

# Brexit

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## Reader's Guide

This chapter analyses the United Kingdom's departure from the European Union (EU), commonly known as Brexit. The chapter examines the historical context that shaped the UK's decision to join the European Economic Community (EEC) and its subsequent relationship with the EU. It charts the events leading to the 2016 EU referendum, including the campaign, and explains the reasons for the narrow Leave vote. The Withdrawal Agreement (WA) negotiations under Article 50 are discussed by focusing on process, actors, and outcomes. This is followed by an evaluation of the negotiations leading to the signing of the Trade and Cooperation Agreement (TCA) and its implications. The chapter ends by discussing the impact and implications of the UK's departure from the EU.

## 27.1 Introduction

On 31 January 2020 the United Kingdom left the European Union (EU). This event, and the process leading up to it, is commonly known as **Brexit**. To understand Brexit it is important to look not only to the short-term factors explaining the outcome of the

2016 EU membership referendum, but also to longer-term trends informing the UK's engagement with the European integration project. This is because the UK's involvement in the EU has been shaped by the UK's history and culture. Indeed, stories from the past combine with pragmatic economics, short-term (party) political and media interests, social and

economic cleavages, and broader global issues to form a base-line for understanding why, in the 1950s, European states decided to work together to forge a common market; why the UK decided first to stay out and then applied to join this venture; and why after 47 years the UK left the EU.

This chapter offers an introductory overview of Brexit as an unprecedented process for both the EU and the UK. It starts by examining the historical context shaping the UK's post-1945 relationship with its European neighbours. It then charts the events leading to the EU referendum, including the campaign, and explains the reasons for the narrow Leave vote in the referendum. The Withdrawal Agreement (WA) negotiations under Article 50 are discussed by focusing on process, actors, and outcomes. This is followed by a review of the Trade and Cooperation Agreement (TCA) that frames the post-Brexit UK-EU relationship. The chapter concludes by discussing the implications of the UK's departure from the EU.

## 27.2 The UK in Europe between 1945 and 2016

In the 1950s, six West European states agreed to co-ordinate first their coal and steel industries and later other economic sectors to form a European community. By 1958, the European Economic Community (EEC) was up-and-running (see Chapter 2). The British government was invited to participate but declined. There was little enthusiasm in the UK for **supranational integration** because of concerns over its implications for national sovereignty. By the end of the 1950s, however, the UK's position had altered. The British economy was stagnant and the **Suez crisis** had put paid to the view that the UK could retain its status as a first-order world power. After toying with an alternative free trade arrangement, the UK government applied to join the EEC in 1961.

The road to accession was far from smooth. Notwithstanding opposition within the UK, it was French president Charles de Gaulle who created the biggest barrier to the UK's EEC membership, vetoing British membership twice, in 1963 and 1967. It was only after he left office in 1969 that negotiations could proceed, led in the UK by the pro-European Conservative Prime Minister, Edward Heath. The negotiations were completed quickly, and the UK joined the EEC on 1 January 1973.

The 'anti-marketeters' opposed to EEC membership argued that the UK had conceded too much in the accession negotiations. The opposition Labour Party leader, Harold Wilson, facing elections in 1974 with his party divided over EEC membership, sought a pragmatic solution. Foreshadowing Prime Minister David Cameron's actions more than four decades later, Wilson agreed, if elected, to renegotiate the UK's EEC deal and to hold a UK-wide referendum on EEC membership. Once elected, and with little enthusiasm, Wilson engaged in a rather limited renegotiation. The referendum to decide whether the UK would leave the EEC was held less than 18 months after the UK had joined, in June 1975. A clear majority of 67 per cent supported membership. The fact that all political parties, aside from the Communist Party, wanted to stay in the EEC, as did all national newspapers aside from the Communist *Morning Star*, no doubt helped the pro-EEC campaign, which was also well-funded and well-organized. The 'outs', by contrast, comprised a rather ill-assorted group of politicians, including Tony Benn on the far left and Enoch Powell on the far right.

Wilson's renegotiation had ignored several tricky questions, however, including the UK's contribution to the European budget. This was one of several issues, which provoked tensions throughout the 1970s, coming to a head after Margaret Thatcher took office as Prime Minister in 1979. At the Fontainebleau summit in 1984, European leaders struck a deal on this issue, which was heralded in the British media as a great victory. However, the aggressive way in which the discussions had taken place left European leaders bruised.

While Thatcher continued to adopt an adversarial approach to European issues, she was nevertheless willing to bargain when in the UK's interest. She was supportive of plans to create a Single Market, which was in line with her domestic deregulatory agenda and could benefit the UK economy, even if it was likely to have long-term institutional and political ramifications. Ultimately, despite or perhaps because of Thatcher's tough stance, the European issue ended up playing a part in her downfall. It also plagued her successor, John Major, in his struggles to negotiate the Maastricht Treaty (see Chapter 2). Although he managed to gain opt-outs for the UK on euro membership and social policy, these concessions were not enough to quell the opposition of Conservative backbenchers who, in 1993, came close to bringing down the government. The legacy of this period influenced British European policy in the decades that followed.

Meanwhile, by the early 1980s, the Labour Party in opposition had moved substantially to the left, so much so that the 1983 election manifesto included a commitment to withdraw from the EEC. After electoral defeats in 1983 and 1987, the Labour Party began to adopt a pro-European position. With a new Prime Minister, Tony Blair, in office from 1997, the tone of the UK's relationship with the EU seemed to improve. Indeed, the first Blair government opted back into the EU's social 'chapter' and negotiated an important deal with France on defence cooperation. However, while Blair favoured euro membership, his Chancellor, Gordon Brown, was hostile. The demanding criteria was established to judge whether the time was right for the UK to join the euro, but as public opinion proved unsupportive, the issue of euro membership was eventually dropped.

Although the **United Kingdom Independence Party (UKIP)** had emerged onto the British political scene in the mid-1980s, it was only in the 2000s that it had its first substantial electoral gains. These culminated in their lead position in the 2014 European Parliament elections, and successes—albeit to a lesser extent—in the 2015 UK general election. UKIP was also able to influence the mainstream political parties, especially the Conservative Party. While UKIP campaigned on a range of issues, its *raison d'être* had from the start been withdrawal from the EU via an in/out referendum. During the Major and Blair governments there had been frequent calls for European referendums on specific European issues and in 2007 David Cameron, then leader of the opposition, gave an 'iron-clad guarantee' that a Conservative government would hold a referendum on the Lisbon Treaty. Thus the referendum issue had entered public discourse.

In office, Cameron's back-tracking on his referendum pledge angered Eurosceptic Conservative backbenchers, turning Europe into the defining issue of his premiership. Cameron had a reputation as soft Eurosceptic (see Chapter 15) who had not wanted Europe to dominate his government. He had already told his Party in 2006 that politicians alienated the public by 'banging on about Europe'. Refusing to hold a referendum on a treaty that had already come into force made sense but simmering tension on this issue required action. Cameron therefore supported legislation (the 2011 European Union Act) to prevent Parliament agreeing any major *future* treaty reform without first holding a referendum, a so-called 'referendum lock'.

In his January 2013 'Bloomberg' Speech, Cameron outlined his vision for a reformed EU and the UK's place

within it. He outlined the British agenda for EU reform around four proposals. He acknowledged the gap between the EU and its citizens and the need to address the EU's lack of democratic accountability and consent; he gave an assurance that developments in the eurozone would not prejudice those outside the single currency; he proposed a limit to welfare incentives encouraging EU citizens to seek work in the UK; and emphasized the need to maintain competitiveness, jobs, growth, and innovation. He also confirmed that a referendum that would be held before the end of 2017 to settle the European question, was contingent on the negotiation of a 'new settlement' for the UK in the EU (Cameron, 2013). The Conservative Party subsequently fought and won the 2015 general election on the basis of this promise to change the UK's relationship with the EU and to reclaim power from Brussels; and with a commitment to hold an in/out referendum before the end of 2017.

