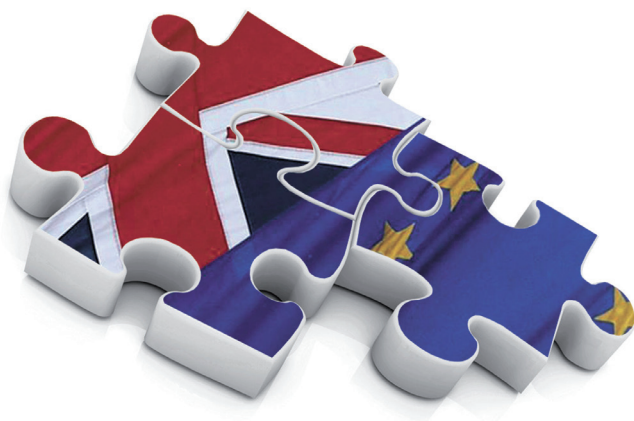




THE 14 BREXIT NEGOTIATIONS

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THE 14 BREXIT NEGOTIATIONS

ANDREW HAMMOND & TIM OLIVER

Last June's EU referendum was a seminal moment in UK post-war history and one that presents an unprecedented challenge to the EU. Yet far from being a single, isolated event, Brexit should be seen as a process made up of some 14 negotiations (a catch-all term used here for formal diplomatic discussions and wider debates about Brexit). These include negotiations:

- within the UK
- between the EU and the UK
- and within the EU about its future

Much attention, since last summer, has focused on intra-UK debates about Brexit and it is already clear that the referendum may be a trigger for a series of profound changes to the nation's unity, constitution, identity, political economy, and place in the world. However, the vote has also begun a series of negotiations elsewhere in the EU, discussions that after Article 50 is triggered will assume much higher prominence, bringing the EU more centre stage in the Brexit process.

THE 4 NEGOTIATIONS WITHIN THE EU

How the EU will change because of Brexit could be the most important, but often overlooked, outcome of the UK's vote to leave. There are four main debates about the EU's future already underway:

(i) Rebalancing the union

Participants: EU 27, European Parliament, Commission, and the ECJ.

Key issues: The new balance of power within the post-Brexit EU; the Eurozone's place in the EU; and whether the EU integrates, disintegrates or muddles through.

(ii) EU in a multipolar Europe

Participants: EU, Norway, Switzerland, Iceland, Lichtenstein, Turkey, Ukraine, non-EU Balkan countries, and the UK.

Key issues: The future of the EU's relations with non-EU European countries; EU-EEA/EFTA relations; and European geopolitics.

(iii) EU in a multipolar world

Participants: EU, UK, United States, Russia, China, UN, and NATO.

Key issues: The EU's place in a multipolar world and how other powers respond to the impact of Brexit on Europe.

(iv) EU's daily business

Participants: EU remains a union of 28 member states until the UK exit becomes formally effective. Key issues: How the EU continues normal non-Brexit business until the UK withdraws.

REBALANCING THE UNION

In the wake of Brexit, the EU will reform to reflect withdrawal of one of its largest member states. This has already led to suggestions as to how to restructure the number of Members of the European Parliament, Qualified Majority Voting, the EU's budget, staffing, and language requirements.

More broadly, the union's centre of power may shift significantly, with unclear consequences for policy direction. The European Parliament's own tough stand on Brexit can be seen as it asserting itself because of a fear that large member states will reach an agreement with the UK and so signal a potential shift away from the EU's supranational institutions towards a more intergovernmentally-run union. Brexit will also matter more for some member states than others, leading to bargaining over wider changes to the EU.

A broad range of EU policy could also be changed, in turn, altering the political economy of the union. The UK's influence over the EU can often be overlooked, not least by its own people, thanks in part to its reputation as an awkward partner. This sometimes confuses popularity and effectiveness. The UK has pushed for an enlarged union where deregulation and free-market economics are the norm. Attempts to move away from this, for example in tax harmonisation, could take a step forward without the UK as a blocker.

This does not mean, however, that Brexit will solely define the future of the EU. Instead, the UK's exit is one of several challenges confronting the EU that include ongoing pressures facing the Eurozone, Schengen, Russia relations, and the future of NATO and ties with the United States. How the EU responds to all of these will determine its place in the world and help frame its future relationship with the UK.

