
June 25, 2019

Brexit Lexicon: Update

As an aid to those continuing to monitor the many moving pieces in Britain and across the Channel as the Brexit saga continues, we provide below our summary of recent developments and our updated Brexit lexicon.

Recent Developments

Once Theresa May announced on May 24 that she was stepping down as leader of the Conservative Party and as Prime Minister, the focus shifted to the leadership contest to choose her successor (though some will say that campaigning started in the weeks leading up to that announcement). Candidates have been setting out differing visions of Brexit, and while the leader is being selected by Conservatives (first by the MPs (which phase has been completed) and then by the members of the Conservative Party), those differing visions of Brexit have very real consequences for the country and, in many respects, the rest of Europe as well. One might go a step further and say that the outcome of that contest could have global implications if the next Prime Minister has campaigned on a platform of leaving the EU on October 31, with or without a deal, and chooses to leave without a deal. The sense of uncertainty is heightened by the fact that EU negotiators and ministers of EU member states remain steadfast in their position that the [Withdrawal Agreement](#) cannot be renegotiated, although they have left open the possibility of discussing modifications to the [Political Declaration](#). The message that the EU27 are not prepared to reopen the Withdrawal Agreement was conveyed most recently by the [European Council](#) President Donald Tusk last Friday following the end of the June European Council summit.

At the beginning of last week, there were six candidates still in the running to succeed Theresa May – Boris Johnson, Michael Gove, Jeremy Hunt, Sajid Javid, Dominic Raab and Rory Stewart. Five of the six candidates (Rory Stewart being the sixth) embraced a preferred outcome – renegotiating the Withdrawal Agreement – that is directly at odds with the position of EU27. After five votes over eight days, there are now two candidates – Boris Johnson and Jeremy Hunt – who will campaign over the next four weeks; the final campaign event is scheduled for July 17. In the final round, Boris Johnson won 160 votes, followed by Jeremy Hunt with 77 votes. Michael Gove received 75 votes. With the first of the two phases of the leadership contest completed, the two candidates now seek support from among the members of the Conservative Party, the grassroots activists whose [demographics](#) (measured by age, ethnicity or gender) are very different from the country as a whole.

Boris Johnson has said the UK will leave the EU on October 31, with or without a deal. He is not supportive of suspending Parliament (known as prorogation, which flows not from statute but from the royal

prerogative) to force a no-deal exit. He believes he can reach agreement with the EU27 to replace the backstop with “alternative arrangements,” which likely is a reference to “[maximum facilitation](#).” No such arrangements have found support among the EU27. He has said a deal remains “eminently feasible” by the deadline, and also maintains that the “otherwise defunct Withdrawal Agreement” can be “disaggregated,” both of which statements are generating significant criticism. Jeremy Hunt believes a new deal can be negotiated before October 31, and would accept leaving without a deal, though he concedes that could trigger a vote of no confidence. The public positions have created a fair amount of confusion, and can be expected to evolve over the coming few weeks of the campaign.

While the then six candidates (down from an original group of 10) were seeking support among Conservative MPs in the first phase of the leadership contest, an effort by Labour to undertake a procedural manoeuvre intended to result in legislation that would effectively block the next Prime Minister from triggering a no-deal exit lost on a vote of 298 to 309 (with 8 Labour MPs (largely from pro-Leave constituencies) voting with the Conservatives, 13 abstaining and 10 Conservatives voting with Labour). While a majority of MPs appear to oppose a no-deal exit, and had voted in the past in a non-binding motion to oppose a no-deal exit, the Labour effort, had it succeeded, would have embedded the principle in legislation.

Whoever becomes Prime Minister will need to deal with the math, starting with the hung Parliament. Throughout this process, there has been an ever-shifting set of alliances that defy easy categorization. Brexit has been delayed not because of an overwhelming level of support for revocation of Article 50, but rather because a coalition of hard Brexit supporters (in the [ERG](#) and the [DUP](#)) and Conservative Remainers continued to vote against the Withdrawal Agreement and lined up against the [Withdrawal Agreement Bill](#). Both Theresa May and Jeremy Corbyn were confronted with significant opposition within their own parties, compounding the challenges the two leaders faced in finding a compromise. The situation has been complicated by the level of support for Nigel Farage’s Brexit Party in the May [MEP elections](#) and in opinion polls since then. The success of the Brexit Party at the expense of the Conservatives has caused a shift to the right for many MPs. This shift incidentally is at odds with the historical support for the Tories from business, which continues to crave certainty and in large numbers opposes a no-deal exit. In this polarized environment, it is difficult to see how any leader can accommodate both hardline Brexiters and those who support either a soft Brexit or no Brexit.

That difficult math may be critical to the outcome of the next phase, as many will have their eyes on what comes next – that is, who is most likely to prevail against Labour in a general election. The thinking appears to be that the next Prime Minister will be no better able than Theresa May to get a deal through Parliament, and it is generally believed that Parliament will not accept a no-deal exit. If there is no majority in Parliament for a second referendum, that leaves a general election. The winner may seek a broader electoral mandate, presumably by winning back Conservative voters who voted for the Brexit Party in the MEP elections, or a small group of Conservative MPs (perhaps a dozen, according to recent reports) concerned

about the consequences of a no-deal exit could vote with Labour to bring down the government and force a new election if the government is headed for a no-deal exit.

To recap, at this point, most of the all-too-familiar options remain on the table: a no-deal exit has by no means been ruled out; many believe it is now more likely. Parliament could still approve the Withdrawal Agreement (or some other deal that the EU27 is willing to agree to), the October 31 deadline could be extended by agreement of both sides or (though truly viewed as unlikely) the Article 50 notice could be revoked by the government. A vote of no confidence also remains a possibility, but the question then is, to what end? And, would there be enough time? The new Prime Minister is expected to be announced on July 23, and Parliament is scheduled to begin its recess on July 25. Some have wondered whether Speaker John [Bercow](#) could take action to halt a no-deal exit. The recent decision of the Speaker to remain in his position prompted a number of articles on the question of whether, and if so how, a no-deal exit could be stopped by Parliament. Finally, there is the possibility of a second referendum, though that too seems to be a remote alternative.

While the uncertainty continues on the British side, so too is there uncertainty on the part of the EU27. Would they agree (it takes a unanimous vote) to extend the Article 50 deadline once again, or are they willing to accept the consequences come what may at the end of October? Would they make adjustments to the Political Declaration, as changes to the Withdrawal Agreement have been ruled out? Are they willing, for example, to agree to a time limit on the backstop or to Boris Johnson's alternative arrangements? Presumably one cannot answer the question of what the EU27 will do until it becomes clear what the British are prepared to offer. And that will not be known until the new Prime Minister is installed, and the rhetoric of the campaign gives way to facing the realities of the many moving pieces – realities that have precluded a solution for over two years.

In addition to the expected announcement of the new Prime Minister on July 23 and the beginning of Parliament's recess on July 25, other key upcoming dates include the Conservative Party annual conference that begins on September 29 and the European Council summit on October 17-18 (the last one before the October 31 deadline).

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The Brexit Lexicon

Acquis: the body of common rights and obligations that are binding on all EU member states based on EU treaties, EU legislation, ECJ case law, declarations and resolutions adopted by the EU; measures relating to the common foreign and security policy; measures relating to justice and home affairs; and international agreements concluded by the EU and third countries.

Alignment: the [Joint Report](#) states that “[i]n the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the [internal market](#) and the [customs union](#) which, now or in the future, support North-South cooperation, the all-island economy and the protection of the [Good Friday Agreement].” There continues to be significant disagreement over what this means. It appears to be a unilateral commitment by the UK if there is no agreement on the future of the border between Ireland and Northern Ireland, either because any [Withdrawal Agreement](#) fails to address the issue or there is no agreement. The commitment appears to be consistent with some aspects of the single market, although it raises the prospect that the commitment would apply to the entire UK and not just to Northern Ireland; the agreement with the [DUP](#) is that in no case would alignment apply only to Northern Ireland. Ultimately, the ambiguity leads to the obvious question: How can the UK avoid a hard border and maintain alignment while exiting the single market and the customs union, and yet maintain the integrity of the UK?

Alternative arrangements: following the government’s defeat on the meaningful vote, on [January 29](#), MPs narrowly passed (317 to 301) a government-backed amendment (known as the Brady amendment) to the Withdrawal Agreement (the government in effect voting against its own defeated deal in an effort to avoid a further rupture among Tory MPs), approving the Withdrawal Agreement and calling for the backstop to be replaced by unspecified “alternative arrangements.”

Article 50: Article 50 of the Treaty of the European Union sets forth the basis on which a member state of the EU can withdraw from the EU. The provision is short on details, though it does set out a two-year process triggered by notice. That notice was provided by the British on March 29, 2017, setting in motion a two-year clock, although in practice the deadline for reaching a deal is earlier due to the need to obtain approvals on both sides of the Channel. Parliament authorized the giving of the notice in the European Union (Notification of Withdrawal) Act 2017. Underlying some of the potential scenarios as to how the Brexit process plays out is the question of whether the Article 50 notice is revocable. Ultimately a question, ironically, of EU law, the ability to revoke the notice has yet to be formally addressed by the British government. Incidentally, as part of the lawsuit brought to compel the government to provide Parliament with a formal vote on Brexit, both the plaintiffs and the government conceded for purposes of the action that the notice was irrevocable. A [case](#) was referred to the ECJ by the Scottish Court of Session to determine whether the Article 50 notice could unilaterally be revoked by the UK. On December 10, 2018, the ECJ ruled that the UK could unilaterally withdraw the Article 50 notice. There is uncertainty among legal scholars as to whether or not revocation would require parliamentary approval.

Backstop: the fall-back position on the Irish border question if no agreement has been reached to avoid the re-imposition of the [hard border](#) between Ireland and Northern Ireland. The backstop, in theory, was agreed in December 2017, but, underscoring the risks presented when broad principles are enunciated with the details left for another day, both the British and the EU27 had different interpretations. For the British, the backstop generally meant the entire UK would be aligned within a customs union. Brussels has interpreted the backstop to mean that Northern Ireland would remain in the customs union (as opposed to the entire UK), with customs checks at Irish seaports for goods moving between Northern Ireland and the UK. Brussels has worried that alignment is a subterfuge to allow Britain to have access to the single market without accepting the [four freedoms](#), and was disinclined to consider any proposal that was not focused solely on Northern Ireland. Ultimately, the backstop, as enshrined in the Withdrawal Agreement, contemplates Northern Ireland remaining in the single market for goods and the rest of the UK remaining in a customs union with the EU. The backstop remains the key impediment to a Brexit deal, as it is opposed by the Brexiters and the DUP. For the EU, diluting the backstop would mean crossing a critical red line.

Blind Brexit: an exit without clarity on the future relationship between the UK and the EU post-Brexit (and the transition period). Accompanying the Withdrawal Agreement is the [Political Declaration](#) setting forth a framework for the future relationship, which is largely aspirational.

BRINO: Brexit in name only.

Cabinet divisions: throughout the Brexit process the divisions within the Conservative Party have been clearly evident in the cabinet. The reported positions represent the full spectrum of views: support for the Prime Minister's deal; doubts about the deal but not yet associated with an alternative plan; support for a second referendum; support for a no-deal exit; support for a managed no-deal exit; vehement opposition to a no-deal exit; and support for providing MPs with a series of indicative votes on various options.

