

BREXIT BRIEFS

Notes on the Negotiations

Customs

Role of
Parliament

Regulatory
Cooperation

Market
Access

Free Trade
Agreements



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Conservatives
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**European Conservatives
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Letter from Vicky

Over the past few months, since the Brexit Referendum, I have been gathering together some thoughts on the negotiations ahead, trying to look at potential outcomes not only through British eyes but also considering how those from other countries may think about these issues.

These briefs area intended to not only look at the immediate withdrawal negotiations, but also to examine models for a future relationship.

I hope you find them useful.

A handwritten signature in blue ink, appearing to read 'Vicky'.

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WHAT DOES ARTICLE 50 SAY?

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. In light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.
A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

WHAT DOES ARTICLE 50 MEAN?

Article 50 starts a UK/EU negotiation, which can last up to two years. However, in practice it needs to be completed by the end of 2018 in order to be voted through the European Parliament and national Parliament before the next European Parliament election in June 2019.

Negotiators anticipate three elements.

The Withdrawal Agreement covering inter alia:

- Citizens' rights e.g. residency, employment, access to services, taxation and recognition of qualifications;
- Financial arrangements e.g. UK contributions to the current 7 year financial framework;
- UK/EU border issues;
- Third country agreements e.g. EU trade agreements with countries outside the EU
- Institutional issues e.g. UK involvement with EU agencies and staff

The Future Relationship

Negotiators from the UK and EU have described this as a new strategic partnership between the UK and the EU. The British White Paper on Brexit calls for free and frictionless trade in goods and services and to continue cooperation on security and the fight against terrorism.

Whilst it is clear that the Withdrawal Agreement and the future relationship are two separate elements, the Withdrawal Agreement can form part of the ground work for the strategic partnership and each will be affected by the other.

A Transition or 'Implementation' Phase, which the UK has indicated may vary from sector to sector as required.

Who's who

UK

The main negotiators for the UK will be led by the Department for Exiting the EU. This includes:



Rt Hon David Davis MP

- Secretary of State for Exiting the EU
- Member for Haltemprice & Howden



Rt Hon David Jones MP

- Minister of State for Exiting the EU
- Member for Clwyd West



Robin Walker MP

- Parliamentary Under Secretary of State for Exiting the EU
- Member for Worcester



The politicians are supported by the Department for Exiting the EU and the UK representation in Brussels, now led by **Sir Tim Barrow** UK Ambassador to the EU

EU

The European Council have appointed the European Commission as negotiator and Michel Barnier will serve as the lead negotiator for the EU 27 countries. He is a former Commissioner for the Single Market and before that Regional Affairs. He has also been a French Government Minister and MEP. He is politically aligned to the Centre Right, the European People's Party.



European Council Presidential Cycle

The European Council brings together the Heads of State of all 28 Members of the EU, and issues regarding Brexit will be discussed regularly between the remaining 27. The Council has a 6 month rotating presidency, which will see the following countries serving as Chair of the Council discussions.



2017 Jan-June

Malta



2017 Jul-Dec

Estonia



2018 Jan-June

Bulgaria



2018 Jul-Dec

Austria



2019 Jan-June

Romania



2019 Jul-Dec

Finland

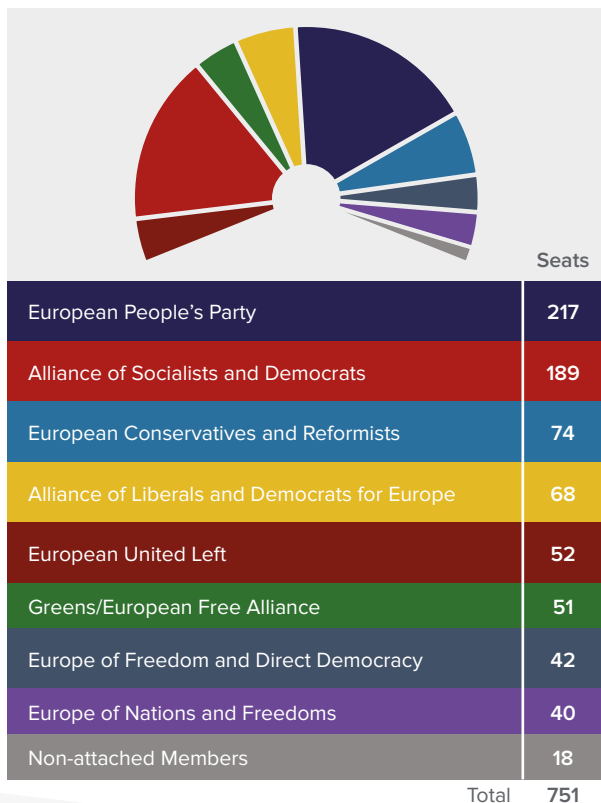
European Parliament Role

Under the terms of Article 50, the European Parliament will vote on whether to approve the outcome of negotiations. This is likely to be the last duty of British MEPs. There are eight political groups in the Parliament. Any final agreement is likely to require support from at least three of the larger groups.