#### KEY POINTS

- Although there was initially little enthusiasm in the UK, by the early 1960s, the economic rationale for joining the EEC had become more convincing. The UK joined in 1973.
- A post-membership referendum in 1975 resulted in 67 per cent of the electorate voting to stay in the Community.
- The UK supported European initiatives where they were perceived to be in the national interest.
- After 2010, the Prime Minister David Cameron addressed the rise of UKIP and ongoing parliamentary hostility to the EU by calling a referendum on membership of the Union.

## 27.3 The 2016 Brexit Referendum

After unexpectedly winning an overall Conservative majority in the 2015 general election, David Cameron confirmed that an in/out referendum would take place in June 2016. From the end of February to the official start of the campaign on 15 April 2016, the Leave and Remain camps rallied to attract supporters from the worlds of politics, business, and entertainment. Their challenge was to translate a generic question: 'Should the United Kingdom remain a member of the European Union or leave the European Union?' into meaningful issues that would engage and mobilize voters.

The key message put forward by the Leave campaign was 'take back control'. This slogan referred to control over borders and immigration and the re-statement of British sovereignty in key policy areas. The Leave side argued that the UK could retain the benefits of access to the EU Single Market without the obligation to allow free movement of people. The call for referendum day to become 'independence day' and the promise that the country would be made 'great again', reflected the ability of the Leave campaign to appeal with skill to national pride and sentiment. The Leave campaign also stressed the vast trading and economic opportunities available to the UK outside the EU, arguing that as one of the largest economies in the world, the UK would thrive.

The Remain campaign made the economy its key theme, arguing that Brexit would have a devastating effect on UK growth. It stressed that as well as creating short-term instability, a decision to leave the EU would plunge the country into recession. These negative predictions led the Leave campaign to claim that the Remain camp was engaged in 'Project Fear'. Meanwhile, the Remain campaign avoided confronting the immigration and border control issue. It failed to recognize the fears and misconceptions of those worst hit by the effects of globalization and government austerity policies; that is, those who regarded EU immigration as a challenge to their national identity, a cause of unemployment, and an unsustainable burden on the country's healthcare, housing, and education systems.

The issue of the UK's territorial integrity emerged during the campaign as opinion polls highlighted an enhanced level of support for a Remain vote in both

Northern Ireland (NI) and Scotland. Wales was an outlier, with the UKIP vote in the Welsh elections in May 2015 already having shown evidence of discontent in traditionally Labour working-class areas over job losses.

The Leave campaign could dismiss Remain's 'doom-and-gloom' narrative by discrediting the expert advice on which it was based as elitist. This reaction wrong-footed the Remain campaign, which seemed unable or unwilling to develop a progressive and positive narrative about EU membership. As the referendum drew closer, the tone of the campaign became more abrasive despite a public outcry over the murder of Jo Cox MP by a far-right terrorist. The 'Leave' campaign strengthened and normalized its anti-immigration narrative and framed the debate as one of 'us' (the decent, ordinary people passionate for our country) against 'them' (the uncaring disconnected elites in both Westminster and in Brussels). At this point, efforts by the Remain campaign to challenge Leave's narrative based on untrue messages about Turkey's imminent EU membership, the possibility of staying in the Single Market without free movement, and the instant transfer of funds from the UK's EU budget contribution to the National Health Service (NHS), became fruitless.

On 23 June 2016, the UK electorate voted to leave the EU. In total 17,410,742 people voted to leave and 16,141,241 voted to remain. That amounted to 51.9 per cent for Leave and 48.1 per cent for Remain, on a turnout of 72.16 per cent (See Box 27.1).

The referendum showed the UK to be a divided country both regionally and ideologically. Scotland and Northern Ireland voted to stay in the EU, while England and Wales voted to leave (see Figure 27.1).



#### BOX 27.1 KEY DEBATES: WHY DID THE UK VOTE TO LEAVE THE EU?

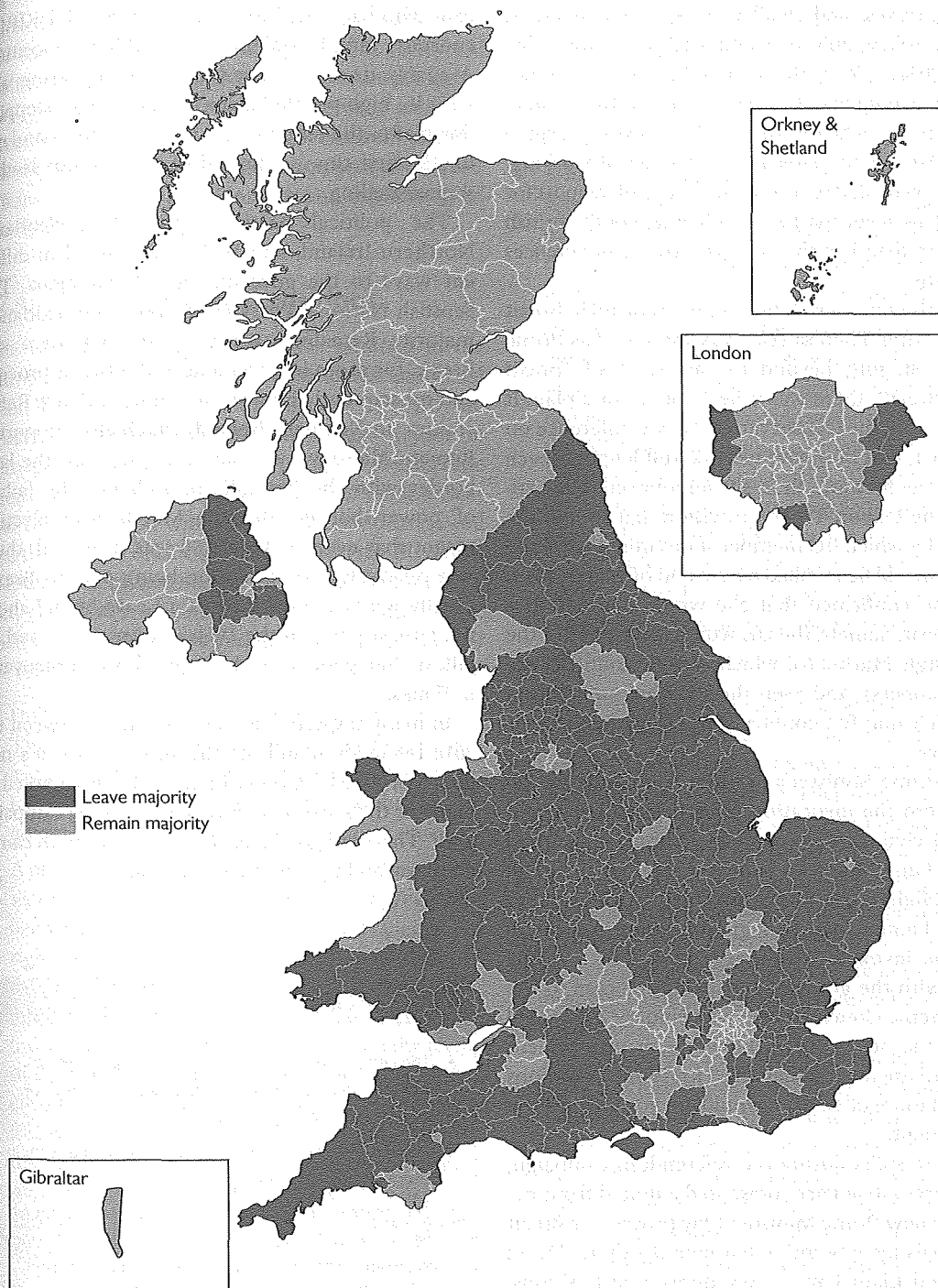
There is no single explanation that accounts for the UK's decision to leave the European Union.

