



THE UNITED KINGDOM'S DEPARTURE FROM THE EU: THE LATEST DEVELOPMENTS

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This is the first in a regular series of updates produced by SPICe setting out developments in the UK's negotiations to leave the European Union which are expected to formally begin early in 2017.

Ahead of the UK Government's triggering of Article 50, the updates will provide information on the UK Government's approach to leaving the EU, along with details of the Scottish Government and the other Devolved Administrations positions. The updates will also provide information on developments within the EU with regard to the UK's departure. Finally the update 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.

As was clear during the referendum campaign and since the decision to leave the EU was taken, there is an abundance of information and analysis available, and this SPICe paper will try to cover the key issues by drawing on that information and analysis. This first update outlines developments over the summer.

The EU names its negotiating team

Michel Barnier, a former French government minister has been named as the European Commission's lead negotiator for the discussions about the UK leaving the EU. Barnier, a former European Commission vice president, will lead the institution's Taskforce for the Preparation and Conduct of the Negotiations with the U.K. after Article 50 is triggered. More on this and the likely British reaction is available in the attached [Politico piece](#).

Meanwhile, the European Council has appointed Belgian career diplomat Didier Seeuws to lead the Council's 27 Member States (for the purposes of negotiating the UK's departure from the EU, the UK Government is not represented in the European Council). Didier Seeuws' job is to lead the Council's working group over the UK's departure from the EU.

On 8 September, the European Parliament [announced](#) that Guy Verhofstadt of the Alliance of Liberals and Democrats for Europe had been appointed as "European Parliament point man for Brexit negotiations". According to the European Parliament press release:

"Guy Verhofstadt will keep the Conference of Presidents (comprising the EP President and group leaders) fully informed of developments and will help prepare the EP position in the negotiations, in close consultation with the Conference of Presidents.

The European Parliament will need to approve a possible agreement on the conditions for the UK's departure from the EU.

Once article 50 of the EU Treaty has been triggered by the UK authorities and the European Council has adopted the negotiation guidelines, Mr Verhofstadt will also

work closely with the Chair of the Constitutional Affairs committee, Danuta Hübner (EPP, PL), and other committees wherever necessary to shape the EP's negotiating position."

Which Institution will lead the negotiations for the EU?

Article 50 does not say who the EU's lead negotiator should be and reports have suggested that there is a disagreement between Member State Governments in the European Council and the European Commission about who should take the lead. An [article in Politico](#) outlines the arguments of both institutions

"The Council's legal position, according to the Commission's own legal service, is that the U.K. would be a member of the EU at the time of the divorce talks, not a "third state" that would usually be dealt with by the Commission, as for example in talks on joining the union. By that logic, as the Council groups together member states, the Council is the appropriate setting for these negotiations. "To the contrary," the Commission legal service memo said, Article 50 "treats the withdrawing Member State as if it were already a third State: that State shall not participate in the Council's discussions and decisions on the negotiations."

What needs to be agreed?

Following the referendum, Charles Grant writing for the Centre for European Reform published a paper looking at the [six different agreements](#) the UK Government will need to negotiate with the EU. In the paper, Charles Grant argues the negotiations will be complicated:

"The Brexit negotiations will take much longer and be far more complicated than many British politicians realise. One set of talks will cover Britain's legal separation from the EU, the second a free trade agreement (FTA) with the EU, the third interim cover for the UK between its departure from the EU and the entry into force of the FTA, the fourth accession to full membership of the WTO, the fifth new FTAs to replace those that currently link the EU and 53 other countries, and the sixth co-operation on foreign, defence and security policies."

The UK in a Changing Europe has written a briefing suggesting how the UK can leave the EU "[without causing chaos](#)". This proposes the adoption of transitional arrangements (to last up to six years) between the EU and the UK. According to author Anand Menon:

"This would allow time for post-exit commercial, financial and political relations to bed in, and, more importantly, a chance for Parliament and Whitehall to ascertain what the different parts of UK society want in fields currently governed by the EU. Obviously, negotiations on a longer term arrangement will continue, but, in the interim, the pressure will be off, tempers can cool, and markets be reassured by transitional arrangements."

In a paper for Open Europe, the Chairman of the House of Commons Treasury Select Committee, Andrew Tyrie has outlined some of the choices available to the UK Government to [give meaning to Brexit](#). His paper dismissed the idea of relying on World Trade Organisation rules and suggested the UK should seek a unique agreement for Single Market access to protect existing trade including financial services.

