trade Agreement. References in the Declaration to building on the single UK-EU customs territory previously envisaged in the old backstop provisions (eliminated in the revised Withdrawal Agreement) have been removed. An article requiring the UK to consider alignment with EU rules “in relevant areas” has also been removed.

Text on level playing field provisions for fair and open competition has been strengthened. This follows on from the removal of level playing field provisions from the WA which would have ensured no undercutting of standards in relation to taxation, environmental protection, labour and social standards, and state aid and competition policy. These would have come into play alongside the previously envisaged UK-EU customs territory). The November 2018 PD suggested that these would have been built on in the future relationship.

These changes are in line with the Prime Minister’s letter to Jean-Claude Juncker on 3 October 2019 which referred to the backstop as “a bridge to a proposed future relationship with the EU in which the UK would be closely integrated with EU customs arrangements and would align with EU law in many areas”. He said that this was “not the goal of the current UK Government”.<sup>16</sup>

Both the older and newer version of the PD also refer to cooperation in particular sectors where this is in the parties’ mutual interest.

Sections in the revised PD on services and investment, financial services, digital, capital movements and payments, intellectual property, public procurement, mobility, transport, energy, fishing opportunities, and global co-operation remain unchanged in the revised PD.

There are changes to the sections on goods, tariffs, customs, implications for checks and controls, and level playing field for open and fair competition.

### 4.1 Free trade agreement as part of the future relationship

The [European Commission’s Q&A](#) on the agreement states:

The main change in the Political Declaration relates to the future EU-UK economic relationship where the current UK government has opted for a model based on a Free Trade Agreement.

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<sup>16</sup> Prime Minister’s [letter](#) to Jean-Claude Juncker, 2 October 2019

In the introduction to the revised PD, paragraph 3 now makes an explicit reference to such an agreement. As in the November 2018 version of the PD, paragraph 3 refers to an “ambitious, broad, deep and flexible partnership across trade and economic co-operation” also covering “law enforcement and criminal justice, foreign policy, security and defence and wider areas of co-operation”. In a new addition in the revised agreement, it now also stresses a “comprehensive and balanced Free Trade Agreement at its core”.

Similarly, in the description of objectives and principles in the Economic Partnership section, paragraph 17 states:

the Parties agree to develop an ambitious, wide-ranging and balanced economic partnership. This partnership will be comprehensive, encompassing a Free Trade Agreement, as well as wider sectoral cooperation where it is in the mutual interest of both Parties. It will be underpinned by provisions ensuring a level playing field for open and fair competition, as set out in Section XIV of this Part.<sup>17</sup>

Other than the replacement of the words ‘free trade area’ with ‘Free Trade Agreement’, the wording of paragraph 17 is the same as before.

There are two other changes to the objectives and principles section of the Economic Partnership chapter.

- At the end of paragraph 17 which refers to the “development of an independent trade policy”, the words “beyond this economic partnership” are deleted from the earlier version.
- Paragraph 19 in the November 2018 has been deleted. This referred to the determination of the UK and EU to replace the Northern Ireland backstop solution with a subsequent agreement ensuring the absence of a hard border. This has been deleted given that the relevant backstop provisions of the protocol on Ireland/Northern Ireland have been deleted in the revised October 2019 Withdrawal Agreement. The new arrangements in the October 2019 WA supersede the previous backstop provisions and are meant to guarantee the absence of a hard border on a more permanent basis.

Nevertheless, in the section on customs, paragraph 25 (previously paragraph 27) – referring to the consideration of facilitative arrangements and technologies in developing alternative arrangements to ensure the absence of hard border on the island of Ireland – is retained.

## 4.2 Trade in Goods

Paragraph 19 (formerly paragraph 20 in the original PD) has been revised to include reference to a Free Trade Agreement, while removing the reference to a relationship on goods “that is as close as possible”.

## 4.3 Tariffs

Paragraph 22 (paragraph 23 in the November 2018 PD) has been rewritten to remove the reference to improving on the single customs

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<sup>17</sup> See also paragraphs 19 and 22

territory provided for in the November 2018 WA. The single UK-EU customs territory was a feature of the previous backstop proposals which have been removed from the October 2019 WA.

