

Brexit: Understanding the withdrawal agreement and political declaration

SUMMARY

In November 2018, the European Union (EU) and the United Kingdom (UK) endorsed, at leaders' level, an agreement that would ensure an orderly UK withdrawal from the EU on 30 March 2019, as well as a political declaration setting out the main parameters of the future EU-UK relationship.

The withdrawal agreement is an extensive legal document aiming, among other things, to preserve the essential rights of UK nationals living in the EU-27 and EU citizens living in the UK; to ensure that all financial commitments vis-à-vis the EU undertaken while the UK was a Member State are respected; and to conclude in an orderly manner ongoing processes in various areas (e.g. circulation of goods already on the market and ongoing judicial procedures). Importantly, the agreement establishes a 21-month transition period, extendable once, to help businesses and citizens to adapt to the new circumstances, and the EU and UK to negotiate their future partnership agreements. During this time, the UK will be treated as a Member State, but without any EU decision-making and representation rights. Furthermore, one of the agreement's three protocols, the Protocol on Ireland/Northern Ireland contains a legally operational 'backstop', aiming to avoid a hard border on the island of Ireland in the future. It has long been the most contested aspect of the withdrawal deal. The political declaration, by contrast, is a non-binding text, providing the basis for future EU-UK economic and security cooperation, taking into account both sides' red lines and principles.

With just days to go to the Brexit deadline, the procedures to approve the withdrawal deal have still not been finalised, due to continuing opposition within the UK Parliament. While extending the Article 50 negotiating period now appears highly likely, all scenarios are still possible, including the UK leaving the EU without a deal at the end of March 2019.

This Briefing updates the earlier EPRS paper on [The EU-UK withdrawal agreement: Progress to date and remaining difficulties](#), of July 2018.

Please also visit the European Parliament homepage on [Brexit negotiations](#).



In this Briefing

- Introduction
- The draft withdrawal agreement: what does it contain?
- The political declaration on the EU-UK future relations
- What next?

Introduction

On 14 November 2018, the EU and UK negotiators announced they had approved the [legal text of the agreement](#) on the UK's withdrawal from the EU. On 25 November 2018, at a special European Council meeting, EU leaders [endorsed](#) the draft withdrawal agreement, as well as the text of the [Political Declaration](#) which sets out the framework for the future relationship between the EU and the UK. Whereas the withdrawal agreement, if ratified, would be a legally binding treaty, the political declaration is a legally non-binding document; however, despite their different legal nature, they are considered as a package for the purpose of the approval process in both the EU and the UK. In January 2019, the Council of the EU adopted the [decision](#) to sign the [agreement](#), once the UK Parliament approves the deal in a meaningful vote.

The draft withdrawal agreement: what does it contain?

Building on an [earlier draft](#) text from March 2018, the November 2018 [agreement](#) sets out the [measures and conditions](#) for the UK's orderly withdrawal from the EU on 30 March 2019,¹ the planned date of its entry into force. It is structured in six parts covering common and final provisions, citizens' rights, the financial settlement, other separation issues, the governance of the agreement and the rules of a transition period. The withdrawal agreement also includes three Protocols (on Ireland/Northern Ireland, Gibraltar and the UK Sovereign Base Areas in Cyprus) and nine annexes (covering the applicable EU law provisions relevant to the agreement as well as other procedures necessary for its the application), all with the same legal value as the main text.

Common and final provisions

The common provisions contain the definitions of terms and concepts used throughout the agreement, as well as the agreement's territorial scope and the principles and methods governing the effect and implementation of the agreement. In particular, Article 4 [clarifies](#) that all provisions of the agreement and the EU legislation applied in virtue of the agreement, will have the same legal effects in the UK as in the EU and its Member States, including [direct effect](#), where applicable. The UK must ensure the implementation of Article 4, including by adopting domestic primary legislation, and empowering its judicial and administrative authorities to dis-apply any [inconsistent](#) or incompatible national provision. Moreover, the concepts or provisions of EU law referred to in the agreement are to be interpreted and applied in accordance with the methods and general principles of EU law; this includes ensuring conformity with the Court of Justice of the EU (CJEU) case law handed down before the end of the transition, while CJEU case law handed down after the end of the transition should be given 'due regard' by UK authorities.

Furthermore, the EU law referenced in the withdrawal agreement will [cover](#) new legislation or amendments entering into force during the transition period. In this context, Article 5 includes a good faith clause, presumably to assuage UK concerns about [new EU legislation](#) adopted in the transition phase over which it would have no influence. Finally, the UK will lose, as of the exit date, its representation in all EU institutions and bodies, and its decision-making and attendance rights in the meetings of the EU institutions and agencies. It will also lose access to all EU networks, databases and information systems, from the end of the transition period, unless otherwise provided.

