

Negotiations on the UK's withdrawal from the EU: Monitoring Report

17 September 2018



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1. Introduction

This report provides an update on developments relating to the Article 50 Negotiations on the UK's withdrawal from the EU since 9 July 2018.

This paper provides:

- A summary of the latest developments in the negotiations and the related UK legislation;
- An analysis of the key issues of interest to the External Affairs and Additional Legislation Committee (the Committee); and
- A summary of the Welsh Government's response to the latest developments.

Please note that the table of Brexit negotiation documents and papers will no longer be included in the monitoring report. It will be updated and published separately on the Research Service blog.

Summary of developments

- On 12 July the UK Government's full White Paper on the future relationship between the United Kingdom and the European Union¹ was published. The Research Service has published a series of thematic articles exploring the White Paper, these have been collated and published on its blog.
- The Welsh European Advisory Group met on the same day, the notes of that meeting reported the group concluded 'more needs to be done to ensure that Wales is operationally ready as the UK exits the European Union'.
- Also on 12 July the European Parliament's Brexit Steering Group (BSG), published a its initial view on the Chequers Statement.
- On 16 July the First Minister, Carwyn Jones, said that the White Paper represents a 'vaguely credible negotiating position'.

¹ The UK Government has published a Welsh language version of the White Paper summary.

- The House of Commons Report Stage of the Taxation (Cross-border Trade) Bill took place on the 16 July. It was introduced in the House of Lords on the 17 July. The Second Reading in the Lords took place on 4 September.
- The Trade Bill received its House of Commons Report stage on 17 July and its First Reading in the Lords on the 18 July. It received its Second Reading in the House of Lords on 11 September.
- On 19 July the European Commission issued a communication to the other EU institutions calling for Brexit preparations to be stepped up immediately at all levels and for all possible outcomes.
- The Haulage Permits and Trailer Registration Act 2018 – UK Parliament received Royal Assent on 19 July 2018.
- Michel Barnier provided public responses to the UK Government in a statement on 20 July, following a meeting of the EU Commission's General Affairs Council and in another on 26 July, following a meeting with Dominic Raab. These statements expressed scepticism about the workability of some of the UK proposals.
- In a parallel statement following the meeting on the 26 July, Secretary of State for Exiting the European Union, Dominic Raab highlighted the UK Government's position on the negotiations.
- A meeting of the Ministerial Forum (EU Negotiations) was held in Cardiff on 1 August.
- On 20 August, the UK Government published its Frameworks for the UK-EU partnership, in the fields of Financial Services and open and fair competition.
- On 21 August, Michel Barnier reported that the negotiations were now focused on 'three workstreams'; the backstop for the Irish border, the outstanding issues in the Withdrawal Agreement and the declaration on the future UK-EU relationship.
- On 23 August, UK Government published the first 25 technical notices on how to prepare for Brexit if the UK leaves the EU without a deal. At the same time the Secretary of State for Exiting the European

Union gave a speech announcing the publication and rationale of the notices.

- On the same day the UK Government has guaranteed replacement funds for EU funded programmes until the end of 2020 if there's no deal and provided guidance on how this will operate for specific programmes such as Erasmus+ and Horizon 2020.
- Responding to the UK Government's publication of the no deal technical notices on August 23, the First Minister said "No deal' is not an option and the UK Government's bluff is fooling no-one".
- In a statement on 31 August Michel Barnier highlighted the progress that had been made in agreeing a partnership on internal security and outlined the remaining issues to be agreed in the Withdrawal Agreement.
- On 10 September, the First Minister Carwyn Jones gave a keynote speech entitled "Brexit and devolution: stresses, strains and solutions", at the Institute for Government in London.
- The Agriculture Bill received its First Reading on 12 September. Clause 27 and Schedule 3 confer powers on Welsh Ministers.
- On 12 September the UK and Welsh Governments published a joint statement setting out it how they intend to work together on agriculture in future.
- On 13 September the UK Government published the second tranche of no deal technical notices covering a range of sectors.

2. Latest Developments

The Withdrawal Agreement

Negotiations on the Withdrawal Agreement continued over the summer, following the conclusion reached in the June meeting of the European Council that insufficient progress had been made.