Guy Verhofstadt MEP, the Liberal (ALDE) group leader from Belgium has been nominated to coordinate on behalf of the Parliament.



Makeup of Parliament



Detailed discussions will also take place between the political group leaders of the Parliament's Conference of Presidents (CoP). The main leaders are;



Manfred Weber MEP

- Leader of the European People's Party
- Germany (Christian Social Union)



Gianni Pittella MEP

- Leader of the Socialists and Democrats
- Italy (Democratic Party)



Syed Kamal MEP

- Leader of the European Conservatives & Reformists
- United Kingdom (Conservative Party)

Technical discussions will also involve the main specialist committees:



Danuta Hubner MEP

- Chairman of Committee on Constitutional Affairs Committee
- Poland (European People's Party)



David McAllister MEP

- Chairman of Foreign Affairs Committee
- Germany (European People's Party)



Vicky Ford MEP

- Chairman of the Internal Market & Consumer Affairs Committee
- United Kingdom (European Conservatives & Reformists)



Bernd Lange MEP

- Chairman of International Trade Committee
- Germany (Socialist & Democrats)

'Off the Shelf' Options for UK/EU Membership

As the UK negotiates its exit from the EU it is important that both sides work to clarify what our future long-term trade relationship might look like.

Staying where we are, or where we have been is not an option. There have been benefits from being at the helm of Europe's Single Market. It has allowed British-based businesses to trade across a market of 500 million consumers, removing the need for multiple authorisations, but sometimes its top-down, one-sized approach can stifle innovation and add costs.

Trade links and supply chains between the UK and the EU are much more intertwined than those with any other trading partner.

No 'off-the-shelf' existing relationship 'model' gives an ideal long-term outcome for either side.

The economic links between the UK and the EU are too diverse to simply adopt the Norway model. In return for access to the single market on certain sectors, Norway accepts complying with the EU regulations for those sectors with only a very limited say on how those regulations are formed. Maintaining a regulatory framework without the UK being able to contribute input in sectors where the UK has leading expertise such as financial services, advanced pharmaceuticals and increasingly, digital is likely to end up in continual arguments.

We are too big to have a relationship like Switzerland's where each side can face losing preferential access to the others' market (based on the 'equivalence' principle) every time there is a slight divergence in regulatory strategy.

Our trading relationship with Europe is too sophisticated for it to be replaced by a cut-and-paste of the Canada-style free trade agreement as this does not give certainty or stability for key 21st century

economic sectors like digital, advanced manufacturing, medical research or financial services due to the lack of 'mutual recognition' and thus does not address the type of non-tariff barriers to trade that can ensue.

Falling back on WTO rules as a backstop is high risk for the UK, since it does not cover services or digital or much of the broader commerce we in Britain sometimes take for granted with the EU. It could result in significant tariffs on many exports and imports, for example on cars and agricultural goods, and does not address the issue of non-tariff barriers. Key sectors like Airlines are also not covered. But it would also be destabilising for the rest of the EU, risking uncertainty for their own trading relationships with other parts of the world and resulting economic risks.

Therefore an orderly, objective-based Brexit process cannot just cut and paste anyone else's relationship with the EU onto UK/EU trade but needs to find a different way forward. Achieving this is of course complex and will require much detailed work but there are other models in other parts of the world that may be helpful to draw upon – for example, the cooperation elements of the trade relationship between Australia and New Zealand may be interesting if combined with elements of a Norwegian or Swiss approach.

During the numerous public debates I took part in during the referendum, many Leave campaigners promised that the UK would negotiate a new 'British' model for our future trade with the rest of the EU going forward and would not be exposed to the risks inherent in any existing model.

It has therefore been heartening to hear some recent discussion from non-UK MEP colleagues of the need to find a deep economic partnership, which is very specific for the UK and takes into account the very substantial sophisticated trade links that already exist.

