

The future partnership between the EU and the UK

Negotiating a framework for relations after Brexit

Introduction

On 29 March 2017, the United Kingdom (UK) government gave notice of its intention to leave the European Union (EU), following the outcome of the June 2016 referendum and in accordance with Article 50 of the Treaty on European Union (TEU). Article 50(2) TEU provides that a withdrawal agreement should set out the terms of such a separation, taking the framework of the departing state's future relationship with the Union into account; however, no other guidance is provided as to the form of this framework. Following the European Council's March 2018 [guidelines](#) for the negotiations regarding the framework for the future relationship, the EU and the UK have begun discussions on their future relations after Brexit. The UK also issued a [white paper](#) in July 2018, detailing its proposals for the future relationship. The aim is to agree on a political framework for the future partnership by autumn 2018, to be adopted alongside the withdrawal agreement. Conclusion of a treaty or treaties establishing future EU-UK relations will only take place after the UK leaves the Union and becomes a third country, and will follow the negotiation procedure for international agreements set out in Article 218 TFEU. No decision has yet been taken on the legal form of any future agreement(s), although the European Parliament has raised the option of concluding an Association Agreement. Both the EU and the UK have expressed the desire to remain in a close partnership covering several areas, including trade and economic matters, internal security, foreign and security policy and defence cooperation. However, divergences persist as to how to achieve the objective of a close partnership in the future.

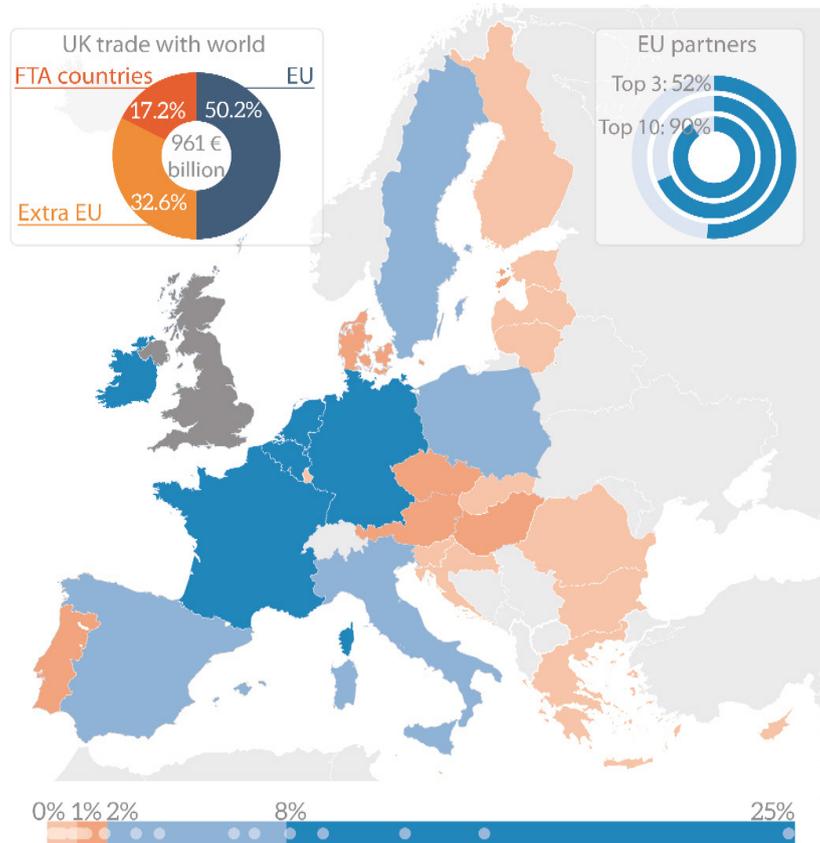
Future EU-UK trade and economic partnership

The UK government initially set 'red lines' for the negotiations on the future economic partnership, declaring that the UK would not remain part of the customs union or the internal market, would not accept free movement or the jurisdiction of the Court of Justice of the EU (CJEU), and intends to regain its 'regulatory autonomy'. On this basis, the [European Commission](#) concluded that the only available model for the future relationship would be a free-trade area (FTA) of the kind concluded with Canada or South Korea. The March 2018 European Council guidelines proposed this model as the basis for the negotiations. An FTA would introduce border controls and impose compliance with [preferential rules of origin](#), in order for goods exported to obtain preferential treatment. Both economies would have to adjust to the change from the current status to a less integrated model, thus incurring [economic costs](#). The EU starts from a position of being the UK's main trading partner, accounting for 50 % of total UK trade with the world in 2017 (see map). Even though the top three EU partners alone account for 50 %, and the top ten for 90 %, of UK trade with the EU, this could under-estimate the importance of value chains within the internal market. For example, inputs imported to the UK from Germany may be manufactured using parts from other EU partners. The UK will also have to [renegotiate agreements](#) with EU third-country FTA partners that account for 17 % of UK trade.

