



## **THE UNITED KINGDOM'S DEPARTURE FROM THE EU: THE LATEST DEVELOPMENTS**

**3 OCTOBER 2016**

This regular paper produced by SPICe sets out developments in the UK's negotiations to leave the European Union which are expected to formally begin early in 2017.

Ahead of the UK Government's triggering of Article 50, the updates will provide information on the UK Government's approach to leaving the EU, along with details of the Scottish Government and the other Devolved Administrations positions. The updates will also provide information on developments within the EU with regard to the UK's departure. Finally the update will provide information on the key issues likely to be at play during the negotiations and in developing the UK's future relationship with the European Union.

As was clear during the referendum campaign and since the decision to leave the EU was taken, there is an abundance of information and analysis available, and this SPICe paper will try to cover the key issues by drawing on that information and analysis. This week's update focusses on details of the Prime Minister's speech announcing how Brexit will happen.

### **The Prime Minister begins to set out how Brexit will happen**

Speaking at the Conservative Party conference on Sunday 2 October, the Prime Minister began setting out how Brexit will happen. In her [speech](#), Theresa May outlined the Government's plan for Brexit, and in particular the timing, the process – and the Government's vision for Britain after Brexit.

The Prime Minister stated that the triggering of Article 50 would be a decision for the Government and not the Parliament; she also said that "the negotiations between the United Kingdom and the European Union are the responsibility of the Government and nobody else". She added:

"we will consult and work with the devolved administrations for Scotland, Wales and Northern Ireland, because we want Brexit to work in the interests of the whole country. And we will do the same with business and municipal leaders across the land.

But the job of negotiating our new relationship is the job of the Government. Because we voted in the referendum as one United Kingdom, we will negotiate as one United Kingdom, and we will leave the European Union as one United Kingdom. There is no opt-out from Brexit."

The Prime Minister also set out how the process of withdrawal will work in practice. She said:

“We will soon put before Parliament a Great Repeal Bill, which will remove from the statute book – once and for all – the European Communities Act.

This historic Bill – which will be included in the next Queen’s Speech – will mean that the 1972 Act, the legislation that gives direct effect to all EU law in Britain, will no longer apply from the date upon which we formally leave the European Union. And its effect will be clear. Our laws will be made not in Brussels but in Westminster. The judges interpreting those laws will sit not in Luxembourg but in courts in this country. The authority of EU law in Britain will end.

As we repeal the European Communities Act, we will convert the ‘acquis’ – that is, the body of existing EU law – into British law. When the Great Repeal Bill is given Royal Assent, Parliament will be free – subject to international agreements and treaties with other countries and the EU on matters such as trade – to amend, repeal and improve any law it chooses. But by converting the acquis into British law, we will give businesses and workers maximum certainty as we leave the European Union. The same rules and laws will apply to them after Brexit as they did before. Any changes in the law will have to be subject to full scrutiny and proper Parliamentary debate. And let me be absolutely clear: existing workers’ legal rights will continue to be guaranteed in law – and they will be guaranteed as long as I am Prime Minister.”

The Prime Minister also used her speech to set out her vision for the UK’s future relationship with the EU whilst dismissing the notions of soft and hard Brexit. She said:

“Whether people like it or not, the country voted to leave the EU. And that means we are going to leave the EU. We are going to be a fully-independent, sovereign country, a country that is no longer part of a political union with supranational institutions that can override national parliaments and courts. And that means we are going, once more, to have the freedom to make our own decisions on a whole host of different matters, from how we label our food to the way in which we choose to control immigration.

So the process we are about to begin is not about negotiating all of our sovereignty away again. It is not going to be about any of those matters over which the country has just voted to regain control. It is not, therefore, a negotiation to establish a relationship anything like the one we have had for the last forty years or more. So it is not going to a “Norway model”. It’s not going to be a “Switzerland model”. It is going to be an agreement between an independent, sovereign United Kingdom and the European Union.

