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The UK's Departure from the European Union - An overview of the Political Declaration

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This briefing provides an overview of the Political Declaration agreed between the EU and the UK Government which was endorsed by the European Council on 25 November 2018. Whilst the Political Declaration has no legal effect, it sets out high level aspirations for the nature of the future relationship after the UK has left the EU.



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Executive Summary

Following 18 months of negotiations, at a special meeting of the European Council on 25 November 2018, Member States endorsed the [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#). At the same time, Member States agreed the [Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#)¹.

Whilst the Withdrawal Agreement (once ratified) will be legally binding on the EU and the UK, the Political Declaration has no such status. Instead, it is an agreement between the EU and the UK Government setting out high level aspirations for the nature of the future relationship after the UK has left the EU.

Negotiations on the future relationship may begin once the Withdrawal Agreement has been ratified but are unlikely to gain momentum until the UK has left the EU, and probably after the new European Commission is confirmed towards the end of 2019.

The Political Declaration describes a desire to build a close partnership between the EU and the UK. However, key EU and UK "red lines" are also noted, and these are likely to have a mitigating effect on the closeness of any future relationship.

The Political Declaration covers the following issues:

- The initial provisions section describes some core values, rights and data protection arrangements as the basis for co-operation.
- The economic partnership section covers joint ambitions for goods, services, movement of people, transport, energy, fishing, global co-operation and level playing field provisions.
- The security partnership section covers joint ambitions for co-operation in criminal matters, foreign policy, security and defence.
- The institutional arrangements section describes a joint desire for an overarching framework for governance.

The Political Declaration sets out the high level ambitions of the UK Government and the EU for a comprehensive future relationship after Brexit. As the document is not legally binding, it has no effect other than to indicate the areas in which the two parties will seek to co-operate, principally on developing economic and security partnerships.

As the Political Declaration sets out aspirations for the future relationship at a high level, negotiations to convert these into a detailed future relationship will be complex and potentially very time consuming. It has even been suggested that negotiating the terms of the UK's withdrawal from the EU was the easy part in the Brexit process.

Context

On 29 March 2017, the UK Government notified the European Council of the UK's intention to withdraw from the European Union. The withdrawal process is set out in Article 50 of the Treaty on European Union (TEU).

Whilst Article 50 TEU outlines the process for the departure, it also states that in negotiating the arrangements for withdrawal of the EU Member State account should be taken of the "framework for its future relationship with the Union" ² .

Following 18 months of negotiations, at a special meeting of the European Council on 25 November 2018, Member States endorsed the [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#) . At the same time, Member States agreed the [Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#) ¹ .

In relation to the Political Declaration, the Council Conclusions following the European Council meeting stated:

“ The European Council approves the Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom of Great Britain and Northern Ireland. The European Council restates the Union's determination to have as close as possible a partnership with the United Kingdom in the future in line with the Political Declaration. The Union's approach will continue to be defined by the overall positions and principles set out in the previously agreed European Council's guidelines. ”

European Council, 2018³

The status of the Political Declaration

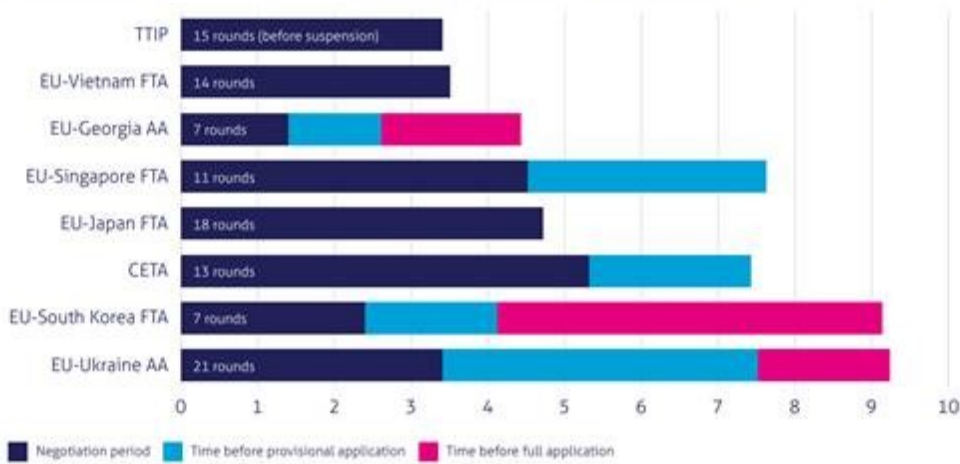
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Negotiations on the future relationship may begin once the Withdrawal Agreement has been ratified but are unlikely to gain momentum until the UK has left the EU, and probably after the new European Commission is confirmed towards the end of 2019.

Whilst the EU and the UK have suggested they will seek to agree the future relationship during the 21 month transition period (which can be extended by up to one or two years taking it to the end of 2021 or 2022) this may prove ambitious given the scale of the Agreement both sides are seeking.

The Institute for Government has charted the time taken to negotiate and conclude other recent international agreements between the EU and other countries and regions.

Figure 4: The duration of negotiating and concluding recent EU FTAs (in years)



Institute for Government https://www.instituteforgovernment.org.uk/sites/default/files/publications/IFGJ5896-Brexit-Report-171214-final_0.pdf

The negotiations on the Political Declaration

When the Prime Minister triggered the Article 50 process by notifying the EU of the UK Government's intention to leave on 29 March 2017, her letter indicated she believed that the two year period should be used to negotiate the terms of Withdrawal and agree a new relationship. The Prime Minister suggested this new "deep and special partnership" should come into force when the UK leaves the EU⁴.

In response, the Member States, and the European Commission's Chief Negotiator, Michel Barnier, were clear that discussions about the future relationship could not begin until sufficient progress had been made on the Withdrawal Agreement. In addition, the EU27 were clear that actual negotiations on the future relationship could not begin until the UK has left the EU.

The sequencing of negotiations was the first big dispute of the withdrawal negotiations with the then Secretary of State for Exiting the EU, David Davis, promising the "row of the summer"⁵. However, on the first day of formal negotiations, the UK Government agreed to the European Commission's proposal for a phased approach with the priority being to agree the terms of withdrawal in the first instance.

During the course of the negotiations, the UK Government also accepted that, because negotiations could not begin until the UK has left the EU, the level of detail that would be possible to build into the Political Declaration would be limited..

On 8 December 2017, after six months of negotiations, the European Commission announced that it would recommend to the December European Council meeting that sufficient progress had been made allowing the Brexit negotiations to move on to the future relationship⁶.

