

# BREXIT BRIEF

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## 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 the 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. ([www.iiea.com](http://www.iiea.com))

## Section One: State of Play

### Provisional Application of Agreement

The Trade and Cooperation Agreement entered into provisional application on 1 January 2021 pending final ratification after the European Parliament gives its consent and all procedures necessary for the entry into force have been completed.

The Council, on 28 December 2020, adopted a Decision permitting the formal signature of the Agreement and providing for provisional application. The Council stated that it would exercise its Treaty powers to conduct the scrutiny and complete the conclusion process of the Agreement "as diligently and smoothly as possible."

The coming into force of the Agreement and the practical application of its provisions on trade and other matters have led to immediate, problematic situations for major supermarket groups, small traders, freight hauliers, financial services, musicians and performers, ferry passengers and many others. The early days of the new dispensation have seen evidence of difficulties and controversies which will take time and patient effort to resolve.

### European Parliament

On 28 December 2020 the leaders of the political groups in the European Parliament accepted the decision to proceed with provisional application of the Trade and Cooperation Agreement and to commence work on parliamentary ratification, allowing for

formal decisions during the plenary session in March 2021. They underlined that Parliamentary cooperation is a key part of the treaty between the EU and the UK and that the European Parliament will seek to establish contact with the UK Parliament to achieve effective cooperation.

The Parliament's International Trade Committee met on 11 January 2021. The MEPs welcomed that the agreement had avoided the cliff edge of a no-deal, which would have brought with it disaster for citizens and companies. There was general agreement that the outcome was "more satisfactory" than expected, with co-rapporteur Christophe Hansen (EPP) stressing that "this was first time we were organising a divorce not a wedding as we usually do for trade agreement". Other MEPs welcomed the inclusion of standards in environmental protection, climate change and the labour area that cannot be undercut, the prohibition of data localisation and the first sustainability chapter in EU trade deals that offers sanctions.

While welcoming the "divergence not convergence" free trade agreement for guaranteeing tariff-free access to the UK market while protecting the Single Market, MEPs regretted that Parliament did not have time to consider its consent before the agreement went into provisional application. "This was a strategy by the UK to get last-minute concessions, and not to have their parliament to have a proper say. We would have preferred a proper ratification". There was agreement that democratic institutions such as the Parliament must have a key role in the implementation and monitoring of the agreement. The Committee emphasized the future role of an inter-parliamentary body in maintaining essential dialogue, and highlighted the role of trade unions and NGOs in arbitration of fair competition violations.

On 14 January 2021, members of the Foreign Affairs and International Trade Committees held a first joint meeting on the Agreement, advancing the parliamentary scrutiny process. The MEPs welcomed the agreement as a good solution, although recognising it as 'thin'. A no-deal outcome would have brought a disaster for citizens and companies on both sides. They insisted that parliamentary scrutiny of the deal must go beyond mere ratification, insisting on thorough access to information and a clear role for Parliament in the implementation and future monitoring of the agreement. Furthermore, MEPs highlighted the importance of developing close dialogue between the European Parliament and Westminster on future EU-UK relations.

The Committees expressed regret that many aspects, including the Erasmus programme, foreign policy, security and defence cooperation, were not included in the negotiations on the future partnership. Some expressed concern about the future for environmental standards, as the new UK emissions trading system has only been in place since 1 January without clarity on how to link it up with the EU system.

The two committees will in due course vote on a formal Consent Proposal drafted by their rapporteurs as the basis for a plenary vote before the end of the provisional application of the agreement. In addition to the plenary vote, Parliament will also vote on an accompanying resolution prepared by the political groups in the UK Coordination Group and the Conference of Presidents, which brings together the President of the European Parliament and the political group chairmen and has responsibility for relations with other EU institutions, the national parliaments and non-EU countries.

## Teething Problems

RTE European Editor, Tony Connelly, writes that “Two weeks into Brexit, problems are mounting and recriminations are flying in all directions. The reality of Brexit is proving every bit as toxic as the four-and-a-half-year slog that got us to this point. There is a hue and cry across the spectrum of British food producers, manufacturers and retailers who trade with the EU over bewildering new customs and food safety rules. Even more confusing are ‘rules of origin’ in other words, the extent to which a product can avail of tariff free trade if parts of it come from somewhere else.”