I know some people ask about the “trade-off” between controlling immigration and trading with Europe. But that is the wrong way of looking at things. We have voted to leave the European Union and become a fully-independent, sovereign country. We will do what independent, sovereign countries do. We will decide for ourselves how we control immigration. And we will be free to pass our own laws.

But we will seek the best deal possible as we negotiate a new agreement with the European Union. I want that deal to reflect the kind of mature, cooperative relationship that close friends and allies enjoy. I want it to include cooperation on law enforcement and counter-terrorism work. I want it to involve free trade, in goods and

services. I want it to give British companies the maximum freedom to trade with and operate in the Single Market – and let European businesses do the same here. But let me be clear. We are not leaving the European Union only to give up control of immigration again. And we are not leaving only to return to the jurisdiction of the European Court of Justice.”

## Responses to the Prime Minister’s speech

Following the Prime Minister’s speech a number of responses were published.

The Scottish Government’s Minister for UK Negotiations on Scotland’s Place in Europe, Michael Russell, [suggested the Great Repeal Bill would require Scottish Parliament approval](#), which may be denied if Scotland’s interests are not represented in negotiations.

Writing for the [Centre on Constitutional Change blog](#), Kirsty Hughes highlights the Prime Minister’s statement that the UK “will negotiate as one United Kingdom, and we will leave the European Union as one United Kingdom”. Hughes suggests this puts an end to the idea of any sort of differentiated relationship with the EU for Scotland compared to the rest of the UK:

“May’s approach discards options such as a ‘reverse Greenland’ approach – with Scotland, Northern Ireland and Gibraltar staying in the EU while England and Wales left – or Scotland staying in the single market, or at least in some key policy areas, even while rUK left. There is no opt-out from Brexit.”

Hughes also cites the Scottish Secretary David Mundell quoting his as saying ““I think there isn’t anybody over the last few months who suggested any realistic and credible basis on which Scotland could somehow remain in the EU while the rest of the UK left the EU.”

A London School of Economics blog suggested that the Prime Minister’s announcement “[is just admin](#)”. Ian Dunt of politics.co.uk suggested that:

“May’s plan is essentially a bridge between legal status quos. An awful lot of EU law was implemented in the UK by adding it to the European Communities Act 1972, which basically said that we would abide by EU law. May’s plan – sometimes called ‘snapshotting’ or ‘grandfathering’ – involves passing a new repeal bill which would incorporate all of that law into British law, then cutting the automatic legal link with the EU and repealing that which we don’t like at our leisure further down the line.”

The [UK in a Changing Europe](#) published a response suggesting that very little new detail had emerged quoting Professor Anand Menon, director of UK in a Changing Europe stating:

“On substance, we are only a little, if at all, closer to knowing where all this will take us. The maximum freedom for business she referred to would involve membership of the market, which implies a loss of control over immigration and being subject to EU law. It does not seem to me she has definitively chosen between the two, though the tone of her speech implied that control matters more than the market.

“Finally, there was no indication of a timeframe for a decision. Will Britain seek a transitional arrangement to allow us time to strike a long term deal after the 2 year period allowed under article 50? If not, it seems highly unlikely such a deal will be possible.

“Much, therefore, remains unclear.”

In the same article, Jonathan Portes a senior fellow for UK in a Changing Europe said

“We may know more about the timing of Brexit from Theresa May’s speech today, but we still don’t know what Brexit means for the two key issues of trade and immigration. The fundamental tradeoff – that the greater the restrictions the UK places on labour mobility post-Brexit, the greater are likely to be the new barriers to trade flows between the UK and the EU – remains, and we have no more clarity on how the government intends to make those tradeoffs. That means continued uncertainty for businesses, both those who trade with the EU and those who employ EU nationals, and of course for EU citizens resident here and Brits abroad.”

In light of the Prime Minister’s confirmation that the triggering of Article 50 would be a matter for the UK Government, not parliament, Steve Peers writing on the EU Law analysis blog questioned [who exactly will ‘take back control’?](#) His blog covered four issues:

1. Who should trigger Article 50?
2. Who should determine the form of Brexit?
3. How accountable should the Brexit negotiations be?
4. And who should control what happens after Brexit?

