

Brexit briefing





Introduction

As the Chartered body for the project profession, we are only too aware that the skills of project managers will be increasingly prized to help transform both the public and private sector to a post-Brexit world. Brexit represents a major challenge to central government, to other public bodies, and to most companies and organisations – the planning for which is made trickier by the fact that considerable negotiations are still to be completed. It is therefore imperative that flexibility is built in to decision making. Project management is all about adapting to change, so as a profession we are well placed to help anticipate the risks and to make the most of emerging opportunities.

This briefing – written just after the conclusion of the December 2017 European council summit – provides an update from the UK parliament and from Brussels, in addition to outlining possible outcomes as the UK seeks to negotiate its new relationship with the EU post-Brexit.

Brexit and the UK parliament:

“The bill will repeal the European Communities Act 1972, which took Britain into the EU and gave precedence to European law over legislation passed in the UK parliament.”

The *repeal bill* or the *European Union (withdrawal) bill* is the key legislative mechanism by which the United Kingdom can exit the EU on 29 March 2019 and ensure that European law no longer applies to the UK. The bill will repeal the European Communities Act 1972, which took Britain into the EU and gave precedence to European law over legislation passed in the UK parliament.

Receiving its second reading in the House of Commons in early September, progress of the bill to committee stage (committee of the whole House) was delayed as **378** amendments and **75** new clauses were proposed by MPs. The leader of the House of Commons, Andrea Leadsom conceded that the government was trying to defuse the potential rebellions on at least a dozen of these key amendments.

Key issues surrounding the bill:

- Among amendments tabled were those calling for a guarantee that MPs would be granted a vote on an act of parliament to endorse the final Brexit deal. The government had promised a vote, which it said could be a simple yes-or-no motion.
- MPs sought guarantees that devolved powers returned to the UK from the EU would be passed on to Edinburgh, Cardiff and Belfast.
- Concern surrounded 'Henry VIII' clauses in the bill that would allow ministers to make substantive legislative changes regarding Brexit with minimal parliamentary scrutiny.
- One important amendment related to the incorporation of the EU charter of fundamental rights and the EU's general legal principles into domestic law after Brexit.
- The amendment paper was 191 pages long at the start of the committee stage – with the bill itself 61 pages in length.

At the time of writing, only one amendment – out of 378 amendments tabled – has been successful. This amendment, tabled by the former attorney general Dominic Grieve, requires any Brexit deal to be approved by a separate Act of Parliament before it can be implemented. Mr Grieve, along with 10 other MPs defying a three line whip handed the government a defeat of 309 votes to 305. The successful amendment, amendment seven, seeks to change Clause 9 of the bill, which would give ministers sweeping “Henry VIII” powers to implement the Withdrawal Agreement without a parliamentary vote.

