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ARTICLE 50 NEGOTIATIONS

Overview

Both the UK Government and European Commission’s stated objectives remain to agree a deal under Article 50 of the Treaty on European Union to ensure the orderly withdrawal of the UK from the European Union.

Since Boris Johnson became Prime Minister, there have been meetings on the UK’s withdrawal from the EU at official and political levels.

EU-UK meetings and proposals

Since those meetings reported in SPICe Brexit Update #91:

- The Prime Minister, Secretary of State for Exiting the European Union, Commission President Jean-Claude Juncker and Chief Negotiator Michel Barnier met for a “working lunch” on 16 September. The aim was to “take stock of the ongoing technical talks between the EU and the UK and to discuss the next steps.” This was described by the UK Government as a “constructive meeting” during which the “leaders agreed that the discussions needed to intensify”.

- Following the lunch meeting on 16 September, the Secretary of State for Exiting the European Union, Stephen Barclay MP, and Chief Negotiator Michel Barnier met on 20 September 2019 and 27 September 2019.

Ahead of the meeting on 27 September, Stephen Barclay MP said in a BBC interview:

“There’s still a long way to go. I think we are coming to the moment of truth in these negotiations. We will see if there is political will on both sides. We are committed to securing a deal. We’re committed to leaving on 31st October. But that deal has to be without the backstop. Parliament has rejected the backstop three times. I have been very clear with Michel Barnier and Taskforce 50 in the negotiations – the backstop has to go, but with goodwill on both sides a deal can be done.”

In its statement following the 27 September meeting, the European Commission said that:

“Michel Barnier stressed that it is essential that there is a fully operational solution in the Withdrawal Agreement to avoid a hard border on the island of Ireland, protect the all-island economy and the integrity of the Single Market. The EU remains open and willing to examine any workable and legally operative proposals that meet all these objectives.

The UK Government has previously produced four “confidential technical non-papers which reflect the ideas the UK has been putting forward”. RTÉ’s Europe Editor Tony Connelly described and discussed these proposals for alterations to the backstop arrangements in a recent RTÉ article.”
On 27 September, it was widely reported that the UK Government plans to submit “concrete proposals” for a Brexit deal following the Conservative Party Conference (taking place 29 September to 2 October). Sky News Europe Correspondent, Adam Parsons tweeted:

“Sources say UK will submit "concrete proposals" for a Brexit deal after Tory Party conference (which ends on October 2nd), but in time to be scrutinised before the European Council, which starts on October 17th.”

The Prime Minister has also held a series of meetings with European leaders:

- PM press statement with Taoiseach Leo Varadkar: 9 September 2019 and Joint statement following the meeting between PM and Taoiseach Leo Varadkar: 9 September 2019
- PM call with Chancellor Angela Merkel: 17 September 2019
- PM calls with European leaders: European Commission President Juncker, European Parliament President Sassoli, Cypriot President Anastasiades, and Latvian Prime Minister Kariņš: 18 September 2019
- At the UN General Assembly on 23-24 September the Prime Minister met with: Prime Minister Rutte of the Netherlands, Taoiseach Leo Varadkar, European Council President Tusk, Prime Minister Michel of Belgium.

EU public statements on Brexit:

On 18 September, the European Parliament held a plenary debate on “The UK’s withdrawal from the EU”.

Tytti Tuppurainen, the Finnish President-in-Office of the Council said:

I hope that we can still achieve an orderly Brexit. This is why we have asked the UK to put forward concrete details and operational ideas regarding what appears to be the main stumbling block, namely how to ensure the absence of a hard border on the island of Ireland, while respecting the Good Friday Agreement and protecting the integrity of the single market.

European Commission President, Jean-Claude Juncker said:

The 'backstop' has three objectives: to avoid a physical border on the island of Ireland; it aims to preserve the integrity of the single market and, above all, Ireland's place in this market; and the 'backstop’ aims to protect North-South cooperation and the 'island economy' - essential elements for peace and stability in Ireland enshrined in the Good Friday Agreement.