While both sides have stated that around 80 per cent of the Agreement is agreed, the most complex and challenging areas remain to be resolved. In a statement

following his meeting with Dominic Raab, UK Secretary of State for Exiting the EU on 21 August, Michel Barnier reported that:

Dominic and I focused on what needs to be done in our three work streams:

- a backstop solution for avoiding a hard border on the island of Ireland;
- the other outstanding issues of the Withdrawal Agreement, for instance the protection of existing Geographical Indications, amongst others;
- the political declaration on our future relationship.

We have agreed that the EU and the UK will negotiate continuously from now on.

Other outstanding areas were set out in a statement by Mr Barnier on 31 August and included the protection of personal data transmitted to the UK before the end of the transition period, Euratom, Withdrawal Agreement governance and finding solutions for specific British territories, such as its sovereign bases in Cyprus, and Gibraltar².

The current deadline for the sign off of the Withdrawal Agreement and the accompanying political declaration on the future UK-EU relationship is October 2018 (as set out in a communication from the Commission to the other EU institutions published on 19 July).

However, it has subsequently been reported that this deadline for agreement could be pushed back to some time in November. Speaking at a conference in Slovenia on Monday 10 September, Mr Barnier stated his view that it was both “realistic” and “possible” for the EU and the UK to reach agreement on the terms of the Withdrawal Agreement by early November.

There is no guarantee that these outstanding issues can be satisfactorily resolved within the time remaining. As a result, the EU Council's communication set out the Commission's view of the ‘main consequences’ of a no deal scenario and concluded that:

² Bilateral negotiations are ongoing between Spain and the UK as to the status of Gibraltar.

Preparation must therefore be stepped up immediately at all levels and taking into account all possible outcomes. [original emphasis]

The UK Government has also stepped up its preparations for a 'no deal' Brexit, publishing [a series of technical notes](#) setting out how the UK Government will attempt to mitigate the impact of a no deal scenario in various sectors. More technical notes are due to be published throughout September. There is more on preparedness in Section 3 of this paper.

The future relationship

While 80 per cent of the Withdrawal Agreement is deemed agreed, there continues to be much uncertainty regarding the accompanying declaration on the future UK-EU relationship.

The UK Government has attempted to introduce some clarity, setting out its vision for a future relationship following a meeting of the UK Government at Chequers on 6 July. Following the meeting, [it was announced](#) that the UK Government had "reached an agreement" on a White Paper on the future UK and EU relationship.

In the days following the announcement the then secretaries of state for Foreign and Commonwealth Affairs, [Boris Johnson](#), and Exiting the European Union, [David Davis](#), resigned. They were replaced with [Jeremy Hunt](#) and [Dominic Raab](#) respectively.

The UK Government's full White Paper on [the future relationship between the United Kingdom and the European Union](#)³ was published on 12 July.

The UK's proposals were summarised by the Research Service in [an article published on 17 July](#). The Research Service has subsequently published a series of more detailed articles on specific areas of White Paper, such as agriculture, transport, higher education, the economy etc. These have been [collated and published here](#).

At its heart, the White Paper proposes a new Free Trade Area for goods including agri-food goods. This would include:

³ The UK Government has published a [Welsh language version of the White Paper summary](#).

- Zero tariffs on manufactured and agri-food goods and no quota or rules of origin requirements for UK-EU goods.
- A common rule book for goods, including agri-food goods, limited to rules that relate to the need for border checks. The paper states that this would require the UK to make an upfront commitment to harmonise rules with the EU and would also prevent a hard border between Ireland and Northern Ireland.
- A new Facilitated Customs Arrangement (FCA) where the UK would charge UK tariffs for goods entering the UK destined for the UK market and EU tariffs for goods entering the UK but destined for the EU market.
- UK participation in key EU agencies who play a significant role in the placing of goods on the market such as the European Medicines Agency, the European Chemical Agency and the European Aviation Safety Agency.
- A new framework on mobility that would allow UK and EU citizens to travel for tourism purposes and for short-term business purposes without the need for visas.
- Agreeing to adopt the same system and rules on state-aid and close cooperation on competition regulation.
- A new agreement on services which goes deeper than the EU's current arrangements with third party countries but would not be equivalent to the current market access the UK service sector enjoys.
- A commitment to maintaining minimum environmental, climate change and social protection standards and in particular a non-regression clause on environmental, and domestic labour standards.