The daily headlines since 1 January reflect Tony Connelly’s “hue and cry”:

*“Baffling Brexit rules threaten export chaos, Gove is warned.” – The Guardian*

*“UK businesses wake up to hard truths on tariffs.” – Politico*

*“Brexit red tape prompts rethink on cross-Channel trade.” – The Financial Times*

Business trade and manufacturing organisations have held emergency discussions with Ministers to sort out the post-Brexit changes which are seen to threaten much of the UK’s export trade to the EU. Prime Minister Boris Johnson had hailed a deal that would allow free and simple access to the single market. As the reality in the opening days of 2021 suggests that exit from the EU is anything but pain-free, he speaks of “teething problems.” Many UK firms see the main threat coming from the range of ‘non-tariff barriers’ confronting them as a result of the UK becoming a ‘third country’ outside the EU regulatory system.

Particular concerns relate to the future prospects and direction of the UK’s Financial Services sector. The first day of post-Brexit trading saw London lose €6 billion in euro-denominated daily trading to Amsterdam and Paris and UK banks have been moving billions of pounds of assets from Britain as Brexit ends EU ‘passporting rights for UK institutions.’

Talks are continuing on finding agreement with the EU on a Memorandum of Understanding on Financial Services since the December Trade and Cooperation Agreement does not contain substantial coverage of this highly significant sector. The EU’s plans for a Capital Markets Union aim at reducing dependence on London and other financial hubs but there is recognition of the significance of London’s longstanding place in the global financial system. High level efforts are underway to establish effective regulatory cooperation and Michel Barnier, with his personal recall of the negative impact of the 2008 crisis, has stressed the importance of ensuring financial stability in key markets.

The Commission President, Ursula von der Leyen, at a lunch for EU ambassadors, referred to the many complaints from UK businesses, saying that “the EU will have to remain calm and the UK will have to adapt. The UK has chosen to put itself in this position because it dropped out of the customs union and single market.” And, the EU Chief Negotiator, Michel Barnier, has remarked, in respect of the new frictions affecting cross-channel trade that some things have “changed for good” as a result of UK policy choices and there are “mechanical, obvious, inevitable, consequences when you leave the single market and that’s what the British wished to do.”

## Irish Concerns

In a letter to the Taoiseach Micheál Martin, the Irish Freight Transport Association (FTAI) has warned of huge disruption in the weeks immediately ahead as the details of the Brexit deal impact fully on trade between Ireland, the UK and Europe after the Christmas/New Year period.

The letter warned of disappearing supply chains, empty supermarket shelves and rising unemployment and called for a six-month adjustment period. It also described a growing backlog of goods – from car parts to electrical goods, furniture, clothing and food supplies – all held up in depots because of a shortage of customs agents to process declarations correctly and speedily. Hauliers, wholesalers and retailers are struggling with the new complexities of importing goods across the land bridge or direct from the UK, according to FTAI general manager Aidan Flynn.

The Revenue Commissioners have moved to temporarily ease some customs arrangements for goods destined for Ireland. Emergency codes have been issued to businesses to cover identification numbers required in respect of safety and security declarations. It is forecast that there will be a twelve-fold increase in customs declarations on Irish-British trade to 20 million a year.

The Government is discussing plans to provide exceptional assistance to beef farmers for disruption caused by Brexit related non-tariff barriers. The barriers are likely to result in lower farm gate prices for beef and, hence, lower farm incomes. Supports may be provided for rural development, local food supply chains and direct support for tillage and horticulture. A capital investment scheme for modernisation and diversification of the agri-food sector has already

been agreed to an amount of €100 million.

The difficulties associated with the UK land-bridge are leading to a dramatic rise in direct ferry transportation between Ireland and Europe. Rosslare Europort recorded a sixfold increase in freight on direct routes to and from France and Spain in the second week of January. There was a 50 per cent decline in freight volumes between Rosslare and Fishguard in Wales with businesses seeking to avoid post-Brexit regulatory controls at the EU-UK border which have delayed supplies and cancelled ferry sailings. Europort has reported a “phenomenal response to the new direct services between Ireland and continental Europe.”