Cambridge Econometrics Report: an assessment of Brexit across key indicators and sectors at a sub-national level assuming five different scenarios, ranging from a status quo outcome (where the UK remains in the single market and customs union) to an extreme no-deal outcome (where the UK defaults to World Trade Organization rules). The assessment, commissioned by the mayor of London and released on January 11, 2018, suggests that London will emerge relatively better than the rest of the UK following Brexit, due to its resilience to economic shocks. However, the results show that Brexit will not only reduce the size of the UK economy (compared to what may have happened if the UK remained in the single market and customs union), but will also put it on a slower long-term growth trajectory (the economy is still expected to grow, but at a slower rate than if Brexit did not occur). The worst case scenario projects 87,000 lost jobs in London, 482,000 lost jobs across the UK and lost investment of close to £50 billion by 2030. The mayor explained that he had commissioned and released the assessment because the government had failed to conduct its own assessment, or had but was keeping it a secret – a statement prompted presumably by the admission by [David Davis](#) regarding the [missing impact statements](#).

Canada plus: an FTA based on the [CETA](#), but also addressing matters such as aviation and fisheries.

Canada plus plus plus (also known as **Canada dry**): a phrase first used by David Davis following the release of the Joint Report that refers to an FTA based on key elements of CETA (as well as other FTAs already agreed with countries such as Japan and South Korea), but also addressing [services](#) (which incidentally represent close to 80% of Britain's economic activity). On December 19, 2017, Michel Barnier ruled out such a deal for financial services. He conceded that such an agreement could include judicial cooperation, defense and security, and aviation (so, perhaps Canada plus plus), but would exclude financial services. Davis responded that the European Commission cannot "cherry-pick some sectors," meaning that goods and services should not be treated differently. The British were reported to have pressed their case in various capitals on the continent, particularly those with significant trade in services with the UK.

CETA: the EU-Canada Comprehensive Economic and Trade Agreement, an FTA that took over seven years to negotiate and finally entered into force in September 2017.

Chequers agreement: on July 6, 2018, the Prime Minister gathered her entire cabinet to secure a common negotiating position ahead of the release of the July White Paper. The Prime Minister secured approval to negotiate a soft Brexit. The position, as set forth in a government statement, envisioned:

- the establishment of a free trade area for goods;
- a "common rulebook for all goods" including agricultural products. The British will commit to ongoing harmonization. Parliament would have oversight over these rules, and could discontinue the harmonization at any time;
- a "joint institutional framework" for interpreting agreements between the UK and the EU. UK courts would "have due regard" for EU case law to the extent the UK continues to apply the "common rulebook";
- a "facilitated customs arrangement" whereby the UK would apply domestic tariffs and trade policies for goods intended for the UK and their equivalents for goods heading to the EU;
- an independent trade policy with the ability to set its own non-EU tariffs and agree to separate FTAs; and
- an end to free movement of EU citizens into the UK, but would include a "mobility framework" to facilitate movement for work and study.

The proposal did not provide a solution for services. The British sought to retain "regulatory flexibility" and recognized there would be less market access as a result. Within 48 hours of the release of the government statement, first David Davis, then, the following day, junior minister Steve Baker and Foreign Secretary Boris Johnson resigned. The Chequers proposal largely was overtaken by events. The Political Declaration confirmed that Chequers has no future.

Cherry-picking: EU27 negotiators consistently maintained that Britain could not “cherry-pick” parts of the single market, while failing to honor the four freedoms. From an EU27 perspective, a hard line taken by EU negotiators and EU spokespersons against cherry-picking made sense, as cherry-picking raised the prospect of separate deals among different member states, which is fundamentally inconsistent with EU principles and could create political dysfunction.

Chuck Chequers: [Jacob-Rees Mogg](#)’s response to the Prime Minister regarding the positions announced at Chequers and outlined in the White Paper.

Contempt motion: on December 4, 2018, the government suffered multiple defeats in the House of Commons. It was held in contempt for failing to release the full text of the legal advice it had received concerning the backstop, it was compelled (by a vote of 311 to 293) to publish the legal advice (which it did the following day) and the Grieve amendment (1) passed (321 to 299).

Cooper-Letwin motion: a motion was proposed on February 12 by Labour MP Yvette Cooper and Conservative MP Sir Oliver Letwin that would empower MPs to block a no-deal exit. The motion envisioned that, if by March 13 a deal has not been approved by Parliament, MPs would either have to vote to approve a no-deal exit or vote to require an extension of the Article 50 deadline. [Cooper’s prior amendment](#), co-sponsored with Nick Boles, which gave the Prime Minister until February 26 to pass a deal, was defeated in January. The subsequent motion did not set a time limit for the Article 50 extension. In the few days leading up to the vote on February 28, the support for the motion from a trio of three Tory rebels – cabinet ministers Amber Rudd, Gregg Clark and David Gauke – appeared to have tipped the balance in favor of the motion. The motion passed (502 to 20, with 88 Tory abstentions, 10 Labour abstentions and 9 DUP abstentions).

Council Supplementary Directives: on January 29, 2018, the European Council released a supplement to its negotiating directives (first issued in May 2017). The supplement set forth negotiating guidelines for the second phase of negotiations, including governance of the Withdrawal Agreement, intellectual property rights, ongoing public procurement procedures, customs-related matters needed for an orderly withdrawal from the EU, protection of personal data and use of information. The supplement also noted that the second phase must set out in unambiguous legal terms the results of the [first phase](#) of the negotiations. (This appears, in effect, to mean that there would be no [transition period](#) if the issues addressed in the first phase, particularly the thorny Irish border question, were not reflected in the Withdrawal Agreement.) The supplement laid out the following negotiating guidelines:

- the transitional arrangements should cover the full range of [acquis](#) and apply during the transition period as if the UK were still an EU member state;
- any changes to the *acquis* should apply to and in the UK during the transition period;
- EU law should continue to apply during the transition period;

- the UK remains a member of the single market and the customs union during the transition period;
- the UK may not become bound during the transition period by FTAs entered into in its own capacity;
- existing EU regulatory, budgetary, supervisory, judicial and enforcement instruments continue to apply and be subject to ECJ jurisdiction during the transition period; and
- the transition period should not extend beyond December 31, 2020.

Crashing out of the EU (also known as **a no-deal exit**): failure to reach agreement by the Article 50 deadline. At this point, the UK will have left the EU, the single market and the customs union, and in respect of trade will have defaulted to the rules of the World Trade Organization. There will be no transition period. Until earlier this year, the Prime Minister's principal view on Brexit, first articulated in her Lancaster House speech in January 2017, was that "no deal is better than a bad deal." As recently as late August, the Prime Minister was reiterating (this time in South Africa, apparently in response to pessimistic Treasury forecasts highlighted by [Philip Hammond](#)) a variation on the theme: no deal would not be "the end of the world." "No deal" remains a very real prospect, and the threat of "no deal" continues to figure prominently in the concerns voiced by those opposed to Brexit. Exiting with no deal would not solve the Irish border issue and that border would become an external frontier for customs and immigration purposes.

The *Financial Times* (in May 2017) estimated that in a no-deal exit, Britain would lose access to a range of agreements with "third countries." Specifically, it "found 759 separate EU bilateral agreements with potential relevance to Britain, covering trade in nuclear goods, customs, fisheries, trade, transport and regulatory co-operation in areas such as antitrust or financial services. This includes multilateral agreements based on consensus, where Britain must re-approach 132 separate parties. Around 110 separate opt-in accords at the UN and World Trade Organisation are excluded from the estimates, as are narrow agreements on the environment, health, research and science. Some additional UK bilateral deals, outside the EU framework, may also need to be revised because they make reference to EU law." In recent weeks, the focus has been on British efforts to replicate the approximately 40 trade deals that the EU currently has with over 70 countries.

According to the House of Commons Library, there are various pieces of legislation that would need to be approved by Parliament as part of a no-deal exit in order to replace EU legislation that would no longer be applicable in the UK.

Cross-party solution: in another sign of the fracturing of the two principal parties, two Tory MPs and two Labour MPs began working together as part of an informal group (known as the Norway Plus group) to forge a cross-party solution to break the Brexit impasse and avoid a no-deal exit. The end-game would be a common market 2.0 solution, namely [Norway plus](#). The plan is outlined in a pamphlet entitled "Resetting the UK-Europe Relationship for the 21st Century."

Customs partnership: one of three temporary arrangements proposed by the British as a means of breaking the deadlock over the Irish border question. The other arrangements proposed by the British were the [maximum facilitation](#) (or “max fac”) approach and the FCA. The customs partnership would entail collection by the UK of customs duties, on behalf of the EU, on goods arriving in the UK and destined for the EU. In fact, all goods arriving in the UK would initially be subject to the same EU tariff, with goods remaining in the UK qualifying for rebates should the UK impose lower tariffs. The system would require the UK to track goods electronically to determine who would be entitled to rebates. The UK would be able to negotiate trade deals with third parties, but could not enter into them so long as the customs partnership is in effect. These have largely been set aside.

Customs Bill: officially known as the Taxation (Cross-border Trade) Bill, lays the regulatory framework for cross-border customs, VAT and excise regimes in connection with the UK’s withdrawal from the EU. The Bill was subject to controversial amendments that were adopted by the government leading to a barrage of criticism from pro-EU Tory MPs and several cabinet resignations. The adopted Customs Bill amendments state that: (i) it will be illegal for the UK to collect duties on behalf of the EU without reciprocal arrangements; (ii) there will be no customs border in the Irish Sea between Northern Ireland and the rest of the UK; (iii) the UK will not take part in the EU’s VAT regime; and (iv) new legislation will be required if the government opts to form a customs union with the EU. A separate soft Brexit amendment calling for the UK to remain in the EU customs union was withdrawn. In the end, the Customs Bill narrowly passed report stage and third reading in July 2018.

Customs union: members of the customs union abolish restrictions on trade in goods (but not services) within the union and apply the same tariffs to goods from outside the union, known as a common external tariff. A customs union is to be distinguished from a free trade area; the latter allows members to set their own tariffs on trade in goods with other countries. The EU is both a single market and a customs union, and it is possible to be a member of the EU customs union and not the EU single market. Were the UK to remain a member of the EU customs union, it would mitigate the impact on the Irish border; it would, however, absent special arrangements, also restrict the UK’s ability to negotiate its own trade deals with third countries.

Divorce bill: the EU27 demanded that the UK honor a range of financial commitments as the price of leaving the EU. The obligations include contributions to the EU budget for 2019 and 2020 as well as the UK’s share of projects the EU has undertaken to fund, but has not yet paid for, known as *reste à liquider*. Pension obligations for EU officials and various other items are also included. The divorce bill is covered by the Withdrawal Agreement, though it does not specify a figure. Estimates of the amount that will be due are in the range of £35-£39 billion; the amount could be increased if the transition period is extended.

ECJ: the European Court of Justice. The European Court of Justice is one of two courts (the other being the General Court) that comprise the Court of Justice of the European Union (CJEU).

