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24th Report of Session 2017–19

Brexit: the Withdrawal Agreement and Political Declaration

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The European Union Committee

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SUMMARY

This report analyses the proposed UK-EU Withdrawal Agreement, and the accompanying Political Declaration setting out the framework for future UK-EU relations, which were presented to Parliament on 26 November 2018. We have published this report at the first possible opportunity, in order to inform debates in the two Houses.

We outline, in turn, the withdrawal provisions, the transition provisions, the ‘backstop’ on Ireland and Northern Ireland, and the Declaration on future relations. We identify areas where further information is needed, and we put questions to the Government. We also identify issues that may arise if and when the Withdrawal Agreement is implemented in domestic law. We have sought to provide dispassionate analysis, to assist parliamentary and public debate—as we have done in the almost 40 reports we have published since the 2016 referendum, all of which have been agreed by consensus.

Whether or not the Agreement is approved by the House of Commons on 11 December 2018, the European Union Committee will continue, as we approach exit day on 29 March 2019, to scrutinise the Government’s preparations for UK withdrawal and its conduct of the negotiations, to engage with stakeholders domestically and in the EU 27, and to offer informed, non-partisan analysis of the developing UK-EU relationship.

Brexit: the Withdrawal Agreement and Political Declaration

CHAPTER 1: INTRODUCTION

Overview

1. This report provides an analysis of the ‘Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and from the European Atomic Energy Community’¹ (hereafter referred to as the Withdrawal Agreement or the Agreement), and the associated ‘Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom’.² Both documents were laid before Parliament on 26 November.
2. The Agreement and the Political Declaration will be debated in the House of Lords on 5–10 December 2018. The House of Commons will debate them on 4–11 December. In accordance with Section 13 of the European Union (Withdrawal) Act 2018, the House of Lords is required to ‘take note’ of the Agreement, whereas the House of Commons must give its approval if the Agreement is to be ratified. This report has been prepared by the European Union Select Committee with a view to informing both debates.
3. If the Commons gives its approval, the Government will then bring forward domestic legislation to implement the Withdrawal Agreement prior to ratification. That legislation will have to be agreed by both Houses.
4. The report focuses on only the most significant aspects of the Withdrawal Agreement and Political Declaration. The European Union Committee has published almost 40 reports since the 2016 referendum, reaching a consensus on each one. We have sought to maintain that consensus, and our report therefore neither endorses nor rejects the Agreement. Instead we have sought to provide a dispassionate analysis: it will be for each Member of the House (and each Member of the House of Commons) to reach his or her own view.
5. We recognise that there may be little or no opportunity to amend the text of either document: the two negotiating teams have, for now, finished their work. Nevertheless, this report, drawing on previous reports by the European Union Committee and its Sub-Committees, welcomes or highlights concerns over particular aspects of the Agreement and the Political Declaration. We signpost areas where further explanation might be required and put questions to the Government, which may be explored further in the debates. We also

1 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as endorsed by leaders at a special meeting of the European Council on 25 November 2018 (25 November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759019/25-November-Agreement-on-the-withdrawal-of-the-United-Kingdom-of-Great-Britain-and-Northern-Ireland-from-the-European-Union-and-the-European-Atomic-Energy-Community.pdf [accessed 30 November 2018]

2 Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom (26 November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759054/26-November-Political-Declaration-setting-out-the-framework-for-the-future-relationship-between-the-European-Union-and-the-United-Kingdom.pdf [accessed 30 November 2018]

make recommendations about how the Withdrawal Agreement should be implemented in domestic law, drawing particular attention to areas where Parliament may wish to play a role in scrutinising the governance and other arrangements.

6. Our comments on the Political Declaration, the full text of which appeared only on 22 November, are necessarily provisional. If the Agreement is approved by the House of Commons on 11 December, the EU Committees will look in more detail at aspects of the future relationship between now and 29 March 2019, when the United Kingdom will leave the European Union.

Timeline

7. On 29 March 2017 the Prime Minister notified the European Council of the UK's intention to withdraw from the European Union, in accordance with Article 50 of the Treaty on European Union (TEU). Article 50 provides that, following notification, the European Union should, within two years, "negotiate and conclude an agreement with [the withdrawing] State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union".³
8. In the summer of 2017 the two sides agreed the sequencing of the negotiations. They would first address withdrawal, beginning with three specific areas stemming from the UK's withdrawal: the protection of citizens' rights after Brexit, the financial settlement, and issues arising with regard to the border between Ireland and Northern Ireland. They also agreed that "sufficient progress" would be needed on these withdrawal issues before discussions could begin on the second element referred to in Article 50, the framework for the future EU-UK relationship.
9. On 8 December 2017 the EU and the UK published a Joint Report, setting out the areas of agreement between both sides on the three withdrawal issues, as well as some other separation issues. This was a significant moment. Among other things, the parties agreed that they would respect the provisions of the Belfast/Good Friday Agreement of 1998 and avoid the creation of a hard border between Ireland and Northern Ireland, interpreting a hard border as "including any physical infrastructure or related checks and controls".⁴
10. The Joint Report recorded the UK's determination to resolve the issue of the Irish border within the context of an agreement on future relations; or, failing this, to propose technological solutions. But the two sides agreed that, "in the absence of agreed solutions", the UK would "maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement".⁵ This agreement was the genesis of what has come to be described as the 'Northern Ireland backstop'. The Joint Report also provided that the UK would ensure that

3 Treaty on European Union, Title VI:Final Provisions: Article 50, [OJ C 326](#), pp 43–44 (consolidated version of 26 October 2012)

4 HM Government and European Commission, *Joint report from the negotiators of the European union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 EU on the United Kingdom's orderly withdrawal from the European Union* (8 December 2017) para 43: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/665869/Joint_report_on_progress_during_phase_1_of_negotiations_under_Article_50_TEU_on_the_United_Kingdom_s_orderly_withdrawal_from_the_European_Union.pdf [accessed 30 November 2018]

5 *Ibid.*, para 49

“no new regulatory barriers develop between Northern Ireland and the rest of the United Kingdom, unless, consistent with the 1998 Agreement, the Northern Ireland Executive and Assembly agree that distinct arrangements are appropriate for Northern Ireland”.⁶

11. On 28 February 2018 the European Commission published the first draft of a Withdrawal Agreement between the European Union and the United Kingdom, translating the December Joint Report into legal terms. On 19 March an amended text was published, highlighting areas of agreement and disagreement using a green, yellow and white colour-coding.⁷
12. No further drafts of the Withdrawal Agreement were published between March and November, but on 19 June a Joint Statement was published, outlining further progress in the negotiations.⁸
13. A final draft Withdrawal Agreement was published on 14 November 2018 alongside an ‘outline’ of the Political Declaration on the future relationship.⁹ A fuller, final, draft of the Political Declaration was published on 22 November. The two documents were endorsed by the European Council (Art. 50) at its meeting on 25 November and the final text (no longer a ‘draft’) was laid before Parliament the following day.
14. Unhelpfully, despite being 585 pages long, the Withdrawal Agreement was published without either a contents page or an index. This makes it harder for all interested parties, whether in the UK or the EU, to compare it with the earlier colour-coded draft published in March 2018. The failure to provide a contents page is particularly regrettable, as the March draft included a detailed table of contents.

This report

15. This report is divided into four substantive chapters. Chapter 2 examines the withdrawal provisions, focusing primarily on issues relating to governance, citizens’ rights and the financial settlement. Chapter 3 considers the transition provisions. Chapter 4 analyses the Protocol on Ireland/Northern Ireland. Finally, Chapter 5 assesses the Political Declaration setting out the framework for the future relationship between the European Union and the UK.
16. **We make this report for information**, with a view to assisting debates in both Houses, and more widely, on the Withdrawal Agreement and the accompanying Political Declaration on future relations.

6 *Ibid.*, para 50

7 European Commission and HM Government, *Draft agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and European Atomic Energy Community*, 14 March 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691366/20180319_DRAFT_WITHDRAWAL_AGREEMENT.pdf [accessed 30 November 2018]

8 Joint statement from the negotiators of the European Union and the United Kingdom Government on progress of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union (19 June 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717697/Joint_Statement_-_19_June_2018.pdf [accessed 30 November 2018]

9 [Outline of the Political Declaration](#) (14 November 2018)

CHAPTER 2: THE WITHDRAWAL AGREEMENT

Governance and scope

17. The Articles relating to governance, scope and implementation of the Withdrawal Agreement will determine how decisions on the Agreement will be implemented and how any disagreements or disputes relating to the Agreement are handled in practice.

Territorial scope

18. The Withdrawal Agreement states¹⁰ that any reference to the United Kingdom covers:
- (a) the United Kingdom; and, to the extent that EU law applied before the Agreement comes into force:
 - (b) Gibraltar; and
 - (c) the Channel Islands and the Isle of Man (the Crown Dependencies).

It also applies to:

- (d) the UK's Sovereign Bases on Cyprus to the "extent necessary" to implement the arrangements set out in the relevant Protocol (see paragraph 19 below); and
 - (e) the UK's Overseas Territories where the agreement relates to "special arrangements" for their association with the EU.¹¹
19. Annexed to the Agreement are two separate¹² Protocols dealing with the UK's Sovereign Bases on Cyprus, and with Gibraltar. The Protocol on Cyprus applies, where relevant, EU law to the UK's Sovereign Bases after the end of the transition period (including: free movement of goods and customs;¹³ agriculture, fisheries, veterinary and phytosanitary rules;¹⁴ VAT;¹⁵ data protection;¹⁶ rights of residence;¹⁷ and, border checks on the Sovereign Bases' sea boundaries, airports and seaports¹⁸). The Protocol also mandates a "Specialised Committee" tasked with facilitating and discussing its application.¹⁹

10 [Withdrawal Agreement](#) (25 November 2018), Article 3

11 Anguilla; Bermuda; British Antarctic Territory; British Indian Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Montserrat; Pitcairn; Saint Helena; Ascension and Tristan da Cunha; South Georgia and South Sandwich Islands; and Turks and Caicos Islands.

12 Described as "integral" in [Withdrawal Agreement](#) (25 November 2018) Article 182

13 [Withdrawal Agreement](#) (25 November 2018), Protocol Relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, Article 2

14 [Withdrawal Agreement](#) (25 November 2018), Protocol Relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, Article 6

15 [Withdrawal Agreement](#) (25 November 2018), Protocol Relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, Article 1(1)

16 [Withdrawal Agreement](#) (25 November 2018), Protocol Relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, Article 1(3)

17 [Withdrawal Agreement](#) (25 November 2018), Protocol Relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, Article 1(4)

18 [Withdrawal Agreement](#) (25 November 2018), Protocol Relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, Article 7

19 [Withdrawal Agreement](#) (25 November 2018), Protocol Relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, Article 9

20. In contrast, the Protocol on Gibraltar is limited to separation provisions and relations with the EU 27 during the transition period only. It calls on the UK and Spain to cooperate “closely” on the “effective implementation” of the Agreement on citizens’ rights²⁰ and to establish “coordinating” committees to discuss employment and labour conditions,²¹ and environmental protection and fishing.²² It also calls for Spain and the UK to establish a “coordination committee” for discussing police and customs matters.²³ A “Specialised Committee” operating under the UK-EU Joint Committee will be established to facilitate the implementation of the Protocol, to discuss any difficulties raised by the UK or the EU, and to “examine” any reports issues by the “coordination committees”.²⁴
21. The Protocol’s Preamble also takes note of the separate Memoranda of Understanding, which will only apply during the transition period and have now been agreed,²⁵ and the pending Treaty on Taxation, between the UK and Spain.

Box 1: Gibraltar

Following publication of the draft Withdrawal Agreement, the Spanish Government requested a clarification to Article 184, which refers to the negotiations on the future relationship. They asked that it be made clear that the territorial scope should be consistent with the European Council’s March 2017 negotiating guidelines, which granted Spain a veto on the extension to Gibraltar of any EU-UK future agreement. In response, the UK’s Permanent Representative to the EU, Sir Tim Barrow issued a letter to the Council of the European Union on 24 November 2018²⁶ on the UK’s interpretation to Article 184, stating that there is “no obligation or presumption, on the basis of this provision, for such agreements to have the same territorial scope as the one provided for in Article 3 of the Withdrawal Agreement”, which does cover Gibraltar. The Presidents of the European Commission and the European Council also wrote a letter to Spanish Prime Minister Pedro Sánchez echoing this interpretation.

22. **We have repeatedly argued that it is vital that the Withdrawal Agreement and its arrangements for the transition period apply to Gibraltar. We therefore welcome the successful resolution of this issue. We also welcome the application of the Withdrawal Agreement, where necessary, to the other Overseas Territories, and the Crown Dependencies.**
23. **We note, however, that while the Agreement settles the post-transition status of the UK’s Sovereign Bases on Cyprus, Gibraltar’s long-term**

20 [Withdrawal Agreement](#) (25 November 2018), Protocol on Gibraltar, Article 1(1)

21 [Withdrawal Agreement](#) (25 November 2018), Protocol on Gibraltar, Article 1(3)

22 [Withdrawal Agreement](#) (25 November 2018), Protocol on Gibraltar, Article 4

23 [Withdrawal Agreement](#) (25 November 2018), Protocol on Gibraltar, Article 5

24 [Withdrawal Agreement](#) (25 November 2018), Protocol on Gibraltar, Article 6

25 HM Government of Gibraltar, *Press release: HMGoG Approves Signature of MoUs* (29 November 2018): <https://www.gibraltar.gov.gi/new/sites/default/files/press/2018/Press%20Releases/747-2018.pdf> [accessed 4 December 2018]

26 UK Representation to the EU Brussels, *Interpretation of the United Kingdom of Article 184 of the Withdrawal Agreement* (24 November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759015/HMG_letter_to_the_Secretary-General_of_the_Council_of_the_European_Union_on_Article_184.pdf [accessed 3 December 2018]

relationship with the EU remains subject to negotiation within the wider context of the UK-EU future relationship.

The role of the Joint Committee

24. The main governance structure that would be established by the Withdrawal Agreement is the Joint Committee.²⁷ The detailed rules of procedure relating to the Joint Committee (and any specialised committees established under the Withdrawal Agreement, discussed further below) are set out at Annex VIII to the Agreement.
25. The Joint Committee would be the primary forum responsible for the implementation and the application of the Withdrawal Agreement. Annex VIII provides that the Joint Committee would be co-chaired by a member of the European Commission and a representative of the UK Government at ministerial level, but that this role could also be filled by “high level officials designated to act as their alternatives”.²⁸
26. Article 164 of the Withdrawal Agreement provides that the Joint Committee would meet at the request of the UK or the EU, and in any event at least once a year. Its meeting schedule would be adopted by mutual consent.
27. The Joint Committee’s decisions and recommendations would also be made by mutual consent and would be binding on the EU and the UK (which would be obliged to implement them).²⁹ Article 166(2) makes plain that such decisions would have “the same legal effect as this Agreement”.
28. The Joint Committee would have a secretariat made up of “an official of the European Commission and an official of the Government of the United Kingdom”.³⁰ Meetings of the Joint Committee would be confidential, unless otherwise decided by the co-chairs. Moreover, the EU and UK would each be able to decide (individually) whether to publish the decisions and recommendations adopted by the Joint Committee in their respective official publication journals.³¹ While the secretariat would be responsible for minuting meetings of the Joint Committee, these minutes would not be made publicly available, although the co-chairs could opt to make summaries public.³²
29. As well as supervising and facilitating the implementation and application of the agreement, the Joint Committee would oversee certain specialised committees (discussed below);³³ issue an annual report on the functioning of the Agreement; and, in some circumstances, adopt amendments to the Agreement.³⁴ Notably, Article 164(5)(d) would allow the Joint Committee to adopt decisions amending the Withdrawal Agreement³⁵ where this was necessary to “address omissions or other deficiencies, or to address situations unforeseen when this Agreement was signed”, provided that such changes did not “amend the essential elements of the Agreement”. This widely drawn

27 [Withdrawal Agreement](#) (25 November 2018), Article 164

28 [Withdrawal Agreement](#) (25 November 2018), Annex VIII, Rule 1

29 [Withdrawal Agreement](#) (25 November 2018), Article 166

30 [Withdrawal Agreement](#) (25 November 2018), Annex VIII, Rule 2

31 [Withdrawal Agreement](#) (25 November 2018), Annex VIII, Rule 10

32 [Withdrawal Agreement](#) (25 November 2018), Annex VIII, Rule 8(5)

33 [Withdrawal Agreement](#) (25 November 2018), Article 164(4)

34 [Withdrawal Agreement](#) (25 November 2018), Article 164(4)(f) and Article 164(5)(d)

35 Save in relation to Parts One (the Common Provisions, including definitions, scope etc.), Part Four (the Transition) and Part Six (the Institutional and Final Provisions) of the [Withdrawal Agreement](#) (25 November 2018).

power may be somewhat constrained by the fact that decisions have to be made by mutual consent.³⁶

The role of the specialised committees

30. As well as the main Joint Committee, the Withdrawal Agreement would establish a number of specialised committees. Some are set out in the Agreement. These are the committees on:
- citizens' rights;
 - "other separation provisions";
 - the Protocol on Ireland/Northern Ireland;
 - the Protocol on the Sovereign Base Areas in Cyprus;
 - the Protocol on Gibraltar; and
 - the financial provisions.³⁷
31. The Joint Committee may also establish additional specialised committees, "in order to assist the Joint Committee in the performance of its tasks".³⁸ The Joint Committee would decide on the tasks of specialised committees and supervise their work. It would also be entitled to change the tasks assigned to specialised committees and "dissolve any of those committees".³⁹
32. Specialised committees will be made up of representatives of the EU and the UK with "appropriate expertise" in the issues under discussion.⁴⁰ However, the fact that a specialised committee has been established would not preclude either the UK or the EU taking a matter directly to the Joint Committee.⁴¹
33. The Joint Committee's Rules of Procedure described in Annex VIII would also, broadly, apply to the specialised committees (unless the Joint Committee decided otherwise).⁴²
34. **The Joint Committee structure for governance of the Withdrawal Agreement, agreed in March 2018, ought to allow a collaborative approach to the supervision of the Withdrawal Agreement, as well as the delegation of specific functions, such as citizens' rights, financial provisions, Northern Ireland/Ireland and Gibraltar, to specialised committees.**
35. **The Joint Committee will be critical in ensuring the smooth working of the Withdrawal Agreement. It will be a uniquely powerful and influential body. Decisions adopted by the Joint Committee would be binding on the EU and the UK and would have the same legal effect as the Withdrawal Agreement.**
36. **In particular, during the transition and for a period of four years thereafter, Article 164 of the Withdrawal Agreement provides that**

36 [Withdrawal Agreement](#) (25 November 2018), Article 166(3)

37 [Withdrawal Agreement](#) (25 November 2018), Article 165

38 [Withdrawal Agreement](#) (25 November 2018), Article 164(5)(b)

39 [Withdrawal Agreement](#) (25 November 2018), Article 164(5)(c)

40 [Withdrawal Agreement](#) (25 November 2018), Article 165(3)

41 [Withdrawal Agreement](#) (25 November 2018), Article 165(4)

42 [Withdrawal Agreement](#) (25 November 2018), Annex VIII, Rule 13

the Joint Committee would have power to amend aspects of the Agreement to take account of errors, omissions and deficiencies, and to address unforeseen situations. Even though changes that “amend the essential elements” of the Agreement are excluded, this is a widely drawn power, and is not subject to clear scrutiny procedures or parliamentary oversight.

37. **Nor does it appear that the Joint Committee will operate in an open and transparent way. The relevant rules suggest that meetings would be confidential, decisions might not be published, and even summary minutes might not be made publicly available. This is an unsatisfactory state of affairs, given the significant role that the Joint Committee will play.**
38. **While the international agreement establishing the terms of the UK’s withdrawal from the EU may not be the appropriate place to include provisions relating to the role of the UK Parliament, Members of both Houses may wish to consider the appropriate level of, and structure for, parliamentary oversight of the Joint Committee, and seek undertakings from the Government on this question.**

Implementation and application of the Withdrawal Agreement

39. Article 4 of the Agreement states that both the Agreement and any EU law applying to the UK under it should have the same effect as in EU Member States. This includes ‘direct effect’ (which allows private parties to invoke their rights under the Withdrawal Agreement before UK courts, as well as in EU Member States). The Government’s Explanatory Note to the Agreement⁴³ states that Article 4 would also allow the UK court to make available certain remedies (including *Francovich* damages).⁴⁴
40. Where it is relevant to the Withdrawal Agreement, Article 4(2) would also give EU law what is sometimes referred to as ‘supremacy’ over domestic law.⁴⁵ Essentially, under the Agreement, the UK would be required to bring forward legislation to allow domestic courts to disapply any other domestic legislation which is incompatible or inconsistent with the Agreement (and EU law applicable under the Agreement).
41. In the March 2018 draft, the ‘supremacy’ provision only applied to citizens’ rights, but in the current draft it would apply to the entire Withdrawal Agreement. In our report *Dispute resolution and enforcement after Brexit* we described it as a “novel constitutional provision”,⁴⁶ albeit one that had been flagged in the Joint Report of December 2017, which indicated that the

43 HM Government, *Explainer for the agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union (14 November 2018)*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756376/14_November_Explainer_for_the_agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_1.pdf [accessed 3 December 2018]

44 *Francovich v Italy (1991) C-6/90* was a decision of the CJEU which established that EU Member States could be liable to pay compensation to individuals who suffered a loss by reason of that Member State’s failure to transpose an EU directive into national law. This principle is sometimes known as the principle of state liability.

45 See for instance C-6/64, *Costa v. ENEL* [1964] ECR 585; C-106/77, *Simmenthal* [1978] ECR 629; C-106/89 *Marleasing* [1991] ECR I-7321 and *R (Factortame Ltd) v Sec. of State for Transport (No 2)* [1991] 1 AC 603

46 European Union Committee, *Dispute resolution and enforcement after Brexit* (15th Report, Session 2017–19, HL Paper 130), para 64

provisions on citizens' rights would "have effect in primary legislation and will prevail over inconsistent or incompatible legislation, unless Parliament repeals this Act in the future".