Market Access: Free Trade Agreements vs. Single Market Access

Recently the EU finalised its long awaited trade agreement with Canada, known as CETA. For those of us who support free and open trade, this is a welcome step. But we should be very wary of using it as a template for future UK/EU trade partnerships.

Removing barriers to trade boosts growth, encourages innovation, increases wages, and gives consumers greater choices and lower prices. CETA will eliminate over €500 million of tariffs currently placed on European and British exports. But we should hardly be popping corks of celebration if we achieve zero tariffs in a UK/EU trade agreement, as today there are already zero tariffs!

A Free Trade Agreement mirroring the Canada Model does not give the level of market access that our sophisticated 21st Century economy industries need. For many in the EU, it is also in their interests to offer a more sophisticated relationship, but we must make the case for it.

It is important to look at the so called 'non-tariff barriers' which reflect the bureaucratic red tape faced by companies exporting into other markets, and to recognise that the level of ease British companies currently have when selling into other EU markets is much greater than that which is now offered to Canada in CETA.

When I talk to key sectors of the British economy about what they want to retain for a new UK/EU relationship, it is about much more than just eliminating tariffs.

- For the digital entrepreneurs, it is access to cross-border data flows;
- For the car manufacturers, it's knowing that once a vehicle has passed its safety and emissions tests in the UK they don't need to go and get the same vehicle tested and approved again before selling it across the continent;

- For the creative sector, market access includes being able to have a joint action to stop cross border infringements of copyright;
- For pharma companies, it is being able to continue to run cross border clinical trials and to have a single approval for the new medicines or medical devices that result;
- For scientists, it is being able to take part in collaborative research across borders to share knowledge;
- For banks, it's making sure that once they pass regulatory tests in the UK they can offer the same mortgages, loans, insurance in other countries;
- For all high-value manufacturing, it is being able to source parts or components from all across Europe as part of a supply chain and move them without repeated checks or repackaging.

All of these are covered by the current trade agreements we have between the UK and the rest of the EU, but none of these issues are covered in any detail or with any certainty by the Canada trade deal, it is not sufficiently 'deep'.

It would be logically possible to include all of these specific elements into a UK/EU trade deal, provided there is trust and political goodwill. But if this is to be achieved then both sides will need to recognise that simply cutting and pasting terms from agreements that the EU has with other parts of the world would in itself create new trade barriers.

Customs Union

Our current arrangement as part of the EU Customs Union gives the benefit of tariff free UK/EU trade and facilitates the movement of goods, but also sets rigid fixed rates for our trade with other parts of the world. This needs to be changed if the UK is to negotiate new trade agreements with countries outside the EU; hence the indication from the UK that it will leave the EU Customs Union.

But, the Customs Union also has other important benefits which is why the UK has also indicated that it wishes to negotiate a new customs arrangement with the EU and may retain some existing elements.

The Customs Union enables joint action on anti-counterfeiting, preventing trade in illegal goods, and it is underpinned by a market surveillance network of local trading standards officers who share information on dangerous toys, faulty electrical items, harmful cosmetic products etc. Given the extent of UK/EU trade these are areas where future cooperation would appear to be beneficial.

Smooth delivery of goods across borders is necessary for a modern competitive economy. Currently goods that come into UK ports from other parts of the world can be sent onwards across Europe without needing new inspections or checks. If full customs controls are needed for goods moving between the UK and EU, HMRC estimates that the number of declarations would increase from 100 million to 350 million every year which UK port operators warn that this could lead to huge delays. Britain and the rest of Europe are in the process of 'digitising' customs operations and, once this is implemented, it may be possible to resolve differential tariff rates by using digital exchanges of information. Furthermore, if the UK and EU follow a mutual recognition approach, which maintains similar product standards, then it may be possible to remove the need for additional inspections or procedures.

So-called 'rules of origin' are important for advanced manufacturing such as automotive producers. These mean that where a product is comprised from multiple parts which have been sourced from across Europe it can be sold as a European good to customers in non-EU countries under the beneficial tariff arrangements that the European Union has negotiated. Unless the rules are addressed many British based manufacturers may not be able to benefit from any new UK trade deals since the assembled products may not be sufficiently 'British' under WTO rules.



Regulatory Cooperation

Fundamental to the Single Market debate is the thorny issue of regulatory equivalence. If we are to maintain relatively barrier-free trade then continental producers will demand their UK competitors also have to comply with any EU rules and product standards.

