

# BREXIT BRIEF



Brexit Brief Issue 73: 23 October 2019



## Introduction

*The Brief seeks to provide up-to-date information on the progress and content of the UK-EU negotiations, and bring together relevant statements and policy positions from key players in Ireland, the UK and EU.*

*The Brief is part of a wider communications programme covering the work of the IIEA's UK Project Group – including commentaries, speeches, texts and event reports – which are highlighted on the Institute's website.*

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## Section One: State of Play

### **Setback for UK Government as MPs Block Timetable Plan**

Despite a positive Second Reading of the Withdrawal Agreement Bill in the House of Commons, the refusal of MPs to accept the Government's tight timetable for consideration of the Withdrawal Agreement Bill has thrown Prime Minister Boris Johnson's plans for EU exit on 31 October into disarray. The time required for full consideration of the Bill in both Houses of Parliament may require an extension to Article 50, requested in two letters from the Prime Minister to Brussels on 19 October.

### **Commons Speaker Frustrates Johnson Government**

On Monday, 21 October – just ten days before the 31 October Brexit deadline – the UK Government suffered further frustration in the House of Commons

as the Speaker, John Bercow, refused its request to hold a meaningful “yes” or “no” vote on the Brexit deal. The Speaker said a motion on the deal had been brought before the House on Saturday, 19 October, and that, in accordance with longstanding procedures it would be “repetitive and disorderly” to present it again.

The UK must adopt specific legislation to implement in UK law the terms of the Withdrawal Agreement agreed in Brussels on 17 October which will take the country out of the EU. The proposed legislation – the Withdrawal Agreement Bill (WAB) - must receive the backing of a majority in both the House of Commons and the House of Lords. The WAB provides the legal basis for the anticipated transition period and for the rights of EU citizens in the UK after Brexit. It also permits the payment of the so-called “divorce settlement” foreseen in the deal.

The Government presented the text of the extensive WAB – 110 pages with 125 pages of explanatory material

- to the House of Commons, with the Second Reading held on Tuesday, 22 October. While the exercise of full Parliamentary scrutiny in the two Houses might be expected to take weeks rather than days, the Leader of the Commons, Jacob Rees-Mogg, announced plans to complete all stages of the Bill in the Commons in three days under the terms of what was seen as an aggressive timetable provision, requiring MPs to sit until midnight on two days. The Bill would then move to the House of Lords for a similar scrutiny process.

The Withdrawal Agreement must be approved by the European Parliament which will not proceed to consider the matter until there is clarity on the position in Westminster. The timetable was put before MPs in a vote on the evening of Tuesday, 22 October 2019 and defeated by 14 votes.

### **Three Letters to Brussels, 19 October 2019**

Following the House of Commons decision to delay ratification of the revised Withdrawal Agreement the Prime Minister was obliged, under the terms of the so-called Benn Act – the European Union (Withdrawal) (No.2) Act – to write to the European Council requesting an extension of the departure period.

On the evening of 19 October 2019 Prime Minister Johnson despatched an unsigned letter to President Donald Tusk in the terms set out in the Benn Act stating that “the United Kingdom is seeking a further extension [...] [and] proposes that this period should end at 11.00pm GMT on 31 January 2020. If the parties are able to ratify before this date, the Government proposes that the period should be terminated early.”

This was accompanied by a signed letter to Donald Tusk in which the Prime Minister indicated that he would press ahead with ratification and introduce the necessary legislation and went on to state “While it is open to the European Council to accede to the request mandated by Parliament or to offer an alternative extension period, I

have made clear since becoming Prime Minister, and made clear to Parliament again today, my view, and the Government’s position, that a further extension would damage the interests of the UK and our EU partners, and the relationship between us.”

A third letter, from the UK Representation in Brussels to the Secretariat of the European Council, attached a copy of the first letter and indicated that the Government would introduce the necessary legislation within the following week.

European Council President Donald Tusk responded by tweet that “The extension request has just arrived. I will now start consulting EU leaders on how to react.” The pace of that consultation will depend on the evolving situation in Westminster.

### **Parliamentary Debate, 19 October 2019.**

The House of Commons met on Saturday 19 October 2019 – the first Saturday sitting since the Falklands War crisis in 1982 – to debate the outcome of the European Council meeting and the revised Withdrawal Agreement. Prime Minister Boris Johnson told the House that “the best thing for the UK and for the whole of Europe is for us to leave with this new deal on October 31” and that “I will not negotiate a delay with the EU, and neither does the law compel me to do so. I will tell our friends and colleagues in the EU exactly what I’ve told everyone in the last 88 days that I’ve served as Prime Minister: that further delay would be bad for this country, bad for the European Union and bad for democracy. So next week the Government will introduce the legislation needed for us to leave the EU with our new deal on October 31.”

