

# Outcome of the special European Council (Article 50), 25 November 2018

On 25 November 2018, EU-27 leaders met to finalise and formalise the outcome of the Brexit negotiations. They endorsed the withdrawal agreement, as presented by the negotiators of the EU and the United Kingdom (UK), and approved the political declaration on future EU-UK relations, accompanying the withdrawal agreement. Last minute statements regarding Gibraltar and clarification on a possible extension to the transition period removed all obstacles, so that the European Council (Article 50) was able to agree unanimously to move to the ratification phase. The agreement is due to enter into force on 30 March 2019.

## 1. European Council (Article 50) meeting

EU-27 Heads of State or Government endorsed the [withdrawal agreement](#) and approved the accompanying [political declaration](#) at their special European Council (Article 50) meeting of 25 November 2018. Commenting on the results, the Commission President, Jean-Claude Juncker, [stressed](#) that ‘this is the best deal possible for Britain, this is the best deal possible for Europe, this is the only deal possible’. He [added](#) that, whilst he was very satisfied with the results of the negotiations, ‘this was a very sad day’. Theresa May, the UK Prime Minister, for her part [acknowledged](#) that ‘many people are sad at this moment’, but that she did not personally share this feeling, stressing her ‘full optimism’ for the future of the UK.

EU-27 Heads of State or Government also adopted a [declaration regarding the withdrawal agreement and the political declaration](#), in which they recalled that ‘the Union negotiated and will conclude the Withdrawal Agreement in the light of the guidelines provided by the European Council under Article 50 TEU’. They pledge to ‘continue to provide the necessary political direction in respect of the implementation of this agreement’. For example, ‘as regards the negotiations of agreements governing the future relationship with the UK, the negotiating directives will be elaborated on the basis of the previously agreed European Council guidelines’.

In their [conclusions](#) from the meeting, EU-27 Heads of State or Government thanked the EU’s chief negotiator, Michel Barnier, ‘for his contribution to maintaining the unity among EU27 Member States throughout the negotiations on the withdrawal of the UK from the European Union.’

### Gibraltar

In the final days leading up to the European Council (Article 50) meeting on 25 November 2018, Gibraltar became a major issue. The Spanish government wanted to ensure that any future trade deal between the EU and the UK would not apply to Gibraltar, unless explicitly agreed between the UK and Spain bilaterally.

An agreement was reached on 24 November 2018, consisting of four components: an interpretative declaration of the European Council (Article 50) and Commission on Article 184 of the Withdrawal Agreement; a second declaration by the two on the territorial scope of the future agreements; a [letter](#) from the UK Government; and a joint [letter](#) from Donald Tusk and Jean-Claude Juncker.

The first [declaration](#) gives an interpretation of Article 184 of the Withdrawal Agreement, stating that the obligation to negotiate future agreements does not impose any obligation on the territorial scope to which they would apply. The UK Government's letter confirms that it shares the same interpretation. In the second [declaration](#), on the territorial scope of the future agreements, the European Council (Article 50) and the European Commission state that 'Gibraltar will not be included in the territorial scope of the agreements' to be concluded between the EU and UK. 'However, this does not preclude the possibility to have separate agreements between the Union and the United Kingdom in respect of Gibraltar'. This reflects the negotiation position already outlined in the [guidelines for Brexit negotiations](#) adopted by the European Council (Article 50) on [29 April 2016](#). This solution alleviated Spanish concerns and paved the way for the EU-27 to unanimously approve the Withdrawal Agreement. After the meeting, President Juncker [recalled](#) the importance of the issue for Spain and emphasised that the agreement reached was good for Spain.

## 2. Withdrawal Agreement

As flagged up in the EPRS [outlook](#) for the meeting, the [Withdrawal Agreement](#) addresses the main issues for the EU - namely citizens' rights, the financial settlement, and governance of the agreement itself - while also including provisions on a transition period to run from the point of UK withdrawal until 30 December 2020 (21 months). Provisions on a possible extension to the transition period were completed in the run-up to the 25 November meeting, with an extension of 'up to one or two years' from 1 January 2021 being able to be agreed by June 2020. The issue is [controversial](#) in the UK since throughout the transition period the UK would be a rule-taker, no longer having any say in making those rules.

In his invitation [letter](#) to this special European Council (Article 50) meeting, President Tusk recalled the EU-27 negotiating guidelines which had set the following objectives:

- 'to minimise the uncertainty and disruption caused by Brexit for our citizens, businesses and Member States;
- to settle the status of EU citizens who live, work and study in the UK, with reciprocal guarantees [for UK citizens in EU Member States];
- to make sure that the UK honours all financial commitments and liabilities;
- to avoid a hard border between Northern Ireland and Ireland;
- to prevent a legal vacuum for our companies.'

In Mr Tusk's view the withdrawal agreement 'ensures that the rights of our citizens are fully protected, the peace process in Northern Ireland should not be affected, the UK will continue its payments to the EU budget during the transition period, and legal certainty will be secured'. While the withdrawal agreement is still subject to final legal revision in the coming days, Michel Barnier [underlined](#) that it will give 'legal certainty to all those affected: citizens, businesses and Member States'.