EU IN A MULTIPOLAR EUROPE

Brexit will change the EU's relationship with other non-EU European countries, namely Norway, Switzerland, Ukraine, Turkey, Lichtenstein and non-EU states in the Balkans. Each has developed relations with the EU that, most obviously in the case of Norway and Switzerland but also to a lesser extent Turkey and Ukraine, were intended as a means to the end of eventual EU membership or at least closer relations with the EU. Brexit might not throw these completely into reverse, with eventual membership remaining an option. It does, however, open up new possibilities for relations.

Decision makers in these states have used the Brexit vote as an opportunity to raise questions about the future of their relations with the EU. In the case of Norway and Switzerland, it has been pointed out that any deal that might entail UK membership of the EEA, which UK Prime Minister Theresa May appears to have ruled out, will require their input and, potentially, permission. There has been some limited discussion as to whether Brexit might open opportunities for a radical overhaul of Europe's institutional architecture, with one such proposal calling for a new "continental partnership". Such ambitious plans might fade if the complexities of the forthcoming Article 50 negotiations drain any optimism surrounding Brexit, but they do point to opportunities for radical change.

Such far reaching reform may be needed not only to deal with the changes that the UK exiting the EU brings to European geopolitics, but also to deal with wider trends of which Brexit is only one. Europe already feels the pull of different world powers, with Europe itself showing signs of becoming a multipolar power with Turkey and Russia as two clear European poles but with other global poles such as the United States and China also drawing the attention of different parts of Europe. Brexit adds another pole in Western Europe. If population projections hold, it is Russia, Turkey and the UK that look set to be the most populous states in Europe by mid-century.

EU IN A MULTIPOLAR WORLD

Europe's changing geopolitics connects to its response to a changing international landscape and how the rest of the world responds to a post-Brexit EU. Brexit reinforces an existing perception, in some quarters, of Europe as divided, weak and declining. From the perspective of decision makers in states such as Russia where sovereignty and hard power matter, the UK's exit is seen as an especially significant loss of power for the EU. Europe's long history of struggling to overcome internal problems is one the world is also accustomed to dealing with. A period of introspection with resources and time spent dealing with internal issues means the EU will be distracted from international matters which others will take the lead on.

Three states in particular will be crucial to shaping how Brexit plays out vis-a-vis Europe's changing geopolitical landscape and an emerging multipolar world, Europe's three hegemonies: Germany, the United States. and Russia. Other powers such as France or China will influence Brexit, but it will be the choices of the first three, whether to engage, exploit or ignore, that will shape the context of European and international politics in which Brexit unfolds.

EU'S DAILY BUSINESS

Until an exit deal is agreed and implemented, or the two year timeframe of Article 50 expires, the UK remains a member of the EU with all the same rights and powers as any other member state with the exception of not being allowed to partake in discussions amongst the remaining 27 members about how to handle Brexit negotiations. This has led to some discussion as to whether UK ministers can threaten to disrupt EU business as a means of leveraging a better exit deal. The UK Government could pursue such a course of action, although it risks antagonising rather than facilitating discussion with a union already frustrated by the Brexit vote.

For more, read the earlier LSE IDEAS Strategic Update [*A European Union without the United Kingdom: The Geopolitics of a British Exit from the EU*](#)

THE 5 EU-UK NEGOTIATIONS

Once Article 50 is triggered, formal Brexit negotiations will begin between the UK and its European partners in what could be the most complex peacetime dialogue ever undertaken by London or the EU. These discussions will be multi-dimensional with five key elements:

(i) Article 50 and an exit deal

Participants: European Parliament, European Commission, UK, and the EU 27

Key issues: Exit agreement for the UK, budget contributions, and the status of UK and EU citizens.

(ii) Brexit transition

Participants: UK, EU 27, European Parliament, and the European Commission.

Key issues: Possible transition arrangements for the UK out of the EU.

(iii) New relationship

Participants: UK, EU 27, European Parliament, and the European Commission.

Key issues: Agreement between the UK and EU over a new relationship, including a potential free trade deal.

(iv) Brexit and the 27 other member EU states

Participants: EU 27, European Parliament, and the European Commission.

Key issues: Remaining EU member states need to reach agreement over what to offer the UK and over what timeframe, potentially with countries ratifying any agreement individually.

(v) Foreign, security and defence cooperation

Participants: UK, and EU 27 (especially France and Germany).

Key issues: How to continue cooperation on international matters.

