



BREXIT STATUS REPORT:

2016 - 2019 AND BEYOND

Edited by Dáithí O'Ceallaigh,
Paul Gillespie and Andrew Gilmore



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TABLE OF CONTENTS

About the Authors.....	2
Foreword	7
The Status Report: An Overview	9
Section One: The Context	15
Chapter 1. The Story so Far: A Calendar of Important Events	17
Chapter 2. UK Political Developments	25
Chapter 3. EU Political Developments Since the UK Referendum	33
Chapter 4. The European Parliament Elections Reviewed	39
Chapter 5. The Condition of British-Irish Relations	45
Section Two: The EU Reaction	51
Chapter 6. The European Council.....	53
Chapter 7. The European Parliament	61
Chapter 8. The European Commission	67
Section Three: The UK Reaction	77
Chapter 9. The Murky Shape of Britain’s Post-Brexit Future	79
Chapter 10. Scotland: Between Two Unions?.....	85
Chapter 11. Wales: The Eternal Footnote?.....	93
Chapter 12. Northern Ireland: What Has Brexit Meant so Far?	103
Section Four: Implications for Ireland	111
Chapter 13. Economic Implications for Ireland	113
Chapter 14. Business Implications: Nothing Added But Time.....	119
Chapter 15. Some Legal Aspects of Brexit.....	125
Chapter 16. The New Protocol on Ireland and Northern Ireland.....	133
Chapter 17. Implications for Ireland of the Future UK-EU Relationship	143
Section Five: Short Term Perspectives	149
Chapter 18. Next Steps.....	151
Annex - Essential Brexit Reading.....	159

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FOREWORD

Dáithí O’Ceallaigh and Paul Gillespie

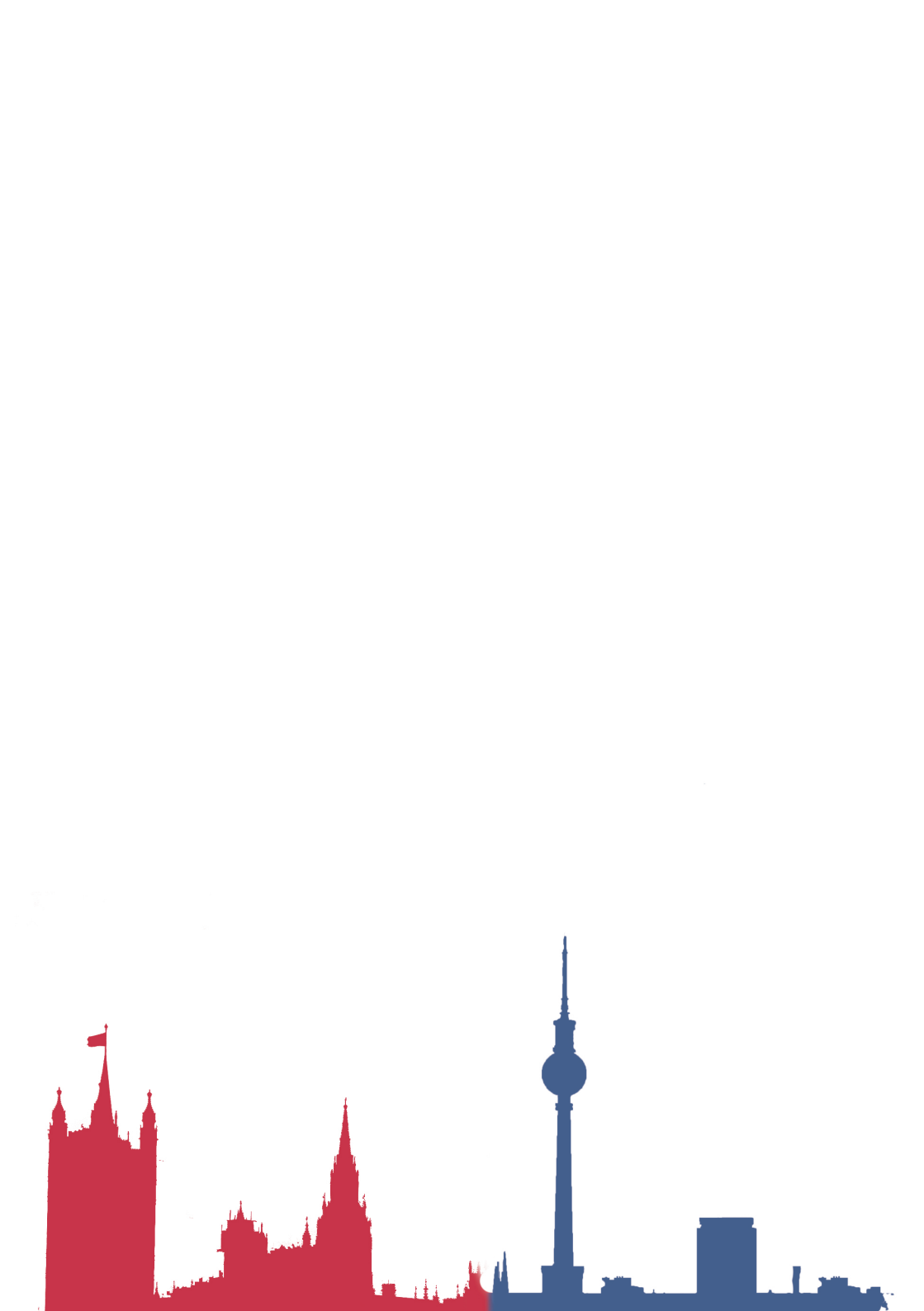
The IIEA’s Brexit Status Reports are a series of sequels to the book *Britain and Europe: The Endgame – An Irish Perspective*, which we edited in 2015. This December 2019 update is designed to provide readers with an account of what has happened since the referendum, and contains sections on the reactions to Brexit within the United Kingdom and within the European Union, as well as examining the implications for Ireland of the events of the last three years.

The issue of Ireland’s relationship with the United Kingdom is of particular importance as we potentially move towards a post-Brexit era. Damage has been done to the relationship between Ireland and the United Kingdom; to the relationship between the Irish Government and Northern Ireland; and to the relationships between the political parties and the communities in Northern Ireland. The absence of a devolved Executive and Assembly in Northern Ireland has contributed immensely to the difficulties of the last few years.

The Belfast/Good Friday agreement and the St Andrews Agreement provide a way forward for the future. The re-establishment of the political institutions in Northern Ireland and the re-commitment of both the British and the Irish Governments to the principles of those Agreements, including that of acting impartially in regard to their commitments in Northern Ireland, is necessary.

With a devolved administration in place in Northern Ireland it could be possible to renew the North-South contacts that were so beneficial in the past. As regards the East-West links, it will be necessary to contemplate some sort of mechanism to fill the gap which will emerge in London-Dublin contacts as a result of Brexit. Whatever arrangements are made must provide for regular contact.

These papers were written in November and December 2019, before the outcome was known of the UK General Election. The editors would like to thank all the authors who so generously contributed to this report, as well as the very dedicated staff of the Institute.



THE STATUS REPORT – AN OVERVIEW

Brendan Halligan

Four years ago, this Institute published a book-length analysis of Britain and Europe under the title *Endgame*. It was the culmination of a study stretching back over two decades and the team of authors were agreed that the saga had entered its final phase, a judgement which has been borne out by events. This Status Report assesses what has transpired in the intervening years (the first chapter immediately assesses the main intervening developments since the 2016 referendum for ease of reference).

Two conclusions stand out. The first is that Brexit is an English problem and the “United Kingdom”, in place since 1707, has been sundered. Irrespective of the future relationship between England and Wales on the one hand and Scotland on the other, it is clear that Scotland will be doing its own thing from now on either as an independent state or in some new form of association with England and Wales. All the forces in play are expertly analysed in Chapter 10 and point to the emergence of some new political arrangement between the two entities.

This will have a major psychological and, therefore, political impact on the Unionist community in the North. The implications for Northern Ireland, always the major preoccupation of this project, are analysed in Chapter 12, as are those for the Republic in Section Four.

These chapters confirm that the consequences consist of a heightened security threat, should a hard Brexit necessitate any form of infrastructure dividing the island North and South, and an economic threat to the Republic should the UK crash out of the EU without a deal on its future relationship. In short, Ireland is open to an asymmetric shock from Brexit; this was the conclusion of the last Status Report but it deserves repetition lest it be under-estimated at this juncture.

Which brings us to the second conclusion. Even after three years of debate (if the raucous exchanges in the House of Commons can be called that) the English body politic is as far away as ever from agreement on what

it wants from Europe. The spectrum of possibilities range from the closest possible alignment of the two economies centered around membership of the Customs Union and alignment with the Single Market (the *status quo* in all but name) to a complete rejection of a customs union and its restrictions on the UK's freedom to negotiate new trade deals and regulatory equivalence within the Single Market and the creation instead of what has been dubbed "Singapore on the Thames". In short, the freedom to have one's cake and to eat it, or to pick and choose at will, a familiar formula which has to be taken with increasing seriousness.

At the time of writing, the Labour Party favours the first framework of close alignment with the EU and the Conservatives veer towards the latter relationship of as much distance as possible from the EU. It is obvious that the eventual outcome will be determined by who wins the election and by the size of its majority in the House of Commons. The economic implications for Ireland are analysed in Chapter 13 and confirm that the all-island economy may yet be in peril, as is free access to the British market in both goods and services. It makes for serious reading, not least for the somber tones in which it is expressed.

The downside could be considerable and in effect would undo the economic (and political) progress initiated by the Belfast/Good Friday agreement.

At the time of writing, in early December, the election seems to be heading for a Tory victory with a majority sufficient to carry through both the Withdrawal Agreement and whatever future relationship the new Government chooses. Due to a well thought out electoral strategy, the Tories may have triumphed and reset English politics for some time ahead. On one of its flanks, the Brexit Party has been repulsed and, on the other, the Liberal Democrats have been reduced to irrelevance, in the main due to flawed strategic choices and a poor campaign. In fact, the scale of the victory may be greater than anticipated.

Which leaves the electorate with the familiar choice of the two traditional parties, except that outer appearances flatter to deceive. Neither party is traditional any longer in the accepted sense, both have been recast, the political system itself has imploded and is no longer fit for purpose, it has become dysfunctional while public discourse has been coarsened, public institutions (such as the Courts) vilified and undermined, dismissed as enemies of the people, while long established constitutional conventions have been torn up. The unquestioned supremacy of Parliament for example is being replaced by that of the will of the people, whatever that means, the Supreme Court has struck down acts of the Government and there is as yet no settled solution about the ultimate locus of authority or legitimacy in sight.

None of this is good news for Ireland.

This state of flux will be even worse if due to the vagaries of the electoral system another hung parliament emerges after the election which, after all, was intended to end the impasse. In that sense it was designed to be yet another invitation to the people to express their will on the future relationship with the EU and if there is no clear-cut decision then a "hard Brexit" is unavoidable by the end of next year.

In that case, the chapters on the economy become even more central to this analysis. Disruptions to supply chains, a loss of competitiveness due to further falls in the value of sterling, blockages in the overland routes to Europe and the lowering of standards consequent on deregulation are all identified as a threat to Irish business that we could do without. The only viable response is a combination of increased productivity at home and the opening of new markets abroad, both of which are underway but will take time.

There is nonetheless cause for some optimism. The chapters on the overall EU response to the triggering of Article 50 indicate the Member States have reacted with deliberation and strictly in accordance with the provisions of the Treaties, resulting in an expression of solidarity with Ireland that many found as surprising and it was welcome. If one picture is worth a thousand words then that of the Taoiseach flanked by

Messrs Tusk, Juncker and Barnier at a Brussels press conference outlining the EU 27 response to the then latest UK developments was worth volumes. The message was clear: the standard imperial ploy of divide and rule, which it was feared the UK would use, would no longer apply, thereby confirming the prediction of Garret FitzGerald that the EU would prove to be the friend we were always waiting for.

Much of the credit for this state of affairs can be attributed to the strategy of the Irish Government, supported by the Oireachtas, and the skill with which it was implemented and applied by the diplomatic corps and the public service at large. This has been widely commented upon at home and abroad. The significance of that goes beyond mere back-slapping, because the task ahead, irrespective of which scenario eventuates, will be more onerous and more demanding than anything we faced in the past. That challenge ahead is how to handle the fall-out from the North without any reversion to past chaos on the security and economic fronts.

In that regard, the chapters on Northern Ireland are particularly helpful and leave no doubt as to the potential for a breakdown in law and order and economic stability. They further indicate that Irish policy-makers will have to fashion a way forward that can calm Unionist fears while simultaneously

reassuring Nationalists that the benefits of the Belfast/Good Friday agreement Agreement will be maintained - no easy task but one within reach if the mastery of events is maintained by the Government, Oireachtas and public service.

All of this makes the Status Report of even greater value than might be expected from a single snap-shot in time. It has proven to be not only an invaluable overview of the past three years but an insight into the years immediately ahead.

For that, the authors and the IIEA UK Expert Group are due our thanks and gratitude.

SECTION ONE
THE CONTEXT



CHAPTER 1. THE STORY SO FAR: A CALENDAR OF IMPORTANT EVENTS - 2016 TO 2019

Tony Brown

This calendar draws on the IIEA's fortnightly Brexit Brief, published from December 2015 to present. The Brief is written on behalf of the IIEA UK Group by Tony Brown, with Sophie Andrews-McCarroll and Andrew Gilmore.

2016

The Brexit referendum took place on **23 June 2016**. The UK voted by 51.9%-48.1% to leave the European Union, with significant regional differences. Scotland voted Remain by 62%-38% and Northern Ireland voted Remain by 56% to 44%, while Wales voted Leave by the national margin of 52%-48%.

Prime Minister David Cameron immediately announced his resignation. The Home Secretary, Theresa May was elected as party leader and became Prime Minister on **5 July 2016**. She appointed a trio of Brexit campaign leaders to oversee the UK departure, with Boris Johnson as Foreign Secretary, David Davis as Brexit Secretary and Liam Fox as International Trade Secretary.

The Cabinet, meeting at Chequers on **31 August 2016** agreed that the exit process would be conducted under executive powers conferred by Royal Prerogative. This approach was challenged, and, on **3 November 2016**, the High Court ruled that invoking Article 50 required parliamentary assent. The UK Supreme Court upheld the High Court judgement by 8-3 on **24 January 2017**.

In her speech to the Conservative Party Conference on **5 October 2016**, Prime Minister Theresa May announced that a 'Great Repeal Bill' would be introduced, enshrining existing European Union law into UK law to facilitate transition and ensure stability.

In a major speech at Lancaster House on **17 January 2017** the Prime Minister stated that Brexit would mean that the UK would exit both the EU Single Market and Customs Union.

The Government introduced the European Union (Notification of Withdrawal) Bill empowering the Prime Minister to activate Article 50 which was passed by the House of Commons on **8 February 2017** by 494-122. Article 50 was invoked by the Prime Minister in a letter to the European Council President Donald Tusk on **29 March 2017** thus setting 29 March 2019 as the formal 'exit' date.

April 2017 saw the European Union Guidelines for negotiations adopted by the European Council, meeting as the EU27, without the UK. The Council set three priorities for the first stage of negotiations: reciprocal rights of UK and EU citizens; settlement of outstanding financial matters; and issues related to the Ireland-Northern Ireland border. The former European Commissioner, Michel Barnier, was nominated as EU Chief Negotiator and the EU Brexit Task Force was established.

On **8 June 2017**, a general election in the UK saw the Conservative Party lose its overall Commons majority. Prime Minister May negotiated a 'confidence and supply agreement' with the Democratic Unionist Party (DUP) whose ten MPs secured her Government's position, giving the party a new level of influence in UK politics.

In Ireland, Enda Kenny resigned after six years as Taoiseach. Leo Varadkar was elected as Leader of the Fine Gael party and became Taoiseach on **14 June 2017**.

Formal Brexit negotiations between a UK team headed by Brexit Secretary David Davis and Michel Barnier's Task Force began in Brussels **19 June 2016** and continued through the summer and autumn.

The debate on the 'Great Repeal Bill' opened in the House of Commons on **7 September 2017** and was eventually passed and given Royal Assent in June 2018.

A comprehensive Joint Report from the negotiators of the European Union and the UK Government, published on **8 December 2017**, dealt with the progress made in the initial phase of negotiations. Across 96 articles, the report covered the three priority areas and other issues of mutual concern. The option of a UK-wide 'backstop' arrangement to protect the border situation on the island was included.

2018

The European Council and the UK Government reached agreement on a second phase of negotiations and talks recommenced on **6 February 2018**.

A Cabinet meeting at Chequers on **6 July 2018** adopted a position on the UK's future relationship with EU based on a free trade area for goods, involving a common rule book which would facilitate commitments in Ireland. This led to the resignation of the Brexit Secretary David Davis and the Foreign Secretary Boris Johnson. A Government White Paper – 'The Future Relationship between the United Kingdom and the European Union' – was published on **12 July 2018**. It was announced that the Prime Minister was taking personal control of the UK negotiation process.

At an informal European Council meeting in Salzburg on **19-20 September 2018** the Prime Minister presented the Chequers proposals which produced a generally negative response. The negotiations continued, led on the UK side by a new Brexit Secretary, Dominic Raab.

On **13 November 2018** the EU Task Force announced agreement between the EU and UK negotiating teams on terms of a Draft Withdrawal Agreement and a Political Declaration setting out the Framework for the Future Relationship between the EU and the UK. The 585-page text of the Agreement was

published, including details of a Protocol on Ireland and Northern Ireland which set out the terms of the backstop. The European Council endorsed the text on **25 November 2018** and both Houses of the Oireachtas adopted Resolutions endorsing the text. A heated debate commenced in the UK. An initial vote in the Commons was deferred.

2019

A UK Government Motion approving the Withdrawal Agreement was defeated in the House of Commons by record margin of 230 votes (432-202) on **15 January 2019**. The House then voted by 317-301 in favour of the so-called 'Brady' Amendment which proposed replacement of the backstop with alternative, unspecified, arrangements to prevent a hard border in Ireland.

The Prime Minister met the Commission President Jean-Claude Juncker in Brussels on **20 February 2019**. A Joint Statement sought to clarify issues on the backstop and on the overall package designed to deliver an orderly UK exit.

The House of Commons voted by a margin of 149 votes (391-242) to reject the Agreement on **12 March 2019** and rejected it for a third time by margin of 58 (344-286) on **26 March 2019**. Between those votes the Prime Minister had requested an extension to the exit date from 29 March to allow time for a decision by the House of Commons. On 21 March, the European Council approved an extension until 22 May. The Prime Minister offered to sit down with Labour Party "to try to agree a plan" and nominated teams met for initial talks on **2 April 2019**.

Following the third defeat of the Agreement, the Commons approved a draft Bill to force Government to seek an extension to the Article 50 process. The Government then introduced a motion agreeing to seek an extension which was passed by 420-110 on **4 April 2019**. The European Council on **10 April 2019** agreed to grant the UK a flexible extension of the Article 50 period until **31 October 2019**.

The UK participated in the European Parliament Elections on **23 May 2019**. The Brexit Party, established just weeks earlier by Nigel Farage, headed the poll with 32% of votes. The Liberal Democrats gained 20%, Labour 14%, the Green Party 12% with the Conservatives obtaining an historically low 9%. The Prime Minister Theresa May announced her resignation on the following day, **24 May 2019**.

In the Conservative Party Leadership election, Boris Johnson defeated Jeremy Hunt by 66% to 34% and became Prime Minister on **24 July 2019**. He indicated determination to take the UK out of the European Union on 31 October, with or without an agreement. On **28 August 2019** he announced the prorogation of Parliament prior to a Queen's Speech setting out his Government policy agenda on 14 October. This move was attacked as an attempt to curtail parliamentary debate on Brexit. Prorogation took place on **9 September 2019**.

Opposition parties moved together to oppose the prorogation decision. On **3 September 2019**, an emergency Commons Motion to take control of the House's agenda saw the Government defeated by 328 votes to 301, with as many as 21 Conservative MPs voting against the Government. These rebels were expelled from the Conservative Party.

The united opposition parties introduced the European Union (Withdrawal) (No 6) Bill which instructs the Government to seek an extension of the departure date from 31 October 2019 to 31 January 2020 in the absence of an agreement with the EU. On **4 September 2019** the Bill was passed by the Commons by 327 votes to 299 and moved to the House of Lords which gave it urgent consideration and passed it. The Bill received Royal Assent on **9 September 2019** (becoming an Act, popularly known as the Benn Act).

The Government twice introduced Motions under the Fixed-Term Parliaments Act to permit the calling of a General Election. On **4 September 2019** the House of Commons voted in favour of the Motion by 298 votes to 56, falling short of the two-thirds majority required under the Act. The second Motion, on **9 September 2019**, was approved by 293-46 vote, again falling short.

The Prorogation decision was challenged in the English, Scottish and Northern Ireland Courts. The English and Northern Ireland Courts ruled in favour of the Government. The Scottish appeal court – Court of Session - on **11 September 2019** overturned a decision of a lower court and ruled that the decision to suspend Parliament was unlawful as it was motivated by the improper purpose of stymying Parliament.

In September 2019 the UK Supreme Court heard appeals against the decisions of the Scottish and English Courts. On **24 September 2019**, the Supreme Court ruled – by 11-0 - that the decision to seek a prorogation order from the Queen was unlawful, void and without effect since its effect was to frustrate or prevent, without reasonable justification, the ability of Parliament to carry out its constitutional functions as a legislature and as the body responsible for the supervision of the executive.

Following the Supreme Court decision Parliament resumed sittings on **25 September 2019** with a statement by the Prime Minister on the prorogation issue.

On **2 October 2019** the Prime Minister wrote to the President of the European Commission, Jean-Claude Juncker, outlining UK proposals for provisions to replace the backstop element of the Withdrawal Agreement and calling for accelerated engagement between the UK and the EU Brexit Task Force with a view to arriving at an agreement which could be ratified by the European Council at its October meeting. An Explanatory Note and a detailed Legal Paper were submitted to the Task Force.

On **3 October 2019** the UK proposals received largely sceptical responses from the Irish Government, the European Commission and the European Parliament Brexit Steering Group. Michel Barnier made a statement to the European Parliament on **8 October 2019** in which he outlined the problems in the UK text.

Prime Minister Boris Johnson and the Taoiseach, Leo Varadkar, met outside Liverpool on **10 October 2019** and, in a joint statement, indicated that they could see a pathway to a possible deal. On **11 October 2019** the UK Brexit Secretary, Steve Barclay met Michel Barnier in Brussels. They agreed to intensify talks on the elements of a possible deal.

The EU and UK negotiators reached agreement on **17 October 2019** on a revision to the Protocol on Ireland and Northern Ireland included in the Withdrawal Agreement and on a revised text of the Political Declaration.

In the House of Commons on **19 October 2019** a Government motion approving the new agreement was moved by the Brexit Secretary. An amendment, moved by Sir Oliver Letwin, providing for the House to withhold approval "unless and until implementing legislation is passed", 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.

Following the House of Commons decision, the Prime Minister was obliged to write to the European Council requesting an extension of the departure period. Late on **19 October 2019** the Prime Minister despatched an unsigned letter to President Donald Tusk seeking a further extension until **31 January 2020**. A signed letter to Donald Tusk indicated that the Government would press ahead with ratification and introduce the necessary legislation and argued that a further extension would damage the interests of both the UK and EU.

On **21 October 2019** the Commons Speaker, John Bercow, ruled that Government could not seek a 'meaningful vote' on the agreement as it would be 'repetitive and disorderly'. The Government then moved to circulate the 110-page text of the Withdrawal Agreement Bill, providing for the details of the UK departure, together with a 125-page explanatory paper.

The House of Commons, on **22 October 2019**, voted by 329 to 299 to approve the Second Reading of the Bill but then rejected – by 322 votes to 308 – a Government proposal to restrict the time available for detailed consideration of the Bill. The Government then paused the progress of the Bill pending information on the European Council response to the request for extension.

On **28 October 2019** the European Union agreed, on request from the Prime Minister, to extend Brexit until 31 January 2020. The European Council President, Donald Tusk, indicated that the decision allowed a so-called 'flexextension' providing that the UK could leave before the new deadline if the Withdrawal

Agreement was approved by Parliament. The Government failed in an attempt to call a General Election when its Motion was carried by 299 votes to 70 but fell short of the two-thirds majority required under the Fixed Term legislation.

By a margin of 438 votes to 20, the House of Commons on **29 October 2019** approved the Early Parliamentary General Election Bill paving the way for a general election on **12 December 2019**. The Bill was approved by the House of Lords and received Royal Assent. This legislation followed intensive discussions and compromises involving the Government and opposition parties. As part of the agreement between the parties the Government indicated that it would not proceed with consideration of the Withdrawal Agreement Bill until after the election.

At 00.01am on Wednesday **6 November 2019**, Parliament was dissolved. Under the Fixed-term Parliaments Act 2011. Dissolution of Parliament must happen 25 days before a general election. With Parliament dissolved, all unfinished parliamentary business falls – including any bills that have not received Royal Assent. Bills cannot be carried over from one Parliament to another, reflecting the convention that no Parliament can bind its successor.

On **27 November 2019**, the European Parliament – by 461 votes to 157 – approved the new European Commission, led by Commission President-elect Ursula von der Leyen who follows Jean-Claude Juncker in the position. The Commission entered into office on **1 December 2019**. On the same day, the new President of the European Council, Charles Michel, entered into his five-year term, in succession to Donald Tusk.

This report went to print on 5 December 2019.

CHAPTER 2. UK POLITICAL DEVELOPMENTS

Dáithí O'Ceallaigh and Sophie Andrews-McCarroll

KEY TAKEAWAYS

The Brexit referendum has caused deep schisms within and between the political parties of the United Kingdom.

This, combined with the transformative effect of deindustrialisation and rising inequality, has had a profound societal effect, with enduring consequences for UK society and politics.

The profound changes in recent times will resonate in the coming years as the UK moves forward post-Brexit.

The referendum in 2016 was designed to resolve the relationship between the United Kingdom and the European Union. Did the people of the UK wish to remain within the EU or not? But it also unleashed a deep well of public frustration with the governing elite aimed not only at Brussels but also at Westminster. It led to a deep political and constitutional crisis in the UK, the outcome of which cannot be foretold.

Brexit has dominated British politics since 2016 causing dramatic changes in the relationship between the executive and the Parliament, and between the executive and the judiciary.

It has caused deep and unprecedented divisions among MPs, between parties and within parties, as they align themselves with different versions of Brexit. It has produced a political system which at times appeared unstable and has raised questions about the future of the Union and also aspects of the UK constitution.

