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# UK withdrawal from the European Union

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Legal and procedural issues

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IN-DEPTH ANALYSIS

This paper considers some of the legal and procedural issues surrounding the United Kingdom's planned withdrawal from the European Union. It looks in particular at the formal exit process under Article 50 TEU and the EU institutions' preparations for negotiations. It also sets out some possible templates for future EU-UK relations, as well as the details of existing frameworks for cooperation between the EU and third countries.

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## EXECUTIVE SUMMARY

On 29 March 2017, the United Kingdom (UK) is expected to give formal notification of its intention to leave the European Union (EU), following the recent adoption of an Act of Parliament authorising the British government to take this important step. The notification follows nine months after a referendum on continued EU membership, held on 23 June 2016, delivered – by 51.89 % to 48.11 % – a narrow majority in favour of the country leaving the Union.

The Treaty of Lisbon amended the Treaty on European Union (TEU), adding an explicit clause enabling the voluntary withdrawal of a Member State from the EU. Article 50 TEU provides for the conditions and procedure to be followed in the event of a Member State deciding to leave the Union, and it is now considered the only legal path for such a withdrawal. Notwithstanding the formal framework set out in this ‘exit’ provision, many aspects of the UK’s impending withdrawal from the EU remain shrouded in uncertainty.

In the nine months since the referendum, the UK government – headed since last July by Theresa May, following the immediate resignation of her predecessor, David Cameron – has revealed its own intentions relatively slowly. However, with a speech by Mrs May in January and the publication of a 75-page white paper on the withdrawal process and future relations between the UK and EU, it has become clear that the UK government has opted for a more decisive break with the EU than many initially foresaw, with an intense and potentially complicated period of negotiations now about to begin.

Whilst the EU and UK will aim to conclude a formal withdrawal agreement during the two-year negotiating period about to open up, each party will be reflecting upon the parameters of their future relationship, where they have an interest in continued cooperation in several policy areas. For the moment, it appears that the two sides have different views on the sequencing and scope of the negotiations, and notably the cross-over between the withdrawal agreement and the structure of future relations, and this divergence itself may be one of the first major challenges to overcome.

The EU already has agreements in place for economic and political cooperation with neighbouring countries and third states or groups of states further afield, elements of which might serve as models for future EU-UK cooperation, although it seems increasingly likely that the precise arrangements decided upon in the course of the coming negotiations may not fit any existing template.

In informal meetings since the UK referendum, the other 27 EU Heads of State or Government have discussed both the procedure to be followed and the role of the various institutions in the negotiations themselves, and future initiatives for a ‘better Union’ at 27. However, the EU’s clear position has been that the negotiations with the UK can only start once the latter has officially invoked Article 50 TEU, a principle of ‘no negotiation without notification’.

The overall approach of the European Parliament will be shaped by its political group leaders, sitting in the Conference of Presidents, who have already designated Guy Verhofstadt as the Parliament’s coordinator for this purpose. All of the standing committees have been contributing their thinking on the subject, as the Parliament prepares to adopt a plenary resolution seeking to influence the European Council guidelines for the withdrawal negotiation. The Commission’s chief negotiator, Michel Barnier, has acknowledged the need to keep the Parliament informed at every stage of the negotiations, not least because the eventual withdrawal agreement will have to gain its consent to come into force.

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### List of main acronyms used

|               |  |
|---------------|--|
| <b>CETA:</b>  | EU-Canada Comprehensive Economic and Trade Agreement |
| <b>CJEU:</b>  | Court of Justice of the European Union               |
| <b>DCFTA:</b> | Deep and comprehensive free trade area               |
| <b>EEA:</b>   | European Economic Area                               |
| <b>EFTA:</b>  | European Free Trade Association                      |
| <b>EP:</b>    | European Parliament                                  |
| <b>EPA:</b>   | Economic partnership agreement                       |
| <b>PTA:</b>   | Preferential trade agreement                         |
| <b>TEU:</b>   | Treaty on European Union                             |
| <b>TFEU:</b>  | Treaty on the Functioning of the European Union      |
| <b>UK:</b>    | United Kingdom                                       |
| <b>WTO:</b>   | World Trade Organization                             |

## 1 Introduction

On 16 March 2017, 'royal assent' from the Queen brought into law the European Union (Notification of Withdrawal) Act 2017. This leaves the road clear for the UK government to deliver its formal notification of the country's intention to leave the European Union to the President of the European Council. This, the British Prime Minister, Theresa May, has indicated, will take place on 29 March, in line with a frequently repeated commitment to do so before the end of March 2017.

Since the referendum held in the UK on 23 June 2016, with a narrow result in favour of the UK leaving the EU, the new UK government has taken some time to make clear the approach it plans to the process of exit. However, at the beginning of February 2017, the UK Government issued a White Paper, 'The United Kingdom's exit from and new partnership with the European Union', which sets out the government's plans, in the form of 12 priorities to guide its negotiations. The white paper builds on a keynote speech delivered by Theresa May on 17 January 2017.

The requirement for an Act of the UK Parliament to authorise the government to initiate the process of withdrawal was confirmed by the UK Supreme Court ruling on the appeal in the Article 50 case.<sup>1</sup> The resultant bill was approved overwhelmingly and without amendment by the House of Commons, completing its third reading on 8 February 2017. Although the House of Lords passed two amendments, it declined to press them following their rejection by the House of Commons. The bill thus completed its parliamentary passage on 13 March, with the European Union (Notification of Withdrawal) Act 2017 receiving royal assent three days later.<sup>2</sup>

On the EU side, the other 27 Member States have discussed future action for a 'better Union' at 27 and also clarified the role of the various institutions in the forthcoming negotiations. The EU's position has been one of 'no negotiation without notification',

<sup>1</sup> Judgment of the UK Supreme Court of 24 January 2017, [R \(on the application of Miller and another\) \(Respondents\) v Secretary of State for Exiting the European Union \(Appellant\)](#).

<sup>2</sup> [European Union \(Notification of Withdrawal\) Act 2017 c.9](#); See also [bill documentation](#).

meaning that negotiations could only start once the UK has officially notified the European Council of its intention to withdraw under Article 50 TEU. However, the respective roles the EU institutions will play during the negotiations have been clarified in the meantime.

With the way now clear for the UK to trigger Article 50 and Theresa May's self-imposed deadline fast approaching, both sides now seem to be ready to start negotiations on the terms of the UK withdrawal from the EU and the two parties' future relationship. Indeed, a special meeting of the European Council has been called for 29 April, at which the 27 other Heads of State or Government will discuss the guidelines they will set for the negotiations.

## 2 Article 50 TEU: Withdrawal of a Member State

### 2.1 A summary of the legal basis and procedure

The Treaty of Lisbon, which entered into force on 1 December 2009, amended the EU Treaties to introduce a specific clause dealing with the voluntary withdrawal of a Member State from the EU.<sup>3</sup> Taken over from the unratified Constitutional Treaty, with minor adjustments, the 'exit' provision is now contained in Article 50 TEU,<sup>4</sup> and represents the only lawful way for a Member State to leave the EU.

#### Article 50 Treaty on European Union (TEU)

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.  
A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

<sup>3</sup> Prior to the Treaty of Lisbon, the possibility of unilateral withdrawal from the European Community/European Union was far from clear. The most likely route to withdrawal would have been to use the procedure for revision of the Treaties, requiring the consent of all Member States. How matters might have proceeded if such agreement could not be found remains a matter of conjecture.

<sup>4</sup> See [Article 50 TEU: Withdrawal of a Member State from the EU](#), Poptcheva E-M, EPRS Briefing, February 2016, and [UK withdrawal from the EU – Next steps](#), Poptcheva E-M, EPRS At a Glance, 28 June 2016.

There is no precedent of a Member State withdrawing from the EU. The example of Greenland, whose population decided by referendum to withdraw from the European Community in 1982, is not fully relevant since it was not a Member State, but only part of the territory of a Member State. As such, Greenland's withdrawal was only made possible through Treaty amendment, with the agreement of all the Member States and the European institutions.<sup>5</sup>

### 2.1.1 *Conditions of withdrawal*

No substantive conditions exist in the Treaties concerning a Member State's right to withdraw from the EU; Article 50 TEU sets out only the procedure to be followed. Withdrawal constitutes a voluntary act which does not require approval/consent by the other Member States, and the withdrawing Member State need not state a reason for its decision to withdraw. What Article 50 TEU requires is that the decision to withdraw is taken in accordance with the state's constitutional requirements – so that possible abuse of the clause for political reasons is minimised.<sup>6</sup>

In this regard, on 24 January 2017, the UK Supreme Court<sup>7</sup> confirmed that a withdrawal from the EU cannot be triggered by a notification served by the UK government without a prior Act of the UK Parliament. According to the Courts, royal prerogative powers, vested in the Crown but traditionally exercised on its behalf by government ministers, cannot extend to fundamental changes entailing major effects for UK constitutional arrangements and the legal rights of UK citizens. However, the UK Supreme Court also ruled that the 'devolved legislatures' (Northern Ireland, Scotland and Wales) need not be consulted or give their agreement prior to the withdrawal notification, since relations with the EU and other foreign affairs matters remain reserved to the UK government and national parliament. As a result, according to the Court, the 'devolved legislatures' do not have a right of veto on the UK's decision to withdraw from the EU.

### 2.1.2 *Procedure*

The process set out in Article 50 TEU begins with a Member State's formal notification to the European Council of its intention to withdraw. However, there is no indication as to the form of this notification. The European Council then adopts guidelines for the negotiation and conclusion of an agreement between the Union and the withdrawing Member State, which should set out the arrangements for the withdrawal, and take account of the framework for that state's future relationship with the EU.

From the moment of formal notification, the EU and the withdrawing Member State have two years to reach an agreement on the withdrawal. At the end of the two years envisaged in Article 50(3) TEU, if no agreement has been reached, the EU membership of the withdrawing Member State comes to an end, unless the European Council decides unanimously, in agreement with the withdrawing Member State, to extend the deadline.

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<sup>5</sup> [Providing a constitutional framework for withdrawal from the EU: Article 59 of the draft European Constitution](#), Friel R J, *International & Comparative Law Quarterly* 2004, 53(2), pp. 407-428. See Section II for Greenland's withdrawal.

<sup>6</sup> In its [judgment](#) of 3 November 2016, the UK High Court stated that the UK government cannot use its exclusive right to trigger Article 50 without domestic parliamentary approval. The government [appealed](#) the decision. The UK Supreme Court heard the case in early December 2016, and its [ruling](#) was delivered on 24 January 2017.

<sup>7</sup> Judgment of the UK Supreme Court of 24 January 2017, [R \(on the application of Miller and another\) \(Respondents\) v Secretary of State for Exiting the European Union \(Appellant\)](#). On the issue of whether a prior Act of the UK Parliament is necessary for the withdrawal notification under Article 50 TEU, the decision was reached by a majority, with eight judges taking that view and three dissenting.

The withdrawal agreement must be negotiated in accordance with the provisions of Article 218(3) TFEU, on conclusion of international agreements by the EU:

*The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.*

The Council thus adopts the negotiating mandate and appoints the Union negotiator, which is expected to be the European Commission, although there could theoretically be a different negotiator, as the Treaties leave this possibility open in the case of a withdrawal agreement.<sup>8</sup> Article 218(3) TFEU is silent on the signature of the agreement; however, experts consider that Article 218(5) TFEU should apply – whereby the Council, following the negotiator's proposal, adopts a decision authorising the signature of the agreement.<sup>9</sup>

The decision to conclude the agreement with the withdrawing Member State is taken by the Council on behalf of the Union, following the consent of the European Parliament (Article 50(2) TEU). The EP gives its consent by a majority of the votes cast (Article 231 TFEU).<sup>10</sup> If consent is given, the Council concludes the agreement with a 'super qualified majority' of the remaining Member States, as defined in Article 238(3)b TFEU:

*By way of derogation from point (a), where the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as at least 72 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.*

While the representatives of the withdrawing Member State do not take part in the discussions and decisions relating to the withdrawal in the European Council and the Council (Article 50(4) TEU),<sup>11</sup> nothing is said about the Members of the European Parliament elected in the withdrawing Member State. It has been argued that MEPs from the withdrawing Member State – as representatives of all EU citizens – must be able not only to participate in EP debates concerning the withdrawal, but also to vote on the EP resolution on the withdrawal agreement.

Finally, ratification of the withdrawal agreement by the remaining Member States is not required – in line with the voluntary character of the withdrawal. Nevertheless, any changes to the Treaties that might become necessary as a consequence of the withdrawal would require ratification by the remaining Member States, in accordance

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<sup>8</sup> On 27 July 2016, Michel Barnier, a former European Commissioner and French foreign minister, was designated chief [negotiator](#) for the European Commission and entrusted with leading the Commission's 'Article 50 Task Force' set up in September 2017. The Conference of Presidents of the European Parliament designated Guy Verhofstadt, leader of the ALDE Group and former Belgian prime minister, as the Parliament's coordinator on Brexit, with Didier Seeuws leading corresponding work in the Council. Formal designation of the Union negotiator by the Council will only take place once the Article 50 notification has been received from the UK.

<sup>9</sup> [Article 50 \(Voluntary withdrawal from the Union\)](#), Wyrozumska A, in Mangiameli S, Blanke H-J, The Treaty on European Union (TEU), Springer, Berlin/Heidelberg, 2013.

<sup>10</sup> See also [Rule 99](#) on the consent procedure and [Rule 168](#) on the quorum, Rules of Procedure of the European Parliament, January 2017.

<sup>11</sup> The withdrawing Member State's representatives continue to sit and vote in the European Council and the Council on matters unconnected to the withdrawal, until the date of withdrawal from the EU.



with Article 48 TEU on the revision procedure. For example, Articles 52 TEU and 355 TFEU on the territorial scope of the Treaties would need to be amended, and the protocols relating to the withdrawing Member State revised or repealed. Furthermore, any international agreement between the EU and the state which has withdrawn defining their future relationship would require ratification in the remaining Member States, unless the agreement were only to cover matters falling within the exclusive competence of the European Union.

