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Exiting the European Union Committee

The progress of the UK's negotiations on EU withdrawal

Second Report of Session 2017–19

Report, together with formal minutes relating to the report

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Exiting the European Union Committee

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Contacts

All correspondence should be addressed to the Clerk of the Exiting the European Union Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 5430; the Committee's email address is exeucom@parliament.uk.

Contents

Conclusions

Progress of the negotiations

1. We welcome the fact that the UK and the EU have prioritised securing an agreement on citizens' rights. We regret that it has not proved possible to conclude this agreement yet, with the consequence that there is a lack of clarity for EU citizens in the UK and UK citizens in the EU—more than four million people. Together with the prospect that "nothing is agreed until everything is agreed" this creates further doubt about what kind of legal guarantees UK citizens in the EU and EU citizens in the UK and their families will have about their status. (Paragraph 16)

2. We are disappointed by the Commission's stance on the recognition of the professional qualifications of UK citizens in the EU. Such inflexibility is contributing to unnecessary uncertainty for millions of people in the UK and Europe. We believe greater precedence should be given to the impact that the lack of early agreement on this issue is having on large numbers of citizens. (Paragraph 17)

3. Notwithstanding that the phasing of the negotiations was accepted, we remain unpersuaded that there is any need to link agreement on citizens' rights to issues concerning Ireland and finance. Both sides should announce when they reach agreement on this that, come what may, the agreement on people is in perpetuity, so that 4.5 million citizens can plan their lives ahead. We urge both sides to reconsider this so that people really do come first. (Paragraph 18)

4. The role of the CJEU in enabling EU citizens in the UK to enforce their rights is clearly an issue of dispute. We encourage the Government and the EU to negotiate a mutually acceptable mechanism. We heard during our inquiry on the European Union (Withdrawal) Bill that there was no convincing precedent in the world for what the EU proposes and concluded in our report that it was not appropriate for the CJEU to continue to have jurisdiction in the UK to enforce citizens' rights after the UK has left the EU. However, a body could be established with representation from both sides to ensure that agreed rights were consistently interpreted after the UK's exit. We encourage the UK Government to make a concrete proposal to the EU on the nature and location of the joint body that would have oversight of UK and EU citizens' rights under any Withdrawal Agreement. We believe that these rights should be enshrined in a binding agreement. (Paragraph 20)

5. We welcome the Government's acceptance that the current system for applying for permanent residence certificates is "not fit to deal with the situation after we leave the EU", and the Secretary of State's acknowledgement that a new system will not ask applicants to complete an 85-page form. Any new online system for enabling EU residents to register with the UK Government must be simple and straightforward and must enable both adults and children to be easily registered. (Paragraph 29)

6. The Government is designing a new system for EU citizens in the UK to make an application online to gain the proposed "settled status". We note that this system is being developed "from scratch" and it is not anticipated to be operational until the end of 2018, only three months before the UK leaves the EU in March 2019.

The new system has to be able to cope with potentially three million applications. Therefore, a period after March 2019 is vital to enable EU citizens in the UK to apply for settled status and we welcome the Government's commitment that EU citizens will still be able to apply for settled status for two years after the UK leaves the EU. The Government has said that obtaining documentation to show their settled status will enable EU citizens who are resident here to continue to do so lawfully but there needs to be early clarification on what that documentation will consist of. If however the processing of applications continues after the two year implementation period then there will be a proportion of EU citizens in the UK unable to demonstrate their settled status and therefore their right to live and work in the UK. (Paragraph 30)

7. We welcome the progress made on citizens' rights and urge both sides to do more to resolve the outstanding areas of dispute to provide reassurance to millions of citizens living across the EU. However, attaining sufficient progress in December 2017 does not mean there will be a final agreement in place on citizens' rights. Firstly, negotiations on citizens' rights will continue alongside phase two talks. Secondly, the principle that "nothing is agreed until everything is agreed" holds out the risk that, even when an agreement on citizens' rights is reached, it could still be put in jeopardy by a failure to reach an overall Withdrawal Agreement. We call on the Government to request, and the EU to agree, that any agreement reached on citizens' rights should be ring-fenced when reached, and preserved even if no overall Article 50 deal is agreed. If the EU negotiating team rejected such a request, then the UK Government should make a declaration that it will unilaterally provide a guarantee on EU citizens' rights in the UK (as recommended in a report by our predecessor Committee). This would provide reassurance to the more than three million EU citizens living in the UK. In these circumstances, we would expect the EU to issue a similar guarantee to UK citizens living in EU countries. (Paragraph 32)

8. The UK and the Irish Governments are co-guarantors of the Good Friday Agreement. The complexity and sensitivity of the implications of the UK's decision to withdraw from the EU, including the Single Market and Customs Union, for Northern Ireland and the Republic of Ireland mean that the negotiations will continue into phase two of the Article 50 process. We agree with the Government's view that for progress to be made in Northern Ireland, the EU and UK should move quickly to negotiations on the terms of the EU-UK future relationship. We also recognise the unique challenges posed by the need to preserve the peace settlement in Northern Ireland, including issues that go far beyond trade and customs. In the light of the recent statement from the Irish Government about the border, Ministers should now set out in more detail how they plan to meet their objective to avoid the imposition of a border, including if no withdrawal agreement is reached by 29 March 2019. (Paragraph 36)

9. The Government has demonstrated significant flexibility in its approach to protecting the Belfast Agreement, peace and co-operation on the island of Ireland. Its objective of enshrining the Common Travel Area within the Withdrawal Agreement is welcome as is the UK's assurance that it will not compromise the Republic of Ireland's free movement obligations. (Paragraph 41)

10. We welcome the Government's commitment to "no physical infrastructure" at the land border between Northern Ireland and the Republic of Ireland. We also welcome its rejection of a customs border between Northern Ireland and Great Britain. We do not currently see how it will be possible to reconcile there being no border with the Government's policy of leaving the Single Market and the Customs Union, which will inevitably make the border between Northern Ireland and the Republic of Ireland the EU's customs border with the UK; i.e. including the land border in Northern Ireland and at the ports of Holyhead, Milford Haven and Fishguard that provide freight services to and from the Republic of Ireland. It will be made harder by the fact that the Government's proposals, by its own admission, are untested and to some extent speculative. We call upon the Government to set out in more detail how a "frictionless" border can in practice be maintained with the UK outside the Single Market and the Customs Union. (Paragraph 47)

11. The negotiations on the financial settlement are fluid and the situation may change. The Government has said that the UK will meet its financial obligations. It must now seek a fair settlement that will not unduly burden UK taxpayers. The evidence is clear that there are many ways to calculate the potential settlement and all involve a degree of speculation. Having challenged the EU's financial assessment, the Government should provide us with evidence on its analysis of the EU's position paper of 12 June 2017 on the financial settlement. If the UK is required to contribute to the EU's liabilities, then the UK must benefit from a share of the EU's assets, which the EU's position paper does not mention in any substantive way. To move forward, the Government and the EU should set out what assets the UK is entitled to. The Government should also set out, as soon as possible, which scientific, educational, cultural, security and any other programmes it would like to contribute to and benefit from after the UK leaves the EU. Early and clear explanation of the purpose of such expenditure will be important to build public confidence in the Government's efforts to reach an agreement with the EU on finances. (Paragraph 57)

12. The EU has decided that it will not allow negotiations to move to phase two until sufficient progress on the financial settlement has been made. We continue to take the view of our predecessor Committee that this approach is unnecessary and unhelpful but the Government has reluctantly accepted it. However, the Government will need to balance its negotiating position against the significant economic risk that arises from the continuing uncertainty over the negotiations. It is essential that talks now move on to phase two. (Paragraph 58)

13. We note the Government's recognition of Parliament's role in scrutinising the negotiations. However, the June General Election, combined with the Summer Recess, has meant that nearly a quarter of the Article 50 negotiation time has passed without the opportunity for us to provide scrutiny on progress. While acknowledging the statements he has made to the House, we expect to hear evidence from the Secretary of State at regular intervals and we request that he commit to giving evidence to us at least once every two months. (Paragraph 62)

14. We note the Government's intention to work closely with the devolved administrations. However, as we said in our report on the European Union (Withdrawal) Bill, the Joint Ministerial Committee for EU Negotiations (JMC (EN)) should meet "much more regularly" and address "the concerns expressed

by the devolved administrations about the effectiveness of its operations." We also recommended that the Government "set out whether it is considering formal structures for inter-governmental relations, and its proposed arbitration system for disputes, so that the views of the devolved governments can be heard, including in any future trade agreements." (Paragraph 63)

15. Towards the end of the Article 50 negotiations, if there is a deal, MPs will vote on whether to accept the outcome. The Government, therefore, has a duty to be as open with Parliament as possible without jeopardising its negotiating position. We welcome the Government's statement that it will abide by the will of the House and provide us with the sectoral analyses of the UK's exit from the EU. There is an important difference between information which would genuinely harm our negotiating position and information that is simply embarrassing for the Government. The two are not the same thing. On 27 November, the Committee received an edited version of the sectoral analyses from the Secretary of State for Exiting the European Union. We will now consider them and respond separately. (Paragraph 74)

16. We welcome the Government's commitment that it will share with the devolved administrations its economic modelling on the impact of UK withdrawal on the constituent nations and regions of the UK. We call on the Government to clarify whether this modelling is different from the sectoral analyses that it has already committed to sharing with us and if so, to provide us with this additional economic modelling as well. (Paragraph 77)

Implementation and the future relationship

17. In the Prime Minister's Florence speech she reaffirmed the Government's intention to seek an 'implementation period' to provide more time for business, the public sector and European governments to adapt to the implications of the UK's withdrawal from the EU. The European Council's statement that it will begin preparatory "internal discussions" on transitional arrangements is also a positive step. Such an arrangement, if it can be agreed quickly, could be of significant mutual benefit to the UK and EU Member States. (Paragraph 85)

18. The Commission's and Council's legal services should give definitive advice on whether Article 50 provides a basis on which to agree an implementation period as part of the withdrawal period, including in relation to potential UK participation in those European Union agencies and institutions that currently have no provision for the membership of, or participation or cooperation with, non-EU Member States. The Government could then publish the reasoning on which its legal opinionon the elasticity of Article 50 rests, as well as that of the Commission's legal service, and clarify what any legal basis in UK law would be for the domestic implementation of the agreement. We believe this could increase certainty in the negotiations; not doing so could risk a successful legal challenge to the Court of Justice of the European Union. We also recommend that the Government should now make a clear and public statement about the likely terms of the transition and implementation period, so that these are widely understood. (Paragraph 90)

19. We urge the EU to acknowledge at its December Council that sufficient progress has been made on the withdrawal issues. Then the Government and the EU must prioritise providing certainty to business and other stakeholders that there will be an implementation period that can be relied upon. Failure to reach an early outline agreement will undermine the very purpose of having an implementation period and will do nothing to reassure importers and exporters in the UK and the EU, or the UK's larger and more mobile businesses, some of which are already considering when to trigger contingency plans to relocate some operations from the UK. We welcome the assurance from the Secretary of State—echoed on our visit to Brussels—that, subject to a positive outcome to the December Council, it will be possible to publish detailed arrangements for the implementation period by the end of March 2018. We think it essential that this deadline is achieved. To mitigate business uncertainty in 2018, these guidelines should provide sufficient scope and detail for business to make investment and trade decisions and for regulatory agencies to base risk assessments and other such judgements on, for the period after March 2019. (Paragraph 96)

20. The Government and the EU should provide more detail on how they intend free movement to operate during the implementation period, and how it will affect the rights of EU citizens coming to live and work in the UK after 29 March 2019, as well as during any time-limited implementation period. (Paragraph 98)

21. The UK is party to over 30 trade agreements with over 60 countries, and hundreds more non-trade agreements, through the EU. These agreements foster trade and co-operation between the UK and the rest of the world and if the UK ceases to be party to them it will rely instead on WTO terms. Third countries will have a mutual interest in continuing many of these agreements. Nevertheless, striking deals to continue them will be a significant task and the Government has acknowledged that much of the work will not be completed until near the end of the Article 50 process. Some of these agreements, both trade and non-trade, will be more important than others; therefore, the Government must prioritise accordingly. The Government should set out its plans for the UK's continuing participation in these agreements, its approach to how it is prioritising agreements, and what can be achieved during the Article 50 timeframe. (Paragraph 105)

22. The Government should publish a white paper on the implementation period as soon as possible after the European Council in December. This should cover the legal basis in UK and EU law for such an agreement, the single market, the customs union, free movement, the CJEU, UK membership of EU agencies, security, defence and foreign policy co-operation, the 30 plus trade agreements, and hundreds of non-trade agreements, that the UK is party to through its membership of the EU and also the Government's response to the European Parliament's resolution of 28 September 2017. (Paragraph 106)

23. The scope and nature of any UK future trade and services agreement with the EU will be determined by many things, including economic interest and by the extent to which the UK chooses to, and the EU requires the UK to, remain closely harmonised with EU standards and regulations, versus diverging from these to secure new trading relationships. It is not yet evident that the Government has decided which path to follow, let alone set out what kind of deal it is seeking. Given the short time

left, it is very hard to see how it will be possible to negotiate a full, bespoke trade and market access deal between now and October 2018. The Government's stated policy aim is to agree, by October 2018, the Article 50 withdrawal agreement, a transition/implementation period and "a comprehensive free trade agreement and a comprehensive customs agreement that will deliver the exact same benefits as we have". Such a deal must deliver the Government's aim in both goods and services. We look forward to monitoring progress on this over the coming year. Until now, the Government's statements on the nature of the UK's future relationship with the EU have been couched in general terms such as 'comprehensive and ambitious' or 'deep and special'. The Government should now provide to Parliament much more specific proposals as to what these words will mean in practice. Similar clarity from the EU negotiators on the "new partnership" would also be welcome. Given the lack of certainty that an agreement, for a future relationship with the EU, will be signed during the withdrawal implementation period, it will be important to have as much clarity by the date of exit. (Paragraph 112)

24. We welcome the Government's commitment to enshrine the withdrawal agreement in separate primary legislation, which will include agreements on citizens' rights, any financial settlement and an implementation period, along with other matters. The Government has also said that the House will have the opportunity to vote on a motion on the withdrawal agreement once it has been agreed but before the European Parliament has its own vote. We recognise that the timeframe for agreeing the withdrawal agreement is not in the Government's hands. However, the timing of the vote in the House of Commons is significant. As it stands, any deal will need to be voted on by the UK Parliament and the European Parliament before 11pm on 29 March 2019 unless the date of exit has been postponed by unanimous agreement of the 27 Member States under the terms of Article 50. If the European Parliament has not approved the agreement and the negotiating period has not been extended, the UK will leave the EU without a deal. Clearly a vote cannot take place until an agreement has been reached between the UK and the EU. If this happens at the very end of the Article 50 period then the Government would be unable to guarantee that either the motion or the Bill could be debated and voted on before the end of March 2019. Therefore, the Government must hold a vote as soon as possible after any deal is agreed. It would not be acceptable to present a motion to the House after the UK has left the EU. (Paragraph 116)