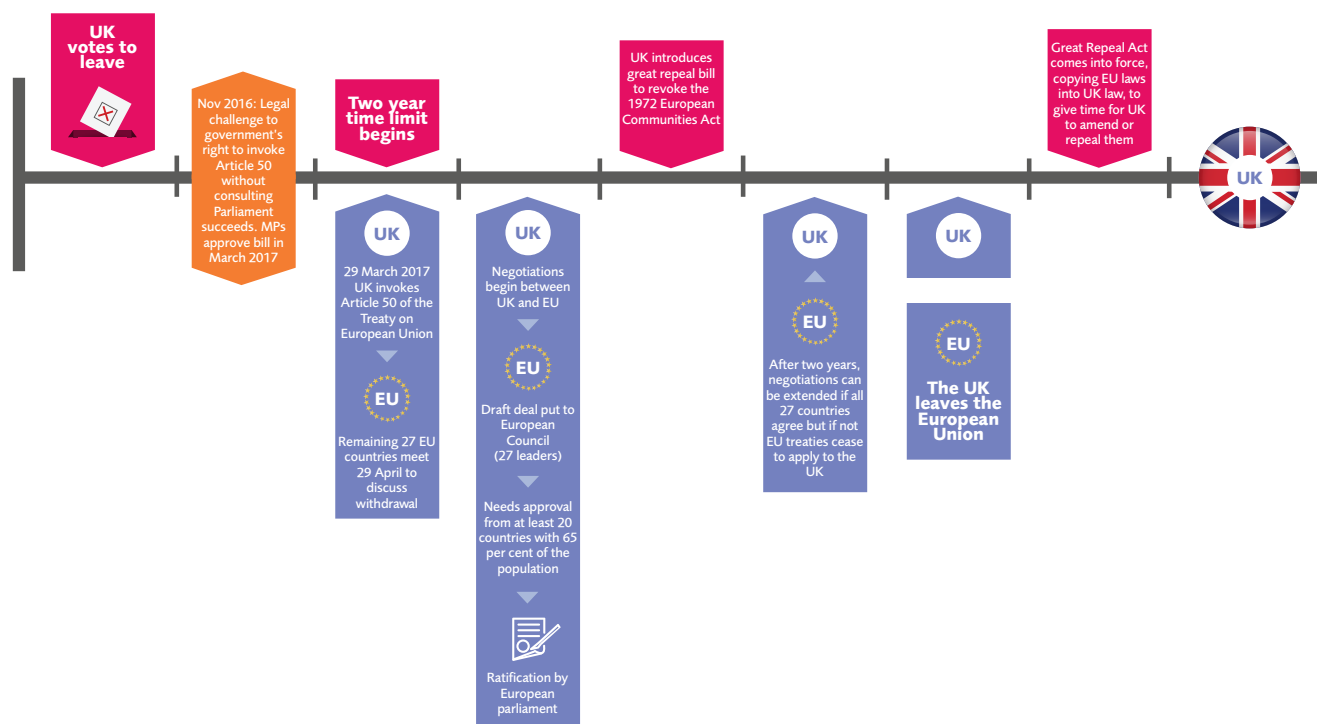
It is important to note however, that amendment seven only enables parliament to have its “meaningful vote” and approve the final terms of withdrawal if a government minister intends to issue orders under Clause 9 in the first place. Furthermore, in the event of a “no deal” scenario, this amendment would not secure parliament’s position.

Across parliament, there are around **20** ongoing inquiries relating to Brexit [for a full list see annex]. These range from the Business, Energy and Industrial Strategy (BEIS) committee inquiry into the effects of leaving the EU on British business – composed of five sub-inquiries, exploring the impact of Brexit upon the aerospace, automotive, civil nuclear, pharmaceutical, and processed food and drink industries – to the treasury select committee inquiry considering transitional arrangements, preparedness for 'no deal', and the long-term economic relationship between UK-EU.

The secretary of state for exiting the European Union, David Davis, had come under increasing pressure to publish studies which he claimed had been undertaken by the Department for Exiting the European Union (DExEU) into the impact of Brexit on 58 sectors. Mr Davis was subsequently forced to admit that no such sectoral assessments had been undertaken.

In the autumn budget 2017, chancellor of the exchequer Philip Hammond confirmed that the government will put aside an additional £3bn for Brexit and is willing to spend more money if necessary.

Steps to UK leaving the European Union



Source: BBC News

Figure 1

“The second phase of negotiations, agreeing the future relationship between the UK and EU, is a complex task – made all the more difficult by the time frame in which agreement will have to be reached. The potential outcomes range from ‘no-deal’ to remaining in the single market.”



Brexit negotiations:

With the UK formally notifying the European council of its decision to leave the EU on **29 March 2017** – triggering Article 50 of the Lisbon Treaty – the count down to the UK's exit from the European Union on **29 March 2019**, is well underway.

There are two phases of negotiations that must be completed:

1. negotiations on the '*terms of the divorce*' from the EU (withdrawal)
2. negotiations on the *future relationship* between the UK and EU

In order to allow time for the European parliament to ratify any deal, these negotiations must be completed by **October 2018**.

For the EU, the sequencing of these two phases was clear from the outset: first would be the *terms of divorce* and only then would come negotiations on the new, post-Brexit UK-EU relationship. Prior to the opening round of negotiations between the UK and EU, at an EU-27 summit on April 29, a nine page document was adopted, stating that "sufficient progress" must be made in talks on withdrawal terms before EU leaders are willing to open talks about the *future relationship* between the UK and EU.

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With the conclusion of the fifth round of negotiations in October, lead EU Brexit negotiator Michel Barnier stated his belief that "sufficient progress" had not been made on the key issues sitting within the *terms of divorce* negotiations, namely on the *rights of EU nationals* living in the UK, on the *Brexit 'divorce bill'*, and on the *Northern Irish border*. As such, Monsieur Barnier said that he could not therefore recommend that the European council provide him with the mandate to move to *phase two* of negotiations on the future relationship of the EU and the UK.

