



The Scottish Parliament
Pàrlamaid na h-Alba

CULTURE, TOURISM, EUROPE AND EXTERNAL RELATIONS COMMITTEE

AGENDA

19th Meeting, 2017 (Session 5)

Thursday 7 September 2017

The Committee will meet at 9.45 am in the David Livingstone Room (CR6).

1. **Decision on taking business in private:** The Committee will decide whether to take item 3 in private and consideration of evidence heard on Article 50 withdrawal negotiations in private at future meetings.
2. **Article 50 Withdrawal Negotiations:** The Committee will take evidence from—

Michael Russell, Minister for UK negotiations on Scotland's Place in Europe, and Ellen Leaver, European Strategy Manager, Scottish Government.
3. **Article 50 withdrawal negotiations:** The Committee will consider evidence heard earlier in the meeting.

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The papers for this meeting are as follows—

Agenda item 2

Note by SPICe

CTEERC/S5/17/19/1

PRIVATE PAPER

CTEERC/S5/17/19/2
(P)

[SPICe briefing - Brexit: The Financial Settlement and the Withdrawal Agreement](#)

[SPICe briefing - Brexit: Citizens' Rights and the Withdrawal Agreement](#)



Culture, Tourism, Europe and External Relations Committee

19th Meeting, 2017 (Session 5) Thursday 7 September

Article 50 Withdrawal Negotiations – Summary of developments over the summer

Background

Following the UK triggering of Article 50, the Council of the European Union, meeting in its EU27 format for the purposes of the Brexit process, adopted a decision authorising the opening of Brexit negotiations with the UK and formally nominated the Commission as EU negotiator on 22 May 2017. The Council also adopted [negotiating directives](#) for the talks.

The negotiating directives as agreed by the Council focused only on the negotiations for the UK's withdrawal from the EU. Negotiations on a future relationship between the EU and UK and any transitional deal will require further negotiating directives in the future.

According to the Council:

“This first set of negotiating directives is intended to guide the Commission for the first phase of the negotiations. They therefore prioritise issues that have been identified as necessary for an orderly withdrawal of the UK, including citizens' rights, the financial settlement and the situation of Ireland, as well as other matters in which there is a risk of legal uncertainty as a consequence of Brexit.

The first phase of the talks aims to provide as much clarity and legal certainty as possible and to settle the disentanglement of the UK from the EU. Once the European Council deems sufficient progress has been achieved, the negotiations will proceed to the next phase.”

The negotiating directives focus on four key areas:

- Addressing citizens' rights – both EU nationals in the UK and UK nationals in the EU
- A financial settlement for the UK's withdrawal
- Ireland
- Addressing the situations of goods already placed on the market before Brexit occurs and on-going procedures such as judicial cooperation proceedings in civil, commercial and criminal matters, as well as administrative and law enforcement cooperation procedures

The directives also confirm that unless there is an agreement to extend the negotiations, the UK will leave the EU at midnight on 30 March 2019.

SPICe has published two Infographics providing some background on the 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.

Timing of the negotiations and the first round

The negotiations to reach an exit agreement began on Monday 19 June.

On the timing of negotiations, the Terms of Reference state that negotiations will take place once every four weeks with indicative dates for the negotiations being:

- Opening: 19th June
- Second round: w/c 17th July
- Third round: w/c 28th August
- Fourth round: w/c 18th September
- Fifth round: w/c 9th October

The first round of negotiations also saw "[Terms of Reference](#)" agreed between the UK and the European Commission. The Terms of Reference address both the structure of the negotiations and the timing. On structure, the Terms of Reference state:

The negotiating rounds will consist of plenary sessions and negotiating group meetings.

Plenary negotiating sessions should be co-chaired by the Principals and/or Coordinators who have the overall responsibility for managing the negotiating process and provide necessary guidance, as appropriate.

The following initial negotiating groups have been established:

- Citizens' rights;
- Financial Settlement;
- Other Separation issues.

In addition, a dialogue on Ireland / Northern Ireland has been launched under the authority of the Coordinators."

The second round of negotiations

On Monday 17 July, the second round of negotiations began. Speaking ahead of the negotiations, David Davis, Secretary of State for Exiting the European Union [told](#) reporters:

“We made a good start last month, and as Michel says we are now getting into the substance of the matter.

As you’ve heard, it’s four categories; the issue of citizens’ rights, the issue of finance, the issue of separation issues and of course, separately, Northern Ireland.

For us it is incredibly important that we now make good progress, that we negotiate through this and identify the differences so that we can deal with them, and identify the similarities so we can reinforce them.

And now, it’s time to get down to work and make this a successful negotiation.”

Following the conclusion of the second week of negotiations on Thursday 20 July, Michel Barnier and David Davis provided an update on progress. In his [update](#), Michel Barnier suggested that the UK position was still not clear in respect of the financial settlement and that on citizens’ rights a sticking point was how those could be enforced following Brexit with the EU27 looking to protect the role of the European Court of Justice.

David Davis provided an [update](#) on the negotiations from a UK perspective:

“Overall, I am encouraged by the progress we have made on understanding each other’s position on citizens’ rights; the financial settlement; the first meetings of sub-groups on separation issues, and on the issues around Ireland and Northern Ireland.”

A key divergence between the EU and the UK with regards to the negotiations has been the EU’s insistence that the negotiations should first focus on agreement on the terms of withdrawal before negotiations on the future arrangements can begin, whilst the UK Government has suggested talks on the future agreement should run alongside discussions about the terms of withdrawal.

