

Outlook for the special European Council (Article 50), 25 November 2018

On 25 November 2018, EU Heads of State or Government are scheduled to meet for a special European Council to endorse the Brexit **withdrawal agreement** and approve a **political declaration on future EU-UK relations** accompanying the withdrawal agreement. This briefing outlines the main elements of the withdrawal agreement, notably the solution to the Irish border issue. It also provides an overview of the European Council's deliberations and guidance regarding the Article 50 negotiations to date, as well as an outlook of the next steps towards ratifying the agreement.

1. European Council meeting 25 November 2018

On 14 November 2018, the EU and UK negotiators agreed on a draft Article 50 withdrawal agreement, which was subsequently [approved](#) by the UK government. The EU's chief negotiator, Michel Barnier, [announced](#) that 'decisive progress' had been achieved. Achieving sufficient progress in the eyes of the EU, was set as a condition, at the October 2018 European Council, for holding a special European Council meeting. Consequently, the President of the European Council, Donald Tusk, [called](#) for a special European Council (Article 50) meeting on 25 November 2018, with the aim being to 'finalise and formalise the Brexit agreement'. This includes endorsing the draft [withdrawal agreement](#) and the draft [political declaration](#) outlining the future EU-UK relationship.

2. Draft withdrawal agreement

The draft withdrawal agreement comprises 185 articles, and has three protocols (on Gibraltar, the UK base areas in Cyprus, and Ireland/Northern Ireland) and numerous annexes. It addresses the [main issues](#) (see Table 1), such as citizens' rights, the financial settlement, and governance of the withdrawal agreement, as well as a number of other areas, and provides for a transition period.

Table 1: Main agreements on priority issues in the withdrawal agreement

Priority issue	Main solution
Citizens' rights	EU citizens in the UK and UK citizens in the EU retain the right to stay and continue their current activities.
Financial settlement	The EU and UK will meet the financial commitments which were agreed while the UK was a member of the EU.
Governance of the agreement	Disputes regarding the interpretation of the withdrawal agreement will initially be dealt with by a Joint Committee (comprising representatives of the EU and UK) responsible for the implementation of the withdrawal agreement. If no resolution is found, the issue can be referred to an arbitration panel (in cases not involving EU law). The decision of the panel is binding on the UK and EU. The Court of Justice of the European Union is the ultimate authority for issues related to EU law.
Protocol on Northern Ireland and Ireland	Includes a 'backstop' solution which would establish a common EU-UK customs territory, thus ensuring there will be no hard border on the island of Ireland and more broadly ensuring mutual respect for the provisions of the Good Friday agreement.
Transition period	As it stands, the transition period will end on 31 December 2020. The transition can be extended only once, for a limited period of time, and such a decision must be taken before 1 July 2020 by the Joint Committee.

The Irish 'backstop' solution

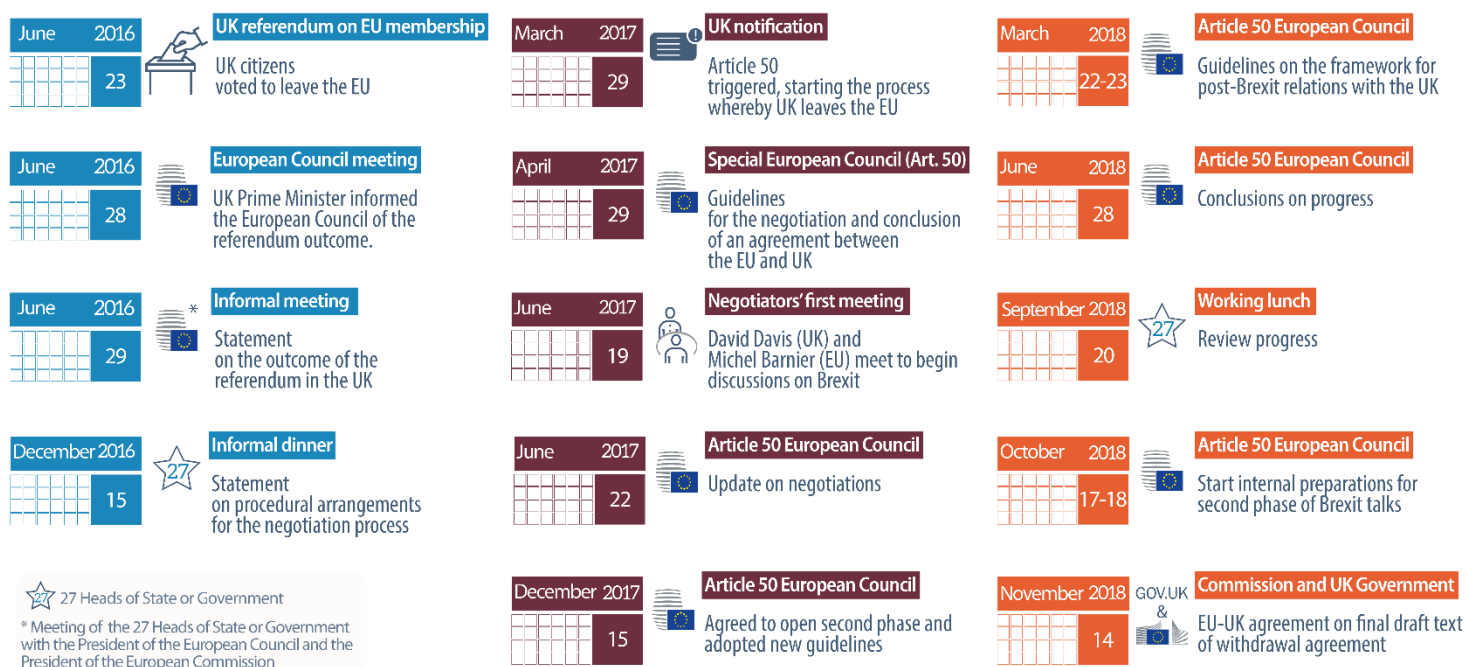
The [Irish 'backstop'](#) was one of the most difficult subjects for negotiators to reach agreement on. From the outset, preventing the creation of a hard border on the island of Ireland was a core priority for the EU. This can be seen in the [guidelines](#) for Brexit negotiations, adopted by the European Council (Article 50) on 29 April 2017, outlining the main EU priorities. In the draft withdrawal agreement, the 'backstop' [solution](#) would only come into play after the transition period (including any extension) has ended, and if a better solution had not been agreed by then.