The revised wording also recognises that as there will not be a single customs territory, Rules of Origin (which determine the country of origin of goods for tariff purposes) will resurface between the UK and the EU. It states that there should be a Free Trade Agreement ensuring “no tariffs, fees, charges or quantitative restrictions” and with “appropriate and modern” accompanying Rules of Origin and “ambitious customs arrangements”.

## 4.4 Regulatory alignment

Paragraph 25 of the previous PD, stating that the UK “will consider aligning with [European] Union rules in relevant areas” has been deleted in the revised PD. Other references to a willingness to align with EU rules have also been removed.

In the November 2018 PD, this paragraph was linked to the preceding paragraph which refers to going beyond WTO barriers when it comes to avoiding technical barriers to trade and exploring the possibility of UK co-operation with EU agencies. The agencies referred to include the European Medicines Agency (EMA), the European Chemicals Agency (ECHA) and the European Aviation Safety Agency (EASA).

## 4.5 Customs

Paragraph 24 of the revised PD (previously paragraph 26) on customs now also explicitly references VAT matters. The paragraph discusses a plan for “ambitious customs arrangements” and now references co-operation in VAT matters (alongside customs and other matters) and exchange of information to combat VAT fraud (alongside customs fraud and other illegal activity).

## 4.6 Implications for checks and controls

In paragraph 26 (previously paragraph 28) on the implications for checks and controls, a reference to alignment of rules has been removed. It is otherwise substantively the same, suggesting that the extent of the UK’s commitments on customs and regulatory co-operation would be taken into account in the application of checks and controls.

## 4.7 Level Playing Field for Open and Fair Competition

Paragraph 77 (previously paragraph 79) has been rewritten and expanded with strengthened wording. The previous version referred to building on the level playing field commitments in the Withdrawal Agreement. These would have applied under the backstop in the envisaged UK-EU single customs territory in the November 2018 WA but this was removed in the revised WA. The revised paragraph 77 in the October 2019 PD provides additional detail in lieu of there no longer being a level playing field element in the WA to build upon.

The revised paragraph includes a new opening line which states that given the EU and UK's "geographic proximity and economic interdependence" the future relations "must ensure open and fair competition, encompassing robust commitments to ensure a level playing field".

As with the November 2018 version, the new version suggests that the precise nature of commitments should be commensurate with the scope and depth of the future relationship. It also adds that the economic connectedness of the parties should be a consideration.

Whereas the November 2018 PD referred to building on the WA level playing field arrangements in relation to the areas of state aid, competition, social and employment standards, environmental standards, climate change, and relevant tax matters, the revised version states that parties "should uphold the common high standards applicable in the Union and the United Kingdom at the end of the transition period".

Additional wording on the following was also included:

- that the "commitments should prevent distortions of trade and unfair competitive advantages".
- That the UK and EU should "in particular maintain a robust and comprehensive framework for competition and state aid control that prevents undue distortion of trade and competition; commit to the principles of good governance in the area of taxation and to the curbing of harmful tax practices; and maintain environmental, social and employment standards at the current high levels provided by the existing common standards".
- That the future relationship "should also promote adherence to and effective implementation of relevant internationally agreed principles and rules in these domains, including the Paris Agreement".

The more detailed wording relates to EU concerns that the new approach of the UK Government since Boris Johnson became Prime Minister and signalled that he would seek a Free Trade Agreement without the levels of regulatory alignment envisaged under his predecessor Theresa May<sup>18</sup> could lead to the UK seeking to [compete economically](#) with the EU by adopting different regulatory standards. The removal of level playing field provisions from the revised WA as the basis on which to develop a future relationship has heightened these concerns.

The previous UK commitment to non-regression from EU social and employment and environmental standards and to considering continuing alignment should EU standards change in the future was

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<sup>18</sup> Mrs May 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 2018, Mrs May stated that: "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".

reflected in the [Joint Statement](#) supplementing the Political Declaration in March 2019. It referred to the UK's intention

to ensure that its social and employment standards and its environmental standards do not regress from those in place at the end of the transition period, and to provide Parliament the opportunity to consider future changes in Union law in these areas.