The EU27 negotiating position

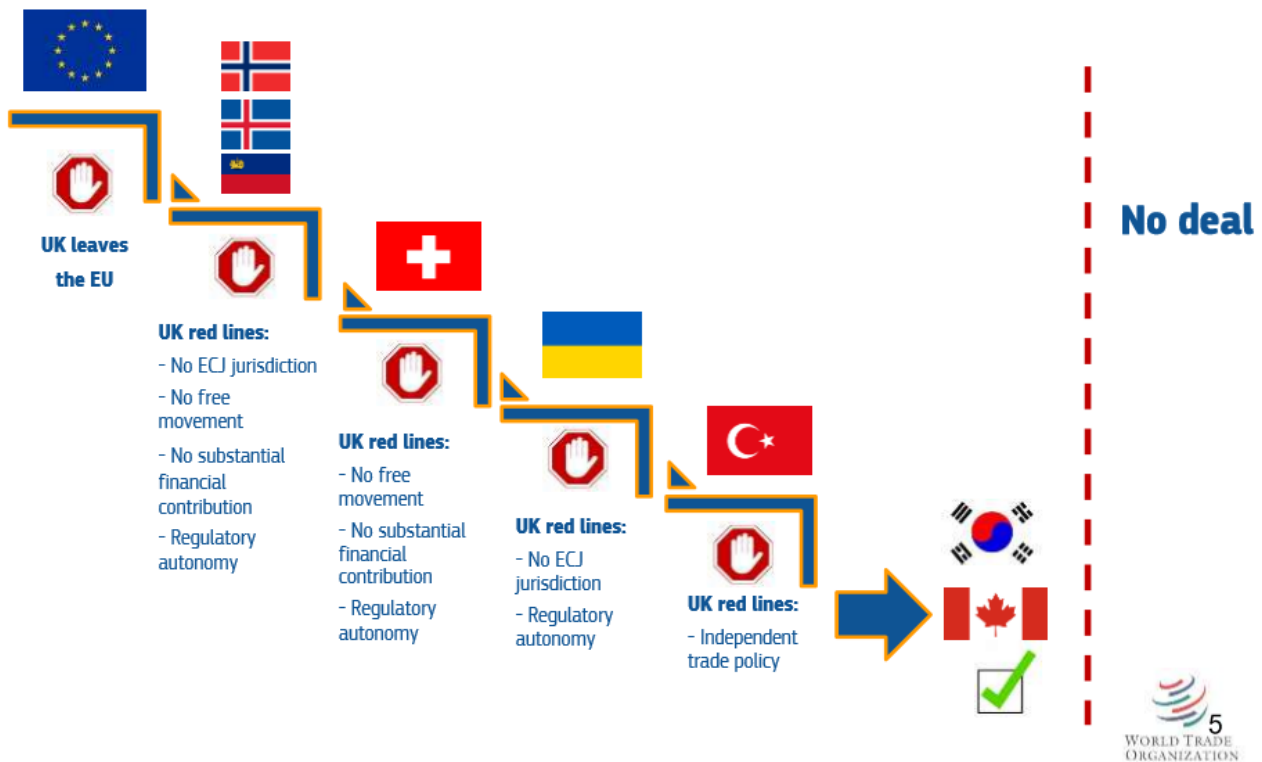
Following agreement to move to the next phase of negotiations, on 15 December 2017, the European Council agreed guidelines, including on the framework for the future relationship⁷. These guidelines were supplemented at the European Council in March 2018. The updated guidelines set out the EU27's desire for a future "close as possible" partnership with the UK. The guidelines proposed that the partnership should cover trade and economic co-operation as well as other areas such as the fight against terrorism and international crime, as well as security, defence and foreign policy⁸.

The guidelines also set out the EU27's view that a non-member of the EU cannot get as a good a deal as an EU member without observing the obligations of membership and that the future relationship must be compatible with protecting the integrity of the Single Market and Customs Union; the indivisibility of the four freedomsⁱ; and the autonomy of the EU's decision-making.

ⁱ The four freedoms of the EU Single Market are the free movement of goods, services, capital and labour.

The EU and UK Government's negotiating red lines served to place limits on the depth of any future relationship at an early stage. For example, the future relationship will be largely dictated by the UK Government's stated red lines including ending freedom of movement and the jurisdiction of the European Court of Justice. This was illustrated in a slide published by the European Commission's Article 50 Taskforce in February 2018.

Future relationship and UK red lines



European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU: Internal EU27 preparatory discussions on the framework for the future relationship: "Regulatory issues"

The UK Government's position

On 12 July 2018, the Department for Exiting the European Union published its [White Paper on the future relationship between the UK and the EU](#). The paper proposed that the future UK-EU relationship should be structured around an economic partnership and a security partnership.

The proposals in the White Paper have become known as the Chequers proposals because they were agreed by the UK Government during a meeting at the Prime Minister's country home at Chequers.

The UK Government's proposals broadly recognised that their red lines on freedom of movement and the jurisdiction of the European Court of Justice would limit the scope of any future relationship, though it still sought a deep and comprehensive future relationship.

In terms of the economic partnership, the White Paper made proposals which aimed to secure the continued frictionless trade in goods, and to protect the integrated supply chains and 'just-in-time' processes that exist across the UK and the EU. To do this, the

paper proposed the establishment of a free trade area for goods alongside new arrangements aimed at minimising new barriers to trade in services.

On security, the White Paper proposed a new security partnership that aimed to maintain close co-operation between the UK and the EU.

Presenting the proposals to Parliament, the then Secretary of State for Exiting the EU, Dominic Raab MP, said that:

“ This White Paper sets out the right Brexit deal, delivering on the result of the referendum; taking back control over our money, laws and borders; supporting the economy by maintaining a strong trading relationship after we have left; ending free movement while avoiding a hard border between Northern Ireland and Ireland, or indeed between Northern Ireland and Great Britain; restoring sovereignty to Parliament and the authority of the UK Supreme Court; seizing the opportunity to forge new trade deals around the world; and maintaining co-operation with the EU in the many other areas that we prize, including security co-operation to keep our people safe. This is our vision for a bold, ambitious and innovative new partnership with the EU. Principled and practical, faithful to the referendum, it delivers a deal that is good for the UK and good for our EU friends.”

UK Parliament, 2018⁹

The conflicts over the UK and EU red lines were ultimately reflected in the lack of detail and depth set out in the Political Declaration.

The Scottish Government's position

Throughout the Brexit negotiations, the Scottish Government's series, *Scotland's Place in Europe*, has reiterated the position that the UK should maintain as close a relationship as possible with the European Union by remaining in the Single Market and the Customs Union after Brexit.

[Scotland's Place in Europe: An Assessment of The UK Government's Proposed Future Relationship with The EU](#) which was published on 27 November 2018 provides the Scottish Government's response to the Withdrawal Agreement. On the Political Declaration, the introduction to the paper states that it is:

“ merely an aspirational statement of intent for the crucial further negotiations. In contrast to the certainty of membership of the European Single Market and Customs Union, the declaration provides no reliable detail and clarity on the future relationship between the UK and the EU. What it does contain suggests a far diminished partnership, one that will leave this country and its people poorer. ¹⁰ ”

The Scottish Government's response is discussed in more detail [later in the briefing](#).

Content of the Political Declaration

"[T]his declaration **establishes the parameters** of an ambitious, broad, deep and flexible partnership across trade and economic co-operation, law enforcement and criminal justice, foreign policy, security and defence and wider areas of co-operation."

The Political Declaration describes a desire to build a close partnership between the EU and the UK. However, key EU and UK "red lines" are also noted, and these are likely to have a mitigating effect on the closeness of any future relationship. Paragraph 4 of the Political Declaration sets out the challenges to agreeing the future relationship:

“ The future relationship will be based on a balance of rights and obligations, taking into account the principles of each Party. This balance must ensure the autonomy of the Union’s decision making and be consistent with the Union’s principles, in particular with respect to the integrity of the Single Market and the Customs Union and the indivisibility of the four freedoms. It must also ensure the sovereignty of the United Kingdom and the protection of its internal market, while respecting the result of the 2016 referendum including with regard to the development of its independent trade policy and the ending of free movement of people between the Union and the United Kingdom.”

UK Government, 2018¹

The Declaration document is structured in a similar way to the UK Government's [Chequers proposals](#):

- Part I - initial provisions
- Part II - economic partnership
- Part III - security partnership
- Part IV - institutional and other horizontal arrangements
- Part V - forward process

The initial provisions section describes some core values, rights and data protection arrangements as the basis for co-operation. This includes a commitment to incorporate the UK's "continued commitment to respect the framework of the European Convention on Human Rights (ECHR)" into any future relationship.

The economic partnership section covers joint ambitions for goods, services, movement of people, transport, energy, fishing, global co-operation and level playing field provisions.

The security partnership section covers joint ambitions for co-operation in criminal matters, foreign policy, security and defence. This section recognises that the scope and scale of the arrangements will be affected by the UK's willingness to "respect the integrity of the Union's legal order" - for example, accepting a role for the European Court of Justice.

The institutional arrangements section describes a joint desire for an overarching framework for governance. This includes mechanisms for dialogue and strategic direction

as well as for a dispute resolution mechanism based on that agreed in the Withdrawal Agreement.

A blindfold Brexit?

The prospect of the UK leaving the EU with no certainty over what the future relationship will look like is described by some as a "blindfold" Brexit. This description arises because, in contrast to the Withdrawal Agreement, the Political Declaration is not a legal text - it only describes the non-binding "parameters" of political ambition for the future relationship.

