

Brexit Update

Introduction

This report gives an update on Brexit-related developments since the last LEIF meeting in March, and covers:

- General developments at national and EU level;
- An overview of LCR's Brexit-related activity.

Brexit implications on funding are covered partly under this item (ESIF) and partly under item 4 (trans-national funding).

N.B. This update was prepared before the result of the general election. Developments since the election will be covered in a verbal update at the meeting.

General developments (national and EU level)

National level

Earlier this month the **UK Brussels offices had their latest regular meeting with the UK Permanent Representation** to the EU to discuss Brexit, regional policy and other issues. A verbal feedback from this will be given at the LEIF meeting.

Theresa May formally invoked Article 50 of the Treaty on European Union on 29th March 2017, in order to begin negotiations for the UK's exit from the EU. The six-page letter did not provide any new indications as to the UK government's negotiating position, other than to say the UK will seek a "deep and special partnership" with the EU, once the UK has left. The implications of this letter are that the UK will leave the EU by 29th March 2019.

The government has published a [white paper](#) setting out how it plans to reduce uncertainty and provide legal stability as the UK leaves the EU. The white paper sets out how the Great Repeal Bill will:

- Repeal the European Communities Act 1972
- Convert EU law into domestic law at the point of departure
- Aim to correct EU law that will not function as it is converted into UK law, through a new time-limited correcting power (secondary legislation), to apply before the UK leaves the EU and for a limited period afterwards.

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This process is designed to ensure that the same rules and laws will apply after the UK leaves the EU as they did before. After Brexit, Parliament will be able to decide which elements of law to keep, change or repeal.

In other developments:

- Theresa May has indicated that **free movement of EU citizens to the UK could continue for a period after Brexit**, as she negotiates an “implementation phase” after 2019
- The House of Lords EU Financial Affairs Sub-Committee has published a [report](#) stating **the UK is under no obligation to pay the proposed €60 billion ‘Brexit bill’** suggested by the EU. However, peers warn that while the UK could exit without payment, “the political consequences would be profound” and could damage the UK’s prospects of a deep, comprehensive, free-trade deal with the EU.
- David Davis, the Brexit secretary, has said the **UK government has not made a thorough assessment of the economic impact of leaving the EU without a deal**, notably what the imposition of new tariffs for different economic sectors means for the UK economy as a whole.
- The government has confirmed that **EU students will continue to remain eligible for undergraduate, master’s, postgraduate and advanced learner financial support in the academic year 2018-2019**, retaining home-fee status, including where the course concludes after the UK’s exit from the EU.

Some recent relevant parliamentary reports include:

- A Commons Health Select Committee [report](#) on the effect of Brexit on health and social care;
- A Commons Education Committee [report](#) on challenges and opportunities for higher education under Brexit;
- A Lords EU Committee [report](#) examining how Brexit will impact UK environment and climate-change policies.

EU level

The European Commission has published **two sets of working papers** in preparation for talks with the UK on Brexit covering the crucial issues of **citizens’ rights and a financial settlement** (so called Brexit bill). The detailed negotiating positions, which will guide the EU’s chief negotiator, Michel Barnier, highlight the intricacies of the Brexit negotiations.

On [citizens’ rights](#), the EU stresses the need for people to be able to continue acquiring rights, even after the UK has withdrawn from the union, something the UK government is thought to oppose. The paper also reiterates that the rights should be extended to family

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members and need to be protected for life. In addition, the paper states that the European Court of Justice should be used to adjudicate and enforce the rights agreed within the withdrawal agreement. The government stated in its White Paper on Brexit that this was a red line issue for them and that the jurisdiction of the European Court of Justice should end.

The second paper on the [financial settlement](#) looks at the complexity of settling the UK's financial obligations during the Brexit talks. While the paper does not mention any figures, it does list in detail the range of liabilities the UK may be exposed to when it leaves the EU. According to the paper, the UK is expected to pay all of its obligations for the current 2014-2020 budget period, which in itself would potentially amount to an additional €20 billion net contribution to the EU budget. The paper also states the UK would not immediately be refunded its 16% shareholding in the European Investment Bank, worth around €39 billion, a position the UK Treasury rejects.