The final articles of the agreement include provisions on the languages and depositary of the agreement. Also, Article 184 contains the parties' commitment to use their *best endeavours* not only to negotiate expeditiously the agreements governing the future relationship but also to ensure these will *apply, to the extent possible, as from the end of the transition period*. Article 185 sets the date of entry into force of the agreement at 30 March 2019, unless one of the parties fails to notify in writing the completion of internal procedures for its ratification. The article also specifies which provisions apply as from the end of the transition period. Finally, it includes the option for Member States, under certain circumstances, to refuse to surrender a national to the UK under the European arrest warrant during the transition period.

Citizens' rights

Part Two of the agreement sets out in legal terms provisions safeguarding most of the essential guarantees of EU free movement law for those who made use of it, both UK citizens in the EU-27 and EU-27 citizens in the UK. A stated priority for the EU and the UK, this part was fully agreed by negotiators in March 2018. In particular, the [withdrawal agreement](#) defines the categories of persons within its scope and contains provisions on residence and related rights, coordination of social security, equal treatment and non-discrimination. Crucially, the persons covered will enjoy the rights set out in Part Two for their lifetime, unless they cease to meet the conditions therein.

Categories of persons covered

Article 10 enumerates the **categories of persons** covered by the withdrawal agreement: EU citizens resident in the UK and UK nationals resident in a EU Member State, in accordance with EU law before the end of the transition and thereafter; UK and EU frontier workers or frontier self-employed persons in the EU and UK respectively; as well as their family members, who are granted rights under EU law (e.g. spouses, parents, children, grandchildren and grandparents) and who will be able to join the EU/UK national in the host state if they are living in a different country. The withdrawal agreement also covers, among others, future children, wherever they are born or legally adopted, and partners in a durable relationship. However, [citizens' groups](#) and the [European Parliament](#) have underlined the withdrawal agreement failed to protect certain family reunification rights. [Categories](#) not covered are: [non-EU family members](#) of an EU citizen moving to another Member State then moving back to that citizen's home Member State (following [Surinder Singh](#) CJEU case law), as well as non-EU carers for minors who have not left their Member State of birth, and therefore are not covered by EU free movement law ([Zambrano case law](#)).

Residence and other related rights

The [agreement](#) provides that EU-27 citizens residing in the UK and UK nationals resident in an EU Member State on the basis of EU law, prior to the end of the transition period, will essentially keep their current rights under the applicable conditions and limits, which may vary depending on the category (e.g. permanent residents, workers, self-employed, job-seekers, students).

Among the main provisions, Article 13 confirms the right of EU citizens and UK nationals, as well as their family members, to reside in the host state under currently applicable EU law ([Directive 2004/38/EC](#)). The right of exit from, and of entry to, the host state, on the basis of specified valid documents and without a visa is also provided for EU/UK nationals and their family members and other persons (e.g. partners). The agreement also confirms that EU/UK nationals and their family members would acquire the [right](#) of permanent residence after five years of continuous lawful residence in accordance with EU law, even if that period is completed after the end of the transition period.² Derogating from current provisions, whereby [the right](#) to permanent residence is lost after two years' absence from the host state, the agreement extends this period to five years. However, under EU law, citizens who had lost their right to permanent residence after a two-year absence could nevertheless return later; after the UK's withdrawal, this will no longer be possible, despite calls from [citizens' groups](#) and the [European Parliament](#) to include in the agreement a life-long right to return to the host country. Moreover, the current text does not contain provisions for a right to onward movement of UK nationals legally residing in an EU Member State (i.e. free movement across the EU-27). The rights of UK and EU citizens and their family members covered to rely directly on the provisions of this Part will not be affected if they change status (e.g. from worker to economically inactive). However, at the end of the transition period, persons who enjoy a right of residence as family members of an EU/UK national will not be able to become right-holders in their own right.

Administrative procedures

The UK and the EU Member States can [choose](#) between a **constitutive system** (persons will be required to apply for a new residence status to attest to their rights under the withdrawal

agreement) **and declaratory** system (those complying with the conditions automatically become beneficiaries of the withdrawal agreement). Applications for such a residence status may be made up to 6 months after the end of the transition period. In any case, persons entitled to the rights under the citizens' chapter will have the right to request from the host state a document, which may be digital, attesting that the person is covered by the withdrawal agreement. The EU law safeguards will apply to any host state decision to restrict the residence rights of the persons covered.

