HOUSE OF LORDS

European Union Committee

15th Report of Session 2016–17

Brexit and the EU budget

Ordered to be printed 2 March 2017 and published 4 March 2017

Published by the Authority of the House of Lords

HL Paper 125

The European Union Committee

The European Union Committee is appointed each session "to scrutinise documents deposited in the House by a Minister, and other matters relating to the European Union".

In practice this means that the Select Committee, along with its Sub-Committees, scrutinises the UK Government's policies and actions in respect of the EU; considers and seeks to influence the development of policies and draft laws proposed by the EU institutions; and more generally represents the House of Lords in its dealings with the EU institutions and other Member States.

The six Sub-Committees are as follows:

Energy and Environment Sub-Committee
External Affairs Sub-Committee
Financial Affairs Sub-Committee
Home Affairs Sub-Committee
Internal Market Sub-Committee
Justice Sub-Committee

Membership

The Members of the European Union Select Committee are:

Baroness Armstrong of Hill Top
Lord Boswell of Aynho (Chairman)
Baroness Brown of Cambridge
Baroness Browning
Baroness Falkner of Margravine
Lord Green of Hurstpierpoint
Lord Jay of Ewelme
Baroness Kennedy of The Shaws
Earl of Kinnoull
Lord Liddle
Baroness Prashar
Lord Selkirk of Douglas
Baroness Suttie
Lord Teverson
Lord Trees
Baroness Verma
Lord Whitty
Lord Woolmer of Leeds
Baroness Wilcox

The Members of the Financial Affairs Sub-Committee, which conducted this inquiry, are:

Lord Butler of Brockwell
Lord Callanan
Baroness Falkner of Margravine (Chairman)
Lord De Mauley
Lord Desai
Lord Haskins
Baroness Liddell of Coatdyke
The Earl of Lindsay
Lord Shutt of Greetland
Lord Skidelsky
The Duke of Wellington
Lord Woolmer of Leeds

Further information

Publications, press notices, details of membership, forthcoming meetings and other information is available at http://www.parliament.uk/hleu.

General information about the House of Lords and its Committees is available at http://www.parliament.uk/business/lords.

Sub-Committee staff

The current staff of the Sub-Committee are John Turner (Clerk), Holly Snaith (Policy Analyst) and Claire Coast-Smith (Committee Assistant).

Contact details

Contact details for individual Sub-Committees are given on the website. General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW. Telephone 020 7219 5791. Email euclords@parliament.uk.

Twitter

You can follow the Committee on Twitter: @LordsEUCom.

CONTENTS

Evidence is published online at http://www.parliament.uk/brexit-eu-budget-inquiry and available for inspection at the Parliamentary Archives (020 7129 3074).

Q in footnotes refers to a question in oral evidence.

SUMMARY

The budget is going to be a contentious early issue during the UK's negotiations over leaving the EU. It is crucial for both parties. The UK provides approximately 12% of the resources available to the EU budget, and is also a significant net contributor. The removal of the UK's payments into the budget will require the other EU Member States to agree either to pay more into the budget, or draw less from it. Neither option is without difficulty, and those difficulties may colour the wider Brexit negotiations. The Government will have to consider its stance on continued budgetary contributions in the light of its impact on the wider negotiations, and the economic and political implications will need to be set against one another. The Government has stated that it is open to making payments towards specific programmes in order to cement a cooperative future relationship with the EU but there are already demands from the EU, for much wider contributions.

However, the strictly legal position of the UK on this issue appears to be strong. Article 50 provides for a 'guillotine' after two years if a withdrawal agreement is not reached unless all Member States, including the UK, agree to extend negotiations. Although there are competing interpretations, we conclude that if agreement is not reached, all EU law—including provisions concerning ongoing financial contributions and machinery for adjudication—will cease to apply, and the UK would be subject to no enforceable obligation to make any financial contribution at all. This would be undesirable for the remaining Member States, who would have to decide how to plug the hole in the budget created by the UK's exit without any kind of transition. It would also damage the prospects of reaching friendly agreement on other issues. Nonetheless, the ultimate possibility of the UK walking away from negotiations without incurring financial commitments provides an important context.

Given the legal and political void that would be created by a disorderly exit, we share the Government's view of the advantages of achieving a negotiated agreement. This is particularly the case given the provision in Article 50 for a withdrawal agreement to take account of the framework for an exiting state's future relationship with the Union. If the Government wishes to include future market access on favourable terms as part of the discussions on the withdrawal agreement, it is likely to prove impossible to do so without also reaching agreement on the issue of the budget.

Many figures have been suggested for the UK's 'exit bill', with the European Commission's chief negotiator, Michel Barnier, reportedly putting the bill at close to €60 billion. This report seeks to examine the factors contributing to these suggestions and highlights the difficulty of arriving at any definitive figure. We explore the wide range of figures it is possible to produce, depending on the chosen calculations of liabilities, assets and any UK 'share'.

We hope that a withdrawal agreement can indeed be reached within the two years of the Article 50 period. It is contingent on both sides recognising the gravity of the alternative and being willing to reach agreement on reasonable terms in the spirit of reciprocity.

Brexit and the EU budget

CHAPTER 1: INTRODUCTION

Brexit negotiations and the EU budget

1. The budget touches on all areas of EU activity. The politics of negotiating the EU's revenues and expenditures are contentious, and typically highlight—if not exacerbate—divisions between the Member States. The UK currently contributes approximately 12% of the EU's funding, although there are many ways of calculating the UK's payments into the EU budget. Determining and accommodating the budgetary implications of UK withdrawal over a relatively short time-span—the two years allowed under Article 50—will be a profound challenge for all concerned.

2. During most of this inquiry it was not clear what sort of financial relationship with the EU the UK would seek. However, toward the end of our deliberations, on 17 January, the Prime Minister, Rt Hon Theresa May MP, made her Lancaster House speech, stating:

> "There may be some specific European programmes in which we might want to participate. If so, and this will be for us to decide, it is reasonable that we should make an appropriate contribution. But the principle is clear: the days of Britain making vast contributions to the European Union every year will end."[1]

3. The purpose of this inquiry was to identify the certainties and uncertainties related to the UK's financial commitments at the point of and after leaving the EU (what might be termed the 'exit bill'). The difficulty in establishing a figure is amply illustrated by two recent reports in the *Financial Times*. The earlier report estimated a potential demand of €20 billion,[2] the latter, published a month later, estimated it at €60 billion.[3] The gap between these estimates is a product of profound financial uncertainty, and this report draws on evidence from which it is possible to produce a variety of figures, which are sometimes mutually inconsistent. We do not specifically endorse any particular figure, and caution against considering any of them in isolation.

4. While the legal advice we have received differed, the stronger argument suggests that the UK will not be strictly obliged, as a matter of law, to render any payments at all after leaving.

5. Nonetheless, there are various reasons why the UK and EU may elect to negotiate continued payments, including the desire to agree an 'implementation period', or transitional arrangement, instead of the 'cliff-edge' that might otherwise result from Brexit. In the context of defining the possibilities for negotiation, we therefore assess what any short-term

---

1 Prime Minister Theresa May, Speech on The Government's negotiating objectives for exiting the EU, 17 January 2017: https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech [accessed 21 February 2017]

2 'UK faces Brexit divorce bill of up to €20bn', *Financial Times* (12 October 2016): https://www.ft.com/content/3c1eb988-9081–11e6-a72e-b428cb934b78 [accessed 21 February 2017]

3 'UK faces Brexit bill of up to €60bn, as Brussels toughens stance', *Financial Times* (15 November 2016): https://www.ft.com/content/480b4ae0-aa9e-11e6-9cb3-bb8207902122 [accessed 21 February 2017]

contributions may entail, and consider opportunities for the UK to continue to pay into certain programmes deemed to be especially beneficial over the longer term, examining potential precedents for different models of contribution.

6. Two of the Prime Minister's 12 negotiating aims were "delivering a smooth, orderly exit from the EU" and "ensuring free trade with European markets". Ensuring a mutually beneficial future relationship with the EU must be paramount in negotiations over Brexit. Our report considers the evidence it received in the context of these aims.

The EU Committee's work

7. Following the referendum on 23 June 2016, the European Union Committee and its six sub-committees launched a coordinated series of inquiries, addressing the most important cross-cutting issues that will arise in the course of negotiations on Brexit.[4] These inquiries, though short, are an opportunity to explore and inform wider debate on the major opportunities and risks that Brexit presents to the United Kingdom.

8. **We make this report to the House for debate.**

4 See European Union Committee, *Scrutinising Brexit: the role of Parliament* (1st Report, Session 2016–17, HL Paper 33)

CHAPTER 2: BACKGROUND

The Government's aims

9. The Government's stance on the upcoming negotiations has been laid out in the Prime Minister's speech of 17 January 2017, and in the White Paper (*The United Kingdom's exit from and new partnership with the European Union*), published on 2 February. These set out twelve principles[5] that will "guide the Government in fulfilling the democratic will of the people of the UK". They are set out in Box 1.

Box 1: The Government's 12 guiding principles

1. Providing certainty and clarity—We will provide certainty wherever we can as we approach the negotiations.
2. Taking control of our own laws—We will take control of our own statute book and bring an end to the jurisdiction of the Court of Justice of the European Union in the UK.
3. Strengthening the Union—We will secure a deal that works for the entire UK—for Scotland, Wales, Northern Ireland and all parts of England. We remain fully committed to the Belfast Agreement and its successors.
4. Protecting our strong and historic ties with Ireland and maintaining the Common Travel Area—We will work to deliver a practical solution that allows for the maintenance of the Common Travel Area, whilst protecting the integrity of our immigration system and which protects our strong ties with Ireland.
5. Controlling immigration—We will have control over the number of EU nationals coming to the UK.
6. Securing rights for EU nationals in the UK, and UK nationals in the EU—We want to secure the status of EU citizens who are already living in the UK, and that of UK nationals in other Member States, as early as we can.
7. Protecting workers' rights—We will protect and enhance existing workers' rights.
8. Ensuring free trade with European markets—We will forge a new strategic partnership with the EU, including a wide reaching, bold and ambitious free trade agreement, and will seek a mutually beneficial new customs agreement with the EU.
9. Securing new trade agreements with other countries—We will forge ambitious free trade relationships across the world.
10. Ensuring the UK remains the best place for science and innovation—We will remain at the vanguard of science and innovation and will seek continued close collaboration with our European partners.

5 HM Government, *The United Kingdom's exit from and new partnership with the European Union*, Cm 9417, February 2017, pp 7–8: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 21 February 2017]

11. Cooperating in the fight against crime and terrorism—We will continue to work with the EU to preserve European security, to fight terrorism, and to uphold justice across Europe.

12. Delivering a smooth, orderly exit from the EU—We will seek a phased process of implementation, in which both the UK and the EU institutions and the remaining EU Member States prepare for the new arrangements that will exist between us.

Source: HM Government, The United Kingdom's exit from and new partnership with the European Union (Cm 9417), pp 7 and 8.

10. These 12 guiding principles do not refer to the EU budget, but a brief statement elsewhere in the White Paper repeats the gist of the Prime Minister's speech. It emphasises that "decisions on how taxpayers' money will be spent will be made in the UK", and that an "appropriate contribution" may be made into the EU budget for specific programmes.[6]

11. The White Paper also comments on a number of areas that have budgetary implications. In particular, it repeats guarantees made by the Chancellor of the Exchequer in late 2016, that the UK Government will cover the equivalent of all Common Agricultural Policy funding between the Brexit date and the end of the current Multiannual Financial Framework (MFF) in 2020, and that it will also finance any European Structural and Investment Fund (ESIF) contracts signed before autumn 2016.

12. The UK's ongoing budgetary commitments are at, or near, the top of the EU's list of priorities. Thus, during a recent visit by the Select Committee to the European Parliament, the budget was cited by the German MEP David McAllister as foremost among the five most important issues for the EU to resolve during the Article 50 negotiations.[7] Sir Ivan Rogers, the former UK Permanent Representative to the EU, describing "where the other 27 are coming from", also listed the budget first among the EU's priorities.[8]

How the EU budget works

13. A crucial aspect of the EU budget is that spending and revenue are treated separately. In other words, the UK's leaving will create two separate accounting problems: one on the revenue side, and one on the expenditure side. Although the prime economic concern in the UK may surround the extent of any net contribution, the issues for the EU are inextricably bound up with the political and administrative processes concerning each side of the budget equation.

Revenue— 'own resources'

14. The key principle of the EU's financing is that annual expenditure must be completely covered by annual revenue. This means that the EU must not accrue any external debt for this purpose; it also has the consequence that

6 HM Government, *The United Kingdom's exit from and new partnership with the European Union*, Cm 9417, February 2017, p 49: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 21 February 2017]

7 Oral evidence taken before the EU Select Committee, 18 January 2017 (Session 2016–17), Q 9 (David McAllister MEP)

8 Oral evidence taken before the House of Commons European Scrutiny Committee, 1 February 2017 (session 2016–17), Q 8 (Sir Ivan Rogers)

Member States must agree on how to finance the EU's anticipated spending lines in advance.

15. The EU budget is funded by revenue drawn from a variety of sources governed by the EU's Own Resources Decision (ORD) (the most recent iteration of which was adopted on 26 May 2014, entering into force October 2016). The ORD applies retroactively with effect from 1 January 2014. It is agreed by unanimity and must be ratified by each of the Member States: in the UK, this was achieved through the European Union (Finance) Act 2015. The overall amount of own resources needed to finance the budget is calculated from the total expenditure, less 'sundry revenue' (for example, fines for breaches of competition rules). Sundry revenue generally accounts for less than 10% of the total.[9]

16. The ORD limits the maximum annual amounts of own resources that the EU may raise during a year to 1.23% of the EU gross national income (GNI).[10] In practice, the EU spends less than the ceiling of the ORD. The intended expenditure is expressed in terms of commitment appropriations (agreements by the Council and to an extent the European Parliament to provide finance within broad policy objectives, up to a defined limit) and payment appropriations (the actual amounts due to be paid over the term). The current spending agreement (the Multiannual Financial Framework for 2014–20) proposes total commitment appropriations of 1.04% of GNI and total payment appropriations of 0.98% of GNI, leaving a 'margin' under the 1.23% maximum. Commitment and payment appropriations often differ, because multiannual programmes and projects are committed in the year they are decided, but are paid out over the term of the project.

Customs duties and levies

17. 'Traditional own resources' (TOR) consist mainly of customs duties on imports from outside the EU and of sugar levies. These are levied by Member States at the external border, and the Member States keep 20% as 'collection costs' (25% prior to the 2014 ORD). For the UK, such collection costs amounted to £772 million in 2015, with £3.1 billion returned to the EU.[11] TOR are sometimes not regarded as originating in any particular Member State, as they derive from tariffs on goods entering the EU as a whole. Inevitably, countries on the EU's external borders or with major international ports (such as the UK or the Netherlands) process a greater proportion of the goods entering the Union, and levy the bulk of customs duties, but it is moot whether the tariffs actually emanate from the countries in which goods enter the EU.

VAT-based contributions

18. The EU has had a common system of VAT since 1967. Contributions are levied on a notional VAT base for each country. This is calculated by dividing the total net VAT revenue collected by the Member State by the weighted

---

9 European Commission, *Consolidated annual accounts of the European Union, Financial Year 2014*, (July 2015), p 10: http://ec.europa.eu/budget/library/biblio/documents/2014/2014%20EU%20Annual%20Accounts.pdf [accessed 27 February 2017]

10 Gross National Income. This is slightly different from the more familiar Gross Domestic Product (GDP), because it includes net income from overseas.

11 Office for National Statistics *UK Balance of Payments, The Pink Book: 2016*, (29 July 2016), Section 9.9: https://www.ons.gov.uk/releases/unitedkingdombalanceofpaymentsthepinkbook2016 [accessed 21 February 2017]

average VAT rate for that country to obtain an intermediate VAT base. This is then adjusted to obtain a harmonised VAT base, which is capped at 50% of GNI. Each Member State must then provide a small percentage of its harmonised VAT base (the 'call rate') to the EU budget. The standard call rate is 0.3% of the notional harmonised VAT base, although for Germany, the Netherlands and Sweden (all net contributors) this was halved for the 2014–20 period. In 2015 approximately £2.7 billion was provided by the UK to the EU in VAT-based contributions.[12]

GNI-based contributions

19. The GNI resource has grown to become the largest of the EU's resources and today accounts for about three-quarters of revenue.[13] The GNI resource was designed as a top-up for the expenditure not covered by the other established own resources, but has grown substantially in importance over time. The calculations on which the GNI resource is based are derived from estimates provided by the relevant national statistical authority—in the UK, the Office for National Statistics (ONS). The figure is subsequently revised up or down as further data emerge. This can result in refunds to Member States, or calls for extra money, as happened to the UK in 2014.[14] The amount members contribute varies from year to year according to the appropriations agreed in annual budgets, the relative GNIs of the Member States, receipts from traditional own resources and other revenue, and the effects of the various rebates. In 2015 the UK's GNI-based contribution amounted to £13.8 billion.[15]

Rebates and corrections

20. The UK receives a rebate (the 'Fontainebleau abatement') on its GNI-based contributions. It is not paid back to the UK in a separate transaction but rather deducted from the UK's contributions, and paid a year in arrears (in other words, it is calculated on the basis of the previous year's net contributions). The method of calculation is complex and has changed over time,[16] but is based on the principle that the UK is awarded 66% of the difference between its contribution and its receipts from the budget, with the cost shared among the other Member States in proportion to their GNI. Some other countries have accordingly argued that they should receive a rebate on their payments towards the UK abatement—Austria, Germany, the Netherlands and Sweden have benefited from a reduction in their contribution to the rebate, paying 25% of their respective shares, with the difference covered by the other

---

12 Office for National Statistics *UK Balance of Payments, The Pink Book: 2016*, (29 July 2016), Section 9.9: https://www.ons.gov.uk/releases/unitedkingdombalanceofpaymentsthepinkbook2016 [accessed 21 February 2017]

13 Eurostat, 'Monitoring GNI for statistics purposes', (20 September 2016): http://ec.europa.eu/eurostat/statistics-explained/index.php/Monitoring_GNI_for_own_resource_purposes [accessed 21 February 2017]

14 In October 2014 the European Commission informed the Government that it would have to make an extra €2.1 billion in contributions to the EU budget, owing to a revision of historic GNI figures. This amount was reduced by the application of the UK rebate. See 'The mystery of Britain's €2.1bn EU budget bill explained', *Financial Times,* (12 November 2014): https://www.ft.com/content/d0b07747-234c-37f4-8211-292a6fb8d51b [accessed 21 February 2017]

15 Office for National Statistics *UK Balance of Payments, The Pink Book: 2016*, (29 July 2016), Section 9.9: https://www.ons.gov.uk/releases/unitedkingdombalanceofpaymentsthepinkbook2016 [accessed 21 February 2017]

16 European Parliamentary Research Service, *The UK 'rebate' on the EU budget: an explanation of the abatement and other correction mechanisms*, (February 2016): http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577973/EPRS_BRI(2016)577973_EN.pdf [accessed 21 February 2017]

Member States. Since 2002 this has been a *de facto* permanent arrangement (as it is included in the ORD). Various other temporary lump-sum rebates have been agreed over individual MFF periods; current beneficiaries are the Netherlands, Sweden, Denmark and Austria.

