

BREXIT BRIEF



Brexit Brief Issue 33: 05 January 2018



Introduction

Brexit Brief is published by the IIEA's UK Project Group and covers developments in the UK's withdrawal from the European Union. The Brief seeks to provide up-to-date information on the progress and content of the UK-EU negotiations, and bring together relevant statements and policy positions from key players in Ireland, the UK and EU.

The Brief is part of a wider communications programme covering the work of the IIEA's UK Project Group – involving commentaries, speeches, texts and event reports – which will be highlighted on the Institute's website. (www.iiea.com)

Section One: State of Play

Commission Recommendations on Negotiating Directives

On 20 December 2017, the European Commission published a formal [Recommendation](#) for a Council Decision 'authorising the opening of negotiations with the United Kingdom [...] for an agreement setting out the arrangements for its withdrawal from the European Union.'

The Recommendation sets out the details of draft negotiating directives and, in particular, makes provision for the transitional arrangements which both the EU27 and the UK see as essential for maintaining business confidence and allowing time for post-Brexit preparations. It covers such issues as Fundamental Rights, the Legal Basis, Choice of Instruments, Budgetary Implications and detailed explanation of the specific provisions of the proposal.

The stipulations for the transitional arrangements include:

- No 'cherry picking', implying continued UK participation in the Customs Union and the Single Market (with all four freedoms);
- the Union acquis will continue to apply in full and changes to the acquis will automatically apply to the UK;
- All existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures will apply, including the competence of the European Court of Justice;
- The UK will be a third country as of 30 March 2019 and will no longer be represented in the Union institutions, agencies and offices;
- The transition period will be clearly defined and precisely time-limited. The Commission recommends that it should not last beyond 31 December 2020.

The Recommendation provides that decisions are needed to translate into [legal terms](#) the results of the first phase of the negotiation in line with the [Commission Communication](#) of 8 December 2017 and the [Joint Report](#) of the EU and UK negotiators of the same date.

Commenting on the Commission papers the EU Negotiator, Michel Barnier, [said](#) that it was logical to end the transition period at the same time as the current

EU multi-annual budget period. This would allow for a transitional period of 20 months.

While it is clear that the UK will have no formal role in EU decision-making and that Britain will cease to be represented in the Union's institutions during the transitional period, Mr. Barnier indicated that the UK may be allowed to observe and be consulted on certain decisions, for example those on fishing quotas. He further stressed the need for the transition arrangement to be agreed in parallel with the formal withdrawal treaty, which must be completed by October 2018 to allow time for approval and ratification.

The Recommendation includes a special reference to the situation on the island of Ireland:

During the second phase of the negotiations, in view of the specific nature of issues related to the island of Ireland, the work on detailed arrangements required to give effect to the principles and commitments set out in the Joint Report should continue in a distinct strand, some of which would be translated in the Withdrawal Agreement, others in the framework for the future relationship.

UK Cabinet Debates Future EU Relationship

Meanwhile, the UK Cabinet has commenced discussions on the future EU-UK relationship. The cabinet Brexit subcommittee held a preliminary session on the key issues of market access and regulatory alignment. The full Cabinet, on 19 December 2017, discussed the need for a united approach to the long-term trade relationship. It is reported that a clear difference of opinion exists between those in the cabinet who insist on freedom 'to do things in a distinctive way' and those who warn that significant divergence from EU regulations could reduce Britain's access to the Single Market. A decision will be required on the 'trade-off' between these positions - possibly as soon as mid-January 2018 - and it is predicted that the Prime Minister will make a speech on the issue similar to her Florence speech last September. Significantly, the EU27 are scheduled to adopt guidelines on the trade deal at the March 2018 European Council.

On 20 December 2017 Prime Minister Theresa May appeared before the House of Commons Liaison Committee where she [expressed](#) the view that, while "we can't legally sign the new trade agreement with the European Union until we are a third country – until we're out of the European Union on 29 March 2019 – but I believe we can negotiate that arrangement in that time."