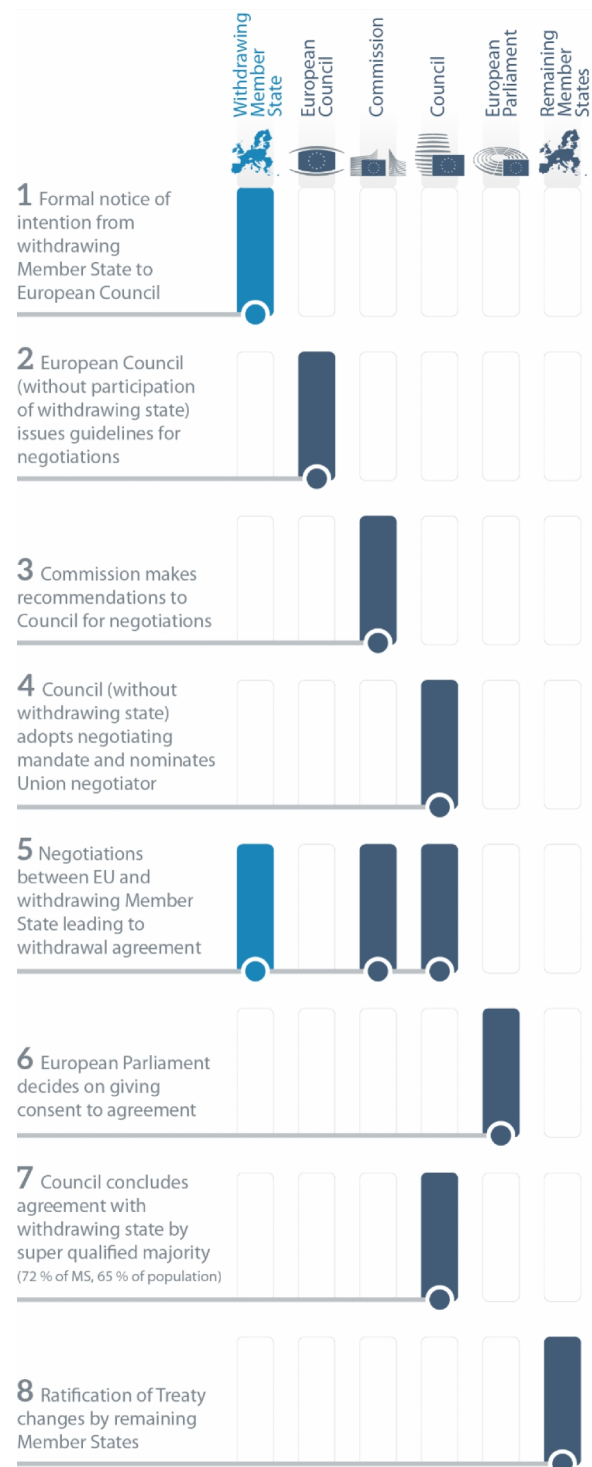
### 2.1.3 Effects and consequences of withdrawal

According to Article 50(3) TEU, from the date of entry into force of the withdrawal agreement or, failing an agreement, two years following the withdrawal notification (unless there is an extension of this period as mentioned above), the EU Treaties and their Protocols shall cease to apply to the state concerned.

While EU law ceases to apply in a Member State once it leaves the EU, national acts adopted in the implementation of, or transposition of, EU law would remain valid until they are repealed or amended by national legislatures or administrations.<sup>12</sup> The rights and obligations deriving from the Treaties would cease to apply, at least to the extent agreed between the EU and the withdrawing Member State. International agreements between the EU and third countries or international organisations would also no longer apply to the withdrawing state, which would have to negotiate alternative arrangements.<sup>13</sup>

As the formulation expressed in Article 50 TEU does not appear to support partial withdrawal

Figure 1 – Article 50 TEU procedure



Source: EPRS, [UK withdrawal from the EU - Next steps](#).

<sup>12</sup> In a [speech](#) delivered on 2 October 2016, the British prime minister, Theresa May, announced that a 'Great Repeal Bill' will be put before the UK Parliament in its next parliamentary [session](#). The Bill would repeal the European Communities Act 1972 (ECA) which gives effect to EU law in the UK, with effect from UK withdrawal. According to May, with the repeal of the ECA, the EU *acquis* will be converted to British law, leaving the UK Parliament 'free to amend, repeal and improve any law it chooses'. See also [Government announces end of European Communities Act](#), Department for Exiting the EU, 2 October 2016.

<sup>13</sup> [Article 50 TEU: Withdrawal of a Member State from the EU](#), Poptcheva E-M, EPRS Briefing, February 2016.

from the EU (that is, withdrawal from certain obligations only, and not from others), Article 50 TEU would not seem to be the appropriate legal instrument for any such an arrangement.

### The Euratom Community and Treaty

Most experts agree that withdrawal from the EU also entails withdrawal from the **Treaty instituting the European Atomic Energy Community (Euratom Treaty)**, although the opposite view has also been advanced. Even if the EU and the Euratom Community are separate legal entities, Article 106a of the Euratom Treaty (considered a 'bridging provision') provides that Article 50 TEU also applies to the Euratom Treaty; as a consequence, a state which is no longer part of the EU cannot remain a Member of the Euratom Community.<sup>14</sup>

Article 106a (Treaty instituting the European Atomic Energy Community)

*1. Article 7, Articles 13 to 19<sup>15</sup>, Article 48(2) to (5), and Articles 49 and 50 of the Treaty on European Union, and Article 15, Articles 223 to 236, Articles 237 to 244, Article 245, Articles 246 to 270, Article 272, 273 and 274, Articles 277 to 281, Articles 285 to 304, Articles 310 to 320, Articles 322 to 325 and Articles 336, 342 and 344 of the Treaty on the Functioning of the European Union, and the Protocol on Transitional Provisions, shall apply to this Treaty.*

*2. Within the framework of this Treaty, the references to the Union, to the 'Treaty on European Union', to the 'Treaty on the Functioning of the European Union' or to the 'Treaties' in the provisions referred to in paragraph 1 and those in the protocols annexed both to those Treaties and to this Treaty shall be taken, respectively, as references to the European Atomic Energy Community and to this Treaty.*

*3. The provisions of the Treaty on European Union and of the Treaty on the Functioning of the European Union shall not derogate from the provisions of this Treaty.*

There is a contrary view that leaving the EU would not necessarily imply leaving the Euratom Community.<sup>16</sup> Some also consider that in reality there are two exit mechanisms: triggering Article 50 TEU would lead only to the two Union Treaties – the TEU and the TFEU – ceasing to apply to the withdrawing state, whilst withdrawal from the Euratom Community would require a separate Article 50 TEU procedure.<sup>17</sup> However, even under these circumstances, nothing would impede the Member State from including its intention to withdraw from both the EU and Euratom in its formal notification to the European Council. Furthermore, membership of Euratom without EU membership would be unworkable in practice, for various reasons (e.g. Euratom is governed by the EU institutions).

In its explanatory notes to the European Union (Notification of Withdrawal) Bill, the UK government asserted that the power for the Prime Minister to notify the UK's withdrawal from the EU 'includes the European Atomic Energy Community ("Euratom"), as the European Union (Amendment) Act 2008 sets out that the term "EU" includes (as the context permits or requires) Euratom (section 3(2)).'<sup>18</sup>

<sup>14</sup> See for example [The Euratom Treaty v. Treaties of the European Union: limits of competence and interaction](#), Ptasekaite R, Swedish Radiation Safety Authority, Report no. 2011:32; [Potential impact of the Brexit on the European nuclear industry](#), FORATOM, 24 June 2016; [Brexit 'could trigger' UK departure from nuclear energy treaty](#), Rojo J, The Guardian, 27 September 2016.

<sup>15</sup> Provisions on the institutions, TEU.

<sup>16</sup> [Energy Brexit – initial thoughts](#), Brown A, International Energy Law Review, 2016, 5, 209-221.

<sup>17</sup> [Brexit Versus Euratom: What the 'No' Vote Could Mean for UK Membership in the European Nuclear Peace Treaty](#), Bruneau M, Hamilton A L, McDermott Will & Emery, 19 July 2016.

<sup>18</sup> [Bill documents – European Union \(Notification of Withdrawal\) Bill 2016-17](#), UK Parliament.

### 2.1.4 *Withdrawing or revoking the Article 50 notification*

One important question is whether a notification under Article 50 TEU can be withdrawn once it has been triggered. Article 50 TEU is silent on this matter. Although the Vienna Convention on the Law of Treaties provides that a notification of intention to withdraw from a treaty ‘may be revoked at any time before it takes effect’, the special arrangements of the TEU take precedence.<sup>19</sup>

There is wide agreement that the withdrawal process could be suspended if all the other Member States agree to this, as the Member States are the ‘masters of the Treaties’. The European Council, perhaps on condition that the new decision to revoke the notification is taken in conformity with the constitutional requirements of the withdrawing Member State, could therefore decide by consensus to accept any revocation of the Article 50 TEU notification, although the agreement of other EU institutions could possibly also be required.<sup>20</sup> Some commentators have suggested, at least theoretically, two other scenarios if the withdrawing state and the rest of the Member States reached an agreement that the former will not in the end leave the EU: either the future relationship between the EU and the withdrawing Member State, following the ending of the negotiations, merely reaffirms the application of the Treaties to that state; or, the parties could agree to extend the negotiations indefinitely and, possibly, insert a protocol into the Treaties to confirm that the notification of withdrawal under Article 50 has been revoked.<sup>21</sup>

By contrast, the *unilateral* revocation of an Article 50 notification appears much more problematic. Some commentators argue that a Member State cannot unilaterally revoke its notification to leave the EU (in the sense of legally compelling the rest of the Member States to accept this revocation). The event triggering withdrawal proceedings is a Member State’s unilateral notification under Article 50(2) TEU, effectively starting a countdown to the deadline (which may be extended if the European Council, together with the withdrawing Member State, so agrees), by which the withdrawal process must end, unless a concluded withdrawal agreement provides otherwise (Article 50(3) TEU). For this reason, as well as in order to prevent any abuse on the part of the withdrawing Member State – for example, stalling the negotiations by withdrawing the notification, then re-notifying and re-starting the two-year period, thus bypassing the agreement of the other Member States<sup>22</sup> – the possibility of a unilateral revocation of the notification at a later date is thought by these commentators to be legally doubtful.<sup>23</sup>

Others, however, believe that the unilateral revocation of an Article 50 withdrawal notice is legally possible, if made in accordance with the national constitutional requirements of the withdrawing Member State. In this scenario, if the withdrawing state decided to stop the exit process, the other Member States would not be legally

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<sup>19</sup> [Brexit Unknowns](#), Miller V (Ed.), Briefing Paper No 7761, House of Commons Library, 9 November 2016.

<sup>20</sup> [Brexit: What Next?](#), Duff A, Statement to the Constitutional Affairs Committee of the European Parliament, 8 November 2016. See also [Brexit and beyond: How the United Kingdom might leave the European Union](#), UK in a Changing Europe and Political Studies Association, November 2016.

<sup>21</sup> [Brexit and Article 50 TEU: A constitutionalist reading](#), Eeckhout P, Frantziou E, UCL European Institute, Working paper, December 2016.

<sup>22</sup> *Ibidem*.

<sup>23</sup> [Article 50 TEU: The uses and abuses of the process of withdrawing from the EU](#), Peers S, EU Law Analysis, 8 December 2014; [What happens if we vote for Brexit?](#), Renwick A., Constitution Unit, 19 January 2016; [Article 50 TEU: Withdrawal of a Member State from the EU](#), Poptcheva E-M, EPRS Briefing, February 2016.

able to force that state to leave the EU.<sup>24</sup> A state expresses its ‘intention’ to withdraw, and an intention may be withdrawn. Any other situation would amount to an expulsion from the EU, which would not have been the purpose of the drafters of Article 50.<sup>25</sup> However, some commentators specify that this unilateral revocation is possible under certain constraints, notably if the Member State has genuinely and in good faith taken a *new decision not to withdraw* from the EU (a decision which must not be about the rejection of a specific agreement).<sup>26</sup>

The Court of Justice of the EU (CJEU) might be called upon to rule on such a revocation’s compatibility with the Treaties; as it is a matter of interpretation of EU law, the CJEU would be the ultimate interpretative authority on the issue.

### 2.1.5 *The withdrawal agreement and the future relationship*

Article 50 does not clarify what the withdrawal agreement should contain.<sup>27</sup> It is assumed that the arrangement would need to include some transitional provisions,<sup>28</sup> to attenuate the consequences of the withdrawal, for example, relating to the transitional application of some EU legislation to protect any individual subjective rights based on such legislation; to address the issue of contract-based rights; the phasing-out of EU financial programmes in the withdrawing state and other EU norms;<sup>29</sup> and broader questions of planned financial commitments, dealing with border issues and relocating EU agencies.

Disentangling budgetary and administrative relations between a Member State deciding to leave the EU and the remaining Member States may prove a difficult exercise, which requires consideration of many different aspects. Examples of elements that would need to be discussed in this process are: common liabilities in the medium-term under a budget that has many resources allocated to programmes with a multiannual life-cycle (for example, cohesion spending and large infrastructure projects);<sup>30</sup> the status and possible relocation of EU bodies based on the territory of the Member State leaving the Union;<sup>31</sup> and the participation of the departing Member State in arrangements (such as the European Development Fund)<sup>32</sup> that are intergovernmental in nature, but are administered by the European Commission.

<sup>24</sup> [Referring Brexit to the Court of Justice of the European Union: Why revoking an Article 50 notice should be left to the United Kingdom](#), Garner O, European Law Blog, 14 November 2016. See also [Leading EU experts advise that EU Notification of Withdrawal Bill does not disable Parliament’s ‘constitutional handbrake’ on Brexit](#), Bindmans, 17 February 2017.