This chapter will examine some of these political divisions in the UK and will look at political developments which have followed, examining the implications for the main political parties, the UK political system and the Union.

Where we are now?

The 2016 Referendum and subsequent negotiations led to profound and

unprecedented schisms between and within established political parties in the UK. These divisions laid bare by Brexit are reflective of a divided society and disillusioned population. The vote for Brexit in 2016 could arguably be viewed as the outcome of a population suffering from a sense of displacement, caused by deindustrialisation, marginalisation and lowering living standards. The genie let out of the bottle in the Brexit referendum has had a profound impact on UK politics. The future is less predictable; the Conservative and Labour parties are now less centrist and more extreme. There are higher levels of voter volatility and the relationship between the justice system and the executive has changed.

Confidence in elites

In an address to the Institute of International and European Affairs in November 2019, Martin Wolf outlined a moment of cultural and societal upheaval as a result of rising inequality, a period of rapid deindustrialisation, and the 2008 financial crash.

The growing discontent caused by rising inequality in the UK came to a head in the financial crash of 2008. In the years since, the least well off in society were the most vulnerable. Although employment rates have been increasing gradually since 2012, wages have stagnated and there have been higher levels of people living in poverty: between April 2010 and April

2018, the median pre-tax weekly earnings of a UK employee fell by 3% in real terms.¹ While GDP has been growing since 2009, its effects have not been not evenly distributed among its population. Despite the UK being one of the richest economies in the world, in 2016/2017, 30% of children, or nine children out of a classroom of 30, were living in poverty.

The rise of transformative technologies is causing a fundamental shift in the economies of the Western world, leading to a period of rapid deindustrialisation. The type and nature of work, particularly low-skilled work, is changing. This process is having a profound societal effect, with enduring consequences for UK society.

The combined processes of rising inequality, the change in the nature of work and the 2008 financial crash has dealt a blow to public confidence in elites which has yet to heal. When the public were asked to vote in June 2016, they voted for change over the status quo. Europe was blamed.

Party leadership developments

Following the 2015 General Election, David Cameron, and then his successor, Theresa May, enjoyed a relatively secure majority. David Cameron's resignation immediately after the referendum precipitated a leadership election. Under the rules of the Conservative Party, at least two rounds of balloting take place

among MPs if there is more than one candidate for the leadership. Theresa May emerged as the strongest competitor after only the second round of votes, obviating the need, under Conservative Party rules, to broaden out the franchise to all members of the Party.

Labour had suffered a defeat in 2015, leading to the resignation of Ed Miliband and the election of Jeremy Corbyn – the first time since the rule change in 2014 that the 'One Member One Vote' system had been utilised, enfranchising the approximately 485,000 Labour Party members for the first time. As had been predicted, it proved advantageous to the activist wing of Party membership.

The decisions by both Labour and Conservative Parties to broaden the franchise for leadership elections has lessened the influence of MPs and has led to a less centrist leaderships in both parties. The effect of this is particularly notable in the Labour Party, whose membership is now over twice that of the Conservatives. Under Conservative Party rules, Theresa May was elected by MPs in 2015. Her successor, for the first time in the history of the Party (following a rule change in 1998) was elected by a membership base of about 180,000. Although the number of members of both parties is still relatively low in historic terms, in our view, both parties have been radicalised as a result of the wider franchise.

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2015-2017 House of Commons	
Conservatives	331
Labour	232
SNP	56
Lib Dems	8
DUP	8
Sinn Féin	4
Plaid Cymru	3
SDLP	3
UUP	2
UKIP	1
Greens	1

Party developments in House of Commons

2017-2019	
Conservatives	318
Labour	262
SNP	35
Lib Dems	12
DUP	10
Sinn Féin	7
Plaid Cymru	4
Greens	1

The outcome of the 2017 General Election foreshadowed the internal struggles within both the Conservative and Labour Parties which were to come and

contributed to the instability in the House of Commons. The Conservatives failed to secure a majority and entered into a confidence-and-supply arrangement with the DUP. This did not mean that the Conservatives were committed to the DUP. As a poll taken in July 2019 showed, 59% of Conservative members were prepared to see Northern Ireland leave the United Kingdom if that was needed to secure Brexit (and 63% would let Scotland go to achieve the same result). The new Labour Party leadership signalled a new departure for the Party and it gained some 30 seats, but the different factions within the Party rendered it difficult to achieve a consensus on Brexit, leading to ambiguity ever since in its policies and direction.

The House of Commons became increasingly fragmented as MPs developed positions on Brexit which were more nuanced than the simple and simplistic 'Leave' or 'Remain' question put to the general public in 2016.

As the negotiations with the EU progressed and the debate evolved, diverging Brexit factions emerged within parties. Lack of consensus led to defections from established political parties, either to form new groups, in the case of The Independent Group for Change (formed in February 2019), to join other political parties, or to sit as independent MPs. In March 2019, *The Financial Times* identified six different 'tribes' within the Conservative Party representing different views on Brexit.

MPs were united, it seemed, only in what they did not want from Brexit, as was clear from the series of indicative votes in April 2019. There was no majority for a customs union, a common market, a second referendum or a further extension at that time. MPs also voted to stop a no-deal Brexit.

Autumn 2019	
Conservatives	298
Labour	243
SNP	35
Independent	24
Lib Dems	20
DUP	10
Sinn Féin	7
The Independent Group for Change	5
Plaid Cymru	4
Greens	1

Unionism

The DUP were instrumental in the final negotiation of the first backstop proposal, bringing unionism and the Irish border to the fore of the Brexit debate. The backstop caused much political wrangling in Brussels and in the House of Commons due to the potential for regulatory divergence between Northern Ireland and Great Britain, deemed unacceptable by the DUP. It ultimately spelled the downfall of the first

Withdrawal Agreement and the Prime Minister who negotiated it, Theresa May.

When Boris Johnson renegotiated the backstop, the sense of betrayal felt by the DUP cannot be overstated. Unionists felt they had been abandoned politically by Margaret Thatcher in 1985 upon the signing of the Anglo-Irish Agreement; now they feel an economic border had been erected between Northern Ireland and the rest of the UK by the Conservatives.

Meanwhile, the SNP has linked the question of Brexit with that of Scottish independence. The SNP viewed the special arrangements for Northern Ireland as something which might also be applied to Scotland. As noted in a later chapter, there are signs that prospects of a hard Brexit are compelling undecided voters to support independence and the SNP.

Constitutional upheaval

Throughout this splintering of political loyalties, the UK constitution has undergone a period of upheaval. The May Government had made several attempts to restrict the powers of the House of Commons in relation to the Brexit legislation and timetable. These led to intervention in the Courts which restrained the power of the Government. Against a background of a fragmented House of Commons, backbenchers were offered significant opportunity to

influence the debate in Westminster, facilitated by the Speaker, leading to legislation requiring the Government to seek an extension and placing qualifications on Government motions.

The momentous actions of the Prime Minister Boris Johnson in requesting the Queen to prorogue Parliament pushed the unwritten UK constitution to its limits. After a number of applications for judicial review were made, the Supreme Court unanimously found that the Prime Minister's advice to Queen Elizabeth had been unlawful and, consequently, Parliament had not been prorogued.

The ruling had profound implications for the balance of power between executive, legislature and judiciary. The judiciary consolidated Parliament's role, protecting it from the arbitrary exercise of executive power. In addition, the Prime Minister was exposed as having misled the Queen, a breach of the fundamentals of the constitutional monarchy.

Conclusion: The future of the UK political system

The fundamental fragmentation between and among parties can be seen as reflecting deep schisms within society. The social implications of the financial crash, deindustrialisation and growing inequality within UK are changing the way in which the electorate behave. Commentators on the 2019 election are observing that voters' behaviour is

being dictated less by social class and more by cultural factors, such as age, race and Brexit stance. Voter volatility is at an all-time high, rendering predictions more difficult than before.

The profound constitutional changes in recent months will resonate in the coming years as the UK moves forward post-Brexit. Changing political allegiances may settle, but this period will leave its mark on the UK political system.

ENDNOTES

1. FullFact, 10 June 2019. *Employment: What's happened to wages since 2010*. Available from: <https://fullfact.org/economy/employment-since-2010-wages/>

CHAPTER 3. EU POLITICAL DEVELOPMENTS SINCE THE UK REFERENDUM

Brigid Laffan

KEY TAKEAWAYS

Political volatility and fragmentation on a domestic level is evident across Europe, but national political developments in Member States have thus far had no impact on how the EU27 has handled Brexit.

There will be a shift in EU Governance following the European Parliament elections and the installation of a new Commission. Furthermore, the Franco-German relationship is strained and is hindering European cooperation at this juncture.

There is a concern in the EU that, given the further extension and new Commission and leadership in Europe, Brexit will start to seep into EU internal considerations and that the UK will prove a disruptive presence while still a member.

The fate of Brexit now lies domestically within the UK. It is as yet unclear whether or not the 2019 General Election will unblock the process.

The EU is a system of multilevel governance and multilevel politics involving the domestic politics of the Member States and elections to Europe's Parliament every five years. There have been multiple parliamentary elections across the Member States since 2016; six in 2016, eight in 2017, six in 2018 and eight already in 2019. Political volatility is apparent with two elections in both Spain and Austria in this period. Party fragmentation a pronounced feature of contemporary politics was evident across Europe as challenger parties made electoral gains. Chancellor Merkel, a towering figure in EU politics since 2005 won her fourth election in 2017 and although she has stepped down from the leadership of her party, the CDU, she continues in office and remains popular with the German electorate. At a European level she remains the preeminent member of the European Council, but she will not preside over German and European politics for too much longer. Emanuel Macron and his *En Marche* movement won the 2017 French Presidential and Assembly elections. The second round of the Presidential election was fought by Macron and Le Pen with Macron winning by 66.1% to 33.9%. President Macron ran on a pro-European platform and was committed to a major reform of the European Union which he couched as a 'European Sovereignty'. Since the election, he has struggled to translate his ambition into action as Berlin was and remains less committed to a quantum

leap in integration. France wants a deepening of the Eurozone which has received lukewarm support from Chancellor Merkel. France is blocking the opening of accession negotiations with Macedonia and Albania and is making overtures to Russia which is not welcomed in Berlin. The Franco-German relationship is hindering rather than promoting European co-operation at this juncture.

A marked feature of all of the elections in Europe since the UK referendum in 2016 is that governmental change in the Member States has had no impact on how the EU27 handled Brexit. It has proved immune to political change and transition, which highlights the coherence and consistency of the EU from the outset. This can be explained by the clarity of the EU approach within one week of the referendum, the dominance of process, the capacity created in the Commission and Council Task Forces and the transparency with which the EU approached the negotiations. Maintaining the unity of the Member States throughout the negotiations were paramount both in EU discourse and practice.

EU Governance-Transition

Had the Brexit timetable gone to plan, the UK would have exited the EU on 31 March well before the EU elections and before the transition to a new Commission in the EU. The absence of

a majority in the House of Commons for any available EU deal has led to three extensions with January 31 as the next scheduled date of departure. The Brexit timetable has thus interacted with Europe's electoral cycle and the appointment of the new Commission. The five yearly EP elections in May are a critical event in the governance of the EU. The 2019 elections were noteworthy for a number of reasons. The outcome of the election ended the dominance of the two large grouping in the EP, the European People's party (EPP) and the Socialists and Democrats (S&D). The EPP with 182 seats remains the largest party but together with the S&D (154 seats) will no longer muster a majority. This is a shift that will affect the 2018-2024 parliament in important ways. Two parties emerged from the election with enhanced power—Renew Europe (former Liberals) which includes Macron's *En Marche* has 108 seat and the Greens have 74 seats. The two traditional parties will have to bargain with either or both of these swing parties to manage the legislative process. Unlike previous parliaments, there is no structural majority in this parliament. The two conservative and right-wing groups, Identity and Democracy and the European Conservatives and Reformist Group have 73 and 62 members respectively. These groups are unlikely to have a major influence on the Union's legislative programme nor will the far left GUE with 41 votes.

The second noteworthy development was the failure of the EP to secure the nomination of one of the *Spitzenkandidaten* as President designate of the European Commission. The EPP candidate Manfred Weber could not command a majority in the Parliament and attempts to nominate the S&D Frans Timmermans also failed. The failure of the EP to secure a consensus on one candidate handed the initiative to the European Council who nominated German Minister for Defence Ursula von der Leyen to the role in a package that saw Charles Michel as President of the European Council, Josep Borrell as the next High Representative, and Christine Lagarde as President of the ECB. The EP voted for the Commission President Designate by 383 to 327 against and 20 abstentions. The majority was not sizeable and underlines the challenge facing Ursula von der Leyen when she takes office. The EP hearings for her Commission proved acrimonious as the European Parliament turned down three of the nominated Commissioners: the Hungarian, Romanian and French nominees. In all three cases the reasons were to do with conflicts of interest. Consequently, the Commission did not take office on 1 November 2019, as planned, but did so on 1 December.

Ursula von der Leyen has set out the priorities for her Presidency and has framed her Commission as a 'Geopolitical Commission' in her mission letters to her Commissioners. This underlines

“GOVERNMENTAL CHANGE IN THE MEMBER STATES HAS HAD NO IMPACT ON HOW THE EU27 HANDLED BREXIT. IT HAS PROVED IMMUNE TO POLITICAL CHANGE AND TRANSITION, WHICH HIGHLIGHTS THE COHERENCE AND CONSISTENCY OF THE EU FROM THE OUTSET”

the challenges facing Europe from a disorderly world characterised by the weakening of multilateral institutions, great power competition between US and China, a disruptive Russia and a volatile and dangerous neighbourhood. The political programme has six broad ambitions that will frame the next five years:

- A European Green Deal;
- An Economy that Works for People;
- A Europe fit for the Digital Age;
- Protecting our European Way of Life;
- A Stronger Europe in the World;
- A New Push for European Democracy.

The translation of these ambitions into policy and action will depend on the quality of Commission proposals and the support they will garner in the Council and the EP. There is a reasonable fit between the von der Leyen ambitions and the European Council Leaders Agenda.

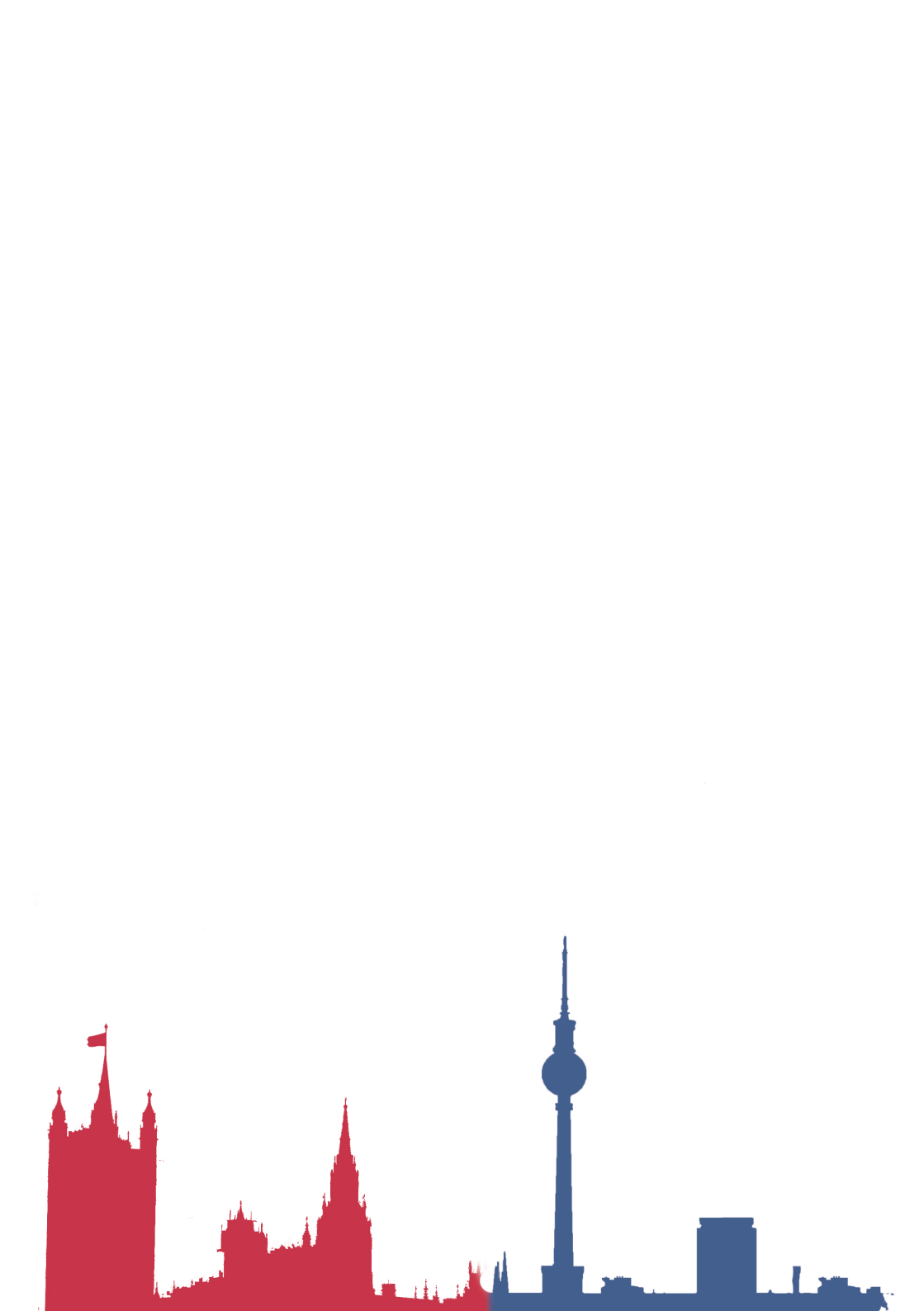
Brexit: the end game

The EU agreed reluctantly to an extension of the Article 50 to 31 January 2020 to avoid a 'no deal' Brexit and to allow political developments to unfold. There is however a growing frustration in many capitals at the failure to bring the first phase of the Brexit negotiations to a close. The concern is two-fold. First,

with the transition to a new Commission and leadership in the EU institutions, there is a fear that Brexit which has so far been kept separate from day to day EU business might begin to seep into EU internal deliberations. The negotiations on the next Multi-Annual Financial Framework (MFF) are a case in point. As these negotiations set the framework for EU policies until 2027, there is no desire to have the UK, a departing state, at the table. There are also fears that the UK might be disruptive on other issues as well.

Following agreement on the extension, the politics of Brexit return to the UK and will unfold during a general election which is likely to be one of the most consequential elections in the electoral history of the UK. The last two UK elections (2015, 2017) were characterised by a high level of volatility with up to 24% of voters switching parties. Although the Conservative Party appears ahead in the polls, the uncertainty of Brexit makes the outcome very difficult to predict. The stakes could not be higher for parties and leaders and especially so for PM Johnson and Jeremy Corbyn. If the Conservatives win an overall majority, then PM Johnson will have the votes to get Brexit done and to pass the latest Withdrawal Deal. If no party has an overall majority, then the distribution of seats will determine the shape of a governing coalition. Could we foresee a coalition between Labour, Liberal Democrats and the SNP to initiate a second referendum. What

will the parties promise on Brexit in their manifestos? The outcome on Brexit hangs in the balance and will become no clearer until the results of the December UK election are known. It will be the third UK election in four years, which underlines just how problematic the politics of Brexit have become for the UK. The absence of any attempt to reach a national accommodation on what Brexit might mean has made a resolution of the challenges posed by the momentous 2016 referendum impossible so far. The 2019 general election may or may not unblock the process.



CHAPTER 4. THE EUROPEAN PARLIAMENT ELECTIONS REVIEWED

Francis Jacobs

KEY TAKEAWAYS

The European Parliament is not a direct negotiator in the Brexit process, but still has a significant role to play. The political composition of the EP is thus of considerable importance in the Brexit process.

Prior fears concerning the outcome of the 2019 European Parliament elections turned out to have been misplaced, or at least exaggerated. Turnout went up by almost 9% to around 52%. The populist surge was far less than many had anticipated.

The issue of Brexit came up surprisingly little in the European elections, apart from in Ireland and above all in the UK, where it was the decisive issue. Elsewhere it had little impact on party programmes and political debates apart from providing an indirect reminder of the continuing value of the EU.

The EP that emerged from the elections is unlikely to adopt a very different position on Brexit. If it does occur, however, Brexit will have a significant impact on the overall composition of the European Parliament but less so on its emerging new governing coalition.

Introduction

The European Parliament (EP) is not a direct negotiator in the Brexit process, but still has a significant role to play, not least because it has to give its consent not just to any Article 50 Withdrawal Agreement, but also to any longer-term framework agreement between the EU and the UK. It has thus closely followed the Brexit negotiation process, not least through its Brexit Steering Group, and has also adopted a number of resolutions on the way forward. Moreover, UK MEPs, including Nigel Farage, have continued to play a full role in the EP in the three years since the 2016 UK referendum. The political composition of the EP is thus of considerable importance in the Brexit process.

The UK was meant to leave the EU on 29 March 2019. The UK was thus not meant to take part in the new EP elections on 23–26 May 2019, and the EP was to be reduced in size from 751 to 705 seats, with 73 fewer UK seats but with 27 of these being retained in order to compensate a number of Member States who were felt to be under-represented in the EP. Ireland, for example, was to gain two seats, and to go up from 11 to 13 MEPs.

In the event, the postponement of Brexit from 29 March to 31 October 2019 meant that the UK did have to take part in the elections.

The postponement of Brexit also meant that the issue might play a greater role in the EP elections. In the event this was only really the case in the UK. Elsewhere it was much less prominent, with the emphasis being much more on whether there would be a major populist surge and on whether environment and climate change would become more salient issues.

The current note looks first at the overall outcome of the EP elections. It goes on to examine the impact of Brexit on the elections. Finally, it reviews the aftermath of the elections, in terms of the new EP and the Brexit process and the impact on EP composition if and when Brexit does eventually occur.

Outcome of the elections

There was a lot of pessimism about the potential outcome of the EP elections, with great concern about a possible surge of populist parties, especially on the right-wing nationalist end of the spectrum. A related concern was that there might be a more fragmented European Parliament and one less easy to control. Finally, overall turnout in the EP elections had gone down in every EP election since 1979, and there was no clear idea as to whether this could be reversed.

These fears turned out to have been misplaced, or at least exaggerated. Turnout not only went up, but by almost

9% to around 52%. The populist surge was far less than many had anticipated, with left wing populist parties actually losing support and with right wing nationalist populists doing well in some countries, notably in Italy, but poorly in others, and gaining more or less the same number of seats as in 2014, if the advance of the Lega in Italy is excluded. Moreover, Green parties did much better in many northern and western European countries, and environment and climate change issues were clearly very important for many voters. Finally the EPP and S&D Groups did indeed lose their governing majority within the EP, for the first time since 1979, but new pro-European governing coalitions seemed possible for the EPP and S&D not just with the reinforced Liberals (re-branded as Renew Europe) but perhaps also with the Greens.

Impact of Brexit on EP elections

The issue of Brexit came up surprisingly little in the European elections, apart from in Ireland and in the UK. It featured very little in the *Spitzenkandidat* (Lead Candidate) debates (although Frans Timmermans did describe the Brexit process as like “the Game of Thrones on steroids”). Nor did Brexit feature significantly in the programmes of the European political parties, although the EPP did emphasise protection of the Four Freedoms and the need to avoid cherry-picking by the UK, and Renew Europe made even more explicit pledges to uphold the Belfast Agreement in

full, and to have a “workable and operable guarantee” in the Withdrawal Agreement that there would be no hard border on the island of Ireland.

National party manifestos in the larger Member States, such as France, Spain and Italy also had few references to Brexit, with the limited exception of the German political parties, most of whom (with the obvious exception of the *Alternative für Deutschland*) called for protection of the Four Freedoms, and defence of the Irish peace process. The FDP and the Greens even explicitly called on the UK to reconsider its decision and to remain within the EU.

Although there were thus few direct references to Brexit there may have been some more indirect impacts, such as an increase in voter mobilisation because of Brexit’s reminders of the value of the EU or in terms of the populist parties adopting more cautious Eurosceptic programmes than they might otherwise have done: *The Rassemblement Nationale* in France did not, for example, explicitly call for Frexit nor did Salvini’s *Lega* call for Italian exit from the Eurozone or even devote much space to any European themes.

As the most affected EU country by Brexit the issue was covered in some detail in most of the Irish political manifestos for the European elections but even here does not seem to have come up very much on the doorsteps.

“THE EP THAT EMERGED FROM THE ELECTIONS IS UNLIKELY TO ADOPT A VERY DIFFERENT POSITION ON BREXIT. [...] THE REAL CHALLENGES ARE HOW THE EP MIGHT REACT IN THE CASE OF A ‘NO DEAL’ BREXIT AND HOW OR WHETHER IT WOULD EXERCISE ITS POTENTIAL VETO POWER OVER THE CURRENT OR A FURTHER MODIFIED WITHDRAWAL AGREEMENT”

Brexit was, however, the decisive issue in the EP elections in the UK. Once it became clear that they had to take place they became a proxy battle between Leavers and Remainers, with those in the middle being squeezed. Never have the two main parties done so badly, with the Conservatives winning only 8.9% and four seats and the Labour Party 14.5% and ten seats. The new Brexit Party, founded only weeks before the elections, won 32.6% and 29 seats and the Liberal Democrats and Greens also had their best ever European elections.

The Conservative Party did not publish a manifesto at all, and the Brexit Party simply issued a pledge card calling for a 'no deal' Brexit. Labour's manifesto adopted a cautious in-between position. On the other hand the pro-Remain and second referendum parties, from the Liberal Democrats and Greens to the SNP and Plaid Cymru, did not just point out the economic disadvantages of Brexit but also expressed positive and much wider support for EU membership in often emotive and value-based terms that had been missing in previous EU campaigns and in the Brexit referendum itself.

The EP elections campaign in Northern Ireland was also distinctive, in that the historic pattern of two Unionist MEPs and one Nationalist was overturned, with the second Unionist seat going to the non-sectarian and pro second referendum Alliance Party, with the three seats thus going to two Remain MEPs and one

Leave MEP. Sinn Fein called for its voters to give their subsequent preferences to other pro Remain parties. All three parties gave strong defences of the Northern Ireland 'backstop'. Moreover, while Sinn Fein was more cautious, the SDLP and Alliance Parties also provided eloquent defences of the value of the EU.

A final feature relates to the position of the Unionist parties. They all advocated respect for the 2016 referendum result and for the UK to leave the EU as soon as possible but both the DUP and the UUP adopted very different tones to the pro-Brexit parties in the rest of the UK, putting much more of an emphasis on the practical programmes that needed to be solved after Brexit and on the programmes of cooperation with the EU that needed to be maintained.