The White Paper also sets out the UK Government's proposals for a new security partnership with the EU. This would include the UK participating in some of the EU's current security agencies but on different terms; access to key security systems, continued collaboration on defence including on research and development, agreements on extradition, continued participation in the Galileo Satellite Programme and cooperation in areas such as health security.

It also proposes 'cooperative accords' in five key fields:

- science and innovation;

- culture and education;
- international aid and development;
- defence research and defence capability; and
- Space.

The European Parliament's Brexit Steering Group (BSG), published its initial view on the Chequers Statement on 12 July. In it, the BSG noted that while it "welcomed" the UK Government's statement and White Paper, it reiterated its view that any new relationship:

"...among others the principles of the **non-divisibility of the four freedoms**, the **integrity of the single market**, avoiding a sector-by-sector approach and safeguarding financial stability, the preservation of the autonomy of EU decision-making, the safeguarding of the EU legal order and the balance of rights and obligations which any future EU-UK relationship will need to respect. In this framework there will be, for example, **no space for outsourcing EU's customs competences**".
[emphasis added]

Michel Barnier provided public responses to the UK Government in a statement on 20 July, following a meeting of the EU Commission's General Affairs Council and in another on 26 July, following a meeting with Dominic Raab.

On 20 July, Mr Barnier reported that there:

- was some agreement on the concept of an EU-UK Free Trade Agreement;
- shared support for 'a level playing field, notably in state aid and environmental and labour standards';
- 'a large convergence of views on possible and necessary cooperation in the field of internal and external security'; and
- remained a number of issues with the Chequers proposals.

His concerns revolved around UK border checks on goods entering the EU, the workability and legality of the proposed 'Facilitated Customs Arrangement' and the extent to which services can be separated from goods, noting that:

“...we know that 20%-40% of the value of products that we use every day is linked to services, how would we avoid unfair competition which European businesses could be faced with?”

In his statement on 26 July, Mr Barnier highlighted that there was much agreement on the UK proposals for a security partnership with the EU, particularly in regards to foreign policy and external security. He noted that there was real scope to agree close cooperation on matters of internal security, such as the tracking and extradition of criminals. However, Mr Barnier also further questioned the UK's customs proposals noting that:

“...the EU cannot – and will not – delegate the application of its customs policy and rules, VAT and excise duty collection to a non-member, who would not be subject to the EU's governance structures”.

Mr Barnier also highlighted the overarching need for a mutually agreeable solution to the issue of the border on the island of Ireland.

In a parallel [statement following the meeting on the 26 July](#), Secretary of State for Exiting the European Union, Dominic Raab highlighted that the UK Government's position on the Irish border issue remains the one it set out in June and called again for the backstop to:

“...be for a time-limited period before the permanent future arrangements would become operational”.

In a [statement to the UK Parliament](#) on 4 September, Dominic Raab summarised the White Paper as allowing for:

- frictionless trade across our borders;
- continued close cooperation on law enforcement and other security matters;
- the UK free to develop its own independent trade policy; and
- broader UK-EU cooperation from research to student exchanges, in many of the areas that we prize on both sides.

The Secretary of State also stated that the proposals will mean that the UK will leave the Single Market and Customs Union and end the free movement of people and the jurisdiction of the European Court.

During this reporting period, the UK Government has also published its Frameworks for the UK-EU partnership, in the fields of [Financial Services](#) and [open and fair competition](#).

UK Legislation

Haulage Permits and Trailer Registration Bill

The [Haulage Permits and Trailer Registration Act 2018 – UK Parliament](#) received Royal Assent on 19 July 2018. The purpose of the Bill is to make provision to support UK hauliers to continue to operate internationally after the UK leaves the EU. As a result, the Bill gives powers to the Secretary of State to make regulations to provide for a haulage permit scheme, if such a scheme will be required as part of a deal with the EU, with the aim of ensuring that UK hauliers can obtain the necessary paperwork to provide services to and from EU countries. It also enables the Secretary of State to make regulations to introduce a trailer registration scheme. The Bill extends and applies to Wales and does not give any powers to Welsh Ministers. The Explanatory Notes to the Bill state that the Assembly does not have legislative competence in relation to road haulage permits and trailer registration.