<sup>25</sup> This view has been expressed, for example, by Jean-Claude Piris, Jurisconsult of the Council at the time of the Convention on the Future of Europe, and John Kerr, its Secretary-General. [Article 50 is not for ever and the UK could change its mind](#), Piris J-C, Financial Times, 5 September 2016. [Article 50 author Lord Kerr says Brexit not inevitable](#), Campbell G., BBC, 3 November 2016.

<sup>26</sup> Eeckhout P, Frantziou E, op. cit.

<sup>27</sup> [Brexit Negotiations – The View From the EU, Cicero Group](#), December 2016.

<sup>28</sup> [Brexit: What Next?](#), Duff A, Statement to the Constitutional Affairs Committee of the European Parliament, 8 November 2016.

<sup>29</sup> See also [Brexit Negotiations – The View From the EU, Cicero Group](#), December 2016.

<sup>30</sup> Unanimously agreed by EU Member States, the current EU Multiannual Financial Framework (MFF) covers the 2014-2020 period. For a number of significant programmes, commitments subscribed to by 2020 may lead to related payments up to 2023 (under the ‘N+3’ principle), and the closure of the programmes may take place only after that date.

<sup>31</sup> Currently, two EU decentralised agencies are based in the United Kingdom: the European Medicines Agency (EMA) and the European Banking Authority (EBA). Very soon after the UK referendum, other EU Member States began to express interest in hosting these agencies, and many have now done so. [Two EU agencies in London face uncertain future](#), Wall Street Journal, 26 June 2016.

<sup>32</sup> For an overview of the EDF, its budgetary specificities and the long-standing debate on its possible inclusion in the EU budget: [European Development Fund. Joint development cooperation and the EU budget: out or in?](#), D’Alfonso A, EPRS In-Depth Analysis, European Parliament, 2014.

The outcome of such a process would also depend on the framework that is agreed for future relations between the EU and the departing Member State (see Section 3). Scenarios range from an exit bill for outstanding liabilities with no further participation in EU activities, to continued participation in a number of activities with associated contributions.<sup>33</sup>

However, the fact that Article 50 TEU does not require ratification of the withdrawal agreement by the Member States has led some experts to conclude that the withdrawal agreement should contain only provisions falling under the EU's exclusive competence (Article 3 TEU).<sup>34</sup>

The extent to which the withdrawal agreement will set out the future relationship of the withdrawing Member State with the EU is also unclear. Most likely, a separate agreement (or agreements) would have to be negotiated to put in place the framework for future cooperation between the two parties, including on trade, because negotiations on such future arrangements are expected to need longer than two years to conclude,<sup>35</sup> unless the UK opts for a very 'hard Brexit', with no or minimal future arrangements put in place. The European Commission's view in this respect – in contrast to the position taken by the UK government (see below) – has been that the withdrawal agreement will be limited to the necessary arrangements to extricate the UK from the EU, as indicated above.

Moreover, regarding the sequencing of the agreements, most commentators agree that the withdrawal agreement and the agreement(s) on the future relationship would logically need to be *concluded* one after the other. The main argument against concluding the withdrawal agreement and the agreement (or agreements) on the future relationship at the same time is the lack of a legal basis: while Article 50 TEU provides the basis for the withdrawal agreement between the EU and the withdrawing (but still a) Member State only, a future-relationship agreement would require a legal basis applicable to relations between the EU and a third country, such as Article 207 TFEU (common commercial policy) or 217 TFEU (association agreements).<sup>36</sup> Most experts, therefore, agree that the withdrawal agreement must be concluded first, and an agreement on the future relationship can only be formally concluded and take effect after the withdrawal agreement has entered into force, transforming the withdrawing state into a third state in relation to the EU.<sup>37</sup>

According to a timetable outlined by Michel Barnier, the withdrawal agreement would be negotiated and concluded first, followed by negotiations for a final trade deal with the UK once it became a 'third country'. The withdrawal agreement would, furthermore, need to be agreed within 16-18 months of the triggering of Article 50 TEU by the UK, so that the UK and the EU institutions involved have time to approve the deal. Barnier also noted that a transitional arrangement would only make sense for the EU if it represented a step towards a future agreement on the new partnership.<sup>38</sup> Other key EU representatives have also indicated their preference for a detailed deal on future

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<sup>33</sup> The Centre for European Reform think-tank has published a paper outlining ['The €60 billion Brexit bill'](#) based on a figure repeatedly cited in the press from Commission sources. A [response](#) from the Bruegel think-tank suggests the UK would benefit more from its share of EU assets than the CER calculations.

<sup>34</sup> [Brexit: A tale of two agreements](#), Flavier H, Platon S, European Law Blog, 30 August 2016.

<sup>35</sup> [Barnier urges UK to be realistic about trade terms for Brexit](#), Financial Times, 6 December 2016.

<sup>36</sup> Flavier H, Platon S, op. cit.

<sup>37</sup> Ibidem.

<sup>38</sup> [Michel Barnier's press conference](#), summary and analysis, The Guardian, 6 December 2016.

cooperation between the EU and the UK, but it is not clear to what extent they would agree to discuss this within the two-year framework.<sup>39</sup>

The agreement or agreements on a future relationship will most likely require approval by the EP and, depending on the competences involved, a qualified majority vote or unanimity in the Council as well as, possibly, ratification by all remaining Member States.

On the other hand, in her 17 January speech on presenting her government's overall position on withdrawal, the UK Prime Minister, Theresa May, expressed the aim of reaching an agreement on the future EU-UK partnership by the time of the conclusion of the Article 50 process (within the two years stipulated by the Treaty). This broad agreement seen as a single package deal would then be followed by a 'phased process of implementation', which would allow both the EU and the UK to adapt to the new arrangements in the many areas of cooperation so as to avoid any instability or legal uncertainty. The UK government also committed itself to put the final deal agreed between the UK and the EU to a 'take it or leave it' vote in both houses of the UK Parliament prior to the EP's debate and vote (although it is not entirely clear on what type of deal it would be voting, or what would be the consequences of a rejection).<sup>40</sup>

For some commentators, there could be five possibilities as regards the scope of a deal:<sup>41</sup>

- a comprehensive deal which covers both the conditions of the withdrawal and the UK's future relationship with the EU;
- a deal on the withdrawal terms with transitional arrangements while the future relationship is determined;
- a deal only on the withdrawal terms, followed by negotiations on the future relationship, but without any transitional arrangements in place during that time;
- no deal, the UK's withdrawal taking place after the two years (or later if agreed by the UK and the European Council), according to Article 50(3) TEU;
- or a decision for the UK to stay in the EU.

The impact of the UK's withdrawal from the EU on Ireland (which will, of course, continue as an EU Member State) and on the situation in Northern Ireland (especially since Northern Irish people have the right to both British and Irish citizenship – and thus, from the latter, EU citizenship post-Brexit) has also been widely discussed. In particular, the future of the peace process under the Belfast/Good Friday Agreement, of the Irish land border and the Common Travel Area between the UK and Ireland, as well as the economic and trade implications for the bilateral UK-Ireland relationship, are all major issues to be considered in the future EU-UK negotiations.<sup>42</sup>

### 2.1.6 *The Court of Justice of the European Union*

There are many ways in which the UK's withdrawal from the EU could come before the Court of Justice of the EU (CJEU), as a series of yet unforeseen legal consequences of the withdrawal cannot be excluded.<sup>43</sup>

<sup>39</sup> [The Process of Brexit: What Comes Next?](#), Renwick A, UCL European Institute, 3 February 2017.

<sup>40</sup> [The government's negotiating objectives for exiting the EU: PM speech](#), 17 January 2017. See also [British parliament will get vote on final Brexit deal](#), Cooper C, Kroet C, Politico, 7 February 2017.

<sup>41</sup> [The Process of Brexit: What Comes Next?](#), Renwick A, op. cit.

<sup>42</sup> See [Leaving the European Union: The UK and Ireland](#), Waitzman E, Lords Library notes LLN-2016-0060, 17 November 2016, and [Brexit: UK-Irish relations](#), EU Committee, House of Lords Paper 76, 12 December 2016.

<sup>43</sup> ['Many ways' Brexit may go to EU courts, top ECJ judge says](#), Financial Times, 21 November 2016.

For example, the withdrawal agreement, as an international agreement of the EU, is subject to CJEU judicial review. The Council decision to conclude the agreement could be contested before the Court through an action for annulment (Article 263 TFEU). Also, questions for a preliminary ruling related to the withdrawal agreement could be referred to the CJEU by a national court of one of the remaining Member States (Article 267 TFEU), while a domestic court of the withdrawing Member State could do the same, if explicitly provided for by the withdrawal agreement.<sup>44</sup> Additionally, a reference for a preliminary ruling on the possibility of unilateral revocation of the Article 50 notice could be envisaged.<sup>45</sup> Furthermore, the CJEU could be requested to rule/give an opinion on the compatibility of the draft withdrawal agreement or the future relationship agreement(s) with EU law (a request that could also be made by the European Parliament under Article 218(11) TFEU).<sup>46</sup> However, some commentators consider that this would not be possible regarding the withdrawal agreement, as Article 50 TEU refers only to Article 218(3) TFEU.<sup>47</sup>

### 2.1.7 *Re-joining the EU*

Article 50(5) envisages the possibility that a Member State that has withdrawn may re-join the EU, but does not confer an automatic right to re-join. That state would have to re-submit an application for EU membership, subject to the procedure contained in Article 49 TEU (namely, the EU accession process).

## 3 EU institutional preparations for negotiations

The process leading to the triggering of Article 50 TEU builds on various stages that involve both Member States and EU institutions. Since the UK referendum on 23 June 2016, the EU institutions and Member States have been preparing to begin the negotiations that will eventually lead to the completion of the withdrawal procedure under Article 50 TEU.<sup>48</sup>

The timeline below summarises the main steps towards the start of negotiations and highlights the activities to date of the EU institutions and of the UK government.

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<sup>44</sup> [Article 50 TEU: Withdrawal of a Member State from the EU](#), Poptcheva E-M, EPRS Briefing, February 2016.

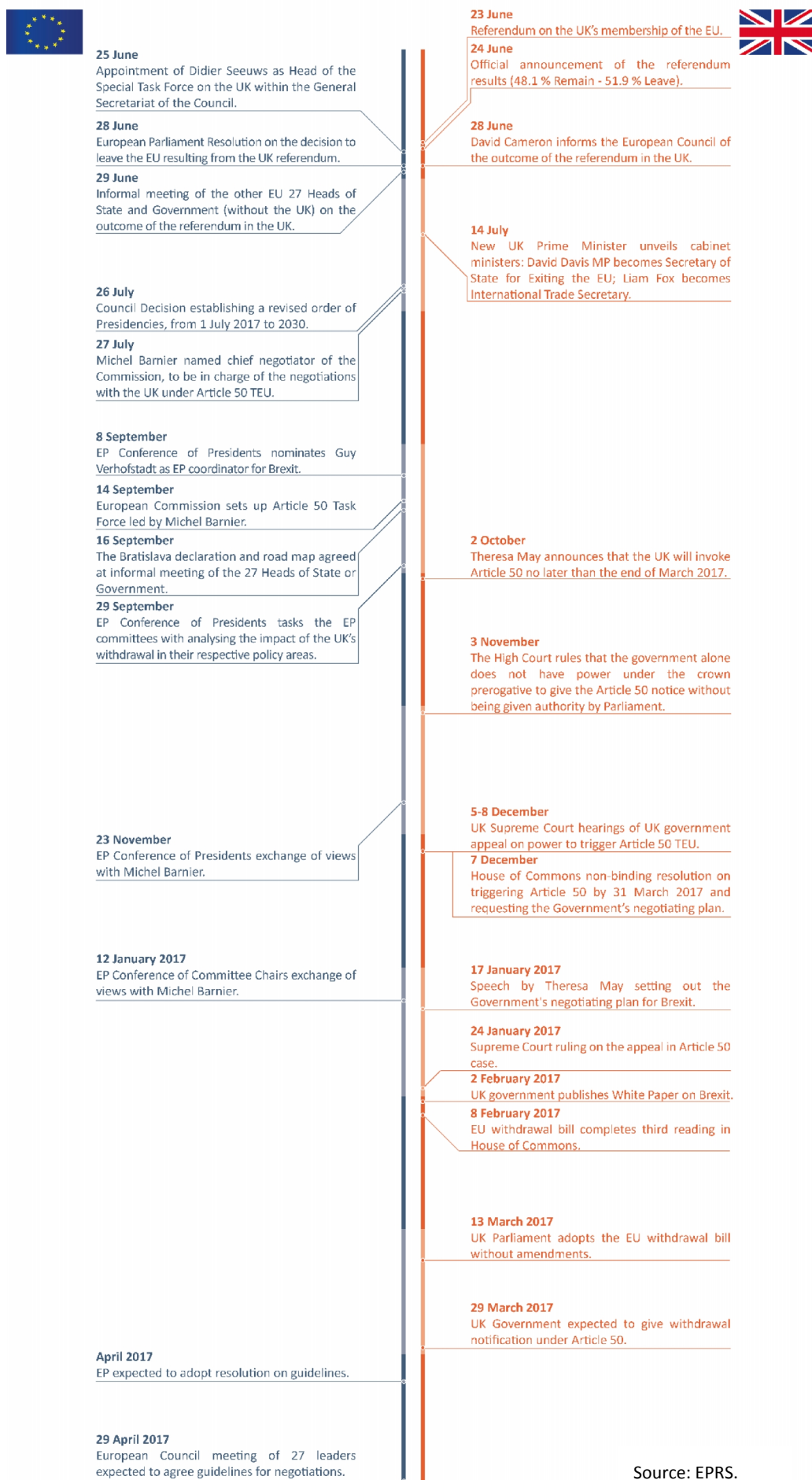
<sup>45</sup> [Referring Brexit to the Court of Justice of the European Union: why revoking an Article 50 notice should be left to the United Kingdom](#), Garner O, European Law Blog, 14 November 2016.