ECJ decision on unilateral withdrawal: a matter was referred to the ECJ by the Scottish Court of Session that asked for a determination of whether or not the UK may unilaterally withdraw the Article 50 notice, and thereby call an end to Brexit. On December 4, 2018, a senior legal adviser to the ECJ holding the position of advocate general issued an advisory opinion that the UK could unilaterally revoke the Article 50 notice. The ECJ issued a ruling on December 10, 2018 confirming that the UK could unilaterally halt the Article 50 process without seeking EU approval. Two attempts by the government to appeal against the referral to the ECJ were rejected. The issue remains hypothetical at the moment because the government has stated repeatedly that it does not intend to withdraw the notice. The case does not bear on whether the Article 50 period can be extended or suspended, either of which would need the consent of the EU27. The European Council and the European Commission are not enamoured of unilateral withdrawal as in their view it would set an unfortunate precedent that other member states might seek to exploit.

In its ruling, the ECJ held that the revocation decision must be “unequivocal” and “unconditional,” suggesting that this could not be used to delay Brexit. In any event, any extension would require EU27 approval. The ECJ also noted that revocation can only occur before the Withdrawal Agreement enters into force; if the Article 50 deadline is extended, revocation can still be effected so long as the Withdrawal Agreement has not become effective. The ECJ confirmed that in the event of a revocation, it would be “under terms that are unchanged.” The ECJ decision is in line with the provisions of the Vienna Convention on the Law of Treaties in respect of unilateral revocation of a decision to withdraw from a treaty.

EEA: the European Economic Area, which was established by the EEA Agreement in 1994 and includes the EU member states plus Norway, Liechtenstein and Iceland. The EEA extends the EU single market to the three participating EFTA members.

EFTA: the European Free Trade Association, which is an intergovernmental organization of Norway, Liechtenstein and Iceland, as well as Switzerland. EFTA is tasked with managing the EFTA Convention (which regulates trade and economic relations among the four EFTA members), the EEA Agreement (which allows three EFTA states to participate in the EU’s single market in exchange for financial contributions) and EFTA’s network of FTAs with various non-EU countries. EFTA countries that are part of the EEA are exempt from the EU agriculture and fisheries regimes, and have control over their own trade policy.

Erskine May: the official parliamentary rulebook, now in its 24th edition, initially published by Thomas Erskine May in 1844. The rulebook formed the basis for the Speaker’s decision regarding MV3.

EU approval thresholds: [Michel Barnier](#), on December 19, 2017, indicated that he expects the required threshold for approval of any future trade relationship will be more than 35 legislative bodies (including lower houses of parliament in each member state, regional assemblies and various upper chambers – 38 in total). Under EU law, certain treaties are subject to ratification only by national governments, acting through the European Council, and by the European Parliament, while those that affect national competences (so-called “mixed agreements”) require the approval of national and regional parliaments. (In

a May 2017 decision, the ECJ ruled that the EU had exclusive competence in all but two aspects of an FTA with Singapore – portfolio investments (*i.e.*, non-direct foreign investment) and investor-state dispute settlement mechanisms in respect of investor protection. Bifurcating an FTA and leaving the investment provisions out, as was contemplated in September 2017 for FTAs with Australia and New Zealand, could avoid approval by national and regional parliaments.)

The Withdrawal Agreement, if approved by Parliament, will need to be “adopted” by the [European Council](#) by a qualified majority, which must represent 72% of the 27 remaining member states (20 member states) and 65% of the population, and will also need to be approved by the European Parliament, voting by simple majority.

European Commission: brings together 28 EU member states-appointed commissioners who formally initiate legislation for the EU.

European Council: the EU institution comprised of the heads of state or government of the EU member states, together with the President of the Council (currently Donald Tusk) and the President of the European Commission (currently Jean-Claude Juncker).

European Parliament: the directly elected legislative body of the EU, comprised of 751 members. Article 50 provides that the European Council must obtain the consent of the European Parliament, voting by a simple majority, with respect to any Withdrawal Agreement. The European Parliament appointed Guy Verhofstadt as its lead representative on Brexit matters. The European Parliament has acted on various aspects of the Brexit negotiations, for example, demanding in December 2017, after what it perceived was backpedalling by the British following the release of the Joint Report, that negotiations be carried out in good faith by the UK and stating that progress will depend on the UK fully respecting its commitments in the Joint Report and translating them into the Withdrawal Agreement.

European Union (Withdrawal) Act 2018: colloquial reference to the European Union (Withdrawal) Bill, formerly known as the Repeal Bill or Great Repeal Bill. The legislation repeals the 1972 European Communities Act and transposes into domestic UK law existing EU law. The Act, which is one of eight pieces of legislation identified in the Queen’s Speech in June 2017 as necessary to implement Brexit, was approved on June 20, 2018.

European Union Withdrawal Agreement Bill 2017-19 (formerly known as **the Withdrawal Agreement and Implementation Bill**, and colloquially referred to as **the Withdrawal Agreement Bill** or **WAB**): will enshrine the terms of the Withdrawal Agreement into domestic English law through primary legislation and will cover both the withdrawal arrangement and the transition period; it will be separate from the European Union (Withdrawal) Act 2018. It has not been approved by Parliament.

EU27: the member states of the EU, other than the UK.

Extension statement: at the European Council summit on March 22, the EU27, reportedly faced with no new proposals from the British and unconvinced that any deal would be approved by Parliament, threw the British a lifeline, but also laid down its own timetable: the new Article 50 deadline would be April 12, but if the [Withdrawal Agreement](#) were approved (MV3) by March 29, the deadline would be pushed back to May 22 (chosen by the EU27 because it is the day before the commencement of the MEP elections), to give the British time to pass the necessary implementing legislation (the [European Union Withdrawal Agreement Bill](#)), although there was no reason to believe that that would be a smooth process. The EU extension statement provided that if the Withdrawal Agreement was not approved by March 29, the UK would need to indicate a way forward by April 12, for consideration by the European Council. The statement also provided that if the UK were still a member of the EU on May 23–26, it would be required to hold MEP elections, and that the Withdrawal Agreement (including the [backstop](#)) would not be open for re-negotiation (although no mention was made of the accompanying [Political Declaration](#)).

The government was able to modify the [European Union \(Withdrawal\) Act 2018](#), through a statutory instrument, to extend the departure date beyond March 29 (441 to 105).

FCA: shorthand for a **facilitated customs arrangement**, which was the Prime Minister's compromise proposal set out in the White Paper for post-Brexit customs arrangements. The arrangement would seek to avoid a hard border between Ireland and Northern Ireland while keeping the UK outside the single market. The UK and EU would become a "combined customs territory" for goods, in which the UK would apply the EU's tariffs and trade policies for goods destined for the bloc, with domestic tariffs imposed for goods remaining in the UK. When goods reach the UK border, if the destination can be "robustly demonstrated by a trusted trader," it will pay the UK tariff if destined for the UK, and the EU tariff if destined for the EU. If the destination cannot be so demonstrated, it will pay the higher tariff and, when the destination is later determined, if the tariff would have been lower, the UK will repay the difference. The Political Declaration suggests this approach is no longer relevant.

Fearmongering: during the campaign leading up to the referendum, the Leave camp accused those citing potentially disastrous economic consequences of a vote to leave the EU (and the inevitable departure) of fearmongering. Following the referendum, efforts to characterize a hard Brexit as leading to disastrous consequences in the medium to long term (Brexiters will concede short term pain) were labelled as part of **Project Fear**.

Following the referendum, while sterling did plummet relative to the dollar in particular (and remains well below pre-referendum levels to this day), the dire economic consequences have not been felt. In fact, the relative value of sterling, together with more positive global growth, has supported overall positive growth in Britain since the referendum. The *Financial Times* cites a range of estimates (as of June 2018) highlighting that growth has slowed to between 1% and 2% of gross domestic product due to Brexit (representing a hit of between £20 and £40 billion). In terms of stock price movements, British businesses that generate significant revenues outside the UK have benefitted since the referendum, while companies

with a substantial domestic focus have not. The disparity between the two is reported at an all-time high. Looking forward, however, prospects may be less certain, in that while sterling is expected to remain under pressure, the companies benefitting most from the devaluation in sterling terms may be more exposed to threats to their supply chains, whether in the form of trade wars or from a hard Brexit.

First phase: the EU27 insisted that negotiations over any transition period and the trade relationship (the second phase) would only begin once “substantial progress” had been made on three issues: the rights of EU citizens in the UK and the rights of British citizens in the EU27, the divorce bill and the border between Ireland and Northern Ireland. On December 15, 2017, EU27 leaders determined, based on the Joint Report, that substantial progress had been made to move the Brexit negotiations on to trade and the post-Brexit relationship. The Irish border issue, in the form of the backstop, remains very much in contention.

Four freedoms: free movement of goods, services, capital and people, which is the cornerstone of the single market. Of these, the target of the Leave campaign was the freedom of movement of people – unrestricted entry by EU citizens into the UK. While early proponents of what ultimately became the Leave campaign focused more on taking back control over laws and regulations (referred to as “regaining sovereignty”), for many supporters of the Leave campaign it was all about immigration.

Forty-eight letters: the submission of letters from 48 Conservative MPs (15% of the parliamentary party) to the chairman of the backbench [1922 committee](#) (Sir Graham Brady) in December 2018 triggered a vote of no confidence in the Prime Minister, which in turn would have led to a leadership contest in the Conservative Party if she had lost. The Prime Minister survived the no-confidence vote. The 48-letter process can only be triggered once in a rolling 12-month period (which runs out December 12), unless the rules are changed.

Free vote: allowing MPs to vote their own personal conscience, rather than the “whipped” party line.

FTA: a free trade agreement. Free trade agreements determine the terms of trade between or among contracting parties, and in particular are intended to reduce barriers to free trade, such as tariffs and quotas. These agreements also cover topics such as intellectual property rights, competition policy and government procurement.

Good Friday Agreement: signed on April 10, 1998, the agreement formally ended the conflict in Northern Ireland. There is a direct correlation between the end of the conflict and the divisions over Brexit, namely that any [hard border](#) between Northern Ireland and Ireland that re-emerges intentionally, or by accident, poses a significant threat to the peace ushered in by the signing of the Good Friday Agreement. Speaker of the U.S. House of Representatives Nancy Pelosi, in April, advised the British government that the House would not approve an FTA with the UK that was inconsistent with the Good Friday Agreement.

Grieve amendment (1): as part of the meaningful vote process, the House of Commons passed an amendment tabled by Dominic Grieve. In the absence of the amendment, had the deal submitted by the government been voted down, the government would have had 21 days to come back with another proposal. Under the amendment, the House of Commons can vote on what it wants the government to do. Although it is precatory, as a political matter many commentators believe the government would be hard-pressed to ignore it. This amendment is viewed as eliminating the possibility of an “accidental” no-deal exit.

Grieve amendment (2): in a procedural manoeuvre that surprised many, and prompted severe criticism from Brexiters, the Speaker of the House of Commons, John Bercow, allowed a vote on an amendment that passed 308 to 297. The amendment called on the government to return to the House of Commons within three working days to present a new plan, should the deal be voted down in the meaningful vote. This shortened the 21 days previously applicable as well as the amount of time available to the Prime Minister to return to Brussels to get a better deal. The more assertive role of the Speaker is significant because, among other things, he can determine the order in which amendments to legislation are considered, which can have a potential impact because certain MPs may only rally behind one option after other options have failed to gain sufficient support. Ultimately, MPs retain only the power to approve or disapprove legislation or vote the government out of power.