The anti-politics literature argues that 'anti-political sentiment was a critical underlying factor in explaining the decision to leave the EU' (see Flinders, 2018). In other words, the Brexit referendum offered a window of opportunity to channel frustration around the issue of EU membership. That frustration was fuelled by 'drivers of dissatisfaction' (Flinders, 2018: 183) namely, economic inequality revealed in declining living standards, economic insecurity, and decreasing levels of social protection (Halikiopoulou and Vlandas, 2017). Thus, the poorest households, with incomes of less than £20,000 per year, people

in low-skilled employment, and those left behind by rapid economic change were more likely to support Brexit (Goodwin and Heath, 2016). Second, there was a cultural backlash against progressive, post-materialist values and in favour of authoritarian nativism, demonstrated in the successful anti-migration and 'taking back control' narratives. The Leave campaign, and UKIP in particular, successfully tapped into this dissatisfaction. Third, Britain is a deeply divided society along age, class, and level of education. These divisions cut across the left/right ideological divide creating a realignment in British politics that allowed the Conservative Party to gain support in Labour's working class areas, thus confirming the Labour Party's weakening relationship with working class Britain (Cutts et al., 2020).



Figure 27.1 Regional distribution of the Brexit vote



Source: Uberoi (2016). © Crown copyright, House of Commons Library (OS) 100040654 and (OSNI) 2085 (2016), available at: <https://researchbriefings.files.parliament.uk/documents/CBP-7639/CBP-7639.pdf>.

Ideologically, the country was divided into two tribes. Leavers, older socially conservative voters living in villages, towns, and smaller cities; and Remainers, younger, urban, university-educated voters. (SurrIDGE et al., 2021). Thus, the best indicator of whether someone would vote Leave or Remain (other than in Scotland) was whether they had a university degree or not. Areas with a large preponderance of working-class voters tended to have higher levels of support for Leave. This divide marked a realignment of the British electorate than has characterized voting preferences since 2016.

Over the summer of 2016 there was a lull in Brexit activity. After Theresa May was appointed as Prime Minister in July, beyond the assertion of 'Brexit means Brexit', there was little evidence of a plan. It was not until the Conservative Party Conference on 2 October, that May gave her first full-length speech on the way forward. In it, she announced that Article 50, the **Lisbon Treaty** provision that set out the process by which EU member states might leave the Union, would be invoked by the end of March 2017. May also confirmed that she would commit to a hard Brexit; namely, the UK would leave the EU, the EU's **Single Market** (of which non-EU countries are also members), and even the EU **Customs Union** (of which non-EU countries are also members) if necessary.

The Prime Minister's decision to exclude Parliament from the invocation of Article 50 led a coalition of civil society actors, including a concerned citizen, Gina Miller, to launch a legal challenge in the UK High Court. The Court ruled on 3 November that Parliament had to legislate before Article 50 could be invoked. The judgment led to a media frenzy with the government taking the case to the UK Supreme Court, which on 24 January 2017 ruled against the government. However, it was evident that Parliament—neither the House of Commons nor the House of Lords—would not vote against the government.

Despite splits during the referendum campaign, the Conservative Party presented a united front behind the new Prime Minister. May proved her Brexit credentials by appointing hardline Brexiters, David Davis and Liam Fox, to key ministerial positions. At the same time the Labour Party did not offer much opposition to Brexit. The Labour leader, Jeremy Corbyn, stuck with the argument that the outcome of the referendum should not be contested.

The Liberal Democrats and the Green Party threw themselves into their role as defenders of the 48 per cent who had voted to remain in the EU. UKIP, by contrast, found itself in a more difficult position. Arguably, its *raison d'être* was fast disappearing, and with its high-profile leader, Nigel Farage, stepping down after the referendum, UKIP entered—and not for the first time—a period of contentious leadership wrangling.

The political parties representing Scotland, Northern Ireland, and Wales, responded in different ways to the government's Brexit plans. The Scottish National Party (SNP) reflected Scotland's majority Remain position by arguing for a soft Brexit, for more involvement in the Brexit process, and subsequently for a second Independence Referendum. In Northern Ireland, which also supported Remain, there was serious concern about the land border with the Republic of Ireland. The failure of power-sharing after the March 2017 election meant that even as Article 50 was triggered, there was relatively little attention being paid to Brexit. Finally, with a majority vote for Leave, with Labour the largest party in the Welsh government and no talk of independence, there was little controversy in Wales.

In many respects, the interim period between the 2016 referendum and the British government's triggering of Article 50 on 29 March 2017 was marked by many of the same themes that affected the campaign itself. There is a good reason for that. For both camps there was still a great deal to play for.

#### KEY POINTS

- The Leave campaign focused on 'taking back control' while the Remain campaign emphasized the impact on the UK economy.
- The result of the 2016 referendum was 51.9 per cent in favour of leaving the EU.
- The referendum result showed clear evidence of the UK being a divided country. These divisions remained evident in the aftermath of the referendum and in the period prior to the triggering of Article 50.
- Theresa May's Conservative government favoured a hard Brexit scenario with the UK leaving both the Single Market and the Customs Union.

## 27.4 The Withdrawal Agreement

This section discusses the lengthy negotiations that led to the 2019 Withdrawal Agreement (WA) and Political Declaration (PD). It focuses on the negotiating positions and areas of agreement and disagreement between the British government and the EU and on the arduous negotiation process. It concludes by discussing the content and ratification of the WA and the PD.

### 27.4.1 The negotiating positions

The EU's negotiating position was outlined in the European Council's successive mandates and acted upon by the European Commission. The EU approached the Brexit negotiations as an exercise in damage limitation. While accepting the democratic choice of the British electorate, the EU27 made it clear that there were no winners in the Brexit process and that their main concerns were to protect the EU Single Market, citizens, and businesses, to avoid a domino effect, and ensure an orderly British departure. These goals translated into a negotiating position defined by the following principles:

- **Unity.** The EU27 were to act with one voice. Thus, the Brexit negotiations were to take place as a single package with no room for informal talks or bilateral negotiations between the UK government and any individual member state.
- **A phased approach to the negotiations.** Phase one would be completed once sufficient progress had been achieved on the following issues: citizens rights, the border on the island of Ireland, and the UK's financial settlement. Phase two would include other aspects of the UK's departure including transitional arrangements and the terms of a future UK–EU relationship. The EU made it clear that if the UK government wanted to ensure free movement of goods and services post-Brexit, this could only be achieved by accepting the free movement of people. The UK would not be allowed to cherry-pick and enjoy the same rights and benefits as a member state.
- **A commitment to the Good Friday Agreement** and peace in Northern Ireland. The EU27 committed to a solution avoiding the erection of a border on the island of Ireland and to respect the priorities of the Irish government.

- **A commitment to a Brexit agreement.** The EU27's goal was to avoid a disorderly British departure. This commitment also translated into the principle of 'nothing is agreed until everything is agreed', that is, that there would be one single agreement with one single governance architecture, rather than multiple agreements.
- **A broad ranging future relationship.** The EU was ready to consider establishing an ambitious partnership with the UK post-Brexit to include trade but also the fight against terrorism and international crime, and security and defence.
- **Sincere cooperation between the UK and the EU** during the negotiations. Negotiating in good faith was at the core of the EU's approach to the Brexit negotiations. This principle was also included in the WA to ensure that obligations arising from it were fulfilled by both parties. This translated into an unprecedented and regular publication of negotiating documents. This was not matched on the UK's side as the British government established early in the negotiations that it 'would not provide a running commentary on the process'.