ARTICLE 50 AND AN EXIT DEAL

Since June, there have been informal discussions between the UK Government, the other 27 national administrations across the EU, plus the European Commission and Parliament. The most definitive statement yet from Brussels came from the EU Commission's Chief Negotiator Michel Barnier in December when he said that any exit deal should be reached by October 2018, mirroring comments from the European Parliament's Chief Negotiator Guy Verhofstadt.

This implies a very tight window for formal negotiations. Barnier has also then proposed four to five months for ratification, including votes in the European and UK Parliaments. This overall timetable, which could potentially get extended beyond two years if all 27 remaining member states agree, is especially short given that it is unlikely that fundamental decisions can be taken until after the French and German elections this year.

Key elements of any exit deal that are eventually agreed will include arrangements on budget contributions, and also the status of UK and EU citizens going forward. On the budget issue, the UK is one of the largest net contributors to the EU budget, paying in around £8 billion net per annum.

[According to The Financial Times, the divorce bill from the EU could potentially be as high as 20 billion Euros](#), given that in excess of 300 billion Euros of shared payment liabilities need to be settled. The size of the exit tab, which some in Brussels and the EU 27 officials believe may be significantly larger, could be a major source of tension in negotiations.

Another key area for discussion will be the status, post-Brexit, of UK and EU citizens. May has offered an early deal whereby she would guarantee rights of EU citizens already living in the UK, as long as the same is reciprocated for UK citizens living in one of the 27 other states. Brussels has, however, refused to explore this issue until Article 50 is triggered.

BREXIT TRANSITIONAL ARRANGEMENTS

The limited timeframe offered by Article 50 has led May to suggest an “implementation phase” to help smooth Brexit. Such a period will help give business and citizens the time to transition to new political and regulatory frameworks, although some Leavers, including former United Kingdom Independence Party (UKIP) leader Nigel Farage have slammed this option as “backsliding”.

Barnier has said that he is open to the idea of an implementation phase. However, he has also declared that “until we know what the intentions of a request from the UK are, what they would like and what they are prepared to accept with this new partnership, it’s going to be difficult to talk about a transitional period”.

NEW UK-EU RELATIONSHIP

Negotiating an exit agreement for the UK will be relatively more straightforward than agreeing specifics of a new deal between the UK and EU that will follow the formal exit. In the UK Government’s Brexit White Paper published on February 2, some 12 negotiating principles were set out to try to reach an agreement.

May has indicated that, while Single Market membership is not an option, she would like a “bold, ambitious free trade agreement with the EU” with “the freest possible trade on goods and services”. However, her paramount negotiating objectives include controlling immigration and “taking back control of our laws and bringing an end to the jurisdiction of the European Court of Justice (ECJ)” in the UK.

May also wants a customs agreement with the EU, but one short of current UK full membership. In her own words, this would allow for “tariff-free trade with Europe and cross border trade that is frictionless as possible”, while leaving the Common Commercial Policy and no longer been tied to the Common Commercial Tariff. This would permit the UK to pursue its own trade agreements.

It is very unclear whether the collective negotiating demands May has advanced are, realistically, possible to secure from the EU in the two year timeframe of Article 50. To be sure, European Council President Donald Tusk said that her landmark January 17 speech showed the UK is becoming “more realistic” about some of the trade-offs that will be necessary in the formal negotiations. Much could now depend on the flexibility of both sides, and here it is interesting to note, for instance, that the UK’s Secretary of State for Brexit David Davis has said that the Government would consider making a continuing EU financial contribution to “get the best possible access for goods and services to the European market”.

BREXIT AND THE 27 OTHER MEMBER STATES

Whether the UK can secure an agreement within the limited timeframes will depend in large part on whether the remaining EU is willing to offer such a deal on attractive enough terms. While some EU officials stress the unity of the 27 non-UK member states on Brexit, each country has distinctive interests that will inform its own stance. Positions vary according to factors such as domestic election pressures, levels of Eurosceptic support within their populaces, security considerations, trade ties and patterns of migration with the UK.