Hard border: the Republic of Ireland is a member of the EU and transporting goods across its border with Northern Ireland currently requires no customs checks. Brexit raises the spectre of border checks on the frontier between Ireland and Northern Ireland. Doing so, however, raises a range of highly charged issues that harken back to the violence between republicans and unionists that ultimately abated following the signature of the Good Friday Agreement. The establishment of a hard border is viewed by many as potentially imperilling the peace process. It is difficult to see how the hard border issue can be resolved until there is agreement on the future trade relationship. See “[Backstop](#).”

Hard Brexit: there is no clear definition of a hard Brexit or a soft Brexit, and the context in which the terms are used matters. It is best to think of these two terms as the extreme ends of a continuum on which can be plotted varying degrees of closeness of the relationship between the UK and the EU following Brexit. The more doctrinaire of the supporters of the Leave campaign (led by the former Foreign Secretary Boris Johnson and the Environment Secretary Michael Gove – the [Brexiters](#)) call for a complete break from the EU in terms of regulation and governance. For them “take back control” means control over borders and full sovereignty over legal and regulatory matters. A hard Brexit, at the very least, means leaving the single market (to avoid freedom of movement into Britain) and can also mean leaving the customs union (to allow Britain to negotiate its own FTAs). A hard Brexit also excludes committing to any form of alignment with the EU. The hard Brexit camp splintered during 2018 between those willing to agree to any deal that delivers Brexit, with the expectation of ironing out details after the fact, and those wanting to nail down all the terms before departure.

In the words of Boris Johnson, “What we need to do is something new and ambitious, which allows zero tariffs and frictionless trade, but still gives us that important freedom to decide our own regulatory framework, our own laws . . .” This, at the moment, flies in the face of the EU27 position, in the words of Michel Barnier, that “there won’t be any cherry-picking. We won’t mix up the various scenarios to create a specific one and accommodate [the wishes of the British], mixing for instance the advantages of the Norwegian model, member of the single market, with the simple requirements of the Canadian one.”

HMRC testimony: in the midst of the debate over options to address the Irish border issue, the chief executive of the UK’s tax authority advised the Commons Treasury Committee that the “max-fac” option preferred by Brexiters could cost UK businesses between £17 to 20 billion per year, the principal driver of which would be the cumulative cost of customs declarations. While HMRC views the alternative customs partnership approach as having a far lower cost, shortly after the HMRC testimony, the operator of the Channel Tunnel, Eurotunnel, weighed into the public debate by warning that either approach would result in severe disruptions for businesses and consumers that rely on timely delivery of goods. Others have followed suit and made similar arguments.

Indicative votes (1): on March 27, the government failed in its effort to cancel the indicative vote debate (281 to 331, including 33 Tory MPs who defied the whips and rebelled). The Speaker reaffirmed his position on “no repeat votes” effectively keeping MV3 off the table (which triggered a search among experts on parliamentary procedure for possible loopholes), and selected from the list of 16 amendments that had been submitted 8 amendments to be the subject of indicative votes. None passed. That evening, the DUP leader indicated that the DUP would not support the government were MV3 to be held, on the ground that “necessary changes” to the backstop had not been negotiated. The Prime Minister announced to a meeting of the [1922 committee](#) that she would step down if her deal passed, implying that she would stay on were her deal to not pass, or not be voted upon. The tallies on the indicative votes were as follows (note there were significant abstentions on many votes; some MPs abstained on all, including members of the cabinet, who were instructed to do so – there are 650 MPs and only 639 MPs cast votes):

- A [no-deal](#) exit (160 to 400);
- [Common market 2.0](#) (188 to 283);
- Remaining in [EFTA](#) and the [EEA](#) (but outside a customs union) (65 to 377);
- Ken Clarke’s remaining in a customs union (264 – 272) – the closest majority (which included 33 Tory MPs);
- Labour’s remaining in the customs union and aligning with the single market (237 to 307);
- Revocation of the Article 50 notice (184 to 293);
- The Kyle-Wilson confirmatory public vote (268 to 295) – the most support (including 8 Tory MPs); and

- Contingent preferential access, also known as the [Malthouse Plan](#) B (139 to 422).

On March 29, the Prime Minister put to Parliament the Withdrawal Agreement only, leaving the Political Declaration for a future date. This effort failed by 58 votes. The bifurcation (presumably prompted by [Speaker Bercow's](#) ruling) incidentally may have contributed to the defeat as it would have left in the hands of a future Prime Minister the task of defining the future relationship.

Indicative votes (2): the following scenarios were voted upon on April 1 (note a number of abstentions, including the entire cabinet):

- Customs union, proposed by pre-EU Tory MP Ken Clarke (273 to 276);
- Common market 2.0, proposed by Nick Boles, who announced he would leave the Tories following defeat of his motion (261 to 282);
- Second referendum, proposed by Labour MP Peter Kyle (280 to 292);
- Parliamentary authority to extend Brexit, or choose between a no-deal exit and revoking Article 50, proposed by SNP MP Joanna Cherry (191 to 292).

Joint Report: the Joint Report from the Negotiators of the European Union and the United Kingdom Government on Progress during Phase 1 of Negotiations under Article 50 TEU on the United Kingdom's Orderly Withdrawal from the European Union. The issuance of the Joint Report was the basis on which the parties moved at the end of 2017 to the second phase of the negotiations.

June 2017 elections: the Prime Minister called a snap election, which was held in June 2017. The Prime Minister had expected to augment her slim majority to 100 to compel pro-European Conservatives to vote in line with the Conservative Party manifesto and deliver a hard Brexit. Instead, the Prime Minister lost her majority and was forced to enter into a "supply and confidence" arrangement with the DUP. Much of what has happened since June 2017 has been affected by the unexpected outcome of the election. While technically not a coalition government, the current Conservative government functions, at least on the dominant issue of the day, Brexit, as an uneasy coalition between the supporters of a hard Brexit and the supporters of a soft Brexit.

Leadership contest: the resignation of Theresa May as head of the Conservative Party triggered a leadership contest that is scheduled to run to July 23. The contest began formally after the close of nominations during the second week of June. The process involves a series of votes by Conservative MPs until only two candidates remain (which has now been completed), following which the estimated 160,000 members of the Conservative Party (the last official count was 124,000 in March 2018) will select the new leader, who will then become Prime Minister. Theresa May will serve as caretaker Prime Minister until she tenders her resignation to the Queen following selection of the new leader, assuming she believes the new leader will command a majority in Parliament.

A recent YouGov poll of Conservative Party members (who according to a study published last year by researchers at Queen Mary University of London, and quoted in the *Financial Times*, are estimated to be 97% white, 71% male and 44% 65 or older) indicates that a majority would be prepared to let either Northern Ireland or Scotland leave the UK, would accept significant damage to the UK economy and would accept destruction of the Party, if necessary to ensure Brexit takes place. They would, however, be prepared to forgo Brexit in order to avoid Jeremy Corbyn becoming Prime Minister.

Leaving the EU: the choice presented in the June 2016 referendum was between remaining in the EU and leaving the EU. There was very little appreciation of the implications of leaving the EU and very little discussion of the details of any such exit. The referendum was not legally binding, and those opposed to leaving have long maintained that there was no reason why Theresa May, who was named Prime Minister following the resignation of David Cameron, should have interpreted the outcome as a mandate to also leave the single market and the customs union. Supporters of leaving the EU generally are referred to as being in the Leave camp, while supporters of remaining in the EU are referred to as being in the Remain camp.

Malthouse compromise: a proposal to address the backstop issue, which contemplates renegotiating the backstop, and if that fails, somehow retaining a transition period followed by an exit on World Trade Organization terms.

Managed no-deal exit: a position floated by certain cabinet members that assumes no deal with the EU27 and seeks to mitigate the more negative aspects of a no-deal exit. An amendment calling for a managed no-deal exit was defeated on March 13. See also the “Malthouse compromise.”

Maximum facilitation or max-fac: an arrangement proposed by the Brexiters that envisioned a streamlined customs arrangement and a frictionless border between Ireland and Northern Ireland that would operate based on as yet unspecified technology, whereby goods would be traced and precleared electronically with tax authorities. The UK would remain in a customs union until the technology could be developed and deployed. Many were sceptical that this arrangement is feasible in the next five to 10 years (in part because of the complexity of [rules of origin](#) that would need to be catered for), and there was little appetite for this proposal among the EU27. The Political Declaration suggests this approach is no longer relevant.

Meaningful vote: an amendment to the European Union (Withdrawal) Act 2018 gave Parliament a “meaningful vote” on the terms of the exit (as set out in the Withdrawal Agreement and the Political Declaration), which in practice gave MPs the ability to approve the final Brexit deal before it becomes effective. The amendment specifically provided that the government cannot issue new regulations to implement Brexit without Parliament passing a new law to authorize them. The amendment did not give MPs the right to change the deal (as the deal can only be changed by negotiation between the UK and the EU27), to force the government to change the deal or to veto Brexit. The amendment did not eliminate the

prospect of the UK crashing out of the EU. The amendment was approved by a vote of 309 to 305, which represented the Prime Minister's first defeat in the House of Commons.

Meaningful vote – 2: a second attempt, on March 12, to obtain approval of Parliament for the Withdrawal Agreement and the Political Declaration.

Meaningful vote – 3 (also known as **MV3**): a third attempt at passage of the Withdrawal Agreement and the Political Declaration. Technically this never occurred as the third attempt was to seek passage of the Withdrawal Agreement only.

MEP elections: elections of Members of the European Parliament held May 23-26, with elected MEPs to take their seats July 2. For Britain, the results in the election no one really expected were disastrous for the two main parties. The Brexit Party – which only six weeks before the election did not officially exist – garnered 31.6% of the vote, followed by the Liberal Democrats at 20.3%, Labour at 14.1%, the Greens at 12.1% and the Conservatives at 9.1% (per the BBC). Change UK and UKIP each were slightly over 3%. The turnout was 37%. The Conservatives suffered their worst performance ever in a national election. The Brexit Party fell short of the more optimistic projections. Labour lost support among both Remain and Leave voters, though it suffered greater losses in areas with strong Remain support.

Missing impact statements: following statements made to the House of Commons by David Davis that the government had prepared 58 detailed impact statements of Brexit on various sectors of the British economy, a motion in Parliament was passed to compel the government to turn over these impact statements to the House of Commons Brexit select committee. After a lengthy delay, the government ultimately turned over a fraction of the impact statements, with heavy redactions, and conceded that the rest did not exist. The lack of what appears to be a meaningful assessment of the impact of Brexit on Britain had been severely criticized by supporters of a soft Brexit or no Brexit. In late August, the government began releasing its [technical notes](#).

MP: member of Parliament.