The sixth round of negotiations in December led to the publication of a joint [EU-UK statement](#) as an agreement in principle was reached on the first phase of negotiations, including on the financial settlement, which the UK Government estimates will cost around £35–39bn.

Perhaps the most noteworthy paragraph within the joint statement is paragraph 5 which states that "Under the caveat that **nothing is agreed until everything is agreed**, the joint commitments set out below in this joint report shall be reflected in the Withdrawal Agreement in full detail. This does not prejudice any adaptations that might be appropriate in case transitional arrangements were to be agreed in the second phase of the negotiations, and is without prejudice to discussions on the framework of the future relationship" (emphasis added). In short, this means that what has been agreed thus far can be superseded by future agreement and that a no-deal scenario can still occur should full agreement not be reached.

Following the EU council summit on 14–15 December, it has been agreed that given sufficient progress had now been made, negotiations could move on to transitional arrangements and the future EU-UK relationship.



The future relationship between the UK and the EU – possible outcomes:

There had been strong pressure for agreement to be reached at the EU council summit in December on commencement of phase two of negotiations if a deal is to be ratified by the European parliament by the 29 March 2019. The second phase of negotiations, agreeing the future relationship between the UK and EU, is a complex task – made all the more difficult by the timeframe in which agreement will have to be reached. The potential outcomes range from 'no-deal' to remaining in the single market.

The following options illustrate possible outcomes but are not exhaustive. They are based upon analysis from the *Financial Times*, from government departments, and from organisations such as the Institute for Government and the Confederation of British Industry (and are not written from a preferred point of view of outcome).

1. Exit without a deal:

Exiting the EU without a deal is the *default scenario* if there is no divorce agreement. When the countdown to **29 March 2019** ends, in the absence of an agreement with the EU, the UK would no longer be bound by the EU treaties and there would be *nothing* to replace the thousands of international agreements that stem from them. Named the 'contingency option' by the Treasury, this option represents the *most* extreme change in the shortest period of time.

Tactically, for the purpose of negotiations, the prime minister has refused to rule out the possibility of walking away without a deal – but as the CBI has suggested, it is vital for British business to avoid a regulatory 'cliff-edge'.

Implications:

- This outcome would result in uncertainty as EU citizens in the UK and British citizens in the EU would be at the mercy of the governments under whose jurisdiction they reside. Formal freedom of movement ends.
- Resorting to World Trade Organisation (WTO) rules as the basis of trade with the EU would result in both tariff and non-tariff barriers with the UK facing tariffs on 90 per cent of its EU goods exports (by value) and the average tariff on UK goods exports to the EU around 4 per cent. Tariffs in the automotive sector would be up to 10 per cent, 22 per cent on agricultural products, and up to 59 per cent on specific items such as beef.
- With the services industries unable to rely on WTO rules, failure to secure agreements covering access to the single market in services could be potentially catastrophic. Companies in financial services, airlines, and a range of professional and business services would be unable to export specific types of services to the EU.
- There would be disruption at ports and airports owing to 'at the border measures' –covering customs procedures and quotas that include paperwork requirements to determine the appropriate level of duties to be applied (rules of origin, processing history and food traceability).
- A no-deal outcome would necessitate thousands of new staff and major changes to over 30 government departments – in addition to the infrastructure and technology necessary to establish (and resource) a hard border between Northern Ireland and the Republic. The new system would need to be fully operational from day one.
- As per the government's *Trade White Paper*, new public bodies and regulatory agencies would have to be established, such as a new *trade remedies* organisation.
- Upwards of 40 free trade agreements that we are currently signatories of through our membership of the EU would need to be replicated.

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2. Divorce-only agreement:

Under this outcome, an Article 50 deal would be struck on the UK's departure from the EU but would leave the *future relationship* to be negotiated from the outside – with WTO rules the default basis for trade.

Implications:

- The implications of this option are as per the 'no-deal' scenario with the UK losing its current preferential trade terms with non-EU countries, since they were negotiated by the EU as a bloc.
- The freedom to set the UK's rules would encourage Britain to become an offshore tax haven like the Bahamas or the Cayman Islands.