If the 'backstop' were to be used, the UK would leave the **single market** but remain in a single EU-UK **customs territory**. Such a customs arrangement would facilitate free trade by ensuring both the EU and UK apply the same import duties on goods entering either area. This means goods can then travel freely between the EU and UK. There would be no checks on rules of origin between the EU and UK, because the UK would align its rules to those of the customs union. The UK would comply with state aid and competition rules, and maintain current international and EU standards on goods. Existing checks at airports and ports on agricultural products would be increased. Northern Ireland would remain part of the UK's VAT area but would remain aligned to the EU VAT rules with respect to goods. By contrast, the concept of the [single market](#) has a broader scope, including the free movement of goods, services, capital and people. Being closely linked to the customs union would, however, make it more difficult for the UK to agree trade deals with third countries, since it would have to maintain EU and international standards and could not apply lower customs tariffs or have different rules of origin on products from third countries.

The backstop provides an 'insurance policy' for the EU to avoid the possibility of a hard border at any point on the island of Ireland, as [indicated](#) by the Taoiseach, Leo Varadkar. This was also [confirmed](#) by Michel Barnier: 'This backstop is not meant to be used. Our objective remains to reach a new agreement between the EU and the UK before the end of the transition.'

3. The European Council and the negotiation process

Timeline and key milestones of European Council involvement



Following the UK referendum on EU membership, the Heads of State or Government of the EU-27 have met regularly, first informally, often in the margins of regular European Council meetings, and later, after the triggering of Article 50, in the European Council (Article 50) format, where they have reviewed the process and provided guidance when appropriate.

Procedural arrangements

Table 2: Responsibilities of the different EU institutions in the negotiation process

EU institution	Involvement / responsibilities
European Council	Adopted guidelines defining the negotiation framework, setting out the overall position and principles of the EU in the negotiations.
	Updated the guidelines in the course of negotiations as necessary.
	General Affairs Council invited to swiftly adopt the decision authorising the opening of negotiations.
General Affairs Council	Adopted negotiating directives, inter alia, setting out the arrangements governing the relationship between the Council, its preparatory bodies and the Union negotiator.
	Ensured that negotiations are conducted in line with the European Council guidelines and provided guidance to the Union's negotiator.
	Amended or supplemented negotiating directives as necessary.
Council, Coreper, and dedicated working party	Ensured that negotiations are conducted in line with European Council guidelines and Council negotiating directives, and provided guidance to Union negotiator.
Presidency of the Council	Informed, and exchanged views with the European Parliament before and after each General Affairs Council meeting
European Commission	Made recommendations to Council on the decision authorising the opening of negotiations.
	Acts as the Union's negotiator.
	Included a representative of the rotating presidency of the Council in the negotiation team.
	Invited representatives of the President of the European Council to attend and support all negotiation sessions alongside Commission staff.
	Systematically reported to the European Council, the Council and its preparatory bodies.
	Kept the European Parliament closely and regularly informed.
European Parliament	Representatives of the European Parliament invited to participate in the preparatory meetings of the representatives of the 27 Heads of State or Governments (Sherpas / Permanent Representatives).
	European Parliament President invited to be heard at the start of European Council meetings.

NB: The members of the European Council, the Council and its preparatory bodies representing the United Kingdom do not participate in the discussions or in the decisions concerning it.

At their informal meeting in December 2016, EU-27 Heads of State or Government and the Presidents of the European Council and Commission issued a statement, outlining procedural arrangements for the Article 50 TEU negotiation process with the United Kingdom. Donald Tusk [described](#) the organisational structure of the negotiation process on the EU's side as 'the European Council maintaining political control over the process and the Commission as the Union's negotiator'. He [justified](#) the limited role of the European Parliament in the negotiation process, pointing to the specific roles of the various European institutions.

At the first formal meeting of the European Council (Article 50) of the EU-27 on 29 April 2017, EU leaders took a united stance on the main priorities for the Article 50 negotiations, namely to i) guarantee EU and UK citizens' rights, ii) settle the UK's financial obligations to the EU, and iii) avoid a hard border between Ireland and Northern Ireland. They agreed on a phased approach for the negotiations, i.e. the negotiations on the future relationship with the UK could only start once sufficient progress had been made on the three priority issues.

4. Recent and next steps

Following the agreement between EU and UK negotiators on 14 November 2018, various steps have been taken to prepare for the special European Council (Article 50) meeting on 25 November. Afterwards both the UK Parliament and the European Parliament will debate and vote on the draft withdrawal agreement, before the Council can conclude the agreement from the EU side.



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