On who should trigger article 50, and bearing in mind the continuing court cases on this issue, Peers concludes that:

“Whatever view the courts finally take of the law, there’s an overwhelming political argument that Parliament ought to decide, given the huge impact upon the laws of the United Kingdom.”

On who should determine the form of Brexit, Peers is clear that there should be a role for Parliament:

“I would expect the executive to draft a proposed motion for Parliament to approve. But if Parliament is only willing to approve that motion subject to amendments, the executive should consider itself politically bound by the amended motion. I’m not suggesting that Parliament should get the power to agree every word in the text of future UK/EU treaties before negotiations start, as if those treaties were Acts of Parliament. But it should have the power to approve the main thrust of the government’s negotiating position. If Parliament votes that the UK ought to negotiate to remain a full participant in the single market, the government must consider itself bound by that result. A clear statement of the government’s negotiation objectives, approved by Parliament, would also supply a degree of legal certainty to those doing business in or investing in the UK.”

On the accountability of the negotiations, Peers is clear that the UK Government’s negotiating position should be accountable to the UK Parliament and he makes the point:

“it would be odd if the UK parliament had any less a role than the European Parliament, which not only (like the UK Parliament) has to approve any final Brexit deal, but must be ‘immediately and fully informed at all stages of the procedure’”

On the post Brexit situation, Peers highlights the proposal by the UK Government that the Great Repeal Act should confer on Government the power to amend EU law in the future. Peers writes:

“The ‘Great Repeal Act’ will set out a process for repealing or amending that EU law retained by that Act as and when the UK wishes to do so. The key issue here is: will the government decide that, or Parliament? The government’s announcement makes clear that it wants Parliament to confer power upon it to make at least some of the decisions on repealing EU law.

Let’s be clear what’s at stake here. Acts of Parliament need to be approved by both the House of Commons and the House of Lords, following a process of several readings where there is a chance for public input and amendments. In comparison, ‘secondary legislation’ adopted by government (usually in the form of ‘Statutory Instruments’ or ‘Orders in Council’) cannot usually be amended by Parliament, and there’s little time for public discussion or parliamentary scrutiny that could influence amendments. Either of the two Houses of Parliament could veto draft secondary legislation, but this is rare.

Secondary legislation is used in other fields, and it was very frequently used to give effect to EU law in the UK. So what’s the problem using it for repealing EU law? First of all, the very fact that secondary legislation was used so much to put EU law into place was a problem. It removed Parliament from having the role it would usually have over the adoption of the substantive laws in question. That was indeed one reason why Eurosceptics were critical of the EU for years. So using secondary legislation to overturn or amend those EU laws doesn’t solve that problem: it continues, even exacerbates it. Remember, as noted above, that the government’s negotiation of EU laws was always scrutinised by Parliament; this ameliorated the impact of the big transfer of power to the executive. But in principle, there would be no such mechanism to ameliorate the executive power to repeal EU laws after Brexit – unless a new form of parliamentary control of secondary legislation, involving some form of effective scrutiny and amendment, were developed.”

### **International Trade Secretary’s speech at the launch of the World Trade Report 2016**

On 27 September, the UK Government’s International Trade Secretary, Liam Fox spoke at the launch of the 2016 World Trade Report at the World Trade Organisation Public Forum at the WTO headquarters in Geneva.

The International Trade Secretary used his [speech](#) to focus on the opportunities for free trade. On the UK’s future role in that he said:

“And the message I want to leave you with today is that, at the multilateral level, you will have no greater champion than the UK in the push towards further trade liberalisation.

We will lead the charge for a fair and rule-based system for global trade and investment.

We have a history as a great trading nation and, as we forge a new global role for ourselves we will carry the banner for free trade.

It’s an area I am passionate about because the benefits are clear.

Free trade puts the consumer first by forcing businesses to compete and countries to specialise.