The UK Government's Plans

The UK Government held a Cabinet meeting on 31 August at which leaving the EU was discussed. According to the BBC's political correspondent [Glenn Campbell](#) who tweeted during the day:

There was a strong emphasis on pushing ahead to Article 50 to lead Britain successfully out of the European Union - with no need for a parliamentary vote.

Furthermore, several cabinet members made it clear that we are leaving the EU but not leaving Europe, with a decisive view that the model we are seeking is one unique to the United Kingdom and not an off the shelf solution. This must mean controls on the numbers of people who come to Britain from Europe but also a positive outcome for those who wish to trade goods and services.

On the agenda and discussed at length was the commitment to the Devolved Nations to make sure that Brexit works for all - but Cabinet members were clear that it is the United Kingdom's Government's decision to establish its terms and on when to trigger Article 50.'

The UK Government's EU negotiating team

The new UK Prime Minister Theresa May's cabinet includes a Minister responsible for Exiting the EU – [David Davis](#) and a Minister responsible for International Trade – [Liam Fox](#). The Prime Minister will be responsible for leading the UK negotiations.

Following the referendum, but before his appointment as Minister responsible for Exiting the EU, David Davis wrote an article on Conservative Home outlining his vision for [A Brexit economic strategy for Britain](#).

House of Commons Statement

When the UK Parliament returned from its summer break, David Davis provided an update on the UK Government's work towards leaving the EU. He [told](#) the House of Commons that:

"Naturally, people want to know what Brexit will mean.

Simply, it means the UK leaving the European Union. We will decide on our borders, our laws, and taxpayers' money.

It means getting the best deal for Britain – one that is unique to Britain and not an 'off the shelf' solution. This must mean controls on the numbers of people who come to

Britain from Europe – but also a positive outcome for those who wish to trade in goods and services.”

Following his statement, the Minister took [questions](#).

The Scottish Government’s response to the decision to leave the EU

Following the referendum result, the First Minister of Scotland made a [statement](#) on Friday 24 June in which she said that she regarded it as “democratically unacceptable” that Scotland should face the prospect of being taken out of the EU against its will. The First Minister also said:

“I want to make it absolutely clear that I intend to take all possible steps and explore all options to give effect to how people in Scotland voted - in other words, to secure our continuing place in the EU and in the single market in particular.

To that end, I have made clear to the Prime Minister this morning that the Scottish Government must be fully and directly involved in any and all decisions about the next steps that the UK government intends to take.

We will also be seeking direct discussions with the EU institutions and its member states, including the earliest possible meeting with the President of the European Commission.

I will also be communicating over this weekend with each EU member state to make clear that Scotland has voted to stay in the EU - and that I intend to discuss all options for doing so.”

On 29 June, the First Minister visited Brussels and met with the President of the European Commission, Jean-Claude Juncker, as well as the President of the European Parliament, Martin Schulz, and the leaders of a number of the political groups in the European Parliament. According to the Scottish Government, the First Minister “stressed that Scotland chose to remain part of the European Union, and her determination to ensure all options are considered to enable Scotland to remain in the EU”. Following the First Minister’s meetings she held a [press conference](#) at which she said:

“In my discussions during the day, I've heard, as you would expect, deep concern about the impact of the referendum not just on Scotland, the UK and the European institutions, but on people in all our countries and on the EU itself.

“For my part, I've emphasised that Scotland voted to remain part of the EU.

“If there is a way for Scotland to stay, I am determined to find it.

“We are in uncharted territory, and none of this is easy. My task is to bring principles, purpose and clarity to the situation, and to speak for all of Scotland.

“We are early in this process. The referendum is not yet a week behind us - a long week for all of us.

“My concern at this stage is to ensure that once the UK negotiation with the EU starts, all the options are on the table. I don't underestimate the challenges but I am heartened by the discussions. Here, I've found a willingness to listen: open doors, open ears and open minds.”

On 23 August, the [First Minister wrote](#) to the Scottish Parliament's European and External Relations Committee with an update on the work the Scottish Government has been doing in the wake of the EU Referendum. On the issue of triggering Article 50, the First Minister wrote:

"We have a welcome commitment from the Prime Minister that the Scottish Government will be fully "involved" in that process; and that "Article 50 will not be triggered until there is a UK approach and objectives for negotiations".

