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**BRIEFING PAPER**

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# Brexit: the exit bill

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# Summary

When the UK leaves the EU it is expected to make a contribution towards the EU's outstanding financial commitments – spending that was agreed while the UK was a member. The media have labelled this as an 'exit bill' or 'divorce bill', the EU see it as a matter of 'settling the accounts'. The issue has been discussed in the first phase of Brexit negotiations under the title of the 'single financial settlement' (the settlement).

The first phase of negotiations between the UK and EU must make 'sufficient progress' on the settlement (and other areas that will disentangle the UK from the EU) before they can move onto transitional arrangements and the future EU-UK relationship, such as trade arrangements. The EU says a methodology for calculating the settlement should be agreed before talks move on.

On 8 December 2017, an agreement in principle was reached on the first phase of negotiations, including the settlement. In its 14/15 December meeting, the leaders of EU Member States (the European Council) agreed that this meant negotiations could move onto transitional arrangements and the future EU-UK relationship. The UK Government estimates that the settlement will cost around £35 billion- £39 billion.

**The EU's position for negotiations**

The EU set out its position on the settlement ahead of negotiations. The EU's position was built on the principle that the UK should honour its share of all the financial commitments made by the EU while the UK was a member. On the same basis, the EU said that the UK should be able to participate in, and receive funding from, EU programmes – such as agricultural funding – until the programmes close. Most programmes cover the period 2014 – 2020, but some spending is expected after 2020.

The EU's position paper expected the settlement to include:

- the UK's participation in the EU budget
- the termination of the UK's membership of institutions such as the European Investment Bank
- the UK's participation in specific EU funds and facilities that don't come under the EU budget, such as the facility for Refugees in Turkey.

Most of the EU's outstanding financial commitments arise from the EU Budget. The position paper expected the settlement to include spending committed in the EU Budget but not yet paid to recipients – often described as 'reste à liquider' – and the outstanding funding agreed for EU spending programmes in the current period. These two sources are the largest outstanding commitments identified by the EU. The EU's liabilities and contingent liabilities should also be shared by the UK, according to the position paper.

The EU's accounts do not apportion the EU Budget's outstanding financial commitments to Member States, so a way for calculating the UK's share must be agreed. The EU proposed that the UK should share the Budget's outstanding commitments in proportion to its share of total contributions to the EU Budget over 2014-2018. In recent years the UK's share, after accounting for the rebate, has been around 13%.

The UK is part of some EU spending outside of the EU Budget. For these programmes – such as overseas aid and spending to support Syrian refugees in Turkey – the EU expected the UK to continue to contribute as normal, in line with the specific rules and schedule for each, until they end.

The EU also proposed that the UK should cover the costs of Brexit – such as the cost of moving EU agencies from the UK – and that the UK's shareholdings in the European Investment Bank should be returned to the UK.

The EU does not want the settlement to result in one single payment, but would rather see a schedule of payments overtime to be established.

#### The UK's position during negotiations

The UK made no formal response to the EU's position, nor was there a position paper from the UK on the settlement. However, in a speech in September 2017 the Prime Minster, Theresa May, suggested that the UK would meet its current EU budget plan (2014-2020) commitments so that EU Member States would not be made worse off as a result of the UK leaving. The Prime Minister also said that the "the UK will honour its commitments made during the period of our membership". The UK did not publicly say exactly which commitments they thought should be included in the settlement.

#### Negotiations

The EU hoped that the UK would have set out its own position on the settlement, and that the two sides would have then negotiated their positions. The UK did not adopt this approach and during exit negotiations interrogated the EU's position on the settlement line by line, presenting its own legal analyses of the commitments potentially to be included in the settlement, with the aim of bidding down the Commission's position.

During negotiations the UK questioned legal aspects of commitments included in the EU's position paper, although David Davis – the Secretary of State for Exiting the European Union – said that the UK views the settlement 'as more of a political principle, a political obligation, than a legal one.'

#### Reaching a conclusion?

At the end of October's negotiations Michel Barnier said that 'deadlock' had been reached over the settlement. However, he was positive that the deadlock could be broken, and that sufficient progress could be achieved in time for December's European Council.

Following its October 19/20 meeting the European Council (the Council) concluded that the UK had not yet turned its pledge to honour its financial commitments into "a firm and concrete commitment". The Council concluded that 'sufficient progress' had not been made in the first phase of negotiations and will next assess the situation at its December meeting.

In late November the media reported that an agreement-in-principle has been reached on the settlement between the UK and EU. This followed on from a decision taken by the UK Cabinet to expand the commitments it was willing to include in the settlement. No formal announcement was made at this point.

#### Agreement (in principle) reached

On 8 December 2017, the European Commission (the Commission) and the UK Government published an agreed methodology for calculating the settlement. The agreement reached on the settlement was part of a joint report agreed by the Commission and the UK on progress during the first phase on negotiations. This is an agreement in principle and will not be legally binding until it enters into a final Withdrawal Agreement. It is a political agreement at this stage.

The underlying principles of the methodology are that:

- no EU Member State should pay more or receive less because of the UK's withdrawal from the EU;
- the UK should pay its share of the commitments taken during its membership; and
- the UK should neither pay more nor earlier than if it had remained a Member State. This implies in particular that the United Kingdom should pay based on the actual outcome of the budget

This last point means that the UK will not make any payments earlier than they would have if they had remained in the EU.

The key settlement details in the joint report are that the UK will:

- contribute to and participate in the 2019 and 2020 EU budgets
- continue to receive EU funding for the programmes that are part of the 2014 – 2020 budget plan
- continue to receive a rebate on its net contributions
- contribute towards the EU's outstanding budget commitments at 31 December 2020 (these are budget commitments that have been made, but not yet paid)
- contribute towards financing some of the EU's liabilities – obligations to pay for certain items – incurred before 31 December 2020. EU staff pensions are the main source of such liabilities
- remain liable for the EU's contingent liabilities – potential liabilities that may occur depending on the outcome of an uncertain event – which relate mainly to financial guarantees given and to legal risks
- receive back the €3.5 billion of capital it has paid into the European Investment Bank in 12 instalments from 2019, and will receive back the relatively small amount of capital it paid into the ECB on withdrawal
- continue to participate in some of EU's overseas programmes, such as the European Development Fund, until the current round ends

The UK's share of financial commitments is to be based on the UK's percentage share of total contributions to the EU Budget over 2014 – 2020. This share will be applied to commitments that are accounted for on an EU-wide basis; in the above list this includes outstanding budget commitments, liabilities and contingent liabilities.

The settlement will be drawn up and paid in euros.

The second phase of withdrawal negotiations will address the practicalities for implementing the agreed methodology and the schedule of payments.

The European Commission recommended to the European Council to conclude that sufficient progress has been made in the first phase of withdrawal negotiations. The European Council did so in its 14/15 December meeting, allowing negotiations to move onto transitional arrangements and the future EU-UK relationship.

# 1. What's it all about?

When the UK leaves the EU it is expected to make a contribution towards the EU's outstanding financial commitments. These are spending commitments that were agreed by Member States while the UK was a member of the EU. The media have labelled the issue as an 'exit bill' or 'divorce bill', the EU see it as a matter of 'settling the accounts'.

The payment was discussed in the first phase of Brexit negotiations under the heading of the 'single financial settlement' (the settlement), along with other separation issues such as citizens' rights and the Irish border.

During the first phase of negotiations the UK and EU aimed to establish what the settlement includes and how the UK's share should be calculated. Actual financial figures were not being agreed, but the methodology for calculating them was.

An agreement in principle was reached, alongside the other separation issues, and published in a joint report on 8 December 2017.