The formal negotiations to define the future relationship cannot begin until after Brexit. This phased approach to negotiations [was set in April 2017 by the European Council](#).¹¹ In this sense, there was always going to be less legal certainty over the future relationship at the point of the UK's withdrawal. However the lack of a settled agreement on the form of the relationship that the UK wishes to negotiate has added to the sense of uncertainty.

In March 2018, the House of Commons Library briefing [Brexit: new guidelines on the framework for future EU-UK relations](#) suggested that one potential weakness created by the lack of legal enforceability of the Political Declaration was that, rather than significant issues being addressed and concluded in the Political Declaration, it was more likely to lead to them being fudged to be dealt with at a later date:

“ The greater risk with this approach to negotiation is that “difficult” issues may be glossed over in the language of a political declaration, leading to arguments later about the meaning that was intended. Much therefore depends on “clarity” and sufficiency of detail. In the case of the UK withdrawal deal this will be important not only for the EU institutions and governments negotiating the deal, and for business, but also for the UK Parliament when it comes to the promised “meaningful vote” on the outcome.”

UK Parliament: House of Commons Library briefing, 2018¹²

In its response to the Political Declaration, the Scottish Government say:

“ The political declaration which accompanies the Withdrawal Agreement provides no certainty on the future relationship as so much within the text is conditional upon the obligations the UK Government will accept. Nearly all the difficult decisions which need to be taken about the future of our businesses and society have simply been postponed for another day, to be negotiated by the UK once we have become a third country. We therefore face what is effectively a blindfold Brexit, with several more years of damaging uncertainty for businesses and of UK government still consumed by these negotiations and their own internal divisions. Such uncertainty is likely to lead to businesses postponing or cancelling investment and recruitment plans until the UK's future economic relationship with the EU becomes clearer. This will depress economic activity and put jobs at risk. ”

Scottish Government, 2018¹⁰

David Henig of the European Centre For International Political Economy tweeted his analysis of the Political Declaration:

“ Verdict - a fairly comprehensive wish-list indicating a direction of travel, and what is important to both sides, but with no particular grounding in how difficult this will be to negotiate, obviously on Ireland but also elsewhere... It is at least complete and does attempt to say what the future could hold, so now we really can debate if that is what we want.”

Henig, 2018¹³

Participation in EU programmes

"Parties will establish general principles, terms and conditions for the United Kingdom's participation in Union programmes, subject to the conditions set out in the corresponding Union instruments, in areas such as **science and innovation, youth, culture and education, overseas development and external action, defence capabilities, civil protection and space.**"

The end of the UK's transition period is timed to coincide with the end of the current set of EU programmes, such as Horizon 2020, Galileo and Erasmus+. The next generation of programmes are due to begin in 2021 and are currently being negotiated through the EU long-term budget process.

In general, the UK as a non-Member State will not be able participate in future EU programmes unless a specific agreement is reached, or the programme allows for a degree of participation by third countries. The Political Declaration identifies a set of areas where there is a joint desire to allow for the UK's future participation. These are:

- science and innovation (e.g. Horizon Europe)
- youth, culture and education (e.g. Erasmus+ and Creative Europe)
- overseas development and external action (e.g. Development co-operation Instrument)
- defence capabilities
- civil protection (e.g. Civil Protection Mechanism)
- space (e.g. Galileo)

The Declaration recognises that participation will include a "fair and appropriate financial contribution" from the UK.

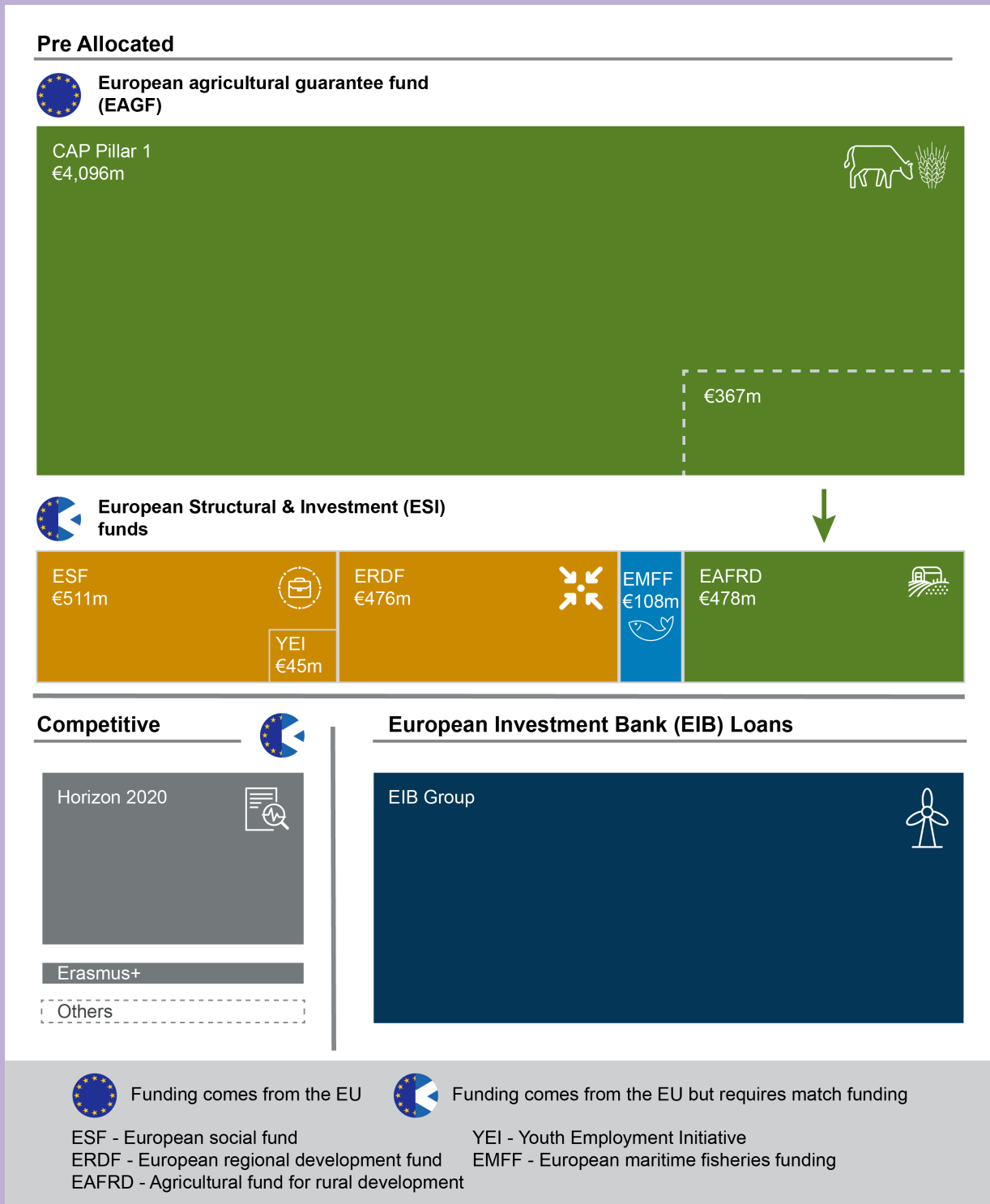
The European Investment Bank (EIB) is jointly owned by EU Member States and is the world's largest multilateral lending institution. Since 2016, the EIB has signed loans worth €2.0 billion to projects in Scotland, with an emphasis on low carbon energy investment.

The UK will cease to be a member of the EIB after March 2019 and will not be eligible for finance from the EIB group reserved for Member States. Since 2017, the UK Government has stated that it wished to maintain a relationship with the EIB.¹⁴ The Political Declaration confirms this, but adds no further detail and is silent on the EU's position.

What funding programmes are important to Scotland?

The infographic below summarises the most significant EU funding programmes which are available to Scotland during the current funding period. It highlights that the programmes with joint agreement on seeking the UK's participation are relatively small in value compared to those programmes that the UK will not be able to participate in such as CAP and European Structural and Investment Funds. For further information see SPICe briefing [SB-61 EU Funding Programmes in Scotland](#).