*Main messages of the EP President:* In his speech at the opening of the European Council (Article 50), Antonio Tajani [expressed](#) the Parliament's satisfaction with the Withdrawal Agreement, as it sets out the appropriate responses on the European Parliament's three priority issues: citizens' rights, finances, and the border issue in Ireland. Concerning the governance of the agreement, he stressed that the 'Parliament must be consulted before changes to the withdrawal agreement necessitated by new circumstances are made and before important provisions, such as Article 132 on extending the transition period, are activated'. This would require a mechanism which ensures that Parliament has a say in decisions which the Union takes within the Joint Committee provided for in the Withdrawal Agreement. He suggested drawing up a common understanding with the Council on the arrangements for such a mechanism before the consent procedure concludes in Parliament.

## 3. Future EU-UK relationship

The [political declaration](#) setting out the framework for the future relationship between the EU and UK calls for an 'ambitious, broad, deep and flexible partnership across trade and economic cooperation, law enforcement and criminal justice, foreign policy, security and defence and wider

areas of cooperation'. But, the declaration also clearly [stresses](#) that the future relationship 'cannot amount to the rights or obligations of membership'. The scope of issues reflects the [guidelines](#) on the framework for post-Brexit relations with the UK adopted on 23 March 2018 by the European Council (Article 50), which called for a free trade agreement, including socio-economic cooperation and specific partnerships regarding police and judicial cooperation in criminal matters, security, defence and foreign policy.

Table 1: Overview of topics covered in the political declaration

Topic	Overview
<b>Areas of shared interest</b>	UK participation in some EU programmes; 'innovation, youth, culture and education, overseas development and external action, defence capabilities, civil protection and space'. This participation should also be accompanied by a fair and appropriate financial contribution.
<b>Economic partnership</b>	
Goods	The EU and UK envision their relationship on trading goods will be 'as close as possible'. To facilitate this they will work towards 'comprehensive arrangements that will create a free trade area, combining deep regulatory and customs cooperation'. This would include tariffs, regulatory aspects, customs and implications for check and controls.
Services and investment	Both parties will aim for 'ambitious, comprehensive and balanced arrangements on trade in services and investment in services and non-services sector', while respecting each party's right to regulate.
Digital	The EU and UK aim to assist 'electronic commerce, address unjustified barriers to trade by electronic means, and ensure an open, secure and trustworthy online environment for businesses and consumers'. This will also include cross border data flows, telecommunications services and exchange of information on emerging technologies.
Mobility	Free movement of people will no longer apply to the UK, and the parties should establish mobility arrangements based on non-discrimination between Member States and full reciprocity. Issues include short-term visits, family law and social security coordination.
Transport	Cooperation in areas of aviation, road transport, rail transport and maritime transport and establish agreements such as a 'Comprehensive Air Transport Agreement', to enable cooperation in the area of transport.
Energy	Both parties agree they should 'cooperate to support the delivery of cost efficient, clean and secure supplies of electricity and gas', and address their future relationship regarding civil nuclear and carbon taxing.
Fishing opportunities	The parties agree that they should cooperate on fishing opportunities, including sustainability, clean healthy marine environments, and regulatory autonomy.
Level playing field for open and fair competition	To provide open and fair competition, provisions 'should cover state aid, competition, social and employment standards, environmental standards, climate change, and relevant tax matters', in line with relevant EU and international standards.
<b>Security Partnership</b>	
Law enforcement and judicial cooperation in criminal matters	The future relationship will support 'comprehensive, close, balanced and reciprocal law enforcement and judicial cooperation in criminal matters' keeping in mind the 'geographic proximity, shared and evolving threats the Parties face'. Cooperation areas: data exchange, operational cooperation between law enforcement authorities and judicial cooperation in criminal matters, anti-money-laundering and counter-terrorism financing.
Foreign policy security and defence	Future relationship would 'provide for appropriate dialogue, consultation, coordination, exchange of information and cooperation mechanisms'. Topic covers consultation and cooperation, sanctions, cooperation and missions, defence capabilities development, intelligence exchanges, space and development cooperation.
Thematic cooperation	Both parties aim to cooperate in the future on cybersecurity, civil protection, health security, illegal migration, counter-terrorism and countering violent extremism.

The political declaration is not a legally binding document that could be relied upon in court. Rather it is more an outline for the commencement of negotiations after 29 March 2019. President Tusk noted that ‘we will have around two years to work out and agree a precise framework for such cooperation. And if, in spite of our best efforts, additional time is needed to negotiate the future relationship, an extension of the transition period by up to two years will be possible’.

*Main messages of the EP President:* President Tajani stressed that the European Parliament ‘welcomes the Political Declaration on the future relationship and regards it as an excellent basis on which to develop [the EU’s] post-Brexit cooperation with the United Kingdom’. He recalled the European Parliament’s suggestion to use an association agreement as the legal basis for the future relationship.

#### 4. Next steps in the ratification process

The meeting of the European Council (Article 50) was followed by a meeting with the UK Prime Minister, Theresa May, at which the next steps were considered. After the meeting, the President of the European Council, Donald Tusk, emphasised that ‘the difficult process of ratification’ still lies ahead. He [reported](#) that ‘the European Council invited the Commission, the European Parliament and the Council to take the necessary steps to ensure that the agreement can enter into force on 30th March 2019’.

[According](#) to Theresa May, the House of Commons will vote on the withdrawal agreement before Christmas 2018, [probably](#) on 11 December. The European Parliament is [expected](#) to vote on a Brexit resolution in December 2018, and on the Withdrawal Agreement itself in early 2019.

*Main messages of the EP President:* Antonio Tajani welcomed the outcome of the negotiations, seeing this as ‘balanced and comprehensive’. However, he also expressed his ‘regret at seeing the United Kingdom leave’ and argued that ‘no-one can be in any doubt that there is no upside to any of this: it is a lose-lose situation’.

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