

# Negotiating Brexit

Briefing paper



Robyn Munro

July 2016

## Our Brexit work programme

Following the UK's vote to leave the European Union (EU), the Institute for Government has launched a major programme of work looking at the negotiations, the UK's future relationship with the EU and the impact of Brexit on the UK as a Union.

Visit [www.instituteforgovernment.org.uk/brexit](http://www.instituteforgovernment.org.uk/brexit) to keep up to date with our Brexit blogs and briefs, read our media and broadcast coverage, and find out about our events.

# Introduction

There are two key sets of negotiations the UK must complete as part of its exit from the European Union:

- negotiating the withdrawal agreement – the ‘terms of the divorce’ from the EU
- negotiating the future UK–EU relationship.

This document focuses on these negotiations, setting out what is being negotiated, who will be involved and how long they will take.

These are not likely to be the only negotiations facing the UK. The UK will want to establish new relationships with non-EU countries and international bodies, including setting up deals with non-EU markets previously covered by EU trade agreements.

## What will be negotiated?

### What needs to be included in the withdrawal agreement?

The first set of negotiations will be around withdrawal from the EU. [Article 50](#) of the Lisbon Treaty. This states that once a member state has notified the European Council of its decision to leave the EU, the EU institutions and the departing member state will negotiate an agreement “setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union”.

A withdrawal agreement will cover immediate issues such as:

- the rights of EU citizens living in the UK and of UK citizens living in the EU
- the closure and re-location of EU agencies currently based in the UK
- access to EU agencies that play a role in UK domestic law, such as the European Medicines Agency
- how to allocate unspent funds due to be received by UK regions and farmers
- cross-border security arrangements
- transfer of regulatory responsibilities
- arrangements for contracts drawn up in accordance with EU law.

### What needs to be agreed on the future UK–EU relationship?

The negotiations on the UK’s future relationship with the EU will need to cover a wider range of areas. These will include: what degree of access to the single market the UK will have in terms of goods (e.g. agricultural and industrial goods), services (e.g. financial services) and people; requirements in terms of financial contributions; and adherence to EU laws; and influence over EU rules and regulations. There will inevitably be trade-offs between what the UK wants and what the EU is willing to accept: for example, balancing access to the single market with free movement of people. Our [table of future options](#) outlines the main existing models for relationships between third-party countries and the EU.

Negotiations will not just focus on future trade arrangements. As a member of the EU, the UK can participate in a number of programmes that offer financial benefits – such as the Horizon 2020 research fund and European Structural Funding. Further EU programmes offer other benefits, such as the security advantages that come from being part of the European Arrest Warrant and arrangements for intelligence-sharing. Continued participation in these programmes would be a matter for negotiation.

### What existing models might a new UK–EU trade relationship be based on?

A number of existing models have been put forward as potential options for the future UK–EU trade relationship:

- **Membership of the European Economic Area (EEA): the 'Norway model'**. This model offers almost complete access to the Single Market in goods and services, with some restrictions on agricultural and fisheries products. In return for this access EEA members must accept free movement of people. They also make a significant contribution to the EU budget and must accept all EU laws and regulations related to the Single Market, with minimal influence over their content.
- **Membership of the European Free Trade Agreement (EFTA) plus bilateral deals: the 'Swiss model'**. EFTA provides access to the Single Market in all non-agricultural goods. Switzerland has built on this with a series of bilateral agreements allowing for trade in some services. It also has a treaty accepting free movement of people. Switzerland contributes to the EU budget to cover the costs of programmes it participates in. It must adapt domestic legislation to meet EU laws in the areas of the Single Market that it participates in, and has no formal influence over those laws.
- **A bilateral free trade agreement, such as the Canadian or Singaporean models**. Both these bilateral agreements, when ratified, will offer almost complete access to the Single Market in goods, but less access to the market in services, with some sectors excluded. Neither agreement requires free movement of people. Exporters must comply with EU rules and regulations when exporting to the Single Market, and will have no influence over these rules and regulations.
- **Membership of the World Trade Organization (WTO)**. This would offer the most complete break with the EU. As a member of the WTO, Britain would be able to negotiate free trade agreements with other members, including the EU. In the period before these agreements were put in place, the UK would have to offer equal '[most favoured nation](#)' status and equal tariffs to all countries wishing to trade with it. UK exports to the EU would also face the EU's external tariff.

