



Leaving the European Union: Reporting to Parliament on the Progress of Negotiations

QSD on 7 September 2017

Summary

On 7 September 2017, the House of Lords is due to debate a question for short debate tabled by Lord Dykes (Crossbench) to ask what plans the Government has to bring regular reports before Parliament on the process of the negotiations for Brexit.

David Davis, Secretary of State for Exiting the European Union, has said that he intends to report back to Parliament immediately after each stage of the negotiations. The first round of negotiations took place on 19 June 2017, at which point Parliament was not sitting following the general election. The second round of talks finished on the same day that Parliament rose for the summer recess; Mr Davis has therefore said he will make a statement to Parliament on the second and third rounds when Parliament is sitting in September. Since the formal stage of negotiations began, members of both Houses have expressed dissatisfaction with the Government's arrangements for reporting back to Parliament. The Government has stressed the need to strike a balance between confidentiality and transparency when sharing information about the progress of the negotiations, but has made a commitment that the UK Parliament will receive at least as much information as that received by members of the European Parliament. The House of Lords European Union Committee has pressed Mr Davis for more information on how he intends to ensure that this happens.

Frequency and Timing of Updates to Parliament

The Government stated in its Brexit white paper published in February 2017 that Parliament had a "critical role" to play in the process of leaving the European Union.¹ It said that both Houses, the House of Commons Exiting the European Union Committee and other committees would "help to scrutinise and inform the decisions made".² The white paper noted that between September 2016 and February 2017, the Government had provided four debates in the House of Commons on the impact of Brexit on various sectors, had made five oral statements and answered over 500 parliamentary questions on Brexit, and ministers from the Department for Exiting the European Union had appeared twelve times in front of parliamentary select committees. The Government undertook to continue to provide regular updates to Parliament and to continue to ensure that there was "ample opportunity" for both Houses to debate the key issues arising from Brexit.

The Prime Minister formally notified the EU of the UK's intention to withdraw from the European Union in a letter to Donald Tusk, President of the European Council, on 29 March 2017.³ The first round of formal talks between the UK and the EU took place on 19 June 2017, and the second round between 17 and 20 July 2017.⁴ Future negotiating rounds, scheduled at four-weekly intervals, are due to take place in the weeks commencing 28 August, 18 September and 9 October 2017.⁵

Giving evidence to the House of Lords European Union Committee between the first and second negotiating rounds, David Davis, Secretary of State for Exiting the European Union, said that he intended to report back to the House of Commons “on the progress, or non-progress if that is what it is, immediately after each stage of negotiation, where it is possible”.⁶ He expected that Baroness Anelay of St Johns, Minister of State at the Department for Exiting the European Union, would do the same in the Lords. However, he warned that parliamentary recesses would not always allow the Government to report back immediately.

The first negotiating round took place while Parliament remained dissolved following the general election. David Davis made a statement to the press following the first day’s talks but did not make a statement in Parliament when the new session opened.⁷ He did refer to the negotiations during a Commons debate on Brexit and foreign policy on 26 June 2017, when he said that they would be “complex and, I have no doubt, at times even confrontational”, although he was “convinced that both sides want to secure close cooperation and a deep, new partnership”.⁸

Also on 26 June 2017, the Prime Minister, Theresa May, made a statement in the House of Commons on the European Council meeting of EU heads of state and government that had taken place the previous week.⁹ She mentioned the “positive and constructive” spirit in which David Davis had begun the negotiations, and used the statement to outline the Government’s negotiating proposals on the rights of EU citizens in the UK post-Brexit, which were set out in full in a policy paper published the same day.¹⁰

David Davis made a written statement to Parliament on 17 July 2017—the same day that the second round of talks began—announcing the publication of UK position papers on ongoing Union judicial and administrative proceedings, nuclear materials and safeguards, and privileges and immunities.¹¹ The statement also set out the Government’s focus in the negotiations on citizens’ rights, the financial settlement, and issues relating to Northern Ireland and Ireland. The second negotiating round concluded on 20 July 2017, the same day that Parliament rose for the summer recess. Mr Davis had previously told the House of Lords European Union Committee that if the talks went into a fourth day, he would not be able to report back to Parliament before the summer recess, but would do so when Parliament returned in September.¹²