3. Limited tariff-free deal:

Britain would strike a limited free-trade agreement with the EU under this scenario, to maintain tariff-free trade in goods. The UK would be free to agree deals with *other* countries, but crucially there would be no guaranteed access to the EU market for the services sector.

Implications:

- With the service sector accounting for 80 per cent of the UK economy, exclusion of the service sector from a limited tariff-free deal on goods could have an enormous impact upon the UK which ran an £88bn trade surplus in services in 2016.
- Customs checks would add friction to trade with the EU and companies with complex supply chains may further exacerbate the pressure on already overburdened customs posts.
- Companies could have to duplicate their production lines to produce some goods that comply with UK regulations and others that comply with EU regulations, where different
- Compared to the option of relying on WTO rules as the basis of trade, given that UK ran a goods trade deficit of £95bn with the EU in 2016, EU manufacturers who could sell to the UK without facing tariffs would be the main beneficiaries of this option.
- Financial services would lose 'passports', which confer the right to sell banking, insurance and other financial services across the EU.

4. A far-ranging trade deal:

Under this scenario, the UK would sign a comprehensive trade deal with the EU covering most aspects of trade with the bloc. The more comprehensive the deal however, the more limitations on sovereignty the UK would have to accept as a quid-pro-quo. In practice, this would take many years to agree and to implement – EU negotiators insist that a trade deal with the UK cannot be agreed whilst the UK is still a member of the bloc.

Implications:

- This outcome necessitates maintaining substantial payments to Brussels and, perhaps unavoidably, continued EU influence over British law.
- The UK would not have a direct say in EU law and regulations but would however, be free to look for trade deals outside the EU.
- The service sector would benefit from a deeper free-trade agreement than it would under a deal covering goods only.
- Given what is at stake, British negotiators argue that it will be easier to include the financial sector in such an accord given that it is currently fully compliant with EU rules. Ensuring regulations are equivalent and accepting EU regulatory oversight of financial services in London might enable some financial services to continue to sell to the EU from London

- Other parts of the services sector would also benefit from more relaxed rules on movement of labour, even if these were more restrictive than *current* free movement rules. Some financial services could continue to sell to the EU from London.
- In many areas, the UK would become an EU rule taker under this option.
- Manufacturers would still have to cope with lengthy customs processes.
- Rules ensuring a level playing field with other European companies could disappoint British companies hoping to benefit from UK public contracts and state-aid/subsidies.
- Trade lawyers and European officials warn that even if the EU wants to grant the UK a bespoke deal that 'preserves unfettered access for goods and services', it cannot do so *without* granting parallel concessions to Canada, South Korea, and other countries that have free trade agreements.

5. Customs union:

If the EU27 were to agree to *keep* the UK in customs arrangements, it would most likely, also seek to avoid being undercut by obtaining assurances that British tax and regulations would remain similar to its own rules. Whilst this is an option hypothetically, in practice, the British government has ruled out remaining in the customs union – saying also that *current* customs border arrangements must remain in place during an 'implementation period' post-2019.

Implications:

- External goods tariffs and goods trade deals would be run by the EU under this option.
- A customs-only agreement would in reality preserve many aspects of Britain's current trading relationship with the EU, but while party to such an arrangement, the UK would not be able to strike tariff reduction agreements in goods trade with countries such as the US and China.
- This option would minimise friction at the UK-EU border although goods that are sensitive and do not necessarily conform to EU regulations would still face enhanced customs checks resulting in delays at the border.
- Britain would be able to negotiate its own deals for services, and agriculture, and set many domestic regulations as the service sector would not benefit from a customs union-only deal.
- British companies would benefit from EU trade deals currently under negotiation.
- But the customs union could be appended to other forms of Brexit including a special free-trade agreement which sought to maintain liberalised trade in these areas.

6. Single market:

This scenario represents the *least disruptive* Brexit. With Britain remaining in the single market by retaining membership of the European Economic Area (EEA), either with or without a customs union agreement, this outcome would ensure continued *regulatory harmony* with the EU in addition to tariff-free trade. This option would maintain most of Britain's economic ties with the EU, but crucially, the UK wouldn't gain much additional control over its economic affairs beyond what it currently has as a member of the EU.

Implications:

- If the agreement includes *customs and agriculture*, on the trade side this option would be equivalent to continued membership of the EU.
- Using 'passports', the City would be able to continue selling financial services to the EU.
- This option guarantees that any goods and (many) services placed on the market in the UK could be sold in any EU state.