The EU's strategy had an internal (within the EU) and an external (in relation to the UK) dimension. Internally, the EU managed to retain its unity. Laffan argues that the shock of the UK's departure mobilized a survival instinct in the EU that led to unprecedented unity built on the need to protect the achievements of European integration and a framing of the UK as an 'embryonic other', that is, as a soon-to-be third country (Laffan, 2019:2). Externally, the EU effectively and strategically deployed its legal and technical expertise in intergovernmental negotiations to deliver a coordinated response.

The UK's negotiating position was formally outlined in a White Paper in February 2017 and in key speeches delivered by the Prime Minister in 2017 and 2018. Informed by slogans such as 'Brexit means Brexit' and 'we are all Brexiters now', the British government committed to repatriate powers from Brussels, to end free movement of people, and to put an end to the CJEU's jurisdiction. These commitments translated into the following negotiating goals:

- **A commitment to engage constructively and respectfully** in the negotiations with the EU, in a spirit of sincere cooperation.

- Repatriation of powers from Brussels. This would be achieved through domestic legislation by repealing the 1972 European Communities Act via the 2018 EU Withdrawal Act.
- Control of the number of people coming to the UK from the EU by ending free movement of people.
- Leaving the Single Market but ensuring unfettered access. The British government aimed to achieve 'a bold and ambitious free trade agreement' that would ensure an independent trade policy at the same time as free trade in goods and services, including financial services, with the EU. The UK government was also ready to cooperate on cyber security and the fight against terrorism.
- Ending the jurisdiction of the CJEU in the UK but honouring international commitments and following international law.
- Ensuring certainty for citizens and business. The British government sought a transition period and mutually beneficial transitional arrangements.
- A commitment to peace in Northern Ireland. The British government committed to maintain the Common Travel Area with the Republic of Ireland and to avoid a hard border on the island while protecting the integrity of the United Kingdom. To this end the British government proposed the creation of a customs union between the UK and the European Union. This proposal was ultimately withdrawn when the government was unable to ensure sufficient parliamentary support for it (see Box 27.3).
- No payments into the EU budget unless beneficial to the UK, such as to facilitate access to EU research programmes.
- A preference for negotiating the WA and the future partnership alongside each other.
- No deal is better than a bad deal. While the UK wanted to avoid a no-deal scenario, it made it clear that it would walk away from the negotiations without an agreement if the outcome was not satisfactory. This proved to be an empty threat.

The UK's strategy on the Brexit negotiations also had an internal (within the UK) and an external (in relation to the EU) dimension. Internally, the British government faced three key challenges. First, after the

referendum, the UK was a divided country lacking a clear consensus on Brexit. The country also suffered from Brexit fatigue as the negotiations endured beyond the expected two years. The May and, from July 2019, the Johnson governments' preference for a hard Brexit was not unanimously supported in the country. The business community expressed concerns about post-Brexit barriers to trade, and increased bureaucratic processes and constraints. The devolved administrations in Scotland, Wales, and NI were concerned about how the repatriation of powers from Brussels might facilitate centralization rather than further devolution. A divided British parliament mirrored the lack of consensus over what Brexit ought to look like as the three votes against the agreed WA text demonstrated. It took another general election in December 2019 and a Conservative majority to ensure the ratification of the WA.

Second, the British government displayed an unexpected lack of readiness in the face of complex Brexit negotiations. Limited administrative capacity was exacerbated by a problematic Whitehall reorganization that created a new Department for Exiting the European Union (DexEU) and a Department of International Trade. This reform dispersed the UK's government administrative and policy expertise on the EU. Similarly, the government found it difficult to match the negotiating expertise of the European Commission and was often reactive and unable to articulate the technical details behind its negotiating aspirations such as ensuring a solution to the Irish border or retaining the benefits of EU membership after becoming a third country.

Finally, Theresa May exhibited weak leadership. She had started her premiership by demonstrating her Brexit credentials after having supported Remain in the 2016 referendum. But an absence of deliberation with the constituencies that she had to accommodate ultimately led to her demise. She was unable to ensure sufficient support for the negotiated WA draft in 2019 because she failed to build bridges with the opposition parties in Parliament while appeasing, to no avail, the Brexiteers in her party.

Externally, the British government adopted a three-pronged strategy. First, it attempted to divide the EU by seeking bilateral political contacts with key national leaders such as Macron, Merkel or Leo Varadkar, and by presenting the European Commission as inflexible, too focused on technical detail and acting beyond the mandate of the EU27. This strategy did not work. Second, the option of a 'no deal Brexit' was



never off the table. While this was largely a tactic for domestic consumption, the intended threat turned into weak posturing as the government's own analysis demonstrated the catastrophic effects of exiting the EU without an agreement. Finally, in its commitment to run the WA negotiations in parallel to negotiations on the future relationship, the British government achieved some success as talks about a future UK–EU relationship started in 2018 and the UK's main aspirations were included in the Political Declaration attached to the WA.

### 27.4.2 The negotiation process

The process by which a member state leaves the European Union is governed by Article 50 TEU (see Box 27.2). This treaty provision sets out the time-frame, scope, and broad negotiating procedure. It also identifies the key actors and the balance of power between the EU and the exiting member state.

The UK government initiated the Brexit process under Article 50 on 29 March 2017 when it communicated to the European Council its intention to leave the Union. However, the Brexit negotiations did not start until 19 June 2017. Between March and June, the EU published its negotiating guidelines and appointed Michel Barnier as the EU's negotiator. British PM, Theresa May, called a general election which was held on 8 June 2017 with the purpose of strengthening

the Conservative Party's position. However, while the Tory party won the majority of parliamentary seats, it did not manage to gain an overall majority, making the Conservative government dependent on the support of the Democratic Unionist Party (DUP), a unionist and loyalist Northern Irish political party. This dependence further weakened May's leadership and shaped future proposals on the solution to the island of Ireland post-Brexit, as the DUP rejected any scenario that differentiated Northern Ireland from the rest of the United Kingdom.

The key actors in the negotiation process were, on the British side, the Prime Minister and the Secretary of State for Exiting the European Union who negotiated on behalf of the British government. This latter role was performed, in turn, by David Davies and Dominic Raab and then by Stephen Barclay (from November 2018). Each led the Department for Exiting the European Union (DExEU). Parliament, under the **EU Withdrawal Bill**, was afforded a vote to ratify any agreement with the EU. Parliament made use of this right by opposing ratification three times.

On the EU side the Brexit negotiations were firmly intergovernmental. The EU's negotiating guidelines were drafted by the European Council, acting on the advice of the EU Council via the General Affairs Council (Article 50 formation, thus not including the UK). Donald Tusk, president of the European



#### BOX 27.2 BACKGROUND: ARTICLE 50 TEU

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. 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. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. The Treaties shall cease to apply to the State in question from the date of entry into force of the Withdrawal Agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.
5. A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
6. If a State which has withdrawn from the Union asks to re-join, its request shall be subject to the procedure referred to in Article 49.

Source: Article 50 TEU.

Council, became the face of EU27 governments. It was the European Council that agreed by unanimity the three requests from the UK to extend the negotiation period. These extensions were not taken lightly and they included conditions such as the UK holding European elections in May 2019.

The European Commission negotiated on behalf of the EU27. Michel Barnier, the EU's Chief Negotiator, was supported by an Article 50 Taskforce in the European Commission. The Commission informed the EU27 weekly on the progress of the negotiations, liaised with the European Parliament and national parliaments, and drafted the EU negotiating positions. When the negotiations concluded, the EU Council decided on the Withdrawal Agreement by qualified majority voting. The European Parliament (EP) created a Brexit Steering Group and appointed its own Brexit coordinator, Guy Verhofstadt. In line with Article 50 TEU, the EP had to provide its consent (by a simple majority of voting members) to the final agreement.