Taxation and Trade

The House of Commons Report Stage of the [Taxation \(Cross-border Trade\) Bill](#) took place on the 16 July. It was introduced in the House of Lords on the 17 July. The Second Reading in the Lords took place on 4 September. As the Bill is a supply Bill the Lords has no power to amend and the remaining stages were taken on the same day. The Bill is intended to 'impose and regulate a duty of customs by reference to the importation of goods into the United Kingdom'.

The [Trade Bill](#) received its House of Commons Report stage on 17 July and its First Reading in the Lords on the 18 July. It received its [Second Reading in the House of Lords](#) on 11 September. In the course of debate Lord Fox (Liberal Democrat) drew attention to the fact that the Committee stage for the Bill in the Lords had not been announced:

[...] after this debate there is absolutely no sign of a committee stage. I had expected to return in October and find committees ready and waiting, but no. It is not on the programme so far; is it happening in mid-October, late October, or November? Perhaps the Minister or

someone in government can help. Either way, if this Bill is so important, why are we not getting on with it?

The [Agriculture Bill](#) received its First Reading on 12 September. The purpose of the Bill is to authorise new expenditure for certain agricultural and other purposes. It also makes provision about direct payments during an agricultural transition period following the United Kingdom's departure from the European Union.

It makes provision about the acquisition and use of information connected with food supply chains. The Bill confers power to respond to exceptional market conditions affecting agricultural markets and to modify retained direct EU legislation relating to agricultural and rural development payments and public market intervention and private storage aid. The Bill makes provision about marketing standards and the classification of carcasses and for the recognition of associations of agricultural producers which may benefit from certain exemptions from competition law. Finally, the Bill confers power to make regulations about contracts for the purchase of agricultural products from agricultural producers and securing compliance with the [WTO Agreement on Agriculture](#).

Clause 27 and Schedule 3 of the Bill confer powers on Welsh Ministers, but not to Scottish Ministers [due to their opposition to the Bill](#). The Explanatory Notes say:

Further provisions relating to Wales can be found in Schedule 3. This is at the request of the Welsh Government in order to continue making payments to farmers and land managers once the UK leaves the EU, to make changes to current schemes and to enable implementation of replacement land management schemes. These powers are intended to be time limited until a Welsh Agriculture Bill can be brought forward.

Upcoming UK legislation

The consultation on the [Fisheries white paper: sustainable fisheries for future generations](#) closed on 12 September. The White Paper is a UK Government policy document that discusses a range of fisheries policy matters, subject to the continuing discussions between the Department for Environment Food & Rural Affairs (Defra) and the Devolved Governments.

The Defra consultation on the [Environmental Principles and Governance after EU Exit White Paper](#) closed on the 2 August. The document addresses some of the key questions around how environmental principles should be embedded into law, public policy-making and delivery, and what functions and powers the new

environmental watchdog should have to oversee environmental law and policy. It is set out in three parts:

Part 1 – Environmental Principles

Part 2 – Accountability for the Environment

Part 3 – Overall Environmental Governance

The consultation proposals apply to England and reserved matters only.

3. Key areas of interest to the External Affairs Committee

Preparedness

With seven months until exit day, the UK Government has increased its preparations for a 'no deal scenario' by publishing the first batch of 25 technical notices on how to prepare for Brexit if the UK leaves the EU without a deal. It is expected that more of these notices, intended to help businesses and citizens to plan and prepare for such a scenario, will be published this September. In a speech announcing the publication of the notices, the Secretary of State for Exiting the European Union, Dominic Raab, said:

“In the notices themselves, we set out clear steps that public institutions, companies and people should take or consider taking, in order to avoid or mitigate or manage the risk of any potential short-term disruption.

The overarching aim of the notices is to facilitate the smooth, continued, functioning of business, transport, infrastructure, research, aid programmes and funding streams that have previously come from the EU.

In some cases, it will mean taking unilateral action to maintain as much continuity as possible at least in the short term, in the event of no deal, and irrespective of whether the EU reciprocates in practice”.

Dominic Raab also reiterated that a no deal scenario is not what the UK Government wants or expects from its negotiations with the EU.