The third round of negotiations

On Monday 28 August, the third round of negotiations began. Speaking at the press conference to mark the beginning of the third week of talks, David Davis [said](#):

“We’ve had a busy few weeks. Since the last round of talks, the UK Government has published a large number of papers covering important issues related to our withdrawal, and our vision for the deep and special partnership we want with the European Union in the future.

They are products of the hard work and detailed thinking that has been going on behind the scenes, not just in last few weeks but in the last twelve months, and should form the basis of what I hope will be a constructive week of talks between the European Commission and the United Kingdom.

For the United Kingdom, the week ahead is about driving forward the technical discussions across all the issues.

We want to lock in the points where we agree, unpick the areas where we disagree, and make further progress on the whole range of issues.

But in order to do that, we'll require flexibility and imagination from both sides - something I think the Council has asked for on some subjects."

The European Commission [tweeted](#) comments from Michel Barnier:



Michel Barnier ahead of 3rd round of Article 50 negotiations with UK

We need UK position on all separation issues. The sooner we remove the ambiguity, the sooner we will be in a position to discuss the future relationship. EU27 and the European Parliament stand united.

4:20 PM - 28 Aug 2017

946 Retweets 842 Likes



As the third round of negotiations began, there were [reports](#) that the European Commission is pessimistic about the chances of talks progressing to phase two (discussions about the future relationship) in October. The lack of progress in talks on the withdrawal agreement which concentrate on the issues of citizens' rights, the financial settlement and the island of Ireland have left "EU officials are "increasingly

doubtful” that Brexit talks will move on to their second phase of discussing trade in October” according to politico.eu:

“The skepticism from the EU side emerged at a key all-day meeting in Brussels Thursday. At the meeting, diplomats from the 27 remaining EU member countries were briefed on the bloc’s position by a senior member of chief negotiator Michel Barnier’s team.

“It is clearly worrying that we have major differences on core issues such as direct effect [the application of EU law in the U.K.], the ECJ [the role of the European Court of Justice] and financial obligations [the so-called Brexit bill],” said a senior diplomat who attended the meeting.

Asked about the content of the briefing, they said: “With very little time to land all this, even if U.K. moves [on key EU demands] ‘sufficient progress’ in October appears to be increasingly doubtful.

October is key because that’s when EU leaders will decide at a European Council summit whether “sufficient progress” has been made in the talks on three separation issues — the Brexit bill, the rights of EU citizens in Britain post-Brexit (and vice versa) and the Northern Irish border.”

Politico.eu also [reported](#) on comments by the European Commission President, Jean-Claude Juncker:

“European Commission President Jean-Claude Juncker sharply criticized the U.K. on Tuesday for its handling of Brexit talks, saying none of its position papers was satisfactory.

Speaking as Brexit negotiators resumed formal talks in Brussels, Juncker also rebuked London for trying to fast-forward the discussions to the future relationship rather than first settling the terms of its withdrawal from the EU.

The U.K. government is hesitating to show all its cards,” said Juncker, speaking in French at an annual conference of the EU’s top diplomats.”

On the UK Government’s position papers published over the summer, Juncker said he had read all of them with great interest, adding: “None of those is actually satisfactory, so there is still an enormous amount of issues which remain to be settled.”

Reports in the UK press have suggested the UK Government is becoming frustrated by the refusal of the EU to discuss the future relationship alongside the withdrawal negotiations with David Davis suggesting the two issues are inextricably linked. According to the [Evening Standard](#), Mr Davis is expected to urge Brussels to show more "imagination" to drive talks forward. The report also provides quotes from a UK Government source:

"This round of negotiations will focus on thrashing out the technical detail on important matters related to us leaving the EU, and will act as a stepping stone to more substantial talks in September,"

The UK has been working diligently to inform the negotiations in the past weeks, and has published papers making clear our position on a wide range of issues from how we protect the safe flow of personal data, to the circumstances around Ireland and Northern Ireland.

Now, both sides must be flexible and willing to compromise when it comes to solving areas where we disagree.

As the EU itself has said, the clock is ticking so neither side should drag its feet."

The position papers

Both the European Commission and the UK Government have published a number of position papers to inform the discussions.

The European Commission published position papers on [citizens' rights](#) and the [financial settlement](#) which were communicated to the UK Government by the European Commission's negotiating team on 12 June.

On 13 July, the European Commission published a further seven position papers which it had communicated to the UK in relation to the withdrawal negotiations:

- [Position paper on nuclear materials and safeguard equipment \(Euratom\)](#)
- [Position paper on Goods placed on the Market under Union law before the withdrawal date](#)
- [Position paper on Issues relating to the Functioning of the Union Institutions, Agencies and Bodies](#)
- [Position paper on Ongoing Union Judicial and Administrative Procedures](#)
- [Position paper on Judicial Cooperation in Civil and Commercial matters](#)
- [Position paper on Governance](#)
- [Position paper on Ongoing Police and Judicial Cooperation in Criminal matters](#)

The UK Government published its first position paper on [safeguarding the position of EU citizens living in the UK and UK nationals living in the EU](#) on 26 June. Following this, a further three position papers were published on 13 July:

- [Privileges and immunities - position paper](#)
- [Nuclear materials and safeguards issues - position paper](#)
- [Ongoing Union judicial and administrative proceedings - position paper](#)

In August, the UK Government published the following position papers:

- [Northern Ireland and Ireland](#)
- [Confidentiality and Access to documents](#)
- [Continuity in the availability of goods for the EU and the UK](#)

The UK Government has also published a number of future partnership papers:

- [Future customs arrangements](#)
- [The exchange and protection of personal data](#)
- [Enforcement and dispute resolution - a future partnership paper](#)
- [Providing a cross-border civil judicial cooperation framework - a future partnership paper](#)

The next section of the paper provides further information on the EU and UK positions in relation to the key areas identified by the European Union to be agreed as part of the withdrawal agreement.