## Northern Ireland Protocol

The DUP in Westminster have called for the UK to effectively disapply the Northern Ireland Protocol because of the significant disruption of trade movements between Britain and Northern Ireland. In the Commons, both Ian Paisley Jnr and Sir Jeffrey Donaldson have raised the possibility of invoking Article 16 of the Protocol.

Northern Ireland businesses have highlighted an increasing list of problems including instances of food consignments being prevented from moving to Northern Ireland because of difficulties with paperwork. Instances raised with the Commons Northern Ireland Committee included British suppliers choosing not to ship food products to Northern Ireland retailers because of the complexity of regulations. Two ‘grace periods’ introduced by the UK Government have not dealt fully with the impact of the Protocol system.

The Northern Ireland Minister for Agriculture, Edwin Poots, has insisted that the

supply difficulties were directly caused by the application of the Protocol. "That is an outrageous situation that we in Northern Ireland have been put in as a result of the Protocol negotiated by the UK Government and the European Union."

In the House of Commons on 6 January, Sir Jeffrey Donaldson raised the issue of Article 16 at Prime Minister's Questions:

"The Prime Minister promised us that Northern Ireland would continue to have unfettered access to the UK internal market, yet consumers in my constituency are facing empty supermarket shelves and cannot get parcels delivered from Great Britain, small businesses cannot bring spare parts and raw materials into Northern Ireland from Great Britain, steel importers are facing tariffs and we have many other problems, all caused by the Northern Ireland protocol. What I and the people of Northern Ireland need to know from the Prime Minister, as leader of the United Kingdom, is what his Government are going to do to address this, and whether he will consider invoking article 16 of the Northern Ireland protocol to resolve these issues. The trader support service is welcome, but it alone is not the solution. We need direct Government intervention to deal with this now."

Boris Johnson replied that "I can tell him that, at the moment, goods are flowing effectively and in normal volumes between Great Britain and Northern Ireland. So far, no lorries have been turned back. Yes, of course there are teething problems, but I can confirm that if there are problems that we believe are disproportionate, we will have no hesitation in invoking article 16."

In a House of Commons Committee, the Northern Ireland issue was raised by Hil-

ary Benn, Chairman of the Committee on Future Relations with the European Union: "Let's take the three-month grace period that ends at the end of March, during which the supermarkets do not have to provide export health certificates for all the food and agrifood products they are transporting into Northern Ireland. They are warning about what happens if that is not extended. Now, you can give us a simple reassurance if that is possible today. Can you guarantee to both supermarkets and shoppers in Northern Ireland that the grace period will be extended after the end of March?"

The Prime Minister: replied; "What I can certainly guarantee is that if there are serious problems in victualling or supplying supermarkets in Northern Ireland because of some piece of bureaucracy that is misapplied, then we will simply exercise article 16 of the protocol, because it is absurd that there should be such difficulties. We will make sure that supplies continue. It goes without saying that any difficulties that remain will naturally fall away anyway, because the people of Northern Ireland have to vote to retain the protocol in four years' time."

British Government spokespersons have indicated that any move to invoke Article 16 would create difficulties in North-South trade on the island and that it was felt that there was no need for "needless panic and uncertainty among consumers."

The DUP position has been strongly criticised by the other parties in the Northern Ireland Assembly. The Alliance Party has argued that people should beware of those "offering populist simplistic solutions" and that "the only route is for the UK and EU to find solutions together."

Arguments for the UK Government disapplying the Protocol have been rejected by some Northern Ireland business leaders who argue that the Protocol gives Northern Ireland advantages in trading freely with the EU. "You can't simply walk away from this and think something else will be better."

