

**CULTURE, TOURISM, EUROPE &
EXTERNAL RELATIONS COMMITTEE**
#SPICeBrexitUpdate

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BREXIT UPDATE

**UK GENERAL ELECTION:
IMPLICATIONS FOR BREXIT NEGOTIATIONS**

**EUROPEAN COUNCIL:
DRAFT NEGOTIATING GUIDELINES**

**SPICe PUBLICATIONS:
BREXIT TIMELINE AND WHO'S WHO**

SPICe The Information Centre
An t-Ionad Fiosrachaidh

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About this paper

This regular paper produced by SPICe sets out developments in the UK's negotiations to leave the European Union, the process for which has now formally begun following the Prime Minister's triggering of Article 50 on 29 March.

The weekly 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 focuses on how the outcome of the general election might affect the negotiations and the development of the Council's negotiating guidelines.

SPICe timeline and who's who

SPICe has published two Infographics providing some background on the upcoming Brexit negotiations. A [timeline](#) provides an indicative guide to the withdrawal process leading up to the UK's departure from the EU in March 2019 whilst the [who's who](#) outlines the key players in both the UK and EU negotiating teams.

UK general election

On 18 April, the Prime Minister, Theresa May [announced](#) her intention to seek a dissolution of Parliament ahead of a general election on 8 June. As a result of the Fixed Term Parliaments Act 2011 the next UK election was not due to take place until May 2020. However in the event of a vote by at least two-thirds of the House of Commons an early election can be held.

On 19 April, the House of Commons [debated](#) the Prime Minister's proposal for an early election. The Prime Minister told the House the reason an election was needed was to "secure the strong and stable leadership the country needs to see us through Brexit and beyond". At the end of the debate, the House of Commons [voted](#) in favour of the motion to hold an early election by 522 votes to 13. As a result, the House of Commons is expected to be dissolved on 3 May five weeks ahead of the election.

The implications of the general election for the Brexit negotiations

Following the announcement of the general election there has been some analysis about what the result might mean for the Brexit negotiations. Writing on the UK in a Changing Europe blog, Professor Anand Menon suggested that an [increased Conservative majority would weaken the UK's hand in the Brexit negotiations](#). According to Professor Menon:

"It looks set to be a campaign dominated by Brexit. This has significant implications for the kind of Brexit we might get. On balance, it shortens the odds on an orderly, hard Brexit."

Specifically Anand Menon addresses a suggestion made by commentators that the election makes a soft Brexit more likely:

"The consensus among the commentators seems to be that, by calling an election, Theresa May has made a soft Brexit more likely. By giving herself a larger majority, and longer between Brexit and the next election, she has allowed herself more scope to compromise with her European partners over issues like migration, or payments to the EU. Such analyses are off the mark."

The prime minister has already effectively ruled out single market membership. Both the jurisdiction of the Court and free movement have been unambiguously presented as her own red lines. She has also effectively said that we will be outside the customs union. (OK, civil servants have been tasked with squaring the

circle of being able to sign trade deals whilst still enjoying tariff and customs free trade with the EU, but I don't see how they can accomplish this task).

In other words, Mrs May has stated that she wants a hard Brexit.”

However, whilst it is suggested the type of Brexit the UK negotiates is not likely to change as a result of the election, Professor Menon states the election may increase the possibility of the Prime Minister (if re-elected) securing a transitional deal:

“What the early election does mean, however, is that the risk of a disorderly Brexit – of Britain falling out of the EU without an article 50 deal or any kind of transition period to whatever our future relationship is – has decreased.

In terms of transition, if — and it is a big if in the context of an election campaign — she avoids commitments on precisely when her red lines take effect — that is, when free movement will end and we will escape the clutches of the ECJ — then she opens the possibility for a transition phase in which, arguably, very little may change from an economic perspective.

Crucially, such an arrangement is precisely what the EU-27 are likely to find easiest and least disruptive. The fact that the next election will not be until 2022 gives her the space to think in such terms.”

A similar analysis suggesting the general election will change very little in terms of the negotiations has been written by Charles Grant of the Centre for European Reform. His article which was also published in the Guardian newspaper suggests that the general election will not weaken Germany's resolve in the negotiations as [Germany needs a strong EU](#). According to Charles Grant:

“Britain has long misread the German attitude to Brexit, with many Tories wrongly assuming that Angela Merkel's government will be driven by economic self-interest to ensure Britain gets a good deal.

The reality is that the German view is strikingly hardline and Theresa May's decision to call a snap election in June will not change that.”