The EU and UK positions on Citizens' Rights

The phrase "citizens' rights" refers to the impact which Brexit will have on the existing free movement rights of EU citizens currently living in the UK; and UK citizens currently living in other EU Member States.

The EU position

The European Union's position paper on citizens' rights sets out a number of essential principles stating:

"The Withdrawal Agreement should protect the rights of EU27 citizens, UK nationals and their family members who, at the date of entry into force of the Withdrawal Agreement, have enjoyed rights relating to free movement under Union law, as well as rights which are in the process of being obtained and the rights the enjoyment of which will intervene at a later date [for example pension rights]."

The essential principles include a statement that all EU nationals legally residing in the UK and all UK nationals legally residing in the EU on the date of Brexit should be considered legally resident whether they have a document to prove their residence or not.

In terms of the scope of citizens' rights, the position paper suggests family members, regardless of nationality, of EU nationals in the UK and UK nationals in the EU should be included within the scope of the Withdrawal Agreement whether or not they reside in the EU or the UK respectively .at the point of Brexit.

The position paper also sets out the material scope of the paper stating that the Withdrawal Agreement should cover the rights set out in the EU Treaties and EU legislation specifically referring to the following:

- Article 18 of the [Treaty on the Functioning of the European Union \(TFEU\)](#) on non-discrimination on the grounds of nationality in relation to equal treatment of students
- Article 21 TFEU on free movement of citizens
- Article 45 TFEU on free movement of workers
- Article 48 TFEU on social security rights for workers utilising their free movement rights

- Article 49 TFEU on the right of establishment which provides rights for self employed workers
- [Directive 2004/38](#) on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States
- [Regulation 492/2011](#) on freedom of movement for workers within the Union
- [Regulation 883/2004](#) on the coordination of social security systems and [Regulation 987/2009](#) laying down the procedure for implementing Regulation 883/2004 on the coordination of social security systems

The position paper states that the rights of the rights holders set out in the EU Treaties and legislation listed above and the derived rights of their family members:

“should be protected for life, provided that conditions of Union law are met [for example, where the right holder dies, in the event of divorce or if the right holder leaves the host State before the divorce, the family member will continue to have derived rights under the conditions set out in Directive 2004/38]”

In addition, the position paper suggests that EU and UK nationals should be able to “continue to change status and to accumulate periods leading to rights pursuant to Union law during the period of protection of the Withdrawal Agreement”. The Commission Working Group provides a number of examples of how this would work in practice:

“an in-active citizen can become a worker and still be covered by EU rules and a person who resided legally in the UK for less than five years by the date of the entry into force of the Withdrawal Agreement can continue to accumulate the necessary five years residence giving access to permanent residence rights].”

Finally, the position paper addresses the issue of enforcement and dispute settlement suggesting the Court of Justice of the European Union should be responsible for enforcing the rights agreed within the withdrawal agreement and that UK Courts should be able to continue to seek a preliminary opinion from the Court of Justice on citizens’ rights issues. It states:

“The Commission should have full powers for the monitoring and the Court of Justice of the European Union should have full jurisdiction corresponding to the duration of the protection of citizen's rights in the Withdrawal agreement.

Citizens should thus be able to enforce their rights granted by the Withdrawal Agreement in accordance with the same ordinary rules as set out in the Union Treaties on cooperation between national courts and the Court of Justice, i.e. including a mechanism analogous to Article 267 TFEU for preliminary reference from UK courts to the Court of Justice of the European Union.”

The UK position

The UK Government’s proposal on citizens’ rights is based on the expectation that the EU will offer reciprocal treatment for UK nationals resident in its member states. According to the UK Government’s proposal:

“after we leave the EU, we will create new rights in UK law for qualifying EU citizens resident here before our exit. Those rights will be enforceable in the UK legal system and will provide legal guarantees for these EU citizens. Furthermore, we are also ready to make commitments in the Withdrawal Agreement which will have the status of international law. The Court of Justice of the European Union (CJEU) will not have jurisdiction in the UK.”

A key aspect of the UK proposal is that qualifying EU citizens will be required to apply for their residence status – this suggests it will not be automatic. The summary of the proposal also states that:

“all qualifying EU citizens will be given adequate time to apply for their new residence status after our exit. There will be no cliff-edge at the point of the UK’s withdrawal from the EU.”

and;

we guarantee that qualifying individuals will be granted “settled status” in UK law (indefinite leave to remain pursuant to the Immigration Act 1971). This means they will be free to reside in any capacity and undertake any lawful activity, to access public funds and services and to apply for British citizenship.”

The proposal states that to qualify for residence status, EU citizens must have been resident in the UK before a specified date – it does not state what that date is though suggests it will be somewhere between 29 March 2017 when the UK triggered Article 50 and the actual date the UK leaves the EU - and must have completed a period of five years’ continuous residence in the UK before they apply for settled status, at which point they must still be resident. For those who arrive before the cut-off date but aren’t able to accrue the five years continuous residence at the time of the UK’s departure from the EU, a temporary status will be introduced allowing them to remain resident in the UK until they have accumulated five years, after which they will be eligible to apply for settled status.

For EU citizens who arrive after the cut-off date, the UK Government’s proposal provides no guarantees but states that they:

“Will be allowed to remain in the UK for at least a temporary period and may become eligible to settle permanently, depending on their circumstances – but this group should have no expectation of guaranteed settled status.”