MPs seize control: On Friday, March 29, Brexit day for the preceding two years, the Prime Minister's third attempt to get her deal approved in the House of Commons failed by a vote of 286 (including 5 Labour MPs) to 344 (including 34 Tory MPs). The day before, none of the eight scenarios that were voted upon as part of the [indicative vote](#) process obtained a majority. MPs were expected to push, on the assumption that either MV3 would be delayed (although that is inconsistent with the EU extension) or that it would fail, to take control of the process and hold a series of indicative votes on Wednesday on various Brexit options (based on a cross-party effort led by Oliver Letwin, Nick Boles and Hilary Benn to take over the business of the House of Commons on Wednesday). A similar call for indicative votes failed by a margin of only two votes earlier in March. It was not clear as the voting began that any option would command a majority in Parliament. Indicative votes are not binding. The only previous set of indicative votes was in 2003.

On Monday April 1, the news headlines announced that MPs had seized control of Brexit. The Letwin-Boles-Benn amendment passed 329 to 302. Three ministers resigned from the government to vote in favor of the amendment; altogether 30 Tory MPs rebelled and voted for the amendment (8 Labour MPs voted against the amendment). This vote followed an announcement by the Prime Minister that, based on her meeting at Chequers over the weekend and discussions with the leader of the DUP, she did not yet have the votes to pass her deal and was disinclined to hand Parliament a “blank cheque.” The government labelled the vote in favor of the amendment as setting “a dangerous and unpredictable precedent.”

Net migration: the difference between the number of immigrants to a country and the number of citizens emigrating from that country. In May 2017, the Prime Minister indicated that she wished to reduce net migration to the tens of thousands. In early December 2017, figures released show that net migration from the EU fell by the largest amount since records were first compiled. Figures published in late August 2018 indicate that net migration from the EU during the 12 months ended December 2017 fell to its lowest level in five years.

New assurances: at the eleventh hour before the second meaningful vote on March 12, the Prime Minister received assurances from the EU27 (set out in an “Instrument” relating to the Withdrawal Agreement) on the backstop that she hoped would sway a sufficient number of MPs who had lined up against her withdrawal deal. The key question in Westminster was whether the assurances were in fact binding. European Commission President Juncker described the assurances as “complements” to the Withdrawal Agreement “without reopening” it. The assurances had three elements: (i) that the backstop would not be a permanent solution to the border issue; (ii) both sides would seek alternative arrangements in good faith and (iii) the UK could trigger the dispute resolution mechanism in the Withdrawal Agreement to end the backstop if it believes the EU is seeking to apply the backstop indefinitely. Shortly before the second meaningful vote, Attorney General Geoffrey Cox pronounced that “the legal risk remains unchanged” and that if a trade agreement cannot be reached due to “intractable differences,” the UK would have “no internationally lawful means” of ending the backstop without EU agreement. Many thought that the Prime Minister needed a positive assessment from the Attorney General (that the UK could leave the backstop, unilaterally) to get her deal through; that assessment was not forthcoming. The Prime Minister’s deal was voted down a second time that evening.

New election: the Fixed-Term Parliaments Act makes it harder to call an early election. To do so requires a vote of two-thirds of the House of Commons or, in the case of a successful (simple majority) vote of no confidence, if no alternative government is agreed within 14 days. Otherwise, the next election is in 2022.

No-confidence vote: this could refer to one of two votes, a vote of the Conservative MPs or of Parliament under the terms of the Fixed-Term Parliaments Act. The former took place on December 12, 2018 and was unsuccessful. Following the defeat of the government in the meaningful vote, Jeremy Corbyn tabled a motion for a vote of no confidence. That motion failed by a vote of 306 to 325.

No-deal exit: see [Crashing out of the EU](#).

No-deal preparations: in mid-December 2018, at the final cabinet meeting of 2018, no-deal preparations were reported to be at the top of the agenda. A £2 billion contingency fund is reported to have been set aside by the chancellor to address the consequences of a no-deal exit. Government departments were reported to have set aside any no-urgent business to focus on contingency plans. See also [Operation Yellowhammer](#).

Norway option: refers to a trading relationship along the lines of that enjoyed by Norway, which would entail membership in both the EEA and EFTA. Norway is one of four members of EFTA. The UK, which left EFTA in 1972, could become part of the EEA as a member of EFTA, though becoming a member of EFTA would require the approval of the other states of EFTA (triggering approval of the parliaments of each of these states). Were the UK to join EFTA and rejoin the EEA (leaving the EU means the UK also leaves the EEA), it would not automatically become part of the various FTAs EFTA has with other countries. Non-EU members of the EEA, such as Norway, have nearly full access (without having a vote or a role in setting any of the rules) to the single market (only EU member states are members of the single market), but are not members of the customs union. Norway makes financial contributions to the EU and accepts a significant proportion of EU laws and regulations as well as free movement of people. By being outside the customs union, Norway can enter into trade deals with other countries. The Norway model does not sit well with the Prime Minister's commitment to take the UK out of the single market and the customs union.

Norway plus (also known as **common market 2.0**): Britain would join EFTA and remain in the single market (the Norway option). It would also become a member of a permanent customs union (the "plus") to maintain so-called "frictionless trade" and avoid customs checks at the Northern Ireland border (though the single market would eliminate most of the border checks in any event). This option has certain Tory MP and certain Labour MP supporters. See "[Cross-party solution](#)."

October deadline: October 2018, which the EU27 had set out as the deadline for the Withdrawal Agreement to be submitted to the European Council in order to provide sufficient time for the approvals to be obtained in each of the EU member states. That date was not met.

Operation Yellowhammer: the government's code name for the contingency plans of the Civil Contingencies Secretariat (within the Cabinet Office) to deal with a no-deal exit. The plans were outlined in a March 12 report by the Comptroller and Auditor General. The report is based on worst-case assumptions, including delays at the border for six months, increased immigration controls, reduced availability of certain fresh food products and higher prices for utilities, food and fuel. It has been reported that the operational centers were closed and that staff seconded to the effort have returned to their old jobs or moved to new jobs.

Party defections: during the week of February 18, eight Labour MPs and three Conservative MPs quit their respective parties and elected to sit as an independent body, initially called the [Independent Group](#) (or TIG). This was the largest defection in Westminster since the 1980s. It eventually became Change UK.

Passporting rights: the basis on which services today are provided across the EU. These so-called passporting rights are enshrined in a series of agreements that allow service providers licensed, and complying with rules, in one (the home) member state to be able to provide services throughout the EU, without complying with further obligations that might otherwise be imposed by the host member state.

Political Declaration: the nonbinding 26-page political declaration setting out the framework for the future relationship between the European Union and the United Kingdom of Great Britain and Northern Ireland, as agreed at negotiators' level on November 14, 2018 and at a political level on November 25, 2018.

Red lines: from the early days of the Brexit process (when the Prime Minister's principal slogan was "Brexit means Brexit"), policy positions have been set forth as immutable and non-negotiable, many of which now appear to have been crossed. The Prime Minister set forth her red lines in her acceptance speech in 2016 and with greater precision in her Lancaster House speech (in January 2017), in which she committed the UK to a hard Brexit in order to achieve her view of the mandate of the 52% of the voters who voted to leave the EU – to "take back control" of borders and the law. This would mean leaving the single market and the customs union, and leaving the jurisdiction of the ECJ. There was also an implied threat to turn the UK into a low tax, lightly regulated jurisdiction.

In early December 2017, Brexiters set out new red lines, including that the ECJ has no jurisdiction in the UK after March 29, 2019, that the UK be free to sign *and implement* FTAs during the transition period, that free movement of people into the UK end on March 29 and that the UK be exempt from *new* EU regulations during the transition period. These red lines were crossed.

Following the government's first defeat in the meaningful vote, many commentators noted that the Prime Minister was "boxed in" due to her red lines.

Remainers speak up: an online petition supporting revocation of the Article 50 notice had been signed by just shy of 6 million as of mid-day March 30 (Parliament is supposed to consider any petition that garners more than 100,000 signatures), and on March 23 more than one million people (estimated by organizers; the police do not release estimates) were reported to have taken part in London in the "Put it to the People March" in support of a second referendum. Neither the Prime Minister (not surprisingly) nor the head of the Labour Party participated in the march. Notwithstanding that Labour is the official "opposition," it is difficult to pinpoint where it stands. Its public stance has been ambiguous throughout – keep all options open. Its shadow cabinet reportedly is split between those supporting a soft Brexit (likely the [common market 2.0](#) variation) and the Remain wing calling for a second referendum.

Reshuffle: in early January 2018, the Prime Minister reshuffled her cabinet. While some expected more drastic changes, the Brexiteers retained their portfolios. Many viewed the reshuffle as underscoring the Prime Minister's difficult political position, and some lamented the missed opportunity for the Prime Minister to use cabinet changes as a means of communicating her preferred Brexit outcome. Essentially the balance between those in favor of Brexit and those against remained unchanged, and the failure to enhance one side or the other raised questions about whether the Prime Minister had decided, even at this late date, on the preferred outcome or, if she had, whether she felt she had the authority to push it through. The political calculus has been further complicated by various resignations of senior ministers since the reshuffle.

Rules of origin: in order to benefit from preferential trade terms in an FTA, exporters must establish that the goods being exported originate in the exporting country or had substantial work done to assemble them in the exporting country. In short, if the UK and the EU were to enter into an FTA, to obtain preferential access to the EU, UK exporters would have to show their goods were made in the UK (unless the goods are exempt). With global supply chains being what they are, rules of origin are tremendously complex, reflecting how products are assembled (and where). It is estimated (by the Society of Motor Manufacturers and Traders), for example, that approximately 44% of the components in a car assembled in the UK are sourced from UK suppliers; however, only between 20-25% of these components actually are manufactured in the UK. Approximately at least 50-55% by value of the goods must be locally sourced for preferential treatment. These rules create various challenges: the need to meet local content requirements and also the costs associated with obtaining certificates of origin and related administrative and audit costs. The UK can avoid these rules if it remains in a customs union with the EU (since there would be no tariffs imposed on goods traded between the UK and the EU and, in fact, such goods would be deemed "EU content" relative to third countries; tariffs are only imposed once goods cross the common external border).

Second phase: negotiations over the transition period and the future (*i.e.*, trade) relationship with the EU, as well as any unresolved issues from the first phase. The parties are still in this phase.

Second referendum: from the earliest days following the referendum, critics of the entire Brexit project have called for a second referendum as the only realistic means of preventing Brexit. In the months leading up to the March 29 deadline, grassroots support emerged among Remain supporters for a People's Vote. At this late date there appears to be little appetite for a second referendum in Parliament. It does, however, remain an option and has popular grassroots support.

Services: the UK is reported to be the second largest exporter of services, after the United States. Services account for 45% of total exports from the UK, the largest component of which is financial services (although by no means even the majority). The UK maintains a trade surplus in services. The challenge is that, in contrast to goods, there is no single regime for services, and the FTA models being considered do not adequately address the services that matter most to the UK. Frictionless trade in services depends on accommodations in respect of non-tariff barriers, including licensing and regulation. The House of Lords

Europe Committee called the EU single market the “most integrated regime for services trade in the world.” The UK had a surplus in financial service exports in excess of £20 billion last year, although digital services are also becoming more significant. See generally “Services: the ‘dark matter that matters’ in trade with the EU,” *Financial Times* (December 18, 2017). As possible solutions for trade move in the direction of a single market for goods, commentators note that many goods also have service components.

