

# Outlook for the European Council (Article 50) meeting on 17 October 2019

The October European Council meeting will represent an important point on the timeline of negotiations on the United Kingdom's withdrawal from the EU, as leaders will be taking stock of the situation heading up to the end of the extension period on 31 October 2019. This Briefing provides an overview of European Council guidelines and decisions taken to provide direction to the negotiations since the UK's formal notification of withdrawal on 29 March 2017.

## 1. Background

Following a referendum on 23 June 2016, in which 51.9 per cent of participants voted to leave the European Union (EU), the United Kingdom (UK) submitted the [formal notification](#) of its intention to leave to the European Council on 29 March 2017. According to the procedure laid out in [Article 50](#) of the Treaty on European Union (TEU), this notification triggered a two-year period during which the EU and the UK were to negotiate the terms of the UK's withdrawal. The European Council, meeting without a UK representative (termed 'European Council (Article 50)' meetings), outlined the general direction for the negotiations in a series of sets of guidelines.

**Guidelines of 29 April 2017:** In its first set of [guidelines](#), the European Council (Article 50) decided that the negotiations would be divided into two phases. The first phase would set the terms of the withdrawal and clarify the impact of UK's withdrawal on three critical issues: 1) citizens' rights, 2) finances, and 3) the border between Ireland and Northern Ireland. The second phase would focus on negotiating the EU's future relationship with the UK as well as agreeing any necessary transitional arrangements. Based on the European Council guidelines of 29 April, the Commission adopted a [recommendation](#) and Council (EU-27 format) a [decision](#) authorising the opening of negotiations.

**Guidelines of 15 December 2017:** Informed by a [joint report](#) from the EU and UK negotiators of 8 December 2017, the European Council (Article 50) decided at its December meeting that sufficient progress had been made on phase one, and adopted additional guidelines for the second phase of negotiations. All the commitments made during phase one would have to be respected and 'translated faithfully into legal terms'. A transition period was agreed for a period of two years, during which the UK would 'no longer participate in or nominate or elect members of the EU institutions, nor participate in the decision-making of the Union bodies, offices and agencies'. It would have to respect the whole body of EU law, including new law, budgetary commitments, and judicial oversight, including the competence of the Court of Justice of the EU. Moreover, the UK would continue to participate in the customs union and the single market (with all four freedoms) as well as comply with EU trade policy until the end of the transition period, but not beyond. The framework for the future relationship would be elaborated in a political declaration accompanying the withdrawal agreement.

On 29 January 2018, the Council (EU-27 format) [adopted](#) supplementary [negotiating directives](#) concerning a transition period, which would apply from the date of entry into force of the withdrawal agreement, and not last beyond 31 December 2020. Commitments made by both parties in the December 2017 [joint report](#) were translated by the Commission into legal terms in a [draft withdrawal agreement](#) released on 28 February 2018. By 19 March 2018, [full agreement had been reached](#) on many issues, including citizens' rights, the financial settlement and the transition period.

As regards the border between Northern Ireland and Ireland, negotiators agreed that a solution would be found in line with the three scenarios [detailed](#) in the December 2017 joint report: 1) first, the UK commits to avoid creating a hard border on the island and proposes a solution in the context of the future EU-UK relationship; 2) if this were not possible, it would then propose a specific solution to address the unique circumstances of the island of Ireland; 3) in the absence of agreed solutions, the UK would continue to 'maintain full alignment with those rules of the internal market and the customs union which support North-South cooperation, the all-island economy and the protection of the Good Friday Agreement of 10 April 1998'. While discussion on all options continued, scenario three, known as the 'backstop', was included in a Protocol on Ireland/Northern Ireland in the draft agreement.

**Guidelines of 23 March 2018:** The European Council (Article 50) issued [guidelines](#) in March 2018 outlining the EU's position on the future relationship with the UK. The EU-27 restated the EU's determination to have 'as close as possible a partnership with the UK in the future'. Regarding economic cooperation with the UK, the European Council stated its readiness to initiate work on a free trade agreement (FTA) and [outlined the issues](#) to be addressed therein. Such an agreement would have to be based on a balance of rights and obligations, ensuring a level playing field, whilst preserving the integrity of the single market. In addition, the guidelines concentrated on several areas where the EU expressed an interest in maintaining strong relations with the UK, in particular the fight against terrorism and international crime, as well as security, defence and foreign policy.