I told Prime Minister Johnson that I do not harbor any emotional attachment to the safety net. But I have made it clear that I remain deeply committed to the goals it serves.
Chief Negotiator for the Taskforce on Article 50 negotiations with the United Kingdom, Michel Barnier set out further positions on the European Commission on both the backstop and negotiations on the future relationship.

Michel Barnier also spoke publicly on the state of the Article 50 negotiations during a speech to a newspaper industry conference in Germany (the Zeitungskongress 2019) on 24 September. On the backstop, Barnier said:

…as you know, the current UK government has asked to remove the backstop.

Talks with the UK are ongoing. We are open to examining the UK’s ideas and proposals. But it is essential for the EU that the Withdrawal Agreement contains a workable, concrete solution - a legally operative solution – to the challenges posed by Brexit on the island of Ireland.

The people living in both parts of the island deserve this legal certainty. And the citizens in the rest of the EU must be able to rely on the internal market being protected, and food safety and product standards guaranteed in the same way as they are today, at our external borders.

As President Juncker has said, we have no ideological attachment to the backstop in its current form. We are open to alternative arrangements as long as all the objectives of the backstop are fulfilled.

However, until now, no alternative solutions that meet all the objectives of the backstop have been presented. I can see challenges down the line: the UK government seems to want a regulatory and customs land border in place while also putting some regulatory checks around the island of Ireland. Let’s see if work over the coming weeks confirms if that is the case. I also note that general principles would need to be transformed into legally operative solutions.

On the future partnership, Barnier said:

In economic affairs, our starting point is a free trade agreement but our Political Declaration leaves the door open to a more ambitious partnership, if there is common will to do so. We are willing to be as ambitious as possible.

However, such an ambitious economic relationship will have to be accompanied by guarantees for a level playing field. Behind the technical expression “level playing field”, there are human, social and regional realities. The UK and the EU will remain neighbours and our companies will continue to compete with each other.

In other words, the level of ambition of our future free trade agreement will clearly depend on the social, environment, competition and state aid guarantees that we can agree together.
Forthcoming European Council, 17-18 October

As it stands, Brexit is not on the formal agenda of the next European Council, scheduled for 17-18 October 2019. However, there is an expectation that, depending on how negotiations on Article 50 proceed, Brexit will be discussed in some form. This is the only European Council meeting currently scheduled before the UK is due to leave the EU on 31 October.

Legislation requiring a request for an Article 50 extension

Following its August recess and before the prorogation proceedings (see prorogation section below), the UK Parliament sat in the first week of September.

MPs gained control of the business of the House of Commons and passed the European Union (Withdrawal) (No. 6) Bill (known as the Benn-Burt Bill). This Bill became the European Union (Withdrawal) (No. 2) Act 2019 on 9 September 2019.

The provisions of this Act require the UK Government to request an extension to the Article 50 process if no agreement has been approved (or leaving without a deal has not been approved) by the House of Commons by 19 October 2019. This date allows for the European Council scheduled for 17-18 October to take place.

PROROGATION AND SUPREME COURT RULING

As reported in SPICe Brexit Update #91, on 28 August, the UK Government announced that it had sought and been granted by HM The Queen a prorogation of Parliament beginning between 9-12 September and lasting until 14 October 2019.

Prorogation proceedings occurred on 9 September and the UK Parliament stopped sitting. However, on 24 September, the Supreme Court ruled that the prorogation was “unlawful, null and of no effect”. The judgment summary stated:

This prolonged suspension of Parliamentary democracy took place in quite exceptional circumstances: the fundamental change which was due to take place in the Constitution of the United Kingdom on 31st October. Parliament, and in particular the House of Commons as the elected representatives of the people, has a right to a voice in how that change comes about. The effect upon the fundamentals of our democracy was extreme.

No justification for taking action with such an extreme effect has been put before the court.

