



How the Article 50 letter compares with the European Council draft guidelines

Three days after the Prime Minister, Theresa May, issued the UK’s Article 50 notification letter to Donald Tusk, the President of the European Council, the EU published a draft of so-called ‘guidelines’, outlining the EU’s core principles for the negotiations. These guidelines will be discussed and a version of them approved at the EU Council summit in April.

In addition to the Council’s draft guidelines, the European Parliament has adopted a resolution on the start of the Brexit talks. This is important because Members of the European Parliament (MEPs) will have a say on the terms of the UK’s withdrawal from the EU, as well as the future UK-EU relationship. The negotiating positions outlined in the resolution are consistent with those drafted by the European Council.

We analyse the initial positions of the UK and EU in the table below. Based on the language in the Article 50 letter and European Council’s draft guidelines, this is what the UK and the EU’s emerging positions could mean for the negotiations.

	What the Article 50 letter says	What the European Council says	What their position means
<i>How the negotiations will be conducted</i>			
Sequencing of the negotiations	“We believe it is necessary to agree the terms of our future partnership alongside those of our withdrawal from the EU.”	The EU insists on a so-called “ phased approach to negotiations”. “The European Council will...determine when sufficient progress has been achieved to allow negotiations to proceed to	The EU appears to be softening from its previous insistence on hard sequencing – no talks on a future relationship until we’ve settled

		the next phase.”	on the ‘divorce’. The EU now envisages “preliminary and preparatory discussions” on the future relationship with the UK – if “sufficient progress” is achieved on the divorce settlement, raising the prospect that the two sets of negotiations will overlap.
<i>Terms of withdrawal from the EU</i>			
Exit bill	“We will need to discuss how we determine a fair settlement of the UK’s rights and obligations as a departing member state”	“A single financial settlement should ensure that the Union [EU] and the United Kingdom both respect the obligations undertaken before the date of the withdrawal”...“and should cover all legal and budgetary commitments...including contingent liabilities.”	Both recognise that money is on the table, but the EU is more specific on the scope of this.
Citizens' rights	“There are, for example, many citizens of the remaining member	“Agreeing reciprocal guarantees to settle the status and situations at the date of withdrawal of EU and	Both sides have signalled their commitment to making progress on

	<p>states living in the United Kingdom, and UK citizens living elsewhere in the European Union, and we should aim to strike an early agreement about their rights”</p>	<p>UK citizens...will be a matter of priority for the negotiations”</p>	<p>citizens’ rights early on. But real certainty can only be achieved when there is firm legal text agreements which have been translated into law.</p>
<p>Northern Ireland and its border</p>	<p>“We want to avoid a return to a hard border between our two countries, to be able to maintain the Common Travel Area between us, and to make sure that the UK’s withdrawal from the EU does not harm the Republic of Ireland.”</p>	<p>“the achievements, benefits and commitments of the Peace Process will remain of paramount importance”...“flexible and imaginative solutions will be required, including with the aim of avoiding a hard border”</p>	<p>Both the UK and EU are prioritising the UK’s relationship with Ireland, and are committed to avoiding a hard border in Ireland. The EU also signals flexibility from existing practices to achieve this.</p>
<p><i>On transitional arrangements and a ‘no deal’ scenario</i></p>			
<p>Transition period</p>	<p>“people and businesses in both the UK and EU would benefit from implementation periods to adjust in a smooth and orderly way to new</p>	<p>“the negotiations may also seek to determine transitional arrangements which are in the interest of the Union and, as appropriate, to provide for bridges towards the foreseeable framework for</p>	<p>Both the UK and EU acknowledge the need for a period of adjustment, but for different reasons. Theresa May believes that the purpose of a</p>

	<p>arrangements.”</p>	<p>the future relationship. “</p> <p>“Should a time-limited prolongation of Union <i>acquis</i> be considered, this would require existing Union regulatory, budgetary, supervisory and enforcement instruments and structures to apply.”</p>	<p>transition phase is to smooth the process of implementing new arrangements. In contrast, the EU is open to the possibility that the deal might not be reached within the two-year deadline, necessitating interim arrangements that allow negotiations to continue.</p> <p>The EU makes clear that if the UK ends up pursuing a gradual transition out of the EU, Britain will need to be prepared to make payments to the EU and to abide by its enforcement processes (i.e. the European Court of Justice (ECJ)) during that time.</p>
<p>Contingency plans for ‘no deal’</p>	<p>“If, however, we leave the European Union without an agreement,...both the</p>	<p>The EU “will prepare itself to be able to handle the situation also if the</p>	<p>Both the EU and UK acknowledge the possibility that the negotiations could</p>