Article 16 of the Protocol on Safeguards provides that:

*If the application of this Protocol leads to serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade, the Union or the United Kingdom may unilaterally take appropriate safeguard measures. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Protocol.*

*If a safeguard measure taken by the Union or the United Kingdom, as the case may be, in accordance with paragraph 1 creates an imbalance between the rights and obligations under this Protocol, the Union or the United Kingdom, as the case may be, may take such proportionate rebalancing measures as are strictly necessary to remedy the imbalance. Priority shall be given to such measures as will least disturb the functioning of this Protocol.*

## **Governance of Agreement**

A significant agenda for discussion and decision between the EU and UK relates to the establishment of the provisions of the Agreement for its implementation and governance.

The Agreement establishes a Partnership Council, comprised of representatives of the Union and of the United Kingdom at ministerial level, co-chaired by a senior EU Commissioner and a British Minister, to supervise and facilitate the attainment of the objectives of this Agreement and any supplementing agreement. Either side will have the right to refer to the Partnership Council any issue relating to the implementation, application and interpretation of this Agreement or of any supplementing agreement. The Partnership Council, will meet at least once a year but can meet any time either side requests it, will have its own secretariat staffed by officials from each side.

The Council will be assisted in the performance of its tasks by a Trade Partnership Committee, in turn assisted by as many as eighteen specialised sectoral committees and four working groups dealing with different aspects of the agreement.

The Agreement enables the European Parliament and Westminster to set up a Parliamentary Partnership Assembly of MEPs and MPs "as a forum to exchange views on the partnership". And it envisages the creation of a Civil Society Forum involving unions, business groups and NGOs from both sides.

## **Future Relationship with UK**

Following the finalisation of the Trade and Cooperation Agreement the Taoiseach, Micheal Martin, spoke of future relationships between Ireland and the UK:

*However, as we now approach the end of the Transition Period, I wish the UK well in this new chapter in its history. The UK will always be a close friend and partner. Our people, our histories and our economies are deeply entwined. As we move into the next*

*phase of our relationship, we will work together to ensure that it remains deep and strong.*

*Prime Minister Johnson and I are agreed on that important goal, and have committed to putting arrangements in place in 2021 to underpin the next chapter. Agreement on the future EU-UK relationship will provide an important underpinning of those new arrangements between us, as neighbours and friends with a deeply shared history.*

The Minister for Foreign Affairs, Simon Coveney, spoke of his “relief tinged with regret” and said that “Ireland is now focused on building a new relationship with the UK outside of the European Union. Personally, I hope talk of ‘Brexit’ will fade away.”

## Rockall

On 5 January 2021 a Donegal fishing vessel – the Northern Celt – was prevented from entering waters around Rockall in the North Atlantic by a Marine Scotland patrol boat. The Northern Celt was boarded by Scottish personnel and the skipper was informed that his vessel can no longer fish within 12 nautical miles of the Rockall outcrop. The Scottish naval patrol of the area commenced on 1 January.

The Department of Foreign Affairs was made aware of the incident and issued a statement on 8 January:

*The Minister for Foreign Affairs and the Minister for Agriculture, Food and the Marine met to discuss recent developments in relation to Rockall.*

*The Ministers are fully aware of interactions between an Irish fishing vessel,*

*and a Marine Scotland patrol vessel in recent days. The Irish Government has been in contact with the relevant Scottish and UK authorities. Through this engagement, the Irish Government is seeking to address the issues involved, reflecting the longstanding fisheries tradition in the area. Taking account of the new EU-UK Trade and Cooperation Agreement, this may also require contact with the European Commission.*

*In addressing these issues, the Minister for Foreign Affairs and the Minister for Agriculture, Food and the Marine, as well as their respective officials, are considering all options for further engagement on the issues involved and are continuing to work closely together.*

*While engagement continues, there remains an increased risk of enforcement action being taken by Scottish fisheries control authorities against Irish vessels operating in the waters around Rockall at present.*

The Rockall outcrop has been a long running matter of contention between Ireland and the UK. The UK claims sovereignty but Ireland refuses to recognise the claim.

## Section Two: The Evolving Debate

### Portuguese Presidency of Council 2021

Portugal took over the Presidency of the EU Council on 1 January 2021.

