

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)

Section One: State of Play

EU-UK Negotiations: The Key Dates

As reported in Brexit Brief 87, the UK has published its detailed negotiating documents so that the basic positions of both sides in the crucial talks scheduled for early June are now in the public arena. Whatever the outcome of those talks, the period immediately beyond them will be decisive. The timeline from June to the end of the year is demanding.

With the fourth round of the EU-UK negotiations scheduled for the week of 1-5 June, the month of June will see some key moments. There will be careful stocktaking after the round by both sides, as the EU-UK

Political Declaration provides for a summit meeting during June to permit the UK and the EU27 to assess progress. June is also the final month for the UK to request an extension of its transition period beyond 2020 to provide more time for negotiations. Despite strong demands for an extension, given the impact of Covid-19, Prime Minister Johnson has insisted that the UK will not request an extension and will reject an EU proposal to extend. The UK side has also indicated that, in the absence of an acceptable level of progress following the fourth round of talks, it may walk away from the process and prepare for a no-deal situation in December.

The month of July is significant insofar as the Political Declaration contains a commitment by both sides to seek a deal by 1 July on the future arrangements for access to UK fishing waters. This is a matter of real concern for eight EU coastal states, including Ireland and France. Failure in this area would have a seriously negative impact on the overall negotiation process. There is also an agreed target in respect of decisions on access to financial services markets by this date.

November will be a critical month. The need to ratify a draft agreement in 27 Member State parliaments must be taken into account in any time schedule. It has been accepted that any trade deal must be finalised, translated and submitted to the European Parliament by 26 November if it is to be debated and ratified by the end of the year. Parliament will sit in Strasbourg, for the last time in 2020, in the final week of November. The subsequent plenary session in mid-December will be too late.

The 31 December 2020 has been described as the 'cliff edge'. If a trade deal cannot be agreed and ratified, the UK will move out of transition into trade on World Trade Organisation terms, involving WTO tariffs on goods and without agreed procedures for border controls and checks. The prospect of this outcome – in reality a 'no-deal' Brexit – would require planning by both the EU and the UK for the severe economic implications.

The European Council, which will be charged with making crucial decisions on the EU side as the negotiations proceed, is scheduled to meet on 18-19 June, 15-16 October and 10-11 December. It must be recognised that the agenda – and attention – of the Council on these occasions will be dominated by the implications of the Covid-19 crisis.

The two sides move into these critical weeks and months in the situation brought about by the fall-out of the first three negotiating rounds.

On the UK side, Michael Gove told the BBC's Andrew Marr Show that: "There's a big difference, a philosophical difference, between the position that we take and the position the European Commission takes. The European Commission want us to follow the rules even though we've left the club, and the European Commission want to have the same access to our fish as when we were in the EU even though we're out. The challenge for the EU is to show just a little bit of their fabled flexibility."

From the EU side, Michel Barnier has argued that: "The UK cannot expect high-quality access to the EU Single Market if it is not prepared to accept guarantees to ensure that competition remains open and fair [...] the success of our negotiation will only be possible if tangible and parallel progress is made across all areas of negotiations, including engagement on, and commitments to, a level playing field and appropriate governance mechanisms, as well as to balanced, sustainable and long-term arrangements on fisheries."

The Irish Times, in an editorial, commented that Brexit "is now again demanding our attention, as predictable problems in the talks between the UK and EU reappear. These highlight the difficulties that lie ahead – and the price of failure if the UK leaves the transition period without an agreement. The mood in the talks has been fractious and, assuming that the June deadline for agreeing an extension passes without this being triggered, negotiators will come under huge pressure heading into the autumn."

Future Relationship with the EU

The documentation issued on 19 May 2020 centred on the 290-page draft Working Text for a Comprehensive Free Trade Agreement between the United Kingdom and the European Union. It was accompanied by nine draft texts on separate agreements: Fisheries; Air Transport; Civil Aviation Safety; Energy; Social Security Coordination; Civil Nuclear; Law Enforcement and Judicial Cooperation; Transfer of Unaccompanied Asylum-Seeking Children; and Readmission of People Residing without Authorisation.

The UK says that it seeks an agreement similar to those that the EU has concluded in recent years with Canada and other countries and that its proposal draws on agreements such as the Comprehensive Economic Trade Agreement (CETA), the EU-Japan Economic Partnership Agreement and the EU-South Korea Free Trade Agreement. The accompanying statement said that this approach “[...] is consistent with the Political Declaration agreed last October, in which both sides set the aim of concluding a ‘zero tariffs, zero quotas’ Free Trade Agreement”.