The EU has 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 2018 [guidelines](#) on the framework for future relations indicated that it would 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.

## 4.8 Areas that are unchanged in the revised PD

### 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.<sup>19</sup>

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<sup>19</sup> 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 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. The future basis of cooperation will be 'equivalence' which is different, and less extensive, than the current system of passported services.<sup>20</sup>

Although this section of the PD remains unchanged since 2018, there are recent developments in relation to equivalence that could be relevant for future UK-EU relations.

In 2017, the Commission granted equivalence for stock markets to a range of countries, but the decision for Switzerland would only last for a year. Extensions were dependent on 'progress made towards the signature of an agreement establishing [a new] common institutional framework' that would replace a wide range of bilateral agreements.<sup>21</sup> In June 2019, the EU refused to continue the recognition of equivalence.<sup>22</sup> The decision not to renew was linked to the EU's frustration at Switzerland's delay and attempt to renegotiate certain elements of the institutional framework. According to the Financial Times, the EU Commissioner 'wrote that any attempt to soften the EU's internal market rules would not be accepted "especially in what is probably the decisive phase regarding Brexit"'.<sup>23</sup>

Nevertheless, in July 2019 the EU published a Communication<sup>24</sup> that sets out its 'comprehensive approach' to equivalence, taking account of how 'recent legislative improvements' support decisions about granting equivalence:

The EU is firmly committed to promoting open, fair and efficient financial markets that operate within rigorous prudential and conduct frameworks. Equivalence is one of the key instruments at the EU's disposal in furthering that goal in the external dimension of the internal market. This is because it fosters coherence and

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<sup>20</sup> 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.

<sup>21</sup> Bruegel, [The consequences of Switzerland's lost equivalence status](#), 25 July 2019.

<sup>22</sup> Financial Times, ["EU-based traders caught in Swiss 'equivalence' spat"](#), 30 June 2019.

<sup>23</sup> Financial Times, [Brussels threatens to cut off Swiss stocks trading access](#), 19 June 2019.

<sup>24</sup> European Commission, Press release, [Commission sets out its equivalence policy with non-EU countries](#), 29 July 2019.

mutual compatibility between the relevant parts of the EU framework and the corresponding rules in third countries. As a result, the EU equivalence policy satisfies three objectives:

it reconciles the need for financial stability and investor protection in the EU, on the one hand, with the benefits of maintaining an open and globally integrated EU financial market on the other;

it is pivotal in promoting regulatory convergence around international standards;

it is a major trigger for establishing or upgrading supervisory cooperation with the relevant third-country partners.<sup>25</sup>

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<sup>25</sup> European Commission, [Communication from the Commission: Equivalence in the area of financial service](#), 29 July 2019.



## 5. Part III: Security Partnership

Part III of the Political Declaration (PD), on the future security partnership, covers both: i) law enforcement and judicial co-operation in criminal matters; and ii) foreign Policy, security and defence.

### 5.1 Law enforcement and judicial co-operation in criminal matters

The wording of the section on law enforcement and judicial co-operation in criminal matters in the revised October 2019 PD is almost identical to that of the November 2018. It provides for “comprehensive, close, balanced and reciprocal law enforcement and judicial co-operation in criminal matters”, covering 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.

The only change in wording is in paragraph 81 (previously paragraph 83). The equivalent para in the previous version (83) referred to the role of the Court of Justice of the EU (CJEU) in interpreting EU law, with respect to mechanisms for resolving disputes and enforcement. The new version says “mechanisms for disputes and enforcement provided for in paragraphs 129 to 132” without mention of the CJEU. These paragraphs propose a Joint Committee responsible for managing the future relationship and facilitating the resolution of disputes, with the possibility of referring disputes to an independent arbitration panel. Paragraph 132 states that in disputes raising a question of interpretation of EU law, the arbitration panel should refer the question to the CJEU for binding ruling. But conversely (in new wording, see below) “there should be no reference to the CJEU where a dispute does not raise such a question”.