The UK Government proposals also include a position on the rights of EU nationals in relation to benefits, pensions, healthcare, economic and other rights. The proposal’s summary states that:

- EU citizens with settled status will continue to have access to UK benefits on the same basis as a comparable UK national under domestic law;
- EU citizens arriving before the specified date who do not have five years’ residence at the time of the UK’s exit but who remain legally in the UK on a pathway to settled status will continue to be able to access the same benefits that they can access now – (broadly, equal access for workers/the self-employed and limited access for those not working). If these individuals go on

to acquire settled status, they will then be able to access benefits on the same terms as comparable UK residents;

- existing rules on the rights of EU citizens and UK nationals to export UK benefits to the EU will be protected for those who are exporting such UK benefits on the specified date, including child benefit, subject to on-going entitlement to the benefit;
- The UK will continue to export and uprate the UK State Pension within the EU.

The final statement in the summary of the UK's proposal on citizens' rights refers to the ending of free movement of persons, it states:

“After the UK leaves the EU, free movement will end but migration between the UK and the EU will continue. We will continue to welcome the contribution EU citizens bring to our economy and society; the UK will remain a hub for international talent. The Government is carefully considering a range of options as to how EU migration will work for new arrivals post-exit and will publish proposals as soon as possible, allowing businesses and individuals enough time to plan and prepare.”

Citizens' rights joint paper

Following the July round of negotiations, the UK and EU published a [joint paper](#) on citizens' rights which summarised the UK and EU positions and compared them following the 2nd round of negotiations. The paper uses a traffic light system to indicate where there are areas of agreement and where more work still needs to be done.

One of the key conceptual differences between the EU and UK proposals is that the EU's proposal works on the basis that the rights which EU citizens have in the UK should continue in their current form. In contrast, the UK approach focuses on ensuring equal treatment with UK nationals post Brexit.

There is also a large gap between the views of the UK and the EU as regards the treatment of UK citizens in the EU. The UK proposal wishes UK citizens in the EU to retain their current rights of free movement between Member States. In contrast, the current EU proposal only appears to grant UK citizens protected rights in those Member State(s) in which they have residence rights on Brexit day, thus limiting free movement for UK citizens in the EU post Brexit.

There is also a major difference as regards the cut-off date with the EU arguing that the UK and EU citizens' rights should be protected if they exercised their right to free movement up to Brexit day, whereas the UK is still suggesting the possibility of an earlier cut-off date (e.g. 29 March 2017 when Article 50 was triggered). There is also an important difference in view in relation to the treatment of future family members.

The positions on enforcement mechanisms differ substantially. The UK wishes to rely on UK law and international law, whereas the EU wishes citizens' rights to be subject to the jurisdiction of the Court of Justice with the provisions in the agreement directly enforceable in the UK legal order and the legal orders of the Member States.

On 23 August, the UK Government published a paper on enforcement and dispute resolution. The paper confirms that UK does not wish individuals in the UK to be able to enforce their rights through the Court of Justice.

The Scottish Government's position on citizens' rights

On 17 July, the Scottish Government published a [response](#) to the UK Government's proposals on citizens' rights. Publishing the paper, Michael Russell, the Scottish Government's Minister for UK Negotiations on Scotland's Place in Europe [said](#):

"EU citizens make a vital contribution to Scotland and to our economy, society and culture. They must have clarity about their future rights and what Brexit will mean for them and their families. As negotiations get underway again today in Brussels it is important that this issue be concluded as soon as possible.

"Were Scotland part of the negotiating team, as we have suggested, we would be doing our best to help the UK resolve the matter and any thoughts we offer are given in that spirit.

"It is of course disappointing that it has taken the UK Government a year to set out their plans but with good will on both sides the issues could be settled in the next few days.

"This issue is also of course about protecting the existing rights of Scots and other UK citizens living in other EU countries, who also continue to face uncertainty over their future. They are also owed an early conclusion."

On the UK Government's proposals, the Scottish Government wrote:

"We are concerned that the UK Government's paper leaves open a large number of very important questions that will have a direct impact on EU citizens and their families. These are not abstract issues, but real concerns that affect people's lives.

We urge the UK Government to immediately clarify these points in order to ensure that all EU citizens have the certainty about their future to which they are entitled. People must never be used as bargaining chips in negotiations."

The Scottish Government's paper highlights a number of issues which it says the UK Government needs to clarify immediately. These include how the rights of EU citizens will be protected and enforced, both in the Withdrawal Agreement and in future, under UK settled status and seeking clarity on the cut-off date (the so-called 'specified date'), before which EU citizens already in the UK will be on a path to 'settled status', whereas EU citizens who arrive afterwards will not, and will instead be subject to UK immigration rules after Brexit. The Scottish Government states that it believes the cut-off date should be date of the UK's exit from the EU.

On the status of family members of EU citizens, the Scottish Government wrote:

"We welcome the commitment that the family members of EU citizens will continue to be able to move to and reside in the UK on the basis of their

existing rights under EU law, until the point of the UK's exit from the EU. That is crucial to the continued enjoyment of the right to family life.

However, we have concerns about the rights of family members, particularly those who come from non-EU countries, after the UK's exit from the EU. We urge the UK Government to clarify these rights immediately, particularly with regards to children, including those born in the UK to parents with settled status who will automatically acquire British citizenship, which might not in all cases be compatible with the nationality and citizenship rules of other EU countries.

We also call on the UK Government to provide further details about the nature and rights that flow from 'settled status' for family members, as well as the criteria and process for applying for 'leave to remain' during the grace period, and the rights that family members will have in that period, before acquiring settled status."

The Scottish Government welcomed the UK Government commitment to improve the application process for EU citizens wishing to gain permanent residence in the UK.

In conclusion the Scottish Government wrote:

"The Scottish Government welcomes that EU citizens, and their families, residing in the UK, will now have some clarity about the UK Government position on safeguarding their future rights and status. It is unacceptable that it has taken so long for the UK Government to set this out.

