

## Analysis of the EU-UK Withdrawal Agreement<sup>1</sup> and Political Declaration<sup>2</sup>: Is this really leading us to Brexit or just back to a more integrated EU? (detailed version)<sup>3</sup>

By [Munish Sharma](#), Brexit Party Parliamentary Candidate, November 2019

### A. Introduction

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

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

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

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

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

**Section B**, the **overview** section, sets out the key areas of concern.

**Sections C to G** provides details on aspects of the **Withdrawal Agreement**.

**Section H** sets out key aspects of the **Political Declaration** which is the agreed framework between the EU and UK of the **future agreement**. It is far more than simply a free trade agreement.

---

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

<sup>2</sup> Political Declaration setting out framework for the future relationship between the EU and the UK agreed on 17 October 2019 [https://ec.europa.eu/commission/sites/beta-political/files/revised\\_political\\_declaration.pdf](https://ec.europa.eu/commission/sites/beta-political/files/revised_political_declaration.pdf)

<sup>3</sup> This is also available at [https://munishsharma.org/?page\\_id=245](https://munishsharma.org/?page_id=245).

## B. Key areas of concern

This section highlights 8 key areas of concern:

- 1) The transition period;
- 2) Recovery of EU investments, particularly from the European Investment Bank
- 3) The UK bill
- 4) Governance and legal issues
- 5) The future relationship/political declaration
- 6) Fishing
- 7) Citizens' rights and immigration
- 8) Tax

### 1) The transition period

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

### 2) Recovery of EU investments

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

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

See **section E** below for more detail.

#### A closer look at the European Investment Bank (EIB)

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

Would you accept being paid for your assets, e.g. your house, today with its cash value as it was in the 1970s rather than current market value? Would you then consider receiving that amount over 12 yearly instalments rather than immediately, over which time the value of what you receive will fall further (because of inflation)? Finally, would you then reinvest in the assets you just released at

today's prices? This is essentially what we are signing. Current estimates in published reports suggest **we are giving away at least £7billion, but it would not be surprising if it was significant more.**

### 3) The UK bill

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

### 4) Governance and legal issues:

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

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

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

See **sections F and I.3)** below for more detail.

### 5) The future relationship/political declaration

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

#### Free Trade Agreement or Another Treaty?

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

- Rule of law (what else can this relate to other than jurisdiction of courts?)
- Promotion of democracy
- High standards of free and fair trade (not reference to “high”)

- Cooperation against internal and external threats, including, law enforcement, criminal justice, foreign policy, security, defence, including **financial contributions from the UK and adherence to EU law as regards participation in the European Defence Agency**
- Wider areas of cooperation, “beyond those described in the political declaration”.
- Overseas development (financial aid)
- Data Protection laws
- Science
- Youth, culture, education
- Environmental Protection
- Workers’ rights (social and employment standards)
- Consumer protection
- Future relationship with the European Investment Bank (after being underpaid for UK investments)
- State aid
- Competition
- Tax matters, including “curbing harmful tax practices”. It’s not clear if the intention is to prevent the UK having a more efficient tax environment
- European Convention on Human Rights
- European Consensus on Development

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

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

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

#### Permanent common foreign, security and defence policies

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

## 6) Fishing

Article 130 of the Withdrawal Agreement maintains the status quo. Furthermore, clause 73 of the Political Declaration calls for access to waters and quota shares. This is clearly not giving UK fisherman exclusive access to UK water and is an arrangement that is intended to become permanent. See **sections G and I.10**) below for more detail.

## 7) Citizens' rights and immigration

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

## 8) Tax

Specifically, clause 77 of the political declaration which refers ambiguously to “curbing harmful tax practices”. For example, it’s not clear if this would prevent the UK pursuing a more competitive tax (and specifically VAT) environment compared with EU countries, particularly given **EU rules on VAT will continue to apply to the UK for 4/5 years after the end of the transition period. See sections H and I.1) below for more detail.**

## MORE DETAILED ANALYSIS

The following sections over the rest of this document provides greater detail on what is included in the Withdrawal Treaty and Political declaration. Some provisions are controversial but others are less so. Text in bold is for emphasis.

