

A stylized world map composed of a grid of grey dots, with several dots highlighted in red to represent specific countries.

# The Brexit Negotiations

## What do the British Want?

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- What the British government wants on Brexit is gradually becoming clearer – though some key decisions have yet to be taken. Despite some of its public rhetoric, the British government prefers a deal to no deal – and can probably make the painful compromises (particularly over money) to secure it.
- The real difficulties will be over the shape of Brexit post-2021 – though there is no particular mystery about the type of ›Goldilocks Brexit‹ that the UK government is seeking: a closer relationship than the CETA EU-Canada deal but a looser one than full EEA membership. Whether any such thing is negotiable is as much a question for the EU27 as for the UK. If it is not, a Canadian-style outcome appears the most probable destination.
- Metaphors about cherry-picking, eating cakes leave a key question unanswered: would a UK offer to negotiate a new preferential EU/EEA migration access, outside of EU free movement framework, help to deepen the nature of the UK-EU trade partnership on services as well as goods or not? How much trade friction would the EU27 want to insist on as a balanced and proportionate response to UK choices on migration?

›The British do not know what they want‹ is a common criticism among European politicians and officials, which is also endorsed by British pro-Europeans, who see the Brexit agenda as contradictory and fantastical. The UK government has proposed a ›special partnership‹ but this does not address some of the key choices which the UK and the EU will face over the next two years. But the contours of what the British want on Brexit is becoming clearer.

### The immediate road to Brexit ...

The British do still want Brexit – and this is unlikely to change before April 2019.

- The British do want a Brexit deal – but worry about the consequences of admitting this.
- The British need a transition – so can (probably) make the compromises needed to get it. There is considerably less disagreement over 2019–21 than over the final settlement.
- The orthodox view is that a transition simply delays all of the key decisions – but a transitional deal could shift the medium-term British politics of Brexit more than is appreciated.

### The future relationship: the known unknowns ....

The British government has yet to agree its policy on key aspects of the future relationship, but the spectrum of plausible alternatives has narrowed considerably.

- The bespoke British ›Goldilocks Brexit‹ would be warmer than Canada, but cooler than Norway – but whether such a possibility exist will depend on what the EU27 want too.
- One key mystery is whether the depth of future economic partnership can be enhanced by the nature of a UK ›preferential‹ offer on migration access, outside of freedom of movement.

## The evolution of the British position on Brexit

The British government's approach to Brexit has evolved through several phases.

›**Brexit means Brexit**‹ (June–October 2016): A 52 percent majority voted to leave the European Union in the June 2016 referendum with no Brexit plan on the table. The Vote Leave campaign saw setting out a detailed plan as a hostage to fortune, given significant differences among pro-Leave advocates. No scenario planning was undertaken by the Cameron government. Theresa May committed to Brexit, but her positions were little tested as her rival candidates withdrew from the contest.

**A deep and special partnership – unless no deal is better** (October 2016 to March 2017): The establishment of the British government's negotiating position. Prime Minister Theresa May set out Britain's aspirations for a ›close and special partnership‹ with the EU in the Lancaster House speech of [December 2016], ahead of triggering Article 50 in March, envisaging ongoing UK-EU cooperation in many spheres of policy, while emphasising that key issues of control over migration, sovereignty and budgetary contributions meant that the UK would not seek membership of the internal market.

The viability of a ›no deal‹ Brexit has had a high profile in UK media and political debate. This was the government's choice, based on the analogy with a car showroom: that being prepared to walk out was necessary for UK status or leverage in the negotiation. That has considerably more resonance in the domestic British media debate than in the negotiations themselves.

**Phased Brexit** (June to December 2017): The 2017 General Election, in which Theresa May's request for a strengthened personal mandate was refused, did not formally change the UK's Brexit policy negotiating position. But it did significantly change the British politics of Brexit. The Prime Minister is much weaker, having to sacrifice her key advisers and to adopt a more collegiate style of government, with the almost universal assumption at Westminster that she is a caretaker Prime Minister, who will step down in the next two years. Senior Cabinet members, particularly Chancellor Phillip Hammond and Home Secretary Amber Rudd, took the

opportunity to assert more authority and autonomy, over the economy and migration. Collective Cabinet responsibility has fragmented (particularly exemplified by Foreign Secretary Boris Johnson's unauthorised interventions before and after the Florence speech). The election also transformed Labour's standing and status, becoming again a conventional party of opposition, and a potential alternate government. The immediate upshot of the General Election was a rapid convergence between the Opposition and the moderate wing of the government on the need for a Brexit transition phase, while the issues of the longer-term settlement remain more opaque.