It continues to say that its approach is “based on friendly cooperation between sovereign equals.” It continues:

Our offer represents our clear and unwavering view that the UK will always have control of its own laws, political life and rules. Both parties will respect each other’s legal autonomy and the right to manage our own borders, immigration policy and taxes.

We believe that our approach and proposals are fair and reasonable. This government is committed to establishing the future relationship in ways that benefit the whole of the UK and strengthen the Union.

UK announces new Tariff Regime

On 19 May 2020, the UK Government announced the UK’s new tariff regime, the UK Global Tariff (UKGT). In the absence of an EU-UK agreement making provision for specific tariff and tariff-free arrangements, it will replace the EU’s Common External Tariff on 1 January 2021, at the end of the Transition Period.

The new tariff regime has been designed to meet the needs of the UK economy, supporting the economy by making it easier and cheaper for businesses to import goods from overseas. It is described as “a simpler, easier to use and lower tariff regime than the EU’s Common External Tariff and will be designated in pounds not euros.” It is intended to scrap red tape and unnecessary barriers to trade, reduce cost pressures and increase choice for consumers and back UK industries to compete on the global stage.

The UK will maintain tariffs on a number of products backing key UK sectors such as agriculture – for example, lamb, beef and poultry – automotive and fishing. Some tariffs are being maintained to support imports from the world’s poorest countries, which benefit from preferential access to the UK market.

The International Trade Secretary Liz Truss wrote that: “For the first time in 50 years we are able to set our own tariff regime that is tailored to the UK economy. Our new Global Tariff will benefit UK consumers and

households by cutting red tape and reducing the cost of thousands of everyday products. With this straightforward approach, we are backing UK industry and helping businesses overcome the unprecedented economic challenges posed by Coronavirus.”

An immediate analysis of the new arrangements demonstrates that high tariffs will be imposed on many Irish food exports to the United Kingdom if a trade deal is not successfully negotiated between the EU and UK. The published schedule confirms that for most agricultural products, tariffs equivalent to those charged by the EU on imports from third countries will be applied. This will produce significant problems for the Irish beef sector, since the UK accounts for over half of its exports. Significant tariffs would also apply to Irish dairy products and many processed foods.

The *Financial Times* commented that: “The price of food and cars imported into the UK from Europe will rise sharply under a new tariff regime set out by Boris Johnson’s government if the EU and Britain fail to reach a deal on their post-Brexit relationship.”

Section Two: The Evolving Debate

House of Commons Statement on NI Protocol, 20 May 2020

Michael Gove MP, Cabinet Office Minister, made a Statement to the House of Commons on the Northern Ireland Protocol recognising that: “The Protocol exists to ensure that the progress that the people of Northern Ireland have made in the 22 years since the Belfast/Good Friday Agreement is secured into the future.” Since the Good Friday (Belfast)

Agreement is built on the principle of consent, “embedding that recognition of consent in the Protocol was intrinsic to its acceptance by the Government. Therefore, for the Protocol to work, it must respect the needs of all Northern Ireland’s people, respect the fact that Northern Ireland is an integral part of the customs territory of the UK, and respect the need to bear as lightly as possible on the everyday life of Northern Ireland.”

Mr Gove pointed to four steps to be taken to ensure that the Protocol is implemented effectively. The first is unfettered access for Northern Ireland producers to the whole of the UK market. The second step is to ensure that there are no tariffs on goods remaining within the UK customs territory. In order to ensure that internal UK trade qualifies for tariff-free status, there will need to be declarations on goods as they move from Great Britain to Northern Ireland, but these systems will be electronic and administered by UK authorities.

The Minister’s third key point was that the implementation of the Protocol will not involve new customs infrastructure. There will be some expansion of existing infrastructure to provide for new processes for the agriculture and food sector at ports such as Larne and Belfast. However, such checks will be kept to a minimum. The fourth proposal is a guarantee that Northern Ireland businesses will benefit from the lower tariffs delivered through new free trade agreements with third countries.

Sir Jeffrey Donaldson MP (DUP) responded that: “The Minister will be aware that we voted against the Withdrawal Agreement because of the Northern Ireland Protocol, but we welcome the clarity that this statement brings — that

Northern Ireland will remain part of the UK customs territory, that there will be no new customs infrastructure, that there will be no tariffs on goods flowing between Great Britain and Northern Ireland and that Northern Ireland businesses will have unfettered access to the Great Britain market.”