More is on the Supreme Court’s decision is available from SPICe Spotlight: Parliament has not been prorogued – the Supreme Court judgment.

MPs sat again on 25 September, the day after the Supreme Court judgment. The Prime Minister gave a statement on the Supreme Court’s ruling and the Chancellor of the Duchy of Lancaster, Michael Gove MP, gave a statement on ‘Brexit readiness and operation Yellowhammer’ (see section below on UK Government preparation for more detail).

**Impact on Brexit-related legislation**

Prorogation represents the end of a parliamentary session and brings nearly all parliamentary business – including most bills – to a halt. “Carry-over” Bills are the only exception and are explained by the Institute for Government in its explainer: [What happens to legislation when Parliament is prorogued?](https://www.legislation.gov.uk/ bill/what-happens-to-bills-when-parliament-is-prorogued).

Brexit-related Bills before the UK Parliament include the Trade Bill, Fisheries Bill, Agriculture Bill and Immigration and Social Security Co-ordination (EU Withdrawal) Bill.

Because no bill was subject to the carry-over procedures before prorogation proceedings on 9 September, it was thought that all draft legislation fell. However, as a result of the Supreme Court’s ruling that the UK Parliament was not prorogued all draft legislation remains live.

**NO-DEAL PREPARATIONS**

**Scottish Government preparations**

SPICe briefing [SB 19-54: Preparing for a no-deal Brexit](https://www.parliament.scot/parliament/news/128992/first-minister-gives-update-on-scottish-government-response-to-supreme-court-judgment) outlines some of the potential immediate impacts of a no-deal Brexit along with the Scottish Government’s contingency planning for disruptions that may occur in the immediate days and weeks after EU exit.

**Operation Yellowhammer planning assumptions published**

Operation Yellowhammer is the code name for the UK Government’s contingency planning for a no-deal Brexit scenario. Following a “humble address” motion being passed by the House of Commons on 9 September, on 11 September the UK Government published a copy of its “reasonable worst case planning assumptions” under Operation Yellowhammer.

These details had been previously reported by the Sunday Times on 18 August. In response to the article, Michael Gove MP told the BBC that the Yellowhammer dossier on the impact of a no-deal Brexit outlines "absolutely the worst case", and that the UK Government has taken “significant additional steps” to ensure the UK is prepared to leave on 31 October.

**UK Government update on preparation – 25 September**


On the likelihood of a deal with the EU, he said:

> …negotiations have seen significant movement over recent weeks. Until recently, the EU has maintained that the withdrawal agreement was sacrosanct,
but now it has acknowledged that it can be changed. Up until this point, the European Union has also said that the backstop was inviolable, but again, European leaders have said that they are not emotionally attached to the backstop and that there are other ways of ensuring that we can safeguard the gains of the Good Friday/Belfast agreement and also ensure smooth trade flows across the island of Ireland.

I want to commend the Prime Minister and his colleagues for the progress that has been made in those negotiations, and I hope that everyone in the House will agree that it is better for all of us if we can leave the EU with a withdrawal agreement in place, but Government need to be prepared for every eventuality.

Michael Gove MP then provided a further detail on the UK Government’s no-deal preparations:

Since the PM took office, he has created a new Cabinet structure to ensure that, across Government, we take all the steps necessary to prepare for exit. A new Cabinet Committee—XO—has met 48 times and brought greater focus and urgency to our preparations. Our top economic priority is to ensure that we can maintain a smooth and efficient flow of goods and people from the UK into the EU and vice versa. We need to make sure that businesses are ready for changed circumstances and new customs requirements. There are, of course, some goods that require not just customs checks but other procedures—particularly food and products of animal origin—and we have been working with the Department for Environment, Food and Rural Affairs and the relevant sectors to ensure that those businesses are ready.

We take very seriously our responsibility to ensure that the rights of millions of EU citizens in this country are protected, and we are working with our European partners to ensure that UK nationals in EU nations also have their rights safeguarded. The XO Committee has also taken steps to safeguard and enhance national security and the operation of our criminal justice system, to enhance the free flow of personal data across borders, to ensure that we can support the devolved Administrations in their work and, in particular, to support the Northern Ireland civil service in its vital work.