Figure 1: EU funding - 2014-2020 programmes available in Scotland



The Economic Partnership

The largest section of the Political Declaration relates to the desire for a future economic partnership. The objectives set out in this section are headlined by the aim to develop "an ambitious, wide-ranging and balanced economic partnership" between the EU and the UK¹.

The economic partnership states that both the EU and the UK will:

“ Retain their autonomy and the ability to regulate economic activity according to the levels of protection each deems appropriate in order to achieve legitimate public policy objectives such as public health, animal health and welfare, social services, public education, safety, the environment including climate change, public morals, social or consumer protection, privacy and data protection, and promotion and protection of cultural diversity.”

UK Government, 2018¹

However, there is also a commitment later in the economic partnership section to seek a "level playing field" covering state aid, competition, social and employment standards, environmental standards, climate change, and relevant tax matters. If agreed, this would reduce the regulatory autonomy of each party in these areas.

Both the EU and the UK have recognised that "sustainable development is an overarching objective of the Parties". No mechanisms for implementing or overseeing this objective are described.

In relation to the Ireland and Northern Ireland border, there is a commitment to replacing the "backstop" with a permanent solution which establishes alternative arrangements for ensuring the absence of a hard border on the island of Ireland.

The first four sections on the economic partnership relate to goods, services, capital and labour which are all subject to the EU's free movement rules. As a result of the UK's intention to end the free movement of persons, the terms of the future relationship in each of these areas is likely to be less beneficial to the UK than the arrangements the UK currently enjoys as a member of the EU.

The aspirations under the economic partnership are set out at a very high level and a lot of work will need to be done to negotiate the detail of a final agreement.

Trade in goods

The Political Declaration sets out the basis for a future trade agreement where the trading relationship for goods is "as close as possible" with the aim being the creation of "a free trade area, combining deep regulatory and customs co-operation, underpinned by provisions ensuring a level playing field for open and fair competition".

There is also a commitment to tariff free trade and the promotion of aligned regulatory environments. The UK Government's explainer on the Political Declaration outlines what this will mean in practice:

“ The UK and the EU will put in place provisions to ensure, as far as possible, that their regulatory approaches are transparent, efficient, compatible and avoid unnecessary trade barriers. The UK and the EU will also agree provisions on product regulation, addressing what are known as ‘technical barriers to trade’. These provisions will include common principles, including on standardisation, testing and approvals, and labelling. They will also include common principles for market surveillance, to enable co-operation between regulators to ensure unsafe or non-compliant products do not reach consumers. The UK and the EU will also agree provisions on sanitary and phytosanitary measures, which apply to animals, animal products and plants in order to protect human, plant and animal health. As part of this, and in the event of disease outbreaks, the UK will recognise regionalisation when applying controls to UK imports in cases where the pest and disease status varies across the UK, and vice versa. ”

UK Government, 2018¹⁵

Linked to facilitating trade in goods, the UK and EU have committed to exploring the possibility for co-operation between UK authorities and EU agencies such as the European Medicines Authority, the European Chemicals Agency and the European Aviation Safety Agency. This is actually a divergence from the UK Government's position in its [White Paper on the future relationship between the UK and the EU](#) which stated that the Government's vision was to participate in these agencies:

“ the Government's vision is for an economic partnership that includes...
...participation by the UK in those EU agencies that provide authorisations for goods in highly regulated sectors – namely the European Chemicals Agency, the European Aviation Safety Agency, and the European Medicines Agency – accepting the rules of these agencies and contributing to their costs, under new arrangements that recognise the UK will not be a Member State.”

UK Government, 2018¹⁶

On customs, the Political Declaration sets out ambitions to make use of "all available facilitative arrangements and technologies". This is a commitment to continued attempts to find technologies which would assist in solving the Irish border question.

Trade in services and investment

Leaving the EU's Single Market and the free movement rules in relation to services, including financial services, will leave the UK in a worse position than it enjoys as an EU Member State. However, the Political Declaration sets out an agreement between the EU and the UK to establish new arrangements on services and investment. According to the UK Government:

“ The new arrangements on services and investment will go well beyond the WTO framework for global services trade, the General Agreement on Trade in Services (GATS), and will build on recent EU FTAs. These arrangements will have a broad scope, covering a substantial number of services sectors — including, among others, professional and business services — as well as all of the different types of services trade. ”

UK Government, 2018¹⁵

Any services related agreement should also allow UK service providers to operate in EU member states without encountering unjustified barriers.

The EU's equivalence arrangements ¹⁷

'Equivalence' refers to a process whereby the European Commission assesses and determines that a third country's regulatory, supervisory and enforcement regime is equivalent to the corresponding EU framework. That recognition makes it possible for the competent authorities in the EU to rely on third country entities' compliance with the third country framework which has been deemed 'equivalent' by the Commission. Equivalence decisions can include conditions or limitations, to better cater for the objectives of granting equivalence

On financial services, the EU has agreed to assess the UK's regulatory regimes to determine whether they can be given equivalence status. This will be done by June 2020 and the UK will reciprocate.

If the EU agrees an equivalence framework in relation to a range of financial services it could allow UK financial services companies to operate in the EU and reduce overlaps in regulatory requirements.

Movement of capital

As with services, the Political Declaration includes agreement between the UK and the EU that they will pursue arrangements that enable "free movement of capital and payments, supporting the free and timely flow of capital for day-to-day business and investment needs" ¹⁵ .

Mobility

As discussed earlier in the briefing, a key element of the UK Government's negotiating position on Brexit has been the decision to end free movement of persons as the UK leaves the EU. This decision impacts on the nature of the offer the EU is willing to make to the UK in terms of a future relationship.

According to the UK Government's Explainer on the Political Declaration, whilst free movement will end, the UK will not discriminate between EU nationals from different Member States and the aim will be to agree reciprocal visa-free travel for short-term visits.

Beyond these commitments, the Political Declaration states that the UK and EU will hold more detailed discussions about the conditions for entry and stay that will be in place for the purposes of research, study, training and youth exchanges.

Further detailed discussions are also expected to address:

- the position of UK citizens in the EU

- border arrangements to facilitate UK nationals' smooth passage throughout the EU
- judicial co-operation in matrimonial, parental responsibility and other related matters

Other economic issues

A number of other areas are covered under the economic partnership section of the Political Declaration. These include arrangements on public procurement, geographical indications, transport and energy.

Public Procurement

Enabled by the UK's continued participation in the World Trade Organisation's Government Procurement Agreement (GPA), the UK and the EU have agreed they will provide reciprocal access to their public procurement markets. This may also extend beyond the GPA commitments.

Geographical Indications

As a result of leaving the EU, the UK Government has committed to establishing its own system for recognising geographical indications (GIs). Under the Withdrawal Agreement, the UK's new system will continue to recognise EU registered GIs whilst UK GIs will continue to receive protection within the EU.

The Political Declaration commits both the UK and the EU to "seek to put in place arrangements to provide appropriate protection for their geographical indications" ¹.

Transport

The Political Declaration agrees to seek close relations in four areas:

Aviation - through a Comprehensive Air Transport Agreement to cover market access and investment, aviation safety and security, air traffic management and fair competition.

Road Transport - to ensure comparable market access for freight and passenger road transport operators. There is also a commitment that the UK and the EU will consider complementary arrangements for travel by private motorists.

Rail Transport - for cross border rail travel in relation to the Belfast to Dublin rail line and the Eurostar services through the Channel Tunnel.

Maritime Transport - there is a recognition that passenger and cargo connectivity in the maritime sector will be underpinned by the international legal framework, whilst both the UK and the EU should "make appropriate arrangements on market access for international maritime transport services".

Energy

On energy, the Political Declaration commits the UK and the EU to cooperating in the delivery of "cost efficient, clean and secure supplies of electricity and gas" based on competitive markets and non-discriminatory access to networks.

There is also agreement to establish a framework to facilitate technical co-operation between electricity and gas networks operators and organisations.

Under Civil Nuclear energy, the Political Declaration sets out that the future UK and EU relationship should include a "wide-ranging Nuclear co-operation Agreement between the European Atomic Energy Community (EURATOM) and the United Kingdom on peace uses of nuclear energy underpinned by commitments to their existing high standards of nuclear safety".

