
March 8, 2019

Brexit Lexicon: Update

As an aid to those trying to keep track of the moving pieces in Britain and across the Channel as the Brexit deadline of March 29, 2019 approaches, we set out in this update of our Brexit Lexicon the key concepts, key players and, most importantly, key developments, which we continue to monitor. This update is current as of its date, and no matter the direction of travel there will be significant changes in the coming days. See, in particular, [next steps](#), below.

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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. 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 has been referred to the ECJ by the Scottish Court of Session to determine whether the Article 50 notice can unilaterally be revoked by the UK. On December 10, 2018, the ECJ ruled that the UK could unilaterally withdraw the Article 50 notice.

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, the 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, an outcome the Brexiters are increasingly fearing. The more open-ended the transition period, the greater the concern.

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 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. No deal could occur if either the British walk away (including if there is a negative vote in Parliament, at this point on any plan B proposal) or the Withdrawal Agreement fails to get the requisite approvals in the EU, or if the clock runs out and there is no appetite or time to extend the Article 50 deadline. 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. To date, only six FTAs have been agreed, representing an estimated 11% of the trade covered by the agreements with the EU that would fall away upon a no-deal exit. In a blow to the government, talks with Japan on a trade deal fell through on February 21. The British do have various mutual recognition agreements in place, but these are not FTAs.

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. At the end of January 2018, it was reported that supporters of soft Brexit were considering a customs union arrangement with the EU that would cover trade in goods only. In July 2018, the Customs Bill and Trade Bill narrowly passed.

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 enshrined in the Withdrawal Agreement and is reported to be £39 billion; this 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 members states might seek to exploit.

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.

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 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 backpedaling 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**): 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.

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

Extension of Article 50: with only a short time left before March 29, other than a revocation of the Article 50 notice, most scenarios will require an extension of the March 29 deadline, failing which the UK exits without a deal. Any extension of the deadline will require the concurrence of the EU27. Certain European leaders have cast doubt on their willingness to support an extension request unconditionally. Both the Spanish Prime Minister and the French President have expressed concerns about an extension, while the German Chancellor has adopted a less aggressive tone. The Prime Minister seems to favor a shorter extension of a few months.

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. More recently, efforts to characterize a hard Brexit as leading to disastrous consequences in the medium to long term (Brexiters will concede short-term pain) have been 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.

February 14 vote: the government suffered a defeat (303 to 258) after scores of MPs abstained. 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). 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).

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) triggered a vote of no confidence, which in turn led to a leadership contest in the Conservative Party. The Prime Minister survived the confidence vote. The 48-letter process can only be triggered once in a rolling 12-month period.

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.

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 some months ago splintered 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.

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.

Leaving the EU: the choice presented in the June 2016 referendum was between remaining in the EU or 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. The general consensus is that this compromise has fallen by the wayside.

Managed no deal: a position reportedly being 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.

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 ten 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, 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.

The meaningful vote was expected to be held on December 10 or 11, 2018 ahead of the meeting of the European Council on December 13, 2018; however, it was delayed until January 16. With 72 days left before the 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. Since then, there have been two sets of votes, one set on [January 29](#) and the second set on [February 14](#).

The Prime Minister expects to bring her deal back to Parliament for a second meaningful vote on March 12.

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.

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 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 vote of no confidence, if no alternative government is agreed within 14 days. Otherwise, the next election is in 2022.

Next steps: a second meaningful vote is scheduled to be held on March 12. If the government's motion passes, the UK might leave the EU on March 29, though more likely an extension of the Article 50 deadline would be requested to allow time for the necessary legislation (the European Union Withdrawal Agreement Bill) to be put into place. If the motion fails, Parliament will vote on March 13 on whether the UK could leave without a deal. If the motion passes, the UK could leave without a deal; the Prime Minister would likely go back to Brussels for more negotiations, failing the success of which the UK exits without a deal. If the motion fails, on March 14, Parliament will vote on directing the Prime Minister to seek an extension of the Article 50 deadline. If that motion fails, the UK would likely leave without a deal. If the motion passes, the Prime Minister would seek an extension of the deadline. The Prime Minister is on record as willing to accept only a short extension.