Aftermath of the EP elections and Brexit

The EP that emerged from the elections is unlikely to adopt a very different position on Brexit. The Constitutional Affairs (AFCO) Committee, now chaired by the former EP President Tajani and the EP's reconstituted Brexit Steering Group (with four of its six members staying on) will continue to play key monitoring roles. The real challenges are how the EP might react in the case of a no deal Brexit and how or whether it would exercise its potential veto power over the current or a further modified Withdrawal Agreement.

UK MEPs are still playing a full role in the EP, including providing many of the largest delegations in a number of the EP political groups and even two of the chairs of the EP's twenty Committees. Ursula von der Leyen's narrow majority as President-designate of the new Commission may well have been ensured by UK Liberal Democrat and Labour MEPs.

If Brexit does occur, it will have a significant impact on Parliament's composition. It will go from 751 to 705 MEPs and 27 extra MEPs currently in the "freezer", including Ireland's Barry Andrews and Deirdre Clune, will be able to take up their seats. The number of seats per country will change (besides Ireland's two extra seats, France and Spain will each gain five more, Italy and the Netherlands three and nine other countries will gain one additional seat. The composition of the political groups would also be modified with Renew Europe losing a net total of 11 MEPs, the Greens/EFA seven, the S&D five, and the ECR two, with the GUE unchanged. On the other hand, the far-right ID Group would gain two seats (but the unattached twenty-nine MEPs of the Brexit Party would have gone) and the EPP would gain four.

This will not materially affect the EP's likely governing majority, with a coalition of the EPP, S&D and Renew Europe having 59% of the total seats before Brexit and 61.4% afterwards, and one extended to the Greens as well would have 69% of the seats before Brexit and 71% afterwards.

CHAPTER 5. THE CONDITION OF BRITISH-IRISH RELATIONS

Dáithí O’Ceallaigh and Andrew Gilmore

KEY TAKEAWAYS

After many years of better relations, Brexit has reinjected a degree of tension into the British-Irish relationship.

Northern Ireland will continue to be the fulcrum of the relationship, but British-Irish relations extend far beyond this and must be carefully guarded and cultivated.

The experience of joint EU membership demonstrates the positive impact of closer ties with our neighbour, and provides us with a template for nurturing the future relationship.

*So like it or not, we, the British and the Irish, are irredeemably linked.
- Tony Blair, addressing the Oireachtas on 26 November 1998.*

As the date of the UK's withdrawal from the EU draws near, Ireland must begin to contemplate a wide range of issues – among them, adapting to a European Union without its closest neighbour, a new context for the relationship with Northern Ireland, and a dramatically changed basis for the relationship with Great Britain.

Since 2016, Brexit has cast an unwelcome shadow over the political landscape of both our islands. The intervening three years have, at times, been acrimonious. But they have also been punctuated with timely reminders of the importance of the relationship with our neighbour: notably, in 2018, the 20th anniversary of the Belfast Good Friday Agreement, which enshrined the process of peace and reconciliation between the communities of Northern Ireland and between the two islands; and, later the same year, the 25th Anniversary of the signing of the Downing Street Declaration, an essential precursor to the GFA.

It has been stated many times in this debate that these watershed moments in the relationship between the UK and Ireland were conceived in the context of membership of the European Union, and facilitated by decades of British and Irish contacts in the forum of the European Union. Indeed, it is true - and bears repeating. But what Tánaiste and Minister for Foreign Affairs

Simon Coveney has called “the habit of cooperation” between Britain and Ireland did not emerge immediately – it took many years of cultivation.

Outside of the EU, the two sides will no longer work together in pursuit of common interests in the Union. Irish officials and Ministers will no longer be in daily contact with their British counterparts. It may only be when this unquantifiable benefit of our joint EU membership is lost, that we begin to fully understand its importance.

It is clear already that Brexit has reinjected some tension into the relationship, and it is unfortunate that as a consequence of the 2016 referendum, we must once again consider how to manage an uncertain future in the relationships within and between these islands.

Northern Ireland

Northern Ireland has long been the fulcrum of this relationship, a fact underlined by its role as the key focal point – and final sticking point – in the Brexit negotiations. Changes in the condition of the London-Dublin relationship, good or bad, are inevitably felt in Belfast, just as the situation in Northern Ireland can have ameliorative or deteriorative effects on the broader relationship. Thus,

the current condition of Northern Ireland presents cause for concern.

It is important to note that it was not Brexit which caused the present impasse in Northern Ireland – now nearly three years without an Executive. It was several years of disputes over a wide variety of issues, including religious parade routes, the status of the Irish language in Northern Ireland, rules over the flying of flags on Government buildings, and, ultimately, the cash-for-cash scandal, that left the region in a wearily familiar state of fracture.

And, just as the vote to Leave did not cause Northern Ireland's present impasse, the Withdrawal Agreement does not solve it – indeed, if not carefully handled in the coming weeks, months and years, it has the capacity to exacerbate it.

The new Protocol on Ireland and Northern Ireland broadly settles the debate over the North-South border (though as Katy Hayward notes in her chapter, it will not completely solve every issue). However, it also creates the need for customs and regulatory arrangements between Northern Ireland and Great Britain. A triumph of creativity and compromise between the EU, and the Irish and UK Governments, has had the consequence of alienating the DUP, who had explicit assurances from the previous Conservative Government that "no British Prime Minister could accept" such an outcome.

The response of Northern Unionism to the deal, labelled "The Betrayal Act" by Loyalists, carries with it echoes of 1985, when Margaret Thatcher and Garret FitzGerald signed the Anglo-Irish Agreement, which gave the Irish Government an advisory role in the governing of Northern Ireland and acknowledged that the region's constitutional status could only be changed by a majority of the electorate. Alex Kane, who later became the Director of Communications for the UUP, was present in Belfast in the aftermath and wrote, in 2014, that: "It was the first time in my life that I had seen real panic, real fear in the eyes of ordinary unionists. They knew, even in those first few hours, that things were never going to be the same again."

The results of the upcoming elections in Northern Ireland, both the 2019 General Election and the 2020 Assembly elections, if it is held, will be watched intently. Irrespective of the outcomes, however, it is clear that concerns among either community cannot be ignored or left to fester. This will be particularly true beyond Brexit, and especially as we approach the centenary of the partition of the island, with the possible unsettling effect that a renewed public discussion of Irish unity might have on the region. Both Governments will need to reaffirm their commitment to the Belfast Good Friday Agreement in the post-Brexit era.

“NORTHERN IRELAND HAS LONG BEEN THE FULCRUM OF THIS RELATIONSHIP, A FACT UNDERLINED BY ITS ROLE AS THE KEY FOCAL POINT – AND FINAL STICKING POINT – IN THE BREXIT NEGOTIATIONS”

The broader relationship

While Brexit and Northern Ireland are pivotal for British-Irish relations, it is important to state that the relationship transcends these issues. Here there is much work to do, but also some cause for optimism.

The two countries share myriad concerns and ambitions, largely arising from their geographical proximity and shared histories. Identifying common ground upon which to build a new, modern bilateral relationship in the years ahead will not be difficult. There are already frameworks or proposals in place for cooperation on key issues such as security, defence, justice and home

affairs, and migration, to name a few, and there are incentives on both sides to ensure that this continues into the future. A notable development in this regard is the recent codification of the Common Travel Area, which is in the interests of all parties on these islands as we move into an uncertain post-Brexit future.

There will also be both the scope and the desire for collaboration in other areas, such as the continuation of the bilateral trade relationship. The shape and extent of this relationship will be in the hands of the EU and UK negotiators, but its economic and political importance will not be lost on either side. That is not even to mention the international issues on which Ireland and the UK may wish to continue

their interactions, such as in the areas of UN peacekeeping, the Middle East, overseas development, and so on.

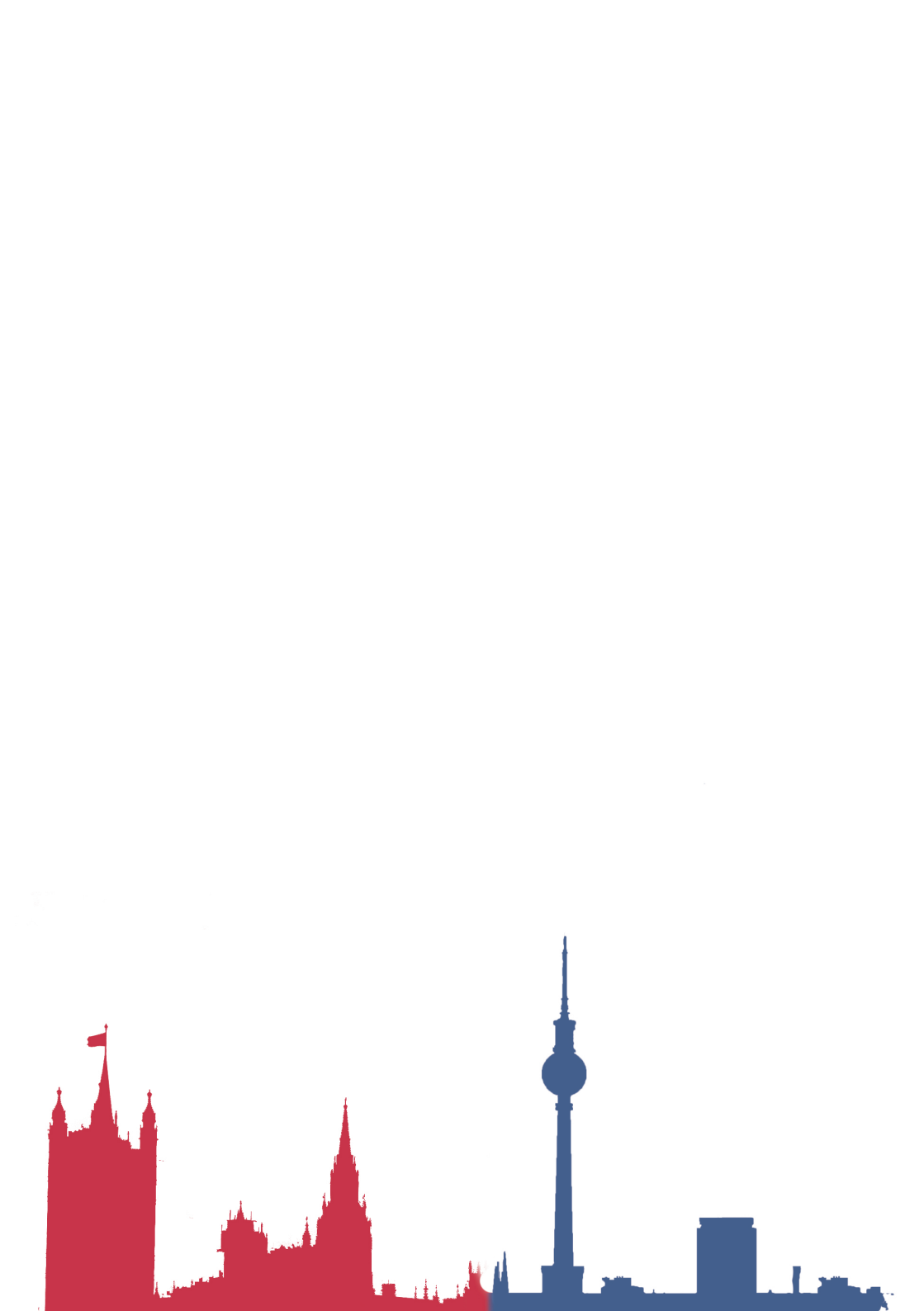
The identification of these areas of cooperation, of course, is a simple matter. The challenge exists in ensuring that cooperation continues, after Brexit, to a similar degree as it did beforehand. Interpersonal links between the British and Irish sides remain good at present, but all efforts must, and no doubt will, be made for those relationships to continue to prosper. As Donal de Buitléir points out in Chapter 18 of this report, there already exist a number of fora for this to happen, including those established under the Belfast/Good Friday Agreement, and new, permanent British or Anglo-Irish institutions must also emerge in the coming years to ensure that there is no regression in the relationship.

In addition, efforts are already underway to expand the Irish diplomatic presence across the UK, including in the devolved nations – the Irish consulate in Wales reopened in May 2019, and deepening links between Ireland and Scotland have been increasingly apparent in recent years, culminating most recently in the launch, in November 2019, of the Scotland-Ireland Bilateral Review. A new Irish consulate may soon follow in the north of England.

It is probable that no new structures can adequately replace four decades of sitting as equals at the table of the European

Union. Managing the relationship in the context of the uncertainties created by Brexit will require vision and imagination, but the previous four decades of the relationship – up to and including the recent Brexit breakthrough on the Wirral – indicate that there is little shortage of that on either side.

SECTION TWO
THE EU REACTION



CHAPTER 6. THE EUROPEAN COUNCIL

Ruairi Quinn

With thanks to Clare Gray and Ryan Grunwell

KEY TAKEAWAYS

Achieving and maintaining unity among 27 Member States was a challenging task and, ultimately, a remarkable achievement.

Raising awareness of Irish issues among the EU27 emerged as the Irish Government's key strategy, and this ultimately bore fruit.

The priorities of the European Council in the next phase of negotiations will be guaranteeing the integrity of the Single Market, maintaining a level playing field in any future trade agreement, and preserving the Good Friday Agreement.

Since the 2016 UK referendum on EU membership, which set in motion the UK's departure from the EU, Heads of State or Government of the EU27 have met regularly to discuss Brexit. These meetings were, at first, of the informal variety and often in the margins of regular European Council meetings. After the triggering of Article 50, however, a new 'Article 50 Format' was established, in which the leaders of the other 27 Member States convened formally, and regularly, to set the EU's overall strategy for the negotiations, offer guidance and assess the progress and, ultimately, approve a final deal.

It was clear from the outset that presenting a unified front among the 27 Member States would be essential for the negotiations – not least because approval of any deal would require the unanimous consent of the Member States. But achieving this unity was expected to present challenges.

In advance of establishing its position on Brexit, the Secretariat of the European Council invited the Member States to share their particular concerns in the Brexit debate. A number of cross-cutting themes emerged, among them the rights of EU citizens in the UK (and vice versa), the impact of Brexit on the EU budget, and the potential for economic disruption. But it was also clear that each Member State had singular concerns: for Spain, Gibraltar; for Slovakia, its automobile industry; for many others including

Netherlands, France and Germany, it was agriculture or trade concerns; and for the eastern European and Baltic states, the continuation of the security and defence relationship with one of the EU's few global military powers.²

Also concerning for some Member States was the potential loss of the UK as a supporter of a liberal and decentralised economic model, which often acted as a counterweight to the more interventionist model preferred by France. This was particularly the case for members of the so-called Hanseatic League, including the Netherlands, Sweden, Finland, Denmark, Estonia, Latvia, Lithuania and Ireland.

It was also clear from early in the process that the UK hoped to leverage these disparate concerns of other Member States in order to shape the negotiations according to its interests.

Ireland and the Council

For Ireland, it was quickly evident that the stakes were extraordinarily high. It is the only state with a land-border with the UK, has a shared obligation to protect the peace process in Northern Ireland, and has extensive trade links across the Irish Sea. It was clear that Ireland stood to lose most from a disorderly Brexit. This would be an asymmetric shock for Ireland, compared to its partners in the EU.

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CONSENT OF THE
MEMBER STATES”**

Raising awareness of the Irish issues among the EU27 emerged as a key strategy for the Irish Government. This was achieved through extensive dialogue with Member States across the EU. By May 2017, over 400 bilateral discussions were conducted at political or senior official level.³ The Taoiseach and Government Ministers also engaged in an extensive tour of European capitals. Ahead of the original March 2019 Brexit deadline, Irish Ministers visited all 27 European capitals as part of the Government's St. Patrick's day programme.⁴ Additional embassy staff were also hired in several key Members States – including Germany and France.

Irish interests at the heart of the Council's strategy

The European Council's negotiating guidelines, when they arrived in April 2017, set out the Council's approach to the negotiations.

They emphasised the unity of the 27, and the European Council's position was that negotiations would be conducted as part of "a single package. In accordance with the principle that nothing is agreed until everything is agreed." This would prevent bilateral side deals on the most controversial issues, including the Irish border. Equally, negotiations would be carried out on behalf of all the EU27 by the European Commission's Article 50 taskforce, avoiding the possibility of bilateral negotiations and undermining the Union's unified negotiating position.

Finally, there could not even be an initial discussion of the framework for future relations before sufficient progress was made on an orderly withdrawal.

The Council ultimately approved three key issues for the first phase of the European Commission's negotiating mandate:

- rights for EU27 citizens in the UK and UK citizens in the EU27
- the settlement of the UK's financial obligations; and
- ensuring the Northern Ireland peace process is not compromised.

The guidelines were warmly welcomed by the Irish Government, which they argued provided sufficient recognition of Ireland's unique situation and provided a pragmatic framework with which to approach the negotiations.⁵

Leaders in the European Council maintained their unity of purpose throughout the negotiations despite continued attempts by the UK to bilateralise negotiations. As another author of this report, Pat Cox, has written for the IIEA:

Attempts to exercise a divide and rule bilateral British diplomatic strategy with other EU states fell on barren soil. Institutionally and politically from the outset the EU has shown remarkable consensus, consistency and coordination. This strength through unity started with its own mantra, "no

notification no negotiations". Through EU solidarity, an historic first, Ireland found itself on the stronger side of bilateral negotiations with the UK.

This led former President of the European Council, Donald Tusk to declare the European Council's unity of purpose on Brexit as one of his defining legacies at the helm of the European Council.⁶

The solidarity given to Ireland by fellow Heads of State and Government was striking, as they continuously argued that Ireland's red lines were the EU's red lines, despite their, at times competing, concerns about Brexit. A visit to the invisible Irish border became an essential agenda item for numerous official state visits, including French Minister of State for European Affairs Amélie de Montchalin and Minister of Foreign Affairs of Finland, Timo Soini. The President of the European Council, Donald Tusk, went so far as to say that the EU27 "would never agree to a deal that was unfavourable to Dublin".⁷

Ultimately, and as expounded upon elsewhere in this report, the solution that was arrived at for the Irish issues was the Protocol on Ireland and Northern Ireland, or 'the backstop' – an insurance policy for the island that would see Northern Ireland remain in the EU Customs Union and aligned with those elements of the Single Market necessary to ensure the continuation of

North-South cooperation. This insurance policy would come into effect only if the terms of the future relationship did not satisfy the goals of an open border between Ireland and Northern Ireland, the continuation of North-South cooperation, and the protection of the Belfast/Good Friday Agreement. However, this first solution was vetoed by the DUP, who could not agree to Northern Ireland being separated from the rest of the UK in this way. This resulted, in early December 2018, in the broadening of the backstop to a UK-wide customs solution, which ultimately sank Theresa May's deal in Westminster.

The debate over the backstop rumbled on throughout 2019, but Irish officials noted that at no stage in the negotiations did Ireland feel threatened to compromise on the question, even when this became the major sticking point in the negotiations and risked a 'no deal' outcome. This support held up to and including the final breakthrough meeting, between Taoiseach Leo Varadkar and Prime Minister Boris Johnson on 10 October 2019. When the UK put forward a new Protocol for Northern Ireland in October 2019, Irish approval was considered a necessary prerequisite for approval by the European Council.

The role of then President of the European Council, Donald Tusk, was also significant. President Tusk was

often a voice of patience in the European Council. He played an important role in recommending that the EU27 accept the third extension to 31 January 2020, despite the reticence of some Member States such as France. His proposal to use a written procedure to grant this extension, rather than convening an exceptional summit, also helped facilitate its passage among Brexit-weary EU leaders.

The future

This year has been the most turbulent yet in the ongoing saga of the United Kingdom's withdrawal from the European Union – with a change in Prime Minister in the UK, a new negotiating strategy towards Brexit and two extensions to the Brexit deadline.

The EU too has undergone much change, as the institutional changes which take place every five years have been rolled out. This has resulted in a new President of the European Council, Charles Michel, a former Prime Minister of Belgium. There was some speculation that his arrival on 1 December 2019 could herald a change in approach by the European Council in negotiations on the future relationship. President Michel declared earlier this year his preference for a 'no deal' over a bad deal for the EU: "At least it would be clearer," he claimed.

While this hawkish stance predates the Withdrawal Agreement negotiated by

the Johnson Government, it is a stark contrast with the more conciliatory approach favoured by both his predecessor, Donald Tusk and the new President of the European Commission, Ursula von der Leyen.

Reflecting on the difficult task of concluding negotiations on the future relationship by December 2020, President Michel recognised that maintaining the unity of the EU27 in the next stage of talks will once again be a challenge, given the different economic interests of Member States.⁸ Nevertheless, he described himself as a bridge builder, given his navigation of the complex political situation in Belgium.

He identified three guiding priorities for the EU going forward: 1) Guaranteeing the integrity of the Single Market; 2) Maintaining a level playing field; and 3) Preserving the Good Friday Agreement. The upcoming European Council of 12-13 December 2019 will likely provide further clarity as to President Michel's leadership approach to Brexit.

Despite these institutional and personnel changes, this is unlikely to radically alter the negotiating position of the European Council in future negotiations with the UK. The role of the European Council will again be to provide broad political prerogatives and guidance on which the Commission may conduct negotiations.

While at times seemingly disparate, the solidarity demonstrated between Heads of State and Government in the European Council thus far during the Brexit negotiations is a testament to its capacity to coordinate the competing interests of its members. For a time at least, Brexit gave the Council a unity of purpose, of which Ireland was one of the main beneficiaries. Whether this solidarity will ultimately require trade-offs for Ireland on contentious policy areas in the future – such as corporate tax regimes, as some commentators have suggested – remains to be seen.

ENDNOTES

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3. Ireland and the negotiations on the UK's withdrawal from the European Union, The Government's Approach, May 2017
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7. A report by the President of the European Council, November 2019
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8. The Guardian, accessed on 02/12/19:
<https://www.theguardian.com/world/2019/nov/28/eu-risks-splits-over-brexit-trade-talks-says-new-council-chief-charles-michel>

CHAPTER 7. THE EUROPEAN PARLIAMENT

Pat Cox

KEY TAKEAWAYS

The UK referendum has prompted a prolonged and divisive internal debate whose ultimate outcome remains unresolved more than three years on.

The European Parliament reacted swiftly to establish the necessary structures to deal with Brexit, and identify the issues for the negotiations – contributing to the eventual negotiating position adopted by the Council.

Assuming the UK leaves the EU at the end of January 2020, the future relationship with the UK will be the next challenge for the Parliament - as a 'no deal' risk could be revived at the end of the transition period.

In choosing to leave but without a specified destination, the UK referendum has prompted a prolonged and divisive internal debate whose ultimate outcome remains unresolved more than three years on. Its legacy effects on social cohesion, economic prospects, a strained constitutional order and the unity of the Kingdom remain to be seen, but separately and collectively these amount to an unprecedented political challenge without parallel in the post-war period. Theresa May wrestled with a divided cabinet, party, parliament and people after failing to win a majority in an unnecessary discretionary election that in its turn followed an entirely discretionary referendum. The EU also was obliged to navigate uncharted waters. The stakes were high in confronting its own first and unprecedented act of disintegration with significant potential downside risks. This paper briefly explores the European Parliament's (EP) response to this challenge.

Article 50 TEU stipulates that any Withdrawal Agreement reached with a departing Member State can only enter into force with the consent of the EP. Consequent upon that, Article 218 TFEU, the legal base for negotiations with the UK after its withdrawal, states that the EP must be kept immediately and fully informed during all stages of the negotiating procedure. The Conference of Presidents (COP) of the Parliament has overall responsibility

and oversight of the process but delegated the detailed work to a Brexit Steering Group (BSG), nominating Guy Verhofstadt, leader of the ALDE Group, as EP Brexit Coordinator. Due to the unprecedented nature and sensitivity of Brexit, BSG membership was restricted to the five political groups supportive of EU integration. Sceptics could find their succour on the UK side of the equation. The BSG was the communications and coordination tool between Verhofstadt and the political group leaders. This process, which matured in April 2017, was initiated by the COP in early in September 2016, less than three months after the UK referendum and more than six months before the UK lodged its formal notice of intention to withdraw.

The EP's standing committees were tasked immediately with providing factual analysis of the consequences of Brexit for their respective policy domains in order to create a comprehensive overview and to better prepare the parliament to "co-construct" the EU's position, in the words of European Commission's chief negotiator, Michel Barnier. This was complemented by direct briefings and debriefings by Mr Barnier; by an invitation to the EP President to be heard at the beginning of each Article 50 European Council meeting and by a right of participation by three "Sherpas": Mr Verhofstadt, Mr Brok and Mr Gualtieri, ALDE, EPP and S&D respectively; at all preparatory meetings of Heads of States and

Governments' Sherpas in relation to Brexit; confirmed in a European Council statement of 15 December 2016.

When European Council meetings were prepared at General Affairs Council (GAC) level the EP's Brexit coordinator interacted with GAC counterparts on a more informal basis. The EP also was invited to a series of scoping meetings with representatives of the 27 EU Member States, which served as a model for EP involvement at administrative level at later Brexit preparedness and contingency seminars. The BSG was supported by a team led by the EP's Deputy Secretary General. A senior EP staff member also was appointed to a permanent position on the Commission's Task Force 50, Mr Barnier's negotiating team. With so much potentially at stake coordination, consistency and coherence were the order of the day. These initiatives represent an unprecedented level of involvement for the EP in an international negotiating process. The game was on and already the EU had forged a powerfully coherent inter-institutional unity months in advance of a divided UK's Article 50 submission.

One week after the UK officially notified its Article 50 withdrawal on 29 March 2017 an overwhelming majority in the EP – 516 for, 133 against and 50 abstentions – voted for a resolution setting out its key principles for the conduct of negotiations and its conditions for eventual approval of a Withdrawal Agreement. These

wholly anticipated and contributed to subsequent European Council negotiating guidelines agreed later in April and also to the formal negotiating mandate conferred on the European Commission and Michel Barnier. The resolution emphasised citizens' rights; the honouring by the UK of its legal, financial and budgetary obligations and the special circumstances of the Northern Ireland peace process and sensitivities regarding the Irish border. It reiterated the indivisibility of the four freedoms and the EP's opposition to "cherry picking" or sector specific deals. Only when "substantial progress" was made could discussions begin on possible transition arrangements. It confirmed that a future EU-UK relationship could only be concluded after the UK had left the EU, becoming in effect a third country. The signatories of this resolution on behalf of their groups were formally appointed by the COP to membership of the BSG.⁹

The BSG has held 98 meetings to date. The frequency has varied from bi-monthly to daily at defining moments. It has published 15 statements, seven comments on European Commission and UK position papers and sponsored five parliamentary resolutions. Michel Barnier has participated in 64 BSG meetings underlining the constant and intense nature of this inter-institutional engagement which, like Brexit itself, is without precedent. He has addressed plenary sessions on 14 occasions as

“BY MOBILISING IMPRESSIVE CROSS-PARTY MAJORITIES [...] THE BREXIT STEERING GROUP HAS PROVED ITS WORTH, PERMITTING THE EP TO IMPACT THE FORM AND CONTENT OF THE NEGOTIATIONS AND ADDING TO THE UNITY AND COHERENCE OF THE EU’S POSITION”

chief negotiator. He also has appeared before both the COP and the EP’s Conference of Committee Chairs on several occasions.