On 7 September, the First Minister made a [statement](#) to Parliament in which she provided an update on the Scottish Government's work over the summer. She told Parliament:

"There is no doubt that leaving the EU will be an extraordinary, self-inflicted blow to the UK's competitiveness, which will be compounded if the decision is to leave the single market as well.

That is why it is so essential that we work to retain the benefits of our EU membership. Over the summer, I set out the national interests that are at stake: our democratic and economic interests, our interests in social protection and solidarity, and our interest in influencing the world in which we live. As I said on the morning after the referendum, we are committed to pursuing all possible options to protect those interests. Of course, our ability to fully assess the different options will be constrained until we start to get some clarity on what the UK Government is seeking to achieve.

Scottish Government UK Negotiations Minister

Upon the resumption of Parliament following the summer recess, Michael Russell was appointed Scottish Government Minister for UK Negotiations on Scotland's Place in Europe.

Scottish Government analysis of the economic impact of leaving the EU

On 23 August, the Scottish Government published its own [economic analysis](#) which it said showed that "leaving the European Union is projected to cost the Scottish economy up to £11.2 billion per year and Scottish public finances up to £3.7 billion per year".

The analysis acknowledged that the actual economic impact will in part depend on the future relationship the United Kingdom agrees with the European Union but that all three likely options of EEA membership, a Free Trade Agreement with the EU or using World Trade Organisation rules "would damage economic growth in the long run, compared to full EU membership".

In response to the economic analysis, the Fraser of Allander Institute issued a [statement](#) questioning the robustness of the Government's analysis.

Welsh First Minister sets out his vision for post-Brexit Wales

On 9 September, in a [speech](#) at the Chicago Council on Global Affairs, Carwyn Jones, Wales First Minister set out "his vision of what a post-Brexit, outward looking Wales should look like, within a reformed UK". The First Minister said a key priority was continuing access to the Single Market. He told his audience that:

“I believe that the interests of Wales and the UK were best served by remaining in the European Union. The people took a different view, albeit by a fairly narrow margin. Of course, I respect the result of the referendum. However, I am absolutely clear that Wales is, and will remain, ‘open for business’.

“I believe it is absolutely vital that when we leave the EU, the United Kingdom must retain access to the single market. Without that guarantee, we risk inflicting needless economic harm on our country, and on our citizens.

“I have absolutely no intention of allowing Wales’ fate to be left to chance, for us to be passive observers in this most momentous of decisions. Wales and the other devolved nations must play a full and active role in the negotiations to leave the EU, to ensure our interests are fully protected.

“If this becomes a two way dialogue between Brussels and London, it will fail. Cardiff, Edinburgh and Belfast must also have seats at the table. Whatever deal is finally negotiated, its acceptance should be subject to the support of the four Parliaments that now legislate for the UK.

“I cannot envisage consent being given by Wales unless the UK both secures access to the single market and delivers solid assurances to our citizens from other EU countries.”

Northern Ireland Executive’s letter to the Prime Minister

At the start of August, the Northern Ireland Executive’s First Minister and Deputy First Minister [wrote](#) to the Prime Minister to set out the Executive’s position on the decision to leave the EU ahead of the triggering of Article 50. The letter covered issues such as the unique situation in Northern Ireland of sharing a land border with the EU, the economic importance of retaining trade with the EU and the importance of EU funds to Northern Ireland.

David Davis’ visit to Northern Ireland

On 1 September David Davis, the UK Government Minister responsible for the UK’s departure from the EU visited Belfast where he met with the Northern Ireland First Minister Arlene Foster. Ahead of his visit, the Minister [wrote an article for the Belfast Telegraph](#) in which he emphasised the UK Government’s continuing desire for the border between Northern Ireland and Ireland to remain open:

“We had a common travel area between the UK and the Republic of Ireland many years before either country was a member of the European Union.