**Box 1.1: Brexit negotiations**

**The first phase**

The first phase of negotiations largely focused on disentangling the UK from the EU. Besides reaching agreement on the settlement, other objectives for the first phase of negotiations included reaching agreements on citizens' rights, "other separation issues" and the Irish border.[1] Section 4 of this briefing summarises negotiations over the settlement.

**Moving on to the next phase: making 'sufficient progress'**

The EU has said that Brexit negotiations can only move on to discussing transitional arrangements and the future EU-UK relationship, including areas such as trade, once 'sufficient progress' has been made on the first phase of negotiations. This means progress must be made on the settlement before negotiations can move on.[2] The leaders of all the other EU Member States will decide on whether sufficient progress has been made on all areas of the first phase of negotiations.

The European Council's directives for negotiations say that the methodology for the settlement 'has to be established in the first phase of negotiations'.[3]

Further information on the negotiations are available in the Library briefings: *Brexit: the talks begin; Brexit: the July negotiations; Brexit: the August negotiations; Brexit: the September negotiations; Brexit: the October negotiations; Brexit: the November negotiations.*

In July 2017, the EU set out its position on what should be included in the settlement and how the UK's share should be calculated.[4] Michel Barnier, the European Commission's Chief Negotiator, says the settlement should 'settle the accounts' and ensure that the

1 European Commission, Terms of Reference for the Article 50 Treaty on European Union negotiations, 19 June 2017
2 The Council of the European Union, Negotiating directives for Article 50 negotiations, 22 May 2017, para 19
3 Ibid., para 12
4 European Commission, Position paper transmitted to the UK: essential principles on the financial settlement, 12 June 2017

commitments made by 28 Member States (including the UK) are honoured by all 28.[5] He doesn't see it being about punishment or a 'brexit bill'.[6]

The UK Government did not set out its position formally. However, in September 2017 the Prime Minster, Theresa May, suggested that the UK would meet its obligations for the current EU budget plan (2014-2020) so that EU Member States would not be worse off as a result of the UK leaving. The Prime Minister also said that the "the UK will honour its commitments made during the period of our membership". The UK has not specified which commitments it is prepared to honour.

**Box 1.2: Estimates made of the settlement before agreement was reached**

Before and during negotiations the media was full of estimates of the potential size of the settlement.

The European Commission's chief negotiator, Michel Barnier, reportedly put the payment at close to €60 billion.[7] The estimated size of the settlement depends on what financial commitments, liabilities and assets are included and how these are shared. For example, the Centre for European Reform – a broadly pro-EU think tank – produced estimates that ranged from €24 billion to €73 billion.[8] Estimates of the net payment from the Institute of Chartered Accountants in England and Wales (ICAEW) ranged from €6 billion to €36 billion.[9] The Financial Times calculated net payments of up to €75 billion.[10] Most of these estimates were made before the EU published its position on the settlement.

The range of estimates highlights the fact that almost every element of the potential payment was subject to interpretation. Even after agreement on the settlement was reached, it remains difficult to put definitive figures to the agreed calculation.

### Paying to participate in EU programmes after Brexit

Putting the settlement to one side, the Government has said that it may want to participate in some of the European Commission's competitive funding programmes after Brexit, and could pay to do so:

> There may be specific European programmes in which we might want to participate and if so, it will be reasonable that we make a contribution.[11]

The above view, set out in the 2017 Conservative Manifesto, was reiterated in a speech made by Mrs May in Florence in September 2017:

> And as we move forwards, we will also want to continue working together in ways that promote the long-term economic development of our continent.

5 European Commission, Speech by Michel Barnier in front of the Committees of Foreign Affairs and the Committees of European Affairs of the Italian Parliament, 21 September 2017

6 UK's financial obligations to EU will be 'incontestable', says Barnier, The Guardian, 3 May 2017

7 House of Lords European Union Committee, *Brexit and the EU budget,* 4 March 2017, HL Paper 125, page 3

8 Centre for European Reform, The €60 billion Brexit bill: How to disentangle Britain from the EU budget, February 2017, page 10

9 ICAEW, Analysing the EU Exit Charge, May 2017

10 'Brussels hoists gross Brexit 'bill' to €100bn', *FT*, 3 May 2017 and 'Brexit number crunch: the final bill the EU could accept', *FT,* 16 June 2017

11 Conservative Manifesto 2017, page 36

> This includes continuing to take part in those specific policies and programmes which are greatly to the UK and the EU's joint advantage, such as those that promote science, education and culture – and those that promote our mutual security.
>
> And as I set out in my speech at Lancaster House, in doing so, we would want to make an ongoing contribution to cover our fair share of the costs involved.[12]

Non-EU members already participate in some of these programmes. For instance, Turkey participates in Horizon 2020, which is the EU's programme for research and innovation. Negotiations over the UK's future relationship with the EU will determine the UK's participation in the Commission's programmes.

The Library briefing The UK's contribution to the EU Budget goes into further details about future participation in Commission programmes. The briefing also discusses how the UK contributes to the EU Budget, and the funding the UK receives from it.

12 PM's Florence speech: a new era of cooperation and partnership between the UK and the EU, 22 September 2017

# 2. The EU's position

A paper published by the European Commission, in June 2017, set out its position on the financial settlement.[13] The Commission's paper fleshed out the European Council's wishes regarding the settlement as laid out in its negotiating directives, which is the mandate for the EU negotiators.[14]

Michel Barnier, the European Commission's Chief Negotiator, says that the EU expects the financial commitments undertaken by 28 Member States (including the UK) to be honoured by all 28, not just the remaining 27.

### Box 2.1: The EU institutions

**European Council**
The European Council is the highest-level decision-making forum in the EU, consisting of the heads of state or government of the Member States, together with the Presidents of the European Council and the European Commission. The European Council gives the EU its ultimate political direction, which it does by adopting 'conclusions' at the end of its meetings. The European Council has no powers to pass laws.

**European Commission (the Commission)**
The European Commission is the executive of the EU: it proposes legislation and implements policy within the competences laid down by the EU Treaties. There are 28 members, one from each Member State, known as Commissioners. The Commission has the following general functions: policy-making; Treaty guardianship; policy implementation and delegated powers; management of EU funds; representation in trade negotiations and other agreements with third countries.

**The Council of the European Union (the Council)**
The Council is made up of ministers of the governments of Member States. It is one of the two principal legislative and decision-making bodies of the EU, along with the European Parliament. It shares responsibility with the Parliament for setting the EU's annual budget. It is headed by a rotation of Member States which act as its President, otherwise known as the Presidency of the Council of the EU. The composition of the Council varies according to the business under discussion. For example the Economic and Affairs (Ecofin) Council gathers finance ministers to discuss economic policy.

**European Parliament**
The European Parliament is the assembly of elected representatives of EU citizens. The representatives are known as Members of the European Parliament (MEPs). The European Parliament debates and passes law; scrutinises other EU institutions; and debates and adopts the EU's budget.

## 2.1 Why does the EU expect the UK to make a settlement?

The EU said that the UK must honour its share of the financial commitments undertaken while it was a member of the EU. For instance, the UK agreed to the EU's spending plans (see Box 2.2) and committed to funding them by agreeing revenue raising measures (see Box 2.3), and the EU believes these commitments should be met.

On the same basis, the EU said that the UK should continue to benefit from EU funding programmes until the programmes close. This means

[13] European Commission. Position paper transmitted to the UK: essential principles on the financial settlement, 12 June 2017

[14] The Council of the European Union, Negotiating directives for Article 50 negotiations, 22 May 2017

the UK continuing to receive funding in areas such as economic development, agriculture and research and innovation until the current funding period ends. Continued participation would require the UK to obey the EU's legal rules for the programmes.