25. Whether or not a deal is reached, we believe that the Government should be investing now in improvements in technology and infrastructure to ease the passage of goods through gateways like the Port of Dover; for example, by introducing electronic customs checks and building the proposed lorry park outside the Port of Dover. However, such measures would not deal with all the risks of serious delays in Dover and would have to be reciprocated across the Channel in order to be effective. (Paragraph 122)

26. There has been continued debate about no deal being reached at the end of the negotiations. We agree with the Chancellor of the Exchequer that this would be "a very, very bad outcome" for the UK and we think it would also be harmful for the EU, in particular for our closest trading partners. It would be chaotic and damaging for the UK economy and would leave many businesses and whole sectors in limbo

facing huge uncertainty. The Government must do everything it can to avoid such an outcome. The Government has said that if no deal is reached, specific sector by sector agreements could still be made to minimise damage to the economies of both the UK and EU member states, but there is nothing to suggest that this would be a straightforward or swift process, or even possible. The Prime Minister has previously stated that 'no deal is better than a bad deal'. It is difficult to imagine any possible deal, consistent with WTO and other international treaties, that would be more damaging to the UK's interests than leaving the EU with no deal whatsoever in place. (Paragraph 123)

1 Introduction

The negotiations

1. In the six months since our predecessor Committee last reported, the Government has triggered Article 50, published a range of position and future partnership papers, and completed five rounds of negotiations with the EU. The timetable is tight; negotiators aim to strike a deal under Article 50 by October 2018 but if that slips significantly, the UK and the EU face the prospect of not reaching a deal before the UK exits the EU on 29 March 2019. Business, individuals and the public sector need time to prepare, but formal talks on either the future EU-UK relationship, or on a potential transition or implementation period have not yet begun.[1]

2. From the outset of the Article 50 negotiations, the Government has wanted to discuss the future relationship in parallel with the withdrawal. The Government has argued that many aspects of the withdrawal, such as border arrangements on the island of Ireland, cannot be resolved without simultaneous discussions on the framework for the future relationship. Our predecessor Committee also recommended that the future relationship and the withdrawal should be negotiated in parallel, so that there is clarity about both the divorce settlement and the new relationship at the moment that the UK leaves the EU.[2] However, the EU27 devised a two-stage process, in which 'sufficient progress' would have to be made on citizens' rights, specific issues affecting the Northern Irish border and the financial settlement before talks could begin on the future relationship. The Government accepted this timetable in the first round of negotiations in June but has criticised it.[3]

3. While there has been progress in some areas, notably citizens' rights, the disagreement on the sequencing of the negotiations has, at least until now, led to deadlock, particularly on the financial settlement. The Prime Minister said in her Florence Speech that the financial settlement can only be resolved "as part of the settlement of all the issues […]", namely those that relate to the UK's future relationship with the EU. She indicated that the Government requires more clarity on the future relationship before it makes any further commitments on the financial settlement.[4] However, in October the European Council stated that the UK had not translated its position on the financial settlement into a "firm and concrete commitment" to settle its "obligations". It deemed that sufficient progress had not been made and negotiations on the future relationship could not yet begin.[5] On 10 November, Michel Barnier confirmed that he had given the Government a two-week deadline to make "clarifications or concessions" if the negotiations are to move

1 The terms "implementation period" and "transition period" are often used interchangeably to refer to the period in which the UK will have formally exited the EU but (a) is in the process of implementing the withdrawal agreement that the Government and EU have agreed under Article 50, and/or (b) may continue to apply existing structures of EU rules and regulations pending agreement on the UK-EU future relationship. On the whole, we use the term "implementation period" in this report. However, we use the term "transition period" when quoting or paraphrasing sources that have referred to it in this way.

2 Exiting the European Union Committee, The process for exiting the European Union and the Government's negotiating objectives, First Report of Session 2016–17, HC 815, para 58

3 Commission, Terms of Reference for the Article 50 TEU negotiations, 19 June 2017 & Department for Exiting the EU, Secretary of State David Davis' statement following the opening of EU exit negotiations, 19 June 2017

4 Prime Minister, PM's Florence speech: a new era of cooperation and partnership between the UK and the EU, 22 September 2017

5 European council, (Art. 50) meeting (20 October 2017) - Conclusions, 20 October 2017

on to phase two in December.[6] The Committee believes that it is in the interests of both the UK and the EU to move on to discussions about the future relationship as soon as possible, particularly given the stated policy aim of reaching agreement by October 2018.

4. Once the EU27 decides that sufficient progress has been made to allow the parties to move on to phase two, the Government is optimistic that it can agree a deal on the UK's future relationship with the EU, including a free trade agreement (FTA), by October 2018.[7] In our meeting with Mr Barnier on 8 November, he explained that the EU expect to "scope" the terms of a future relationship from January 2018. He thought it possible that a political declaration on that future relationship could be reached by October 2018, but said that agreement on a free trade deal would be on a different legal basis.[8] Figure 1 below is a slide shown to us during our meeting with Michel Barnier setting out the Commission's expectations for the timeline for negotiations. The Government is seeking an 'implementation period', of around two years, during which it will introduce measures necessary for the future relationship.[9] While the European Council has said that it will begin "internal discussions" on transitional arrangements and the future relationship, questions remain on what any implementation period would include, its legal basis and what rights and obligations the UK might have for its duration.[10] The lack of clear answers to these questions has implications for businesses in different sectors, some of which will be making significant organisational and investment decisions from early 2018 onwards. The Secretary of State and the EU have both indicated that they hope to reach agreement on an implementation period in the first quarter of 2018.

6 Channel 4 News [video], May sets Brexit time and date, 10 November 2017 [00.54]

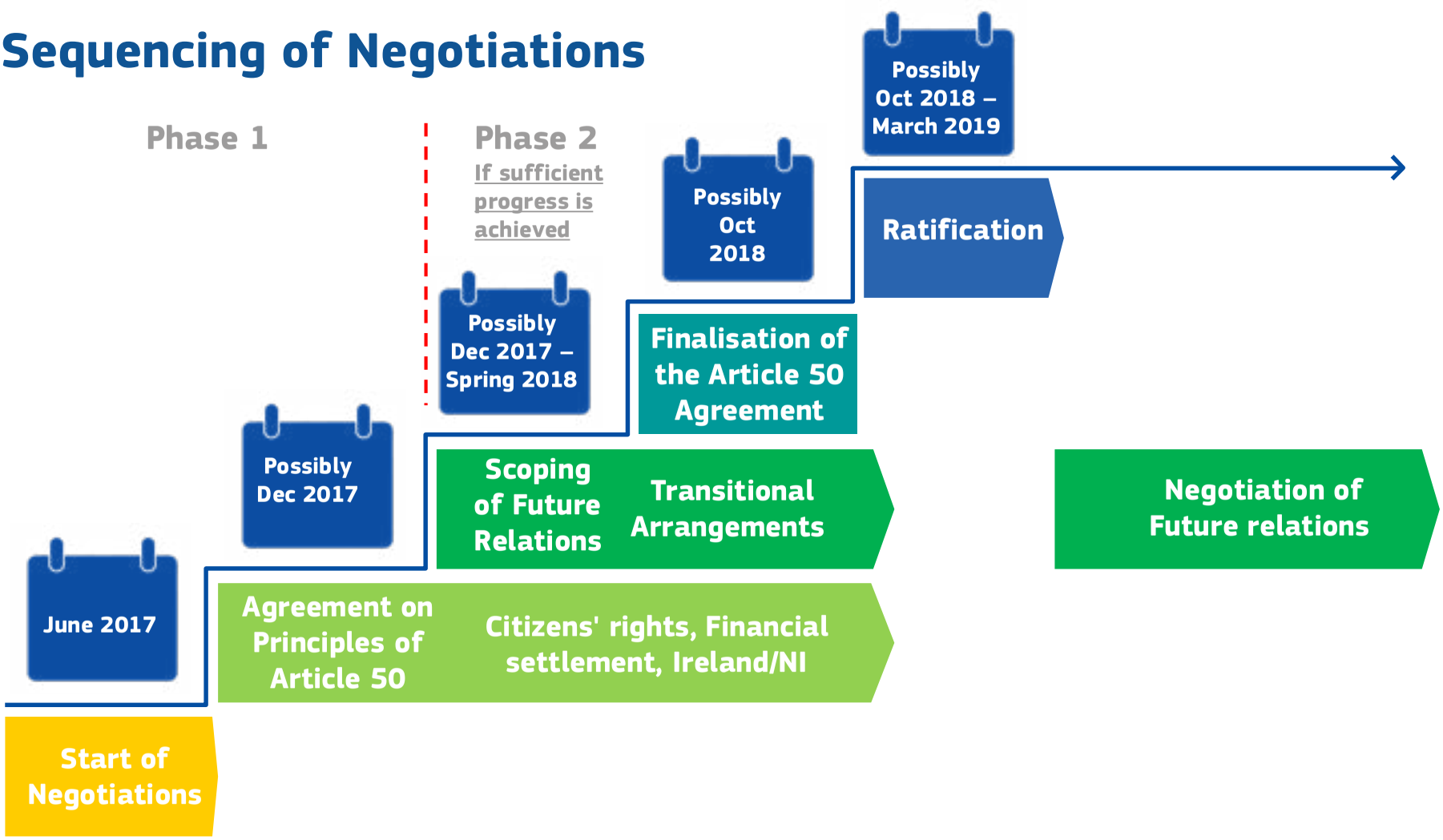
7 Q24

8 An agreement between the UK and the EU on their future relations would be concluded using existing EU Treaty legal bases, for example Article 207 TFEU (common commercial policy) or Article 217 TFEU (association agreements), each in conjunction with Article 218 TFEU which sets out the procedures for the EU to negotiate and conclude agreements with third countries. An agreement limited to trade, based on Article 207, would fall within the exclusive competence of the EU and therefore need only the agreement of the EU Council and (likely) the consent of the European Parliament. A broader agreement covering areas of both EU and Member State competence—such as the recent EU-Canada Comprehensive Economic and Trade Agreement (CETA)—would require the agreement of the Council and the European Parliament, and would be likely to require ratification by each individual Member State. This would include, in practice, the approval of up to 38 national and regional assemblies.

9 Prime Minister, PM's Florence speech: a new era of cooperation and partnership between the UK and the EU, 22 September 2017

10 European council, (Art. 50) meeting (20 October 2017) - Conclusions, 20 October 2017

Figure 1: The European Commission's expectations for the timeline for negotiation



The inquiry

5. In this report, we consider the current state of the negotiations. We also examine the prospects for the European Council meeting in December when the EU27 will consider again whether sufficient progress has been achieved before talks can progress to phase two. We took evidence from Rt Hon. David Davis MP, the Secretary of State for Exiting the European Union, shortly after the last European Council meeting. We visited the Port of Dover where we met individuals from the Port Authority, officials from executive agencies based at the Port as well as ferry operators, to learn more about how the border will be affected by the UK's withdrawal from the EU. In November, we also visited Brussels and Paris where we met a range of interlocutors, including Michel Barnier, Guy Verhofstadt MEP, Danuta Hübner MEP, Mairead McGuinness MEP, French parliamentarians and representatives of French business. As in the last Parliament, we have also drawn on the work of other Select Committees in both the House of Lords and the House of Commons, and on documents published by the Government, to help to inform our work.

6. We intend to publish further reports on the progress of the Article 50 negotiations at regular intervals. Our next report on the state of the negotiations will be published after the December European Council.

2 Progress of the negotiations

Citizens' rights

7. Citizens' rights are one of the three areas in phase one that EU negotiators have said require sufficient progress before the talks can move on to phase two. After each round of negotiations, the UK and the EU have published a joint technical note summarising and comparing the UK and EU positions on citizens' rights.[11]

8. On Monday 17 October, in his statement updating the House of Commons on the fifth round of negotiations in September, the Secretary of State for Exiting the EU summarised the negotiations on citizens' rights.[12] He said that there had been "further progress" towards giving both UK citizens in the EU27 and EU citizens in the UK "the greatest possible legal certainty about the future." He listed the areas of agreement: the criteria for residence rights; the right to work and to own a business; social security rights; rights for current family members; reciprocal healthcare rights; the rights of frontier workers; and the need to streamline and reduce the cost of the process for securing settled status in the UK. He also identified areas where there was still disagreement: recognition of professional qualifications; voting rights in local elections; rights of onward movement for UK citizens already resident in the EU27 (and rights of return); rights to bring in future family members; and the export of a range of benefits.[13] Mr Davis told this Committee that some of the disagreements related to the distinction between phase one and phase two, for example on professional qualifications:

> Whenever we try to talk about, let us say, something like protecting the professional qualifications of somebody who is studying for that qualification, we say, "We should protect them. That is protecting their lives as they are now." The Commission is really quite picky about this and says, "No, that is the future relationship."[14]

He said there was hope that some areas could be concluded, "If not now, it may be released by going to the forward arrangements."[15]

9. In the press conference after the fifth round of negotiations on 12 October, Michael Barnier noted that the UK had informed his team of its intention to put in place a simplified process for EU citizens to establish their status in the UK, adding:

> We will study attentively the practical details of this procedure, which should really be simple for citizens.[16]

His conclusion, following that round of negotiations, was that "as things stand at present, I am not able to recommend to the European Council next week to open discussions on the future relationship."[17]

11 The Joint technical note on the comparison of EU-UK positions on citizens' rights can be found on the Department of Exiting the EU website
12 HC Deb 17 October 2017, Vol. 629, Col 731
13 HC Deb 17 October 2017, Vol. 629, Col 731
14 Q139
15 Q139
16 European Commission, Press statement by Michel Barnier following the fifth round of Article 50 negotiations with the United Kingdom, Brussels, 12 October 2017
17 European Commission, Press statement by Michel Barnier following the fifth round of Article 50 negotiations with the United Kingdom, Brussels, 12 October 2017

Touching distance of a deal

10. On 19 October, in an email to EU citizens in the UK ahead of the European Council, the Prime Minister said "I have been clear throughout this process that citizens' rights are my first priority" and that:

> When we started this process, some accused us of treating EU nationals as bargaining chips. Nothing could have been further from the truth. EU citizens who have made their lives in the UK have made a huge contribution to our country. And we want them and their families to stay. I couldn't be clearer: EU citizens living lawfully in the UK today will be able to stay.[18]

11. The Prime Minister said that the agreement "will provide guarantees that the rights of those UK nationals currently living in the EU, and EU citizens currently living in the UK, will not diverge over time".[19] In evidence to this Committee on 25 October, the Secretary of State agreed with the Prime Minister that the negotiations were within "touching distance" of a deal on citizens' rights.[20] When asked what might change between now and December to enable the EU to declare that "sufficient progress" has been made, to enable negotiations to move on to phase two, the Secretary of State said on citizens' rights:

> We are going to have to work very hard on concluding the citizenship element. That has huge political leverage among the 27.[21]

12. Jane Golding, Chair of British in Europe, in evidence to the House of Lords EU Select Committee on 31 October, disagreed a deal was close and said:

> Although we do not see a solution within touching distance, we think that some progress has been made on technical issues, particularly with regard to non-economically active people and reciprocal healthcare and social security. Much less progress has been made on working citizens—on both sides, obviously. It is a little known fact that around only 21% of British citizens in the EU are over 65, so this is a very important issue for us.[22]

13. The 3million and British in Europe, campaigning groups for EU nationals in the UK and UK nationals in the EU, have highlighted where they would like to see progress from both sides. They have identified three obstacles in the EU's position:

- the EU has drawn a flawed distinction between the rights of citizens who have already moved and the future relationship between the UK and the EU—this relates to the EU position on professional qualifications;[23]
- the EU's position that UK citizens in the EU should have no right of freedom of movement after Brexit, again shows in its position on cross-border working and recognition of qualifications;

18 PM's open letter to EU citizens in the UK, 19 October 2017
19 PM's open letter to EU citizens in the UK, 19 October 2017
20 Q140
21 Q150
22 House of Lords EU Select Committee, Oral evidence 31 October 2017, Q3
23 The British in Europe paper Case Studies of UKinEU and professional qualifications, and cross-border working, October 2017, gives examples of UK migrants currently working across Europe

- the EU attaches an "excessive importance to preserving the integrity of its laws", for example, insisting that a person with permanent residence in a member state loses that right if he or she is absent for two years.