Other provisions

The **rights of workers and self-employed persons**, including **frontier** workers, are also protected by the withdrawal agreement beyond the transition period. Decisions on the **recognition of professional qualifications** of persons covered by the withdrawal agreement remain valid, while applications pending at the end of the transition period will still be finalised. Regarding the **coordination of social security systems**, the UK will have to align with future changes to the relevant EU legislation in the application of this part; although some exceptions are provided, subject to the agreement of the Joint Committee governing the agreement. The social security provisions address the rights of EU citizens and UK nationals in cross-border situations involving the UK and (at least) one Member State at the end of the transition period.³ Essentially the [persons](#) covered will maintain their [rights](#) to social security benefits, including pensions and healthcare, even if they decide to live in another country.⁴

The role of the CJEU in the application of the citizens' rights provisions is set out in Part Six of the agreement (Articles 158, 159). A UK court or tribunal may address a question for preliminary ruling to the CJEU, if it arises in a case started at first instance within 8 years of the end of the transition period, or from 30 March 2019 if the case concerns an application for residence documents during the transition period. The CJEU's preliminary rulings will have the same legal effects in the UK as in the EU and its Member States. The European Commission and a national independent authority to be set up for the UK will exercise **oversight** of the implementation of the citizens' rights part for the EU-27 and for the UK, respectively; they will receive complaints from UK/EU citizens and their family members, and inquire into alleged breaches of their rights by administrative authorities.

Separation provisions

The [draft withdrawal agreement](#) sets out how to manage [procedures or situations](#) not concluded at the end of the transition period. To give a few [examples](#), **goods placed lawfully on the market** in the EU and the UK before the end of the transition may continue to circulate freely until they reach their end users, or are put into service (except live animals and animal products which will undergo border controls as of the end of the transition). The rights of holders of **intellectual property rights** registered before the end of the transition period will be protected thereafter; **judicial proceedings** ongoing at the end of the transition period will be completed under the relevant EU legislation. The agreement also includes rules on an orderly UK exit from **Euratom**. The existing EU **data protection** rules will apply for data processed under EU law in the UK before the end of the transition period or after its end on the basis of the withdrawal agreement, until the EU adopts [adequacy decisions](#) attesting that UK data protection rules are essentially equivalent to the EU's. **EU judicial and administrative processes ongoing** at the end of the transition period will be finalised according to EU rules. The CJEU remains competent for all judicial cases to which the UK is a party, including for requests for preliminary rulings from UK courts, initiated before the end of the transition period. Moreover, the European Commission may bring new infringement cases against the UK before the CJEU for 4 years after the end of the transition period and may initiate new state aid cases against the UK for a further 4 years after the end of the transition period for aid granted before its end.

Transition period

The negotiated [transition](#) period sets out the rules applicable as of the day of UK withdrawal until 31 December 2020, in order to allow time for businesses and people to prepare for the changes

arising from Brexit, and also for the UK and the EU to negotiate the future relationship agreements based on the terms of the political declaration.

In essence, during the transition period, the [status quo](#) is preserved, with EU law and policies and all the EU institutional, supervision and enforcement mechanisms (including full CJEU jurisdiction) continuing to apply to and in the UK. The UK will be treated as if it had remained a Member State (maintaining its opt-outs and budget rebate), participating in the single market and the customs union, with all the attached obligations, and remaining bound in principle by the EU's international agreements. However, the UK will not be represented in the EU's decision-making process and institutions; will have no right to submit proposals to the EU institutions; or to take part in enhanced cooperation set up after the withdrawal date, including in the permanent structured cooperation (PESCO) arrangements in defence (although it may be invited to join PESCO projects as a third country). Moreover, even if the UK may negotiate, sign and ratify trade agreements with other countries, they may not enter into force or apply during the transition period without EU authorisation.

The common foreign and security policy and common defence and security policy will apply to the UK, but with no decision-making role. In justice and home affairs, cooperation will continue as before, except that the UK will be excluded from completely new EU measures in this area (however, it may be invited to participate under terms available to third countries); and that Member States may refuse to surrender their own nationals to the UK under the European arrest warrant procedure. The UK will also remain in the common fisheries policy until the end of the transition and will be consulted regarding the decisions on fishing opportunities when necessary.

Extending the transition period

Missing from the March 2018 draft, the withdrawal agreement now provides for the possibility to extend the transition period. Article 132 allows a one-time extension to be granted for **one or two years (until the end of 2022 at the latest)**, on a decision of the Joint Committee governing the agreement taken before 1 July 2020. Article 3 of the protocol on Ireland/Northern Ireland also allows the UK to request, before the same date, to extend the transition period, having regard to progress in the negotiations on an agreement superseding the protocol. As the current multiannual financial framework (MFF) expires on 31 December 2020, if the transition period is extended, the UK will be considered a third country for the purposes of EU programmes and funding; however, the Joint Committee will decide on an appropriate UK financial contribution to the EU budget, independent of the general financial settlement, from 1 January 2021 until the end of the extended transition period. During an extended transition period, the common agricultural policy will not apply to the UK, although the UK will have to respect some [limits](#) on direct payments.

Financial provisions

The withdrawal agreement contains the agreed principles and methodology for calculating the settling of accounts between the UK and the EU, without offering estimates. There are no changes with regard to the [draft text](#) from March 2018. The financial settlement will [ensure](#) the UK and the EU honour all financial obligations undertaken while the UK was a member of the EU, in particular:

All [joint commitments](#) vis-à-vis the EU budget (2014-2020), including outstanding commitments at the end of 2020 and liabilities which are not matched by assets. The UK will also continue to guarantee the loans made by the EU before its withdrawal and will receive back its share of any unused guarantees and subsequent recoveries following the triggering of the guarantees for such loans.