At the start of the negotiations in June 2017, the British government and the European Union agreed the principles that were to shape the Brexit negotiations. These included a commitment to transparency and to negotiate in good faith. The two negotiating parties also agreed to a phased approach to negotiations. Phase one focused on the withdrawal issues: the status of UK citizens in the EU and EU citizens in the UK; the border between the Republic of Ireland and Northern Ireland; and the settlement of the UK's financial obligations. This phase concluded on 15 December 2017 when the parties agreed that sufficient progress had been achieved.

This agreement in principle included. (1) Protecting the rights of Union citizens in the UK and UK citizens in the EU. Crucially on this issue the UK and the EU agreed to provide reciprocal protection for EU and UK citizens exercising free movement rights by the date of the UK's departure. (2) A framework for addressing the unique circumstances in Northern Ireland (NI) that respected the Good Friday Agreement and avoided the reinstatement of a hard border between the Irish Republic and NI (see Box 27.3), and to maintain full alignment with those rules of the Internal Market and the Customs Union which support North-South cooperation, the all-island economy, and the protection of the Good Friday Agreement. (3) On the financial settlement, the methodology for working out the final bill (estimated to be between

€40 bn and €60 bn) was settled but the final figure and the payment schedule were not. Both the UK and the EU agreed that the commitments made in phase one of the negotiations would be maintained in phase two.

Phase two of the negotiations started formally on 6 February 2018 with a focus on the governance of the agreement, the border on the island of Ireland, the transition period, and the framework for future EU-UK relations. This phase lasted until the UK's departure from the EU on 31 January 2020 and involved more frequent and intense negotiating rounds.

On 19 March 2018 the UK and the EU agreed a Draft Withdrawal Agreement that established the terms of the UK's departure from the EU planned for 29 March 2019. The subsequent negotiations tweaked the terms of the solution to the Irish border and tried to achieve common ground on the future UK-EU relationship. The political situation in the UK was complicated by the resignation in July of the Brexit Secretary and the Foreign Secretary, Boris Johnson, due to disagreements with the Prime Minister, while the DUP did not agree with the proposal on the Irish border. By 17 October 2018 the EU27 confirmed the absence of sufficient progress in the negotiations on the Irish border and the future economic relationship and warned of a no-deal Brexit. However, on 14 November the negotiating teams agreed on a Withdrawal Agreement text as well as on the outline of a Political Declaration defining the framework for a future UK-EU relationship. This was endorsed on 25 November 2018.

However, the ratification of the WA text would prove impossible on the British side. Parliament was divided on the terms of the departure as well as on the framework for the future relationship. On 15 January 2019, British MPs voted against the WA by 432 to 202 votes. On 12 March 2019 they once again voted against the WA by 391 to 242 votes. And in a desperate attempt to get the WA through parliament, on 29 March 2019 (the day the UK should have left the EU) a vote was held to approve the WA without the PD. MPs rejected this agreement too by 344 to 286 votes. Faced with this lack of parliamentary support and to avoid a no-deal Brexit, the Conservative government had to request three successive extensions of the negotiation period.

A revised Withdrawal Agreement and Political Declaration were the result of a limited renegotiation of the original text agreed between Theresa May and the EU

### BOX 27.3 CASE STUDY: THE IRISH BORDER

How to square the commitment by the UK government and the EU27 not to introduce a border between the Republic of Ireland (an EU member state after Brexit) and Northern Ireland (NI) (part of the UK and thus outside the EU after Brexit) while respecting the terms of the 1998 Good Friday Agreement, was one of the most difficult stumbling blocks in the WA negotiations, and an issue of contention that shaped UK–EU relations in subsequent years. While a range of scenarios was discussed during the negotiations (such as a ‘backstop’ creating a temporary customs area for the EU and the whole of the UK) the final treaty text incorporates a Protocol on Ireland/Northern Ireland. The Protocol ensures the absence of a physical border between NI and the Republic of Ireland but creates a complex solution that erects a regulatory border in the Irish Sea thus de facto recognizing the special status of Northern Ireland within the UK internal market. In practice this means that Northern Ireland follows EU regulatory and customs rules to ensure free movement of goods (particularly agri-food and industrial goods) across the island of Ireland and that regulatory controls on goods moving from Great Britain to Northern Ireland need to be implemented so that they can then freely circulate within the EU’s Single Market. The complex implementation of this solution and relevant dispute mechanisms are overseen by a UK–EU Joint Committee.

The Protocol also incorporates a section on ‘democratic consent’ that affords the Northern Ireland Assembly the possibility to vote on whether to maintain the provisions of the Protocol, with a requirement to have cross-community support. This provision reflected a shift in the EU’s position and the attempt by the British government to give voice to the devolved administration while recognizing the effect of the Protocol on

community relations in NI. Article 16 of the Protocol allows Protocol provisions to be overridden in the event of ‘serious economic, societal or environmental difficulties’.

The implementation of the Protocol has been controversial. On the UK side, the Democratic Unionist Party and some members of the Conservative Party oppose it on the grounds that it creates a de facto border in the Irish Sea between NI and the rest of the UK. In June 2021, the High Court in Belfast dismissed a legal challenge that argued that the Protocol undermined the UK’s constitutional integrity. Earlier that year, rioting erupted in some protestant areas of Belfast in protest against the regulatory border in the Irish Sea. Second, the British government knowingly challenged the commitment entered into under the Protocol by unilaterally proposing changes to its terms through domestic legislation (see Section 27.5, ‘The Trade and Cooperation Agreement’). While these changes were subsequently dropped, this unilateral action clearly meant a departure from the good faith approach to the Protocol’s implementation. Third, the British government showed an incomprehensible lack of readiness to implement the Protocol. Thus after heavily politicized exchanges, in June 2021, the European Commission agreed a temporary (until September 2021) easing of rules governing the movement of chilled meats and livestock as well as the provision of medicines from the rest of the UK into NI. On the EU side, Commission President, Ursula von der Leyen, had to backtrack on her attempt to invoke Article 16 of the Protocol to limit the export of COVID-19 vaccines beyond the EU. The political sensitivities in Northern Ireland, the difficult implementation of the Protocol, and calls for its revision or even suspension are likely to shape the UK–EU relationship in the years to come.

in November 2018. When Boris Johnson became PM in July 2019 he promised to oversee the UK’s departure from the EU by 31 October, to abolish the Irish backstop (see Box 27.3) and to include the Irish border in the negotiation of a future UK–EU relationship. The EU preferred to agree an Irish border solution as part of the WA. Negotiations intensified to avoid a no-deal Brexit. Finally, a new Irish Protocol was agreed (see Box 27.4). The text of the Political Declaration was also re-drafted to reflect the new British government’s preference for a looser future UK–EU relationship based on a free trade agreement. On 17 October 2019 the United Kingdom and the European Union reached an agreement on a revised Withdrawal Agreement and Political Declaration, setting in motion a new ratification process.

### 27.4.3 Content of the Withdrawal Agreement and Ratification

In line with Article 50, the WA outlines the terms of the British departure from the EU and defines the framework for a future UK–EU relationship in an accompanying Political Declaration. These are lengthy and detailed documents. The WA is structured as follows:

- **Part One—Common Provisions:** this section sets out definitions to be used in the remainder of the WA including the objective of the agreement, territorial scope and the principle of good faith.
- **Part Two—Citizens’ Rights:** all EU citizens arriving in the UK during the transition period should have exactly the same rights as EU citizens



who arrived before the UK's withdrawal. UK citizens who arrive in an EU Member State after withdrawal but before the end of the transition period, should be covered by the WA. An independent Authority should be created in the UK to monitor the implementation and application of the citizens' rights part of the Agreement.

