



ERG: Update on Brexit Negotiations

- **The third round of Brexit negotiations commenced on Monday 28 August and ended on Thursday 31 August.**
- **Topics included: Northern Ireland, a financial settlement, the governance of the withdrawal agreement and citizens' rights.**

UK Government Papers

The following 'position' and 'future partnership' papers were published in August:

- **Future Customs Arrangements – a Future Partnership Paper;**
- **Providing a Cross-Border Civil Judicial Cooperation Framework – a Future Partnership Paper;**
- **Enforcement and Dispute Resolution – a Future Partnership Paper;**
- **The Exchange and Protection of Personal Data – a Future Partnership Paper;**
- **Northern Ireland and Ireland – Position Paper;**
- **Confidentiality and Access to Documents – Position Paper;**
- **Continuity in the Availability of Goods for the EU and the UK – Position Paper.¹**

Sequencing of negotiations: Northern Ireland first?

Michel Barnier and other key EU figures responded by reiterating their demands that issues covering Northern Ireland, EU citizens' rights and the financial settlement needed to be settled before negotiations could progress to the terms of a future Free Trade Agreement between the UK and the EU.

One of the main issues from the third round of negotiations will be whether or not the European Commission believes sufficient progress has been made on these three key areas for the negotiations to move on successfully in October or whether it wishes to hold up discussions to apply pressure on the UK.

¹ DExEU: 'Position' and 'future partnership' papers:
<https://www.gov.uk/government/collections/article-50-and-negotiations-with-the-eu>

As of the final day of this round of negotiations (31 August), Michel Barnier stated that there had been no decisive progress on key subjects – in particular over the issue of the financial settlement. While there has been some agreement made on Northern Ireland matters and pending cases at the European Court of Justice, the issue of the UK's leaving 'bill' is likely to remain controversial.

Northern Irish border

While the EU27 profess they wish to prioritise the EU/Northern Irish border it is unclear how this can be done while refusing to discuss trade. A Free Trade agreement and technical agreement on Customs would be the best way to reduce friction to trade on the border. The EU27 will need to move on to trade if they are to stick to their promises to Ireland and Northern Ireland to prioritise the border.

Possible Questions:

Does the SoS agree with me that for the EU27 to stick by its commitments to prioritise the Northern Irish border it will need to move on to discussing a future trade agreement with the UK, any artificial hold ups in these talks will be a failure of the EU's commitment to the people of Northern Ireland and Ireland as a whole?

The “financial settlement”

The Rt Hon David Davis MP has told the BBC Andrew Marr show that the UK intended to go through the bill "line by line" and "They are finding it difficult because we have got good lawyers."²

While the European Commission has let it be known that it is claiming anything up to £100bn, legal authority places the UK's obligations at a far smaller figure.³

The European Commission's figures are based on the UK being a net contributor to the budget. Their claim can potentially be made up of several parts:

- The UK's share of the EU's deficit – the unspent commitments made to EU states that have yet to be filled by contributions. These are called Reste A Liquider (RAL) and run to the end of an EU financial framework before being either written off or rolled over.⁴ The current Multi Year Financial Framework runs until 2020.
- Pension liabilities. This may be for UK staff or a share of a whole?

² Independent, 2 September: <http://www.independent.co.uk/news/uk/politics/david-davis-michel-barnier-silly-brexit-negotiations-andrew-marr-a7926766.html>

³ FT, 19 June 2017: <https://www.ft.com/content/db2716aa-5026-11e7-a1f2-db19572361bb>

⁴ EU Budget: <http://www.consilium.europa.eu/en/policies/eu-annual-budget/>

- Annual payments into the budget until the end of the MFF.

Possible Questions:

Does the SoS agree with me that the EU27's logic that because the UK has been a very generous contributor into the EU budget for 44 years that it should continue to pay even after we have left is ridiculous, by the same token if a net beneficiary were to leave the EU would the EU27 propose giving them an exit dividend? Is it not more logical that the UK's obligations end once we have left or indeed that we should get a refund to compensate us for our very substantial past contributions?

Does the SoS agree with me that it is entirely appropriate to go through the EU's claims for money "line by line", the alternative is surely to pull out a blank cheque a policy we used to see from the Labour party?

Lawyers for Britain – Martin Howe QC

"Our new and updated [Analysis of the UK's potential financial liabilities](#) looks at the legal arguments in depth. We have failed to find a credible legal argument either for a liability on the UK to contribute to the EU's unfunded pension fund deficit, or for any liability to contribute to the EU's ongoing programmes after Brexit day on 29 March 2019, with the possible exception of an obligation to carry on contributing overseas aid of €1.3bn up to the end of 2020 via the European Development Fund (EDF). But the EDF example is actually helpful to the wider argument that the UK has no ongoing liability at all to contribute to the EU budget, since the funding for the EDF is agreed via a quite different mechanism in which the individual Member States assume direct obligations to fund the programme outside the framework of the EU treaties.

On the other hand, the UK has a firm financial claim for the value of its shareholding interest in the European Investment Bank (EIB) worth about €10bn, although it is likely that the UK's interest in the EIB and its uncalled capital obligation will have to be unwound together with a proportion of its loan book rather than being "cashed up".

We have also examined the vexed question of whether there is an international court which has jurisdiction to adjudicate on these financial claims and counterclaims. We conclude that neither the ECJ nor the ICJ (International Court of Justice) have jurisdiction.." ⁵

⁵ *Lawyers for Britain*, analysis of the "Brexit Bill": <http://www.lawyersforbritain.org/eu-deal-financial-liabilities.shtml>