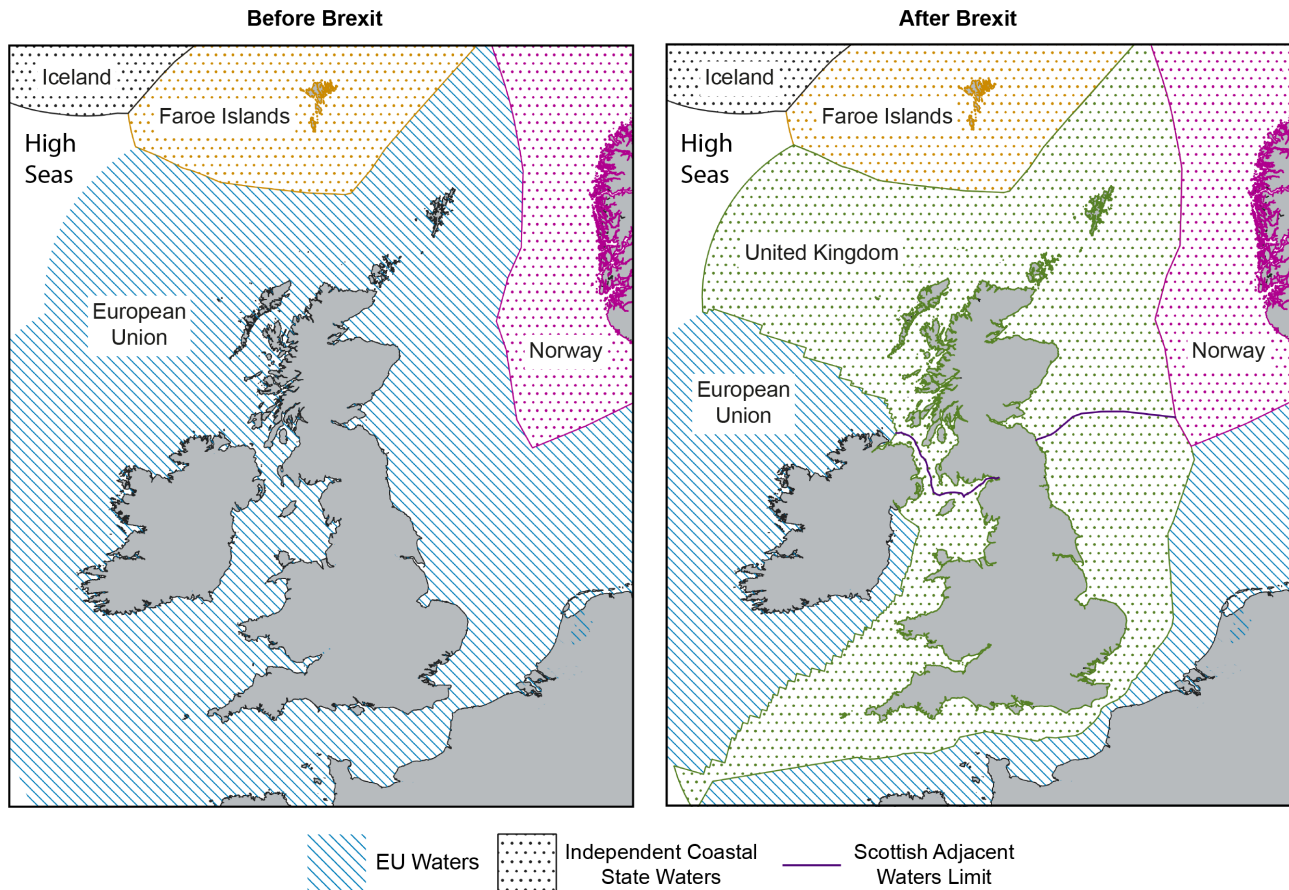
On carbon pricing, the Joint Declaration states that the UK and the EU "should consider co-operation on carbon pricing by linking a United Kingdom greenhouse gas emissions trading system with the Union's Emissions Trading System".

Fisheries

There has been much debate in the media about what the Political Declaration says and means in relation to fisheries.

Under the Common Fisheries Policy (CFP), EU vessels have equal access to EU waters. EU vessels can fish in the UK Exclusive Economic Zone (EEZ i.e. waters out to 200nm) as long as they have quota, and vice versa. Once the transition period ends, the UK will be out of the CFP, and equal access to EU waters will end. UK waters will no longer be a part of EU waters.

EU Exclusive Economic Zone and UK Exclusive Economic Zone



Section XII of the Political Declaration, on fishing opportunities makes two clear points -

1. the UK will become an independent coastal state
2. a new fisheries agreement on access to waters and quota shares will be established.

The UK as an independent coastal state

As an independent coastal state the UK will be subject to international law under the UN Convention on the Law of the Seas (UNCLOS). Within their EEZ, coastal states have -

- the **right** to exploit, develop, manage and conserve all resources e.g. fish, oil, gas etc.
- the **responsibilities and obligations** to prevent and limit pollution and to facilitate marine scientific research. And jurisdiction for the protection and preservation of the marine environment.

The box below sets out UNCLOS articles relevant to sea fishing. In order to comply, coastal states need to make fisheries agreements with other states.

UNCLOS articles relevant to sea fishing

Article 62(2) Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements ... give other States access to the surplus of the allowable catch (see comments below)

Article 62(3) requires coastal states to “minimize economic dislocation in States whose nationals have habitually fished in the zone” when giving access to the EEZ

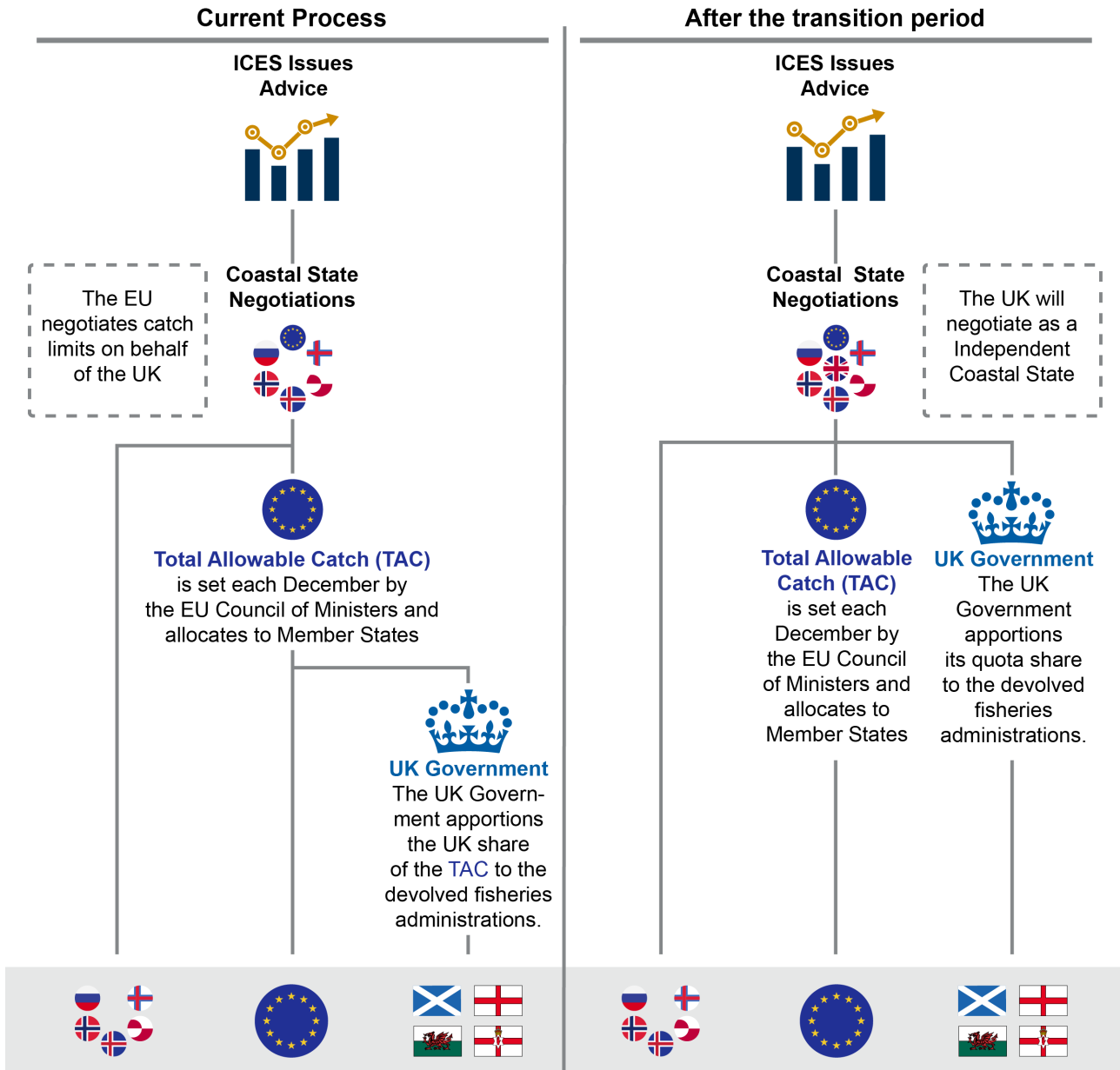
Article 63 (1) Provides an obligation to co-operate with other coastal states on the management of shared stocks or stocks of associated specie

