

## The Future EU-UK Relationship: The UK's vision

March 2017



This document summarises the UK government's vision for a new, post-Brexit relationship between the UK and the EU, based on the White Paper "The United Kingdom's exit from and new partnership with the European Union" published in February 2017 and reflected in the UK government's Article 50 notice delivered on 29 March 2017.

Achieving this new model would possibly be seen as a triumph for Prime Minister May. The risk remains that the UK will not agree either a resolution of its existing commitments in a withdrawal agreement or the kind of new relationship envisaged here.



Legal basis: Withdrawal Agreement, EU-UK Free Trade Agreement (UKFTA)



Customs union: Outside EU customs union. New customs union established



Future UK legislation: Great Repeal Bill and other legislation



Trade Policy: Freedom to enter into free trade agreements



Access to single market in goods: Greatest possible access to the single market



Dispute resolution: Dispute mechanism settled under the UKFTA



Access to single market in services: Access for services based on equivalent regulation and mutual recognition



Procurement Rules: Signatory to Government Procurement Agreement with market open to EU and EU reciprocal access



Free movement of people: No free movement but guarantee for people who have already relocated both to and from EU



Subsidies: Outside state aid, but subject to WTO on subsidies



Contribution to the EU budget: No contribution to the EU other than for specific projects the UK chooses to be involved in

## Insights from the UK Government's Brexit White Paper.

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There are many examples of models of relationship with the EU – Norway, Turkey, Switzerland, Canada. These involve differing levels of benefits and obligations for the non-EU country involved. Before the UK Prime Minister's 17 January Lancaster House speech, there was much speculation as to whether the UK would seek to follow an existing model of relationship with the EU on its exit, and, if so, which one it would aim for and for what reasons. However, Theresa May made it clear when she said “we do not seek to adopt a model already enjoyed by other countries” that what the UK will seek in its upcoming negotiations with the EU is a bespoke model of relationship with the EU.

This publication explores the foundations for, and summarises the main elements of, this vision as outlined in the UK Government's [Brexit White Paper](#) and in Theresa May's 17 January Lancaster House speech. It also highlights other key components of the EU-UK future relationship to be determined in the upcoming Brexit negotiations to give an overall picture of what might form part of this model.

The risk for the UK is that the EU27 will not be prepared to allow the UK a deal that seems better than membership of the EU, as they will want to deter any other states from leaving. However, there are many areas where continued cooperation will be in the mutual interest.



### Legal basis

Under Article 50 of the Treaty on European Union, the UK and the EU must negotiate an agreement to cover the UK's withdrawal. Article 50 is silent on its contents but in principle this agreement should cover everything needed to close out the UK's relationship with the EU, for example: what protection should be given to those losing rights (such as rights to remain within jurisdictions for people who have migrated), settling financial commitments and reconciliation of budgets, joint programmes and grandfathering of any rights.

There will also need to be a framework for the future relationship between the parties. The White Paper says the UK Government will “pursue a bold and ambitious Free Trade Agreement with the European Union” (referred to here as the UK Free Trade Agreement or UKFTA). Such an agreement will be heavily negotiated between the UK and the EU and will apply either post-Brexit or following a transitional period.



### Future UK legislation

The Government has confirmed that it will introduce a “Great Repeal Bill” which will disapply EU law but, where appropriate, convert its provisions into domestic UK law. The intention of this exercise is to ensure continuity and avoid uncertainty on exit day. Whilst the Government has also confirmed that, following exit day, it will be able to decide which elements of the law as adopted to keep, amend or repeal, any such amendment or repeal will have to be undertaken cognizant of requirements dictated by the need to retain access to EU markets, which may depend on equivalence of regulation. There are likely to also be a number of other domestic bills required, which will need to be on the statute book before the UK leaves the EU. These bills are likely to cover areas such as sanctions, fisheries, agriculture, data protection, tax, trade and customs arrangements and immigration.



### Access to single market in goods

The UK will leave the single market but, where possible, the Government wants to retain the “greatest possible access” to it in respect of goods on a tariff-free basis. If a trade deal has not been reached between the EU and the UK on exit day, the UK will have to accept the EU's World Trade Organisation (WTO) schedule of tariffs.