Single market: also known as the internal market, and formerly known as the common market, stands at the center of the EU. Membership in the single market implies accepting the four freedoms. The single market removes barriers to trade (both goods and services) and harmonizes national laws at the EU level. The single market should not be confused with the customs union.

Soft Brexit: if Brexit cannot be avoided, the fall-back position for the proponents of a soft Brexit in the cabinet (the Chancellor, Philip Hammond, and the Business Secretary, Greg Clark) has been an arrangement that could include remaining in the customs union and the single market, or perhaps only in the customs union. A soft Brexit envisions providing some accommodation on free movement into the UK. At Davos earlier this year, in an effort to assuage the fears of the business community in Britain that the country would lose frictionless access to the EU, as well as the fears of the EU27 that Brexit would prompt Britain to become a loosely regulated, low-tax jurisdiction, the Chancellor stated that Britain wished to stay closely aligned with the EU and that material differences in regulation between the UK and the EU would be “modest.” This produced outrage on the part of the Brexiteers and earned a rebuke from the Prime Minister.

Special Relationship: the longstanding geopolitical relationship between the US and the UK has in diplomatic and academic circles been referred to as the “special relationship.” Eager to curry favor with the then new US President, the Prime Minister was the first foreign leader to visit Washington. A key objective of that meeting was to ensure that Britain would stand, not last in line (as former President Obama had threatened during the referendum campaign), but first in line for a new FTA. The deterioration in the public relationship between the two countries, as well as the prospect of a looming trade war, calls into question whether one of the proffered benefits of a hard Brexit (namely the ability to negotiate favorable trade agreements with key trading partners around the world) might in fact still be on the table. Uncertainty in respect of the ability to negotiate an arrangement that benefits the UK could prompt more ministers to favor remaining in the EU customs union.

Technical notes: in late August 2018, the government began releasing the first of an expected 80 technical notes, outlining the consequences of a no-deal exit. The technical notes were criticized from many quarters. Brexiters complained that the notes were scaring the population to push for a second referendum. Opponents of Brexit complained that the notes were too vague to be of any use to anyone should the UK crash out of the EU.

Ten-point plan: in a “last ditch” effort to win support in Parliament for a Brexit deal, the Prime Minister, on May 21, outlined possible changes to the Withdrawal Agreement in the form of a 10-point plan, these being:

- an alternative arrangement to deal with the backstop;
- a promise to keep Northern Ireland aligned with the rest of the UK on regulations and customs if the backstop comes into force;
- approval by Parliament of “negotiating objectives and final treaties”;
- a bill guaranteeing that workers’ rights in the UK would remain on a par with those in the EU;
- a guarantee that environmental standards would remain on a par with those in the EU;
- an undertaking to seek “as close to frictionless trade in goods with the EU as possible while outside the single market and ending free movement”;
- a pledge to match EU rules for goods and agrifood products that may be subject to border checks in order to avoid excess delays in supply chains;
- a vote on post-Brexit customs arrangements (either a temporary customs union, a permanent customs union or the Prime Minister’s existing plan for a “customs” arrangement);
- a guarantee for a vote on whether the final deal should be subject to a confirmatory referendum; and
- a “legal duty” to seek changes to the Political Declaration.

Third country status: when the UK leaves the EU, regardless of the nature of the trading relationship, the UK will be, and will be treated as, a third country, and there is little flexibility in the EU ecosystem to be more accommodative. As the former chief UK diplomat to the EU [Sir Ivan Rogers](#) has noted,

There is no legal status of ‘being a third country which used to be a member and therefore can be treated radically better than other third countries.’ There is no legal ‘half way in, half way out’ option for either the Single Market or the Customs Union. There is therefore an asymmetry. If you are in, you can, within constraints, negotiate bespoke arrangements, carve outs, opt-outs, opt back-ins, and so forth. But once you are out of the legal architecture of the EU, the scope for bespoke arrangements is massively diminished You simply cannot, with any honesty or coherence, make an argument for taking back control and full autonomy of decision-making on the UK side of the Channel, and simultaneously argue for the EU27 to restrict to a certain extent its own autonomous decision-making precisely in order to give you, a non-member of the club, a real say in the direction of its policy.

Top down/bottom up approaches: as businesses focused on the post-Brexit trade relationship with the EU, ministers offered different solutions. The hard Brexit camp envisioned a bottom up approach that started with a clean slate of total regulatory divergence and added sectors (via an opt in) as to which regulatory alignment with the single market would be acceptable, while the soft Brexit camp had the opposite view, favoring maximum regulatory alignment with the EU, with opt outs kept to a minimum. A variation on the theme had been attributed to [Olly Robbins](#), namely a three-pronged approach: some sectors being fully converged; some sectors being fully exempt from EU regulation; and a third group being aligned as to objective, achieved through divergent means. These all needed to be viewed for the moment in light of the EU27 position against any [cherry-picking](#).

Trade Bill: key Brexit legislation (along with the Customs Bill) that gives the government legal powers to negotiate and enter into international trade agreements with third countries post-Brexit. The Bill passed by 307 to 301 on July 17, 2018 after the Prime Minister averted defeat on a key amendment that would have kept the UK inside the customs union in the absence of a new trade arrangement by mid-January 2019, only two months shy of the formal March 29, 2019 withdrawal date. Another amendment to the Bill that requires the government to ensure that the UK take “all necessary steps” to participate in the regulatory network operated by the European Medicines Agency after it leaves the EU was, however, voted through by the MPs by 305 to 301, making it the second defeat for the government on Brexit-related legislation.

Transition period or implementation period: a concept initially proposed by the proponents of a soft Brexit to allow time to prepare for withdrawal. It quickly became clear to all that such a period would be needed to complete negotiations over the future trade relationship. During this period the status quo (what Michel Barnier calls the “complete architecture” of the EU) would be maintained as a practical matter, with one critical exception. During this period, the UK technically would have ceased being a member state of the EU, would have left the customs union and the single market and would have no input into EU decision-making. However, all existing rules and regulations, as well as any new rules and regulations adopted in the EU, would continue to apply, as would ECJ jurisdiction. The Withdrawal Agreement provides that the transition period, which otherwise ends December 31, 2020, can be extended once prior to July 1, 2020 and contemplates an extension period of either one year or two years. If the transition period is extended, Britain could be making an additional contribution to the EU budget.

As a reminder of the complexities ahead, Michel Barnier has reiterated that, while a trade agreement could be agreed to during the transition period with the EU, it would still need to go through the full ratification process. According to Barnier, any FTAs agreed, during this period, by the UK with other countries could only enter into force at the end of the transition period. As for EU FTAs with other countries, Barnier has noted that, during the transition period, the UK would not automatically be covered by approximately 750 bilateral agreements currently in place with the EU. Note that the six-month extension will reduce the time available for the transition period, as the December 31, 2020 end date is fixed in the Withdrawal Agreement, and similarly reduces by six months the time available before the July 1, 2020 date to extend the period.

Tribal politics: an attack by far-right, pro-Brexit “yellow jackets” in front of Parliament against a pro-EU Tory MP, Anne Soubry, and calls by MPs for enhanced police protection, in the days leading up to the March 12 meaningful vote underscored the febrile atmosphere, not only in Westminster but throughout the country.

The country remains divided into two camps: (i) those who voted to leave and who believe it would be anti-democratic not to leave (admittedly some are concerned about possible violence if the country does not leave), and (ii) those who wish to remain – either by holding a second referendum or simply by revoking the Article 50 notice. For many, the subtleties about the details being debated in Parliament are a distraction.

In Parliament, both the Conservatives and Labour were and continue to be deeply divided; the Conservative MPs are split essentially into three camps – hard Brexit, soft Brexit and no Brexit, while Labour MPs are largely anti-Brexit, though their leadership is at heart antagonistic towards Europe, even though it has gotten away with a policy of constructive ambiguity, largely because of the dysfunction in the Conservative Party. The Prime Minister has referred to her party as a “broad church.” It is estimated that, of the 313 Tory MPs, approximately 140 are viewed as government supporters, as they hold ministerial positions or hold official positions within the party. Up to 90 MPs belong to the ERG, although it is believed there are various factions within the ERG. Another group of backbenchers is the Brexit Delivery Group, which has both Leave and Remain MPs who accept that Britain is to leave the EU. Another group supports a second referendum, and a final group is unaligned.

Labour is holding out for a new election, though many consider that unlikely; while the DUP and Eurosceptic Tories may be happy to vote down the government’s current deal, they are unlikely to support the call for a new election. As an institution, Parliament is paralyzed – with no single option enjoying anything approaching majority support.

The two-party system is firmly entrenched in Britain, with tremendous power vested in the leaders of the two parties; a nascent “cross-party” effort is viewed by many as too little, too late, and facing significant institutional challenges. That having been said, the MEP elections highlighted the low esteem in which the two mainstream parties are held. Voters of both parties deserted their longstanding political homes, in favor of the Brexit Party and the Liberal Democrats.

While the referendum was called, in the words of former Prime Minister David Cameron, to “settle [the] European question in British politics,” not only has little been settled, but the divisions outside political circles on the European question are now far more pronounced, and seemingly more entrenched. In fact, for many, the question of the EU as an institution, as a legal regime, as a trade regime or as a driver of immigration was hypothetical. Today, it is anything but hypothetical. Commentators ask whether these divisions can reasonably be expected to be overcome.

Unilateral withdrawal from the backstop: it was reported that part of the government’s message (delivered by the Attorney General, Geoffrey Cox) during the week of March 18 to the DUP (then ahead of MV3) was that the UK could use a provision of the Vienna Convention on the Law of Treaties (Article 62) to unilaterally withdraw from the [backstop](#) by cancelling the Withdrawal Agreement. International law experts disputed that position.

White Paper: originally expected before the June 2018 European Council summit, the government’s blue print for the future relationship with the EU was published on July 12, 2018. The document, entitled “The Future Relationship between the United Kingdom and the European Union,” set forth a detailed explanation of the government’s proposals for the UK’s future relationship with the EU and set out many of the proposals agreed to at the cabinet’s meeting at Chequers held on July 6, 2018 in far greater detail. The White Paper reflected the government’s vision of “a principled and practical Brexit,” which included:

- a free trade area for goods, giving frictionless border access. This would “protect the uniquely integrated supply chains and ‘just in time’ processes” with no “costly customs declarations”;
- a separate arrangement for services, based on “the principles of international trade and the precedents of existing EU trade agreements”;
- an end to free movement of people, with a new immigration system being set in place, support for farming and fisheries, and what is called a “shared prosperity fund”; and
- a facilitated customs arrangement (FCA) to avoid a hard border between Ireland and Northern Ireland, under which the UK would apply EU tariffs and trade policies for goods destined for the EU, with domestic tariffs applied to goods destined for the UK.

Withdrawal Agreement: Article 50 calls for the negotiation of an agreement “setting out the arrangements for [the UK’s] withdrawal, taking account of the framework for its future relationship with the [EU].” This agreement had been the subject of negotiations between the EU and UK, and a draft version (Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as agreed at negotiators’ level on November 14, 2018) was approved in draft form at a political level by the cabinet on November 14, 2018 and by the EU27 on November 25, 2018. It has been the subject of three votes in Parliament.

The Players

Barclay, Stephen: the Brexit Secretary, appointed following the resignation of Dominic Raab.