<sup>46</sup> [Brexit: What Next?](#), Duff A, Statement to the EP's Constitutional Affairs Committee, 8 November 2016.

<sup>47</sup> [Article 50 TEU: Withdrawal of a Member State from the EU](#), Poptcheva E-M, EPRS Briefing, February 2016.

<sup>48</sup> See, for instance, [Article 50: The Brexit divorce paper](#), Barker A, The Financial Times, July 2016. See also [Brexit: What Next?](#), Duff A, Statement to the Constitutional Affairs Committee of the European Parliament, November 2016.

**Figure 2 – Timeline of main steps taken in the EU and UK post-referendum, 2016 and early 2017**



Source: EPRS.



### 3.1 Early stages – EP resolution and Bratislava declaration

The European Parliament, in a resolution passed on 28 June 2016 at a special plenary session, invited the Council to appoint the European Commission as negotiator on Article 50 TEU and called for a roadmap for a better Union, to be completed by a revision of the Treaties.<sup>49</sup>

This roadmap was discussed for the first time during the informal meeting of the 27 Heads of State or Government of the EU – with the exception of the UK Prime Minister, who was not invited to the informal meeting on 29 June 2016,<sup>50</sup> which indicated the necessary steps to take in order to start the negotiations for the withdrawal. The meeting confirmed that the Council would adopt the guidelines for the negotiations and that the Commission and the EP would play their full role in accordance with the Treaties. The meeting also stressed the need to activate the procedures for withdrawal ‘as quickly as possible’, in order to minimise uncertainty.

At another informal meeting of the European Council without the UK, on 16 September 2016, the 27 Heads of State or Government of the EU adopted a declaration concerning the state of the EU and agreed on a roadmap of future action to be taken to ‘make a success of the EU at 27’. The President of the European Council, Donald Tusk, stressed that this was a preliminary step in a process that would redefine the balance of the EU’s future at 27 and guide leaders’ actions during future meetings.<sup>51</sup>

The ‘Bratislava roadmap’ touches upon migration, security and economic growth. Member States continued discussion on these themes and the future of Europe at their informal meeting on 3 February 2017 in Malta, as well as on 10 March 2017, with a view to publishing their position following the celebration of the 60th anniversary of the Rome Treaties on 25 March 2017.<sup>52</sup> In view of the 25 March summit in Rome, the European Commission also adopted a White Paper on the future of Europe,<sup>53</sup> as its contribution to the upcoming discussions.

In their statement following the informal meeting on 15 December, the Heads of State or Government of 27 Member States and the Presidents of the European Council and European Commission reiterated that negotiations will start after the UK triggers Article 50, and that agreements will be based on a balance of rights and obligations.<sup>54</sup> Their statement clarified a number of procedural points:

- First, the European Council will adopt the guidelines defining the framework for negotiations under Article 50, and update them when necessary. The adoption of the decision authorising the opening of the negotiations (based on the European Commission’s recommendation) and of the directives for the negotiations – and their updating – will remain a task for the Council. The representative of the UK in the European Council, the Council and its preparatory bodies will not be invited to participate in decisions concerning the withdrawal;

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<sup>49</sup> European Parliament, [resolution of 28 June 2016 on the decision to leave the EU resulting from the UK referendum](#) (2016/2800(RSP), 28 June 2016.

<sup>50</sup> European Council, [Informal meeting at 27 – Brussels, 29 June 2016 – Statement](#).

<sup>51</sup> European Council, [Remarks by President Donald Tusk before the Bratislava summit](#), September 2016.

<sup>52</sup> European Parliament, At a glance [‘Post-European Council Briefing’](#), September 2016. See also [Informal meeting of EU heads of state or government](#), Malta, 03/02/2017 and [Remarks by President Donald Tusk after the informal meeting of the 27 heads of state or government](#), 10/03/2017.

<sup>53</sup> European Commission, [White Paper on the future of Europe](#), COM(2017) 2025, 1 March 2017.

<sup>54</sup> [Statement](#) after the informal meeting of the 27 heads of state or government, 15 December 2016.

- Second, the Council was invited to nominate the European Commission as the Union's negotiator, and the nomination of Michel Barnier as chief negotiator was welcomed. However, the Union's negotiating team will include a representative of the rotating presidency of the Council.
- Third, the Council and Coreper, assisted by a dedicated working party with a permanent chair, will ensure that the negotiations are conducted in line with the guidelines of the European Council and directives of the Council;
- Fourth, representatives of the European Parliament would be invited to the preparatory meetings (Sherpa meetings) ahead of European Council meetings;
- Finally, during all phases of the negotiations, the European Parliament will be closely and regularly informed. In particular, the Council presidency will be ready to inform and exchanges views with the EP before and after each meeting of the General Affairs Council. Moreover, Parliament's President will also be invited to be heard before each European Council meeting.

So far, just one legal act pertaining to EU law is directly concerned with the decision of the UK to leave the Union. This is the decision of the Council of the EU to change the order of its rotating presidency.<sup>55</sup> Following the UK decision to relinquish the Council presidency in the second half of 2017, the Council decided to bring forward by six months the subsequent order of presidencies, starting from 1 July 2017.

## 3.2 European Parliament

Following the Treaties to the letter, the role of the European Parliament in the withdrawal procedure may appear to be limited. However, the role of the EP remains crucial to the success of the negotiations, since, under Article 50 TEU, to enter into force, the Parliament must give its consent to the final agreement by a (simple) majority vote. The Parliament's power also consists in monitoring the negotiation process. Article 218 TFEU states that the EP must be kept immediately and fully informed during all stages of the negotiation procedure. Given the importance of securing Parliament's approval, the institution will need to be closely involved in the negotiations.

### 3.2.1 EP Conference of Presidents

At its meeting of 8 September 2016, the European Parliament's Conference of Presidents of political groups (CoP) appointed Guy Verhofstadt, Chair of the Alliance of Liberals and Democrats for Europe (ALDE) Group, as the Parliament's coordinator for the negotiations on the UK withdrawal from the EU. The CoP stressed the importance of this decision as crucial to guaranteeing the Parliament's involvement throughout all stages of the future negotiations.

Mr Verhofstadt's mandate involves providing the CoP with regular updates on the status of negotiations. Cooperation is envisaged, in particular, with all the political group leaders, and with the chair of the Constitutional Affairs Committee, which will be responsible for preparing Parliament's position on an eventual withdrawal agreement. Moreover, the Parliament's standing committees have been asked to provide factual analysis addressing the issues arising from the UK decision to withdraw from the EU. On this point, Mr Verhofstadt stressed the need for a coordinated EP approach from the beginning of the negotiations. In his opinion, each of the committees should produce analysis on the implications of the UK withdrawal for its policy area prior to Article 50 being triggered.

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<sup>55</sup> Council of the EU, [Council rotating presidencies: decision on revised order](#), Press release 475/16, July 2016.

Coordination is also envisaged with other leading figures in the negotiations, specifically with Michel Barnier, appointed by the European Commission to lead the task force for the preparation and conduct of the negotiations with the UK under Article 50 TEU (see below).<sup>56</sup> To foster cooperation with the Commission and the full involvement of the EP at all stages of the negotiations, Barnier has been invited to relevant meetings of the CoP since September 2016, and to the EP's Conference of Committee Chairs.

On 29 September 2016, the CoP analysed ways of enhancing cooperation between the EP and the Commission in the framework of negotiations on UK withdrawal. In particular, the CoP examined internal coordination arrangements for the withdrawal, and divided the process into three phases:

- (i) Phase 1 (pre-notification phase), running until the notification by the UK government to the European Council of its intention to leave the EU, foreseen to take place by the end of March 2017;
- (ii) Phase 2 (negotiation phase), aimed at delivering an agreement on the UK exit (and possibly on a new relationship between the UK and the EU);
- (iii) Phase 3 (post-negotiation phase), covering the EP's formal endorsement of the withdrawal agreement through the consent procedure.

According to Article 50 TEU, the maximum duration of phases 2 and 3 shall not exceed two years (unless extended by consensus among all Member States).

The CoP agreed that the EP committees should produce input in their areas of responsibility to be used in drafting an EP resolution setting out Parliament's 'red lines', key messages and general principles, notably in view of the preparation by the European Council of its negotiating guidelines.

The CoP is likely to discuss a draft resolution at its meeting on 29 March, immediately after the expected notification by the UK, with a view to tabling it for discussion and vote at the April I plenary session. That resolution will set out the Parliament's main principles, broad objectives and 'red lines' for the negotiations. As well as representing the EP's contribution to the European Council for its guidelines, the resolution will also serve as a benchmark for Parliament's evaluation of an eventual agreement, or agreements, between the UK and EU.

### *3.2.2 EP Conference of Committee Chairs*

In an exchange of views in December 2016 with the EP's Conference of Committee Chairs (CCC), Guy Verhofstadt noted that the committees' analysis would constitute the basis of an EP resolution likely to be adopted in early April 2017, following the UK's notification under Article 50. The resolution would provide the Parliament's input in relation to the European Council's negotiating guidelines, as well as regarding the future framework of relations between the EU and the UK.

At an extraordinary meeting on 12 January 2017, the CCC held a further exchange of views with Michel Barnier. The CCC's then-chair, Jerzy Buzek, explained that the committees were working on their technical assessments of the potential impact of Brexit in their respective policy areas, and were willing to provide further input throughout the process. While not going into the details of the negotiations, Barnier

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<sup>56</sup> European Commission, [President Juncker appoints Michel Barnier as Chief Negotiator in charge of the preparation and Conduct of the Negotiations with the United Kingdom under Article 50 of the TEU](#), press release, July 2016.

indicated that the timeline to reach an agreement with the UK under Article 50 would be less than two years, and that, once the broad lines of the future relationship have been decided, a transitional arrangement could be put in place. He also emphasised the need for constant dialogue with the EP.

### 3.2.3 EP committees

During the first phase (pre-notification phase) identified above, the Parliament's committees analysed the issues pertaining to the consequences of withdrawal of a Member State.

Four main questions were considered by EP committees, namely:

- (i) The possible impact of UK withdrawal on EP legislative files currently under discussion;
- (ii) The possible impact on legislative files currently under discussion in case they are not concluded before the withdrawal of the UK from the EU, or in case of delay;
- (iii) The EU policies, programmes and legislation in force that should feature as part of the withdrawal agreement;
- (iv) How EU policies, programmes and legislation currently in force will feature in any future EU/UK relationship.

## 3.3 European Commission and Council

According to the EU Treaties, the European Commission and the Council will play a crucial role in informing and agreeing the EU's negotiating position. The Commission will carry out the bulk of the negotiations, whereas the Council will define the directives for the negotiations, in light of the European Council's guidelines. Those guidelines are set to be agreed by the 27 Heads of State or Government at a special European Council meeting scheduled for 29 April.

Both institutions have appointed a negotiator to lead the work. The main task of the Commission's chief negotiator, Michel Barnier – a former European Commission Vice-President, and former French Foreign Minister and Minister for Europe – drawing on the technical expertise provided by the European Commission's directorates-general, will be to implement the political mandate decided by the Council. Barnier has already visited most EU capitals to have preliminary discussions on Brexit.<sup>57</sup> He has also held meetings with the 'Sherpas' – senior officials from the 27 national governments – in Brussels.<sup>58</sup>

Within the Council, Didier Seeuws – a Belgian diplomat and former *chef de cabinet* for the then President of the European Council, Herman Van Rompuy – is mandated with the task of gathering the positions of the 27 Member States into a single Council position on the EU mandate. Specifically, Seeuws may chair the special committee of Member State representatives appointed to oversee the negotiations for the Council.

According to a report published by the Cicero think-tank in December 2016, a set of key variables in Member States, including trade ties, migration, and upcoming elections, will be determinant in shaping a single EU position in the negotiations.<sup>59</sup>

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<sup>57</sup> [EU's chief divorce negotiator to make first Brexit statement](#), Rankin J, The Guardian, 6 December 2016.

<sup>58</sup> [Barnier to host Brexit seminar with senior national officials next week](#), Taylor S, MLex Brexit Service, 22 November 2016.

<sup>59</sup> See Cicero Group, [Brexit Negotiations: The View from the EU](#), December 2016.

## 4 UK preparations for the negotiations

### 4.1 The UK government

Following the referendum results and the resignation of David Cameron, the new UK Prime Minister, Theresa May, unveiled her cabinet on 14 July 2016. Among the ministers, David Davis became Secretary of State for Exiting the EU, and Liam Fox, Secretary of State for International Trade. Both the newly created Department for Exiting the EU and the Department for International Trade, as well as the Foreign and Commonwealth Office are set to benefit from extra resources. A new Cabinet committee, chaired by the Prime Minister, the European Union Exit and Trade Committee, is tasked with coordinating the Brexit process in Whitehall.<sup>60</sup>

The UK government has the power to formally trigger Article 50 by notifying the European Council of the UK's intention to leave the EU, but, as decided by the Supreme Court in its ruling of 24 January 2017, only after obtaining approval from Parliament. Once the notification is sent, the government is responsible for deciding the UK's negotiating objectives and for conducting talks with the rest of the EU Member States.