It leads to higher efficiency, greater productivity as well as better quality and cheaper goods.

Businesses also benefit from a global customer base – a shop window of continents rather than domestic cities and towns.”

On the “UK’s future direction of travel”, Liam Fox said:

“The UK is a full and founding member of the WTO.

We have our own schedules that we currently share with the rest of the EU.

These set out our national commitments in the international trading system.

The UK will continue to uphold these commitments when we leave the European Union.

There will be no legal vacuum.

But this will not stop us pursuing a more liberalised trade agenda.

As I have said, the decision of the British people to leave the EU is not symptomatic of looking inwards but a people who want to take more control over our laws, our money and our borders.

We are a proud and outward-looking trading nation.

We want Europe to succeed and be a vibrant partner in global affairs, economics and security.

But in the era of globalisation we want to be free to help shape an even more transparent, more open and more liberal trading environment.

An environment that not only brings success to businesses large and small alike, but also stability to our societies and prosperity to our citizens.

And I think that’s a future worth fighting for.”

### **First Minister’s address to the Institute Of Directors Annual Convention**

On 27 September, the First Minister [addressed the Institute Of Directors Annual Convention](#) in London. On Brexit, Nicola Sturgeon told the Convention that “remaining a member of the single market, as well as being democratically defensible, will be crucial to businesses and communities in Scotland and across the UK as well”. On the Scottish Government’s response to the EU referendum, the First Minister said:

I have established a Standing Committee on Europe. It is investigating distinctive solutions for Scotland, which preserve the benefits of EU membership. We are looking to see if there are ways in which - for example – the benefits of single market membership could be retained by Scotland even if they are discarded by the rest of the UK.

That won’t be straightforward. But nothing about Brexit is straightforward, therefore we need to think creatively and negotiate constructively. In these circumstances, no option can be off the table for Scotland.

The other key objective of the Scottish Government, is to exert as much influence as possible on the UK Government's eventual negotiating position.

In doing that – and I'm trying to be tactful here - it would be helpful to know more about the UK Government's current thinking. As a first step, I think we would all benefit from some clarity.

However we do know from the Prime Minister that she will not invoke Article 50 until a "UK approach" to negotiations has been agreed. So that gives the ability to seek to exert some influence.

I have a very clear view of the UK approach that I would like to see. I believe that the UK should seek to retain full membership of the single market.

We know that some parts of that - retaining freedom of movement - would not satisfy everyone. Although immigration brings significant economic benefits, those benefits aren't felt by everyone. So it will become even more important to ensure that the economy works more effectively for people who are currently unemployed, or on low wages.

But I believe there is a strong democratic justification for retaining our single market membership. 48% of the electorate voted to remain in the EU. So did two of the four nations of the UK.

And of course people who voted to leave were repeatedly told that leaving the EU did not necessarily mean leaving the single market. So I don't believe there is a clear mandate for what is generally known as a hard Brexit. Single market membership seems to me to be the obvious consensus position that we should try to work towards.

And that in my view would be the least damaging outcome for individuals, communities and businesses across the whole of the UK."

### **Scottish Parliament debate on the Rural Economy and the EU Referendum**

On 27 September, the Scottish Parliament debated [Rural Economy \(European Union Referendum\)](#). Following the debate, the Parliament passed the following motion by 83 votes to 35.

That the Parliament agrees that the best way to protect rural interests is by protecting Scotland's place in Europe, maintaining membership of the single market, and access to the free movement of labour; welcomes that the Scottish Ministers will pass on in full the EU funding guaranteed by the UK Government so far; notes that membership of the EU delivers significant economic and social benefits to Scotland's rural economy, worth billions between 2014 and 2020 and is poised to provide significant funding towards the further roll-out of high-speed broadband to Scotland; resolves to do all it can to secure the jobs, incomes, businesses, investment and development dependent on these benefits, and, therefore, calls on the UK Government to guarantee all EU funding due to Scotland and to ensure that Scotland has a role in decision-making, as well as full involvement in all UK negotiations, including those on fisheries management.

