

Road to Brexit: Explaining the process toward a deal/no deal

As the Withdrawal Agreement is pending in Parliament, the effects of Brexit remain unclear.

Negotiation process

Article 50 TEU sets out three cumulative requirements for an orderly withdrawal from the EU: a unilateral notification of withdrawal; a withdrawal agreement (WA); and a framework for the EU-UK future relationship. The UK fulfilled the first requirement on 29 March 2017 when it formally notified the European Council of its intention to withdraw from the EU. The second and the third requirement, however, are not yet fulfilled. Even though the EU and the UK reached a draft WA on the negotiators' level on 14 November 2018, it remains to be seen whether this draft WA will be accepted by the House of Commons. On 14 November 2018 a draft political declaration on a future framework was concluded by the EU and the UK as well. This draft declaration was specified a couple of days later on 22 November 2018.

Withdrawal Agreement

The WA, the second requirement, is set to be an international treaty between the EU and the UK comprising good faith commitments, which are legally binding on both parties under international law. The final version must include a transition agreement and, in a separate political declaration, commitments to finalizing a treaty on the future relationship between the EU and the UK after Brexit day.

The EU and the UK started to negotiate the WA on 19 June 2017. During the first phase of negotiations, they discussed issues in relation to citizens' rights, financial settlement and the Ireland/Northern Ireland border. As a result of the first phase, they released the Draft Agreement on the withdrawal of the UK from the EU and European Atomic Energy Community on 28 February 2018, including a protocol on Ireland/Northern Ireland.

On 14 November 2018, the EU and the UK agreed on a 585 page-long draft WA on the negotiators' level. The draft WA covers the issues mentioned above as well as provisions to safeguard the circulation of goods already placed on the market on 29 March 2019. It does not contain any detailed provisions on financial services whatsoever.

Transition period

In Art. 126 of the WA, a transition period is stipulated. This period would run from Brexit day to 31 December 2020. During this time, EU law and jurisprudence would continue to apply to the UK as if it were an EU Member State; but being a third country, the UK would no longer participate in the EU institutions or have any voting rights. During the transition period, it is also envisaged that the UK will remain in the EU Single Market, the EU Customs Union and within the jurisdiction of the Court of the European Union. After the transition period, the UK would be free of all EU obligations and able to adopt its own trade deals with other countries. In addition, according to Art. 132 of the draft WA, this transition period might also be extended for at least one year—a provision that remained widely unnoticed.

Ratifying the WA

The EU can only adopt the WA, while considering the future framework declaration, if the Council of the EU



**31 Dec
2020**

End of Brexit
transition period

and the European Parliament give their consent. The Members of the European Parliament, including the MEPs from the UK, have to vote with a simple majority. Then, the WA has to pass the Council with a strong qualified majority, without the UK being allowed to vote (Article 238(3)b TEU). In principle, the WA does not require ratification by the remaining Member States.

On 25 November 2018, the European Council endorsed the draft WA. Thus, it is now the UK's turn to take further steps, namely approving the draft WA in the House of Commons on 11 December 2018. If the House of Commons accepts the draft WA, the European Council could agree formally on the then finalized WA at its 13 and 14 December 2018 meeting.

However, if the House of Commons blocks the ratification, an emergency session would need to be held. Consequently, there might be renegotiations at the European Council Meeting on 13 and 14 December 2018, followed by a second vote in the House of Commons on a renegotiated WA at the European Council Meeting.

In case no deal has been reached by the end of 21 January 2019, the UK Parliament will then discuss next steps, contingency measures or seek an extension to the Article 50 TEU process. If Parliament approves, the UK then has to pass



The EU and the UK must still negotiate a framework for their future relationship



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the Withdrawal Bill (see below for further detail) to implement the WA into domestic law. After the WA has been signed, it has to be presented before both Houses for a period of 21 sitting days, as required by the Constitutional Reform and Governance Act 2010, before it may be ratified.

By ratifying the treaty, the parties give their consent to be bound in accordance with international law. The ratified WA will enter into force on Brexit day, and the transition period will start.

Future framework

The EU and the UK are still negotiating the third withdrawal requirement: a framework for their future relationship. Although it merely constitutes a political act, the framework has to be agreed to alongside the WA to ensure an orderly withdrawal. Once the UK has left the EU, the parties will have to negotiate an actual treaty in accordance with the process used to reach agreements with third countries outlined in Article 218(3) TFEU. On 22 November 2018, the EU and the UK issued a specified political declaration setting out the future framework of the relationship between them. Their aim is to conclude a Free Trade Agreement that would liberalize trade in services well beyond WTO commitments and build on recent Free Trade Agreements of the EU, such as CETA. Regarding financial services, the political declaration outlines the parties' intent to establish an equivalence regime, which would, however, be framed by their regulatory and decision-making autonomy. As the UK rejects membership in the European Economic Area, such as Norway or Liechtenstein, it would thus be under a future framework agreement, a third country to the EU.

Further, the EU and the UK intend to assess each others' regulatory framework until June 2020 in order to prepare an equivalence regime taking effect in January 2021.

UK Brexit legislation

To prepare for post-Brexit, the UK Parliament passed

the EU (Withdrawal) Act 2018 on 26 June 2018. The Act repeals the 1972 European Communities Act (ECA), but is without prejudice to the outcome of the negotiations. On 29 March 2019, the Act will convert all EU law in force at that date and applicable to the UK into a new domestic legal category called "retained EU law". This category preserves the rights in EU treaties on which individuals can directly rely in court, as well as all laws made in the UK to implement EU obligations. Ultimately, from the UK perspective, this process "freezes" EU law in time. To circumvent the likely disadvantages caused by applying a static body of EU law, the UK authorities will assume the competencies of the EU institutions, and after 29 March 2019 ministers will be able to amend or remove retained EU law where necessary.

If a WA is reached, the UK will need to delay the Act's key effects to ensure the continued application of EU law during the transition period. To that extent, it is envisaged that the UK Parliament would pass the transitional EU (Withdrawal Agreement and Implementation) Bill before ratification of the WA. The Bill would delay Union law from turning into "retained EU law" and preserve the necessary parts of the ECA during the transition period. It would also implement the WA into UK law and prolong the period for the UK to apply correcting powers to EU legislation until 31 December 2022 to ensure a coherent and functioning UK statute book. The Bill would sunset at the end of the transition period, giving the Act full effect.

Brexit

Whether or not there will be a deal, 29 March 2019 11 p.m. GMT is the point of no return; from that moment onward, the UK will no longer be an EU Member State.

As matters currently stand, if the UK and the EU have not ratified the WA by that date, the UK on the one hand and the EU Member States on the other will immediately become third countries with respect to each other.



By now 100% of the Withdrawal Agreement has been negotiated—now pending parliamentary approval



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