14. With regard to the UK position, they have listed two fundamental stumbling blocks:

- the insistence on not accepting the simple continuation of the existing system of EU residence rights but rather requiring EU nationals to be brought under UK immigration law, where this principle is "fundamentally different to the concept of citizens' rights in the EU."[24]

- the argument that the rights of EU citizens in the UK should be no better than those of UK citizens.

The 3million and British in Europe remain concerned that any decision on sufficient progress needs to include "clarity as regards the registration procedure and criteria to be applied by the UK to EU citizens in the UK."[25]

15. In addition, they are concerned that if discussion moves on to phase two matters before there has been complete agreement on all the key issues in phase one, then citizens' rights risk becoming "bargaining chips" again. They have asked that any agreement on citizens' rights "must be protected so that it cannot be opened up later for use as leverage to gain some collateral benefit."[26]

16. **We welcome the fact that the UK and the EU have prioritised securing an agreement on citizens' rights. We regret that it has not proved possible to conclude this agreement yet, with the consequence that there is a lack of clarity for EU citizens in the UK and UK citizens in the EU—more than four million people. Together with the prospect that "nothing is agreed until everything is agreed" this creates further doubt about what kind of legal guarantees UK citizens in the EU and EU citizens in the UK and their families will have about their status.**

17. **We are disappointed by the Commission's stance on the recognition of the professional qualifications of UK citizens in the EU. Such inflexibility is contributing to unnecessary uncertainty for millions of people in the UK and Europe. We believe greater precedence should be given to the impact that the lack of early agreement on this issue is having on large numbers of citizens.**

18. **Notwithstanding that the phasing of the negotiations was accepted, we remain unpersuaded that there is any need to link agreement on citizens' rights to issues concerning Ireland and finance. Both sides should announce when they reach agreement on this that, come what may, the agreement on people is in perpetuity, so that 4.5 million citizens can plan their lives ahead. We urge both sides to reconsider this so that people really do come first.**

24 See also, House of Lords, EU Select Committee, Oral evidence 31 October 2017, Q3

25 The3million and British in Europe, Citizens' Rights: The road to a satisfactory comprehensive agreement, 31 October 2017

26 The3million and British in Europe, Citizens' Rights: The road to a satisfactory comprehensive agreement, 31 October 2017

Enforcing citizens' rights

19. The question of how the rights of EU citizens, as set out in the Withdrawal Agreement, should be enforced once the UK leaves the EU remains unresolved. In his statement to the House of Commons on 17 October, the Secretary of State said the discussions had included ways in which we can give "confidence to European citizens living in the UK that they will be able to directly enforce their rights—as set out in the Agreement—in UK courts."[27] Before this Committee, he explained that one barrier to progress was "the very fundamental area of the European Court" and said that the UK Government had a solution that it hopes will be acceptable to the European Commission.[28] At the press conference following the fifth round of negotiations, Michel Barnier said that there were two common objectives: for the Withdrawal Agreement to have direct effect, which is essential to guarantee the rights to be of all citizens in the long-term, and for the interpretation of these rights to be fully consistent in the EU and in the UK. Michel Barnier said "This means for us the role of the European Court of Justice."[29] We note that the joint technical paper that sets out the areas where both sides agree and disagree on matters discussed does not provide any information on the role of the CJEU.[30]

20. **The role of the CJEU in enabling EU citizens in the UK to enforce their rights is clearly an issue of dispute. We encourage the Government and the EU to negotiate a mutually acceptable mechanism. We heard during our inquiry on the European Union (Withdrawal) Bill that there was no convincing precedent in the world for what the EU proposes and concluded in our report that it was not appropriate for the CJEU to continue to have jurisdiction in the UK to enforce citizens' rights after the UK has left the EU. However, a body could be established with representation from both sides to ensure that agreed rights were consistently interpreted after the UK's exit. We encourage the UK Government to make a concrete proposal to the EU on the nature and location of the joint body that would have oversight of UK and EU citizens' rights under any Withdrawal Agreement. We believe that these rights should be enshrined in a binding agreement.**

Registering EU citizens in the UK and "settled status"

21. Our predecessor Committee considered the process for EU citizens to apply for permanent residence documents in the UK. The Committee's report, published in March 2017, commented on the complexity of the process and the ability of the Home Office to manage the number of applications for permanent residence documents made after the referendum.[31]

27 HC Deb 17 October 2017, Vol. 629, Col 731

28 Q139

29 Press statement, Michel Barnier following the fifth round of Article 50 negotiations with the UK, Brussels, 12 October 2017

30 Under "Role of CJEU" and "Monitoring and oversight" in the September Joint Technical paper it says "For discussion in Governance Group"

31 Exiting the EU Committee, The Government's negotiating objectives: the rights of UK and EU citizens, Second Report of Session 2016–17, HC 1071, The Home Office granted 65,195 permanent residence documents to EEA nationals and their family members in 2016—when there are an estimated three million EU citizens in the UK—and was rejecting nearly 30% of permanent residence applications.

22. In June 2017, the UK policy paper on safeguarding the position of EU citizens living in the UK and UK nationals living in the EU acknowledged that, under free movement rules, EU citizens did not need EU documentation to prove they were exercising treaty rights; nor did they need permanent residence to secure their status after the UK leaves the EU.[32] Instead, the UK was introducing a new category of "settled status" for qualifying EU citizens in the UK. Individuals would have to apply for the new residence status and would be eligible to apply as long as they were resident in the UK, had been so continuously for five years, and had been resident in the UK before the specified cut-off date. They would receive documentation to enable them "to carry on living here lawfully", and to demonstrate their status to anyone who requires confirmation of their right to reside in the UK, such as a possible employer.[33]

23. The Secretary of State said that those who already have permanent residence documents will not need to go through the full application process again, but will be able to exchange their permanent residence document for the new "settled status".[34] Furthermore, he told the Committee that he was dissatisfied with the permanent residence procedure, describing the 85 page form as "daft", and that he wanted to make the process easy and cheap.[35] In evidence to the Home Affairs Committee on 17 October 2017, Rt Hon. Amber Rudd MP, Home Secretary, said the Home Office had started working on preparations for a new online system for EU citizens to apply for settled status in the UK, which would be "up and running" by the end of 2018.[36]

24. It is the Government's intention that the UK will leave the EU at the end of March 2019. If the new system is "up and running" at the end of 2018, this would leave only three months for EU citizens in the UK to apply and receive proof of their new "settled status" unless the period is extended by a transitional arrangement. The Home Secretary has said the system is intended to manage the potential 3 million applications, from the end of 2018 and through any transition period, and that the Home Office is recruiting extra staff to assist this.[37] In the twelve-month period from Q3 2016 to Q2 2017, the Home Office received 340,000 applications for permanent residence certificates.[38] The average time for processing a permanent residence certificate application in Q4 2016 was 116 days.[39]

25. On 7 November, the Government published a *Technical Note on Citizens' Rights–Administrative Procedures in the UK* giving more information on the new online system for applications for the new status as defined in the Withdrawal Agreement. The note goes some way to address the complexities of the process. On one hand it clearly states that "there is no suggestion that those lawfully here will be required to leave on the day we exit the EU" but it also states that settled status will be "a condition for lawful residence in the

32 Department for Exiting the European Union, Safeguarding the position of EU citizens living in the UK and UK nationals living in the EU, 26 June 2017
33 Department for Exiting the European Union, Safeguarding the position of EU citizens living in the UK and UK nationals living in the EU, 26 June 2017
34 HC Deb 17 October 2017, Vol. 629, Col. 731
35 Q141
36 Home Affairs Committee, The work of the Home Secretary, oral evidence 17 October 2017, Q19. See also Civil Service World, Home Office to recruit 1,500 more staff to deal with Brexit, Civil Service World, 18 Oct 2017
37 Home Affairs Committee, The work of the Home Secretary oral evidence, 17 October 2017, Qq22–25
38 Home Office, Immigration statistics, April-June 2017, 24 August 2017
39 Free Movement, FOI response: waiting times for permanent residence certificates triple, 18 October 2017

UK."[40] So there will be a time period where not everyone who needs to be able to prove their status to the UK authorities, employers, service providers, etc. will be registered and, therefore, able to do so.

26. To address this, the note says "those currently resident will be given sufficient time after exit to make their application".[41] The note has two proposals to increase the timeframe for registration and it is clear that the registration process continues during the implementation period. First, it says that individuals will be able to make an application for "around 2 years after the UK's exit from the EU." Secondly, it says that "Subject to getting an early agreement with the EU" it will set up a "voluntary application process before we leave the EU" and the "voluntary scheme will sit alongside any existing EU law rights, until those rights fall away."[42] The UK policy paper on citizens' rights published in June 2017 had said that there was no need for EU citizens to apply for "settled status" before the UK leaves the EU, but that the new application system would "enable those who wish to do so to get their new status at their earliest convenience."[43]

27. The response from the European Parliament Brexit Steering Group (BSG) to the UK's Technical Note also drew attention to the administrative procedure for settled status. The BSG response said that the procedure: must be an automatic process in the form of a simple declaration and not an application which introduces any kind of conditionality (e.g. a pro-active 'criminality check'); enable families to make one joint declaration; place the burden of proof on the UK authorities to challenge the declaration on a case-by-case basis and in line with EU law; and be cost-free. Furthermore, it said the procedure should be:

> a system that can only enter into force after any transition period, if requested and agreed, has concluded. Before that, the freedom of movement applies.[44]

28. The 3million campaign group also responded to the publication of the technical note, highlighting 25 sections of the note that concerned them, such as the introduction of a fee and the criminality checks.[45] They also compared the technical note to their own proposal for an alternative to "settled status".[46]

29. **We welcome the Government's acceptance that the current system for applying for permanent residence certificates is "not fit to deal with the situation after we leave the EU", and the Secretary of State's acknowledgement that a new system will not ask applicants to complete an 85-page form. Any new online system for enabling EU residents to register with the UK Government must be simple and straightforward and must enable both adults and children to be easily registered.**[47]

40 HM Government, Technical Note: Citizens' Rights – Administrative Procedures in the UK, 7 November 2019, para 2 and para 4-

41 HM Government, Technical Note: Citizens' Rights – Administrative Procedures in the UK, 7 November 2019, para 4

42 Ibid para 5

43 UK policy paper, Safeguarding the position of EU citizens living in the UK and UK nationals living in the EU, 26 June 2017

44 European Parliament, Brexit: EP outlines its red lines on latest UK citizens' rights proposals, 9 November 2017

45 Technical Note: Citizens' Rights -Administrative Procedures in the UK. Response by the3million, 9 November 2017

46 The3million, The Alternative to Current Proposals for EU Citizens Living in the UK before Brexit: UKPR and UKTR, October 2017

47 We will return to the issue of UK nationals in the EU in future

30. **The Government is designing a new system for EU citizens in the UK to make an application online to gain the proposed "settled status". We note that this system is being developed "from scratch" and it is not anticipated to be operational until the end of 2018, only three months before the UK leaves the EU in March 2019. The new system has to be able to cope with potentially three million applications. Therefore, a period after March 2019 is vital to enable EU citizens in the UK to apply for settled status and we welcome the Government's commitment that EU citizens will still be able to apply for settled status for two years after the UK leaves the EU. The Government has said that obtaining documentation to show their settled status will enable EU citizens who are resident here to continue to do so lawfully but there needs to be early clarification on what that documentation will consist of. If however the processing of applications continues after the two year implementation period then there will be a proportion of EU citizens in the UK unable to demonstrate their settled status and therefore their right to live and work in the UK.**

Citizens' rights and no deal

31. The reciprocal rights for EU citizens in the UK will fall away when the UK leaves the EU. This means EU states' obligations to the UK and its citizens will also fall away. As such "obligations beyond that time would only exist if they were agreed between the EU and the UK as part of the negotiations that have recently commenced".[48] A unilateral solution for the UK cannot provide for those areas which require a reciprocal arrangement.[49] In the absence of an agreement, the UK would have to decide how it would address the status of EU citizens in the UK, what legislation it would introduce to protect their rights and how those rights would be enforced. The UK could use powers in the European Union (Withdrawal) Bill to maintain, modify, limit or remove rights which domestic law presently grants to EU nationals.[50] The timing and manner of any no deal outcome will be relevant for how much progress has been made in registering the three million EU citizens in the UK.[51] Business groups, such as the Institute of Directors, have expressed concern about what no deal might mean for EU workers.[52] The British in Europe campaign group said that

> The short answer to the question "What would be the effect of no deal?" is that nobody knows for certain. The worst-case scenario is that UK citizens in the EU and EU citizens in the UK would simply lose all of their existing rights as EU citizens living in an EU Member State other than their country of origin.[53]

32. **We welcome the progress made on citizens' rights and urge both sides to do more to resolve the outstanding areas of dispute to provide reassurance to millions of citizens living across the EU. However, attaining sufficient progress in December 2017 does not mean there will be a final agreement in place on citizens' rights. Firstly, negotiations on citizens' rights will continue alongside phase two talks. Secondly, the principle that "nothing is agreed until everything is agreed" holds out the risk that,**

48 European Union (Withdrawal) Bill, Explanatory notes
49 House of Lords EU Select Committee, Oral evidence 31 October 2017, Q5
50 House of Lords EU Select Committee, oral evidence 31 October 2017, Q5. See also the EU Withdrawal Bill, Explanatory notes
51 House of Lords EU Select Committee, oral evidence 31 October 2017, Q5
52 Institute of Directors, Business leaders will welcome clarity of intent on EU citizens, 26 June 2017
53 British in Europe written evidence to the House of Lords Justice Sub-Committee, para 8

even when an agreement on citizens' rights is reached, it could still be put in jeopardy by a failure to reach an overall Withdrawal Agreement. We call on the Government to request, and the EU to agree, that any agreement reached on citizens' rights should be ring-fenced when reached, and preserved even if no overall Article 50 deal is agreed. If the EU negotiating team rejected such a request, then the UK Government should make a declaration that it will unilaterally provide a guarantee on EU citizens' rights in the UK (as recommended in a report by our predecessor Committee).[54] This would provide reassurance to the more than three million EU citizens living in the UK. In these circumstances, we would expect the EU to issue a similar guarantee to UK citizens living in EU countries.

