

The UK Government's Brexit White Paper



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A White Paper presented by the UK Government on 2 February 2017 outlines the strategy of the United Kingdom for the exit negotiations with the EU.

It reaffirms and further details in many parts the positions that Theresa May put forward in her speech on 17 January 2017. In detail, however, there are several new, sometimes notable, accents.

The "Ukraine Plus" model (see [cepAdhoc](#) of 24 January 2017) continues to crystallise as the goal of the UK negotiating strategy. Given the trade policy, fiscal and security policy interests of the EU, this could provide a realistic basis for the future relationship between the United Kingdom and the EU.

1 Political Background

On 2 February 2017, the UK Government outlined its plans for withdrawal from the European Union in a White Paper entitled "The United Kingdom's exit from and new partnership with the European Union"¹. The background is a judgment of the UK Supreme Court of 24 January 2017 which requires the UK Government to obtain the assent of both chambers of the British Parliament for the initiation of the EU withdrawal procedure under Article 50 TEU. To this end, on 26 January 2017, the British government presented a draft for the "European Union (notice of withdrawal) bill" to the House of Commons.

In its White Paper, the Government sets out its objectives and its rough strategy for the exit negotiations. The White Paper serves as input from the Government for the so-called "Committee Stage" in the House of Commons on 6 and 7 February 2017. During that stage, amendments to the draft bill will be discussed. Voting in the House of Commons is expected to take place on 8 February 2017. The House of Lords is expected to subsequently approve the bill by 7 March 2017. According to current plans, Theresa May will issue the exit-declaration pursuant to Article 50 at the EU summit on 9 March 2017.

2 Essential statements of the White Paper

The White Paper substantiates the main elements of Prime Minister Theresa May's speech of 17 January 2017.² In her speech, May proposed a 12-point plan for the withdrawal of the United Kingdom from the EU (see [cepAdhoc](#), 24 January 2017). The scope of this cepAdhoc is confined to the following objectives:

- (1) Control over legislation
- (2) Control of immigration and protection of existing rights
- (3) Free trade with the EU
- (4) Own trade agreements with third countries
- (5) Cooperation in security and defence policy

2.1 Control over legislation

Background - The UK Government's goals: The laws applicable in the United Kingdom will be made in the UK and interpreted only by UK courts, no longer by the European Court of Justice.

The White Paper substantiates this aim as follows: The government will present a further White Paper on the planned "Great Repeal Bill", which will set out how currently applicable EU law will be transposed into national law. However, the government points to the fact that national legislation must be in line with the content of the future agreement with the EU.

The government also points to the need for a "mechanism" for dispute settlement with the EU. Existing instruments (within the framework of the WTO, CETA, NAFTA and the bilateral agreement between the EU and Switzerland) are only examples of the current practice. It believes that new models, which also depend on which agreements are concluded with the EU, were conceivable.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/588944/The_United_Kingdoms_exit_from_and_new_partnership_with_the_EU_Print.pdf

² Theresa May's speech is available at: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

2.2 Control of immigration and protection of existing rights

Background - The UK Government's goals: The United Kingdom intends to control the number of immigrants from the EU. The rights of EU citizens who are living in Britain, and the rights of British nationals living in the EU, should be guaranteed.

The White Paper substantiates this aim as follows: The government will carefully examine the various options to control the number of EU immigrants. It will take into account the impact on different sectors of the economy. The government claims it had attempted, already before officially starting Article 50 negotiations with the EU, to ensure that the rights of UK citizens living in the UK and of British citizens living in the EU were guaranteed. Although many EU Member States had been willing to do so, this had proven to be not possible.

2.3 Free trade with the EU

Background - The UK Government's goals: The United Kingdom is seeking the greatest possible access to the EU single market for goods and services.

The White Paper substantiates this aim as follows: The UK Government wants a customs agreement with the EU, which allows for trade in goods and services to continue to take place as smoothly as possible. The government sees a number of options for this. For example, there might be a completely new agreement or the United Kingdom may remain a contracting party of some of the existing agreements. To the UK Government, it is also conceivable that the agreement will incorporate elements of existing internal market rules in some areas.

The United Kingdom does not aspire to an "existing model". This includes the agreements with Norway or Switzerland. The reason for this is the "unique situation" that according to the UK Government, the legal situation in the EU and in the United Kingdom is largely identical.

For the following economic sectors, the UK Government is further specifying its objectives.

2.3.1 Services

In the area of services, too, the United Kingdom is striving for the freest possible trade with the EU. The government mentions that it is aware that an effective system of judicial cooperation is necessary to ensure legal certainty and protection of the consumer.

2.3.2 Financial Services

The United Kingdom is striving for the freest possible trade in financial services with the EU. The UK Government draws attention to two specific possibilities: the EU passport, which presupposes common rules and a recognized authorization, and an "equivalence regime", in which financial institutions from third countries can offer services in the EU when their domestic level of regulation has found to be comparable with European standards.