The EP has not yet consented to the Withdrawal Agreement and will not do so until it has been approved and adopted by the House of Commons. Meanwhile attention has begun to shift to future EU/UK relations based on the non-binding Political Declaration. This could be altered by a new UK government. In effect the EU’s opening preference has been clearly stated by Michel Barnier: “no tariffs, no quotas and no dumping”. This aligns wholly with the tone and content of an EP

resolution adopted in March 2018 which emphasised the need for:

“a level playing field, in particular in relation to the United Kingdom’s continued adherence to the standards laid down by international obligations and the Union’s legislation and policies in the fields of fair and rules-based competition, including state aid, social and workers’ rights, and especially equivalent levels of social protection and safeguards against social dumping, the environment, climate change, consumer protection, public health, sanitary and phytosanitary measures, animal health and welfare, taxation,

including the fight against tax evasion and avoidance, money laundering, and data protection and privacy, together with a clear enforcement mechanism to ensure compliance”.

If the Article 50 UK debate has been dominated by defining, debating, disputing and delaying deadlines for leaving, there is every chance that future negotiations will feature deadline debates on the appropriate length of the transition period, currently agreed to last until the end of December 2020. This potentially could revive a UK ‘no deal’ negotiating threat. In addition to trade and economic relations the EP has called for three other negotiating pillars on - foreign policy, security cooperation and development cooperation; internal security and thematic cooperation.

The EP has not yet decided to continue the BSG into the future relations stage of EU/UK negotiations pending COP consideration of the role of competent EP Committees’ responsibilities for international agreements under the rules of procedure. Yet it is hard to countenance the prospect of setting aside a structure that has served the EP and the EU so well. The next stage of negotiations, whenever it is reached, is likely to be fast paced and multifaceted necessitating a structure that is proven, strategic and flexible and one that has internal and external standing. The EP has not been a passive agent awaiting its hour of expression

through formal consent. It has been a vital and indispensable player from the outset, part of an inter-institutional EU landscape that has delivered remarkable coherence and a negotiating prowess based on strength through unity. The EP has been fully informed on a par with the Council and far beyond the strict requirements of the Treaty. By mobilising impressive cross-party majorities every time a resolution has been voted, the BSG structure has proved its worth permitting the EP in a timely way to impact the form and content of the negotiations and adding to the unity and coherence of the EU’s position.

ENDNOTES

9. Mr VERHOFSTADT (ALDE), as Coordinator and Chair, Mr BROK (EPP), Mr GUALTIERI (S&D), Ms ZIMMER(GUE/NGL), Mr LAMBERTS (Verts/ALE) and Ms HUEBNER (in her capacity as AFCO Chair). The composition of the BSG changed after the European Elections since two MEPs, Ms ZIMMER and Mr BROK did not contest the elections. Mr GUALTIERI became a member of the Italian Government in September 2019. Those 3 Members, representing GUE, EPP and S&D, were replaced respectively by : Mr SCHIRDEWANS, GUE co-chair, Ms HUEBNER (who was already part of BSG as AFCO Chair) and Mr SILVA PERREIRA. Mr TAJANI became a BSG member in his capacity as AFCO Chair. See Brexit Steering Group @europarl.europa.eu

CHAPTER 8. THE EUROPEAN COMMISSION

Andrew Gilmore

KEY TAKEAWAYS

The European Commission moved swiftly to prepare itself for the Brexit negotiations, a fact evidenced by the structured and confident approach of the Article 50 Taskforce.

In spite of the difficult circumstances, and the lack of clarity of purpose on the UK side, the Commission negotiated a Withdrawal Agreement that met all of its baseline objectives.

The negotiations over the future relationship will take place in an exceedingly tight timeframe, and there remain risks that a deal on the future relationship will not be reached.

The result of the 2016 Brexit referendum came as a shock to many in the EU, but it nonetheless responded swiftly to establish its structures for the upcoming negotiations with the UK.

The European Commission, in accordance with Article 50, was tasked with negotiating the UK's withdrawal, on behalf of the European Council. The Commission was to handle the day-to-day technical and practical business of negotiating with representatives of the UK, in contrast with the Council, which provided the negotiating mandate and strategic guidance.

Within a month of the referendum, an Article 50 Taskforce had been established in the Commission, had recruited much of its core staff, and had set up its headquarters in the Berlaymont. On 26 July 2019, Commission President Juncker appointed Michel Barnier as Chief Negotiator and head of Taskforce, to commence his duties on 1 October 2016.

An holistic approach

Though the Taskforce itself was centralised, the Commission was conscious of the need for expertise from across all its Directorates General to be brought to bear in the negotiations. Every DG was therefore asked to nominate a point of contact for the Taskforce on Brexit matters, and each division conducted a screening exercise

of its portfolio area to identify key issues for the negotiations.

This, combined with similar exercises being conducted by the European Council, permitted the Taskforce to develop a holistic view of the upcoming negotiations and begin to design its general approach to the talks, which would in turn feed into the European Council's guidelines.

The Taskforce was also keenly aware of the Irish issues from the outset, helped in no small part by Michel Barnier's past experience as European Commissioner in charge of Regional Policy, as well as by the Irish members of the Taskforce, Tadhg O'Briain, who originally joined the Commission from the Northern Ireland civil service as a national expert, and Daniel Ferrie, who transferred from the Spokespersons' Service.

A Brexit Preparedness unit was also established in the Secretariat General, to provide contingency planning for the UK's departure. Between 2017 to 2019 more than 90 Brexit preparedness notices were published; more than 70 technical expert seminars had taken place on various aspects of Brexit preparedness and contingency planning, involving officials from EU27 Member States; and five Communications on preparing for the withdrawal of the UK had been published.

Negotiations begin

In the event, the Taskforce was afforded far more time to prepare than it may have anticipated. The UK did not invoke Article 50 until March 2017, nine months after the Brexit referendum. It quickly emerged that little preparation for the referendum outcome had been conducted by the UK in advance – indeed, Prime Minister Cameron had instructed the UK civil service not to prepare contingency plans for a Leave vote (the Foreign Affairs Select Committee of the UK Parliament later described this as an act of ‘gross negligence’).¹⁰

When Article 50 was finally triggered on 29 March, however, the Commission brought its months of preparation to bear.

Its positions on the key withdrawal issues were clearly stated and published on the website of the Article 50 Taskforce. Furthermore, and looking beyond the withdrawal, its analysis of the UK Government’s public statements, with the stated red lines on trade, customs and free movement (as outlined in Theresa May’s January 2017 Lancaster house speech¹¹), led it to conclude that the UK would most likely aim for a future relationship involving a comprehensive free trade agreement.

However, the ongoing political paralysis in Westminster meant that, when UK officials finally sat down to negotiate,

a detailed position on the UK’s desired terms of withdrawal and post-Brexit future had still not emerged. The Commission taskforce noted publicly that the UK did not appear to know what it wanted. At times, the UK team appeared not to have a clear negotiating mandate.

Breakthroughs, breakdowns and backstops

By August 2017, gradual progress was being made on citizens’ rights and the UK’s financial obligations after Brexit, but other matters, including the question of the status of Northern Ireland, seemed intractable. Mr Barnier noted that the UK appeared to want an ‘impossible deal’, in which it would leave the Customs Union and Single Market, yet retain the benefits of both. ‘No cherry-picking’ became a mantra at the Berlaymont.

At the end of the year, a Joint Report from the Negotiators of the European Union and the UK Government emerged. The document proposed, for the first time, special arrangements for Ireland and Northern Ireland. However, it took another year of intensive negotiation before agreement was reached on the idea of the ‘backstop’¹². This arrived first in a draft Northern Ireland-only format, before the protestations of the DUP led to a UK-wide version in the Withdrawal Agreement endorsed by the European Council on 25 November 2018.

“THE UK APPEARED TO WANT AN ‘IMPOSSIBLE DEAL’, IN WHICH IT WOULD LEAVE THE CUSTOMS UNION AND SINGLE MARKET, YET RETAIN THE BENEFITS OF BOTH. ‘NO CHERRY-PICKING’ BECAME A MANTRA AT THE BERLAYMONT.”

But even the revised solution was inherently problematic for the UK: in order to prevent the backstop ever being used, the UK and the Commission would have to find a format for the future relationship that:

- ensured an open customs border between Ireland and Northern Ireland;
- aligned Northern Ireland with all those elements of the Single Market necessary to ensure the continuation of North-South cooperation;
- protected the integrity of the Single Market; and
- simultaneously, did not create barriers to trade between Northern Ireland and a potentially diverging Great Britain.

These requirements appeared to point in only one direction: a future relationship that would be far closer than many in the Conservative Party wanted, and which contradicted some of Mrs May's stated 'red lines'. In the ensuing political gridlock in the UK, the Commission was reduced to the role of spectator. Mrs May's attempts to push the deal through Parliament between December 2018 and March 2019 suffered repeated defeats. Requests to the European Council for extensions to the withdrawal deadline followed: first to 12 April 2019; then another to 31 October.

By June, however, Brexit had claimed its second UK Prime minister, and Mrs May's successor, Boris Johnson, pledged to secure a Brexit deal "do or die". After his 10 October meeting with Taoiseach Leo Varadkar, in which a potential solution to the impasse was proposed, the Commission expressed cautious optimism and agreed to enter an intensive "tunnel phase" of negotiations with the UK. On 22 October a new Withdrawal Agreement was finalised, which saw the replacement of the UK-wide backstop with indefinite arrangements for Northern Ireland.

This was perceived by many as a significant compromise by the Commission. Michel Barnier, after all, had stated on numerous occasions that the EU would not renegotiate the Agreement. However, it is worth noting that the Commission was uncomfortable from the outset with the idea of UK-wide backstop, which it saw as a cumbersome construct. The Northern Ireland-only solution was always regarded as the more elegant and practical of the two, and so a permanent solution that fulfilled the same goals was technically acceptable.

Assessing the next phase

Assuming the UK leaves the EU on 31 January 2020, following its third Brexit extension, the stage is set for the next act: what future relationship will the UK have with the EU, its Member States and the largest Single Market in the world?

The Political Declaration sketches a script for the negotiations to come, suggesting a “broad, deep and flexible partnership across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement at its core, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation.”

The cast of characters is also broadly known. Boris Johnson, assuming he will lead the UK into these negotiations, remains a mercurial figure, but his stated preference for a more distant relationship with the EU than that envisaged by his predecessor must be taken at face value. On the Commission side, Ireland will take some comfort in seeing personnel in key positions who are *au fait* with its concerns in the negotiations: Michel Barnier will serve as head of the new Taskforce for Relations with the United Kingdom. Phil Hogan has taken up his new role as European Commissioner for Trade. His Director General, Sabine Weyand, played a prominent role in the Article 50 Task Force and was involved in the negotiation of the EU trade deal with Canada (CETA).

In terms of institutional knowledge and expertise, the Commission appears once again to be poised for the negotiations, and they have made clear that they are ready to open talks on the Future Relationship immediately after the UK becomes a third country.

So how might this next drama play out? For the trade negotiations, at least, it may do so rather more quietly; EU trade negotiations happen behind closed doors and under rules of confidentiality. The Commission, as negotiator, is obliged to report its progress to the Council and Parliament, but the media coverage and public debate may be more subdued. There will certainly be flashpoints in the coming months – particularly if the UK requests an extension to the transition, which must come before 1 July 2020 if it is to be considered. Another such moment will arrive if the UK is still aligned with EU regulations after 31 December 2020, the originally proposed end date of the transition period.

Finalising a future relationship – challenges ahead

The likely endpoint – which we assume to be a comprehensive free trade agreement with additional agreements for cooperation on the areas described in the Political Declaration – is theoretically achievable, especially beginning from a point of deep convergence. But the timeframe – before the end of 2020 - is exceedingly ambitious.

In November 2019, Michel Barnier told the European Parliament Brexit Steering Group that the trade talks would expedite core priorities, such as duty-free and quota-free trade in goods, which could be put in place rapidly,

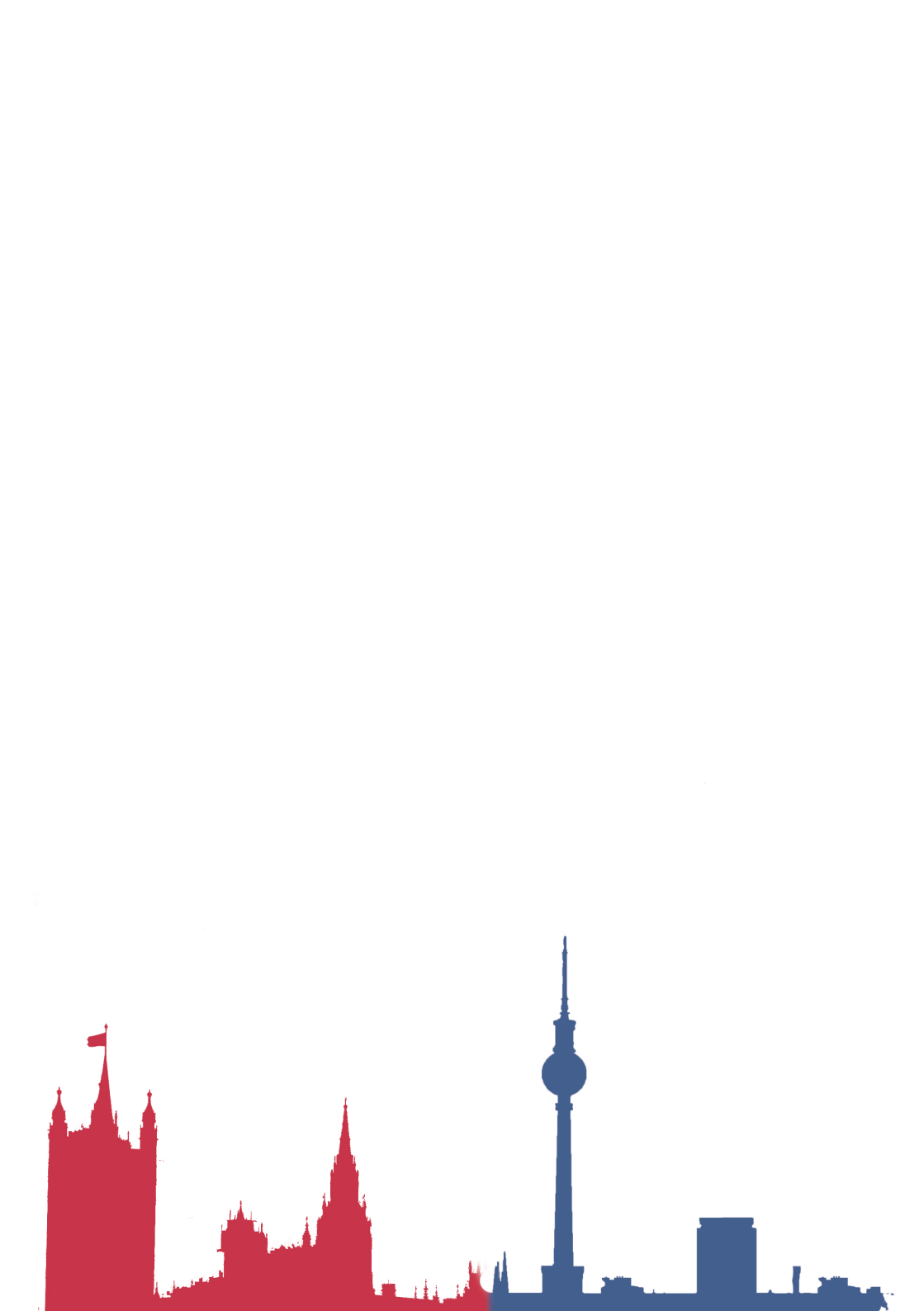
and without the need for ratification by national parliaments.¹³ But the many other areas for cooperation outlined in the Political Declaration will also need to be resolved. Achieving all of this in 11 short months seems ambitious.

Both the EU and the UK are acutely aware that they find themselves in a vastly changed world. Faced with an increasingly volatile phase in international relations, neither can afford to alienate the other – and both must be alert to the risk of another ‘no deal’ cliff-edge at the end of the transition period.

ENDNOTES

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SECTION THREE
THE UK REACTION



CHAPTER 9. THROUGH A GLASS DARKLY: THE MURKY SHAPE OF BRITAIN'S POST-BREXIT FUTURE

John Palmer

KEY TAKEAWAYS

Irrespective of the outcome of the UK general election
- Brexit will have a major impact on UK politics for years to come as the UK struggles to agree a new long term relationship with the EU.

The political traumas unleashed by Brexit could lead to a creeping fragmentation of the UK Union itself with obvious implications for a gradual future unification of Ireland.

Brexit tensions have generated demands for a radical overhaul of the British constitution and electoral system, involving Parliament and the judiciary, and pointing to a future written constitution.

"Now we see things imperfectly, as through a glass darkly... but then we will see everything with perfect clarity."

Thus St Paul wrote to a Christian community in Galatia - referring to the end of time. Will we have to wait that long to see clearly what new relationship between the United Kingdom and the European Union emerges after Brexit?

The UK/EU 'divorce' agreement has – in principle – been endorsed by the British Parliament. But days before the 31 October 2019 Brexit deadline, the House of Commons insisted on having more time to approve the details of the lengthy and complex Brexit draft law.

The European Union was initially uncertain what ratification deadline the UK should be given. Meanwhile the opposition parties continue to insist that any eventual Brexit would have to include UK participation in the Customs Union and alignment with the Single Market, something fiercely opposed by the Government.

A high risk, last minute bid by Mr Johnson to persuade a deadlocked House of Commons to agree to a general election on December 12 was finally accepted. The 27 EU governments meanwhile agreed to an Article 50 extension to the end of January. The Prime Minister will now fight the election without having actually secured Brexit itself.

The divorce settlement provides for a "transitional period" after the UK actually leaves when very little will change. This phase will last until a post-Brexit long term EU/UK Free Trade Agreement has been concluded and come into force.

London seeks something modelled on the existing Canada-EU trade agreement. This took seven years to negotiate and would rule out UK participation in the Single Market or Customs Union. Thus it would be a much 'harder' Brexit than anything the previous Prime Minister, Theresa May, envisaged. Parliament may yet veto this option.

Prime Minister Johnson believes that an FTA can be agreed in 12 months because they will still be aligned with EU rules and standards. Trade experts are sceptical. The chief EU Brexit negotiator, Michel Barnier, believes an FTA could take up to four years – implying it might only be completed by the start of 2024.

Much depends on how far the UK intends its future regulations to diverge from EU environmental and consumer protection standards and workers' rights. Critics of the Johnson government are convinced it plans far-reaching deregulation, not least to help secure a priority trade agreement with President Trump.

During the transition, although subject to EU laws and regulations, the UK will have no voice or vote in the Council of Ministers, the European Commission or the European Parliament. How long before voters resent such 'vassal state' impotence? How long before the Brexit party and like-minded Tory 'ultras' raise the cry 'This is not a real Brexit. We have been betrayed!?'

British Politics Post-Brexit

Brexit has polarised the British public in a way no other issue has since the end of the Second World War: more than the invasion of Egypt in 1956, than the war in Vietnam, than nuclear weapons or the Iraq war. Public debate has generated rhetoric at times suggestive of an incipient civil war. Remain supporters have been denounced as "traitors" and "collaborators" with a 'foreign power' – the EU!

Controversy has occasionally spilled into public abuse of migrants, both European and non-European. In an appalling but fortunately isolated case, a British Labour MP, Jo Cox, was murdered by a far-right extremist during the referendum campaign. MPs, particularly women, have required extra police protection.

In Scotland and Northern Ireland, which are discussed in subsequent chapters, politics seem to be heading in very different directions to England.

The Conservative Party is morphing from being the party of the UK 'Union' to a more English nationalist hue. It is something the Democratic Unionists in Northern Ireland are acutely and uncomfortably aware of.

'Why can't we have the same relationship with the EU Single Market and Customs Union they have in Northern Ireland?' Scots now ask. There is resentment that the rules for EU customs and regulatory standards in Northern Ireland are not extended to Scotland or Wales.

Many voters in England primarily blame the parties in Parliament for the protracted political deadlock over Brexit. This will encourage Boris Johnson's advisors who want him to fight an early election on a English populist platform of "The People Against Parliament."

Among Brexit supporters, however, there is a lingering fear that 'a real Brexit' may eventually be an undeliverable, especially if the UK remains linked to the EU Customs Union and Single Market. This could lead some pro-Brexit voters to switch from the Tories to Nigel Farage's Brexit party.

A wider split in the pro-Brexit vote would help Labour's election prospects. That is why the Labour leader, Jeremy Corbyn, prefers to delay a Vote of No Confidence in the Johnson government until any risk of a 'crash out' 'no deal' Brexit is eliminated.

“HAVING LOST AN EMPIRE, IT USED TO BE SAID, BRITAIN STILL SOUGHT A NEW ROLE. ...IF THE UK ITSELF NOW DISSOLVES INTO SEPARATE NATIONS WHAT ROLE WILL THERE BE FOR A RUMP ENGLISH STATE IN A POST-BREXIT WORLD?”

One possible election result might be a 'Confidence and Supply' pact between Labour and the Scottish National Party. The SNP – riding very high in the polls – would certainly demand London's assent for a new Scottish independence referendum.

If Labour was elected, the Canada-EU agreement model would be jettisoned. Jeremy Corbyn would then negotiate a much 'softer' Brexit agreement – including UK participation in the Customs Union and the Single Market. Contacts Labour have had with the EU institutions have reportedly had a positive response. This 'deal' would be put to a new referendum together with an option to Remain.

In any election voters will pass judgement on much more than Brexit. Economic stagnation, worrying levels of poverty and economic and social inequality – as well as climate change - will all figure prominently in any campaign.

This makes the result of an election very hazardous to predict. Many polling experts predict another 'hung parliament' with no clear majority for any government. In which case the post-Brexit transition will even more politically charged than it has been so far.

Remaking the British Constitution

The Brexit turmoil leaves not only UK politics but the British constitution itself in some disarray. The roles of Parliament, government and the judiciary under the constitution are all being questioned. The confused and unfinished devolution of powers, not only to the nations constituting the UK but also to the English regions, adds to a sense of constitutional uncertainty.

Brexit delivered an unprecedented shock to the UK constitution in September 2019, when the Supreme Court ruled that the Conservative government's attempt to impose a lengthy prorogation of Parliament was "unlawful." The involvement of Queen Elizabeth in a maladroit political manoeuvre by the Prime Minister also fuels calls for an overhaul of the constitution.

The unwritten, opaque, complex and historically arcane system of 'precedent' which defines the respective constitutional roles of the judiciary, Parliament and Government is seen by many as in need of reform. The UK has never had a written constitution, but the Brexit drama may have made this unavoidable.

Agreement on a new constitution could take years. It may of necessity also have to include reform of the unelected House of Lords (maybe linked to a

more radical devolution of power to the English cities and regions). The Labour Party, the Green Party and Liberal Democrats already support the convening of Citizens' Assemblies to prepare concrete priorities for a full-scale Constitutional Convention.

There is dissatisfaction with the present, less than democratic, First Past the Post electoral system. There are influential voices who think that constitutional reform should be accompanied by a new Proportional Representation based voting system.

The UK? Britain? Or England?

Both the Tories and Labour face being eclipsed as major political forces in Scotland. Polling evidence suggests that both parties might end up with few MPs in Scotland after the next general election. UK politicians and media seem now to accept the near inevitability of a second Scottish independence referendum.

Less well publicised has been a remarkable recent growth in popular support for Welsh independence: if still not a majority. There may – as of yet – be no irreversible force driving the fragmentation of the UK state. But a dramatic reordering of the power relationships between the different UK constituent nations seems unavoidable.

In London it is accepted that Brexit treaty will strengthen the importance of the all-Ireland economy. Public opinion seems to recognize that Brexit and changing demographic and political trends in Northern Ireland may mean that another border poll and even the gradual unification of Ireland is only a matter of time.

The eventual definition and status of the English geographical and historical regions under devolution is also unresolved. The smaller English cities and towns have felt the brunt of de-industrialisation and economic austerity. It is also where the Eurosceptic populists attract most voter support.

Having lost an empire, it used to be said, Britain still sought a new role. After 1945 the UK recovered from the traumas of war and the break-up of the British Empire in large measure thanks to its influential role in the development of the European Union. If the UK itself now dissolves into separate nations what role will there be for a rump English state in a post-Brexit world?

CHAPTER 10. SCOTLAND: BETWEEN TWO UNIONS?

Paul Gillespie

KEY TAKEAWAYS

Scots are choosing between the UK and the EU and waiting to see which attracts them more.

The harder the Brexit the greater the support for Scottish independence but the more likely independence would create a hard border with England.

"This election is Scotland's chance to escape Brexit and to put our future in our own hands." So said Nicola Sturgeon on 2 November 2019, ahead of launching the Scottish National Party's manifesto for the UK vote on 12 December 2019. By linking Brexit so explicitly to the question of independence she underlined the fateful choice facing Scotland between the two unions of which it has been a member: the European Union and the United Kingdom. That adds a specifically Scottish drama to the wider dynamics of the UK general election, underlining how entangled these two questions have become north of the border with England.

As they do with Northern Ireland, English voters favouring Brexit and determined to see it delivered prioritise leaving the EU over the possibility that Scotland might leave the UK. In consequence the eminent Scottish historian Tom Devine describes this period as the "by far the closest we have come historically to the breakup of the union." He went on to argue: "I have always thought that if [the union] was eventually destroyed, the major battering ram would come from south of the border. A particular strain of English nationalism has now infected the Conservative Party, and one wonders to what extent the majority in England will be concerned with the loss of Scotland – and indeed Northern Ireland."¹⁴

Delayed Reaction to EU Referendum Result

The UK referendum decision on 23 June 2016 to leave the EU saw majorities in England and Wales overwhelm Scotland's decisive 64-36% preference to stay in the EU (a result it shared with Northern Ireland's 56-44% Remain vote). However, that did not produce an immediate effect on Scottish public opinion demanding the independence question be reopened. For several reasons that shocked the SNP and surprised media commentary, there was a more delayed reaction which saw only a slow increase from the mid-40% to the 50+ in favour of independence over the next three years. Scots, unlike Catalans, are not prone to express such a humiliation by street protests, but are more inclined to take time to absorb such a shock according to the veteran analyst Neal Ascherson.¹⁵ There are definite signs that the prospects of a hard Brexit are now pushing undecided voters towards supporting independence and driving the polling figures over 50%.¹⁶ But one third of those voting for independence in 2014 voted Leave in 2016, among them a substantial number of former Labour supporters. Referendum fatigue and a fear of reopening social divisions also played their role, as did an understandable desire to wait and see how the whole dramatic story plays out.