After losing a vote on a proposal calling for the UK to remain in a customs union (by 323 to 240), the Labour Party leader Jeremy Corbyn said he would back calls for a second referendum, and is reported to be likely to put forward an amendment to call for that second referendum. Any extension of the Article 50 deadline requires approval of the EU27. In the meantime, various ministers, led by the Attorney General Geoffrey Cox, continue to push in Brussels for changes to the backstop.

The votes on March 13 and 14 still need to be scheduled. On the other side of the Channel, the next meeting of EU27 leaders is scheduled for March 21-22. Even if the deal is approved in March, observers expect that pitched battles will be fought over the European Union Withdrawal Agreement Bill, suggesting that even in this scenario an extension of the Article 50 deadline will be needed. And the ratification procedures will also need to be undertaken on the EU side (including the approval of the European Parliament).

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: 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.

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 **single market 2.0**): Britain would remain in the single market (the Norway option) and a member of a permanent customs union (the "plus") to maintain so-called "frictionless trade." This option has certain Tory MP and certain Labour MP supporters.

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.

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, called the Independent Group. The group now has one more seat in Parliament than the DUP and has the same number of seats in Parliament as the Liberal Democrats. Observers are watching to see if there will be further defections in the coming weeks; it is expected that more defections will follow if a no-deal exit becomes a clearer prospect. This is the largest defection in Westminster since the 1980s.

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.

Plan B: 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. A debate in the House of Commons on plan B followed on January 29. In her statement to the House of Commons on January 21, it was apparent very little had changed and there in effect was 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.

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 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 be legally binding, and none in fact passed on January 21.

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.

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 nonnegotiable, 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 defeat in the meaningful vote, many commentators noted that the Prime Minister was “boxed in” due to her red lines.

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: some critics of the entire Brexit project have called for a second referendum as the only realistic means of preventing Brexit. The government has steadfastly rejected the idea of a second referendum. Supporters point to recent polling data that show a growing margin of the electorate in favor of remaining in the EU, when undecided voters are excluded. The increase in the numbers of those opposing Brexit is attributable to those who did not vote in the 2016 referendum (particularly younger voters), many of whom voted for Labour in the 2017 snap election. At present, there is no clear choice available to British voters as between Labour and Conservatives on the question of Brexit.

Beginning in May 2018, a coordinated effort among the disparate Remain groups appears to be coalescing around the idea of a People's Vote – one form of which contemplates a vote of Parliament against the Withdrawal Agreement, to be followed by a referendum on the Withdrawal Agreement. There is little consensus on whether there is sufficient time for a second referendum or what the question or questions ought to be. The Electoral Commission has been considering the latter issue for some months.

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) is 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. The soft Brexit faction worries that further intransience on the part of the EU negotiators could result in no deal. 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: Brexiteers 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.

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 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 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 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.

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 meaningful vote underscored the febrile atmosphere, not only in Westminster but throughout the country.

The country is 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.

The fury outside Parliament was matched by fury of Tory cabinet ministers aimed at the House of Commons Speaker for permitting the Grieve Amendment (2) to be voted upon. On the eve of the meaningful vote, both the Conservatives and Labour were and continue to be deeply divided; the Conservatives 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, 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 317 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, though 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.

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.

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.

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.

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.

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. 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.

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: a new parliamentary group formed on February 18 by seven Labour MPs who have now been joined by three Conservative MPs and one more Labour MP. The 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 are part of the new group include Anna Soubry, Sarah Wollaston and Heidi Allen. The former Conservative MPs in the Independent Group are Luciana Berger, Chris Leslie, Angela Smith, Gavin Shuker, Ann Coffey, Mike Gapes, Chuka Umunna and Joan Ryan. The formation of this group appears to have emboldened moderates to back the [Cooper-Letwin motion](#), which could prompt the Prime Minister to fire the rebellious government ministers who break ranks and support the motion.

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 Brexiters: 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.

May, Theresa: Prime Minister.

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 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.

Tory rebel MPs: also known as Remainer Tories, the 12 Tory MPs who favour a soft Brexit and voted against the government on the Customs Bill and Trade Bill. These include Heidi Allan, Guto Bebb, Ken Clarke, Jonathan Djanogly, Dominic Grieve, Stephen Hammond, Philip Lee, Nicky Morgan, Bob Neill, Antoinette Sandbach, Anna Soubry and Sarah Wollaston.

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.

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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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