**Box 2.2: EU spending plans: multiannual financial frameworks**

The EU plans its spending over seven-year periods through the Multiannual Financial Framework (MFF).[15] The MFF broadly sets out maximum EU spending across different categories. It also sets an overall maximum for the amount of actual payments the EU can make in a year.

The MFF provides a framework through which the annual budgets are negotiated. It aims to ensure that the EU's spending evolves in line with its policies.

The MFF is negotiated by the European institutions and requires unanimous agreement at the European Council – which means each Member States' head of government must agree to it – and agreement by the European Parliament. It is laid down in a Council Regulation.

The current MFF covers 2014-2020. It allows the EU to commit to spend up to €960 billion over the period and make payments of €908 billion (in 2011 prices). This spending is equivalent to around 1% of the Gross National Income (GNI) of the whole EU.

The regulations for most of the EU's spending programmes are adopted alongside the MFF. These legal bases provide a reference amount of money to be spent on the programme over the period.

Further details are available in the Library briefing A guide to the EU budget.

**Box 2.3: Raising the EU's revenue: the Own Resources Decision**

The Own Resources Decision (ORD) lays out how Member States contribute to the EU Budget. The regulation is negotiated at the same time as the Multiannual Financial Framework (MFF) but the two are set out in different regulations.

The current ORD says that Member States should contribute: through the custom duties and sugar levies they collect; a share of their adjusted VAT-base; and, a share based on their national income.

The ORD also includes the UK's rebate and other correction mechanisms for Member States.

Further details are available in the Library briefing A guide to the EU budget.

## What should the settlement cover?

Broadly speaking the EU wanted the settlement to include:

- the UK's participation in the EU Budget
- termination of the UK's membership of EU bodies and institutions, such as the European Investment Bank
- the UK's participation in specific EU funds and facilities, such as the facility for Refugees in Turkey.

Annex 1 of the EU's position paper provides an indicative list of over 70 bodies and funds to be included in the settlement. This list may be updated before the day of withdrawal.

The most significant commitments are those arising from the UK's participation in the EU Budget. Of particular significance are the spending committed in the EU Budget but not yet paid to recipients –

[15] The MFF must cover a period of at least five years.

often described as 'reste à liquider' – and the outstanding funding agreed for EU spending programmes in the current budget period.

## 2.2 Which parts of the EU Budget were included in the position paper?

The EU believes that the UK's approval of EU spending plans and revenue raising measures commit it to providing funding for the financial commitments arising from the EU Budget.

Below are the five types of financial commitment that the EU expected the UK to contribute to, along with a short description of each.

### (1) EU budget outstanding commitments (reste à liquider)

In their annual budget the EU commit to some future spending without making payments to recipients at the time. The commitments will become payments in the future. The EU refer to outstanding commitments as reste à liquider (RAL).[16]

At the end of 2016, the EU's total accumulated RAL is €239 billion.[17]

### (2) Financial programming, 2014 to 2020

When the EU agreed its spending for 2014 – 2020 it adopted regulations setting out the rules and amounts allocated to individual spending programmes. Programmes covering areas such as economic development, skills, cohesion, agriculture and asylum and migration all have regulations setting out rules and allocated amounts. The spending under these programmes has been legally committed by the EU – through EU regulations – to provide certainty for the recipients.

The EU's position paper on the settlement lists close to 70 programmes whose spending has been agreed through regulations – the EU expected the UK's settlement to cover a share of the outstanding spending of these programmes.[18]

The EU's financial programming allocates €169 billion in 2020 for these programmes.[19]

### (3) Liabilities which are not balanced by corresponding assets

Liabilities are, generally speaking, obligations to pay for something. The EU's position paper said the settlement should include EU liabilities recorded in the EU's accounts which are not balanced by corresponding assets, such as pensions and other employee benefits.[20] Below we discuss the specific liabilities listed in the position paper.

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16 From the French for 'yet to be paid'.
17 European Commission, Consolidated accounts of the European Union and Financial Statement Discussion and Analysis, June 2017, Table 4.5
18 European Commission, Essential Principles on Financial Settlement, 12 June 2017, Annex 2. The regulations are available from the European Commission's website.
19 European Commission, Statement of estimates of the European Commission for the financial year 2018, financial programming section.
20 Further examples are provided on page 3 of the Single Financial Settlement position paper.

### Pensions and other employee benefits

This covers the costs of providing pensions and other benefits to EU employees. Like the UK civil service pension scheme, the EU's pension scheme is unfunded and operates on a 'pay-as-you-go basis', which sees costs being covered by the EU Budget as they arise.

At the end of 2016, the EU's liabilities for pensions and other employee benefits stood at €67 billion.[21]

### Provisions

Provisions are amounts arising from past events that will probably have to be paid by the EU budget in the future. Over two-fifths of the EU's provisions are for the decommissioning of nuclear sites.[22]

At the end of 2016, the EU's liabilities for provisions stood at €2.6 billion.[23]

### Financial liabilities not related to borrowings

At the end of 2016, the EU's financial liabilities not related to borrowings stood at €2.2 billion.[24] The majority relate to finance lease liabilities.

### Payables and accrued charges other than RAL

Payables are largely unpaid cost claims from grant beneficiaries or other EU funding. They include refunds owed to Member States on their financial contributions to the EU Budget.

At the end of 2016, the EU has around €107 billion of payables and accrued charges. It isn't clear which of these aren't included in RAL: our interpretation of the EU's accounts suggest that the EU has around €55 billion of payables and accrued charges other than RAL.[25]

### Box 2.4: What about assets?

The EU's position paper does not mention assets – apart from saying that the liabilities to be included in the settlement should be those without corresponding assets. If the UK is required to contribute to the EU's liabilities, the UK Government may say that they should also benefit from a share of the EU's assets. The EU's assets include buildings, equipment and financial investments.

The EU has larger liabilities than assets, so if these are shared it is probable that the UK would make a payment to the EU rather than receive one from the EU.[26] However, this depends on precisely what it shared.

21 European Commission, Consolidated accounts of the European Union and Financial Statement Discussion and Analysis, June 2017, page 18
22 European Commission, Consolidated accounts of the European Union and Financial Statement Discussion and Analysis, June 2017, note 2.10
23 European Commission, Consolidated accounts of the European Union and Financial Statement Discussion and Analysis, June 2017, page 18
24 European Commission, Consolidated accounts of the European Union and Financial Statement Discussion and Analysis, June 2017, note 2.11
25 This is estimate is based on EAGF payables (€12.2 billion), own resoruces payables (€10.4 billion), sundry payables (€0.4 billion), EAGF accrued charges (€33 billion)
26 European Court of Auditors, Annual Reports concerning the financial year 2015, 13 October 2016, para 1.5

### (4) Contingent liabilities

Contingent liabilities are potential liabilities that may occur depending on the outcome of an uncertain event in the future. They relate mainly to financial guarantees given (on loans and financial assistance programmes) and to legal risks.

The EU's consolidated accounts record close to €90 billion of contingent liabilities at the end of 2016.[27]

**Box 2.5: Example of a contingent liability in the EU budget**
**The European Financial Stabilisation Mechanism**

The European Financial Stabilisation Mechanism (EFSM) was created in 2010 as a temporary fund to provide loans to EU Member States in financial difficulty. The EFSM used the EU budget as a guarantee to borrow money on financial markets, which it then subsequently lent to countries who require the funding. The EFSM is no longer used to fund new loans, but the outstanding loans still exist.

If the countries who receive EFSM loans fail to repay them, then the EU budget bears the cost. If, as a result of this, additional money is required to fund the EU budget, further contributions from EU Members may be required. This is where the UK currently has a contingent liability.