The delayed reaction to the 2016 result posed political and management problems for the governing SNP. They lost 13 seats to the Conservatives in the 2017 election compared to 2015 when that party was led by a confident young woman, Ruth Davidson. Her resignation in 2019 was widely believed to be in response to her disagreements with the harder and more Anglocentric line on Brexit taken when Boris Johnson took over as Prime Minister from Theresa May. That sets the scene for the SNP to retrieve those seats along with 8 others they lost in 2017, based on a buoyant polling record and weaker Labour and Conservative opponents (although of the 31 seats in the UK with a majority under 1%, 12 are in Scotland and eight are held by the SNP).

The SNP leader has two potential pathways after the election. She can demand another referendum from a Labour Party seeking to form a minority government as a condition for external support if it holds a balance of power. Or she can ask the same from a Conservative Party whose leader refuses to contemplate making any such an offer and is fighting the election in Scotland as a defender of the union. It is therefore a high-risk strategy for Ms Sturgeon if the growing support for independence is wide rather than deep, even though it comes mostly from Remain supporters.¹⁷

Taking the Labour minority government perspective opens up intense bargaining after the election, in which the SNP would be challenged to support Labour's radical domestic programme; an independence vote might be made contingent on the SNP winning the Holyrood elections in 2021 and seeing the Scottish Parliament supporting it. In the meantime, there would presumably be another referendum on the outcome of Labour's renegotiation with Brussels.

If the Conservatives win there is an alternative perspective of the SNP campaigning against their refusal to concede another independence referendum, turning the presumed harder Brexit model into a stronger argument for that on the basis of its economic and political damage to Scotland and pointing to the growing difference between Scotland's civic nationalism and a more xenophobic English nationalism in the meantime. Thus, either way the SNP must still play a long game if it is to achieve a second independence referendum – which is arguably in keeping with its pragmatic and incremental approach over recent years. A Labour government would ease the way to a softer Brexit, making Scottish independence more attractive because it would not involve a hard border with England; a Conservative government would increase the campaigning case for independence but at the cost of creating such a hard border in Britain.

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Drivers of Change

Scotland is pivotal because the United Kingdom is facing a dual territorial sovereignty crisis in its external relations with the EU and internal relations with its constituent nationalities.¹⁸ Both territorial crises are intertwined with related ones in the central institutions of its political system: relations between the executive and parliament and dispute over the proper source of sovereignty – in parliament or from the people in referendums. Together these amount to a constitutional moment. The British state in its traditional form has come into question with Brexit. Its future will depend on whether its future relations converge or diverge from those of the EU in a soft or hard Brexit and on whether power relations within the UK remain centralised in Westminster/Whitehall or are dispersed to the devolved authorities. The two dimensions are interlinked. Their combined impact channels and constrains political choices on the union's future trajectory between a potential breakup of the UK through Scottish independence and Irish reunification or a renegotiated, differentiated or federal alternative.¹⁹

When Nicola Sturgeon links Brexit to independence through this general election she puts the SNP at the centre of these potential futures. Her Government makes a strong case that the harder the Brexit the more Scotland's economy will suffer. Scotland has benefitted

from EU transfers, agriculture and market access; it relies on immigration to fill out demographic problems in industry, scattered rural and peripheral communities and to sustain health and educational services. It draws lessons from Ireland on how smaller states can prosper and thrive in the wider EU setting in which its civic nationalism resonates with European values.

These arguments also feed into the case it makes for independence as an alternative to the recentralised UK arising from the transfer of EU competences back to Westminster and Whitehall. Environmental, agricultural, fishing and other devolved issues are located there until central government decides how to deal with them. This was described as a 'power grab' by the SNP and their perception has been increased by proposals to use so-called Henry VIII powers to allow ministers avoid consultation with devolved governments under the Withdrawal Agreement and particularly under its Ireland and Northern Ireland Protocol in the event of direct rule from London. Similar procedures could be used to negotiate a trade agreement with the United States in which there would be minimal involvement of devolved governments.²⁰ Such revelations reinforce the sense of devolved administrations in Edinburgh and Cardiff that their arguments for much greater shared governance through joint ministerial councils are disregarded or neglected in London.²¹

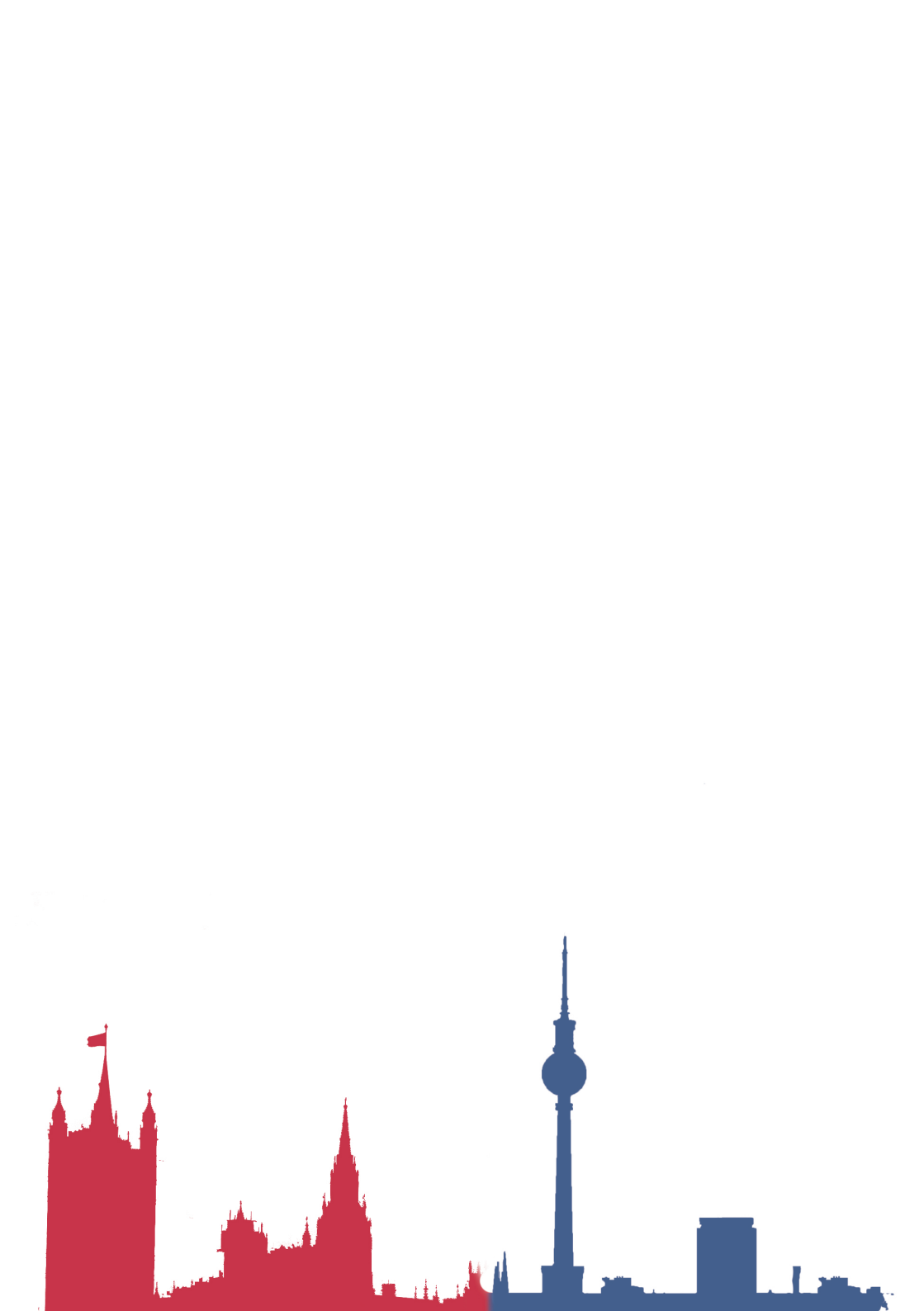
Conclusion

As a result of these two interlinked processes, the UK's union is put under greater pressure. There seems to be little systematic effort by unionists of all political stripes in London and England to find a renegotiated or reformist path through this question. Scottish leaders recognise the unique circumstances of Northern Ireland's violent conflicts and peace agreement requiring particular treatment, but resent the competitive disadvantage its now agreed access to the EU puts Scotland in. The case for a differentiated UK allowing that to happen is thereby weakened.

Scottish and Welsh unionists have similar proposals to federalise the UK in a combination of self and shared rule through a written constitution and an entrenched agreement on where powers lie; but there is little evidence that the major Conservative, Labour or Liberal Democrat parties can muster the will or capacity to achieve such an ambitious outcome because of disagreements on Brexit, on a unitary or union state UK demos, on the nature of sovereignty and on the abiding scale of England with 85% of the population.²² A breakup of the United Kingdom initiated by Scottish independence and possibly accompanied later by major constitutional change in Ireland is therefore as plausible an outcome as are the alternative renegotiated, differentiated or federalised future models of the UK in coming years.

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CHAPTER 11. WALES: THE ETERNAL FOOTNOTE?

Geraint Talfan Davies

KEY TAKEAWAYS

Wales, the eternal footnote in British politics, deserves closer study.

In backing Remain, the Welsh Labour Government has moved ahead of UK Labour.

The Brexit debate has underlined how much the UK Government struggles with constitutional questions.

New Conservative policies will not dent Britain's current spatial inequalities.

Increasingly, the 'indy-curious' segment of the Welsh population includes many elements in the Welsh Labour Party.

Wales has been the eternal footnote in British politics and in most studies of political developments here in the UK. At 5% of the UK population it has never demanded the attention of central governments because of weight of numbers nor, like Scotland, for fear of a declaration of independence, nor like Northern Ireland, for fear of civil war. Wales has relied merely on the force of argument and an appeal to equity, not always consistently effective weapons in politics.

It is not surprising, therefore, that following the 2016 referendum – Wales, seemingly having aligned itself with England rather than with the other two devolved territories – few outside Wales have challenged the assumption of ‘me-tooism’ with its large neighbour. It merits closer examination because what Wales may lack in clout it makes up in complexity.

First, some referendum facts. Wales voted to leave by 52.5% to 47.5% – a majority of 82,225 in a country of three million people. These figures fall between the UK result – 51.9% to 48.1% – and the result in England – 53.4% to 46.6%. But it is easy for this top line result to mask more surprising differences. Given the conventional, but disputed, assumption of correspondence between poverty and anti-EU sentiment, the question is why the Leave vote in Wales was not greater than it was.

In 2016, across England and Wales, Wales scored the lowest Leave vote (52.5%) of any region/nation outside London and the South East. The Welsh capital, Cardiff, recorded a marginally higher vote for Remain than London – and fully 10% more than English cities such as Sheffield, Nottingham, Birmingham, Leeds, and Newcastle. The highest Leave vote in Wales was in Blaenau Gwent, the local authority with the second lowest per capita GVA in the UK. It was 62%. There were 75 other constituencies across the UK with higher Leave percentages – 10 recording more than 70% - all of them in England.

A quarter of the total votes cast in Wales (for both sides) were accounted for by the south Wales valleys constituencies, that have been described as the largest area of multiple deprivation in Europe. The per capita GVA of West Wales and the Valleys – what used to be called the Objective 1 area – is only 64.1% of the UK average. The sense of deprivation is substantial and of unconscionably long standing. And yet, at 52.5%, the Leave vote in Wales was much lower than in the Midlands (59%) or the north East (58%) and only 0.7% higher than the south-east of England. In terms of Wales’s 40 MPs, all voted Remain save for five of the 12 Conservative MPs in Wales at that time.

The thesis that the referendum vote was simply a cry for help by the ‘left behind’ has been challenged by Richard Wyn

Jones, of Cardiff University's Wales Governance Centre. He argues for the "the centrality of national identity – and attendant nationalisms - in underpinning the result", especially in Wales, a part of the UK that he describes as "home to the most varied and heterogenous patterns of national identity of any country in these islands." "Those who feel strongly Welsh

but without feeling the same attachment to Britishness voted heavily to Remain. At the other end of the spectrum, the substantial minority in Wales who feel both strongly English and strongly British (the English British) or strongly English only tended to vote Leave (like their equivalents in England itself)."

2016 Referendum vote by national identity

	Leave %	% of Welsh electorate
Welsh only	29	24
Welsh British	58	27
British only (not Welsh)	62	6
English only	71	2
English British	60	16
British only (not English)	44	9

Data: British Election Survey

Whichever emphasis you choose, it all occurred in circumstances where Wales was obliged to accommodate elections to its National Assembly only a matter of weeks before the referendum. It is not hindsight that leads one to say this timing was another measure of David Cameron's carelessness. Politicians in Wales and Scotland had warned him against any overlapping of the referendum campaign with the scheduled May elections to both Welsh and Scottish parliaments. He waived them away. So, quite unrealistically, parties that had

spent 18 months knocking chunks out of each other were expected to turn on a sixpence and link arms. It made early cross-party planning of a Remain campaign impossible, and when the short campaign started many party workers in the three main pro-EU parties in Wales were flagging. A by-product of the National Assembly's proportional voting system was that in the very month before the referendum UKIP won seven seats (all via the regional list system), their first and only seats in all of the UK's legislatures.

“TIME WAS NEEDED TO ALLOW THE CONTRADICTIONS OF THE LEAVE VOTE TO PERCOLATE THROUGH THE POLITICAL PROCESS, AND TO CREATE ROOM TO REBUILD THE [...] CONFIDENCE OF THE FORCES OF REMAIN”

There were other misfortunes. For some months before polling day in 2016, the news in Wales had been dominated by the threat to the Tata-owned steelworks at Port Talbot, accounting for thousands of Welsh jobs and several percentage points of its GDP. A planned cross-party launch of the Remain campaign – in the week immediately following the Assembly elections - had to be called off because the First Minister, Carwyn Jones, had to attend meetings with Tata in Delhi. It proved impossible to re-arrange.

The campaign was not helped either by the lack of indigenous media in Wales, and the country’s overwhelming reliance on London newspapers, nor by the Charity Commission warning civil society organisations that they could

not be active in the campaign without jeopardising their charitable status – quite different from the situation in the 2011 Welsh referendum on legislative powers for the National Assembly when civil society had been fully engaged.

Such facts are pertinent to the legitimacy of the continuing campaign in Wales to retain the UK’s membership of the EU, a campaign to which the Welsh Government and three of the main political parties in Wales are now fully aligned. They have been the basis for optimism that the 2016 result in Wales can be reversed in a future referendum. The political class, if not the general public, has been on a journey. Time was needed both to allow the contradictions of the inchoate Leave vote to percolate through the

political process, and to create room to rebuild the stances and confidence of the forces of Remain, including a network of grassroots support.²³

That process has run alongside wholesale change in Welsh political leadership, with the leaders of all the parties in its National Assembly having been replaced since 2016. This has been of most obvious significance in Plaid Cymru and the Labour Party. In Plaid Cymru the replacement of Leanne Wood²⁴ with Adam Price in September 2018 was partly motivated by a perception that the former's inclination, as well as constituency interest, made her less than full-hearted in the European cause. Price has brought a new and creative aggression to his task that is energising both his own party and sympathetic movements beyond.

Within Welsh Labour, the retirement of Carwyn Jones from the posts of Welsh Labour leader and First Minister in December 2018 had three consequences: a leadership contest in which one of the candidates, Vaughan Gething, a member of the Welsh Cabinet, was unequivocal in his ambition to overturn the 2016 result; the freeing of Carwyn Jones from the constraints of office, which allowed him to demonstrate an unrestrained enthusiasm for Europe that had not always been as apparent before²⁵; and the election of Mark Drakeford, a more cautiously cerebral politician who had been the Welsh

Government's Minister of Finance since 2016, combining that with responsibility for Brexit.

Drakeford had supported Jeremy Corbyn for the Labour leadership and it can be argued that the Welsh Government has been careful not to stretch the elastic between it and the UK Labour leadership too far. That said, its stance on Europe has always been more enthusiastic than that of London leadership, and more sceptical of the various soft Brexit permutations. But it was not until the summer of 2019, with all notions of a soft Brexit out of the window, that the Welsh Government finally adopted an unequivocal stance in favour of a new referendum in which Labour in Wales would campaign to Remain.

This emphasis on the devolved administration is not intended to discount the Welsh representation at Westminster where, after all, this marathon drama is being played out. Here not only the small Plaid Cymru group, led by Liz Saville-Roberts, but also the larger phalanx of Welsh Labour MPs – most notably Stephen Doughty and Owen Smith²⁶ – have been voluble in support of a continuing Remain position, the latter often overtly critical of their party leader's equivocations. Unexpectedly, Stephen Kinnock, the MP for Aberavon, has ploughed a lone furrow, advocating a 'pragmatic compromise' on Norwegian lines and resolutely opposing a new referendum. Significantly, he has had virtually no support from his Labour colleagues in

Wales. Debates within the Kinnock family on this issue must be as piquant as those within the Johnson family, though they are less written about.²⁷

While the political battle has been fought at Westminster, in the era of devolution it was inevitable that the work of policy development would focus on the Welsh Government and the National Assembly. The first formal post-referendum response from the Welsh Government came in January 2017 with the publication of *Securing Wales' Future*,²⁸ a paper jointly endorsed by the First Minister, Carwyn Jones, and the Leader of Plaid Cymru, Leanne Wood. This outlined six priorities for the Welsh Government including 'full and unfettered access to the Single Market' and participation in the Customs Union; preservation of a large measure of free movement of people, although with a system to track migrants who failed to find work; full replacement of lost EU funds; retention of environmental and social protections; a transition period; and a programme on constitutional reform. Significantly, Theresa May's Lancaster House speech, only days later, showed no regard for these proposals, nor was there any formal response to this paper from the UK Government, nor for that matter to the series of Welsh Government position papers that have followed since.²⁹

It should not come as a surprise that Brexit has strained the relationships between the UK Government on the

one hand and the Welsh and Scottish Governments on the other hand. In sharp contrast to the EU, the UK Government has always struggled with regional policy even when it was confined to an economic policy dimension. The Brexit debate has illuminated just how far it struggles with the constitutional dimension, the shift from a unitary state to a union state. Time and again it has demonstrated its failure to digest fully the political and constitutional implications of the devolution settlement. One can see this evidenced in a myriad ways: its approach to the post-devolution Joint Ministerial Committees, an approach that has been at best casual and at worst contemptuous – *de haut en bas*; the lack of consultation with the devolved governments on the date of the referendum, on the triggering of Article 50, and on the shaping of the core Brexit proposals; a rather grudging attitude at best to the notion of shared governance in a post-Brexit situation.

For instance, a review of intergovernmental relations was instituted by the Joint Ministerial Committee (Plenary) in March 2018 and the Welsh Government was asked to lead on a work stream developing 'high level principles'. The Scottish Government was asked to lead on international engagement, and the Northern Ireland Executive on dispute resolution. The Welsh Government's own paper, *Brexit and Devolution*, had called for a new UK Council of Ministers

with an independent secretariat, more robust dispute resolution arrangements and a 'Convention on the future of the UK'. More than a year later, in July 2019, the Welsh Government was complaining that "progress has been far too slow [...] we are disappointed at the lack of concrete progress which serves no one's interests, including the UK Government itself". In October 2019 it sought to revive this issue with the publication of a second paper proposing a set of constitutional reforms that would finally establish the UK as "a voluntary association of nations taking the form of a multi-national state."³⁰ By now the 'Indy-curious' includes many elements in the Welsh Labour Party and in the Welsh Government, even if the terminology used is different.

Meanwhile, on the economic front, we also see the continuing lack of detailed proposals for a 'Shared Prosperity Fund', first mentioned in the Conservative Manifesto for the 2017 general election and designed to replace the EU regional funding of which Wales has been the most notable beneficiary. More than two years later the promised consultation paper has still not emerged, while ministerial statements that the fund will be designed to operate across the UK have done nothing to alleviate Welsh concerns about both the scale of funding and the degree of Welsh Government control. The *ad hoc* development of 'city region deals', outside the Barnett formula for funding

devolved governments, can also be seen as a further central intrusion into the devolution settlement.

Welsh reaction to Brexit cannot be considered without reference to what might happen in Northern Ireland and Scotland. Concern about "a border down the Irish Sea" is not confined to the DUP or to Holyhead. Were that new border to give Northern Ireland a distinct economic advantage over other UK regions and nations, and were the EU to pull out the stops to mitigate any adverse economic effects of Brexit on Ireland, it is quite easy to see why this might produce a negative reaction in Wales, which is currently at the bottom of most regional league tables, as well as some English regions. The effect in Scotland is dealt with earlier, in Paul Gillespie's chapter.

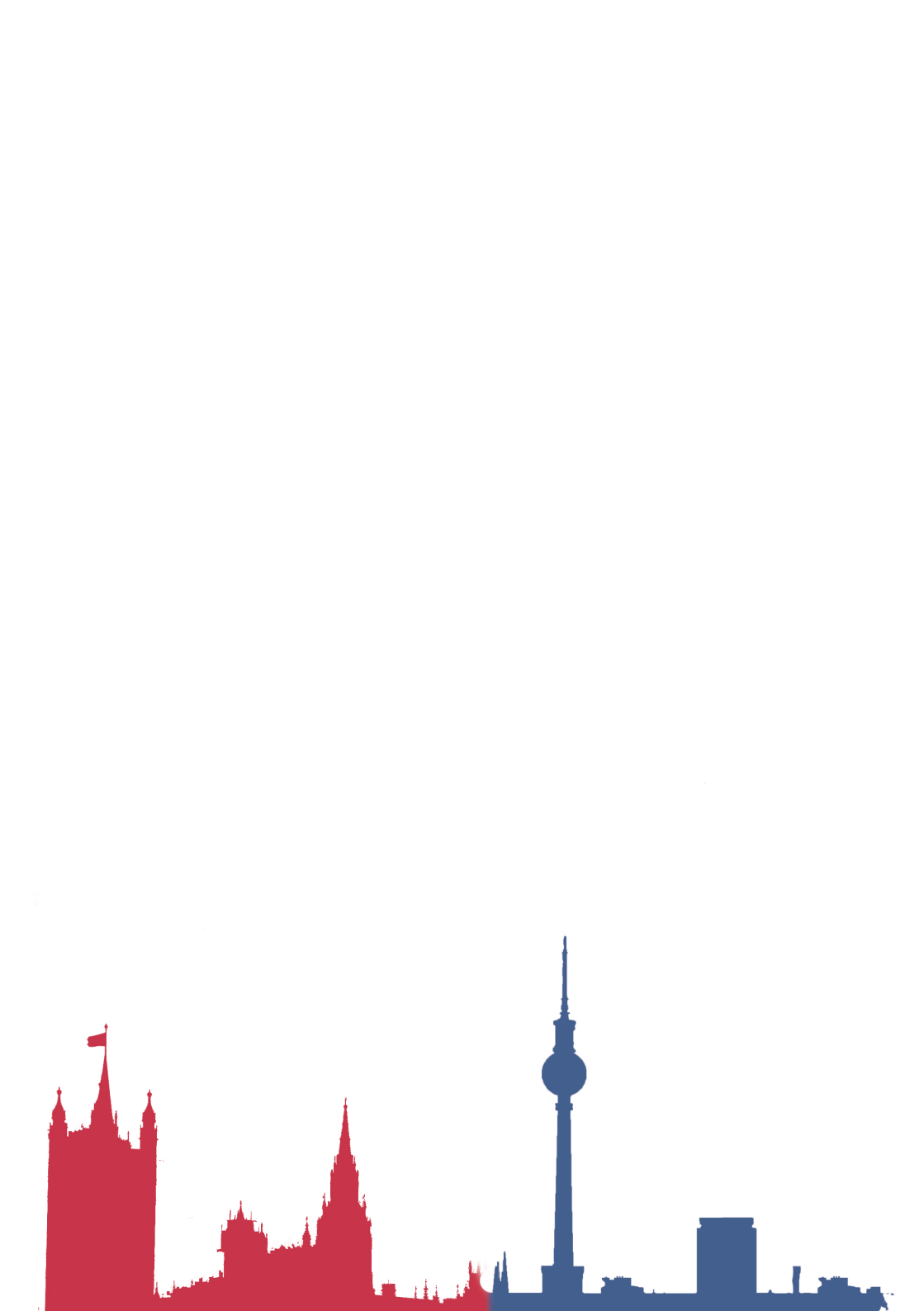
It would, of course, be open to a UK government to put in place radical policies to iron out regional inequalities within Great Britain, but such an expectation would be another triumph of hope over experience. Even the sketchy domestic policies outlined by Boris Johnson in his first days in office have been enough to frighten the horses at the IFS, even so they are not of an order that would even dent current spatial inequalities. It is hard to detect any inclination to radical regional policies within the DNA of the current dominant breed of Conservative politician, while even good intentions on the part of a Labour government could

easily be undermined by a combination of the party's traditional centralism and Treasury orthodoxy.

In short, if the forthcoming General Election does not return a government determined to stop Brexit in its tracks, or at least to put the matter back to the people, the challenges Wales already faces will become much more severe. The agenda is already a forbidding one: lifting Wales from the bottom of economic league tables, mending its damaged social fabric, preserving its vulnerable manufacturing base, its agricultural industry and its higher education research base³¹, while resisting any push for the re-centralisation of British government and, instead, enhancing and entrenching the devolution settlement. None of those tasks would be made easier by excluding ourselves from the European polity that, whatever its faults, has been such an expansive, enriching and stabilising framework for both small countries either side of the Irish Sea.