Northern Ireland and the Republic of Ireland

33. Northern Ireland is the only part of the UK to share a land border with an EU member state and UK withdrawal will mean that an EU external border will be between Northern Ireland and the Republic of Ireland. The Government and the EU27 have placed the highest priority on protecting the Belfast Agreement, peace and co-operation.

34. The Government and the Commission have published position papers on the future of the border. The Government's paper sets out its proposals for dealing with the following issues:

- upholding the Belfast ('Good Friday') Agreement (GFA);
- maintaining the Common Travel Area (CTA) and associated reciprocal rights;
- avoiding a hard border for the movement of goods; and
- preserving North-South/East-West cooperation, including on energy.

It emphasises that the unique circumstances relating to Northern Ireland and the Republic of Ireland must be addressed early in the negotiations, in accordance with directives from the Commission and priorities published by the Irish Government. However, it says that for progress to be made the EU and UK must move quickly to negotiations on their future relationship.[55]

35. On 17 November, at a joint press conference with the Foreign Secretary in Dublin, Irish Foreign Minister Simon Coveney said that although "we all want to move onto phase two of the Brexit negotiations", discussions were "not in a place right now that allows us to do that." He stated: "We have very serious issues, particularly around the border, that need more clarity".[56] The same day, Irish Taoiseach Leo Varadkar told Sky News at an EU leaders' summit in Sweden that he "can't say in any honesty" that agreement is close on the border issue.[57]

54 Exiting the EU Committee, The Government's negotiating objectives: the rights of UK and EU citizens, Second Report of Session 2016–17, HC 1071, 5 March 2017, para 45
55 Department for Exiting the European Union, Northern Ireland and Ireland position paper, 16 August 2017
56 RTE News, "Coveney calls for more clarity on border in Brexit talks", 17 November 2017
57 Lewis Goodall, "Irish PM Leo Varadkar throws a spanner in Brexit works", Sky News, 17 November 2017

36. **The UK and the Irish Governments are co-guarantors of the Good Friday Agreement. The complexity and sensitivity of the implications of the UK's decision to withdraw from the EU, including the Single Market and Customs Union, for Northern Ireland and the Republic of Ireland mean that the negotiations will continue into phase two of the Article 50 process. We agree with the Government's view that for progress to be made in Northern Ireland, the EU and UK should move quickly to negotiations on the terms of the EU-UK future relationship. We also recognise the unique challenges posed by the need to preserve the peace settlement in Northern Ireland, including issues that go far beyond trade and customs. In the light of the recent statement from the Irish Government about the border, Ministers should now set out in more detail how they plan to meet their objective to avoid the imposition of a border, including if no withdrawal agreement is reached by 29 March 2019.**

Belfast Agreement and citizens

37. The Government has said that its priority is to uphold the Belfast ('Good Friday') Agreement, which among other things establishes that those born in Northern Ireland should be able to be citizens of the UK, or the Republic of Ireland, or both.

38. The Government proposes that the EU, the Republic of Ireland and the Northern Ireland Executive should continue to fund the PEACE IV programme, which is designed to improve relations between and integrate communities on both sides of the border, until and potentially beyond the 2014–2020 framework, and that the Special EU Programmes Body (its managing authority) should remain in Belfast.

39. The EU's position paper differs from the UK's in some respects. For example, it states that continued PEACE IV programme funding must be tied to continued UK payments into the EU's budget.[58] It also states that the integrity of the EU's Internal Market and Customs Union must be protected and that those in Northern Ireland choosing to retain citizenship of the Republic of Ireland must continue to enjoy the "rights, opportunities and identity" that come with EU citizenship.[59]

Common Travel Area

40. The Government's second priority is to enshrine the CTA within the Withdrawal Agreement. The UK is content to include an assurance that this would not compromise the Republic of Ireland's free movement obligations. The EU's guiding principles also include the preservation of the CTA but suggest that this should be "in conformity with EU law", including that which governs the free movement of people within the EEA, of which Republic of Ireland will remain a member.

41. **The Government has demonstrated significant flexibility in its approach to protecting the Belfast Agreement, peace and co-operation on the island of Ireland. Its objective of enshrining the Common Travel Area within the Withdrawal Agreement is welcome as is the UK's assurance that it will not compromise the Republic of Ireland's free movement obligations.**

58 EU Commission, Dialogue on Ireland/Northern Ireland, 7 September 2017

59 Michael Barnier, Statement on the publication of the Guiding Principles for the Dialogue on Ireland and Northern Ireland, 7 September 2017.

North-South and East-West cooperation

42. The Government's final main priority is to reach agreement on the principles of North-South and East-West cooperation. It has stated that cross-border co-operation is wider than the CTA and the goods border and said that the single energy market requires specific early consideration.[60]

Arangements at the border

43. There is a continuous flow of lorries across the border between the Republic of Ireland and Northern Ireland. The border has over 200 crossing points with no customs controls.[61] In the Prime Minister's Florence Speech, she said that the EU and the UK "have both stated explicitly that we will not accept any physical infrastructure at the border." It is not yet evident, however, how this can be achieved given the Government's stated position to leave the Single Market and the Customs Union, as this would mean that the border will be the customs border of the EU. In evidence to the Northern Ireland Affairs Committee in February, Michael Lux, a customs and trade lawyer and former customs official at the European Commission, said:

> If […] the UK does not want to have even a part of its territory remain in the customs union, then there are different possibilities for agreements between the EU and the UK. Each of these agreements, whether it is a customs union agreement or a free trade agreement, requires that customs controls take place at the border.[62]

It was reported that, in an update on the negotiations, the European Commission suggested that to avoid a hard border between Northern Ireland and the Republic of Ireland, the economic border should be moved to the Irish Sea which would mean checks taking place between the island of Ireland and Great Britain,[63] which would also have significant consequences for the port at Holyhead. However, the Government's position paper states unequivocally that the answer to avoiding a hard border, "cannot be to impose a customs border between Northern Ireland and Great Britain".[64]

44. A hard border could also pose risks for the peace process. Our predecessor Committee's third report said:

> Many in Ireland are deeply concerned that the introduction of new and visible border check points would provide an opportunity and focal point for those who wish to disrupt the peace and feed a sense in some communities that the Good Friday Agreement was being undermined.[65]

60 The electricity sector in Ireland previously operated as two separate markets. Northern Ireland operated as part of the UK, and the Republic of Ireland operated its own separate market. In 2007 the two Transmission System Operators established the Single Electricity Market (SEM) for the island of Ireland, under which all electricity generated on or imported onto the island of Ireland must be sold, and from which all wholesale electricity for consumption on or export from the island of Ireland must be purchased.

61 Institute for Government, Implementing Brexit: Customs, 11 September 2017

62 Northern Ireland Affairs Committee, Future of the land border with the Republic of Ireland, 1 February 2017, HC 700, Q367

63 Financial Times, Keep Northern Ireland in customs union, says EU, 9 November 2017

64 Department for Exiting the European Union, Northern Ireland and Ireland: position paper, 16 August 2017

65 Exiting the European Union Committee, The Government's negotiating objectives: the White Paper, Third Report of Session 2016–17, HC 1125, para 112

Moving checks away from the border might alleviate some of these concerns but could still be disruptive to business.

45. In a future partnership paper on the UK's customs arrangements after withdrawal, the Government put forward two proposals for ensuring that trade between the EU and UK remains as 'frictionless' as possible. The first option, 'a highly streamlined customs arrangement', would use technology-based solutions to reduce customs checks along with international precedents to try to deliver a border that is light touch, although "there will remain an increase in administration compared with being inside the EU Customs Union."[66] The second option, a 'customs partnership', involves having no EU-UK border but would allow the UK to leave the Single Market and strike free trade agreements. As the Government notes, this would be "unprecedented as an approach and could be challenging to implement".[67]

46. The solutions proposed by the Government are by its own admission "untested" and the Irish Taoiseach has said that the UK must put forward "a lot more detail" on how the proposals would work.[68] An internal report by the Irish Revenue Commissioners, recently leaked to the press, stated that an open border between Northern Ireland and the Republic would be impossible from a customs perspective.[69] Mairead McGuinness MEP, First Vice President of the European Parliament, whose constituency includes the entire southern side of the border region of Ireland, told us the way to avoid borders is for the UK to remain in the Customs Union and Single Market. Given the volume and economic importance of cross-border trade to both the Northern Ireland and the Republic of Ireland economies, it is essential that commitments to free and frictionless trade are backed with practical proposals to ensure those commitments are upheld.

47. **We welcome the Government's commitment to "no physical infrastructure" at the land border between Northern Ireland and the Republic of Ireland. We also welcome its rejection of a customs border between Northern Ireland and Great Britain. We do not currently see how it will be possible to reconcile there being no border with the Government's policy of leaving the Single Market and the Customs Union, which will inevitably make the border between Northern Ireland and the Republic of Ireland the EU's customs border with the UK; i.e. including the land border in Northern Ireland and at the ports of Holyhead, Milford Haven and Fishguard that provide freight services to and from the Republic of Ireland. It will be made harder by the fact that the Government's proposals, by its own admission, are untested and to some extent speculative. We call upon the Government to set out in more detail how a "frictionless" border can in practice be maintained with the UK outside the Single Market and the Customs Union.**

66 Department for Exiting the EU, Future customs arrangements: A future partnership paper, 15 August 2017, para 29

67 Department for Exiting the European Union Committee, Future Customs Arrangements, 15 August 2017

68 BBC, Brexit: More detail needed on plan to avoid hard border, 19 October 2017

69 RTE, Open customs border impossible after Brexit – report, 8 October 2017

Financial settlement

48. The Prime Minister's Florence Speech included an important proposal on the financial settlement. She assured EU Member States that they will not need "to pay more or receive less over the remainder of the current budget plan" and that the UK would honour "commitments we have made during the period of our membership". This was widely reported to imply that the UK had offered €20 billion to cover the Multiannual Financial Framework (MFF) budget plan, which runs until the end of 2020, and that the UK would continue to pay contributions during the implementation period.[70] However, the Prime Minister indicated that the financial settlement could only be resolved as part of a wider settlement on an implementation period and the future EU-UK relationship.[71] If the UK paid nothing towards a financial settlement, then the EU would lose 13% of its budget.[72] Under the MFF, if the EU's revenues decline then the MFF declines accordingly and Member States would initially be expected to cover the shortfall.[73]

49. Despite the Prime Minister's proposal in Florence, Michel Barnier said that the negotiations remained "deadlocked" on the financial settlement, after the fifth round of negotiations. He was therefore unable to recommend to the European Council the start of discussions on the future relationship.[74] The European Council agreed with Michel Barnier at its meeting in October and stated that the UK had not translated its position on the financial settlement into a "firm and concrete commitment" to settle its "obligations".[75] At meetings in Brussels and Paris, we heard repeatedly that more clarity would be needed on the specific "commitments" to which the PM had referred in her Florence speech.

50. The EU has previously indicated that sufficient progress need not entail agreement on a specific sum, but there should be agreement on a methodology for calculating the settlement.[76] It has published a position paper on the financial settlement, which set out the financial obligations for which the EU believes the UK remains liable and proposed a methodology for calculating the UK's share of those commitments.

51. The main categories of obligations cited by the Commission are:

- additional financial programming to which the UK has committed under MFF 2014–2020, including that which falls after the date of the UK's withdrawal;
- the UK's remaining share of the *reste à liquider* (RAL) for successive Multiannual Financial Frameworks during which the UK was an EU member State. RAL is

70 For example, Daily Mail, May is accused of betraying referendum by effectively keeping Britain in EU until 2021 as she climbs down on citizens' rights and borders with €20bn bung for Brussels in bid to revive Brexit talks, 23 September 2017 and Politico, Theresa May: UK to follow EU rules for 2 years after Brexit, 22 September. 2017 The Multiannual Financial Framework (MFF) of the European Union, also called the financial perspective, is a seven-year framework regulating its annual budget. It is laid down in a unanimously adopted Council Regulation with the consent of the European Parliament

71 Prime Minister, PM's Florence speech: a new era of cooperation and partnership between the UK and the EU, 22 September 2017. Michel Barnier has said the UK has said that no member should pay more or receive less for the 2019–2020 period only. See, Commission, Press statement by Michel Barnier following the fourth round of Article 50 negotiations with the United Kingdom, 28 September 2017

72 House of Commons Library briefing, The UK's contribution to the EU Budget, 9 October 2017

73 LSE [Michiel Scheffer, a regional minister in the Netherlands], Brexit: If Britain doesn't pay the Brexit divorce bill, her ex-partners will have to, 7 August 2017

74 European Commission, Press statement by Michel Barnier following the fifth round of Article 50 negotiations with the United Kingdom, 12 October 2017.

75 European council, (Art. 50) meeting (20 October 2017) - Conclusions, 20 October 2017

76 House of Lords EU Select Committee, oral evidence: Scrutiny of Brexit negotiations, 12 July 2017, Q2.

> the accumulative difference between the commitments the EU makes in each annual budget for specific purposes or projects which could span a number of years and the payments it plans to make in each year which could include payments for commitments entered into in previous years. The EU's annual commitments are typically greater than the payments, meaning that projects undertaken by the EU are often paid for several years later;

- liabilities in the EU's accounts which are "not balanced by corresponding assets". Among other things, this category includes pensions for EU officials;
- contingent liabilities, primarily comprised of guarantees on loans to countries such as Ukraine; and
- the costs associated with the withdrawal process itself and/or resulting directly from it, such as the costs of moving EU agencies out of the UK.

The paper says that special arrangements will be required to settle the UK's withdrawal from the European Investment Bank, the European Central Bank, the European Development Fund, and EU Trust Funds and the Facility for Refugees in Turkey. It also states that the UK should continue to pay any obligations undertaken with respect to Council agencies that are not funded from the EU's general budget (such as the European Defence Agency) before withdrawal, and should pay its share of funding for UK teachers seconded to European schools until 2021.