42. It is unclear why the scope of this provision has been extended in the latest text of the Agreement, nor is it clear what would happen if the UK Parliament sought to repeal the domestic legislation implementing the Withdrawal Agreement (although if the UK sought to resile from its obligations under the Agreement, this would probably lead to a breach of international law). The means of implementing this provision in domestic law may well be of interest to the Constitution Committee, and to Members of the House more widely.
43. Article 4(4) would require the provisions of the Agreement referring to EU law, or "concepts or provisions thereof", to be interpreted in conformity with any relevant case-law of the CJEU handed down before the end of the transition period. The UK judicial and administrative authorities would only be required to "have due regard" to case-law of the CJEU handed down after the end of transition.⁴⁷
44. It is hard to predict the effect of this provision, since many aspects of the Withdrawal Agreement (including some of the new rules on citizens' rights) will not come into force until the end of the transition period. However, Article 4, which provides for direct effect and supremacy, is not limited to the transition period. This means that the EU law principles of direct effect and supremacy will continue to apply to those provisions of the Withdrawal Agreement (and to the provisions of EU law to which the Agreement refers) once the UK has left the EU at the end of the transition period. Thus the status of EU law in the UK at the end of the transition period is not entirely clear.⁴⁸

Good faith

45. Article 5 of the Withdrawal Agreement states that the UK and EU will "in full mutual respect and good faith, assist each other in carrying out tasks which flow from this Agreement". It imposes an obligation on the parties to "take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising from this agreement and shall refrain from any measures which could jeopardise the attainment of the objectives of this Agreement".
46. Should any disputes arise between the parties to the Agreement, they would fall to be determined against the background of this provision. It might become relevant, for example, if a dispute arose as to whether the EU was seeking to retain the UK in the backstop arrangement⁴⁹ unilaterally, rather than genuinely seeking to negotiate a future trade arrangement. The

47 A duty to have "due regard" could be expected to mean that the domestic courts would be under an obligation to take the case-law of the CJEU into account. It is not the same as an obligation to follow the case-law on every occasion. However, when such words are used, it would usually require good reasons to depart from applying it.

48 See also: Public Law for Everyone, *The Brexit Withdrawal Agreement: Taking back "control of our laws"?* (23 November 2018): <https://publiclawforeveryone.com/2018/11/23/the-brexit-withdrawal-agreement-taking-back-control-of-our-laws> [accessed 3 December 2018]

49 Discussed in detail in Chapter 4 of this report.

Government's paper *The Legal Position on the Withdrawal Agreement*⁵⁰ notes that "the principle of good faith is a rule of customary international law, as has been recognised by the CJEU and the International Court of Justice".⁵¹

The role of the Court of Justice of the European Union

47. In its Future Partnership Paper on *Enforcement and Dispute Resolution*, the Government restated its intention that "in leaving the European Union, we will bring about an end to the direct jurisdiction of the Court of Justice of the European Union".⁵² When she presented the proposed deal to the House of Commons on 15 November 2018, the Prime Minister also emphasised that "the jurisdiction of the European Court of Justice in the United Kingdom will end".⁵³
48. In this context, our report *Dispute resolution and enforcement after Brexit* identified two linked issues. First, that liabilities and obligations under the Withdrawal Agreement could arise "many years after the UK has left the EU", and that it would therefore be "problematic to leave the interpretation of the entirety of this agreement to the CJEU, since it is associated with one of the parties to the agreement, and any perception of bias should be avoided". Secondly, we noted that the Government would need to be mindful of the fact that "the legal autonomy of the EU, as defined by the CJEU, means that only the CJEU can have the final say on the interpretation of EU law".⁵⁴

Other provisions which engage the jurisdiction of the CJEU

49. Under the Withdrawal Agreement, the CJEU would retain its jurisdiction "as provided for in the Treaties" during the transition period.⁵⁵ In our earlier report we said that "given that the transitional period will be relatively short, it would be too burdensome and time-consuming to establish a separate dispute resolution mechanism solely for the period of transition".⁵⁶ It is worth noting, however, that if the transition period is extended, there would also be a prolongation of the jurisdiction of the CJEU.
50. The CJEU will continue to have jurisdiction over cases that are pending before it at the end of the transition period (and over certain new enforcement actions brought within four years after the end of transition provided the UK's violation occurred before then).⁵⁷ This 'longstop' for when a cause of action arises during the transition period was missing from the March 2018 text.

50 HM Government, *EU Exit: Legal position on the Withdrawal Agreement*, Cm 9747, December 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/761153/EU_Exit_-_Legal_position_on_the_Withdrawal_Agreement.pdf [accessed 3 December 2018]

51 See for instance *Opel Austria GmbH v Austria*, T-115/94, EU:T:1997:3 (para 90); *Portugal v Council*, C-149/96, EU:C:1999:574 (para 41); Nuclear Test cases (*Australia v France*), Judgment of 20 December 1994, ICJ Reports 1974, p 253 (para 46)

52 HM Government, *Enforcement and dispute resolution: a future partnership paper* (2017) para 1: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/639609/Enforcement_and_dispute_resolution.pdf [accessed 3 December 2018]

53 HC Deb, 15 November 2018, col 445

54 European Union Committee, *Dispute resolution and enforcement after Brexit* (15th Report, Session 2017–19, HL Paper 130), Summary

55 *Withdrawal Agreement* (25 November 2018), Article 131

56 European Union Committee, *Dispute resolution and enforcement after Brexit* (15th Report, Session 2017–19, HL Paper 130), para 146

57 *Withdrawal Agreement* (25 November 2018), Articles 86 and 87

51. In relation to Part Two of the Withdrawal Agreement (citizens' rights), UK courts will continue to be able to refer cases to the CJEU for eight years following the end of transition.⁵⁸ This provision will require an amendment to Section 6 of the European Union (Withdrawal) Act 2018, which currently precludes the domestic courts from making references to the CJEU. Article 160 of the Withdrawal Agreement also allows for CJEU jurisdiction in respect of certain limited aspects of Part Five of the Agreement, relating to the financial settlement.⁵⁹
52. The provisions dealing with the jurisdiction of the CJEU in the Protocol on Ireland/Northern Ireland are discussed further in Chapter 4 of this report.

The proposed arbitration model

53. The March 2018 draft of the Withdrawal Agreement envisaged that intractable disputes relating to the Withdrawal Agreement (which had not been settled within three months) could be submitted to the CJEU by either party, and that any rulings from that court would be binding on the Union and the UK.⁶⁰ It also envisaged that the CJEU would have the power to impose a fine, and provided for the possibility of either side imposing sanctions on the other. The Government subsequently told the Committee that it would prefer for disputes to be settled by the Joint Committee, rather than involving the CJEU.⁶¹
54. Article 170 of the final text of the Withdrawal Agreement sets out a new model for dispute resolution: an arbitration procedure. This could be instituted in circumstances where no mutually agreed solution to a dispute has been reached within three months of a written notice being provided to the Joint Committee (or earlier if agreed by the parties). This process replaces the earlier provisions which provided for CJEU jurisdiction, but it does not displace the role of the CJEU in its entirety.
55. Under the arbitration procedure, the Joint Committee would be required to establish before the end of the transition period a list of 25 persons who were willing to serve on a panel.⁶² The UK and the EU would nominate 10 potential (independent expert) panellists themselves. They would also jointly nominate five 'chair' panellists. Nominees would have to "possess the qualifications required for appointment to the highest judicial office", and would need specialist knowledge or experience of Union law and public international law.
56. If a dispute were not resolved in the Joint Committee and an arbitration panel were established, it would comprise five members (including the

58 [Withdrawal Agreement](#) (25 November 2018), Article 158

59 The specific provisions relate only to Articles 136 and 138(1) and (2) of the [Withdrawal Agreement](#) (25 November 2018). These are respectively, the provisions applicable after 31 December 2020 relating to the applicable law concerning the EU's "own resources"; and the EU law applicable after 31 December 2020 relating to the UK's participation in the implementation of the Union's programmes and activities committed under the 2014–2020 MFF.

60 European Commission and HM Government, *Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, 19 March 2018, Article 163: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691366/20180319_DRAFT_WITHDRAWAL_AGREEMENT.pdf [accessed 3 December 2018]

61 Oral evidence taken before the EU Justice Sub-Committee, 27 March 2018 (Session 2017–19), [Q 49](#) (Suella Fernandes MP)

62 [Withdrawal Agreement](#) (25 November 2018), Article 171(1)

chair); the EU and the UK would nominate two panellists each from the agreed list and would have to agree on the chair. The panel would usually be expected to issue a binding decision within twelve months. Further rules of procedure relating to the arbitration process are contained in Annex IX to the Withdrawal Agreement.

57. If either party failed to comply with a ruling of the arbitration panel, then after the reasonable period of time has expired, the other party may request the arbitration panel to impose a lump sum or penalty payment as a temporary remedy to enforce compliance.⁶³ If the party in breach fails to pay, or if that party has still not complied with the original panel decision after a further six months, the other party may then suspend obligations either arising from the Withdrawal Agreement (other than Part Two on citizens' rights) or parts of "any other agreement between the Union and the United Kingdom under the conditions set out in that agreement".⁶⁴

The proposed role of the CJEU in the arbitration process

58. Although Article 175 makes clear that arbitration panel rulings would be "binding on the Union and the United Kingdom" and that both parties should "take any measures necessary to comply in good faith" with the ruling, the procedure retains a limited, but nonetheless important role for the CJEU.
59. Article 174 provides that where a dispute raises a question of interpretation of EU law, including of a provision of EU law referred to in the Withdrawal Agreement, or a question of whether the UK has complied with its obligations under Article 89(2),⁶⁵ the arbitration panel should "request the Court of Justice of the European Union to give a ruling on the question". Any such ruling would be binding on the arbitration panel. This is similar to the current procedure by which domestic courts can refer questions of EU law to the CJEU.⁶⁶
60. While Article 174 does not provide for the direct jurisdiction of the CJEU over disputes between the UK and the EU, its precise effect is already contested. It appears that the CJEU may retain an important and potentially decisive role.⁶⁷ Moreover, depending on the nature of the CJEU's response to a question about the interpretation of EU law, it may or may not come close to determining the dispute.⁶⁸ However, such a provision may be necessary to guarantee the legal autonomy of the EU.
61. It is worth recalling that there is a precedent for an arbitration clause of this kind in the Moldova, Ukraine and Georgia Association Agreements, which

63 [Withdrawal Agreement](#) (25 November 2018), Articles 177 and Article 178(1)

64 [Withdrawal Agreement](#) (25 November 2018), Article 178(2)

65 [Withdrawal Agreement](#) (25 November 2018), Article 89(2) relates to judgments and orders of the CJEU handed down before the end of the transition period.

66 Article 267, [Treaty on the Functioning of the European Union](#)

67 Public Law for Everyone, *The Brexit Withdrawal Agreement: Taking back "control of our laws"?* (23 November 2018): <https://publiclawforeveryone.com/2018/11/23/the-brexit-withdrawal-agreement-taking-back-control-of-our-laws> [accessed 3 December 2018]

68 See for instance: Sylvia de Mars, *The Role of the CJEU in the (November) Withdrawal Agreement*, (16 November 2018): <https://medium.com/@sylviademars/the-role-of-the-cjeu-in-the-november-withdrawal-agreement-thoughts-9cc0ca6c472> [accessed 3 December 2018]

make provision for an arbitration panel which can then make references to the CJEU. A similar model is also under discussion with Switzerland.⁶⁹

Analysis of the arbitration provisions

62. In our report *Dispute resolution and enforcement after Brexit* we noted a number of disadvantages to arbitration, as compared to a court-based process, including the fact that it is usually conducted in private; decisions do not create clear, binding precedent; and, that individual litigants (including companies) would not have access to any arbitral arrangements, but would instead have to lobby governments.⁷⁰ There is also a risk that the referral mechanism for the CJEU to determine questions of EU law, discussed above, may mean that the CJEU gives a judgment on the point of substance in any dispute and that its decision may be determinative. Professor Carl Baudenbacher, the former President of the EFTA Court, has argued that:
- “A solution based on the model of the Ukraine Agreement would have a substantially detrimental impact on legal certainty. The arbitration procedure itself would take time and would be in addition to the processing time of cases before the ECJ.”⁷¹
63. Article 180 of the Withdrawal Agreement seeks to deal with one of these concerns, by providing that the Union and the UK should “make the arbitration panel rulings and decisions publicly available in their entirety”.⁷² There is a proviso that this is “subject to the protection of confidential information”, and that “in no case dissenting opinions of an arbitration panel shall be published”.⁷³ Part IX of the Procedural Rules⁷⁴ also states that the parties can agree for hearings to be closed to the public. In such cases, the rule provides that the parties shall “maintain the confidentiality of the hearings of the arbitration panel”.
64. On the broader question of access to justice, it is clear from Article 4 of the Withdrawal Agreement that the UK’s domestic courts (to which individual litigants have access) will continue to be able to have regard to the judgments of the CJEU in interpreting the Withdrawal Agreement, even after the end of the transition period. More generally the carve-out for cases involving citizens’ rights, under Article 158 of the Agreement, means that a domestic court or tribunal could continue to make references to the CJEU for eight years after the end of the transition period.
65. It is not evident that there are any other straightforward options other than arbitration. The option of ‘docking’ with the EFTA Court as an off-the-shelf solution to the problem of dispute resolution, which was considered in some detail in our report *Dispute resolution and enforcement after Brexit*,⁷⁵ has been

69 See for instance ‘Swiss soften line on foreign judges in bid to bolster EU ties’, *Financial Times* (5 March 2018), available at: <https://www.ft.com/content/17d840b6-209b-11e8-a895-1ba1f72c2c11> [accessed 3 December 2018]

70 European Union Committee, *Dispute resolution and enforcement after Brexit* (15th Report, Session 2017–19, HL Paper 130), paras 110, 156–162

71 Professor Dr. Dr. h.c. Carl Baudenbacher, ‘Britzerland’: the problem of dispute resolution post-Brexit (29 October 2018): <http://blogs.lse.ac.uk/brexit/2018/10/29/britzerland-the-problem-of-dispute-resolution-post-brexit> [accessed 3 December 2018]

72 *Withdrawal Agreement* (25 November 2018), Article 180(2)

73 *Withdrawal Agreement* (25 November 2018), Article 180(1)

74 *Withdrawal Agreement* (25 November 2018), Annex IX

75 European Union Committee, *Dispute resolution and enforcement after Brexit*, (15th Report, Session 2017–19, HL Paper 130), paras 34–58 and 123

consistently rejected by the Government, even for adjudicating disputes over the Withdrawal Agreement.⁷⁶

66. Finally, it appears that this arbitration model may eventually form part of the governance mechanism for the future relationship. The Political Declaration notes that the parties will “base arrangements for dispute settlement and enforcement on those provided for in the Withdrawal Agreement”. This is explored further in Chapter 5. This would mean that the CJEU would have a limited, but continuing, role in relation to questions of EU law that arose in disputes with the UK, even after its obligations under the Withdrawal Agreement fell away.
67. **The provisions relating to dispute resolution in the Withdrawal Agreement retain a limited role for the CJEU. This role is, however, attenuated when compared with that envisaged in the March 2018 draft text.**
68. **Notably, the inclusion of an arbitration mechanism, with input from the CJEU only in circumstances where questions of Union law arise, moves toward the Government’s goal of ending the direct jurisdiction of the CJEU, while still respecting the autonomy of the European Union’s legal order and the role of the CJEU. Nonetheless, it is possible that concerns may arise if a decision of the CJEU were effectively to determine a dispute between the parties.**
69. **Other provisions, such as the retention of CJEU jurisdiction during the transition, and over the provisions relating to citizens’ rights for an eight-year period following the transition, have long been accepted by the UK Government, though they too arguably fall short of the Government’s original red line on CJEU jurisdiction.**
70. **We welcome the fact that the Agreement addresses concerns raised in our earlier report, *Dispute resolution and enforcement after Brexit*, about the need for a longstop, or limitation period, for any claims that arise before, or during, the transition period. This will give parties involved in legal disputes greater certainty as to the legal regime which will apply to their case.**

Citizens’ rights

71. The rights of EU citizens in the UK and UK nationals in the EU were one of the first issues that this Committee addressed after the referendum, and were explored in detail in our December 2016 report on *Brexit: acquired rights*.⁷⁷ In May 2018 the Office for National Statistics estimated that there were 3.7 million individuals in the UK who were born elsewhere in the EU.⁷⁸

76 See Department for Exiting the European Union, Government Response to the European Union Committee’s report *Dispute resolution and enforcement after Brexit* (5 July 2018): <https://www.parliament.uk/documents/lords-committees/eu-justice-subcommittee/brexit-enforcement-dispute-resolution/Response-to-HoL-EU-Justice-Sub-Committee-report-dispute-resolution-and-enforcement-after-Brexit.pdf> [accessed 3 December 2018]

77 European Union Committee, *Brexit: acquired rights* (10th Report, Session 2016–17, HL Paper 82)

78 Office for National Statistics, *Population of the UK by country of birth and nationality: 2017* (24 May 2018): <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/ukpopulationbycountryofbirthandnationality/2017> [accessed 3 December]

It is estimated that over a million UK nationals live in other EU states.⁷⁹ Despite appeals from across the political spectrum, and our own clear recommendations,⁸⁰ the rights of these individuals have yet to be legally assured.

72. There was broad agreement between the UK and the EU on the parameters of the deal on citizens' rights as part of the Joint Report, published in December 2017. These commitments were transposed into a text which was agreed at negotiator level upon the publication of the March 2018 draft of the Withdrawal Agreement. The current version of the legal text is little changed. However, not all of the issues have been resolved in the way sought by stakeholders.
73. In particular, there is no agreement on a lifelong right of return (where family or work obligations mean that an individual has to leave the country for five years and does not benefit from settled status); or on the onward free movement rights of UK citizens in the EU. In addition, the UK Government has decided not to issue new residence documents for settled status free of charge.⁸¹ Nor has provision been made for EU citizens resident in the UK to retain their voting rights in elections for the European Parliament. This includes Irish citizens resident in Northern Ireland, notwithstanding the prospect, if the 'backstop' came into force, that substantial elements of EU law would continue to apply in Northern Ireland.⁸²

Analysis of the citizens' rights provisions

74. Part Two of the Withdrawal Agreement⁸³ protects EU citizens who were residing in the UK and UK nationals who were residing in one of the 27 EU Member States at the end of the transition period, provided that such residence was in accordance with the Free Movement Directive (the EU law relating to free movement).⁸⁴ Free movement itself will end at the conclusion of the transition period, unless the UK and EU sign a separate treaty as part of the future relationship extending it.
75. EU citizens and UK nationals arriving in a host state during the transition period would enjoy the same rights and obligations under the Withdrawal Agreement as those who arrived before 30 March 2019.
76. For those who fall within the scope of the citizens' rights provisions, the substantive conditions of residence will remain the same as under current EU law on free movement. Where the host state opts for a mandatory registration system, decisions for granting the new residence status under the Withdrawal Agreement will be made based on objective criteria (i.e. no

79 Full Fact, 'Brits abroad: how many people from the UK live in other EU countries?' (1 February 2018): <https://fullfact.org/europe/how-many-uk-citizens-live-other-eu-countries/> [accessed 3 December 2018]

80 European Union Committee, *Brexit: acquired rights* (10th Report, Session 2017–19, HL Paper 82), para 47

81 See for instance British in Europe, *Letter to Theresa May* (21 November 2018): <https://britishineurope.org/wp-content/uploads/2018/11/PM-letter-21.11.18-FINAL-No-sigs-.pdf> [accessed 3 December 2018] and The3million, Newsletter (November 2018): <https://mailchi.mp/the3million/newsletter104-740353> [accessed 3 December 2018]

82 See also para 164.

83 *Withdrawal Agreement* (25 November 2018), Articles 9–39

84 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, *OJ L 158* (30 April 2004), pp 77–123

discretion), and on the basis of exactly the same conditions as are set out in the Free Movement Directive. Articles 6 and 7 of that Directive confer a right of residence for up to five years on those who work or have sufficient financial resources and sickness insurance, and Articles 16, 17 and 18 of that Directive confer a right of permanent residence on those who have resided legally for five years.

77. Citizens will meet these conditions if they are:
- workers or self-employed; or
 - have sufficient resources and comprehensive sickness insurance; or
 - are family members of some other person who meets these conditions; or
 - have already acquired the right of permanent residence and are therefore no longer subject to any conditions.
78. In addition, those who would otherwise be protected by the Withdrawal Agreement, but who have not yet acquired permanent residence rights—if they have not lived in the host state for at least five years—will continue to be entitled to reside in the host state and acquire permanent residence rights even after Brexit. In the UK, such individuals would be granted a domestic residence right of “pre-settled status”, entitling them to reside in the UK for a further five-year period in order to qualify for settled status. A person with pre-settled status would be entitled to spend up to two years in a row outside the UK without losing that status. But such a person would nonetheless have to demonstrate continuous residence to qualify for settled status.⁸⁵
79. Individuals covered by the Agreement could be joined by close family members (spouses, civil and unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) at any point in the future, as long as the relationship existed on the last day of transition and still exists when the person wishes to come to the UK.
80. The Withdrawal Agreement provides for EU rules on social security coordination to apply to the beneficiaries of the citizens’ part of the Withdrawal Agreement. Such persons will maintain their rights to healthcare, pensions and other social security benefits.⁸⁶
81. There are also specific provisions covering workers (including frontier workers),⁸⁷ and the continuing recognition of professional qualifications of individuals who have taken up residence in a host state before the end of the transition period.⁸⁸

85 See HM Government, ‘Settled and pre-settled status for EU citizens and their families’: <https://www.gov.uk/settled-status-eu-citizens-families/what-settled-and-presettled-status-means> [accessed 3 December 2018]

86 [Withdrawal Agreement](#) (25 November 2018), Articles 30–36. Article 33 is a new provision, which would extend the Articles on social security co-operation to Norway, Iceland, Liechtenstein and Switzerland, provided that each of those countries entered into a corresponding agreement with the UK and the EU. The ‘explainer’ published by the UK Government notes that agreements on citizens’ rights and a small number of separation issues are also being negotiated by the UK with Norway, Iceland, Switzerland and Liechtenstein (see [Explainer for the agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#)).

87 [Withdrawal Agreement](#) (25 November 2018), Articles 24, 25, and 26 (a frontier worker lives in one EU member state and works in another, returning home daily or weekly).

88 [Withdrawal Agreement](#) (25 November 2018), Articles 27, 28 and 29

82. The right to reside permanently in the host state could only be lost through an absence of more than five years, unless it was restricted due to a person's conduct.⁸⁹
83. The citizens' rights provisions have proved contentious due, in part, to concerns that they might exclude individuals who do not qualify under the Free Movement Directive (for example, people who are not economically active and are not in possession of comprehensive sickness insurance). Although the Government has indicated that it will not apply these rules strictly to individuals who apply for settled status under the domestic settlement scheme, until individuals are granted settled status, they could be at risk of removal. This may result in differential treatment of individuals during the transition period, depending upon whether they have applied for settled status or not. On 19 November 2018, the Immigration Minister, Rt Hon Caroline Nokes MP, offered this explanation:

“The draft Withdrawal Agreement does not protect those who are not exercising or are misusing free movement rights. This means that, while free movement rules continue to operate to the end of the planned implementation period, there will remain scope, as a matter of law, for a person to be removed from the UK on those grounds. It is logical that this is reflected in the Immigration Rules for the EU Settlement Scheme.”⁹⁰

84. Article 18(1)(p) would allow a host state to conduct systematic checks on criminality and security prior to issuing a residence document. Applicants can be required to declare past criminal convictions “in accordance with the law of the State of conviction at the time of the application”.
85. Although applicants would have access to judicial and administrative redress if their applications for residence status were refused for any reason, under Article 20(4) the host state would be entitled to remove applicants who submitted “fraudulent” or “abusive” applications prior to the final judgment in any appeal. Thus in effect appeals in such circumstances would not suspend the removal of the applicant.