Expenditure

21. The EU's spending is approved by the Member States and the European Parliament at various stages: once every seven years through the Multiannual Financial Framework, once a year via the annual budget, and more regularly throughout the year via Draft Amending Budgets. The UK is in absolute terms one of the larger net contributors, along with Germany, France and Italy.[17]

The Multiannual Financial Framework (MFF)

22. The Multiannual Financial Framework (MFF), laid out in a Regulation,[18] sets the parameters for the European budget process. It is drawn up for a period of seven years, with the current MFF running from 2014 to 2020; it was agreed in 2013 after negotiations lasting two and a half years. The MFF stipulates the maximum annual amounts ('ceilings') that the EU can spend, expressed in terms of commitment and payment appropriations, and broken down across different broad categories ('headings', of which there are currently six). The MFF is proposed by the European Commission, and then adopted via unanimity in the Council, after obtaining the consent of the European Parliament. Article 17 of the MFF Regulation states that it can be amended in response to "unforeseen circumstances" using the same procedure. Article 21 also provides for its revision if a country accedes to the EU, though the Regulation says nothing about a country withdrawing.

The annual budget

23. The annual budget sets the actual figures for expenditure for each EU project. It is proposed by the Commission, and then adopted by co-decision: both the Council and the European Parliament must agree it. The Council agrees the annual budget using the Qualified Majority Vote (QMV) procedure.[19] The annual budget corresponds to the calendar year and must be agreed by the end of the preceding year. If no agreement is reached in time, the previous year's budget is in effect rolled over, with the Commission authorised to continue equivalent spending on a monthly basis (the 'system of provisional twelfths'). The amount agreed through the budget usually remains below the MFF's expenditure ceilings, thereby retaining some flexibility to cope with unforeseen circumstances. Such events are dealt with throughout the year via 'Draft Amending Budgets' (DABs). These are subject to the same procedural rules as the general annual budget agreement.

---

17 Iain Begg, 'Who pays for the EU and how much does it cost the UK? Disentangling fact from fiction in the EU Budget', (27 January 2016), p.7: http://ukandeu.ac.uk/wp-content/uploads/2016/01/Who-pays-for-the-EU-and-how-much-does-it-cost-the-UK-Disentangling-fact-from-fiction-in-the-EU-Budget-Professor-Iain-Begg.pdf [accessed 21 February 2017]

18 Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014–2020, OJ L 347/884 (2 December 2013)

19 The European Council, 'Qualified majority', (31 May 2016): http://www.consilium.europa.eu/en/council-eu/voting-system/qualified-majority/ [accessed 27 February 2017]

The Common Provisions Regulation

24. The Common Provisions Regulation[20] lays down common principles, rules and standards for the implementation of the five European Structural and Investment Funds (ESIFs). Article 76 empowers the Commission to commit resources directly to individual Member States in accordance with agreed national allocations ('enveloping') on the basis of which Member States determine their co-financing plans, resulting in budgetary provisions that are difficult to unpick. These funds form a large part of the budget (£371.4 billion over the term of the MFF, 34.2% of total commitment appropriations), and because they involve commitments made over the course of several years, associated payments tend to accrue during the latter part of the MFF period. The Commission anticipates that only 27% of the budget allocated to the three main ESIFs will have been transferred into payments by 2019.[21]

Reste à liquider

25. *Reste à liquider* (RAL, deriving from the French for 'yet to be paid') represents the difference between the amount of appropriations that have been committed and those that have been paid: that is, the accumulation of EU payment promises over the years that have not yet been disbursed to their intended recipients. The majority of commitments under the current MFF are due to be paid by 2023, under the 'decommitment' rule (Article 136 of the Common Provisions Regulation, also known as the 'N+3' rule). Under this rule, commitments under the ESIFs that have not been paid out by the end of the third year following the commitment under the operational programme, are cancelled.

The legal framework

26. All of the components of the EU's financial system—own resources, customs duties and levies, VAT-based contributions, GNI-based contributions, rebates and corrections, expenditure under the MFF and annual budget, *reste à liquider*, and the Common Provisions Regulation—are established by EU legal frameworks, subject, ultimately, to the interpretation of the Court of Justice of the EU (CJEU). Our inquiry has obliged us to consider the UK's legal obligations under those frameworks in the event that the UK exits the EU without a withdrawal agreement. We address the legal obligations in detail in Chapter 4. The advice of the Legal Adviser to the European Union Committee is included in Appendix 3.

20 Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ L 347 (20 December 2013)

21 Commission staff working document accompanying Mid-term review/revision of the multiannual financial framework 2014–2020, An EU budget focused on results, COM (2016) 603 final

CHAPTER 3: POTENTIAL DEMANDS

Introduction

27. It may seem intuitive that when the UK leaves the EU, it leaves behind both the responsibilities and benefits of membership. However, this does not take account of the complexity of the UK's participation in the EU, nor of the procedures for agreeing current and future budgets, which involve mutual commitments projected many years into the future. We summarise the views of witnesses without taking a view as to their merits. We do not focus on any single figure for a potential EU demand. However, any withdrawal agreement will need to take account of the status of existing commitments that the UK is a party to (and will be until the moment of Brexit).

Elements of a potential EU claim

28. Professor Iain Begg, Professorial Research Fellow at the European Institute, London School of Economics and Political Science, told us that "what Barnier's team has been saying", is that the bill for leaving "could be of the order of €60 billion".[22] Ingeborg Grässle MEP, Chair of the European Parliament's Budgetary Control Committee, commented that "up to now the Commission has refused to put forward the bill, and it is the only one that knows what the exact bill is every day".[23] A recent report by the Centre for European Reform (CER) think tank, written by Alex Barker, head of the *Financial Times'* Brussels Bureau, suggests a figure of €57.4 billion. This seems to align with the amounts reportedly being ascribed to the Commission—though the CER report also concludes that, if the rebate is excluded from calculations, the arithmetic liability is likely to lie between €47.9 and €72.8 billion.[24]

29. There is, though, nothing ordained about the figure of €60 billion. Ms Grässle suggested an alternative figure of €21.7 billion, which she viewed as "an obligation that will cover the whole procedure".[25] This figure was based on what she deemed to be the UK's share of the EU's current and non-current liabilities, including pensions, plus a share of the RAL.[26] She qualified this by saying: "I think that €20 billion is at the lower level, but you can imagine it going up to €70 billion."[27]

30. Ms Grässle, taking an approach that differed substantially from those of our other witnesses, reached her figure by allocating the liabilities and assets on the EU's balance sheet in proportion to the UK's share of the EU's population (12.5%), while adding 5% (the proportion of the UK's pre-allocated spending under the MFF) of the RAL (€254 billion). Importantly, the balance sheet (drawn from the annual accounts for 2015)[28] measures the financial position of the EU itself (primarily loans and assets), and not the total revenue and spending of the annual budget. In other words, it excludes the UK's

22 Q 3
23 Q 48
24 Alex Barker, Centre for European Reform, *The €60 billion Brexit bill: How to disentangle Britain from the EU budget*, (February 2017), p 10: http://www.cer.org.uk/sites/default/files/pb_barker_brexit_bill_3feb17.pdf. [accessed 21 February 2017]. The range is a function of whether or not contingent liabilities are included.
25 Q 48
26 Q 47
27 Q 48
28 European Commission, *Consolidated annual accounts of the European Union, Financial Year 2015*, (11 July 2016), p 32: http://ec.europa.eu/budget/library/biblio/documents/2015/EU_AnnualAccounts2015_EN.pdf [accessed 21 February 2017]

payments and receipts under the EU's various spending programmes (such as the ESIFs), and looks solely at the EU's financial position.

31. According to the CER report, Michel Barnier "takes a more expansive view".[29] Ms Grässle's figure and that attributed to Mr Barnier are based on different assumptions. In order to obtain the larger figure, it is necessary to take a maximalist perspective on the UK's potential contributions. The CER report details how this might be done. According to their calculations, it is necessary to carve out responsibilities based not merely on the EU's current financial position, but also to add in an obligation to honour spending under the MFF to 2020. Including this measure contributes at least €17.7 billion[30] to their overall computed figure of €57.4 billion (assuming the UK would have a 12% share of ongoing EU funding).

32. Obtaining such a figure also requires minimising any putative share of receipts. The CER report therefore accounts selectively for the EU's balance sheet assets, by counting only property and assets available for sale, which make up €22.5 billion of the EU's total listed assets of €154 billion. It also excludes the UK rebate.

33. **The range of values in circulation for the UK's potential 'exit bill' indicates that the absolute sum of any posited settlement is hugely speculative. Almost every element is subject to interpretation.**

Calculating the value of the UK's current contribution

34. A key issue in reaching a figure for the EU's potential demand following Brexit is the UK's 'share' of the EU budget, which is itself not a fixed sum. The amount of the UK contribution varies from year to year, depending on currency fluctuations,[31] spending commitments, own resources and VAT receipts, and the relative size of Member States' GNIs. It can also be measured as a gross or net figure, either taking account of the UK rebate and receipts from the budget, or not. Table 1 breaks down the UK's contributions in recent years.

Table 1: UK gross contributions to the EU budget (£ million)

Year	2010	2011	2012	2013	2014	2015
Duties and levies	2,945	2,937	2,898	2,926	2,960	3,087
VAT-based contribution	2,253	2,197	2,282	2,154	2,388	2,715
GNI-based contribution	10,819	10,958	11,300	14,312	13,762	13,790
Other income to EU institutions	-18	-17	-39	-15	-3	1
Total	**15,999**	**16,075**	**16,441**	**19,377**	**19,107**	**19,593**

Source: ONS Pink Book 2016, section 9.9

29 Alex Barker, Centre for European Reform, *The €60 billion Brexit bill: How to disentangle Britain from the EU budget*, (February 2017), p 5: http://www.cer.org.uk/sites/default/files/pb_barker_brexit_bill_3feb17.pdf [accessed 21 February 2017]

30 Share of ESIF funds due in 2019 and 2020. Committee's own calculations based on CER report.

31 The exchange rate between the UK and EU is set by the Commission for the coming year on the 31 December of the previous year. Where figures have not been taken directly from evidence or from third sources, we have used these exchange rates to calculate the difference between the two currencies for the relevant year. These exchange rates are published in the Annual accounts of the European Union: and in equivalent previous editions. European Commission, *Consolidated annual accounts of the European Union, Financial Year 2015*, (11 July 2016), p 40: http://ec.europa.eu/budget/library/biblio/documents/2015/EU_AnnualAccounts2015_EN.pdf [accessed 27 February 2017]

35. Professor Begg proposed a figure of 12% for the UK share. This represents an approximate amount for the UK's gross contribution to the budget, once the rebate has been deducted. The CER report used a figure of 12.1% as the average of UK contributions, after the rebate, from 2012 to 2016.[32] Ingeborg Grässle MEP proposed a UK share of 12.5%, calculated by reference to the UK's population as a share of the EU whole. In contrast to the CER report, both Ms Grässle and Richard Ashworth MEP, a member of the European Parliament's Budget Committee, proposed that other figures be used to calculate any UK share of RAL liabilities (5% and 8%, based on different measures of spending) and pensions (4%, 8%, or 12.5%)—issues that are discussed further below. In sum, our witnesses and other experts did not agree on a single, uncontroversial number that might be considered a measure of the UK's 'fair share' across all liabilities.

36. It would also be possible for the EU to take a maximalist view of the UK's current contribution by excluding the rebate. According to Professor Begg, this would leave a gross contribution of approximately 15%.[33] In the 2015 financial year the rebate accounted for £4.9 billion, against a total gross contribution of £19.5 billion[34] (about €25 billion at the time[35]). The EU budget in 2015 allocated €145.3 billion for commitments and the UK's contribution less the rebate was 12.57%.[36] The rebate therefore forms a significant proportion of the UK's receipts. It is an accepted part of the EU budgeting process, being incorporated into the ORD, but its inclusion in any calculation is likely to be a point of negotiation.

37. In addition to the rebate, and the UK's 20% 'collection fee' for levying duties at the external border (worth £772 million in 2015), the UK also receives money in the form of public sector and private sector receipts. At present, public sector funds accrue to the UK mostly through EU programmes such as the Common Agricultural Policy (CAP) and the European Structural and Investment Funds (ESIFs). The ONS reports that, collectively, these EU-funded public sector credits accounted for £4.8 billion in 2014.[37] For 2015, the most recent data available, the ONS accounts list a return to the UK of £3.6 billion from spending programmes, plus £0.8 billion accrued from the administration of duties and levies.

---

32 Alex Barker, Centre for European Reform, *The €60 billion Brexit bill: How to disentangle Britain from the EU budget'*, (February 2017), p 9: http://www.cer.org.uk/sites/default/files/pb_barker_brexit_bill_3feb17.pdf [accessed 21 February 2017]

33 Q 8

34 Office for National Statistics, *UK Balance of Payments, The Pink Book:* (29 July 2016), Section 9.9: https://www.ons.gov.uk/releases/unitedkingdombalanceofpaymentsthepinkbook2016 [accessed 21 February 2017]

35 Conversions, where necessary, use the Commission's exchange rates to the euro calculated at the year end. These can be found in the Annual Accounts of the European Union 2015, p.40. European Commission, *Consolidated annual accounts of the European Union, Financial Year 2015*, (11 July 2016), p 40: http://ec.europa.eu/budget/library/biblio/documents/2015/EU_AnnualAccounts2015_EN.pdf [accessed 27 February 2017]

36 HM Treasury, *European Union Finances 2015,* Cm 9167, (December 2015), p. 13: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483344/EU_finances_2015_final_web_09122015.pdf [accessed 21 February 2017]

37 Office for National Statistics, 'UK Perspectives 2016: The UK contribution to the EU budget', (25 May 2016): http://visual.ons.gov.uk/uk-perspectives-2016-the-uk-contribution-to-the-eu-budget/ [accessed 21 February 2017]. This figure differs slightly from that implied by Table 2, also sourced from ONS figures.

Table 2: UK receipts from the budget (£ million)[38]

Year	2010	2011	2012	2013	2014	2015
Duties (collection costs)	737	735	724	731	741	772
Agriculture	3,498	3,585	2,916	3,075	2,873	2,491
ESIFs	1,400	991	1,023	544	1,317	1,010
Other receipts	93	77	132	81	99	54
Rebate	3,046	3,144	3,110	3,675	4,416	4,913
Total	**8,774**	**8,532**	**7,905**	**8,106**	**9,446**	**9,240**

Source: ONS Pink Book 2016, section 9.9

38. This left the UK's net contribution to the EU institutions—contributions less the rebate and receipts to the UK public sector—at £10.4 billion in 2015, compared to an average balance since 2010 of £9.1 billion per year. However, the ONS figures only count public sector revenue, and not private sector grants (for instance research funding under Horizon 2020, for which €1.4 billion had been awarded to UK organisations by November 2015). The European Commission, by contrast, includes spending disbursed directly to the private sector[39] in its accounts. These numbers are not directly comparable to the ONS data, because they include adjustments to the budget between years.[40] But on this measure, the five-year average of UK net contributions was £7.1 billion per annum.[41] This figure amounts to approximately 5–6 % of the EU budget.[42]

---

38 This table excludes private sector receipts.

39 Although, as Professor Begg commented, "Bizarrely, that includes some of the public sector, such as universities" (Q 1). The distinction is that such funds are awarded on a competitive basis rather than being enveloped. One of the most important sources of private sector receipts is the Framework Programme for Research and Innovation (known in its 2014–2020 iteration as Horizon 2020), which has an overall budget of €74.8 billion (£58.3 billion) according to the HM Treasury report, *European Union Finances 2015*, Cm 9167, (December 2015), p 14: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483344/EU_finances_2015_final_web_09122015.pdf [accessed 28 February 2017]

40 Letter to The Rt Hon Norman Lamb MP from Sir Andrew Dilnot CBE (21 April 2016) and Letter to Sir Andrew Dilnot CBE from Jonathan Athow (21 April 2016) on UK contributions to the European Union: https://www.statisticsauthority.gov.uk/wp-content/uploads/2016/04/Letter-from-Sir-Andrew-Dilnot-to-Norman-Lamb-MP-210416.pdf [accessed 27 February 2017]

41 Letter to The Rt Hon Norman Lamb MP from Sir Andrew Dilnot CBE (21 April 2016) and Letter to Sir Andrew Dilnot CBE from Jonathan Athow (21 April 2016) on UK contributions to the European Union: https://www.statisticsauthority.gov.uk/wp-content/uploads/2016/04/Letter-from-Sir-Andrew-Dilnot-to-Norman-Lamb-MP-210416.pdf [accessed 27 February 2017]

42 European Commission, *EU Budget 2014: Financial report* (2015): http://ec.europa.eu/budget/financialreport/2014/lib/financial_report_2014_en.pdf [accessed 27 February 2017]. Committee's own calculations, based on the EU's *Financial Report 2014*) using the total euro-denominated contributions for 2014 less the rebate and public and private sector spending produces a figure of approximately €7 billion (UK payments after the rebate being €14.1 billion) against total payment appropriations of €139 billion, or 5%. However, this figure fluctuates to a large degree from year to year. 2014 was a year of unusually high receipts from Horizon 2020 in particular, meaning that the net contribution is usually larger.