- Freedom of movement of labour is a requirement of this option and therefore beneficial for employers of EU labour – including construction companies, food manufacturers, and other large companies.
- The European Court of Justice (ECJ) would maintain a role in interpreting law that applies in the UK.
- Britain would have to accept EU regulations without a 'seat at the table' to influence them.
- If this option is not coupled with a customs agreement, domestic exporters would have to complete additional and burdensome customs forms.

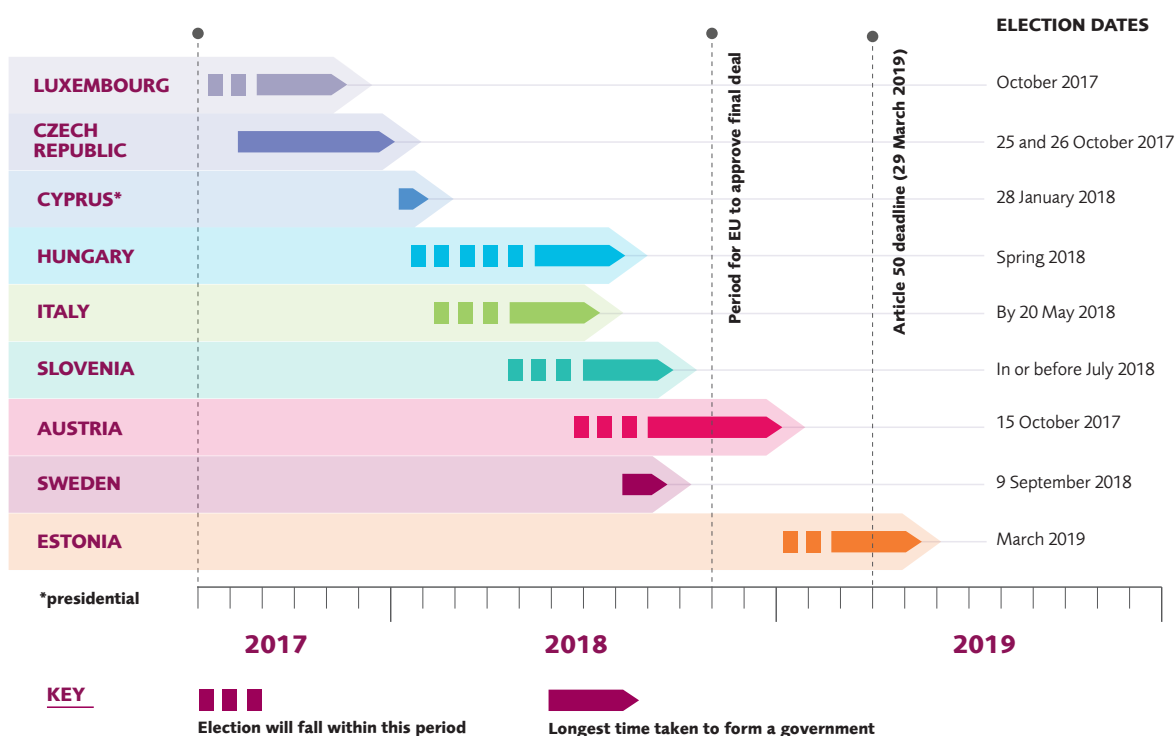
EU27 election dates before Brexit:

| | |
|----------------|--------------------------|
| Malta | 3 June 2017 |
| United Kingdom | 8 June 2017 |
| France | 11 June and 18 June 2017 |
| Germany | 24 September 2017 |
| Austria | 15 October 2017 |
| Luxembourg | October 2017 |
| Czech Republic | 25 and 26 October 2017 |
| Hungary | Spring 2018 |
| Italy | By 20 May 2018 |
| Slovenia | In or before July 2018 |
| Sweden | 9 September 2018 |
| Estonia | March 2019 |

Transition period:

The relationship between the UK and the EU has as its foundation over 40 years of economic integration. It is likely that concluding the most ambitious free trade agreement ever signed will not happen in time to be ratified by the European parliament by the deadline of October 2018. Under Article 50, an exit deal requires a *qualified* majority (72 per cent of member states) from the European council in order to pass, after obtaining the consent of the European parliament. A comprehensive new partnership deal (or 'mixed agreement') requires unanimous assent in the council and ratification by national or subnational parliaments. Any change of government or head of state would therefore potentially increase uncertainty surrounding the likelihood of a deal being ratified. Excluding the elections that have already happened, there are five elections (six including the Cypriot presidential election - timetabled for January 2018) scheduled across the 27 member states during the remainder of the two year Article 50 negotiation period. Although some nations have fixed dates for elections, others permit a degree of flexibility for the incumbent government over dates. The composition of the European council is therefore likely to change.