ENDNOTES

23. Wales for Europe was established in the months immediately following the 2016 referendum. There are now groups of activists in every local authority in Wales, a network that did not exist in 2016.
24. Leanne Wood, is the Assembly Member for Rhondda, a constituency that voted 53.7-46.3 to Leave in 2016.
25. Carwyn Jones' last year in office was overshadowed by the legal aftermath of the suicide, in November 2017, of Carl Sargeant, a member of the Welsh Cabinet, following his suspension from office after allegations of sexual misconduct. Sargeant's family were very critical of the way Jones had handled the situation. The results of an inquiry are awaited.
26. On 30 October 2019 Owen Smith announced that he would not be standing in the forthcoming General Election. Smith was Jeremy's Corbyn only opponent in the Labour leadership election in July 2016.
27. Stephen Kinnock is the son of Neil Kinnock, a former European Commissioner and Glenys Kinnock, a former MEP. He is also the husband of Helle Thorning-Schmidt who was the Prime Minister of Denmark from 2011 to 2015.
28. *Securing Wales' Future, Transition from the European Union to a new relationship with Europe*, Welsh Government. 2017
29. *Brexit and Devolution*, Welsh Government, June 2017; *A brighter future for Wales – Why we should remain in the EU*, Welsh Government, September 2019
30. *Reforming our Union – Shared Governance in the UK*, Welsh Government. October 2019
31. *The Single Market of the Mind, Education and Culture in Wales after the European Referendum*, Geraint Talfan Davies. Institute of Welsh Affairs. 2017



CHAPTER 12. NORTHERN IRELAND: WHAT HAS BREXIT MEANT SO FAR?

Katy Hayward

KEY TAKEAWAYS

Protecting the 1998 Agreement remains a challenge into the future UK-EU relationship – it is not a task that can be indefinitely secured by any Withdrawal Agreement.

Northern Ireland faces the challenge of having harder borders to the east and to the south of it post-Brexit – a situation which brings economic and political risks.

Making sure that the economic consequences of Northern Ireland's unique position post-Brexit move in a positive rather than negative direction will require yet more flexibility from the EU and UK.

The mobilisation of new voices in the public sphere in Northern Ireland has been a welcome consequence of the Brexit process and needs to be built upon.

Perhaps it is apt that the process of the UK's withdrawal from the European Union has in no small way been determined by the conundrum of Northern Ireland's status. A region which can be understood as embodying the best and the worst of the historical relationship between Britain and Ireland, Northern Ireland's peace is pivoted on a compromise of national sovereignty. As the two countries get set on different geopolitical trajectories, the gyropes essential to the region's stability inevitably come under strain. This chapter outlines the consequences that this strain has already had on Northern Ireland in the form of four broad types of impact. What this will mean for the future – for these islands, not just for Northern Ireland – still depends on the approach of the new UK Government to the next phase of Brexit.

Aware of the existential significance of Brexit for this small region on the periphery of the UK and of Europe, the local political parties were agreed that things should change as little as possible for Northern Ireland after the referendum. This was encapsulated in the letter to Theresa May in August 2016 from the First and deputy First Minister. They drew attention to the significance of the open Irish border, to the value of agri-food, to the benefit of EU funding, and to the necessity of EU labour. In essence, the magic trick of pulling the tablecloth out whilst leaving the setting of the dinner service intact was required.

But this was always an impossible task. And the more dramatic and decisive the act of Brexit, the greater the risk of broken china.

Yet Brexit 'meant' Brexit, according to Prime Minister May. In the wake of her determination to see the UK leave the Customs Union and Single Market, the decision by the EU and UK to make the avoidance of a hard border on the island of Ireland as one of their three negotiating priorities was an outrageously ambitious one. Intrinsic to this commitment was an implicit recognition that the EU would have to breach two of its stated absolute objectives: not to determine anything about the future UK-EU relationship prior to withdrawal and, secondly, not to do anything to undermine the integrity of the Single Market. The justification for this breach was the 'unique circumstances' of Northern Ireland. And the rationale for it was the quest for 'flexible and imaginative solutions' to the conundrum. Flexibility and imagination are not terms that readily come to mind when considering Northern Ireland...except where the 1998 Belfast/Good Friday Agreement is in play.

This leads to the first of the four impacts that Brexit has already had on Northern Ireland. The 1998 Agreement is under pressure. The logic of the Agreement is at odds with much of that of the UK's withdrawal from the EU. The Agreement is underpinned by close British-Irish relations. This is based on a belief that exclusivist notions of national

sovereignty generate only conflict in a place such as Northern Ireland, which is a place of diversity: different cultures, different national identities, different political aspirations. The multilevel model of governance utilised by the 1998 Agreement exemplifies the ways by which this diversity can be put to practical effect and mutual benefit. In so doing, it is actively cross-border and transgressing usual boundaries of national sovereignty. This does not mean that the 1998 Agreement cannot survive Brexit, but it does mean that there is a need to actively – and collaboratively – protect and preserve its achievements into the post-Brexit period.

Secondly, the relationship between the Republic of Ireland and Great Britain has changed – with enormous ramifications for Northern Ireland. The Irish Government's efforts to educate other Member States of the EU about the peace process and the 1998 Agreement must go down as one of the most remarkable and successful efforts of diplomacy in the twenty-first century. As some UK politicians and commentators were keen to point out, Irish trade with Great Britain is worth far more to Ireland than trade across the Irish border. In so doing, they were overlooking the fact that Ireland's political parties were in one accord in their assessment that the peace process and the 1998 Agreement are beyond value for the Irish state. Moreover, they underestimated the

extent to which the European Union itself was determined to show solidarity with a small but committed Member State. As the UK leaves the EU, we have seen the shift in the power balance between the two countries mean something in real terms – Ireland's influence on the EU was disproportionate to its size. The fact that this was almost exclusively enacted under the auspices of protecting the interests of a region of the UK has not gone unnoticed in Northern Ireland. Whether it is viewed as helpful or as interference is of course a matter of partisan judgement.

The third key effect of Brexit that is already evident is that it has placed the union of the UK under remarkable strain. This is in part because it has added another layer to existing fundamental differences within the union (i.e. Scotland and Northern Ireland voting to Remain). But it is also because it has exposed a persistent myopia within England when it comes to the union. Against a background of growing indifference from Great Britain and a rising pressure for independence in Scotland, unionists in Northern Ireland are also having to deal with the perception of growing momentum among nationalists closer to home. This impression is cultivated by the fact that Sinn Féin is quite happy with Boris Johnson's deal; if republicans are happy, then the natural assumption is that loyalists should be uneasy.

“A REGION WHICH CAN BE UNDERSTOOD AS EMBODYING THE BEST AND THE WORST OF THE HISTORICAL RELATIONSHIP BETWEEN BRITAIN AND IRELAND, NORTHERN IRELAND’S PEACE IS PIVOTED ON A COMPROMISE OF NATIONAL SOVEREIGNTY”

Although an increasing number of opinion polls that appear to indicate growing support for Irish unity in Northern Ireland, the most reliable data would indicate a more nuanced picture. Catholic respondents have never been as predominantly nationalist or pro-unification as Protestants have been so predominantly unionist and pro-union. The fact that more Catholics are saying that they are in favour of Irish unification is far from a sign of an imminent majority for a border poll. Support for Irish unity is conditional, e.g. it grows in the imagined scenario of an Irish hard border post-Brexit, or of Scottish independence. Moreover, Catholics' willingness to see Northern Ireland continue in the UK has been largely conditional on the full operation of the 1998 Agreement. The failure of the devolved institutions to function properly since early 2017 has been as important as Brexit in affecting people's views on Irish unity.

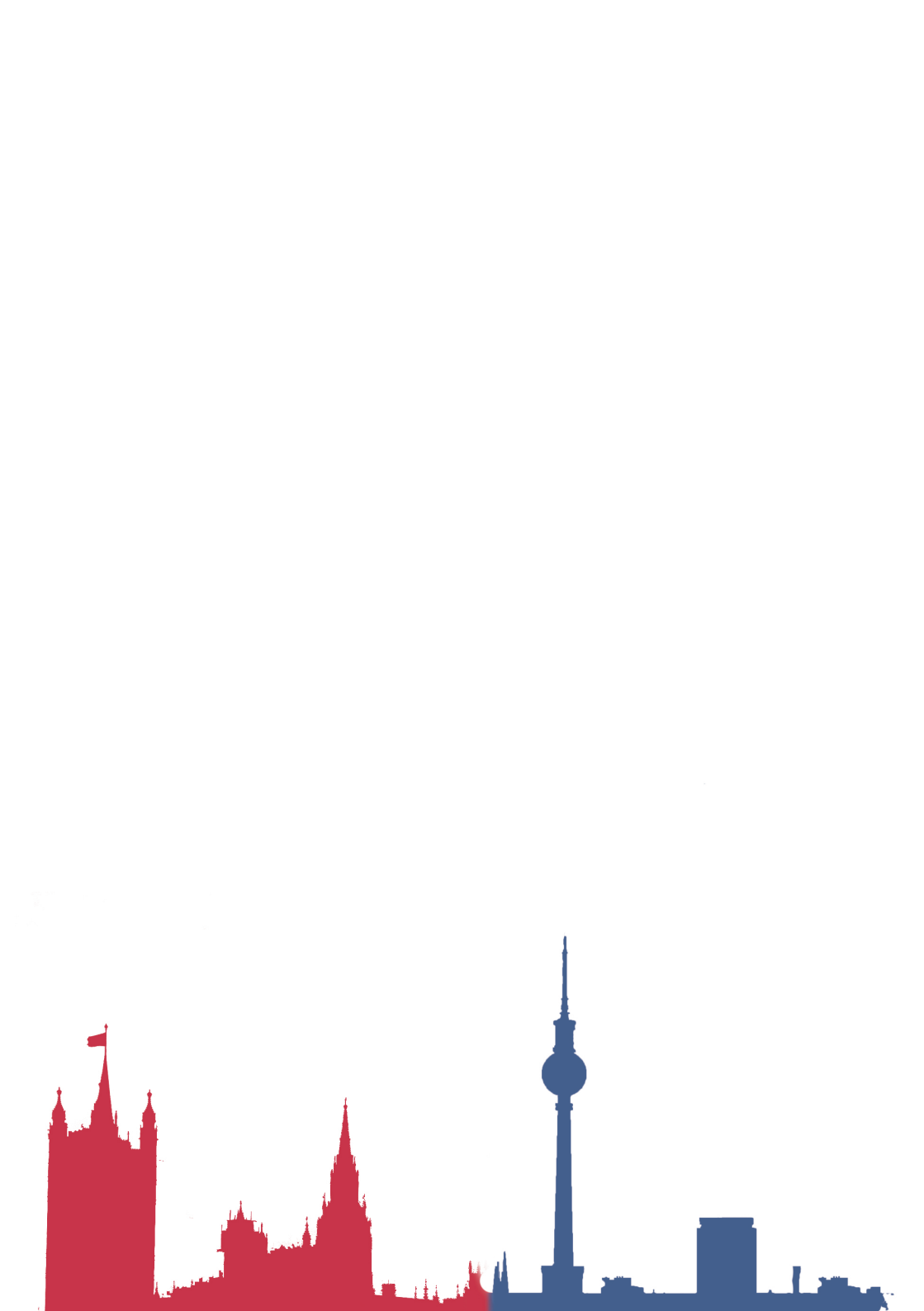
Finally, and quite positively, there has been a mobilisation of new political dynamics and voices within Northern Ireland. Whilst there is a tendency to think about this mobilisation in terms of a straightforward growth of support for Irish republicanism, the truth is that the most obvious dynamic comes in the centrist, non-aligned sphere. Theresa May can be noted for having requested the support of wider society in Northern Ireland for her version of the Withdrawal Agreement and the

backstop. This is what they did. And they have continued to occupy the public sphere long after May had urged the EU to replace the backstop with alternative arrangements. As a body, businesses and civic leaders talk much more simply about the common interests of Northern Ireland and its future sustainability – without the burden of constitutional questions. There is hope that, as the next phase of Brexit unfolds, such views and voices will be taken into account when it comes to the operation of such institutions as the Specialised Committee on Ireland and Northern Ireland and the Joint Consultative Working Group, as well as those in the three Strands of the Agreement and in the UK itself. Such representation is important, and not just when it comes to consultation over the continued application of Articles 5-10 of the Protocol.

If the Withdrawal Agreement is voted through in its current form, Northern Ireland can expect to have harder borders all around. The Irish border will be a harder border for the movement of people (i.e. non-British and non-Irish citizens), services and capital. The significance of this is often overlooked. Northern Ireland sells about £2 billion in services exports; £1.2 billion of which goes to the EU, and over 75% of those EU sales are to Ireland. The vast majority of businesses involved in that cross-border services trade are small/micro businesses who will struggle with

increased restrictions on their trade. The movement of goods across the Irish Sea will also become more burdensome. Although this is far from a matter of constitutional significance, making sure that the economic consequences of Northern Ireland's unique position post-Brexit move in a positive rather than negative direction will require yet more flexibility. It will also require leadership in Northern Ireland that has confidence in the Irish and British governments, both of which will have to adjust to the new situation in the region. In light of the impact of Brexit so far on Northern Ireland, we can expect future challenges to be even more acute.

SECTION FOUR
IMPLICATIONS
FOR IRELAND



CHAPTER 13. ECONOMIC IMPLICATIONS FOR IRELAND

Dan O'Brien

KEY TAKEAWAYS

The effects of the UK's decision to leave the UK have had very limited implications for the Irish economy in the years since the 2016 referendum.

Since early 2018, capital investment in the Irish economy has stagnated. An intensification of Brexit uncertainty is likely to be the main cause.

The economies of Ireland and the UK are highly integrated. Goods and services, capital and labour, and more recently data, flow in large volumes between the two economies. Ireland and the UK's membership of the European Union has provided the framework for the interaction and the continued integration of the two economies for half a century. The decision of the British people to leave the EU in a referendum in 2016 has, from the beginning, posed very significant challenges and risks to the existing relationship between the two economies. The degree to which these risks materialise will not be known until after the UK leaves the EU, if that does indeed happen, the terms of its departure and the evolution of EU-UK relations over time. Much remains uncertain at time of writing in November 2019.

However, to date the economic impact of the UK's decision to leave the EU has been limited if not marginal for the Irish economy. In the final months of 2019 Irish growth rates - of both output and employment - remain among the highest in the developed world, as they have been quite consistently for over half a decade, both before and after the UK's Brexit referendum.

The most marked economic impact from the UK's 2016 referendum of relevance to Ireland was a significant depreciation in the value of sterling vis a vis the euro. From late 2015 and into early 2016 the British pound depreciated by more than

10%, in large part reflecting uncertainty over the referendum. There followed a further sharp depreciation in the immediate aftermath of the vote in June of that year. From a pre-referendum peak of £0.71 to the euro in November 2015 to its immediate post-referendum nadir of £0.89 in October 2016, sterling depreciated by more than 20% vis-à-vis the euro around the time of Brexit referendum. By historical standards over such a timeframe, this was one of the largest changes in the value of the British pound vis-à-vis the currency of a major trading partner in history.

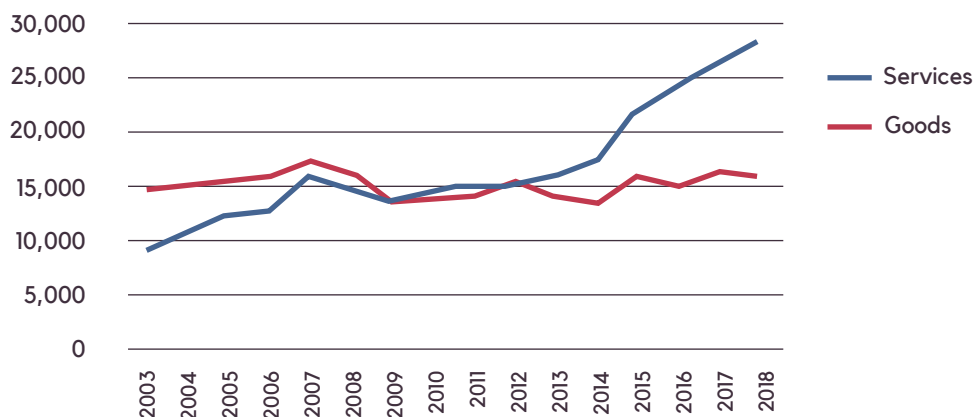
The weakening of the British pound made Irish goods and services more expensive in the UK market. This gave rise to considerable concerns among exporters about a loss of competitiveness in a market that, although not as important as it once was, remains among the largest buyers of Irish goods and services.

In the case of goods exports, the substantial depreciation of sterling appears to have had a limited effect. The value of merchandise exports to the UK contracted by 3.7% in 2016 compared to 2015, according to the Central Statistics Office. It should be said, however, that merchandise exports to the UK recorded no clear upward or downward trend in the 2003-18 period, with the value of earnings from this source fluctuating in a range of €14-17 billion annually (this contrasted with strong export growth to almost all other markets world-wide).

The most recent trade data do not show any discernible change in longer run Irish export trends to the UK (see chart below). The value of merchandise exports grew in 2017 before contracting in 2018, to stand at €16.1 billion. As such, and despite the squeeze on

margins for Ireland-based business selling into the UK market, the Brexit-related weakening of sterling, which was concentrated in the year before and after the referendum, appears to have been absorbed by Irish exporters relatively well.

Irish exports to the UK (€m)



Source: CSO

Data on international trade in services show a markedly different pattern as compared with goods exports. The depreciation of the sterling around the time of the Brexit referendum had little impact on the rapid growth of Irish services exports to the UK (see chart above). In 2016, the value of these exports grew by just over 10% compared

to 2015, to reach €24 billion. Despite considerable uncertainty around the future EU-UK trading relations for services in the context of Brexit, Irish exports of services to the UK continued to grow in subsequent years, reaching €28.3 billion in 2018 (almost twice the value of total merchandise exports).

The depreciation of sterling had a more marked effect on one important element of the trade in services between Ireland and the UK – tourism. In 2018, British citizens made 3.8 million trips and spent an estimated €981 million in the Republic of Ireland. But compared with 2016 both have fallen, by 4.2% and 7.5% respectively. This contrasts starkly with the strong growth in tourists from the rest of the world over the same time period, suggesting that exchange rate effects have been significant for UK tourism to Ireland.

More positively, the depreciation of sterling has made UK goods and services cheaper in the Irish market. This is likely to have contributed to the driving down of inflation in Ireland. In the years since 2016, Ireland's rate of consumer price inflation has been consistently below the average rate in the euro area and has been so despite the emergence of capacity constraints in a rapidly growing economy. It can therefore be concluded that the Brexit-related weakening of the British pound has helped ease price pressures in the Irish economy at a time when overheating risks have increased.

Among the only long-term upsides for the Irish economy from Brexit is the potential for greater inward investment. The UK has the largest stock of foreign direct investment (FDI) in the EU28, amounting to £1.5 trillion in 2018. The UK's attractiveness as an investment location over decades has many elements, but its

membership of the EU market has been significant among them. International companies based in the UK servicing the EU market and international companies considering locating within the EU, as well as British companies seeking access to the EU market, are all likely to view Ireland as a more attractive location relative to the UK as a result of Brexit.

Given the size of the Irish economy, attracting only a small proportion of the EU-focused FDI in the UK has the potential to be impactful, even if the effect to date has been moderate. According to IDA Ireland, between June 2016-2019 Ireland gained 80 investment projects and 5,300 jobs related to Brexit. Most of these were in the financial services sector. More inward investment of this kind could offset the downside effects of Brexit, such as disruptions to supply chains and reduced access to the UK market for Irish exporters.

Among the expected effects of the Brexit referendum – for both Ireland and the UK – was a depressing effect on capital expenditure by businesses owing to increased uncertainty levels. In the event, and somewhat surprisingly, neither economy saw any significant change in fixed capital formation trends in the quarters following the referendum. More recent data, however, point to the uncertainty surrounding Brexit having a negative effect on business investment in both economies.

“IRELAND AND THE UK’S MEMBERSHIP OF THE EUROPEAN UNION HAS PROVIDED THE FRAMEWORK FOR THE INTERACTION AND THE CONTINUED INTEGRATION OF THE TWO ECONOMIES FOR HALF A CENTURY”

As the original date of the UK’s departure from the EU – March 31st, 2019 – approached, uncertainty around the manner of exit intensified, causing business confidence in Ireland to weaken. Evidence from the AIB/IHS purchasing managers indices (PMIs) showed that among manufacturers, confidence fell sharply from mid-2018. By June 2019, readings were pointing to a contraction in the sector for the first time since 2013. Over the same time period, the PMI readings for the services sector saw a similar trend, even if this index has not yet dropped into contractionary territory. By October 2019 the Composite PMI Index, of both manufacturing and services, was at its weakest level since June 2012.

The weakening in business confidence is reflected in the amounts being invested in Ireland’s capital stock. While spending on capital assets in Ireland is distorted by the presence of highly internationalised firms, such as aircraft leasing firms, a measure modified by the CSO to stripe out these factors gives a more reliable indication. Its modified data series on fixed capital formation shows quarterly contractions in three of the five most recent quarters (up to the second quarter of 2019). This was the weakest period of capital spending since 2011.

A further channel from which Brexit uncertainty has had the potential to dampen economic growth is the impact

on consumer spending. In the case of consumers, unlike businesses, there has been a bifurcation between feelings of confidence and actual behaviour. The widest measure of consumer activity – private consumption – continued to record solid quarterly growth of 0.8% in the April-June period. More timely monthly data on retail spending (a narrower measure of consumer activity) points to continued solid growth into the second half of 2019. This pattern is quite different from the KBC forward-looking consumer confidence index, which has weakened sharply in the last year. The latest index read for October 2019 was the lowest level since August 2013. The divergent trends in consumer sentiment and behaviour suggest that it would take a material change in the circumstances of Brexit for there to be a material effect on Ireland's real economy.

As of time of writing in November 2019, and with a general election to take place in the UK on December 12, the range of Brexit outcomes remains as large as ever. Even in the event of a solid majority for one party, uncertainty around Brexit is likely to continue given the commitments and absence of clarity on significant issues by both major parties. This can be expected to have some negative impact on the Irish economy, although, as the past three and a half years have shown, other sources of growth are likely to far offset any further Brexit drag effects.

CHAPTER 14. BUSINESS IMPLICATIONS: NOTHING ADDED BUT TIME...

John McGrane

KEY TAKEAWAYS

A negotiated UK withdrawal is the only way to avoid the disruption and chaos that would be caused for businesses by a 'no deal' Brexit.

For business, the key phase of the Brexit process will be the future trade talks which will determine how UK and Irish firms continue to do business and trade with each other.

The administrative burden on business is likely to be increased and firms need to be prepared for these changes.

Uncertainty remains high with many potential cliff edges still in sight.

More than three years have passed since the UK voted to leave the EU; yet three extensions later, businesses are still none the wiser about what that decision will mean for how they operate and trade.

Business has always been of the view that if Brexit is to happen, it should be done in an orderly fashion with a negotiated treaty in place. The alternative would lead to massive disruption and overnight barriers to trade that would cause chaos and be extremely damaging for everyone.

It is for these reasons that most business groups, including the British Irish Chamber of Commerce (BICC), have advocated for the ratification of the deal that is currently on the table. The BICC took the same stance on the previous Withdrawal Agreement that was negotiated between the European Commission and Theresa May's Government last year.

In a deal with something for everybody, everybody loses something. While there are flaws in the revised Withdrawal Agreement and Protocol, namely its lack of protection for Services trade on the island of Ireland and the uncertainty surrounding how NI-GB trade will be administered in future, it meets the stated objectives of both parties and provides legal underpinning to the Brexit process.

The decision to delay key decision making on how the Protocol will operate in practice is not ideal, but Northern Ireland has a lot to gain from these arrangements. It will have a special status with access to both the UK and EU markets. Northern Irish businesses will also have access to other world markets achieved through negotiated trade deals by the UK and EU. This places Northern Ireland in a very advantageous position and one that will hopefully see Northern Ireland achieve its full potential through increased investment, jobs and private enterprise growth.

For business more broadly, the Withdrawal Agreement is only a stepping-stone towards the much more important future trade talks. It is these talks that will ultimately decide how businesses across these islands interact and trade with each other over the longer term. While the Protocol on Ireland and Northern Ireland provides some clarity for trade arrangements on the island of Ireland, the future of East-West trade is still far more uncertain.

This is hardly surprising as East-West trade between Ireland and Great Britain has always been viewed as a Phase Two issue both by the Irish Government and the European Commission. While future trade arrangements have somewhat seeped into the Phase One Withdrawal talks, it has only ever been in relation to how trade interacts with border arrangements in the context of the border on the island of Ireland.

As a result, our only indication of how future trade might be managed is what is included in the Revised Political Declaration that was published in October 2019. While this remains largely unchanged from what was agreed before, there are some key revisions that indicate a move towards a more distant UK-EU relationship than what was previously sought.

Under Theresa May, the UK Government looked for a closely aligned trade relationship with the EU. It was envisaged that customs formalities would be reduced through close cooperation and potentially the development of a free trade area for goods. Regulatory divergence was to be limited with continued alignment in some sectors proposed in the first version of the Political Declaration. The revised version moves away from many of these commitments although there are still ambitious commitments retained in the text.

On the positive side, the revised Declaration includes commitments towards level playing field arrangements in the areas of State aid, competition rules, relevant tax matters, employment and environmental standards. These commitments are vital if Irish businesses are not to be unfairly undercut by UK competitors.

Furthermore, the Declaration retains the commitment towards achieving a zero-tariff and quota-free trade

agreement between the UK and EU and an agreement to work towards a UK adequacy decision for Data Protection by the end of 2020. Sections on Services and Investment, Financial Services, Mobility, Transport, Digital, Capital Movements and Payments, Intellectual Property, Public Procurement, Energy, Fishing and Global Cooperation all remain unchanged from the earlier version.

Nevertheless, there are some differences that should be noted and may give cause for concern. The changed emphasis towards a 'Free Trade Agreement' rather than a 'Free Trade Area' or a relationship that 'is as close as possible' clearly represents a move away from former Prime Minister, Theresa May's approach. The removal of any references to future regulatory alignment is also worrying.

These changes suggest that we are likely to end up in a trade arrangement more similar to Canada's relationship with the EU than Norway's, which will mean increased costs for businesses that trade between Ireland and Great Britain.

Even in a scenario where a zero-tariff and quota-free Free Trade Agreement is agreed, trade will still require the completion of customs documentation and will be subject to customs/regulatory formalities. This will be an added burden for businesses and will be far more bureaucratic than trade is today.

As a result, it is vital that businesses continue to prepare for these changes. In the lead-up to the potential 'no deal' Brexit last month, preparations remained low among many Irish businesses despite the damage that this would cause.

While the British Irish Chamber of Commerce has seen an impressive level of preparation among larger firms, especially those in highly regulated sectors, this has not been replicated throughout the broader business landscape.

Of particular concern are mid-size firms that have significant exposure to the UK. These firms often have a high turnover but operate on tight margins. They are exposed across multiple areas including tariffs, currency and regulatory requirements. Despite the Brexit risk, they simply do not have the resources, either financial or human, to put in place the necessary preparations for such a significant change to how they operate.