In light of the economic costs of new barriers to EU-UK trade, the July 2018 UK [white paper](#) slightly revisited its original position, seeking to reduce friction. However, as noted by [President Tusk](#), the informal European Council of September 2018 highlighted that, while the UK proposal includes positive elements, the suggested economic cooperation framework would 'not work'. Some of the UK proposals could conflict with one or more of the EU [guiding principles](#) underpinning the negotiations, including: protection of the EU's interests; preserving the integrity of the internal market and customs union; safeguarding the EU's decision-making autonomy, including the role of the CJEU; ensuring a balance of rights and obligations and a level playing field (LPF); and the fact that a third country cannot have the same rights and benefits as a Member State; as well as safeguarding the EU's financial stability, its regulatory and supervisory regime and standards.

In particular, the UK has proposed a 'facilitated customs arrangement', whereby the UK would apply UK or EU tariff duties at its external border depending on the goods' intended destination (UK or EU internal market) and a common rulebook for goods' standards checked at the borders, which would eliminate the need for an internal EU-UK border for goods (including the need for preferential rules of origin). However, the Commission has indicated that it considers the customs proposal unrealistic. Different approaches have emerged regarding access to [fishing](#) waters and sustainable fisheries. Other areas of divergence in the negotiations include market access for [services](#) and [regulatory cooperation](#). Indeed, greater market access is permitted in some sectors only if regulatory alignment is achieved, with a corresponding role for the CJEU. Market access in an FTA can also be limited by constraints in other EU FTAs (such as most favoured nation clauses in previously concluded EU agreements), as well as by EU law (preserving the integrity of the internal market and the EU decision-making system, including CJEU jurisdiction). The UK also requested the establishment of an enhanced framework for equivalence to facilitate trade in financial services consisting, inter alia, of: a wider scope of equivalence; an assessment of equivalence based on common objectives; a structured withdrawal process; and regulatory dialogue. This proposal is at odds with current [EU decision-making procedures](#) for equivalence, defined in various EU financial market regulations, and which mean that equivalence decisions are unilateral measures left to Commission discretion. Finally, the EU is adamant that strong provisions be introduced to ensure the maintenance of a [level playing field](#) (LPF), such as in competition and state aid, taxation, and environmental and labour standards. Violations of these LPF measures should be subject to a dispute settlement mechanism and sanctions. The UK seems to partly share that desire, but some differences can be discerned in some

Map: UK trade in goods with EU Member States (share of total UK trade with the EU)



Data source: Eurostat; UK trade with FTA partners means UK trade with EU FTA partners, including FTA partners with which the EU is in the final stages of signature and ratification (Japan, Singapore and Vietnam).

areas. For example, on state aid, the UK has mentioned a 'common rulebook' that must not affect its sovereign discretion regarding taxation, and payments to farmers and other land-managers for environmental benefits, as well as its future public procurement policy. Similarly, while the UK white paper mentions the Commission-proposed non-regression clauses for labour and environmental standards, no such commitment is mentioned regarding climate change.

Future EU-UK cooperation in Justice and Home Affairs (JHA)

Wary of further integration in a field considered emblematic of national sovereignty, the UK has negotiated several opt-outs in JHA, such as on the Schengen border-free area. Conversely, the UK has provided significant expertise in the area and participated actively in police and judicial cooperation under the EU agencies set up for this purpose (Europol and Eurojust), as well as in the exchange of security-related information via the numerous EU databases. The UK has also been a promoter of several mutual recognition tools adopted at EU level, including the European arrest warrant (EAW). To avoid any operational gaps post-Brexit and take account of the important contribution the UK has made in providing intelligence and analysis under the current EU instruments, the UK proposes to conclude an [internal security treaty](#) with the EU. Such a treaty would be based on existing EU measures regarding exchange of information, including access to EU databases, operational cooperation through mutual recognition instruments, and multilateral cooperation through Europol and Eurojust. Furthermore, the [UK](#) has advocated a dynamic dimension to the future security treaty with the EU that would allow for new areas for cooperation to be added as necessary.