Following an exchange of correspondence with the House of Lords European Union Committee (described in further detail below), on 9 August 2017 David Davis sent the Committee a written update on the July round of negotiations.¹³ He explained that:

The main focus, as planned, was on citizens’ rights but discussions also took place on the financial settlement, Northern Ireland/Ireland, and various separation issues [nuclear materials and safeguards; legal cases pending before the Court of Justice of the European Union; privileges and immunities; judicial cooperation in civil and commercial matters and ongoing judicial cooperation in criminal matters; goods placed on the market]. The main objectives for this round were to build on the initial dialogue established at the June round by moving towards more detailed discussion and identification of areas of agreement and disagreement.

The purpose of this round was not to reach firm agreement (ie jointly agreed legal text), but rather about building trust in the process and understanding where there might be room for compromise.¹⁴

Mr Davis’s letter went on to give a short summary of discussions on the subjects listed above.

Since the formal stage of negotiations began, members of both Houses have expressed dissatisfaction with the Government's arrangements for reporting back to Parliament. In response to the Government's first business statement of the 2017–19 session, Valerie Vaz, Shadow Leader of the House of Commons, argued it was "unclear how Parliament will be informed during EU negotiations".¹⁵ Referring to Theresa May's often quoted phrase that there would be "no running commentary" during the Brexit negotiations, Ms Vaz said: "Yes, we do want a running commentary". She called on Andrea Leadsom, the Leader of the House, to "ensure there is a timetable for a debate on the report-back on where we are with the negotiations".

The House of Lords European Union Committee has been engaged in a series of correspondence with the Secretary of State for Exiting the European Union over the summer regarding its dissatisfaction with the provision of regular updates. The Committee wrote to David Davis in mid-July 2017 to say it saw "no reason" why reporting back to Parliament should be interrupted by parliamentary recesses.¹⁶ The Committee invited Mr Davis to appear before it on 9 August 2017 to report back on the second round of negotiations. The Committee said it would be happy to hear from another minister, Olly Robbins (Permanent Secretary of the Department for Exiting the European Union) or Sir Tim Barrow (UK Permanent Representative to the European Union) if Mr Davis was unable to attend. In response, Mr Davis "regretfully" declined the invitation to appear before the Committee during the summer recess, but said he would be happy to do so while the House was sitting in October following the fourth and fifth rounds of negotiations.¹⁷ He repeated his commitment to give an oral statement after the summer recess to update Parliament on the second and third rounds of negotiations, and said he would set out plans to update Parliament on subsequent rounds "in due course".

Lord Jay of Ewelme (chairing the Committee in the absence of Lord Boswell of Aynho) described Mr Davis's refusal to attend the Committee because the suggested date was in the summer recess as an "inadequate" reason.¹⁸ He regretted Mr Davis's failure to respond to the suggestion of sending a colleague if he was personally unavailable. Lord Jay argued in his letter to Mr Davis that:

[...] effective parliamentary scrutiny of the Brexit negotiations is essential to ensure an appropriate level of transparency and accountability, and thus to help achieve the best possible outcome for the whole of the United Kingdom.

To be effective, scrutiny should adjust to the timetable of the negotiations themselves, not to the convenience of parliamentary recesses.¹⁹

Noting Mr Davis's offer to appear before the Committee in October, Lord Jay reminded him that the Committee was scheduled to meet on 12 September to review progress in the third round of negotiations. He said that the Committee would "expect" Mr Davis to appear before it that week, or to send a ministerial colleague, Olly Robbins or Sir Tim Barrow.