However, there are a large number of issues that remain unclear and which must be resolved immediately in order to provide EU citizens with the comfort and security to which they are entitled. These include the details of the different statuses applicable to EU citizens and their family members and the associated rights, as well as the process and costs of applying for these statuses, the mechanism for resolving disputes about the application and interpretation of the Withdrawal Agreement, and the crucial issue of the cut-off date.

It is deeply disappointing that the UK Government paper does not go as far as the European Commission's position. The European Commission seek to guarantee the same level of ongoing protection for all EU citizens as set out in EU law at the date of withdrawal, and include a clear mechanism to resolve disputes about the application and interpretation of the Withdrawal Agreement – using the experience and expertise of the European Court of Justice."

SPICe has published a briefing on [Citizens' Rights and the Withdrawal Agreement](#) which includes a summary of the EU and UK's proposals as well as a number of case studies aimed at highlighting some of the main issues for individuals.

The EU position on the financial settlement

The EU position

The EU's position paper on financial settlement also sets out some general principles with regards to the "financial obligations resulting from the whole period of

the United Kingdom membership in the Union”. The general principles suggest there should be a single financial settlement related to:

- The Union budget;
- The termination of the membership of the United Kingdom of all bodies or institutions established by the Treaties;
- The participation of the United Kingdom in specific funds and facilities related to the Union policies.

On the single financial payment, the position paper states:

“This single financial settlement should be based on the principle that the United Kingdom must honour its share of the financing of all the obligations undertaken while it was a member of the Union. The United Kingdom obligations should be fixed as a percentage of the EU obligations calculated at the date of withdrawal in accordance with a methodology to be agreed in the first phase of the negotiations.”

The paper suggests the UK should continue to participate in all EU funding programmes which it currently participates in until the programmes close. Most of the funding programmes the UK participates in will close at the end of 2020 including the Common Agricultural Policy and the structural fund programmes though funding commitments in these programmes will continue to at least 2023.

The position paper then presents a methodology for calculating the UK’s financial obligations upon Brexit. The methodology includes calculations of the UK’s outstanding commitments to the multiannual financial framework for 2014-2020 along with calculation of liabilities such as employee benefits and pensions for employees of the EU institutions and the cost of decommissioning Joint Research Centre nuclear sites. The calculation also takes account of the cost of Brexit and the withdrawal process such as the relocation of EU agencies from the UK.

Having calculated the overall liabilities, a calculation is then proposed to reach the UK’s share of the liabilities:

“Should the financial settlement include all the obligations mentioned above, the United Kingdom share of the Union obligations should be established as the ratio (in percentage) between all own resources transferred by the United Kingdom to the EU budget and the total own resources transferred by the Member States (EU28) over 2014-2018. These amounts include all specific adjustments of national contributions as defined by the ORD (Own Resources Decision).”

The position paper also takes account of UK support for the European Investment Bank and the European Central Bank. In both cases it is proposed the UK will be reimbursed, but in the case of the Investment Bank this will be done as the UK’s share of liabilities held by the Bank is reduced.

Finally, it is proposed that the UK's commitments "related to the financial settlement should follow a schedule of payments that should aim at mitigating the impact of the United Kingdom withdrawal on the budget for the Union and on its Member States".

Underlining the complexity of the negotiations on the financial settlement, the position paper includes as an annex, four pages listing the bodies or funds included in the consolidated accounts along with details of the relevant EU legislative acts.

The UK position

The UK Government has not published a position paper in relation to the financial settlement.

On 6 August, the Sunday Telegraph reported that the UK Government was [ready to pay £36bn Brexit bill](#) (£) as a financial settlement when the UK leaves the EU on the proviso it allows talks on a future trade deal to begin as soon as possible. According to the newspaper:

"Senior Whitehall officials have concluded that such an offer - the first time a precise figure has been proposed - is the only way to break the current deadlock in negotiations.

However, the UK will only agree to pay the sum - equivalent to €40 billion - it if the EU agrees to negotiate the financial settlement as part of a deal on future relations, including a trade deal."

The article also suggests that the UK Government "been able to ascertain that the EU's actual opening position is around €60billion, not €100billion, as the most extreme interpretation of the EU demands had previously suggested"

Following the article's publication, it was [reported](#) that a Downing Street source had said the figure, which was mentioned by Brussels sources quoted in the Sunday Telegraph, was "inaccurate speculation", playing down the idea that such a high bill would be acceptable to the government or Brexit voters.

The Guardian [reported](#) that Günther Oettinger, the EU's budget commissioner, told Germany's Bild newspaper in remarks published on Monday that Britain would remain bound by some previous commitments and would "therefore have to transfer funds to Brussels at least until 2020".

The potential disagreement over the financial settlement for the UK's departure revolves around the EU's desire to see the UK agree a "methodology" on the bill whilst according to the Sunday Telegraph, "British ministers are equally adamant this is tantamount to agreeing a final bill and they cannot sign cheques except as part of a final deal".

SPICe has published a briefing on the Financial Settlement and the Withdrawal Agreement which provides background information about the EU budget along with the EU27's proposals for the financial settlement.

The House of Commons Library has also published a briefing examining [The UK's contribution to the EU Budget](#) which includes a section on the proposed financial

settlement to be agreed as part of the withdrawal agreement for the UK's departure from the EU.

The UK position on Ireland and Northern Ireland

The UK Government's position paper on [Northern Ireland and Ireland](#) sets out proposals in four areas:

1. upholding the Belfast ('Good Friday') Agreement in all its parts;
2. maintaining the Common Travel Area and associated rights;
3. avoiding a hard border for the movement of goods; and
4. aiming to preserve North-South and East-West cooperation, including on energy.