Ongoing debate about the viability of a ›no deal‹ scenario includes backbench pressure on the Chancellor to spend more on practical preparations. But complaints from backbench MPs and pro-Brexit commentators that ›no deal‹ would look less like a bluff if the UK had done more to invest in and prepare for it risk simply confirming its lack of credibility as a negotiating stance.

### Sufficient progress? Priorities for the separation

The EU27 succeeded in securing its priorities for the sequencing of the talks: that three key priority issues about Britain's withdrawal from the EU should be addressed prior to discussing the post-Brexit trading relationship. The UK agreed to this sequencing in June 2017.

As the October European Council summit conclusions showed, the EU27 remain some distance from being able to declare that there has been ›sufficient progress‹.

**Citizens rights** ought to be the simplest of the three issues. There is a very broad political, economic and public consensus on the 3 million Europeans in Britain being able to settle. Because the Vote Leave campaign made this commitment during the referendum campaign, there has been little or no Eurosceptic pressure on the government to be tough on EU nationals. May's pro-Brexit rivals in the leadership contest (including Johnson, Gove and Leadsom) favoured a unilateral UK commitment prior to negotiations. The UK ›settled status‹ offer gives EU nationals similar rights to UK citizens, bar the right to vote in General Elections, but this represents a ›levelling down‹ on family migration rights, as EU nationals are not

currently subject to the income threshold which applies to British citizens who want a partner to settle in the UK. The main dispute has been over the direct role of the ECJ, but various supranational alternative mechanisms are more viable. Home Office administrative errors have had a high profile, bringing both domestic and EU27 pressure for a fit-for-purpose system.

**Money:** This was always likely to prove the most challenging issue in the opening phase. The UK government has challenged the idea it has enforceable legal obligations on the scale proposed, but also seeks an amicable settlement of past responsibilities in the context of its desire for a future partnership. The Florence speech included a direct offer of UK contributions, and a form of words which implicitly indicates more flexibility, but the October Council conclusions demonstrate the distance between the two sides. The contours of a deal which could meet the key objectives of both sides can be identified: UK contributions across a transition phase, within the envelope of its current contributions, could reduce the size of a final one-off ›cheque‹. The idea of the UK effectively paying twice for single market membership during a transition phase would not be viable. Ultimately, the UK position over financial responsibilities depends on the plausibility of the ›no deal‹ alternative. It will be politically painful for the UK government to move further on financial obligations – but the political and economic risks of a breakdown are rather greater.

**Northern Ireland** is the most difficult of the three initial divorce issues. Beyond expressing the desire to avoid a hard border, it is difficult to make significant progress on Northern Ireland without discussing the broader UK-EU trade relationship, or Northern Ireland becoming a proxy for the entire trade dimension. Northern Ireland is not now seen as a significant barrier to talks about the future relationship if the financial issues are resolved.

The outcome of the June 2017 General Election made the political dimensions more challenging, giving the DUP a pivotal role in the UK parliament. The stark imbalances in the political clout of Northern Ireland's communities are exacerbated by the suspension of the Stormont Parliament, and Sinn Fein's policy of abstention from Westminster. The DUP will be sceptical of all-Ireland arrangements, which place boundaries between Great Britain and Northern Ireland.

## The British do want a standstill transition – and can (probably) make the compromises to secure it.

The post-election period saw a rapid shift towards a consensus on the need for a transition phase, a cause pursued simultaneously by the Chancellor of the Exchequer and Labour's opposition spokesman Keir Starmer. This was then endorsed in the Prime Minister's Florence speech. The terms on which a time-limited transition will be available have always been clear from the EU27 negotiating guidelines, that these would *»require existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures to apply«*

Foreign Secretary Boris Johnson's unauthorised distancing himself from the Florence speech created a media psychodrama which dominated much of the Conservative conference week. Yet the upshot was to show that pro-Brexit ministers and MPs do not have a united view – and that Brexit Cabinet ministers are advocating pragmatism on the 2019–21 arrangements very close to the status quo, focusing on the case for divergence in the final post-2021 settlement. The arguments inside the government are much sharper around 2021 than 2019–21. There are approximately 500–550 votes out of 650 across the House of Commons in favour of a transition deal, including one which has to compromise on money. Around 80 Conservative MPs may have preferred a clean break and WTO rules in 2019, this is too narrow a group to contest the issue successfully.

