



UK AND EU AGREE BREXIT DEAL – WHAT DOES IT MEAN, AND WHAT HAPPENS NEXT?

The UK and EU have provisionally agreed a [draft Withdrawal Agreement](#) and [outline Political Declaration](#) on their future relationship. A special European Council has been scheduled to take place on 25 November to sign the agreement.

The greatest risks are posed by the lack of Cabinet support (with key resignations already announced), disparate factions within the Conservatives and, ultimately if it gets that far, the UK House of Commons voting against the deal. The Withdrawal Agreement has generated intense opposition from across the UK political spectrum – not least the resignation of Dominic Raab, the Brexit Secretary.

This briefing considers the substance and implications of the emerging deal, the next steps, and the complex risks and multiple possible scenarios that arise between now and 29 March 2019, and beyond.

WHAT ARE THE RISKS AND POSSIBLE SCENARIOS?

There is virtually no risk at this stage that the EU side will not approve the Withdrawal Agreement. Michel Barnier has been careful throughout the negotiations to keep member states and the European Parliament fully informed and on side. But both the European Parliament and the Council of the EU will, however, need to be given the time to consider the agreement properly. The European Parliament will debate the issue in plenary and vote on a report.

The greatest risk is that the UK House of Commons, informally or formally, rejects the Withdrawal Agreement. Unease with the outcome of the negotiations is felt on all sides within government. Pro-EU MPs believe that the concessions made by the UK leave it in an inferior situation to full EU membership, economically weakened, with no say in the EU rules it must follow, while pro-Brexit MPs attack the concessions for not truly delivering on the vote to leave the EU because they keep the UK's hands tied (for example in its ability to negotiate and agree new trade deals with third countries).

Key issues

- The UK and EU have provisionally agreed a Withdrawal Agreement and outline of a Political Declaration on their future relationship.
- An EU summit has been called for 25 November to conclude the Agreement.
- The agreement then has to be approved – the UK hopes to do this by Christmas, with the EU following early in 2019.
- The Withdrawal Agreement contains a whole-UK backstop and a transition period that can be extended once.
- Approval on the EU side should be straightforward. The key risk is the UK House of Commons, directly or indirectly, rejecting the Withdrawal Agreement.
- In the event of the UK rejecting the Withdrawal Agreement, the political situation in the UK would be thrown into crisis with any number of scenarios becoming possible, including a general election and a change in government with a resulting change in the UK position on Brexit.

Unease extends beyond the government: the Democratic Unionist Party (DUP) MPs are unhappy that Northern Ireland has been singled out for different treatment in the negotiations and in March 2017, the Labour party set out "six tests" to be applied to the Withdrawal Agreement. If the tests are not met, the Labour party has said it will vote against the resolution approving the Withdrawal Agreement.

Unless the rejection of the Withdrawal Agreement is over specific issues which Mrs May can return to Brussels to try to renegotiate, a negative vote in the House of Commons would trigger a process as set out in section 13(4) of the European Union (Withdrawal) Act 2018, which states that the government must, within 21 days on which the House of Commons decided not to pass the resolution, make a statement to the House of Commons setting out how the government intends to proceed in relation to the negotiations. It is important to bear in mind that the likelihood of the EU to change its offer is very low indeed unless the government changed its position and recalibrated its "red lines."

The House of Commons then has the opportunity to debate – and, if the Speaker of the House considers it appropriate, to amend – "a motion in neutral terms, to the effect that the House of Commons has considered the matter" within seven sitting days of the statement being made. This process is highly politicised, with both parties currently trying to determine what this means.

A failure to reach agreement on the Withdrawal Agreement by 21 January 2019 will trigger the requirement of the government to make a statement saying so, and within five days make a statement on what the government proposes to do. At this stage, the government will be required to table a motion similar to the one described directly above and provide the House of Commons with the opportunity to vote on it within seven days.