### Are the existing models the only options for the UK's future relationship with the EU?

No. It's possible that the UK will seek to secure a bespoke deal that combines different aspects of the models set out above. Some UK politicians have indicated that they would attempt to secure a high degree of access to the Single Market in goods and services, but maintain limits on free movement of people.

However, negotiations are a two-way street – the EU Council, European Parliament, and member states, will also have to agree to any future deal. European leaders [have said](#) that access to the Single Market "requires acceptance of all four freedoms" of the EU, including freedom of movement of people. Other member states will be keen to protect the rights of their citizens to live and work in the UK.

### What are different groups arguing for?

Various groups have already started to set out their position on what the final deal should cover. The Confederation of British Industry [has called](#) on the Government to "protect tariff and barrier-free access to the Single Market". At the other extreme, Leave campaigner Lord Lawson [has argued](#) that the UK should not negotiate access to the Single Market but should introduce a free trade policy. David Davis, the new Secretary of State for Exiting the European Union, [has written](#) that the Government's priority should be to agree new trade deals with large markets like China and the US, while seeking continued access to the EU Single Market but control over free movement of people. The devolved administrations have also begun to make their priorities clear: Scotland's First Minister Nicola Sturgeon [has stated](#) that her priority is to explore options to keep Scotland in the EU.

# Who will be involved in the negotiations?

## Who will be involved in negotiations on the withdrawal agreement?

On the UK side, both sets of negotiations will be led by the Prime Minister, working closely with the new Secretary of State for Exiting the European Union David Davis and Liam Fox, who will lead the Department for International Trade. Supporting the negotiations will be a challenge for the Civil Service, [requiring new capabilities and skills](#) in key areas such as trade negotiation.

On the EU side, four institutions will be involved in conducting the negotiations:

- the **European Council**, made up of the heads of the 28 member states. The role of the European Council is to define the EU's overall direction and priorities
- the **Council of the European Union**, made up of ministers from member states, which negotiates and adopts legislation and concludes international agreements
- the **European Commission**, effectively the EU's civil service, which develops EU policy, proposes laws and negotiates international agreements on behalf of the EU
- the **European Parliament**, comprising elected Members of the European Parliament (MEPs) from each member state, which scrutinises, amends and adopts legislation and international agreements.

Article 50 gives little detail about how the negotiations will be run, stating only that the European Council will agree 'guidelines' for the negotiations. There have already [been disagreements](#) between the Council of the European Union and the Commission on which institution should lead the formal negotiations. The Council [has appointed](#) a diplomat to lead its so-called 'Brexit taskforce', which is expected to be supported by Commission officials. In practice, the negotiations are likely to be more complex, with a series of informal bilateral discussions between member states and the UK running alongside the formal process.

## How will the withdrawal agreement be concluded?

As mentioned above, Article 50 states that the final withdrawal agreement shall be concluded by the Council of the European Union through a qualified majority vote, as well as by the European Parliament. Domestically, the [UK Parliament](#) will have a role in the UK's ratification of the withdrawal agreement, as well as amending or repealing the 1972 European Communities Act and other legislation which gives EU law effect in the UK.

## Who will be involved in negotiating the future UK–EU relationship?

The UK will use the same structures and people to negotiate both the exit agreement and the new UK–EU relationship. In practice, however, others will have to be [consulted and involved](#). The terms of the deal will affect all parts of the UK – the UK Government has indicated its intention to involve the devolved administrations in the negotiations. Local government will also have an interest.

Again, on the EU side, things may be more complicated. Article 50 does not set out any formal roles for the negotiation of the new UK–EU relationship. According to the EU treaties, accession talks between the Union and non-member states are led by the Commission – but the Council of the European Union may argue that the UK is a special case, and negotiations should be led by the Council instead. The 27 member states will play a crucial role in informal negotiations on the future UK–EU relationship.