In essence, the UK will contribute to the 2019 and 2020 EU budgets as if it were an EU Member State, while the EU own resources rules will continue to apply to the UK after 2020. Also the UK will participate in EU programmes financed under the current MFF until their closure. Finally, the UK will honour its commitments to several funds outside the EU budget and will be reimbursed its paid-in capital held in the European Central Bank and the European Investment Bank (EIB), but will continue to remain liable for EIB loans granted before its withdrawal date.

The CJEU maintains jurisdiction as regards the application of EU legislation on own resources after 31 December 2020, as well as EU law applicable after 31 December 2020 related to the UK's implementation of EU programmes and activities committed under the 2014-2020 MFF and previous MFFs. In particular, the Court will be competent for an indefinite period of time to hear infringement actions by the Commission against the UK for failure to fulfil an obligation, and for the sanctions procedure in case of non-compliance with a Court judgment; as well as any questions for preliminary ruling (Article 160 of the withdrawal agreement).

Institutional provisions

The **governance** of the agreement is entrusted to a Joint Committee, made up of UK and EU representatives and co-chaired by the EU and the UK, responsible for the implementation and application of the agreement. Six specialised committees (on citizens' rights, the financial provisions, other separation provisions and the three protocols) will report to the Joint Committee.

The **mechanism for settling disputes** is based on an arbitration procedure. Accordingly, should consultation in the Joint Committee regarding the dispute not lead to agreement (first step in the procedure), either party can request the establishment of an independent arbitration panel which will have to give a ruling within 12 months, or earlier in urgent matters. If the dispute raises a question of interpretation of EU law, the arbitration panel must request a ruling on the question from the CJEU, which will be binding on the arbitration panel. If the dispute is not related to EU law, the arbitration panel issues a reasoned assessment, which may be reviewed at the request of either party. The final ruling of the arbitration panel will be binding on the EU and UK, which will have to comply within a reasonable period of time. The panel is competent to decide on all issues related to compliance with the ruling, and may impose a lump sum or penalty payment on the non-compliant party. Should non-compliance persist after a certain time, the complainant can suspend any provision of the withdrawal agreement other than the citizens' rights provisions; or parts of any other EU-UK agreement. The suspension must be proportionate and temporary (until compliance is achieved or the dispute is settled otherwise).

The arbitration procedure was a major concession from the EU. It was not in the March 2018 draft agreement, as EU negotiators then insisted that the CJEU should be the ultimate arbiter of disputes concerning EU law and the application of the withdrawal agreement. [Experts](#) have raised doubts about the compatibility of the new dispute settlement arrangements with the autonomy of EU law, although, as mentioned above, the competence of the arbitration panel does not extend to questions of EU law, which remain the exclusive competence of the CJEU. They argue that the restrictive interpretation of the CJEU of its own jurisdiction and of the autonomy of EU law might raise some future problems for the withdrawal agreement's dispute settlement mechanism, although this also would ultimately be a matter for the CJEU to decide.

Beyond dispute settlement, the agreement maintains the **jurisdiction of the CJEU** regarding: Part Two on citizens' rights; Part Three on other separation provisions; Part Four on the transition period; and certain provisions of Part Five (the financial settlement), as explained in the respective sections above. The CJEU also retains jurisdiction over large parts of the backstop contained in the Protocol on Ireland/Northern Ireland, should it apply at the end of the transition period. In particular, the CJEU maintains jurisdiction and remains ultimate arbiter over all EU law concepts applicable under the protocol; for all other areas, the enforcement and dispute resolution arrangements provided in the withdrawal agreement will apply. Finally, EU Member States will have the right to refer to the CJEU questions for preliminary ruling concerning the interpretation of the withdrawal agreement, and the subsequent decisions will be notified to the UK. Also, no time limit is put on preliminary reference procedures launched by EU national courts regarding the citizens' rights part.

The protocols annexed to the withdrawal agreement

The three protocols annexed to the withdrawal agreement - on Ireland/Northern Ireland; on the Sovereign Base Areas in Cyprus; and on Gibraltar - have the same legal value as the agreement.

Protocol on Ireland/Northern Ireland

The Protocol on Ireland/Northern Ireland reflects the recognition by both the EU and the UK of the 'unique circumstances' of Northern Ireland. After Brexit, the border between Northern Ireland and Ireland will become an EU external border, carrying the requirement of border checks on goods entering the EU single market; nevertheless, both parties have committed to preventing a hard border on the island of Ireland and to fully respecting the 1998 Good Friday/Belfast Agreement which is the basis of the peace process in Northern Ireland and which established cooperation on matters of common interest between the north and south of the island, including joint policies. Back in March 2018 the UK and the EU agreed provisions on ensuring no diminution of individuals' rights as set out in the Good Friday/Belfast Agreement, including protection against discrimination; on maintaining the [Common Travel Area](#) between the UK and Ireland; on the continuation of North-South cooperation in existing areas (e.g. environment, health, agriculture, and transport), and the possibility to extend UK-Ireland cooperation to new areas of common interest; and on maintaining the single electricity market on the island of Ireland.