The European Commission has published its **guidelines for how it expects to manage the flow of documents and information during the Brexit negotiations with the UK**. The Commission has taken the decision to publish the largest range of documents possible, describing the negotiations as “unprecedented” and therefore requiring full transparency. Commission negotiating documents which are shared with EU Member States, the European Council, the European Parliament, national parliaments, and the United Kingdom will be released to the public [here](#). The negotiating documents mentioned above include, but are not limited to:

- Agendas for negotiating rounds
- EU position papers
- Non-papers (internal / unofficial working documents)
- EU text proposals.

In contrast, the UK government is not expected to publish detailed working documents, nor formal text proposals for discussion.

The European Commission has published, and the member states subsequently adopted, the first set of draft Brexit negotiating directives. These cover [four main areas](#).

- Safeguarding the status and rights of citizens – EU27 citizens in the UK and UK citizens in the EU27 – and their families is the first priority of the negotiations for the Commission.
- Financial settlement: agreement on the principles of the financial settlement (Brexit divorce bill). The Commission believes the UK and EU must reach an agreement on the methodology of how the bill is calculated before it is possible to move on to the second phase of the negotiations i.e. a UK-EU free-trade deal.
- Northern Ireland: the negotiations should not undermine in any way the Good Friday Agreement. The Commission argues that "imaginative" solutions should be found to avoid a hard border on the island of Ireland.

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- Finally, arrangements must be found regarding dispute settlement and the governance of the withdrawal agreement. The Commission wants the European Court of Justice to adjudicate any dispute between the UK and EU. This is something the UK is expected to resist.

The draft mandates make clear that the EU will not discuss a comprehensive free-trade deal with the UK until "significant progress" is made on the above four areas. Heads of state and government, excluding the UK, will determine how much progress has been made.

EU Heads of State and Government met at the European Council on 29th April **to formally agree the EU's political guidelines for the Brexit negotiations**. The [guidelines](#) will define the framework for negotiations and set out the overall EU positions and principles during the talks. The European Council will update the guidelines in the course of the negotiations as necessary. In the guidelines, the European Council states that the EU27 will keep its unity and act as one during the negotiations. Leaders stressed:

- Their wish to have the UK as a close partner;
- That any future deal will need to be based on a balance of rights and obligations and ensure a level playing-field;
- That the integrity of the Single Market must be preserved, which means the four freedoms are indivisible and excludes any cherry-picking (participation in the Single Market based on "a sector-by-sector approach" – a strategy the UK government hoped to pursue – is specifically excluded);
- That a non-EU member cannot enjoy the same rights and benefits as a member.

The European Council also agreed that the first phase of negotiations should aim to "provide as much clarity and legal certainty as possible" and to settle the disentanglement of the UK from the EU, with citizens' rights and the 'divorce bill' as the top two priorities to be discussed and agreed. The Council will monitor progress and determine when "sufficient progress" has been achieved to allow negotiations to proceed to the next phase i.e. a UK-EU free-trade deal. An agreement on a future relationship between the EU and the UK can only be concluded once the UK has become a third country (i.e. left the EU). However, EU leaders did declare readiness, during a second phase of negotiations, to start preliminary and preparatory discussions on the framework for that future relationship. Nonetheless, any UK-EU free-trade deal can only be finalised and adopted post-Brexit. Responding to the UK's potential to turn itself into a low-tax, light-regulation economy, the draft guidelines suggest any future deal with the EU must ensure "a level playing field in terms of competition and state aid" and include "safeguards against unfair competitive advantages through ... fiscal, social and environmental dumping".