As for the implementation of the backstop, a [compromise](#) was reached based on the UK's June 2018 proposal for a [temporary customs partnership](#). A single customs territory would be established between the EU and the entire UK (not just Northern Ireland) covering all trade in goods except fisheries and aquaculture. While the UK would harmonise its commercial policy with the EU's to the extent necessary for the functioning of the single customs territory, including alignment with the EU's common external tariff, Northern Ireland would have to apply EU customs law. In addition, Northern Ireland would remain [aligned](#) with EU law related to the internal market in a number of areas, including agriculture and environmental protection and regulation, technical regulations on goods, state aid, EU VAT and excise, and other areas of North-South cooperation.

## 2. Ratification of the Withdrawal Agreement

On 25 November 2018, at a special meeting of the European Council (Article 50), EU leaders [endorsed](#) the [withdrawal agreement](#) and approved the [political declaration](#), on the basis of the future relationship. Three protocols, on Ireland/Northern Ireland, on Gibraltar, and on the UK Sovereign Base Areas in Cyprus, are included. The [decision to sign](#) the agreement was subsequently adopted by the Council on 11 January 2019, although the signature has not taken place. The Council in the meantime forwarded the [decision on the agreement's conclusion](#) to the European Parliament for its consent.

In accordance with section 13 of the EU (Withdrawal) Act 2018, the agreement was submitted to the House of Commons for approval. It [was rejected](#) a first time on 15 January 2019, the main concerns revolving around [the nature of the backstop](#). This led then UK Prime Minister, Theresa May, to ask for additional clarifications. A legally binding [instrument](#) related to the withdrawal agreement, providing clarification and legal guarantees on the nature of the backstop, was [agreed](#) at a meeting in Strasbourg on 11 March 2019, between Commission President Jean-Claude Juncker and May, accompanied by a [joint statement](#) supplementing the political declaration. The 'Strasbourg package' was approved by the March 2019 European Council. The backstop is to serve as an 'insurance policy', with the aim being to replace the backstop by 31 December 2020, as previously [underlined](#) by the European Council in its conclusions in December 2018. Should the backstop be triggered, this would be on a temporary basis only until such time as an alternative arrangement avoiding a hard border is put in place. The withdrawal agreement allows for a one-time extension of the transition period, for one or two years.

[Despite](#) these additional [assurances](#) from the EU, the agreement was rejected in the UK Parliament a second time, on 12 March. The House of Commons [voted](#) two days later to call for an extension of the two-year period under Article 50. A third vote, before the European Council meeting on 21 March, was not possible, since, as stated by the Speaker, John Bercow, the House of Commons [could not](#) vote

again on the 'same proposition or substantially the same proposition'. Consequently, on 20 March, May formally [asked](#) the European Council for an extension until 30 June 2019.

Responding to May's request, the March 2019 European Council (Article 50) adopted a [decision](#) extending the period, but not to the date requested. It [agreed](#) to an extension until 22 May 2019, on the condition that the UK Parliament were to approve the withdrawal agreement by 29 March. If not, the extension would run until 12 April 2019 and the UK would have to indicate the way forward. By that date, the UK would need to announce the holding of European elections, considering its obligation to do so if it were still a Member State on 23-26 May 2019. On 29 March 2019, the UK Parliament held a third vote on the agreement along with the 'Strasbourg package' resulting in a third rejection. Following up on a second [request](#) by May for an extension until 30 June 2019, a special meeting of the European Council was held on 10 April 2019, at which EU leaders discussed the feasibility of granting a short or a longer extension. The [compromise decision](#) granted the UK a six-month extension of the Article 50 period until 31 October 2019 at the latest.

Following this third rejection and a breakdown in cross-party Brexit negotiations aimed at finding common ground for a deal, Theresa May announced her resignation as party leader on 24 May, with effect from 7 June 2019. On 23 July, Boris Johnson won the Conservative Party leadership, thus replacing Theresa May as Prime Minister. In his [first letter](#) to European Council President Donald Tusk, on 19 August 2019, Johnson underlined the UK's commitment to achieve an agreement with the EU in full respect of the Belfast (Good Friday) Agreement. However, he stressed that 'the backstop cannot form part of an agreed Withdrawal Agreement' given that it 'locks the UK, potentially indefinitely, into an international treaty which will bind us into a customs union and which applies large areas of single market legislation in Northern Ireland'. He added 'the Government will not put in place infrastructure, checks or controls at the border between Northern Ireland and Ireland'.