EU27 elections in the run up to Brexit



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The broad consensus of businesses and governments alike is that resorting to WTO rules as the basis of trade between the UK and EU – and the tariff/non-tariff barriers that this would entail – is far from a desirable outcome. Transitional arrangements will therefore be required – as far as possible, such transitional arrangements must maintain as much of the *current* economic relationship between the UK and the EU. Agreeing that the UK should remain in the single market *and* a customs union until a new deal is in force may be the most effective way of achieving this smooth transition with businesses afforded continuity and ease of trade is maintained.

Whilst it is clear that transitional arrangements are mutually beneficial, the *exact nature* and *duration* of such transitional arrangements are not so clear. Senior EU figures have notionally mentioned a transition period of only 21 months – as this would be up to the date that the UK leaves the EU bloc's legal structures. In her speech in Florence the prime minister formally requested what she had described as an implementation period of 'about two years' to cushion Britain's exit, and the Irish government has publicly called for a longer period – of up to five years.

Crucially, no decisions have yet been made – and the EU27 are yet to formally discuss the terms of a transition period, although the European council summit in October opened the door to 'internal preparatory discussions' on transitional arrangements. Beyond transitional arrangements, there are still a great many issues for consideration for both the EU27 and for the UK in light of Brexit. Among additional considerations for the UK government are: UK foreign policy post-Brexit; dispute resolution post-Brexit (see annexe); the interaction between Brexit, devolution, and common frameworks. *Implementation* of the outcome will almost certainly result in businesses and government departments alike having to reassess their recruitment plans and processes. It has already been confirmed that the government has taken on an extra 3,000 civil servants to cope with the demands of leaving the European Union, and expects to employ up to 5,000 more next year (including approximately 350 project managers specifically).

The importance of project management – whatever the outcome:

Whatever the outcome, a huge number of experienced project professionals with the right skills and flexibility will be needed as the process ebbs and flows. Equally, it will require risk management and planning skills that reflect the need to constantly adjust plans and processes to non-Brexit activity as these are impacted by changes as the process evolves.

Project professionals will know all too well that three of the crucial conditions necessary for project success are: competent project teams; effective governance; and clear goals and objectives. Unfortunately, these conditions are all challenging for 'Project Brexit'. Arguably the last is the most important – and while the key players may have clear goals in mind, they are necessarily restricted in communication as long as they are part of the negotiation process. As well as the delivery of Brexit as a project or portfolio of projects, the project management community must also pay attention to how Brexit will impact upon individual jobs, businesses and future career prospects. Many commentators believe that it is inevitable that project and programme management skills will be in high demand whatever happens.

Brexit will represent a seismic change in how most UK businesses will operate, how they are structured, how they trade with Europe and what legislation they must comply with. Such a change will require very robust but flexible planning and every organisation will need to be ready and capable of managing difficult and possibly complex change processes. Highly qualified project professionals will be an essential resource across the civil service and private sector over the next few years as the UK attempts to make Brexit succeed. Given the likely increase in demand, APM's new Chartered status could not be more timely for project managers looking to show their expertise and raise their profile in this new environment.

The information provided above is correct as at the beginning of December 2017 but should be read in the context of a continually changing narrative. The potential outcomes are illustrative and are based upon analysis from the financial times, from government departments, and from organisations such as the Institute for Government and the Confederation of British Industry. They do not constitute an APM point of view on any particular option.



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Annexe:

Full list of parliamentary inquiries (as at December 2017):

Aviation and Brexit

- The Transport Committee is undertaking an inquiry into transitional deal for flying rights before Brexit deadline.