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The rights of EU citizens in the UK and of UK citizens in the EU has been much discussed since the Brexit referendum. However, neither the UK or the EU have thus far made any unilateral moves to guarantee the rights of nationals. Theresa May has suggested she would like this issue “dealt with” during the June meeting of the European Council. The European Commission has also said it wants to prioritise EU citizens’ rights. However, it’s now emerged that the issue of UK and EU citizens’ rights is far more complex than simply guaranteeing that an individual and their family can remain permanently resident post-Brexit. The Commission has prepared an internal document for the negotiations in which it lists 25 separate and legally distinct policy areas related to citizens’ rights post-Brexit. These policy areas include: access to healthcare; pensions earned in other EU countries; access to benefits; full access to the labour market; rights of family members; and the enforcement of these rights (either by a domestic court or the European Court of Justice).

The UK is currently home to two EU regulatory agencies; the European Medicines Agency and the European Banking Authority. According to the EU treaties, **EU agencies must be located within a member state of the EU**. A spokesperson for the European Commission stated that the agencies will be relocated and that this is “not part of the Brexit negotiations”. Indeed, the Commission has also made clear that they believe the UK is liable for some of the relocation costs. David Davis, Brexit secretary does not accept that the two agencies and roughly 1,000 staff will have to move from London. However, the European Commission is currently preparing for the process of relocating them to a different member state. The agency will not only bring highly skilled jobs to its new home but also act as a hub for the pharmaceutical industry and other research.

MEPs have voted in favour of a resolution officially laying down **the European Parliament’s key principles and conditions for its approval of the UK’s withdrawal agreement**. Any such agreement at the end of UK-EU negotiations will need to win the approval of the European Parliament. The resolution stressed the importance of securing equal and fair treatment for EU citizens living in the UK and British citizens living in the EU. It also points out that the UK remains an EU member until its official departure, and that this entails rights but also obligations, including financial commitments which may run beyond the withdrawal date. The resolution warns against any trade-off between security and the future EU-UK economic relationship, opposes any sort of cherry picking or a piecemeal economic relationship based on sector-specific deals, and reiterates the indivisibility of the four freedoms of the single market - free movement of goods, capital, services, and people. Finally, the resolution says that only when “substantial progress” has been made in talks on how the UK is to leave the EU can discussions begin on possible transitional arrangements. These arrangements must not last longer than three years, while an agreement on a future relationship can only be concluded once the UK has left the EU.

Michel Barnier, the EU’s Chief Brexit negotiator, has listed the key areas where no Brexit deal would be most harmful:

- EU and UK citizens confronted with total uncertainty about their rights and their future;
- Supply problems in the UK, which would disrupt value chains;

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- Reintroduction of binding customs controls, which would inevitably slow down trade and generate lines of trucks at ports;
- Very severe air traffic disruptions to and from the UK;
- A suspension on the movement of all nuclear material in the United Kingdom (both in and out of the country) as a result of leaving EURATOM.

Barnier reiterated his previous position that the UK can't negotiate a free-trade deal until the Article-50 agreement has been agreed. He also made clear that any transitional arrangements between the UK and EU would need to be governed by EU law and under the auspices of the European Court of Justice. While Article 50 deals very specifically with the departure of a country from the EU, Article 218 of the EU treaties sets out the procedures by which the EU can make agreements including trade deals and strategic/political agreements. This is an important distinction because the Article-50 exit deal only requires a qualified majority, while an Article-218 trade deal requires unanimity of all member states.

ESIF

The LEP is unable to attend the LEIF meeting and so will not be providing its usual verbal update on the ESIF. However, it has provided the Brussels Office with a short update, which we will relay at the meeting.

LCR Brexit activity

A short verbal update will be provided at the meeting on LCR's Brexit-related activity. Attendees of the last LEIF may recall the Brussels Office was planning to prepare, for the working group coordinating the LCR Brexit Task Force, a document outlining other key organisations' and networks' positions on Brexit. The Brussels Office has since produced (late March) the first draft of this document, an expurgated version of which is attached as annex 1 to this report. The office has been taking soundings on the table and is working on a new version with extra bodies added; we would welcome input from LEIF members in identifying any gaps and also for suggestions as to how best to use the table.

Meanwhile, annex 2 is the latest quarterly update for the LEIF on the University of Liverpool's (EU Law @Liverpool Unit's) Brexit-related work. This has been provided by Dr Stephanie Reynolds at the university.