Mr Davis responded to Lord Jay's letter on 9 August 2017, stating that he "fully recognise[d] the critical role the Committee plays in scrutinising our withdrawal from the European Union".²⁰ He said it was for this reason that he believed he, "as the Secretary of State who represents the UK in Brussels [...] should personally update the Committee on the progress of negotiations". He repeated his offer to appear before the Committee in October. In this letter, Mr Davis also provided a written update on the July round of negotiations. In reply, Lord Jay said that the Committee was "grateful" for the update, and for Mr Davis's repeated offer to appear before the Committee in October.²¹ However, Lord Jay observed that if Mr Davis did not appear until October, "three months—almost a fifth of the likely total duration of the negotiations" would have elapsed since his previous appearance in July. Lord Jay said that "given the

pace of developments” and the anticipated publication of new UK position papers, this would not be “sufficient”. He noted that Michel Barnier, the EU’s chief negotiator, had committed to reporting to the European Parliament’s Brexit Steering Group both before and after every round of negotiations. He observed that if the Committee was to have access to information equivalent to that afforded to the European Parliament (as the Government has promised—see below), “we would expect to hold a session with ministers or officials in each of the four-week negotiating cycles”. He therefore repeated his request for Mr Davis or a senior colleague to meet the Committee in the week beginning 11 September 2017, as well as in October and subsequently.

Previously, the Labour Party had attempted to amend the European Union (Notification of Withdrawal) Bill to include specific requirements for the Government to report to Parliament on the progress of negotiations. At committee stage in the House of Commons, Matthew Pennycook, Shadow Minister for Exiting the European Union, moved a new clause which would have stipulated that the Prime Minister could not trigger Article 50 until she had given an undertaking to report to Parliament at least every two months on the progress of negotiations, to lay before Parliament copies of any documents relating to the negotiations provided by the European Council or European Commission to the European Parliament, and to make arrangements for the parliamentary scrutiny of confidential documents.²² Mr Pennycook said the purpose of the new clause was to provide Parliament with the means to “effectively monitor” and “actively contribute” to the negotiations. David Jones, then Minister of State at the Department for Exiting the European Union, said that the Government had “aimed at all times scrupulously to fulfil Parliament’s legitimate need for information” and would “continue to do so”.²³ The new clause was defeated by 333 votes to 284.²⁴

Transparency

In addition to the question of the timing and frequency of government reports to Parliament on the progress of the negotiations, there has also been some debate about what information the Government should make available to Parliament. In the Brexit white paper published in February 2017, the Government argued that there was a need to strike a balance between transparency and confidentiality during the negotiations:

To enable the Government to achieve the best outcome in the negotiations, we will need to keep our positions closely held and will need at times to be careful about the commentary we make public. Our fundamental responsibility to the people of the UK is to ensure that we secure the very best deal possible from the negotiations. We will, however, ensure that the UK Parliament receives at least as much information as that received by members of the European Parliament.²⁵

In a report published in July 2016, the House of Lords European Union Committee acknowledged that “certain elements of the forthcoming negotiations, particularly those relating to trade, may have to be conducted confidentially”.²⁶ However, the Committee’s expectation was that parliamentary scrutiny of the negotiating phase would “strike an appropriate balance between transparency and confidentiality, while achieving the overarching objective of holding the Government effectively to account”.

In a follow-up report in October 2016 the Committee examined in more detail what information the EU negotiators would be required to provide the European Parliament:

While the procedure for EU withdrawal is set out in Article 50 TEU, the negotiations themselves will be conducted in accordance with the provisions of Article 218 of the Treaty on the Functioning of the European Union (TFEU) [...]

Article 281(10) TFEU provides that “The European Parliament shall be immediately and fully informed at all stages of the procedure” [...] The detailed arrangements are set out in a binding 2010 Framework Agreement on relations between the European Parliament and the European Commission.