Either of these options – the House of Commons not passing the resolution to approve the Withdrawal Agreement or no such agreement being agreed by 21 January 2019 - opens up any number of possibilities, but the default position will be that the UK will leave the EU on 29 March 2019 with "no deal" - a "hard Brexit" (or cliff edge).

Rejection of the Withdrawal Agreement could also lead to a leadership crisis in the Conservative Party, and a change of Prime Minister. In some scenarios it could lead to a general election. It could even lead to a fracturing of the traditional party structure if, say, a hard-line Brexiteer were to become the Conservative leader and the Labour leadership were to continue its ambivalent attitude to EU membership. For the complexities surrounding calling a general election, and why a general election scenario is perhaps less likely than many imagine, see our briefing on the Fixed Term Parliaments Act 2011, [here](#).

If a general election were to take place, it is possible that the Labour Party would secure a majority, or be able to form a government with support from other parties, and ask to extend the Article 50 process, which would require the unanimous agreement of the EU member states. A Labour Party victory would likely result in a dramatic change to the UK's negotiating position with the EU. The Labour Party has stated that it would seek to enter into "a" customs union with the EU, and establish high levels of regulatory alignment and cooperation. There are many Labour MPs who would go further, and seek a second referendum, or "people's vote", with options including remaining in

Labour Party's "Six Tests for Brexit":

1. Does it ensure a strong and collaborative future relationship with the EU?
2. Does it deliver the "exact same benefits" as we currently have as members of the Single Market and Customs Union?
3. Does it ensure the fair management of migration in the interests of the economy and communities?
4. Does it defend rights and protections and prevent a race to the bottom?
5. Does it protect national security and our capacity to tackle cross-border crime?
6. Does it deliver for all regions and nations of the UK?

(Labour's "Theresa May's Failed Brexit Plan")

the EU. However, the attitude of the Labour Party's leadership to Brexit (and to the EU itself) remains ambiguous, and it is possible that a Labour government would continue down essentially the same path as the present government, perhaps with additional commitments on employment laws and environmental protection.

WHAT NEXT FOR THE WITHDRAWAL AGREEMENT?

The Withdrawal Agreement text is "stabilised but not formalised".

A special EU summit has been scheduled to take place on 25 November for the Withdrawal Agreement to be formally concluded. After that, a number of procedural steps must be taken to give full effect to the agreement.

First, the European Parliament, the Council of the EU, and the UK Parliament must all approve the deal.

The Council must approve the agreement by a qualified majority of the 27 remaining member states. This formal approval process will be quick and could take place over the course of a day or two.

The European Parliament must give its consent which requires the support of a majority of its members. That is likely to take no more than a matter of a few weeks.

Securing the approval of the UK Parliament will be the most challenging part of the process. The Withdrawal Agreement will be debated in the House of Commons, for probably around five days. The House of Lords will also debate the Withdrawal Agreement.

Mrs May must persuade a majority of 650 MPs, 320 MPs excluding non-voting and other non-active members, to support the deal in the "meaningful vote" required by section 13 of the European Union (Withdrawal) Act 2018. The House of Lords does not have a veto power. Mrs May has said that the vote in the UK will take place before the Commons Christmas recess, which begins on 20 December 2018. The European Union (Withdrawal) Act 2018 also states that this vote must, so far as is practicable, be held prior to the vote of the European Parliament.

Second, once the motion has passed, the government must table a bill – the European Union (Withdrawal Agreement) Bill – enacting the Withdrawal Agreement, as provided for in the EU (Withdrawal) Act 2018. The bill will need to be approved by both the House of Commons and the House of Lords. Although it is unclear how long the process will take, this legislative approval is likely to be passed rapidly, early in 2019. The enactment of the Banking (Special Provisions) Act 2008 (to take temporary public ownership of Northern Rock) which had its first reading in the House of Commons on 19 February 2008 and received Royal Assent on the 21 February 2008 shows that this process can be done very quickly if necessary, and if both houses agree. (See our briefing on [the EU \(Withdrawal Agreement\) Bill](#)).