### How will the new UK–EU relationship be agreed?

There are two stages to 'closing the deal' on the future UK–EU relationship – ratifying the final agreement and implementing the terms. The former involves EU institutions and member states; the latter is a domestic task for the UK.

#### *Ratifying the deal*

The deal must first be agreed by the Council of the European Union. According to the UK Government's [briefing](#) on the process for withdrawing from the EU, if the deal on the future relationship is a 'mixed agreement', meaning that it affects EU competences (e.g. on trade policy) and member state competence (e.g. on foreign policy), then it will require the unanimous support of Council members. The deal must also be approved by a simple majority vote of the European Parliament. It must then be ratified by all 27 member states.

The deal will need to be ratified by the UK Parliament. Depending on the nature of the final agreement, this may be a difficult task in itself.

#### *Implementing the deal*

Agreeing a deal with the EU institutions and member states is only the first step – the agreement must then be implemented by the UK Government. The nature of the task will depend on the deal agreed, but the scale of the challenge will be significant. A range of UK government departments will be affected, potentially having to develop new policies or regulatory regimes to replace those provided by the EU. Parliament will also be involved in implementing the deal. It will scrutinise and vote on new legislation to amend or replace EU laws.

## How long will the negotiations take?

### When will the withdrawal negotiations start?

The President of the EU Commission [has said](#) that negotiations of any kind will not begin until the UK Government triggers Article 50 and kick-starts the process of withdrawal. We don't know when Article 50 will be triggered – this is a decision for the new Prime Minister. Theresa May [has previously said](#) that she would not trigger Article 50 before the end of 2016. David Davis, Secretary of State for Exiting the European Union, has also said that he would delay triggering Article 50 until "before or by the beginning of next year".

The UK Government may seek [informal talks](#) with other member states and the EU institutions before beginning formal negotiations. Chancellor Philip Hammond has said that EU leaders have already shown themselves keen to engage in informal talks about the future UK–EU relationship.

### How long will the withdrawal agreement take to negotiate?

Article 50 sets a two-year deadline for a deal with the EU on the UK's withdrawal agreement. This deadline can be extended with the unanimous agreement of European Council members.

### What happens if we can't reach a deal within two years?

If no deal on the withdrawal agreement is reached within this two-year period, there are two options: the negotiating period can be extended by unanimous agreement of the European Council; or, the UK leaves the EU with no withdrawal agreement in place. The EU treaties would cease to apply to the UK, with no arrangement for how to manage the transition. This would create significant uncertainty for UK citizens living in the EU, for UK businesses trading with EU states, and for UK organisations reliant on EU funding. It might also contribute to uncertainty over the status of EU citizens living in the UK.

### When will the new UK–EU relationship negotiations start?

The EU's Trade Commissioner [has said](#) that formal negotiations on the UK's future relationship with the EU can only begin once the withdrawal process is complete. Under EU law, the European Union cannot negotiate a trade deal with a member state – the UK must leave the EU before such negotiations can begin. However, Article 50 seems to contradict this, as it states that the arrangements for a member state's withdrawal should "[take] account of the framework for its future relationship with the Union". This would suggest that some framework for the future UK–EU relationship would need to be in place before the UK leaves the EU, and that negotiations on that future relationship could start around the same time as negotiations on the withdrawal agreement. What happens if we can't reach a deal within two years? as follows: It might also contribute to uncertainty about the status of EU citizens living in the UK.

### How long will the future UK–EU relationship take to negotiate?

The two-year negotiation period only applies to the withdrawal agreement under Article 50. Negotiations on the future UK–EU relationship will vary in length, depending on what the goal is. It is not clear whether the EU will begin negotiations on the future UK–EU relationship before the withdrawal agreement is complete. If these negotiations do begin before the withdrawal process is complete they could continue after the two year period expires, whatever the outcome. However, once the Article 50 negotiations are completed and implemented, or the two-year time limit has been reached without an agreement, the UK will be negotiating as a non-EU member state.