The first official indication as to when the UK would start the withdrawal process was given by May in a speech delivered on 2 October 2016. She stated that the UK would invoke Article 50 by the end of March 2017, and indicated some of the main goals for the UK in the future talks with the EU. She looked to a bespoke agreement between the UK and the EU not based on any existing models, which would include free trade in goods and services, access to the greatest extent possible to the EU's single market, and cooperation on law enforcement and counter-terrorism. Conversely, the UK would take back control of immigration and reject the jurisdiction of the European Court of Justice.<sup>61</sup>

In a speech delivered on 17 January 2017, to bring greater clarification to the Brexit process as envisaged by the UK government, the Prime Minister set out 12 negotiating priorities for the UK.<sup>62</sup> These were reiterated and detailed further in the Government's White Paper on 'The United Kingdom's exit from and new partnership with the European Union' published on 2 February 2017.<sup>63</sup> The 12 objectives are:

- providing certainty and clarity;
- taking control of the laws and ending the jurisdiction of the CJEU in the UK;
- strengthening the Union, by concluding a deal that benefits all the nations making up the UK;
- protecting the strong ties with Ireland and maintaining the Common Travel Area;
- controlling immigration;
- securing rights for EU nationals in the UK and UK nationals in the EU;
- protecting workers' rights;
- ensuring free trade with European markets;
- securing new trade agreements with countries across the world;
- ensuring the UK remains the best place for science and innovation;
- cooperating in the fight against crime and terrorism; and

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<sup>60</sup> [The Process of Brexit: What Comes Next?](#), Renwick A, op. cit.

<sup>61</sup> [Britain after Brexit: a vision of Global Britain](#), Theresa May, Speech at the Conservative Party conference, 2 October 2016.

<sup>62</sup> [The government's negotiating objectives for exiting the EU: PM speech](#), 17 January 2017.

<sup>63</sup> [The United Kingdom's exit from and new partnership with the European Union White Paper](#), Department for Exiting the EU, 2 February 2017.

- delivering a smooth orderly exit from the EU.

Essentially, the UK government's preferred approach to leaving the EU consists of reaching an agreement about the future partnership with the EU before the two-year Article 50 process has concluded, followed by a phased process of implementation of the new arrangements in various areas, in order to maintain legal certainty for people and businesses. This transitional status would under no circumstances be unlimited in time. Failing successful negotiations, the White Paper states that 'no deal for the UK is better than a bad deal for the UK'. The main features sought by the UK in its future cooperation with the EU appear to be:<sup>64</sup>

- discontinuing the UK's membership of the Single Market, since this would be incompatible with the power to control immigration coming from EU Member States and with ending the jurisdiction of the CJEU;
- seeking instead to conclude a comprehensive and ambitious free-trade agreement (FTA) with the EU which would give the UK wide access to the EU's single market, as well as negotiating a new customs agreement that would allow the UK to conclude FTAs with other countries, while not impeding trade with the EU;
- continuing cooperation with the EU in the fields of science, research, the fight against crime and terrorism, foreign policy and defence;
- maintaining the Common Travel Area with the Republic of Ireland;
- fully engaging the devolved administrations in Scotland, Wales and Northern Ireland in view of the upcoming talks (although they do not hold any veto right on the withdrawal), including through the Joint Ministerial Committee on EU Negotiations, as well as taking into account the particular interests of the Overseas Territories, the Isle of Man, Channel Islands and Gibraltar;
- seeking agreement on the rights of EU nationals in the UK and of UK nationals in the EU.

## 4.2 The UK Parliament

Following the Supreme Court's ruling on 24 January 2017 that Parliament must give its approval before the triggering of Article 50,<sup>65</sup> the Government introduced a short bill for the consideration of the Parliament on 26 January 2016: the European Union (Notification of Withdrawal) Bill. The examination of the bill started with a second reading debate in the House of Commons on 31 January 2017 and a vote on the general principle of the bill – withdrawing from the EU – on 1 February 2017, with 498 votes in favour and 114 against.<sup>66</sup> At its third reading on 8 February 2017, the House of Commons approved the bill without amendment, with 494 votes in favour and 122 against. The bill passed to the House of Lords on 8 February 2017, which held its second reading debate on 20 and 21 February 2017. The committee stage then took place on 27 February and 1 March 2017, and amendments were tabled, of which one was passed – on ensuring the rights of EU and EEA citizens legally resident in the UK after Brexit. Finally, the report stage and third reading were held on 6 March with votes taking place on 7 March 2017 on three amendments.<sup>67</sup> Whereas two amendments were defeated – to approve the agreement with the EU by national referendum (131 for and 336 against), and to reject

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<sup>64</sup> Renwick A, op. cit.

<sup>65</sup> On 7 December 2016, the House of Commons already adopted a [non-binding resolution](#) on triggering Article 50 by 31 March 2017 and requesting the Government to submit its negotiating plan.

<sup>66</sup> [Bill documents – European Union \(Notification of Withdrawal\) Bill 2016-17](#), UK Parliament.

<sup>67</sup> [Lords debates European Union \(Notification of Withdrawal\) Bill](#), UK Parliament.

the bill because it does not include a mechanism of public consultation prior to the UK's departure from the EU on the future EU-UK relationship (95 for – 340 against) – the amendment on requiring Parliament's approval for the outcome of the negotiations with the EU was passed, by 366 votes for and 268 against.<sup>68</sup>

A similar amendment, that would have made the government's conclusion of a final deal conditional upon the Parliament's approval at the end of the negotiations, had previously been rejected in the House of Commons; however, the UK government has committed to submit a final deal to the Parliament for a 'yes–no' vote, before the European Parliament debates and votes on the matter. In this respect, some commentators point out that, since the withdrawal deal and any agreement(s) on future cooperation will be international agreements, the House of Commons would anyway have the power to block treaty ratification in accordance with the 2010 Constitutional Reform and Governance Act.<sup>69</sup> It is nonetheless unclear what would happen if the UK Parliament refuses to ratify a final deal.

The two amendments passed in the House of Lords were subsequently rejected in votes in the House of Commons. The bill then returned to the House of Lords, which in the end voted not to maintain either of the amendments, recognising that there was no prospect of the House of Commons changing its mind. On 13 March 2017, therefore, the European Union (Notification of Withdrawal) Bill completed its passage through the Houses of Parliament without amendment. It subsequently received royal assent on 16 March.<sup>70</sup>

This clears the way for the government to trigger Article 50 as it has planned, by the end of March. Importantly, the UK Parliament will also scrutinise the 'Great Repeal Bill', on which the government plans to publish a white paper very shortly after triggering Article 50, before introducing the bill with a view to its adoption in the next parliamentary session. This bill would repeal the European Communities Act 1972 (ECA) which gives effect to EU law in the UK; the EU *acquis* will be converted to British law, following which the Parliament would be able to keep, amend or repeal any legislation stemming from the EU membership. This will also end the CJEU's jurisdiction in the UK, according to the government. The 'Great Repeal Act', once adopted, would take effect only as the UK actually leaves the EU. A series of further bills to legislate for new arrangements in many areas, not least immigration controls, would also have to go through Parliament.<sup>71</sup>

Finally, the Parliament will be able to scrutinise the government throughout the negotiating process through parliamentary questions, debates and statements, and the work of its various select committees.<sup>72</sup>

## 5 Templates for future EU-UK relations

The framework for the future relationship between the EU and the UK – to which Article 50 TEU makes reference – is a matter of intense debate and uncertainty, all the more so as consensus seems to be lacking in the UK on many issues deriving from the

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<sup>68</sup> Lords Divisions [results](#) - European Union (Notification of Withdrawal) Bill, 7 March 2017.

<sup>69</sup> Renwick A, *op. cit.*

<sup>70</sup> [European Union \(Notification of Withdrawal\) Act 2017 c.9.](#)

<sup>71</sup> [Legislating Brexit](#), White, H., Rutter, J., Institute for Government, 20 March 2017.

<sup>72</sup> *Ibidem.*

result of the referendum on membership of the EU.<sup>73</sup> Nevertheless, most observers seem to agree on the idea that a new framework for the EU-UK relationship will include many dimensions, among others: economics and trade, cooperation on foreign policy, on security and defence, justice and home affairs (in particular the fight against terrorism and organised crime), and policy in the agricultural and environment fields.<sup>74</sup>

Of these many dimensions, defining the future trade and economic relationship is likely to be one of the most arduous aspects of the negotiations. There are several trade and economic (and in many cases also political) cooperation frameworks between the EU and third states that might serve as a model for a future relationship between the EU and the UK (for a description of the main features of each model, see Section 6 below), without prejudice to any *sui generis* arrangements on which the parties might agree. It is worth looking at these in some detail in order to understand the full range of relationships which the EU has already defined with third countries.

In this context, several options have been advanced. Membership of the **European Economic Area** (EEA) would give the UK extensive access to the Single Market. An 'EEA-minus' option (to account for limitations regarding freedom of movement, for example) has been advanced as a solution by some, but is seen as unacceptable to most EU Member States who would rather keep the EEA template.<sup>75</sup> Others have pointed to the EU-Ukraine Association Agreement containing a **Deep and Comprehensive Free Trade Area** (DCFTA), as a sound basis for a future EU-UK relationship, while the **Comprehensive Economic and Trade Agreement** (CETA) between the EU and Canada has also been proposed as a potential model. Finally, many take the view that the default option of **World Trade Organization** (WTO) rules, without any other preferential agreement in place, would not represent a desirable outcome for the United Kingdom in particular.<sup>76</sup>

The EU has implemented preferential trade agreements (PTA) with 58 third countries and territories. Other PTAs have been concluded but are not yet in force – with Canada, Ecuador, Singapore and Vietnam. Economic partnership agreements (EPAs) with countries grouped in the Eastern African Community, the Southern African Development Community and West Africa are in the same situation.<sup>77</sup> Other negotiations for PTAs are ongoing.<sup>78</sup>

Broadly, the EU has negotiated three main types of trade agreement with third countries and groupings:

- First, agreements creating a customs union;
- Second, association agreements, stabilisation and association agreements, free

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<sup>73</sup> For example, political disagreement exists within the UK on whether the referendum vote to leave the EU should also be construed as a mandate to leave the single market. See the debate in the House of Lords on the [UK-EU Relationship](#), 1 December 2016.

<sup>74</sup> Debate in the House of Lords on the [UK-EU Relationship](#), 1 December 2016. See also [Leaving the European Union: Future UK-EU Relationship](#), Brown T, Waitzman E, House of Lords Library, Note LLN 2016/063, 25 November 2016 and [Brexit and beyond: How the United Kingdom might leave the European Union](#), UK in a Changing Europe and Political Studies Association, November 2016.

<sup>75</sup> [Oral evidence: The UK's future economic relationship with the European Union, HC 483, Treasury Committee](#), House of Commons, 13 July 2016.

<sup>76</sup> [After Brexit: A New Association Agreement Between Britain and Europe](#), Duff A, Policy Network Paper, October 2016.

<sup>77</sup> See [DG Trade Statistical Guide](#), June 2016 and [The State of EU Trade](#) map, DG Trade, European Commission, November 2016.

<sup>78</sup> [Overview of FTA and other trade negotiations](#), DG Trade, European Commission, October 2016.



trade areas including the newer deep and comprehensive free trade area agreements, economic and partnership agreements (between the EU and the African, Caribbean and Pacific group of states), and the more recently negotiated comprehensive economic agreements (such as CETA with Canada);

- Finally, partnership and cooperation agreements (PCA) define a framework for bilateral economic and political relations, without modifying the customs tariffs (normally, PCAs establish that bilateral trade is based on the 'most favoured nation' principle – see below).

Section 6 below outlines in greater detail the characteristics, and gives examples, of the different types of agreement the EU has concluded.

Trade with countries with which the EU has no preferential trade agreement in place is based on WTO rules. Accordingly, imports to the EU are subject to EU tariffs according to the category of goods imported, while exports from the EU are subject to the tariffs the third country applies. However, due to the WTO's principle of non-discrimination, the maximum tariffs would be the tariffs applied to the most favoured nation (MFN). As concerns services, under the WTO's General Agreement on Trade in Services (GATS), the EU and other third-country parties to the agreement have identified the sectors they wish to liberalise; as with trade in goods, market access cannot be discriminatory and must be awarded uniformly to all countries (with the exception of PTAs) for the chosen sectors.<sup>79</sup>

In the context of the various economic and trade relationships the EU has entered into with third countries, it must be further underlined that, with the exception of the customs union, in the case of all other preferential trade agreements, third countries must comply with preferential rules of origin for the goods they export to the EU market. Otherwise, these goods will not benefit from the tariff preference granted to that country.<sup>80</sup>

Besides the necessity of agreeing arrangements setting up the future bilateral relationship with the EU, most experts also agree that, once the UK withdraws from the EU, it would not be a party to the preferential trade agreements and other bilateral investment agreements negotiated between the EU and third countries. The UK's continued participation in these agreements after exiting the EU would depend on new negotiations with the contracting parties.

At the time of writing, there is still much uncertainty. It is possible, for example, that the United Kingdom will need to conduct concomitant negotiations both with the EU, should it opt for a future relationship going beyond MFN terms, and within the WTO for settling its rights and obligations once it is no longer a member of the EU.<sup>81</sup>

It became apparent last autumn that the UK government had already ruled out the European Economic Area (EEA) model (which, according to commentators, would be the closest to EU membership and the least harmful to the UK economy), as well as the Swiss model, as these would mean acceptance of freedom of movement for people and/or jurisdiction of the EU Court of Justice. Some observers therefore concluded that the UK's intention was to exit the single market and to aim for the conclusion of a *sui generis* FTA with the EU.<sup>82</sup>

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<sup>79</sup> [Brexit: Trade aspects](#), Webb D, Briefing Paper 7694, House of Commons Library, 8 September 2016.

<sup>80</sup> [Rules of origin](#), Trade Export Helpdesk, European Commission.

<sup>81</sup> [Leaving the European Union: Global Free Trade](#), Library Note, House of Lords, 20 October 2016.

<sup>82</sup> [Brexit Unknowns](#), Miller, V, (ed.), Briefing paper 7761, House of Commons Library, 9 November 2016. See also [Europe after Brexit: A proposal for a continental partnership](#), Pisani-Ferry, J, Röttgen, N, Sapir, A, Tucker, P, Wolff, G B, Bruegel, 25 August 2016.