Portugal has identified the main lines of action for on its Presidency, with three key pri-

ities; promoting Europe's recovery in the context of the twin digital and climate transitions; implementing the Social Pillar of the EU to ensure a fair and inclusive transition; and strengthening the EU's strategic autonomy through ensuring global openness. The Presidency will operate with the understanding that the economic, environmental and digital challenges facing the EU are not only interlinked but interdependent.

This will be the first rotating presidency to deal with the United Kingdom's definitive departure from the EU's Internal Market and Customs Union. With a provisional agreement now in place on the future relationship between the two sides, Portugal's Presidency will work to obtain its definitive approval and then its implementation, so that the United Kingdom and the European Union can consolidate a strong partnership, in the economic, geopolitical and security fields.

## UK Workers' Rights

The *Financial Times* has reported that the UK Government is considering changes to worker protections enshrined in EU law -under the Working Time Directive - as part of a post-Brexit overhaul of UK labour laws. "The package of deregulatory measures is being put together by the UK's business department with the approval of Downing Street, according to people familiar with the matter. It has not yet been agreed by ministers - or put to the cabinet - but select business leaders have been sounded out on the plan."

It is suggested that the main focus is on ending the 48-hour working week, adjusting the rules around rest breaks at work, changing the rules on overtime pay and removing the requirement of firms to log details of daily working hours. It is argued by government spokespersons that any chang-

es under consideration are designed to help companies - with savings of up to £1billion - and that there would be full consultation. In a recent zoom call with 250 leading business figures the Prime Minister has urged industry to get behind plans for future regulatory liberalisation after Brexit.

The TUC has responded that "Workers in the UK are the primary beneficiaries of the very positive judgments of the European courts" and that any attempt to "whittle down and narrow" the interpretation of EU law "is a concern because it amounts to a diminution of rights."

## Operation Bleach

The *Telegraph* has reported that Boris Johnson has instructed UK civil servants to strip references to the European Union from thousands of laws and regulations, in a plan known by some in Whitehall as "Operation Bleach". Officials across Whitehall have been tasked with leafing through regulations and statutory instruments drawn up over the UK's forty years of EU membership of the EU to ensure that Brexit is fully cemented in UK law and cannot be easily unwound by a future Labour government. Ministers are quoted as arguing that it is necessary to ensure that the wording or nomenclature of laws and regulations will not lead judges to refer back to the rulings of the European Court of Justice, leading to enforcement of EU case law 'by the back door.' UK negotiators made every effort to ensure that the eventual text of the Trade and Cooperation Agreement avoided the use of EU terminology, for example by seeking to replace the term 'State aid' with 'Subsidy System' as used by the WTO.

## Ham Sandwiches

Headlines were generated by video images of Dutch customs officers confiscating ham sandwiches from drivers and ferry passen-



gers arriving from the UK under rules banning personal imports of meat and dairy products into the EU. The officers explained that this was a direct result of Brexit.

The UK Department for Environment, Food and Rural Affairs (Defra) issued an information leaflet telling commercial drivers to EU countries that "From 1 January 2021 you will not be able to bring products of an animal origin such as those containing meat or dairy (e.g. a ham and cheese sandwich) into the EU." The EU Commission states that the ban is required because meat and dairy products can contain pathogens – such as foot-and-mouth or swine fever – which "continue to present a real threat to animal health throughout the union."

## Leave.eu

The aggressive pro-Brexit campaign group Leave.EU has moved its website registration from the UK to Ireland in order to maintain its European internet address. It has announced its registration for internet purposes in Waterford using an accommodation address. The move follows notification by EURid which manages the ".eu" web domain name that a British site would no longer be compliant with the regulatory framework but that the suffix could be retained by moving to a legal entity in an EU Member State.

The Fine Gael TD Neale Richmond has called on the online regulator Comreg and the Department of Communications to investigate the legitimacy of the Leave.EU move.

The group's EU domain name has been temporarily suspended, after the Waterford businessman in whose name the pro-Brexit campaign group is registered denied having any involvement with the organisation. Visitors to the site receive an error message, and the EU's online registry marks the do-

main as under a 'server hold', meaning it is "temporarily inactive and under investigation".

## Section Three: Background Material and Further Reading

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