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Annex 1 – Brexit networks table

Sector	Network	Overview	LCR involvement	Brexit activity
Local government	UK Brussels Offices Network (UKBO)	Informal network of UK regionals representations in Brussels	LCR Brussels Office is a member.	Regular meetings (monthly) to share Brexit-related activity from member regions and meet with reps of other sectors. UKREP contact with Brussels Offices is largely via this group (quarterly).
Local government	Local Government Association	Works on behalf of councils to ensure local government has a voice with national government and EU. Represents UK on CEMR (European LGA) and supports UK members of Committee of the Regions.	All our local authorities are members. LGA Brexit work is led by their Brexit Task and Finish Group (politicians group), overseen by the LGA Leadership Board. Thematic boards in the LGA are also picking up Brexit-related issues. LCR Brussels Office is in regular contact with LGA Brussels Office.	Their business plan for the year ahead has 7 main points; point 1 is Brexit. Brexit priorities are as follows: devolving repatriated powers to the local level; making UK review of EU-derived law local government-friendly; having a domestic regional funding system that works; recruitment and retention of workers, such as in adult social care; reforming employment and skills funding; addressing place-based impacts (impact assessments of how Brexit affects different parts of the country differently). C 50 councils have responded to the LGA call for evidence on place-based impacts.
Business	CBI	Represents 190,000 businesses (directly and indirectly), helping them to lobby and network.	Via LCR member companies and other local bodies.	Has long-standing Brussels office. Has identified following Brexit priorities: as much access to the Single Market as possible; a clear plan for regulation; new global economic partnerships; a working migration system; continued access to EU funding and/or its benefits; avoiding a cliff-edge exit, via a multi-sector transitional deal.

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Business	British Chambers of Commerce (BCC)	National representative body of 52 accredited chambers of commerce across the UK, representing 92,000 businesses. Is a partner of British Chamber of Commerce in Belgium (BCCB).	BCC membership includes several LCR chambers. BCCB has worked closely with LCR Bussels Office and Liverpool Vision around IFB.	BCC has consulted members extensively to identify multiple Brexit priorities around each of the following: trade (notably keeping UK-EU tariffs to a minimum and allowing UK to benefit from EU-negotiated FTAs internationally), customs, taxation, regulation, labour market, EU funding, and the border with Ireland. BCCB has separate priorities (reflecting its broader partnership, including many non-UK bodies): trade & investment (equivalent access and treatment, freedom of investment and establishment), availability of skilled employees and recognition of their qualifications, continued regulatory cooperation, keeping taxation arrangements simple and avoiding double taxation, continued access to energy market, and innovation (continued cooperation, such as through buying into EU funding programmes).
Business	Federation of Small Businesses	Provides advice, financial services, networking and other support (including lobbying) to small businesses (fewer than 250 employees) and the self-employed.	Will have many LCR members. Has various regional sub-divisions covering NW England and LCR.	Has commissioned a research programme into the opportunities and risks. A four-part (one each on trading with the single market and non-EU markets, access to labour/skills, EU funding, and the future of regulation) research series will be published soon.
HE	Russell Group	The association of leading UK public-research universities	University of Liverpool is represented on Russell Group's Brexit group.	Their main Brexit priority is continued access to high quality international staff and students: maintaining working rights for current EU staff; a visa and immigration system that allows UK universities to attract, recruit and retain talented staff and students; clarity as soon as possible on fee rates and access to financial support for EU students. A final key priority is the UK's continued participation in excellence-based EU research programmes.