For the SDLP, Claire Hanna MP pointed out that the Minister had confirmed that there will be a large increase in the amount of red tape and therefore also to the costs to consumers and businesses in Northern Ireland. She asked whether Minister Gove accepted that “divergence and further political choice that his Government choose to make in pursuit of castles in the air —trade deals with the United States — increase the checks required in the Irish sea and that the only way to ensure that there is no fettering and barriers to trade is to soften Brexit?”

The former Northern Ireland Secretary, Julian Smith MP, insisted that: “We now need quickly to reassure the Unionist grassroots on their fears about the exact nature of the processes referred to, and nationalist and non-aligned voters who have serious concerns about leaving the EU.” Turning to the needs of business, he spoke of the impact of Covid-19 and made a plea to the Minister: “Please, please will my Right Hon. Friend use all his energy to work with them on exactly what they will need and a constructive approach with the EU to getting a practical solution?”

Sammy Wilson MP of the DUP stated that arrangements for Northern Ireland of this kind “will always be offensive to Unionists, regardless of what allowances the Government try to make.” He insisted that, at least, the Government provide confirmation that “these

arrangements will be totally in the control of the UK Government and not the EU, and that the Government will resist all attempts by the EU and the European Court of Justice to dictate how business regulations and human rights laws should be applied in Northern Ireland”.

Responses to UK Protocol Paper

The Tánaiste, Simon Coveney TD, has welcomed the publication of the UK Government plan for implementation of the Protocol as a follow through on commitments made in the Withdrawal Agreement. He made it clear that the content of the document will require close technical assessment. An initial reading must give rise to concerns at EU level about the British statement that there will be no new physical infrastructure for customs. While Northern Ireland will remain legally within the UK customs territory, EU customs rules will apply to certain goods entering Northern Ireland unless it can be determined that they are not at risk of moving into the Republic of Ireland and, hence, into the EU Single Market.

The RTÉ Europe Editor, Tony Connelly, argued that while the paper “skirts as close to the rocks of EU disapproval [...] it may have just done enough to avoid a fresh crisis over the Irish question.” The document was clearly designed for Unionist circles by seeking to reinforce the bond between Northern Ireland and Great Britain.

In an analysis described as unusually forthright, the influential Institute for Government has argued that the transition period must be extended or, failing that, a longer implementation period must be agreed for the new border arrangements.

"Many businesses in Northern Ireland are simply focused on "staying afloat" during the coronavirus crisis and cannot be expected to concentrate on new trade arrangements." The Institute suggests that the UK Government underestimates the complexity of the new Northern Ireland arrangements: "The timetable for putting arrangements in place for the Irish Sea border was very tight even before Covid-19 hit Europe. But now coronavirus has slowed the pace of negotiations on the future relationship, delaying key decisions."

Cabinet Secretary Michael Gove: Written Parliamentary Statement 19 May 2020

Michael Gove MP, Minister for the Cabinet Office, made a statement in the House of Commons and tabled a Written Statement covering details of the third round of EU-UK negotiations:

Negotiators from the UK and the EU held discussions through video conferencing on 11 – 15 May 2020 for the third round of negotiations on the UK-EU future relationship. This was a full and constructive negotiating round, covering the full range of issues with both sides discussing full legal texts.

The Statement indicated that the week's discussions covered all agreed workstreams, including:

Trade in Goods – Market access and rules of origin, trade remedies, customs, technical barriers to trade and SPS.

Trade in Services – Investment, temporary entry for business purposes, professional qualifications, professional and business services, financial services and digital.

Fisheries – Discussion on control and enforcement, conservation and sustainable exploitation, and scientific evidence, all principally on the basis of the draft Fisheries Framework Agreement provided to the EU the previous week.

Transport – Aviation and aviation safety, road haulage and passenger transport.

Energy – Civil nuclear cooperation, gas and electricity trading, climate change and carbon pricing.

Law Enforcement and Criminal Justice – UK presentation of the UK Law Enforcement Treaty with detailed discussions on operational capabilities.

Thematic cooperation – Covering health security, asylum and illegal migration, unaccompanied asylum-seeking children, cyber security, and security of information.

Participation in Union Programmes – General terms for UK participation in programmes, including provisions for financial contribution.

Mobility and Social Security Coordination – Including the UK's legal text on social security coordination.

"Level Playing Field" – Including subsidies, competition policy, and trade and sustainable development.

Horizontal Issues – Governance arrangements, territorial scope.

The Statement continued by expressing optimism for agreement on issues such as law enforcement, civil nuclear cooperation, and aviation, alongside a comprehensive Free Trade Agreement, but saying that there “remain some areas where we have significant differences of principle - notably fisheries, governance arrangements, and the so-called ‘level playing field.’”