### (5) The specific costs related to the withdrawal process

This would include, for example, the cost of moving any EU agencies that have to leave the UK following its withdrawal.

## What sources should be used?

The EU proposed that its audited consolidated accounts should be used for determining the EU's RAL, liabilities and contingent liabilities at the time of UK withdrawal. The EU also suggest that the latest updated financial programming should be used for determining outstanding financial commitments for spending programmes up to 2020.

## How should the UK's share be calculated?

The sources that the EU propose should be used for quantifying the outstanding commitments only show totals for the EU – they don't provide shares for each Member State. A way to calculate the UK's share needs to be negotiated.

The EU proposed that the UK's share of financial commitments should be based on the UK's percentage share of total contributions to the EU Budget over 2014-2018. The UK's rebate (see Box 2.6) would be included when determining the UK's share of contributions to the EU Budget. This suggests a UK share of around 13%.[28]

The EU thinks that the UK's payments shall be established and paid in euros.

[27] European Commission, Consolidated accounts of the European Union and Financial Statement Discussion and Analysis, June 2017, section 4
[28] European Commission, Budget on line

### Box 2.6: The UK's rebate

The UK receives a rebate on its net contribution to the EU budget. The rebate was introduced to address the issue of the UK making relatively larger net contributions than other Member States. When the rebate was introduced, in 1985, the UK received relatively little from the EU budget: it had a small agricultural sector, but most EU spending went on agriculture. At the same time the UK made relatively large contributions to the budget, despite being among the less well-off Member States at the time.

#### How does the rebate work?

Broadly speaking the formula used means that the UK's net contribution is reduced by 66% relative to what it would be without rebate. However, certain parts of the EU's spending are excluded from the deduction including EU overseas aid, and non-agricultural spending in Member States that joined the EU after April 2004.

The basic concept of the rebate has remained the same since its inception, but changes to its calculation have been made over time as the EU and its methods for raising revenues have changed. The changes aim to keep the calculation similar to what it would have been had the overall system not changed since 1985.

The European Commission calculates the rebate on the basis of its estimates of the likely outturn for payments from the budget in-year and its estimates of Member States' contributions to the budget. These are then corrected in light of actual outturn figures. Corrections may be made up to three years after the year to which the rebate relates, after which a final reckoning is made in the fourth year. The rebate is deducted from the UK's contribution a year in arrears.

The Library briefing The UK's contribution to the EU Budget has more on the rebate.

### Will there be a one off payment?

The EU do not want a single payment, they would rather have a series of payments staggered over time. The EU said that a schedule of payments should "aim at mitigating the impact of the United Kingdom withdrawal on the budget for the Union and on its Member States."[29]

The EU proposes that the schedule should be established in phase 2 of Brexit negotiations.

## 2.3 What about areas outside of the EU's Budget?

As discussed previously, the EU expect the settlement to cover some areas that aren't part of the EU Budget. The EU's position paper proposed that the settlement should also cover the termination of the UK's membership of bodies established in the EU's Treaties (such as the European Investment Bank) and the UK's participation in specific EU funds and facilities.

#### European Investment Bank (EIB)

When the UK joined the EU it paid capital into the EIB to become a shareholder in the bank. Once the UK leaves the EU it will cease being a member of the EIB. The EU proposed that the UK's capital in the EIB be paid back once all the EIB's outstanding loans, at the time of UK withdrawal, have concluded.

[29] European Commission, Essential Principles on Financial Settlement, 12 June 2017, pages 4 - 5

At the end of 2016, the UK had €3.5 billion of paid-in capital in the EIB.[30]

### European Central Bank (ECB)

The UK also has capital in the ECB. The EU proposed that the UK's capital should be reimbursed on withdrawal in line with the payment profile established for the single financial settlement.

At January 2015 the UK had €0.06 billion (€56 million) of paid-in capital in the ECB.[31]

### Other areas outside of the EU Budget

Some EU spending is carried out outside the EU Budget, from specific funds and trusts. The EU proposes that the UK continues to meet its outstanding commitments in the same fashion as it currently does in these cases. The UK would therefore continue to contribute to these areas as normal – in line with the specific rules and schedule for each – until they end. Below we briefly discuss the 'other areas' set out in the EU's position paper.[32]

*European Development Fund (EDF)*

The EDF is the EU's main instrument for providing development aid overseas. The EDF is broken down over time into 'EDF funds'. The Commission wants the UK to honour its commitments to all unclosed funds (8th – 11th EDF). The current EDF will run from 2014-2020.

For further information on the EDF see the European Parliament Research Service's briefing European Development Fund.

*EU Trust Funds*

These development tools pool together resources from different donors in order to enable an EU response to an emergency or post-emergency situation.

The European Parliament Research Service's briefing EU Trust Funds for external action: First uses of a new tool has more on the EU's trust funds.

*Facility for Refugees in Turkey*

The Facility for Refugees in Turkey was established as part of a wider framework to address the migration crisis. The Facility focuses on humanitarian assistance, education, migration management, health, infrastructure, and socio-economic support.

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30 EIB, 2016 Financial Report, Note H, April 2017
31 ECB, Capital subscription
32 The EU also expect the UK to contribute to the funding of the teachers it seconded to the European schools until 2020/21 and share all the financing obligations of agencies of the Council which are not financed by the EU Budget.

## 2.4 Will the UK continue to receive EU funding as part of the settlement?

The EU's position paper said that if the UK contributes to the EU Budget's outstanding commitments then it should continue to benefit from EU funding programmes until they close. Most programmes cover the period 2014 – 2020, but some spending is expected after 2020. Continued participation would require the UK to obey the EU's legal rules for the programmes.

The EU's programmes include those managed by the UK Government – such as structural and agricultural funding – and those managed directly by the Commission through a competitive bidding process – such as the funding provided through Horizon 2020 for research and innovation.

The Office for Budget Responsibility (OBR) – the UK's public finances watchdog – produces forecasts of UK-EU transactions. The OBR forecast that if the UK continued to participate as normal, EU programmes managed by the UK Government could receive around €7 billion a year in 2019 and 2020.[33] This doesn't include the funds directly managed by the Commission, which normally see around €1.5 billion - €2 billion allocated to UK recipients.[34]

33 OBR. Economic and fiscal outlook – November 2017, supplementary table 2.27
34 European Commission, EU expenditure and revenue 2014-2020

# 3. The UK's public position

The UK made no formal response to the EU's position paper and did not set out its view in any detail. However, in September 2017 the Prime Minster, Theresa May, suggested that the UK would meet commitments for the current EU budget plan (2014-2020) so that EU Member States would not be worse off as a result of the UK leaving. The Prime Minister also said that the "the UK will honour its commitments made during the period of our membership". The Prime Minister's pledge did not appear to extend to all potential commitments outside of the current budget plan. For instance items such as pensions, according to the Secretary of State for Exiting the European Union, David Davis, remained debatable.

Prior to Mrs May's speech the UK Government had recognised that the UK has financial obligations to the EU, and vice-versa, and that they need to be resolved.

David Davis has said that the UK would probe and challenge the EU's position on the settlement during negotiations, with a view to lowering the EU's position. While the UK probed the legal case for the settlement, Mr Davis has said that the Government sees the issue as "more of a political principle, a political obligation, than a legal one."[35]

## 3.1 UK Government's public views on the settlement prior to agreement being reached

### Theresa May's letter triggering Article 50

On 29 March 2017, Prime Minister Theresa May's sent a letter to Donald Tusk – the President of the European Council – giving notice of the UK's intention to leave the EU. The letter triggered Article 50[36] thereby starting the withdrawal procedure. In this letter the Prime Minister said that the negotiations should determine a 'fair settlement' of the UK's obligations as a "departing member state, in accordance with the law and in the spirit of the United Kingdom's continuing partnership with the EU".[37] The Prime Minister went on to say that the settlement should be agreed alongside the terms of the future EU-UK relationship.