This approach was then confirmed by the UK Prime Minister, Theresa May, in a speech on 17 January 2017, setting out her government's negotiating objectives for the UK withdrawal from the EU. Accordingly, control of immigration and ending the jurisdiction of the European Court of Justice in the UK are not compatible with UK membership of the Single Market; therefore the government's stated objective is to negotiate a 'bold and ambitious free trade agreement with the European Union' allowing for the 'freest possible trade in goods and services', securing thus the greatest possible access to the EU's single market for the UK. On the other hand, the UK will likely aim to negotiate a customs agreement with the EU, excluding, however, full customs union membership which would impede the UK from negotiating its own trade agreements with other countries (due to the common external tariff of the customs union) and setting its own tariffs at the WTO. Beyond trade, the speech set the goal of continued cooperation with the EU on matters of police and judicial cooperation, intelligence sharing, foreign affairs and defence.<sup>83</sup>

The government's recent White Paper on the United Kingdom's exit from and new partnership with the European Union<sup>84</sup> further details the goal of a EU-UK new strategic partnership to include a 'wide reaching, bold and ambitious free trade agreement' and that of a new customs agreement between the two parties. The future FTA, in the UK government's view, would not be based on any existing model enjoyed by other countries in their relations with the EU. Moreover, due to the parties' convergence of their systems and regulatory frameworks, the agreement could include elements of current Single Market arrangements in various areas (e.g. financial services, energy, transport and communications, data transfers and data protection etc.). As for the potential new customs arrangement with the EU, mentioned options include a completely new agreement or the UK participating in some elements of the current arrangements.

## 6 Cooperation frameworks between the EU and third countries

### 6.1 European Economic Area agreement between EU and EFTA states

The **European Free Trade Association (EFTA)** was founded in 1960 by the Stockholm Convention signed by seven countries: Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom, with the aim of providing a framework for the liberalisation of trade in goods amongst its Member States. Finland joined in 1961, Iceland in 1970 and Liechtenstein in 1991. With six of these states having joined the EU, EFTA today consists of four Member States: Iceland, Liechtenstein, Norway and Switzerland.

Although the EFTA states do not form a customs union, they usually negotiate preferential trade agreements as a group. EFTA states have 27 free trade agreements (covering 38 countries). However, each retains the right to conclude bilateral trade agreements with third countries outside the EFTA framework. The EFTA FTAs have evolved in time from trade in goods and protection of intellectual property rights to cover areas such as trade in services, investment, competition and government procurement, and more recently trade facilitation, sustainable development and cooperation.<sup>85</sup>

The **European Economic Area (EEA)** brings together the 28 EU Member States and three

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<sup>83</sup> [The government's negotiating objectives for exiting the EU: PM speech](#), 17 January 2017.

<sup>84</sup> [The United Kingdom's exit from and new partnership with the European Union White Paper](#), Department for Exiting the EU, 2 February 2017.

<sup>85</sup> See EFTA [Free Trade Agreements](#).

of the EFTA States (Iceland, Liechtenstein and Norway).<sup>86</sup> It was established by the **EEA Agreement** in 1992, which enables the three EFTA states to participate extensively in the single market. The EEA agreement provides for the incorporation of EU legislation in all policy areas covering the single market on a continuous basis, as and when legislation with EEA relevance is adopted by the EU.<sup>87</sup> It covers the four freedoms, i.e. the free movement of goods, capital, services and persons, plus competition and state aid rules and horizontal areas related to the four freedoms.<sup>88</sup>

Cooperation between the EU and the three EFTA states under the EEA agreement means:<sup>89</sup>

- The three EEA/EFTA members are treated as if they were EU Member States with respect to the single market; this means that all EU single market legislation, including new legislation and amendments to existing legislation must be fully implemented by the EEA/EFTA states. However, they do not have a say in the EU decision-making process on relevant EU legislation and policies, although they can provide comments in the early stages of the legislative process;
- The four freedoms – of movement of goods, people, services and capital – are an integral part of the agreement and must be respected;
- The EEA agreement covers all single market policy areas, including competition and state aid rules,<sup>90</sup> as well as consumer protection, company law, environment, social policy, and statistics. It also provides for cooperation in research and technological development, education, training and youth, employment, tourism, culture, civil protection, enterprise, entrepreneurship, and small and medium-sized enterprises.
- Agriculture and fisheries policies are excluded from the scope of the EEA agreement; other policies not covered are: customs union; common trade policy; common foreign and security policy; justice and home affairs (the EFTA states are, however, part of the Schengen area); direct and indirect taxation; and economic and monetary union;
- As the EEA agreement does not establish a customs union, EFTA/EEA members retain the scope to negotiate preferential trade agreements independently and to maintain full jurisdiction over external relations;<sup>91</sup> in contrast, being outside of the customs union means that exports to the EU must comply with customs procedures and rules of origin;
- The EEA/EFTA states make considerable contributions to the EU budget, with a view to reducing socioeconomic disparities in the EEA area;<sup>92</sup>

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<sup>86</sup> According to [Article 128\(1\)](#) of the EEA Agreement, ‘Any European State becoming a member of the Community shall, and the Swiss Confederation or any European State becoming a member of EFTA may, apply to become a party to this Agreement.’

<sup>87</sup> [In, out or in-between? The UK as a contracting party to the Agreement on the European Economic Area](#), Sif Tynes, D, Lian Haugsdal, E, E.L. Rev. 2016, 41(5), 753-765.

<sup>88</sup> See the EFTA website: <http://www.efta.int/>.

<sup>89</sup> [Which model for Brexit?](#), Emerson M, CEPS Special Report, No. 147, October 2016. See also [In, out or in-between? The UK as a contracting party to the Agreement on the European Economic Area](#), Sif Tynes, D, Lian Haugsdal, E, E.L. Rev. 2016, 41(5), 753-765.

<sup>90</sup> For an analysis of the impact of withdrawal from the EU on UK competition policy see [Post-Brexit scenarios for UK competition policy and public enforcement: the EEA model v complete independence](#), MacGregor, A, Kidane, A, International Trade Law & Regulation, 2016, 22(4), 81-90.

<sup>91</sup> [Comparing EU and EFTA trade agreements: Drivers, actors, benefits, and costs](#), Maurer A., Policy Department study, DG EXPO, European Parliament, May 2016.

<sup>92</sup> See [EEA grants](#). For the period 2014-2021, Norway, Iceland and Liechtenstein agreed to a total contribution of €2.8 billion.

- Enforcement is ensured by the EFTA Surveillance Authority and the EFTA Court; this latter must take CJEU rulings into account for the interpretation of the provisions of the EEA agreement.

It has been argued that a post-withdrawal UK could simply, if it wished, retain its membership in the EEA.<sup>93</sup> However, most commentators consider that, in this scenario, the UK would need to re-join EFTA once it withdraws from the EU (having left EFTA when joining the European Communities in 1973), in order to be able to subsequently re-join the EEA.<sup>94</sup> If the rights and obligations deriving from the EEA agreement are a matter of EU law for the EU Member States, then when EU law ceases to apply to the UK post-withdrawal, so will the EEA agreement. Commentators remark that the ‘status of the UK as a contracting party to the EEA agreement today is contingent upon and inherently linked to its EU membership’.<sup>95</sup> According to Article 127 of the EEA agreement, parties to the agreement may withdraw following twelve months’ notification. Should the UK decide not to opt for the EEA model post-withdrawal, such notification could be given independently of, but in conjunction with the Article 50 TEU notice. It is not clear what the consequences would be of failing to notify withdrawal from the EEA agreement.<sup>96</sup>

## 6.2 The Swiss model

A member of EFTA, Switzerland rejected accession to the EEA (and to the EU) by referendum in 1992; as a consequence, the Swiss-EU relationship relies on a multitude of sector-specific agreements (more than 120), negotiated over many years, starting with the 1972 Free Trade Agreement between the EEC and Switzerland.<sup>97</sup>

The 1972 agreement is a classical FTA, forbidding all quantitative restrictions and measures equivalent to customs duties on trade in the goods mentioned in the agreement; and was followed in 1989 with an agreement on the freedom of establishment of insurance companies.

A first package of bilateral agreements signed in 1999 covers seven sectors: free movement of persons; mutual recognition agreement; public procurement; agriculture; land transport; air transport and research. The second package of agreements signed in 2004 extend the cooperation between Switzerland and the EU to: Schengen/the Dublin Convention (formal entry into force 1 March 2008); savings taxation; the fight against fraud; processed agricultural products; the environment; statistics; the EU Media programme (film industry); pensions and education. Negotiations on the liberalisation of services were suspended by common agreement in 2003. No services agreement has yet been negotiated, including for financial services.

Since 2004, other agreements deal with cooperation in the framework of Europol and Eurojust; the European Defence Agency; the European Asylum Support Office; satellite navigation (Galileo and Egnos), as well as cooperation between authorities in the field of competition.

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<sup>93</sup> [What next after the UK vote to leave the EU?](#), Peers, S, EU Law Analysis blog, 24 June 2016.

<sup>94</sup> [If the UK votes to leave: The seven alternatives to EU membership](#), Piris, J C, Centre for European Reform, January 2016. Also, [In, out or in-between? The UK as a contracting party to the Agreement on the European Economic Area](#), Sif Tynes, D, Lian Haugsdal, E, E.L. Rev. 2016, 41(5), 753-765.

<sup>95</sup> [In, out or in-between? The UK as a contracting party to the Agreement on the European Economic Area](#), Sif Tynes, D, Lian Haugsdal, E, E.L. Rev. 2016, 41(5), 753-765.

<sup>96</sup> Ibidem.

<sup>97</sup> See the factsheet [Les accords bilatéraux Suisse–Union européenne](#), 2016, as well as the [List of EU-Switzerland Agreements](#) as of 1 January 2016.

EU-Swiss cooperation is characterised by:

- classical international cooperation, without any transfer of competences to supranational authorities; however, an exception exists in the field of air transport competition rules, where monitoring and application of these rules are a European Commission and CJEU competence, except for state aid;
- the bilateral agreements rely either on the equivalence of EU and Swiss legislation or on the incorporation of EU legislation (such as in the case of Schengen and air transport); some bilateral agreements have been regularly amended in line with EU legislative developments, while other agreements (Schengen, customs) oblige Switzerland to adopt all new legislation and changes in their fields; furthermore, legislation considered in the Swiss federal parliament is also assessed against its compatibility with EU law;<sup>98</sup>
- as the CJEU and EFTA court have no competence, no enforcement mechanism is instituted under the bilateral agreements; implementation and development of the agreements are managed by joint committees, which are also a forum for dialogue in case of disagreement;
- the agreements may be modified only by common agreement;
- Switzerland also supports the reduction of socioeconomic disparities with the 13 Member States which joined the EU after 2004, through financial contributions made available through bilateral projects with these states.<sup>99</sup>

One important aspect of the bilateral relationship is the freedom of movement of persons, subject of a referendum vote in 2014 seeking to limit the free movement rights of EU citizens in Switzerland. As a result, Switzerland must implement legislation in 2017 which could infringe the existing bilateral agreements. Following the vote, the EU suspended cooperation with Switzerland in the fields of education and research.<sup>100</sup> A compromise deal on the free movement of people was reached at the end of 2016.<sup>101</sup> However, the EU has been pushing to launch negotiations to replace the bilateral agreements with a new framework agreement to govern EU-Swiss relations, of which, in the European Commission's view, free movement should be a part.<sup>102</sup> The EU also seeks to introduce a legally binding mechanism whereby Switzerland signs up automatically to revised EU legislation, as well as mechanisms for surveillance and judicial control, in particular giving the CJEU competence to hear cases introduced either by the EU or Switzerland without the other party's prior consent and to give legally binding decisions.<sup>103</sup>

### 6.3 Customs union with Turkey

The EU has a customs union in place with Turkey (a candidate for EU membership since 1999), which was agreed in 1995, and established on 1 January 1996. The EU-Turkey customs union has been considered outdated for some time, however, with Turkey in

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<sup>98</sup> Is the Swiss model a Brexit solution?, Jenni, S, The UK in a Changing Europe, 23 March 2016.

<sup>99</sup> A [Memorandum of Understanding](#) signed between the EU and Switzerland in 2006 sets the terms of the Swiss financial contribution to the 10 new EU Member States which joined in 2004; addenda in [2008](#) and [2014](#) adjust the Swiss contributions following the accession of Romania, Bulgaria and Croatia.

<sup>100</sup> [Merkel: No link between Swiss-EU deal and Brexit talks](#), Euractiv, 3 November 2016.

<sup>101</sup> [EU and Switzerland agree on free movement](#), Maurice E, EU Observer, 22 December 2016.

<sup>102</sup> [Swiss climbdown over free movement may deal blow to UK hopes](#), Henley J, The Guardian, 22 September 2016.

<sup>103</sup> [Negotiating Mandate for an EU-Switzerland institutional framework agreement](#), EU Council, 6 May 2014, 9525/14.

particular pushing to upgrade the customs agreement.<sup>104</sup> Indeed, on 21 December 2016, the Commission asked the Council for a mandate to negotiate the modernisation of the agreement.<sup>105</sup>

The customs union with Turkey established by the EU-Turkey Association Council Decision 1/95 covers industrial goods, including industrial components of processed agricultural commodities, and excluding European Coal and Steel Community (ECSC) products. The customs union also includes those goods which are wholly or partially manufactured from products coming from third countries, but which are in free circulation in the European Community or in Turkey.<sup>106</sup>

Requirements of the customs union include:

- eliminating all customs duties, quantitative restrictions, charges with an equivalent effect to customs duties, and all measures with an equivalent effect to quantitative restrictions in the trade of industrial goods between Turkey and the EU as of 1 January 1996;
- Turkey adopting the EU's common external tariffs on third-country imports, as well as all the preferential agreements the EU had/has concluded and would/will conclude with third countries. However, Turkey does not have a say in the negotiations of EU FTAs with third countries.

The agreement excludes sectors such as services or geographical indications; Turkey does not benefit from EU commitments in the area of public procurement, although negotiations on this issue are not excluded.