A new fisheries agreement

Paragraph 75 of the Political Declaration states: "Within the context of the overall economic partnership the Parties should establish a new fisheries agreement on, inter alia, access to waters and quota shares."

Controversy surrounds the meaning of "Within the context of the overall economic partnership", since establishing fisheries agreements is what coastal states are required to do. The figure below illustrates the international negotiation process now and after the transition period. It shows the framework within which the UK will negotiate a new fisheries agreement with the EU.

The international negotiation process now and after the transition period



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It is (perhaps deliberately) not clear whether the declaration means there will be a link between access to waters and quota share, and trade, or not (see SPICe briefing [Will fishing be discarded in the Brexit negotiations?](#) for more on this).

The European Council has published a [Declaration regarding the Withdrawal Agreement and the Political Declaration](#). It makes a couple of points on fisheries:

1. that "the European Council will demonstrate particular vigilance ... to protect fishing enterprises and coastal communities."
2. that "a fisheries agreement ... should build on, inter alia, existing reciprocal access and quota shares."

The context of the Withdrawal Agreement should not be ignored in determining the meaning of paragraph 75. The [SPICe briefing on the withdrawal agreement](#) sets out that the EU and the UK have agreed that a single EU-UK customs territory will apply from the

end of the transition period unless a new agreement is made (the backstop). If the backstop is implemented, there will be no tariffs, quotas or checks on goods, with the exception of fishery and aquaculture products, "unless an agreement on access to waters and fishing opportunities" is agreed.

Fishery and aquaculture products are defined in [Annex I to Regulation \(EU\) 1379/2013](#) and include:

- wild caught sea fish, which are traditionally included in international fisheries agreement (such as mackerel and herring, cod and haddock)

and also products not traditionally included in international fisheries agreements:

- creel caught shellfish (such as crab)
- farmed fish (such as Scottish farmed salmon) and
- processed fish and fish products.

If the backstop were implemented, all of these these fishery and aquaculture products would be subject to tariffs, quotas and checks **until** a fisheries agreement was made.

Different politicians and stakeholders are interpreting the Political Declaration section on fisheries in different ways, as set out below.

Response from politicians

Scottish Government. In [Scotland's place in Europe: assessment of UK Government's proposed future relationship with the EU](#), the Scottish Government states that it "has not had any role in negotiations on fisheries, despite the vast majority of the UK fisheries and aquaculture sector being Scottish and, unlike the rest of the UK, Scotland being a net exporter of seafood" and that "the UK has begun the process of reneging on its promises to the fishing industry by accepting both a link between access to UK waters and access to EU markets.

It also commits to a separate Fisheries Agreement as part of the economic partnership which could result in either the UK conceding guaranteed access for EU vessels to UK waters, or accepting tariffs and customs barriers on trade in fish, seafood and farmed salmon with the EU. This threatens to leave two key Scottish interests to be traded off against each other.

Scottish Conservatives. During a topical question on [27 November 2018](#), Peter Chapman for the Scottish Conservatives said "... everybody needs to calm down a bit. Nothing has been traded away on fishing, no red lines have been crossed on fishing and the Prime Minister has been very clear that nothing will be traded away."

EU politicians. The [BBC have reported](#) that both French President Emmanuel Macron and German Chancellor Angela Merkel said talks on fisheries were "undoubtedly going to be an area where negotiations are going to be tough". With Macron suggesting that if the UK was unwilling to compromise in negotiations on fishing, then talks on a wider trade deal would be slow.

Responses from stakeholders

[The Scottish Fishermen's Federation](#) have said:

"The declaration gives the UK the power to assert its position as an independent Coastal State with full, unfettered sovereignty over our waters and natural resources. However we know that several EU nations will not give up their attempts to link access with trade in order to retain absolute rights to fish around our coastline. So we will continue to seek assurances from the UK Government that it will remain steadfast and will not rest until the future arrangements are signed, sealed and delivered and we secure that critical control over access to our waters and who catches what stocks, where and when."

[Scottish Salmon Producers Organisations](#) have said - (23 November 2018) "

"... By coupling aquaculture with future catch fish quotas, this document raises the prospect of tariffs being imposed on exports of farmed fish if there is no agreement on North Sea white fish quotas. It also raises the prospect of border checks for fresh salmon exiting the UK bound for our biggest export market – the EU... We are clear: there must be no linkage between access for EU vessels to UK waters and the tariff-free supply of seafood products to EU markets."

Before publication of the Political Declaration the [Scottish Creel Fisherman's Association](#) in a recent [article by Politico](#) said:

"Hard borders would be a disaster for us. Most of our prawns are sent right away to Europe in lorries filled with salt water tanks so they stay alive. That's why we get more money for our product and even a short delay means fishermen don't get paid...Any tariffs would hurt our margins and profitability. It would also dismantle 20 years of perfecting the current system - overnight."

Agriculture

Whilst agriculture is not specifically mentioned in the Political Declaration, a number of elements are important to the sector in relation to trade, regulation and sanitary and phytosanitary measures.

Trade

The Political Declaration states: "with a view to facilitating the movement of goods across borders, the Parties envisage comprehensive arrangements that will create a free trade area, combining deep regulatory and customs co-operation" ¹. More detail on this is set out above.

In a [joint statement the UK farming Unions](#) broadly welcomed the Withdrawal Agreement, but called for greater clarity on trade: "Farmers want clarity on what the future trading relationship with Europe will be. We have argued for free and frictionless trade with the EU to continue, with no tariffs or non-tariff barriers."

Regulation

The [Agricultural and Horticultural Development Board](#) point out a potential trade-off between the UK setting its own rules, and a breakdown of "co-operation" and what the consequences of that would be.

“ At present the EU and UK have common regulations as we are part of the single market. This could change after Brexit as the UK would be able to set its own rules and regulations. If the UK approach is deemed by the EU to give UK businesses an unfair advantage they may decide a breakdown of co-operation has occurred. It is unclear exactly how much influence the EU will have over the UK approach, but increased customs checks and controls could be introduced if regulations diverge – which would negate the benefits of reduced trade friction. Alternatively, it could limit the extent to which the UK would determine its own regulatory framework.”

Agricultural and Horticultural Development Board, 2018¹⁸

Sanitary and phytosanitary measures

Sanitary and phytosanitary (SPS) measures seek to protect humans, and plants and animals from risks connected with additives, contaminants, toxins, pests and diseases. These measures are particularly important for agricultural trade. As set out above, the UK Government's explainer on the Political Declaration outlines what is intended with respect to SPS measures -

“ The UK and the EU will also agree provisions on sanitary and phytosanitary measures, which apply to animals, animal products and plants in order to protect human, plant and animal health. As part of this, and in the event of disease outbreaks, the UK will recognise regionalisation when applying controls to UK imports in cases where the pest and disease.”