Article 50 was inserted into the European Union Treaty by the Lisbon Treaty in 2009. It allows a Member State to leave the EU and sets out a procedure for doing so.

### 2017 Conservative Manifesto

The Conservative Manifesto didn't go into more detail than Mrs May's letter to Donald Tusk:

> We will determine a fair settlement of the UK's rights and obligations as a departing member state, in accordance with the

35 Lords Select Committee on the European Union, Uncorrected oral evidence Scrutiny of Brexit negotiations, 31 October 2017

36 This is the letter which triggered Article 50. Article 50 of the Treaty on European Union was inserted into the European Union Treaty by the Lisbon Treaty in 2009. It allows a Member State to leave the EU and sets out a procedure for doing so.

37 Prime Minister's letter to Donald Tusk triggering Article 50, 29 March 2017, page 4

> law and in the spirit of the UK's continuing partnership with the EU.[38]

## Parliamentary statement: July 2017

David Davis went a little further than the Article 50 letter and the Conservative Manifesto. In a statement to the House of Commons, he recognised the UK has financial obligations to the EU, and vice-versa, and that they need to be resolved:

> On the financial settlement, as set out in the Prime Minister's letter to President Tusk, the Government have been clear that we will work with the EU to determine a fair settlement of the UK's rights and obligations as a departing member state, in accordance with the law and in the spirit of our continuing partnership. The Government recognise that the UK has obligations to the EU, and the EU obligations to the UK, that will survive the UK's withdrawal—and that these need to be resolved.[39]

## Mrs May's Florence Speech: September 2017

In her Florence speech the Prime Minister said that the UK would honour commitments made during the period of its EU membership. The Prime Minister's speech was ambiguous about exactly which commitments would be honoured. It was clear, however, that the pledge would mean no remaining Member States being made worse off over the current EU budget plan (2014 – 2020) as a result of the UK's decision to leave:

> But in this context [of a transition or implementation period] I am conscious that our departure causes another type of uncertainty for the remaining member states and their taxpayers over the EU budget.
>
> Some of the claims made on this issue are exaggerated and unhelpful and we can only resolve this as part of the settlement of all the issues I have been talking about today.
>
> Still I do not want our partners to fear that they will need to pay more or receive less over the remainder of the current budget plan as a result of our decision to leave. The UK will honour commitments we have made during the period of our membership.[40]

The promise to honour commitments was made within the context of a proposed implementation or transition period after the UK leaves the EU.

David Davis was interviewed by the BBC's Andrew Marr following Mrs May's speech. He suggested that the UK would honour commitments made for the current EU budget period, but whether they would do so for other liabilities – such as pensions – was still debatable:[41]

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38 The Conservative and Unionist Party Manifesto 2017, page 36
39 HC Deb.13 July 2017:c15-16WS
40 PM's Florence speech: a new era of cooperation and partnership between the UK and the EU, 22 September 2017
41 Andrew Marr Show, Interview with David Davis MP Secretary of State for Exiting the European Union, 23 September 2017

> I mean things like pensions and other things – these are debatable to say the least, arguable to say the least.[42]

[42] ibid

# 4. The settlement in the first phase of Brexit negotiations

## 4.1 How are the negotiations organised?

The UK's exit negotiations are following a phased approach starting with the priority objectives – citizens' rights, a financial settlement, "other separation issues" and the Irish border – moving on to the UK's future relationship with the EU if 'sufficient progress' is made in these areas. The other 27 EU Member States will decide whether sufficient progress has been made in the first phase.

Generally speaking negotiations in the first phase followed four-week cycles. The first two weeks in each cycle were for preparations, with officials from both sides meeting to establish negotiating positions. The third week was for negotiations between the chief negotiators Michel Barnier and David Davis. Week four is for reporting back on any progress to the governments of the EU27.

Negotiations have taken place as follows:

- Opening 19 June
- Second round w/c 17 July
- Third round w/c 28 August
- Fourth round w/c 25 September
- Fifth round w/c 9 October

The European Council – the leaders of EU Member States – met on 19/20 October. The European Council (the Council) was not able to conclude that 'sufficient progress' had been made in the first phase of negotiations. The Council called for negotiations to continue and build on progress in order for talks to move onto the second phase of negotiations.[43]

Negotiations continued with a sixth round on 9 and 10 November. Subsequently, the Commission and UK negotiators had constant direct contact.

## 4.2 July round

In the week before July's negotiations, the UK Government recognised that the UK has financial obligations to the EU that will survive the UK's withdrawal, and vice versa, and that they need to be resolved.[44]

The UK Government has not publicly said precisely which obligations they recognise. Instead David Davis said he would challenge the EU's

[43] European Council, European Council (Art. 50) meeting (20 October 2017) - Conclusions, 20 October 2017
[44] HC Deb 13 July 2017:c15-16WS

proposals during negotiations, and only after that might an alternative proposal be published by the UK.[45]

After July's negotiations Michel Barnier – the EU's Chief Negotiator – made the following points on the financial settlement:[46]

- negotiations had focussed on a detailed legal analysis of the EU's position on which financial obligations should be included the settlement
- by recognising that obligations exist the UK has made it possible for the two sides to engage in identifying the specific obligations to be settled
- clarification of the UK's position is indispensable to negotiate and achieve 'sufficient progress' on the settlement.

David Davis's statement referred to 'robust but constructive talks' on the financial settlement:

> On financial settlement, we both recognise the importance of sorting out the obligations we have to one another, both legally, and in the spirit of mutual cooperation.
>
> We have had robust but constructive talks this week.
>
> Clearly there is a lot left to talk about, and further work before we can resolve this. Ultimately getting to a solution will require flexibility from both sides.
>
> But as Michel said, we shouldn't expect incremental progress in every round. [47]

At the end of the week's negotiations, the BBC reported a Downing Street spokesman as saying that there are no plans to produce a position paper on the financial settlement.[48]

## 4.3 August round

Negotiations continued on the scale and scope of the payments for which the UK will be liable on leaving the EU, but little progress was made towards agreeing precisely what these obligations would include. The EU pressed the Government for a "clear position" on the UK's recognition of its "legal and moral" commitments to a financial settlement. At the opening press conference on 28 August, Michel Barnier stressed that "we need UK positions on *all* separation issues", an emphasis that David Davis apparently did not miss, given his response that "for the United Kingdom, the week ahead is about driving forward the technical discussions across all the issues – *all* the issues".

[45] House of Lords Select Committee on the European Union, Uncorrected oral evidence: David Davis evidence session, 11 July 2017.

[46] European Commission, Speaking points by Michel Barnier at the press conference following the second round of Article 50 negotiations with the United Kingdom, 20 July 2017

[47] David Davis' closing remarks at the end of the second round of EU exit negotiations in Brussels, 20 July 2017

[48] BBC, Brexit: UK and EU at odds over 'exit bill', 21 July 2017

Referring to the UK's financial settlement, Michel Barnier said in his statement at the end of the negotiations "this week the UK explained that these obligations will be limited to their last payment to the EU budget before departure". He criticised this position by listing examples of commitments that the UK had made that extend past the UK's departure, including loan guarantees for Ukraine and funding for developing countries, and said "after this week, it is clear that the UK does not feel legally obliged to honour these obligations after departure".