Third, under section 20 of the Constitutional Reform and Governance Act 2010, the Withdrawal Agreement must be laid before both the House of Commons and the House of Lords for 21 sitting days before it can be ratified. This period may take place at the same time as the passage of the EU (Withdrawal Agreement) Bill, but the Bill must be enacted before the Withdrawal Agreement can be ratified. Provided that either House does not

UK Next Steps

1. Approval of the final deal as set out in Section 13 of the European Union (Withdrawal) Act 2018.
2. Enacting the European Union (Withdrawal Agreement) Bill.
3. Final scrutiny under Section 20 of the Constitutional Reform and Governance Act 2010.

resolve that the treaty should not be ratified, the government can proceed to ratification.

WHAT IS IN THE WITHDRAWAL AGREEMENT AND SUMMARY POLITICAL DECLARATION?

The final shape of the Withdrawal Agreement is now clear after months of uncertainty. It consists of a 585 page draft Withdrawal Agreement and accompanying seven page summary of a Political Declaration on the framework for the future relationship between the EU and UK.

Negotiations were concluded many months ago on the UK's financial settlement with the EU, the status of EU27 nationals residing in the UK post-Brexit and vice versa and a number of other issues in the Withdrawal Agreement. Mrs May said that 95% of the deal was done in late October. Now it seems we are at 100%.

The struggle has been achieving agreement on this last 5%. The principal stumbling blocks have been the so-called Northern Irish "backstop" with the transition, or implementation, period (as UK officials refer to it) and the "political declaration" on the future relationship between the UK and EU post-Brexit also raising problems. These three issues are closely related both in content and in the mechanical process of the UK's withdrawal from the EU.

Next Steps



Each of those issues comes into play, chronologically, as follows. The agreement also sets up a "Joint Committee" to deal with any issues relating to the implementation, application and interpretation of this Agreement, which is discussed further below.

The transition period

The transition period serves the purpose of bridging the gap between the UK's formal departure from the EU on 29 March 2019 at 11pm GMT – "Brexit Day" – and the coming into force of a new long-term relationship between the UK and the EU.

As set out in Article 127 of the draft Withdrawal Agreement, the UK would continue to be treated as if it were still an EU member for the purposes of market access for goods, services and individuals, and requires the UK to continue to pay into the EU budget. Article 87 of the Withdrawal Agreement requires the UK to abide by Court of Justice of the EU (CJEU) judgments relating to the content of the Agreement for four years after the end of the transition period.

It also requires the UK to abide by EU law and judgments and determination of the EU's institutions and agencies, such as the CJEU and the European

Commission in terms of licences and authorisations of, for examples, vehicles and medicines.

The UK has also committed to continue to apply EU free trade agreements, providing preferential access to the UK market for third countries. Throughout this period the UK will no longer participate in the EU institutions, and by extension, in the legislative or decision-making processes of the EU.

The transition period is currently due to end on 31 December 2020 – 21 months after Brexit Day. This period is designed to give the UK and the EU time to negotiate the details of the agreement that will govern their future relationship. Once concluded and ratified, the UK's plan is for that future agreement to come into force seamlessly on 1 January 2021.

Without this transition period, the UK and the EU would fall back on World Trade Organisation (WTO) rules to govern trade between them. This is the "no deal" (or "hard Brexit") scenario that businesses, the UK and the EU have (or should have) also been planning for. Even if all sides will have prepared, a "no deal" scenario would bring about emergency situations for dozens of issues, with significant implications for imports and exports of goods, rules on establishment for services and ownership structures.

There was concern that the UK and EU would fail to complete the negotiations in time, and there would be no agreement ready to come into force on 1 January 2021 when the transition period ends. In those circumstances the UK would be in the "no deal" or "hard Brexit" scenario described above. However, the latest draft of the Withdrawal Agreement in Article 132 allows for the UK and the EU to extend the transition period once "up to [31 December 20XX]".

The "backstop"

The "backstop" is the arrangement that would come into force with regard to Northern Ireland if there is no agreement at the end of the transition period on 31 December 2020, or no extension of the transition period. Its aim is to avoid the imposition of a hard border in the island of Ireland, between the UK and the Republic of Ireland.