## Scottish Parliament Culture, Tourism, Europe and External Relations Committee

On 29 September the Scottish Parliament's Culture, Tourism, Europe and External Relations Committee continued its inquiry into [The EU Referendum and its Implications for Scotland](#) by taking [evidence](#) from the Scottish Government's Minister for UK Negotiations on Scotland's Place in Europe, Michael Russell. During his evidence the Minister reiterated the five tests for assessing Scotland's future relationship with the EU that the First Minister laid out in her speech at the Institute for Public Policy Research on 25 July:

"We have to ensure that our democratic interests are respected; that is, because of the Scottish result of the EU referendum, we have to ensure that our voices are heard and that our wishes are respected. There are our economic interests—safeguarding free movement of labour, access to the single market and membership of the single market. Our interest in social protection needs to be borne in mind, as does our interest in solidarity, which is the need to recognise the importance of independent nations coming together for the common good. Our interest in having influence is a particularly important test. For example, you can see that the financial sector will be concerned that, under a European Economic Area model, there might be regulation without participation, which, given the nature of the sector, it would find undesirable. Those five tests have to be brought to the table when we consider any of the options, and we are engaged in that process now."

In response to a question from Lewis Macdonald MSP, the Minister provided some background to EEA membership:

"The EEA is an organisation that comprises sovereign states, so there is an issue at the very start. It might not be insuperable, but it is an issue.

It really is too early to say where the EEA lies in the spectrum of options, because we do not know the UK Government's view on that. Your question on Tuesday was a good one, as I think I said, and it is important that we consider that type of question.

Elements in the Scottish debate, such as fishing, might find EEA membership very acceptable, except that it might not assist those people in exporting their products and might therefore be a mixed blessing for them. As you have said, EEA membership excludes fisheries—and it also excludes agriculture.

Other elements, such as the financial sector, might find EEA membership less than the optimum, because they would not participate in the regulatory structure. Some prefer the EEA and Norwegian model to the Swiss model, because it is dynamic and changes with the EU, whereas the Swiss model consists of a hundred and something treaties—I cannot remember the exact number, but no doubt Michael Keating can—all of which have to be constantly updated. That means that a huge number of officials are in the air all the time.

The approach has advantages and disadvantages. Work is being undertaken to examine it, and we are talking to experts and listening to people who know the system. We are having a wide variety of conversations and doing a great deal of reading.

During the negotiation process within these islands, the matter will need to be looked at closely. A lot will depend on the position that the UK Government takes on the single market when it starts negotiations with the EU. The article 50 negotiations deal



not so much with exit as with framework. Others would need to be consulted. We would have to join the European Free Trade Association, and EFTA members would have to accept UK membership; there would then have to be a discussion with the EU about moving into EEA membership. We should also remember that EEA membership was designed to be a halfway house on the way into the EU. It has not always been that—and at times it has been a static halfway house—but it was never designed for people on their way out of the EU. That is another issue to be borne in mind.

There is a great deal to be discussed, and this committee will be an important part of that discussion, but we are a very long way from a conclusion. One of the limiting factors is that we do not know anything about the UK Government's view on the matter. I think that we can discern from the language on free movement of labour that membership of the single market is probably not on the table—whether or not David Davis has been slapped down by Theresa May for saying so.

However—and I must stress this—membership of the single market should be on the table for us. This is about negotiation and discussion, so we must come to the table with and discuss the things that we believe to be in our best interest. There is no doubt in my mind or in the minds of my colleagues that, short of being a member of the EU, full membership of the single market is the best option. I have given some examples in that regard, but there are many other examples that we could talk about.”

EEA Membership would leave Scotland out with the Customs Union. Given this, the Minister was asked to provide information on the importance of the Customs Union for Scottish business:

“The absence of a customs union would be more problematic for most Scottish businesses than almost anything else. I will not say that it would be more problematic than the lack of a single market, because there are whole sectors for which the single market is absolutely vital. However, it is true that the loss of a customs union will impinge on any business or organisation.”

