



# The Potential Impacts of Brexit on Trade

*Disclaimer: this briefing is based on [a public hearing](#) of the European Parliament Internal Market and Consumer Protection (IMCO) Committee held on 28<sup>th</sup> February 2017 on 'The consequences of Brexit'*

## Background: The UK Government White Paper on Brexit

On 17<sup>th</sup> January 2017 the Prime Minister of the United Kingdom (UK) set out the [12 principles](#) which will guide the United Kingdom Government in implementing the result of the referendum on leaving the European Union (EU). On 2<sup>nd</sup> February 2017, the UK Government published a White Paper '[The United Kingdom's exit from and new partnership with the European Union](#)' outlining the Prime Minister's vision of a global UK and the future relationship with the EU. The White Paper sets out the Government's priorities and approach to forging a new strategic partnership between the United Kingdom and the EU. The most relevant points for trade and health include – among others:

- Control of UK legislation,
- Control of immigration,
- Rights for EU nationals in Britain, and British nationals in the EU,
- Protect workers' rights,
- Free trade with European markets,
- New trade agreements with other countries, and
- Global UK as the best place for science and innovation

In the area of trade, the government is seeking to replace membership of the EU Single Market with access via a new, comprehensive free trade agreement, on a fully reciprocal basis. If the UK remains part of some specific programmes, an appropriate financial contribution to the EU budget is foreseen. By leaving the Customs Union, the UK should be able to negotiate its own bilateral Free Trade Agreements. Countries including the United States, China, Brazil, and the Gulf States have already expressed interest in striking trade deals with the UK.

## The application of Article 50 of the Treaty on the European Union (TEU) and its consequences (Brexit)

The legal consequence of the UK government notification of leaving the Union by triggering TEU Article 50 would be that European Union law will cease to apply to the United Kingdom two years after the notification, in the absence of a withdrawal agreement. In order to avoid that within the given deadline, a prolongment is possible but would require the unanimous support of the 27 EU Heads of States and Governments in the European Council.

Reaching a 'withdrawal agreement' is not an obligatory requirement: Brexit can happen without such an agreement. The future relationship between the EU and the UK will depend on policy choices made on both sides and will require a separate agreement on a 'framework for the future relations of the UK with the EU' ('trade agreement'). As the withdrawal agreement does not define that framework, there is a need for a separate agreement. A trade agreement does not have to be part of the withdrawal agreement, but pragmatically it would be negotiated in parallel. However, different rules apply to a 'withdrawal agreement' compared to a 'trade agreement', which is covered by Article 207 of the Treaty on the Functioning of the European Union (TFEU).



Once TEU Article 50 is activated, there is no consensus as to whether there is a way back: It could be argued that Articles 65-68 of [the Vienna Convention on the Law of the Treaties \(VCLT\)](#) could be applied and the UK could withdraw its decision. Article 68 relates to the revocation of notifications and instruments provided for in Articles 65 and 67 says that a notification may be revoked at any time before it takes effect.

However, others argue that such a decision would not be in line with the spirit and aim of TEU Article 50. It can be interpreted in such a way that a withdrawal would need the unanimous support of the European Council to be valid.

- See [Annex - TEU Article 50 Legal Text](#) :

There are three basic scenarios for a future EU-UK relationship:

1. **World Trade Organization (WTO) based relationship** based on the UK's WTO membership. The UK would not enjoy the terms and benefits negotiated by the EU on behalf of the Member States. Therefore, the UK should negotiate a new WTO agreement which should be approved theoretically by the other 168 WTO Member States. This may be particularly difficult in the area of agriculture and tariff rate quotas, where the UK also needs to negotiate with the EU in order to divide up the EU wide quota commitments.
2. **Membership of the European Economic Area (EEA)**, with the UK first joining the European Free Trade Association (EU + Switzerland, Lichtenstein, Norway and Iceland). This option would mean accepting internal market rules, which has been ruled out by the UK Government at this stage.
3. **A tailor made agreement**, which would be a comprehensive free trade agreement. There is no one model agreement and the content would depend on a number of policy choices. Depending on its content, this agreement can have two basic forms:
  - a. international Free Trade Agreement without reference to the EU acquis (eg. CETA)
  - b. Association Agreement heavily loaded with EU acquis (eg. the EU-Ukraine Association agreement).

At this point in time, a mixed relationship governing i.e. WTO membership and an FTA could be imaginable and the EEA membership option seems to be highly unlikely.

To conclude, it is fair to say that the TEU Article 50 procedure can be considered a 'moving target'.

- For more details, see the presentation of Prof. Dr. F. Amtenbrink (University of Rotterdam): [Article 50 TEU: The EU Legal Framework for Brexit and the Road Ahead](#).
- Further Reading: European Parliament Briefing - [Article 50 TEU: Withdrawal of a Member State from the EU](#)

## The Role and Powers of the European Parliament in the Brexit Process

There are three ways for the the European Parliament to be involved in the Brexit process.

1. **The making of Brexit Agreement(s)** – The European Parliament (EP) will have to give its consent to the final agreement(s) (a yes or no vote). This implies that it has the right to full information and early involvement in the negotiating process. The EP can also ask the opinion of the European Court of Justice (ECJ) and can express its own opinion.