- **Part Three—Separation Provisions:** this part of the agreement outlines rules applicable to procedures that are ongoing when EU law ceases to apply to the United Kingdom ranging from European Arrest Warrants to Geographical Indicators, VAT, intellectual property, public procurement, and EURATOM. It protects EU officials, judges, and politicians' immunity from prosecution and taxpaying obligations in the UK until the end of the transition period.
- **Part Four—Transition:** this section provides for a transition period lasting until 31 December 2020 that can be extended once by up to one or two years. During this time, the UK benefits from the Single Market and Customs Union and is bound by the same obligations, even new ones acquired during the transition period, while being a third country. However, during the transition, the UK loses all voting rights and decision-making power. The CJEU has full jurisdiction over the United Kingdom with regard to all matters in the Withdrawal Agreement during the transition period.
- **Part Five—Financial Settlement:** this section outlines how the UK and the EU will honour the financial obligations undertaken while the UK was an EU member state. It includes the methodology to calculate the final obligations and additional details such as payment deadlines.
- **Part Six—Governance Structure:** this section envisages the creation of a Joint Committee responsible for supervising and facilitating the implementation and application of the WA. It will comprise representatives of the EU and the UK. It also sets out the dispute resolution mechanisms (an arbitration committee) and the CJEU's role in adjudicating on any question of EU law. This part also includes the mechanisms to address non-compliance including the partial suspension of the application of the Withdrawal Agreement itself, except for citizens' rights.
- **Protocol on Ireland/Northern Ireland:** the protocol includes the agreed solution to the border

on the island of Ireland that recognizes the unique circumstances on the island of Ireland and the joint aim of protecting peace and stability (see Box 27.4).

- **Protocol on the Sovereign Base Areas in Cyprus:** this protocol sets the general framework for the implementation of applicable EU law in relation to the Sovereign Base Areas in Cyprus after Brexit.
- **Protocol on Gibraltar:** this Protocol provides the framework for cooperation on Gibraltar between Spain and the UK in relation to key policy areas (such as environment, police, and customs) during the transition period, and on the implementation of the citizens' rights section of the WA.
- **The Political Declaration on the Future Relationship** outlines the shared UK–EU ambition to have a Free Trade Agreement with zero tariffs and quotas between the EU and the UK post-Brexit. It commits the two parties to a level playing field (see Section 27.5, 'The Trade and Cooperation Agreement') and to enforcement and dispute settlement mechanisms.

The ratification of the WA and Political Declaration was finalized in January 2020. The WA entered into force on 31 January 2020 at midnight, when the UK finally left the EU. This also marked the beginning of the transition period.

#### KEY POINTS

- Article 50 establishes the timing and scope of the exit negotiations as well as the key actors and decision-making procedures. It was drafted to ensure the orderly withdrawal of the exiting member state.
- The Brexit negotiations under Article 50 started on 29 March 2017 and continued until 31 January 2020, thus beyond the two years afforded by the exit procedure, and requiring three successive extensions.
- The negotiation of the Withdrawal Agreement was structured around two phases. A first phase focused on withdrawal issues with a second phase focused on the terms of exit, the transition period and the future UK–EU relationship.
- These were difficult negotiations that demonstrated the EU's ability to speak with one voice and protect the Single Market and the UK government's lack of preparedness. The solution to the border between the Irish Republic and Northern Ireland as well as the framework of the future UK–EU relationship were key points of disagreement.



## 27.5 The Trade and Cooperation Agreement

The Trade and Cooperation Agreement (TCA) was negotiated in a record eight-month period between 31 March and 24 December 2020. This section outlines the dynamics informing the negotiating positions, the negotiation process, the content of the agreement, and its challenging implementation.

### 27.5.1 The negotiating positions

After the difficult Brexit negotiations and as the COVID-19 pandemic started to take hold in the UK and the European Union, the parties began 2020 by setting out the key principles informing their negotiating positions, building on the Political Declaration attached to the WA. On 25 February 2020, the EU published its mandate for negotiations on its future relationship with the UK, with the UK government publishing its own mandate two days later. On 18 March the European Commission published its draft texts for negotiation. The British government published its draft texts for negotiation on 19 June.

The EU's negotiating position envisaged a free trade agreement (FTA) with the UK that would apply zero tariffs and zero quotas to trade in goods. The agreement would reflect the areas outlined in the Political Declaration, namely trade and economic cooperation, law enforcement and judicial cooperation in criminal matters, foreign policy, security and defence, and other areas of cooperation such as science and innovation, youth, culture and education, participation of the United Kingdom in the European Research Infrastructure Consortia (ERICs), and a PEACE PLUS programme to sustain reconciliation in Northern Ireland. On fisheries, the EU expected the future partnership to uphold the existing reciprocal access to waters as well as stable quota shares. The EU committed to ensure that the FTA 'should be underpinned by robust commitments to ensure a level playing field for open and fair competition' (European Council, 2020) and to include effective management and supervision, dispute settlement, and enforcement arrangements.

The British government aimed for:

A comprehensive free trade agreement covering substantially all trade, an agreement on fisheries, and an agreement to cooperate in the area of internal security, together with a number of more technical agreements

covering areas such as aviation or civil nuclear cooperation. These should all have governance and dispute settlement arrangements appropriate to a relationship of sovereign equals (Johnson, 2020).

The UK government made it clear that it could not agree to 'any regulatory alignment, any jurisdiction for the CJEU over the UK's laws, or any supranational control in any area, including the UK's borders and immigration policy' (Johnson, 2020).

There were four key areas that were not agreed until the autumn and winter of 2020 when negotiations intensified as the end of the transition period approached. These were: governance of the future relationship including treaty architecture and dispute resolution mechanisms; the establishment of a level playing field (LPF) to ensure open and fair competition; fisheries; and police and judicial cooperation in criminal matters (see Box 27.4).

### 27.5.2 The negotiation process

On 28 February 2020 just before the negotiations started, the UK and the EU published their terms of reference informing the process. Two further addendums were published on 11 June and 21 October.

On the EU side, the negotiations were led by the European Commission mandated by the EU27. Michel Barnier was again appointed chief negotiator and head of the Task Force for Relations with the United Kingdom (UKTF), the successor to the Article 50 Task Force. Negotiations were based on negotiating directives set by the EU Council, taking into account the resolutions of the European Parliament. On the UK side, negotiations were led by David Frost, head of Task Force Europe (TFE), the successor to the Department for Exiting the European Union (DeXEU).

There were a total of nine rounds of negotiations followed by an intensive negotiating phase between 15 October and 24 December. The negotiations took place against the backdrop of the COVID-19 pandemic. This affected progress, with the negotiations suspended shortly after they started on 31 March and conducted remotely via videoconference from April to early June 2020. Negotiations returned to face-to-face meetings from June until 24 December alternating their location between London and Brussels.