Level playing field issues

The Political Declaration states that the future relationship "must ensure open and fair competition". To deliver this, there is high-level agreement on a set of policy areas where 'level playing field' provisions are required.

What is a level playing field?

Level playing field provisions are arrangements designed to ensure that the regulatory environments in the UK and EU are similar in some respects. The arrangements are intended to prevent companies benefiting from an unfair competitive advantage. This "advantage" would typically be gained due to the lowering or non-enforcement of regulatory standards or as a result of different taxation or state aid practices.

The policy areas mentioned in the Political Declaration are:

- state aid

- competition
- social and employment standards
- environmental standards
- climate change
- relevant tax matters

No arrangements are agreed, but the Declaration states that the level playing field provisions should build on the provisions agreed in the Withdrawal Agreement's Protocol on Ireland/Northern Ireland. Provisions agreed in the Protocol include "non-regression" clauses on environmental and labour standards, a standard setting role for the Joint Committee and requirements for independent enforcement bodies in the UK. These arrangements are described in the relevant chapter of SPICe briefing [SB 18-78 The UK's Departure from the European Union - An overview of the Withdrawal Agreement](#).

Agreement between the UK and EU on a set of level playing field arrangements would reduce the regulatory "autonomy" of each party, as [described at the beginning of the Economic Partnership section](#).

Security Partnership

The second pillar of the Political Declaration relates to proposals for a security partnership to sit alongside a future economic partnership. The next section of the briefing examines the proposals for co-operation set out in the security partnership section of the Political Declaration. This includes sections on law enforcement and judicial co-operation and foreign policy, security and defence.

Law Enforcement and Judicial co-operation in Criminal Matters

The EU does not have a general power to legislate in the field of law enforcement or criminal justice. Member States set their own national policies, with the EU focusing on cross-border matters such as:

- Exchange of law enforcement data - e.g. DNA, fingerprints, criminal records, passenger name records, missing or wanted persons etc.
- Eurojust and Europol - EU agencies aimed at improving criminal justice/law enforcement
- The mutual recognition of Member States' judicial decisions - the most important measure is the fast track extradition process known as the European Arrest Warrant

The UK is not automatically bound by EU legislation in this field, but can choose to opt-in if it wishes. As most criminal justice matters are devolved, the Scottish Government and Scottish Parliament also have important roles in this area - for example the Scottish Government has a role in inputting its views into the UK's negotiating positions as well as implementing EU legislation. For further details and background information see the SPICe briefing "[Brexit: Impact on the Justice System in Scotland.](#)"

Brexit has led to questions about how criminal justice and law enforcement co-operation can continue once the UK is no longer an EU Member State. For example, the degree to which data can be shared between the EU and the UK as a non Member-State, and the degree to which the UK as a non Member-State can remain involved in Eurojust and Europol.

The Scottish Government published an [analysis](#) of the possible impacts of Brexit on security, judicial co-operation and law enforcement in June 2018. The Secretary of State for Scotland, David Mundell MP, outlined the UK Government's view on future co-operation with the EU at a [meeting of the Scottish Parliament's Justice Committee on 6 September 2018](#).

The Political Declaration stresses that a deal in the area of criminal justice and law enforcement would be mutually beneficial to both the UK and the EU since they are close geographically and face shared threats - e.g. from terrorism, international crime, cyber-attacks etc.

It therefore proposes a future relationship between the UK and EU which will provide for:

“ ” ... comprehensive, close, balanced and reciprocal law enforcement and judicial co-operation in criminal matters, with the view to delivering strong operational capabilities for the purposes of the prevention, investigation, detection and prosecution of criminal offences.””

UK Government, 2018¹⁹

The aim is for co-operation in three main areas:

1. **Data exchange**
2. **Operational co-operation** between law enforcement authorities and judicial co-operation in criminal matters
3. **Anti-money laundering and counter terrorism financing**

There is, however, little detail as to how such co-operation will occur, the depth of future co-operation or the extent to which changes will need to be made to the current system to reflect the UK's future status as a non-Member State.

For example, although the Political Declaration specifically recognises the value in facilitating co-operation between the United Kingdom's and Member States' law enforcement and judicial authorities, it doesn't give an indication of what this means for bodies such as Europol and Eurojust. Instead, there is only an agreement to, "work together to identify the terms for the United Kingdom's co-operation via Europol and Eurojust" (paragraph 88). What these terms might be is currently not clear and is open for negotiation.

There is a similar lack of clarity as regards how a possible replacement for the European Arrest Warrant might function. Paragraph 89 of the Political Declaration merely states that the UK and EU wish to:

“ ” ... establish effective arrangements based on streamlined procedures and time limits enabling the United Kingdom and Member States to surrender suspected and convicted persons efficiently and expeditiously ...””

UK Government, 2018¹⁹

The Political Declaration does, however, stress that, if the aim is to have a close and deep future relationship, then this will have to be reflected in the accompanying obligations. It states at paragraph 83, "the closer and deeper the partnership the stronger the accompanying obligations."

On this point, the Political Declaration emphasises that any future deal will have to:

- reflect the degree to which the UK is prepared to align with EU rules and dispute resolution mechanisms, including the Court of Justice's role in interpreting EU lawⁱⁱ
- be underpinned by a commitment to:

ii Paragraphs 132-5 of the Political Declaration propose that disputes should be resolved in line with the rules in the Withdrawal Agreement - this means that disputes involving EU law would have to be referred to the Court of Justice for a binding ruling.

- the fundamental rights of individuals, including the UK's continued adherence to the European Convention on Human Rights and reflecting the EU's and Member States' commitment to the Charter of Fundamental Rights of the European Union
 - procedural rights
 - the *ne bis in idem* principle; known in the UK as "double jeopardy" (in other words, that no one can be prosecuted or sentenced twice for the same charges on the same facts)
- provide for adequate protection of personal data

Consequently, although there is currently a lack of clarity as to the contents of any deal, the suggestion is that its scope will at least partly depend on the willingness of the UK to remain aligned with EU norms, including accepting a role for the European Court of Justice.

Foreign Policy, Security and Defence

As a Member State, the UK is currently a party to the EU's arrangements for collective foreign and security policy, the [Common Foreign and Security Policy](#) (CFSP) and the [Common Security and Defence Policy](#) (CSDP).

The CFSP facilitates the co-ordination of Member States' foreign policies. However, unlike in other areas of EU policy, Member States have the ability to veto any collective decision taken. The CSDP is a related area of co-operation, with a focus on peace-keeping operations and conflict prevention, greater co-ordination of military procurement and enhancing the interoperability of Member States' armed forces.

In relation to foreign policy, security and defence, the Political Declaration indicates support for co-operation between the UK and EU in areas of shared interest (e.g. protecting citizens from external threats, preventing conflict around the world, tackling terrorism and promoting sustainable development and the eradication of poverty). The declaration outlines a number of key areas where work will need to be done to facilitate the necessary degree of co-operation, including:

- **Consultation and co-operation:** the existing CFSP and CSDP are identified as possible vehicles for facilitating structured consultation and regular dialogue at both ministerial and official levels. As indicated above, the UK will formally leave these arrangements when it withdraws from the EU and no detail is provided on how any new relationship would be structured. The declaration also highlights the potential utility of working together in third countries, including on consular provision, and in international organisations like the UN, to support shared positions and achieve shared objectives.
- **Sanctions:** the UK and EU will have separate sanctions policies, but there is a recognition that sanctions work best as a multilateral foreign policy tool and tend to be most effective when used in a co-ordinated manner. Where UK and EU foreign policy objectives are aligned, the declaration advocates for close consultation and co-operation in this area.