By hardline, Charles Grant explains that whilst many German's regret the UK's decision to leave the EU, the German government will not compromise in a way which might undermine the EU:

“Yet none of this regret – as I learned during a recent visit to Berlin – makes the German government inclined to indulge the British in the forthcoming negotiations. Its top priority is to ensure that Brexit does not weaken the EU, and that means the UK must not be allowed any kind of special arrangements that could undermine the European institutions.”

Charles Grant goes on to examine both the reasons for the German position on Brexit and the likely approach to the negotiations. On the reasons for pushing an uncompromising position, Grant concludes that German foreign policy which is built on two pillars might be compromised if the EU is weakened by Brexit. As the other pillar of German foreign policy - close ties to the United States - is threatened by the Trump presidency securing the continuation of a strong EU is even more important.

On the approach to the negotiations, Charles Grant wrote:

“In practice, Germany’s support for the uncompromising stance taken by the European commission, France and most other states means that only when the article 50 talks have made progress – on such issues as the rights of EU citizens, and Britain’s financial obligations to the EU – will they be willing to discuss future trade relations. And if the British balk at the principle of paying money – leaving Germany to pick up the biggest share of the hole then left in the EU budget – then there will simply be no deal. Many senior German officials think the Brexit talks are quite likely to collapse in any case as a result of the UK, in their view, being ill-prepared. For example, the British say they want a quick deal on the rights of EU nationals in the UK and vice versa, but seem unaware of the legal and technical complexities involved. The Germans fret, too, about the lack of EU expertise in Whitehall and its lack of capacity to run the negotiations efficiently.”

Finally, Charles Grant speculates on what might happen in the event that Angela Merkel loses the Chancellorship to Martin Schulz in the federal election to be held in September:

“If Schulz triumphs over Merkel in September’s federal elections, the chances of Britain crashing out of the EU without a deal would rise. Schulz has long had an antagonistic relationship with Britain, and, lacking Merkel’s personal authority with EU leaders, would be ill-equipped to forge a compromise.”

The Council draft negotiating guidelines

Shortly after Article 50 was triggered, the President of the European Council, Donald Tusk published [draft guidelines following the United Kingdom’s notification under Article 50 TEU](#). The draft guidelines were drawn together by the General Secretariat of the Council and they will be discussed at the European Council meeting (of the EU27) on April 29.

Ahead of this week’s EU27 meeting to agree the final guidelines, national representatives (often known as sherpas in the EU) have been meeting to develop the final guidelines. According to an [article by Politico](#) published on 25 April, the guidelines have been changed ahead of the EU27 meeting on 29 April. The most significant change appears to be a reference to the UK’s financial commitments upon leaving the EU. According to Politico:

“The section of the guidelines covering the U.K. financial obligations was changed to “make crystal clear they expect UK to honor financial commitments beyond Brexit date, until the end of EU multi-annual Financial Framework” (in December 2020), said Playbook’s source.

The new, longer paragraph reads: “A single financial settlement – including issues resulting from the MFF as well as those related to the European Investment Bank (EIB), the European Development Fund (EDF) and the European Central Bank (ECB) – should ensure that the Union and the United Kingdom both respect the obligations resulting from the whole period of the UK membership in the Union.

The settlement should cover all commitments as well as liabilities, including contingent liabilities.”

A further change which was widely reported referred to the proposed removal – at the behest of the French Government - of financial services from the scope any future trade deal between the UK and the EU. According to Politico:

“Diplomats in the room said that France, in particular, insisted that the U.K. should not assume that financial services would be included in a future free trade agreement between the EU and U.K.

A European Council source described the absence of financial services from the text as “a signal rather than a substantial change” to the text.

Diplomats from other countries said they were happy to accommodate France but the lack of a reference to financial services indicated a wish to keep the guidelines general rather than a specific victory for France in the discussions.”

According to a report in the Guardian, the guidelines were also amended to strengthen the EU’s position with regards to citizens’ rights. According to the [Guardian report](#):

“The EU document had always insisted on reciprocal guarantees “to safeguard the status and rights derived from EU law at the date of withdrawal”, but now says: “Such guarantees must be effective, enforceable, non-discriminatory and comprehensive, including the right to acquire permanent residence after a continuous period of five years of legal residence. Citizens should be able to exercise their rights through smooth and simple administrative procedures.”

The amendments to the draft negotiating guidelines were also reported in the [Daily Telegraph](#) with the focus on the UK’s payments to the EU budget.

The draft guidelines will now be the subject of discussion amongst the leaders of the EU27 on 29 April when it is expected the guidelines will be finalised.

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