The negotiations were structured vertically along two levels: plenary negotiating sessions co-chaired by the chief negotiators or their deputies, and technical



## BOX 27.4 KEY DEBATES: THE STICKING POINTS DURING THE TCA NEGOTIATIONS

The UK and the EU disagreed on a number of substantive issues during the TCA negotiations:

- *Governance of the future relationship.* The EU preferred a single treaty and overarching governance structure to deal with the issues included in the FTA. Furthermore, the EU envisaged a dispute resolution system that protected the CJEU's right to interpret questions of EU law. Conversely, the British government preferred a set of independent agreements on fishing, aviation, nuclear cooperation, and law enforcement and judicial cooperation with independent governance arrangements separate from the FTA. The TCA was concluded as a single treaty with a single governance structure.
- *Fair competition, or a 'level playing field' (LPF),* was a principle already included in the Political Declaration. It was a precondition of the EU to protect the Single Market from the UK government's lowering of labour, environmental, tax, and state aid standards. The UK made it clear that it would not agree to be bound by level playing field obligations and that it would not accept any regulatory alignment with the EU, or any CJEU jurisdiction over any dispute mechanisms. The TCA includes LPF provisions to cover six fields: competition, subsidy control (state aid), state-owned enterprises
- and designated monopolies, taxation, labour and social standards, environment and climate, and a complex bilateral procedure to assess divergence and arbitration mechanisms in the event of a lack of agreement (see Barnard, 2020).
- *Fisheries.* This was a highly political and symbolic issue even though fisheries only amount to around 0.1 per cent of GDP of both parties' economies. The EU expected to retain unrestricted access to British waters and unchanged fishing quotas. In turn, the British government made it clear that any loss of sovereignty over its ability to control access to its own waters and fisheries quotas was unacceptable. Both parties had to give ground. The TCA allows EU vessels to maintain their access to UK waters for only five years and requires a gradual reduction in catches from EU vessels.
- *Police and judicial cooperation in criminal matters.* For the EU, cooperation in this area was conditional on the enforcement of data protection and human rights standards in the UK, as well as CJEU jurisdiction. For the UK, any alignment with the EU Charter of Fundamental Rights and CJEU jurisdiction were in clear opposition to its recently regained sovereignty. In the end, the positions in this area did converge quite effectively, although it reduces the UK's access to EU databases and excludes the CJEU and mutual recognition of standards.

level negotiations across 11 negotiating groups focusing on the key issues for negotiation such as trade, the level playing field (LPF), fisheries, energy, transport, and governance. Between March and June 2020, the negotiations faltered for want of common ground on the LPF, fisheries, the governance of the agreement, and judicial and police cooperation. As face-to-face negotiations started in June, Michel Barnier spoke of slight progress. Nevertheless, by 5 June the EU's chief negotiator's frustration and sense of urgency was clear when he confirmed that an agreement would not be ready by July and that the British government was backtracking on the commitments it had undertaken in the PD (Barnier, 2020). At a High-Level Meeting on 15 June, all leaders agreed to intensify negotiations while Johnson restated the British red lines: no role for the CJEU in the UK; the right to determine future UK laws without constraints; and a new agreement on fisheries.

By the end of July the two parties agreed that their positions were still far apart and that there was a need to intensify negotiations to ensure an agreement by

the end of the transition period, which the UK had decided not to extend. This intensification was translated into specific roundtables on fishing rights and the level playing field. By the end of August, Barnier confirmed his worry and disappointment at the lack of sufficient progress and the unlikelihood of an agreement. As the eighth round of negotiations ended in London on 10 September, the negotiating climate had soured: the British government proposed measures in the UK Internal Market Bill that would allow the UK unilaterally to override elements of the Northern Ireland Protocol, thus knowingly breaking international law. On 1 October, the European Commission initiated infringement proceedings against the UK for violating the good faith provisions included in the WA.

By early October, fisheries had moved up the agenda as French President Macron requested that the TCA allowed French fishermen the same access to British waters as before the UK's departure from the EU. He was concerned that Barnier would sacrifice the French fishing industry's interests to achieve an agreement. Macron's request could not be further

from that of the British government which sought to replace the pre-Brexit status quo with a series of annual negotiations on quotas and access that would favour the British fishing industry. At the European Council on 15–16 October, the EU27 confirmed their unity, the lack of sufficient progress on an agreement, the need for the UK to move its negotiating positions to respect the terms of the WA, and the preparations for all scenarios after the end of the transition period including that of no agreement. In a rather dramatic move, the British government suspended negotiations, albeit only for a couple of days.

The period from October to 24 December 2020 was defined by a further intensification of talks in London and in Brussels with the aim of reaching an agreement that could be ratified before the end of the transition period. On 17 December the EU–UK Joint Committee agreed a set of solutions which included the UK's withdrawal of the contentious text in the UK Internal Market Bill.

By early December, while agreement had been reached on law enforcement and judicial cooperation, social security coordination, goods, services, and transport, disagreements persisted over governance, the LPF, and fisheries. Whereas the EU remained committed to the integrity of the Single Market, and to robust enforcement and governance mechanisms, concerns about UK sovereignty over its territorial waters remained. In the final weeks of the negotiations, positions converged, however, allowing for certain concessions to be made, particularly on fisheries by the EU27, and on the level playing field and governance by the British government. The prospect of no agreement by the end of December; queues of lorries approaching the Channel ports due to the closure of EU borders to UK freight and passenger transport to limit the spread of the so-called alpha COVID-19 variant; and concerns about stockpiling and shortages of food in British supermarkets helped concentrate minds; so much so that on 24 December the TCA was agreed.

In some ways, the dynamics shaping the negotiation of the TCA were distinct from those shaping the WA negotiations. First, the negotiations leading to the TCA took place as the COVID-19 pandemic developed. This limited the ability of the negotiating teams to meet in person. Towards the end of 2020 there were long queues at the ports, a shortage of storage space, and spikes of panic-buying in British supermarkets. These dynamics helped to concentrate the political

effort to agree a trade agreement before the end of the transition period. Second, as a non-EU member state, the UK was no longer bound by EU procedures or the need to abide by the commitments acquired during EU membership. This presented an opportunity for the British government to overcome some of the advantages enjoyed by the European Union during the negotiation of the WA. Third, drawing on the experience of previous trade negotiations, there was an expectation that the EU27 would be unable to retain the unity that they had so effectively displayed during the WA negotiation. Fourth, the ability to engage in informal negotiations between the formal rounds of negotiations was limited. This might have allowed the British government to use its soft diplomacy to drive agendas and create trust. In practice, this did not happen. Fifth, with a comfortable majority in Parliament, the Conservative Government was able to ratify the TCA without delay.

### 27.5.3 The content and ratification of the TCA

The TCA is a free trade agreement, which affords wide scope for cooperation in other policy areas (transport, research, judicial cooperation). Within the EU it is defined as an association agreement governed by Article 217 of the Treaty on the Functioning of the European Union (TFEU). The TCA is a long and detailed document. It has seven parts that span 1,200 pages. It is structured as follows:

- Part One—Common and institutional provisions: the object and purpose of the agreement, the creation of a Partnership Council and the independence of the two parties are outlined.
- Part Two—Trade (goods and services), transport, fisheries, and other arrangements (other arrangements covered include intellectual property, public procurement, aviation, road transport, energy, social security, and visas for short-term visits): the Agreement establishes zero tariffs and quotas on trade between the UK and the EU, where goods meet the relevant **rules of origin**. The level playing field conditions and their implementation are outlined in this part, including dispute resolution and commitments not to lower standards on competition law, taxation transparency, labour and social standards, and environmental and climate protection. On

fisheries, the Agreement provides for a gradual change of quota-sharing arrangements including the reduction of the quota available to the EU fishing industry.