### 5.2 Foreign Policy, Security and Defence

The November 2018 PD reiterated many of the principles of future cooperation in foreign policy and defence already agreed in the negotiations. It envisaged the creation of a “Framework Participation Agreement” that will go beyond existing EU third-party agreements and establish an unprecedented relationship between the EU and UK in defence matters.

This would involve “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”.

The UK has indicated its willingness to engage, as a third-party participant, in EU military operations and to consider involvement in EU capability development mechanisms such as Permanent Structured Cooperation (PESCO) and the European Defence Fund, albeit on a case-by-case basis and where it is in the UK national interest to do so. The decision to commit forces would continue to be a sovereign decision taken by the UK Government. Levels of consultation and exchange of information would remain proportionate to the level of participation by the UK.

For further discussion of this, see Commons Briefing Paper 8676 [Brexit and UK Defence: An explainer](#).

### Changes in the revised Political Declaration

The text of the revised October 2019 PD remains largely the same. However, the new text includes two changes to paragraphs relating to military operations and planning and defence capabilities.

The first change is additional text in paragraph 99 (previously paragraph 101) which refers to possible close co-operation in EU-led crisis management missions and operations, both civilian and military. Both the November 2018 PD and the revised text suggest that the future relationship should therefore enable the United Kingdom to participate on a case by case basis in Common Security and Defence Policy (CSDP) missions and operations through a Framework Participation Agreement. The revised text adds that

Such an agreement would be without prejudice to the decision-making autonomy of the Union or the sovereignty of the United Kingdom, and the United Kingdom will maintain the right to determine how it would respond to any invitation or option to participate in operations or missions.

The second change is to the wording of a sentence in paragraph 102 (previously paragraph 104) relating to research and industrial co-operation between UK and EU entities “in specific European collaborative projects to facilitate interoperability and to promote joint effectiveness of Armed Forces”.

With reference to a range of different collaborations, the original wording said: ‘the Parties agree to *enable to the extent possible* under the conditions of Union law.’ This has changed to ‘the Parties agree to *consider the following to the extent possible* under the conditions of Union law’ (author’s emphasis).

The revised paragraph is as follows with the revised text in bold:

102. The future relationship should benefit from research and industrial cooperation between the Parties' entities in specific European collaborative projects to facilitate interoperability and to promote joint effectiveness of Armed Forces. In this regard, while both Parties should preserve their respective strategic autonomy and freedom of action underpinned by their respective robust domestic defence industrial bases, the Parties agree **to consider**

**the following to the extent possible** under the conditions of Union law:

- a) the United Kingdom's collaboration in relevant existing and future projects of the European Defence Agency (EDA) through an Administrative Arrangement;
- b) the participation of eligible United Kingdom entities in collaborative defence projects bringing together Union entities supported by the European Defence Fund (EDF); and
- c) the United Kingdom's collaboration in projects in the framework of Permanent Structured Cooperation (PESCO), where invited to participate on an exceptional basis by the Council of the European Union in PESCO format.

## 6. Part IV: Institutional and Other Horizontal Arrangements

Part IV of the Political Declaration (PD) suggests that the future relationship should be based on an overarching institutional framework underpinned by mechanisms for dialogue and arrangements for setting the direction and implementing the future relationship. The text on structure of arrangements (paragraphs 118-121 in the revised PD) is identical to that in the November 2018 PD. This includes a suggestion (paragraph 120 in the new text) that “the overarching institutional framework could take the form of an Association Agreement”.

The section on governance removes references in the November 2018 PD to continuing the arrangements set out in the WA. Paragraph 124 of the old text (paragraph 122 in the October 2019 PD) referred to dispute resolution and enforcement based on the arrangements provided for in the WA. This is replaced in the new paragraph 122 with arrangements for dispute resolution and enforcement “in full respect of the autonomy of their legal orders”.