Some of the technical notices published by the UK Government and likely to be of interest to stakeholders in Wales include guidance on:

- [Trading with the EU if there's no Brexit deal](#) including implications for businesses importing from, or exporting to, the EU;
- [How to classify goods in the UK Trade Tariff](#) if the UK fails to negotiate a future economic partnership with the EU which provides for a Free Trade Area for goods. In a 'no deal scenario' goods traded between the UK and the EU after Brexit will be subject to the same requirements as third country goods, including the payment of customs duty; and
- [Producing and processing organic food](#) including changing logos on packaging from the EU organic logo and exporting from the UK to the EU. To export to the EU in a no deal scenario, UK businesses would need to be certified by an organic control body recognised and approved by the EU to operate in the UK but UK control bodies would have to wait until the UK becomes a third country in order to apply to the European Commission for recognition.

As part of these plans, [the UK Government has guaranteed replacement funds for EU funded programmes](#) until the end of 2020 if there's no deal. Alongside the the guarantee the UK Government has provided guidance on how this will operate for specific programmes such as [Erasmus+](#) and [Horizon 2020](#). The Wales Audit office, in its [Managing the impact of Brexit on EU Structural Funds](#) report published on 1 August, concluded, amongst other things, that "the guarantee with the new terms significantly reduc[es] the risk of Wales losing funding in a no deal scenario".

A [second tranche of notices](#) are were published on 13 September. These notices included: the Connecting Europe Facility; European Regional Development Funding; European Social Fund (ESF) grants; Funding for UK LIFE projects; driving in the EU; Handling civil legal cases; Appointing nominated persons; Trading under the mutual recognition principle; Trading goods regulated under the 'New Approach'; Vehicle type approval; Accessing public sector contracts; Broadcasting and video on demand; Merger Review and anti-competitive activity; what telecoms businesses should do; Data protection; industrial emissions standards; Reporting CO2 emissions for new cars and vans; Upholding environmental standards; Using and trading in fluorinated gases; running an oil or gas business; Trading in drug precursors; Satellites and space programmes; exemption from maritime security notifications; Recognition of seafarer certificates; Mobile roaming and travelling in the EU.

On the EU side, the European Commission adopted a [Communication](#) on preparing for the UK's withdrawal from the EU, published on 19 July. This Communication called on stakeholders and national and EU administrations to prepare for all Brexit scenarios. In addition, the European Commission has also prepared a series of [preparedness notices](#) setting out the legal and practical implications of the UK's withdrawal from the EU.

The [Open Europe](#) thinktank recently published a high level overview of what [key EU 27 countries have done to prepare](#) for a no deal Brexit, as well an analysis of [some of the UK Government's technical notices](#).

The potential impact of Brexit

On 3 September, the [UK in a Changing Europe](#) thinktank published a report on the Cost of No Deal Revisited. This report concludes that:

“So while a chaotic Brexit remains a possibility, either via a breakdown in the negotiations or the inability of British politicians to provide a majority for any conceivable negotiated outcome, its impacts will be severe and overwhelmingly negative. In the short term at least, considerable uncertainty and disruption will result. In all likelihood, the chances of negotiating the kinds of mitigating deals that the government seems to assume will be possible in its technical notices on the pact of no deal seem slim”.

The House of Commons Library published its [‘What if there's no Brexit deal?’](#) Briefing paper on 10 September. The paper focuses on how such a situation might arise, the constitutional implications for the UK and the devolved administrations, and what the impact might be in a range of policy areas.

In [his statement to the UK Parliament](#) on 4 September, the Secretary of State for Exiting the European Union noted that:

“Our approach acknowledges that there are some risks to a ‘no deal’ scenario, And demonstrates that we are taking the action to avoid, to minimise and to mitigate these potential risks so we are equipped to manage any short-term disruption”.

The Secretary of State also said that a no deal Brexit could bring “countervailing opportunities”, such as lower tariffs from the ability to introduce new free trade deals straight away, the full recovery of legislative and regulatory control, and a swifter end to financial contributions to the EU.

The Economists for Free Trade group also published a report in September on the impact of the UK trading with the EU based on the World Trade Organisation rules. Its report concludes that:

The long-term gain to GDP would be about 7% over the next decade and a half, a half percentage point addition to the growth rate over this period. The average household would gain around 8%, while the poorest household will be 15% better off. The Treasury will receive about 10% extra revenue - around £80 billion.

The BBC's Reality Check team analysed this paper, exploring some of its key claims, pointing out the differences between these and other published work, and highlighting some of the critiques of the report made by other economists and organisations.