The reason why these national interests are potentially so important was underlined last year by the near-complete breakdown of negotiations for the EU-Canada free trade treaty (the so-called Comprehensive Economic and Trade Agreement) which had taken some seven years to finalise. Wallonia, a region of Belgium with a population of around 3.5 million, indicated to Canada that its concerns about key provisions of the deal were red lines. The opposition of Wallonia’s legislature until a last minute deal was finally reached meant that Belgium’s national Government could not give the deal its own approval. The near collapse of this agreement, one some in the UK have pointed to as a potential model for future UK-EU relations, highlights potentially significant hurdles

for any Brexit deal that the UK negotiates. This is because, like the Canadian agreement, it may need approval by not just countries, but also a cross section of regional parliaments and possibly national referendums, across Europe before it can be ratified.

The varied, complex positions of EU states on Brexit ranges from the UK's fellow non-Eurozone member, Sweden, whose political and economic interests are likely to be broadly aligned with UK positions, to countries with more countervailing postures.

Take the example of France which has long had a complex, contradictory relationship with the United Kingdom in the context of EU affairs. One key reason Paris is likely to take a hard-line stance in the first phase of Brexit negotiations is political pressure from the 2017 Presidential race. The French Government perceives that any early, significant concessions to the UK could feed political oxygen to National Front Leader Marine Le Pen, who has promised a referendum on EU membership if she gets into power.

Election year issues aside, the toughness of Hollande's Brexit positioning is reinforced by broader plans to tout Paris as a competing financial centre to London. Indeed, Finance Minister Michel Sapin and Brexit Special Envoy Christian Noyer, former Bank of France governor, have already started promoting Paris with key banks.

France is not alone in having a complicated Brexit stance. For instance Spain, home to around 300,000 UK citizens, has a significant trade deficit with the United Kingdom which might, other things being equal, favour softer negotiating positions. However, this picture is complicated by other factors, including Gibraltar's future. Madrid has already invited the UK Government to post-Brexit negotiations on Gibraltar, the UK overseas territory on the southern Spanish coast, including proposals for joint sovereignty. The fact that Prime Minister Mariano Rajoy may play hard-ball in Brexit negotiations is reflected in his reported remarks to May in October that such a joint-sovereignty model, under a hard Brexit, may be the only way for Gibraltar to secure continued access to the European Single Market which is key for its economy.

Finally, any deal agreed between the UK and the EU will need approval of the European Parliament and, potentially, the ECJ. It is often forgotten that in the early 1990s the ECJ struck down some early arrangements for European Economic Area (EEA)-EU relations, ruling that they breached the EU's treaties. UK and EU politicians may face considerable constraints in creating a new UK-EU legal architecture.

For more on the Brexit negotiating stances of EU countries, read the earlier LSE IDEAS Strategic Update [Brexit: What Happens Next?](#)

FOREIGN, SECURITY AND DEFENCE COOPERATION

May has emphasised that while the UK is departing the EU, it is not leaving Europe. Instead, she has stressed her desire to continue, if not intensify, cooperation with EU partners in areas including crime, counter-terrorism and foreign affairs.

To this end, the prime minister wants the UK's future relationship with the EU to include practical law enforcement partnership working arrangements, plus those for sharing intelligence. She also highlighted that she wants close liaison with EU allies on foreign and defence policy to keep the continent secure, including the prospect of UK military personnel remaining for some time in Eastern Europe.

At this early stage, the EU has not yet formally commented on post-Brexit security and foreign policy cooperation with the UK. However, it is likely that many national leaders, including in Germany, France and Eastern Europe will particularly favour a continued strong working relationship given the growing array of external security challenges facing the union.

THE FIVE UK-BASED BREXIT NEGOTIATIONS

It is already clear that May's Government will probably be defined by Brexit. Amidst the sea of debate about leaving the EU, there are five distinctive discussions underway across the nation:

(i) **Brexit narrative**

Participants: UK political parties, media, and academia.

Key issues: What the vote by the UK populace meant.

(ii) **Government, Parliament and the Judiciary**

Participants: Ministers, MPs, Lords, and Supreme Court.

Key issues: Who defines the Brexit process.P

(iii) **Party politics**

Participants: Conservatives, Labour, UKIP, and Liberal Democrats.

Key issues: Positioning the parties to manage Brexit.

(iv) **A united Kingdom?**

Participants: UK Government, Scottish Government and Parliament, Northern Ireland Government and Assembly, Welsh Assembly and Government, and London and local government in England.

Key issues: Role of the devolved administrations in Brexit; the place of London and England in the negotiations; and the stress of leaving the EU on the UK's existing quasi-federal structure.