### C. Transition Period

- Articles 126 and 132: Transition ends on 31 December 2020. This can be extended under the Treaty up to 1 or 2 years. **It can also be extended by mutual consent, just as Article 50 has been extended significantly beyond the two the years stated in the EU Treaty. This is very likely given the terms of the future relationship, described below**
- **There is no unilateral exit clause for the UK.**
- Article 127(1): The EU Treaty is applicable during the transition period unless provided otherwise in the Withdrawal Agreement.
- Article 129: The **UK will be bound by international agreements that the EU enters into with no rights of participation in negotiations unless invited by the EU**, although within the transition period only. It can at least negotiate on its own behalf for applicability after the transition period, but subject to the terms of the political declaration

### D. Citizens' rights and immigration

- EU citizens who exercise their right to reside in the UK before the end of the transition period are protected (Article 13).
- EU citizens and their family members residing in the UK or EU for 5 years continuously gives the rights to permanent residence, at any point commencing from the **end** of the transition period (Article 15). Permanent residence can only be lost through absence from the host Member States for a period exceeding 5 continuous years (Article 15(3)).
- **Criminal and security checks** may be carried out on applicants but **“with the exclusive aim” of verifying whether restrictions may be applicable** (Article 18(1)(p)). Is there a security issue to carry checks exclusively for immigration purposes and nor more generally?
- EU citizens have access to the courts and any other appeal bodies where a decision against their immigration is made (Article 18(1)(r) and (3)).
- **The family members (irrespective of their nationality) of EU citizens** residing in the UK have rights to employment or self-employment (Article 22). They shall also enjoy equal treatment with UK nationals (Article 23). However, social assistance is excluded so although that may mean no welfare benefits what about other benefits?
- Stateless persons to access sickness benefits (Article 32(2)).

### E. Compensation to and from the EU imbalanced and not properly accounted for

#### 1) The UK should be fairly compensated for the following:

- The UK will cease to have access to information systems or databases established under EU law (Article 8). The UK will cease to have access to systems for the mutual recognition of mutual qualifications (Article 29(2)). Should the UK be compensated for its contribution to the database and the transfer of any UK information?
- **Investments, for example, in the European Investment Bank (EIB), European Central Bank (ECB) and European Development Fund (EDF)** (see below for further detail).

- Contributions to **Galileo and the European Space Agency** (these are not referenced in the Withdrawal Treaty, possibly because they may not be EU Treaty subjects but the UK is expected to withdraw from these projects so should be compensated for its investment).
- Article 55: The UK is being asked to register **intellectual property rights**, currently protected in the EU (in Article 54), in the UK for free. The UK will not be compensated in anyway.
- Article 142(1). This makes UK will be liable for its share of the financing of liabilities, but not where there are related “assets”. It is not clear whether the UK share of those assets have been valued and whether the EU paying the UK for effectively the transfer in ownership of assets completely out of UK hands to the EU? If so, it is not clear how have those value been calculated.
- Article 146: The **EU shall be liable to the UK for its share in the EIF for “paid-in capital”** at 31 December 2020 over 5 years. This is book value (not current market value) so the UK is getting materially underpaid. It does not take into account future earnings (e.g. interest or dividends paid) in relation to any capital. Future Values increase over time so this must be taken into account if the EU is paying in instalments over 5 years.

Has the above been properly accounted for/valued in the “bill”? i.e. is the UK being compensated for its contribution (capital investment and data) in these systems but no longer having proprietary rights of access? In the case of EIB the answer is definitely no. See below

## 2) Provisions where there will be a cost to the UK

**The Treaty does not mention £39billion. How can we be sure the following will not be valued by the EU at significantly more than the reporting £39billion value?**