Brexit – medicines, medical devices and substances of human origin

- The Health Committee is undertaking an inquiry into post-Brexit arrangements to guarantee the supply of medicines, devices, and products

Brexit and Local Government

- The Communities and Local Government Committee is undertaking an inquiry into Brexit and Local Government

Brexit and the future of Customs

- The Public Accounts Committee is undertaking an inquiry into the new Customs Declaration Service

Brexit and the implications for UK business

- The Business, Energy and Industrial Strategy Committee is undertaking an inquiry into the effects of leaving the EU on British business – composed of five sub-inquiries exploring the impact on the aerospace, automotive, civil nuclear, pharmaceutical, and processed food and drink industries

Brexit: Agriculture, Trade and the repatriation of powers

- The Welsh Affairs Committee is undertaking an inquiry into *Brexit: Agriculture, Trade and the repatriation of powers*

Brexit: Trade in food

- The Environment Food and Rural Affairs Committee is undertaking an inquiry examining how a potential trade deal could affect farmers, food processors and consumers

Devolution and Exiting the EU

- The Public Administration and Constitutional Affairs Committee is undertaking an inquiry into the internal constitutional arrangements of the UK after leaving the EU.

European Union (Withdrawal) Bill: Implications for devolution

- The Scottish Affairs Committee has a one-off session on the European Union (Withdrawal) Bill

Exiting the European Union: scrutiny of delegated legislation

- The Procedure Committee is undertaking an inquiry into the provisions being made for scrutiny of delegated legislation in the EU (Withdrawal) Bill

Home Office delivery of Brexit: immigration

- The Home Affairs Committee is undertaking an inquiry into Home Office delivery of Brexit pertaining to immigration

The European Union (Withdrawal) Bill

- The bill committee inquiry aims to help inform Parliament's consideration of the European Union (Withdrawal) Bill 2017-2019

The future of Britain's diplomatic relationship with Europe

- The Foreign Affairs Committee inquiry relates to the future of UK diplomacy towards the EU and its Member States

Annexe continued:

Full list of parliamentary inquiries continued:

The future of chemicals regulation at the EU referendum

- The Environmental Audit Committee is seeking views on the Government's response to the former Committee's report on *The Future of Chemicals Regulation after the EU Referendum* and the section on chemicals in the Delegated Powers Memorandum

The land border between Northern Ireland and Ireland

- The Northern Ireland Affairs Committee is undertaking an inquiry into the impact of Brexit on Northern Ireland

The progress of the UK's negotiations on EU withdrawal

- The Exiting the EU Committee is undertaking an inquiry into the Brexit process

The UK's economic relationship with the European Union

- The Treasury Select Committee is undertaking an inquiry considering transitional arrangements, preparedness for 'no deal', and the long-term economic relationship between the UK-EU

Options for dispute resolution:

European Court of Justice



The EU's own court interprets the withdrawal deal for both sides.

- ✓ Easily negotiable
- ✗ ECJ would not be neutral in disputes between UK and EU member states
- ✗ Crosses the Prime Minister's red lines on ECJ jurisdiction

EFTA Court



The EFTA Court with UK judges added interprets the withdrawal deal for UK. The ECJ interprets it for EU.

- ✓ Could resolve citizens' rights issue
- ✓ EU already accepts the EFTA court
- ✓ EFTA court interferes less in domestic law than the ECJ
- ✗ EFTA Court's close relationship with the ECJ may cross the Prime Minister's red lines

New EFTA-style court



A new UK-only court, modelled on EFTA, interprets the withdrawal deal for the UK. The ECJ interprets it for the EU.

- ✓ Allows the UK to 'take back control'
- ✓ Unlikely to threaten EU legal autonomy
- ✗ Brussels unlikely to accept UK 'marking its own homework'
- ✗ Disruptive to UK courts system – UK Supreme Court no longer highest in the land

New joint court



A court with UK and EU judges interprets the withdrawal deal for both sides.

- ✓ Would put the UK and EU on equal footing
- ✗ ECJ has rejected a similar proposal for a joint EU-EFTA court in the past

Joint committees



Committees of diplomats and ministers resolve disputes.

- ✓ Would not cross the Prime Minister's red lines
- ✗ EU highly unlikely to accept as it is dissatisfied with the function of this system in Switzerland
- ✗ Bad for legal certainty, because disagreements can linger for years

Arbitration



A new panel of arbitrators is convened to resolve each dispute.

- ✓ Could work for UK-EU future partnership and parts of the withdrawal deal not related to EU law
- ✗ ECJ likely to reject arbitration for parts of the deal related to EU law
- ✗ High cost if caseload is big
- ✗ Less transparent and consistent than a court, so worse for legal certainty



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