The Minister also pointed out that to negotiate its own bilateral trade agreements with other countries, the UK would need to be out with the Customs Union.

#### Evidence from the Slovakian Ambassador to the UK

Following the Minister's evidence session, the Committee heard from the Slovakian ambassador to the UK L'ubomír Reháč about the Slovakian Government's plans for its Presidency of the Council of the European Union.

On Brexit, the Ambassador [told the Committee](#):

“The consequences of the United Kingdom's referendum will dominate the EU agenda in the coming months and years. EU members express their regret at the referendum's outcome, and there is a vital interest in having the UK as a close partner of the EU after separation. I express my personal appreciation of the Scottish people, who were able to recognise the positive sides of the European Union, despite enormous anti-Europe attacks during the referendum campaign.”

On the negotiations, the Ambassador was clear that there would be no negotiations before the UK triggers Article 50 and that access to the Single Market would require acceptance of all four freedoms (goods, services, people and capital).

## Evidence from Scotland's MEPs

The Committee also took [evidence from two of Scotland's Members of the European Parliament](#). David Martin MEP told the Committee that “there are three things that we need to try to defend as a nation post Brexit. First, we have to find methods of protecting jobs; secondly, we have to find a way of protecting rights; and, thirdly, we have to look at our security”. On the issue of social and labour rights, Mr Martin expressed the view that;

“Scotland should push hard to make those matters a Scottish responsibility. We need to make a case for devolving those matters to the Scottish Parliament and Scottish Executive”

Alyn Smith MEP told the Committee that representatives of the European Union institutions were aware of Scotland's vote to remain. He told the Committee:

“Mr Barnier and Mr Verhofstadt are very alive to the Scottish question. My advice to Scotland and to the committee is that Scotland should not be silent as the process goes forward. We cannot wait until we see, fully formed, what the UK is going to present as its article 50 demand. Instead, we must take the opportunity to consider what Scotland's demands are. What do we want to keep? What do we want to remain part of? How do we want to do that?”

Both MEPs also argued that Scotland should seek to retain maximum access to the Single Market and seek continued participation in EU schemes such as Erasmus and Horizon 2020.

## **The UK Parliament's response to the decision to leave the European Union**

The UK Parliament has indicated it is ready to establish scrutiny committees to examine the work of the Department for Exiting the EU led by David Davis and the Department for International Trade led by Liam Fox. These Committees are expected to be established once the House of Commons resumes after party conference season.

The Institute for Government has published two blogs by Hannah White examining [Parliament's role in the Brexit negotiations](#) and why [A 'supersize committee' could hamper Parliament's scrutiny of Brexit](#).

A number of Committees in both the House of Commons and House of Lords have established inquiries linked to the UK's decision to leave the European Union. These include:

[House of Commons European Scrutiny Committee Post Referendum Consultation](#)

[House of Commons Scotland Affairs Committee Scotland's Place in Europe](#)

[House of Commons Welsh Affairs Committee Implications for Wales of the EU Referendum Result](#)

[House of Commons Public Administration and Constitutional Affairs Committee Lessons Learned from the EU Referendum](#)

[House of Commons Environmental Audit Committee The Future of the Natural Environment after the EU Referendum](#)

[House of Commons Energy and Climate Change Committee Leaving the EU: Implications for UK Energy Policy](#)

[House of Commons Brexit and health and social care inquiry](#)

[House of Lords European Union Committee Brexit: UK-Irish Relations](#)

[House of Lords European Union Committee Brexit: Parliamentary Scrutiny Inquiry](#)

[House of Lords EU External Affairs and EU Internal Market Sub-Committees Brexit: future trade between the UK and the EU inquiry](#)

The [sub-committees](#) of the House of Lords European Union Committee are also conducting a number of evidence sessions following the UK's decision to leave the EU including:

[Fisheries Policy after Brexit](#)

[Brexit implications for environment policy examined by committee](#)

[Brexit implications for energy and climate change policy](#)

[Brexit and Financial Services](#)

### **British offers of help to smaller EU Member States?**

According to an article in Politico last week, whilst the UK may be leaving the EU, it is still intent on [trying to influence matters](#). The article suggested that the UK Government offered to lend officials to Malta and Estonia - the countries that will hold the bloc's presidency next year.