The Government Motion approving the new deal was moved by the Brexit Secretary Stephen Barclay. An Amendment, moved by Sir Oliver Letwin, provided that “this House has considered the matter but withholds approval unless and until implementing legislation is passed.” The purpose of the amendment was to keep in

place the insurance policy provided by the Benn Act, preventing the UK from automatically crashing out if no deal is in place by 31 October.

The Letwin Amendment was carried by 322 votes to 306 thus triggering the Benn Act as the Government had failed to gain approval of the Withdrawal Agreement within the time period provided for in the Act.

### **EU-UK Agreement 17 October 2019**

On 17 October 2019 the European Commission and the UK Government announced that their negotiators had reached agreement on a revised Protocol on Ireland/Northern Ireland included in the Withdrawal Agreement and a revised Political Declaration setting out the framework for the future relationship between the EU and the UK.

Substantial texts were published on the EU Task Force website setting out the details of the new deal including consequential technical adaptations. A Declaration by the UK Government concerning the operation of the 'democratic consent in Northern Ireland' provision of the revised Protocol was also published.

The European Commission summarised the key element of the agreement:

*The revised Protocol provides a legally operative solution that avoids a hard border on the island of Ireland, protects the all-island economy and the Good Friday (Belfast) Agreement in all its dimensions, and safeguards the integrity of the EU Single Market.*

*Northern Ireland will remain aligned to a limited set of Single Market rules to avoid a hard border on the island of Ireland. Today's Protocol will also avoid any customs border on the island of Ireland, while ensuring that Northern Ireland remains part of the UK's customs territory. The Northern Ireland Assembly will have a decisive voice on the long-term application of relevant EU law in Northern Ireland.*

*The main change in the Political Declaration relates to the future EU-UK economic relationship where the current UK government has opted for a model based on a Free Trade Agreement (FTA). The Political Declaration confirms the ambition to conclude an FTA with zero tariffs and quotas between the EU and the UK, and states that robust commitments on a level playing field should ensure open and fair competition.*

*The revised Protocol is no longer an insurance policy that applies unless and until the EU and the UK conclude a subsequent agreement that replaces it in part or in full. It is a fully legally operative solution that will continue to apply unless it fails to receive the democratic support of the Northern Ireland Assembly. The Assembly will be asked to provide its continued support for the Protocol 4 years after the end of the transition period and every [4] years thereafter. Obviously, the terms of the future trading relationship between the EU and the UK – in terms of our shared ambition to have zero customs duties and quotas between the EU and the UK – will have a bearing on the practical application of the newly agreed Protocol.*

### **President Juncker Letter to President Tusk**

The Commission President wrote to the President of the European Council informing him of the agreement:

*While I deeply regret the outcome of the referendum of 23 June 2016, I continue to believe that the European Union is best served by an orderly and amicable withdrawal of the United Kingdom from our Union. Our hand should always remain outstretched as the United Kingdom will remain a key partner of the European Union in the future.*

*The negotiators reached an agreement on a revised Protocol on Ireland/Northern Ireland and on a revised Political Declaration on 17 October 2019. Both were endorsed by the European Commission. The Prime Minister of the United Kingdom also signalled his approval of these documents to me today. Both texts are attached to this letter.*

*I recommend that the European Council endorses the revised Withdrawal Agreement and Political Declaration at its forthcoming meeting. As I have indicated to you in the past, I believe it is high time to complete the withdrawal process and move on, as swiftly as possible, to the negotiation on the European Union's future partnership with the United Kingdom.*

### **European Council Conclusions**

The Conclusions of the Special meeting of the European Council (Art.50) on 17 October 2019 provided that:

*The European Council endorses 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. On this basis, the European Council invites the Commission, the European Parliament and the Council to take the necessary steps to ensure that the agreement can enter into force on 1st November 2019, so as to provide for an orderly withdrawal.*

*The European Council approves the Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom of Great Britain and Northern Ireland. The European Council restates the Union's determination to have as close as possible a partnership with the United Kingdom in the future in line with the Political Declaration.*

### **Significant Comments on the Agreement**

Prime Minister Boris Johnson said that "it is a very good deal for our friends in the EU. And what it means is that we in the UK can come out of the EU as one United Kingdom [...] and it means we can decide our future together. We will be able to do free trade agreements around the world. After three and a half years we can also build now on our relations with our friends and partners in the EU."

The Taoiseach Leo Varadkar commented that the agreement created a unique solution for Northern Ireland and was the result of serious negotiation and compromise: "I think it's always the case that a compromise never has one father. We were all involved in making these compromises." Speaking at a press briefing with Presidents Tusk and Juncker and Michel Barnier, the Taoiseach said: "I have mixed feelings today, I regret the UK is leaving but respect the decision to do so, like an old friend going on a journey without us, and we really hope it works out for them, but I think there will always be a place at the table for them if they ever choose to come back."