Table 3: UK Net contributions to the EU budget, including and excluding private sector receipts (£ million)

Year	2010	2011	2012	2013	2014	2015	Average
Contribution including private sector receipts	6,790	6,300	7,500	9,130	5,710	No figure available	**7,086**
Contribution excluding private sector receipts	7,225	7,543	8,536	11,271	9,661	10,353	**9,098**

Source: First row––European Commission, cited in HM Treasury analysis: the long-term economic impact of EU membership and the alternatives, Annex B; second row––ONS Pink Book 2016, section 9.9

39. It is worth underlining one final point: EU spending is not hypothecated, which is to say that revenue from particular taxes is not ring-fenced for application to associated areas of spending. This means that determining an amount that the UK could potentially 'pay in' to maintain access to particular programmes such as Horizon 2020—the approach suggested by the Prime Minister in her speech in January—is not straightforward.

40. **The total UK contributions to and receipts from the EU budget are variable, difficult to calculate, and subject to interpretation. It is therefore difficult to reach an unequivocal figure for the UK's current commitments. This has ramifications for attempts to determine the costs or benefits of disentangling from current financial commitments. Nonetheless, on average, the UK's net contribution in recent years has been around £7.1 billion when receipts to the private sector are taken into account.**

41. **Various figures have been suggested for the UK's 'share' of the EU budget that could be used to determine a share of EU liabilities. This could be based on the UK's average gross contribution (around 15% of EU revenues), that same contribution minus the rebate (12%), the net contribution taking into account public sector receipts (8%), or taking into account private sector receipts (5–6%). It has also been suggested that the 'share' be calculated on the basis of the UK's population, as a proportion of the EU total (12.5%). The percentage to be used is likely itself to be a matter for negotiation, and different figures could be adopted depending on the precise liabilities (or assets) under discussion.**

Currently committed spending

The MFF

42. The UK is currently scheduled to make further payments to the EU, in accordance with the provisions of the ORD, in order to meet spending set out under the MFF. Were the UK to continue to pay into the MFF up to the end of 2020, it would remain a net contributor, but might also expect to receive continuing benefits. The EU might also make the case that the UK should continue to fulfil the commitments that have been made up until 2020, regardless of whether it enjoys the benefits of membership.

43. The UK currently receives significant disbursements, and Professor Begg commented that "if we were still paying in, I would expect the counterpart to that to be continuing to receive on the same basis".[43] As we have discussed, the net figure of the UK's contribution is contingent, but the five-year average cited in Table 3 suggests a net figure of about £7.1 billion per year. Assuming that receipts from the EU to the public and private sector continued until the end of 2020, alongside UK payments into the EU budget, the net cost would be around £12.4 billion, for the 21 months between 1 April 2019 and 31 December 2020.[44] This also assumes that that the UK will meet liabilities that fall due during this period in the normal way: it does not take into account any extra liabilities that might be claimed.

44. The Government's White Paper repeats commitments to certain UK beneficiaries made by the Chancellor of the Exchequer, to maintain equivalent levels of spending in particular funding categories, such as ESIF and CAP funding, through to 2020.[45] This guarantee applies to all UK ESIF projects agreed before the 2016 Autumn Statement (and some agreed thereafter). HM Treasury has also guaranteed that funding under the CAP will be matched until the end of the MFF in 2020. In the years 2018/2019 and 2019/2020 HM Treasury predicts that this will amount to £3.3 billion and £3.5 billion respectively.[46]

45. It is impossible to calculate what would be the net cost of remaining in the MFF until 2020 without an accurate comparison of expected receipts from the EU budget and those that the Government would match domestically if the UK withdrew from the budget at the point of Brexit. The figure of £12.4 billion discussed above, based on the UK's average net contribution in recent years, would represent the net cost only if the Government were to fund every penny of the expected receipts in this second scenario in which it did not contribute to the EU budget. The Government has provided guarantees for most, but not all, of these receipts. The gap between a possible gross payment to the EU, and payments that will be made regardless is therefore likely to be higher than the £12.4 billion figure. Without knowing precisely how much the Government will guarantee domestically it is impossible to predict the size of this gap.

46. Jens Geier MEP, Vice-Chair of the European Parliament's Budget Committee, suggested that the other EU Member States might be anticipating that the UK would not continue paying towards the MFF post-Brexit, and referred to a proposal by the German Finance Minister, Wolfgang Schäuble: "The German proposal is that we would have a new MFF. That would make it necessary to start negotiating a new MFF in 2018, which will be in place at the moment the UK stops its payments." This would involve renegotiating payment commitments in line with an anticipated drop in resources. As he presented it, the alternative was "to cope with the MFF as it is until it is

43 Q 1
44 This is calculated from the expected date of Brexit—the end of March 2019—to the end of 2020. The UK's average annual net contribution of £7.1 billion, calculated over 21 months, comes to £12.4 billion.
45 HM Government, *The United Kingdom's exit from and new partnership with the European Union,* Cm 9417, (February 2017), p 12: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 21 February 2017]
46 HM Treasury, *European Union Finances 2015,* Cm 9167, (December 2015), p 18: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483344/EU_finances_2015_final_web_09122015.pdf [accessed 27 February 2017]

finished on 31 December 2020. That would be the more uncomfortable situation for the 27 Member States left."[47] Mr Geier's comments imply that, in Germany at least, there is an acknowledgement that the commitments made in the MFF may not be legally or politically due.

47. **The EU might demand that the UK continues to contribute to the 2014–20 MFF until its natural conclusion at the end of 2020, regardless of the date of Brexit. Were this demand to be met, this suggests a net cost to the UK, based on its average net contribution, of at least £12.4 billion, assuming other liabilities are not accrued.**

48. **In the event that the UK does not remain part of the MFF the Government has guaranteed some, but not all, receipts from the EU. The Chancellor has stated that "structural and investment funds projects signed before the Autumn Statement and Horizon research funding granted before we leave the EU will be guaranteed by the Treasury after we leave. The government will also match the current level of agricultural funding until 2020, providing certainty to our agricultural community."[48] However, without knowing precisely how much the Government will guarantee domestically it is impossible to arrive at a precise figure.**

Reste à liquider (RAL)

49. RAL contributes a large proportion of the speculative EU demand being discussed. Ingeborg Grässle MEP argued that the UK had "an obligation to pay as-yet-unpaid commitments for the RAL at least until [it leaves] the European Union".[49] In her view there was "also an obligation that covers the rest of the MFF period".[50] The Commission forecasts that RAL will amount to €254 billion[51] in total by the end of 2020.

50. A claim based on RAL may be particularly attractive to European negotiators, because it represents future payments for commitments already made, to which the UK has been a party. Nevertheless, accounting for the total amount of RAL, let alone any potential share that could be attributed to the UK, is not straightforward.

51. The payments of RAL sit within the spending limit set over the term of the MFF, allowing the Member States to carry forward spending commitments ahead of their disbursement as payments.[52] However, some commitments are settled beyond the term of the relevant MFF, as Professor Begg noted:

> "In particular, cohesion policy is allowed a rule of what is called N+3. For example, Poland[53] has yet to start most of its cohesion policy

---

47 Q 61

48 HM Treasury, *Chancellor Philip Hammond guarantees EU funding beyond date UK leaves the EU*, (13 August 2016): https://www.gov.uk/government/news/chancellor-philip-hammond-guarantees-eu-funding-beyond-date-uk-leaves-the-eu [accessed 28 February 2017]

49 Q 49

50 *Ibid.*

51 Commission staff working document accompanying Mid-term review/revision of the multiannual financial framework 2014–2020, An EU budget focused on results, COM (2016) 603 final

52 HC Deb 2 June 2016, House of Commons, Session 2016–17, Written Answer 38264

53 The largest recipient of commitment allocations: European Parliamentary Research Service, 'Structural and Cohesion Funds in the Member States: an overview', (7 April 2014), http://www.europarl.europa.eu/EPRS/EPRS-At_a_glance-CFinMS_SS_GS.pdf [accessed 21 February 2017]

programmes, even though they are for 2014 to 2020. It can still present bills up to 2023, using the N+3 rule."[54]

52. Some of the current RAL commitments date back further even than the N+3 rule would suggest, from the period before the 2007–2013 MFF.[55] Published EU data only go back nine years, but indicate that in 2015 (when total RAL was €217.1 billion) the pre-2007 share of the RAL's maturation structure was €2.1 billion.[56] Thus even by 2023, not all of the current RAL may be cleared. Dr Giacomo Benedetto, Senior Lecturer in the Department of Politics and International Relations at Royal Holloway, University of London, reflecting on comments made by the German Finance Minister, stated: "There is this lag [in liabilities] that, apparently, if we are to believe Wolfgang Schäuble, could go on until 2030."[57]

53. The amount of RAL varies somewhat unpredictably over time. Richard Ashworth MEP cited the current RAL liability as €237.5 billion,[58] but Ms Grässle noted the Commission's forecast that it was due to rise to €254 billion by 2020.[59] For 2017, the gap between commitment appropriations and payments was €22.7 billion, with payment appropriations totalling €134 billion.[60] Over the term of an MFF, RAL is accumulated slowly before reaching a maximum in the last stages of a programming period. It is then disbursed over the N+3 period as commitments are paid out.

54. Mr Ashworth stated that the amount of RAL was difficult to predict, because it was "a projection budget … dependent on the Member States wishing to sign up to the project that has been undertaken, wishing to fulfil it, wishing to make their own financial part-contribution towards it".[61] In consequence, some anticipated commitments may never be converted into payments, being instead 'decommitted'. The decommitment amount was €3.8 billion for 2015, and the Commission anticipates an overall rate of about 2% based on the previous period. This means that the current projection for the size of the RAL to 2020—€254 billion—may never fully materialise as a liability, although most of it will.

55. Determining what any UK share of RAL might be is equally challenging, although the UK's average post-rebate contribution to the EU budget is around 12%. Most ESIFs, and almost all CAP spending, are pre-allocated to Member States at the beginning of the MFF period (other forms of spending—in particular on research—are by contrast allocated on a competitive basis over the term of the MFF, with the allocations to individual Member States unknown in advance).[62] The spending pre-committed to the UK was €39.6

---

54 Q 1

55 Communication from Michel Barnier to the European Commission, *Application of the "n+2" rule under article 31.2 of Regulation 1260/1999*: http://ec.europa.eu/regional_policy/sources/docoffic/working/doc/c_2002_1942_en.pdf [accessed 27 February 2017] This is partly because the initial decommitment rule ('N+2') was only introduced in 2002

56 European Commission, *Report on budgetary and financial management: Financial Year 2015*, p 25: http://ec.europa.eu/budget/library/biblio/documents/2015/2015_report_budgetary_financialmanagement.pdf [accessed 27 February 2017]

57 Q 3

58 Q 55

59 Q 49

60 Draft General budget of the European Union for the financial year 2017: General statement of revenue, COM(2016) 300

61 Q 55

62 Institute for Fiscal Studies, *The budget of the European Union: a guide*, (April 2016): https://www.ifs.org.uk/uploads/publications/bns/BN181.pdf [accessed 21 February 2017]

billion over the term of the MFF (out of a total of €767.3 billion for the EU-28). This produces a UK share of the allocations of 5.1%.

56. As the RAL is largely comprised of these pre-commitments, Ms Grässle felt that it would be fair for the UK to contribute around 5%, in line with its expected pre-committed receipts, although she also mentioned that "12.5% is the maximum share of this obligation … there is room for negotiation".[63]

57. Mr Ashworth calculated the UK's potential share of the RAL at approximately 8%.[64] This figure represents a very rough estimate of the UK's "net cost of contribution" to the budget as a whole (less both the rebate and an approximation of receipts), based on HM Treasury data for 2014.[65] This net contribution for 2014 was £9.8 billion, minus receipts to the private sector of approximately £1.4 billion.[66]

58. Mr Ashworth, however, suggested that even his own approximation of the UK's share was problematic: "It is far too simplistic to divide €237.5 billion [the current stock of RAL] by 8% and say that is the figure you owe." This was because "it is almost impossible to determine how much of that would have come back to the United Kingdom", rather than being returned to other international contractors.[67]

59. Any liability for RAL needs to be seen in the context of forecast UK receipts. In particular, Ms Grässle's proposition overlaps with the Chancellor's commitment to fund domestically a large proportion of the receipts expected from the EU if the UK's receipts from the EU budget cease before the end of 2020. In total, 70.1% of the MFF's commitment appropriations are pre-committed—€767 billion—with 5.1% of the total going to the UK (€39.6 billion). However, the UK would face an additional contribution if it were to fund the RAL in line with its gross share of total budgetary contributions, (15%, or 12% less the rebate) rather than in accordance with pre-allocated receipts (5%). This could therefore amount to a difference of between 7% and 10% depending on how the share of any UK liability were calculated.

60. **Assessing any UK liability for *reste à liquider* (RAL) amounts is complicated by uncertainty over the extent of RAL. The Commission's current forecast is for RAL to amount to €254 billion by the end of 2020, but this assumes that none of that amount will be decommitted in the meantime.**

61. **If a UK liability for RAL were to be agreed within the Brexit negotiations, it may be liable for a share of RAL up to 2023 or beyond. The precise point at which any UK RAL liability is calculated would have an impact on the amount, as the extent of RAL depends on the sequencing of commitments and payments. The EU's starting point for negotiation could be the total accumulated RAL at the point at which the UK ceases to make payments to the budget.**

63 Q 49

64 Q 55

65 HM Treasury, *European Union Finances 2015,* Cm 9167, (December 2015): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483344/EU_finances_2015_final_web_09122015.pdf [accessed 21 February 2017]

66 *Ibid.*, pp 13–14. These figures differ somewhat from those included in Table 3 due to different sources and calculation methods.

67 Q 55.

62. **If it were argued that the UK were liable for a share of RAL, using the Commission's forecast for 2020 and the maximum assessment of the UK's share as 15%, the total liability could amount to some €38.1 billion. But this is based on the largest possible assessment of RAL and does not take into account the rebate or any expected receipts from RAL. Given the difficulties in establishing a figure for RAL and the various options for assessing any UK 'share', this figure is extremely tentative.**

Pensions

63. Pension entitlements for retired EU staff are a liability of the EU institutions to their employees, and are guaranteed by Member States. They are paid out of the annual budget, while existing staff contribute a sufficient proportion of their salary (currently 9.25%)[68] to fund one third of the costs of the scheme. These contributions are not invested in a separate fund, but are ploughed back into the annual budget. This has been referred to as a 'pay as you go' system. A number of our witnesses proposed various ways to approximate a potential UK share of pensions, which do not necessarily tally with proposed methods of calculating its share of the rest of the budget. Others questioned the assumption that the UK should be liable for a share of pension liabilities beyond the date when the UK ceases to be a member of the EU.

64. The UK's potential liability for EU pensions has garnered some attention in recent months—though Mr Ashworth argued that pensions "will have a disproportionate amount of press to the actual size of the liability, and I suspect at the end of the day there are quite a lot of grey areas".[69] He argued that pensions should be "split off" as a separate budgetary issue.[70]

65. Mr Ashworth gave us figures for the UK share of employment in the institutions over the years. He noted that, as the EU has enlarged, this share has changed: "Historically, the [UK] contribution to the European Union general budget was of the order of 15% … at the highest level of employment of UK nationals, [the UK was] at 8%. Currently, [the UK is] at 4%."[71] Therefore, in his view, "There would be very good grounds for the United Kingdom to say, 'Hold on a minute. We have over-contributed over the years.'" On the other hand, he cautioned:

> "The European Union institutions have a very strong case for saying, 'Come on, these are your people. There are about 1,800 people, going right back to the coal and steel days, who are dependent for their pensions on the European Union. You always contributed through the European Union budget, so you need to continue to meet that or take those people back under your own wing.'"[72]

66. Ms Grässle believed that a figure either of 4% or of 12.5% could potentially be used to derive a pensions liability for the UK. These numbers refer to the 4% of EU officials who are UK nationals, and the UK's 12.5% share of the EU's population: "It depends on how you attack the question, but

68 European Commission, *Staff Regulations of Officials of the European Communities*, (1 May 2004): http://ec.europa.eu/civil_service/docs/toc100_en.pdf [accessed 21 February 2017]

69 Q 56

70 *Ibid.*

71 Q 3. Professor Begg also suggested a figure of 8%, although based on the proportion of those in receipt of an EU pension who were UK nationals.

72 Q 56

this means that there is room for negotiation."[73] In her view, the UK had a moral obligation to contribute towards pensions: as officials had paid into the budget as part of their pension entitlement, during its membership the UK "had plenty of money from their pension fund … It would be fair to pay at least this money back, plus, perhaps, the money for the UK officials." She put the number of these British former employees who receive a pension at around 1,000.[74]

67. Professor Begg noted that the EU accounts included a figure for the capitalisation of the long-term pension commitments;[75] Ms Grässle made a similar point, noting that "there is accrual accounting for all pension liabilities".[76] The current figure for this total EU liability is €63.8 billion;[77] according to Ms Grässle's calculations, possible UK shares of this might be between €2.5 billion and €7.9 billion.

68. However, one of our witnesses, Dr Zsolt Darvas, Senior Fellow at Bruegel, has co-authored a report that questions the validity of the calculation producing the €63.8 billion capitalisation.[78] He and his co-authors argue that the UK should omit the one-third contributed by officials, and furthermore that the "reasonable" value of the pension liabilities is €43.1 billion instead of €63.8 billion. Two thirds of this lower liability is approximately €29 billion.[79] Although Professor Begg thought that "the liability could be capitalised" he suggested that "the cash flow on it could be spread over several years. It could be a lingering bill for 20 years." As we suggest later, there may not be a legal liability for pensions at all.