According to Politico, Maltese and Estonian officials said UK diplomats have courted them aggressively with offers of staff to help them manage policy files as they prepare for the Council presidency. Tomáš Prouza, the Czech Republic's state secretary for Europe is quoted in the article stating:

“Using too many Brits during the presidencies that will address Brexit will be politically touchy. Not to mention the need for strong Chinese walls for anything related to the EU-U.K. negotiations.”

Whilst the Maltese Government rejected any support, the Estonian Government (which has stepped in to run the Presidency following the UK decision to relinquish it given its imminent departure) will accept support on a case by case basis.

According to Politico:

“The official in charge of the Council's Brexit task force, Didier Seeuws, is aware of the U.K.'s aggressive courting of the Maltese and Estonians, according to a Council official. Seeuws has no real power to stop the practice because the Council secretariat has little jurisdiction over the policing of the EU presidencies. The matter is new territory for the Council, which has never had to manage the exit of a country from the EU.

“We have nothing to do with that, if the Brits have offered Brits to the Maltese and the Estonians, it’s in the hands of the Maltese and the Estonians,” said Council spokesperson Juri Laas.”

### **The hard line in negotiations**

Charles Grant from the Centre for European Reform has written about [why the 27 are taking a hard line on Brexit](#). Citing the short period of time in which to do a deal (potentially just two years) and all the things which need to be agreed (including a free trade agreement), Grant examines why the EU27 are so united in their belief that if Britain restricts free movement after it has left the EU, it cannot be part of the single market.

“The biggest reason why most governments take a tough line on the four freedoms is their fear of populism. Thus in Paris, mainstream politicians do not want Marine Le Pen to be able to say: “Look at the Brits, they are doing fine outside the EU, let’s follow them there”. Similar views colour thinking in The Hague, Rome and many other capitals. So the British must be seen to pay a price for leaving. They cannot be allowed to enjoy the benefits of membership, like participation in the single market, without accepting the responsibilities, like paying into the EU budget and accepting free movement (which both Switzerland and Norway do).

I found a strong consensus for this hard line in EU capitals. Many governments adopt a softer tone than the French, the Commission and the Parliament, but they differ little on substance. The British government needs to take MEPs very seriously. They must approve both the Article 50 agreement and the FTA governing future relations between the UK and the EU. If by some feat of brilliant diplomacy, Britain were to negotiate single market membership combined with limits on free movement, MEPs would certainly throw out the deal.”

Having set out why the negotiations will be tough for the UK, Grant goes on to suggest three ways in which the UK might be able to make some constructive progress. These are to not immediately announce restrictions on freedom of movement before consulting the EU27, work out what the UK Government’s top priorities are and not have too many of them – for instance is one of them to protect the passporting system for UK financial services and finally to be polite and constructive during the negotiations.

### **Different types of Brexit**

Given the Prime Minister’s statement that there is no such thing as soft and hard Brexit, this article by Raoul Ruparel, the Co-Director of Open Europe examines the meanings of [different “forms” of Brexit](#) and concludes that “either we stop using the terms hard or soft Brexit or we start to actually try and define what they mean”.

### **Mapping Brexit**

In a blog for the London School of Economics, Chris Hanretty, a Reader in Politics at the University of East Anglia uses a [spatial model to set out the complexity and difficulty of the Brexit negotiations from Britain’s point of view](#). According to Hanretty, limiting factors to the success (or otherwise) of the negotiations will be the two year time frame set out in Article 50 (this can be extended by a unanimous vote of the Council), being unsure about different Member States compromise position and the bargaining power one Member State has against 27.