The future situation on the island of Ireland is one of the three priorities set by the European Union in negotiating the Article 50 Withdrawal Agreement. As such the UK Government's proposals are an important contribution in attempting to make progress on a Withdrawal Agreement which would allow discussions on the future relationship between the EU and the UK to begin. Recognising this, the introduction to the position paper states:

"The UK believes that swift progress should be made in agreeing the way forward on the Common Travel Area and associated rights and some of the specific issues arising from the Belfast ('Good Friday') Agreement by October. The UK also believes it is possible in this phase to establish working principles for the movement of goods, energy and wider cross-border cooperation that will underpin the development of technical solutions as part of the negotiations on the future relationship between the UK and the EU. Given the complete alignment between the UK, Ireland and the EU on high level objectives for these crucial issues, and our strong support for the peace process in Northern Ireland, these solutions should be agreed at the earliest opportunity. To facilitate progress, the UK proposes to discuss in forthcoming negotiating rounds the high level principles and criteria that could be agreed and used to test potential future models for border arrangements."

Recognising the importance of upholding the Good Friday Agreement, the position paper states:

"The UK believes that the UK and the EU should be mindful of the full breadth of commitments made in the Belfast ('Good Friday') Agreement. Ensuring that nothing is done to undermine it will require detailed and close engagement between the UK and the EU throughout the negotiations. At this stage, the UK proposes that both the UK and the EU should:

- affirm the ongoing support of the UK Government and Irish Government, and the European Union, for the peace process;
- formally recognise that the citizenship rights set out in the Belfast ('Good Friday') Agreement will continue to be upheld; and
- agree to the continuation of PEACE funding to Northern Ireland and border counties of Ireland."

Avoiding a hard border for the movement of goods between Northern Ireland and Ireland as the UK leaves the Single Market and Customs Union is perhaps one of the biggest challenges of Brexit. In the position paper, the UK Government proposes nine key principles and criteria, these are:

- Recognise the crucial importance of avoiding a return to a hard border for the peace process in Northern Ireland. This must mean aiming to avoid any physical border infrastructure in either the United Kingdom or Ireland, for any purpose (including customs or agri-food checks).
- Respect the provisions of the Belfast ('Good Friday') Agreement in all its parts, with particular reference to: the three-stranded constitutional framework set out in the Agreement; the need to respect and treat equally the identity, ethos and aspirations of both communities; and the importance of promoting sustained economic growth in Northern Ireland.
- Recognise the unique nature of the land border, in particular: its history and geography; the cross-border movements of smaller traders, farmers and individuals; the need to protect everyday movement of goods; and the integrated nature of the agri-food industry.
- Prevent the creation of new barriers to doing business within the UK, including between Northern Ireland and Great Britain.
- Address other regulatory and customs-related barriers necessary to deliver as frictionless a land border as possible including waivers from security and safety declarations, and ensuring there is no requirement for product standards checks or intellectual property rights checks at the border.
- Address the transit of goods to and from Ireland to the rest of the European Union via the United Kingdom – in line with the European Commission's directives – through UK membership of the Common Transit Convention.
- Consider how best to protect the integrity of both the EU Customs Union, Single Market and trade policy, and the new independent UK customs regime, internal market and trade policy, in the context of finding flexible and imaginative solutions, while recognising that the solution will need to go beyond any previous precedents.
- Take account of the importance of trade between Ireland and the UK and aim to avoid economic harm to Ireland as an EU Member State.
- Agree at an early stage a time-limited interim period, linked to the speed at which the implementation of new arrangements could take place that allows for a smooth and orderly transition.

Clearly the details of any agreement on avoiding a hard border for the movement of goods may be influenced by any transitional and future trade agreement between the EU and the UK.

Responding to the publication of the position paper, the Irish Foreign Minister, Simon Coveney [wrote an article](#) for the Belfast Telegraph. He wrote:

“Overall, I welcome the emphasis placed in these UK papers on priority areas long-identified by the Irish government, including the Common Travel Area, the Good Friday Agreement, north/south co-operation and avoiding a hard border on the island of Ireland.

Our own position remains that set out in my own public statements and by the Taoiseach in his comprehensive speech at Queen's University earlier this month.

One of the greatest advances in my lifetime has been the achievement of peace and the progressive normalisation of relations between both parts of the island and between Ireland and Britain.

The gains of the peace, achieved through the Good Friday Agreement and supported by the European Union, have been particularly tangible and transformative along the 500km border on the island of Ireland.

Today, the border is invisible and both parts of the island enjoy the benefits of close collaboration and interaction. The open border is critical for our integrated, world-class agri-food sector; for the success of businesses both small and large; for the effectiveness of north-south co-operation that is an indispensable part of the Good Friday Agreement; and for the ease with which people study, work and live their lives as individuals and communities, north and south.

This peaceful normality is the very core of the peace process and of the ongoing process of reconciliation.

The European Union has been essential to the creation and maintenance of the invisible border. The previous customs border was dismantled by the completion of the internal market in 1992. The security border was removed on foot of the historic political changes of the Good Friday Agreement, which was strongly endorsed by the people, north and south, in 1998.

Protecting the peace process and avoiding a hard border on the island is of highest priority for the Irish government and the European Union.

It is very welcome that the priority of protecting the peace process and avoiding a hard border is shared by the British Government. The publication this week of the UK paper on Ireland/Northern Ireland is a helpful contribution to the achievement of that priority objective.

In recent discourse on the UK's withdrawal from the European Union, some were saying that new border arrangements were inevitable. The further suggestion was that cameras, online registrations and customs software could smooth over the political challenges that would be involved.