The UK Government signals its willingness to work closely with the EU in financial supervision after Brexit. It will continue to support and implement international supervisory standards.

2.3.3 Energy

The UK Government stresses that EU legislation allows for coordinated trade in energy (gas and electricity) between the United Kingdom and the EU. In its view, this contributes to low prices and increased security of supply both for the EU and for the UK and reduces the need for national emergency energy

supply systems. The United Kingdom is examining all options for future cooperation with the EU in the field of energy.

2.3.4 Transport

The UK Government signals that it will take into account the comprehensive inventory of EU law for the four modes of transport (air, road, rail and shipping). It sees an interest for both the EU and the UK to obtain the most favorable and freely accessible air transport possible. The United Kingdom wants to conclude a bilateral air transport agreement with the United States.

2.3.5 Telecommunications

The UK government draws attention to the relevance of EU legislation on electronic telecommunications, which it claims to promote competition and freedom of choice. Also following Brexit, British and European telecommunication companies should be able to compete with each other. The UK Government points to the possibility for the EU Commission to classify the UK data protection standards as "equivalent" with the EU standard. This would allow for EU companies to further export data to the UK.

2.4 Own trade agreements with third countries

Background - The UK Government's goals: The United Kingdom is aiming to conclude its own free trade agreements with third countries.

The White Paper substantiates this aim as follows: Following Brexit, the UK-Government intends to conclude its own trade agreements with third countries. The UK does expressly not want to participate in the EU's common trade policy. The UK Government concedes that it cannot conclude trade agreements for as long as it is still an EU Member State. However it signals that it can and will make "preparations" for such agreements already now. The UK government will "discuss" with some of the countries that are in trade agreements with the EU in order to reach the maximum degree of "continuity and certainty" for business once the UK leaves the EU. The UK Government is also preparing a UK concession list at the World Trade Organization (WTO). Such a list will be the basis for negotiations with the EU and other countries. The UK Government signals that the British concession list will correspond largely to the current EU list at the WTO.

2.5 Cooperation in security and defence policy

Background - The UK Government's goals: The United Kingdom is aiming to continue to collaborate with the EU on foreign and defence policy as well as on combating crime and terrorism.

Right at the beginning of her preface to the White Book, Theresa May emphasises the efficiency of British intelligence and military. The UK Government stresses that it aims to continue to cooperate with the EU in defence and security policy. It also strives to achieve the "best possible" cooperation with the EU in combating crime and terrorism. It says, public security in the UK and the EU will be at the heart of the disputes in this area. The UK Government wants to use its "tools and privileged position in international affairs" to continue to work with the EU in these areas.

3 Assessment

The White Paper reaffirms, in many respects, the position Theresa May expressed in her speech on 17 January 2017. In detail, however, there are several new, sometimes notable, accents.

- The objective of regaining control over legislation is being weakened: National laws can not deviate comprehensively from EU law if trade with the EU is to be as free as possible. Although the ECJ should no longer interpret the laws in the United Kingdom, the UK Government points to the necessity of a mechanism for settling disputes with the EU and for judicial cooperation with the EU. Over time, the legal situation in the UK and the EU is likely to diverge, with negative consequences for free trade. The UK Government leaves unclear how to deal with this and refers to a later White Paper.
- The UK Government seems aware of the potentially negative effects of a restriction on the free movement of persons. It intends to consult stakeholders in the sectors concerned in full before restricting free movement.
- The UK government wants to achieve the widest possible access to the EU's markets by means of a customs agreement. It is interesting to note that the UK Government believes that certain parts of the existing internal market rules could simply be copied in such agreement. In this context, the UK Government repeatedly stresses that UK law is in line with EU law. Given that this also applies to Norway and Switzerland (whose association models the UK does not want to accept), the UK-Government is likely to be faced with the argument of "cherry-picking" (market access yet, but no free movement).
- The UK Government emphasises its particular interest in comprehensive market access in the areas of financial services, energy, transport and telecommunications. It explicitly points to the relevance of European legislation and signals that it is willing to continue to respect equivalence with these rules.
- The UK government is signaling active preparations for the conclusion of trade agreements with third countries. This is understandable from a UK perspective, but it might make negotiations with the EU more difficult.

Conclusion: The United Kingdom continues to aim at a broad trade agreement with the EU, which should include limits to the freedom of movement. The UK Government reiterates its desire to work together closely with the EU on security and defense policy. The "Ukraine Plus" model (see [cepAdhoc](#) of 24 January 2017) continues to emerge as the goal of the British negotiation strategy. Given the trade policy, fiscal and security policy interests of the EU, this could be a realistic basis for the future relationship between the United Kingdom and the EU.

The Author:

Dr. Bert Van Roosebeke is Head of Division at the Centre for European Policy.

cep | Centre for European Policy

Kaiser-Joseph-Strasse 266 | D-79098 Freiburg

Telephone +49 761 38693-0 | www.cep.eu

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