Commission President Jean-Claude Juncker told a press conference with Prime Minister Johnson: "We have a deal. And this deal means that there is no need for any kind of prolongation. This is a fair and balanced agreement. It is testament to our commitment to finding solutions. It provides certainty where Brexit creates uncertainty. It protects the rights of our citizens and it protects peace and stability on the island of Ireland. There will be no border on the island of Ireland. And the Single Market will be protected. This deal is not about us, the deal is about people and peace. We will start the negotiations on the future relations immediately after the deal will have been approved. We will start our debates on 1 November, without delay."

EU Chief Negotiator Michel Barnier commented in particular about the democratic dimension of the Protocol:

*Prime Minister Johnson and the Taoiseach wanted to ensure long-term democratic support for the application by UK authorities of relevant Union rules in Northern Ireland.*

*Four years after the entry into force of the Protocol, the elected representatives of Northern Ireland will be able to decide, by simple majority, whether to continue applying relevant Union rules in Northern Ireland or not. This democratic support is a cornerstone of our newly agreed approach. Why? Because this newly agreed Protocol is no longer to be replaced*

*by a subsequent agreement between the EU and the UK. So it makes sense to ensure consent.*

*Obviously, when discussing Northern Ireland, we talk about the economy, about technical matters, about goods. But for me, since 3 years, what really matters are the people of Northern Ireland and Ireland. What really matters is peace.*

The Leader of the UK Labour Party, Jeremy Corbyn, responded to the announcement of the Brussels agreement: “From what we know it seems the Prime Minister has negotiated an even worse deal than Theresa May’s which was overwhelmingly rejected. These proposals risk triggering a race to the bottom on rights and protections [...] this sell out deal won’t bring the country together and should be rejected.”

#### **Varadkar-Johnson Meeting 10 October 2019**

In advance of the announcement of the new deal, Taoiseach Leo Varadkar and Prime Minister Boris Johnson had met in a hotel outside Liverpool on Thursday 10 October 2019. They discussed the state of play in Brexit negotiations and the Prime Minister indicated a new UK approach to the land border issue in Ireland. A brief joint statement was issued:

*The Taoiseach and Prime Minister have had a detailed and constructive discussion. Both continue to believe a deal is in everybody’s interest. They agreed that they could see a pathway to a possible deal. Their discussions concentrated on the challenges of customs and consent. They also discussed the potential to strengthen bilateral relations, including on Northern Ireland. They agreed to reflect further on their discussions and that officials would continue to engage intensively on them. Following their discussions, The Taoiseach will consult with the EU Task Force and the UK Brexit Secretary will meet Michel Barnier tomorrow morning.*

#### **Brussels Negotiations Accelerated**

The Irish Times announced on the morning after the Johnson/Varadkar meeting that “chances of a deal on

Brexit improved suddenly last night [...] the focus will now switch to Brussels where European Union chief negotiator Michel Barnier will meet British Brexit Secretary Steve Barclay for talks.”

The reference in the joint statement to a ‘pathway towards a possible deal’ surprised officials in Dublin, London and Brussels. The Taoiseach spoke of the Johnson meeting as “very good, very positive, very promising” and the Tánaiste, Simon Coveney said that “today was a positive day. I do believe it is possible now to get a deal before the end of October.”

The UK Secretary of State for Exiting the European Union, Stephen Barclay, and the Prime Minister’s negotiator, David Frost travelled to Brussels to meet EU Chief Negotiator Michel Barnier and his Task Force on 11 October, just a week before the scheduled meeting of the European Council on 17-18 October. In the *Financial Times*, Wolfgang Munchau wrote that the leaders’ meeting “may well have been the big breakthrough. Brexit would then be playing out in exactly the same way as EU negotiations since time immemorial. The pundits declare that time has run out that one side or the other is acting irresponsibly and that agreement is now impossible. And then in the middle of the night the contours of a deal start to appear.”

The background of the negotiations was largely negative prior to the Johnson/Varadkar meeting. Leaked papers from within EU circles had revealed what was described as a “devastating point-by-point rejection of British proposals for the Irish border. A Johnson phone call with German Chancellor Angela Merkel led to a No 10 source saying that the conversation was “a clarifying moment” and that a Brexit deal was “essentially impossible”. These developments led to stories of a ‘blame game’ on the part of Johnson’s allies and ‘dark warnings’ of largely unspecified retaliation against the EU.