### 6.1 Strategic Direction and Dialogue

Section A on strategic direction and dialogue (paragraphs 123 to 125) has been revised and is now less specific on how dialogue should take place. For example, paragraphs 125 and 126 in the November 2018 version (now combined in new paragraph 123) referred to dialogue between the UK and EU at “summit, ministerial and technical level” to provide strategic direction and discuss opportunities for co-operation. This now refers to dialogue “at appropriate levels”. A sentence in the November 2018 PD suggesting this would “foster a strong relationship between the Parties, support the operation of the agreements, and enable the partnership to evolve in response to changing and unforeseen circumstances” has been deleted. New wording in paragraph 125 (covering dialogue between the UK and European Parliament “where they see fit”) suggests that the parties should encourage “civil dialogue”.

### 6.2 Dispute Settlement

The text on management and supervision of the relationship remains unchanged (Section B, paragraphs 126-127). This provides for the establish of a Joint Committee responsible for “managing and supervising the implementation and operation of the future relationship”.

Section D (paragraphs 129 to 132) on dispute settlement has revised wording. It removes a reference (paragraph 129 in the revised PD, paragraph 132 in the old one) to building on the dispute settlement and enforcement arrangements of the WA.

A new provision is included in paragraph 129, suggesting that appropriate arrangements for dispute settlement and enforcement

could include provisions for “expedient problem-solving” through a ‘flexible mediation mechanism’. This would be “without prejudice to the Parties’ rights and obligations or to dispute settlement provided for under the Agreement”.

The text of paragraph 130 remains identical to that of the old paragraph 133, providing that the Joint Committee may agree to refer a dispute to an independent arbitration panel, and either party can do so if no resolution has been arrived at within a defined period of time.

As with the previous paragraph 134, paragraph 131 of the revised PD provides that the arbitration panel can refer questions in disputes regarding the interpretation of EU law to the CJEU. However, a sentence stating that the arbitration panel should decide the ruling in accordance with the ruling given by the CJEU has been removed. Moreover, a new sentence has been added stipulating that there should be no reference to the CJEU where a dispute does not raise such a question. Wording in the old PD suggesting that where a party considers that the arbitration panel should have referred a question of interpretation of EU law to the CJEU it may ask the panel to review and provide reasons for the assessment has been removed in the revised version.

### 6.3 Remedies

The wording on remedies in paragraph 132 (formerly paragraph 135) has also been revised. Paragraph 135 in the November 2018 PD stated 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 proportionate temporary measures “including the suspension of its obligations” within the future relationship. The new paragraph 132 removes the specific reference to financial remedies but retains a reference to suspension of obligations. As with the previous PD it suggests this would be as foreseen in Article 178 of the WA which sets out temporary remedies in case of non-compliance. This covers both financial penalties to be paid to the complainant, and suspension of obligations. The new paragraph 132 also adds a reference to Article 179 of the WA which covers review of suspension of obligation measures taken under Article 178 by the arbitration panel.

### 6.4 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 remain unchanged in the new version of the PD, and are as follows:

- The future relationship should provide for appropriate exceptions in relation to security, with “national security is the sole responsibility of the Member States of the Union and the United Kingdom respectively”.

- Temporary safeguard measures should be possible that would otherwise breach treaty commitments where there are “circumstances of significant economic, societal or environmental difficulty”.

These are both fairly standard conditions in international agreements.

## 7. Part V: Forward Process

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

The content of this section has been reorganised with what used to be paragraphs 141-143 now condensed into a single paragraph 140.

Both the old and the new version refer to the shared intention to negotiate a new relationship agreement that can be implemented in time for the end of 2020 (when the transition/ implementation period will come to an end unless there is agreement to extend it). One substantive change is in paragraph 139, which makes clear that the European Commission is ready to propose provisional application of relevant parts of the future relationship, where the relevant legal frameworks and practices are there.

As with the November 2018 version of the PD there is a commitment to identify the areas most likely to require the greatest consideration. However, there is no longer a reference to focusing initially on arrangements for ensuring the absence of a hard border on the island of Ireland (given that this appears to have been already addressed in the revised Withdrawal Agreement).

The other substantive change is in paragraph 141, where rather than agreeing to meetings every 6 months (as was the case in the November 2018 PD), there is less specific commitment to “convene to take stock of progress”. Only a single future meeting is explicitly identified as to take place at ‘high level’. This will be in June 2020 (shortly before the deadline of 1 July 2020 for deciding on whether to extend the transition period for another one or two years).

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