Barnier, Michel: the lead negotiator for the EU27.

Bercow, John: the speaker of the House of Commons. He is the highest authority of the House of Commons, with the power to determine how business is conducted, including which amendments are to be

voted upon. In spite of speculation that he would step down during the summer of 2019, in late May, Bercow announced he would stay on as Speaker, to the fury of some Brexiters.

Brexiters: current and former members of the cabinet that led the Leave Campaign and following the referendum became associated with the hard Brexit position. They include Michael Gove and Boris Johnson, as well as David Davis, Liam Fox and Garvin Williamson. **Brexiters** refer to the broader group of MPs who support a Hard Brexit.

Corbyn, Jeremy: leader of the Labour Party.

Davis, David: until he resigned two days after the Prime Minister secured the Chequers agreement, the head of the Department for Exiting the European Union and the formal lead negotiator for the British on Brexit. Davis resigned because, in his words, he could not support the Chequers proposals in good faith in that it ties the UK too closely to EU regulation and the common rule book for trade gives only an illusory return of control.

DUP: the Democratic Unionist Party in Northern Ireland, a hardline unionist party that opposed the Good Friday Agreement and on whose 10 votes the government depends for its majority. The DUP has a support agreement with the Conservatives to provide the government with the votes necessary to achieve a narrow majority if all Conservatives vote with the government. The DUP supports Brexit, but is steadfast against the imposition of a hard border between Northern Ireland and Ireland. Moreover, the DUP is opposed to any arrangement that applies only to Northern Ireland and not the entire country (that is, an agreement that, when the UK leaves the EU, Northern Ireland would have a separate, aligned set of arrangements). An 11th hour deal with the DUP and Ireland rescued the first phase of the negotiations.

European Research Group or ERG: a single issue research group for the Conservative Party, led by Jacob Rees-Mogg. That single issue is the withdrawal of the UK from the EU.

Farage, Nigel: the former leader of UKIP and now the leader of his newly formed Brexit Party.

Gove, Michael: the Environment Secretary and one of the Brexiteers.

Grieve, Dominic: a Conservative MP and the former Attorney General, who led the rebellion over the meaningful vote amendment, which saw 11 Conservatives defect to pass the amendment providing for the vote. However, as part of the final vote on the European Union (Withdrawal) Act 2018, Grieve failed to support his own second amendment, which would have given Parliament the right to decide what happens if the House of Commons rejects the eventual Brexit deal. In December 2018, he tabled the so-called Grieve amendment.

Fox, Liam: the Secretary of International Trade and one of the Brexiteers.

Hammond, Philip: the Chancellor of the Exchequer and a member of the soft Brexit faction.

Hunt, Jeremy: the Foreign Secretary, appointed following Boris Johnson's resignation.

Independent Group for Change (initially known as the Independent Group, then renamed Change UK – The Independent Group, and now known as the Independent Group for Change): a parliamentary group formed on February 18 by seven Labour MPs who were joined a few days later by three Conservative MPs and one more Labour MP. The Labour MPs decided to leave their party in opposition to the Labour leadership's Brexit policy, and failure to address antisemitism issues within the party. The former Labour MPs who were part of the initial group include Anna Soubry, Sarah Wollaston and Heidi Allen. The former Conservative MPs in the initial group were Luciana Berger, Chris Leslie, Angela Smith, Gavin Shuker, Ann Coffey, Mike Gapes, Chuka Umunna and Joan Ryan. These MPs support a second referendum and remaining in the EU. The group, at its height with 11 members, has since splintered, with six members expected to join the Liberal Democrats, which is experiencing a surge in popularity as the principal anti-Brexit party. Chuka Umunna has been named Treasurer of the Liberal Democrats.

Johnson, Boris: until he resigned three days after the Prime Minister secured the Chequers agreement, the Foreign Secretary, and one of the Brexiteers. He had been the most visible public face of the Vote Leave campaign. Boris Johnson was the seventh member of Theresa May's cabinet to resign. His two principal concerns about the Chequers agreement were, in his words, locking large parts of the economy into the EU system "with no control over that system" and the fear that by agreeing to the common rulebook for goods Britain would be unable to reach trade deals with non-EU countries.

Juncker, Jean-Claude: the President of the European Commission.

Labour Brexiteers: the four Labour MPs who sided with the government on the Customs Bill and Trade Bill vote. These include Frank Field, Kate Hoey, John Mann and Graham Stringer.

Lidington, David: the Prime Minister's de facto deputy. He is viewed as pro-Remain. An increasing number of observers believed he could take over were Theresa May to step down.

May, Theresa: Prime Minister, until her successor as Conservative Party leader is named and she formally steps down, which she will do assuming she believes her successor commands a majority in Parliament.

1922 committee (also known as the "22" committee): the committee of Tory backbench MPs. The committee is named after the date on which Conservative MPs ended the party's coalition with the Liberals, causing the government of David Lloyd George to fall. The Conservatives won the ensuing general election.

One Nation: a moderate bloc, said to comprise approximately 40 Tory MPs and led by Amber Rudd and Nicky Morgan, intended to support a less extremist candidate (at the very least, someone who did not

support a no-deal exit) in the leadership contest to replace Theresa May. These MPs have been concerned that an influx of pro-Brexit supporters in local constituency associations who are eligible to vote in the leadership contest (referred to as “entryism”) are pushing the Conservative Party further to the right.

Raab, Dominic: David Davis’ former Chief of Staff, who replaced Davis as Secretary of State for Exiting the European Union, when Davis resigned. Raab is viewed as an active supporter of the European Reform Group. Raab resigned following the publication of the Withdrawal Agreement, and was succeeded by Stephen Barclay.

Rees-Mogg, Jacob: Conservative backbencher aligned with the Brexiteers. Rees-Mogg heads the Conservative’s hardline, pro-hard Brexit European Reform Group (ERG) and is viewed as the most influential Conservative MP who is not a minister. He has said he intends to vote against the Brexit deal and has published a copy of his letter of no confidence.

Robbins, Oliver (Olly): formerly David Davis’ principal deputy, reports directly to the Prime Minister as her Brexit advisor and chief negotiator. In what may have been an intentional leak, on February 12, Robbins was overheard in a Brussels hotel bar by a news team saying that, rather than offering MPs a choice of her deal or a no-deal exit, the Prime Minister would offer MPs a choice of backing her deal or face a lengthy delay in leaving the EU (following a request to extend the Article 50 deadline). Earlier that day the Prime Minister had insisted the choice was between her deal and a no-deal exit. Robbins was reported to have also indicated that the backstop was initially conceived as a “bridge” to the future trading relationship – a view that is anathema to Eurosceptic Tories.

Rogers, Sir Ivan: formerly the UK Permanent Representative to the European Union who resigned in January 2017.

Rudd, Amber: a former Home Secretary and part of the soft Brexit faction. She was forced to resign over an immigration scandal. She rejoined the cabinet following the resignation of another Brexiter, Esther McVey.

Starmer, Sir Keir: a Labour MP, the shadow Brexit secretary and a leading voice in the Labour Party in support of a soft Brexit.

Tusk, Donald: the President of the European Council.

UKIP: the UK Independence Party, which currently has no members in the House of Commons.

Verhofstadt, Guy: the lead Brexit representative for the European Parliament.

Key Dates Leading Up to the Extension of the Brexit Deadline and the Prime Minister's Resignation

May 24: On the day that she was expected to submit her [Withdrawal Agreement Bill](#) to Parliament for approval, the Prime Minister announced she would resign, and set June 7 as the date she steps down as leader of the Conservative Party. This announcement was the culmination of a very difficult week for her and, in fact, the culmination of many difficult months since she lost her majority in Parliament following the snap election in June 2017. After three failed attempts to muster a majority in support of the [Withdrawal Agreement](#) and the [Political Declaration](#) (further hampered by the Speaker's decision that subsequent [meaningful votes](#) had to be in respect of something new), the Prime Minister had switched tack and sought support for the Withdrawal Agreement Bill, the legislation needed to enshrine the Withdrawal Agreement in domestic law. Given the content of the legislation, this was never going to be an easy exercise in the best of circumstances.

As attention turned mid-week to the expected results of the MEP elections, with polling showing voters deserting the two main parties in droves, and as calls for the Prime Minister to step down turned into a torrent, the Prime Minister presented yet another plan to break the impasse and allow her to “deliver Brexit.” That strategy failed miserably; her [speech in the House of Commons](#) outlining concessions made to Labour on workers' rights, a customs union and a second referendum was met largely by silence. The plan infuriated Brexiters and failed to resonate with Labour.

What had started as a fight to deliver her two red lines – sovereignty to set the laws and adjudicate disputes in British courts, and an end to freedom of movement – had succumbed to internal contradictions, the consequence of failing to decide whether to be in or out of a customs union with the EU, and most importantly, tribal politics. Many attribute the Prime Minister's downfall to her singular drive to keep the Conservative Party together, and in power, in the face of years of division over Europe. There was little effort, until it was too late, to reach any compromise with the opposition, and there was little effort to encourage a candid national discussion about the benefits and burdens of EU membership and the realities of leaving the EU based on the different visions of the future relationship being proffered. The country is now far more divided than when voters cast ballots in the 2016 referendum.

April 3 – May 17: six weeks of talks between Jeremy Corbyn and the Prime Minister, and their respective negotiating teams, aimed at breaking the Brexit impasse ended in failure. Labour pushed for a customs union (a soft Brexit, which would cross one of the Prime Minister's red lines) and/or a confirmatory referendum. A key concern for Labour was that there was no certain path to ensure, following approval of the Withdrawal Agreement, that concessions granted by Theresa May regarding the future relationship would bind her successor; this became a more acute concern as it became clear that her days were numbered. In the end both Tories and Labour blamed each other's internal divisions for the ultimate inability to find compromise on Brexit and the breakdown of the UK's inter-party talks.

At this point the options appeared to be (and only the last one came to fruition):

- The government and Labour could have agreed to a compromise, giving the Prime Minister the majority needed to get the Withdrawal Agreement approved. The math remained a challenge: a soft Brexit would likely not have enjoyed the support of a majority of Conservative MPs and, similarly, would likely not enjoy the support of a majority of Labour MPs without a confirmatory referendum. Labour was under pressure, as the MEP elections were approaching, to back a second referendum in its next election manifesto or risk losing the support of young, pro-EU voters, who might switch their allegiance to [Change UK](#) or the Liberal Democrats. Incidentally, the Conservatives faced similar pressure from an increasing number of anti-EU voters who might switch their allegiance to anti-EU parties, such as UKIP and the [new Brexit Party](#).
- The Prime Minister might have sought for the fourth time to get her deal approved.
- The Prime Minister could have agreed to abide by the outcome of a series of votes on alternative options that yields a majority, perhaps using a preferential voting system. MPs might have also been given the opportunity to amend the Withdrawal Agreement Bill. The risk for the Prime Minister had been that the Bill was voted down, in which case she might have encountered difficulties bringing it back for a second vote, without discontinuing the current session of Parliament (a prorogation).
- A new election could have been called (either based on a two-thirds majority vote or a no-confidence vote, which requires a simple majority, followed by a 14-day period during which a new government commanding a majority could be formed, failing which a new election would be called). In order to comply with relevant legislation, a new election would have needed to be called by mid-August to be completed before the new Brexit deadline (the practical deadline being October 10, the last Thursday (the weekday, by convention, for snap elections) before the last European Council summit preceding October 31).
- A second referendum could have been held. That referendum might have been binding or non-binding. Either way, Parliament would have had to set out the process for a new referendum and the Electoral Commission would need time to advise on that referendum. That entire process could have taken 20-24 weeks (which means that for the vote to be held, MPs would have had to act by mid-May for it to be completed before the new Brexit deadline). Even this scenario was fraught. If the voters would have approved the Withdrawal Agreement, that vote would not have clarified what the future trade relationship would look like.
- The government could have revoked Article 50.
- The Prime Minister could have stepped down. There were reports of a grassroots effort among local constituency organizations in support of a non-binding vote of no confidence, as well as reports of an effort to change Conservative Party rules to permit a no-confidence vote based on the 48-letter procedure, which then precluded a vote until December 2019.