David Davis's response did not directly address this concern, except to acknowledge that "it is fair to say, across the piece, we have a very different legal stance". The statement suggested that the UK has presented its own legal analyses of its potential financial obligations. Davis did, however, seek to emphasise that "the settlement should be in accordance with law and in the spirit of the UK's continuing partnership with the EU". His conclusion was that "we have succeeded in building mutual understanding, but it is also clear that there are still significant differences to be bridged".

In the Q&A following these statements, David Davis expanded on his position:

> the European Union made a claim on the United Kingdom – on the United Kingdom taxpayer – for a large sum of money, unspecified but undoubtedly large, and on the basis of what it determined to be our legal obligations. And so the proper approach to that is to go through line by line and see whether or not we believe those legal obligations are correctly codified.[49]

He went on to say that "we're a country that meets our international obligations… but those obligations have got to be well specified and they've got to be real. They don't necessarily have to be legal – we also recognise moral obligations sometimes".

Barnier's response was that:[50]

> …in order to make these discussions simpler, we set out a very precise list of commitments and accounts [referring to the EU position paper published before the first round of negotiations] that have to be resolved, that the 28 subscribed to and the 27 will not agree to having to pay on their own based on the current financial perspectives, and we have a list of all the legal bases underpinning these commitments.

## 4.4 September round

The September round was preceded by Mrs May's Florence speech (see section 3.1). Broadly speaking negotiations focused on two areas arising from Mrs May's Florence:

- the UK explained what was meant by Theresa May's assurance that the UK's departure would not make EU Member States worse

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[49] European Commission, Press conference following the 3rd round of Article 50 negotiations with the UK, 31 August 2017

[50] ibid

off during the current budget plan. Michel Barnier reported that this reassurance was limited to 2019-2020.

- technical discussions were held on Theresa May's pledge that "the UK will honour its commitments made during the period of our membership". The UK is not yet ready to specify exactly which commitments the settlement should include.

David Davis felt that discussions on the UK's financial commitments were 'very constructive'.[51] Mr Barnier said that the discussions were 'useful'. However, Mr Barnier was also stated that for 'sufficient progress' to be reached on the settlement requires the UK to honour all of the commitments undertaken while it was a member of the EU.[52] On the Tuesday following the negotiations Mr Barnier told the European Parliament that 'serious divergences' still existed on the financial settlement.[53] At the 2017 Conservative Conference David Davis reiterated that the UK's approach to negotiations was one of challenge.[54]

At the start of September's negotiations David Davis said that a conclusion on the financial settlement could not be reached in the first phase of negotiations. In Mr Davis's view the settlement could only be concluded "in the context of and in accordance with our new deep and special partnership with the EU";[55] in other words, alongside talks on the future EU-UK relationship. This view is at odds with the EU's expectations. The EU expects a methodology for the financial settlement to be agreed during the first phase of exit negotiations. Michel Barnier was asked about the link between the financial settlement and the UK-EU future relationship in the Q&A following the statements closing the September negotiations. Mr Barnier sees the two subjects as separate issues:

> …there is no link, there is no possible link the way we see it, no possible link between that discussion [the second phase of negotiations on the UK-EU future relationship] and a discussion about separating the - the separations issues – and the commitments entered into the past.[56]

## 4.5 October round

The October round saw further discussions on technical aspects of the settlement, with no negotiation over which commitments are to be included in the settlement. In the press conference at the end of

[51] David Davis' closing remarks at the end of the fourth round of EU exit negotiations in Brussels, 28 September 2017
[52] European Commission, Press statement by Michel Barnier following the fourth round of Article 50 negotiations with the United Kingdom, 28 September 2017
[53] European Commission, Speech by Michel Barnier at the Plenary Session of the European Parliament on the state of play of negotiations with the United Kingdom, 3 October 2017
[54] David Davis' speech to 2017 Conservative Conference
[55] David Davis' opening remarks at the start of the fourth round of EU exit negotiations, 25 September 2017
[56] European Commission Audiovisual Services, Article 50 negotiations press conference Q&A, 28 September 2017

October's negotiations David Davis said that the UK are not in a position to agree specific commitments and that "this can only come later":

> In line with the process agreed at our last round of talks, we have undertaken a rigorous examination of the technical detail where we need to reach a shared view.
>
> This is not a process of agreeing specific commitments - we have been clear this can only come later.
>
> But it is an important step, so that when the time comes we will be able to reach a political agreement quickly and simply.[57]

David Davis' comments echo his previously expressed view that a conclusion on the settlement will only be reached alongside talks on the future EU-UK relationship. Mr Davis, speaking generally about the negotiations, called for the European Council to recognise the progress made and move negotiations forward. This would allow the ideas explored during the first phase of negotiations to be turned into 'concrete shared proposals'.

At the same press conference Michel Barnier said that talks on the settlement were 'at a deadlock' with the UK unable to clarify which financial commitments it agrees should be in the settlement.[58]

With deadlock on the settlement, and outstanding issues in other areas of the first phase of negotiations, Michel Barnier said that he currently cannot recommend negotiations to move onto the future EU-UK relationship. However, he was positive that the deadlock could be broken, and that sufficient progress could be achieved in time for December's European Council:

> …we are in a position of deadlock at the moment but I'm sure, as I said, with the necessary will and on the basis of the commitments entered into by Theresa May in Florence we can find a way out of this deadlock.
>
> […]
>
> Slowly but surely over the next few weeks I will explore the way forward if there is the necessary will. I will explore ways of getting out of this deadlock we find ourselves in on the financial issues, with a view to making sufficient progress by the next European Council. Unfortunately we are not at this stage now. [59]

## 4.6 European Council October 19/20

Following its October 19/20 meeting the Council adopted conclusions on the exit negotiations.[60] On the settlement, the Council concluded

57 David Davis' closing remarks at the end of the fifth round of EU exit negotiations in Brussels, 12 October 2017
58 European Commission Press Release, Press statement by Michel Barnier following the fifth round of Article 50 negotiations with the United Kingdom, 12 October 2017
59 European Commission Audiovisual services, Press conference following the 5th round of Article 50 negotiations, 12 October 2017
60 European Council, European Council (Art. 50) meeting (20 October 2017) - Conclusions, 20 October 2017

that the UK had not yet turned its pledge to honour its financial commitments into "a firm and concrete commitment".

In general, the Council was not able to say that 'sufficient progress' has been reached in the first phase of negotiations. The Council called for negotiations to continue and build on progress in order for talks to move onto the second phase of negotiations. The Council will next assess with 'sufficient progress' has been made at its December meeting.

## 4.7 November round

Negotiations again focused on technical aspects of the settlement. In the press conference at the end of the negotiations, David Davis reported that "we have made substantial technical progress across all the issues that will need to be addressed".[61] Michel Barnier echoed this view, saying that November's negotiation had been about "deepening, clarification and technical work".[62]

In general, Mr Davis said that the negotiations had drawn out areas where further political and technical discussions is required – presumably including areas of the settlement. Mr Davis' view is that political discussions will enable progress to be made.

Mr Barnier was clear that for 'sufficient progress' to be made the UK needs to specify which financial commitments it is prepared to include in the settlement. He re-iterated his view, expressed throughout the first-phase of negotiations, that "this is an essential condition to reach sufficient progress in December".