However, with such a serious issue, it is important to be honest and clear - seeing technology as the answer misunderstands the problem. We cannot rely on technology alone to solve political questions.

Cameras, checks, delays and the resulting possibility of increased security issues at the border would pose a major political challenge that would have serious implications for both governments, for the people of the island and for the peace process.

As the UK progresses towards exit, alternative political approaches will be needed if we are to avoid a hard border. Technology alone would not solve all practical problems and cannot gloss over political realities.

It can, of course, be part of how we implement the operational aspects of any new trading regime between the EU and UK, but that will be part of the detail that follows after we settle on a political way forward.

I, therefore, welcome the suggested key principle outlined in this week's UK paper on Ireland/Northern Ireland of "aiming to avoid any physical border infrastructure in either the United Kingdom or Ireland, for any purpose (including customs or agri-food checks)".

The Irish government and the European Union are clear that flexible and imaginative solutions will be required to reflect the unique circumstances and geography of the island of Ireland. Of course, the EU-UK negotiation will be conducted on behalf of the Union by the European Commission - specifically the Barnier Task Force - and any approach to resolving the border issue will need to respect EU law and Ireland's place within the European Union.

This will not be easy and will require collective political will and imagination on all sides, with broad policy objectives being supported by the necessary negotiating substance.

The historic gains of the peace process were hard won by the two governments and by political leaders in Northern Ireland, working together over the last two decades and more. The European Union has been a major supporter of what has been achieved and I know its support remains constant.

As the UK leaves the European Union, our collective duty and commitment is to protect the peace process.

As we do so, difficult questions on the border cannot be avoided, obscured or minimised.

The same political vision and determination that secured the Good Friday Agreement in 1998 will be required to make sure that there are no risks to the invisible border that our people enjoy and rely on every day."

The UK position on future customs arrangements

Although the future relationship is not being considered as an element of the withdrawal negotiations by the EU, on 15 August the UK Government published its position paper setting out proposals for a future customs relationship with the EU. According to the UK Government, it is seeking "a new customs arrangement that facilitates the freest and most frictionless trade possible in goods between the UK and the EU, and allows the UK to forge new trade relationships with its partners in Europe and around the world".

The position paper sets out two possible approaches to customs arrangements between the EU and the UK:

A highly streamlined customs arrangement between the UK and the EU, streamlining and simplifying requirements, leaving as few additional requirements on UK-EU trade as possible. This would aim to: continue some of the existing agreements between the UK and the EU; put in place new negotiated and unilateral facilitations to reduce and remove barriers to trade; and implement technology-based solutions to make it easier to comply with customs procedures.

A new customs partnership with the EU, aligning our approach to the customs border in a way that removes the need for a UK-EU customs border. One potential approach would involve the UK mirroring the EU's requirements for imports from the rest of the world where their final destination is the EU.

The customs arrangements between the UK and the EU after Brexit will have a particular impact on the island of Ireland. In relation to Ireland, the position paper states:

“The border between Northern Ireland and Ireland is the UK’s only land border. We must avoid a return to a hard border, and trade and everyday movements across the land border must be protected as part of the UK-EU deal.

The proposals set out above for new customs approaches are first steps to meet our objective of trade across that land border being as seamless and frictionless as possible, but further steps will be necessary. The Government welcomes the clear commitment made in the European Council’s negotiating guidelines and the European Commission’s directives to work with us on “flexible and imaginative” solutions to achieve this, and we will be setting out our guiding principles for a land border arrangement in a forthcoming publication.

The Government has made clear that the answer to avoiding a hard border between Northern Ireland and Ireland cannot be to impose a new customs border between Northern Ireland and Great Britain. We should avoid any approach that would create new barriers to doing business within the UK (including between Northern Ireland and Great Britain).”

The position paper suggests the UK Government will seek a transitional arrangement between the UK leaving the EU and the introduction of a new trading relationship between the EU and the UK. On the transitional arrangements, the position paper states:

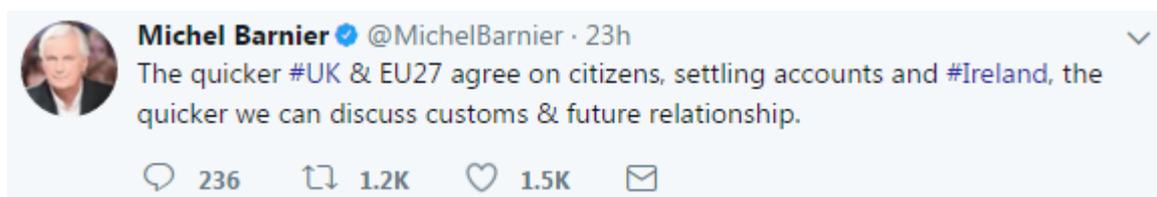
“The Government is keen to explore with the EU a model for an interim period which would ensure that businesses and people in the UK and the EU only have to adjust once to a new customs relationship. This could be delivered through a continued close association with the EU Customs Union for a time-limited period after the UK has left the EU. This could involve a new and time-limited customs union between the UK and the EU Customs Union, based on a shared external tariff and without customs processes and duties between the UK and the EU. The length of the interim period needs further consideration and will be linked to the speed at which the implementation of new arrangements could take place.”

In the section on transition, the UK Government recognises that any transitional agreement may delay the introduction and influence the content of new bilateral trade agreements the UK agrees following Brexit:

“The UK has been clear that, once it has left the EU, it intends to pursue new trade negotiations with others. However, the UK would not bring into effect any new arrangements with third countries which were not consistent with the terms of the interim agreement while the interim agreement was in place.”