69. **The current total capitalised EU pension liability is recorded as €63.8 billion. If the UK were to accept a liability for any of this, our witnesses suggested that its share could be calculated by reference to the UK's average contribution to the EU budget (between 8% and 15%), the proportion of those currently serving in EU institutions who are UK nationals (4%), or the proportion of those in receipt of an EU pension who are UK nationals (8%). The total liability on this basis would be likely to come to between €2.5 billion and €9.6 billion. However, an accurate assessment of any potential liability could involve a complex actuarial calculation of pension rights accrued by those serving in the EU institutions while the UK was a member, whether UK nationals or not. Negotiations may also encompass a figure for capitalised pension liabilities that is in practice substantially lower than €63.8 billion.**

EU assets

70. The EU has a range of assets. They total €153.7 billion, and include property, equipment, loans and investments, and cash and other fungible assets. The

73 Q 47
74 Q 47
75 Q 4
76 Q 47
77 European Commission, *Consolidated annual accounts of the European Union, Financial Year 2015*, (11 July 2016), p 32: http://ec.europa.eu/budget/library/biblio/documents/2015/EU_AnnualAccounts2015_EN.pdf [accessed 27 February 2017]
78 Zsolt Darvas et al, 'The Brexit bill: uncertainties in the estimate of EU pension and sickness insurance liabilities', *Bruegel* (17 February 2017): http://bruegel.org/2017/02/the-brexit-bill-uncertainties-in-the-estimate-of-eu-pension-and-sickness-insurance-liabilities/ [accessed 27 February 2017]
79 The lower 'reasonable' number is a function of the Commission's use of different discount rates in the employee contribution rate calculations and the EU balance sheet calculations, which in the view of the Bruegel article overstates the actuarial cost.

biggest elements of the EU's assets are loans (37%) pre-financing and other advances to Member States held in anticipation of issuing payments under the MFF (32%), and cash and equivalents (14%).[80] Any agreement on apportioning assets would need to take account of their varied composition.

71. An article co-authored for Bruegel by Dr Darvas, attempts to account for the divisibility of the EU's assets. The article states that €41 billion of balance sheet assets constitute 'accumulated wealth', which could potentially be apportioned, including cash (€21.7 billion), property (€8.7 billion), available-for-sale financial assets (€9.6 billion), and other assets (€1 billion).[81] Dividing financial assets is largely an accounting exercise, which may make it potentially easier for the UK to include asset offsets in any negotiations over payments. The CER report, however, envisages only the property, and an expanded category of assets available for sale (€13.6 billion), being divisible.[82]

72. In the case of financial assets, contingent liabilities—primarily in the form of loans, which amount to €57 billion[83]—are particularly problematic, in that they are counted on the EU's balance sheet as assets, but are also potential liabilities. As the Bruegel article notes, such loans do not constitute 'net wealth', because they are matched by EU borrowing.[84] Nonetheless, the CER report comments that the UK may be asked to provide some kind of capital backstop in relation to its budget share, in anticipation of eventual (but not guaranteed) returns. It considers that this scenario "is perhaps the most implausible, but may nonetheless be the Commission's starting point in talks".[85] The Bruegel article argues that if EU borrowing is considered a liability that should be apportioned, then the corresponding loans should be considered an asset.

73. The Bruegel article notes that pre-financing (€45 billion) is likewise not a divisible asset, but argues that it should be considered in any negotiations over offsetting.[86] In the case of pre-financed projects, commitments are already matched by payments and are therefore not included in the RAL. Pre-financing is considered an asset, as a proportion of it will be returned if unused. The UK has, by definition, already provided the required resources for its share of pre-financed commitments. Therefore, if it were divided on

80 European Commission, *Annual consolidated accounts of the European Union, Financial Year 2015*, (11 July 2016), p 14: http://ec.europa.eu/budget/library/biblio/documents/2015/EU_AnnualAccounts2015_EN.pdf [accessed 21 February 2017]

81 Zsolt Darvas et al., 'The UK's Brexit bill: could EU assets partially offset liabilities?', *Bruegel* (14 February 2017): http://bruegel.org/2017/02/the-uks-brexit-bill-could-eu-assets-partially-offset-liabilities/ [accessed 21 February 2017]

82 Alex Barker, Centre for European Reform, *The €60 billion Brexit bill: How to disentangle Britain from the EU budget*, (February 2017), p 9: http://www.cer.org.uk/sites/default/files/pb_barker_brexit_bill_3feb17.pdf [accessed 28 February 2017]

83 European Commission, *Annual consolidated accounts of the European Union, Financial Year 2015*, (11 July 2016), p 32: http://ec.europa.eu/budget/library/biblio/documents/2015/EU_AnnualAccounts2015_EN.pdf [accessed 21 February 2017]

84 Zsolt Darvas et al., 'The UK's Brexit bill: could EU assets partially offset liabilities?', *Bruegel* (14 February 2017): http://bruegel.org/2017/02/the-uks-brexit-bill-could-eu-assets-partially-offset-liabilities/ [accessed 21 February 2017]

85 Alex Barker, Centre for European Reform, *The €60 billion Brexit bill: How to disentangle Britain from the EU budget*, (February 2017), p 8: http://www.cer.org.uk/sites/default/files/pb_barker_brexit_bill_3feb17.pdf [accessed 21 February 2017]

86 Zsolt Darvas et al., 'The UK's Brexit bill: could EU assets partially offset liabilities?', *Bruegel* (14 February 2017): http://bruegel.org/2017/02/the-uks-brexit-bill-could-eu-assets-partially-offset-liabilities/ [accessed 21 February 2017]

an equivalent basis "EU pre-financing would offset a small part of the UK's share of future commitments."[87]

74. Only 6% of the EU's assets are held as property. These property assets are recorded at historic cost value, minus accumulated depreciation (with the exception of land and artworks, which are deemed to have an indefinite useful life).[88] As a result, the current market value of the EU's property holdings is probably significantly larger than their book value.

75. There was some disagreement among our witnesses about what proportion of property was owned or rented: Mr Ashworth stated that "the assets in terms of buildings in Luxembourg, Brussels and Strasbourg are worth €9 billion. The policy is to own those buildings".[89] By contrast, Dr María-Luisa Sánchez-Barrueco, Senior Lecturer in EU Law at the Deusto Law School, University of Deusto in Bilbao, Spain, said that most buildings were rented or leased, and the recent trend was towards purchasing institutional buildings through emphyteusis (a lease with an option to purchase).[90] Jonathan Arnott MEP, a member of the European Parliament's Budget and Budgetary Control Committees, noted that while EU assets had been "described in the tabloid press under headlines such as 'Give us wine, art and property'",[91] in reality these formed a relatively small proportion of the total.

76. Our witnesses were split on the question of whether, or how, such assets might be divided. For accounting purposes, assets and liabilities are considered together. In this vein, Ms Grässle's calculations net the UK's potential share of EU assets against its share of EU liabilities in suggesting a possible contribution. These calculations fully incorporate the EU's balance sheet assets (€153.7 billion), regardless of their composition.

77. On a political level, some witnesses felt that assets should be considered as part of any settlement. Dr Darvas stated:

> "Since the UK paid in for more than 40 years and the UK was a net payer to the European Union budget, I expect that some of these assets will be [apportioned]. The big question is what the guiding principle should be".[92]

He argued that the UK differed from net recipient states, such as Greece, which would not "have the same claim", and concluded that a potential UK share of assets could be higher than 12%.

78. On the other side of the argument, Dr Sánchez-Barrueco commented that "no additional contribution was requested from the UK to cover a share of the assets already owned by the European Union".[93] In other words, at no point did the UK (or any other acceding Member State) explicitly 'buy into' the assets of the EU. The corollary of this point, she stated, was that

87 Zsolt Darvas et al., 'The UK's Brexit bill: could EU assets partially offset liabilities?', *Bruegel* (14 February 2017): http://bruegel.org/2017/02/the-uks-brexit-bill-could-eu-assets-partially-offset-liabilities/ [accessed 27 February 2017]

88 European Commission, *Consolidated annual accounts of the European Union, Financial Year 2014*, (23 July 2015), p 40: http://ec.europa.eu/budget/library/biblio/documents/2014/2014%20EU%20Annual%20Accounts.pdf [accessed 27 February 2017]

89 Q 57

90 Q 30

91 Q 70

92 Q 41

93 Q 29

"no acceding member so far has benefited from a reduction in its budget contribution", to take account of accrued liabilities such as pension costs.[94]

79. Jonathan Arnott MEP ultimately concluded that invoking a UK claim on the EU's assets might be futile, if not counterproductive. He observed that the EU's liabilities totalled €226 billion, significantly more than the sum of its assets. Therefore, any initial attempt to claim assets could undermine the UK's attempt to minimise or obviate liabilities. Nonetheless, he believed that it could be a valid strategy, if the EU were to ask the UK take on a share of EU liabilities: "The first thing that we would mention in a response is the assets, I would hope."[95]

80. **The UK may or may not have a claim against EU assets. However, the EU's assets are less than its liabilities, and therefore are likely only to come into play in the event that the UK is willing to accept responsibility for contributing to the budget post-Brexit. The EU's assets total €154 billion: the theoretical maximum the UK could claim would be €23.1 billion, using 15% as the relevant 'share'. This share is likely to be hotly contested by the EU.**

The European Investment Bank

81. The UK's position with respect to the European Investment Bank (EIB) gives rise to related but separate issues, as it involves a stakeholder share. It might be assumed that if the UK leaves the EIB, it will be paid at least for its stake.

82. Professor Begg stated that "the overall subscribed capital of the EIB is €232 billion … of which 16.1% is British".[96] Shareholdings were calculated according to relative economic size at the time of accession, and the UK is one of the four biggest shareholders (along with Germany, Italy, and France). Professor Begg went on to state that "only about 5% or 6% of that is called up". He therefore thought that "16.1% of 6% of €232 billion" would "represent the British amount".[97]

83. The data published by the EIB in its Financial Report 2015[98] list overall subscribed capital of €243.3 billion, of which €21.7 billion was called up as of December 2015. The UK's contribution to the called up capital is €3.5 billion.[99] It is likely that the UK would claim its called up capital in the event that it ceased to be a shareholder of the EIB. However, a more useful measure of the EIB's assets may be the listing of own funds (its equity), which includes reserves, and profits for the financial year. This amounted to €63.3 billion in 2015. A 16.1% stake of this sum, were it to be put into play, amounts to €10.1 billion.

84. The EIB Statute, echoing the words of the Treaties, declares that "the Bank's members shall be the Member States" (Article 3), and therefore the default position would be for the UK to leave the EIB upon Brexit, unless the other Member States decided (by unanimity) to amend the Statute and

94 Q 28
95 Q 70
96 Q 6
97 *Ibid.*
98 European Investment Bank, *2015 Financial Report*, (29 April 2016): http://www.eib.org/infocentre/publications/all/financial-report-2015.htm [accessed 28 February 2017]
99 *Ibid.*p 47

the Treaties to allow the UK to retain membership. Dr Jorge Núñez Ferrer, Senior Research Fellow at the Centre for European Policy Studies (CEPS), mused: "Could we open the door to a more regional model? We could to some extent, also allowing Iceland or Norway to join would be good for the EIB. Why not?"[100] Retaining the UK stake could be the more financially straightforward option, although it would be politically and legally more complex.

85. Professor Begg stated that, from the UK perspective, "it may be of interest simply to leave [the UK's stake] as an investment that generates a rate of return",[101] and in order to help retain access to EIB financing for infrastructure projects. The UK is a significant recipient of EIB funds: in the last three years, £16 billion was invested directly in the UK by the EIB.[102] While the EIB does lend to non-EU countries, 90% of its funds are spent within the EU.[103]

86. **The Statute of the European Investment Bank, and the Treaties, state that its members are limited to EU Member States. Unless the 27 remaining Member States were to agree unanimously to amend this rule the UK would have to leave the EIB upon Brexit, losing access to around £5 billion per year in financing. The UK might expect its €3.5 billion in called up capital to be returned if it ceased to be a shareholder. Based on the current net worth of the EIB, the UK may be due a share of equity in the region of €10 billion.**

The figures

87. The discussion throughout this chapter illustrates the fact that, even if it were to be accepted that the UK had any financial liability on leaving the EU, no single figure can incontrovertibly represent an amount that the UK might be requested to pay. As Professor Begg stated: "It can be done only on the back of an envelope."[104] Nonetheless, our witnesses suggested a range of numbers across several headings that indicate the possibilities. We have calculated and summarised the absolute amounts associated with their evidence. Where this evidence was insufficient to reach a determination, we have made reference to publicly available reports, such as those published by CER and Bruegel.

88. On the side of liabilities, we heard from a variety of witnesses with different views. Some felt that the UK might be asked to pay towards the MFF after leaving: at rates that reflected measures of the current UK contribution (gross, gross minus the rebate, net of public sector receipts, and net of private sector receipts, or 15%, 12%, 8% and 5% respectively). Under the MFF headings, there are €296 billion in outstanding payment appropriations for the 21 months between April 2019 and the end of 2020.[105] Dividing this produces values of €44.4 billion, €35.5 billion, €23.7 billion and €14.8 billion.

100 Q 46
101 Q 6
102 Q 46
103 House of Commons Energy and Climate Change Committee, *The Energy Revolution and future challenges for UK energy and climate change policy* (Third Report, Session 2016–17, HC 705), p 41
104 Q 3
105 European Commission: 'Budget; Multiannual Financial Framework' (September 2016): http://ec.europa.eu/budget/mff/index_en.cfm [accessed 28 February 2017]

89. The upper range of these estimations is unlikely to be demanded or conceded, not least because it relies on the UK's gross contribution to apportion liabilities. Furthermore, Alex Barker, the author of the CER report, took the view that the whole MFF would not in any case be included, but rather only expenditure covered by the Common Provisions Regulation (principally ESIFs), which would imply that any share could be instead be determined as a proportion of pre-allocated funds (€767 billion for 2014–20, or approximately €191.8 billion over 21 months). Ingeborg Grässle MEP omitted the MFF from her calculations entirely, giving weight to any claims that the potential liabilities under this heading could be zero.

90. For RAL, we heard from witnesses that the share could be 5% (the UK proportion of allocated pre-financing under the current MFF), 8% or 12% (the UK contribution less the rebate, and less public sector receipts), 12.5% (the UK's share of the EU population) or 15% (the gross contribution). The EU's estimation of the stock of RAL at the end of 2020 is €254 billion. Using our witnesses' suggested shares gives numbers of €12.7 billion, €20.3 billion, €30.5 billion, €31.8 billion and €38.1 billion. Again, the largest of these approximations is unlikely; the smallest is worked out on the basis of an apportionment that is unusual with respect to the other financial headings.

91. For pensions, UK shares were mooted in line with the current proportion of the EU's staff who are UK nationals (4%), the proportion of UK claimants amongst current pensioners (8%), the UK's share of the population (12.5%) or the UK's gross contribution (15%). We used the total pensions capitalisation included in the 2015 Annual Accounts of €63.8 billion, while noting Dr Darvas' opinion that a "reasonable" number could be significantly lower.[106] Using the EU's total produces numbers of €2.5 billion, €5.1 billion, €8.0 and €9.6 billion. Taking Dr Darvas' total "reasonable" sum of €29 billion as the numerator, by contrast, gives a range from €1.2–4.4 billion. As pensions are paid out from the EU budget, any attempt to apportion them nationally will be the subject of negotiations.

92. In the case of assets, few witnesses made explicit statements about what a UK share might entail, or which assets could be included for accounting purposes. €153.7 billion is the total sum of balance sheet assets. This was included by Ingeborg Grässle MEP in her calculations as an offset against total budget liabilities (€162.3 billion excluding pensions), but as explained above, she was the only witness to include the balance sheet liabilities in this way, as many of the items are not obviously divisible. On this basis, we conclude that the full sum of assets may only be a valid consideration only where all balance sheet liabilities were also included (leaving a share of negative €8.6 billion). Dividing this figure in line with Ms Grässle's proposed share (12.5%) gives a net figure of negative €1.1 billion.

93. However, not all assets are necessarily divisible, and nor—for legal and political reasons—are they likely to be included *en bloc* in negotiations. Therefore, we have identified a range of estimates from external sources: a sum of €22.5 billion in divisible assets is quoted in the CER report, consisting of property and assets available for sale; €41 billion is quoted in the Bruegel article by Dr Darvas and his co-authors, representing 'accumulated wealth'. Similarly a figure of €86.2 billion may be derived from the Bruegel

106 Zsolt Darvas et al., 'The UK's Brexit bill: could EU assets partially offset liabilities?', *Bruegel* (14 February 2017): http://bruegel.org/2017/02/the-uks-brexit-bill-could-eu-assets-partially-offset-liabilities/ [accessed 21 February 2017]

article by adding to the 'accumulated wealth' their figure for pre-financing (€45.2 billion). Bruegel notes, though, that the status of this is "ambiguous. Some of it may essentially 'pre-cover' part of the UK's liabilities for future expenditures agreed while it was still a member".[107] This would suggest that any incorporation of this amount would be as an offset towards liabilities.

94. We calculated the proportion of each of these categories of EU assets according to the UK's current gross contribution and contribution less the rebate, in the absence of any specific suggestion by witnesses as to an appropriate share. This produces a minimum estimate of €2.7 billion (12% of €22.5 billion) and a maximum of €12.9 billion (15% of €86.2 billion). These calculations are purely arithmetic, and may not reflect the nature of political and legal negotiations over assets.

95. In sum, depending on which financial headings are included and on what basis, the range of possible demands is wide. Producing what might be thought of as a 'best case scenario' for the UK on this basis involves omitting all contested areas of spending (namely the MFF and balance sheet liabilities). Such an estimation produces a figure of €15.2 billion for RAL and pensions at the lowest shares suggested by our witnesses (5% and 4% respectively). It may also be possible to offset this yet further with a share of assets, although if minimalist figures are used for liabilities, it is not likely that a 15% share would be the determinant of such a number, nor that a large proportion of assets would be considered.

96. At the opposite end of the scale, generating a maximalist demand would imply taking an expansive view of the UK's current contributions and therefore dividing by the gross figure (15%). It should be noted that Professor Begg was the only one of our witnesses explicitly to identify 15% as a possible denominator;[108] most other witnesses used some variety of net figure. Depending on which liabilities and assets are included on this basis, it is possible to produce numbers that match, or indeed exceed, the €60 billion attributed to Mr Barnier.

97. **It is possible to arrive at various, widely ranging, figures for any EU claim against the UK. This is not least the case because our witnesses disagreed over which categories of assets and liabilities might be included in any potential demands. If only RAL and pensions were included, at the minimum suggested level of contribution, the total sum would be approximately €15 billion; if gross contributions were used as the determinant and both the MFF to 2020 and budget liabilities were included, the total that is produced by the EU could be even larger than the oft-quoted figure of €60 billion.**

107 Zsolt Darvas et al., 'The UK's Brexit bill: could EU assets partially offset liabilities?', *Bruegel* (14 February 2017): http://bruegel.org/2017/02/the-uks-brexit-bill-could-eu-assets-partially-offset-liabilities/ [accessed 21 February 2017]

108 Q 3

CHAPTER 4: THE UK'S LEGAL OBLIGATIONS

What are the UK's obligations?