If there is a negotiated resolution on *»the bill«*, there would appear to be relatively few major political obstacles to a *»standstill transition«*, though the legal details of this will be complex. The main 2018 issue may be over how far it is possible or necessary to agree the detail of the future relationship during 2018 in order to agree the transition. There is a wide gap between Theresa May's continued insistence on talking about an *»implementation period«*, on the grounds that all of the details of the future settlement will be included in the Article 50 agreement, and the language of Article 50 itself, which talks about the framework for the future relationship, perhaps implying a political declaration as to the shared objectives of a future negotiation.

If the transition deal fails, there will be a political crisis in the UK. Outcomes would then be more uncertain. The liberal wing of the 30 most pro-European Conservative MPs potentially holds the *»hinge«* votes in the House of Commons, since they are more able than the pro-Brexit MPs to combine with the opposition parties. But the Conservative Party leans more heavily pro-Brexit, by a 2:1 margin. Regular surveys on the ConservativeHome website show that party members are closer to the approach of Boris Johnson than Phillip Hammond. Any party leadership contest in the next 12–18 months would be considerably more likely to harden the Brexit position than to soften it.

A transition phase is largely regarded as kicking the can down the road – and so not resolving the major choices about the long-term settlement. There is a good deal of validity in this, if the debate does not move on to the final settlement quickly in 2018. But a transitional deal would also change the British politics of Brexit in ways that have not been fully anticipated. For example, a transition deal would end any realistic prospects of a *»referendum on the deal«* in its predominant form, where it is a strategy of Remain advocates to seek a choice between a negotiated Brexit deal, and the status quo of remaining in the EU. The deal would not be known in 2019, and the UK will not be a member of the European Union in 2019–21 when the deal is known. While *»Return«* may replace *»Remain«* as a proposition in British politics, there would be considerably higher political hurdles to a future application to rejoin the EU under Article 49, since it would not be possible to offer the status quo ante of British rebates and opt-outs of Britain's pre-2016 position.

## Public attitudes on Brexit

The main news about public opinion on Brexit is that there is no news: almost nobody has changed their mind. Nine-tenths of both Leave and Remain voters believe that they made the right choice in the referendum. Yet the picture of unified tribes of the 52 percent versus the 48 percent are misleading. Public views of Brexit are not so much split down the middle, as divided into four quarters. One-quarter hope to reverse Brexit, despite the referendum. Another quarter are strongly pro-Leave, and would leave without a deal (doubting that the EU27 will offer any reasonable deal anyway). These passionate partisans naturally dominate the social media

and political debate. Half of the British electorate are in neither camp. The softer half of the pro-Leave vote, which is willing to compromise on the details of Brexit. A quarter of the electorate who voted Remain as »stay in sceptics«, believe the results should be respected, while hoping for a pragmatic deal. This group explains why support for a new referendum is well below 48 percent, at around one in three voters.

Public preferences on a post-Brexit relationship also cut across the referendum divide. Overall, the government's agenda broadly reflects the priorities and preferences of the electorate: two-thirds of voters would like a free trade deal, and two-thirds favour migration controls. The median leave voter does want a close economic partnership and the median remain voter is sceptical about EU free movement. As John Curtice has noted, the British public does not support the idea that the four freedoms are inextricably linked<sup>1</sup>. When this is presented as a forced trade-off, there is a long-standing 40 percent versus 40 percent split on seeing market access or migration controls as the priority: Conservative and Leave voters prioritise migration; Labour and Remain voters prioritise market access. This is reflected in the Parliamentary politics of the issue too.

The public are sceptical about the government getting a good deal in the Brexit negotiations. Majorities are dissatisfied with the government's handling of Brexit (partly reflecting that those who don't want to leave at all and those who think Britain should have left already are equally dissatisfied). There is more public scepticism about the EU27 than the UK government. Critical coverage of the UK government and understanding of the EU27 position features primarily in liberal broadsheet newspapers, such as the Financial Times and the Guardian, but will tend to reach narrow audiences of highly engaged pro-Europeans. The strength of focus on the Brexit bill appears to have exacerbated public scepticism of the EU.

There is an ongoing intense battle between pro-Remain and pro-Brexit advocates, but one legacy of the referendum is that there is considerable scepticism about

the claims and counter-claims of both sides. After two General Elections and a referendum in three years, but quite a lot of people have tuned out until something actually happens. It is difficult to see how any decisive shift of opinion could coalesce without some major shock event. Direct experience of the consequences of leaving, rather than predictions about it, are more likely to follow Brexit than to precede it, especially if a 2019–21 transition phase is negotiated.