In the press conference Q&A, Michel Barnier confirmed press reports that he requires clarifications on outstanding issues from the UK within two weeks in order to move negotiations onto the second phase in December.[63]

## 4.8 Agreement reached?

On 20 November 2017, the media reported that a sub-committee of the UK Cabinet had reached agreement on expanding the commitments it is willing to include in the settlement.[64] The reports suggested that the agreement amounted to increasing the UK's potential payment from around €20 billion to €40 billion, although at this point in negotiations

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61 David Davis' closing remarks after EU exit negotiations on 9-10 November, 10 November 2017

62 European Commission, Speech by Michel Barnier following the sixth round of Article 50 negotiations with the United Kingdom, 10 November 2017

63 European Commission Audiovisual services, Press conference on the state of play of Article 50 negotiations with the United Kingdom, 10 November 2017

64 Theresa May's cabinet agrees to pay more to break Brexit deadlock, *The Guardian*, 20 November 2017; Brexit: UK 'ready to pay more to the EU', *BBC.* 21 November 2017; Tory backlash as Boris Johnson and Michael Gove agree in Cabinet to increase £20bn Brexit divorce bill, *The Telegraph,* 21 November 2017

it is a methodology for calculating the settlement that is being agreed, not actual financial figures.

In late November 2017 it appeared that an agreement-in-principle had been reached on the settlement between the UK and EU.[65,66] No formal announcement was made.

Once a consensus had been reached on other separation issues, the UK and Commission were able to publish a joint report on the first phase of negotiations. The joint report is essentially an agreement in principle between the UK and Commission on the separation issues. The joint report will allow the Commission to recommend to the European Council that 'sufficient progress' has been made in the first phase.

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65 *Exclusive: Britain and the EU agree Brexit divorce bill*, The Telegraph, 29 November 2017

66 *UK bows to EU demands with breakthrough offer on Brexit bill*, FT, 29 November 2017; UK could pay £50bn Brexit divorce bill after bowing to EU pressure, *The Guardian*, 29 November 2017; *Brexit: UK divorce bill offer worth up to 50bn euros*, BBC, 29 November 2017

# 5. Agreement reached

On 8 December 2017, the European Commission (the Commission) and the UK Government published an agreed methodology for calculating the settlement. The agreement reached on the settlement was published in a joint report agreed by the Commission and the UK on progress during the first phase on negotiations.

The joint report – which also covers other 'separation issues' such as citizens' rights and the Irish Border – allowed the Commission to recommend to the European Council – the leaders of EU Member States – that sufficient progress has been made in the first phase of negotiations.[67] In its 14/15 December meeting the European Council agreed that 'sufficient progress' has been made and that negotiations should move onto transitional arrangements and the future EU-UK relationship.

The joint report is an "agreement in principle" on the package as a whole as opposed to individual elements. The agreement is made under the caveat that "nothing is agreed until everything is agreed", which means that the issues addressed won't become enforceable until they enter into the final Withdrawal Agreement.[68] It has been described as a political agreement at this stage.

The UK Government costs the settlement at around £35 billion-£39 billion.[69] However, it is very difficult to put definitive figures to the settlement, not least because many of the commitments the UK has agreed to will be based on their value in 2020. Further complications are that many of the items are being paid over a number of years, so any estimate made now relies on assumptions made about the future, such as how many outstanding commitments are written off (or decommited) in the future, and at what rate you discount future payments to come up with today's value.

## 5.1 What has been agreed?

A methodology for calculating the financial settlement is agreed in the joint report. The underlying principles of the methodology are that:

- no EU Member State should pay more or receive less because of the UK's withdrawal from the EU;
- the UK should pay its share of the commitments taken during its membership; and

67 European Commission, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN COUNCIL (ARTICLE 50) on the state of progress of the negotiations with the United Kingdom under Article 50 of the Treaty on European Union, 8 December 2017; European Commission, Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union, 8 December 2017
68 Ibid, para 4 - 5
69 HC Deb 11 Dec 2017:c25

- the UK should neither pay more nor earlier than if it had remained a Member State. This implies in particular that the United Kingdom should pay based on the actual outcome of the budget

The final point means that the UK will not be required to make any payments earlier than would have been the case if it had remained a Member State, unless agreed by both sides. For instance, as discussed below, the UK agrees to contribute towards the pensions of EU employees. The payments to EU employees are made annually in the EU's budgets and the UK will make annual contributions towards these costs. The UK will make a stream of EU pension related payments.

## UK participation in Union annual budgets to 2020

The UK will continue to contribute to, and participate in, the EU Budget in 2019 and 2020. Any changes made to the Budget or its financing after the withdrawal date (March 2019) will not apply to the UK. In November 2017, the Office for Budget Responsibility (OBR) – the UK's public finances watchdog – forecast that the UK will contribute around €15 billion in 2019 and €16 billion in 2020.[70]

The UK's rebate (see Box 2.6) will continue to apply. The rebate is paid one year in arrears, so for instance the rebate paid in 2019 is based on the 2018 Budget. The joint report proposes that the UK shall receive a rebate in 2021 on its 2020 contributions. The OBR forecasts that the UK's rebate in 2021 will be around €5 billion.[71]

The agreement says that the UK and EU may consider simplifying the rebate in the second phase of negotiations

## EU budget outstanding commitments (reste à liquider)

In their annual budgets the EU commit to some future spending without making payments to recipients at the time. The commitments will become payments in the future. The EU refer to outstanding commitments as reste à liquider (RAL). The UK will contribute towards the financing of the RAL outstanding at 31 December 2020.

The total applicable RAL will be adjusted to account for the actual amount that will be implemented. An adjustment will be made for decommittments – commitments that are cancelled as they are not going to be converted into payments – and assigned revenues, which are largely revenues from non-EU countries to EU programmes.

At the end of 2016, the EU's total accumulated RAL is €239 billion.[72] The extent to which this will be adjusted for decommitments and assigned revenues won't be known until they happen. Media reports suggest that UK Government officials expect that the UK's share of RAL

70 OBR. Economic and fiscal outlook – November 2017, supplementary table 2.27. These figures exclude the customs duties and levies collected by the UK on behalf of the EU.
71 ibid
72 European Commission, Consolidated accounts of the European Union and Financial Statement Discussion and Analysis, June 2017, Table 4.5

could be in the region of €21 billion - €23 billion overtime.[73] It appears that the UK's figure assumes a greater proportion of decommitments than the EU usually assumes.[74]

## Liabilities

The UK will share the financing of the EU's liabilities incurred before 31 December 2020. Liabilities with corresponding assets will be excluded as will assets and liabilities related to the spending and financing of the EU Budget (see Box 2.2 and 2.3). Payables and accrued charges, which largely relate to farming subsidies, aren't to be included. Box 5.1 lists the excluded assets and liabilities.

Payables and accrued charges, which largely relate to farming subsidies, are excluded. In its original position paper the EU expected these to be included in the settlement. However, as the UK will be contributing to the EU Budget in 2019 and 2020, and payables and accrued charges relate to the operation and financing of the Budget, they are not included.

The pensions and other benefits of EU employees look like being the most significant liabilities included in the settlement. Like the UK civil service pension scheme, the EU's pension scheme is unfunded and operates on a 'pay-as-you-go basis', which sees costs being covered by the EU Budget as they arise. It is likely that the UK will contribute towards these pensions over many years – as discussed above, the UK will not have to pay for anything earlier than they would have if they had remained in the EU.

At the end of 2016, the EU's liabilities for pensions and other employee benefits stood at €67 billion.[75] This figure is an estimate of what these future payments are worth now – it is based on discounting the future payments by a rate that adjusts for the time value of money. Therefore at this time it isn't possible to say precisely how much the UK will have contributed once all the annual payments for EU pensions have been made.

### Box 5.1: Assets and liabilities excluded from the financial settlement

The joint report provides a list of the assets and liabilities that would not be included in the financial settlement.