Its first guise, as proposed by the EU and accepted by the UK in December 2017, is set out in the box on this page. It was contentious at that time, and became overwhelmingly the most contentious issue of the negotiations in 2018, with the UK insisting that the corollary of the plan would have to be no additional customs or regulatory checks between Northern Ireland and the rest of the United Kingdom.

The current "all UK" backstop is contained in a detailed Protocol of the Withdrawal Agreement. The UK and the EU have now agreed that the backstop will cover the whole of the UK, effectively keeping the UK in the EU customs union and maintaining regulatory alignment with the EU, in order to ensure that no additional regulatory checks are required between Northern Ireland and the Republic or between Northern Ireland and the rest of the UK.

A highly contentious question was how long this all-UK backstop would last. "As long as it takes to agree the future arrangement" has not been a satisfactory answer to many Conservative Brexiteers – or indeed, many Remainers - in Mrs May's government or parliamentary party. From their perspective, that could mean the UK being bound to the EU's trading rules for

"The United Kingdom remains committed to protecting North-South cooperation [on the island of Ireland] and to its guarantee of avoiding a hard border [between Northern Ireland and the Republic of Ireland]. Any future arrangements must be compatible with these overarching requirements... In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in future, support North-South cooperation, the all-island economy and the protection of the 1998 [Good Friday] Agreement..."

... In absence of agreed solutions, as set out in the previous paragraph, the United Kingdom will ensure that no new regulatory barriers develop between Northern Ireland and the rest of the United Kingdom..."

(Joint Report by EU and UK negotiators, 8 December 2017)

an indeterminate period of time, preventing the UK from having an independent trade policy and realising the claimed benefits of Brexit. The draft Withdrawal Agreement states that the provisions of the Protocol on Northern Ireland are intended to apply only temporarily, until superseded in whole or in part, by a subsequent agreement. The EU and the UK have agreed to use their best efforts to conclude such an agreement by 31 December 2020.

However, a mechanism has now been agreed whereby the all-UK backstop could be terminated by mutual agreement of the UK and EU within the Joint Committee (discussed below), if it is jointly decided that the Protocol, in whole or in part, is no longer necessary to achieve the objectives set out in Article 1(3) of the Protocol. This is set out in Article 20 of the Protocol on Northern Ireland.

The Northern Ireland backstop is considered to be a win for the UK government. The EU objective of ensuring that the backstop is "all weather", i.e. there is no time limit or unilateral UK right to terminate it within the terms of the Withdrawal Agreement has been maintained. However, this has not been without controversy. Dominic Raab's resignation letter of 15 November cited an "indefinite backstop arrangement, where the EU holds a veto over our ability to exit" as one of the reasons for Mr Raab's resignation.

The backstop contains a number of provisions to ensure a "level playing field" between the UK and the EU. It reflects the EU's concern that the UK should not be able to undercut the EU whilst being part of a single customs territory. There are "non regression" clauses on environmental protection and labour and social standards, and a commitment that the UK will apply EU state aid law in a number of circumstances. The UK also commits to apply "international principles of good governance in the area of taxation", including "fair taxation" generally and, more specifically, the OECD BEPS anti-avoidance rules, their implementation into EU law under the Anti-Tax Avoidance Directive, and automated international cross-border reporting of financial accounts.

The Joint Committee

Article 164 of the Withdrawal Agreement sets up a "Joint Committee" to deal with any issues relating to the implementation, application and interpretation of this Agreement. It is made up of representatives of the UK and the EU and will meet at least once a year. The Joint Committee shall adopt its decisions and make its recommendations by mutual consent. In the event that agreement on an issue cannot be reached within three months, the EU or the UK may request the establishment of an arbitration panel. Such request shall be made in writing to the other party and to the International Bureau of the Permanent Court of Arbitration.