Supervision and enforcement of the agreement on citizens' rights

86. The implementation and application of citizens' rights in the EU would be monitored in the EU by the European Commission, acting in conformity with the EU Treaties. In the UK, this role would be fulfilled by an “independent authority”. This authority, which will presumably be set up under domestic statute, would be granted “powers equivalent to those of the European Commission”, to receive and investigate complaints from Union citizens and their family members, to conduct inquiries on its own initiative, and to bring legal actions before UK courts concerning alleged breaches by the administrative authorities of the UK of their obligations under Part Two of the Withdrawal Agreement.⁹¹
87. The Commission and the UK authority should each report annually to the specialised committee on citizens' rights, and the Joint Committee would assess, no earlier than eight years after the end of the transition period, the

89 [Withdrawal Agreement](#) (25 November 2018), Article 20 sets out restrictions of the rights of residence which may be imposed due to conduct.

90 Written Answer [191403](#), Session 2017–19

91 [Withdrawal Agreement](#) (25 November 2018), Article 159

functioning of the independent authority. Following this assessment, the Joint Committee would be able to decide that the UK could abolish the authority.

88. In its Fact Sheet on the Withdrawal Agreement, the European Commission notes:

“The text of the Withdrawal Agreement on citizens’ rights is very precise, so that it can be relied upon directly by EU citizens in British courts, and by UK nationals in the courts of the Member States. Any national law provisions that are not consistent with the provisions of the Withdrawal Agreement will have to be disapplied.”⁹²

89. Moreover, as noted at paragraph 53, above, UK courts would continue to be able to refer cases to the CJEU for preliminary rulings over the interpretation of Part Two of the agreement for eight years following the end of transition.
90. The roll out of the settled status scheme is currently being scrutinised by the EU Justice Sub-Committee, which has taken evidence from the Immigration Minister and the Home Secretary, Rt Hon Sajid Javid MP.⁹³ We understand that the Government has successfully trialled the software in a phase one ‘Beta’ phase involving around 1,000 people; and that it is moving ahead with a further trial involving 250,000 EU nationals over the coming months. The Sub-Committee will continue to keep the scheme under review.

What is not included in the citizens’ rights provisions

91. The European Parliament, among others, has called for the citizens’ rights provisions to ensure that any documents securing residence rights should be issued free of charge; that EU citizens granted settled status in the UK should enjoy a lifelong right of return; and that UK nationals in the EU should be entitled to move freely between Member States (‘onward free movement’).⁹⁴ These efforts have been unsuccessful. Under Article 18 of the Withdrawal Agreement charges for documents would be permissible, provided that they do not exceed those imposed on nationals of the host state for the issuance of similar documents.⁹⁵ Although the House of Commons Exiting the European Union Committee has proposed linking onward free movement rights for UK citizens to a right of unlimited return for EU citizens in the UK,⁹⁶ the Withdrawal Agreement addresses neither issue.⁹⁷ In the event, any

92 European Commission, ‘Brexit Negotiations: What is in the Withdrawal Agreement’ (14 November 2018): http://europa.eu/rapid/press-release_MEMO-18-6422_en.htm [accessed 3 December 2018]

93 Oral evidence taken before the EU Justice Sub-Committee, 21 June 2018 (Session 2017–19), [QQ 18–27](#) (Rt Hon. Sajid Javid)

94 See European Parliament resolution on the framework of the future EU-UK relationship (2018/2573(RSP)) (14 March 2018): http://www.epgencms.europarl.europa.eu/cmsdata/upload/e9270809-8891-4d5d-bea4-1a764178e282/European_Parliament_resolution_on_the_framework_of_the_future_EU-UK_relationship_14_March.pdf [accessed 3 December 2018]

95 The UK Government has indicated that the charges would usually be £65 for those over 16 and £32.50 for those under 16 (although there would be some exemptions, notably for those who already have indefinite leave to remain). HM Government, ‘Settled and pre-settled status for EU citizens and their families’: <https://www.gov.uk/settled-status-eu-citizens-families/what-settled-and-presettled-status-means> [accessed 3 December 2018]

96 See for instance House of Commons Exiting the European Union Committee, *The progress of the UK’s negotiations on EU withdrawal: the rights of UK and EU citizens* (Eighth Report, Session 2017–19, HC 1439), paras 6–13

97 For commentary on this issue see for instance The3million, Newsletter (November 2018): <https://mailchi.mp/the3million/newsletter104-740353> [accessed 3 December 2018]

discussion of onward free movement rights will now have to form part of the negotiations on future relations.

What happens in the event of a no deal Brexit?

92. It remains unclear what would happen to citizens in the event of a ‘no deal’ Brexit. A small number of EU citizens in the UK may already have been through the Government’s ‘Beta’ test scheme and obtained settled status. But Government statements in respect of the remaining EU nationals in the UK have lacked detail.
93. On 21 September 2018, the Prime Minister said, in respect of EU nationals in the UK:
- “I want to be clear with you that even in the event of no deal your rights will be protected. You are our friends, our neighbours, our colleagues. We want you to stay.”⁹⁸
94. This commitment was reiterated on 5 November by the Immigration Minister, Rt Hon Caroline Nokes MP, but she highlighted that the position of UK citizens resident in the EU 27 is less clear:
- “This country has made an offer to EU citizens and we have made it very clear that we want them to stay, but the same cannot be said of some of our European counterparts. This matter is pressed with Ministers at every available opportunity, and indeed with ambassadors and the EU, because it is important that British citizens living in the EU 27, the majority of whom are in France and Spain, are afforded the protections to which we believe they are entitled under the withdrawal agreement.”⁹⁹
95. **One of the Government’s primary aims in negotiating Brexit has been a desire to end free movement of people. A necessary consequence has been that the citizens’ rights guaranteed under the Withdrawal Agreement fall short in some respects of those enjoyed during the UK’s EU membership. Most notably, for UK citizens in the EU, onward free movement rights are not guaranteed. EU nationals in the UK will generally be obliged to pay a small fee to register for settled status, and will face automatic criminal records checks, if they wish to remain after Brexit.**
96. **Notwithstanding these specific reservations, the agreement on citizens’ rights is fairly comprehensive and will, if the Withdrawal Agreement is ratified, allow individuals and families to continue with their lives and careers with a minimum of disruption. We therefore broadly welcome the citizens’ rights provisions.**
97. **It remains far from clear what would happen to EU citizens in the UK and UK nationals in the EU in the event of a ‘no deal’ Brexit. Throughout the negotiations, we have called on the Government to give a clear and unilateral assurance that all EU nationals in the UK would be entitled to stay and retain their rights.**

98 Rt Hon Theresa May MP, ‘PM Brexit negotiations statement: 21 September 2018’ (21 September 2018): <https://www.gov.uk/government/news/pm-brexit-negotiations-statement-21-september-2018> [accessed 3 December 2018]

99 HC Deb, 5 November 2018, [col 1233](#)

98. **We therefore welcome the Prime Minister’s assurance that the rights of EU citizens will be protected in the event of a ‘no deal’ Brexit, and we call upon the Government formally to undertake to honour all the obligations set out in Part Two of the Withdrawal Agreement, regardless of whether the Agreement itself is ratified.**
99. **We are concerned that similar commitments have not been received from the EU 27, and call on the Government as a matter of urgency to seek assurances that the rights of UK nationals in the EU will be secured on a reciprocal basis.**

The financial settlement

100. The provisions relating to the financial settlement were agreed at negotiator level as early as March 2018. The relevant provisions are found at Part Five of the Agreement, between Articles 133–157.
101. Although the UK Government estimates that the settlement—which includes the UK’s continuing contributions to the EU Budget during the transition period—would have a net cost of around £35–39 billion, the final figure will depend on future events. For example, the settlement will be calculated and paid in euros, and the sterling figure is thus exposed to changes in exchange rates.¹⁰⁰
102. Thus, as the European Commission Fact Sheet sets out, “The agreement is not about the amount of the UK’s financial obligation, but about the methodology for calculating it.”¹⁰¹ The House of Commons Library Paper, *Brexit: the exit bill*¹⁰² provides a detailed summary of the agreement reached on the settlement, which will become legally binding in international law if the Withdrawal Agreement is concluded by the UK and the EU. We do not rehearse this analysis at length in this report.
103. Under the Agreement the UK would, among other things:
- contribute to and participate in the 2019 and 2020 EU budgets, during the transition period, on the same basis as if it were a Member State;¹⁰³
 - contribute towards some EU liabilities incurred before 31 December 2020 (for example pensions);
 - remain liable for certain EU contingent liabilities;
 - receive back the €3.5 billion of capital it has paid into the European Investment Bank (EIB) in 12 instalments from 2019;¹⁰⁴ and

100 [Withdrawal Agreement](#) (25 November 2018), Article 133

101 European Commission, ‘Brexit Negotiations: What is in the Withdrawal Agreement’ (14 November 2018): http://europa.eu/rapid/press-release_MEMO-18-6422_en.htm [accessed 3 December 2018]

102 House of Commons Library, *Brexit: the exit bill*, Briefing Paper [Number 8039](#), 22 November 2018. See also Institute for Government, *Financial Settlement Agreement* (8 December 2018): <https://www.instituteforgovernment.org.uk/explainers/financial-settlement-agreement> [accessed 3 December 2018]

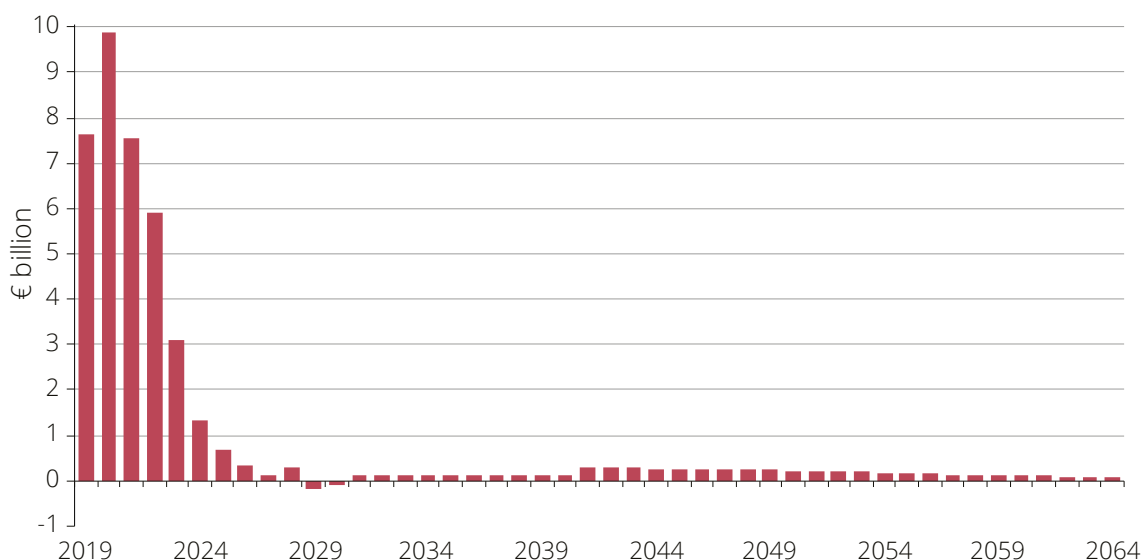
103 The scheduled end of the transition period, 31 December 2020, coincides with the end of the current (2014–2020) EU Multiannual Financial Framework, under which the UK’s contributions have already been calculated.

104 In oral evidence to the EU Financial Affairs Sub-Committee on 21 November 2018, HM Treasury stated that the UK had secured repayment of its ‘paid-in capital’, but that the EIB Statutes did not contain provisions for the repayment of any profits accumulated over the term of UK membership. Session 2017–19, [Q 78](#) (Robert Jenrick MP)

- continue to participate in some of the EU’s overseas programmes, such as the European Development Fund, until the current round ends.

104. As set out in Figure 1 and Table 1, the Office for Budget Responsibility has estimated that while the bulk of the payments under the settlement will be made by the mid-2020s, some elements of the settlement will still be payable until 2064.

Figure 1: Estimated path of settlement payments



Source: OBR, *Economic and fiscal outlook: October 2018*, Cm 9713, October 2018, Supplementary fiscal table 2.39: https://cdn.obr.uk/EFO_October-2018.pdf [accessed 3 December 2018]

Table 1: OBR’s estimate of the settlement and its components

	Payment period	Amount	
		€ billion	£ billion
UK Participation in EU annual budgets to 2020	2019–2020	18.1	16.3
Reste à liquider	2021–2028	21.3	19.8
Other net liabilities	2019–2064	2.8	2.6
Total	2019–2064	42.2	38.7

Source: OBR, *Economic and fiscal outlook: October 2018*, Cm 9713, Box 4.1 (October 2018): https://cdn.obr.uk/EFO_October-2018.pdf [accessed 3 December 2018]

The UK’s legal obligations in the event of ‘no deal’

105. In March 2017 we published our report on *Brexit and the EU budget*.¹⁰⁵ In that report we asked the question, whether the United Kingdom was under any legal obligation to reach a financial settlement. The point we made in our 2017 report was important, but narrowly drawn and often misrepresented: if there is no agreement, the UK could in principle leave the EU without accepting any liability for outstanding financial obligations. This is in part

¹⁰⁵ European Union Committee, *Brexit and the EU budget* (15th Report, Session 2016–17, HL Paper 169)

because there is no court with obvious jurisdiction to enforce such liabilities once the UK has left the EU. But, as we also noted, the consequences of such a decision would be profound, and the UK Government has acknowledged that even in the event of a ‘no deal’ Brexit, the UK Government would accept some of the liabilities listed in the Withdrawal Agreement. The then Secretary of State for Exiting the EU, Rt Hon Dominic Raab MP, told us in evidence in August that whatever the outcome of the negotiations, the UK Government would “pay their dues”.¹⁰⁶

106. At the same time, he accepted that a no deal scenario would have an impact upon any financial settlement:

“I do not think that it would be safe for either side to assume that the financial settlement as agreed as part of the withdrawal agreement would then be paid in precisely the same shape, with the same speed or at the same rate if there was no deal.”

107. **The provisions on the financial settlement set out in Part Five of the Withdrawal Agreement do not set out the precise amount of the UK’s financial obligations, but set out the agreed methodology for calculating them. The precise amounts paid will be contingent upon future events.**
108. **The Government has acknowledged that it will ‘pay its dues’, whether or not the Withdrawal Agreement is successfully concluded, while also indicating that, in the absence of an Agreement, both the total amount, and the timetable for repayments, could vary from what is currently proposed. We reiterate the conclusion reached in our March 2017 report on *Brexit and the EU budget*, that the consequences of seeking to leave the EU without settling claims under the EU budget would be profound.**
109. **Much of the sum payable relates to UK contributions to the 2019 and 2020 EU budgets, which coincide with the transition period, during which the UK will continue to be subject to EU law and be part of the EU Single Market.**
110. **The payment of these sums is not contingent upon a successful outcome to negotiations on future UK-EU relations. Once the UK and the EU conclude the agreement under Article 50 of the TEU, the UK’s financial commitments will crystallise as clear legal obligations in international law, irrespective of the outcome of the future negotiations.**

Other provisions

111. Part Three of the Withdrawal Agreement broadly covers what are referred to as ‘separation issues’. These issues are not considered in detail in this report, though the Committee may return to them in future inquiries. The

¹⁰⁶ Oral evidence taken on 29 August 2019 (Session 2017–19), [Q 7](#) (Rt Hon. Dominic Raab MP). On 3 December, the Attorney General expanded on the Government’s position on the financial settlement, noting that “we would have obligations to pay a certain amount of money were we to leave the European Union without a deal”. While it might be difficult to enforce this obligation in public international law, he noted that “if this country, acknowledging that such obligations probably exist or do exist, did not pay them, it would be likely to cause the deepest resentment”. HC Deb, 3 December 2018, [col 570](#)

list below gives an impression of the broad range of matters that are covered between Articles 40–125.

- Title I: Goods placed on the market;
- Title II: Ongoing customs procedures;
- Title III: Ongoing value added tax and excise duty matters;
- Title IV: Intellectual Property;
- Title V: Ongoing police and judicial cooperation in criminal matters;
- Title VI: Ongoing judicial cooperation in civil and commercial matters;
- Title VII: Data and information processed or obtained before the end of the transition period or on the basis of this agreement;
- Title VIII: Ongoing public procurement and similar procedures;
- Title IX: Euratom related issues;
- Title X: Union judicial and administrative procedures;
- Title XI: Administrative cooperation procedures between Member States and the United Kingdom;
- Title XII: Privileges and immunities; and,
- Title XIII: Other issues relating to the functioning of the institutions, bodies, offices and agencies of the Union.

112. The Government’s Explanatory Memorandum makes clear that these provisions “aim to provide legal certainty”, providing the technical basis for the winding down of ongoing processes and arrangements “to ensure an orderly withdrawal”.¹⁰⁷

¹⁰⁷ HM Government, *Explainer for the agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union* (14 November 2018) p 13: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756376/14_November_Explainer_for_the_agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_1.pdf [accessed 3 December 2018]

CHAPTER 3: THE TRANSITION PERIOD

The general principles of transition

113. Arrangements for the transition period are dealt with in Articles 126–132 of the Agreement.¹⁰⁸ The transition period will run from when the Agreement comes into force until 31 December 2020.¹⁰⁹ Article 132 of the Agreement provides for a single decision by the Joint Committee to extend the length of the transition period “for up to one or two years” (see paragraph 130).¹¹⁰
114. During the transition period, as a general principle, all EU law will apply to the UK¹¹¹ and produce “the same legal effects as those which it produces within the Union and its Member States”.¹¹² The EU’s institutions and agencies, including the Court of Justice of the European Union (CJEU), will continue to enjoy all their current powers to enforce, police, and review the application of EU law within the UK, including the application of the Withdrawal Agreement.¹¹³
115. While EU law will continue to apply, several provisions deprive the UK Government, and its citizens, of the institutional and constitutional privileges of membership. For UK citizens, this includes the rights to vote and stand in European and/or municipal elections and to engage in European Citizens’ Initiatives.¹¹⁴ UK citizens will also cease to be eligible for recruitment as officials and/or servants of the EU’s institutions, offices or agencies.¹¹⁵
116. Article 128, which deals with “Institutional Arrangements”, works in conjunction with Article 7 to remove the UK’s right as an EU Member State to participate in the EU’s institutions and agencies during the transition period. The UK will also lose its limited right to initiate EU legislation;¹¹⁶ will no longer be able to participate in new legislation pursued via enhanced cooperation;¹¹⁷ and will lose its current right to opt into new Justice and Home Affairs (JHA) measures, but will be able to opt into measures that “amend, build upon or replace existing [JHA] measures”.¹¹⁸
117. The Agreement also states that during transition the UK Parliament will “not be considered a national Parliament of a Member State”, and will lose its

108 The Government has consistently described the period immediately following the UK’s exit from the EU on 29 March 2019 as an ‘implementation period’. Successive drafts of the Withdrawal Agreement, on the other hand, have referred to a ‘transition period’, and although Article 126 of the current text refers to “a transition or implementation period”, the term ‘transition’ is still used throughout the text. We therefore use the term ‘transition period’ in this report. See also para 129 of European Union Committee, *Brexit: deal or no deal* (7th Report, Session 2017–19, HL Paper 46).

109 [Withdrawal Agreement](#) (25 November 2018), Article 126

110 The original text said that the single extension could be until “31 December 20XX”.

111 [Withdrawal Agreement](#) (25 November 2018), Article 127

112 [Withdrawal Agreement](#) (25 November 2018), Article 127(3)

113 [Withdrawal Agreement](#) (25 November 2018), Article 131

114 [Withdrawal Agreement](#) (25 November 2018), Article 127(1)(b)

115 [Withdrawal Agreement](#) (25 November 2018), Article 127(7)(c)

116 [Withdrawal Agreement](#) (25 November 2018), Article 128(3)

117 [Withdrawal Agreement](#) (25 November 2018), Article 127(4)

118 [Withdrawal Agreement](#) (25 November 2018), Article 127(5). The UK can also be compelled to participate by the Council in such measures where the UK’s non-participation “in the amended version of an existing measure makes the application of that measure inoperable” for the other EU Member States (Article 4a of Protocol (No 21) of the [Treaty on the Functioning of the European Union](#)).

privileges, for example to issue subsidiarity Reasoned Opinions.¹¹⁹ The UK Parliament will continue, however, to receive consultation documents (Green and White Papers and Communications) directly from the Commission,¹²⁰ along with draft legislative acts placed in the public domain.¹²¹

Exceptions to the general principles

118. There are few exceptions to the general principle that the UK should be excluded from the EU's institutions and agencies during transition. This is despite the fact that in many of the agencies provision is made for third country cooperation. The Agreement says that "upon invitation" the UK will be able to send national experts to "meetings or parts of meetings" of "Commission expert groups" and/or EU "bodies, offices or agencies".¹²² But this will only happen in exceptional circumstances and when the discussion involves legislation "to be addressed to the United Kingdom,¹²³ or where the presence of a UK expert "is necessary and in the interest of the Union". UK experts will not be allowed to vote in these meetings.¹²⁴
119. With regard to fisheries and the negotiation and agreement of Total Allowable Catches (TACs) under the Common Fisheries Policy, the UK will be "consulted in respect of the fishing opportunities related to the United Kingdom",¹²⁵ and will be allowed to "provide comments" to the Commission ahead of the preparation of its annual Communication on fishing opportunities.¹²⁶
120. **In our report *Brexit: deal or no deal* we identified two secure means, consistent with the terms of Article 50 TEU, whereby a 'standstill period' could be established after exit day, in order to provide reassurance to citizens and businesses and buy time to finalise an agreement on future relations. Either the European Council could, by unanimous agreement, agree to a request to extend the negotiating period, or the Article 50 Agreement could set a date later than 29 March 2019 for the UK's withdrawal to take effect. At the same time, we recognised the political sensitivities over both these approaches.**
121. **Under this Agreement, save for a few minor exceptions, transition means that the UK will carry all the responsibilities of EU membership without the institutional rights and privileges enjoyed by EU Member States. Throughout the transition period, the UK will remain subject to EU law and the EU institutions and agencies that oversee its application and operation, without any institutional say over its development, application and content. This falls short of a genuine 'standstill' period.**
122. **Despite the possibility of invitations being extended to UK officials to attend relevant meetings in exceptional circumstances, we are concerned about the sudden removal of the UK's institutional**

119 Under Protocol (No 2) to the [Treaty on the Functioning of the European Union](#) on the Application of the Principles of Subsidiarity and Proportionality.

120 Article 1 of Protocol (No 1) to the [Treaty on the Functioning of the European Union](#) on the Role of National Parliaments in the European Union

121 [Withdrawal Agreement](#) (25 November 2018), Article 128(2)

122 [Withdrawal Agreement](#) (25 November 2018), Article 128(5)

123 [Withdrawal Agreement](#) (25 November 2018), Article 128(5)(a)

124 [Withdrawal Agreement](#) (25 November 2018), Article 128(5)(b)

125 [Withdrawal Agreement](#) (25 November 2018), Article 130(1)

126 [Withdrawal Agreement](#) (25 November 2018), Article 130(2)

privileges, particularly those relating to the EU’s many executive agencies.