There are areas where international trade requires agreement on international regulations and standards. Even Lord Dyson, a vocal Brexiteer is now calling for common European standards to be adopted for many of the products he manufactures. Ten percent of everything we produce in the UK is exported elsewhere in the EU and the vast majority of those who make these products say they do not wish to face multiple regulatory regimes. They also want predictable regulatory decision making, where those affected by a change in the rules have a chance to be consulted before the changes are made.

Existing Models

Some trade experts point to the 'regulatory cooperation' model of the EU/Canada trade agreement, but this would not be up to the job for UK/EU. It would not give a British car maker or insurance



company the confidence that they will be consulted on a new market rule let alone have their issues taken into a consideration.

Others suggest we should move more of our regulatory cooperation up to a global level. Relying on the Basel committee for more detail on their decisions for banking regulation, on IOSCO for securities transaction, on the UNECE for more global harmonisation on car regulation, more ISO standards on digital, and so forth. Where global rule making works well it is helpful but it is not sufficient in itself, the process is very slow, it only covers the minority of products or services and has no enforcement mechanisms.

Furthermore, global regulatory cooperation tends to be driven by the bottom-up not top-down. It is easier to get a global agreement on the fine detail if you've ironed it out at a lower level first. For example when the UK wanted new global rules on how to resolve a cross border bank failure in the aftermath of the Royal Bank of Scotland scandal, we agreed the broad principles at the G20 but we then nailed down the nitty-gritty with our EU neighbours first and used that detail to springboard back to the global level.

Instead of Canada-style, or going global we might look down-under. The Australian and New Zealand authorities have long-standing arrangements for working together on regulatory matters. They assume that they intend to regulate together, but also respect each others right to regulate separately. They coordinate impact assessments and recognise each other's regulations where similar.

This understanding that the same regulatory aims can be achieved by means of different pathways and leaving room for divergences. This need not be seen as a new concept for the EU: it is inherent in the way the EU often regulates. Directives rather than Regulations leave decisions on implementation up to national governments.

Continued overleaf...

Mutual Benefits

Finding a new approach to regulatory cooperation between the UK and the rest of Europe does have many mutual benefits. In many areas, the EU needs UK expertise. For example, the UK's MHRA is the most significant contributor of expert advice to the European Medicines Agency. The European Banking Authority, European Markets and Securities Authority and many others also rely heavily on UK expert contributions.

There is a strong case for the myriad of British experts who take part in specialist stakeholder groups, standard setting bodies and trade associations to keep their seats and continue to contribute. Keeping these seats is not automatic it will need to be agreed, as will maintaining a UK role on European cooperation networks with other jurisdictions such as the Transatlantic Financial Markets Regulatory Dialogue. Furthermore, if a cooperation model is to work practically it must allow time for discussions before any sanctions are imposed.

Dispute Resolution

A new approach will be needed to address the issue of how to resolve disputes clearly. Recourse to the ECJ would not be acceptable for the UK, whilst non-public arbitration behind closed doors increasingly faces a backlash from the public across Europe. The EFTA court model may provide inspiration. Each country nominates its own judge but unlike the ECJ there is no Advocate General and no General Court. Furthermore the advisory opinions the court issues are not formally binding making them fundamentally different to the ECJ's preliminary rulings. The new courts of arbitration introduced under the Canada / EU Free Trade Agreement are also an interesting model.

Case Study

How a British made car is sold around Europe

By Dan Dalton MEP (West Midlands)

The European car market operates on the principle of mutual recognition. This means that a new car, such as the new Range Rover Velar can go through the testing process in the UK and can then be sold across all 28 EU member states.



To obtain the mutually recognised 'type approval' a manufacturer must submit its vehicle and components to a series of tests to show they meet EU safety and emissions standards. The manufacturer can pick any testing service and any national 'type approval authority' in the EU for these tests, it doesn't have to be in the UK. However, in the UK the VCA (designated UK Vehicle Type Approval authority) can do both the tests and act as the type approval authority. The manufacturer also has to submit to a conformity of production assessment to demonstrate that all vehicles it makes will meet the approved standard.

Once a car has the approval from the national authority, such as the VCA, it is automatically recognised by every other EU member state and the vehicle can be legally driven and sold across the EU. This mutual recognition is extremely valuable to car manufacturers in the UK, giving them automatic access to a market of over 500 million people and substantially reducing the cost of having to replicate the tests in different EU countries. This lowers prices and raises quality for consumer.

