



Brexit Model under the Proposed EU-UK Deal

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The deal on the United Kingdom's exit from the EU, which was signed off by EU and UK leaders on 25 November, determines not only the Brexit's conditions but also important aspects of the future EU-UK relations. The deal's content represents a success for the EU, reflecting all of the Union's initial objectives and limiting the incorporation of the UK's. Consequently, the outcome of the negotiations makes the agreement's rejection by the UK parliament highly probable. Such a scenario would increase the likelihood of "no-deal" Brexit.

Although the UK's exit from the EU is scheduled for 29 March 2019, UK politicians are still arguing over the conditions. This contrasts with the consistent EU position. However, this difference in attitude is more understandable when considering the long-term legal effects of the deal: its contents legally predetermine the future EU-UK relations, hence its universal criticism in the UK.

General Characteristics. The deal consists of two documents: the agreement on the UK's exit and a political declaration on the framework for future cooperation. Both documents fundamentally differ in their formal status. The first is legally binding whereas the latter states the intentions of the parties. Moreover, the provisions of the agreement are extensive and unambiguous while the declaration is open to interpretation. In practice, the latter is to be read by the EU in light of the provisions in the first. [Importantly, the agreement will enter into force after ratification.](#)

The Exit Agreement. It regulates comprehensively the UK's exit from the EU and establishes a transition period of 21 months. In that period, the UK will retain the basic rights and obligations of an EU Member State, with the exception of decision-making powers. In particular, the agreement guarantees the rights of citizens residing in the other party's territory (including recognition of their professional qualifications) and EU Court of Justice (CJEU) supervision. It also covers a financial settlement estimated at €50 billion, confirming the UK's contribution to the EU's Multiannual Financial Framework 2014–2020. The document also provides for an arbitration mechanism, allowing for representation of both parties, but eliminating the possibility of unilateral termination of the deal. It also reserves the final interpretation of EU law to the CJEU while omitting corresponding provisions for the UK Supreme Court.

The agreement also establishes a two-stage "backstop" for the Irish border. If a treaty on the future EU-UK relations is not concluded by the end of 2020, the whole UK will remain in the EU customs area, including harmonisation of environmental, labour, and state-aid regulations. Were that treaty to establish a looser model of cooperation (e.g., a free-trade agreement), Northern Ireland would remain in the EU's customs and regulatory area, resulting in the establishment of a customs and regulatory border in the Irish Sea. Therefore, the UK faces the choice of an exit agreement in which it will be legally bound to maintain indefinitely the customs and regulatory union with the EU without decision-making powers regarding its rules and no possibility of a unilateral exit, or to accept permanent curtailment of its territorial integrity (i.e., Northern Ireland).

Declaration on Future Relations. The declaration sets out in political terms the goals for future cooperation (i.e., after 2020) on economic, foreign, and security policy issues, as well as indicates some basic institutional solutions. The document expresses the intention to anchor the future relations in shared European values, especially as defined in the European Convention on Human Rights. The future treaty would also cover the UK's participation (including financial) in EU programmes on, among others, scientific cooperation, innovation, defence industrial cooperation, and youth exchange. Economic cooperation is defined in general terms: the document does not indicate frictionless trade as its primary objective, as proposed by the UK, but rather provides for duty- and quota-free exchange. The declaration notes the UK's ambition to pursue an independent trade policy after Brexit, but this objective must be seen in light of the exit agreement's backstop provisions (i.e., the UK's customs union with the EU, assuming the UK's will to maintain its territorial integrity). The document provides for cooperation in financial services based on the principle of equivalence (analogical to EU agreements with the U.S. or Japan), which is a regress in comparison to the single market. The parties also declared that they would keep their respective public-procurement markets open wider than WTO rules provide for. The document also provides for coordination in foreign and security policy, including the partial continuation of personal and other sensitive data exchange.

Unresolved Issues. The most significant controversy in the UK is the declaration statement that the future EU-UK economic relations shall be built on the customs, regulatory, and arbitration solutions defined in the exit agreement. From the UK perspective, this means that the backstop model—as defined in the legally binding treaty—would predetermine key aspects of the future EU-UK economic relations. Moreover, this would be true regardless of whether the backstop itself was ever put into practice. In addition, the treaty on the future relations will be subject to unanimous acceptance in the EU. This will make it impossible for the UK to return to negotiating concessions in the 25 November agreement while empowering both the European Commission (EC) and individual Member States to push for new concessions, thus expanding their final scope.

On the other hand, France, Belgium, the Netherlands, and Denmark have criticised the lack of confirmation of EU ships' access rights to UK fishing grounds. The status of Gibraltar has also become the subject of a dispute with Spain. This has led to other Member States and the EC reconfirming that the future relations of this British Overseas Territory with the EU will be subject to a separate agreement subject to Spain's veto.

Conclusions and Perspectives. The agreement secures the EU's interests. Moreover, the EU's objectives have been included mostly in the agreement while the majority of the UK's, in the declaration. The exit agreement in fact prevents the UK from pursuing an independent trade policy (i.e., outside the framework of a customs and regulatory union with the EU), despite the fact it was to be the key economic prize of Brexit. As a consequence, the Union can assume that the UK will be made to support its position in global trade disputes. The provisions of the agreement also secure the Polish government's priorities regarding Brexit (citizens' rights, the financial settlement, and favourable framework for further trade with the UK).

The EU has strengthened its internal coherence by demonstrating to all parties the exit costs. From the EU perspective, the basic risk associated with the deal originates from the high likelihood of its rejection by the House of Commons. Due to the EU Withdrawal Act of 2018, the basic remaining scenario in that case would be the UK's exit to default WTO rules and without an agreement with the EU (e.g., "no deal"). The probability of this costliest scenario would further rise in the event of a Cabinet crisis. Also possible is a "managed no-deal," which would involve the UK's exit on the WTO rules combined with the signing of a new agreement incorporating uncontested provisions of the original exit treaty (e.g., short transition period, citizens' rights, some payments, transport, security).

In case of the deal's rejection by the Commons, there are also three scenarios possible requiring UK legislation, which is a serious difficulty for Prime Minister Theresa May's minority government. The most probable from the point of view of the House of Commons' balance of power is the UK's entry into the European Economic Area and EFTA (Norwegian model), which would require the UK's official resignation from independent trade and immigration policy. The second one, preferred by Tory backbenchers and rank-and-file members, is adoption of the CETA (Canadian) model, which requires the backstop revision. The least likely—due to the political risk to both the Conservatives and Labour—is cancellation of Brexit before 29 March. It would take a snap election and probably another referendum. From Poland's point of view, the preferred solutions are those closest to the pattern of the UK's existing EU membership. However, any of the scenarios above is better than no deal.