Free trade agreements

123. Specific provisions address the ramifications of the UK’s withdrawal from the EU for the suite of international agreements to which the EU is party and in which the UK currently participates by virtue of its EU membership.
124. The Agreement confirms that the UK “shall be bound”¹²⁷ by all such agreements and must refrain, in this context, from any action “which is likely to be prejudicial to the Union’s interests”.¹²⁸ During transition, UK representatives will not be permitted to participate in the “work of any bodies set up by international agreements concluded by the Union”, unless the UK participates in its own right or is invited to do so by the EU.¹²⁹
125. A footnote¹³⁰ confirms that the EU “will notify” all the other parties to these agreements (that is, third countries) “that during the transition period [the UK] is to be treated as a Member State for the purposes of these agreements”.¹³¹
126. The UK will be free to “negotiate, sign and ratify” its own international agreements in areas falling within the “exclusive competence of the Union” (such as free trade agreements) during the transition period. But such agreements cannot enter into force or apply to the UK during transition without prior authorisation from the EU.¹³²
127. **We broadly welcome Article 129, which leaves the UK free to pursue its own free trade agreements during the transition period, provided they do not enter into force before it expires.**
128. **However, beyond the limitations to this freedom implied by the Protocol on Ireland/Northern Ireland (the so-called backstop), questions remain about the detailed operation of this provision. For example, it is silent about the extent of the UK’s freedom to renegotiate during transition the myriad EU agreements dealing with matters where responsibilities are shared between the EU and the individual Member States.**
129. **Furthermore, Article 129, which attempts to carry over the application to the UK of the suite of existing EU international agreements, is one-sided and unclear. While it expressly binds the UK to its obligations under these international agreements, and calls on the Government to refrain from any action in this context deemed “prejudicial” to the Union’s interests, the UK’s status as a party to these agreements after 29 March 2019 is dealt with by a footnote. We are concerned that the solution to such a significant question is subject to a footnote of questionable legal status. The attitude of third countries to continuing UK participation in agreements with the EU remains unclear.**

127 [Withdrawal Agreement](#) (25 November 2018), Article 129(1)

128 [Withdrawal Agreement](#) (25 November 2018), Article 129(3)

129 [Withdrawal Agreement](#) (25 November 2018), Article 129(2)

130 [Withdrawal Agreement](#) (25 November 2018), Article 129(1)

131 A footnote to [Withdrawal Agreement](#) (25 November 2018), Article 132 providing for the extension of the Transition Period states: “In case of extension, the Union will notify other parties to international agreements thereof.”

132 [Withdrawal Agreement](#) (25 November 2018), Article 129(4)

Extending the transition period

130. Article 132 of the Withdrawal Agreement may prove one of the most significant elements of the text. It was amended on 22 November 2018, to make clear that the Joint Committee (for which see paragraphs 24–38) would be entitled, before 1 July 2020, to adopt a single decision extending the transition period for “up to one or two years”.¹³³
131. As we note in Chapter 5, the breadth and complexity of negotiations on the future UK-EU relationship are such that it will be difficult to complete them by the end of June 2020. In circumstances where these negotiations are still continuing (or the two sides have been unable to resolve the question of the Irish border) an extension of the transition period would be the only way to avoid activating the backstop on 1 January 2021. The Prime Minister, in a debate on 15 November 2018, described the provision as an “insurance policy”:
- “As I have said many times, I do not want to extend the implementation period and I do not believe we will need to do so ... but if it happens that at the end of 2020 our future relationship is not quite ready, the UK will be able to make a choice between the UK-wide temporary customs arrangement or a short extension of the implementation period.”¹³⁴
132. The key benefit of extending the transition period, if negotiations on the future relationship are incomplete, would be to maintain continuity and stability: the UK could remain part of the EU Single Market, subject to the continuing application of EU rules, until such time as the new relationship is ready to be implemented. The downside is that the UK would remain subject to all the obligations described above (including those under new Regulations and Directives) and subject to the jurisdiction of the CJEU beyond 2020.
133. Moreover, under Article 132(2)(d), if the UK wished to extend the transition period, it would be required to make an additional contribution to the EU budget. This would not occur if the UK simply fell into the backstop.¹³⁵ The Prime Minister has acknowledged that this is one of the criteria which would be relevant in deciding which of the two options was preferable.¹³⁶
134. Article 132(2) sets out a number of derogations from Article 127 (which defines the scope of the transition). It indicates that the UK would be considered a third country for the purposes of implementation of EU programmes and activities committed to under the Multiannual Financial Framework applying from 2021; and that the applicable EU law concerning the EU’s own resources would not apply after 31 December 2020. The UK would also not be a party to the Common Agricultural Policy during any extension to the transition period, and could devise its own system of

133 The original text said that the single extension could be until “31 December 20XX”.

134 HC Deb, 15 November 2018, [col 432](#)

135 See Chapter 4 for further analysis of the Protocol on Ireland/Northern Ireland.

136 HC Deb, 15 November 2018, [col 464](#)

agricultural subsidies as long it did not exceed the UK's CAP expenditure in 2019.¹³⁷

135. The mechanism for calculating the actual payment for the extension is set out at Article 132(3). However, the amount that would be payable is far from clear. The “status of the United Kingdom during that period” would be taken into account, as well as the “modalities of payment of the amount”.
136. The decision on extending transition would be made by the Joint Committee. This means that it would not be subject to veto by individual Member States in Council, but it would still need agreement with the EU and would be subject to “negotiation”.¹³⁸ As we have noted above (paragraph 37), there is also the question of transparency in the Joint Committee. It is far from clear what information would be provided to the UK Parliament (and the negotiation of the Withdrawal Agreement has not provided a good precedent). It is also far from clear what role Parliament would have in approving any such extension (and the relevant payment which would fall due). Members may wish to raise these matters when any Bill implementing the Withdrawal Agreement is brought before Parliament.
137. Finally, it is possible that even if the transition period is extended for a period of up to two years, at considerable cost, the negotiations with the EU may still not reach a satisfactory conclusion. In such circumstances, while the UK would have avoided a ‘cliff edge’ in December 2020, it would still ultimately fall into the backstop.
138. **The Government has described the option to extend the transition period as an “insurance policy” in case the negotiations on the future relationship are not completed. However, this insurance policy gives rise to a number of significant issues. It would have to be triggered several months before the end of the transition period. It would then have to be negotiated by the UK and the EU. The cost of extension is unclear. And should the parties be unable to conclude their negotiations on the future relationship at the end of the extended transition, it would not stop the UK falling into the proposed backstop.**
139. **An extension of the transition period would also mean that the UK would remain subject to EU law (including new Regulations and Directives and the jurisdiction of the CJEU) for an extended period, without any representation in the European Parliament, the Council, or the CJEU. The risk that is inherent in the UK becoming a ‘rule taker’ (subject to new EU laws, without having had any say in their preparation or adoption) will become more acute, the longer the transition period lasts.**

137 [Withdrawal Agreement](#) (25 November 2018), Article 127(1)(c) sets out a detailed derogation from Articles [107](#), [108](#) and [109](#) of the Treaty on the Functioning of the EU, which would “not apply to measures of the UK authorities, including on rural development, supporting the production of and trade in agricultural products in the United Kingdom up to the annual level of support which shall not be more than the total amount of expenditure incurred in the United Kingdom under the Common Agricultural Policy in 2019, and provided that a minimum percentage of that exempted support complies with the provisions of Annex 2 to the WTO Agreement on Agriculture.” This does not apply to the Common Fisheries Policy. However, there may be a separate agreement on fisheries and aquaculture (see para 153).

138 HC Deb, 15 November 2018, [col 456](#)

140. **Given that any decision on extending the transition period would have to be taken by the Joint Committee, Members may wish to seek clarification from the Government on the role that Parliament will play in authorising any extension.**

CHAPTER 4: PROTOCOL ON IRELAND/NORTHERN IRELAND

Basic principles and conditions

141. The Agreement includes a Protocol on Ireland/Northern Ireland dealing with the so-called backstop arrangements. The Protocol seeks to maintain “continued North-South cooperation” and avoid a “hard border” on the island of Ireland, while protecting the 1998 Belfast/Good Friday Agreement “in all its dimensions”.
142. The opening provisions set out a number of basic principles and conditions. These include:
- respect for the “essential state functions and territorial integrity of the United Kingdom”;¹³⁹
 - recognition that any change to the status of Northern Ireland can “only be made with the consent of a majority of its peoples”;¹⁴⁰ and
 - reference to the “unique circumstances on the island of Ireland”.¹⁴¹
143. Emphasis is placed on the Protocol’s temporary nature. The stated objective of the Withdrawal Agreement “is *not* to establish a permanent relationship between the Union and the United Kingdom” (emphasis added), and its arrangements will “apply unless and until they are superseded, in whole or in part, by a subsequent agreement”.¹⁴² To this end, the UK and the EU undertake to “use their best endeavours” to conclude an agreement that supersedes the Protocol before the transition period expires (currently December 2020).¹⁴³ However, as we explore in Chapter 5, we have concerns about how realistic it is to expect to conclude an agreement in that timeframe.
144. **We welcome the Government’s and the EU’s commitment to use their “best endeavours” to agree an alternative agreement addressing the UK’s future relationship with the EU before the end of the transition period. If successful, this will render recourse to the so-called backstop arrangement for Ireland/Northern Ireland unnecessary. However, this is an ambitious timetable, even allowing for one extension of the transition period.**

The rights of individuals and the Belfast/Good Friday Agreement

145. Article 4 of the Protocol, headed “Rights of individuals”, deals with the UK’s undertakings to ensure “no diminution of rights, safeguards and equality of opportunity”, as set out in Section 6 of the 1998 Belfast/Good Friday Agreement, including with respect to six EU Directives that implement the EU’s principle of equal treatment between men and women.¹⁴⁴
146. The UK also promises to “continue to facilitate” the work of the bodies created by the 1998 Agreement “in upholding human rights and equality standards”. These include the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland, and the Joint Committee of

139 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 1(2)

140 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 1(1)

141 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 1(3)

142 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 1(4)

143 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 2(1)

144 See [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Annex 1.

representatives of the Human Rights Commission of Northern Ireland and Ireland.

Common Travel Area

147. Our December 2016 report on *Brexit: UK-Irish relations* outlined the history and operation of the Common Travel Area (CTA) between the UK and Ireland. We stressed the vital importance of the full retention of its provisions post-Brexit.¹⁴⁵
148. Article 5 of the Protocol seeks to protect the CTA arrangements, “while fully respecting” the rights conferred on individuals by EU law. It provides that the UK will ensure that the CTA can continue to apply, in such a way as not to affect Ireland’s responsibilities under EU law to respect the free movement of EU citizens and their family members “to, from, and within Ireland”.
149. **We have repeatedly emphasised the historic importance of the Common Travel Area as a basis for cooperation between the UK and Ireland. We therefore welcome the explicit commitment to its retention contained in the Withdrawal Agreement.**

The “single customs territory” and the movement of goods

UK-wide obligations

150. At the heart of the so-called backstop is a “single customs territory” containing the EU and the UK,¹⁴⁶ which will operate until the future UK-EU relationship “becomes applicable”.¹⁴⁷
151. Under the arrangement, the UK would be obliged to abide by the EU’s rules governing the prohibition of all customs duties on imports and exports (and charges having equivalent effect) for trade in goods between the EU and the UK.¹⁴⁸ For trade in goods between the UK (as a member of the “single customs territory”) and third countries, the UK would also have to “align” with all EU customs tariffs and “harmonise” its commercial policy with the EU’s Common Commercial Policy to the extent necessary to give effect to the “single customs territory”,¹⁴⁹ including commitments on tariff rate quotas established under the WTO’s 1994 General Agreement on Tariffs and Trade (GATT) and the EU’s trade defence regime.¹⁵⁰
152. In order to ensure the “proper functioning” of the “single customs territory” and “the maintenance of [a] level playing field”¹⁵¹ within it, the UK would also undertake to implement EU standards on taxation (including a number of EU Directives that support the “principles of good governance in the

145 European Union Committee, *Brexit: UK-Irish relations* (6th Report, Session 2016–17, HL Paper 76)

146 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 6(1) states that: “accordingly, Northern Ireland is in the same customs territory as Great Britain”.

147 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 6(1)

148 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 2 of Annex 2

149 Article 4 of Annex 2 of the Protocol on Ireland/ Northern Ireland. Under the EU’s Common Commercial Policy, the EU Member States confer responsibility on the European Commission to negotiate, on their behalf, the EU’s external trade policy.

150 In circumstances where the European Commission believes that imports are unfairly damaging EU based producers, for example by undercutting them with low prices, it can use its trade defence policy to impose tariffs and restrict imports by employing so-called anti-dumping measures.

151 [Withdrawal Agreement](#) (25 November 2018) Protocol on Ireland/Northern Ireland, Article 6

area of taxation”),¹⁵² and not to fall below whatever EU standards apply at the end of the transition period (the provisions refer to “non-regression”¹⁵³) in respect of environmental protection¹⁵⁴ and labour and social standards.¹⁵⁵ While the backstop remains in place, the UK also agrees to match the EU’s rules on State owned undertakings,¹⁵⁶ and, as they develop, the rules on State aid¹⁵⁷ and competition law.¹⁵⁸ Additional responsibilities with regard to Northern Ireland are set out below in paragraphs 165–172.

153. The EU’s rules on fisheries and aquaculture are not covered by the Protocol and will not apply within the “single customs territory”. But the EU and the UK both promise “to use their best endeavours” to conclude and ratify a separate agreement covering these matters before July 2020.¹⁵⁹
154. **If, by the end of the transition period (including any extended transition period), the UK and the EU have failed to reach agreement on future relations, then to avoid a hard border on the island of Ireland, the Protocol creates a “single customs territory” comprising the UK and the EU. The UK would be required to abide by the EU’s rules on the prohibition of customs duties, and to align with the EU’s Common Commercial Policy, to the extent necessary to give effect to the “single customs territory”, including tariffs on external trade with third countries.**
155. **The UK would also undertake to ensure a level playing field within the “single customs territory” across a range of associated EU policies, including environmental protection law, labour and social standards, State aid, and competition law. We note that the UK’s obligation to match developments in the areas of State aid and competition law would continue for as long as the backstop remained in force.**
156. **The Protocol on Ireland/Northern Ireland would thus tie the UK closely to EU law across these associated policy areas. Moreover, UK membership of the “single customs territory” and the inherent requirement that the UK aligns with the EU’s Common Commercial Policy (including tariffs on external trade) would significantly curtail the UK’s freedom to pursue an independent trade policy.**

152 See [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 1 of Annex 4.

153 For example, [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 2 of Annex 4, states “With the aim of ensuring the proper functioning of the “single customs territory”, the Union and the United Kingdom shall ensure that the level of environmental protection provided by law ... is not reduced below the level provided by the common standards applicable within the Union and the United Kingdom at the end of the Transition period”.

154 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 2 of Annex 4

155 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 4 of Annex 4

156 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 25 of Annex 4

157 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 7 of Annex 4

158 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 16 of Annex 4

159 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Articles 6(1) and 2 July 2020 is the date by which the parties to the Agreement must have decided whether or not to extend the transition period.

157. **We also note that fisheries and aquaculture are specifically excluded from the “single customs territory”, and that the UK and EU promise to use their best endeavours to negotiate a separate agreement dealing with these matters.**

Institutional oversight of the Protocol

158. The Protocol would impose a number of institutional commitments designed to police the UK’s adherence to the principles of EU law that would apply to it during the Protocol’s application. The additional responsibilities applying to Northern Ireland are discussed in paragraphs 165–172 below.
159. On taxation, the UK’s compliance would be overseen by the Joint Committee.¹⁶⁰ The UK would ensure the availability of “effective” administrative and judicial proceedings against violations of principles of environmental protection and labour and social standards.¹⁶¹ Additionally, for environmental protection, the UK would have to establish a public body empowered to monitor, report and oversee its application.¹⁶² In contrast, labour and social standards would be monitored by “an effective system of labour inspections”.¹⁶³
160. The UK would have to establish an “independent authority” to preserve a “robust and comprehensive framework for State Aid control that prevents undue distortions of trade and competition”.¹⁶⁴ This authority would operate without “political or external influence”¹⁶⁵ and cooperate closely with the European Commission, including on all decisions it “intends to adopt”.¹⁶⁶ The authority would enjoy, in the UK, the same powers and functions as the Commission.¹⁶⁷ Similar provisions would apply in relation to competition law.¹⁶⁸
161. The UK would also be obliged to ensure that its courts and tribunals enjoyed powers to review and enforce compliance with its State aid responsibilities,¹⁶⁹ and that effective remedies and sanctions applied for enforcing EU competition law.¹⁷⁰

160 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 1(4) of Annex 4

161 See [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Articles 3(1) and 6 of Annex 4.

162 See [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Articles 3(2) and 6 of Annex 4.

163 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 6 of Annex 4

164 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 7 of Annex 4

165 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland Article 9(1) of Annex 4

166 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 10 of Annex 4

167 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 9(3) of Annex 4

168 While the UK is not obliged to set up a new independent authority dealing with Competition Law, the UK’s existing Competition Law Body, the Competition and Markets Authority, will be obliged to work similarly closely with the EU Commission. See [Withdrawal Agreement](#) (25 November 2018) Protocol on Ireland/Northern Ireland, Articles 22-23 of Annex 4.

169 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 11 of Annex 4

170 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland Article 24 of Annex 4

162. **While the backstop remained in place, the UK would be required not to fall below EU standards applying at the end of the transition period on environmental protection and social and labour standards. UK compliance with these EU standards would remain the responsibility of national institutions and/or the Joint Committee.**
163. **In contrast, the UK’s commitments with regard to State aid and competition law would go considerably further. The Protocol proposes a system of very close cooperation between the UK’s authorities and the European Commission, which reflects the additional burden of having to match EU developments in these areas.**
164. **If recourse to the backstop were to prove necessary, this would effectively weave the UK into the EU’s State aid and competition rules. It would also leave the relevant UK institutions subordinate to the European Commission, which is responsible for policing and providing institutional oversight of the EU’s rules on State aid and competition law.**

Additional responsibilities for the UK regarding Northern Ireland

165. The Protocol would place further regulatory and technical responsibilities deriving from EU law on the UK with respect to Northern Ireland. These would include:
- application to goods moving from the EU into Northern Ireland¹⁷¹ of the EU’s rules prohibiting quantitative restrictions on imports, and measures having equivalent effect;¹⁷²
 - EU customs legislation as defined by Article 5(2) of Regulation 952/2013;¹⁷³
 - EU rules on VAT and excise;¹⁷⁴
 - additional rules binding Northern Ireland to the EU’s State aid rules in the context of the production and trade in agricultural products;¹⁷⁵ and
 - a requirement to introduce a “United Kingdom (Northern Ireland)” or “UK(NI)” marking for the labelling of goods produced in Northern Ireland.¹⁷⁶
166. The Protocol would also require Northern Ireland’s compliance with a host of EU technical rules and product standards set out across the 68 pages of Annex 5 to the Protocol on Ireland/Northern Ireland.¹⁷⁷ Article 11 of the Protocol would keep Northern Ireland within the Single Electricity Market on the island of Ireland.¹⁷⁸ In our 2017 report on *Brexit: energy security* we supported preservation of the Single Electricity Market, but noted that if EU energy legislation were to continue to apply in Northern Ireland, the

171 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 8(1)

172 Articles 34 and 36 of the [Treaty on the Functioning of the European Union](#)

173 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 6(2)

174 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland Article 9 and Annex 6

175 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 12

176 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 8(2)

177 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 10

178 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 11

Government would “need to consider whether to devolve additional powers to the Northern Ireland Assembly”.¹⁷⁹

167. Given the different regulatory arrangements that would apply in Great Britain and Northern Ireland, the Protocol would introduce additional measures to supervise and enforce Northern Ireland’s compliance with the relevant aspects of EU law. The Protocol would also confer full jurisdiction on the CJEU to oversee the operation of the EU law applying to Northern Ireland; including the power to hear applications for preliminary rulings¹⁸⁰ submitted by the Courts of Northern Ireland;¹⁸¹ the UK would enjoy the right to participate in these proceedings as if it were a Member State. The EU’s executive agencies would also enjoy their normal powers within Northern Ireland.¹⁸² In spite of this, Northern Ireland would not have any representation in the EU Institutions, including the European Parliament.¹⁸³
168. Also in recognition of the different regulatory and technical regimes operating between Great Britain and Northern Ireland, the Protocol includes a provision that seeks to ensure “unfettered market access for goods”¹⁸⁴ moving from Northern Ireland to Great Britain. It requires the EU and the UK to “use their best endeavours” to facilitate the movement of these goods, and the Joint Committee is enjoined to keep the issue “under constant review”.¹⁸⁵
169. **If the Protocol on Ireland/Northern Ireland were to come into effect, its provisions would apply the EU’s customs legislation to Northern Ireland, and would impose additional technical and regulatory responsibilities on the UK with regard to Northern Ireland, including in respect of the free movement of goods. Taken together, these rules would bind Northern Ireland even more closely to EU law than those applying to Great Britain within the “single customs territory”. Moreover, Northern Ireland’s compliance with these EU rules would be policed and enforced by the European Commission, the EU’s executive agencies and the CJEU, without the additional institutional privileges inherent in EU membership, save for the UK’s right to participate in Northern Ireland-based CJEU proceedings.**
170. **The introduction of different regulatory and technical rules on opposite sides of the Irish Sea would carry risks for the UK’s internal market, as evidenced by Article 7 of the Protocol, which appears to envisage goods exported from Great Britain to Northern Ireland being subject to regulatory checks. We highlight the importance of the Joint Committee’s responsibility to keep this issue under constant review.**
171. **The differing technical and regulatory rules that would apply in Great Britain and Northern Ireland, if recourse to the Protocol is necessary, would also raise profound implications for the movement of goods between Great Britain and the EU 27. There would not be**

179 European Union Committee, *Brexit: energy security* (10th Report, Session 2017–19, HL Paper 63), para 150

180 Under Article 267 of the [Treaty on the Functioning of the European Union](#)

181 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 14(4)

182 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 14(5)

183 It has been suggested that this may raise concerns under the European Convention on Human Rights, particularly in the light of the case of *Mathews v UK*, Application no. 24833/94, (1999) 28 EHRR 361.

184 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland Article 7(1)

185 [Withdrawal Agreement](#) (25 November 2018), Protocol on Ireland/Northern Ireland, Article 7(2)

a frictionless border for goods between Great Britain and the EU, unless this was agreed in the negotiations on the future relationship, or the EU and the UK Government agreed to align Great Britain with the additional regulatory rules applying to Northern Ireland. Hence, although Northern Ireland would benefit from a free movement of goods regime, this would not apply to goods transported between the EU 27 and Great Britain. These would potentially be subject to regulatory checks, which could have a significant impact on UK ports.

172. We have previously recommended that Northern Ireland should, as part of the future UK-EU relationship, remain part of the Single Electricity Market on the island of Ireland. We welcome the fact that the provisions of the Protocol show that the UK and EU negotiators are aware of the importance of this issue, which should also figure in negotiations on the future UK-EU relationship. We draw attention to our earlier conclusion that such an outcome might require the devolution of additional powers to the Northern Ireland Assembly once the devolved institutions are reinstated.