4. Welsh Government response

On 16 July, in response to the UK Government's White Paper, the First Minister, Carwyn Jones, said that it represents a 'vaguely credible negotiating position'. He went on to:

"...urge the EU27 to show an element of flexibility to avoid the catastrophic 'no deal' scenario...By stepping over the red lines and working together I believe we can reach an agreement that provides the basis for a long-term economic relationship".

On the following day, the Cabinet Secretary for Finance, Mark Drakeford, launched the latest Welsh Government paper on Brexit on 'Reforming UK funding and fiscal arrangements after Brexit'. The accompanying statement outlined the proposals, which include replacing the Barnett formula with a new, rules-based system, ensuring Wales must not lose a penny of funding due to Brexit and the creation of new independent bodies to oversee any new system of funding.

Responding to the UK Government's publication of the no deal technical notices on August 23, the First Minister said:

"'No deal' is not an option and the UK Government's bluff is fooling no-one. It is time the Prime Minister dropped the poker face and worked constructively with the EU-27 to secure a Brexit deal that protects our citizens, services and economy".

On 10 September, the First Minister, Rt Hon Carwyn Jones gave a keynote speech entitled “[Brexit and devolution: stresses, strains and solutions](#)”, at the Institute for Government in London. In his speech, the First Minister called for reform of UK constitutional arrangements after Brexit including reform of the Sewell convention and the creation of new inter-governmental mechanisms.

On 12 September the UK and Welsh Governments [published a joint statement](#) setting out it how they intend to work together on agriculture in future.

Preparedness

The [Welsh European Advisory Group](#) met on 12 July, the notes of that meeting reported that the group concluded that

“more needs to be done to ensure that Wales is operationally ready as the UK exits the European Union”.

The minutes also contain an over of the Cabinet Secretary for Energy, Planning and Rural Affairs introduction of the [Brexit and Our Land consultation document](#). The document sets out a new Land Management Programme to support Welsh farmers post-Brexit, replacing the Common Agricultural Policy (CAP). The document proposes two new large and flexible schemes to replace Basic Payment Scheme (BPS), Glastir and other parts of the Rural Development Programme. These will be

- The Economic Resilience Scheme will provide targeted investment to land managers and their supply chains. It will provide investment to increase competitiveness and make improvements in resilience and productivity for high-quality food production.
- The Public Goods Scheme will provide a new income stream to land managers delivering public goods from the land. It will enable them to help address challenges such as climate change mitigation, habitat loss, poor air and water quality.

Alongside the minutes of the meeting, a document containing more detail on the [Welsh Government's EU transition fund](#), including its design principles and governance structure was published. In general it says:

“The Fund should help benefit Wales’ planning and preparedness for Brexit. Potential areas for investment in transition include technical, commercial, trade, and export-related and industry sectoral-specific

support for businesses, the public and third sectors. The fund can help employers attract, recruit and retain EU nationals, who make a crucial contribution to Wales”.

Details on the first tranche of funding from the fund are also included. Allocations highlighted in the document are:

- £2.15 million to support the development of the red meat sector in Wales;
- £100,000 for an import substitution project to help identify and secure supply chains within the UK and encourage companies based in the EU to set up operations in Wales;
- £390,000 and £440,000 over two years for transforming the Government Fisheries Management Systems for EU Exit and to supporting Welsh fisheries and Aquaculture sectors to prepare for EU Exit respectively;
- £3.5m for a programme run by Wales' universities to drive international partnerships and promote Wales as a study destination in a post Brexit world;
- £150,000 to facilitate the WLGA to deliver a Brexit support package to all 22 local authorities in Wales; and
- £200,000 for research to collect data on social care workforce and dependency on EU nationals. Further [details on this research](#) was published on 30 July.

The proposals for the second tranche of funding are due to be assessed, and where applicable, approved on 19 September 2018.

A meeting of the [Ministerial Forum \(EU Negotiations\)](#) was held in Cardiff on 1 August. the Cabinet Secretary for Finance, Mark Drakeford and the Minister for Housing and Regeneration, Rebecca Evans AM represented Wales. The subsequent communiqué noted that:

“The three principal agenda items at the meeting were an update and discussion of the latest state of the EU negotiations, a discussion on measures to support open and fair competition between markets and the Forward Work Programme for the Ministerial Forum (EU Negotiations)”.