#### Assets

- EU financial assistance loan assets and the associated balance sheet liabilities
- assets corresponding to property, plant and equipment and provisions related to the Joint Research Centre nuclear sites dismantlement
- lease-related obligations and all provisions other than in respect of fines, legal cases and financial guarantee liabilities
- intangible assets and inventories

[73] Bloomberg, Brexit deal in Brussels: What the Fine Print Says and What it Means, 8 December 2017
[74] FT, Brexit bill could rise beyond UK estimate of €40bn-€45bn, 8 December 2017
[75] European Commission, Consolidated accounts of the European Union and Financial Statement Discussion and Analysis, June 2017, page 18

- assets and liabilities relating to the management of foreign currency risk
- accrued and deferred income
- assets relating to EU space programmes (EGNOS, Galileo & Copernicus) are not part of the financial settlement. The UK's past contribution to the financing of space assets could be discussed in the context of possible future access to the services offered.

**Liabilities related to the budget and its financing**

- Outstanding pre-financing advances
- Receivables
- Cash
- Payables, and accrued charges including those related to EAGF or already included in the budgetary RAL will not be included for the calculation of liabilities

## Contingent liabilities

The UK will remain liable for its share of the EU's contingent liabilities as established at the date of withdrawal. Contingent liabilities are potential liabilities that may occur depending on the outcome of an uncertain event in the future. These liabilities include those related to financial operations – for instance for financial guarantees given on loans and financial assistance programmes – and legal cases. Box 2.5 discusses an example of a contingent liability.

Contingent liabilities are potential liabilities that may occur depending on the outcome of an uncertain event in the future. They relate mainly to financial guarantees given (on loans and financial assistance programmes) and to legal risks.

For those contingent liabilities related to financial operations, the UK's liability only be affected by decisions adopted before the date of withdrawal.

For contingent liabilities related to legal cases as a result of participation in the budget, programmes and policies, the cut-off date will be 31 December 2020.

If any contingent liabilities are triggered, the UK will receive any subsequent recoveries from meeting those liabilities. The UK will also receive its share of paid-in guarantees when the financial operations associated with some contingent liabilities decline.[76]

## The UK's share

The financial commitments discussed above are accounted for on an EU-wide basis. The joint report suggests that the UK's share of these commitments should be based on the UK's percentage share of total contributions to the EU Budget over 2014 – 2020.

The exception is the UK's continued participation in Budget 2019 and 2020 – here there is no need to calculate a UK share.

In its original position paper the EU expected the UK's share to be calculated using the same approach, but only covering the period 2014 – 2018. It is thought that including contributions in 2019 and 2020 may make the UK's percentage share lower.[77] This is because following the EU referendum result the pound fell relative to the euro, and has

[76] The UK will also receive a share of the net asset of the European Coal and Steel Community in liquidation and of the European Investment Fund decided before the withdrawal date, as the financial operations supported by these mature.
[77] FT, Britain prepares case to cut Brexit divorce bill, 17 November 2017

remained at a lower level since. This makes the UK economy appear relatively smaller, and means the UK will make relatively smaller contributions to the EU Budget.

### UK participation in programmes

The UK will continue to participate in EU programmes funded from the current budget plan (MFF 2014 – 2020; see Box 2.2) until they close. The UK and UK beneficiaries will be required to respect all relevant EU legal provisions including co-financing.

EU programmes take two forms – funding is either provided to the UK Government to manage, or funding is allocated directly to beneficiaries by the Commission.

The UK Government managed funds include the European Structural & Investment funds and the direct payments to farmers. The OBR forecasts that the UK will receive around €7 billion in funding for these programmes in both 2019 and 2020.[78]

The funding allocated directly by the Commission is largely through the Horizon 2020 – the EU's research and innovation programme. UK beneficiaries receive around €1.5 billion - €2 billion a year in direct funding from the Commission.[79]

The second phase of negotiations may include some simplification of the UK's participation in EU programmes. For instance the joint report says that the UK and EU could decide to simplify procedures so as to avoid unnecessary administrative burdens.

The Library briefing Brexit: UK Funding from the EU has more on EU funding programmes.

### The currency of payments

The settlement will be drawn up and paid in euro. This means that the UK's actual contribution in pounds will be contingent on the future exchange rate.

## 5.2 Areas outside of the EU Budget

### European Investment Bank

EU Member States are members of the European Investment Bank (EIB). As an EIB member the UK agrees to provide €39 billion of the EIB's capital, which is known as unpaid, or callable, capital. The UK also has €3.5 billion of paid-in capital with the EIB.

On withdrawal from the EU the UK will no longer be a member of the EIB. The UK's €3.5 billion of paid-in capital will be repaid to the UK in twelve annual instalments starting at the end of 2019.[80]

78 OBR. Economic and fiscal outlook – November 2017, supplementary table 2.27
79 European Commission, EU expenditure and revenue 2014-2020
80 The first eleven payments will be €300 million and the final one will be €196 million.

The UK will provide a guarantee to the EIB equal to its callable capital – an amount the UK currently agrees to provide if required. This guarantee will decrease as EIB loans associated with it decrease.

### European Central Bank

At January 2015 the UK had €0.06 billion (€56 million) of paid-in capital in the ECB.[81] The paid-in capital will be returned to the Bank of England after the UK's withdrawal.

### European Development Fund (EDF)

The EDF is the EU's main instrument for providing development aid overseas. The EDF is broken down over time into 'EDF funds'. The EDF is outside of the EU Budget and the UK contributes to the fund.

The UK will remain part of the EDF until the close of the 11th EDF fund. The 11th EDF is running between 2014 and 2020. The UK will honour its share of the total commitments made under this EDF and the payments related to its share of the outstanding commitments made under previous EDFs. The practicalities of making payments will remain as they currently are, unless otherwise agreed in the second phase of negotiations.

The UK has a share of the EDF's Investment Facility. This funding will be returned to the UK as the investments end.

For further information on the EDF see the European Parliament Research Service's briefing European Development Fund.

### Facility for Refugees in Turkey and EU Trust funds

The UK will continue to honour the commitments it has made on the Facility for Refugees in Turkey and the European Union Emergency Trust Fund. The practicalities of the UK's participation in these schemes will continue on the current basis after withdrawal, unless changes are agreed in the second phase of negotiations.

The Facility for Refugees in Turkey was established as part of a wider framework to address the migration crisis. The Facility focuses on humanitarian assistance, education, migration management, health, infrastructure, and socio-economic support.

EU Trust Funds are development tools pool together resources from different donors in order to enable an EU response to an emergency or post-emergency situation. The European Parliament Research Service's briefing EU Trust Funds for external action: First uses of a new tool has more on the EU's trust funds.

## 5.3 What's the cost of the settlement?

The UK Government costs the settlement at around £35 billion-£39 billion.[82] However, it is very difficult to put definitive figures to the settlement, not least because many of the commitments the UK has

81 ECB, Capital subscription
82 HC Deb 11 Dec 2017:c25

agreed to will be based on their value in 2020. Further complications are that many of the items are being paid over a number of years, so any estimate made now relies on assumptions about the future, such as how many outstanding commitments will be written off (or decommitted) in the future, and at what rate future payments are discounted – for EU pensions for instance – to come up with today's value. The settlement is being calculated and paid in euros, so the UK's actual contribution in pounds will be contingent on the future exchange rate.

The UK Government's estimate does not include contingent liabilities.[83] If included, these liabilities – which are dependent on the outcome of uncertain future events – add around €10 billion. However, the chance of all of these liabilities materialising is remote, so it is reasonable for the Government to exclude them from its estimate.

## 5.4 What is to be agreed in the 2nd phase of negotiations?

In regards to the settlement, the second phase of the negotiations will address the practical modalities for implementing the agreed methodology and the schedule of payments.

There may also be some further negotiation about some of the issues mentioned above, such as simplifying the rebate or the UK's participation in EU programmes.

83 FT, €40bn or €60bn? Totting up the Brexit bill, 8 December 2017

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