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HE	UK Research Office (UKRO)	The European office of the UK Research Councils. UKRO's mission is to maximise UK engagement in EU-funded research, innovation and higher education activities. It has over 140 subscribers from universities and other research organisations in the UK.	University of Liverpool, LJMU and School of Tropical Medicine are members.	Supporting continued HEI engagement with current trans-national funding programmes in the face of Brexit
HE, The North	N8 Research Partnership	Collaboration of the eight most research intensive Universities in the North of England, mainly around 'agrifood' and 'urban and community transformation'. Promotes collaboration between universities, business and society. Establishes innovative research capabilities and programmes. Supports driving economic growth by generating income, supporting jobs and new businesses.	University of Liverpool is a member.	Unclear if active yet on Brexit

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Legal	UK Law Societies	Law Society of England and Wales is the professional body for solicitors. It is the approved regulator for them. It works internationally to open up markets to its members and it lobbies on members' behalf. It receives a portion of solicitors' annual practicing fee. The Joint UK Law Societies (plus Scotland and Northern Ireland) have a presence in Brussels.	Will have multiple members in the LCR legal sector. LCR Brussels Office has had contact with their Brussels representation.	Has recently produced a set of reports outlining its priorities for the Brexit negotiations around, respectively: recognition and enforcement of judgements; practice rights; criminal justice; consumer law; the UK's position in international conventions. These themes closely reflect its stated Brexit priorities. England and Wales is the leading global centre for legal services; Brexit could threaten this if our legal decisions are less readily recognised across Europe. Has met with various ministers, civil servants and parliamentarians on Brexit. Is on Mayor of London's Brexit Advisory Group.
Health	NHS Confederation	Membership body for whole health and care system. 560+ members providing NHS-funded services.	Numerous LCR Health Trusts and CCGs are members.	Main concerns are: that Brexit may lead to an economic downturn, which will reduce public resources for the NHS; that there are almost 150k European nationals working in the health sector; cross-border healthcare arrangements; that leaving the single EU medical regulation system will harm innovation; that access to multi-national trials may be harmed. Is represented in Brussels by the NHS European Office, which in turn is a member of the Brexit-focused Cavendish Coalition of health and care organisations, which also includes the Association of Directors of Adult Social Services. The NHS Confederation and Cavendish Coalition have both made numerous submissions to parliamentary committees looking at Brexit.
Environment	Joint Waste Disposal Authorities (JWDA)	Represents six JWDAs (Merseyside, Greater Manchester and four in Greater London)	MRWA is a member. LCR Brussels Office works fairly closely with this group.	Is well networked on European issues, notably through Eurocities. Is lobbying on current EU Circular Economy Package; additionally, has argued that, should this package not enter UK law because of Brexit, England needs a domestic waste policy that closely mirrors it.

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Transport	Urban Transport Group (UTG)	Represents most major UK city regions on public transport issues at UK and international level. Analyses public transport needs and lead practice of UK cities.	Merseytravel is a member. UTG Brussels representation is partly provided by LCR Brussels Office. UTG also holds UK membership of UITP (the major international public transport body).	Produces regular Brexit bulletin and holds regular Brexit seminars for members. Sits on UITP European Committee, which has strong influence on EU transport law.
Transport, The North	Transport for the North	Dedicated body for transforming the transport system and infrastructure of the North of England. Strongly linked to wider Northern Powerhouse concept.	Merseytravel and LEP are on partnership board.	Not noticeably active on Brexit as yet
Trans-national	Eurocities	Network of c 190 European cities, arranged across numerous specialist thematic groups. Priorities are sharing good practice, developing projects and promoting the urban dimension of EU policy.	Liverpool City Council is a member of Eurocities and gives the LCR Brussels Office access to the network. Eurocities has a series of thematic forums each with a set of working groups on sub-themes; these are supported by a large secretariat.	No official Brexit activity as it has a trans-national membership but could ultimately provide useful intelligence and links on the 'other side' of the Brexit equation: i.e. what the other EU member states will want. May also be useful to us in maintaining influence in the EU once we lose our direct representation (i.e. MEPs, CoR members, UKREP).

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Annex 2 – EU Law @ Liverpool update

1) Academic

Academic Articles

Mike Gordon, "[The UK's Sovereignty Situation: Brexit, Bewilderment and Beyond ...](#)" (2016), *King's Law Journal*, 27(3), 333-343.