52. According to the paper, the UK's share of the above liabilities should be calculated as the ratio between the UK's total contribution to the EU budget and the total contributions of the EU28 over the period 2014–2018.[77]

53. The UK has not published a corresponding position paper on a financial settlement. The Secretary of State said he wanted "to take their bid down" rather than appearing to make a counter-bid.[78] Instead, in the third round of negotiations in August, the Government challenged rigorously the legal basis of the EU's position paper.[79] In evidence, the Secretary of State told us that the Commission's paper includes "every conceivable liability, including things like contingent liabilities, and did not take in any assets". The EU's assets, which the UK would have contributed to, include buildings, equipment and financial investments.

54. On the legal basis for the financial settlement, the Secretary of State said that the UK could have liabilities for one year but not for any significant length of time.[80] He also said:

> From the beginning, from my very first meeting with him, we took the view that this is not an issue of legal responsibility; it is an issue of political, moral maybe, and operational responsibility. You pick your words: different people put it differently. But it is not a legal responsibility.[81]

77 Commission, Essential Principles on Financial Settlement, 12 June 2017
78 Q40
79 Department for Exiting the European Union, David Davis' closing remarks at the end of the third round of EU exit negotiations in Brussels, 31 August 2017
80 Q46
81 Q46

55. In March, the House of Lords EU Select Committee published a report entitled Brexit and the EU Budget. The report examined whether the UK had a legal responsibility to pay a financial settlement, particularly if the EU and UK failed to reach a Withdrawal Agreement under Article 50. The Committee concluded that on the balance of legal opinion that was presented, the UK was not liable legally to pay a financial settlement on exiting the EU:

> Article 50 allows the UK to leave the EU without being liable for outstanding financial obligations under the EU budget and related financial instruments, unless a Withdrawal Agreement is concluded which resolves this issue.

The Committee also concluded:

> Individual EU Member States may seek to bring a case against the UK for the payments of outstanding liabilities under principles of public international law, but international law is slow to litigate and hard to enforce. In addition, it is questionable whether an international court or tribunal could have jurisdiction.
>
> However, the political and economic consequences of the UK leaving the EU without responding to claims under the EU budget are likely to be profound. If the UK wants a preferential trading relationship with the EU, including a transitional arrangement, the EU partners may well demand a financial contribution post-Brexit.[82]

56. The Government has said that it intends to continue contributing to a range of programmes after it has left the EU. The Secretary of State said it was "likely" that the UK would continue to contribute to Horizon 2020 and the Galileo Space programmes as well as nuclear programmes.[83] That chimed with the Prime Minister's statement that the UK intends to continue to take part in specific policies and programmes such as "those that promote science, education and culture—and those that promote our mutual security."[84] Non-EU members already participate in some of these programmes. For example, Turkey participates in Horizon 2020. Universities have also raised the implications of leaving Erasmus.

57. **The negotiations on the financial settlement are fluid and the situation may change. The Government has said that the UK will meet its financial obligations. It must now seek a fair settlement that will not unduly burden UK taxpayers. The evidence is clear that there are many ways to calculate the potential settlement and all involve a degree of speculation. Having challenged the EU's financial assessment, the Government should provide us with evidence on its analysis of the EU's position paper of 12 June 2017 on the financial settlement. If the UK is required to contribute to the EU's liabilities, then the UK must benefit from a share of the EU's assets, which the EU's position paper does not mention in any substantive way. To move forward, the Government and the EU should set out what assets the UK is entitled to. The Government should also set**

82 House of Lords European Union Select Committee, Brexit and the EU Budget, 15th Report of Session 2016–17, HL Paper 125, paras 135 - 137, 4 March 2017.

83 Q51

84 Prime Minister, PM's Florence speech: a new era of cooperation and partnership between the UK and the EU, 22 September 2017. Horizon 2020 is the EU's programme for research and innovation. Galileo is the EU's satellite navigation system akin to the USA's GPS (Global Positioning System), which provides Position, Navigation and Timing (PNT) information.

out, as soon as possible, which scientific, educational, cultural, security and any other programmes it would like to contribute to and benefit from after the UK leaves the EU. Early and clear explanation of the purpose of such expenditure will be important to build public confidence in the Government's efforts to reach an agreement with the EU on finances.

58. **The EU has decided that it will not allow negotiations to move to phase two until sufficient progress on the financial settlement has been made. We continue to take the view of our predecessor Committee that this approach is unnecessary and unhelpful but the Government has reluctantly accepted it. However, the Government will need to balance its negotiating position against the significant economic risk that arises from the continuing uncertainty over the negotiations. It is essential that talks now move on to phase two.**

Parliamentary scrutiny of leaving the EU

59. The Secretary of State has said that the Government would endeavour to keep Parliament at least as well informed on the negotiations as the European Parliament is by the Commission.[85] Furthermore, in June the Government and the Commission agreed that "for both parties the default is transparency."[86] In her Lancaster House speech, the Prime Minister communicated her intention to engage fully with the devolved nations throughout the process.[87] However, the inter-governmental frameworks whereby devolved administrations input into negotiations are deficient. The JMC (EN), Chaired by the First Secretary of State, has only met once since February.

60. In our predecessor Committee's first report we welcomed the Government's broad assurances that Parliament will have the opportunity to scrutinise the Government's plan for the negotiations. While the House has had opportunities to scrutinise Ministers in the Chamber, the Dissolution of Parliament on 22 April 2017 ahead of the General Election in June combined with the Summer Recess, meant that most Select Committees were not established until September. In that period the Government and Commission completed three rounds of negotiations and published numerous position papers, without an opportunity for this Committee to provide scrutiny.

61. In Brussels, we heard that the Commission's commitment to transparency in its dealings with the European Parliament was based, in large part, on practical expediency. The European Parliament will have a vote on the final deal and therefore, we were told, it was essential to secure the European Parliament's buy-in at all stages of the negotiations. The same is true for the UK Parliament, which has been promised a meaningful vote on the final deal.

85 First Report of Session 2016–17, The process for exiting the European Union and the Government's negotiating objectives, HC 815, para 36 and para 40

86 EU Commission, Terms of Reference for the Article 50 TEU negotiations, 19 June 2017 & Department for Exiting the EU

87 Prime Minister, PM's Florence speech: a new era of cooperation and partnership between the UK and the EU, 22 September 2017

62. **We note the Government's recognition of Parliament's role in scrutinising the negotiations. However, the June General Election, combined with the Summer Recess, has meant that nearly a quarter of the Article 50 negotiation time has passed without the opportunity for us to provide scrutiny on progress. While acknowledging the statements he has made to the House, we expect to hear evidence from the Secretary of State at regular intervals and we request that he commit to giving evidence to us at least once every two months.**

63. **We note the Government's intention to work closely with the devolved administrations. However, as we said in our report on the European Union (Withdrawal) Bill, the Joint Ministerial Committee for EU Negotiations (JMC (EN)) should meet "much more regularly" and address "the concerns expressed by the devolved administrations about the effectiveness of its operations." We also recommended that the Government "set out whether it is considering formal structures for inter-governmental relations, and its proposed arbitration system for disputes, so that the views of the devolved governments can be heard, including in any future trade agreements."**

Sectoral analyses

64. On 14 December 2016, in evidence to our predecessor Committee, the Secretary of State said that his Department was carrying out 57 sets of sectoral analysis, covering 85% of the economy (one sector was added later, making it 58 sectors, covering 88% of the economy).[88]

65. In June 2017 and subsequently in October 2017 the Government promised to publish "shortly" the list of sectors being analysed.

66. The Government has been criticised for not placing the sectoral analyses in the public domain. On 30 August, a Freedom of Information (FoI) request that sought their publication was submitted to the Department for Exiting the EU.[89] On the 29 September, the Department responded with a refusal to publish the documents. According to reports, the request was refused under Section 22 of the Freedom of Information Act 2000 which covers information that is exempt from release because it is intended for future publication.[90] The response also said:

> There is a strong public interest in policymaking associated with our exit from the EU being of the highest quality and conducted in a safe space to allow for design and deliberation to be done in private.[91]

In the same response, the Government also reiterated what the Secretary of State had publicly stated in June, that the sectoral analyses had been completed.

88 Exiting the EU Committee, Oral evidence: The UK's negotiating objectives for its withdrawal from EU, HC 815, Q404. The Government later stated that the impact assessment did not include a further 10% of the UK economy that is 'imputed rent', which is not traded. The remaining areas of the economy include sectors with strong links to other sectors covered, and sectors where the issues are the same as those in other sectors. See, EU External Affairs Sub Committee, Government Response: Brexit: trade in goods, 30 October 2017, Annex A

89 Seema Malhotra MP, Seema Malhotra MP Demands answers to EU FoI Request, 31 August 2017

90 Legislation.gov.uk, Freedom of Information Act 2000

91 Financial Times, Key details of Brexit impact reports on 58 industries to stay secret, 20 October 2017

67. In October, 120 MPs signed a letter stating that the Government was keeping "Parliament and the public in the dark" and called upon the Government to publish the documents.[92] In evidence to us, the Secretary of State said that one criterion for not placing the documents in the public domain was that the House of Commons had previously resolved that:

> […] there should be no disclosure of material that could be reasonably judged to damage the UK in any negotiations to depart from the European Union after Article 50 has been triggered.[93]

68. It is not clear how widely read the analyses have been within Government. The Secretary of State said that the Prime Minister would "know the summary outcomes" of the documents but that she may not have read every single one. He also said that they had been drafted in "excruciating detail". He confirmed that the Cabinet would also have seen the summary outcomes but not the full assessments.[94]

69. On 30 October, the Government released a list of sectors on which it had commissioned analysis, in an annex to a letter from the Secretary of State to the Chair of the House of Lords EU External Affairs Sub-Committee, which was published on the Committee's website.[95] The next day, Her Majesty's Official Opposition tabled an Humble Address (a type of motion that the Speaker said "have traditionally regarded as binding or effective"[96]) that called for the list of sectors to be laid before the House and for "the impact assessments arising from those analyses to be provided to the Committee on Exiting the European Union." The Government did not oppose the motion and it was agreed without division.[97]

70. In a letter to us, the Secretary of State said that the Government is preparing to respond to the motion. He repeated a point made in the debate that the sectoral analyses are not discrete impact assessments for 58 sectors but are instead a "wide mix of qualitative and quantitative analysis", that is "contained within a range of documents developed at different times since the referendum". He said that the analyses are evolving constantly and are being updated based on discussions with industry and the negotiations with the EU. The Government was committed to providing the information as soon as possible, taking not more than three weeks.[98]

71. On 7 November, Steve Baker MP said that the sectoral analyses had been discussed with the devolved administrations and the Joint Ministerial Committee, and that the Government would consider how to share that information with the devolved administrations "as and when the information is released to the Select Committee".[99]

92 David Lammy MP, Demanding DExEU publish Brexit impact assessments, 13 October 2017

93 Q127. The full text of the motion that the Secretary of State was referring to is available at HC Deb 7 December 2016, Vol. 618

94 Qq131 &132

95 The letter from the Secretary of State was in response to a House of Lords EU External Affairs sub-committee report on Brexit: Trade in Goods, 16th Report of Session 2016–17, 14 March 2019. See EU External Affairs Sub Committee, Government Response: Brexit: trade in goods, 30 October 2017, Annex A

96 HC Deb 1 November 2017, Vol. 630, Col. 931

97 House of Commons, Votes and Proceedings, 1 November 2017

98 Exiting the EU Committee, Letter to Chair from Secretary of State regarding Brexit impact assessments, 6 November 2017. See also, Department for Exiting the European Union, HCWS231, 7 November 2017

99 HC Deb 7 November 2015, Vol. 630 Col. 1335

72. The Secretary of State made it clear that confidential or commercially sensitive information in the analyses, including advice to Ministers would remain private. Furthermore, he said that the Department intended to "collate and bring together this information in a way that is accessible and informative for the Committee".

73. The Secretary of State met with the Chair of the Committee for Exiting the EU on 13 November to discuss the release of the sectoral analyses.[100]

74. **Towards the end of the Article 50 negotiations, if there is a deal, MPs will vote on whether to accept the outcome. The Government, therefore, has a duty to be as open with Parliament as possible without jeopardising its negotiating position. We welcome the Government's statement that it will abide by the will of the House and provide us with the sectoral analyses of the UK's exit from the EU. There is an important difference between information which would genuinely harm our negotiating position and information that is simply embarrassing for the Government. The two are not the same thing. On 27 November, the Committee received an edited version of the sectoral analyses from the Secretary of State for Exiting the European Union. We will now consider them and respond separately.**

Economic assessment of EU exit on UK nations and regions

75. In evidence to the Treasury Select Committee, the Chancellor of the Exchequer said that the Government uses a model that can examine the sectoral impacts of EU withdrawal on regional and national economies within the UK, as well as impacts on bilateral trade pairings with other countries.[101] Charles Grant, Director of the Centre for European Reform, referred to the unpublished analysis in June 2017, when he said that it showed "the economic benefits of future FTAs would be significantly less than the economic cost of leaving the customs union".[102] The Government has been criticised for not publishing the assessment of the impact of Brexit on Scotland's economy.