The Statement claimed that “it remains difficult to reach a mutually beneficial agreement while the EU maintains an ideological approach.” The Statement concluded by committing to publish the draft legal texts that had been previously shared with the Commission and confirming that the Government “remains committed to a deal with a Free Trade Agreement at its core.”

EU-UK Joint Committee under the Withdrawal Agreement

The Withdrawal Agreement Joint Committee was established to oversee UK and EU implementation, application and interpretation of the Withdrawal Agreement. The Joint Committee seeks to resolve any issues that may arise during implementation; supervises the work of six Specialised Committees; and takes decisions on their recommendations. The Joint Committee is co-chaired by the UK and the EU. The six Specialised Committees cover: Citizens’ Rights; Other Separation Provisions; Ireland/Northern Ireland; Gibraltar; Sovereign Base Areas in Cyprus; Financial Provisions.

The Joint Committee met for the first time on 30 March 2020. The parties agreed on the importance for the UK to set out its plans over the coming months with regard to the implementation of the Protocol on

Ireland/Northern Ireland. It was agreed that there was an urgent need to present a detailed timetable and proceed with the necessary measures, such as preparing for the introduction of customs procedures for goods entering Northern Ireland from Great Britain, and ensuring that all necessary sanitary and phytosanitary controls as well as other regulatory checks can be carried out in respect of goods entering Northern Ireland from outside the EU. Both parties agreed that clear, reliable answers are key to allowing businesses to prepare for change, to address the challenges, and to seize the opportunities, of the Protocol. Providing such answers to businesses could not wait.

On 30 April 2020, the EU and the UK held the first Specialised Committee meeting on the implementation and application of the Protocol on Ireland / Northern Ireland, by means of video conference. The parties agreed that the proper and timely implementation of the Withdrawal Agreement remains a key priority for the EU, in particular for maintaining peace and stability on the island of Ireland in the context of the Good Friday (Belfast) Agreement, while ensuring the integrity of the Single Market. As time is short, the Commission underlined the importance of the UK setting out its plans with regard to all implementation measures prescribed by the Protocol on Ireland/Northern Ireland and providing a detailed timetable. The exchanges in the Specialised Committee urgently needed to be followed up by tangible measures.

On 19 May 2020, the first meeting of the Specialised Committee on Financial Provisions (SCFP) was held via video conference. The EU and the UK exchanged updates on the implementation of the financial provisions of

the Withdrawal Agreement. The EU and UK sides reaffirmed their commitment to complying with their legal obligations under the Withdrawal Agreement. They agreed to continue informal work on information requirements and on a range of technical issues, recognising the mutual benefit of smooth implementation of the provisions of the Agreement.

On 20 May 2020, the first meeting of the Specialised Committee on Citizens' Rights was held by video conference. The EU and the UK exchanged updates on the implementation of the citizens' rights provisions in the Withdrawal Agreement. They agreed on the need to ensure the timely and correct implementation of the Withdrawal Agreement to provide certainty to UK nationals in the EU and EU citizens in the UK. They reaffirmed their commitment to comply with the legal obligations under the Withdrawal Agreement that protect citizens' rights.

Extension to Transition Period

The EU Chief Negotiator, Michel Barnier, has been told by a number of UK MPs that there is "significant opposition" to the UK Government's refusal to consider extending the timetable for the talks.

On 18 May 2020, both the SNP leader at Westminster, Ian Blackford, and acting Liberal Democrat leader, Sir Ed Davey, signed a letter to Michel Barnier supporting an extension to the transition period. Such a move would allow talks to take place when "the efforts of national governments and the European Union will not be engaged solely with dealing with the dreadful Covid-19 epidemic", they said.

The letter to Mr Barnier has also been signed by Plaid Cymru MP, Liz Saville Roberts, Green MP, Caroline Lucas, Stephen Farry MP from the Alliance Party, as well as fellow Northern Ireland MP, Colum Eastwood of the SDLP. They contacted Mr Barnier to highlight the "significant opposition to the UK Government's extreme position amongst the business community, the general public and elected representatives". No Labour Party MPs signed the letter.

The opposition MPs noted that the Scottish and Welsh governments both backed an extension of the transition period, along with "the majority of political parties in the Northern Ireland Executive". The MPs said: "A consensus is taking shape and we hope the UK Government will soon recognise reality."

Section Three: Background Material and Further Reading

Background Material

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Further Reading

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The Institute of International and European Affairs,

8 North Great Georges Street, Dublin 1, Ireland

T: +353-1-8746756 F: +353-1-8786880

E: reception@iiea.com W: www.iiea.com