Other areas of North-South cooperation

173. In order to maintain the “necessary conditions for continued North-South cooperation”, Article 13 of the Protocol would require it to be implemented and applied “in full respect of” EU law in the following areas: environment, health, agriculture, transport, education and tourism, energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport. The operation of this provision would be kept “under constant review” by the Joint Committee.
174. We have, in previous reports, repeatedly highlighted the crucial importance to UK and Irish citizens, particularly those living in border areas, of maintaining North-South cooperation. For instance, in our report on *Brexit: UK-Irish relations* we called for a reaffirmation of the UK’s and Ireland’s “continued support for existing cross-border cooperation”,¹⁸⁶ and in our report on *Brexit: reciprocal healthcare*, we called on both sides “to treat healthcare as a priority in the final settlement of issues relating to the island of Ireland”.¹⁸⁷
175. We note that Article 13 of the Protocol, on cross-border cooperation, covers a wide range of areas of EU competence, including some areas where the EU’s competence is merely to support action by the Member States. Notwithstanding the breadth of this provision, we reiterate the conclusions reached in earlier reports, as to the vital importance of cross-border cooperation to the lives of UK and EU citizens, particularly those living close to the Irish land border.

Reviewing the backstop

176. Article 20 of the Protocol, headed ‘Review’, sets out a process through which the provisions of the Protocol, in whole or in part, might be brought to an end. The EU or UK would first notify the other party of their view that the Protocol should cease to apply and, within six months of such a notification,

186 European Union Committee, *Brexit: UK-Irish relations* (6th Report, Session 2016–17, HL Paper 76), para 262

187 European Union Committee, *Brexit: reciprocal healthcare* (13th Report, Session 2017–19, HL Paper 107), para 124

the Joint Committee would meet “at ministerial level to consider the notification”. The Joint Committee would be able to seek an opinion from the institutions created by the 1998 Belfast/Good Friday Agreement.

177. Following this consideration, a decision would be taken by the UK and the EU jointly in the Joint Committee, having regard to the objectives listed in Article 1 of the Protocol, and acting “in full respect of Article 5 of the Withdrawal Agreement” (the good faith provision). Although it is not spelled out directly in the Protocol, if the parties were unable to reach an agreement on this issue, then under the general provisions relating to dispute resolution contained in Part 6 of the Withdrawal Agreement, either party could institute the arbitration procedure (described above, paragraph 53–61).
178. In a debate in the House of Commons on 3 December 2018, the Attorney General, Rt Hon Geoffrey Cox QC MP, addressed the question of whether the UK could unilaterally withdraw from the backstop. He accepted that there was “no unilateral right for either party to terminate this arrangement. This means that if no superseding agreement can be reached within the implementation period, the protocol would be activated and in international law would subsist even if negotiations had broken down.” On the “good faith” obligation, he acknowledged that if a dispute between the UK and the EU were to be referred for arbitration, “clear and convincing evidence would be required to establish a breach of that obligation”.¹⁸⁸
179. **Article 20 of the Protocol is clear that there would be no way for one party to the Agreement to bring the Protocol on Ireland/Northern Ireland to an end on a unilateral basis. Any such decision would be made in the Joint Committee, by mutual consent, having regard to the objectives set out in Article 1 of the Protocol and the duty of good faith set out in Article 5 of the Withdrawal Agreement. Should this provision lead to an intractable dispute between the parties, either side could institute the arbitration procedure set out in Part 6 of the Withdrawal Agreement.**

188 HC Deb, 3 December 2018, [col 547](#)

CHAPTER 5: THE POLITICAL DECLARATION ON THE FUTURE RELATIONSHIP

Overview

180. Article 50(2) TEU states: “In the 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.” The European Council has consistently stated that the provisions of Article 50 do not permit formal negotiations on the future relationship to commence until the Member State’s withdrawal has taken effect.
181. A seven-page ‘Outline of the Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom’ was published alongside the draft Withdrawal Agreement on 14 November 2018.¹⁸⁹
182. Following further intense negotiation, on 22 November a full 26-page draft ‘Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom’ was published. This expanded the outline Declaration, as well as adding new material. The Political Declaration was approved by the meeting of the European Council (Art. 50) on 25 November,¹⁹⁰ and the Government presented the final text to Parliament on 26 November.¹⁹¹
183. This chapter analyses in turn each section of the Political Declaration, highlighting key issues, with particular reference to the findings of the reports published by the Committee since the referendum.

Introduction to the Political Declaration

184. The introduction to the Political Declaration sets out overarching principles and shared “values and interests”, deriving from the EU and the United Kingdom’s “common European heritage”, which should underpin the future relationship. It expresses a shared belief in “free and fair trade, defending individual rights and the rule of law, protecting workers, consumers and the environment, and standing together against threats to rights and values from without or within”.¹⁹² It also acknowledges the “unique context” of the UK’s status as a former Member State.¹⁹³
185. The Declaration “establishes the parameters of an ambitious, broad, deep and flexible partnership “, working in the interests of EU and UK citizens,

189 Outline of the Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom (14 November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756378/14_November_Outline_Political_Declaration_on_the_Future_Relationship.pdf [accessed 28 November 2018]

190 European Commission, European Council (Art. 50) Conclusion, 25 November 2018 (25 November 2018): <https://www.consilium.europa.eu/en/press/press-releases/2018/11/25/european-council-art-50-conclusions-25-november-2018> [accessed 28 November 2018]

191 Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom (26 November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759054/26_November_-_Political_Declaration_setting_out_the_framework_for_the_future_relationship_between_the_European_Union_and_the_United_Kingdom.pdf [accessed 28 November 2018]

192 [Political Declaration](#) (26 November 2018), para 3

193 [Political Declaration](#) (26 November 2018), para 5

and based on “a balance of rights and obligations, taking into account the principles of each party”.¹⁹⁴ On the EU side, these include “the integrity of the Single Market and the Customs Union and the indivisibility of the four freedoms”, and that the future relationship “cannot amount to the rights and obligations of membership”. On the UK side, these include the sovereignty of the UK, the protection of its internal market, and respecting the result of the referendum, with particular reference to “the development of its independent trade policy and the ending of free movement of people”.

186. In effect, therefore, paragraph 4 of the Declaration is a restatement of the key ‘red lines’ of the two sides to the negotiation, which we summarised in our report on *UK-EU relations after Brexit*. In that report we commented that the two sides’ emphasis on ‘red lines’ had risked closing off rather than opening up the options for establishing a fruitful and lasting relationship. We noted that the benefits that the EU and the UK sought from their future relationship would “come at a cost, and may entail trade-offs between economic and political considerations”. In particular, we argued that from the UK’s perspective, “the greater the benefits sought, for instance in respect of trade in services, the greater the compromises that will be needed”.¹⁹⁵
187. The Political Declaration also acknowledges that the UK-EU relationship may evolve over time, and therefore “may encompass areas of cooperation” beyond those described in the document itself.
188. **We welcome the Political Declaration’s acknowledgement of the shared heritage, values and interests of the UK and EU, and its recognition of the unique context of their future relationship given the UK’s post-withdrawal status as a former Member State. It is therefore important to acknowledge that the future relationship may evolve over time.**
189. **The Political Declaration notes the need to strike a balance between the rights and obligations of both sides. In practice, however, it restates their respective red lines at the outset. This demonstrates just how difficult it has been for both sides to compromise: the scope and ambition of the Declaration must be judged in that light.**

Part I: initial provisions

190. Paragraphs 6 and 7 develop the theme of shared values, focusing on the commitment of both sides to “human rights and fundamental freedoms, democratic principles, the rule of law and support for non-proliferation”. The EU will remain bound by the Charter of Fundamental Rights of the European Union (which reaffirms rights arising out of the European Convention on Human Rights), but while the outline Political Declaration referred to the UK’s commitment to the ECHR, the final text replaces this with a commitment to “respect the framework” of the ECHR.
191. Both sides commit to maintaining personal data protection. The Commission will start the process of assessing the UK’s data protection regime as soon as possible after the withdrawal date, with a view to adopting an ‘adequacy decision’ by the end of the transition period on 31 December 2020, allowing

194 [Political Declaration](#) (26 November 2018), para 4

195 European Union Committee, [UK-EU relations after Brexit](#) (17th Report, Session 2017–19, HL Paper 149), paras 22, 60 and 103

data flows to proceed without interruption.¹⁹⁶ In return the UK commits within the same timeframe to take steps to ensure uninterrupted transfers of personal data to the EU. There is also a general, but undefined, commitment to “appropriate cooperation between regulators”.

192. The Declaration then gives a generic undertaking to establish “principles, terms and conditions” for UK participation in EU programmes, including those in “areas such as science and innovation, youth, culture and education, overseas development and external action, defence capabilities, civil protection and space”. Though the programmes themselves are not specified, this commitment could be the basis for negotiating continued UK participation in several EU programmes, including but not limited to:
- Horizon Europe (a €100 billion research and innovation programme, the successor to Horizon 2020);
 - Erasmus+, the EU’s programme for education, training, youth and sport;
 - The European Development Fund;
 - Defence projects supported by the European Defence Fund;
 - The EU Civil Protection Mechanism;
 - The EU Space Programme (which has been proposed for 2021–27).
193. The precise means by which the UK will participate in, and have influence over the management of, these programmes remains to be clarified. But among the key principles for UK participation will be a fair and appropriate financial contribution, sound financial management, fair treatment of participants, and “management and consultation appropriate to the nature and cooperation between the Parties”.¹⁹⁷
194. The parties will also “explore” UK participation in the European Research Infrastructure Consortia (ERICs), subject to relevant conditions and the level of UK participation in science and innovation programmes. There is a more detailed commitment to a future PEACE PLUS programme in Northern Ireland, maintaining current funding proportions.¹⁹⁸
195. As well as contemplating UK participation in specific programmes, the Declaration, under the heading of ‘Dialogues’, states that the parties should look for opportunities to cooperate in areas such as culture, education, science and innovation. It acknowledges the importance of mobility and temporary movements of objects and equipment in these areas—though it is unclear whether the reference to ‘mobility’ in this context is intended to allow for measures to facilitate short-term movement of workers in specific sectors, such as the cultural sector, which are acutely reliant on such movement.¹⁹⁹ The parties will also explore ongoing cooperation between culture and education related groups.²⁰⁰

196 Compare European Union Committee, *The EU data protection package* (3rd Report, Session 2017–19, HL Paper 7), paras 112 and 113

197 [Political Declaration](#) (26 November 2018), para 11

198 [Political Declaration](#) (26 November 2018), paras 12–13

199 See European Union Committee, *Brexit: movement of people in the cultural sector* (18th Report, Session 2017–19, HL Paper 182)

200 [Political Declaration](#) (26 November 2018), para 14

196. While no specific commitment is made, the Declaration notes the UK's intention to explore options for a future relationship with the European Investment Bank.²⁰¹
197. **We welcome the reference in paragraphs 6–7 of the Political Declaration to shared values and the maintenance of human rights and fundamental freedoms. We call on the Government to explain the significance, if any, of the reference to the UK's commitment to the 'framework' of the ECHR, rather than to the ECHR itself.**
198. **We have reported on the critical importance of maintaining uninterrupted data flows during and after Brexit. We therefore welcome the provisions on data protection, which offer a pragmatic way forward.**
199. **We also welcome the prospect of UK participation in EU programmes in areas such as science and innovation, youth, culture and education, overseas development and external action, defence capabilities, civil protection and space, and the possibility of UK participation in European Research Infrastructure Consortiums. We note, however, that such participation will come at a cost, which is yet to be determined, and that the Declaration sheds little light on how UK participation will be achieved, and what influence it will have over these programmes.**
200. **We warmly welcome the shared commitment of the UK and the EU to delivering a future PEACE PLUS programme in Northern Ireland.**
201. **We note the possibility of continuing cooperation in areas such as culture, education, science and innovation. We call on the Government to explain the significance of the reference in paragraph 14 of the Declaration to "the importance of mobility" in enabling such cooperation.**
202. **We note that most of the commitments in Part I of the Declaration remain undefined. Stakeholders in the various sectors affected urgently need clarification of how future UK-EU cooperation will work in practice, in particular in terms of UK participation in EU programmes.**

Part II: economic partnership

203. In view of the importance of the trading relationship between the UK and EU, the parties agree to develop "an ambitious, wide-ranging and balanced economic partnership", encompassing a free trade area "as well as wider sectoral cooperation where it is in the mutual interest of both Parties". It should facilitate trade and investment to the extent possible while respecting both sides' principles and obligations. The Declaration also reiterates the determination of both parties to replace the backstop (discussed in Chapter 4) with a "subsequent agreement that establishes alternative arrangements for ensuring the absence of a hard border on the island of Ireland on a permanent footing".²⁰²

201 [Political Declaration](#) (26 November 2018), para 15

202 [Political Declaration](#) (26 November 2018), paras 16–19

Goods

204. The Declaration envisages “a trading relationship on goods that is as close as possible”, while also acknowledging that “moving goods across borders can pose risks to the integrity and proper functioning of these markets, which are managed through customs procedures and checks”.²⁰³ This appears to rule out “frictionless trade”, based on a common rulebook and a facilitated customs arrangement, as envisaged in the Government’s July 2018 White Paper on *The future relationship between the United Kingdom and the European Union*.²⁰⁴
205. Instead, the aim appears to be to facilitate the movement of goods by reaching “comprehensive arrangements that will create a free trade area, combining deep regulatory and customs cooperation, underpinned by provisions ensuring a level playing field for open and fair competition”.²⁰⁵
206. The Declaration envisages “no tariffs, fees, charges or quantitative restrictions across all sectors”; these will sit alongside “ambitious customs arrangements” that “build and improve on the “single customs territory” provided for in the Withdrawal Agreement which obviates the need for checks on rules of origin”.²⁰⁶ The syntax means that it is unclear whether the reference to rules of origin merely describes the Withdrawal Agreement provisions, or whether the parties will in fact seek to negotiate permanent arrangements with similar effects (notwithstanding the fact that there is no precedent for waiving rules of origin outside a customs union). Nor is there any reference to a common external tariff, which would inhibit the UK’s ability to develop an independent trade policy.
207. The Declaration emphasises the principle of regulatory autonomy, but notes that the UK will consider aligning with EU rules in relevant areas, with particular reference to:
- Technical barriers to trade. The Declaration calls for common principles in relation to standardisation, technical regulations, conformity assessment, accreditation, market surveillance, metrology and labelling.
 - Sanitary and phytosanitary measures. The parties should treat each other as single entities including for certification purposes, and recognise regionalisation on the basis of appropriate epidemiological information.²⁰⁷
208. The parties undertake to explore the possibility of UK “cooperation” with EU Agencies, including (but not explicitly limited to) the European Medicines Agency, European Chemicals Agency and European Aviation Safety Agency. The extent and means of such cooperation are not explained.
209. In an apparent nod to the so-called ‘maximum facilitation’ model advocated by some UK ministers, the Declaration refers to “making use of all available

203 [Political Declaration](#) (26 November 2018), paras 20–21

204 HM Government, *The future relationship between the United Kingdom and European Union*, Cm 9593, July 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725288/The_future_relationship_between_the_United_Kingdom_and_the_European_Union.pdf [accessed 28 November 2018]

205 [Political Declaration](#) (26 November 2018), para 22

206 [Political Declaration](#) (26 November 2018), para 23

207 [Political Declaration](#) (26 November 2018), para 24

facilitative arrangements and technologies”, including mutual recognition of trusted traders’ programmes, administrative cooperation and mutual assistance in the recovery of claims for taxes and duties, and exchange of information to combat customs fraud. It also recalls the December 2017 Joint Report in stating that these arrangements will be considered in developing a permanent solution to avoiding a hard border on the island of Ireland (see paragraph 10).

210. Paragraph 28 of the Declaration adds the general caveat that all future customs arrangements are dependent upon “the extent of the United Kingdom’s commitments on customs and regulatory cooperation”. It follows that there is “a spectrum of different outcomes for administrative purposes as well as checks and controls”. While the parties wish to be “as ambitious as possible”, any agreements will have to respect the “integrity of their respective markets and legal orders”.²⁰⁸
211. **The commitment to tariff-free trade in goods is welcome. Beyond this, the text is careful not to commit to or rule out particular models for cooperation on trade in goods. It consistently reiterates the EU’s principles, with the implication being that some new friction in trade in goods is inevitable. Nevertheless, the extent and nature of such friction is not defined, and the document specifically envisages a “spectrum of outcomes” depending on how closely the UK aligns to the EU on customs and regulation. At the same time, it seeks to reflect the UK’s concerns by omitting reference to a common external tariff, and by holding out the possibility, without commitment, of the use of facilitative arrangements and technologies.**
212. **The Declaration thus leaves a number of key issues open and undefined, including:**
- **The precise nature of UK-EU cooperation on customs and regulation;**
 - **The extent of UK alignment to EU rules that will be necessary to minimise barriers to trade;**
 - **The specific ways in which the proposed customs arrangements will build and improve on the “single customs territory” provided for in the Withdrawal Agreement, and whether and how they will obviate the need for checks on rules of origin, given the Government’s policy not to enter into a permanent customs union with the EU;**
 - **The impact of these arrangements on the UK’s ability to pursue an independent trade policy;**
 - **Whether any new facilitative arrangements and technologies are envisaged, and if so which ones, when, at what cost, and to what effect;**
 - **The extent and means of UK cooperation with EU agencies, including the European Medicines Agency, the European Chemicals Agency and the European Aviation Safety Agency, and whether cooperation with other agencies is envisaged.**

208 [Political Declaration](#) (26 November 2018), para 28

Services and investment

213. The Declaration envisages “ambitious, comprehensive and balanced arrangements on trade in services and investment in services and non-services sectors, respecting each party’s right to regulate”. It aims for substantial sectoral coverage of professional and business services, telecommunications services, courier and postal services, distribution services, environmental services, financial services, transport services and other services of mutual interest.²⁰⁹ There are no explicit references to other services sectors that are important to the UK economy and citizens, including the health, creative and tourism sectors.
214. The Declaration calls for provisions on market access and national treatment under host state rules to ensure services providers and investors are treated in a non-discriminatory manner. In our 2017 report on *Brexit: trade in non-financial services* we expressed concern that the Government had “underestimated the reliance of the services sector on the free movement of persons”.²¹⁰ Paragraph 32 of the Declaration states that “the temporary entry and stay of natural persons for business purposes” should be permitted in defined areas, suggesting that there may be scope for relaxing rules on the movement of people to facilitate the delivery of services.
215. While regulatory autonomy is to be retained, the Declaration states that regulatory approaches should be “compatible to the extent possible”. In particular, there should be horizontal provisions on licensing procedures, and specific regulatory provisions in sectors of mutual interest such as telecommunications, financial services, delivery services and international maritime transport. A framework for voluntary regulatory cooperation, including exchange of information and sharing of best practice, should be established. Appropriate arrangements should be developed on professional qualifications which are necessary to the pursuit of regulated professions, “where in the Parties’ mutual interest”.²¹¹
216. **We welcome the intention to conclude “ambitious, comprehensive and balanced” arrangements on trade in services across a range of sectors. We note, however, the lack of detail in the section on services and investment, and also that some key service sectors are not mentioned in the Declaration. We call on the Government to explain what agreement, if any, it expects to reach in respect of the health, creative and tourism sectors.**
217. **We welcome the commitment to ensure services providers and investors are treated in a non-discriminatory manner, and to allow for the temporary entry and stay of natural persons for business purposes. We invite the Government to confirm whether or not the latter provision envisages preferential arrangements for UK and EU citizens moving between each other’s territories to provide services.**
218. **We welcome the reference to appropriate arrangements for professional qualifications, but note the lack of a specific commitment to reciprocal recognition of qualifications.**

209 [Political Declaration](#) (26 November 2018), paras 29–30

210 European Union Committee, [Brexit: trade in non-financial services](#) (18th Report, Session 2016–17, HL Paper 135), para 292

211 [Political Declaration](#) (26 November 2018), paras 33–36

219. **The statement that “regulatory approaches should be compatible to the extent possible”, and the mechanics of the proposed voluntary framework on regulatory cooperation, also require further clarification.**
220. **In summary, while the provisions on services and investment are helpful as far as they go, they will not provide the current level of access to the EU Single Market enjoyed by the UK’s services sectors. Further details are urgently required to provide service providers and customers with assurance and certainty.**

Financial services

221. The Declaration offers a generalised commitment to preserving “financial stability, investor and consumer protection and fair competition”, but qualifies this by acknowledging the UK’s and the EU’s regulatory and decision-making autonomy. It also records an agreement “to engage in close cooperation on regulatory and supervisory matters in international bodies”.²¹² We have previously noted that it is “crucial that [international] standards remain the base of the UK’s domestic regime”.²¹³
222. The Declaration makes clear that the future relationship will be on the basis of “equivalence frameworks”, and states that both sides will endeavour to conclude these assessments before the end of June 2020. Respective equivalence frameworks will be kept under review, and there is no commitment to a model of economic and regulatory alignment with the EU in financial services as proposed by the Government in its future relationship White Paper. This bears out a warning we issued as long ago as December 2016: “While the UK might be deemed equivalent at the point of withdrawal, there is no guarantee that it will remain so.”²¹⁴
223. Offsetting the prospect of regulatory divergence, the Declaration stresses the mutual importance of “close and structured” political and technical regulatory and supervisory cooperation, including transparency and appropriate consultation on equivalence decisions, information exchange and consultation on regulatory initiatives.²¹⁵
224. **We acknowledge the intention of both sides to complete the equivalence assessment process in respect of financial services by June 2020. We also welcome the commitment to “close and structured” regulatory and supervisory cooperation, and to close cooperation in international bodies. But the agreement to keep respective equivalence frameworks under review falls short of the new economic and regulatory arrangement in financial services proposed by the UK. Nor does the granting of equivalence in June 2020 provide any long-term guarantee—equivalence can be reviewed and withdrawn at any point. As we concluded in December 2016, any agreement on financial services based on equivalence will be an “inadequate substitute” for the passporting regime that the UK participates in as an EU Member State.**

212 [Political Declaration](#) (26 November 2018), para 37

213 European Union Committee, [BrexIt: the future of financial regulation and supervision](#) (11th Report, Session 2017–19, HL Paper 66), para 61

214 European Union Committee, [BrexIt: financial services](#) (9th Report, Session 2016–17, HL Paper 81), para 58

215 [Political Declaration](#) (26 November 2018), para 39

Digital

225. The Declaration calls for the establishment of “provisions to facilitate electronic commerce, address unjustified barriers to trade by electronic means, and ensure an open, secure and trustworthy online environment for businesses and consumers”. These provisions should also facilitate cross-border data flows, though in this respect they should be read alongside the provisions on personal data protection.²¹⁶ Paragraph 41 proposes sectoral agreements to provide for fair and equal access for service providers to public telecommunications networks and services. There is, however, no commitment to the maintenance of free data flows, or to the continued abolition of data roaming charges.
226. **Given its growing importance to the UK’s economy, the specific emphasis on digital services in the Political Declaration is welcome. Nevertheless, the Declaration’s emphasis on the facilitation of data flows, rather than on the retention of free data flows, appears to mark a lowering of ambition when compared with the ongoing development of the EU’s Digital Single Market.**
227. **We regret the lack of reference in the Political Declaration to maintaining the abolition of roaming charges across the UK and the EU 27.**

Capital movements and payments, intellectual property and public procurement

228. Paragraph 43 of the Declaration calls for provisions to enable free movement of capital and payments related to transactions that fall within the scope of the economic partnership.
229. Paragraph 44 states that provision should be made for the “protection and enforcement of intellectual property rights”, going beyond international standards. Paragraph 45 builds on the Withdrawal Agreement in requiring that any such provisions should include appropriate protection for geographical indicators. The parties will retain their own regimes for the exhaustion of intellectual property rights, and the Declaration calls for a mechanism for cooperation and exchange of information on intellectual property issues.
230. Paragraphs 48–49 of the Declaration call for mutual access to public procurement markets, going beyond WTO provisions, alongside a commitment to upholding mutual standards based on those of the WTO Government Procurement Agreement.
231. **We welcome the provisions to enable free movement of capital and payments, on intellectual property (including geographical indicators) and on public procurement, as far as they go. Our Justice Sub-Committee is currently examining EU intellectual property law and the implications of Brexit on UK participation in the Unified Patent Court, and we will offer more detailed comment on this complex area in due course.**

²¹⁶ [Political Declaration](#) (26 November 2018), para 40

Mobility

232. The section on mobility begins by recalling the UK’s red line, that the principle of free movement of persons between the EU and UK should no longer apply. That red line defines the parameters of what can be agreed, and the Declaration accordingly calls for:

- Mobility arrangements based on non-discrimination between the EU Member States and full reciprocity;
- Visa-free travel for short-term visits;
- Consideration of conditions for entry and stay for the purpose of research, study, training and youth exchanges;
- Consideration of social security coordination; and
- The possibility of facilitating the crossing of respective borders for legitimate travel.