98. The preceding chapter described the elements that might contribute to the EU's possible financial demands on the UK. But the force of any demand by the EU will depend on whether or not the UK, in the absence of a negotiated deal, is under any obligation to pay. Such an obligation could be political, moral or legal. But, at base, the UK's legal obligations will represent its starting point for negotiations.

99. In addressing these issues, we have benefited from the academic and political expertise of our witnesses, but particularly from evidence provided by three legal experts: Dr Maria-Luisa Sánchez-Barrueco, Rhodri Thompson QC and Professor Takis Tridimas. Given the differences between them we put their evidence to the Legal Adviser to the European Union Committee, and his opinion is published in full as an appendix to this report. Our assessment of the legal position draws heavily upon his analysis, as well as that of Dr Sánchez-Barrueco.

100. The elements of any bill, as well as being very difficult to calculate, may also engage differing legal considerations. Set against this, possible UK receipts following withdrawal—in particular any claim on the EU's assets and already-agreed funding commitments—will also be subject to legal interpretation. We have therefore sought to establish, with as much legal certainty as possible, the areas of expenditure where the UK may be legally obliged to pay whatever sum is agreed.

101. Professor Begg and Dr Benedetto set out some of the over-arching considerations. Professor Begg said that it was an "open question as to whether Britain remains liable for the entirety of that Multiannual Financial Framework even if it leaves before the financial framework is complete." He thought it would be a subject for negotiation.[109]

102. Dr Benedetto said that it was a question of seeking the correct legal analysis, and noted that the MFF could be amended—by unanimity—to take account of the UK's withdrawal, in the same way as happened for accessions. He also noted that that MFF was a legal text agreed by the EU institutions. It was not part of the EU's constitution, and the Treaties had a "higher status than the financial regulation or the MFF."[110]

103. Dr Benedetto also suggested that the question was wider than the status of the MFF, in that many areas of expenditure were subject to individual contracts between the EU and a recipient. Professor Begg gave the example of a Horizon 2020-funded research project: "There is a legally binding document that is signed."[111] Dr Benedetto added that there was a separate legal decision taken at the point at which any expenditure programme—for instance Horizon 2020 or cohesion funding—was put into effect:

> "There is a legal act passed by the European Union that governs each and every one of these different funds. Among other things, that also guarantees an end point, because all these funds expire at the end of

109 Q 1
110 Q 2
111 Q 7

2020—at least, the commitments for them do; payments will follow later. There is a level of guarantee, not only in the MFF but in the legal spending decisions that are taken for each of the constituent funds."[112]

The view from Brussels

104. We asked MEPs in Brussels for their views. Though they responded from a political, rather than a legal, perspective, their evidence serves to illustrate some of the current thinking in Brussels on these legal issues.

General obligations

105. Richard Ashworth MEP argued that the signing ceremony—involving the Council and the European Parliament—associated with the agreement of each MFF sent "a clear message … that that is signing a legal document. The Member States are all signing an agreement of what they will participate in for the next seven years." He added that the recipients of funding also entered into agreements lasting seven years. The UK would "still be obligated to those universities, farmers and research institutions"—an obligation acknowledged by the Government's commitment to match EU funding within the UK until 2020.[113]

106. Mr Ashworth was less certain about the status of payments into the EU budget, describing the matter as "debateable". He thought refusing to pay might be a breach of contract, but was clear that it would be a "breach of faith". He argued that payments into the budget would have to be part of the negotiated agreement of the UK's disengagement.[114]

107. Ingeborg Grässle MEP argued that, with a "hard Brexit":

> "You can leave the Union without looking behind you. If you do not care about treaties and obligations that you have signed, if it is a brutal exit you can say, 'Who cares?', and see how you manage. Everything is possible."[115]

She added that it was important not to let "the hardliners win, because we need friendship and a good relationship. All those things are lost by giving up a good relationship afterwards."[116]

108. Speaking in the context of continuing contributions to the 2014–2020 MFF, Jens Geier MEP drew a comparison with accession states. When Croatia joined the EU, it was known in advance what the budgetary impact would be, because it had "already been decided at the very moment when everybody said yes to Croatia entering the EU". There was no precedent for a country such as the UK leaving. Mr Geier had consulted the European Parliament Legal Service, who had told him: "We simply don't know".[117]

109. Mr Geier thought that the Commission would argue that the UK had signed an obligation until 2020, but added that there was no "legally clear answer" to whether or not the UK actually had such an obligation. Article 50 itself

112 Q 7
113 Q 54
114 *Ibid.*
115 Q 47
116 *Ibid.*
117 Q 63

was short, and "there are no further regulations behind that."[118] He also touched upon a suggestion by the German Finance Minister, Wolfgang Schäuble, that a new MFF could be negotiated to start following Brexit.[119]

110. Jonathan Arnott MEP noted that the MFF Regulation made provision for its own amendment in the case of accession or "unforeseen circumstance", and argued that it was "logically consistent to suppose that, with the withdrawal of a Member State, the MFF may also be revised and that that is an unforeseen circumstance."[120] He believed that Article 50 was paramount in its assertion that that the Treaties ceased to apply at the point of withdrawal, and thought that the MFF "does not present a legal requirement for the UK to continue paying until the end of that period to fulfil those obligations. I suppose it should be seen more as mediumterm financial plan."[121]

111. **Opinion among MEPs on the inviolability of the UK's obligations under the current MFF varied, though some argued that the UK had a moral, if not legal, obligation to meet its agreed commitments. However, provisions in the MFF Regulation to allow for its own revision in the event of "unforeseen circumstances" suggest an acknowledgement at EU level that agreement to the figures set out in an MFF is not immovable. This interpretation is strengthened by the apparent suggestion by Mr Wolfgang Schäuble that a new MFF could be negotiated following Brexit.**

Pensions

112. Pensions are a different type of liability, in that they relate to rights accrued by individuals (a portion of whom are UK nationals) through service in the European Institutions, to which those individuals have made contributions. Chapter 3 described different options put forward by our witnesses for calculating any UK share of any pension liability, but underlying any such calculation is the argument that the UK has accrued obligations through over 40 years of membership.

113. Richard Ashworth MEP, as we have noted, argued that the UK had in fact over-contributed to EU pensions throughout its membership. The UK would be in a position to say "very clearly this is a legal responsibility of the European institutions. It is not our problem. They were your employees."[122]

114. Ingeborg Grässle MEP acknowledged that the pension obligation was an obligation of the EU, but argued that this meant "the Member States, which is why there is no option not to be responsible for that". She noted that staff paid in to "a fund that does not exist; this money is distributed to the Member States", and argued that the UK had received "plenty of money from their pension fund".[123] She believed that it would be fair, at a minimum, to return this money and perhaps to contribute for the pension costs of UK officials, though her personal view was that the UK's real share of the liability was 12.5%.[124]

118 Q 63
119 Q 61
120 Q 68
121 *Ibid.*
122 Q 56
123 Q 47
124 *Ibid.*

Legal obligations arising under Article 50 TEU

115. The views we have described so far are academic or political. We have also sought to establish, as a matter of law, whether the UK will be under any obligation to continue to pay towards the EU budget post-Brexit. Answering this question involves the resolution of possible conflicts within and between UK, EU and international law.

Liabilities

The views of legal experts

116. Professor Tridimas drew a distinction between the overarching MFF and individual annual budgets. While the annual budget contained the obligations of the EU to incur expenditure under specific budget headings, the obligation of the Member States to contribute to EU finances depended on the Own Resources Decision and the MFF.[125] While it would be possible for the MFF Regulation to be revised to take account of UK withdrawal, and while even within the ceilings set out by the MFF the EU could agree to adopt smaller annual budgets for 2019 and 2020, he argued that the UK would still be liable under the commitments it made when agreeing the MFF in 2013: "One would need to look at the obligation of the Member States within the cycle of the MFF, not within the cycle of the individual budget."[126] Professor Tridimas also noted that "Member States undertake a concrete obligation to finance the EU within the limits of the financial cycle provided within the Multiannual Financial Framework."[127]

117. Rhodri Thompson QC noted that the MFF, as a Regulation, was directly applicable in the UK by virtue of section 2 of the European Communities Act 1972. The ORD, which he characterised as a "mini-treaty", was recognised under sections 1(3) and 2(1) of that Act. He argued that "as a matter of EU law and domestic law, they are, as it stands, binding legislation subject to the interpretation by the CJEU, and, under section 3 of the 1972 Act, what the CJEU says about what that means goes."[128] Mr Thompson therefore thought that there was "at least an argument, both under UK and EU law, that the quantification and analysis of [any] liability would fall to the Court of Justice in the absence of agreement and in the absence of amendment of section 3 of the European Communities Act."[129]

118. Mr Thompson added another important consideration: currently, the UK accepts the jurisdiction of the CJEU in the interpretation of EU law, but that could be changed, at least so far as domestic law is concerned, by means of the Great Repeal Bill. He warned, however, that there would be "significant international implications if the UK was not prepared to comply with international obligations", and that another forum would need to be found to decide the question.[130]

The Vienna Convention on the Law of Treaties

119. The Vienna Convention, concluded in 1969, sets out the international law pertaining to the interpretation of treaties. 26 of the 28 EU Member States

125 Q 13
126 *Ibid.*
127 *Ibid*
128 Q 12
129 Q 14
130 Q 16

have ratified the Convention,[131] but the EU itself has not. Professor Tridimas drew attention to Article 70 of the Convention, which is set out in Box 2.

Box 2: Article 70 of the Vienna Convention

Article 70. Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:
   (a) Releases the parties from any obligation further to perform the treaty;
   (b) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.
2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

120. Professor Tridimas argued that the provision in Article 70(1)(b) of the Convention, that the termination of a treaty does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination—as would be the case when the UK leaves the EU—meant that obligations undertaken when the UK was still bound by the EU Treaties would not disappear at the moment of Brexit:

> "The Vienna Convention on the Law of Treaties provides expressly in Article 70.1(b) that a termination of a treaty does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination. Therefore, undertaken obligations under the treaty do not disappear when a contracting party decides to denounce that treaty."[132]

121. At the same time, Professor Tridimas noted that the enforcement of any residual obligations could be problematic:

> "Once the United Kingdom withdraws, EU law ceases to apply so the United Kingdom is not, strictly speaking, bound by the jurisdiction of the European Court of Justice. That may be a breach of Article 70 of the Vienna Convention, but then the enforcement mechanism would be one of international law. It would no longer be that provided for by European Union law and, being one of international law, it is imperfect."[133]

122. Dr Sánchez-Barrueco offered a different interpretation of the UK's legal position. She noted that Article 50 Treaty on European Union (TEU) did not establish provisional measures to be applied if the two-year period expired with no withdrawal agreement in force, and did not make provision for enforcement:

> "I would like to stress two aspects. First, Article 50 does not establish provisional measures to be applied if the two-year period expires with no withdrawal agreement in force. Secondly, Article 50 does not solve

131 France and Romania have not ratified the Convention.
132 Q 15
133 Q 16

the question of enforcement: who will be the competent jurisdiction to adjudicate on post-Brexit matters or conflicts?"[134]

123. Dr Sánchez-Barrueco argued that there were two post-Brexit scenarios: either there will be an agreement, in which case the provisions of that agreement will apply, or there will be nothing:

> "When I say nothing, I mean it. If the Treaties collapse for the UK, the whole legal building—all the legal documents hanging from the Treaties—will collapse. That includes the MFF, the annual budget, the programmes and the individual funding decisions for beneficiaries."[135]

124. She argued that there was no legal basis on which to extend the binding force of the Treaties or the legal acts based on them if the parties did not reach explicit agreement on it. Article 50, she argued, was the prevailing provision in the EU Treaties, and took precedence over other provisions that, for instance, gave force to the MFF or established the competence of the CJEU. Article 50 was the *lex specialis* applicable to withdrawal.[136]

125. Dr Sánchez-Barrueco acknowledged that there was a conflict between Article 50 TEU, which provided that the CJEU's jurisdiction should cease to apply to the UK, and Article 344 Treaty on the Functioning of the European Union (TFEU), whereby Member States agreed to solve their disputes through the Court of Justice and not by other means. She argued that preference should be given to Article 50:

> "Because the purpose of the Treaty on European Union, in which Article 50 is enshrined, is to organise the relationship between sovereign states so as to create the international organisation, but the purpose of the Treaty on the Functioning of the European Union, in which Article 344 is enshrined, is of a more administrative nature—to organise the internal functioning of the European Union as an international organisation."[137]

126. On the applicability of the Vienna Convention, Dr Sánchez-Barrueco noted that the EU, as an international organisation, was not and could never be a party to the Vienna Convention, even though most Member States were. The CJEU had resorted to the Convention in order to adjudicate on matters regarding the external relations of the Union, but this did not mean that the Vienna Convention bound the EU.[138]

127. She also highlighted the importance of Article 5 of the Vienna Convention, which states that it applies to the constitutive treaties establishing international organisations "without prejudice to any relevant" provision contained in them. Article 50 was a relevant provision and therefore prevailed over other provisions of a more general scope contained in the Vienna Convention.[139]

134 Q 25
135 *Ibid.*
136 *Ibid.*
137 *Ibid.*
138 Q 26
139 *Ibid.*

Box 3: Article 5 of the Vienna Convention

Article 5. Treaties constituting international organizations and treaties adopted within an international organization

The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

128. In subsequent written evidence, Professor Tridimas and Mr Thompson challenged Dr Sánchez-Barrueco's interpretation. They argued that Article 50 was not the *lex specialis*, as it did not contradict the provisions of the EU budget, but instead said nothing at all about finances. Article 50, they argued, "does not dictate any specific solution. It does not necessarily mean that, once the treaties cease to apply, the UK no longer has any obligation to make further contributions to the EU."[140] It was possible that, at the moment of withdrawal, the UK's budgetary liabilities would be "crystallised rather than eliminated."[141] It would thus be necessary to determine the matter through EU or international law: the CJEU would be the relevant authority, although, once the UK withdrew, it would not be bound by its interpretation. They drew attention to paragraph 2.3 of the Government's White Paper, which stated that the UK would "of course continue to honour our international commitments and follow international law,"[142] but without specifying whether the Government would recognise the CJEU as a court of competent jurisdiction for the interpretation of EU law in general, and Article 50 and the budgetary provisions of the Treaties in particular.[143]

129. Professor Tridimas and Mr Thompson also did not agree that that the Vienna Convention was irrelevant to the interpretation of Article 50 TEU:

> "The fact that Article 50 provides for a process of withdrawal and the possibility of the conclusion of a withdrawal agreement does not mean that, in the absence of such an agreement, withdrawal will necessarily have retroactive effect or that all existing obligations will cease with immediate effect. If anything, given that the EU treaties envisage a far more intense form of integration than other international agreements, the limitation on retroactive or immediate effect of termination, provided for by Article 70(1)(b) should apply *a fortiori* to the EU Treaties."[144]

130. As a consequence, they considered that the CJEU would take account of Article 70(1)(b) of the Vienna Convention "as a guide to the proper interpretation of EU law."[145]

131. Mr Thompson and Professor Tridimas concluded that the UK would not necessarily be bound to make contributions after withdrawal, but that:

> "In the absence of agreement, it would be necessary to determine, on the basis of the principle of good faith which is an overarching principle

140 Supplementary written evidence from Professor Takis Tridimas and Rhodri Thompson QC (EUB001)
141 *Ibid.*
142 HM Government, *The United Kingdom's exit from and new partnership with the European Union,* Cm 9417, (February 2017), p 13: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 27 February 2017]
143 Supplementary written evidence from Professor Takis Tridimas and Rhodri Thompson QC (EUB001)
144 *Ibid.*
145 *Ibid.*

> of interpretation, whether specific obligations that Member States undertook under EU law for a set period of years will continue to be binding after withdrawal, if nothing is said about them in the withdrawal agreement."[146]

132. They also thought that any difference of opinion between themselves and Dr Sánchez-Barrueco on how the UK's outstanding budgetary commitments could be enforced was "less than … might have been thought".[147] In particular, they agreed with Dr Sánchez-Barrueco that:

> "In the event that the EU considered that the UK had ongoing obligations to make budgetary contributions after withdrawal, it is not easy to see in which forum it could enforce those obligations … In any event, it would be difficult for the EU to seek judicial enforcement of any UK obligations post withdrawal, on the assumptions that nothing had been agreed on the issue during the negotiations, and the position under UK domestic law had been amended to remove any obligation to follow the rulings of the ECJ on disputed issues of EU law."[148]

The Committee's assessment

133. We have carefully weighed up the different views of our legal expert witnesses and the opinion of the Legal Adviser to the European Union Committee. Our assessment of the UK's legal obligations under the EU budget and related financial instruments, in the event that the UK withdraws from the EU without a withdrawal agreement, is as follows:

- Article 50 TEU should be interpreted in the light of Article 70 of the Vienna Convention.
- The rule in Article 70(1)(b) of the Vienna Convention only applies to withdrawal from a treaty which does not have its own withdrawal procedures ("unless the treaty otherwise provides"[149]). Manifestly, the TEU does, in the form of Article 50. Article 50 therefore takes precedence over Article 70(1)(b) of the Vienna Convention.
- Article 50 TEU provides for two types of withdrawal from the EU: with an agreement, and without an agreement. Any agreement would itself provide for the settlement of outstanding financial liabilities and the division of assets. We are here concerned with the legal effect of withdrawal without an agreement.
- Article 50 makes clear that, in the absence of a prior withdrawal agreement, the EU "Treaties shall cease to apply to the State in question"[150] two years after the notice of withdrawal is given. No provision is made for ensuring that EU legal obligations on the withdrawing State persist after the Treaties cease to apply. This is no doubt because the withdrawal agreement is intended to resolve such issues, by "setting out the arrangements for … withdrawal".[151]

146 Supplementary written evidence from Professor Takis Tridimas and Rhodri Thompson QC (EUB001)
147 *Ibid.*
148 *Ibid.*
149 Article 70 of the Vienna Convention on the Law of Treaties, 1969
150 Article 50(3), Treaty on European Union, OJ C202 (consolidated version of 7 June 2016)
151 Article 50(2), Treaty on European Union, OJ C202 (consolidated version of 7 June 2016)

- The ordinary meaning should be given to the words "Treaties shall cease to apply to the State in question". Such meaning is clear: the legal basis for the application of all EU law to the UK—the *acquis communautaire*—comes to an end.
- The EU Treaties are at the pinnacle of the hierarchy of EU law; all subordinate EU legislation derives from them. Once the Treaties cease to apply to the UK, all EU legal obligations found in Regulations, Directives and Decisions and other EU acts cease to apply under EU law.
- This would include the UK's current and future legal obligations under the Own Resources Decision, the MFF, and the annual budget.
- The jurisdiction of the CJEU over the UK would also come to an end when the EU Treaties ceased to have effect. Outstanding payments could not, therefore, be enforced against the UK in the CJEU.
- It follows that, under EU law, Article 50 TEU allows the UK to leave the EU without being liable for outstanding financial obligations under the EU budget or other financial instruments, unless a withdrawal agreement is concluded which resolves this issue.
- Individual EU Member States might seek to bring a case against the UK for the payments of outstanding liabilities under principles of public international law, but, as our witnesses explained, international law is slow to litigate and hard to enforce. In addition, it is questionable whether an international court or tribunal could have jurisdiction. Article 344 TFEU prohibits EU Member States from submitting the legal interpretation of the EU Treaties to a court other than the CJEU.