The 'backstop'

The Protocol on Ireland/Northern Ireland also contains the 'backstop', an arrangement to avoid a hard border on the island of Ireland, that would apply from the end of the transition period unless it is replaced by other arrangements in the meantime.

A [solution](#) to ensure no hard border in the future between Northern Ireland and Ireland was extremely difficult to agree. The UK government rejected from the outset the possibility of remaining in the EU's customs union and internal market in the future, which would have removed the need for physical border and regulatory checks. Noting the UK stance, the EU demanded a backstop plan to guarantee there will be no hard border on the island, irrespective of the future relationship. In December 2017, the parties agreed to three linked scenarios: i) solving the issue through the future EU-UK relationship; ii) if this proved impossible, the UK would propose specific solutions for Northern Ireland; iii) if specific solutions were not agreed, the UK would commit to 'full alignment of 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.'

This final scenario came to be known as the [backstop](#), which has become the most [controversial](#) issue in the Brexit negotiations, and is currently reflected in the Protocol. The backstop now consists of a compromise based on a June 2018 UK proposal of a [temporary customs arrangement](#) between the UK and the EU⁵ which would see the entire UK - not only Northern Ireland - forming a single customs territory with the EU. Indeed the protocol refers in its Article 6 to a 'single customs territory' including the UK and the EU which would cover all trade in goods with the exception of fishery and aquaculture products, unless an EU-UK agreement on access to waters and fishing opportunities is in place by 1 July 2020. The UK will have to harmonise its [commercial policy](#) with the EU's common commercial policy to the extent necessary for the functioning of the single customs territory, including alignment with the EU's common customs tariff for goods imported from third countries, and applying the same rules of origin. Furthermore, in order to avoid a hard border and be able to place products on the EU internal market without restriction, Northern Ireland (but not the rest of the UK) will apply the Union Customs Code and will remain aligned to EU law related to the internal market in several areas (e.g. VAT and excise law in respect of goods, sanitary and phytosanitary rules, goods standards, rules on agricultural production and marketing, state aid). In this context, while the UK also commits to unfettered market access to the UK market for Northern Irish businesses, some regulatory checks will be performed on goods entering Northern Ireland from Great Britain.

Also, due to the way the single customs territory is defined, new EU [trade deals](#) will apply automatically to Northern Ireland, but not necessarily to the rest of the UK. The protocol's ten annexes cover the applicable EU legislation, including the agreed level playing field commitments.

Level playing field provisions

The protocol's level playing field provisions relate to the [areas](#) of taxation, environmental protection, labour and social standards, state aid and competition. The UK commits to respect international and EU standards (including to replicate specific EU rules in some of these areas), to the principle of non-regression from current levels of protection, as well as to measures to ensure the enforcement of these obligations. The dispute settlement mechanism in the withdrawal agreement will apply, while disagreement on the substantive rules will be dealt with exclusively by the Joint Committee. The UK will set up national independent authorities to monitor compliance in each of these areas.

A particular case is state aid: the UK commits to applying EU state aid rules, including amended or new EU rules, with some exemptions for agricultural products. Moreover, [state aid](#) affecting trade between Northern Ireland and the EU will be enforced directly by the European Commission, with the CJEU having full jurisdiction; however, the UK independent authority will enforce the rules on state aid affecting trade between Great Britain and the EU, supervised by UK courts.

Implementation, supervision and enforcement

The implementation of the protocol is ensured by the UK authorities, although EU representatives will have the right to request all relevant information regarding the application of EU law referenced by the protocol or to be present during any related activities. Regarding EU law applying by virtue of the protocol, the EU institutions, including the CJEU, maintain their powers. Moreover, the protocol is dynamic, i.e. the EU laws referenced also include subsequent amendments or replacements, unless provided otherwise. However, if the EU adopts a completely new law falling within the scope of the protocol, a mechanism is set out for agreeing in the Joint Committee its addition to the relevant annex or the necessary measures if agreement is not possible.

Duration of the protocol, including the backstop

If no agreement to replace it is reached during the transition period, the [legally operational backstop](#) will apply from the end of the transition, *unless and until* replaced, *in whole or in part*, by a subsequent agreement. However, some other parts of the protocol will enter into force at the same time as the withdrawal agreement (e.g. the creation of the specialised committee on Northern Ireland). The protocol has been highly contested because it contains no time limit or [exit clause](#). Parts of the UK political class have continued to [insist](#) on the temporary nature of the backstop, arguing the protocol should contain an expiry date or a unilateral exit clause. However, the EU's firm position has been that the protocol must contain an '[all-weather backstop](#)', necessary to avoid a hard border in all circumstances. The European Parliament's Brexit Steering Group has backed this position, [stating](#) that 'without such an "all-weather" backstop-insurance, the European Parliament will not give its consent to the Withdrawal Agreement'. The UK government itself has argued the backstop would not need to enter in effect, as a future relationship treaty would be concluded in time; or, should the backstop apply, it would only do so briefly before a future agreement would be in place.