- Article 50: Access to relevant network, information systems and databases. No reference to reimbursement or repatriation of information and technology, if any, contributed by the UK.
- Articles 62(2), 62(3) and 63(3): Relates to access to the SIENA system and criminal justice costs more generally. It is not clear on what basis the costs to the UK are being estimated or calculated. How are “best estimates” established and what if the UK disagrees?
- Articles 99(3)/100(2): Relates to access to systems for VAT/Taxation purposes. It is not clear how the costs to the UK will be estimated, how “best estimates” will be determined or what happens if the UK disagrees with those estimates.
- Article 135: UK to contribute to EU budget in 2019/2020
- Article 136: refers to **additional contributions after December 2020**.
- Article 140: The UK is liable for **outstanding budgetary commitments** to the EU. It is not clear how these are to be valued. How are the commitments communicated from the EU to the UK verified (particularly for **future commitments applicable from 2022 onwards and potentially up to 2028** (Article 140(5))?)
- Article 142(1). The UK will be liable for its share of the financing of liabilities, but not where there are related “assets”. Are future liabilities within the calculation discounted on a net present value basis or some other appropriate basis?
- Article 142(2) – (4): **Have future pension and social insurance liabilities been discounted** on a net present value or other appropriate basis? Upfront payment may be cheaper than instalment-based payments from 2022 onwards. How can the UK challenge pension calculations if they disagree with them? Alternatively (to eliminate EU related administrative costs), would we consider either:
  - agreeing with the EU not to pay pensions to former UK based EU staff including MEPs and European Commission staff, given they have already been paid extortionately anyway?

- Taking on pensions obligations directly or paying a lump sum into a specific privately-run pension scheme for the benefit of ex-EU employees, rather than via the EU.
- Article 157: UK to take on **pension liabilities of personnel of the European Defence Agency**, EU Institute for Security Studies and the EU Satellite Centre.
- Article 143: Lending obligations: The UK is on the hook for contingent loan financial assistance liabilities to certain countries. Why? What are these liabilities for and how have they been valued? Do they take into account low interest/negative interest rates? Should we carve out obligations to eliminate EU related administrative costs? The liabilities of the UK cannot increase, but equally it cannot decrease as a result of restructuring. That seems absurd given it's more likely that we will see debt write off reducing overall liability over time which should impact any liability.
- Article 144. Exposure to liabilities arising out of "financial operations" as determined by the European Commission and approved by financial institutions. This is very vague, not indicating what the financial operations include, just that it will be "decided upon by the European Commission" making the UK liable to significant liability.
- Article 147: The UK is liable for "contingent liabilities" (i.e. uncertain future liabilities) in relation to legal cases concerning the financial interests of the EU. This could be significant.
- Article 148: Payments continue after the transition period.
- Article 157(1)(b): Liabilities arising from the liquidation of the "**Western European Union**" [look up in definitions]. What does this mean?
- Articles 117/118: ECB, EIB employees, assets and financings remain free from any taxation.

### 3) European Investment Bank (EIB)

- Articles 143(1) and 150: The UK will be liable for certain financial operations (loans, guarantees, fund investments, equity investments, bonds and other loan substitute products) and asset management risks of the EIB, even if the financial exposure is assumed after entering into the Treaty. It is not clear how this will be assessed and valued by the EU. Liability will be determined by the EIB board rather than the UK, as well as possible restructuring of and changes to financial operations. The amortisation (writing off UK liability) period is 10 years for some liabilities but indefinite for others.
- Article 150(4): The UK is to only receive €3.5bn over 12 years in annual payments; they are receiving paid in capital only (**not market value capital or compensation for loss of future cash flow**). This should either be paid upfront or a multiplier should be applied to take into account inflation and missed opportunities by not being able to invest the money until received by the EU. It is not clear why the UK is not claiming an appropriate value for its investments, and is potentially giving away tens of billions in assets. Take a look at this video for specific commentary on this article [https://twitter.com/jake\\_pugh/status/1188367974203379712](https://twitter.com/jake_pugh/status/1188367974203379712). Other published articles have suggested the UK is missing out on approximately £7billion.
- Article 150(6) On the other hand the UK is required to pay the EIB certain amounts reflecting its "associated asset-liability management risk or operational risk", "an amount equal to the UK share of the subscribed share capital that Members States are required to pay". How will this be valued and determined?
- Articles 118: EIB employees, assets and financings remain free from any taxation.