The Prime Minister contributed an article to The Telegraph

on 16 December 2017 entitled '[We are getting on with the job of Brexit, and we will not be derailed](#)' in which she indicated that the Government was beginning to discuss a 'new, deep and special partnership' with the European Union. She wrote that the UK wants 'an economic partnership that is underpinned by high standards, a practical approach to regulation and the greatest possible access to European markets.' The development of a new security partnership to protect the continent from emerging threats was highlighted.

European Parliament Resolution

On 13 December 2017 the European Parliament adopted – by 556 votes to 62 – a Motion on the [State of Play of Negotiations with the United Kingdom](#), backing the move to the next phase of negotiation.

The Motion welcomed the progress report presented by the EU and UK negotiators which concluded that sufficient progress had been made in the negotiations. Importantly, it also went on to make a number of recommendations regarding the next steps in the negotiations, including that the terms of the withdrawal deal must be set out in "a clear and unambiguous legal text." This recommendation is designed to ensure that the guarantees given on citizens' rights, the role of the Court of Justice of the European Union, and the future status of the Northern Ireland border are fully enforceable.

The Parliament motion goes on to note that it reserves all its rights with respect to the final Withdrawal Agreement "to which it will need to give its consent if that Agreement is to come into effect."

On the Transitional Arrangements for the UK, the Parliament motion provides that it must "contain the right balance of rights and obligations", and must also be time-limited, to a maximum of three years. In agreement with the positions of the European Commission and European Council, the motion states that the transition should consist of "the prolongation of the EU acquis, including the rights of citizens, thereby requiring that the existing EU regulatory, budgetary, supervisory, judicial and enforcement instruments and structures continue to apply."

Finally, the motion also addresses the Framework for a future EU-UK Relationship. It lays down a number of strict principles to be applied in agreeing the Framework, including protection of the integrity of the internal market and the four freedoms, safeguarding the EU's decision-making and legal order and assuring the UK's adherence

to standards provided by international obligations and the Union's legislation and policies in fields such as environment, consumer protection and social and workers' rights. It calls for the maintenance of as close a relationship as possible between the EU and the UK.

Section Two: The Evolving Debate

Simon Coveney on Soft Brexit

On Friday, 29 December, the Irish Times quoted the Tánaiste and Minister for Foreign Affairs, Simon Coveney, who [argued](#) that the United Kingdom should be allowed to seek concessions from the European Union if it chooses to pursue the course of 'Soft Brexit' in the next phases of negotiations.

Tánaiste Coveney argued that the UK must take a clear position on whether it wishes to retain a close future relationship with the Single Market and Customs Union or if it intends to pursue an agreement along the lines of the EU-Canada deal. He expressed the opinion that Ireland favours an outcome based on that currently in place between the EU and Norway, and reflected on a possible situation in which the UK might see the starting point to be "a Customs Union partnership and a very close relationship trading with the Single Market."

The Tánaiste spoke of Ireland's position as a continuing member of the EU, in which context it will continue to show solidarity, but acknowledged that some differences may emerge among Member States:

It is not straightforward because different countries have different relationships with Britain from a trading point of view. Some want to get on with it and show there are consequences of leaving and others, like Ireland, are closer to Britain and want strong, seamless trading. It would be a lot easier to achieve that outcome if Britain signalled to remain part of a newly-designed customs union and an extension of the single market that is negotiated by Britain.

The European Commission, meanwhile, has expressed the view that the UK's promises on avoiding a hard border in Ireland are hard to reconcile with its stated determination to leave the Single Market and the Customs Union. It warns that the commitments made by the UK on the border "will need to be translated into workable, practical solutions in the second phase of the negotiation" and that this needs to be continued "in a distinct strand of negotiations."