Following Johnson's decision to [prorogue](#) the UK Parliament from 9 September until 14 October 2019 (later [deemed](#) unlawful by the Supreme Court), on 4 September the House of Commons [approved](#) the [EU Withdrawal \(No 2\) Act](#) (known as the Benn Act). This legislation requires the UK government to seek an extension of the Article 50 period until 31 January 2020, unless the House of Commons approves a deal with the EU or agrees to a no-deal Brexit by 19 October 2019.

### 3. Way forward

Two weeks ahead of the planned Brexit date, the 17-18 October 2019 European Council meeting is expected to be dominated by Brexit. EU-27 leaders will discuss the most recent developments, and notably Johnson's [proposal](#) of 2 October 2019 for a new Protocol on Ireland/Northern Ireland to replace the backstop (detailed in Table 1), as well as potentially explore the feasibility of a further extension. While the June 2019 European Council stated that the withdrawal agreement was not open for renegotiation, EU leaders remained [open](#) for talks regarding the content of the political declaration if the UK position were to evolve. The EU's reaction to the proposal has been expressed in detailed terms by EU's chief negotiator Michel Barnier during the European Parliament's plenary part-session on 9 October 2019. He [expressed](#) three main concerns regarding the new proposals.

First, despite a strong commitment from the UK to avoid customs and regulatory checks as well as any physical infrastructure at the border, many questions remain as to the means of implementation, which had not been addressed in the text. Not only would this create uncertainty but would rely on technology not yet developed or tested; it would also require exemptions from the Union Customs Code and changes to the Common Transit Convention. Second, the current Protocol creates a legally operational safety net available immediately, while the new proposal, applicable only as of the transition period, would add uncertainty. In addition, as [underlined](#) by the European Parliament's Brexit Steering Group, the Parliament's consent would be required in a context where the full implications of the new arrangements could not be known.

The third issue concerned consent for Northern Ireland. While the current text includes a mechanism allowing for Northern Irish representation – which could still be improved – the new proposal would

allow Northern Ireland institutions to decide unilaterally not to activate the agreed solution. And, were it to enter into force, it would allow them to review it every four years. As the Northern Ireland Assembly has not sat for almost three years, and its [ability to reconvene](#) is questioned, making application conditional on its consent would render an agreed solution hypothetical and provisional. Finally, Barnier added that the UK's plan to diverge in areas such as social, environmental and tax rules, on which the current political declaration provides for a level playing field, would not be acceptable.

Table 1: Proposals from Prime Minister Boris Johnson of 2 October 2019

Issue	Proposal
Good Friday Agreement	Commitment to uphold the Belfast (Good Friday) Agreement and avoid a 'hard border' between Ireland and Northern Ireland.
Regulatory compliance for goods	Creation on the island of Ireland of a single regulatory zone. Northern Ireland maintains alignment with EU single market rules on food safety, animal and plant health as well as with rules relevant to the placing on the market of manufactured goods. Regulatory checks will be conducted on goods moving from the UK to Northern Ireland where necessary, but there would be no checks on goods entering Northern Ireland from Ireland.
Consent of Northern Ireland	Consent of the Northern Ireland Assembly and Executive to the all-island regulatory zone required every four years. Should consent be withheld, arrangements would default to existing rules.
Customs	Two differentiated UK and EU customs areas after the transition period. Northern Ireland is part of the UK's customs territory. The border between Northern Ireland and Ireland will be a customs border, but no customs controls will be performed near or at the border. Instead, movements of goods must be declared to the relevant customs authorities, with provisions made for small traders and with no entry or exit summary declarations. The UK would no longer be subject to EU VAT and excise legislation. Arrangements for level playing field measures (state aid, taxation, social, labour and environmental standards) are no longer needed given that the UK will be leaving the customs union.

The Parliament's Brexit Steering Group [stated](#) in early October that it did not consider the latest proposal 'a basis for an agreement to which the EP could give consent', as it did 'not address the real issues, namely the all-island economy, the full respect of the Good Friday Agreement and the integrity of the Single Market'. In September, the Parliament [warned](#) that it could 'not give consent to a Withdrawal Agreement without a backstop'.

EU-27 unity has endured throughout the three years of negotiations and this is also due in no small part to the role that the European Council President has played at critical times in finding agreement among the 27 leaders and leading the way forward. In recent statements, Donald Tusk has emphasised yet again the seriousness of the issues at stake, although in a rather [straightforward](#) manner. He [welcomed](#) the positive signals of the meeting between Taoiseach Leo Varadkar and Johnson, and emphasised that 'a no deal Brexit will never be the choice of the EU'.

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