## The future relationship: the more difficult negotiations to come

The UK wants a closer partnership with the EU than any third country outside the internal market. But there are five significant »divergence« issues which explain why the UK government is not pursuing membership of the internal market and customs union, while seeking the most »frictionless« trade possible outside of them. Each of these red lines contains some implicit flexibility, so there is a significant amount of disagreement within government which takes place formally within the contours of the Lancaster House/White Paper framework – between what could be called »EEA minus« and »CETA plus« models.

- Trade: the UK wishes to leave the Customs Union, so as to make its own external trade deals (but is open to discussing new customs arrangements, outside of a common external tariff).
- Money: the UK does not want to make large general payments (but itemised contributions for specific areas of cooperation often have broad support).
- Migration: the UK wants domestic control over EU/EEA migration to the UK (but might be open to negotiating over the nature of these controls)
- Sovereignty: the UK will not be subject to the European Court of Justice (but recognises the need for an arbitration mechanism for a future trade deal)
- Regulatory divergence: the UK would have the freedom to diverge (but may agree not to do so, though the mechanisms for doing so are opaque).

1. John Curtice, »What do voters want from Brexit?« (NatCen and ESRC, UK in a Changing Europe project, November 2016) <https://whatukthinks.org/eu/wp-content/uploads/2016/11/Analysis-paper-9-What-do-voters-want-from-Brexit.pdf> and John Curtice »Hard but not too hard: more on what voters want from Brexit« (NatCen and ESRC, UK in a Changing Europe project)

The major political arguments inside government over how the final settlement should strike these balances has yet to take place – but there is a narrowing spectrum of plausible alternatives. The centre-of-gravity in British politics favours the closest possible economic relationship that is compatible with greater domestic control over EU/EEA migration. The Treasury favouring less expansive migration reforms to prioritise frictionless trade, with arrangements coming close to mirroring EEA membership, while pro-Brexit members prioritising either migration controls or opportunities for future divergence, with a starting point closer to the Canada trade deal. There is a similar contrast in emphasis between the two major parties, with the Labour party being broadly aligned to the Treasury approach.

But there is some contrast between the broader British public debate – in which the migration/markets issue is key – and the debate inside the government and

Conservative parliamentary party, which is currently more focused on issues of judicial oversight and regulatory divergence. These are fairly esoteric issues with low public salience.

## Markets and migration: six ways to engage with a trade-off

The EU position that the ›four freedoms‹ of the EU – the movement of goods, capital, services and labour – must go together and can not be ›cherry-picked‹ means that that proposals for domestic migration controls, instead of freedom of movement, would affect the UK-EU economic and trading relationship. There are six broad positions in the British political debate about how to respond to this link or trade-off between post-Brexit immigration policy and market access. (See Table 1)

**Table 1** Six potential positions and implications of the market-migration trade-off

	<b>View of free movement</b>	<b>Overall context</b>	<b>European migration rules</b>	<b>UK-EU market access</b>	<b>Advocates and supporters</b>
1	Free movement is a good thing in itself	Remain in EU, or at least stay in EEA.	Keep free movement.	Stay in EU, including single market.	Green party. Centre-left MEPs. Some Labour MPs.
2	Free movement is a price worth paying for the priority of single market	Join EEA or agree similar framework.	<b>Keep EU/EEA free movement;</b> place emphasis on <b>applying existing controls</b> within FoM; and domestic migration impacts measures.	Single market membership, within EEA or analogous deal.	LibDem policy; SNP policy; New Labour backbenchers (eg Progress); TUC; handful of Conservative MPs.
3	Prioritise single market: seek free movement reforms compatible with single market membership	Join EEA or agree similar framework.	<b>Reformed free movement:</b> free movement with a job offer? Potential use of EEA Article 112 safeguards? Bespoke EU-UK renegotiation (again)? EU-wide reforms later?	Single market membership, or a bespoke negotiated deal that is as close as possible to it.	Nick Clegg; Tony Blair; Chuka Umunna; possible destination of Labour Party?  Some Treasury thinking leans in this direction.
4	Balance market access and migration goals	Bespoke future ›special partnership‹	<b>Offer to negotiate new preferential EU/EEA access</b> to UK labour market, such as no limits for roles above salary/skills, but controls/limits on low/semi-skills.	A bespoke economic association: how much friction depends what is balanced and proportionate economic analogy to migration rules.	Government moderate wing, eg Chancellor; Home Secretary; First Secretary of State; Business Secretary.  Current policy of Labour party.  Most ex-Remain Conservatives; some moderate Leave MPs.

