

Analysis of the EU-UK Withdrawal Agreement¹ and Political Declaration²: Is this really leading us to Brexit or just back to a more integrated EU?

By Munish Sharma, Brexit Party Parliamentary Candidate, November 2019

I previously worked for the Financial Conduct Authority, negotiating EU financial services regulation in the aftermath of the financial crisis on behalf of the UK. I subsequently worked as a compliance officer in the investment banking industry to ensure appropriate implementation of global banking rules. This has given me good insight into how laws are developed and interpreted across the EU. However, I am not a practicing lawyer. This document should be read in that context. The analysis has been done with time constraints and so I am open to receiving feedback regarding any corrections or other comments to improve the content on this page.

The Brexit Party have published an [overview of the flaws with the Conservative Party's agreed Withdrawal Treaty](#). Other very good summaries are also available including by the [Bruges Group](#) and [Facts4EU](#).

This document provides a more detailed overview of key aspects of the Withdrawal Treaty and Political Declaration. This page provides a more detailed overview of aspects of the Withdrawal Treaty and Political Declaration as I have analysed it. **It prevents us from being able to derive the key benefits of Brexit including (after the transition period):**

- **Reviewing and amending EU derived industrial laws**, which indirectly prevents us from being able to help our economy become more competitive, and ensures smaller businesses continue to face high costs in a market where many businesses are struggling to maintain profitability.
- **Agreeing trade deals** with non-EU countries on a more competitive basis than they have with the EU. Where a pre-existing trade agreement with the EU does not already exist, we may not be able to enter into a trade agreement at all.

The Political Declaration is also very ambitious and goes far beyond creating the framework for a Free Trade Agreement. It creates the framework for **a new Future UK-EU Treaty to replace the current EU Treaty** but without any influence over future EU laws. It also specifically includes requirements for “**deep regulatory and customs cooperation**” which, given my analysis below, appears to be another way of stating **Customs Union**. Overall, by taking away the key benefits of Brexit, ***this will ultimately lead the UK back into an even more integrated EU.***

The analysis has been done with time constraints and so I am open to receiving feedback regarding any corrections or other comments to improve the content on this page. It focuses on 8 key areas:

- 1) The transition period;
- 2) Recovery of EU investments, particularly from the European Investment Bank
- 3) The UK bill
- 4) Governance and legal issues
- 5) The future relationship/political declaration

¹ Consolidated version of the Withdrawal Agreement of the UK from the EU and Euratom, 17, October 2019 https://ec.europa.eu/commission/publications/working-document-consolidated-version-withdrawal-agreement-following-revision-protocol-ireland-northern-ireland-and-technical-adaptations-articles-184-and-185-agreed-negotiators-level-and-endorsed-european-council_en

² Political Declaration setting out framework for the future relationship between the EU and the UK agreed on 17 October 2019 https://ec.europa.eu/commission/sites/beta-political/files/revised_political_declaration.pdf

- 6) Fishing
- 7) Citizens' rights and immigration
- 8) Tax

More detailed analysis is available at https://munishsharma.org/?page_id=245.

1) The transition Period

This can be indefinitely extended despite what the Treaty states and there is **no exit clause**. This is very likely as the future relationship (political declaration) is very ambitious and actually sets the framework for **far more than a just a Free Trade Agreement**, tying the UK's flexibility in future negotiations. The Government and EU have been more than creative with the truth.

2) Recovery of EU investments:

The UK will recover EU related investments on a "**paid-in capital**" (or **book value**) basis. That means it only gets what it paid in at the time of investing, not what its investments are worth today. This includes investments via the European Investment Bank (see below, Article 150), European Development Fund (Articles 152-154), European Central Bank (Articles 117, 149) and other more general EU-related investments.

Additionally, there is no mention of clawing back money we have invested in the **European Space Agency, Galileo** and who knows how many other significant pan-European projects the UK will no longer participate in.

A closer look at the European Investment Bank (EIB)

Significant UK investments in the EIB were made in the 1970s, so UK EIB investments are worth much more than it has agreed to receive. Published analysis has already clarified we are **giving up at least £7billion. It could be significantly more**. The UK has also agreed to receive payment in instalments, including 12 years for its EIB investments. On top of this, the UK has agreed to continue to be liable for EIB guarantees despite divesting out of the EIB as determined by the European Union and EIB Board (Articles 143, 150). **After separating from the EIB, the Political Declaration clarifies the UK wishes to explore a future relationship with the EIB** (clause 15).

Would you accept being paid for your assets, e.g. your house, today with its cash value as it was in the 1970s rather than current market value? Would you then consider receiving that amount over 12 yearly instalments rather than immediately, over which time the value of what you receive will fall further (because of inflation)? Finally, would you then reinvest in the assets you just released at today's prices? This is essentially what we are signing. Current estimates in published reports suggest **we are giving away at least £7billion, but it would not be surprising if it was significant more**.