[...] The key principles underpinning European Parliament scrutiny of trade and other international negotiations are that:

- The European Parliament, through a designated Committee, has access to all relevant documents, including draft negotiating directives, draft amendments to those directives, draft negotiating texts, agreed articles, and draft agreements;
- Those documents are supplied to the [European] Parliament in sufficient time for it to be able to express its view, and if necessary to publish formal recommendations, and for the Commission (which conducts the negotiation) to be able to take these views and recommendations into account;
- The Commission is under a duty to respond to such recommendations, and in particular, if recommendations are rejected, to explain why;
- Both the Commission and the [European] Parliament are under a duty to adopt procedures to safeguard confidential information.²⁷

The guiding principles for transparency in the negotiations, published by the Council of the European Union in May 2017, further outlined how information would be shared with the European Parliament in practice:

The European Parliament will be kept closely and regularly informed by the Union negotiator [Michel Barnier], including through the transmission of negotiation documents through the appropriate channels and in accordance with applicable rules and practices. In addition, regular contacts between the rotating Presidency [of the Council] and representatives of the European Parliament will take place, in particular before and after meetings of the General Affairs Council (Art 50).²⁸

The House of Lords European Union Committee argued in its October 2016 report that the European Parliament’s rights to information on the progress of the negotiations were “a baseline against which any arrangements agreed in the United Kingdom must be measured” as it would be “unacceptable for the European Parliament to have greater rights of scrutiny over the negotiations on Brexit than Westminster”.²⁹ The Committee questioned David Davis in mid-July 2017 on how he intended to fulfil the Government’s undertaking to provide Parliament at least as much information as the Commission would be giving the European Parliament.³⁰ Mr Davis said he had appointed a member of staff whose “primary aim” was “to do just that”.³¹ He pointed out that he had made seven statements on Brexit to the Commons—all of which had been repeated in the Lords—and had made “about half a dozen major speeches” in the Commons during Brexit debates; in contrast, he thought that Michel Barnier, the EU’s chief negotiator, had made two speeches to the European Parliament during the same period. He also drew attention to the publication of the Government’s proposals on EU citizens’ rights, and his plans to publish further papers in advance of the second round of negotiations if he could “get through the clearance procedures [...] quickly enough”. He assured the Committee that the Government was being “as forthright as we can”, but reiterated that “obviously, it is a negotiation so we cannot say everything up front”.

Lord Woolmer of Leeds (Labour) put it to Mr Davis that Parliament found it “very difficult to know what the Government’s objectives are in a number of areas”, given the distinction between “papers the Government produce and publish and the areas where [the Government] is waiting to see what the Commission proposes and which [it] will then negotiate in private”.³² Mr Davis said that “where it is appropriate”, the Government would publish its proposals on the future relationship with the EU in the early autumn, “subject to not undermining the negotiations”.

Lord Woolmer also questioned Mr Davis about whether the Government would be willing to share sensitive negotiating documents with parliamentary committees under conditions of confidentiality.³³ Mr Davis said that there would be some Privy Counsellor-level briefing on confidential matters, and to that end, he had recently supported the appointment of Sir Keir Starmer, the Shadow Secretary of State for Exiting the European Union, to the Privy Council.³⁴ However, Mr Davis said that the Government had not gone further in its thinking on the sharing of confidential information with Parliament. Baroness Falkner of Margravine (Liberal Democrat) wondered whether parliamentarians could be enabled to read confidential documents in a dedicated reading room, as had happened during negotiations on the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the United States.³⁵ Mr Davis explained that at the current stage of the negotiations, he did not think there was “anything in the arrangement that is going to be private for that long”—for example, any papers that the UK submitted to the EU before the second round of negotiations would also be made available in the public domain the same day. However, he suggested that it might be different when it came to the negotiation of more complex trade proposals, and at that point, he might consider the idea of private reading rooms for parliamentarians to have access to confidential material.