2. **The implementation of the Agreement(s)** – The role of the EP is less formal. It is limited to the right of information and to express its opinion by issuing non-binding declarations.
3. **Interparliamentary relations with the UK Parliament** – The EP has a long-standing relationship with the Parliament of Canada but interestingly, no such interparliamentary collaboration is mentioned in the EU-Canada Comprehensive Economic and Trade Agreement (CETA). However, such cooperation exists in the EU-Ukraine and the EU-Turkey agreements.

Modern agreements are often ‘living agreements’ in that they create their own structure and institutions which can amend the agreement itself without a formal ratification process.<sup>1</sup> As the Brexit agreement(s) are likely to be such agreements, it is the EP’s responsibility to pay close attention to the conditions under which future modifications can be made. It is important that the negotiation aims and the entire negotiating process are transparent.

- For more details, see the presentation of Prof. Dr. T. Stoll (University of Göttingen): [The Role and Powers of the European Parliament in the Brexit Process](#).

## The Potential Economic impacts of Brexit

As regards the value of traded goods as a percentage of GDP, there is a huge imbalance in favour of the EU: the UK is much more dependent on trade with the EU27 than vice-versa. As regards trade of services, the difference is less dramatic but the UK has a trade surplus with the EU27. Different model calculations – which should be treated with caution given the problems with predicting future economic developments – show the economic impact of Brexit by 2030 to be relatively moderate for the EU27, with a reduction in percent GDP varying between 0.1-0.5. For the UK, in contrast, Brexit was estimated to have a significantly negative impact, with an estimated reduction of 3-7 per cent of GDP by 2030, which will be a massive systemic shock.

- For more details on these estimates, see the presentation of Dr. M. Emerson (CEPS): [Economic impact of Brexit on the EU27](#). It could have also significant [sectoral impacts](#).

## Trade in Services After Brexit

The different, existing, potential model agreements on services, such as CETA, the EU-Ukraine Agreement, the FTA EU -Korea and the General Agreement on Trade in Services are far less ambitious than the current EU or EEA agreements, as there is:

- no comprehensive scope
- no common standard setting
- no direct effect of market access and national treatment rules

The EU Services Market is considerably larger than the UK market on its own and in order to respect all interests, a very detailed and substantiated agreement would be needed.

- For more details, see the presentation of Prof. Dr. F. Kainer (University of Mannheim): [Trade in Services after Brexit](#).

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<sup>1</sup> On living agreements, see also, De Ville, F. and Siles-Brügge, G. (2016), ‘[Why TTIP is a Game-Changer and Its Critics Have a Point](#)’, *Journal of European Public Policy*, DOI: 10.1080/13501763.2016.1254273.



## Trade and Public Procurement

Concerning the area of public procurement, the key elements of different trade regimes are prohibition on discrimination, transparent award procedures to support this and foster competition, as well as remedies for undertakings (before national courts. The UK government indicated in its White Paper that it would aim for “replicating” current WTO commitments which would mean that the UK and the EU could maintain the current WTO Government Procurement Agreement (GPA), although the UK have to apply to be party of the WTO GPA. The EU-UK negotiations could maintain current WTO GPA coverage but the outcome would depend on the negotiations.

- For more details, see the presentation of Prof. Dr. S. Arrowsmith (University of Nottingham): [The Consequences of Brexit for Public Procurement Legal Standards](#).

## The implications of Brexit on Consumer Protection and Health Standards

The key aspect of the internal market is the principle of mutual recognition. There are not very many examples of agreements containing a mutual recognition element. This is the case with the EU-EEA agreement but EFTA states agreed to adopt and implement EU standards without any possibility of modification which is unlikely to be acceptable to the UK. There are no EU law elements in FTAs. In the case of association agreements, third parties are about to adopt EU standards whereas during Brexit negotiations, the aim and direction will be the opposite.

As regards legal implementation in the WTO framework, there is a robust system of state-to-state enforcement of the WTO law, the Dispute Settlement Body (DSB) which deals with 5-6 cases each year. If the UK ends up having a WTO-like agreement with the EU, other WTO members can request the same treatment based on the ‘most favoured nation’ clause.

International agreements like CETA have no direct effect and therefore cannot be applied in national courts. In the EU, all national law courts apply EU law (directives) while EU Regulations apply directly with the possibility of involving the ECJ, which has more than 100 cases each year. The question of jurisdiction therefore remains open in the case of Brexit.

**As regards health and consumer protection**, the UK will no longer be bound by EU law. However, the UK aims to include them in the so-called “Great Repeal” Act. EU Directives already implemented in UK law and regulations would continue apply in the future, following this act. However, the UK government could then revoke pieces of domestic legislation overtaken from EU law, which could put public health protections, as well as consumer, environmental and social protections at particular risk, depending on UK government decisions. As the UK/EU legal systems progress and diversify from one another, the implications of Brexit in divergence of laws and standards is likely to be felt more deeply in time.

- For more details, see the presentation of Prof. Dr. P. Eeckhout (University College London): [The Consequences of Brexit for the EU Customs Union and the Internal Market Acquis](#).
- For more details, see the presentation of Dr. M. Kramme (University of Bayreuth) [Consequences of Brexit in the Area of Consumer Protection](#).



## Annex

### Article 50 – Treaty on European Union (TEU)

*1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.*

*2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.*

*3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.*

*4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.*

*A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.*

*5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.*