- **Part Three—Law enforcement and judicial cooperation in criminal matters:** this part creates a new framework for law enforcement and judicial cooperation in criminal matters that allows for cooperation between national police and judicial authorities, including extradition arrangements, and the exchange of data.
- **Part Four—Thematic co-operation (including health security and cybersecurity):** this section includes cooperation in the field of health security, in particular the possibility that the UK be invited to participate on a temporary basis in a set of EU structures (for example to fight a pandemic). The structures for cooperation on cybersecurity have a similar pattern, but the UK and the EU have signed a separate Security of Information Agreement on the exchange of classified information.
- **Part Five—Participation in EU programmes:** this part sets out the arrangements for the UK's participation in EU programmes and access to programme services. These include the terms for the UK's financial contribution towards the programmes, fair treatment of UK participants, and sound financial management of programme funding and governance arrangements. Programmes include Horizon Europe, the Euratom Research and Training programme, the International Thermonuclear Experimental Reactor (ITER), and Copernicus. Erasmus is excluded.
- **Part Six—Dispute settlement and horizontal provisions (governance):** this section outlines the creation of a Joint Partnership Council to manage the TCA. The Council is co-chaired by a member of the European Commission and a UK representative at ministerial level. The EP and the UK Parliament can create a joint parliamentary assembly to exchange views on the TCA and make recommendations to the Partnership Council. There are also provisions for consultation with civil society and dispute settlement mechanisms.
- **Part Seven—Final provisions:** this section provides for a review of the TCA every five years, the procedure to be followed should a new country

join the EU, and the terms of the unilateral termination of the agreement. Regarding its territorial scope this part makes it clear that the TCA applies to the UK but that it does not apply to the overseas countries and territories of the EU or to the UK's Overseas Territories. The UK, Gibraltar, and Spain would negotiate separate arrangements.

The TCA was ratified separately in the UK and in the EU between December 2020 and April 2021. In the United Kingdom, the legislation that allowed the TCA to enter into UK law, that is the European Union (Future Relationship) Act 2020, was passed by Parliament on 30 December 2020 soon after Prime Minister Boris Johnson signed the agreement. On the EU side, the process was more complicated. Agreeing the TCA so late in the day meant that the European Parliament could not be afforded sufficient time to scrutinize the text. Thus, on 29 December 2020, the EU Council adopted the decision on the signing of the TCA and its provisional application as of 1 January 2021 pending ratification by the European Parliament. The EU signed the agreement on 30 December 2020 and on the 28 April 2021, the European Parliament ratified the TCA by 578 votes, with 51 against and 68 abstentions.

#### KEY POINTS

- The TCA is the comprehensive Free Trade Agreement that frames the relationship between the UK and the EU after Brexit.
- The TCA was negotiated in a record time. The negotiations were complex and politically charged. They were affected by the difficult experience of negotiating the WA, the effects of the COVID-19 pandemic, the complex implementation of the Northern Ireland Protocol, and the need to ensure agreement before the end of the transition period in December 2020.
- The TCA affords zero quota and zero tariff trade in goods as well as wide scope for cooperation in other policy areas such as transport, research, and judicial cooperation.
- The TCA was temporarily ratified in December 2020. The EP was afforded time to scrutinize the text and finally delivered its consent on 28 April 2021.



## 27.6 Conclusion

This chapter has contextualized Brexit by reviewing the uneasy involvement of the United Kingdom in the European integration process, while accounting for the 2016 referendum, the negotiation of the 2019 WA and PD, and the negotiation and implementation of the 2020 TCA. In so doing, the chapter has reflected on the divisions in British society and their effect on the outcome of the referendum, the politically sensitive situation in Northern Ireland, the relevance of the COVID-19 pandemic and the distinct approaches of the EU27 and the British government as they negotiated the terms of the UK's departure from the EU and the future UK–EU relationship. While it is still too early to fully understand the effect of the UK's exit from the EU, it is possible to identify four ways in which this historic event might affect European integration and UK–EU relations in the years to come.

First, Brexit could weaken the EU (see Chapter 29). While the EU27 displayed unprecedented unity in the face of an existential crisis, this is unlikely to last as disagreements over the rule of law (see Chapter 9) and the COVID-19 pandemic (see Chapter 28) have demonstrated. Being able to respond to the disintegration challenges posed by populist parties from the left and the right, and to the demands of EU citizens for a more democratic Union, would go a long way to protect the robustness of the integration process.

Second, Brexit is a failure of European integration. While the absence of a Brexit dividend and the negative effect of the COVID-19 pandemic on trade flows between the UK and the EU have halted a domino effect in the Union, the UK's exit offers an opportunity to reform the EU. Some national leaders may regard the UK's exit as an opportunity to strengthen EU integration to address key challenges; others are more likely to see Brexit as an opportunity to enhance the use of opt-outs and calls for exceptionalism. As the Commission White Paper on the Future of Europe (European Commission, 2017) acknowledged, a more agile Union, less integration, and more flexibility are the way forward.

Third, Brexit may weaken the international standing of both the UK and the EU. Viewed from China, India, and the USA, Brexit may suggest a weak and divided Europe. For the first time, the EU has shrunk in size, a prospect that goes against conventional wisdoms that see progress bound up with forward steps in integration and enlargement. Some may find it hard to imagine that the EU will be taken seriously in matters of global economy and politics under these circumstances. The prospect of global EU leadership on issues ranging from environmental protection to the exchange of anti-terrorist intelligence seems perhaps less likely; and despite its robust standing within the United Nations Security Council (UNSC), the G7, the G20 groupings of nations, the Commonwealth, and NATO, the UK will need to ensure that it does not become marginalized in the international arena.

Finally, Brexit affects short-term and long-term EU–UK relations. Both partners are learning to operate in this new context in which barriers are erected rather than removed, and policy goals diverge rather than converge, while the legacy of tense years of negotiation and the contested implementation of parts of the agreements (Ireland and Northern Ireland Protocol or the UK's financial commitments) are taking their toll. The WA and TCA do not solve all issues pertaining to UK–EU relations and new ways of working together will have to be developed to address wider challenges such as climate change, security concerns, upholding the universal values of democracy and the rule of law, or a public health crisis such as the COVID-19 pandemic. Equally, the good faith framing the negotiations needs to be sustained as the UK and the EU share a commitment to peace in Northern Ireland and prosperity across Europe. As the effects of Brexit sink in, it has become obvious that the UK's departure from the EU is not just a matter of high politics; rather it affects the lives of individuals whether businesspeople, students, musicians, or private citizens whose experiences of travelling and working across Europe have been fundamentally changed.



## QUESTIONS

1. What factors led to the UK joining the EEC in 1973?
2. In what senses did membership of the EU change the UK?
3. Why did the UK hold a referendum on EU membership in 2016?
4. What factors explain the vote to leave the EU in June 2016?
5. Why was the border on the island of Ireland such a controversial issue in the negotiation of the Withdrawal Agreement and the Trade and Cooperation Agreement?
6. How successful has the UK been in negotiating Brexit and its future relationship with the EU?
7. How successful has the EU been in negotiating Brexit and its future relationship with the UK?
8. What are the likely effects of Brexit on UK–EU relations?



## GUIDE TO FURTHER READING

Diamond, P., Nedergaard, P., and Rosamond, B. (eds) (2018) *Routledge Handbook of the Politics of Brexit* (London: Routledge). An excellent collection that offers an insightful analysis of the political, economic, regulatory, theoretical, and policy-oriented dimensions of Brexit.

Evans, G. and Menon, A. (2017) *Brexit and British Politics* (Cambridge: Polity Press). A short, but well-informed overview of both long- and short-term factors leading to the British decision to leave the EU, covering in more detail many of the themes discussed in this chapter.

Fabbrini, F. (ed.) (2017) *The Law & Politics of Brexit* (Oxford: Oxford University Press). A serious academic collection of essays by leading voices on Brexit, covering a range of questions but with a particular focus on the constitutional change dimension of Brexit.

Fabbrini, F. (ed.) (2021) *The Law & Politics of Brexit: Volume III. The Framework of New EU–UK Relations* (Oxford: Oxford University Press). A collection of academic essays analysing the Trade and Cooperation Agreement and the future UK–EU relationship.

O'Toole, F. (2018) *Heroic Failure: Brexit and the Politics of Pain* (London: Head of Zeus Ltd). A lively journalistic account of the early stages of the Brexit process from a respected Irish commentator.



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