To address these issues potential solution could be (to avoid delay in exiting the EU) to:

- transfer the EIB assets and risk exposures to a UK investment bank so we have complete control of future liabilities;
- receive from the EIB compensation for any the UK's share of any assets and future cashflows and to pay for current and future liabilities that remain on the EIB book (appropriately valued at current values (not paid-in capital)); or
- a combination of the above.

#### **4) European Development Fund**

Articles 152 - 154: There must be appropriate valuation of the investment and returns the UK have participated in. Liabilities for EDF guarantees made by the UK should be reviewed and ideally ceased or the underlying project being funded should be transferred to a UK Government entity where possible.

#### **5) European Central Bank (ECB) and Bank of England**

- Articles 117: ECB employees, assets and financings remain free from any taxation.
- Article 149: The ECB shall be liable to the BoE for “**paid in capital**” (not current values), which raises the same questions as above in relation to the EIB.

### **F. Governance and Legal issues: Continued influence of the European Court of Justice, European Commission and other EU institutions**

#### **1) Status of EU institutions**

Article 7: Competent authorities (official regulatory bodies) of EU Member States remain applicable.

#### **2) Participation in the European Commission**

Article 34(1): The UK will continue to have observer status in the Commission. This means Government messaging that the UK will not have involvement in EU bodies during the transition period is untrue

#### **3) Setting up of an Authority to Replace the European Commission**

Article 159: Obligations under the Treaty (part two) will be monitored by an “independent authority” with “powers equivalent to those of the European Commission” for “alleged breaches ... of the United Kingdom”. It may also bring action against the UK in UK courts (which ultimately has to reference to ECJ under Article 158). The UK “in good faith” may decide to abolish the authority 8 years after the end of the transition period.

#### 4) Setting up of a Joint Committee (Article 164-165)

The EU and UK will sit on a Joint Committee and six other specialist committees meeting at least annually for the implementation of this agreement. This would go on potentially indefinitely given above post-transition arrangements. One of these specialist committees will be set up to focus on specialised areas including the Protocol on NI and Ireland which means potential EU interference from the EU for years to come on UK border issues.

#### 5) European Court of Justice (ECJ) and European Legal Matters

- Article 4(1): Individuals and entities can take direct action under the Withdrawal Treaty as if it applies as direct law.
- Article 4: The Withdrawal Treaty must be interpreted in accordance with principle of EU Law according to ECJ case law.
- Articles 87, 92 – 95: ECJ has jurisdiction to make judgements against the UK or its citizens/entities for **4 years after the transition period** for anything done within the transition period. The European Commission and other EU institutions can bring legal action under the “Treaties” or “other legal order” for breaches of EU law, EU competition standards applicable in the UK, State Aid rules, financial services (including Credit Rating Agencies), anti-fraud.
- Article 89: **ECJ decisions are binding on the UK and enforceable.** The related ECJ provisions in the EU Treaty continue to apply.
- Article 158 and 161 - 163: The UK courts must take a **preliminary ruling from the ECJ for 8 years after the transition period** on citizens’ rights (Part 2) related questions regarding the Withdrawal Treaty. The **European Commission can also advise with written submissions to the courts and tribunals of the UK.**
- Article 160: For purposes of Article 138 (the EU political budget from 2014 to 2020) the UK will be considered a Member State subject to ECJ jurisdiction.

#### 6) Dispute resolution

Articles 168-174: Disputes can only be decided by cooperation and an agreed interpretation between the UK and EU and only in accordance with this Treaty. If the EU and UK cannot agree on interpretations disputes within 3 months, disputes will be referred to the **International Bureau of the Permanent Court of Arbitration**. These will be drawn from a list of candidates from 25 selected by the EU and UK. However, given they must have qualifications required for appointment to the highest judicial office and **possess specialised knowledge or experience of EU law** and public international law. They must not be members, officials or servants of the EU or the UK. Given this requirement, arbitrators could well have previously been EU employees which raises questions of bias towards an EU way of thinking. Overall, the procedures are complex. They should reach a resolution within 12 months but it can go for longer. Who is responsible for payment to the Court of Arbitration?