### How long would a Norway-style agreement take to negotiate?

If the aim is to base the new UK–EU relationship on an existing arrangement, such as the 'Norway model', this could take less time than a bespoke deal, as the UK would not need to negotiate every aspect of its co-operation with the EU. The UK would simply accept the terms of the pre-existing EEA agreement. But joining an existing set of arrangements would still require some negotiation. To join the EEA, the UK would first have to become a member of EFTA, which would require the [unanimous approval of current EFTA members](#).

### How long would a bilateral free trade agreement (FTA) take to negotiate?

If the aim is to have a new FTA along the lines of Canada or Singapore, agreeing the terms of future trade and co-operation arrangements with the EU is likely to take several years. Canada's and Singapore's bilateral trade agreements each took seven years to negotiate, and they are still awaiting ratification. Negotiating a bilateral agreement between the UK and the EU may take less time, as the UK is already closely aligned to EU systems: for example, UK technical trading standards are at present already aligned with EU-wide standards. Even once a provisional deal is in place, this still needs to be ratified by the European Parliament and by each individual member state through their own ratification process, which may involve referenda or regional parliamentary approval. This will add to the timeline – Chancellor Philip Hammond [has said](#) that this ratification process alone could take at least four years to complete.

### Can the UK use World Trade Organization rules as a fallback option?

If the aim is to move straight to the WTO option, it would still take time to agree the UK's membership. Before it could begin trading on WTO rules, the UK would need to establish its new status within the organisation, requiring agreement from all WTO members. The WTO's Director General [has said](#) that agreeing the UK's position in the WTO "would likely take years".

### What about the UK's relationship with the rest of the world?

Leaving the EU will not only affect the UK's relationships with remaining member states, but also with the rest of the world. The UK will therefore need to enter talks with non-EU member states and key international institutions, such as the WTO and NATO.

These talks would need to cover three broad areas:

- Replacing existing free trade agreements that the UK had under EU membership, such as with South Korea, South Africa and Mexico.
- Negotiating new trade deals with countries not covered by EU agreements, such as China.
- Negotiating other obligations that the UK has signed up to as part of the EU, e.g. climate change agreements.

### When will negotiations between the UK and other non-EU member states begin?

Once the withdrawal agreement comes into effect, the UK will be free to begin formally negotiating other deals with non-EU member states, something which is not legally permitted as long as the UK remains a member of the EU. Informal discussions may take place beforehand. Other non-EU states may wish to delay making progress with trade negotiations until the UK has struck a deal with the EU on its future relationship, as the nature of that relationship is likely to affect the nature of the deal they would wish to make.

**The Institute for Government acts as a catalyst for better government.**

We are an independent charity, founded to help make government more effective.

- We carry out research, look into the big governance challenges of the day and find ways to help government improve, rethink and sometimes see things differently.
- We offer unique insights and advice from experienced people who know what it is like to be inside government both in the UK and overseas.
- We provide inspirational learning and development for senior policymakers.

We do this through seminars, workshops, talks or making connections that invigorate and provide fresh ideas.

We are well placed for senior members of all parties and the Civil Service to discuss the challenges of making government work, and to seek and exchange practical insights from the leading thinkers, practitioners, public servants, academics and opinion formers.

Copies of this briefing paper are available alongside the Institute's other Brexit-related material at:

[www.instituteforgovernment.org.uk/brexit](http://www.instituteforgovernment.org.uk/brexit)

July 2016

© Institute for Government 2016

2 Carlton Gardens

London

SW1Y 5AA

Tel: +44 (0) 20 7747 0400

Fax: +44 (0) 20 7766 0700

Email: [enquiries@instituteforgovernment.org.uk](mailto:enquiries@instituteforgovernment.org.uk)

Web: [www.instituteforgovernment.org.uk](http://www.instituteforgovernment.org.uk)

Twitter: [@instituteforgov](https://twitter.com/instituteforgov)

The Institute is a company limited by guarantee registered in England  
No. 6480524

Registered Charity No. 1123926