The Political Declaration between the UK and the EU on the future relationship

The new relationship will take the shape of an international agreement, and the intentions in relation to that are sketched out in a seven-page outline accompanying the draft Withdrawal Agreement. The outline is high level and sufficiently widely drafted to allow for a very wide range of possible outcomes.

It was the UK's original intention that the future relationship should be fully negotiated, concluded and ratified to come into force on 30 March 2019, the day after Brexit day. It quickly became clear that this was not a realistic goal – not least because the EU refused to negotiate a detailed trade agreement whilst the UK remained a member state. The best on offer was a high level Political Declaration accompanying the Withdrawal Agreement and setting out an outline of what the UK and EU would seek to negotiate during the implementation period.

The UK's fall-back position has been that the Political Declaration should be as detailed and as binding as possible. The EU's position has been to say that the declaration is effectively a statement of intent, and subject to change and negotiation. It is the latter position that is reflected in the agreement between the UK and the EU.

This outline Political Declaration states that the UK and the EU will seek to negotiate a comprehensive free trade area "combining deep regulatory and customs cooperation, underpinned by provisions ensuring a level playing field for open and fair competition". This is likely to resemble a modern free trade agreement such as the Canada-EU Comprehensive Economic and Trade Agreement (CETA) or the EU-South Korea FTA.

For goods and customs, the declaration states that the UK and EU will have zero tariffs, no fees, charges or quantitative restrictions across all goods sectors and there will be "ambitious customs arrangements that build on the single customs territory provided for in the Withdrawal Agreement". This last statement is likely to be contentious because on one reading it implies that the UK wants to stay in a customs union with the EU. Of course, "build on" could mean that, or any number of other things.

The Joint Statement released alongside the Withdrawal Agreement and outline Political Declaration states that the balance of rights and obligations that will be compatible with the integrity of the Union's Single Market and Customs Union and the development of the UK's independent trade policy will be the subject of further future relationship negotiations. As set out in the provisions on the transitional period, the UK will be able to negotiate, sign and ratify trade agreements with third countries such as the USA, but will have to wait to bring them into force until the initial transition period, or all-UK backstop period comes to an end.

For services, the UK and EU will seek to negotiate "ambitious, comprehensive and balanced arrangements on trade in services and investment" that seek to go "well beyond the Parties' WTO commitments."

Financial Services

In the area of financial services, the outline Political Declaration sheds little further light on the impact of Brexit in this area compared to what the industry knew following the result of the referendum. It sets out three points as the framework for the future relationship between the EU and the UK on financial services: the UK and EU have gone down the route of regulatory independence and equivalence. Both the UK and EU have agreed to commence equivalence assessments as soon as possible after the UK leaves the EU, with the aim of concluding these assessments before the end of

"Financial Services

1. Commitments to preserving financial stability, market integrity, investor protection and fair competition, while respecting the Parties' regulatory and decision-making autonomy, and their ability to take equivalence decisions in their own interest. This is without prejudice to the Parties' ability to adopt or maintain any measure where necessary for prudential reasons.
2. Commencement of equivalence assessments by both Parties as soon as possible after the United Kingdom's withdrawal from the Union, endeavouring to conclude these assessments before the end of June 2020.
3. Close and structured cooperation on regulatory and supervisory matters, grounded in the economic partnership and based on the principles of regulatory autonomy, transparency and stability, recognising this is in the Parties' mutual interest."

(Outline Political Declaration, 14 November 2018)

June 2020. This falls short of the UK's original ambitions to establish a system of mutual recognition.

LINKS TO KEY DOCUMENTS

[Theresa May announcement of Cabinet approval](#)

[14 November Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#) (PDF, 1.37MB, 585 pages)

[14 November Outline Political Declaration on the Future Relationship](#) (PDF, 108KB, 7 pages)

[14 November Joint Statement](#)(PDF, 52.9KB, 2 pages)

[European Commission press release](#)

[Questions & Answers: Brexit Negotiations: What is in the Withdrawal Agreement](#)

[Questions & Answers: Protocol on Ireland and Northern Ireland](#)

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