	View of free movement	Overall context	European migration rules	UK-EU market access	Advocates and supporters
5	Prioritise UK migration control and seek maximum market access that is compatible.	Free trade agreement	Apply third country rules to EU/EEA migrants. Do not expect to negotiate on migration, outside narrow technicalities.	Canada-style free trade in goods (but not services), while attempting to make that closer.	Prime Minister, Michael Gove, Boris Johnson, and median pro-Leave Conservative MP. Handful of Labour Leave
6	UK migration controls: no particular desire for special trade deal.	Third country relationship: do not negotiate on trade or migration	No specific UK-EU migration rules.	WTO rules	About 40–80 Cons MPs; eg Bernard Jenkin; Leadsom supporters.

## Beyond the cake metaphors: a challenge for both sides?

In an ideal world, the British would prefer to have their cake and eat it on the markets/migration trade-off. But British politicians are aware that there is a trade-off – as shown by the government's decision to leave the internal market – though the British public believe that a wide-ranging trade agreement without freedom of movement ought to be possible.

Unless there is a further dramatic political shift, it is unlikely that the UK is going to want the type of UK-EU partnership which would probably, on balance, have been the first preference of many EU27 member states: a least disruptive Brexit which involves single market membership and acceptance of something close to the status quo on freedom of movement.

How those balances are struck will ultimately depend as much on the EU27 position as the UK one, though this is only intermittently acknowledged in the UK debate. It is not clear how far either ›EEA minus‹ or ›CETA plus‹ – or territory in between – is negotiable. That is much a mystery about the EU27 view of future relationships as about the UK view.

There are two significant unknown features about the position of both sides.

- Would the UK make a ›preferential‹ offer of increased EU/EEA migration access, outside a free movement framework, and would it deepen the nature of the trade relationship if it did so?
- What does the EU27 approach to a balanced and proportionate deal mean in practice? What penalties of

trade friction are appropriate given the UK position on divergence – and how far does this change according to the nature of the divergence which is proposed in each sphere?

Both sides have been clear in 2017 about their red lines. But neither side in the negotiations has decided, or communicated, its intentions about viable post-Brexit settlements they would endorse.

So the cake metaphors may have outlived their usefulness – if they are applied not only to spheres where they do apply (such as attempting to be an internal market member without the obligations of the four freedoms). Beyond these, they become a barrier to the negotiation of what, if anything, can be negotiated, in an equitable way, between a full EEA-style relationship and a clean break on WTO terms. If it is accepted that it is not possible to both have and eat cake, the question of whether and how it is possible to agree on how to slice a cake fairly could become more relevant.

### **Finally, the timescales for settling the future relationship are unknown – and could make a significant difference to the final destination.**

The British government want Article 50 to settle everything about the future settlement beyond 2021 – though this is considered excessive ambitious by many inside the UK government, and extremely unlikely by almost everybody outside it.

However, this means that there has been very little consideration of the form or process which negotiations will take. The ratification process for a comprehensive free trade agreement or association agreement would be considerably more onerous than is the case under Article 50.



There is political pressure for the UK government to insist on a strictly time-limited transition period of two years. This addresses an issue of political trust – but it is not clear how this time limit would work in practice. It could also replicate the power imbalance of the Article 50 period, where the ticking clock is a bigger problem for the UK than the EU27. But this may be attractive to some Brexit advocates, on the grounds that it would be possible, this time, to make serious preparations for a possible WTO-terms Brexit.

Were negotiations to stall well beyond 2019, the politics of the final settlement would get mixed into the party politics of leadership transitions and the next General Election. Outcomes would then become much more unpredictable, particularly given the very strong likelihood of a change of Conservative Prime Minister sometime between 2019 and 2021, which could push the current government into a harder position on Brexit. The unpredictable outcome of the next General Election, which could see the centre-of-gravity shift towards a softer position, though this would probably depend on a change of government. In the event of negotiations stalling well beyond 2019, and a Labour-led government taking office around 2021–22, it is conceivable that there would be increased interest in proposing something close to an EEA-style Brexit, as a settlement rather than a temporary phase, though this would remain a contested issue, both within the party and beyond it.



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