In contrast, smaller firms are often very nimble and should be able to adjust quickly once the future requirements are known. Nevertheless, it is still advisable for these businesses to have some level of preparation in place to best protect them from the uncertainties that still lie ahead.

Although the Political Declaration is the current guide for the Future Relationship, it should be remembered that this text is the 'non-binding'

element of the deal and nothing in its revised form would prohibit future negotiators from agreeing a closer (or more distant) relationship than what is currently envisaged. The outcome of next month's general election in the UK could dramatically influence how closely this text is adhered to.

Whatever the outcome, we are likely to see the real colour of the negotiators' money by Easter next year. It will be around this time when negotiators on both sides are expected to publish their negotiating mandates giving businesses first sight of what the real priorities will be for these talks.

This is the point where businesses will need to pay most attention. This is when decisions will be made that will substantially shape how we do business and trade with each other long into the future. And it is prior to this point when the British Irish Chamber of Commerce will be busiest advocating to teams on both sides to work towards a close future partnership that supports current existing trade and reduces the risk to jobs and livelihoods on both sides.

The Brexit that does least damage is the best outcome for business. However unlikely this may look now, one of the lessons that has been learned over the past three years is that with uncertainty also comes unpredictability and as a result, on many occasions, the direction of Brexit has changed course.

**“THE INEVITABLE
DELAYS TO BUSINESS
INVESTMENT AND
JOBS GROWTH ON
BOTH ISLANDS REMAIN
A TRAGIC CASUALTY
OF THE CONTINUED
‘NOTHING ADDED BUT
TIME’ BREXIT SAGA”**

The current deadline to fully negotiate a Free Trade Agreement by 31 December 2020 is extremely ambitious and very likely unrealistic. Most trade experts anticipate negotiations lasting 5-10 years to reach a deal that covers all the areas of cooperation and trade currently managed through EU membership.

Within this timeframe there are many potential cliff edges lying in wait. A 'no deal' exit at the end of January 2020 is still possible should the UK Parliament fail to ratify the Withdrawal Agreement after the election. Until ratification happens, this remains the default outcome.

If the deal is ratified, there is then only a short window to engage on the future trade talks before the next deadline. While the Withdrawal Agreement allows for an extension to the transition period, the deadline for this request is 1 July 2020. Should an extension not be requested, there is then a deadline of 31 December 2020 to achieve the near impossible and negotiate a fully functioning free trade agreement. Failure to achieve this will result in a situation similar to a 'no deal' exit with East-West trade reverting to WTO terms on New Year's Day 2021.

The upshot of all of this is that it looks like businesses will continue to have to deal with Brexit for some time yet. The impending general election in the UK in December means there are still many outcomes to this process that may come to pass. As a result, uncertainty will

continue to prevail, and businesses must remain prepared for all scenarios for the time being. The inevitable delays to business investment and jobs growth on both islands remain a tragic casualty of the continued "nothing added but time" Brexit saga.

CHAPTER 15. SOME LEGAL ASPECTS OF BREXIT

John Temple Lang

KEY TAKEAWAYS

The United Kingdom should ensure that no diminution of rights is caused by the United Kingdom's departure from the European Union. Article 2 of the Protocol on Northern Ireland says there must be "no diminution" of the rights set out in the Good Friday Agreement.

The fact that the Charter of Fundamental Rights will no longer apply after Brexit means a big reduction in the protection of rights.

The simplest solution would be for the EU, the UK and Ireland to agree by treaty that the Charter should be made a permanent part of the law of Northern Ireland.

The principal legal result of Brexit can be stated simply: EU law will no longer apply in the UK. The Treaties and all directly applicable EU measures such as regulations will no longer have legal effects. In the case of directives which have been implemented by national measures, the directives will cease to apply in the UK, but the national measures giving effect to them will remain until amended or repealed. The UK authorities will have to decide whether and if so how to replace the EU measures, even if this is done only temporarily to avoid confusion. In the absence of any agreement between the UK and the EU, the UK will be free to modify or end any rights or obligations given or guaranteed until now by EU law. A 'no deal' Brexit would leave the UK, in formal legal terms, with a free hand constrained only by international law obligations not based on EU law, such as the Good Friday Agreement. The UK authorities have been compiling a list of all EU and EU-related measures that will need to be considered in due course for repeal, modification or replacement.

What is said here is subject to the terms of any new agreements that may be made between the EU and the UK.³²

The EU27's paper 'Guiding Principles for the Dialogue on Ireland-Northern Ireland' said "The Good Friday Agreement includes provisions as Rights, Safeguards and Equality of Opportunity, for which European Union Law and practice has provided a supporting

framework in Northern Ireland and across the island [...] the Belfast/Good Friday Agreement. requires equivalent standards of protection of rights in Ireland and Northern Ireland [...] the United Kingdom should ensure that no diminution of rights is caused by the United Kingdom's departure from the European Union." Article 2 of the Protocol on Northern Ireland says there must be "no diminution" of the rights set out in the Good Friday Agreement.

Professor Christopher McCrudden has written a very thorough and detailed analysis for Northern Ireland of the rights and duties resulting from EU directives and other measures which, unless it is otherwise agreed, the UK (either London or Belfast) would be legally free to end or modify after Brexit.

The most important EU measure that will automatically cease to apply in the UK, including Northern Ireland, is the Charter of Fundamental Rights. Since at least some of the provisions of the Charter are applied by national courts, the fact that the Charter will no longer apply in the UK after Brexit means a big reduction in protection of rights. In addition, of course, authorities in the UK, including Northern Ireland, will be free to adopt legislation ending or modifying rights hitherto given by EU law, and private parties will no longer be able to obtain compensation if rights previously given by EU law are withdrawn or reduced. Subject to any arrangement

that may ultimately be made between the EU and the UK, rights until now given or guaranteed by EU law will be given, if at all, only by UK or Northern Ireland law, and will be enforced and applied only in the UK and Northern Ireland courts. In short, the UK will have no obligation under EU law to avoid modification or “diminution” of rights that have until now been part of the law in the UK and Northern Ireland.

This has several very important consequences. First, in Northern Ireland the importance of the Belfast/Good Friday Agreement is enormously increased, because it will no longer be reinforced and complemented by the whole body of EU law. The consequences of this are analysed by Professor McCrudden. Brexit is not regarded as a breach of the Agreement, but that Agreement was negotiated and agreed at a time when both Ireland and the UK were in the EU, and the Agreement was based in many respects on that situation. The Agreement will have to bear the whole weight of Northern Ireland’s problems. Issues that until now have been governed, without serious consideration, primarily or exclusively by EU law will now be open to discussion and controversy. The EU will need to insist on all provisions of EU law that have hitherto underpinned the Agreement, by prohibiting all forms of discrimination.

Under the Vienna Convention on the Law of Treaties, the Belfast/Good Friday Agreement, like any other international agreement, must be interpreted and applied in good faith. This means, among other things, that the UK would not be free to reduce the benefits or modify the effects of the Belfast/Good Friday Agreement by arguing that it is no longer bound by any obligations under EU law. A state is not free to reduce the substance of its obligations under one treaty by unilaterally abrogating another if the treaty being abrogated was the basis of the treaty being formally maintained.

The second important consequence of the legal changes due to Brexit is that the agreements that will ultimately have to be made between the EU and the UK will need to fill the gaps in the law in Northern Ireland that will be left. This is not the ‘backstop’ issue, which concerns only trade in goods. The new EU-UK arrangements will need to set out the rights and obligations that the UK will be obliged to respect in Northern Ireland, as a matter of international treaty law, including (but not limited to) the Belfast/Good Friday Agreement. The EU will be entitled to insist on this because of its long-standing support for the peace process in Northern Ireland, and because it can be assumed that the EU will continue to help as far as the possible to minimise the problems of Border areas in Ireland. The UK can be expected to undertake a legal obligation to the EU

“IT IS DIFFICULT AND UNSATISFACTORY TO NEGOTIATE WITH PEOPLE WHO DO NOT KNOW WHAT THEY WANT AND ARE NOT AGREED AMONG THEMSELVES”

(and not merely to Ireland) to respect in full the Belfast/Good Friday Agreement. This would have been dealt with by any well-drafted withdrawal arrangements, and a 'no deal' Brexit, if that is what ultimately occurs, must not be allowed to prevent it.

This is so in particular for another reason. It has been suggested by several UK politicians that the UK should reduce its obligations under the European Convention on Human Rights. This is not an EU treaty and is not affected by Brexit. It is a less effective instrument than the EU Charter of Fundamental Rights, although the scope of the Convention is wider in some respects. There can be no guarantee that in the future the UK will not reduce fundamental rights protection

by modifying its commitment to the Convention, unless it is constrained by treaty from doing so.

The simplest solution, if it were politically acceptable, would be for the EU, the UK and Ireland to agree by treaty that the Charter should be made a permanent part of the law of Northern Ireland. This would make it less necessary to draft and adopt a special Bill of Rights in Northern Ireland.

With careful legislative drafting, all of the rights now given by EU law in Northern Ireland could be given by UK law, with guarantees by treaty that they would not be withdrawn, and with effective mechanisms for enforcement. However, it is not clear how far the UK would be willing to do this.

It is not yet clear what changes the UK will wish to make in the legal provisions that now are governed by EU law, and that will be governed by UK law. Undoubtedly the UK will wish to maintain, in substance, some elements of the existing situation, for example the European Arrest Warrant. It is surprising that the UK's Government leaked documents on the consequences of Brexit have so little to say about police and security cooperation. On some issues the UK could not make satisfactory arrangements without the agreement of the other EU Member States. The UK authorities will certainly take the opportunity of reviewing the EU measures that need to be reconsidered, to make changes. The UK authorities have not yet shown signs of having a clear policy on any of these issues, among other reasons because Brexit has never been advocated for serious economic or legal reasons.

The Withdrawal Agreement and the Northern Ireland Protocol

The Withdrawal Agreement was and is intended to be temporary, until a long-term agreement is made between the EU and the UK. The version of the Agreement agreed by the May government was on the basis that the UK would remain in the EU Customs Union and the EU Single Market. The Agreement therefore included many provisions corresponding to the EU rules on both subjects. However, the Political Declaration now says that the Boris Johnson Government

does not intend that the UK will remain in either the EU Customs Union or the EU Single Market. So, the basis of the future relationship will be entirely different, and many of the provisions of the Agreement will no longer be relevant in the longer term. The Johnson Government hopes to make bilateral trade agreements with countries all over the world. It intends to have tariff- and quota-free trade with the EU, but it has weakened the assurances given in the Political Declaration envisaging aligned rules in a 'level playing field' regulatory regime. It seems that the Johnson Government envisages an EU-UK agreement that will be little more than the EU-Canada agreement ruling out tariffs and quotas. One key issue will be the constraints imposed on State aid given by UK authorities (including regional authorities): there is little point in prohibiting tariffs if there is no effective control over State aid.

The Protocol treats Northern Ireland differently. Formally Northern Ireland will be in the UK customs area, and will of course export freely to the rest of the UK. Direct trade between the Republic of Ireland and the EU, on the one hand, and Britain on the other, will be governed, in due course, by the future EU-UK trade arrangements. No tariffs will be imposed on exports from the Republic of Ireland into Northern Ireland, and products originating in Northern Ireland will not be subject to tariffs on entering the rest of Ireland or the EU.

For some other purposes, Northern Ireland will be treated as if it were part of the EU Customs Union. This is the result of having customs at Northern Ireland ports at which goods entering Northern Ireland from Britain will be checked by the UK authorities on behalf of the EU. If the goods are likely to be exported into the Republic of Ireland or the rest of the EU, they will pay, on entering Northern Ireland, whatever tariffs are required by EU law. If they are not "at risk" of going into the Republic of Ireland, they will pay no EU tariffs. Goods will be regarded as being "at risk", that is, likely to enter the Republic, unless they comply with requirements to be drawn up by a Joint Committee, and will not be commercially processed.

In other words, goods entering Northern Ireland that are likely to move into the Republic will be treated, on entering Northern Ireland, as if they were entering the EU. Goods considered sufficiently likely to remain in Northern Ireland will bear only the tariffs appropriate to entry into the UK, if these have not already been paid.

Northern Ireland will also be, in effect, in the EU Single Market for goods. This is the result of the Protocol provisions that require Northern Ireland law to include a large number of EU internal market rules. On this basis, goods complying with Northern Ireland law (include EU provisions) can be exported freely into the Republic of Ireland and the rest of

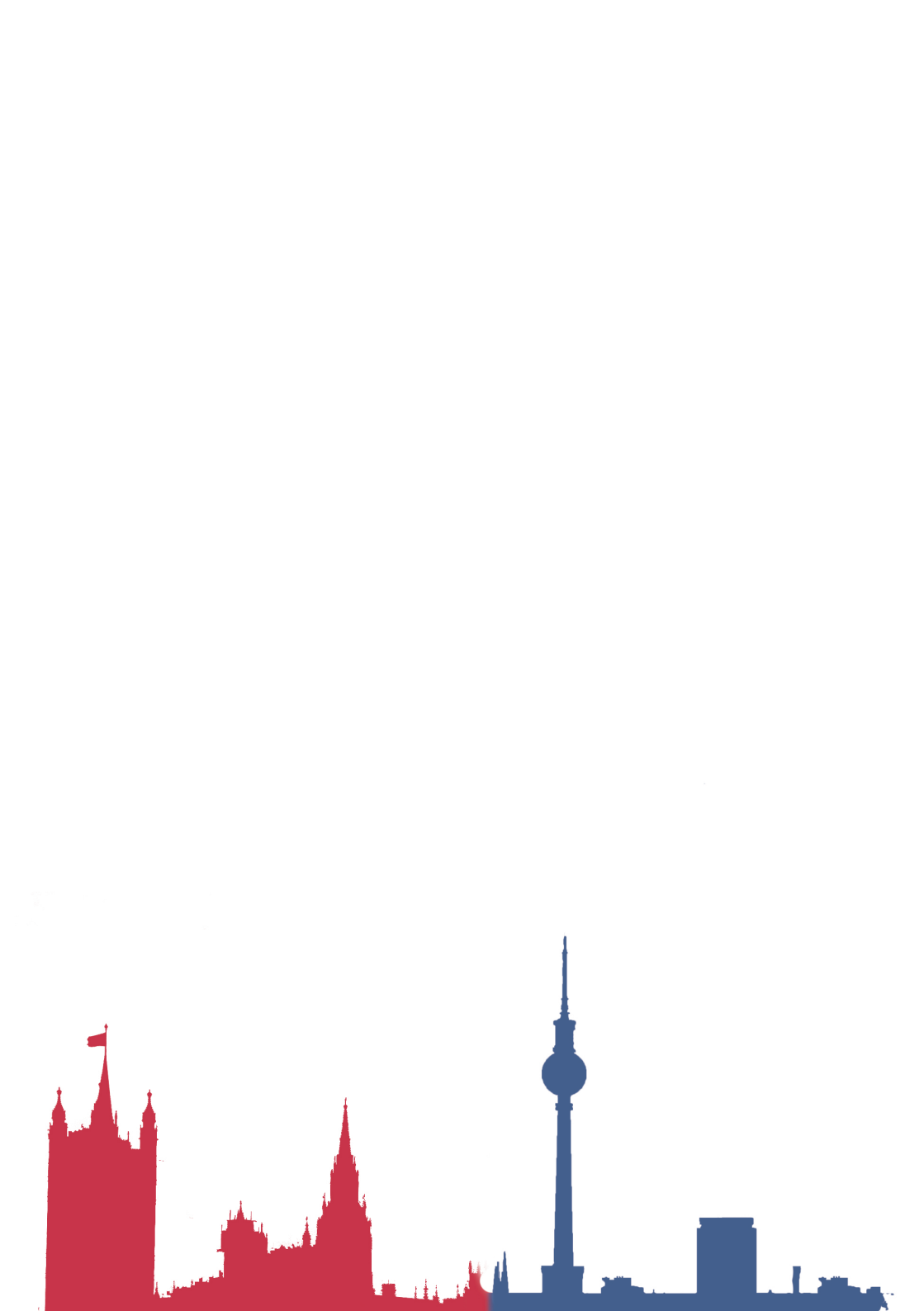
the EU. The EU provisions in question are those dealing with goods, sanitary rules for veterinary controls, rules on agricultural production and marketing, value added tax and excise duties, and State aid rules (Protocol, Annex 2). So far, very little has been said about services.

Importantly, the Protocol provides that the EU institutions shall, in relation to the UK, exercise the powers given to them by EU law. The EU Court of Justice will have the jurisdiction provided by the EU Treaties in connection with the Single Market measures applying in Northern Ireland, under Article 267 TFEU.

It is difficult and unsatisfactory to negotiate with people who do not know what they want and are not agreed among themselves. The most difficult negotiations, on the long-term EU-UK relations, have not yet begun.

ENDNOTES

32. McCrudden, *The Good Friday Agreement, Brexit and Rights* (2017, Royal Irish Academy): "whilst the EU was never considered as the sole guarantor of rights in Northern Ireland, rights deriving from the EU are, nevertheless, an important dimension of the post-GFA architecture."



CHAPTER 16. THE NEW PROTOCOL ON IRELAND AND NORTHERN IRELAND

Blair Horan

KEY TAKEAWAYS

The backstop in the original Protocol required only a regulatory border in the Irish Sea, due to the EU-UK single customs territory, but Northern Ireland would have remained in the EU Customs Union, which raised concerns that this could prevent an independent UK trade policy.

Initially the EU27 ruled out any re-opening of the Withdrawal Agreement, but then agreed to consider alternatives, provided they met the same objectives.

The new Prime Minister, Boris Johnson, secured a change to the backstop, which leaves Northern Ireland in the UK Customs Union along with a consent mechanism for Stormont, but at the price of a customs border down the Irish Sea.

There was no consideration given to the implications of Brexit for the island of Ireland during the 2016 referendum, despite the best efforts of some to warn of the potential consequences. It was noted in Ireland, for example, that passport controls were introduced between Northern Ireland and Great Britain, rather than on the land border, after the fall of France in May 1940 and were only removed in 1952.

Following the UK decision to leave the EU, both the British and Irish Governments quickly agreed that there could be no return to the borders of the past, though it is doubtful if the UK Government fully appreciated what that commitment would eventually entail. Also, the unique situation of the land border, and the need to prevent any impediments to the movement of people, goods and services, was set out in a letter from the Northern Ireland Executive to the Prime Minister.

The Broad Economy Sales and Exports Statistics published by NISRA, show that in 2017, the destinations of Northern Ireland's external sales and exports of goods were as follows: Great Britain £7.6 billion (48%), Ireland £3.0 billion (19%), rest of EU £1.6 billion (10%), and rest of World £3.5 billion (22%). In the case of purchases and Imports the origins of goods were as follows: Great Britain £10.5 billion (63%), Ireland £2.3 billion (13%), rest of EU £2.0 billion (12%), and the rest of the World £2.0 billion (12%).³³

The vast majority of Northern Ireland's trade with Ireland is carried out by SMEs who account for over 80% of exports by value. In contrast, for sales to Great Britain large firms account for 39% by value. An IFA Report showed, using CSO statistics, that in 2015, cross border agri-food trade was valued at €1.3 billion with 400,000 pigs moving North for processing, while 400,000 lambs moved South, and 30% of the North's milk output went South to be processed. In 2018, UK exports to Ireland were £35.1 billion (goods £20.9 billion), and imports £21.6 billion (goods £13.6 billion). Food and live animals represented a very high proportion of Northern Ireland's total goods exports (32%) and imports (41%) with Ireland.³⁴

Commitment to avoid a hard border

The joint commitment to avoid a hard border became much more difficult to achieve after the UK Prime Minister, Theresa May, announced at Lancaster House in January 2017, that the UK would leave both the EU Customs Union and Single Market. It was the incompatibility of these conflicting commitments which led to the backstop, aimed at avoiding a hard border on the island.

Central to the controversy which arose over the backstop was the issue of cross-community consent to a regulatory border in the Irish Sea. The Downing Street Declaration in 1993 referenced

Ireland and the UK as partners in the EU. It established the principle of consent, full respect for the rights and identities of both traditions, while reiterating that the UK had no selfish strategic or economic interest in Northern Ireland. The Belfast/Good Friday Agreement in 1998 identified EU issues as part of the work of the North-South strand, and that Agreement along with the EU was central to making the invisible land border a reality.

A hard Brexit makes it impossible to avoid a hard border and protect the integrity of the EU Single Market, without introducing special measures for Northern Ireland. The backstop did lack cross community support because it was opposed by both the DUP and UUP, but the decision to pursue a hard Brexit also lacked cross community support. It is also important to note that Brexit does not have the consent of a majority of the people in Northern Ireland, with 56% of the people voting in the referendum to remain in the EU.

In August 2017, the UK issued a paper on future customs arrangements and another on Northern Ireland. Two customs options were outlined, the first involved a highly streamlined customs arrangement using trusted trader schemes and technology and was called maximum facilitation, the other a customs partnership in which the UK would align with EU rules and tariffs for imports destined for the EU, while applying a UK tariff and customs regime for imports destined for the UK.

A tracking mechanism would verify the final destination of the goods, with a rebate mechanism where appropriate. For Northern Ireland, the UK proposed a system of regulatory equivalence with the EU for animal and agri-food products, alongside a proposal that SMEs exporting to Ireland would constitute local trade and be exempt from customs procedures, with trusted trader schemes to be used for larger firms.

The EU27 did not consider these proposals could avoid a hard border or protect the integrity of the EU Single Market, but finally an agreement was concluded in the Joint Report of 8 December 2017, which would ensure there would be no hard border. The backstop, which involved close alignment for Northern Ireland with EU rules, was agreed as a final option, should the overall EU-UK relationship or specific UK solutions fail to meet the objectives agreed. After the DUP raised concerns, the UK and EU27 agreed that unfettered access for goods from Northern Ireland to Great Britain would continue, and that there would be no new regulatory barriers within the UK, without the consent of Stormont.

Chequers Plan

The EU27 draft Withdrawal Agreement of March 2018 set out the backstop as a common EU-NI regulatory area with Northern Ireland in the EU Customs Union and those areas of the Single

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Market essential for free movement of goods. That June the UK proposed, as an alternative, that the customs element of the backstop would be UK-wide. In July, the UK issued the Chequers Plan as the basis for the final UK-EU relationship. It further developed the customs partnership proposal of August 2017 for a dual customs arrangement, while also accepting that the UK would align with EU goods regulations, including sanitary and phytosanitary rules on animals and agri-food.³⁵

The purpose of the Chequers Plan was to allow the UK to pursue an independent trade policy, while also maintaining frictionless trade with the EU and removing the need for the backstop. It was intended to give the UK the benefits of being inside the EU Customs Union, while actually being a third country outside it, and for that reason was never going to be acceptable to the EU27. The EU considered it risked undermining the integrity of the Single Market, with the potential for goods to enter illegally through a UK backdoor.

In November 2018 a Withdrawal Agreement and Political Declaration was finally agreed. The EU27 granted the UK's wish for a UK-wide customs backstop. Northern Ireland would apply the Union Customs Code (UCC) to ensure frictionless trade across the land border with a regulatory, but not a customs border, down the Irish Sea. For Great Britain, there would be tariff-free

access to the EU27, but in the absence of full regulatory alignment under the UCC, there would not be frictionless trade with the EU27. The DUP objected to a regulatory border in the Irish Sea, while the hard line Brexiteers in the Conservative Party feared that the UK-wide customs backstop might be permanent and prevent an independent UK trade policy. Despite efforts by Theresa May to clarify what the agreement involved, she failed to secure a majority in Parliament.

New Prime Minister opts for a free trade agreement (FTA)

An Article 50 extension became inevitable, but instead of using it to find a compromise, the Brexiteers moved to remove Theresa May and install Boris Johnson as Prime Minister. He immediately demanded the removal of the backstop in a speech in Parliament on 25th July, and in a letter to the President of the EU Council, Donald Tusk, on 19th August also reneged on Paragraph 49 of the Joint Report, and stated that all of the UK must leave the Customs Union and Single Market.

Initially, the EU27 refused to re-open the Withdrawal Agreement, but then stated it was prepared to examine alternatives to the backstop, provided the same objectives were achieved. Johnson had resigned from Cabinet over the Chequers Plan, promoting instead the maximum facilitation option set out

in the 2017 Customs paper. These ideas were later developed in the Alternative Arrangements Commission Report, sponsored by some Conservative Party MPs. This accepted the need for some alignment on animal and agri-food regulations but rejected the Joint Report approach of no customs related checks and controls on the island, proposing instead that these should take place away from the border.

In a letter to the President of the European Commission, Jean Claude Juncker, on 2 October, the Prime Minister set out his detailed alternative to the backstop. This involved regulatory alignment with the EU on all goods including animal and agri-food regulations, but with Northern Ireland to remain in the UK Customs Union with the standard customs processes taking place, but away from the land border at trader's premises or other points in the supply chain. In addition, to ensure consent to the regulatory alignment for Northern Ireland, this would have to be approved by the Executive and Assembly, prior to coming into force at the end of the transition period, and every four years thereafter. The DUP agreed to this new UK proposal, even though it involved a regulatory border in the Irish Sea, but they clearly understood the consent mechanism would be cross-community, which would afford them a veto.

The EU27 were never going to accept a customs border on the island or a DUP veto, but obviously Dublin saw potential in the UK proposal for a possible landing zone. Following a meeting between the Taoiseach and Prime Minister on 10 October, they agreed there was a pathway to a deal. It involved Boris Johnson accepting two very significant changes to his 2 October proposals by agreeing to a new customs border down the Irish Sea, along with a shift from cross-community consent to a simple majority in the Assembly. The EU27 also made concessions by leaving Northern Ireland in the UK Customs Union and accepting that the new Protocol could be terminated by a majority in the Assembly.

One of the key decisions of the Johnson administration is to have a much looser trade relationship by changing the Political Declaration on the future relationship to that of a Free Trade Agreement (FTA), rather than the previous commitment to build on the single customs territory.