The [EU](#) has also expressed interest in preserving areas of cooperation with the UK in exchange of information, operational police cooperation, and judicial cooperation in criminal matters. However, rather than a special status for the UK, the EU is offering a relationship based on the model available to other third countries that do not participate in Schengen. Accordingly, the UK would lose direct access to EU databases and participation rights in the managing bodies of Europol and Eurojust. Furthermore, the EU mutual recognition instruments recognised as extremely valuable for UK law enforcement, such as the EAW, would cease to apply, while data-sharing and protection arrangements would need to be agreed to allow any future exchange of information. Finally, the dynamic relationship advocated by the UK has not been taken up by the European Commission, which has argued that any future cooperation with the UK on new JHA measures would only be possible under the same conditions as other third countries. According to the Commission, future operational cooperation along the lines of the UK's proposals would lead to a situation where the UK would have the same rights as EU Member States, but different constraints (not subject to CJEU jurisdiction, nor to the same rules on fundamental rights and data protection), undermining the integrity and proper functioning of the EU area of freedom, security and justice, including the Schengen area.

Foreign policy, defence and development cooperation

Both the EU and the UK have indicated they aim to continue cooperation in foreign policy and defence after Brexit. Both sides in the negotiation are pursuing the [option](#) of reaching a deal as soon as possible after exit day, because the UK would not be represented in the EU institutions during a possible transition, and would therefore have no say in EU common foreign (CFSP) and defence (CSDP) policies which largely rely on unanimity.

The UK seeks a [special status](#) in CFSP and CSDP, including some influence in the EU decision-making process, proportionate to its future contribution to these policies. The UK has suggested a future security partnership based on consultation and coordination in diplomatic fora, including cooperation on sanctions, operational cooperation through possible UK contributions to EU missions and operations and to EU development programmes and instruments, and on capability development. In essence, the UK position aims at maximising UK involvement in CFSP/CSDP decision-making structures and processes, including, for example, a greater influence in the

planning of CSDP missions and operations than exists for any other participating third country. Conversely, the [EU](#) has again taken the third-country model of cooperation as a starting point in the talks, although some special arrangements could be envisaged for the UK in light of its diplomatic weight in world affairs and significant defence capabilities. The UK has a permanent seat on the United Nations Security Council, and is one of the two EU nuclear powers, with a wide network of embassies and consulates around the world. Moreover, the UK is a significant contributor to development aid, one of the strongest European military powers and the biggest EU military spender.

Nonetheless, the Commission has already presented some red lines (that apply in general to cooperation with third countries), according to which the UK would not be able to take part in EU Council or Political and Security Committee meetings, lead as a Battlegroup framework nation or in CSDP missions and operations, participate in the management of the European Defence Agency, or benefit in the same way as Member States from the European Defence Fund, among other things. A contentious issue has already arisen in negotiations with respect to Galileo/EGNOS, the European satellite navigation system. While the UK has requested continued use of and participation in the development and operation of both the open and the encrypted signal (entailing continued access to the relevant security information, as well as implying that UK entities would have the right to compete for related contracts), the Commission has pointed out that the EU [rules](#) on Galileo prevent third countries (and their companies) from participating in the development of security-sensitive matters, such as the manufacturing of public regulated service security modules.

Regarding international development aid, the UK has indicated a willingness to continue close [cooperation](#) with the EU. In the UK's view, the EU and the UK could agree to coordinate measures on geographic areas or across thematic issues to ensure complementarity, including through the creation of a cooperation mechanism. This would also allow for UK contributions to EU programmes or instruments, provided the UK was appropriately involved in the decision-making process. The EU has also suggested the UK could make future contributions to EU development programmes, but without amounting to treatment exceeding current EU arrangements with third countries.

This is a synopsis of an EPRS study, ['The future partnership between the European Union and the United Kingdom: Negotiating a framework for relations after Brexit'](#), by Carmen-Cristina Cîrlig and Laura Puccio, September 2018.

Access the full study on the European Parliament's Think Tank website or scan the QR code below.

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