- **Operations and missions:** the need for a Framework Participation Agreement is identified to allow the UK to participate on a case-by-case basis in civilian and military CSDP operations and crisis management missions.
- **Defence capabilities development:** while both the UK and the EU will retain their existing autonomy in this area, the declaration recognises the benefits of continued close collaboration in projects aimed at increasing interoperability and joint effectiveness of Armed Forces. The declaration states that, to the extent that it is possible under EU law, the UK will continue to participate in: 1. relevant existing and future projects of the [European Defence Agency](#) (EDA); 2. projects that bring together EU entities supported by the [European Defence Fund](#) (EDF); and 3. projects in the framework of [Permanent Structured Co-operation](#) (PESCO), where invited on an exceptional basis by the Council of the European Union.
- **Intelligence exchanges:** the declaration describes a future relationship that allows for: “timely exchanges of intelligence and sensitive information between the relevant Union bodies and the United Kingdom authorities.” This would include sharing intelligence in the areas of counter-terrorism, hybrid threats and cyber-threats and in support of CSDP missions or operations to which the UK is a contributor. Again, no detail is provided on the structures, protocols or legal measures that will be required to facilitate this degree of co-operation.

The Political Declaration also identifies areas of "thematic co-operation" where there is a joint ambition to collaborate in the areas of: cyber security, civil protection, health security, illegal migration, counter terrorism and countering violent extremism.

Institutional and Governance Arrangements - An Association Agreement?

The Political Declaration states that the precise institutional and legal form any future agreement will be based upon is at this stage undetermined. However, it also suggests that the overall institutional framework needed to govern the future could take the form of an Association Agreement. Institute for Government has produced a short [Q&A on the EU and Association Agreements](#).

The European Parliament's call for an Association Agreement

In March 2018, the EP passed a [resolution recommending that the future EU-UK relationship should be based on an association agreement](#). The EU already has an [Association Agreement with Ukraine](#). The EP suggested the EU-UK Association Agreement could be based on four pillars:

- trade and economic relations (FTA),
- internal security,
- co-operation in foreign policy and defence and
- thematic co-operation, for example on cross-border research and innovation projects.

MEPs also stated that any future agreement should have a robust dispute resolution mechanism.

The Political Declaration also sets out the ways in which discussions and political dialogue would take place suggesting meetings at summit, ministerial and technical level as well as at parliamentary level.

Management and supervision of the future relationship is envisaged through the creation of a Joint Committee. This approach closely mirrors the proposal for a Joint Committee to manage the Withdrawal Agreement. Similarly, the Political Declaration sets out procedures for dispute settlement which are based on the procedures provided for in the Withdrawal Agreement. The [SPICe Briefing on the Withdrawal Agreement](#) examines both these elements in more detail.

Examples of EU international agreements

The EU has concluded several far-reaching international agreements. For instance, besides trade, [the agreement between the EU and Canada](#) covers common rules on competition, government procurement, intellectual property and regulatory co-operation. The EU and Canada also committed to uphold labour standards and promote sustainable development and environment protection. These topics largely correspond to those listed

in section II of the draft political declaration: “Economic Partnership.” The agreement with Canada took seven years to negotiate, and not all its parts are in force yet.

In 2016, after five years of negotiations, the EU concluded with Canada a [Strategic Partner Agreement](#). The content of this agreement complements that of CETA, and extends over matters such as human rights; the rule of law; international peace and security; sustainable development; justice, freedom and security.

The topics covered by the draft Political Declaration go much further, and are included in the [Security Partnership](#) section. These matters appear to replicate some of the elements of the EU's internal competence on Justice and Home Affairs, which member states share with the Union to create an area of “Freedom, Security and Justice.” The EU is keen to include provisions on deeper co-operation on these matters in agreements with neighbouring states.

For instance, the [Association Agreement with Ukraine](#) contains, alongside the parts on economic co-operation, a separate Title on “Justice, Freedom and Security.” Therein, the EU and Ukraine agreed on rules on co-operation on migration, asylum and border management; treatment of workers; mobility of workers; movement of persons; co-operation on the fight against illicit drugs, crime and corruption, terrorism and money laundering; and legal co-operation more generally. The Association Agreement took four years to complete, six years to sign and nine years to enter into force. The delay was provoked, in part, by the adverse outcome of a consultative referendum in the Netherlands.

The EU has also concluded similarly deep comprehensive agreements with Georgia and Moldova.

How would the EU negotiate an Association Agreement

As proposed by the European Parliament and referenced in the Political Declaration, an Association Agreement may be chosen as the framework for managing the future relationship.

Article 207 of the Treaty on the Functioning of the European Union (TFEU) provides the legal basis for the EU to conclude a trade and investment agreement with a third country, whilst Article 217 of the TFEU provides the competence for the EU to establish “an association involving reciprocal rights and obligations, common action and special procedure”.

The procedure for negotiating third country or international agreements is set out in Article 218 TFEU.

Association agreements are “mixed agreements”; in that they extend over matters of shared competence between the EU and Member States. Initially, the European Commission conducts preliminary studies and issues recommendations to the Council which must consider these and then agree on whether to open negotiations with a third country.

Subsequently, the Council will adopt negotiating directives for the European Commission, which is then responsible for negotiating the agreement.

The EU Chief Negotiator, appointed by the Commission, will assemble a team of Commission experts, depending on the topics included in the agreement. At every round of negotiation, the Commission publishes an update, and consults with the Council and European Parliament.

The Council and the Parliament are responsible for agreeing the final terms of any agreement. In the European Parliament, consent is required by a simple majority. In the Council, unanimity is required. This means that any one of the EU's Member States could block an agreement being finalised if it does not agree to all the terms of the agreement.

For a mixed treaty to enter into force the ratification of the agreement by each EU member state is necessary, after the conclusion at the EU level. Before all EU member states ratify, a treaty might enter into provisional application with those sections which are exclusive EU competences coming into force.

Scottish Government response

On 27 November 2018, the Scottish Government published its seventh Brexit policy paper: [Scotland's place in Europe: assessment of UK Government's proposed future relationship with the EU](#).¹⁰

The paper states that the Scottish Government does not support "the Prime Minister's proposed deal" (i.e. the Withdrawal Agreement and Political Declaration) and suggests alternative action:

“ The Scottish Government believes that there are two ways forward. Firstly, the House of Commons must coalesce around a clear direction of travel that would keep the UK within the European single market and the customs union, and secondly the option of another public vote should be supported.”

The reasons why the Scottish Government does not support the deal were set out under the following headings:

- Continued uncertainty
- Overall economic impact
- The crucial service sector will be significantly disadvantaged by the deal
- Loss of market access for key Scottish exports
- It trades away the promised 'sea of opportunity' for the Scottish fishing industry
- Loss of freedom of movement will have strong negative consequences
- Damaging implications for the health and social care sector
- Undermining co-operation in security, justice and law enforcement
- Diminution in participation in EU funding programmes and collaborations

In addition, the Scottish Government highlighted its position that, should the UK leave the Single Market and Customs Union, a differentiated deal should be available for Scotland:

“ The Scottish Government fully and unconditionally supports the Good Friday Agreement and the maintenance of an invisible border on the island of Ireland. However, we also firmly believe that if the UK is determined to pursue a more distant relationship with Europe, there should be an extension of the principle of differentiation established in the draft Withdrawal Agreement in respect of Northern Ireland to other parts of the UK.”

What happens next?

The European Union (Withdrawal) Act makes provision for the Withdrawal Agreement and the Political Declaration to be subject to the so-called meaningful vote in the House of Commons. The details of this are set out in the House of Commons Library Briefing [A User's Guide to the Meaningful Vote](#).

If the Withdrawal Agreement and Political Declaration are endorsed by the House of Commons, the Withdrawal Agreement will then require the consent of the European Parliament and implementing legislation in the UK. In contrast, as the Political Declaration is not legally binding, it does not require any further consideration process.

Part V of the Political Declaration sets out what will happen next. It makes clear that, if the Withdrawal Agreement is ratified, preparatory and organisational work on the future relationship may begin. Once the UK has left the EU, formal negotiations guided by the procedure set out under Article 218 TFEU will begin.

Conclusion

The Political Declaration sets out the high level ambitions of the UK Government and the EU for a comprehensive future relationship after Brexit. As the document is not legally binding, it has no effect other than to indicate the areas in which the two parties will seek to co-operate, principally on developing economic and security partnerships.

As the Political Declaration sets out aspirations for the future relationship at a high level, negotiations to convert these into a detailed future relationship will be complex and potentially very time consuming. It has even been suggested that negotiating the terms of the UK's withdrawal from the EU was the easy part in the Brexit process.

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