There is no reference in this section of the Declaration to reciprocal healthcare, including the European Health Insurance Card (EHIC), as a means of facilitating mobility.

233. What do these provisions mean in practice? We have previously concluded that there might be “benefits to the UK in offering preferential treatment to EU nationals compared to non-EU nationals in the UK’s future immigration regime”.²¹⁷ The Government has instead maintained its red line, and on 15 November the Prime Minister said: “The Declaration will end free movement once and for all. Instead we will have our own new, skills-based, immigration system—based not on the country people come from, but on what they can contribute to the UK.”²¹⁸ The emphasis in the Declaration on “full reciprocity” means that the same applies in reverse: UK nationals will not receive any preferential treatment in the EU 27, as compared with other third country nationals. Set against this fundamental fact, the proposals outlined in the Declaration, such as visa-free travel for short visits, or measures to facilitate border crossings, are necessarily limited in scope and impact.

234. The Declaration also highlights the options for judicial cooperation in matrimonial, parental responsibility and other family law matters. It affirms both parties’ commitment to the effective application of existing international family law instruments to which they are parties.

235. In our 2017 report on *Brexit: justice for families, individuals and businesses?* we expressed concern that the Government had not taken account of the full implications of the impact of Brexit on family law, and warned that leaving the EU without an alternative system in place would have a “profound and damaging impact on the UK’s family justice system and those individuals seeking redress within it”.²¹⁹ The lack of detail in the Declaration suggests that little consideration has yet been given to this complex area.

217 European Union Committee, *Brexit: UK-EU movement of people* (14th Report, Session 2016–17, HL Paper 121), para 169

218 HC Deb, 15 November 2018, cols 432–433

219 European Union Committee, *Brexit: justice for families, individuals and businesses?* (17th Report, Session 2016–17, HL Paper 134), para 145

236. **The provisions on mobility respect and reflect the UK’s decision that the principle of free movement of persons from the EU will no longer apply. The principle of full reciprocity means that UK nationals will therefore also cease to receive preferential treatment by the EU in the future. While the Political Declaration proposes some mitigations, they will not change this significant restriction upon the freedoms currently enjoyed by UK citizens.**
237. **We are concerned at the omission of any reference to reciprocal healthcare, including the European Health Insurance Card, as a means of facilitating mobility. We call on the Government to set out, as a matter of urgency, its plans for maintaining reciprocal healthcare arrangements in the context of the future relationship.**
238. **We are concerned that the Declaration contains so little detail on the impact of UK withdrawal on family law. We remind the Government of our earlier conclusion, that if the UK leaves the EU without alternative arrangements being in place, the UK’s family justice system, and the individuals seeking redress within it, could suffer profound damage.**

Transport

239. The Declaration calls for a Comprehensive Air Transport Agreement covering “market access and investment, aviation safety and security, air traffic management, and provisions to ensure open and fair competition, including consumer protection requirements and social standards”.²²⁰ It also calls for further arrangements to ensure high standards of aviation safety. As set out above, UK membership of the European Aviation Safety Agency will also be considered. The Declaration does not, however, clarify if the proposed Agreement will aim for reciprocal liberalised market access, as proposed in the Government’s future relationship White Paper.
240. The Declaration also calls for “comparable market access for freight and passenger road transport operators, underpinned by consumer protection requirements and social standards for international road transport”. There is no reference to reciprocal market access, as advocated by the Government in its future relationship White Paper, nor to reciprocal cabotage rights.²²¹
241. The Declaration states that the parties should consider “complementary arrangements to address travel by private motorists”, though it is not clear if this will negate the need for UK drivers to carry International Driving Permits or insurance Green Cards when travelling in the EU.
242. The Declaration states that bilateral arrangements should be established to cover cross-border rail services between Belfast and Dublin (with Ireland) and through the Channel Tunnel (with France, Belgium and The Netherlands).
243. It also states that maritime transport passenger and cargo connectivity should be underpinned by the international legal framework, with appropriate arrangements on market access. Maritime safety and security cooperation should be facilitated, including exchange of information between the European Maritime Safety Agency and the UK Maritime and Coastguard Agency.

220 [Political Declaration](#) (26 November 2018), para 60

221 [Political Declaration](#) (26 November 2018), para 62

244. **We welcome the commitment to cooperation in the aviation sector, and in particular the proposed Comprehensive Air Transport Agreement. We call on the Government to confirm whether or not the reference to market access in paragraph 60 of the Declaration is intended to include the fully liberalised market access currently enjoyed by UK and EU operators.**
245. **We also note the high-level commitments to cooperation in the road, rail and maritime sectors. More detail is needed, particularly with respect to road transport, where the Government needs to explain whether the reference to “comparable market access” achieves its aim of “reciprocal access”; whether, in the absence of any reference to reciprocal cabotage rights, new permitting and licencing requirements will be required for transport operators and professional drivers; and whether any “complementary arrangements” in relation to travel by private motorists will negate the need for UK motorists to carry International Driving Permits and insurance Green Cards when travelling in the EU.**

Energy

246. In our 2017 report on *Brexit: energy security* we urged the Government to seek continuing participation of the EU’s Internal Energy Market.²²² The Declaration falls short of this, but does call for cooperation to support the delivery of “cost efficient, clean and secure supplies of electricity and gas, based on competitive markets and non-discriminatory access to networks”. It also calls for a technical cooperation framework between electricity and gas networks operators and organisations in the planning and use of energy infrastructure connecting their systems. This should include mechanisms to ensure as far as possible security of supply and efficient trade over interconnectors.
247. The Declaration advocates a wide-ranging Nuclear Cooperation Agreement between EURATOM and the UK, to enable cooperation between them, including exchange of information, trade in nuclear materials and equipment, and the participation of the UK as a third country in EU systems for monitoring and exchanging information on levels of radioactivity in the environment. The UK’s intention to be associated with EURATOM research and training programmes (which include the ITER nuclear fusion research programme) is noted. The Declaration indicates that the EURATOM Supply Agency intends to reassess the authorisations and approvals for contracts for the supply of nuclear material between the EU and UK, and that there will be cooperation through the exchange of information on the supply of medical radioisotopes.²²³
248. **We regret that the Declaration does not hold out the possibility of continued UK participation in the Internal Energy Market, but at the same time we welcome the high-level commitment to cooperation in the supply of electricity and gas to ensure as far as possible security of supply and trade over interconnectors.**

222 European Union Committee, *Brexit: energy security* (10th Report, Session 2017–19, HL Paper 63), para 67

223 [Political Declaration](#) (26 November 2018), paras 68–70

249. **We welcome the commitment to a wide-ranging Nuclear Cooperation Agreement, including exchange of information, trade in nuclear materials and equipment, monitoring of levels of radioactivity, and exchange of information on medical radioisotopes. While the reference to the UK’s intention to be associated with the EURATOM research and training programmes is a positive step, we call on the Government to provide further clarification of its plans in this regard.**

Fishing opportunities

250. The Declaration notes that the UK will be an independent coastal state, while stating that the parties should cooperate bilaterally and internationally to ensure sustainable fishing and a healthy marine environment. While preserving regulatory autonomy, the parties should cooperate on conservation, management and regulation of fisheries in a non-discriminatory manner. The key provision, in light of current controversy, is paragraph 75, which, in the context of the overall economic partnership, calls for a new fisheries agreement, covering access to waters and quota shares. The parties will endeavour to conclude and ratify this agreement by 1 July 2020, in time for it to be used for determining fishing opportunities for the first year after the transition period.²²⁴
251. An accompanying Declaration by the EU 27, attached to the Minutes of the 25 November European Council (Art. 50) meeting, states that the European Council will be particularly vigilant to protect fisheries enterprises and coastal communities when considering the future relationship: “A fisheries agreement is a matter of priority, and should build on, inter alia, existing reciprocal access and quota shares.”²²⁵ It appears therefore that the EU will insist on a fisheries agreement, providing access to the UK’s waters, as a precondition for agreement of a free trade agreement.
252. In our 2016 report on *Brexit: fisheries* we concluded that geographical proximity, the mobility of fish stocks, international law and the risk of over-exploitation, all necessitated cooperation with the EU and other neighbouring states in fisheries management. We also warned:

“There is a likelihood that the Government may come under pressure to balance the negotiations over a future fisheries relationship, including quota shares and access arrangements, against the negotiations over trade in fish products with the EU.”²²⁶

That warning has been borne out by recent events.

253. **The Political Declaration confirms that the UK will leave the Common Fisheries Policy and become an independent coastal state. Yet, as we warned in December 2016, the EU has also made clear that finalising a future fisheries agreement is a precondition for agreement of the overall economic partnership. While we reiterate our view that cooperation with the EU and other neighbouring states**

224 [Political Declaration](#) (26 November 2018), paras 73–76

225 European Council, Special Meeting of the European Council (25 November 2018): <https://www.consilium.europa.eu/media/37102/xt20017-en18.pdf> [accessed 28 November 2018]

226 European Union Committee, *Brexit: fisheries*, (8th Report, Session 2016–17, HL Paper 78), paras 96 and 170

in fisheries management will be critical in the years to come, difficult negotiations lie ahead.

Global cooperation

254. The Declaration stresses the importance of cooperation between the parties in international fora, “where it is in their mutual interest”. The specific areas identified are: climate change; sustainable development; cross-border pollution; public health and consumer protection; financial stability; and the fight against trade protectionism.²²⁷
255. Paragraph 78 of the Declaration gives more specific detail on climate change, restating both parties’ commitment to international agreements, including those implementing the UN Framework Conventions on Climate Change, such as the Paris Agreement. A key tool in reducing carbon emissions is emissions trading, and paragraph 78 should thus be read alongside paragraph 72 (in the section on energy). This indicates that the parties will consider cooperation on carbon pricing by linking a UK national greenhouse gas emissions trading system with the EU Emissions Trading System.
256. **We welcome the commitment to future UK-EU cooperation to address issues of shared economic, environmental and social interest. We particularly welcome the continued shared commitment to international agreements on climate change, where the UK has been a global leader, and where continuing cooperation with the EU will help to offset any potential loss of influence as a result of Brexit.**

Level playing field for open and fair competition

257. The Declaration states that the future relationship must ensure “open and fair competition”, including in relation to “State aid, competition, social and employment standards, environmental standards, climate change and relevant tax matters”. These provisions should “build on the level playing field measures in the Withdrawal Agreement”. They should be “commensurate with the overall economic relationship”, subject to “the scope and depth of the future relationship”. Standards should combine relevant EU and international standards, while providing mechanisms to ensure effective implementation, enforcement and dispute settlement.²²⁸
258. We note that in its July 2018 future relationship White Paper, the Government itself committed to maintaining alignment, or made a commitment to non-regression in a number of these fields, save in relation to taxation matters.²²⁹
259. **The section on a level playing field for open and fair competition reflects the acute concern of the EU (and many of its Member States) that the UK may seek to undercut EU standards and competitiveness. This may help to explain the opaque language in paragraph 79, notably the reference to provisions that build on the Withdrawal Agreement, while being “commensurate with the overall economic relationship”.**

227 [Political Declaration](#) (26 November 2018), para 77

228 [Political Declaration](#) (26 November 2018), para 79

229 HM Government, *The future relationship between the United Kingdom and European Union*, Cm 9593, July 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725288/The_future_relationship_between_the_United_Kingdom_and_the_European_Union.pdf [accessed 28 November 2018]

It will be difficult to translate such vague commitments into a binding agreement.

Part III: security partnership

260. The Declaration envisages a “broad, comprehensive and balanced security partnership” that comprises law enforcement and judicial cooperation in criminal matters, foreign policy, security and defence, as well as thematic cooperation in areas of common interest.²³⁰

Law enforcement and judicial cooperation in criminal matters

261. Without setting out the precise depth and breadth of future arrangements between the UK and the EU in these areas, paragraph 82 states that the aim is for a comprehensive, close and reciprocal relationship, while acknowledging “the fact that the United Kingdom will be a non-Schengen third country that does not provide for the free movement of persons”. Paragraph 83 adds that “the closer and deeper the partnership the stronger the accompanying obligations”. Any partnership should therefore reflect “the commitments the United Kingdom is willing to make that respect the integrity of the Union’s legal order”, in particular with regard to the role of the CJEU in the interpretation of Union law.

Data exchange

262. The parties commit to establishing reciprocal arrangements for the exchange of Passenger Name Record (PNR) data, and of DNA, fingerprints and vehicle registration data through the Prüm system. Both are extremely valuable to UK law enforcement, as witnesses to our 2016 inquiry into *Brexit: future UK-EU security and police cooperation* testified.²³¹ There are also less specific commitments to consider other arrangements for data exchange which could “approximate” EU mechanisms, but there is no mention of either the SIS (Schengen Information System) II, or the European Criminal Records Information System (ECRIS), which witnesses identified as “top priorities for the UK”,²³² but to which no non-EU (or, in the case of SIS II, no non-EU and/or non-Schengen) country currently has access.

Operational cooperation between law enforcement authorities and judicial cooperation in criminal matters

263. Paragraph 88 of the Declaration states that the parties will work together to identify terms for the UK’s operational cooperation via Europol and Eurojust. Given that no non-EU Member State is a participant, we previously called on the Government to seek a bilateral extradition arrangement that would mirror the European Arrest Warrant’s provisions as closely as possible, following the precedent set by Norway and Iceland.²³³ It is not surprising, therefore, that the Declaration makes no mention of the European Arrest Warrant. It does, however, suggest that “effective arrangements” on extradition will be established. It also expresses an intention to continue

230 [Political Declaration](#) (26 November 2018), para 80

231 See European Union Committee, [Brexit: future UK-EU security and police cooperation](#) (7th Report, Session 2016–17, HL Paper 77), Chapter 3

232 See European Union Committee, [Brexit: future UK-EU security and police cooperation](#) (7th Report, Session 2016–17, HL Paper 77), para 122

233 See European Union Committee, [Brexit: future UK-EU security and police cooperation](#) (7th Report, Session 2016–17, HL Paper 77), para 141

joint investigation teams (JITs) that “approximate those enabled by relevant Union mechanisms”.²³⁴

264. Paragraph 88 would also allow the parties “to determine the applicability of these [extradition] arrangements to own nationals and for political offences”. The reference to “own nationals” builds on Article 185 of the Withdrawal Agreement, which would allow any Member State that has “raised reasons related to fundamental principles of national law” to refuse during the transition period to surrender its own nationals to the UK in response to a European Arrest Warrant. This provision would, for instance, allow Germany, which has a constitutional bar on extraditing its own nationals to non-EU countries, to decline to surrender them to the UK following exit day.

Anti-money laundering and counter-terrorism financing

265. The parties envisage continued cooperation through international bodies, including the Financial Action Task Force, to fight money laundering and terrorist financing.²³⁵

Classified and sensitive non-classified information

266. Also relevant to the security sphere is paragraph 118 of the Declaration, in which the parties agree to conclude a Security of Information Agreement, along with Implementing Arrangements, for the handling and protection of classified information.

Conclusions

267. **We welcome the ambition by both sides to strike a “broad, comprehensive and balanced security partnership”, but note that this may fall short of the Government’s ambition for a single comprehensive treaty covering all areas of security cooperation.**
268. **The depth of the future relationship in law enforcement and judicial cooperation, though yet to be defined, will depend on “an appropriate balance between rights and obligations”, and on the UK’s willingness to continue to follow EU rules and to accept that the CJEU, as the sole interpreter of EU law, will have continuing influence over the application of those rules.**
269. **In some areas the UK will necessarily cease to be part of the EU’s law enforcement and security ecosystem. This is most evident in the case of databases and data exchange. While we welcome the commitment to establishing arrangements for the exchange of Passenger Name Record and Prüm data, we regret the lack of any reference to UK access to the Schengen Information System II (SIS II) and the European Criminal Records Information System (ECRIS) database.**
270. **It is unclear whether UK cooperation with Europol and Eurojust will go beyond existing third-country-arrangements. Both agencies are vital tools for UK law enforcement.**
271. **We note that the UK will also withdraw from the European Arrest Warrant (EAW), but welcome the commitment to establishing**

²³⁴ [Political Declaration](#) (26 November 2018), paras 88–90

²³⁵ [Political Declaration](#) (26 November 2018), para 91

“effective arrangements based on streamlined procedures” on extradition. We urge the Government to bring forward detailed proposals as soon as possible, ahead of formal negotiations.

Foreign policy, security and defence

272. Paragraph 92 of the Declaration commits both parties to “support ambitious, close and lasting cooperation on external action”. This open-ended commitment reflects the close alignment between the UK’s and the EU’s strategic interests, and their determination to “champion a rules-based international order and [to] project their common values worldwide”. At the same time, paragraph 94 acknowledges “their respective strategic and security interests”—collaboration will only occur “when and where these interests are shared”.²³⁶

Consultation and cooperation

273. Paragraph 97 states that a Political Dialogue on Common Foreign Security Policy (CFSP) and Common Security and Defence Policy (CSDP) will enable “flexible consultation between the Parties at different levels”. It is not clear whether this goes beyond existing third-country arrangements.
274. Paragraph 97 also states that the “High Representative may, where appropriate, invite the United Kingdom to informal Ministerial meetings of the Member States of the Union”. This provides a channel through which the UK may informally discuss matters of foreign policy, security, and defence with the Member States, when the EU judges that this is appropriate.

Sanctions

275. In 2017 we concluded that it was “particularly important that the UK should remain able to align itself with EU sanctions post-Brexit”.²³⁷ The Declaration falls some way short of this, stating that, while the parties will pursue “independent sanctions policies driven by their respective foreign policies”, they recognise that sanctions are a “multilateral foreign policy tool”, and that there are benefits in “close consultation and cooperation”.²³⁸ Paragraph 100 refers to “the possibility of adopting sanctions that are mutually reinforcing”.

Operations and missions

276. The Declaration proposes a Framework Participation Agreement that would enable the UK to participate “on a case by case basis in CSDP missions and operations”. Similar arrangements already exist for third-countries, and we warned in our report on *Brexit: Common Security and Defence Policy missions and operations* that such a model would allow limited influence.²³⁹ A key difference is that the Declaration envisages the UK participating in the Force Generation conference that plans the mission, a status otherwise reserved for EU Member States. This could enable the UK to have more influence over the planning and design of the mission, and also suggests that the greater the UK contribution to a future EU operation, the closer the consultations would be.

236 [Political Declaration](#) (26 November 2018), paras 92–95

237 European Union Committee, [The legality of EU sanctions](#) (11th Report, Session 2016–17, HL Paper 102), para 116

238 [Political Declaration](#) (26 November 2018), para 99

239 European Union Committee, [Brexit: Common Security and Defence Policy missions and operations](#) (16th Report, Session 2017–19, HL Paper 132), paras 173–174

Defence capabilities development

277. The Declaration foresees a future Administrative Agreement to enable the UK to collaborate in projects of the European Defence Agency (as is already the case for third countries such as Norway and Ukraine), the European Defence Fund, as well as projects in the framework of Permanent Structured Cooperation (PESCO), upon invitation from the Council of the European Union. This would permit UK defence companies to participate in future projects supported by the EDF.²⁴⁰

Intelligence exchanges

278. The parties agree to exchange intelligence on a “voluntary basis as appropriate”, especially in the areas of counter-terrorism, hybrid threats, cyber-threats and space-based imagery, and to support those CSDP missions to which the UK is contributing. No formal mechanism for such exchanges is described.

Space

279. Paragraph 107 of the Declaration is a one-line reference to consideration of “appropriate arrangements for cooperation on space”. There is no mention of the Galileo programme, let alone support for continuing UK participation. On 30 November the Government confirmed that the UK would withdraw from military aspects of Galileo, instead seeking to build its own global satellite navigation system.²⁴¹

Development cooperation

280. Paragraph 108 proposes a dialogue to develop “mutually reinforcing” strategies in the programming and delivery of development. Paragraph 109 suggests that the UK could contribute to EU development instruments and mechanisms, including coordination with EU delegations in third countries. No further clarity is provided.