3) The UK bill

The UK is on the hook for lots of costs. Many may be relatively small individually but they all add up. There is a lack of clarity on how these will be calculated but it gives the EU lots of control on valuations with little comeback from the UK. **The overall costs are not stated to be £39bn, they actually end up being more in practice given they are yet to be calculated.**

4) Governance and legal issues:

There will be continued involvement in UK affairs by **EU institutions, an “independent authority” with “powers equivalent to those of the European Commission” and the ECJ** for up to 8 years after the end of the transition agreement (whenever or if that ends) (Articles 4, 7, 34, 87, 89, 92-95, 138, 158-163).

Additional arrangements covered in the “Withdrawal Treaty” (i.e. the “transition” arrangements) are also referred in the Political Declaration (and therefore the **intention of the UK and EU is to make these permanent**). These include:

- a) the **Joint Committee and other specialist committees** reflects continued involvement of the EU in UK affairs (Article 164-165 and Clauses 126-127); and
- b) **dispute resolution arrangements** which take power away from UK legal courts and place them in the hand of the International Bureau of the Permanent Court of **Arbitration (giving the EU strong and continuing influence on UK trade)** (Articles 168-180 and Clauses 129 – 132 and 134).

5) The future relationship/political declaration

The framework for the future and permanent relationship with the EU is already set out in the Political Declaration, which is given legal force by Article 184 of the Withdrawal Treaty, which is enforceable by the ECJ.

Free Trade Agreement or Another Treaty?

This is not limited to, and it is untrue to suggest the future relationship is just, a free trade agreement at all. It is the framework for a very comprehensive remain with no influence Treaty (Clauses 2, 3, 11, 15, 77-102 and others). It includes many other areas other than trade including:

- Rule of law (what else can this relate to other than jurisdiction of courts?)
- Promotion of democracy
- High standards of free and fair trade (not reference to “high”)
- Cooperation against internal and external threats, including, law enforcement, criminal justice, foreign policy, security, defence, including **financial contributions from the UK and adherence to EU law as regards participation in the European Defence Agency**
- Wider areas of cooperation, “beyond those described in the political declaration”.
- Overseas development (financial aid)
- Data Protection laws
- Science
- Youth, culture, education
- Environmental Protection
- Workers’ rights (social and employment standards)
- Consumer protection
- Future relationship with the European Investment Bank (after being underpaid for UK investments)
- State aid
- Competition

- Tax matters, including “curbing harmful tax practices”. It’s not clear if the intention is to prevent the UK having a more efficient tax environment
- European Convention on Human Rights
- European Consensus on Development

It is worth highlighting that the political declaration seeks to include EU workers' rights protections in the future agreement. Therefore, it is difficult to understand the Labour Party claim that the political declaration does away with EU "**workers' rights**" (even though UK workers' rights are much more stringent than EU standards) (Clause 2, 77 of the political declaration).

Deals with other (non-EU) countries)? No

There are specific provisions embedded within the Political Declaration which indicate **agreeing deals with the non-EU countries on more competitive terms than they already have with the EU will not be possible**. These include agreeing a “**deep regulatory and customs cooperation**, underpinned by provisions **ensuring a legal playing field for open and fair competition** as set out in Section XIV...” (Clauses 17, 21). “**Customs Cooperation**” in this context appears to be another way of describing the existing customs Union.

Permanent common foreign, security and defence policies

Article 127(2) also sets an intention to agree to a common **foreign and security policy** and common **security and defence** policy. If they cannot the Withdrawal Treaty provisions appear to continue to apply indefinitely.

6) Fishing

Article 130 of the Withdrawal Agreement maintains the status quo. Furthermore, clause 73 of the Political Declaration calls for access to waters and quota shares. This is clearly not giving UK fisherman exclusive access to UK water and is an arrangement that is intended to become permanent.

7) Citizens' rights and immigration

One specific area of potential concern is the limited scope to carry out criminal and security checks on applicants. It must be “with the exclusive aim” of verifying whether restrictions may be applicable (Article 18(1)(p)). Does this raise a concern that criminal checks can only be done for specific immigration purposes and not more generally? Another potential concern is that family members (**irrespective of their nationality**) of EU citizens residing in the UK have rights to employment or self-employment (Article 22). They shall also enjoy equal treatment with UK nationals (Article 23).

8) Tax.

Specifically, clause 77 of the political declaration which refers ambiguously to “curbing harmful tax practices”. For example, it’s not clear if this would prevent the UK pursuing a more competitive tax (and specifically VAT) environment compared with EU countries, particularly given **EU rules on VAT will continue to apply to the UK for 4/5 years after the end of the transition period**.