The agreement sets out options for resolving disputes according to the options available, which include the CJEU (only with the unanimous agreement of the EU-Turkey Association Council, the body in charge of overseeing the customs union – no dispute to date has followed this procedure); arbitration; or submitting disputes to another existing unnamed court or tribunal.

Experts point to the paradoxical situation whereby Turkey, as an EU accession candidate and customs union partner, has agreed to regulatory obligations which extend beyond those adopted by other EU trade partners; whereas other third states, which are not EU candidates, have secured market access commitments from the EU in the services, investment, public procurement, geographical indicators and agriculture areas, that extend far beyond those provided by the legal framework of the EU-Turkey customs union.<sup>107</sup> Andorra, Monaco and San Marino – 'micro-states' which only have borders with EU countries – are also part of the customs union with the EU.

## 6.4 Preferential trade agreements

The EU's preferential trade agreements include free trade agreements (FTA), association agreements (AA), and deep and comprehensive FTAs, as well as economic partnership agreements (EPA). Concluding an FTA is a rather flexible option, as the scope of the

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<sup>104</sup> [Bringing EU-Turkey trade and investment relations up to date?](#), Policy Department, DG EXPO workshop, European Parliament, May 2016.

<sup>105</sup> Commission press release, [IP/16/4468](#), 21 December 2016.

<sup>106</sup> A free trade agreement (FTA) between the ECSC and Turkey was signed on 29 February 1996, with European Commission Decision 96/528/ECSC covering the ECSC products. In 2002, when the ECSC expired, the rights and obligations flowing from the international agreements concluded by the ECSC were taken over by the EC, allowing for the continuation of those agreements, including with Turkey (Council Decision [2002/596/EC](#)).

<sup>107</sup> *Ibidem*.

agreement depends on what the parties agree to include. Thus, the EU's FTAs with third countries and regions vary significantly – for instance between EPAs with the African, Caribbean, and Pacific (ACP) group of states, trade agreements with countries in South America, and deep and comprehensive FTAs with some of the EU's eastern neighbours. In general, EU FTAs mean:

- less access to the EU single market than EEA membership, for goods and particularly for services;
- no requirements regarding ensuring freedom of movement of labour or contributing to the EU budget;
- freedom to conclude trade agreements with other countries/regions, as FTAs are less integrated than a customs union; but requirement to comply with customs procedures and rules of origin;
- few provisions on non-tariff barriers to trade (e.g. standards and regulations), which are the most significant obstacles to trade;
- newer 'comprehensive' FTAs and economic agreements go further in terms of market access (e.g. provisions on public procurement markets) and may set standards in certain areas such as intellectual property rights, investment protection and the environment.

Examples of EU bilateral agreements with third countries that are based on the creation of a free trade area but go beyond this in terms of economic (as well as political) cooperation are the association agreements concluded with the EU's neighbours to the east and south, and the comprehensive economic agreements with countries such as Canada, South Korea, Singapore and Vietnam.<sup>108</sup>

#### 6.4.1 Association agreements with neighbouring countries

According to Article 8 TEU, the EU 'shall develop a special relationship with neighbouring countries' and with a view to achieving this, the EU may conclude specific agreements with these countries. Association agreements, free trade agreements or cooperation agreements were concluded between the EU and neighbouring states even before the establishment of the European Neighbourhood Policy (ENP) in 2004 (essentially a bilateral policy between the EU and individual neighbouring countries), or the later regional-focused approaches of the Eastern Partnership (eastern neighbours) and the Union for the Mediterranean (southern neighbours). The ENP governs the EU's relations with 16 of the EU's eastern and southern neighbours:<sup>109</sup>

- to the south: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia,
- to the east: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

Under the ENP, EU association agreements (AA) with neighbouring states constitute the main legal instrument used. Article 217 TFEU constitutes the legal basis for concluding AAs, which establish an association between the EU and the third country founded on 'reciprocal rights and obligations, common action and special procedure'.<sup>110</sup> AAs are mixed agreements – combining elements of EU and Member State competence – and, as such, must also be ratified by all the EU Member States following the Council of the EU's decision authorising their signature. For their conclusion by the EU, the consent of

<sup>108</sup> The future course of negotiations on a Transatlantic Trade and Investment Partnership with the US, ongoing since July 2013, under the Trump Administration is yet to become clear.

<sup>109</sup> [The European Neighbourhood Policy](#), EU Neighbourhood Info Centre.

<sup>110</sup> [EU Association Agreements: Common patterns and specific characteristics](#), Latek M, EPRS Briefing, July 2012.

the European Parliament is required.

With the neighbouring states to the south, the EU has concluded what are known as the Euromed Agreements, which are bilateral association agreements encompassing political dialogue, free trade and cooperation in various areas. These agreements are in force with Algeria (2005), Egypt (2004), Israel (2000), Jordan (2002), Lebanon (2006), Morocco (2000), the Occupied Palestinian Territories (1997, interim agreement), and Tunisia (1998).<sup>111</sup> Syria and Libya are the only countries in the region which have not established association agreements with the EU. The signature of the AA negotiated with Syria has been put on hold, while negotiations, started in 2008, on a framework agreement on trade between the EU and Libya, were suspended in 2011.<sup>112</sup> Essentially, the FTA component of these AAs is characterised by:

- trade in goods, in particular industrial goods, with some additional protocols concluded or negotiations ongoing for further liberalisation of trade in agriculture and fisheries;
- duty free access given by the EU for all industrial goods from the Mediterranean countries while these countries are progressively dismantling their tariffs on imports of EU industrial goods; preferential rules of origin must be complied with;

Negotiations have started or are envisaged to deepen these free trade areas through liberalisation of trade in agriculture, liberalisation of trade in services, accreditation and acceptance of industrial products and regulatory convergence.<sup>113</sup> They also include investment and sustainable development issues (e.g. Egypt, Jordan, Tunisia and Morocco).

The six ENP countries in the east (also part of the Eastern Partnership dimension), some still linked by partnership and cooperation agreements with the EU (e.g. Armenia and Azerbaijan), are all expected to conclude full AAs with the EU based on deep and comprehensive free trade areas (DCFTA). Negotiations with Belarus were suspended in 2006. While negotiations with Azerbaijan for a comprehensive agreement are still ongoing, with Armenia they were successfully completed in February 2017.

Georgia, Moldova and Ukraine have successfully agreed AAs with the EU, which are fully in force for Moldova and Georgia since July 2016, and provisionally applied since 2014 in the case of Ukraine (those parts of the AA which are in the exclusive competence of the EU).<sup>114</sup>

The DCFTAs contained in these agreements are the most ambitious concluded by the EU with its neighbours, and offer a comprehensive structure and a high degree of inclusion in the EU single market. Broadly, the DCFTAs with Georgia, Moldova and Ukraine, although they differ in certain aspects, contain provisions on:<sup>115</sup>

<sup>111</sup> [La politique méditerranéenne de l'UE: les limites de l'approche régionale](#), Cîrlig C, EPRS briefing, 2012.

<sup>112</sup> [Euro-Mediterranean partnership : Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria, Tunisia, Turkey](#), DG Trade, European Commission.

<sup>113</sup> [The Euro-Med Free Trade Area: An Empirical Assessment of the main Trade Agreements' Effects](#), Elmallah M, MPRA Paper No 57448, July 2014.

<sup>114</sup> [EU-Ukraine Association Agreement](#), [EU-Moldova Association Agreement](#) and [EU-Georgia Association Agreement](#). Following the rejection of the AA with Ukraine by Dutch voters in an advisory referendum held on 6 April 2016, the entry into force of the agreement is uncertain, the Netherlands remaining at the time of writing the only EU Member State still to ratify the AA. At their summit on 15 December 2016, the EU leaders agreed to [additional guarantees](#) in order for the Netherlands to be able to ratify the EU-Ukraine deal. The Dutch Parliament will have the final say on the matter.

<sup>115</sup> [EU-Georgia Deep and Comprehensive Free-Trade Area: Reading Guide](#), DG Trade, European Commission, April 2014; [Factsheet EU-Moldova Trade: DCFTA](#), European Commission, May 2015 and [Deep and Comprehensive Free Trade Area EU-Republic of Moldova: Argumentaire](#), EEAS; [EU-Ukraine Deep and Comprehensive Free Trade Area: Reading guide](#), DG Trade, European Commission, April 2013.



- removal of all customs duties on imports and exports of goods: normally an immediate removal of import duties is envisaged for industrial products (some exceptions may be retained), as well as full and immediate liberalisation of trade in agricultural products (depending on the agreement, some exceptions regarding sensitive products remain, or provisions are made for gradual liberalisation);
- removal of technical barriers to trade through standardisation of technical rules, for selected products or sectors – based on EU rules; possibility of concluding later agreements on conformity assessment and acceptance of industrial products;
- alignment with EU rules concerning sanitary and phytosanitary standards (food safety);
- reciprocal market access for (cross-border) services in a wide range of sectors, in particular after implementation of certain parts of the EU *acquis*, especially legislative approximation in the areas of financial services, postal and courier services, international maritime services, and electronic commerce;
- freedom of establishment for businesses both in service and non-service sectors (negative lists of excluded sectors are provided), accompanied by mode four provisions (i.e. temporary presence for qualified personnel for business purposes/temporary work in sectors covered by the establishment provisions);
- provisions on the free movement of capital;
- alignment with EU legislation concerning customs procedures;
- access to public procurement markets, based on these countries' alignment with EU legislation (public procurement provisions vary in the three DCFTAs);
- provisions on intellectual property rights, alignment with selected EU current and future legislation in competition and state aid rules, trade related energy and other trade related areas;
- creation of a dispute settlement mechanism in each of the agreements;
- other provisions on transparency, sustainable development, etc.

Besides the trade aspects, these AAs establish political dialogue, cooperation on foreign policy, and justice and home affairs, the fight against terrorism, and economic and sectoral cooperation (financial services, public administration, environment, budget, energy, agriculture and fisheries, tourism, transport research, culture, participation in EU agencies and programmes). They also contain an institutional chapter providing for joint institutions for managing the AA, and regular high-level meetings. The annexes to the AAs contain the list of EU legislation considered relevant with a view to approximation.

#### 6.4.2 *Comprehensive agreements: CETA, South Korea, Singapore, Vietnam*

Some recent FTAs also move beyond trade in goods to aim at greater regulatory convergence, as well as further market access in certain sectors (e.g. public procurement, investment and investment protection, services). Of the comprehensive free trade agreements negotiated by the EU with Canada, Singapore, South Korea and Vietnam, only the EU-South Korea FTA is in force (since 2011). Negotiations between the EU and Singapore were concluded in October 2014, but the approval process may begin only after the Court of Justice of the EU delivers its opinion on EU competence to conclude the FTA.<sup>116</sup> Negotiations on a comprehensive FTA with Vietnam were also completed in February 2016, following which the agreement must undergo the approval process in the EU. With negotiations begun in 2009, the comprehensive economic and trade agreement

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<sup>116</sup> The request for opinion deals with the question of whether the EU-Singapore FTA is an agreement falling under the EU's exclusive competence, or a mixed agreement also requiring approval by Member States. On 21 December 2016, the Advocate-General delivered her [opinion](#) on the matter, concluding on the necessity of joint ratification, by the EU and the Member States. The Court's decision is expected in 2017.

with Canada (CETA) was only signed on 30 October 2016, after approval by the Council.<sup>117</sup> Considered a mixed agreement, CETA must be approved by the European Parliament, and by all Member States through their national procedures.<sup>118</sup>

CETA has attracted particular attention as it is considered one of the most ambitious and comprehensive trade agreements ever negotiated by the EU,<sup>119</sup> as well as the most up-to-date model of an FTA between advanced economies applying high regulatory standards.<sup>120</sup> Essentially, CETA:<sup>121</sup>

- eliminates tariffs on all industrial products – with some products excepted, for which tariffs will be eliminated gradually (on condition that these goods comply with preferential rules of origin);
- eliminates tariffs and quotas on almost all products in agriculture and all in fisheries (on condition that these goods comply with preferential rules of origin);
- provides for market access, national treatment and most favoured nation (MFN) status, both at federal and provincial level (Canada) for environmental, telecoms, financial and other services, if not subject to specific reservations;
- covers investment market access, national treatment and MFN if not subject to reservation, and includes investment protection; both for investment and services; CETA follows a ‘negative list’ approach, i.e. excluding only the sectors expressly mentioned in the agreement;
- provides for access to public procurement markets (for agencies and ministries at federal and sub-federal levels mentioned in the agreement) for the goods and services mentioned in the agreement;
- may protect public services and utilities through reservations;
- contains provisions on regulatory cooperation, including dialogue on future regulations;
- contains provisions on temporary entry and stay of persons for business purposes (for the professions mentioned in the agreement – a ‘positive list’ approach); however, temporary entry of ‘key personnel’ and for investment purposes is liberalised to a further extent (‘negative list approach’);
- covers intellectual property rights, sanitary and phytosanitary rules (SPS), technical barriers to trade (TBT), customs and trade facilitation;
- contains provisions on sustainable development including labour and environmental standards;
- and establishes joint mechanisms to oversee implementation and development of rules;
- does not require any approximation of legislation to conform to EU rules.

## 6.5 The World Trade Organization framework

Without negotiated preferential market access with the EU, the post-withdrawal United Kingdom would rely on World Trade Organization (WTO) rules in its trade relationship with the EU. As explained above, this means that the EU would apply tariffs to UK goods at the most favoured nation (MFN) rates that the EU applies to all WTO members without a preferential trade agreement in place with the EU. Although the EU’s MFN tariff rates

<sup>117</sup> [EU-Canada trade agreement: Council adopts decision to sign CETA](#), 28 October 2016.

<sup>118</sup> Country pages: [Canada](#), [South Korea](#), [Vietnam](#), [Singapore](#), DG Trade, European Commission.

<sup>119</sup> [If the UK votes to leave: The seven alternatives to EU membership](#), Piris, J C, Centre for European Reform, January 2016.

<sup>120</sup> [Which model for Brexit?](#), Emerson M, CEPS Special Report, No 147, October 2016.