Book project

Michael Dougan (ed), "The UK after Brexit: Legal and Policy Challenges" (Intersentia, forthcoming). With contributions from:

M. Dougan – The border between Northern Ireland and the Republic of Ireland

M. Gordon – The UK constitution

T. Horsley – The impact on the courts

G. Messenger – The UK's membership of the WTO

S. Reynolds – EU citizens' residence security

M. Sattorova – UK bilateral investment policy

Conferences organised by EU Law @ Liverpool

Academic conference on [Brexit and the \(Northern\) Law School](#) in collaboration with the University of Sheffield and the University of York, Foresight Centre, University of Liverpool, 14h June 2017.

Liverpool-Leiden-Oslo PhD symposium, 9th June (co-organised by Katy Sowery and Andrew Woodhouse)

Academic Conference on "[The UK After Brexit](#)", University of Liverpool London Campus, 17th February 2016.

Conference Papers

Mike Gordon, "[Brexit Process & UK Constitutionalism](#)", *Amsterdam Centre for European Law and Governance*, May 2017.

Stephanie Reynolds, Mike Gordon and Michael Dougan, [Brexit: The Causes, the Process, the Consequences, Swedish Network for European Legal Studies, Stockholm, March 2017](#)

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Mike Gordon, "Constitutional Realities Post Brexit", [Brexit and Legal Practice – Impact and Opportunities](#), Manchester, April 2017.

Mike Gordon, speaking at "[Administrative Law After Brexit](#)", Kings Chambers Manchester, February 2017.

Michael Dougan, "Which European Future for the United Kingdom?" at the [Risk Minds International conference, Amsterdam, December 2016](#).

Blogs

Thomas Horsley – "UK Courts and the Great Repeal Bill – Awaiting Fresh Instruction", [UK Constitutional Law Association](#), February 2017

2) Government and Policy Engagement

Parliamentary contributions

Michael Dougan and Michael Gordon, [Oral Evidence to UK Parliament's Procedure Committee](#), March 2017

Gregory Messenger, [Written Evidence to the UK Parliament's International Trade Committee](#), Jan 2017.

3) Public Engagement

Stephanie Reynolds - Speaker at "Cambridge Stays" event on the legal position of EU nationals, Cambridge, January 2017.



Dr Stephanie Reynolds -
Cambridge Stays. 11 Jan 2017.

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Michael Dougan: [“Misrepresenting Reality”](#), Merseyside Skeptics event, The Vines Liverpool, 19th January 2017.

Michael Dougan: Speaker at the [Putney Debates](#), St Mary's Church, 2nd February 2017

Michael Dougan: [Leeds for Europe event](#), March 2017.

Michael Dougan: Seminar at UWE Bristol, March 2017.

Harriet Gray, Michael Dougan, Ben Murphy, Gregory Messenger, Thomas Horsley, Michelle Farrell: [EU Panel Conversation with the Liverpool Liberal Democrats](#), March 2017

Michael Dougan: Stratford-Upon-Avon School, May 2017.

Michael Dougan: [“Time for Action!”](#), [WOW Festival](#), Liverpool, May 2017.

Michael Dougan: "Brexit, Trade and the Single Market: What happens now?" with Europe Direct Wrexham, Glyndŵr University, May 2017.

4) Stakeholder Engagement

Eleanor Drywood, Samantha Currie, Katy Sowery: Final Report: Stakeholder-Led Scrutiny of Legal Issues Surrounding Renegotiation and Membership in a Regional and National Context, Funded by a UK in a Changing Europe (ESRC) Commissioning Grant.

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5) Media Engagement

Television

Mike Gordon, two appearances on Sky News March 2017



Radio

Stephanie Reynolds, interview with *Radio Merseyside* immediately following Theresa May's Lancaster House speech.

Reddit

Reddit is an online discussion forum which has millions of users. The unit made the decision to use the forum as a way to disseminate information on Brexit in the aftermath of the referendum.

The unit conducted its [second reddit in January 2017](#).



This led to a lively response, with over 300 comments and 368 upvotes. Many users thanked the Unit for bringing their expertise to a public forum. The unit was able to answer over 100 questions.

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this post was submitted on 27 Jan 2017

368 points (93% upvoted)

all 312 comments