

# Brexit – The Way Forward



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## News

At the end of 31 January 2020, the United Kingdom left the European Union. The “[Agreement on the withdrawal](#) of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community” of October 2019 was endorsed by the Council and the European Parliament. The Withdrawal Agreement entered into force and started a transition period that will end on 31 December 2020. In essence, the United Kingdom will continue to apply Union law during the transition period but will no longer be represented in the European institutions. The special position of the United Kingdom in respect of measures in the area of freedom, security and justice will also continue. The Joint Committee may, before 1 July 2020, adopt a single decision extending the transition period for up to one or two years.

Ongoing police and judicial cooperation in criminal matters is regulated in Part III, Title V of the Withdrawal Agreement (Art. 62 et seq.). The framework of the future relationship between the European Union and the United Kingdom is set out in the [Political Declaration of 17 October 2019](#). From the outset, the Political Declaration emphasises the importance of data protection. The EU and the UK are committed to ensuring a high level of personal data protection to facilitate data flows and exchanges, which are seen as key to the future relationship. Part 3 of the Political Declaration outlines the policy objectives of the future security partnership. The partnership will comprise law enforcement and judicial cooperation in criminal matters, foreign policy, security and defence, and thematic cooperation in areas of common interest.

On 25 February 2020, the General Affairs Council [formally authorised](#) the Commission to negotiate a new partnership agreement with the United Kingdom. The Council also adopted [negotiating directives](#) that specify the Commission’s mandate for the negotiations. The directives largely follow the recommendation presented by the Commission on 3 February 2020 ([COM\(2020\) 35 final](#)). They mainly build on the aforementioned political declaration of October 2019. The EP already endorsed the draft directives in a [resolution of 12 February 2020](#).

The negotiating directives reiterate the EU’s wish to set up an ambitious, wide-ranging, and balanced economic partnership with the UK. The EU intends to establish a free trade agreement with the UK to ensure that zero tariffs and quotas apply to trade in goods. This agreement regulates customs cooperation and regulatory aspects. The mandate also contains provisions for future cooperation in areas such as digital trade, intellectual property, public procurement, mobility, transport, and energy.

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As regards the envisaged security partnership, the EU reiterates its aim to establish a broad, comprehensive, and balanced security partnership with the UK. As regards future law enforcement and judicial cooperation, in particular, the mandate outlines the following aspects:

- Although the security partnership should provide for close law enforcement and judicial cooperation in relation to the prevention, investigation, detection, and prosecution of criminal offences, account must be taken of the UK's future status as a non-Schengen third country, meaning that the UK cannot enjoy the same rights and benefits as a Member State;
- Respect for fundamental rights, including adequate protection of personal data, is a necessary condition for the envisaged cooperation. The EU will automatically terminate cooperation if the UK no longer gives effect to the ECHR;
- The security partnership must also provide judicial guarantees for a fair trial, including procedural rights, e.g., effective access to a lawyer. Cooperation instruments must lay down appropriate grounds for refusal, including a transnational *ne bis in idem*;
- In the area of data exchange, the security partnership should include PNR arrangements, an information exchange (currently foreseen within the Prüm framework), and the effective/efficient exchange of existing information and intelligence, e.g., on wanted and missing persons/objects;
- Within the framework of operational cooperation, the partnership should provide for cooperation between the UK and Europol/Eurojust in accordance with Union standards on third country cooperation;
- A streamlined extradition scheme should be built up, which includes the possibility to waive the double criminality check for certain offences, to make arrangements regarding political offences, to give EU Member States the right not to extradite own nationals, and to allow additional guarantees in particular cases;
- In other areas of cooperation in criminal matters, a future agreement should facilitate and supplement the application of relevant CoE conventions; arrangements may impose time limits, foresee standard forms, and must take into account the latest technological advancements;
- The envisaged partnership should include commitments to support international efforts to prevent and fight against money laundering and terrorist financing, which comply with the FATF standards or even go beyond these standards as far as certain aspects are concerned (e.g., beneficial ownership).

Ultimately, the mandate foresees that the future partnership should be embedded in an overall governance framework covering all areas of cooperation. The Commission has a [special website](#) that provides regular updates on the Brexit negotiations. Negotiations on an agreement for the post-transition phase started in early March 2020. The Commission published a [draft text on the new partnership agreement](#) with the UK on 18 March 2020.

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