To provide further assurances that applying the backstop is not the ideal solution for either party, Article 1(4) of the protocol underlines its temporary nature, also because the withdrawal agreement cannot constitute a legal basis for permanent arrangements for the future relationship. The EU and UK pledge to use their [best endeavours](#) to **conclude and ratify a subsequent agreement** by 31 December 2020; if insufficient progress is made, the UK may ask for an extension of the transition period (Article 132 of the agreement), thus postponing the application of the backstop and allowing further talks. The other mechanism to put an end to the backstop is through the **review clause** in Article 20 of the protocol. Accordingly, the EU or the UK may notify the other party, at any point after

the end of the transition period, that it considers the protocol, in whole or in part, no longer necessary for achieving the objectives in Article 1(3): 'to address the unique circumstances on the island of Ireland, maintain the necessary conditions for continued North-South cooperation, avoid a hard border and protect the 1998 Agreement in all its dimensions.' The UK Attorney General considers such a [scenario](#) would arise 'if the parties had established alternative arrangements for ensuring the absence of a hard border.' The Joint Committee must meet at ministerial level to consider the reasoned notification, within six months of its receipt; it may also seek an opinion from the [institutions](#) created by the Belfast Agreement. The decision to end the application of the protocol, in whole or in part, will be made jointly by the EU⁶ and the UK in the Joint Committee.

Protocol on the UK Sovereign Base Areas (SBAs) in the Republic of Cyprus

Following UK-Cyprus negotiations, the EU and UK agreed a [Protocol](#) to protect the interests of Cypriots who live and work in the UK SBAs in Cyprus (Akrotiri and Dhekelia) to apply from the end of the transition period. Essentially, the protocol ensures that EU law in the areas stipulated in [Protocol No 3](#) annexed to Cyprus's Act of Accession to the EU (e.g. taxation, goods, agriculture, fisheries and veterinary and phytosanitary rules) will continue to apply in the SBAs, and maintains the rights of thousands of Cypriots living and working in the SBAs. The territory of the SBAs will remain part of the EU customs union and the goods produced therein will be able to circulate freely in the EU. Cyprus will be [responsible](#) for implementing and enforcing EU law related to most of the areas covered, except security and military affairs and the [application](#) of the [Green Line Regulation](#).

Protocol on Gibraltar

[Gibraltar](#) is an external European territory of the UK to which EU law is applicable to the extent provided by the UK's Act of Accession. Given that the [European Council guidelines](#) of 29 April 2017 provided that no EU-UK agreement may apply to the territory of Gibraltar without agreement between Spain and the UK, bilateral [negotiations](#) ensued. As a result, Spain and the UK agreed four [Memoranda of Understanding](#) (on citizens' rights, environmental matters, cooperation in police and customs matters, and on tobacco and other products) and an [agreement](#) on taxation and protection of financial interests. The protocol contains provisions on cooperation between Spain and the UK regarding the effective implementation of the withdrawal agreement's provisions in all the above areas. It will apply as of 30 March 2019 until the end of the transition period, except for the citizens' rights provisions in Part Two of the withdrawal agreement which will continue in force.

The political declaration on future EU-UK relations

Following the [European Council guidelines](#) of March 2018, the EU and UK started [discussions](#) to identify 'an overall understanding of the framework for the future relationship' as mandated by Article 50(2) TEU. The [political declaration](#) agreed in November 2018 sets out the framework which will represent the basis for the future relationship between the EU and the UK. It establishes 'the parameters of 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', taking into account the UK's expressed red lines (UK sovereignty, ending the free movement of people, establishing an independent trade policy), as well as the principles set by the European Council (a balance of rights and obligations; preserving the autonomy of the EU's decision-making and legal order; the integrity of the single market and customs union and the indivisibility of the four freedoms). While the political declaration goes together with the withdrawal agreement as a package, it is [not a legally binding](#) document. It does however confirm the 'clear intent' of the parties to negotiate the future relationship agreements in good faith (Article 184 of the withdrawal agreement). The future relationship agreements will be subject to ratification by the European Parliament and, in many cases, by all national parliaments of the EU-27.

The political declaration contains two pillars: the economic, and the security partnership. It also includes institutional and governance provisions and sets out the process for carrying out the formal

negotiations for the future agreements. Its initial provisions refer to the parties' shared values (e.g. human rights and fundamental freedoms, democracy, rule of law and non-proliferation) as prerequisites for future cooperation. The UK will commit to respect the framework of the European Convention on Human Rights (ECHR). Moreover, the Commission will endeavour to adopt adequacy decisions on the UK's data protection framework by the end of 2020. The parties will also establish rules for the UK's participation in EU programmes, subject to a UK financial contribution, and commit to maintaining current funding proportions for the Peace+ programme in Northern Ireland.