76. In response to an FoI request for the data, the Department for Exiting the EU did not confirm or deny that such data existed, reportedly because it could impact "the national and regional economies by precipitating pre-emptive and reactionary assumptions from stakeholders in the respective regions".[103] However, the Secretary of State told us that the Government would be willing to share the results with the devolved administrations at official level.[104]

77. **We welcome the Government's commitment that it will share with the devolved administrations its economic modelling on the impact of UK withdrawal on the constituent nations and regions of the UK. We call on the Government to clarify whether this modelling is different from the sectoral analyses that it has already committed to sharing with us and if so, to provide us with this additional economic modelling as well.**

100 Exiting the EU Committee, Letter to Chair from Secretary of State regarding Brexit impact assessments, 6 November 2017. See also, Department for Exiting the European Union, HCWS231, 7 November 2017

101 Treasury Select Committee, Oral evidence: The Work of the Chancellor of the Exchequer, HC 424, Qq 68–65

102 Centre for European Reform [Charles Grant], Britain prepares for a softer Brexit, 17 June 2017

103 The Courier, Tories urged to publish UK's secret report on extent of Brexit damage to Scotland, 14 October 2017. DExEU's response to the FOI is not available on the FOI responses page on gov.uk

104 Q82

3 Implementation and the future relationship

Implementation period

78. The Government has announced that it will seek to agree an implementation period of "around two years" after the UK's exit from the EU in March 2019. The Government will introduce measures in that period that are necessary for the UK's future relationship with the EU which it says it will have agreed before the UK's exit date.[105]

79. The European Council concluded in October that it would begin preparatory internal discussions on transition arrangements, as well as the future relationship, before its next meeting in December.[106]

80. In her Florence speech, the Prime Minister outlined the type of implementation period that the Government will seek. She said:

- the legal framework for the implementation period should be the existing structure of EU rules and regulations;
- the EU and UK should be able to access one another's markets on current terms;
- EU citizens would continue to be able to live and work in the UK but they would be required to register; and
- there could be an agreement to introduce new dispute resolution mechanisms before the end of the implementation period.[107]

81. The Secretary of State for Exiting the EU provided detail on the implementation period in his evidence to us. He said that the main benefit of an implementation period was to give business, the UK Government and European governments more time to prepare for the UK's withdrawal from EU structures.[108] We understand that the UK expects to remain under the jurisdiction of the CJEU during this period.[109] Justice and home affairs arrangements, such as access to the Schengen Information System, would continue as at present. The UK would retain membership of EU regulatory bodies such as the European Medicines Agency and the European Aviation Safety Agency. It would remain party to international agreements such as the EU-US Open Skies agreement. Financial services would retain passporting rights and the UK would continue to benefit from the EU's FTAs with third countries.[110]

82. When we met them in Brussels, both Michel Barnier and Guy Verhofstadt said that any transitional period under Article 50 would necessitate the UK remaining part of

105 Prime Minister, PM's Florence speech: a new era of cooperation and partnership between the UK and the EU, 22 September 2017
106 European council, (Art. 50) meeting (20 October 2017) - Conclusions, 20 October 2017
107 Prime Minister, PM's Florence speech: a new era of cooperation and partnership between the UK and the EU, 22 September 2017
108 Q22
109 Express, European court could STILL make Britain's laws AFTER Brexit warns Lewis, 21 November 2017
110 Qq3–16

the Customs Union, the Single Market and under the jurisdiction of the CJEU. Moreover, the European Parliament resolution of 28 September is categorical in its definition of the terms of the transition period:

> such a transition can only happen on the basis of the existing European Union regulatory, budgetary, supervisory, judiciary, enforcement instruments and structures; underlines that such a transitional period, when the United Kingdom is no longer a Member State, can only be the continuation of the whole of the acquis communautaire which entails the full application of the four freedoms (free movement of citizens, capital, services and goods), and that this must take place without any limitation on the free movement of persons by imposing any new conditions; stresses that such a transitional period can only be envisaged under the full jurisdiction of the Court of Justice of the European Union ('ECJ'); insists that such a transition period can only be agreed provided that a fully-fledged Withdrawal Agreement covering all the issues pertaining to the United Kingdom's withdrawal is concluded.[111]

83. While the Government has emphasised that the implementation period should be "around two years", the CBI and other business groups have urged more flexibility and requested a transition period of three years. In early November, the Irish Foreign Minister called for a transition period of up to five years. Michel Barnier told us that the implementation or transition period should be "short".

84. The Secretary of State could not confirm whether the UK would continue to be bound by the Common Fisheries Policy as the Government will need to make a policy decision on new quotas that will be introduced during the implementation period. He said that the UK would probably not be a member of the Customs Union but would have a "customs arrangement" with the EU which would "look the same".[112]

85. **In the Prime Minister's Florence speech she reaffirmed the Government's intention to seek an 'implementation period' to provide more time for business, the public sector and European governments to adapt to the implications of the UK's withdrawal from the EU. The European Council's statement that it will begin preparatory "internal discussions" on transitional arrangements is also a positive step. Such an arrangement, if it can be agreed quickly, could be of significant mutual benefit to the UK and EU Member States.**

Legal basis for an implementation period

86. The Government believes that Article 50 provides the legal basis for negotiating the implementation period.[113] The Secretary of State said that he believes the European Parliament also "sees it in those terms" as does the Commission's legal service.[114] Michel

111 European Parliament, Motion for a Resolution, 28 September 2017

112 Qq3–16

113 The Prime Minister said in her Florence Speech, "The framework for this strictly time-limited period, which can be agreed under Article 50, would be the existing structure of EU rules and regulations." The Prime Minister also told the House on 23 October 2017 that " The European Union raised a similar concept to the implementation period in its April guidelines, and that would be on the basis of the article 50 process." See, HC Deb 23 October 2017, Vol. 630, Col. 34

114 Q67

Barnier confirmed this when we met him in Brussels. The European Council's guidelines for the negotiations published in April refer to transitional arrangements in the context of those that are "necessary and legally possible".[115]

87. Article 50 itself does not refer explicitly to a transition or implementation period; nor does it rule one out. It says that the Withdrawal Agreement with a Member State which has given the Article 50 notification can cover "arrangements for its withdrawal". It also states:

> 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.[116]

88. This suggests that the UK and the EU could agree to extend unanimously the two-year timeframe. The Centre for European Legal Studies and the Centre for Public Law (CELS/CPL) at the University of Cambridge published a paper that stated that if the EU treaties no longer applied to the UK then the sort of implementation period that the Government is seeking under Article 50—a third country, party to the existing structure of EU rules and regulations—"might be particularly testing in legal terms". In their paper, CELS/CPL stated:

> It is unclear to what extent, if any, [Article 50] can be used as the basis for a transitional agreement. The more that such an agreement merely perpetuates membership subject to minor modifications, the less easy it is to characterise as a 'withdrawal' agreement within the meaning of Article 50.[117]

89. The Secretary of State said that the Government does not publish legal advice to Ministers, and questions on the legal basis of the implementation period are "a question almost for the Commission rather than me".[118]

90. **The Commission's and Council's legal services should give definitive advice on whether Article 50 provides a basis on which to agree an implementation period as part of the withdrawal period, including in relation to potential UK participation in those European Union agencies and institutions that currently have no provision for the membership of, or participation or cooperation with, non-EU Member States. The Government could then publish the reasoning on which its legal opinionon the elasticity of Article 50 rests, as well as that of the Commission's legal service, and clarify what any legal basis in UK law would be for the domestic implementation of the agreement. We believe this could increase certainty in the negotiations; not doing so could risk a successful legal challenge to the Court of Justice of the European Union. We also recommend that the Government should now make a clear and public statement about the likely terms of the transition and implementation period, so that these are widely understood.**

115 European Council, European Council (Art. 50) guidelines for Brexit negotiations, 29 April 2017

116 EUR-Lex, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union

117 Centre for European Legal Studies/Centre for Public Law, Implementing Transition: How Would it Work?, October 2017

118 Q67

Timetable for agreement

91. The Secretary of State said talks on the implementation period should begin in December and the "outlines" should be agreed in the first quarter of 2018.[119] The timetable set out by the Secretary of State is contingent on the EU27 agreeing to move on to phase two of the negotiations in December. Furthermore, the Secretary of State said that the EU's principle that "nothing is agreed until everything is agreed" would apply, indicating that it would not be possible to provide absolute certainty on an implementation period until the end of the negotiations—which he said could be as late as the UK's exit date in March 2019.[120]

92. In evidence to the Treasury Select Committee, the Rt Hon. Philip Hammond MP, Chancellor of the Exchequer, said that the benefits of an implementation period can be realised only if it is agreed at an early stage. He described an implementation period as a "wasting asset" and said:

> [An implementation period] has a value today; it will still have a very high value at Christmas and early in the New Year. But as we move through 2018, its value to everybody will diminish significantly.[121]

93. Business groups have welcomed the Government's statements on a possible implementation period; however, there is concern that agreement might come too late for it to be useful. A letter signed by the UK's largest business organisations in October said that "agreement is needed as soon as possible, as companies are preparing to make serious decisions at the start of 2018, which will have consequences for jobs and investment in the UK."[122]

94. A survey published in November 2017 of 1,118 supply chain managers in the UK and the EU found that 63% of EU businesses expected to move their supply chain out of the UK due to concern over the potential loss of frictionless trade. This was up from 44% that agreed with the same statement in May. 40% of UK businesses were looking to replace their EU suppliers, which was up from 31% in May. 20% of UK businesses with EU suppliers have found it difficult to secure contracts that run after March 2019.[123] A September 2017 survey of 1,000 UK businesses found that 21% of respondents needed an agreement on the implementation period by the end of the year and 22% needed it by June 2018. Furthermore 40% of respondents said possession of more knowledge of what the implementation period will entail would have a "positive impact on their ability to unblock investment and recruitment decisions on hold since the referendum".[124]

95. The Government has consulted regularly with business on its negotiating strategy, most recently through the introduction of quarterly Business Advisory Group meetings.[125] In his evidence, the Secretary of State acknowledged that business leaders "would like

119 Q42
120 Q62
121 Treasury Select Committee, Oral evidence: The Work of the Chancellor of the Exchequer, HC 424, 11 October 2017, Q19
122 Letter to the Secretary of State from British Chambers of Commerce, Confederation of British Industry, The Manufacturers' Organisation, Federation of Small Businesses and the Institute of Directors, 17 October 2017
123 Chartered Institute of Procurement and Supply, EU businesses say goodbye to UK suppliers as Brexit bites into key relationships, 6 November 2017.
124 London First, NEG0001, 2 November 2017
125 Prime Minister, PM to host Business Advisory Council at Downing Street, 6 October 2017

things in black-and-white law" but said they are "not beyond making judgments" on communications that emanate from the UK and other EU Member States. He said that influential Member States like Germany had welcomed the prospect of an implementation period and so he "would give [business leaders] the advice to save their money [spent on implementing contingency plans] for the moment—at least until January."[126] A delegation of German business representatives met with the Prime Minister on 13 November 2017. They told the Prime Minister that in relation to any implementation deal "two years are not enough to ensure the necessary legal conditions are in place."[127] TheCityUK, an advocacy group for the financial sector, has said that credible political commitments from the UK and EU are welcome, but should be backed by assurances from regulatory agencies that these political commitments will guide their risk assessments for supervisory purposes. TheCityUK emphasised the need for swift progress, calling on the government to "rapidly set out in greater detail its objectives for this [transition] period", and called for transitional arrangements that "in contrast to the government's proposed implementation period, allows for enough time to negotiate a mutually beneficial future UK/EU relationship", which would need to then be "followed by an adaptation/implementation period" because "an integral part of most Free Trade Agreements" are provisions "to allow for enough time to make all necessary adjustments for the new trading arrangements."[128]

96. **We urge the EU to acknowledge at its December Council that sufficient progress has been made on the withdrawal issues. Then the Government and the EU must prioritise providing certainty to business and other stakeholders that there will be an implementation period that can be relied upon. Failure to reach an early outline agreement will undermine the very purpose of having an implementation period and will do nothing to reassure importers and exporters in the UK and the EU, or the UK's larger and more mobile businesses, some of which are already considering when to trigger contingency plans to relocate some operations from the UK. We welcome the assurance from the Secretary of State—echoed on our visit to Brussels—that, subject to a positive outcome to the December Council, it will be possible to publish detailed arrangements for the implementation period by the end of March 2018. We think it essential that this deadline is achieved. To mitigate business uncertainty in 2018, these guidelines should provide sufficient scope and detail for business to make investment and trade decisions and for regulatory agencies to base risk assessments and other such judgements on, for the period after March 2019.**

Citizens' rights and the implementation period

97. In the section above on registering EU citizens in the UK and "settled status", we commented that the Government is assuming EU citizens in the UK will be able to register for "settled status" during the implementation period, and that the rules around free movement during the implementation period are yet to be negotiated. When asked if EU citizens will continue to be able to come and live and work in the UK during the implementation period, Mr Davis said:

126 Qq43 & 44
127 BDI, Ample progress must be achieved ahead of the next summit in December, 13 November 2017
128 TheCityUK, Transitional arrangements, 17 October 2017

> Yes. The conditionality we put on that was that there would be a registration scheme. Although it would look like free movement to them, the rights may be a little different.[129]

Michel Barnier stated in his 21 September Speech in front of the Committees of Foreign Affairs and the Committees of European Affairs that access on "current terms", in other words the extension "for a limited period of the acquis of the EU", would entail the continued operation of the free movement of persons as currently experienced by the UK as an EU Member State.[130]

98. **The Government and the EU should provide more detail on how they intend free movement to operate during the implementation period, and how it will affect the rights of EU citizens coming to live and work in the UK after 29 March 2019, as well as during any time-limited implementation period.**

Trade and non-trade agreements

99. The UK is a party to approximately 30 trade agreements, covering more than 60 countries, through the EU. These together account for 13% of UK trade.[131] Some of these are entered by the EU alone but many are "mixed agreements" entered into by the EU and its Member States in their own right on one side, and the third country on the other. Furthermore, some agreements are more deep and comprehensive than others.[132] Nevertheless, ten of the UK's top 50 export markets for goods in 2015 were covered by these agreements which the UK would cease to be a party to after it withdraws from the EU.[133] If the UK leaves the EU without agreements with these countries, trade could be negatively affected as the UK would have to trade on Most Favoured Nation tariffs in accordance with WTO rules, which many consider to be less advantageous.[134] Furthermore, the UK would cease to benefit from provisions that reduce non-trade barriers that increasingly constitute the real value of these agreements.

100. The Government has said that it will seek to grandfather these arrangements so that they continue to apply to the UK.[135] However, it is unclear how straightforward this process will be, whether it can be done before the UK exits the EU in 2019, and whether the legal position is different depending on whether the agreement has been entered into by the EU alone or is a mixed agreement to which the UK is also a party in its own right.

101. The Centre for European Policy Studies, a think tank, said the ease of grandfathering all these agreements should not be assumed and highlighted that some of these are

129 Q5
130 Commission, Speech by Michel Barnier in front of the Committees of Foreign Affairs and the Committees of European Affairs of the Italian Parliament, 21 September 2017
131 Department for International Trade, Impact Assessment: Trade Bill (Existing international trade (and other related) agreements, 8 September 2017
132 Commission, Trade: Negotiations and agreements
133 Library Briefing Paper, List of EU trade agreements, 21 November 2016
134 UK Trade Policy Observatory, Grandfathering Free Trade Agreements and Rules of Origin: What might appear bilateral is in fact trilateral!, 27 September 2017
135 In this context, 'Grandfathering' refers to an option whereby the UK could inherit the rights the EU had acquired under its FTAs with third countries

bespoke.[136]The UK Trade Policy Observatory at Sussex University also warned that countries might seek to extract further concessions in particular sectors. It has also become clear that visa access will also figure prominently in such trade deals.[137][138]

102. In evidence to the International Trade Committee, the Rt Hon. Dr Liam Fox MP, Secretary of State for the Department for International Trade, said that the Government was conducting negotiations with third countries that are party to EU trade agreements "implicitly […] to ensure market stability" after the UK exits the EU, but with "a view to being able to develop a more bespoke agreement with those countries in the future."[139] He said that negotiations were at an "advanced stage" with specific countries that hold a high value in trade to the UK. However, he also said that no formal agreements had been struck and were not likely to be "until we get considerably closer to March 2019."[140] It is our understanding that legally such trade agreements could not take effect until the end of any implementation period.