134. It is also highly unlikely that national law in the UK would allow for the enforcement of UK's financial obligations under EU law. The Supreme Court in *Miller*[152] has made clear that once the UK withdraws from the EU, EU law will cease to be a source of domestic law. The Government's White Paper has also clarified that the Great Repeal Bill will repeal the European Communities Act 1972, which currently gives EU law supremacy over inconsistent national law, with effect from the date of withdrawal. In addition, the Great Repeal Bill, in its final form, is likely to reflect the outcome of the negotiations, including the UK Government's view on whether it is legally bound to continue paying into the EU.

Conclusions

135. **On the basis of the legal opinions we have considered we conclude that, as a matter of EU law, Article 50 TEU allows the UK to leave the EU without being liable for outstanding financial obligations under the EU budget and related financial instruments, unless a withdrawal agreement is concluded which resolves this issue.**

136. **Individual EU Member States may seek to bring a case against the UK for the payments of outstanding liabilities under principles of public international law, but international law is slow to litigate and hard to**

152 *R (On The Application of Miller and Another) (Respondents) v Secretary of State For Exiting The European Union (Appellant)*, (2017) UKSC 5: https://www.supremecourt.uk/news/article-50-brexit-appeal.html [accessed 28 February 2017]

enforce. In addition, it is questionable whether an international court or tribunal could have jurisdiction.

137. **However, the political and economic consequences of the UK leaving the EU without responding to claims under the EU budget are likely to be profound. If the UK wants a preferential trading relationship with EU, including a transitional arrangement, the EU partners may well demand a financial contribution post-Brexit.**

Assets and receipts

Assets

138. One might expect that the legal position of assets would mirror that of liabilities: if the UK accepts liability for ongoing contributions then it can expect to receive a share of the EU's assets, and *vice versa*. The legal arguments are, however, more complex.

139. Professor Tridimas, who argued that the UK would face financial liabilities following Brexit, also argued that it would not have a claim on the EU's assets. The EU, he said, had a distinct legal personality, separate from that of the Member States collectively: "It has its own assets and its own liabilities. I do not think it is the case that when a Member State leaves the EU, it can take back its share of those assets. I cannot see any legal basis for that."[153] While he acknowledged that one might follow the logic that "If you take assets, you also need to take liabilities", he argued that, in legal terms, "It is not possible to think that way. The EU has its own personality. Under the Treaty it enjoys diplomatic immunity in each of the Member States and the whole system of EU finances is based on own resources."[154]

140. Dr Sánchez-Barrueco thought that the situation would depend on whether the state were a founding Member State or an acceding Member State:

> "When the UK joined the European Union, no additional contribution was requested from the UK to cover a share of the assets already owned by the European Union.[155] I would apply a similar solution to withdrawing from the Union. The Union is an international organisation, not a company. No state can claim a share of the assets when withdrawing."[156]

Conclusion

141. **The EU has a distinct legal personality, and we conclude that the UK will not be in a position, legally, to claim a share of the EU's assets upon withdrawal, unless provisions to this effect are included in a withdrawal agreement.**

Receipts

142. Funding from the EU flows to the UK each year, through, *inter alia*, structural funds, CAP payments, and research grants. Any discussion of whether the UK has continuing liabilities toward the EU budget raises the related question of whether receipts could continue, and under what

---

153 Q 21
154 *Ibid.*
155 Although it should be noted that the UK did make initial contributions to the reserves of the European Investment Bank and the European Coal and Steel Community.
156 Q 29

circumstances. The Chancellor's commitment to match most EU funding until 2020 suggests that the Government is contemplating the cessation of funding from the EU post-Brexit.

143. Certain funding programmes, such as Horizon 2020, involve already agreed payment schedules that stretch beyond the expected date of Brexit. This is a separate issue from continued participation in EU programmes (for which the UK could expect to pay, and receive funding, according to any agreement made on the future relationship with the EU).

144. The legal status of any receipts expected after Brexit may differ between schemes. Rhodri Thompson QC said:

> "If you are a Welsh sheep farmer then you may have rights to certain types of subsidy, and the question will be whether that subsidy regime continues and whether you can make a claim either against the UK authorities or possibly directly against the EU under that subsidy scheme. That is going to be case-specific to that scheme, and likewise for things that are made centrally to the universities or local authorities. Each will have their own particular incidence and will not necessary follow the same pattern as either the MFF or the budget."[157]

145. Mr Thompson added that, because the EU has full legal personality, any contracts it has entered into will remain binding. This contrasts with the status of more public benefits, which may or may not be agreed in the future, and which would be an area for negotiation: "If the UK says, 'We are not paying you a penny,' that may well have implications for any future funding from the EU."[158]

146. Professor Tridimas argued that any obligations the EU had entered into with companies, individuals or institutions had to be honoured:

> "If I am a recipient, I would not necessarily care where the EU finds the money from … it really is an issue of contractual rights or property rights. One would need to look at the finance scheme and examine and determine exactly what the EU obligations are to this effect."[159]

147. If such contractual rights existed, there would need to be a forum for ruling on disputes. Professor Tridimas thought that this would be the CJEU, in so far as the finance scheme was governed by European Union law.[160] Mr Thompson added that the current mechanism for referring matters to the CJEU, via the domestic courts, would change following Brexit. He thought that an aggrieved party would have to bring a direct action against the relevant EU institution at the CJEU. If, on the other hand, someone were to make a claim against a UK institution, this might need to be decided by the UK courts, "without guidance from the Court of Justice on a tricky point of EU law".[161]

148. Dr Sánchez-Barrueco noted that UK nationals would not lose legal standing before the CJEU: any individual can introduce proceedings if an EU act has been addressed to that individual and is of direct and individual concern to

---

157 Q 18
158 Q 19
159 *Ibid.*
160 *Ibid.*
161 *Ibid.*

them. However, she noted that the UK would not be in a position to defend the interests of its citizens as a whole. Although she acknowledged that contracts between the EU institutions and beneficiaries did not allow for a suspension of payments if the recipient ceased to be a citizen of a Member State, she was sceptical that the court would enforce such rights:

> "Imagine a British beneficiary of EU funds, be it a natural person, a university or a town council, who faces a Commission decision to interrupt grant payments. The court will have to adjudicate on it, but not necessarily to sustain it, because the whole legal building will have collapsed, failing an agreement."[162]

She reiterated the point later: "There is no legal obligation on the Union to continue funding projects, because the whole building has collapsed. That is my legal view."[163]

Conclusions

149. **The legal rights of UK-based persons to continue to receive EU funding post-Brexit are uncertain, and the Government, in undertaking to meet outstanding obligations (such as CAP payments) from domestic funds, implies that it does not expect the EU to meet them.**

150. **Where individuals have entered into contracts with EU institutions, their legal rights will depend on the precise contractual terms. While such contracts could in principle be enforced before the CJEU, the process would be made more difficult by the UK's withdrawal, and the outcome would be uncertain.**

Pensions

151. As discussed in Chapter 3, a case may be made that the UK has a particular obligation to fund pension liabilities accrued during its membership of the EU, especially in respect of UK nationals.

152. Rhodri Thompson QC, however, argued that the nationality of an employee or pensioner was irrelevant: "The employees are employees of the EU and the liability is that of the EU."[164] He thought that the EU's starting position would be that the UK would have a liability in relation to the capital sum of accrued pension liabilities, calculated according to its proportionate share of the total sum, rather than by reference to UK employees. He did not think that responsibility for the pensions of UK nationals would be passed to the UK in the absence of a specific deal. He added: "In default of agreement, no doubt this would potentially be an area of litigation where the same issues about the role of the Court of Justice will come in."[165]

153. Professor Tridimas noted that pension expenditure was part of the EU budget, and highlighted the principle of universality, namely that contributions made by Member States were not hypothecated for any particular expenditure: "There is no correlation between the contribution that Germany makes, for example, and the pensions that the German [EU] civil servants receive."[166] However, Article 83 of the EU Staff Regulations expressly stated that benefits

162 Q 25
163 Q 30
164 Q 20
165 *Ibid.*
166 *Ibid.*

paid out of the pension scheme were to be charged to the EU budget, and that the Member States were to guarantee them jointly. He concluded that the UK would "remain liable for any pension benefits that will have been accrued at the point it decides to leave the EU."[167]

154. Professor Tridimas raised a further question, regarding the status of UK nationals who remained as employees of the EU institutions following Brexit: "The question is whether that creates an ongoing obligation on the part of the United Kingdom to contribute towards the pensions of EU civil servants beyond the MFF period." This was an open question, but he argued that it "would not be unreasonable to suggest that some kind of obligation subsists."[168]

155. Dr Sánchez-Barrueco thought that the pension rights of UK nationals should be made the object of a specific agreement, and was concerned that the Member State guarantee standing behind the staff fund complicated matters: it was "very likely that the remaining states will refuse to cover this part of the expenditure."[169]

156. She considered the legal status of Member States as guarantors of the staff fund to be secondary to other matters. In a situation where the EU budget was not able to cover the staff fund, Member States would be requested to step in, creating a liability for those Member States, but she thought the matter was better left to political negotiation.[170]

157. Dr Sánchez-Barrueco also ruled out any connection between the size of the UK contribution to the pensions liability and the number of UK nationals working for the EU institutions. She noted that Croatia, upon accession, was not granted a reduction in its contributions "based on the fact that there are not enough civil servants of that nationality or that they have not reached the stage of entitlement to specific allowances or pension rights". Nor did Member State contributions rise over the years to meet increased pension liabilities. The only precedent in international law was the dissolution of the League of Nations in 1946, where the members agreed to take on the costs of the staff pension fund—but this precedent was imperfect, as the EU was not being dissolved.[171]

158. In written evidence, Professor Tridimas and Mr Thompson suggested that:

> "So far as any final liability that the UK may be argued to have in respect of its share of the pensions liability of the EU as at the date of withdrawal, that gives rise to the same issues as those set out above—Article 50 does not determine the question so it would have to be resolved, in the absence of agreement, by reference to the specific provisions of the EU Treaties and the general principles of EU law, as interpreted by the ECJ."[172]

Conclusions

159. **Pension liabilities affect the rights accrued by individuals (including many UK nationals) through service with the EU institutions. Nevertheless, since the pension scheme is run entirely through the**

167 Q 20
168 *Ibid.*
169 Q 28
170 *Ibid.*
171 *Ibid.*
172 Supplementary written evidence from Professor Takis Tridimas and Rhodri Thompson QC (EUB001)

EU's annual budgets, the same legal principles apply in respect of any UK liability as apply in respect of the EU budget generally. The political and economic consequences of the UK's not responding to claims under the EU budget, noted above, apply also to pensions.

160. **We also note that no special arrangement has been made for countries on accession, to reflect the fact that their nationals have little or no pension entitlement: pensions are liabilities of the EU, not individual Member States, and the nationality of pensioners is, as a matter of law, irrelevant.**

CHAPTER 5: FUTURE RELATIONSHIPS

161. The Government has made it clear that it wishes the UK to continue to have a close relationship with the EU following Brexit. The White Paper says that the UK will "forge a new strategic partnership with the EU, including a wide reaching, bold and ambitious free trade agreement."[173] In respect of the budget, the White Paper says: "As we will no longer be members of the Single Market, we will not be required to make vast contributions to the EU budget", but it acknowledges that "There may be European programmes in which we might want to participate. If so, it is reasonable that we should make an appropriate contribution."[174] The White Paper does not expand upon what might constitute "vast contributions", nor whether any form of payment in return for access to elements of the single market could be contemplated.

162. If the UK is to maintain cordial relations with the EU, then the tone of the negotiations, and their successful outcome in the form of a withdrawal agreement, will be crucial. But the preceding chapters have set out two stark alternatives: on the one hand a potential demand from the EU for tens of billions of euros; on the other, failure to reach agreement, in which case the UK could walk away from any further contributions to the budget. If the UK and the EU are to forge a new relationship, reaching an equitable agreement on the budget will be critical.

Sequencing

163. The Article 50 process is scheduled to take two years, at the end of which the aim is to reach a withdrawal agreement, while "taking account of the framework for [the withdrawing state's] future relationship with the Union".[175] Negotiations on the budget will be central to the withdrawal agreement, but the extent to which they will be tied in to a wider agreement on a future relationship is disputed. The European Commission's negotiator, Michel Barnier, has been quoted as saying that a comprehensive UK-EU trade deal would take longer than allowed for under Article 50, and was of a "different legal nature". He added: "You cannot do everything in 15–18 months of negotiations; you have to take things in the right order."[176]

164. The Government White Paper takes a different approach: "We want to have reached an agreement about our future partnership by the time the two year Article 50 process has concluded."[177] The sequencing is important: both sides will wish to use their strengths in the withdrawal process to secure not only a better withdrawal agreement, but also better terms for any new relationship. Disputes over the budget, even if they arise in summer 2017, could have long-term implications.

173 HM Government, *The United Kingdom's exit from and new partnership with the European Union,* Cm 9417, (February 2017), p 7: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 27 February 2017]

174 *Ibid.*

175 Article 50, Treaty on European Union

176 'Barnier urges UK to be realistic about trade terms for Brexit', *Financial Times,* 6 December 2016. https://www.ft.com/content/e3644d5e-bba9-11e6-8b45-b8b81dd5d080 [accessed 27 February 2017]

177 HM Government, *The United Kingdom's exit from and new partnership with the European Union,* Cm 9417, (February 2017), p 65: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 27 February 2017]

165. **As well as reaching agreement on the terms of withdrawal, the Government has indicated that it wishes to negotiate a cooperative future relationship with the EU. The positions taken by both parties to the negotiation in respect of the budget will colour this wider negotiation. The Government has already indicated its willingness to pay for continued participation in specific EU programmes, but any budgetary contributions over and above these will need to be considered in the context of the wider negotiations on a future relationship.**

Ongoing access to EU programmes

166. The White Paper mentions several programmes and agencies, although it does not indicate the extent to which the Government wishes the UK to remain involved with them. It mentions in particular the European Medicines Agency (EMA), the European Chemicals Agency (ECHA), the European Aviation Safety Agency (EASA), the European Food Safety Authority (EFSA) and the European (Financial Services) Supervisory Authorities (ESAs).[178] It also draws attention to the Galileo and Copernicus space programmes, the European Space Agency and Horizon 2020.[179] We note that the Government's list is not comprehensive.

EU R&D funding: European Added Value?

167. Horizon 2020—the EU's current research funding framework programme—is an example of an area of EU cooperation with apparent benefits for the UK. Horizon 2020 runs from 2014 to 2020 (although it is likely to be replaced by a successor programme in the next MFF) and has an overall budget of €74.8 billion, excluding Euratom.[180] Grants under Horizon 2020 are awarded directly by the Commission to programme participants. The Commission's November 2015 update stated that €1.4 billion, representing 15% of the total awarded at that time, had been awarded to UK organisations.[181] The UK received around 18% of the funding provided by the predecessor programme which ran from 2007 to 2013.[182] In other words, the UK has consistently received a proportionately greater share of Horizon funding than it has contributed to the EU budget.

168. European Added Value (EAV) is the concept that funding routed collaboratively through the EU can be used more effectively than the same amount being spent separately by Member States. In the case of R&D, EAV might arise if an EU funding model encouraged applicants to build up transnational networks, leading to cross-fertilisation of ideas and the sharing of best practice. Professor Begg described EAV as "in the eye of the beholder",[183] but in a 2011 report on the MFF we concluded that "EU R&D

---

178 HM Government, *The United Kingdom's exit from and new partnership with the European Union*, Cm 9417, (February 2017), p 45: https://www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union--2 [accessed 27 February 2017]

179 *Ibid.*

180 HM Treasury, *European Union Finances 2015,* Cm 9167, (December 2015), p 51: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483344/EU_finances_2015_final_web_09122015.pdf [accessed 27 February 2017]

181 *Ibid.*

182 Written evidence from the Campaign for Science and Engineering to the Science and Technology Committee for its report *A time for boldness: EU membership and UK science after the referendum* (1st Report, 2016–17, HL Paper 85) (EUM0047) [accessed 27 February 2017]

183 Q 9

funding represents strong European added value and will support the EU's economic recovery after the financial crisis".[184]

169. For the purposes of this inquiry we have therefore considered research collaboration to be one area the UK might wish to continue to contribute to following Brexit. We have sought to ascertain the costs and implications of doing so.

170. Professor Begg noted that Norway, as an EEA member, contributed to the EU budget and took part in the research programme.[185] Norway's contribution is comprised of EEA grants to the 15 Member States covered by the cohesion programme (around €391 million per year between 2014 and 2021), and payments for participation in EU programmes (averaging €447 million per year between 2014 and 2020).[186] The contribution to programmes (including, but not limited to, Horizon 2020) is calculated on the basis of the relative size of Norway's GDP, compared to that of the EEA as a whole,[187] which in 2014 was $498 billion.[188] The UK's GDP was $2,999 billion,[189] so were the UK to contribute towards the same EU projects on the same basis, a very rough calculation would suggest a contribution of around €2.7 billion per annum.