Julian Braithwaite, the UK permanent representative at the WTO in Geneva, has indicated that the UK will replicate the current EU trade regime as far as possible on exit day. The withdrawal negotiations are expected to involve some “unpicking” of the WTO arrangements, including agreeing a division of “tariff rate quotas” (which allow a certain amount of a product to be imported at lower duties) between the EU and the UK. It may be the case that goods imported into the UK from the EU are subject to tariffs adopted by the UK to reflect those currently imposed by the EU on third country products. The UK could choose to reduce or do away with tariffs unilaterally but would then have to do the same for all WTO members under the most favoured nation principle.



### Access to the single market in services

The example of the EU's Comprehensive Economic and Trade Agreement with Canada (CETA) shows that it is possible to negotiate a free trade agreement in services, and this provides a useful precedent, although it does not address passporting for financial services. Full access to the single market is unlikely to be granted without accepting direct EU regulation and freedom of movement of people. Access on the basis of the equivalence of regulatory regimes might be sought, given the UK regime currently adopts all of the relevant EU legislation (and in some cases exceeds current requirements). Ideally a confirmation that equivalence has been demonstrated and (subject to reciprocity) free access for services is guaranteed would form part of the UKFTA. However, it remains to be seen if this outcome is achievable and it would require the UK regime to remain in line with the EU going forward.



## Free movement of people

Post-Brexit EU citizens will lose their free movement rights in the UK and instead will be subject to the UK's national immigration policy. The Government has said it will be a priority of the negotiations to guarantee the rights of EU citizens living in the UK and UK citizens living in the EU. It is unknown on what basis this will be done or how future UK immigration policy will operate. We do know, however, that the UK will not accept the EU's four freedoms, which includes the freedom of movement. Restrictions on EU citizens coming to the UK to work are therefore to be expected.



## Contribution to the EU budget

The Government intends to leave both the single market and the EU customs union which means it would not be required to contribute to the EU budget in the same way it currently does as a member of the EU. However the UK would make an "appropriate contribution" to participate in certain European programmes of its choosing.



## Customs union

In order to negotiate its own trade arrangements with countries other than the EU, the UK must move outside the customs union. The UK's intention is to secure some form of customs arrangement with the EU that removes barriers to trade and makes cross-border trade as frictionless as possible. This will involve the re-establishment of customs checks on EU imports and further administration. The issues arising in this regard in relation to the Ireland-Northern Ireland border are yet to be resolved.



## Trade policy

Outside the EU, the UK would have the freedom to negotiate its own trade agreements and has set up a new department to do so. One question it will have is the extent to which interim transitional arrangements are put in place to grandfather existing relationships (those the subject of EU FTAs, eg with South Korea and Canada) whilst new FTAs are negotiated. One aspect which will need immediate attention is the settlement of the UK's position under the WTO rules.



## Dispute resolution

The development of the relationship between the EU and Switzerland has shown the need for a dispute resolution mechanism. The UK Government's Article 50 notice names it as an area to be prioritised in the negotiations. Some form of arbitral arrangement, perhaps similar to the arrangement under CETA (the EU's new trade agreement with Canada), is a likely solution.



## Procurement rules

Once it leaves the EU, the UK would no longer need to comply with the EU's public procurement rules. However, as a non-EU country, the UK may find it difficult to complain about public procurement rules being applied "unfairly" against UK companies tendering for EU work. Ultimately, irrespective of any trading relationship that is negotiated with the EU, it is likely that the UK would have rules similar to the existing public procurement regime. One way of achieving this would be to sign up to the Government Procurement Agreement (a plurilateral agreement within the WTO framework which aims to mutually open government procurement markets among its parties) which would give the UK access to EU procurement and vice versa. This is the position adopted by Canada.



## Subsidies

The UK may seek freedom from state aid rules and seek to be bound only by the WTO restrictions on government support. Such an approach would leave UK businesses without a reliable mechanism to complain about state aid granted to competitors by EU countries. Whilst the UK could bring information to the European Commission's attention, there would be no incentive for the Commission to act unless it was also a breach of WTO rules, in which event there is a possibility of complaint under WTO rules.

A full collection of Brexit materials is available on our dedicated [Brexit microsite](#) on the Client Knowledge Portal. For more information please get in touch with your usual Linklaters contact or any of the contacts listed [here](#).

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