103. The Secretary of State for International Trade said that grandfathering agreements was not simply a matter of rolling over the current terms that were agreed between the EU and the third countries, as it was necessary to disaggregate EU and UK quotas, so that third country exporters will know what their level of market access will be.[141] Some countries, including the US, Canada and New Zealand, have complained to the World Trade Organisation about the methodology that the EU and UK want to use for quota disaggregation.[142]

104. As well as trade agreements, there are numerous non-trade related EU treaties to which the UK is a party, such as mutual recognition agreements, regulatory co-operation agreements, nuclear accords, data-sharing agreements et cetera, to which the UK would cease to be a party when it leaves the EU, unless it can secure grandfathering agreements. In evidence to the International Trade Committee, Antonia Romeo, Permanent Secretary to the Department for International Trade, said that there were "hundreds" of such agreements; and some reports put the figure as high as 975.[143]

105. **The UK is party to over 30 trade agreements with over 60 countries, and hundreds more non-trade agreements, through the EU. These agreements foster trade and co-operation between the UK and the rest of the world and if the UK ceases to be party to them it will rely instead on WTO terms. Third countries will have a mutual interest in continuing many of these agreements. Nevertheless, striking deals to continue them will be a significant task and the Government has acknowledged that much of the work will not be completed until near the end of the Article 50 process. Some of these agreements, both trade and non-trade, will be more important than others; therefore,**

136 Centre for European Policy Studies, Brexit Transitional Period: The solution is Article 50, 9 September 2017
137 Financial Times, Australia warns UK not to toughen visa regime, 24 July 2017
138 UK Trade Policy Observatory, Grandfathering Free Trade Agreements and Rules of Origin: What might appear bilateral is in fact trilateral!, 27 September 2017
139 International Trade Committee, Oral evidence: The work of the Department for International Trade, HC 436-ii, 1 November 2017, Q145
140 Q150
141 International Trade Committee, Oral evidence: The work of the Department for International Trade, HC 436-ii, 1 November 2017, Qq145–155
142 BBC, WTO countries fret over Brexit plans, 11 October 2017
143 International Trade Committee, Oral evidence: The work of the Department for International Trade, HC 436-ii, 1 November 2017, Q158. See also, The Times, EU global deals threaten to wreck Brexit transition hopes, 25 October 2017 and Financial Times, After Brexit: the UK will need to renegotiate at least 759 treaties, 30 May 2017

the Government must prioritise accordingly. The Government should set out its plans for the UK's continuing participation in these agreements, its approach to how it is prioritising agreements, and what can be achieved during the Article 50 timeframe.

106. **The Government should publish a white paper on the implementation period as soon as possible after the European Council in December. This should cover the legal basis in UK and EU law for such an agreement, the single market, the customs union, free movement, the CJEU, UK membership of EU agencies, security, defence and foreign policy co-operation, the 30 plus trade agreements, and hundreds of non-trade agreements, that the UK is party to through its membership of the EU and also the Government's response to the European Parliament's resolution of 28 September 2017.**

Future relationship

107. The Government is optimistic that it can agree a bespoke FTA with the EU before March 2019. The Prime Minister has said that the Government does not favour any existing model; neither "something based on European Economic Area membership [such as the Norway model]; or a traditional Free Trade Agreement, such as that the EU has recently negotiated with Canada". Instead, it will seek a new "comprehensive and ambitious" economic partnership with the EU which the Government said is the only economic model that is in the interests of both the EU and UK.[144] The Secretary of State said that EU Member States with particularly close trade relationships with the UK, such as Belgium, France, Holland and Denmark, would have a strong interest in an FTA between the EU and the UK to prevent any disruption to their own economies.[145] We heard the view in Brussels that trade between those countries is of "secondary importance" to their trade with the rest of the EU, and EU countries would place the interests of the Single Market ahead of any trade deal with the UK.

108. Reaching a trade agreement on services will be particularly important for the UK. While the Single Market in services is significantly less developed than the Single Market in goods, services accounted for 38% of the UK's exports to the EU in 2016, accounting for a £14 billion trade surplus. However, that was outweighed by a deficit of £96 billion on trade in goods, resulting in an overall trade deficit of £82 billion with the EU.[146] The services sector is not subject to tariffs. Where barriers to trade in services exist, they are usually due to regulatory differences. UK service providers currently have the right of establishment, which means that they are free to deliver services in another member state while continuing to be regulated by UK authorities. Furthermore, service providers benefit from the mutual recognition of professional qualifications throughout the Single Market. The EU has developed harmonised sets of regulations for certain sectors which can further reduce barriers to trade between Member States.

109. When challenged on whether it was possible, in practical terms, to agree a bespoke economic partnership in the remaining Article 50 time, the Secretary of State cited statements from Karel De Gucht, a former EU Trade Commissioner, who said it was possible to strike a deal in a period of two years, providing that there was sufficient

144 Prime Minister, PM's Florence speech: a new era of cooperation and partnership between the UK and the EU, 22 September 2017

145 Q30

146 House of Commons Library Briefing Paper, Statistics on UK-EU trade, 1 November 2017

political will.[147] The Secretary of State said that a trade agreement could be agreed in a short timeframe because the EU and UK will start negotiations from a position of regulatory harmony. However, in evidence to the Treasury Select Committee, Sir Ivan Rogers, a former Permanent Representative of the UK to the European Union, said that it is not clear how the Government intends to reconcile regulatory harmony with the need to diverge if the UK is to take full advantage of its capacity to strike deals with new trade partners.[148] Sir Ivan Rogers said that the Government's ambition to negotiate an FTA during the Article 50 negotiations was not possible. He said:

> [FTAs are] inordinately complex legal, lengthy documents. They often run to thousands of pages. There is no way that an EU-UK trade deal as comprehensive as the one we want to strike will be done in under a couple of thousand pages. Those couple of thousand pages will not be legally baked and done by October 2018.[149]

He concluded that any FTA ratification process was unlikely to be completed until "the early mid-2020s".[150] Furthermore, in evidence to the House of Lords EU Select Committee, Michel Barnier said that the "scoping" of the future relationship would "continue after 30 March 2019" and then the negotiations on a free trade agreement and defence and security co-operation would require "a few years".[151] The issue of public opinion across the EU27 will be particularly important when it comes to the future relationship, because the future relationship will be negotiated as a mixed agreement, thus requiring the ratification of 38 national and regional parliaments. Mr Barnier said that anything perceived as dumping or unfair regulatory competition would be unlikely to be accepted by legislatures.

110. In both Brussels and Paris, we were told repeatedly that managing potential divergence would be the key stumbling block to any future FTA. Interlocutors warned that public opinion across the EU was wary of any prospect of economic, social and environmental 'dumping', if the UK chooses to deregulate substantively. They noted the major disputes over CETA to highlight the debates over trade in Member States.

111. It is now generally accepted that Article 50 does not provide a legal basis for future trade negotiations with a departing Member State.[152] It refers only to the need for the EU to take account of a "framework" for a future relationship.[153] The Secretary of State said that an FTA would most likely be negotiated under Article 218 of the Treaty on the Functioning of the European Union which sets out the EU's procedures for negotiating and concluding agreements with third countries and international organisations. He said that the agreement on the future relationship, including the trade agreement, the justice and home affairs relationship and possibly the defence relationship would constitute mixed agreements which under Article 218 would require ratification by all Member States, some

147 Q30
148 Treasury Select Committee, oral evidence: The UK's economic relationship with the European Union, HC 473, 25 October 2017, Q11
149 Treasury Select Committee, oral evidence: The UK's economic relationship with the European Union, HC 473, 25 October 2017, Q39
150 Treasury Select Committee, oral evidence: The UK's economic relationship with the European Union, HC 473, 25 October 2017, Q37
151 House of Lords EU Select Committee, Oral evidence: Scrutiny of Brexit negotiations, 12 July 2017, Q4
152 The Secretary of State for Exiting the EU said in evidence that "Article 50 does not say very much about anything, if you read it. It is the blandest and unhelpful phrase you are ever likely to come across". Q70
153 EUR-Lex, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. See also, Institute for Government, Article 218

of whom require authorisation by their parliaments (or even regional assemblies). This could take some time. Article 218 cannot be used to strike agreements with Member States and so the Secretary of State indicated that while an EU-UK FTA could not be signed until the UK had become a third country, it could do so a "nanosecond" after it has withdrawn from the EU.[154] However, any mixed agreement would have to go through an extensive ratification process before it would enter fully into force.

112. **The scope and nature of any UK future trade and services agreement with the EU will be determined by many things, including economic interest and by the extent to which the UK chooses to, and the EU requires the UK to, remain closely harmonised with EU standards and regulations, versus diverging from these to secure new trading relationships. It is not yet evident that the Government has decided which path to follow, let alone set out what kind of deal it is seeking. Given the short time left, it is very hard to see how it will be possible to negotiate a full, bespoke trade and market access deal between now and October 2018. The Government's stated policy aim is to agree, by October 2018, the Article 50 withdrawal agreement, a transition/implementation period and "a comprehensive free trade agreement and a comprehensive customs agreement that will deliver the exact same benefits as we have".[155] Such a deal must deliver the Government's aim in both goods and services. We look forward to monitoring progress on this over the coming year. Until now, the Government's statements on the nature of the UK's future relationship with the EU have been couched in general terms such as 'comprehensive and ambitious' or 'deep and special'. The Government should now provide to Parliament much more specific proposals as to what these words will mean in practice. Similar clarity from the EU negotiators on the "new partnership" would also be welcome. Given the lack of certainty that an agreement, for a future relationship with the EU, will be signed during the withdrawal implementation period, it will be important to have as much clarity by the date of exit.**

Parliamentary vote on the deal

113. In February, in a debate on the European Union (Notification of Withdrawal) Bill, David Jones MP, the then Minister of State for Exiting the EU, reaffirmed the Government's commitment to provide both Houses of Parliament with an opportunity to vote to approve the withdrawal and future relationship agreements before the conclusion of the negotiations. He said:

> First of all, we intend that the vote will cover not only the withdrawal arrangements but also the future relationship with the European Union. Furthermore, I can confirm that the Government will bring forward a motion on the final agreement, to be approved by both Houses of Parliament before it is concluded. We expect and intend that this will happen before the European Parliament debates and votes on the final agreement.[156]

154 Qq25 & 28. Article 218 describes how the EU makes agreements with third countries or international organisations. See EUR-Lex, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union

155 HC Deb 24 January 2017, Vol. 620 Col. 169 (Rt Hon. David Davis MP)

156 HC deb 7 February 2017, Vol. 621, Col. 264

In the same debate, the Minister said:

> What we are proposing, and what I am committing to from the Dispatch Box, is that before the final agreement is concluded—the final draft agreement, if you like—it will be put to a vote of this House and a vote of the other place. That, we intend, will be before it is put to the European Parliament. That is as clear as I can make it.[157]

However, the Secretary of State told us that the Government would bring a motion to the House only after a deal had been agreed as "[a motion] cannot come before we have the deal".[158] He also said it was possible, if negotiations continued to the end of the Article 50 period, that Parliament would not have a vote on the exit deal until after 29 March 2019.[159] The Government has since clarified that it shares the Commission's ambition to have agreed the future relationship by October 2018, and that it is still the intention that the UK Parliament is given the opportunity to vote before the European Parliament. The Secretary of State told the House that it "will be given the agreement to approve as soon as possible at the draft stage". Nevertheless, despite these assurances he was unable to guarantee a meaningful vote on the exit terms before exit day as the timetable for negotiations is not wholly in the hands of the Government.[160]

114. On 13 November, the Government announced that the Withdrawal Agreement would be enshrined in a specific piece of primary legislation. The Government intended previously for the Withdrawal Agreement to be implemented through secondary legislation under Clause 9 of the European Union (Withdrawal) Bill. The Secretary of State said that the introduction of separate legislation would mean that Parliament will be given time to "debate, scrutinise and vote on the final agreement we strike with the European Union. The agreement will hold only if Parliament approves it." He said that the Government's commitment to give Parliament a vote on the final deal "as soon as possible after the deal is agreed" still stood, and that the Government still intended for such a vote to occur before the European Parliament votes on it.[161] However it would appear that the choice being offered to Parliament would only be agreeing the deal or defaulting to no deal.

115. There will be two parts to the Withdrawal Agreement. The first covering the divorce settlement and the implementation period—which the Government states would come under Article 50. The second will be a scoping and outline of a new trade and market access agreement which the Government intends to agree by October 2018 but which would most likely have to be concluded under Article 218 once the UK has left the EU. The Government has said that this agreement will be a bespoke free trade agreement between the EU and the UK. However, others argue that such an agreement would only consist of a framework on which to base trade negotiations, which would begin only once the UK

157 HC deb 7 February 2017, Vol. 621, Col. 271

158 Q119

159 Q120

160 HC Deb 26 October 2017, Vol. 630, Col. 445

161 HC Deb 13 November 2017, Vol. 631 Col. 37. The Secretary of State said that the legislation will include issues "such as an agreement on citizens' rights, any financial settlement and the details of an implementation period agreed between both sides. Of course, we do not yet know the exact details of the Bill and are unlikely to do so until the negotiations are near completion."

has left the EU.[162] It is possible that reaching this agreement could take some time during the implementation period and would, as it is a mixed agreement, be subject to ratification by all EU Member States.

