

## Status of settlement

- The Settlement Agreement is a binding international agreement between the 28 Member States. § 3(ii) and (iii) of the Conclusions of the EU Council to which it is attached state that the Decision recording the Agreement is legally binding, compatible with the existing Treaties, and that it can only be amended or repealed by the common consent of the Member States, thus including the UK.
- The Agreement will come into effect when the UK decides to remain a Member State of the EU. The only express condition of the Conclusions and the annexed Decision of the Member States is that the United Kingdom should remain a member of the EU.
- In the event of a vote to leave the EU, the Agreement would cease to exist.
- The Agreement is not subject to the jurisdiction of the ECJ. As such, the ECJ could not pronounce on the validity of the Agreement otherwise than in the context of an action brought under EU law and after hearing full argument from Member States and the Institutions of the Union.
- The task of the ECJ is “to ensure that in the interpretation and application of the Treaties, the law is observed”. The Agreement between the Heads of State and Government is an international treaty. If and when it comes into effect, it will be part of “the law” to be observed.
- In so far as the Agreement provides for amendments to the EU Treaties, these are binding international commitments agreed unanimously by all the Member States. The ECJ is the creature of the Treaties and there is no basis on which it could rule that amendment to the Treaties is unlawful.
- The Agreement provides for the Commission to prepare secondary EU legislation to give effect to certain aspects of it. Such legislation would require to be passed by the normal procedure, and could be challenged by an individual or company only if it affected them individually and directly. This could happen only after the secondary legislation came into effect and was applied to them. Even if successful, that challenge could not invalidate the Agreement – only a specific provision of the secondary legislation.