Economic partnership

The UK and the EU agree 'to develop an ambitious, wide-ranging and balanced economic partnership' which will encompass a free trade area (FTA) as well as wider sectoral cooperation. It will also build on the level playing field provisions in the withdrawal agreement, to cover state aid, competition, social, employment and environmental standards, climate change, and tax matters. The future economic relationship will cover, [as usual in FTAs](#), trade in goods, trade in services and investment, public procurement, intellectual property rights (IPRs), mobility provisions, transport, energy, fishing opportunities and global cooperation on economic, environmental and social issues.

The FTA will be based on comprehensive arrangements on **trade in goods**, relying on deep regulatory and customs cooperation as well as level playing field provisions. Trade in goods will be tariff-free, without charges or quantitative restrictions and will rely on ambitious customs arrangements, including in the area of tariffs which will 'build and improve on the single customs territory provided for in the Withdrawal Agreement'. Future agreements on technical barriers to trade and sanitary and phytosanitary issues will go beyond WTO standards. The UK will consider aligning with certain EU rules to facilitate cooperation with EU agencies (e.g. European Medicines Agency, the European Chemicals Agency, and the European Aviation Safety Agency).

The Northern Ireland backstop

Paragraph 19 of the political declaration states the parties' determination to replace the backstop with a subsequent agreement establishing alternative arrangements that would ensure the absence of a hard border on the island of Ireland on a permanent footing. Paragraph 27, related to customs processes, includes the commitment of the parties to make use of all available facilitative arrangements and technologies that could contribute to developing alternative arrangements on the island of Ireland.

For **trade in services and investment**, the parties commit to a level of liberalisation beyond their WTO commitments and building on recent EU FTAs. The future EU-UK FTA would aim at 'substantial sectoral coverage, covering all modes of supply and providing for the absence of substantially all discrimination in the covered sectors, with exceptions and limitations as appropriate'. It will include provisions on market access and national treatment under host state rules, based on non-discrimination, including as regards establishment; arrangements on temporary entry and stay of natural persons for business purposes in certain areas; as well as regulatory cooperation. The political declaration clarifies that the FTA will include financial services, on the basis of equivalence decisions, to be finalised before the end of June 2020. The parties will also aim to conclude a new fisheries agreement on, inter alia, access to waters and quota shares, by 1 July 2020.

Security partnership

This will cover law enforcement and judicial cooperation in criminal matters, foreign policy and security and defence cooperation, as well as thematic cooperation – in the areas of cybersecurity, civil protection, health security, illegal migration and counter-terrorism. A security of information agreement to share classified and sensitive non-classified information will be concluded.

The partnership in the area of police and judicial cooperation in criminal matters will cover arrangements for data exchange; operational cooperation between law enforcement and judicial

authorities; and for anti-money-laundering and counter-terrorism financing. They will reflect the extent of the UK commitment to respect the integrity of the EU's legal order (alignment to EU rules, respecting the CJEU's role in interpreting EU law) and to fundamental rights, including continuing adherence to the ECHR, personal data protection, the *ne bis in idem* principle and procedural rights. Under the data exchange arrangements, the UK and the EU should establish rules for passenger name record data exchanges, and for DNA, fingerprints and vehicle register data; data exchange on wanted or missing persons, objects, and criminal records could approximate the current EU mechanisms (e.g. SIS II, ECRIS), 'in so far as is technically and legally possible'. The UK and EU will also identify the terms of the UK's future cooperation with Europol and Eurojust, the EU's police and judicial cooperation bodies, as well as between national authorities, in an effort to approximate the current EU mechanisms. New arrangements to replace the European arrest warrant could include the possibility to waive the double criminality requirement and apply the arrangements to own nationals for political offences (excluded from EU surrender treaties with [third countries](#)). Finally, the parties commit to complying with relevant international standards in the area of anti-money-laundering and counter-terrorism financing, and to going beyond them in their bilateral cooperation.

Future EU-UK foreign policy, security and defence cooperation will be based on dialogue, consultation, coordination, exchange of information and cooperation mechanisms. In particular, political dialogue at different levels is provided for, with the possibility of inviting the UK to informal EU-27 ministerial meetings. Cooperation would extend to areas of common interest, including cooperation in third countries and in international fora, common approaches on sanctions; UK participation in EU civilian and military missions and operations; collaboration on defence capabilities development through various mechanisms, to the extent possible under EU law; intelligence exchanges, and cooperation on space and in international development.