116. **We welcome the Government's commitment to enshrine the withdrawal agreement in separate primary legislation, which will include agreements on citizens' rights, any financial settlement and an implementation period, along with other matters. The Government has also said that the House will have the opportunity to vote on a motion on the withdrawal agreement once it has been agreed but before the European Parliament has its own vote. We recognise that the timeframe for agreeing the withdrawal agreement is not in the Government's hands. However, the timing of the vote in the House of Commons is significant. As it stands, any deal will need to be voted on by the UK Parliament and the European Parliament before 11pm on 29 March 2019 unless the date of exit has been postponed by unanimous agreement of the 27 Member States under the terms of Article 50. If the European Parliament has not approved the agreement and the negotiating period has not been extended, the UK will leave the EU without a deal. Clearly a vote cannot take place until an agreement has been reached between the UK and the EU. If this happens at the very end of the Article 50 period then the Government would be unable to guarantee that either the motion or the Bill could be debated and voted on before the end of March 2019. Therefore, the Government must hold a vote as soon as possible after any deal is agreed. It would not be acceptable to present a motion to the House after the UK has left the EU.**

No deal

117. In an evidence session on the European Union (Withdrawal) Bill, Sir Konrad Schiemann drew our attention to the fact that a no deal outcome could result from a challenge in the CJEU on the subject of vires—the powers—of the parties who make the Withdrawal Agreement under the Treaties:

> The European Union sees itself as a community of law bound together by the interpretation of the treaties, which is given by the ECJ. In consequence, it can happen and has happened that everybody, all the politicians, are agreed on what the answer is, but the European Court of Justice has said, "I am sorry, that does not work because it goes against the role of the European Court of Justice in the treaties".[163]

118. In the same evidence session, Professor Ekins described the risk of the CJEU challenging or invalidating the agreement as a "standard risk of negotiating with the EU."[164] This does not signify that the CJEU could stop the UK leaving the EU, as Sir Konrad went on to explain, "because Article 50 comes in and says if there is no agreement the UK leaves. That is why I say it is pretty important for Parliament to decide, the sooner the better I should have thought, what precisely we will do if there is no agreement."[165] When we raised this point with Ministers, we were told that it was in the interests of "both

162 Treasury Select Committee, oral evidence: The UK's economic relationship with the European Union, HC 473, 25 October 2017, Q37

163 Q9 (Sir Konrad Schiemann)

164 Q25 (Prof Richard Ekins)

165 Q29 (Sir Konrad Schiemann)

sides of the negotiating table to ensure that it does not transpire" and it was an ongoing consideration.[166] In June 2017, the Chancellor of the Exchequer described leaving the EU without a deal as a "a very, very bad outcome for Britain".[167]

119. The Secretary of State told us that there are various sorts of no deal. He said:

> There is a no deal where we go to WTO arrangements but we have a bare-bones deal on other elements. I listed them to the Chairman: aviation, data and maybe nuclear—or not—and so on. Then of course there is a complete failure to agree and a hostile outcome. That is so incredible that it is off the probability scale. But in those circumstances, it is conceivable there will be no deal of any sort.[168]

120. The Institute for Government has said that the ease of agreeing even a "bare bones" deal should not be taken for granted. It said, "without an agreement on data, for example, transfers of personal information between the UK and the EU would be severely disrupted." However, existing precedents suggest that a deal on data requires a judgment from the Commission that the UK will comply with EU data protection laws, but "such judgement could take years". Furthermore, deals on other sectors, such as aviation, could be just as protracted. The Institute for Government said "negotiations for a quick aviation deal would turn into talks on cross-cutting regulation and institutional oversight—the very areas that are likely to prove contentious in a full free trade agreement".[169]

121. The Committee recently visited the Port of Dover to see how the Port works and why it is so important for the UK's trade. We held a series of private meetings with representatives of the Port, which included those who work at the border to facilitate security and the free flow of trade, representatives from the Port of Calais, and one of the ferry operators. A large amount of trade passes through Dover every day and the efficiency of the processes in place at the Port, and at Calais, have helped to minimise the time it takes for goods to move from supplier to customer on both side of the channel. Furthermore, it has introduced a predictability to the delivery timetable that is important for sectors with time sensitive supply chains, such as the automotive sector, and the agri-food sector. The current processes—involving roll on roll off ferries and short turnaround times—have developed while the UK has been in the Customs Union and the Single Market. Any change to the UK's trade relationship with the EU could lead to a change in regime for customs checks and conformity to single market rules, particularly on animal or plant products, for goods being exported from the UK into the EU. A no deal scenario, especially if it was before any of the necessary adjustments had been made in areas such as IT systems, infrastructure, recruitment and training of staff, would cause major disruption. The Port has illustrated the scale of the challenge by noting that an additional two-minute delay per freight vehicle in the Ferry Terminal would cause 17 miles of queues on the motorway in Kent.[170] The Committee also heard that Calais would be severely affected and the Port's President has said that it might have to shut.

166 Q257 (Steve Baker)
167 BBC [Video], Andrew Marr Show, 18 June 2017, [18.00]
168 Q47
169 Institute for Government, Could the UK bank on a "basic" no deal?, 1 November 2017
170 Port of Dover, Written evidence to the Public Accounts Committee inquiry on Brexit and the Borders

122. **Whether or not a deal is reached, we believe that the Government should be investing now in improvements in technology and infrastructure to ease the passage of goods through gateways like the Port of Dover; for example, by introducing electronic customs checks and building the proposed lorry park outside the Port of Dover. However, such measures would not deal with all the risks of serious delays in Dover and would have to be reciprocated across the Channel in order to be effective.**

123. **There has been continued debate about no deal being reached at the end of the negotiations. We agree with the Chancellor of the Exchequer that this would be "a very, very bad outcome" for the UK and we think it would also be harmful for the EU, in particular for our closest trading partners. It would be chaotic and damaging for the UK economy and would leave many businesses and whole sectors in limbo facing huge uncertainty. The Government must do everything it can to avoid such an outcome. The Government has said that if no deal is reached, specific sector by sector agreements could still be made to minimise damage to the economies of both the UK and EU member states, but there is nothing to suggest that this would be a straightforward or swift process, or even possible. The Prime Minister has previously stated that 'no deal is better than a bad deal'. It is difficult to imagine any possible deal, consistent with WTO and other international treaties, that would be more damaging to the UK's interests than leaving the EU with no deal whatsoever in place.**

Formal Minutes

Tuesday 28 November 2017

Members present:

Hilary Benn, in the Chair

Joanna Cherry	Mr Pat McFadden
Mr Christopher Chope	Craig Mackinlay
Stephen Crabb	Seema Malhotra
Mr Jonathan Djanogly	Mr Jacob Rees-Mogg
Richard Graham	Stephen Timms
Peter Grant	Mr John Whittingdale
Wera Hobhouse	Hywel Williams
Stephen Kinnock	Sammy Wilson
Jeremy Lefroy	

Draft Report (*The progress of the UK's negotiations on EU withdrawal*) proposed by the Chair, brought up and read.

Question put, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 46 agreed to.

Paragraph 47 read.

Amendment proposed, to leave out from "Ireland." in line 9 to the end of the paragraph – (*Mr Christopher Chope*)

Question put, That the amendment be made.

The Committee divided.

Ayes, 7	**Noes, 10**
Mr Christopher Chope	Joanna Cherry
Mr Jonathan Djanogly	Stephen Crabb
Richard Graham	Peter Grant
Craig Mackinlay	Wera Hobhouse
Mr Jacob Rees-Mogg	Stephen Kinnock
Mr John Whittingdale	Jeremy Lefroy
Sammy Wilson	Mr Pat McFadden
	Seema Malhotra
	Stephen Timms
	Hywel Williams

Question accordingly negatived.

Motion made, and Question put, That the paragraph stand part of the Report.

The Committee divided.

Ayes, 12	**Noes, 5**
Joanna Cherry	Mr Christopher Chope
Stephen Crabb	Craig Mackinlay
Mr Jonathan Djanogly	Mr Jacob Rees-Mogg
Richard Graham	Mr John Whittingdale
Peter Grant	Sammy Wilson
Wera Hobhouse	
Stephen Kinnock	
Jeremy Lefroy	
Mr Pat McFadden	
Seema Malhotra	
Stephen Timms	
Hywel Williams	

Paragraph accordingly agreed to.

Paragraphs 48 to 57 agreed to.

Paragraph 58 read.

Motion made, and Question put, That the paragraph stand part of the Report.

The Committee divided.

Ayes, 13	**Noes, 4**
Joanna Cherry	Mr Christopher Chope
Stephen Crabb	Craig Mackinlay
Mr Jonathan Djanogly	Mr Jacob Rees-Mogg
Richard Graham	Sammy Wilson
Peter Grant	
Wera Hobhouse	
Stephen Kinnock	
Jeremy Lefroy	
Mr Pat McFadden	
Seema Malhotra	
Stephen Timms	
Mr John Whittingdale	
Hywel Williams	

Paragraph accordingly agreed to.

Paragraphs 59 to 108 agreed to.

Paragraph 109 read.

Amendment proposed, to leave out from "harmony." to "Furthermore". – (*Mr Jacob Rees-Mogg*)

Question put, That the amendment be made.

The Committee divided.

Ayes, 8	**Noes, 9**
Mr Christopher Chope	Joanna Cherry
Stephen Crabb	Peter Grant
Mr Jonathan Djanogly	Wera Hobhouse
Richard Graham	Stephen Kinnock
Craig Mackinlay	Jeremy Lefroy
Mr Jacob Rees-Mogg	Mr Pat McFadden
Mr John Whittingdale	Seema Malhotra
Sammy Wilson	Stephen Timms
	Hywel Williams

Question accordingly negatived.

Paragraph agreed to.

Paragraph 110 read.

Amendment proposed, to add at end "In essence, we were being told that the United Kingdom will be held to ransom in any trade deal by all those in the EU who wish to promote protectionism and undermine free trade." – (*Mr Christopher Chope*)

Question put, That the amendment be made.

The Committee divided.

Ayes, 5	**Noes, 12**
Mr Christopher Chope	Joanna Cherry
Craig Mackinlay	Stephen Crabb
Mr Jacob Rees-Mogg	Mr Jonathan Djanogly
Mr John Whittingdale	Richard Graham
Sammy Wilson	Peter Grant
	Wera Hobhouse
	Stephen Kinnock
	Jeremy Lefroy
	Mr Pat McFadden
	Seema Malhotra
	Stephen Timms
	Hywel Williams

Question accordingly negatived.

Paragraph agreed to.

Paragraph 111 agreed to.

Paragraph 112 read.

Amendment proposed, to leave out from the first "which" to "The Government's stated" and insert "there is good will on either side. The principle of equivalence could easily replace that of harmonisation. Free trade negotiations can be conducted with considerable speed; for example the United States and Australia agreed their free trade deal within a year." – (*Mr Jacob Rees-Mogg*)

Question put, That the amendment be made.

The Committee divided.

Ayes, 5	**Noes, 12**
Mr Christopher Chope	Joanna Cherry
Craig Mackinlay	Stephen Crabb
Mr Jacob Rees-Mogg	Mr Jonathan Djanogly
Mr John Whittingdale	Richard Graham
Sammy Wilson	Peter Grant
	Wera Hobhouse
	Stephen Kinnock
	Jeremy Lefroy
	Mr Pat McFadden
	Seema Malhotra
	Stephen Timms
	Hywel Williams

Question accordingly negatived.

Amendment proposed, after "same benefits as we have." to insert "such a deal must deliver the Government's aim in both goods and services. We look forward to monitoring progress on this over the coming year." – (*Mr Pat McFadden*)

Question put, That the amendment be made.

The Committee divided.

Ayes, 11	**Noes, 6**
Joanna Cherry	Mr Christopher Chope
Stephen Crabb	Richard Graham
Mr Jonathan Djanogly	Craig Mackinlay
Peter Grant	Mr Jacob Rees-Mogg
Wera Hobhouse	Mr John Whittingdale
Stephen Kinnock	Sammy Wilson
Jeremy Lefroy	
Mr Pat McFadden	
Seema Malhotra	
Stephen Timms	
Hywel Williams	

Amendment agreed to.

Paragraph, as amended, agreed to.

Paragraphs 113 to 116 agreed to.

Paragraph 117 read, as follows

"**It is also deeply unsatisfactory that the only option available to Parliament will be to endorse the deal the Government has negotiated or to accept the consequences of leaving the EU without a deal. If necessary the exit date must be postponed and Article 50 extended to avoid this and Parliament must have the opportunity to instruct the Government to adopt a different approach to the negotiations if the national interest demands it.**"

Motion made, and Question put, That the paragraph stand part of the Report.

The Committee divided.

Ayes, 8	**Noes, 9**
Joanna Cherry	Mr Christopher Chope
Peter Grant	Stephen Crabb
Wera Hobhouse	Mr Jonathan Djanogly
Stephen Kinnock	Richard Graham
Mr Pat McFadden	Jeremy Lefroy
Seema Malhotra	Craig Mackinlay
Stephen Timms	Mr Jacob Rees-Mogg
Hywel Williams	Mr John Whittingdale
	Sammy Wilson

Paragraph accordingly negatived.

Paragraphs 118 to 123 (now 117 to 122) agreed to.

Paragraph 124 (now 123) read.

Amendment proposed, to leave out from "negotiations" to the end and insert "or, as Konrad Schiemann pointed out, because the ECJ rules any deal reached invalid. This is not without its advantages. No money would be owed to the EU, the benefits of free trade would start immediately and the ECJ would no longer have any jurisdiction over the UK's affairs. It would be preferable to have a deal if it were are the right price but World Trade Organisation terms is a good second best."- (*Mr Jacob Rees-Mogg*)

Question put, That the amendment be made.

The Committee divided.

Ayes, 5	**Noes, 12**
Mr Christopher Chope	Joanna Cherry
Craig Mackinlay	Stephen Crabb
Mr Jacob Rees-Mogg	Mr Jonathan Djanogly
Mr John Whittingdale	Richard Graham
Sammy Wilson	Peter Grant
	Wera Hobhouse
	Stephen Kinnock
	Jeremy Lefroy
	Mr Pat McFadden
	Seema Malhotra
	Stephen Timms
	Hywel Williams

Question accordingly negatived.

Amendment proposed, at end to add "The Prime Minister has previously stated that 'No deal is better than a bad deal'. It is difficult to imagine any possible deal, consistent with WTO and other international treaties, that would be more damaging to the UK's interests than leaving the EU with no deal whatsoever in place." – (*Peter Grant*)

The Committee divided.

Ayes, 9	**Noes, 8**
Joanna Cherry	Mr Christopher Chope
Peter Grant	Stephen Crabb
Wera Hobhouse	Mr Jonathan Djanogly
Stephen Kinnock	Richard Graham
Jeremy Lefroy	Craig Mackinlay
Mr Pat McFadden	Mr Jacob Rees-Mogg
Seema Malhotra	Mr John Whittingdale
Stephen Timms	Sammy Wilson
Hywel Williams	

Question accordingly agreed to.

Motion made and Question put, That the paragraph, as amended, stand part of the report.

The Committee divided.

Ayes, 9	**Noes, 8**
Joanna Cherry	Mr Christopher Chope
Peter Grant	Stephen Crabb
Wera Hobhouse	Mr Jonathan Djanogly
Stephen Kinnock	Richard Graham
Jeremy Lefroy	Craig Mackinlay
Mr Pat McFadden	Mr Jacob Rees-Mogg
Seema Malhotra	Mr John Whittingdale
Stephen Timms	Sammy Wilson
Hywel Williams	

Paragraph accordingly agreed to.

Question put, That the Report be the Second Report of the Committee to the House.

The Committee divided:

Ayes, 12	**Noes, 5**
Joanna Cherry	Mr Christopher Chope
Stephen Crabb	Craig Mackinlay
Mr Jonathan Djanogly	Mr Jacob Rees-Mogg
Richard Graham	Mr John Whittingdale
Peter Grant	Sammy Wilson
Wera Hobhouse	
Stephen Kinnock	
Jeremy Lefroy	
Mr Pat McFadden	
Seema Malhotra	
Stephen Timms	
Hywel Williams	

Question accordingly agreed to.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned till Wednesday 29 November at 9 a.m.

Witness

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Wednesday 25 October 2017	*Question number*
Rt Hon Mr David Davis MP, Secretary of State, Department for Exiting the European Union	Q1–153

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

1 London First (NEG0001)

2 Rail Delivery Group (NEG0003)

3 TheCityUK (NEG0002)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	European Union (Withdrawal) Bill	HC 373