Article 175-178, 180: Arbitration decisions are binding and must be complied with within a “reasonable period”. Failure to comply will result in **penalties**.

## G. Fishing

Article 130: UK remains bound by EU access during the transition period. The UK may be invited by the EU at its discretion to participate in EU negotiations on future fishing arrangements. See also future relationship below.

## H. Limitations on setting VAT

Articles 51(2), 99: EU rules on VAT remain applicable for 4/5 (inconsistency between Articles) years after the transition period for certain goods exported/imported between the UK and EU where the agreement was entered into before the transition period ended, though refund provisions exists (Article 51(3))

## I. The Future Relationship (Articles 127(2) and 184, and the Political Declaration)

Article 184 give the future relationship legal effect requiring the EU and UK to use its **“best endeavours, in good faith and in full respect of the respective legal orders to negotiate expeditiously the agreements governing their future relationship...”** The political declaration sets out key terms to what the future relationship must include.

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

### 1) Scope of agreement

The future agreement’s scope is ambitious and looks like a successor to the EU Treaty rather than simply a free trade agreement. “The future relationship should be approached with high ambition with regard to its scope and depth and recognise it **might evolve over time**” Clause 5). The EU and UK “should rely on appropriate and relevant **Union [EU]** and international standards (Clause 77).

The scope of the talks includes (all within Clauses 2, 3, 11, 15 and 77 as indicated below):

- Rule of law (Clause 2) (this usually means jurisdiction of courts)
- Promotion of democracy (Clause 2) (How?)
- High standards of free and fair trade (Clause 2)
- Cooperation against internal and external threats (Clauses 2, 3, 78-79), including
  - law enforcement, criminal justice (Clauses 2, 80 – 89) and
  - foreign policy security and defence (Clauses 2, 90 - 101), including **financial contributions from the UK** (Clause 101), **adherence to EU law as regards participation in the European Defence Agency** (Clause 102)
- Wider areas of cooperation, “beyond those described in the political declaration” (Clause 2).
- Overseas development (financial aid) (Clause 11)
- Data Protection laws (EU to start equivalence assessment of UK laws, even though we currently have the same laws) (Clause 3).
- Science (Clause 11)
- Youth, culture, education (Clause 11)
- Environmental Protection (Clauses 2, 77)

- Workers' rights (social and employment standards) (Clauses 2, 77)
- Consumer protection (Clause 2)
- Future relationship with the European Investment Bank (after being paid very low book values, not market values, for divestment (Clause 15)
- State aid (Clause 77)
- Competition (Clause 77)
- Tax matters, including "curbing harmful tax practices" (Clause 77). It's not clear if this includes enabling a more competitive tax environment.
- European Convention on Human Rights (Clause 81)
- European Consensus on Development (Clause 91)

## 2) Preconditions

Human rights, the fundamental freedoms and the rule of law are "an essential prerequisite" for EU-UK cooperation (Clause 6). Adherence with the European Convention on Human Rights is envisaged (Clause 81)

## 3) Governance (the transitional arrangements are envisaged to be permanent)

- The UK and EU support the establishment of **dialogue between the European Parliament and the UK Parliament** (Clause 125). The European Commission sets the agenda and directs legislation so, aside from continuing engagement with EU institutions required here, it does not make sense to encourage dialogue with the European Parliament which has very limited powers in practice.
- The **Joint Committee** in the transition treaty (Article 164-165) is to be established on a permanent basis so it is likely the above transition arrangements are likely to become permanent (Clauses 126 - 127).
- Dispute resolution is covered in the transition treaty (Articles 168-180). The future arrangements political declaration is consistent with the transition terms and paves the way to **make the transitional dispute resolution arrangements permanent** (Clause 129 – 132 and 134)

## 4) Free trade agreement

- "ambitious, **broad, deep** and flexible partnership across trade and economic cooperation" (Clause 3)
- With a view to facilitating the movement of goods across borders [i.e. exports and imports], the Parties [the EU and UK] envisage comprehensive arrangements that will create a free trade area, combining **deep regulatory and customs cooperation**, underpinned by provisions **ensuring a legal playing field for open and fair competition** as set out in Section **XIV...**" (Clauses 17, 21)
- "Commitments should prevent distortions of trade and unfair competitive advantages" (Clause 77)