Controlling Migration and Enabling Free Trade

In our up-coming negotiations with the EU, the UK needs to re-establish its own authority over immigration policy whilst also maximising free and unfettered trade in goods and services with the rest of the EU.

The Prime Minister has said that she wants to 'give British companies the maximum freedom to trade with and operate in the Single Market and let European businesses do the same here' but she also reaffirmed 'We are not leaving the European Union only to give up control of immigration again.' How might both of these objectives be achieved?

Politicians on both sides of the channel risk being locked into positions based on ideological purity on 'Free Movement' with many on the continent declaring Free Movement as non-negotiable. However, real world examples show that many cases of the European Union's declared red line being far from rigid already exist.



Some of the measures that are already exercised by other governments within the single market, EEA or EFTA have proven to be highly effective controls, these include:

- Migrants only being able to access housing, health and education if they prove their employment through a registration system.
- Jobs being advertised locally before being offered overseas
- Stricter limits on access to benefits and welfare.
- An upper break – or cap – on migrant numbers.

In **Belgium**, in practical terms it is impossible to move into the country without a reasonably well paid job. Any person wishing to access public services or rent a property must register within their local area for a social security card; this requires proof of employment and a guarantee from the employer to pay social security contributions, or to be able to prove considerable independent means. If the person subsequently loses their job then after a period of time the card is removed and with it the access to services. A card-based system has been rejected in the UK in the past due to data privacy concerns. To assuage this, one might consider Estonia's 'e-id' model, which enables individuals to monitor and control who has access to their own personal data.

In **Germany**, the government has approved a draft bill forbidding EU citizens from drawing benefits in Germany for their first five years in the country - considerably longer than the 'Phased' four year moratorium offered to the UK in the February negotiation.

Continued overleaf...

Switzerland, which is in the European Free Trade Area, is about to introduce new rules so that jobs must be advertised to local people before non-domestic residents. Access to jobs for local people will be an important element of a reformed migration system in the UK. In the East of England, during the referendum, I heard complaints that some local jobs were not advertised locally at all and the advertisements were not always available in English.

In its relationship with **Liechtenstein** the EU has already accepted the principle of an overall cap on total migration, which gives residency permits to only around 90 people each year. A precedent has been set. Liechtenstein is a tiny country but if you scale up their cap for the population of the UK this would be equivalent to around 150,000 permits per annum. Interestingly Liechtenstein's population of 37,000 people is about the same as the population of Wisbech in the Cambridgeshire Fens which in some years has had over 1,000 new arrivals, putting great pressure on local services. It seems unreasonable for the EU to offer free market access to a small country with a cap but exclude access for larger countries who wish to better control the impact of migration on their smaller towns.

When we are negotiating our new relationship with Europe we should not underestimate how deeply cherished the right to free movement is in other parts of Europe. Especially for those that were held under Communist rule where there are recent and often emotionally painful memories of the heavy restrictions on movement. Therefore, drawing on examples such as those above may facilitate the negotiations.

We should be sensitive to how 'points based' systems are perceived as these can easily be interpreted as an attempt to brain-drain talent and skills from others. The UK Prime Minister has sensibly rejected a points based system. Recently, in Poland the Deputy Prime Ministers of two large Eastern European countries told me about the recruitment challenges in their own health services from the high numbers of health professionals

choosing to come to the UK. The UK has proposed a 25 per cent increase in the number of medical student training places in England, which should help not only our health service but those in other countries too, but it will be the best part of a decade before this will be realised.

Increasing levels of skills and training in the UK will take time. We cannot afford to lose the skills and experience of the staff we currently have. Furthermore, if we are to retain our position as a world leader in areas such as science and innovation then it is important that top academic and research jobs can go to the best applicants from all over the world, and that the best in the world wish to continue to come to live in Britain. There is deep anxiety among many of those from across Europe currently living and working in the UK about their future status. It is important that the UK reassures them and sends out a clear signal that it will continue to be an open and welcoming country.





Vicky Ford MEP chairs the European Parliament's committee for the Internal Market and Consumer Protection, a position held by a British MEP since the committee was created in 2004. She was re-elected unopposed in January 2017, which she says reflects the wish of many across Europe to retain a close co-operative relationship with the UK post-Brexit.

In her time as MEP, Vicky has led work in Science and Research, Bank Reforms, Firearms and Digital Policy. Before entering politics, she had a career in infrastructure financing.

Vicky is also a mum, a gardener, a fly-fisher woman, and proud back row Alto.

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