(v) UK and the world, especially in the context of new trade deals

Participants: UK bilateral relations with the non-EU world

Key issues: UK relations with the United States; emerging powers such as China and India; and full membership of the WTO.

BREXIT NARRATIVE: WHAT THE VOTE BY THE UK POPULACE MEANT

Winston Churchill is believed to have said that “history is written by the victors” and this may ultimately be true of Brexit too. Most crucially, May (who was a reluctant Remainer) has implied that immigration and sovereignty were the primary drivers behind the Leave campaign's victory. Controlling migration flows from the EU and ending the jurisdiction in the UK of the ECJ have therefore become key objectives for the forthcoming negotiations. Given the EU's commitment to the free movement of goods, people, services, and capital, this has pushed May towards a hard Brexit negotiating stance.

However, May's narrative about Brexit is challenged from key quarters, including a cross section of opposition political parties and left-leaning and centrist media organisations and journalists. For instance, it is highlighted that there were diverse and sometimes divergent views expressed by people voting to exit the EU.

Some of these Leave voters focused on perceived costs and constraints of EU membership other than immigration and sovereignty, including the issue of UK financial contributions to the supranational organisation's budget. Others voted, for a vision of a buccaneering global UK that could, post-Brexit, allow the nation to secure new ties with countries outside of the EU. Meanwhile, a significant slice of the electorate voted Leave as a protest against non-EU issues such as the austerity measures implemented by UK Governments since the 2008–09 international financial crisis.

Contrary to what many Brexiteers now insist, the Leave vote therefore encapsulated a range of sentiments, and there was (and still is) not a consensus behind any specific version of Brexit, whether hard or soft, disorderly or orderly. The continuing divisions within the electorate on these issues (perhaps as big as on the basic merits of the referendum decision itself) are underlined in polls which tend to show the country broadly split over whether maintaining access to the European Single Market, or being able to limit migration, should be the key objective in negotiations.

GOVERNMENT, PARLIAMENT AND THE JUDICIARY: WHO DEFINES THE BREXIT PROCESS

In the midst of this debate over the Brexit narrative, there has also been disagreement amongst key UK institutions concerning the process for moving forward from the referendum to triggering Article 50. The Supreme Court gave a landmark constitutional ruling on January 25 that the Government requires an act of Parliament to invoke Article 50. A second development of potential significance was May's concession in her January 17 speech that Westminster legislators will get to vote on any final exit deal agreed with the EU.

PARTY POLITICS: POSITIONING TO MANAGE BREXIT

The referendum decision has helped drive clear positioning by political parties on Brexit. On one pole, the ruling Conservatives are now unifying around the Government's stance. Like the prime minister herself, this includes many former Remainers.

The other major party with a pro-Brexit message is UKIP. Its vote could now be squeezed by the significant shift in the positioning of the Conservatives. However, the threat UKIP poses to the Conservatives has distracted attention from the danger it potentially poses to Labour. UKIP is hoping that it may now have more opportunities in Labour seats given that roughly two thirds of constituencies with Labour MPs voted to leave.

Conversely, the Liberal Democrats are seeking to make political capital through opposition to Brexit. This stance has given the party clearer differentiation, and recently led it to win a by-election victory in Richmond Park against the Conservatives when Brexit was the defining issue.

Labour has the biggest positioning challenge given that the party's MPs represent both the top 20 Leave voting constituencies, and the 20 Remain constituencies, from the referendum. To be sure, much of the party faithful remains instinctively pro-EU, and some 65% of Labour voters are believed to have backed Remain last June.

However, the stance of the party's leadership in the House of Commons was ultimately to vote to trigger Article 50 given the referendum result and potential risks of losing support in many of its heartland seats, especially in England, to UKIP and the Conservatives if Labour was perceived to thwart the democratic will of the populace. Hence the reason why the party's MPs, by and large, have turned their energies not to opposing Brexit, but more to trying to soften the terms of any final deal with the EU.

A UNITED KINGDOM?

While legislative worries about Brexit go well beyond Westminster, to the Scottish, Welsh and Northern Irish legislatures, the Supreme Court ruled that the UK Government does not have to consult the devolved administrations before triggering Article 50. The justices decided that the Sewell Convention, which states that if Westminster is introducing legislation on issues that have been devolved, it “normally” has to seek the consent of devolved parliaments, is not a law and not within the jurisdiction of the court.