We are clear we do not want a hard border - no return to the past - and no unnecessary barriers to trade. What we will do is deliver a practical solution that will work in everyone’s interests”

The UK Parliament’s response to the decision to leave the European Union

A number of Committees in both the House of Commons and House of Lords have established inquiries linked to the UK’s decision to leave the European Union. These include:

[House of Commons European Scrutiny Committee Post Referendum Consultation](#)

[House of Commons Scotland Affairs Committee Scotland's Place in Europe](#)

[House of Commons Welsh Affairs Committee Implications for Wales of the EU Referendum Result](#)

[House of Commons Public Administration and Constitutional Affairs Committee Lessons Learned from the EU Referendum](#)

[House of Commons Environmental Audit Committee The Future of the Natural Environment after the EU Referendum](#)

[House of Commons Energy and Climate Change Committee Leaving the EU: Implications for UK Energy Policy](#)

[House of Lords European Union Committee Brexit: UK-Irish Relations](#)

[House of Lords European Union Committee Brexit: Parliamentary Scrutiny Inquiry](#)

[House of Lords EU External Affairs and EU Internal Market Sub-Committees Brexit: future trade between the UK and the EU inquiry](#)

The House of Lords European Scrutiny Committee published a [report](#) on 22 July 2016 stating that all aspects of the negotiations on the UK withdrawal from the EU, including trade negotiations, should be effectively scrutinised by Parliament.

The [sub-committees](#) of the House of Lords European Union Committee are also conducting a number of evidence sessions following the UK's decision to leave the EU including:

[Fisheries Policy after Brexit](#)

[Brexit implications for environment policy examined by committee](#)

[Brexit implications for energy and climate change policy](#)

[Brexit and Financial Services](#)

The House of Commons Library has also refreshed and published the research briefing [Brexit: impact across policy areas](#)

The requirement for legislative consent?

Writing a blog for the Centre on Constitutional Change, Professor Michael Keating poses the question [Does Brexit Need the Consent of the Devolved Territories?](#) According to Professor Keating:

“If Westminster were to assert its view of the constitution, the devolved governments would probably have little legal recourse, as the courts would simply follow the doctrine of parliamentary sovereignty and note the ‘normally’ provision in the Sewel Convention. Yet such a unilateral interpretation of the constitution would re-open up the whole question of the nature of the union and whether the devolution settlement does now represent a third way between secession and remaining in the unitary state. Brexit was about restoring national sovereignty but, in the process, it has raised the question of where sovereignty lies at home.”

What's happened since the referendum?

At the start of September the BBC website published an [article](#) outlining what had happened in the UK since the referendum on 23 June.

The article includes an examination of developments in the economy, the value of sterling, trade and jobs along with the start of negotiations and an apparent rise in hate crime.

The Electoral Reform Society's review of the referendum

Following the EU referendum the Electoral Reform Society published [It's Good to Talk - Doing referendums differently after the EU vote](#).

The Electoral Reform Society concluded that the EU referendum campaign was "dire" and "let voters down", specifically:

"There were glaring democratic deficiencies in the run-up to the vote, with previously unreleased polling showing that far too many people felt they were ill-informed about the issues; and that the 'big beast' personalities did not appear to engage or convince voters.

The polling also shows that voters viewed both sides as increasingly negative as the campaign wore on. Meanwhile, the top-down, personality-based nature of the debate failed to address major policies and subjects, leaving the public in the dark.

It's clear that the EU debate was in stark contrast to the Scottish independence referendum, which for all its faults undoubtedly featured a vibrant, well-informed, grassroots conversation that left a lasting legacy of on-going public participation in politics and public life.

There are so many lessons to be learned from the EU campaign – from the effect of a too-short campaign period to the fact that misleading claims could be made with impunity. This report lays out both the facts, and the way forward."

The Electoral Reform Society made [nine key recommendations](#) to improve the conduct of future referendums.

The Future of EU funding in the UK

Since the referendum, there has been a focus on future access to EU funding. Whilst the UK continues to be a member of the European Union it will continue to participate in European funding programmes. Following the UK's departure from the EU, the position is less clear. Continued access to some aspects of EU funding will depend on the terms of the UK's new relationship with the European Union (for instance EFTA EEA members participate in some EU funding programmes such as Horizon 2020).