May 8: Parliament returned from its May recess. At this point, there appeared to be no consensus in the cabinet, and no scenario that had been submitted to Parliament commanded majority support, other than avoiding a no-deal exit. The Prime Minister very much wanted to avoid having British candidates participate in the upcoming MEP elections and, therefore, had only a short window in which to manoeuvre. She was unable to prevent the elections from taking place.

April 10: at the emergency summit of the European Council, after a compromise was reached between Chancellor Merkel, who favored a longer extension, and President Macron, who favored a shorter extension (foreshadowing the potential for future disagreements on a range of issues between the two anchor capitals on the continent), the EU27 approved the extension request, but to October 31. Parliament then went into recess for 10 days.

This extension, set out in a European Council decision “taken in agreement” with the UK, avoided a no-deal exit on April 12, providing another six months to find a solution. Referring to the six months, Donald Tusk called on the British to “not waste this time.” The decision provides that the British have the option of leaving earlier if the House of Commons approves the Withdrawal Agreement. Consequently, the withdrawal should take place on the first day of the month following the completion of the ratification procedures or on November 1, whichever is earlier. The October 31 date aligns with the beginning of the next five-year political cycle at the European Commission. In the decision, the EU27 emphasized that, while still a member of the EU, the UK would refrain from actions that would undermine EU objectives. (Commentators have questioned whether this has any practical effect.)

April 5: the Prime Minister requested a “flexible” extension to June 30. In the meantime, it was announced that talks were being held between the government and the opposition Labour Party on the nature of the future relationship with the EU (that would be reflected in the non-binding Political Declaration), in return for support for the Withdrawal Agreement, but by the weekend it was clear that little progress had been made, particularly on the Labour view that any deal should include membership in a customs union.

April 2: the Prime Minister announced she would seek an extension of the Article 50 deadline to May 22 (and thereby avoid the [MEP elections](#)). On April 3, a cross-party group of MPs narrowly passed legislation (313 to 312) instructing the Prime Minister to seek an extension of Article 50. Just before that vote, a 310 to 310 tie vote on an amendment that would have led to a third round of indicative votes was defeated when the Speaker cast the deciding vote, siding (based on precedent, and last done in 1993) with the government.

April 1: Parliament undertook a [second set](#) of indicative votes. None passed.

March 29: Brexit day, came and went. The Prime Minister was unable to get the Withdrawal Agreement approved, having incidentally excluded the Political Declaration from consideration. By Friday night, the only certainty was that the UK would not [crash out](#) of the EU on *March 29*. At this point, April 12 became the new March 29 under the terms of the EU [extension statement](#).

March 27: the government failed in its effort to cancel [a first set](#) of indicative votes (281 to 331, including 33 Tory MPs who defied the whips and rebelled) and a series of indicative votes of a number of amendments took place. None passed.

March 23: the “Put it to the People March” took place in London. Over one million people were report to have taken part in the march in support of a second Brexit referendum.

March 22: the EU27, meeting at the European Council summit, issued the EU [extension statement](#) extending the Brexit deadline to April 12 and requiring the UK to hold MEP elections if it was still an EU member on May 23.

March 16–17: the Prime Minister spent the weekend trying to woo the [DUP](#) to back her deal, in the hope that some members of the [ERG](#) (75 of whom voted against her deal on March 12) would follow suit. As she lost the second [meaningful vote](#) by 149, she needed to convince 75 MPs to change their minds. Meanwhile, Labour again raised the prospect of calling for a motion of no confidence if the government were to fail to win [MV3](#). If the Prime Minister did not feel she had the support of the DUP (in the words of No. 10, “unless there is a realistic prospect of success”), it was expected that she would postpone MV3 to the following week and would meet with the EU27 at the European Council summit in Brussels on March 21–22 without an approved deal. That plan for MV3, however, ran into what had the making of a constitutional crisis when Monday evening (March 18) John Bercow, the Speaker of the House of Commons, citing convention dating back to 1604 that precludes a defeated motion from being reintroduced in the same form in the same session of Parliament, announced that MV3 could only be presented for a vote if it were substantially different. The unexpected move by the Speaker added further confusion to an already confused state of affairs. (The Speaker had concluded that the second meaningful vote did not run afoul of the 1604 convention.) Technically the vote on March 29 on the Withdrawal Agreement did not qualify as a meaningful vote, as MPs were not also voting on the Political Declaration.

March 14: MPs voting for the third day in a row approved a request (412 to 202, including eight Eurosceptic cabinet ministers) to extend the Article 50 deadline to June 30 if the Withdrawal Agreement was to be approved on the third meaningful vote, now being referred to in Westminster as “[MV3](#).” This again was non-binding. The Prime Minister indicated that she would schedule MV3 the following week, having been defeated on the first two occasions. The short, “technical” extension would be needed to give Parliament time to pass the [European Union Withdrawal Agreement Bill](#) and for the European Parliament and European Council to approve the Withdrawal Agreement.

The March 14 vote demonstrated once again how fractured the cabinet is, with eight ministers voting against the government’s motion to extend the deadline, preferring to keep the threat of a no-deal exit alive, notwithstanding the vote the day before. The Brexit secretary, speaking on behalf of the government, called for MPs to support the motion, then, in a move likened to the chancellor voting against his own budget,

went on to vote against the motion. More than half the Tory MPs voted against the motion. Tortured as it may seem, the Prime Minister did achieve a victory that evening.

Labour was equally in disarray that evening, with some MPs voting for (25) and others voting against (18) a motion calling for a second referendum, which was roundly defeated (334 to 85), though with many Labour MPs following the whips and abstaining.

Also defeated that evening (312 to 314) was an amendment to allow MPs to hold a series of indicative votes on other Brexit options. A Labour amendment calling for a delay to Brexit to “provide parliamentary time for this House to find a majority for a different approach” was also rejected (318-302) that night.

March 13: MPs voted (on a non-binding amendment) to take a [no-deal exit](#) off the table, in yet another defeat for the government. Specifically, MPs voted 312 to 308 in support of an amendment ruling out a no-deal exit and striking out language in a government motion noting a no-deal exit remained the default position if the Withdrawal Agreement were not approved. However, as a spokesperson for [Donald Tusk](#) noted, the vote was akin to the Titanic asking the iceberg to get out of the way, since either a failure to support the Withdrawal Agreement or a failure by the EU27 to agree to an extension would cause a no-deal exit, unless the Prime Minister were to withdraw the Article 50 notice in the final days or hours before the deadline. In what was characterized as an unprecedented night of splits among the Tories, four cabinet ministers defied the whips and refused to vote against the government’s own motion taking a no-deal exit off the table. Six other ministers backed a separate proposal for a managed no-deal exit (the [Malthouse compromise](#)), which also failed, by a margin of 210 votes.

March 12: the Prime Minister lost the second meaningful vote on the [Withdrawal Agreement](#). Her deal was voted down 391 (which included 75 Conservative MPs) to 242 (which included three Labour MPs).

February 14: the government suffered a defeat (303 to 258) after scores of MPs abstained. The government’s non-binding motion – in essence in support of continuing discussions with the EU on the basis of finding an alternative to the backstop – reiterated “support for the approach to leaving the EU expressed by this house on 29 January.” The problem was that embedded in that phrase were two positions: the Brady amendment, which calls for replacing the backstop with unspecified “alternative arrangements,” and a rejection of leaving the EU without a deal. The Eurosceptics, led by the ERG, abstained because of the second of the two positions, as did a few pro-EU MPs because of the first of the two positions. The government offered a concession to Remain-supporting MPs (Tory Anna Soubry and Chuka Umunna of Labour) to publish documents setting out the impact of a no-deal exit (prompting the withdrawal of an amendment that would have forced the government to release the no-deal assessments). Also defeated that evening were amendments sponsored by Labour (to force the government to hold a vote on February 27) and the SNP (to rescind Brexit).

January 29: following the government's defeat in the meaningful vote, the Prime Minister was given three working days (which ended January 21) to come back with a new proposal, dubbed her plan B. In her statement to the House of Commons on January 21, it was apparent very little had changed and there was, in effect, no presentation of a plan B. The Prime Minister offered greater consultation on the next phase of the negotiations, stronger protection of workers' rights and the environment, and another effort to address the backstop (though it was unclear what she had in mind). She dismissed the idea of extending the Article 50 deadline and declined to rule out a no-deal exit.

A debate in the House of Commons on plan B followed on January 29. The day's events set the stage for a series of amendments, including:

- one that would seek to block a no-deal exit by giving MPs the right to vote to extend the Article 50 deadline if no deal is reached by the end of February (led by Nick Boles and Yvette Cooper);
- another that would allow MPs (rather than the government) to determine what is put forward for debate, provided it had the support of 300 MPs across five parties including at least 10 Conservative MPs (led by Dominic Grieve); and
- yet another that would allow MPs to show indicative support for one of the following seven competing options: changes to the backstop, a no-deal exit, an extension of the Article 50 deadline, Norway plus, a Canada FTA, a second referendum, and membership in a customs union (led by Frank Field).

None of these amendments would have been legally binding, and none in fact passed.

That evening, the Brady amendment passed as did another amendment (318 to 310) that declared that the House of Commons would not accept a no-deal exit, though it did not approve the means to prevent a no-deal exit. The EU promptly noted that it was unwilling to revisit the terms of the Withdrawal Agreement. The Prime Minister herself had noted only a few weeks earlier that the EU was not prepared to agree to changes to the Withdrawal Agreement and, therefore, rejecting the backstop means a no-deal exit. The Prime Minister stated she could seek a time limit to the backstop, a unilateral exit provision or the [Malthouse compromise](#), supported by an unlikely combination of Jacob Rees-Mogg and Nicky Morgan.

January 16: the first meaningful vote is held (it was initially expected to be held on December 10 or 11, 2018 ahead of the meeting of the European Council on December 13, 2018), but was delayed until January 16. With 72 days left before the original March 29 deadline, and despite an exchange of letters between the Prime Minister and European Commission President Juncker on the backstop the day before, the Prime Minister lost the meaningful vote by the largest margin in modern times – 202 to 432 (118 Tory MPs voted against the deal), a margin that exceeded the pre-vote consensus by a significant number.

December 10, 2018: the ECJ issues a ruling stating that the UK could unilaterally withdraw the Article 50 notice and halt the Brexit process without seeking EU approval.

* * *

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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