Conclusions

281. **We welcome the commitment to continued cooperation in the areas of foreign policy and defence. While we note that this includes the possibility of UK contributions to EU development programmes, we regret the lack of specific detail about how such cooperation will work in practice. While the commitments in respect of sanctions fall short of the alignment this Committee has proposed, they are nevertheless a balanced reflection of both the common external threats faced by the UK and the EU, and their mutual interest in supporting peace and tackling terrorism.**
282. **We also endorse the commitment to UK-EU political and industrial collaboration in the area of defence, through UK collaboration with the European Defence Agency and projects in the PESCO framework, and the possibility of UK defence companies participating in projects by the European Defence Fund.**

240 [Political Declaration](#) (26 November 2018), para 104

241 ‘Britain quits military side of Galileo satellite system’, *Financial Times* (30 November 2018): available at <https://www.ft.com/content/da53b36e-f4ad-11e8-ae55-df4bf40f9d0d> [accessed 4 December 2018]

283. **The EU’s readiness to engage in sectoral dialogue with the UK, and to invite the UK to informal EU Ministerial meetings on an ad-hoc basis, reflects the crucial contribution by the UK to Europe’s foreign policy. Taken together with the possibility of the UK participating in the planning of CSDP missions to which it contributes, the Declaration allows a greater UK engagement with and influence over EU foreign policy than is currently afforded to any third country.**
284. **The Political Declaration is extremely vague in respect of space, and fails to address the extent of UK involvement in programmes with a security element such as Galileo. Set alongside the recent confirmation that the UK will no longer have access to Galileo, this underlines that there will be serious consequences for UK companies operating in the sector and for their ability to tender for contracts.**

Thematic cooperation

285. On cyber-security, the parties foresee close UK cooperation with the EU’s Computer Emergency Response Team (CERT-EU), as well as participation in the European Union Agency for Network and Information Security (ENISA) and in “certain activities” of the NIS Cooperation Group. There is a broad commitment to “promote security and stability in cyberspace” through increased cooperation in international bodies, and an agreement to exchange data on a voluntary basis that can protect both parties from common threats.²⁴²
286. The Declaration provides for UK participation as a “participating state” in the EU’s Civil Protection Mechanism. The CPM already provides for third-country participation, and includes Norway, Iceland, and Turkey as well as other EU candidate countries.²⁴³
287. Paragraph 115 envisages cooperation on health security “in line with existing Union arrangements with third countries” and via international fora.
288. Paragraph 116 sets out both parties’ commitment to cooperate in tackling illegal migration, through operational cooperation with Europol, working with the European Border and Coastguard Agency, and “dialogue on shared objectives and cooperation”, with a particular view to tackling illegal migration upstream. There is no mention of the Eurodac database, which records fingerprints of those seeking asylum. The Government had sought to join Eurodac,²⁴⁴ in which Norway, Iceland, and Switzerland participate.
289. Both parties agree to cooperate on “counter-terrorism, countering violent extremism and emerging threats”.²⁴⁵
290. **The UK and the EU’s wish to continue cooperation and dialogue on cyber-security, civil protection, illegal migration, and counter-terrorism, reflects shared concerns, priorities, and threats. While commitments are vague, and the mechanisms for future collaboration are not always described, the Political Declaration shows willingness**

242 [Political Declaration](#) (26 November 2018), paras 110–113

243 [Political Declaration](#) (26 November 2018), para 114

244 HM Government, *The future relationship between the United Kingdom and European Union*, Cm 9593, July 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725288/The_future_relationship_between_the_United_Kingdom_and_the_European_Union.pdf [accessed 28 November 2018]

245 [Political Declaration](#) (26 November 2018), para 117

to continue to exchange information and cooperate in international fora. This is to be welcomed.

Part IV: institutional and other horizontal arrangements

291. Part IV of the Declaration states that the future relationship should be based on an “overarching institutional framework covering chapters and linked agreements relating to specific areas of cooperation”. At the same time, it recognises that the precise legal form of the future relationship will be determined as part of the formal negotiations, and that there may be “specific governance arrangements”, particularly in respect of agreements that sit outside the overarching institutional framework. In our report on *UK-EU relations after Brexit* we noted the European Parliament’s support for an Association Agreement, observing that such agreements are “by their nature dynamic and evolutionary”, and suggesting that a UK commitment to such a partnership could bring about a positive change in the tone of the negotiations.²⁴⁶ One of the benefits of an Association Agreement would be that it would be subject to a single ratification process on the EU side; it could also be applied provisionally pending ratification. This potential model is now explicitly referenced in paragraph 122, which states that the overarching institutional framework could take the form of an Association Agreement.
292. On governance, there is a commitment to dialogue at summit, ministerial, technical and parliamentary level, as well as to civil society dialogue. The summit and ministerial level should oversee the future relationship, provide strategic direction and discuss opportunities for cooperation. There should also be specific thematic dialogues at ministerial and senior official level, which should take place as often as is necessary for the effective operation of the future relationship.
293. According to paragraph 128, the UK and the EU “support the establishment of a dialogue between the European Parliament and the UK Parliament, where they see fit ... to share views and expertise on issues related to the future relationship”.
294. Paragraph 129 states that a Joint Committee will be established, with responsibility for managing and supervising the implementation and operation of the future relationship, and to facilitate the resolution of disputes. It should comprise the parties’ representatives at an appropriate level, establish its own rules of procedure, reach decisions by mutual consent, and meet as often as required. It could also establish sub-committees.
295. The section on dispute settlement (paragraphs 132–135) provides further detail on the role of the Joint Committee. Paragraph 132 states that “arrangements for dispute settlement and enforcement will be based on those in the Withdrawal Agreement”. Every effort will be made to resolve matters through discussion and consultation, but if either side deems it necessary, it will be able to refer the matter to the Joint Committee for formal resolution. The Joint Committee may refer a dispute to an independent arbitration panel, and either party may do so where the Joint Committee has not arrived at a mutually satisfactory solution within a defined period of time. The decisions of the arbitration panel will be binding. Should a dispute raise an issue of

²⁴⁶ See European Union Committee, *UK-EU relations after Brexit* (17th Report, Session 2017–19, HL Paper 149), para 105

the interpretation of EU law, the arbitration panel will refer the question of EU law to the CJEU for a binding ruling. The arbitration panel should then decide the dispute in accordance with the CJEU ruling.

296. Where a party fails to take necessary measures to comply with the binding resolution of a dispute, the other party will be entitled to request financial compensation or take proportionate and temporary measures, including suspension of its obligations within the scope of the future relationship. The future relationship will set out the conditions under which obligations may be suspended. Either party may refer the proportionality of such measures to the independent arbitration panel.
297. Paragraphs 136–137 outline certain exceptions and safeguards, confirming that national security (which is not an EU competence) remains the sole responsibility of the Member States and the UK. Either party may activate temporary safeguard measures if faced with significant economic, societal or environmental difficulties. The other party should have the right to take rebalancing measures, and the proportionality of measures taken would be subject to independent arbitration.
298. **We welcome the proposed overarching institutional framework, which should help provide consistency and coherence. While we note that the precise legal form of the future relationship remains to be determined, we welcome the suggestion that the overarching framework could take the form of an Association Agreement. Association Agreements are by their nature dynamic and evolutionary, and such a model fits well with the commitment by both sides to keep the future relationship under review.**
299. **We welcome the commitment to dialogue at summit, ministerial and technical level. We also note the key role that the proposed Joint Committee will play in managing and supervising the implementation and operation of the future relationship. Much of the detail of how this dialogue will function in practice, including the Joint Committee’s rules of procedure, the frequency of its meetings, and the appointment of specialist sub-committees, remains to be determined. We emphasise that the work of the Joint Committee, and the process by which it is established, will require close parliamentary scrutiny and accountability at both UK and EU level.**
300. **In that context, we particularly welcome the recognition of the importance of interparliamentary cooperation, and the proposed establishment of a specific dialogue between the European Parliament and the UK Parliament. While noting the interest of devolved legislatures in the UK, and EU Member State parliaments, we stand ready to work with House of Commons and European Parliament colleagues in establishing this dialogue as swiftly as possible.**
301. **We intend to explore these issues further in a forthcoming inquiry into future UK-EU interinstitutional relations, to be completed ahead of UK withdrawal in March 2019.**
302. **As we set out in Chapter 2, the proposed arbitration model for the future relationship would mean that the CJEU would have a limited, but continuing, role in relation to questions of EU law that arose in**

disputes with the UK, even after its obligations under the Withdrawal Agreement fell away. This potentially represents a ‘one size fits all’ solution, respecting the role of the CJEU as sole arbiter of EU law, potentially across the full spectrum of UK-EU relations, rather than in specific, identified areas.

303. **The provisions on dispute settlement, and on the Joint Committee, illustrate how the structure for interinstitutional dialogue in the future relationship echoes the provisions set out in the text of the Withdrawal Agreement. This underlines the close relationship between the two parts of the Brexit agreement.**

Part V: forward process

304. Part V of the Declaration sets out the “clear intent of both Parties to develop in good faith agreements giving effect to this relationship and to begin the formal process of negotiations as soon as possible” after UK withdrawal, so that they can come into force before the scheduled end of the transition period at the end of 2020.²⁴⁷
305. Both parties also affirm their commitment to the peace process in Northern Ireland, and the protection of the Belfast/Good Friday Agreement in all its parts, including “the practical application of the 1998 Agreement on the island of Ireland and to the totality of the relationships set out in the 1998 Agreement.” Priority will be given to addressing this issue in the future relationship negotiations.
306. Before UK withdrawal in March 2019, the two sides will engage in “preparatory organisational work, with the aim of enabling rapid commencement of and progress in formal negotiations”.²⁴⁸ After withdrawal, it is envisaged that the parties will “negotiate in parallel the agreements needed to give the future relationship legal form”.²⁴⁹ A programme will be agreed, covering the structure, format and schedule of negotiation rounds. A high-level conference will be convened at least every six months to take stock of progress and agree, as far as possible, further action.
307. **The Political Declaration confirms that formal negotiations on the future UK-EU relationship will begin only after UK withdrawal on 29 March 2019. The Political Declaration is thus in many places little more than an agenda for a discussion that has barely begun. But despite its lack of detail and precision, the Declaration is an important signpost to the shape of the future relationship, and to the structure and scope of the forthcoming negotiations.**
308. **We welcome the commitment of both sides to engage in preparatory organisational work ahead of the commencement of formal negotiations. We also note their commitment to develop agreements in good faith, so that the future relationship can come into force by the end of 2020. While this is welcome, we note that in fact agreements will have to be reached by June 2020, the point at which the UK will have to decide whether to request an extension to the transition period. Given the range and complexity of the issues to be discussed, this timetable is extremely challenging.**

247 [Political Declaration](#) (26 November 2018), para 138

248 [Political Declaration](#) (26 November 2018), para 141

249 [Political Declaration](#) (26 November 2018), para 144

309. **We endorse the Declaration’s recognition, in the context of the future relationship, of the need to safeguard the peace process in Northern Ireland, and to protect the Belfast/Good Friday Agreement in all its parts. Paragraph 139 of the Declaration is thus important in balancing the backstop provisions in the Withdrawal Agreement.**
310. **The negotiations on the future relationship should be subject to full parliamentary scrutiny. We note that at EU level the negotiations are likely to take place under Article 217 or 218 TFEU, and will be subject to detailed and transparent scrutiny by the European Parliament. The UK Parliament and the British people deserve the same transparency and accountability: the Government must engage proactively and constructively with Parliament, rather than repeating the mistakes of the last two years. We look forward, in this regard, to making further submissions to the Liaison Committee review of committee activity.**
311. **We welcome the commitment to a high-level conference at least every six months, which is in keeping with the recognition of both sides that the future relationship will continue to evolve. UK withdrawal from the EU is an important milestone in the evolution of the UK-EU relationship, but the story will not end on 29 March 2019. It is imperative that the structures underpinning the future relationship are flexible to adapt to whatever changes take place in the future.**

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The Withdrawal Agreement

1. We have repeatedly argued that it is vital that the Withdrawal Agreement and its arrangements for the transition period apply to Gibraltar. We therefore welcome the successful resolution of this issue. We also welcome the application of the Withdrawal Agreement, where necessary, to the other Overseas Territories, and the Crown Dependencies. (Paragraph 22)
2. We note, however, that while the Agreement settles the post-transition status of the UK's Sovereign Bases on Cyprus, Gibraltar's long-term relationship with the EU remains subject to negotiation within the wider context of the UK-EU future relationship. (Paragraph 23)
3. The Joint Committee structure for governance of the Withdrawal Agreement, agreed in March 2018, ought to allow a collaborative approach to the supervision of the Withdrawal Agreement, as well as the delegation of specific functions, such as citizens' rights, financial provisions, Northern Ireland/Ireland and Gibraltar, to specialised committees. (Paragraph 34)
4. The Joint Committee will be critical in ensuring the smooth working of the Withdrawal Agreement. It will be a uniquely powerful and influential body. Decisions adopted by the Joint Committee would be binding on the EU and the UK and would have the same legal effect as the Withdrawal Agreement. (Paragraph 35)
5. In particular, during the transition and for a period of four years thereafter, Article 164 of the Withdrawal Agreement provides that the Joint Committee would have power to amend aspects of the Agreement to take account of errors, omissions and deficiencies, and to address unforeseen situations. Even though changes that "amend the essential elements" of the Agreement are excluded, this is a widely drawn power, and is not subject to clear scrutiny procedures or parliamentary oversight. (Paragraph 36)
6. Nor does it appear that the Joint Committee will operate in an open and transparent way. The relevant rules suggest that meetings would be confidential, decisions might not be published, and even summary minutes might not be made publicly available. This is an unsatisfactory state of affairs, given the significant role that the Joint Committee will play. (Paragraph 37)
7. While the international agreement establishing the terms of the UK's withdrawal from the EU may not be the appropriate place to include provisions relating to the role of the UK Parliament, Members of both Houses may wish to consider the appropriate level of, and structure for, parliamentary oversight of the Joint Committee, and seek undertakings from the Government on this question. (Paragraph 38)
8. The provisions relating to dispute resolution in the Withdrawal Agreement retain a limited role for the CJEU. This role is, however, attenuated when compared with that envisaged in the March 2018 draft text. (Paragraph 67)
9. Notably, the inclusion of an arbitration mechanism, with input from the CJEU only in circumstances where questions of Union law arise, moves toward the Government's goal of ending the direct jurisdiction of the CJEU, while still respecting the autonomy of the European Union's legal order and the role of the CJEU. Nonetheless, it is possible that concerns may arise if

a decision of the CJEU were effectively to determine a dispute between the parties. (Paragraph 68)

10. Other provisions, such as the retention of CJEU jurisdiction during the transition, and over the provisions relating to citizens' rights for an eight-year period following the transition, have long been accepted by the UK Government, though they too arguably fall short of the Government's original red line on CJEU jurisdiction. (Paragraph 69)
11. We welcome the fact that the Agreement addresses concerns raised in our earlier report, *Dispute resolution and enforcement after Brexit*, about the need for a longstop, or limitation period, for any claims that arise before, or during, the transition period. This will give parties involved in legal disputes greater certainty as to the legal regime which will apply to their case. (Paragraph 70)
12. One of the Government's primary aims in negotiating Brexit has been a desire to end free movement of people. A necessary consequence has been that the citizens' rights guaranteed under the Withdrawal Agreement fall short in some respects of those enjoyed during the UK's EU membership. Most notably, for UK citizens in the EU, onward free movement rights are not guaranteed. EU nationals in the UK will generally be obliged to pay a small fee to register for settled status, and will face automatic criminal records checks, if they wish to remain after Brexit. (Paragraph 95)
13. Notwithstanding these specific reservations, the agreement on citizens' rights is fairly comprehensive and will, if the Withdrawal Agreement is ratified, allow individuals and families to continue with their lives and careers with a minimum of disruption. We therefore broadly welcome the citizens' rights provisions. (Paragraph 96)
14. It remains far from clear what would happen to EU citizens in the UK and UK nationals in the EU in the event of a 'no deal' Brexit. Throughout the negotiations, we have called on the Government to give a clear and unilateral assurance that all EU nationals in the UK would be entitled to stay and retain their rights. (Paragraph 97)
15. We therefore welcome the Prime Minister's assurance that the rights of EU citizens will be protected in the event of a 'no deal' Brexit, and we call upon the Government formally to undertake to honour all the obligations set out in Part Two of the Withdrawal Agreement, regardless of whether the Agreement itself is ratified. (Paragraph 98)
16. We are concerned that similar commitments have not been received from the EU 27, and call on the Government as a matter of urgency to seek assurances that the rights of UK nationals in the EU will be secured on a reciprocal basis. (Paragraph 99)
17. The provisions on the financial settlement set out in Part Five of the Withdrawal Agreement do not set out the precise amount of the UK's financial obligations, but set out the agreed methodology for calculating them. The precise amounts paid will be contingent upon future events. (Paragraph 107)
18. The Government has acknowledged that it will 'pay its dues', whether or not the Withdrawal Agreement is successfully concluded, while also indicating that, in the absence of an Agreement, both the total amount, and the timetable for repayments, could vary from what is currently proposed. We

reiterate the conclusion reached in our March 2017 report on *Brexit and the EU budget*, that the consequences of seeking to leave the EU without settling claims under the EU budget would be profound. (Paragraph 108)

19. Much of the sum payable relates to UK contributions to the 2019 and 2020 EU budgets, which coincide with the transition period, during which the UK will continue to be subject to EU law and be part of the EU Single Market. (Paragraph 109)
20. The payment of these sums is not contingent upon a successful outcome to negotiations on future UK-EU relations. Once the UK and the EU conclude the agreement under Article 50 of the TEU, the UK's financial commitments will crystallise as clear legal obligations in international law, irrespective of the outcome of the future negotiations. (Paragraph 110)

The transition period

21. In our report *Brexit: deal or no deal* we identified two secure means, consistent with the terms of Article 50 TEU, whereby a 'standstill period' could be established after exit day, in order to provide reassurance to citizens and businesses and buy time to finalise an agreement on future relations. Either the European Council could, by unanimous agreement, agree to a request to extend the negotiating period, or the Article 50 Agreement could set a date later than 29 March 2019 for the UK's withdrawal to take effect. At the same time, we recognised the political sensitivities over both these approaches. (Paragraph 120)
22. Under this Agreement, save for a few minor exceptions, transition means that the UK will carry all the responsibilities of EU membership without the institutional rights and privileges enjoyed by EU Member States. Throughout the transition period, the UK will remain subject to EU law and the EU institutions and agencies that oversee its application and operation, without any institutional say over its development, application and content. This falls short of a genuine 'standstill' period. (Paragraph 121)
23. Despite the possibility of invitations being extended to UK officials to attend relevant meetings in exceptional circumstances, we are concerned about the sudden removal of the UK's institutional privileges, particularly those relating to the EU's many executive agencies. (Paragraph 122)
24. We broadly welcome Article 129, which leaves the UK free to pursue its own free trade agreements during the transition period, provided they do not enter into force before it expires. (Paragraph 127)
25. However, beyond the limitations to this freedom implied by the Protocol on Ireland/Northern Ireland (the so-called backstop), questions remain about the detailed operation of this provision. For example, it is silent about the extent of the UK's freedom to renegotiate during transition the myriad EU agreements dealing with matters where responsibilities are shared between the EU and the individual Member States. (Paragraph 128)
26. Furthermore, Article 129, which attempts to carry over the application to the UK of the suite of existing EU international agreements, is one-sided and unclear. While it expressly binds the UK to its obligations under these international agreements, and calls on the Government to refrain from any action in this context deemed "prejudicial" to the Union's interests, the UK's status as a party to these agreements after 29 March 2019 is dealt

with by a footnote. We are concerned that the solution to such a significant question is subject to a footnote of questionable legal status. The attitude of third countries to continuing UK participation in agreements with the EU remains unclear. (Paragraph 129)

27. The Government has described the option to extend the transition period as an “insurance policy” in case the negotiations on the future relationship are not completed. However, this insurance policy gives rise to a number of significant issues. It would have to be triggered several months before the end of the transition period. It would then have to be negotiated by the UK and the EU. The cost of extension is unclear. And should the parties be unable to conclude their negotiations on the future relationship at the end of the extended transition, it would not stop the UK falling into the proposed backstop. (Paragraph 138)
28. An extension of the transition period would also mean that the UK would remain subject to EU law (including new Regulations and Directives and the jurisdiction of the CJEU) for an extended period, without any representation in the European Parliament, the Council, or the CJEU. The risk that is inherent in the UK becoming a ‘rule taker’ (subject to new EU laws, without having had any say in their preparation or adoption) will become more acute, the longer the transition period lasts. (Paragraph 139)
29. Given that any decision on extending the transition period would have to be taken by the Joint Committee, Members may wish to seek clarification from the Government on the role that Parliament will play in authorising any extension. (Paragraph 140)

Protocol on Ireland/Northern Ireland

30. We welcome the Government’s and the EU’s commitment to use their “best endeavours” to agree an alternative agreement addressing the UK’s future relationship with the EU before the end of the transition period. If successful, this will render recourse to the so-called backstop arrangement for Ireland/Northern Ireland unnecessary. However, this is an ambitious timetable, even allowing for one extension of the transition period. (Paragraph 144)
31. We have repeatedly emphasised the historic importance of the Common Travel Area as a basis for cooperation between the UK and Ireland. We therefore welcome the explicit commitment to its retention contained in the Withdrawal Agreement. (Paragraph 149)
32. If, by the end of the transition period (including any extended transition period), the UK and the EU have failed to reach agreement on future relations, then to avoid a hard border on the island of Ireland, the Protocol creates a “single customs territory” comprising the UK and the EU. The UK would be required to abide by the EU’s rules on the prohibition of customs duties, and to align with the EU’s Common Commercial Policy, to the extent necessary to give effect to the “single customs territory”, including tariffs on external trade with third countries. (Paragraph 154)
33. The UK would also undertake to ensure a level playing field within the “single customs territory” across a range of associated EU policies, including environmental protection law, labour and social standards, State aid, and competition law. We note that the UK’s obligation to match developments in

the areas of State aid and competition law would continue for as long as the backstop remained in force. (Paragraph 155)

34. The Protocol on Ireland/Northern Ireland would thus tie the UK closely to EU law across these associated policy areas. Moreover, UK membership of the “single customs territory” and the inherent requirement that the UK aligns with the EU’s Common Commercial Policy (including tariffs on external trade) would significantly curtail the UK’s freedom to pursue an independent trade policy. (Paragraph 156)
35. We also note that fisheries and aquaculture are specifically excluded from the “single customs territory”, and that the UK and EU promise to use their best endeavours to negotiate a separate agreement dealing with these matters. (Paragraph 157)
36. While the backstop remained in place, the UK would be required not to fall below EU standards applying at the end of the transition period on environmental protection and social and labour standards. UK compliance with these EU standards would remain the responsibility of national institutions and/or the Joint Committee. (Paragraph 162)
37. In contrast, the UK’s commitments with regard to State aid and competition law would go considerably further. The Protocol proposes a system of very close cooperation between the UK’s authorities and the European Commission, which reflects the additional burden of having to match EU developments in these areas. (Paragraph 163)
38. If recourse to the backstop were to prove necessary, this would effectively weave the UK into the EU’s State aid and competition rules. It would also leave the relevant UK institutions subordinate to the European Commission, which is responsible for policing and providing institutional oversight of the EU’s rules on State aid and competition law. (Paragraph 164)
39. If the Protocol on Ireland/Northern Ireland were to come into effect, its provisions would apply the EU’s customs legislation to Northern Ireland, and would impose additional technical and regulatory responsibilities on the UK with regard to Northern Ireland, including in respect of the free movement of goods. Taken together, these rules would bind Northern Ireland even more closely to EU law than those applying to Great Britain within the “single customs territory”. Moreover, Northern Ireland’s compliance with these EU rules would be policed and enforced by the European Commission, the EU’s executive agencies and the CJEU, without the additional institutional privileges inherent in EU membership, save for the UK’s right to participate in Northern Ireland-based CJEU proceedings. (Paragraph 169)
40. The introduction of different regulatory and technical rules on opposite sides of the Irish Sea would carry risks for the UK’s internal market, as evidenced by Article 7 of the Protocol, which appears to envisage goods exported from Great Britain to Northern Ireland being subject to regulatory checks. We highlight the importance of the Joint Committee’s responsibility to keep this issue under constant review. (Paragraph 170)
41. The differing technical and regulatory rules that would apply in Great Britain and Northern Ireland, if recourse to the Protocol is necessary, would also raise profound implications for the movement of goods between Great Britain and the EU 27. There would not be a frictionless border for

goods between Great Britain and the EU, unless this was agreed in the negotiations on the future relationship, or the EU and the UK Government agreed to align Great Britain with the additional regulatory rules applying to Northern Ireland. Hence, although Northern Ireland would benefit from a free movement of goods regime, this would not apply to goods transported between the EU 27 and Great Britain. These would potentially be subject to regulatory checks, which could have a significant impact on UK ports. (Paragraph 171)