Concern has been expressed about accessing funding during the current programming period in the event that the UK leaves the EU during the lifetime of a project which is being funded by the EU. On 13 August, Phillip Hammond, the Chancellor of the Exchequer guaranteed "[EU funding beyond date UK leaves the EU](#)". The guarantee provided by the UK Government covers both structural and investment funds and Horizon 2020 funding along with Pillar One payments of the Common Agricultural Policy:

- all structural and investment fund projects, including agri-environment schemes and the European Maritime and Fisheries Fund, signed before the Autumn Statement will be fully funded, even when these projects continue beyond the UK's departure from the EU
- where UK organisations bid directly to the European Commission on a competitive basis for EU funding projects while we are still a member of the EU, for example universities participating in Horizon 2020, the Treasury will underwrite the payments of such awards, even when specific projects continue beyond the UK's departure from the EU
- the current level of agricultural funding under CAP Pillar 1 will be upheld until 2020, as part of the transition to new domestic arrangements.

The same levels of assurance were provided to the Devolved Administrations for the European funding programmes which they administer.

The UK Government has since confirmed the Autumn Statement will be held on 23 November.

On 6 September, the Scottish Government [confirmed](#) that it had secured agreement from UK Ministers to guarantee all Structural Funds projects which are approved and have offers of grant agreed by the Chancellor's Autumn Statement. According to the Scottish Government, "this secures around £340 million of funding for Scotland's communities, and provides certainty for partners who are undertaking procurement exercises and long-term planning of services".

EU Citizens in the UK

The status of EU citizens in the United Kingdom is likely to be addressed during the negotiations of the UK's exit from the EU and negotiation of a new settlement between the EU and the UK.

The UK Government published a [statement](#) on the status of EU nationals in the UK on 11 July 2016. The statement said:

"There has been no change to the rights and status of EU nationals in the UK, and UK nationals in the EU, as a result of the referendum.

(...) When we do leave the EU, we fully expect that the legal status of EU nationals living in the UK, and that of UK nationals in EU member states, will be properly protected.

The government recognises and values the important contribution made by EU and other non-UK citizens who work, study and live in the UK."

The First Minister has called on the UK Government to provide a guarantee to EU citizens about their futures. [Addressing the Scottish Parliament](#) on 7 September the First Minister said:

"Since the referendum, our first priority has been reassurance.

That has included seeking to do everything we can to reassure non-UK EU citizens who live in Scotland.

It is in my view a disgrace that the UK government has not guaranteed the position of EU citizens. I therefore call again today on the Prime Minister to do the right thing and stop using human beings as bargaining chips.”

Scottish Fishermen’s Federation meetings with Scottish and UK Governments

Following discussions with the Scottish and UK Governments, the Scottish Fishermen’s Federation [announced](#) a campaign for fishing to be at the heart of Brexit. According to Chief Executive Bertie Armstrong:

“The strong unified message is that for fishing, the overwhelmingly positive balance of benefits of Brexit is plain to see. A successful outcome from the negotiations will mean that our coastal and island communities can look forward to a secure future in terms of jobs, economic activity and the sustainable production of a wonderful, sustainable natural resource. In short, the country has the potential to become a world leader in seafood production and exports. We regard it as a ‘sea of opportunity’ that must be grasped.”

Alternative Trading models

Ahead of the UK Government’s triggering of Article 50, much of the focus following the EU referendum has focussed on the alternative trading relationship the UK will seek with the European Union.

In January 2016 the Centre for European Reform published a paper by the former director general of the Legal Service of the Council of Ministers analysing [the seven alternatives to EU membership](#). This looks at the range of trading options including EEA membership, Customs Union membership, a Free Trade Agreement or relying on WTO rules.

In August, Open Europe published a briefing analysing [whether EEA membership would be a viable alternative to EU membership](#) for the UK.

Open Europe concluded that EEA membership might not be a viable alternative in part because it wouldn’t address the issues raised during the referendum with regards to freedom of movement, restoring UK sovereignty over lawmaking and ending UK contributions to the EU budget. As a result, the research paper analysed other trading options concluding a transitional EEA style membership before moving towards a Free Trade Agreement would be the most suitable outcome given the political drivers from the referendum.

Japan’s message to the UK and the EU

Ahead of the G20 summit in Hangzhou, China, the Japanese Government’s Foreign Ministry published a [report warning of the implications of the UK leaving the EU](#) in terms of Japanese investment in the UK if a number of concerns were not addressed. The report warns:

“Japanese businesses with their European headquarters in the UK may decide to transfer their head-office function to Continental Europe if EU laws cease to be applicable in the UK after its withdrawal.”

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