171. Other factors might come into play. For instance, Dr Sánchez-Barrueco argued that Norway's contributions were based on "an immaterial calculation of the benefits received by the EFTA countries because of their access to the internal market." This arrangement also included the free movement of workers, and she pointed to the suspension of Switzerland's participation in Horizon 2020 when it tightened its rules on free movement.[190]

172. Another possible model is that adopted by pre-accession countries and others, including Israel. Those countries pay into the EU budget (€946 million in total in 2015) in return for access to specific programmes, but do not get access to the single market. Dr Sánchez-Barrueco noted, within a framework such as Horizon 2020, that: "They pick and choose the projects. However they pay a fee that is established by the Union and is higher than the fee that Member States pay." She thought that the UK would, accordingly, be asked to pay a higher fee for access than it currently pays through its contributions to the EU budget.[191]

173. Contributions to the EU budget are not hypothecated, so establishing a 'fee' for the UK's current involvement in Horizon 2020 is impossible. However, the UK's gross contribution to the budget in 2014 (after the rebate) was

---

184 European Union Select Committee, *EU Financial Framework from 2014* (13th Report, 2010–12, HL Paper 125).

185 Q 9

186 Norway Mission to the EU, *Norway's Financial Contribution*, (10 August 2016): http://www.eu-norway.org/eu/Financial-contribution/#.WJ21rdKLRpi [accessed 27 February 2017]

187 Norway Mission to the EU, *Norway's participation in EU programmes and agencies:* (10 August 2016]): http://www.eu-norway.org/eu/Coopperation-in-programmes-and-agencies/#.WJ22uNKLRpg [accessed 27 February 2017]

188 Trading Economics, 'Norway GDP: 1960–2017', (2017): http://www.tradingeconomics.com/norway/gdp [accessed 27 February 2017]

189 Trading Economics, 'United Kingdom GDP 1960–2017', (2017): http://www.tradingeconomics.com/united-kingdom/gdp [accessed 27 February 2017]

190 Q 32

191 *Ibid.*

£14.4 billion (approximately €17.3 billion).[192] Horizon 2020 expenditure that year was €6.5 billion, 4.7% of the total EU budget of €139 billion.[193] A very rough estimate of the current 'fee' paid by the UK for Horizon 2020 participation could therefore be around €809 million.

174. Dr Jorge Núñez Ferrer thought that continued participation in Horizon 2020 and other programmes would be set against settlement of liabilities in the negotiations.[194] He also argued that any fee for continued participation might be used to account for the settlement of liabilities: an agreement might be that "We will handle this pension issue on an annual basis" by including it in continued payment for access.[195]

175. Ingeborg Grässle MEP said that she would "welcome" continued UK participation in Horizon 2020, as it would promote excellence. However, she thought that it would not be "possible to have those kinds of ties to the European Union without access to the internal market and the four freedoms". She argued that Switzerland's exclusion from Horizon 2020 encouraged it to be "creative" in implementing its referendum result on freedom of movement in a way compatible with the four freedoms.[196]

176. Jonathan Arnott MEP thought that a deal for access would be possible, but added that "the price has to be right. If the access that we are offered comes at a price that affords value for money, there is a point at which it is reasonable for the United Kingdom to accept the deal that is on offer." He considered research to be the area where there was the strongest case for continued collaboration. But he drew a distinction between the positions of Norway and Israel: "The requirements upon Israel are broadly speaking financial; the requirements upon Norway are political as well as financial." He would not support a deal that undermined the return of sovereignty following Brexit.[197]

177. **The Government has said that it wishes the UK to remain involved in certain EU programmes and would be willing to make an "appropriate contribution" to do so. It is not clear what this contribution might be, nor whether any agreement would allow such payments to be hypothecated in this way.**

178. **European research cooperation appears to be an area in which the UK could continue to participate. The UK currently benefits under the research funding framework and receives more in grants, proportionately, than it contributes to the EU budget. Any continued involvement after Brexit is likely, however, to require a higher payment, and may also require other political concessions, such as**

192 HM Treasury, *European Union Finances 2015*, Cm 9167, (December 2015), p 14: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483344/EU_finances_2015_final_web_09122015.pdf [accessed 27 February 2017] Conversion to euros at £0.8337 to the euro, based on the exchange rate of 31 December 2013: European Commission, *Consolidated annual accounts, 2014,* (23 July 2015): http://ec.europa.eu/budget/library/biblio/documents/2014/2014%20EU%20Annual%20Accounts.pdf [accessed 28 February 2017]

193 Based on payments appropriations agreed for the 2014 EU budget: European Commission, Budget: annual budget, (16 October 2015), http://ec.europa.eu/budget/annual/index_en.cfm?year=2014 [accessed 28 February 2017]

194 Q 35

195 Q 40

196 Q 50. The 'four freedoms' are the free movement of capital, services, labour and goods.

197 Q 71

over free movement. The precise nature of such an agreement will be a matter for negotiation.

Purchasing market access

179. Norway's payments go beyond those explicitly made for participation in EU programmes. Professor Begg described these payments, which go towards EU cohesion funds, as "hypothecated to economic development in central and eastern Europe". They were "in effect their club membership fee. That is beyond the net gains that they will get from the research programme in which they are participants."[198] Underlying such payments was the "elephant in this room", namely that "the single market is also about free movement" and the jurisdiction of the CJEU.[199]

180. Jens Geier MEP characterised Norway's—and all Member States'—cohesion payments as inherent in preserving the fairness of the single market: "The weaker countries said, 'Please give us the balance for not having the possibility any more to stop your goods and services by customs taxes, technical obstacles and so on', and because of that Norway is paying."[200] Dr Sánchez-Barrueco concurred: "It is important to highlight that the underlying logic of budgeting in the European Union is of a redistributive nature."[201]

181. Dr Zsolt Darvas, Senior Fellow, Bruegel, told us that he had obtained figures from the European Commission on the contributions of EEA countries to the EU budget. The figures, and corresponding figures for selected EU Member States are set out in Table 4.[202]

Table 4: Annual net financial contribution to the EU

	% GDP	€ per capita
Iceland	-0.05%	-25
Switzerland	0.02	12
Liechtenstein	0.03	40
Norway	0.16	115
UK	0.25	79
Italy	0.29	79
France	0.32	100
Netherlands	0.36	140
Germany	0.39	131

Source: Calculations prepared by Dr Zsolt Darvas, based on European Commission data

182. Dr Darvas noted that Norway's net contribution of €115 per capita per annum was significantly higher than the UK's (though less as a proportion

198 Q 10
199 *Ibid.*
200 Q 66
201 Q 26
202 The figures represent the average of 2008–2014 contributions for EU countries, 2014–15 for non-EU countries. This table is published in Zsolt Darvas, 'Single market access from outside the EU: three key prerequisites', *Bruegel*, (19 July 2016): http://bruegel.org/2016/07/single-market-access-from-outside-the-eu-three-key-prerequisites/ [accessed 27 February 2017]. These figures differ from those in Table 3 as they are from different sources.

of GDP). Ms Grässle put the figure for Norway's contribution slightly lower, at "€107 per capita to the Union budget, on average.[203] Dr Darvas argued, however, that as the UK was not pursuing full EEA membership, "in the future I would expect lower payments for the UK than Norway's current payments". Nevertheless, there would be a price for single market access: "I still imagine that European Union countries would demand a significant contribution from the United Kingdom."[204]

183. Richard Ashworth MEP reached similar conclusions:

> "There would be an ongoing element of payment, voluntarily entered into, by which [the UK] would get benefit. There would be an ongoing element of payment, if [the UK] wished to have a special relationship with certain elements of the single market, and again, in the Prime Minister's speech, she said quite clearly that she sought a special arrangement specifically for cars and trucks."[205]

184. The alternative to making regular payments into the EU budget in return for access to elements of the single market would be to accept that tariffs will be charged on goods passing in either direction. Mr Ashworth argued that regular payments would be "cheaper than bit-part, drip-feed payment through tariffs … It is cheaper to pay an annual subscription to the golf club, rather than every time you go and play."[206] If the UK did not secure tariff-free access to the single market, "the amount of tariff that will be paid … seems to be a very, very substantial sum of money indeed. It would need to be greater than the contribution into the single market; otherwise it would not be worth doing. I do not think it has dawned on people yet quite how big that sum is going to be."[207]

185. Access to parts of the single market will form a major element of the negotiations on a future relationship, and within these negotiations the balance between the bill for single market access (wherever it falls) and the cost of tariffs will play a part. The issues go much wider than we can cover in this report. Suffice to say, it is likely that, either directly or indirectly, the EU will seek budgetary contributions in return for single market access.

186. **The example of Norway shows that access to the single market may come with a financial price. We note, however, that Norway's contributions over and above its payments for participation in particular programmes are calculated to take account of its specific situation as a member of the EEA, an option that has been ruled out for the UK by the Government.**

187. **The question of whether the UK will be required to make a payment in return for market access will be a matter for negotiation, and is likely to involve trade-offs between the level of access sought, the structure and level of other payments and more general political considerations. If the UK refuses to accept free movement of persons or the jurisdiction**

203 Q 50
204 Q 44
205 Q 58
206 Q 59
207 Q 59. This figure has been calculated elsewhere as €4.6 billion per annum. Jorge Núñez Ferrer and David Rinaldi *The Impact of Brexit on the EU Budget: A non-catastrophic event*, CEPS Policy Brief No. 347, (7 September 2016): https://www.ceps.eu/publications/impact-brexit-eu-budget-non-catastrophic-event [accessed 27 February 2017]

of the CJEU, the price that it is asked to pay could be proportionately higher than that demanded of Norway. The Government will have to consider any proposals in the round, weighing any payment included in a wider trade deal against the economic benefits the UK stands to gain from continued market access.

The impact on the rest of the EU

188. The removal of UK contributions from EU revenues will substantially affect the EU's ability to fulfil its planned spending until 2020, and will have an impact on the negotiations, due to start at the end of 2017, on the next MFF. The UK's gross post-rebate contribution represents around 12% of EU revenue. If we assume that UK receipts will end at the same time as its contributions, the 'hole' in the budget would equate to its net contribution, or around 8%.

189. Professor Begg calculated that the UK's gross contribution after the rebate was equivalent to the gross contribution of all 12 Member States that joined the EU in 2004 and 2007. When the UK leaves, something "of the order of 12% or 15% of the budget will be withdrawn", but under the MFF, "there are commitments to those expenditure levels. That means that somebody else will have to pay up in the short term for the current Multiannual Financial Framework." Germany would resist paying more, while other Member States would continue to seek their allotted receipts. Ultimately, "they will all curse the Brits, because they are the ones causing the problem of how you finance it." Professor Begg argued that this had "the potential to be particularly toxic as a British legacy", and suggested that withdrawing from the budget would be seen as a "hostile act".[208]

190. Dr Darvas thought that a key priority for the EU would be to "preserve the integrity of the current Multiannual Financial Framework as far as possible". Net recipients were keen to keep the current MFF as it was originally agreed, but he expected the budget to be scaled back if the UK did not agree to continue funding beyond 2019.[209]

191. Although Dr Darvas agreed with Dr Sánchez-Barrueco that the UK would not be under any legal obligation to contribute following Brexit, he noted that there was "a political dimension to it", and "a very strong political interest from the United Kingdom to behave as a responsible partner". As the UK had committed to the seven year MFF, he argued that "common sense" would suggest that "the UK should continue to pay its own net share—not the gross … to the current Multiannual Financial Framework".[210]

192. Dr Núñez Ferrer has suggested in a published paper that UK withdrawal from the MFF, while not easy, would not be a "catastrophe".[211] The paper argues that a UK exit from the 2014 budget would have reduced it by €7 billion (the UK's net contribution), but notes that, were UK payments to continue in return for access to the single market or particular programmes, this hole would be reduced. It would also be reduced by any UK contributions to *reste à liquider*. If the UK did not negotiate access to the single market, the

208 Q 8
209 Q 35
210 Q 38
211 Q 38. Jorge Núñez Ferrer and David Rinaldi *The Impact of Brexit on the EU Budget: A non-catastrophic event*, CEPS Policy Brief No. 347, (7 September 2016): https://www.ceps.eu/publications/impact-brexit-eu-budget-non-catastrophic-event [accessed 27 February 2017]

shortfall, in his view, would be made up by tariffs on goods exported from the UK. Dr Núñez Ferrer (and his co-author David Rinaldi) calculated that a 2% tariff on annual UK exports to the EU of €255 billion would bring in around €4.6 billion for the EU budget, after collection fees.

193. Dr Benedetto agreed with this analysis, though Professor Begg doubted the final part of the argument. He argued that the tariffs would be borne by consumers in the EU, who would make up the shortfall irrespective of how the funds were routed: either they would pay tariffs on imports from the UK, or their taxes would fund increased GNI-based contributions to the budget.[212] However, Professor Begg and Dr Benedetto agreed that there could be advantage to the UK in continuing to make payments until the current MFF ends in 2020: Dr Benedetto, for instance, thought that this would help with transition and would allow the UK to retain single market access until the end of 2020.[213]

194. Jonathan Arnott MEP described possible payments to the end of the MFF as "temporary", covering a period of around 21 months. He thought that, if the EU offered something suitably attractive in return, "the United Kingdom might be prepared to make a concession with regard to this". But he added that "you have to do so from the basis of stating that there is no legal obligation to do so, in order for it to be considered a concession in the first place."[214]

195. The period between the expected date of Brexit—the end of March 2019—and the end of the MFF is 21 months. We calculated above that the cost to the UK of participating in the budget for those 21 months would be at least £12.4 billion, equivalent to its forecast net contribution for that period, plus the difference between envisaged EU expenditure in the UK and that guaranteed by the Government. This assumes that no extra liabilities will be incurred during that time.

196. **Even though we consider that the UK will not be legally obliged to contribute to the current MFF after Brexit, we expect the issue of continuing payments to be a factor in withdrawal negotiations. The Government will have to set the financial and political costs of such payments against potential gains from other elements of the negotiations, such as continued market access for goods and services (without the imposition of tariffs or other barriers), smooth transitional arrangements, and good will in the wider negotiations.**

Negotiating considerations

197. There are two plausible outcomes of the Article 50 negotiations: either the conclusion of a withdrawal agreement, or UK withdrawal without an agreement. The first option will bring with it the possibility of continued participation in EU projects, transitional arrangements and a cooperative future relationship. The latter would result in a complete parting of the ways between the UK and EU. The Government has said that it wishes to preserve cooperation with the EU following Brexit and that it is seeking a

212 Q 8
213 *Ibid.*
214 Q 69

"smooth, orderly exit from the EU".[215] The Prime Minister has also said that "a deal—and a new strategic partnership between the UK and the EU—can be achieved," but she has been equally clear that "no deal for Britain is better than a bad deal for Britain."[216]

198. An agreement could entail the payment of an exit bill, but, as the Prime Minister has made clear, any such bill would need to be set within the wider context of an acceptable deal for the UK. Failure to reach agreement, and the cessation of payments to the EU, would be hugely damaging to both sides, but it is an option that remains conceivable and forms an important backstop to the negotiations.

199. Our witnesses generally urged that the two sides agree a deal, and, as we have seen, warned of dire consequences if no such deal were reached. Dr Sánchez-Barrueco hoped that a withdrawal agreement would resolve the budget, but warned that, in the absence of an agreement, "Brexit will thrust the UK and the EU into one of the worst scenarios for a legal scholar—that of legal uncertainty, or even legal void."[217] Rhodri Thompson QC warned of "significant international implications if the UK was not prepared to comply with international obligations".[218] Professor Begg, as we have seen, warned that a UK refusal to pay even its expected contribution to the MFF until the end of 2020 would be seen as a "hostile act".[219]

200. MEPs emphasised the need for 'fairness' in the negotiations. Richard Ashworth considered that a UK refusal to pay funds to which it had committed politically would be a "breach of faith".[220] Ingeborg Grässle argued that "fair negotiations cannot mean picking what you would like to have and leaving the rest for others."[221] Jens Geier thought that, since the UK had "enjoyed all these positive things [emanating from EU membership], I do not think it is unfair that you take some burdens that result from being part of the club."[222]

201. Jonathan Arnott MEP thought that a wider deal on tariff-free market access would be negotiated regardless of any UK promise to pay an 'exit bill', as it was in the interests of both the UK and the EU. While he considered that budget contributions could be part of the broader negotiation, he did not think that they would be needed specifically as a "bargaining chip" to gain market access. Instead, they could be used to "try to cash in on something that we are not already expecting to get".[223]

202. Professor Tridimas put the situation starkly. The Article 50 process was "politically neutral. It simply crystallises the underlying bargaining power of each of the parties. It may work to the advantage of the EU or it may work

215 HM Government, *The United Kingdom's exit from and new partnership with the European Union,* Cm 9417, (February 2017), p 6: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 27 February 2017]
216 Prime Minister Theresa May, Speech on The Government's negotiating objectives for exiting the EU, 17 January 2017: https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech [accessed 27 February 2017]
217 Q 25
218 Q 16
219 Q 8
220 Q 54
221 Q 47
222 Q 65
223 Q 69

to the disadvantage of the EU and, correspondingly, to the advantage of the withdrawing state."[224]

203. An assessment of the negotiating strength of the parties to the forthcoming Article 50 process would be beyond the terms of this inquiry. However, it is worth noting that the budgetary implications, though important, may be subsumed into a broader trial of strength on economic and political grounds. Notwithstanding that assessment, the EU will wish to avoid an awkward reassessment of its spending plans, and the uncertainty of replacing revenues through other means such as tariffs. The UK, on the other hand, will be aware of the risk that its long-term relationship with the EU may be poisoned, with damaging consequences for the UK economy. There is also a wider reputational risk if the UK is perceived as having avoided its responsibilities. Both sides will wish to bear in mind their ability to work together in defending Europe's internal and external security.

204. **We hope that there is a desire on both sides to use the Article 50 process to reach an acceptable agreement on the terms of the UK's withdrawal from the EU. Among a wide range of subjects for discussion in the negotiation, the issue of continued UK contributions to the EU budget will be an important factor.**

205. **But this is more than a negotiation on withdrawal, and more than a trial of strength. It is also a negotiation about establishing a stable, cooperative and amicable relationship between the UK and the EU, so as to promote the security, safety and well-being of all the peoples of Europe. Such a relationship is inconceivable without good will. The Government will need to approach the forthcoming negotiations in that spirit.**

224 Q 15

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Butler of Brockwell
Lord Callanan
Lord De Mauley
Lord Desai
Baroness Falkner of Margravine (Chairman)
Lord Haskins
Baroness Liddell of Coatdyke
Earl of Lindsay
Lord Shutt of Greetland
Lord Skidelsky
Duke of Wellington
Lord Woolmer of Leeds

Declarations of Interest

Lord Butler of Brockwell

No relevant interests declared

Lord Callanan

Former MEP- in due course will receive pension from the European Parliament Schemes.