42. We have previously recommended that Northern Ireland should, as part of the future UK-EU relationship, remain part of the Single Electricity Market on the island of Ireland. We welcome the fact that the provisions of the Protocol show that the UK and EU negotiators are aware of the importance of this issue, which should also figure in negotiations on the future UK-EU relationship. We draw attention to our earlier conclusion that such an outcome might require the devolution of additional powers to the Northern Ireland Assembly once the devolved institutions are reinstated. (Paragraph 172)
43. We note that Article 13 of the Protocol, on cross-border cooperation, covers a wide range of areas of EU competence, including some areas where the EU's competence is merely to support action by the Member States. Notwithstanding the breadth of this provision, we reiterate the conclusions reached in earlier reports, as to the vital importance of cross-border cooperation to the lives of UK and EU citizens, particularly those living close to the Irish land border. (Paragraph 175)
44. Article 20 of the Protocol is clear that there would be no way for one party to the Agreement to bring the Protocol on Ireland/Northern Ireland to an end on a unilateral basis. Any such decision would be made in the Joint Committee, by mutual consent, having regard to the objectives set out in Article 1 of the Protocol and the duty of good faith set out in Article 5 of the Withdrawal Agreement. Should this provision lead to an intractable dispute between the parties, either side could institute the arbitration procedure set out in Part 6 of the Withdrawal Agreement. (Paragraph 179)

The Political Declaration on the future relationship

45. We welcome the Political Declaration's acknowledgement of the shared heritage, values and interests of the UK and EU, and its recognition of the unique context of their future relationship given the UK's post-withdrawal status as a former Member State. It is therefore important to acknowledge that the future relationship may evolve over time. (Paragraph 188)
46. The Political Declaration notes the need to strike a balance between the rights and obligations of both sides. In practice, however, it restates their respective red lines at the outset. This demonstrates just how difficult it has been for both sides to compromise: the scope and ambition of the Declaration must be judged in that light. (Paragraph 189)
47. We welcome the reference in paragraphs 6–7 of the Political Declaration to shared values and the maintenance of human rights and fundamental freedoms. We call on the Government to explain the significance, if any, of the reference to the UK's commitment to the 'framework' of the ECHR, rather than to the ECHR itself. (Paragraph 197)

48. We have reported on the critical importance of maintaining uninterrupted data flows during and after Brexit. We therefore welcome the provisions on data protection, which offer a pragmatic way forward. (Paragraph 198)
49. We also welcome the prospect of UK participation in EU programmes in areas such as science and innovation, youth, culture and education, overseas development and external action, defence capabilities, civil protection and space, and the possibility of UK participation in European Research Infrastructure Consortia. We note, however, that such participation will come at a cost, which is yet to be determined, and that the Declaration sheds little light on how UK participation will be achieved, and what influence it will have over these programmes. (Paragraph 199)
50. We warmly welcome the shared commitment of the UK and the EU to delivering a future PEACE PLUS programme in Northern Ireland. (Paragraph 200)
51. We note the possibility of continuing cooperation in areas such as culture, education, science and innovation. We call on the Government to explain the significance of the reference in paragraph 14 of the Declaration to “the importance of mobility” in enabling such cooperation. (Paragraph 201)
52. We note that most of the commitments in Part I of the Declaration remain undefined. Stakeholders in the various sectors affected urgently need clarification of how future UK-EU cooperation will work in practice, in particular in terms of UK participation in EU programmes. (Paragraph 202)
53. The commitment to tariff-free trade in goods is welcome. Beyond this, the text is careful not to commit to or rule out particular models for cooperation on trade in goods. It consistently reiterates the EU’s principles, with the implication being that some new friction in trade in goods is inevitable. Nevertheless, the extent and nature of such friction is not defined, and the document specifically envisages a “spectrum of outcomes” depending on how closely the UK aligns to the EU on customs and regulation. At the same time, it seeks to reflect the UK’s concerns by omitting reference to a common external tariff, and by holding out the possibility, without commitment, of the use of facilitative arrangements and technologies. (Paragraph 211)
54. The Declaration thus leaves a number of key issues open and undefined, including:
 - The precise nature of UK-EU cooperation on customs and regulation;
 - The extent of UK alignment to EU rules that will be necessary to minimise barriers to trade;
 - The specific ways in which the proposed customs arrangements will build and improve on the “single customs territory” provided for in the Withdrawal Agreement, and whether and how they will obviate the need for checks on rules of origin, given the Government’s policy not to enter into a permanent customs union with the EU;
 - The impact of these arrangements on the UK’s ability to pursue an independent trade policy;
 - Whether any new facilitative arrangements and technologies are envisaged, and if so which ones, when, at what cost, and to what effect;

- The extent and means of UK cooperation with EU agencies, including the European Medicines Agency, the European Chemicals Agency and the European Aviation Safety Agency, and whether cooperation with other agencies is envisaged. (Paragraph 212)
55. We welcome the intention to conclude “ambitious, comprehensive and balanced” arrangements on trade in services across a range of sectors. We note, however, the lack of detail in the section on services and investment, and also that some key service sectors are not mentioned in the Declaration. We call on the Government to explain what agreement, if any, it expects to reach in respect of the health, creative and tourism sectors. (Paragraph 216)
 56. We welcome the commitment to ensure services providers and investors are treated in a non-discriminatory manner, and to allow for the temporary entry and stay of natural persons for business purposes. We invite the Government to confirm whether or not the latter provision envisages preferential arrangements for UK and EU citizens moving between each other’s territories to provide services. (Paragraph 217)
 57. We welcome the reference to appropriate arrangements for professional qualifications, but note the lack of a specific commitment to reciprocal recognition of qualifications. (Paragraph 218)
 58. The statement that “regulatory approaches should be compatible to the extent possible”, and the mechanics of the proposed voluntary framework on regulatory cooperation, also require further clarification. (Paragraph 219)
 59. In summary, while the provisions on services and investment are helpful as far as they go, they will not provide the current level of access to the EU Single Market enjoyed by the UK’s services sectors. Further details are urgently required to provide service providers and customers with assurance and certainty. (Paragraph 220)
 60. We acknowledge the intention of both sides to complete the equivalence assessment process in respect of financial services by June 2020. We also welcome the commitment to “close and structured” regulatory and supervisory cooperation, and to close cooperation in international bodies. But the agreement to keep respective equivalence frameworks under review falls short of the new economic and regulatory arrangement in financial services proposed by the UK. Nor does the granting of equivalence in June 2020 provide any long-term guarantee—equivalence can be reviewed and withdrawn at any point. As we concluded in December 2016, any agreement on financial services based on equivalence will be an “inadequate substitute” for the passporting regime that the UK participates in as an EU Member State. (Paragraph 224)
 61. Given its growing importance to the UK’s economy, the specific emphasis on digital services in the Political Declaration is welcome. Nevertheless, the Declaration’s emphasis on the facilitation of data flows, rather than on the retention of free data flows, appears to mark a lowering of ambition when compared with the ongoing development of the EU’s Digital Single Market. (Paragraph 226)
 62. We regret the lack of reference in the Political Declaration to maintaining the abolition of roaming charges across the UK and the EU 27. (Paragraph 227)

63. We welcome the provisions to enable free movement of capital and payments, on intellectual property (including geographical indicators) and on public procurement, as far as they go. Our Justice Sub-Committee is currently examining EU intellectual property law and the implications of Brexit on UK participation in the Unified Patent Court, and we will offer more detailed comment on this complex area in due course. (Paragraph 231)
64. The provisions on mobility respect and reflect the UK's decision that the principle of free movement of persons from the EU will no longer apply. The principle of full reciprocity means that UK nationals will therefore also cease to receive preferential treatment by the EU in the future. While the Political Declaration proposes some mitigations, they will not change this significant restriction upon the freedoms currently enjoyed by UK citizens. (Paragraph 236)
65. We are concerned at the omission of any reference to reciprocal healthcare, including the European Health Insurance Card, as a means of facilitating mobility. We call on the Government to set out, as a matter of urgency, its plans for maintaining reciprocal healthcare arrangements in the context of the future relationship. (Paragraph 237)
66. We are concerned that the Declaration contains so little detail on the impact of UK withdrawal on family law. We remind the Government of our earlier conclusion, that if the UK leaves the EU without alternative arrangements being in place, the UK's family justice system, and the individuals seeking redress within it, could suffer profound damage. (Paragraph 238)
67. We welcome the commitment to cooperation in the aviation sector, and in particular the proposed Comprehensive Air Transport Agreement. We call on the Government to confirm whether or not the reference to market access in paragraph 60 of the Declaration is intended to include the fully liberalised market access currently enjoyed by UK and EU operators. (Paragraph 244)
68. We also note the high-level commitments to cooperation in the road, rail and maritime sectors. More detail is needed, particularly with respect to road transport, where the Government needs to explain whether the reference to "comparable market access" achieves its aim of "reciprocal access"; whether, in the absence of any reference to reciprocal cabotage rights, new permitting and licencing requirements will be required for transport operators and professional drivers; and whether any "complementary arrangements" in relation to travel by private motorists will negate the need for UK motorists to carry International Driving Permits and insurance Green Cards when travelling in the EU. (Paragraph 245)
69. We regret that the Declaration does not hold out the possibility of continued UK participation in the Internal Energy Market, but at the same time we welcome the high-level commitment to cooperation in the supply of electricity and gas to ensure as far as possible security of supply and trade over interconnectors. (Paragraph 248)
70. We welcome the commitment to a wide-ranging Nuclear Cooperation Agreement, including exchange of information, trade in nuclear materials and equipment, monitoring of levels of radioactivity, and exchange of information on medical radioisotopes. While the reference to the UK's intention to be associated with the EURATOM research and training

programmes is a positive step, we call on the Government to provide further clarification of its plans in this regard. (Paragraph 249)

71. The Political Declaration confirms that the UK will leave the Common Fisheries Policy and become an independent coastal state. Yet, as we warned in December 2016, the EU has also made clear that finalising a future fisheries agreement is a precondition for agreement of the overall economic partnership. While we reiterate our view that cooperation with the EU and other neighbouring states in fisheries management will be critical in the years to come, difficult negotiations lie ahead. (Paragraph 253)
72. We welcome the commitment to future UK-EU cooperation to address issues of shared economic, environmental and social interest. We particularly welcome the continued shared commitment to international agreements on climate change, where the UK has been a global leader, and where continuing cooperation with the EU will help to offset any potential loss of influence as a result of Brexit. (Paragraph 256)
73. The section on a level playing field for open and fair competition reflects the acute concern of the EU (and many of its Member States) that the UK may seek to undercut EU standards and competitiveness. This may help to explain the opaque language in paragraph 79, notably the reference to provisions that build on the Withdrawal Agreement, while being “commensurate with the overall economic relationship”. It will be difficult to translate such vague commitments into a binding agreement. (Paragraph 259)
74. We welcome the ambition by both sides to strike a “broad, comprehensive and balanced security partnership”, but note that this may fall short of the Government’s ambition for a single comprehensive treaty covering all areas of security cooperation. (Paragraph 267)
75. The depth of the future relationship in law enforcement and judicial cooperation, though yet to be defined, will depend on “an appropriate balance between rights and obligations”, and on the UK’s willingness to continue to follow EU rules and to accept that the CJEU, as the sole interpreter of EU law, will have continuing influence over the application of those rules. (Paragraph 268)
76. In some areas the UK will necessarily cease to be part of the EU’s law enforcement and security ecosystem. This is most evident in the case of databases and data exchange. While we welcome the commitment to establishing arrangements for the exchange of Passenger Name Record and Prüm data, we regret the lack of any reference to UK access to the Schengen Information System II (SIS II) and the European Criminal Records Information System (ECRIS) database. (Paragraph 269)
77. It is unclear whether UK cooperation with Europol and Eurojust will go beyond existing third-country-arrangements. Both agencies are vital tools for UK law enforcement. (Paragraph 270)
78. We note that the UK will also withdraw from the European Arrest Warrant (EAW), but welcome the commitment to establishing “effective arrangements based on streamlined procedures” on extradition. We urge the Government to bring forward detailed proposals as soon as possible, ahead of formal negotiations. (Paragraph 271)

79. We welcome the commitment to continued cooperation in the areas of foreign policy and defence. While we note that this includes the possibility of UK contributions to EU development programmes, we regret the lack of specific detail about how such cooperation will work in practice. While the commitments in respect of sanctions fall short of the alignment this Committee has proposed, they are nevertheless a balanced reflection of both the common external threats faced by the UK and the EU, and their mutual interest in supporting peace and tackling terrorism. (Paragraph 281)
80. We also endorse the commitment to UK-EU political and industrial collaboration in the area of defence, through UK collaboration with the European Defence Agency and projects in the PESCO framework, and the possibility of UK defence companies participating in projects by the European Defence Fund. (Paragraph 282)
81. The EU's readiness to engage in sectoral dialogue with the UK, and to invite the UK to informal EU Ministerial meetings on an ad-hoc basis, reflects the crucial contribution by the UK to Europe's foreign policy. Taken together with the possibility of the UK participating in the planning of CSDP missions to which it contributes, the Declaration allows a greater UK engagement with and influence over EU foreign policy than is currently afforded to any third country. (Paragraph 283)
82. The Political Declaration is extremely vague in respect of space, and fails to address the extent of UK involvement in programmes with a security element such as Galileo. Set alongside the recent confirmation that the UK will no longer have access to Galileo, this underlines that there will be serious consequences for UK companies operating in the sector and for their ability to tender for contracts. (Paragraph 284)
83. The UK and the EU's wish to continue cooperation and dialogue on cyber-security, civil protection, illegal migration, and counter-terrorism, reflects shared concerns, priorities, and threats. While commitments are vague, and the mechanisms for future collaboration are not always described, the Political Declaration shows willingness to continue to exchange information and cooperate in international fora. This is to be welcomed. (Paragraph 290)
84. We welcome the proposed overarching institutional framework, which should help provide consistency and coherence. While we note that the precise legal form of the future relationship remains to be determined, we welcome the suggestion that the overarching framework could take the form of an Association Agreement. Association Agreements are by their nature dynamic and evolutionary, and such a model fits well with the commitment by both sides to keep the future relationship under review. (Paragraph 298)
85. We welcome the commitment to dialogue at summit, ministerial and technical level. We also note the key role that the proposed Joint Committee will play in managing and supervising the implementation and operation of the future relationship. Much of the detail of how this dialogue will function in practice, including the Joint Committee's rules of procedure, the frequency of its meetings, and the appointment of specialist sub-committees, remains to be determined. We emphasise that the work of the Joint Committee, and the process by which it is established, will require close parliamentary scrutiny and accountability at both UK and EU level. (Paragraph 299)

86. In that context, we particularly welcome the recognition of the importance of interparliamentary cooperation, and the proposed establishment of a specific dialogue between the European Parliament and the UK Parliament. While noting the interest of devolved legislatures in the UK, and EU Member State parliaments, we stand ready to work with House of Commons and European Parliament colleagues in establishing this dialogue as swiftly as possible. (Paragraph 300)
87. We intend to explore these issues further in a forthcoming inquiry into future UK-EU interinstitutional relations, to be completed ahead of UK withdrawal in March 2019. (Paragraph 301)
88. As we set out in Chapter 2, the proposed arbitration model for the future relationship would mean that the CJEU would have a limited, but continuing, role in relation to questions of EU law that arose in disputes with the UK, even after its obligations under the Withdrawal Agreement fell away. This potentially represents a ‘one size fits all’ solution, respecting the role of the CJEU as sole arbiter of EU law, potentially across the full spectrum of UK-EU relations, rather than in specific, identified areas. (Paragraph 302)
89. The provisions on dispute settlement, and on the Joint Committee, illustrate how the structure for interinstitutional dialogue in the future relationship echoes the provisions set out in the text of the Withdrawal Agreement. This underlines the close relationship between the two parts of the Brexit agreement. (Paragraph 303)
90. The Political Declaration confirms that formal negotiations on the future UK-EU relationship will begin only after UK withdrawal on 29 March 2019. The Political Declaration is thus in many places little more than an agenda for a discussion that has barely begun. But despite its lack of detail and precision, the Declaration is an important signpost to the shape of the future relationship, and to the structure and scope of the forthcoming negotiations. (Paragraph 307)
91. We welcome the commitment of both sides to engage in preparatory organisational work ahead of the commencement of formal negotiations. We also note their commitment to develop agreements in good faith, so that the future relationship can come into force by the end of 2020. While this is welcome, we note that in fact agreements will have to be reached by June 2020, the point at which the UK will have to decide whether to request an extension to the transition period. Given the range and complexity of the issues to be discussed, this timetable is extremely challenging. (Paragraph 308)
92. We endorse the Declaration’s recognition, in the context of the future relationship, of the need to safeguard the peace process in Northern Ireland, and to protect the Belfast/Good Friday Agreement in all its parts. Paragraph 139 of the Declaration is thus important in balancing the backstop provisions in the Withdrawal Agreement. (Paragraph 309)
93. The negotiations on the future relationship should be subject to full parliamentary scrutiny. We note that at EU level the negotiations are likely to take place under Article 217 or 218 TFEU, and will be subject to detailed and transparent scrutiny by the European Parliament. The UK Parliament and the British people deserve the same transparency and accountability: the Government must engage proactively and constructively with Parliament,

rather than repeating the mistakes of the last two years. We look forward, in this regard, to making further submissions to the Liaison Committee review of committee activity. (Paragraph 310)

94. The negotiations on the future relationship should be subject to full parliamentary scrutiny. We note that at EU level the negotiations are likely to take place under Article 217 or 218 TFEU, and will be subject to detailed and transparent scrutiny by the European Parliament. The UK Parliament and the British people deserve the same transparency and accountability: the Government must engage proactively and constructively with Parliament, rather than repeating the mistakes of the last two years. We look forward, in this regard, to making further submissions to the Liaison Committee review of committee activity. (Paragraph 310)
95. We welcome the commitment to a high-level conference at least every six months, which is in keeping with the recognition of both sides that the future relationship will continue to evolve. UK withdrawal from the EU is an important milestone in the evolution of the UK-EU relationship, but the story will not end on 29 March 2019. It is imperative that the structures underpinning the future relationship are flexible to adapt to whatever changes take place in the future. (Paragraph 311)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Baroness Armstrong of Hill Top
 Lord Boswell of Aynho (Chairman)
 Baroness Brown of Cambridge
 Lord Cromwell
 Baroness Falkner of Margravine
 Lord Jay of Ewelme
 Baroness Kennedy of The Shaws
 The Earl of Kinnoull
 Lord Liddle
 Baroness Neville-Rolfe
 Baroness Noakes
 Lord Polak
 Lord Ricketts
 Lord Risby
 Lord Soley
 Baroness Suttie
 Lord Teverson
 Baroness Verma
 Lord Whitty

Declarations of interest

Baroness Armstrong of Hill Top
Joint owner of a property in Spain

Lord Boswell of Aynho (Chairman)
In receipt of salary as Principal Deputy Chairman of Committees, House of Lords
Shareholdings as set out in the Register of Lords' Interests
Income is received as a Partner (with wife) from land and family farming business trading as EN & TE Boswell at Lower Aynho Grounds, Banbury, with separate rentals from cottage and grazing
Land at Great Leighs, Essex (one-eighth holding, with balance held by family interests), from which rental income is received
House in Banbury owned jointly with wife, from which rental income is received
Lower Aynho Grounds Farm, Northants/Oxon; this property is owned personally by the Member and not the Partnership

Baroness Brown of Cambridge
Vice Chair of the Committee on Climate Change
Chair of the Adaptation Sub-Committee of the Committee on Climate Change
Chair of the Henry Royce Institute for Advanced Materials
Chair of STEM Learning Ltd
Non-Executive Director of the Offshore Renewable Energy Catapult
Chair of The Carbon Trust
Council member of Innovate UK

Lord Cromwell
Employment and business as set out in the Register of Lords' interests

Baroness Falkner of Margravine

Member, British Steering Committee: Koenigswinter, The British-German Conference

Member, Advisory Board, Demos

Lord Jay of Ewelme

Trustee (Non-Executive Director), Thomson Reuters Founders Share Company

Member, European Policy Forum Advisory Council

Member, Senior European Experts Group

Chairman, Positive Planet (UK)

Patron, Fair Trials International

Trustee, Magdalen College, Oxford Development Trust

Baroness Kennedy of The Shaws

President, Justice, UK arm of International Commission of Jurists

Chancellor, Sheffield Hallam University

The Earl of Kinnoull

Farming interests as principal and as charitable trustee, in receipt of agricultural subsidy

Chairman - Culture Perth and Kinross, in receipt of governmental subsidy

Chairman-United Kingdom Squirrel Accord, in receipt of governmental monies

Director-Horsecross Arts, in receipt of governmental subsidy

Shareholdings as set out in the register

Lord Liddle

Member, Cumbria Country Council

Pro-Chancellor (Chair of Board), Lancaster University

Co-Chair, Policy Network

Baroness Neville-Rolfe

Former Commercial Secretary, HM Treasury

Former Minister of State for Energy and Intellectual Property

Chair, Assured Food Standards Ltd

Non-Executive Director, Capita Plc

Non-Executive Director, Secure Trust Bank

Governor, London Business School

Shareholdings as set out in the register

Baroness Noakes

Director, Royal Bank of Scotland Group plc

Interests in a wide range of listed companies as disclosed in the Register of Interests

Lord Polak

Employment and business as set out in the Register of Lords' interests

Lord Ricketts

Non-Executive Director, Group Engie, France

Strategic Adviser, Lockheed Martin UK

Charitable activities as set out in the Register of Interests

Lord Risby

No relevant interests declared

Lord Soley

No relevant interests declared

Baroness Suttie

Associate with Global Partners Governance Limited in respect of their Foreign and Commonwealth Office contract to provide mentoring and training for parliamentarians and their staff in Jordan

Trustee, Institute for Public Policy Research (IPPR)

Campaign Council Member, British Influence

Lord Teverson

Board Member, Marine Management Organisation

Trustee, Regen SW

In receipt of a pension from the European Parliament

Baroness Verma

No relevant interests declared

Lord Whitty

Vice President, Chartered Trading Standards Institute

Chair, Road Safety Foundation

Vice President, Local Government Association

President, Environmental Protection UK

Member, GMB

Vice President, British Airline Pilots Association

A full list of Members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/register-of-lords-interests/>