## Road to Brexit

A publication for the Legatum Institute and the Centre for Social Justice published last week set out a vision for the [road to Brexit](#). The document includes chapters by leading proponents of the leave campaign including Ian Duncan Smith MP (and also founder of the Centre for Social Justice), John Redwood MP, Peter Lilley MP and Owen Paterson MP.

The publication is a record of a seminar held at All Souls College, Oxford University, in September 2016. The day was led by John Redwood MP and consisted of presentations on different aspects of process and detailing priorities for the UK government to ensure a positive outcome at the end of the process.

### **Brexit can make UK highly attractive, says Axel Springer chief**

An article published in the Financial Times on 26 September suggested that [Brexit will make the UK “highly attractive to foreign investors”](#). According to the Financial Times:

“In the short term, Mr Döpfner said the UK would be buffeted by currency fluctuations and turbulence in its property market. But in the long term it would be better off outside the EU.

He said it would, for example, be able to implement a “very healthy”, “talent-oriented” immigration policy. “You basically integrate and invite the people that you benefit from and not people who only benefit from your social welfare system,” he said.

Meanwhile, the EU would suffer because it would lose Britain’s “healthy influence”, in particular its “pragmatism” and “free-market orientation”, which had led to “sensible compromises” in negotiations between member states. “If it is all defined, let’s say, by France, Spain and Italy making compromises with Germany — I’m a little worried by that prospect,” he said.”

### **Legal challenge to Article 50**

A preliminary ruling in the legal challenge to the UK Government aimed at forcing a parliamentary vote on the decision to trigger Article 50 to begin the process for leaving the EU was delivered on 26 September. The ruling by Mr Justice Cranston removed restrictions on publishing official documents before the hearing on 13 October. As a result, the “People’s Challenge” a crowd funded group have released papers outlining both their own and the UK Government’s position in the case. According to a [report in the Guardian](#), in the released documents:

“Lawyers for the government argue that it is “constitutionally impermissible” for parliament to be given the authority rather than the prime minister and dismiss any notion that the devolved nations – Scotland, Northern Ireland and Wales – will have any say in the process.

They add: “The appropriate point at which the UK should begin the procedure required by article 50 [of the European Union treaty] to give effect to [notifying the UK’s exit] is a matter of high, if not the highest policy.

“[It is] a polycentric decision based upon a multitude of domestic and foreign policy and political concerns for which the expertise of ministers and their officials are particularly well-suited and the courts ill-suited.”

The government submission states: “The lawfulness of the use of [royal] prerogative is not impacted by the devolution legislation. The conduct of foreign affairs is a reserved matter such that the devolved legislatures do not have competence over it.”

In contrast, People’s Challenge argues that:

“only parliament can lawfully ‘decide’ to leave the EU for the purposes of article 50[of the treaty]; and that the [government] may only ‘notify’ such a decision to the European council under article 50(2) once [it] has been properly authorised to do so by an act of parliament”.

The case will be heard on the High Court on 13 and 17 October.

### **Northern Irish challenge to Article 50**

On 27 September, a High Court in Northern Ireland [ruled that a cross-party group of Members of the Legislative Assembly \(MLAs\) could seek a judicial review of the British government’s move towards leaving the EU](#) arguing that the Belfast Agreement overrides any right by the British government to quit the European Union without a House of Commons vote.

The judge hearing the preliminary case, Mr Justice Maguire rejected the idea that concerns about the impact of Brexit on Northern Ireland’s peace process should be parked and dealt with at separate proceedings in London. Instead he ruled that issues specific to Northern Ireland could “fall between the cracks” during actions due to come before the English and Welsh courts. As a result he gave the go-ahead for a case seeking judicial review to be brought by MLAs including former Alliance leader, MLA David Ford, SDLP leader Colum Eastwood along with Sinn Féin Assemblyman John O’Dowd and Steven Agnew of the Green Party.

In their legal challenge, the MLAs argue that legislation would have to be passed by the Commons, with the consent of the Northern Ireland Assembly, before Article 50 could be triggered.

**Iain McIver**  
**SPICe Research**