The position paper also refers to the devolved administrations stating that customs arrangements are a reserved matter though committing to work with the Scottish Government, the Welsh Government and the Northern Ireland Executive (when it returns) to understand the practical impact of new customs arrangements in different parts of the UK.

Reacting to the publication of the UK Government’s customs proposals, the European Commission’s Chief Negotiator Michel Barnier tweeted:



The European Parliament’s lead representative in the Brexit negotiations tweeted his view that the UK Government proposals were impractical:



Dispute resolution after Brexit

On 23 August, the UK Government published [Enforcement and dispute resolution - a future partnership paper](#).

Whilst the EU position in relation to judicial enforcement has concentrated on a continuing role for the European Court of Justice, the UK Government’s paper says that when the UK leaves the EU, it will leave the jurisdiction of the European Court of Justice. The UK has proposed implementing and enforcing agreements with the EU in domestic law and international law and proposed establishing a new mechanism for dispute resolution:

“There are a number of existing precedents where the EU has reached agreements with third countries which provide for a close cooperative relationship without the CJEU having direct jurisdiction over those countries. There are a variety of ways in which the parties to those agreements have

reassured each other on both the implementation of, and enforcement and dispute resolution under, the agreements.”

On dispute resolution, the position paper states:

“Dispute resolution mechanisms are common within international agreements. The form these mechanisms take varies considerably across the spectrum of agreements, given the different areas of international cooperation, and consequently the varied nature of potential disputes that could arise. The appropriate dispute resolution mechanism is dependent on the substance and context of each agreement.

However, one common feature of most international agreements, including all agreements between the EU and a third country, is that the courts of one party are not given direct jurisdiction over the other in order to resolve disputes between them. Such an arrangement would be incompatible with the principle of having a fair and neutral means of resolving disputes, as well as with the principle of mutual respect for the sovereignty and legal autonomy of the parties to the agreement. When entering into international agreements, no state has submitted to the direct jurisdiction of a court in which it does not have representation.”

The position paper highlights a number of different precedents in relation to dispute resolution including the establishment of a joint committee or arbitration models.

On the future role of the European Court of Justice in enforcing agreements, the position paper proposes taking account of pre-agreement ECJ rulings:

“Where agreements between the EU and third countries replicate language which is identical in substance to EU law, it may be agreed that those terms should be interpreted and applied in line with any relevant interpretations of the CJEU which preceded the agreement.”

For ECJ judgements delivered after an agreement has been reached, the paper states:

“In agreements between the EU and third countries, where cooperation is facilitated through replicating language which is identical in substance to EU law, these agreements can specify that account is to be taken of CJEU decisions when interpreting those concepts. This is relevant where both parties agree that divergence in interpretation would be undesirable, for example, for operational reasons such as continued close cooperation with EU agencies.

Agreements which utilise this approach do not always require account be taken solely of post-agreement CJEU judgements. Some include a two-way requirement for the case law of both the CJEU and the courts of the other party to be taken into account.”

The position paper also suggests that provision could be made for voluntary references to the ECJ to help interpret EU law where that is relevant to any agreement:

“In agreements which utilise concepts of EU law, and in which some means of reaching a binding interpretation of those concepts is sought, an approach which has been adopted is a reference for an interpretation to the CJEU. The result of such a reference would be a binding determination of the meaning of substantive EU law.

This approach can apply in respect of both judicial and political dispute resolution models.”

Dr Tobias Lock has written a [blog](#) examining the UK Government’s proposals set out in the position paper. He welcomed the position paper’s acknowledgment of the role of ECJ rulings in any agreement and suggested this is important given the constitutional limitations placed on the EU in any post Brexit agreement:

“When it comes to agreeing dispute settlement clauses between the EU and the UK, the EU side is constitutionally limited by the ECJ’s position concerning its own exclusive jurisdiction to render binding interpretations of EU law with effect for the EU legal order (see Opinion 1/91). There are no comparable constitutional limits in the UK legal order, but Theresa May’s red line formulated in January would have constituted a serious stumbling block to finding agreement on dispute resolution. The position paper’s partial retreat on the matter – performed semantically by reformulating the red line as bringing about an end to ‘the direct jurisdiction’ of the ECJ – is significant and paves the way for an agreement along the lines of the dispute settlement regime found in the EEA agreement (though it does not answer the intriguing question of what the direct jurisdiction of the ECJ is).”

On dispute resolution mechanisms, Dr Lock suggests how a future EU-UK agreement might address this is harder to predict:

“Dispute settlement under the future EU-UK relationship agreement (or agreements) is much harder to predict. This is where the various options canvassed in the UK Government’s position paper – ranging from Joint Committees, via arbitration to an EEA-inspired international court – come into play.

What is most striking in the paper is the lack of any discussion of envisaged dispute settlement procedures and notably of who would have access to dispute settlement. Some of the options discussed would only provide for the resolution of inter-party disputes, others for investor-state arbitration, and others still would seem to allow for reference requests from UK courts to a variation of the EFTA-court, which would in practice follow ECJ precedents. Of course, much will depend on the substantive content of the future EU-UK deal. If it replicates EU law to a large extent, then an arrangement based on the EFTA-court is the most likely. If, however, it is a mere free trade deal, a much more traditionally international form of dispute settlement – possibly even restricted to political settlement – is conceivable.

The Government's paper is cautious and disclaims any preference for one of the models discussed. One can therefore assume that not every model might receive the same amount of political support. At the same time, the recent public insistence by some of the most ardent Brexiteers (here or here) that the EFTA-court was something completely different from the ECJ as it cannot issue binding preliminary rulings and because EEA law does not have direct effect, suggests that something may be moving politically and that the UK might eventually be in a position to agree to a workable compromise, which is acceptable to the EU as well."