

Sufficient progress in first-phase Brexit talks

After seven months of talks, the EU and the UK reached agreement in principle on the key withdrawal issues, on 8 December 2017. The European Council (EU-27) of 15 December will decide whether sufficient progress has been achieved in order to proceed to the second phase of negotiations.

Background

After the UK notified in March 2017 its wish to [withdraw](#) from the EU, the European Council adopted political guidelines for the negotiations, setting out a phased approach. In a first phase, the negotiations would focus on three priority issues: EU and UK citizens' rights; a financial settlement; and the situation of Northern Ireland. A second phase, conditional upon a European Council decision that 'sufficient progress' has been achieved on the first, would address a framework for the future EU-UK relationship and transitional arrangements, as [requested](#) by the UK. Six rounds of talks have taken place. On 8 December, after a breakthrough on the Northern Ireland issue, the parties announced an [agreement in principle](#) on the priority issues.

The common understanding on the withdrawal agreement

According to the [joint report](#) from the EU and UK negotiators on progress in phase one, the parties reached, in principle, a package deal on the three main issues, whilst some individual elements will be dealt with during further negotiations. Notably, the joint report states that the arrangements in it could still be adapted to the transitional agreement and that they are without prejudice to discussions on the future EU-UK relationship.

Citizens' rights

On citizens' rights, the joint report reflects almost entirely the [joint technical note](#) on the EU and UK positions on citizens' rights of 8 December. Accordingly, the withdrawal agreement would preserve certain rights for citizens deriving from EU law after the UK's withdrawal, in particular the right of EU-27 and UK citizens to continue living, working and studying in their host state. The agreement would confer **residence rights** on the different [categories of citizens](#) as established by the EU Treaties and the Free Movement Directive 38/2004, and as interpreted by the Court of Justice of the EU as of the withdrawal date or as of the end of a possible transitional period during which the 'original' EU citizens rights would apply. This would include workers, self-employed and job-seekers, and also economically inactive persons (students, pensioners) as long as they are economically self-sufficient. These rights would be recognised only for citizens who, at the date of the UK's withdrawal, have already lawfully exercised their free movement rights. However, **family reunification** in accordance with EU provisions would also be possible after the UK's withdrawal, subject to certain limits (e.g. certain family members who become so after withdrawal) so that national law would apply instead of EU law. Besides residence rights, the withdrawal agreement would secure **equal treatment** between EU-27 citizens and UK nationals. **Social coordination** under EU law would also continue to apply to citizens under the scope of the withdrawal agreement as well as to EU-27 citizens who have worked in the UK in the past and to UK nationals who have worked in the EU-27 in order to ensure, amongst others, the accumulation of insurance and pension periods. As a consequence, certain social security benefits such as child benefit or pensions would continue to be exportable to another state.

The UK would **implement** the withdrawal agreement through a [parliamentary act](#), which makes an express reference to the withdrawal agreement. Such an act could in theory be amended by subsequent parliaments but the reciprocal approach of the withdrawal agreement regarding UK nationals' rights in EU-27 is meant to render such a repeal unlikely. The implementing act may not be challenged in court, but UK courts will be able to interpret it. In doing so, they would be obliged to take **due regard of relevant decisions of the CJEU**. The withdrawal agreement would also establish a mechanism enabling, although not obliging, **UK courts to ask the CJEU for interpretation** with regard to cases brought before them within eight years of the date of application. The Commission, and an independent authority on the UK side, would monitor implementation.



Financial settlement

The financial aspects of the UK's withdrawal from the EU have been controversial from the start of talks. The EU has maintained that all commitments made by the EU-28 (with the UK) must be paid for by the EU-28, and rejecting any link between discussions on the financial obligations and those on the future EU-UK relationship. The joint report states that the parties have agreed on the methodology for the financial settlement, including its components, the principles for calculating it and how it will be paid. The UK will continue participating in the implementation of the EU budget up to 31 December 2020 (as if it were a Member State), taking into account necessary adjustments. It will contribute its share of the outstanding budget commitments at 31 December 2020 (*reste à liquider*) and of the financing of EU liabilities incurred before 31 December 2020, with certain exceptions. It will remain liable for EU contingent liabilities established at the withdrawal date. The UK will receive its share of recoveries or paid-in guarantees. Payments will be made as they fall due (no lump sum or early payment required from the UK) and the settlement will be drawn up and paid in euro. Furthermore, arrangements have been agreed for continued participation in programmes of the current multiannual EU budget, and arrangements related to other EU funds and facilities, the European Central Bank and the European Investment Bank. The next phase of the talks will settle the details. No final figure is mentioned.

Northern Ireland and Ireland

The question of preventing a hard border between Ireland and [Northern Ireland](#) after the UK leaves the EU, became a key sticking point in the negotiations. The notion of continued regulatory alignment between Northern Ireland and Ireland provoked a breakdown, due to opposition from the Democratic Unionist Party (the Northern Ireland allies of Theresa May's government). The 1998 Good Friday Agreement (or Belfast Agreement), guaranteed by the UK, Ireland and the EU, has at its heart cooperation between Ireland and Northern Ireland, which is largely reliant on the EU legal and policy framework, as recognised by both sides in the negotiations. The UK's withdrawal from the EU, including the decision to leave the Single Market and Customs Union, poses [significant challenges](#) to North-South cooperation on the island of Ireland. In this context, the joint report sets out the following principles and commitments, as a basis for detailed arrangements in the next phase. First, protecting the peace process and the Good Friday Agreement, including its practical application, to be 'upheld in all circumstances, irrespective of the nature of any future agreement between the EU and the UK'. The UK remains committed to avoiding a hard border on the island, including any physical infrastructure or related checks and controls, an objective to be achieved through the future EU-UK relationship. Should this prove impossible, the UK would propose specific solutions for Northern Ireland, and, failing this, it commits to 'full alignment with those rules of the Internal Market and the Customs Union which now or in the future support North-South cooperation, the all-island economy and the protection of the 1998 Agreement'. Specific mechanisms will be created to monitor and implement any arrangement. The next phase of negotiations will also set out specific arrangements for Northern Irish people having Irish citizenship – therefore EU citizenship, so that they can effectively exercise their EU rights. Finally, the UK pledges the Common Travel Area with Ireland will operate without affecting Ireland's obligations under EU law.

Next steps

The European Council (EU-27) will meet on 15 December to [assess](#) whether sufficient progress has been achieved for the talks to move on to the second phase, dealing with a transitional period and the future framework of EU-UK relations. Should a positive assessment be made, the European Council will adopt new guidelines for the negotiations. The [draft guidelines](#) issued by the European Council President state that any transition period (as part of the withdrawal agreement) would see all the EU *acquis*, all existing regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures apply. Preparatory discussions on the future relationship would also take place, subject to additional European Council guidelines.

European Parliament's role

The Parliament has so far adopted two resolutions on the negotiations, on [5 April](#) and [3 October 2017](#), whereby it made clear its main concerns on the three priority issues. On 13 December, the EP is set to adopt a [new resolution](#) acknowledging sufficient progress in the first phase of the talks and recommending to the European Council to move the discussions forward. A draft motion for resolution tabled by five political groups sets out five outstanding issues (on the extent of citizens' rights and their enforceability and implementation of the commitments on Northern Ireland) that would need to be further addressed, in order to ensure the EP's consent on that agreement. Regarding transition, the draft calls for the full EU *acquis* and all oversights to be applicable to the UK during that period. In the UK too, the British Parliament will have to pass [legislation](#) on the approval of the withdrawal deal.