Institutional arrangements and future process

The future relationship should be based on an 'overarching institutional framework' covering the various agreements to be concluded. Its precise legal form – which could be that of an [association agreement](#) as proposed by the [European Parliament](#) – will be decided in formal negotiations. Some agreements may be concluded outside this framework. The governance aspects should include effective arrangements for the future relationship's management, supervision, implementation, review and development, as well as dispute resolution and enforcement mechanisms based on the withdrawal agreement. A Joint Committee will supervise the implementation of the future relationship and have a role in dispute resolution; it may be assisted by specialised sub-committees. Dialogue at all levels, including parliamentary and civil society dialogues should be established.

Prior to the withdrawal date, the parties would engage in preparatory work to identify the priority areas, including the 'alternative arrangements' on the island of Ireland. Formal talks may begin only once the UK becomes a third country, and the EU agrees its negotiating mandate under Article 218 TFEU. After the UK withdrawal, a twice yearly high-level conference will review progress in the talks.

What next?

Whereas the approval process of the withdrawal agreement and political declaration in the EU has advanced smoothly, the [UK parliament](#) rejected the withdrawal deal in January 2019, prompting fresh talks with the EU, mainly on obtaining added reassurances that the backstop in the Protocol on Ireland/Northern Ireland was meant to be temporary. Eventually, on 11 March 2019, the EU and the UK [agreed](#) a legally binding interpretative [instrument](#) relating to the withdrawal agreement, and a [joint statement](#) supplementing the political declaration. These aim, inter alia, to reaffirm the parties' commitment to use their best endeavours to start negotiations as soon as possible, and conclude by 30 December 2020 an agreement that supersedes in part or in whole the protocol, including replacing with alternative arrangements the elements of the protocol related to customs and regulatory alignment in goods. The dispute settlement mechanism in the withdrawal agreement (independent arbitration panel) can be triggered by either party, if it considers that the

other is acting in breach of its good faith obligations and aims to apply the protocol indefinitely. Persistent lack of compliance with the arbitration panel's ruling would enable the aggrieved party to unilaterally suspend its obligations under the protocol, unless and until compliance is ensured. Furthermore, the parties agreed to start negotiating speedily the future relationship agreements and to set up a specific negotiating track on developing alternative arrangements to ensure the protocol will not apply at all. On 12 March, the UK House of Commons held a second [meaningful vote](#) on the withdrawal deal supplemented by the recently agreed documents, including a [unilateral declaration](#) by the UK government setting out the UK's understanding of the effect of some provisions in the protocol. The withdrawal deal was [defeated](#) again by a margin of 149 votes.⁷

At time of writing, the UK government is expected to request an [extension](#) to the negotiating period, which the EU-27 must approve unanimously. A disruptive no-deal Brexit might nevertheless still occur on 30 March 2019 if no other way forward is agreed, despite the UK House of Commons voting on 13 March against leaving with no deal.

MAIN REFERENCES

[The UK's EU Withdrawal Agreement](#), Library Subject Specialists, House of Commons Library, Briefing Paper No 08453, 4 December 2018.

[The EU-UK withdrawal agreement: Progress to date and remaining difficulties](#), C-C. Cîrlig, L. Tilindyte, S. Mazur, EPRS In-Depth Analysis, July 2018.

[The Political Declaration on the Framework for Future EU-UK Relations](#), Library subject specialists, House of Commons Library Briefing Paper 8454, 30 November 2018.

ENDNOTES

- ¹ The UK's exit is due to take place at 23.00, UK time on 29 March.
- ² By way of derogation, the right of permanent residence can be acquired after less than five years of continuous residence in the host Member State for certain categories of persons defined in Article 17 of [Directive 2004/38/EC](#).
- ³ The social security provisions can also cover citizens of the EFTA countries (Iceland, Liechtenstein, Norway and Switzerland), if the necessary agreements are concluded (Article 33 of the withdrawal agreement).
- ⁴ The social security chapter covers also other persons and special situations (Articles 30 and 32) than those defined by Article 10 of the agreement.
- ⁵ The initial EU proposal of keeping Northern Ireland in a 'common regulatory area' with the EU was refused by the UK. In turn, the EU rejected the UK proposals of 1) a maximum facilitation arrangement based on new technological solutions to reduce customs checks; and 2) a customs partnership whereby the UK would collect tariffs and perform checks on imports on behalf of the EU; as well as the UK proposals set out in the July 2018 [White Paper](#) ('Chequers').
- ⁶ For this, the Council [must act](#) in accordance with the European Council's guidelines.
- ⁷ In a [letter](#) to President Tusk, Jean-Claude Juncker recommended that the European Council endorse the package agreed on 11 March 2019, subject to the UK Parliament's prior approval of the withdrawal agreement.

DISCLAIMER AND COPYRIGHT

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

© European Union, 2019.

Photo credits: © tanaonte / Fotolia.

eprs@ep.europa.eu (contact)

www.eprs.ep.parl.union.eu (intranet)

www.europarl.europa.eu/thinktank (internet)

<http://epthinktank.eu> (blog)