With your permission, Mr Speaker, I would like to go into a little more detail about how we can facilitate the free flow of goods across borders, and it is in that context that I would like to explain the role of Project Yellowhammer in the Government’s planning. If the UK leaves the European Union without a withdrawal agreement, we will be a third country, subject to the EU’s common external tariff and trading on World Trade Organisation terms, and exports will be subject to new customs and sanitary and phytosanitary checks. These are unarguable facts, they pose specific challenges, and they constitute the base scenario with which we all have to work.

The Government’s Civil Contingencies Secretariat has used these facts to develop a reasonable worst-case scenario of what might happen, including in cases where appropriate mitigations are not put in place and readiness measures are not implemented. That reasonable worst-case scenario and the steps required to mitigate it are the work undertaken under the name Operation
Yellowhammer. As the National Audit Office reported in March, work on Operation Yellowhammer has been going on since June 2018. The NAO made it clear then that

“Departments are working on the basis of a reasonable worst case scenario.”

Many of the challenges that Operation Yellowhammer identifies relate specifically to flow at the border. It contains careful estimates of how flow might be affected through a range of factors, including if steps are not taken to help businesses to be ready. That is why this Government have taken significant steps to ensure that businesses are ready. Specifically, we know that in adjusting to this new situation, businesses require support to deal with those new customs procedures, and Her Majesty’s Revenue and Customs has acted to support traders. Importers will have access to transitional simplified procedures, which ensure that businesses have time to adjust to new duties. Businesses exporting to the European Union will need a specific economic operator registration and identification number from HMRC, and HMRC has already allocated EORI numbers to 88,000 VAT-registered businesses that currently trade with the EU and not beyond it.

We have introduced postponed accounting for import VAT and negotiated access to the common transit convention, so that both imported and exported goods can continue to flow across international borders without the payment of any duties until they reach their final destination. We have established new transit sites in Kent and Essex, to ensure that trucks can flow freely, carrying goods into France and beyond to the wider EU. We are also providing tailored information to hauliers and businesses through a range of sites across the country, to ensure the greatest level of readiness. We have funded business representative organisations to share information with enterprises large and small, and they are preparing for exit. We have also worked with the authorities in both Dover and Calais to smooth trade, and I want to take this opportunity to thank the French authorities for the work they have done to ensure the operation of a smart border at Calais, so that compliant consignments should experience no delay.

The steps we have taken are designed to ensure that businesses are ready for exit without a deal on 31 October, but these steps will in any case be necessary for life outside the single market and the customs union when we secure a new free trade agreement with the EU. Thanks to work undertaken under the previous Government, and accelerated under this Administration, many businesses are already well prepared. For any business that is in any doubt about what is required, the Department for Business, Energy and Industrial Strategy is conducting roadshows and visiting businesses in their premises, and gov.uk/brexit provides all the information required.

As I mentioned, there are specific additional requirements for those who are exporting food and products of animal origin, with sanitary and phytosanitary checks. Traders will require export health certificates for food and catch certificates for fish. Hundreds of vets have now been trained to issue those certificates and additional personnel certified to support them. Again, the French authorities have taken steps to ensure the smooth flow of critical produce. They
have specifically created a new border inspection post at Boulogne-sur-Mer to ensure that fish and shellfish products can be caught in the UK today and be on sale in the European Union tomorrow.

Of course, as well as making sure that commerce flows, we must safeguard the rights of individuals. That is why this Government have provided the most comprehensive and generous offer to EU citizens in this country, in order to guarantee their rights. It is already the case that under the EU settlement scheme, more than 1 million people have been granted status, and the Home Office is helping thousands of new applicants every day. If any Member of Parliament finds that any of their constituents are having difficulties with that process, I would welcome their getting in touch directly with me and the Home Secretary.