Advises clients into the EU on European legislation matters as listed in the register of interests.

Lord De Mauley

Farmer, in receipt of CAP support

Lord Desai

No relevant interests declared

Baroness Falkner of Margravine (Chairman)

No relevant interests declared

Lord Haskins

Chairman, Humber Local Enterprise Partnership (LEP)

Director, JSR Farms Ltd

Director, Quarryside Farms Ltd

Baroness Liddell of Coatdyke

Senior Adviser, PwC, which advises Government departments on a wide range of issues

Earl of Lindsay

Farmer, in receipt of CAP support

Lord Shutt of Greetland

No relevant interests declared

Lord Skidelsky

No relevant interests declared

Duke of Wellington

Former MEP (1979–1989)

Director RIT Capital Partners since 2010

Former Chairman at King's College London (2007–2016)

Partner in farming business

Lord Woolmer of Leeds

No relevant interests declared

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

Baroness Armstrong of Hill Top
Lord Boswell of Aynho (Chairman)
Baroness Brown of Cambridge
Baroness Browning
Baroness Falkner of Margravine
Lord Jay of Ewelme
Earl of Kinnoull
Lord Liddle
Lord Selkirk of Douglas
Lord Teverson
Baroness Verma
Baroness Wilcox
Lord Woolmer of Leeds

During consideration of the report the following Members declared an interest:

Lord Boswell of Aynho
Receipt of EU farm payments by my agricultural interest declared in the register

Baroness Brown of Cambridge
Former Vice Chancellor (and professor emerita) Aston University
Advisor to the Vice Chancellor of Cranfield University

Lord Jay of Ewelme
A trustee, Thomson Reuters Founders Share Company
Member, European Policy Forum Advisory Council
Member, Senior European Experts Group

Earl of Kinnoull
I am in receipt of CAP in a personal capacity and as a trustee of the Blair Charitable Trust

Lord Selkirk of Douglas
Investments held in McInroy & Wood investment fund (with no direct influence in the management of the fund or the selection of the investments in that fund)

Lord Teverson
In receipt of a pension from the European Parliament

A full list of Member's interests can be found in the Register of Lords Interests: http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at http://www.parliament.uk/brexit-eu-budget-inquiry and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with a ** gave both oral and written evidence. Those marked with * gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

*	Professor Iain Begg, Professorial Research Fellow, European Institute, London School of Economics; and Dr Giacomo Benedetto, Senior Lecturer in Politics/ Jean Monnet Chair, Department of International Relations, Royal Holloway, University of London	QQ 1–10
**	Professor Takis Tridimas, Matrix Chambers and Chair of European Law, King's College London; and Mr Rhodri Thompson QC, Matrix Chambers	QQ 11–24
*	Dr María-Luisa Sánchez-Barrueco, Senior Lecturer in EU Law and Politics, University of Deusto, Bilbao, Spain	QQ 25–33
*	Dr Zsolt Darvas, Senior Fellow, Bruegel; Dr Jorge Núñez Ferrer, Senior Research Fellow, CEPS	QQ 34–46
**	Ms Ingeborg Grässle MEP, Chair, Budgetary Control Committee, European Parliament	QQ 47–52
*	Mr Richard Ashworth MEP, Member, Budget Committee, European Parliament	QQ 53–60
*	Mr Jens Geier MEP, Vice-Chair, Budget Committee, European Parliament	QQ 61–67
*	Mr Jonathan Arnott MEP, Budget Committee, European Parliament.	QQ 68–73

Alphabetical list of all witnesses

*	Mr Jonathan Arnott MEP, Member, Budget Committee, European Parliament (QQ 68–73)
*	Mr Richard Ashworth MEP, Member, Budget Committee, European Parliament (QQ 53–60)
*	Professor Iain Begg, Professorial Research Fellow, European Institute, London School of Economics (QQ 1–10)
*	Dr Giacomo Benedetto, Senior Lecturer in Politics/ Jean Monnet Chair, Department of International Relations, Royal Holloway, University of London (QQ 1–10)
**	Dr Zsolt Darvas, Senior Fellow, Bruegel (QQ 34–46)

	Mr Jens Geier, Vice-Chair, Budget Committee, European Parliament (QQ 61–67)	
**	Ms Ingeborg Grässle MEP, Chair, Budgetary Control Committee, European Parliament (QQ 47–52)	EUB0002
*	Dr Jorge Núñez Ferrer, Senior Research Fellow, CEPS (QQ 34–46)	
*	Dr María-Luisa Sánchez-Barrueco, Senior Lecturer in EU Law and Politics, University of Deusto, Bilbao, Spain (QQ 25–33)	
**	Mr Rhodri Thompson QC, Matrix Chambers (QQ 11–24)	EUB0001
**	Professor Takis Tridimas, Matrix Chambers and Chair of European Law, King's College London (QQ 11-24)	EUB0001

APPENDIX 3: ADVICE BY THE LEGAL ADVISER TO THE EUROPEAN UNION COMMITTEE—THE UK'S OBLIGATIONS UNDER THE EU BUDGET ON WITHDRAWAL FROM THE EU WITHOUT A WITHDRAWAL AGREEMENT

Legal Opinion

Introduction

1. This advice concerns the UK's legal obligations arising under EU Budget and related financial instruments on its withdrawal from the EU. It takes account of the evidence provided to the inquiry by Professor Tridimas and Dr Sánchez-Barrueco, and Rhodri Thompson QC.

2. Two issues fall to be determined in the light of the evidence received. The first is whether Article 50 of the Treaty on European Union (TEU) should be interpreted in the context of the 1969 Vienna Convention on the Law of Treaties (the Vienna Convention). The second is the legal effect of Article 50 TEU on the UK's obligations under the EU budget, and related financial instruments, after its withdrawal from the EU.

Should Article 50 TEU be determined in the light of the Vienna Convention?

The relationship between EU law and international law

3. The Vienna Convention is part of international law, which is comprised of international treaties for the most part, but also of customary international law (the practice of inter-State relations), and the case law of international courts and tribunals. The Vienna Convention is an international treaty which in 1969 consolidated in large part customary international legal practice on treaty-making between States.

4. By contrast, the EU has what the Court of Justice of the EU (CJEU) describes as an "autonomous legal order", which is separate and distinct from international law, and over which the CJEU has sole jurisdiction.[225] Within that autonomous legal order is a "hierarchy of norms", at the pinnacle of which are the EU Treaties. From these all EU legislation derives: every Regulation, Directive or Decision is made pursuant to an Article in the EU Treaties. The EU Charter of Fundamental Rights has the same status as the EU Treaties.

5. The relationship between EU law and international law is now set out in the EU Treaties themselves, as well as the judgments of the CJEU. In a judgment in 1992[226] the CJEU ruled that "the European Community must respect international law in the exercise of its powers." Since the entry into force of the Lisbon Treaty in 2009, Article 3(5) TEU declares that the EU "shall contribute to […] the strict observance and the development of international law." Consistent with this, CJEU judgements on international law and EU law, though few in number, have tended to interpret EU law in

225 See, for example, Opinion 1/76, or case C-459/03 *Commission v Ireland*
226 Case C-286/90, *Poulsen and Diva Navigation*

the light of relevant international law when the rules in each legal jurisdiction overlap.[227]

6. Importantly, the CJEU has in the past relied on the Vienna Convention to interpret EU law. In a judgment in 2010[228] it stated that, whilst the Vienna Convention did not legally bind the EU, or all of its Member States,[229] provisions of the Vienna Convention that reflected customary international law were binding on the EU:

> "The Court has held that, even though the Vienna Convention does not bind either the Community or all its Member States, a series of provisions in that convention reflect the rules of customary international law which, as such, are binding upon the Community institutions and form part of the Community legal order."[230]

7. In this case, the CJEU ruled that the EU must respect the principles of customary international law set out in Article 34 of the Vienna Convention.[231]

8. It follows, therefore, that that the meaning of Article 50 TEU, should, as a matter of EU law, be determined in the light of rules laid down in the Vienna Convention, to the extent that those rules reflect customary international law.

The relationship between Article 70 of the Vienna Convention and Article 50 TEU

9. Both Articles set out the consequences of withdrawing from a treaty, the former under international law, the latter under EU law. For the purposes of this advice it is assumed that Article 70 of the Vienna Convention reflects customary international law.

10. Article 70, entitled "Consequences of the termination of a treaty", provides:

> "1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:
>
> a) releases the parties from any obligation further to perform the treaty;
>
> b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination."

11. The general rule of international law, codified in Article 70(1)(b), is, therefore, that the termination of a treaty does not affect any right, obligation or legal situation which arise as a result of participation in that treaty. This applies as much to the remainder States participating in the treaty as to the withdrawing State. In other words, existing rights and obligations under the treaty must be respected until they are fulfilled.

12. The relevant extracts of Article 50 TEU are as follows:

---

227 That said, when international law is in direct conflict with a fundamental right safeguarded in the EU Treaties or EU Charter, the CJEU has held that, in order to preserve the autonomy of EU law, the EU Treaties prevail. See Cases C-402 and 415/05 *Kadi*

228 Case C-386/08 *Firma Brita*

229 France and Romania have not ratified the Vienna Convention.

230 Para 42. See also C-162/96, *Racke*, paragraphs 24, 46 and 46

231 Article 34 states that treaties do not impose any obligations or confer any rights on non-party States without their consent.

> "1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
>
> "2. […] In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. […]"
>
> "3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period."

13. From these provisions it is clear that:

 (a) a Member State can unilaterally withdraw from the EU (paragraph 1);

 (b) it can do so on the basis of an agreement "setting out the arrangements for its withdrawal" and taking account of the future relationship (paragraph 2);

 (c) but it can also do so without an agreement ("failing that") (paragraph 3);

 (d) the withdrawal takes place either when the withdrawal agreement enters into force, or two years after the notification to withdraw, whichever is the earlier (paragraph 3); and

 (e) the two year period can be extended by agreement between the withdrawing State and the other EU Member States (paragraph 3).

14. Unlike Article 70 of the Vienna Convention, Article 50 TEU does not preserve in terms the rights, obligations or legal situation of the withdrawing State that have arisen as a result of participation in the EU. Nor does it preserve the rights, obligations or legal situation of the EU as a result of the withdrawing State's participation in the EU. In other words, there is no express provision in Article 50 which states that existing rights and obligations under the EU Treaties must be respected until they are fulfilled, by both the withdrawing State and the EU. On first reading, therefore, there may appear to be a conflict between Article 70 of the Vienna Convention and Article 50 TEU.

15. On closer inspection, however, it is clear that there is no such conflict. Article 70(1) of the Vienna Convention is introduced by the all-important exception "unless the treaty [in question] otherwise provides". The Commentary on the draft of this Article, prepared by the UN's International Law Commission, makes clear that the intention of these words is to ensure that the rules laid down in the treaty in question prevail over Article 70 of the Vienna Convention:

> "Clearly, any such conditions provided for in the treaty or agreed upon by the parties must prevail, and the opening words of paragraph 1 of the article (which are also made applicable to paragraph 2) so provide".[232]

232 International Law Commission, Draft Articles on the Law of Treaties with commentaries,1966, p 265: http://legal.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf [accessed on 13 February 2017]

16. The rules on withdrawing from a treaty in Article 70(1) only apply, therefore, if the treaty in question does not have any provisions on withdrawal. Manifestly, this is not the case for the EU Treaties: Article 50 sets out the provisions on withdrawal from the EU.

17. Reliance has been placed on Article 5 of the Vienna Convention as a further reason why the Vienna Convention is not relevant to the interpretation of Article 50 TEU. This Article provides:

> "The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization."

18. If the expression "relevant rules of the organisation" were to be read to include rules laid down by the treaties establishing that organisation, Article 5 would add further force to the conclusion that there is no conflict between the Vienna Convention and Article 50 TEU. That said, the wording of Article 70(1) alone is enough to lead to that conclusion.

The effect of Article 50 TEU on the UK's rights and obligations under the EU budget after its withdrawal from the EU

19. It follows from the above that Article 50 TEU does not need to be interpreted in the light of the Vienna Convention, but on its terms alone.

20. The analysis of Article 50 TEU above demonstrates that two options for withdrawal from the EU are possible. The first is withdrawal on the basis of an agreement. By using the phrase "setting out the arrangements for its withdrawal", the drafters of Article 50 TEU no doubt intended the agreement to cover all of the issues whose resolution is necessary for an orderly withdrawal from the EU. In Vienna Convention terms, "any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination".[233] Such issues would include ongoing legal and financial obligations under the Own Resources Decision, the Multiannual Financial Framework, and the Annual Budget. The withdrawal agreement could also include a dispute resolution mechanism, in case of future disagreement. Once the withdrawal agreement enters into force, Article 50(3) TEU makes clear that the EU "Treaties shall cease to apply to the State in question."

21. The second option is stark: if no agreement is reached within two years, the effect is exactly the same as if a withdrawal agreement had been agreed and entered into force: the EU "Treaties shall cease to apply to the State in question" (Article 50(3) TEU). The second option allows, therefore, for the most disorderly of withdrawals. The *travaux préparatoires* explain that the two-year cut-off was inserted to ensure that the right of a Member State to withdraw from the EU was unilateral, rather than dependent on the conclusion of a withdrawal agreement. Indeed, the drafters of Article 50 foresaw the two-year period being extended:

> "The Praesidium considers that, since many hold that the right of withdrawal exists even in the absence of an explicit provision to that effect, withdrawal of a Member State from the Union cannot be made conditional upon the conclusion of a withdrawal agreement. Hence the

233 Article 70(1)(b)

> provision that withdrawal will take effect in any event two years after notification. However, in order to encourage a withdrawal agreement between the Union and the State which is withdrawing, Article I-57 [now I-60] provides for the possibility of extending this period by common accord between the European Council and the Member State concerned."[234]

22. The expression the "Treaties shall cease to apply to the State in question" in Article 50(3) TEU is unqualified by any condition about ongoing liabilities under EU law, no doubt because this is exactly what the withdrawal agreement is intended to cover. The meaning of the words are clear: the foundation of the whole edifice of EU law—the *acquis communautaire*—is abruptly removed for the State in question. Given that the EU Treaties are at the pinnacle of the hierarchy of EU norms, once they cease to have effect, the legal base for every aspect of the UK's membership of the EU comes to an end. This will include all of its legal obligations under the Own Resources Decision, the Multiannual Financial Framework, and the Annual Budget. It will also include the supremacy of EU law over UK law, and the jurisdiction of the CJEU over the UK.[235]

23. It follows that, under EU law, Article 50 TEU allows the UK to leave the EU without being liable for outstanding financial obligations under the EU budget, unless a withdrawal agreement is concluded which resolves this issue. (This advice does not address the political consequences of the UK withdrawing from the EU without settling outstanding payments to the EU budget and related financial instruments.)

The legal liability of the UK in the event of a withdrawal without an agreement under international law and national law

Under international law

24. EU Member States may seek to bring a case against the UK for the payments of outstanding debts under principles of public international law, such as acquired rights, but international law is slow to litigate and hard to enforce. In addition, it is questionable whether an international court or tribunal could have jurisdiction. Article 344 TFEU prohibits EU Member States from submitting the legal interpretation of the EU Treaties to a court other than the CJEU:

> Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein.

25. In terms of substance, a case against the UK in an international court or tribunal would be hindered by the fact that Article 50 does not conflict with the relevant rule of international law on withdrawal from treaties, namely Article 70(1)(b) of the Vienna Convention.

234 Explanatory notes on the Treaty Establishing a Constitution for Europe
235 It is possible under Article 273 TFEU for the CJEU to be asked to interpret Article 50 TEU before the UK withdraws by means of "a special agreement", but the UK would have to give its agreement to this.

Under national law

26. The Supreme Court in *Miller*[236] has made clear that once the UK withdraws from the EU, EU law will cease to be a source of domestic law:

> "Upon the United Kingdom's withdrawal from the European Union, EU law will cease to be a source of domestic law for the future (even if the Great Repeal Bill provides that some legal rules derived from it should remain in force or continue to apply to accrued rights and liabilities), decisions of the Court of Justice will (again depending on the precise terms of the Great Repeal Bill) be of no more than persuasive authority, and there will be no further references to that court from UK courts. Even those legal rules derived from EU law and transposed into UK law by domestic legislation will have a different status. They will no longer be paramount, but will be open to domestic repeal or amendment in ways that may be inconsistent with EU law."[237]

27. It remains to be seen to what extent the Great Repeal Act repeals national legislation implementing the UK's obligations under the EU budget and related financial instruments. It can be assumed, however, that the Great Repeal Act will be amended to reflect the outcome of the negotiations, including the UK Government's view on whether it is legally bound to continue paying into the EU budget. It can also be assumed that the Great Repeal Act will repeal the European Communities Act 1972 and so end the jurisdiction of the CJEU over the UK. The Government's White Paper, *The United Kingdom's exit from, and new partnership with, the European Union*, makes this clear.[238]

28. Whatever the content of the Great Repeal Bill, it will not allow the EU or its Member States to sue in the UK courts for outstanding contributions under the EU budget.

The legal liability of the EU institutions in the event of a withdrawal without an agreement

29. Any individual, company or organisation can challenge a decision of the EU institutions before the CJEU. Nationality of a Member State of the EU is not a prerequisite. To bring a case they would have to show that they are individually and directly affected by the decision in question.[239] For example, UK organisations whose EU funding was stopped could bring a case. It may be, however, that the CJEU would rely on Article 50 TEU as allowing all EU funding programmes to be stopped in relation to UK institutions, if it decided that that the legal obligation to do so ended with the UK's withdrawal.

---

236 *R (On The Application of Miller and Another) (Respondents) v Secretary of State For Exiting The European Union (Appellant)*, [2017] UKSC 5

237 Paragraph 80

238 HM Government, *The United Kingdom's exit from and new partnership with the European Union,* Cm 9417, (February 2017), pp 7–8: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 21 February 2017]

239 Article 263 TFEU: "Any natural or legal person may […] institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measure."