	<p>United Kingdom and the European Union would of course cope with the change, but it is not the outcome that either side should seek.”</p>	<p>negotiations were to fail.”</p>	<p>collapse and that they need to put contingency plans in place. However, they both reiterate their commitment to secure a deal on a future relationship.</p>
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On the future relationship between the UK and EU

<p>Single Market participation</p>	<p>“The UK does not seek membership of the Single Market: we understand and respect...there can be no ‘cherry picking’.”</p>	<p>“the European Council welcomes the recognition by the British Government that the four freedoms of the Single Market are indivisible and that there can be no “cherry picking”.</p> <p>“Preserving the integrity of the Single Market excludes participation based on a sector-by-sector basis.”</p>	<p>There is a shared understanding that the UK will not have full access to the Single Market without participating in the Union. The EU also explicitly rules out any ‘carve outs’ for key sectors of the UK economy that Theresa May’s government may be considering.</p>
<p>Future relationship</p>	<p>“We want to agree a deep and special partnership between the UK and the EU, taking in both economic and</p>	<p>“strong and constructive ties will remain in both sides’ interest and should encompass more than just trade.”</p>	<p>Both sides have signalled their commitment to having a future agreement which should include</p>

	<p>security cooperation.”</p>		<p>cooperation beyond trade. But amid concerns that security could be a "bargaining chip" in negotiations, the EU warns that there can be no “trade-off between international and external security and the future economic relationship”.</p>
<p>Free trade deal</p>	<p><i>“We also propose a bold and ambitious Free Trade Agreement between the United Kingdom and the European Union. This should be of greater scope and ambition than any such agreement before it so that it covers sectors crucial to our linked economies such as financial services and network industries.”</i></p>	<p>“the European Council stands ready to initiate work towards [an ambitious free trade] agreement, to be finalised and concluded once the United Kingdom is no longer a member state.”</p> <p>“It must ensure a level playing field in terms of competition and state aid, and must encompass safeguards against unfair competitive advantages through, inter alia, fiscal, social and environmental dumping.”</p>	<p>The UK and EU share an ambition towards pursuing a comprehensive free trade deal. But Brussels makes it clear that the free trade relationship must not provide the benefits the Single Market, and should prevent Britain pursuing a role as a low-tax, low-regulation haven on Europe’s border.</p>

<p>Dispute settlement</p>	<p>“We should therefore prioritise how we manage the evolution of our regulatory frameworks to maintain a fair and open trading environment, and how we resolve disputes.”</p>	<p>“The future partnership must include appropriate enforcement and dispute settlement mechanisms that do not affect the Union’s autonomy”</p>	<p>Both sides acknowledge that a future trade deal will require some dispute settlement mechanism that enforces trade rules. This may prove to be one of the most contentious aspects of the negotiations.</p>
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There are other issues which surface in the EU draft guidelines – but not in the Article 50 letter.

- **Assertion of solidarity:** *“there will be no separate negotiations between individual member states and the United Kingdom on matters pertaining to the withdrawal.”* A warning to other member states (and the UK) not to engage in divide and rule.
- **Cyprus and Gibraltar:** The special cases of the sovereign bases in Cyprus and how new arrangements apply to Gibraltar both get a mention. The guidelines make clear that how the new arrangements apply to Gibraltar must be agreed between the UK and Spain.
- **Pending (and future) court cases:** *“for all court procedures pending before the Court of Justice of the European Union upon the date of withdrawal that involve the United Kingdom or natural or legal persons in the United Kingdom. The Court of Justice of the EU should remain competent to adjudicate in these procedures.”* A reminder that we may not be free of ECJ jurisdiction on 30 March 2019. Moreover, new cases could be brought: *“arrangements should be foreseen for the possibility of administrative or court proceedings to be initiated post-exit for facts that have occurred before the withdrawal date.”* This could mean continuing fines for the UK.
- **European agencies:** *“While the future location of the seats of EU agencies and facilities located in the UK is a matter for the 27 member states, arrangements should be found to facilitate their transfer.”* This is a unilateral decision for the 27 member states – but we should not get in the way.
- **International commitments:** *“The European Council expects the UK to honour its share of international commitments contracted in the context of its EU membership”.* A warning that we cannot escape commitments we made while a member state – and a possible hint of continued cooperation in

the future: *“In such instances, a constructive dialogue with the UK on a possible common approach towards third country partners and international organisations concerned should be engaged.”*