## Section Two: The Evolving Debate

### Queen's Speech

On Monday, 14 October 2019, Queen Elizabeth delivered her address to the Houses of Parliament, opening the parliamentary session and outlining the policy programme of Boris Johnson's Government. On Brexit, the Speech stated:

*My Government's priority has always been to secure the United Kingdom's departure from the European Union on 31 October. My Government intends to work towards a new partnership with the European Union, based on free trade and friendly cooperation [to be covered in the European Union (Withdrawal Agreement) Bill].*

*My Ministers will work to implement new regimes for fisheries, agriculture and trade, seizing the opportunities that arise from leaving the European Union [to be covered in a Fisheries Bill, an Agriculture Bill and a Trade Bill]. An immigration bill, ending free movement, will lay the foundation for a fair, modern and global immigration system. My Government remains committed to ensuring that resident European citizens, who have built their lives in, and contributed so much to, the United Kingdom, have the right to remain. The bill will include measures that reinforce this commitment [to be covered in the Immigration and Social Security Co-ordination (EU Withdrawal) Bill]. Steps will be taken to provide certainty, stability and new opportunities for the financial services and legal sectors [to be covered in a Financial Services Bill and a Private International Law (Implementation of Agreements) Bill].*

### Irish Government Update

The 2020 Budget provides for a fund of €1 billion to be spent in the event of a no-deal Brexit. The funding will be used to protect Ireland from the worst effects of a no-deal, to help people and businesses most affected 'if and when they need it.' This funding is on top of existing grants and loans available for business and agriculture and is in

addition to ongoing Government expenditure on Brexit preparedness.

Government programmes continue, covering the impact of Brexit in school communities and giving details of two separate legislative provisions in the health and childcare areas to be commenced in the event of a no-deal Brexit – dealing with reimbursement for residents of Northern Ireland who incur healthcare costs in the EU and access for British citizens to the National Childcare Scheme on the same basis as Irish citizens.

Government activity in the business field includes the €300 million Brexit Loan Scheme and the Future Growth Loan Scheme and specific approaches to businesses in the construction and chemicals sectors to prepare for Brexit.

### Business Views

IBEC has warned that Irish companies could suffer a €500 million a year loss in export sales to the UK in a no-deal situation: "A depreciation in sterling, cancelled investment, cash flow challenges and increased trade costs will all lead to significant pressure on companies in a no-deal scenario."

Economists have warned that Britain's economy will take years to recover from the uncertainty that has resulted in abandoned investment plans and movement of headquarters from London. These issues could see economic recovery delayed until well into the next decade. Car maker Nissan has indicated that a no-deal Brexit would jeopardise the future of its UK factory and 30,000 jobs.

Representatives of five UK manufacturing sectors – aerospace, automotive, chemical, food and drink and pharmaceutical - have written to the government arguing that the Prime Minister's apparent decision to drop commitments to EU regulatory arrangements posed a serious risk to competitiveness.

## **UK Public Opinion**

Sir John Curtice, Professor of Politics at Strathclyde University, has written for the BBC on the overall state of British public opinion on Brexit.

*Boris Johnson hopes in the coming days to strike a deal that takes the UK out of the EU. Doing so would implement the result of the referendum of June 2016, in which 52% of voters backed Leave and 48% Remain. But where do voters stand on Brexit now, after more than three years of debate and negotiation?*

*There is no majority for any course of action.*

*First, no single course of action is preferred by a majority of voters. For example, polling firm Kantar has asked voters on a number of occasions which of four possible outcomes they prefer. The most popular choice has been to remain in the EU. However, this secured the support of only about one in three. The next most popular, leaving without a deal, is preferred by slightly less than a quarter.*

*Much the same picture has been painted by another survey. BMG asked people which of five alternatives they would prefer if a deal is not agreed by the end of this month. None has come even close to being backed by more than half of voters. Should no agreement be reached, the single most popular option is to leave the EU without a deal. Even so, it is still only backed by about one in three. Both of the next most popular options - holding another referendum and reversing Brexit without a referendum, are only chosen by about one in five.*

## **Former Prime Ministers Warning**

Former UK Prime Ministers Tony Blair and John Major have warned that Boris Johnson's Brexit deal could upset the delicate balance in Northern Ireland put in place by the Good Friday (Belfast) Agreement. In a joint video for the People's Vote campaign, which advocates a second Brexit referendum, Mr Major said a border in the Irish

Sea would fuel unionist fears: "It splits Northern Ireland from the rest of the United Kingdom. And that, of course, always plays on the inherent fears of Northern Ireland, that they're being ignored, that they're being maltreated. And those fears are very real. And they need to be addressed and they need to be assuaged."

### Section Three: Background Material and Further Reading

#### Background Material

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The IIEA acknowledges the support of the Europe for Citizens Programme of the European Union



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