New Ireland and Northern Ireland Protocol agreed

In the new Protocol, Northern Ireland will remain in the UK Customs Union, but will still be covered by the Union Customs Code (UCC), with the addition of a customs border down the Irish Sea, along with the regulatory alignment on goods agreed in the backstop. This is because, after the transition period, Great Britain will only have a Free Trade Agreement

with the EU and will be outside both the EU Customs Union and Single Market. Goods destined for Northern Ireland from Great Britain can be tariff free, but all goods, from whatever source, deemed at risk of entering the EU Single Market will have EU tariffs applied. In the event that goods have been consumed in Northern Ireland, and a higher EU tariff was applied, a rebate will apply. Customs duty levied under the Union Customs Code will accrue to the UK, and there is provision for the UK to waive or reimburse EU tariffs up to the limit of state aid rules to offset business costs. The criteria to determine goods at risk of entering the EU Single Market will be agreed by the Joint Committee during the transition period. However, the structure of the Protocol would indicate that strict conditions will apply to ensure that Northern Ireland does not become an illegal gateway into the EU Single Market.³⁶

The commitment on unfettered access for goods from Northern Ireland to Great Britain remains, but exit summary declarations under Article 5 of the UCC will be required for all goods moving from Northern Ireland to Great Britain. This will add administrative burdens and costs in particular for SMEs. It was not required under the backstop, which involved an EU-UK single customs territory. This may well suit the UK as it will assist differentiation between NI and EU27 goods. Overall, the new Protocol introduces new barriers to Northern Ireland-Great Britain trade, in both directions, and full customs

procedures required on an East/West basis, in particular, will add to costs. However, the new Protocol also allows Northern Ireland to benefit from tariff free access to both EU and UK markets, which will apply even if there is no EU-UK free trade agreement in place. The commitment to maintain the all island economy should ensure that goods from Ireland, with Northern Ireland inputs, can maintain access to the markets of the EU's FTA partners. However, there is no clarification on whether Northern Ireland goods exports generally would also have access to EU FTAs, alongside the confirmed access in respect of future UK FTAs. Level playing field commitments in the original Protocol are removed, as they were linked to the single customs territory.

Under the consent mechanism agreed, four years after the Protocol comes into force at the end of the transition period, the Assembly will have the right to opt out by a majority decision, and this procedure will apply ever four years. If the decision secures cross-community consent, either through an absolute majority in both communities, or a 60% overall majority with 40% from both communities, then the next decision will not arise for eight years.³⁷

The new customs arrangements are a variation of the original NI specific backstop, along with the customs partnership in the Chequers Plan. The EU27 was not prepared to accept the customs partnership due to the volume of UK-EU goods exports, but the much

smaller volume of goods movement into Northern Ireland made it feasible there. The EU27 had agreed early on to examine 'flexible and innovative solutions', so the decisive pivot by Boris Johnson to a customs and regulatory border down the Irish Sea, gave the opening for an agreement to be done.

The EU27 initially viewed Paragraph 50 of the Joint Report as a UK only responsibility and saw it as a route to a closer EU-UK trade relationship. Once Boris Johnson rejected a future relationship building on the single customs territory, pursued by his predecessor, in favour of a Free Trade Agreement, it put the onus on the EU27 to respond to the UK objection that Northern Ireland would be governed by laws without any democratic consent. The support for the backstop in Northern Ireland among business and civil society groups, probably gave comfort to Dublin that the new Protocol would secure majority support in the Assembly. The DUP consider that the consent mechanism should be on a cross-community basis. While the key issues involved of customs and taxation are excepted or reserved matters, there are also some regulatory issues which are devolved, and would normally be appropriate for cross-community consent. However, the inclusion of non-devolved matters allowed the UK Government to agree to a consent mechanism by a majority decision in the Assembly. While the DUP remain aggrieved, it must also be recognised that if cross-community

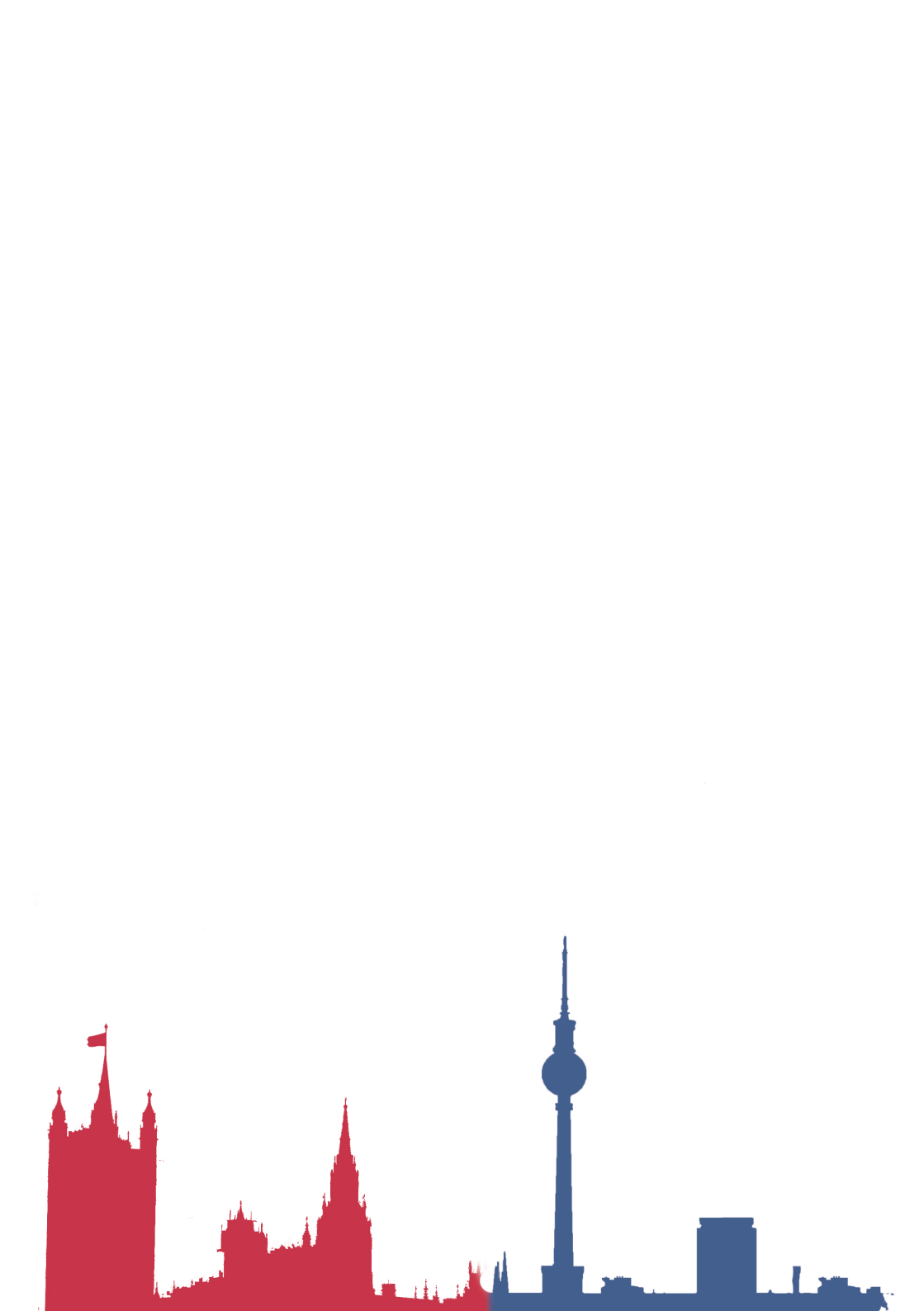
consent applied to the Protocol, it would also have been appropriate for it to apply to Northern Ireland when Article 50 was triggered and the option of a hard Brexit was chosen, and supported by the DUP.

Conclusion

The new Protocol does involve concessions by the EU27, but the main change was Boris Johnson's decision to accept a customs border in the Irish Sea, which opened the way for the Canada style FTA desired by the Brexiteers, but at the price of greater divergence for Northern Ireland. Prime Minister Johnson managed to secure the election he sought once Parliament took 'no deal' off the table, and currently the Conservative Party are ahead in the polls. However, the election and as a result the outcome of Brexit is still difficult to call.

ENDNOTES

33. NISRA, Broad Economy Statistics, Sales and Exports 21March2019 and Purchases and Imports 19June2019. Available at <https://www.nisra.gov.uk/publications/current-publication-broad-economy-sales-exports-statistics>
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CHAPTER 17. IMPLICATIONS FOR IRELAND OF THE FUTURE UK-EU RELATIONSHIP

Bill Emmott

KEY TAKEAWAYS

The approximately 18 months from December 2017 until summer 2019 put the Irish border at the centre of the debate, and resulted in the worst period in Anglo-Irish relations for several decades. But the new Withdrawal Agreement, treating Northern Ireland as a special case, eases the pressure considerably.

The UK general election opens up the possibility of a wide range of outcomes that would have implications for Ireland, including a new 'crash-out' potential at the end of 2020, a return to an immediate 'no deal', a new referendum, and an orderly move to negotiations over the future UK-EU relationship.

Under the continuity scenario of the parliamentary ratification of Boris Johnson's Withdrawal Agreement, the likeliest implication for Ireland will arise from a UK move to the deregulation of favoured sectors, diverging from previous 'level playing field' assumptions.

As soon as Theresa May became UK Prime Minister on 11 July, 2016, the land border between Northern Ireland and the Republic of Ireland became central to the possible impact on Ireland of whatever future UK-EU relationship emerged. The 'red lines' about leaving the Customs Union and Single Market, laid down by Prime Minister May in her party conference speech in October 2016 and restated in her Lancaster House speech on 17 January 2017, meant that the provisions of the 1997 Belfast/Good Friday Agreement for regulatory convergence and inter-governmental co-operation in an all-island economy were automatically called into question. Other contributors to this report have already described in full the role then played by the backstop agreement concerning the Irish border and how it emerged in the Joint Report from the EU and UK negotiators on 8 December, 2017.

For the purpose of this chapter, the salient point is the difference made to UK-Irish relations by just four days. Until 4 December 2017, Mrs May's stated intention had been to accept an EU proposal of a backstop applying only to Northern Ireland. In the event that the eventual UK-EU agreement on trade and investment did not by the end of the transition period in December 2020 ensure frictionless trade that required no customs infrastructure, Northern Ireland would have remained in the EU Single Market and Customs Union but the rest of the UK would not, and border checks would be instituted at Irish sea ports and

airports. But then on 4 December 2017, Prime Minister May decided to accede to objections by the Democratic Unionist Party (DUP) to that plan and to put an all-UK backstop into the Withdrawal Agreement instead.

Consequently, by 8 December 2017, resolution of the Irish border issue had become contingent on the future status of the whole of the UK with respect to Single Market regulations and customs arrangements. This enabled the Conservative Party to retain their working majority in the House of Commons but meant that all issues related to the future EU-UK relationship had to be judged by their likely effects on the border and thus on the eventual necessity to invoke the backstop. This put Dublin in an uncomfortably hot seat during 2018 and the first half of 2019. Not surprisingly, relations between the UK and Ireland, at least as represented in both countries' media and in public comments by political figures in both countries, veered between rancorous and poisonous. The Irish border and the stated determination of both Governments to avoid any border infrastructure had come to be seen to be holding the entire UK-EU relationship hostage. During the Conservative Party leadership election in June and July 2019, much of the pro-Brexit UK media chose to portray Ireland in general, and Taoiseach Leo Varadkar in particular, as the main obstacles in the way of achieving a future UK-EU relationship that matched the 'will of the people' expressed in the 2016 referendum.

The current state of affairs, July 24th-December 12th, 2019

Fortunately, this media-led impression proved to be misleading. From the day when Boris Johnson succeeded May as Prime Minister on 24 July 2019, it took just two-and-a-half months for him to move back to a proposition close to, but not identical to, the one rejected by his predecessor at the DUP's behest on 4 December 2017. This was made manifest at a bilateral meeting between Leo Varadkar and Boris Johnson near Liverpool on 10 October 2019. Seven days later, this decision to make Northern Ireland a kind of special economic zone, so as to move the de facto border checks back to Irish Sea ports and airports had been negotiated as a revised Withdrawal Agreement and Political Declaration and approved by the European Council on 17 October 2019.

As noted elsewhere in this report, the legislation to implement that new Withdrawal Agreement passed its second reading in the House of Commons on 22 October 2019 but was then withdrawn when MPs voted to approve a general election on 12 December 2019.

As a result, the current state of the implications for Ireland of the future UK-EU relationship can be described by reference only to the potential outcomes of that election.

In brief they are:

a) Conservative Party absolute majority

In this case the Withdrawal Agreement legislation would swiftly be resubmitted to Parliament and would be passed also quite swiftly, taking the UK out of the European Union by 31 January 2020, once the European Parliament has also ratified it. The first-level implications for Ireland under this agreement concern the need to revive and potentially reform the inter-governmental institutions established under the Belfast/Good Friday Agreement so as to manage the quite complex customs and regulatory procedures that will be required under the new agreement. The second-level implications will concern the degree of regulatory and customs divergence adopted by the UK Government for goods and services industries under the UK-EU trade and investment agreement that will need to be negotiated during 2020. That transition period may be extended, given that an absolute majority UK Government would be able to expect to remain in office until 2024. The nature of these potential divergences are explored elsewhere in this report.

b) Hung Parliament with Conservatives as largest party, with DUP and Brexit Party support

This outcome is the likeliest to lead to a 'no deal' Brexit as politically it would force Boris Johnson (assuming he remains Prime

Minister) to renegotiate or simply renege upon the October 17th Withdrawal Agreement, unless he wishes instead to risk a further general election during 2020. If he agrees to DUP and Brexit Party demands, then following a 'no deal' Brexit, perhaps on 31 January, 2020, negotiations would resume but would swiftly require border infrastructure on the island of Ireland.

c) Hung Parliament with Labour as largest party, with Liberal Democrats, Scottish National Party, Greens and Plaid Cymru support

This outcome would lead to a further request for an extension, so as to permit a renegotiation of the Withdrawal Agreement so as to keep the whole of the UK in the EU Customs Union (which is Labour policy). The price of support from the smaller parties would be a second referendum, in which voters choose between the new softer Brexit agreement and remaining in the EU.

d) Labour Party absolute majority

This might produce the same outcome as c), although a second referendum in these circumstances might not be certain. What remains unclear is how far Labour would seek to diverge from EU regulations and State aid rules, and what its policy would be on freedom of movement.

Future developments

Given the level of uncertainty contained in the UK election, for the present purpose the only future development we can usefully elaborate upon concerns the implications of a continued Boris Johnson administration.

The first implication concerns the transition period, which under the new Withdrawal Agreement will last only for 11 months instead of the original 21. It could, if the Tories have an absolute majority, be extended. But under the agreement an extension is supposed to be requested by 1 July 2020; assuming Johnson's usual bravado about how a UK-EU FTA can break all records and be agreed within those 11 months, there is a danger that no extension will be requested but an FTA not be completed, leading to a new 'crash-out' danger on 31 December 2020. This would have obvious implications for Ireland-UK trade.

The second implication concerns deregulation. In his two opening speeches as Prime Minister, on 24 and 25 July 2019, Johnson outlined a clear intention to use deregulation and investment-incentives to promote UK growth outside the EU, focusing on science-based industries. In both speeches he said: "Let's start now to liberate the UK's extraordinary bioscience sector from anti-genetic modification rules, and let's develop the blight-resistant crops that will feed the world."

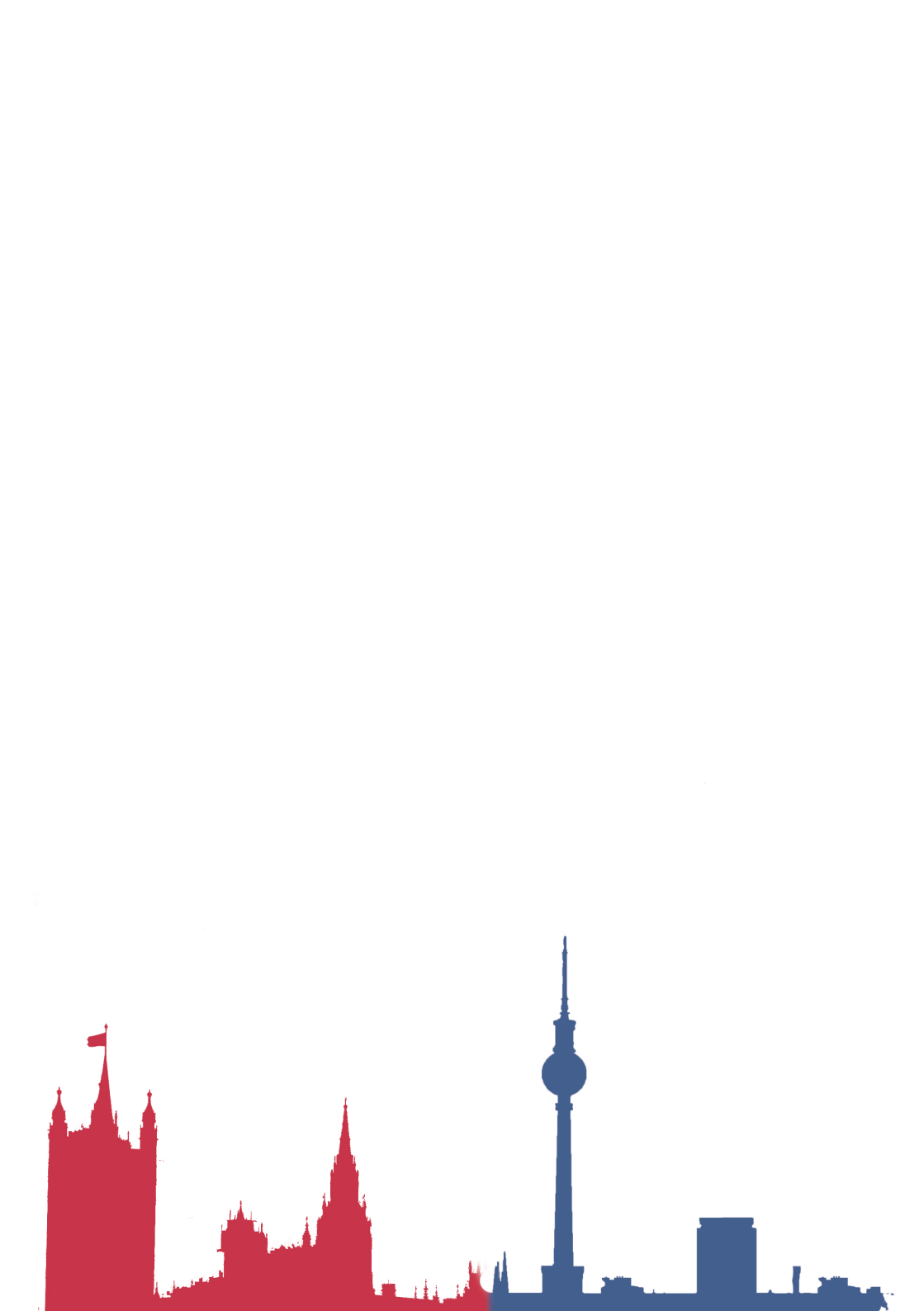
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‘WILL OF THE PEOPLE’”**

Given the importance of agricultural trade between Ireland and the UK, and on the island of Ireland, a future UK-EU relationship in which markedly different regulations applied to genetically modified organisms in the UK and the EU would create considerable challenges for regulation and enforcement in Ireland.

Another sector that has been highlighted by supporters of the Johnson Government (such as the Tory peer Lord Ridley, who writes as Matt Ridley in *The Times*) is pharmaceuticals. Ridley is a frequent critic of the EU’s “precautionary principle” in drug regulation. Such pressure to introduce a more liberal regime in the UK may be reinforced by American pharmaceutical industry lobbying in the context of a future US-UK trade agreement.

Finally, mention should be made of services. Although science-based manufacturing is favoured in political speeches, it is services that create most jobs and drive both the UK and Irish economies. There is so far little evidence as to how finance, law, aviation, digital services and others will be regulated in a future UK-EU agreement. Such sectors could nevertheless be where the greatest impact, positive or negative, is felt in Ireland.

SECTION FIVE
SHORT TERM
PERSPECTIVES



CHAPTER 18. NEXT STEPS

Donal de Buitléir

KEY TAKEAWAYS

After Brexit, the British and Irish Governments must put in place arrangements for regular meeting between Ministers to deal with Northern Ireland issues.

Every effort must be made to restore the Northern Ireland Executive as soon as possible.

Ireland must continue to nurture strong relationships with EU institutions and like-minded Member States.

Following the decision by the British people in June 2016 to leave the EU, key relationships for Ireland have been put under strain. Both unionists and nationalists have very different views on Brexit. Nationalists feel the UK government has ignored the majority view in Northern Ireland expressed in the referendum - they fear the prospect of barriers and hard borders. This fear has been eased by the proposed Withdrawal Agreement.

Unionists fear their links with Great Britain will be weakened; a fear heightened by the proposed Withdrawal Agreement which will result in some checks being required for trade between Northern Ireland and the rest of the UK.

In this Chapter we set out some steps that need to be taken to address the situation.

Need for Strategic Thinking

The annual National Risk Assessment³⁸ published by the Department of the Taoiseach provides an opportunity to step back from day-to-day concerns and consider the strategic risks facing the country over the medium and long term.

Since its inception, the annual National Risk Assessment has highlighted a number of important strategic risks for Ireland. The first National Risk Assessment in 2014 was one of the earliest official acknowledgements of the risks arising from a potential Brexit. This

analysis was developed in the 2015 and 2016 assessments, which highlighted the principal risks, including those relating to trade and the economy and the impact on Northern Ireland.

While the prospect of the UK leaving the EU may have appeared to be remote at the time, subsequent developments have highlighted the need for strategic thinking to consider a range of possibilities. It will be important to continue to build on the work that has already been done.

Relations between Ireland and the UK

One of the great advantages of the common membership of Ireland and the UK in the EU was the opportunity it provided for frequent contact between Ministers and officials in regular EU fora. This helped establish easy personal relations often formed in informal settings.

Both countries often took the same approach when dealing with policies, problems and events. However, post-Brexit there is the danger that the relationship will be more distant and, in some cases, adversarial. This may be a particular issue in relation to the negotiation of a future trade agreement between the EU and the UK.

As Peter Robinson said at the MacGill Summer School in July 2018:

It is easy to imagine circumstances, in the future, where the Republic takes a position alongside the other EU states which are hostile to the United Kingdom's interests. It is just as easy to envisage the impact that the resultant resentment will have on the ties between the two nations.

It will be very important for both Governments to set up alternative meeting arrangements particularly when it comes to Northern Ireland. However, these can never replicate the frequent, routine and relaxed environment for contact and conversation in the margin of EU meetings. Both Governments will struggle to maintain the warmth of their pre-Brexit relationship.

One useful structure would be regular (perhaps every six months) meetings organised by the relevant Cabinet Secretariat of Ministers and senior officials of the key Government Departments such as Taoiseach, Foreign Affairs, Finance and Justice with others as required. These meetings should focus on Northern Ireland issues.

North-South Relations

Relations between the unionist community (particularly the Democratic Unionist Party) and the Irish Government have been damaged by the Brexit process.

Some in the Unionist community fear that a Border poll may be imminent. While the Irish Government has been at pains to suggest that this would be entirely premature, the fear has not been entirely assuaged. Much work needs to be done to restore amicable working relations between the Irish Government and the Unionist community.

The great lesson from the UK referendum is the need to have an informed debate before issues are put to people in a referendum. Academics and others need to give serious consideration to the issues that would have to be considered if a Border poll was triggered. These include the economic implications, the governance structures and the protections for minorities that would be essential. In particular, the simplistic notion that all that would be required is a takeover by the South of the North, without major changes on both sides, needs to be challenged.

Northern Ireland

Following the collapse of the Northern Ireland Executive on 16 January 2017, the Northern Ireland Civil Service (NICS) has been responsible for the day-to-day running of the country. Senior officials have continued to carry out departmental functions and run public services, operating within the scope of the policy direction set by ministers before the collapse.

This has created a vacuum. Important matters have been neglected. Decisions cannot be made which impact on health, education and other essential public services.

Westminster has legislated occasionally in devolved areas, but only when unavoidable – to pass budgets, set essential rates and extend the period for executive formation – and often at the last minute. More substantive policy changes, namely those on same-sex marriage and abortion, have been the result of backbench amendments rather than UK Government strategy.

Some of the consequences of such a prolonged period of governing without ministers³⁹ are as follows:

- As civil servants are unable to develop new policy and change policy direction, no progress can be made on the long-term public service reforms necessary to run Northern Ireland efficiently. David Sterling, head of the NICS, warned of the risk of “stagnation and decay”.
- The North South Ministerial Council is not able to meet, meaning that opportunities for cross-border working, particularly on Brexit, have been missed.
- In the absence of ministers and a sitting Assembly, there are few mechanisms in place to hold civil servants to account and scrutinise decision making.

To deal with this situation, the UK and Irish Governments must redouble their efforts to restore durable and sustainable government in Northern Ireland. But more is needed.

Northern Ireland lacks a vibrant policy community – although as a consequence of Brexit, civil society groups have become increasingly vocal. Future government and civil society should build on this to reinvigorate wider policy engagement across Northern Ireland and facilitate greater interchange with other parts of the UK and with Ireland.

The establishment of Pivotal⁴⁰, a new public policy think tank for Northern Ireland, in September 2019 provides an important opportunity. Pivotal aims to help Northern Ireland prosper by encouraging better public policy and involving a wider range of people in policy debate.

Pivotal aims to promote policy solutions that improve the lives of people across Northern Ireland by engaging a wider range of people in public debate and by using evidence-based research about what works to help develop better public policy.

It will be important for think tanks and research institutes in Ireland to develop links with Pivotal to share experiences and research.

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Scotland

One possibility is that the UK's decision to leave the EU will lead to Scottish independence. A further twist would then be if Scotland applied to join the EU and was admitted.

Given the close links between Northern Ireland and Scotland serious consideration needs to be given to the implications for Northern Ireland of such developments.

Ireland's Relationship with the EU

Ireland's position in the EU will change after the UK leaves. Up to now, a common language, common legal systems and in many cases common interests allowed Ireland to rely on UK Ministers and public servants to articulate positions in line with our interests. Having a large Member state to do so was very helpful.

Government policy is to strengthen Ireland's position at the heart of the European Union, to the benefit of our citizens.⁴¹

We have to develop alternative alliances with like-minded Member States. Considerable work has already been done on this through a sustained programme of Ministerial and senior official visits to EU partners, strengthening our influence and alliances in the EU.

Strong relationships with the EU institutions have been nurtured during the Brexit process and it is an important priority that this will continue.

Conclusion

The departure of the UK from the EU is likely to lead to moves towards greater economic and political integration. As a large Member State, the UK acted as a break on some proposals in the past. The absence of the UK may raise sensitive issues for Ireland for example in the areas of defence and taxation particularly if we wish to remain at the centre of the European project. Our position on these and other issues will need to be updated to reflect what is in our best interests in the new environment.

ENDNOTES

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ANNEX - ESSENTIAL BREXIT READING

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