<sup>121</sup> [Comprehensive Economic and Trade Agreement \(CETA\) with Canada](#), Schöllmann W, EPRS Briefing, October 2016. See also [CETA chapter by chapter](#), DG Trade, European Commission.

continue to decline – in 2015, the simple average MFN applied rate was 10.7 % for agricultural products and 4.2 % for non-agricultural products, compared to 14.4 % and 4.3 % in 2014 – for certain categories of products these tariffs can be as high as 30 %.<sup>122</sup> Currently, due to single market membership, all UK exports to the rest of the EU benefit from a zero tariff.<sup>123</sup>

In addition, it is argued that the UK will have to renegotiate its terms of trade within the WTO, as the UK's obligations currently arise in its capacity as an EU Member State rather than through its individual WTO membership. The rights secured by the EU in the WTO for its Member States would not automatically apply to the UK upon its withdrawal from the EU.<sup>124</sup> EU commitments at the WTO would somehow need to be separated into EU and UK commitments, as concerns goods and services.<sup>125</sup> In practice, this would mean negotiating and agreeing updated schedules of commitments both for goods and services for the UK with all 164 WTO members (with unanimous agreement required), pending which a degree of uncertainty would affect UK access to WTO member markets. Conversely, some experts believe there is a possibility that the UK could 'inherit' EU tariffs.<sup>126</sup> However, even if this might work for most trade, complications may ensue in relation to agriculture and agricultural products.<sup>127</sup>

Moreover, according to the WTO Director-General, the UK would need to renegotiate its trade relationship with the 58 countries with which the EU has preferential trade agreements in place. This would concern about 60 % of the UK's trade in goods. Some consider, however, that the UK could simply continue to apply 'the substantive terms of these agreements on a reciprocal basis after exit unless the counterparty State were actively to object', building on the argument that both the EU and its Member States are parties to these agreements.<sup>128</sup>

To conclude, operating under WTO rules – that is without any preferential trade agreement in place – would broadly mean:

- trading at MFN tariff rates according to the respective schedules of commitments;
- market access for services under GATS provisions (less liberalisation than within the single market);
- no obligation to implement EU legislation relating to the single market, although UK exporters to the EU would have to comply with EU rules;
- no conditions relating to the free movement of goods, services, persons and capital.<sup>129</sup>

<sup>122</sup> For the EU's tariff profile see [World Tariff Profiles 2015](#) and [World Tariff Profiles 2016](#), published by the WTO. See also [trade Policy Review: European Union](#), WTO, 2015.

<sup>123</sup> [The process for withdrawing from the European Union](#), Chapter 3 – Article 50: the route to withdrawal, UK Government, February 2016.

<sup>124</sup> [Azevêdo addresses World Trade Symposium in London on the state of global trade](#), Speech, London, 7 June 2016.

<sup>125</sup> [Oral evidence: The UK's future economic relationship with the European Union, HC 483, Treasury Committee](#), House of Commons, 13 July 2016.

<sup>126</sup> [Brexit: impact across policy areas](#), House of Commons Library, Miller, V, (Ed.), Briefing paper No 07213, 26 August 2016.

<sup>127</sup> [Brexit Brief: 10 things to know about the World Trade Organization \(WTO\)](#), Institute for Government, 31 October 2016.

<sup>128</sup> See [Brexit and International Trade](#), Lawyers for Britain.

<sup>129</sup> [Brexit: Trade aspects](#), Webb D, Briefing Paper 7694, House of Commons Library, 8 September 2016.

## 7 Further reading

Please find below a non-exhaustive list of recent commentaries and reports concerning the UK decision to withdraw from the EU under Article 50 TEU and its consequences. It should be noted that parliaments across the Member States have devoted, and continue to, considerable time to questions related to Brexit and the future of the EU. There is therefore a considerable, and growing, body of work, both from relevant committees and from research services on the issue.

### 1. UK Parliament

The researchers in the Libraries of both houses of the UK Parliament have published and continue to produce valuable material on a wide range of Brexit-related issues, sometimes in conjunction with the work of parliamentary committees. Their various research papers and the committees' work can be accessed from these pages:

- Library of the House of Commons, [Brexit: Next steps of UK's withdrawal from the EU](#).
- House of Lords Library, [Brexit round-up](#).

### 2. Legal and political commentaries on negotiations on a UK withdrawal from the EU

Emerson M, [Which model for Brexit?](#), Centre for European Policy Studies (CEPS), October 2016.  
Wyrozumska A, [Article 50 \(Voluntary withdrawal from the Union\)](#), in Mangiameli S, Blanke H-J, The Treaty on European Union (TEU): A Commentary, Springer, Berlin/Heidelberg, 2013.

Hillion C, [Leaving the European Union, the Union way. A legal analysis of Article 50 TEU](#), European Policy Analysis, Swedish Institute for European Policy Studies, Issue 2016:8, August 2016.

Lippert B, von Ondarza N, [Brexit into uncharted waters](#), Stiftung Wissenschaft und Politik, July 2016.

Deutscher Bundestag, [Zurücknahme eines Antrags gemäß Art. 50 EUV](#), PE 6 - 3000 - 112/16, 28 July 2016.

Eeckhout P, Frantziou E, [Brexit and Article 50 TEU: a constitutionalist reading](#), UCL European Institute, Working paper, December 2016.

[The Process of Brexit: What Comes Next?](#), Renwick A, UCL European Institute, Working Paper, 3 February 2017.

Whitman G. R, [The UK and EU foreign, security and defence policy after Brexit: integrated, associated or detached](#), National Institute Economic Review, 2 November 2016.

Whitman G. R, [Devolved external affairs: the impact of Brexit](#), Europe programme, Chatham House, 9 February 2017.

Tonge, J., [The impact of the withdrawal from the European Union upon Northern Ireland](#), The Political Quarterly, Vol. 87[3] July-September 2016.

Holmes P, Rollo J, Winters L. A, [Negotiating the UK's post-Brexit trade arrangements](#), National Institute Economic Review, 2 November 2016.

Ludlow P, [Between a rock and a hard place: Mrs May's dilemma](#), Commentary 2017/1, EuroComment.

Kreiling V, Wolfstädter L M, Becker S, [Brexit drama in three acts: Negotiation phases & scenarios](#), Jacques Delors Institute Berlin, 25 January 2017.

Bartolone C. (Président-Rapporteur), [Rapport d'information sur les suites du référendum britannique et le suivi des négociations](#), No 4485, Assemblée nationale, 15 February 2017.

McNamara F., [Ulster says 'Remain': Brexit and the Northern Irish election result](#), Commentary, EPC, 10 March 2017.

Emerson M., [After the UK's Brexit White Paper – What's the next move towards a CFTA?](#), CEPS, 27 February 2017.

Grant C., [Mrs May's emerging deal on Brexit: Not just hard, but also difficult](#), Centre for European Reform, 20 February 2017.

Dehousse, F., [The House of Lords' report on the 'Brexit bill': an extremely dangerous development for the coming negotiation](#), Commentary, Egmont Institute, 7 March 2017.

Carl, M. P., [How to \(Br\)exit: A guide for decision-makers](#), Friends of Europe, 12 March 2017.

### 3. The future of the EU after UK withdrawal

Mattelaer A, Europe's post-Brexit retrenchment, Egmont, 30 January 2017.

Colomina C, [¿Quién liderará la UE post-Brexit? El retorno de la política a Bruselas](#), Barcelona Centre for International Affairs, July 2016.

Pisani-Ferry J, Röttgen N, Sapir A, Tucker P, Wolff G B, [Europe after Brexit: A proposal for a continental partnership](#), Bruegel, August 2016.

Dempsey J, [Can the EU survive without Britain?](#), Carnegie Europe, September 2016.

Grabbe H, Lehne S, [How to build a more flexible EU after Brexit](#), Carnegie Europe, September 2016.

De Grauwe P, [What future for the EU after Brexit?](#), CEPS, October 2016.

Duff A, [After Brexit: A New Association Agreement Between Britain and Europe](#), Policy Network, October 2016.

Biscop S, [All or nothing? European and British strategic autonomy after the Brexit](#), Egmont - The Royal Institute for International Relations, Egmont Paper 87, September 2016.

Ivan P, [The EU after Brexit, Russia and the countries in-between](#), European Policy Centre (EPC), July 2016.

Temple Lang J, [The elements of a new EU-UK relationship](#), Institute of International and European Affairs, July 2016.

Deutscher Bundestag, [Konsequenzen des Brexit für den Bereich Inneres & Justiz: Möglichkeiten zukünftiger Kooperationen der EU mit dem Vereinigten Königreich](#), PE 6 - 3000 - 115/16, 18 August 2016.

Deutscher Bundestag, [Möglichkeiten für eine zukünftige Zusammenarbeit der EU mit dem Vereinigten Königreich nach dem Brexit auf den Politikfeldern Inneres & Justiz](#), PE 6 - 3000 - 131/16, 1 September 2016.

Van Ham, P, [Brexit: Strategic Consequences for Europe - A Scenario Study](#), Clingendael Report, Clingendael Netherlands Institute for International Relations, February 2016.

Santopinto F., [La défense européenne après le Brexit: mieux vaut tard que jamais](#), GRIP, 27 September 2016.

Biscop S., [European defence after Brexit: Flying on one engine?](#), Egmont Institute, 11 January 2017.

Chalmers M., [UK Foreign and Security Policy after Brexit](#), RUSI, 9 January 2017.

Raffarin, J-P, Bizet, J, [Rapport d'information fait au nom du groupe de suivi sur le retrait du Royaume-Uni et la refondation de l'Union européenne sur la refondation de l'Union européenne](#), Sénat français.

### 4. UK withdrawal from the EU and consequences for trade

García-Herrero A, Xu J, [What consequences would a post-Brexit China-UK trade deal have for the EU?](#), Bruegel, October 2016.

Lydgate E, Rollo, J, Wilkinson R, [The UK trade landscape after Brexit](#), Chatham House, October 2016.

Siles-Brügge G, De Ville F, [What does Brexit mean for TTIP?](#), German Development Institute, July 2016.

Bown P C, [Brexit: An impossibly complex task for the UK's new trade negotiators?](#), Peterson Institute for International Economics, September 2016.

Schroeter, U, Nemeček, H, [The \(Unclear\) Impact of Brexit on the United Kingdom's Membership in the European Economic Area](#), European Business Law Review, Volume 27 (2016) Issue 7, pp. 921–958.

Gros D., [After Brexit: It's a brave new world](#), Commentary, CEPS, 14 February 2017.

## 5. UK withdrawal from the EU and consequences for the economy

Véron N., [The City will decline and we will be the poorer for it](#), Bruegel, September 2016.

Merler S., [Brexit, the pound and the UK current account](#), Bruegel, October 2016.

Lannoo K., [EU financial market access after Brexit](#), CEPS, September 2016.

Gros D., [The economics of Brexit: It's not about the internal market](#), CEPS, September 2016.

Tilford S., [Brexit will make Britain's mediocre economic record worse](#), Centre for European Reform, September 2016.

Núñez Ferrer J, Rinaldi D, [The impact of Brexit on the EU budget: A non-catastrophic event](#), CEPS, September 2016.

Jackson K J, Akhtar I S, Mix E D, [Economic Implications of a United Kingdom Exit from the European Union](#), Congressional Research Service, July 2016.

Wright W, Bax L, [What do EU capital markets look like post-Brexit](#), New Financial, September 2016.

Booth S, [How to ensure UK and European financial services continue to thrive after Brexit](#), Open Europe, October 2016.

Colebrook C, [One step removed? Six possible futures for the UK's economic relationship with the EU](#), Institute for Public Policy Research, July 2016.

## 6. EPRS and Policy Department publications on Brexit

Poptcheva E-M, [Article 50 TEU: Withdrawal of a Member State from the EU](#), EPRS Briefing, February 2016.

Novak P, Tell Cremades M, [Brexit and the European Union: General Institutional and Legal Considerations](#), Study for the AFCO Committee, Policy Department for Citizens' Rights and Constitutional Affairs, January 2017.

Dessimirova D, Paternoster D, [Brexit - Possible Economic Impact for the Euro Area and the EU](#), Policy Department A: Economic and Scientific Policy, November 2016.

Barbone L, Green M, Speckesser S, Broughton A, [Brexit Implications for Employment and Social Affairs: Facts and Figures](#), Study for the EMPL Committee, January 2017.

Gortsos, C. V., [Potential Concepts for the Future EU-UK Relationship in Financial Services](#), Study for the ECON Committee, Policy Department A: Economic and Scientific Policy, January 2017.

Emerson, E, Busse, M, Di Salvo, M, Gros, D, Pelkmans, J, [An assessment of the economic impact of Brexit on the EU 27](#), Study for IMCO Committee, Policy Department A: Economic and Scientific Policy, March 2017.

[Brexit Literature Update 3/2017](#), Policy Department on Citizens' Rights and Constitutional Affairs, March 2017.

Cesluk-Grajewski, M, 'What Think Tanks are thinking' series:

- [Latest thinking on Brexit](#), February 2017
- [Brexit: Implications and outlook](#), October 2016
- [Brexit and the future of the European Union](#), July 2016
- [Brexit: What next for Britain and Europe?](#), July 2016
- [The UK referendum](#), June 2016.



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Following the United Kingdom's referendum in June 2016, which delivered a majority vote in favour of the country leaving the European Union, a period of uncertainty has begun for both the UK and the EU. Although the process of withdrawing from the EU is outlined by Article 50 of the Treaty on European Union, a number of issues remain unclear in practice, all the more so since there is no precedent of a Member State withdrawing from the Union.

This in-depth analysis considers the legal and procedural issues surrounding UK withdrawal, focusing in particular on the formal exit process under Article 50 TEU and the EU institutions' preparations for negotiations. It also sets out some possible templates for future EU-UK relations, as well as the details of existing frameworks for cooperation between the EU and third countries.

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