The above appears to **prevents the UK from:**

- **deviating in substance from EU rules and take a competitive advantage for UK business; and**

- **entering into trade deals with other non-EU countries on more favourable terms as those countries have with the EU.**

*(i) Goods*

Technical barriers to trade (i.e. rules) “should set out common principles in the fields of standardisation, technical regulations, conformity assessment, accreditation, market surveillance metrology and labelling.” (Clause 23)

*(ii) Services*

- Scope to include professional and business services, telecommunications services, courier and postal services, distribution services, environmental services, financial services, transport services and other services (Clause 28).
- Regulations should capture licensing procedures, specific regulatory provisions in sectors of mutual interest (telecommunications services, financial services, delivery services, international maritime transport services) (Clause 32).
- Financial services (Clauses 35-37), the intention is “to keep close and structured cooperation on regulatory and supervisory matters” (i.e. **keep the same regulations despite forcing financial services employees to move away from the EU**). **This will inhibit our ability to trade on financial services with other non-EU countries.**
- Digital (Clause 38), the provisions “should facilitate cross-border data flows and **address unjustified data localisation requirements**” (this is another way of saying keep regulatory requirements between the EU and UK aligned).
- Telecommunications (Clause 39) will provide for “fair and equal access to public telecommunications networks and services to each other’s services suppliers and address **anticompetitive practices**” (i.e. regulatory alignment).
- IP clauses 42-45): Will go beyond WIPO/WTO standards and will preserve EU concepts such as “geographical indications”.

## 5) Public Procurement

This impact public services **including supplies to education and the NHS**. This is one area where we absolutely must diverge from EU standards to promote competition in the supply of services to the public sector but also to gain access to the global suppliers where appropriate (such as medicines and medical equipment outside the EU as well as in the EU).

- The UK will accede to the WTO Government Procurement Agreement (Clause 46). This must be reviewed in light of the above considerations.
- In addition, the UK and EU is obliged to address the risk of arbitrary behaviour when awarding contracts, and “make available **remedies and review procedures, including before judicial authorities**” (Clause 47). The UK cannot be part of an agreement where its ability to award procurement contracts is challenged by non-UK entities or governments in courts, particularly non-UK courts.

## 6) Aviation

A Comprehensive Air Transport Agreement (CATA) will be agreed for freight and passenger travel (Clause 58). This is not surprising as EU based airlines need access to UK waters/airspace for

transatlantic flights. **This is important leverage in any trade deal** and is being given away without consideration of what access rights the UK could negotiate in other industries e.g. financial services).

## 7) Rail Transport

Unsurprisingly, and non-controversially, a common sense approach will be taken for EU-UK cross rail services including the Belfast-Dublin Enterprise Line and Channel Tunnel services (Clause 61).

## 8) Immigration

- This will be done on the basis of non-discrimination between the EU's Members States and on full reciprocity (Clause 48), including visa free travel for short term visits (Clause 49)
- Social security coordination will be considered (Clause 52).

## 9) Environment

Carbon pricing (Clause 70) exists within the EU and the future relationship calls for an agreement here. However, **this does not really do enough to combat climate change**. Alternatives need to be considered including **obliging** carbon producing firms to contribute to reforestation programmes to more than offset their own carbon emissions. **The EU programme penalises but does not solve for climate change**.

## 10) Fishing

**Access to waters and quota shares** (Clause 73) is specifically called for in the future relationship, selling out our fisherman. If we give access local coastal towns must be compensated but non-UK fisherman accessing our water.

## 11) Law, Order and Criminal Justice (Clauses 80 to 89)

The agreement should "reflect the commitments the United Kingdom is willing to make that **respect the integrity of the Union's legal order**, such as with the regard to **alignment of rules and mechanisms for disputes and enforcement...**" (Clause 81)

## 12) European Convention on Human Rights (ECHR)

The UK is expected to give "continued adherence ... to the ECHR" (Clause 81)