This was a setback to the Scottish and Welsh First Ministers, Nicola Sturgeon and Carwyn Jones, who from their different political standpoints of the Scottish National Party (SNP) and Labour respectively have both said that they cannot support Brexit without membership or full access to the Single Market which appears highly unlikely to be realised. Meanwhile, there is also substantial opposition in Northern Ireland to the UK Government’s stance, especially from Sinn Féin whose leader Michelle O’Neill said on January 30 that May has “ignored the views of the majority of the people” in the country who voted by 56% to 44% to Remain.

Given opposition of most key party leaders in Scotland, Wales and Northern Ireland to May’s Brexit vision, the forthcoming exit negotiations with the EU could test existing UK constitutional and legal frameworks to their limits.

In Scotland, for instance, which voted 62–38% to remain in the EU, Sturgeon has asserted that Brexit, especially May’s vision of a hard exit, could become a trigger for a second independence referendum from the UK. While she has ruled out such a vote in 2017, a draft bill for a second Scottish independence plebiscite was published for consultation last October.

Local government leaders across England have also voiced hopes that they will be given some say in Brexit, not least in those areas where they may acquire new powers or lose funding opportunities. The Mayor of London Sadiq Khan, in particular, has made clear his concerns about the implication of Brexit for the metropolis, a city that from 12% of the UK’s population generates approximately one third of all UK tax income. However, the lack of any formal role for local leaders in Brexit negotiations looks set to reaffirm the overly-centralised nature of the UK’s, and especially England’s, system of government, potentially causing resentment in areas that feel ignored.

UK AND THE WORLD, ESPECIALLY IN THE CONTEXT OF TRADE RELATIONS

May has re-affirmed that, post-Brexit, the nation will continue to play a major role in international security, including through its membership of NATO. She also wants to rediscover the UK's heritage "as a great global trading nation", including with key emerging markets such as India and China.

Secretary of State for International Trade Liam Fox has confirmed that the Government is already discussing, informally, trade deals with at least 12 countries. A central challenge for him with this agenda is that no agreements can be formally negotiated, let alone finalised, before the UK actually leaves the EU.

Thus, while there was much fanfare over a potential new UK-US trade deal when May met US President Donald Trump on January 27, any such agreement could not be secured until at least the second half of his four year term when the administration could have lost significant traction in Congress which would also need to vote on a deal. Moreover, while there are key areas ripe for agreement between the two nations in such a pact, including lowering or eliminating tariffs on goods, potential disagreements, such as over harmonising financial services regulations, and other possible icebergs lie on the horizon, not least given the president's commitment to "America First".

At the same time that informal talks have begun with multiple nations on these bilateral trade agendas, Fox has also opened discussions with the 164-strong body of the WTO over post-Brexit terms of membership. The UK's current membership is governed by its status within the EU with Brussels making commitments on trade tariffs and quotas on behalf of the 28 Governments.

In two years of potentially tough forthcoming negotiations, Fox is seeking to replicate, as much as possible, the UK's current schedule of commitments to the WTO. Upon leaving the EU, these obligations would then serve as the baseline from which the nation would seek to negotiate new trade agreements.

While these WTO negotiations contain significant opportunity, they also have risk too. For if the UK fails to achieve a new schedule of WTO commitments, the nation's trading arrangements would be severely disrupted, with a proverbial cliff edge scenario a danger.

Yet again, a key difficulty for Fox is that, under the terms of the UK's EU membership, he can only engage in informal talks with other WTO members until a Brexit deal is in place. Until then, many WTO members are adopting a cautious, wait and see approach.

CONCLUSION

With so many Brexit discussions now underway, this Strategic Update has highlighted that the final form of the UK's departure from the EU is not yet set in stone. However, most indications are that the UK Government is heading down a hard exit pathway that could potentially see no deal agreed.

The stakes in play are therefore huge and historic, not just for the UK, but also the EU which could also be damaged by a disorderly Brexit. Delivering a smoother departure needs clear, coherent, and careful strategy and thinking on all sides so that the EU and UK can move toward a new constructive partnership that can hopefully bring benefits for both at a time of significant global geopolitical turbulence. ■



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The process of Brexit goes far beyond invoking Article 50. In this Strategic Update, Andrew Hammond and Tim Oliver identify some 14 Brexit negotiations underway - both formal diplomatic discussions and wider debates between and within the UK and EU.

How will these range of negotiations bring the EU centre stage, and do they point towards a 'hard exit' for the UK?