In the same way, we have taken steps to secure the rights of UK nationals in the EU, including access to healthcare after exit, and we will continue to work with our partners in member states to provide further protection for UK nationals. It is important that UK citizens in those countries register with the appropriate authorities. On gov.uk/brexit details are outlined, member state by member state, to enable every citizen to have the rights they deserve.

Also this month, the Government committed to increasing the UK state pension, which is paid to nearly half a million people living in the EU every year, for three years after a no-deal exit. Previously the commitment was solely for the financial year 2019-20. As well as making sure that UK nationals in the EU, and EU citizens in the UK, have their rights protected, we want to make sure that UK citizens can continue to travel in the EU without impediment. That is why UK nationals will have visa-free travel into the EU. We are also talking to member states to understand how people who provide professional services can continue to do so, member state by member state.

On security, it is vital to ensure, as we leave the EU, that we have the right approach to safeguarding citizens. That is why we have been talking to the EU about making sure we continue to have access to law enforcement and national security instruments. It is also important to recognise that, as we leave the EU, new tools will be available to ensure that we can better deal with people trafficking, smuggling and other criminal activity.

On the situation in Northern Ireland, the Government are absolutely committed to the Good Friday/Belfast agreement, absolutely determined to ensure there will be no infrastructure at the border, and absolutely determined to uphold the functioning of the all-Ireland economy. That is why we will have no checks at the border and no tariffs. We wait to see what Ireland and the EU Commission will decide, but we stand ready to work with them to help to safeguard commerce and rights across the island of Ireland.

I do not shirk from the fact that leaving the EU without a deal provides economic challenges, but it is also provides economic opportunities. There is the opportunity to secure new trade deals and become a strong voice for free trade at the WTO; the opportunity to develop new technologies that will help feed the world and enhance the environment; the opportunity to overhaul Government
procurement to better support growing British businesses; the opportunity to introduce a fairer, more efficient and more humane immigration system; the opportunity to deal more effectively with cross-border crime; the opportunity to invest more flexibly and generously to support overlooked communities; and the opportunity to strengthen our democratic institutions.

Changes to EU transport, fisheries and budget contingencies

On 4 September, the European Commission:

1. Published a checklist designed to “help those businesses that trade with the UK to make final preparations”.

2. Proposed to the European Parliament and the Council to extend the provisions of four of the EU’s ‘no-deal’ contingency measures so that they apply for longer (to various dates in 2020). This is as a result of the UK’s exit date moving to 31 October. The regulations subject to the proposed time extensions are:
   - basic road freight and road passenger connectivity (Regulation (EU) 2019/501)
   - basic air connectivity (Regulation (EU) 2019/502)
   - fishing authorisations (Regulation (EU) 2019/498)

3. Proposed further financial assistance to Member States and redundant workers in a no-deal scenario

UK request for joint and bilateral preparations

On 27 September, the UK and EU published an exchange of letters between Stephen Barclay MP and Michel Barnier on no-deal preparations.

The UK Government’s letter requested “structured engagement and exchange of information” between EU and UK officials in a number of areas to assist preparations for a no-deal Brexit scenario. The UK letter also requests a “signal” from the Commission that it does not object to bilateral discussions between the UK and individual Member States on no-deal arrangements.

Michel Barnier’s reply said “As regards ‘no-deal’ preparations, the EU has already finalised its work” and stated that the European Union would “not enter into any negotiations with the United Kingdom on these matters”.

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About this publication

This regular paper produced by SPICe sets out developments in the UK’s negotiations to leave the European Union, the process for which formally begun following the Prime Minister’s triggering of Article 50 on 29 March 2017.

The updates provide information on the UK Government’s approach to leaving the EU including the domestic legislation necessary to ensure a smooth transition in terms of the UK statute book, along with details of the positions of the Scottish Government and the other Devolved Administrations. The updates also provide information on developments within the EU with regard to the UK’s departure. Finally, the updates 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.

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