Further Reading

- House of Lords European Union Committee, [Letter from Rt Hon David Davis MP](#), 9 August 2017 (Secretary of State for Exiting the European Union’s written update on the second round of negotiations)
- Department for Exiting the European Union, ‘[Article 50 Negotiations with the EU](#)’, accessed 22 August 2017 (position papers published by the UK)
- European Commission, ‘[Negotiating Documents on Article 50 Negotiations with the United Kingdom](#)’, accessed 22 August 2017 (position papers published by the EU)
- House of Commons Library, [Brexit: The July Negotiations](#), 2 August 2017

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- ¹ HM Government, [The United Kingdom's Exit From and New Partnership With the European Union](#), February 2017, Cm 9417, p 10.
- ² *ibid*, p 11.
- ³ Prime Minister's Office, [Prime Minister's Letter to Donald Tusk Triggering Article 50](#), 29 March 2017.
- ⁴ European Council and Council of the European Union, 'Brexit', accessed 2 August 2017.
- ⁵ Department for Exiting the European Union, [Terms of Reference for the Article 50 TEU Negotiations](#), 19 June 2017.
- ⁶ House of Lords European Union Committee, [Corrected Oral Evidence: David Davis Evidence Session, 11 July 2017](#), 1 August 2017, Q3.
- ⁷ Department for Exiting the European Union, '[Secretary of State Davis' Statement Following the Opening of EU Exit Negotiations](#)', 19 June 2017.
- ⁸ [HC Hansard, 26 June 2017 col 370](#).
- ⁹ [ibid, cols 301–4](#).
- ¹⁰ Home Office, Foreign and Commonwealth Office, Prime Minister's Office and Department for Exiting the European Union, '[UK Government Publishes Proposals on Rights of EU Citizens](#)', 26 June 2017.
- ¹¹ House of Commons, '[Written Statement—EU Exit Negotiations July 2017](#)', 13 July 2017, HCWS43.
- ¹² House of Lords European Union Committee, [Corrected Oral Evidence: David Davis Evidence Session, 11 July 2017](#), 1 August 2017, Q3.
- ¹³ House of Lords European Union Committee, [Letter from Rt Hon David Davis MP](#), 9 August 2017.
- ¹⁴ *ibid*.
- ¹⁵ [HC Hansard, 22 June 2017, col 214](#).
- ¹⁶ House of Lords European Union Committee, [Letter to Rt Hon David Davis MP](#), 19 July 2017.
- ¹⁷ House of Lords European Union Committee, [Letter from Rt Hon David Davis MP](#), 28 July 2017.
- ¹⁸ House of Lords European Union Committee, [Letter to Rt Hon David Davis MP](#), 1 August 2017.
- ¹⁹ *ibid*.
- ²⁰ House of Lords European Union Committee, [Letter from Rt Hon David Davis MP](#), 9 August 2017.
- ²¹ House of Lords European Union Committee, [Letter to Rt Hon David Davis MP](#), 10 August 2017.
- ²² [HC Hansard, 6 February 2017, col 49](#).
- ²³ *ibid*, col 119.
- ²⁴ *ibid*, cols 123–7.
- ²⁵ HM Government, [The United Kingdom's Exit From and New Partnership With the European Union](#), February 2017, Cm 9417, p 11.
- ²⁶ House of Lords European Union Committee, [Scrutinising Brexit: The Role of Parliament](#), 22 July 2016, HL Paper 33 of session 2016–17, p 6.
- ²⁷ House of Lords European Union Committee, [Brexit: Parliamentary Scrutiny](#), 20 October 2016, HL Paper 50 of session 2016–17, pp 18–20.
- ²⁸ Council of the European Union, [Guiding Principles for Transparency in Negotiations under Article 50 TEU](#), 22 May 2017.
- ²⁹ House of Lords European Union Committee, [Brexit: Parliamentary Scrutiny](#), 20 October 2016, HL Paper 50 of session 2016–17, p 20.
- ³⁰ House of Lords European Union Committee, [Corrected Oral Evidence: David Davis Evidence Session, 11 July 2017](#), 1 August 2017, Q2.
- ³¹ *ibid*.
- ³² *ibid*.
- ³³ *ibid*.
- ³⁴ *ibid*.
- ³⁵ *ibid*, Q6.

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