John Bruton on Brexit and Ireland

Former Taoiseach John Bruton, in articles in The Guardian and The Irish Times, addresses key elements of the evolving Brexit debates as they apply to Ireland.

In his [Guardian piece](#), Mr Bruton argues that the UK's handling of Brexit led to a crisis in Anglo-Irish relations insofar as the decision to leave the EU, and thus to change the crucial relationship with Ireland, was made without any evidence of the careful consideration of how this would affect the republic, which should have applied both in legal terms and as a matter of basic civility. He points out that both the Good Friday/Belfast Agreement and the St Andrews Agreement were concluded "on the unquestioned assumption that the UK would continue to be an EU member. We each assumed that the freedoms created by membership of the EU would continue to be used to strengthen relations between the two communities in Northern Ireland, between North and South and between Ireland and Britain."

In the [Irish Times](#), Mr Bruton comments on the UK commitment in the Joint Report on the EU-UK negotiations to "the avoidance of a hard border, including any infrastructure or related checks and controls" at the border in Ireland, which would mean that "the UK has bound itself not to adopt any UK policies that would require the EU, under its existing rules, to impose such border controls." This would rule out devising new and distinctive UK product standards, which UK Foreign Secretary Boris Johnson has suggested, but it would also rule out Philip Hammond's idea of the UK "diverging from the EU rules on certain technologies."

Mr Bruton concludes that "formulating a UK proposal which satisfies all these conflicting criteria will be a hugely demanding task, not only politically, but intellectually and legally. 'Taking back control' and 'no hard border' are hard to reconcile, to put it mildly"

TUC Warning on Workers' Rights

The TUC General Secretary, Frances O'Grady, in a [Guardian article](#), argued that some British Ministers "are plotting to scrap the working time directive...a crucial piece of EU law that protects working people - and which working people were promised would still apply after Brexit." She insisted that "the best option for British workers is for the UK to stay a member of the Single Market and the Customs Union. That will protect our rights at work for the long-term- and protect jobs too" and concluded that "Brexit promised ordinary working

people more control over their lives, not a draining away of power to bad bosses and big corporations.” She called on the Prime Minister to “take a stand for working people... putting all options for a final deal back on the table.”

The Labour Party’s Shadow Brexit Secretary, Keir Starmer, has indicated that his party will force a vote in the House of Commons on how the EU Charter of Fundamental Rights will be covered by UK law after Brexit. He [states](#) that a statement by the Government “fails to provide any assurance that essential rights will be protected once we leave the EU. We need a cast-iron guarantee in law that the rights contained in the charter will be given the same legal protection as those currently contained in the Human Rights Act. This is not a party political issue. It is about the type of nation we want to be. Britain should be a proud advocate of human rights.”

German Minister on Brexit ‘model’

The German Foreign Minister, Sigmar Gabriel, has [said](#) that a ‘smart’ Brexit deal between Britain and the European Union could become a template for management of relations with other countries. Discussing the Union’s relations with countries such as Turkey and Ukraine the Minister made reference to the possibility of developing a ‘new, closer form of the customs union’.

David Davis comment from 26 November 2002

Finally, in November 2002, during a debate on the creation of regional assemblies in the UK, David Davis [warned](#) the House of Commons that “Referendums can be dangerous if not done properly. They should be held only if voters are told exactly what they’re voting for. We shouldn’t ask people to vote on a blank sheet of paper, and tell them to trust us to fill in the details afterwards.”

Section Three

Upcoming events

Tony Connelly, Europe Editor, RTE News. [Brexit and Ireland: The Dangers, the Opportunities, and the Inside Story of the Irish Response](#). Thursday, 18 January at 12.45p.m., at the IIEA, 8 North Great George’s Street.

In this timely address to the IIEA, which takes place as the second phase of the Brexit negotiations begins, Tony Connelly will draw upon his bestselling 2017 book ‘Brexit and Ireland: The Dangers, the Opportunities, and the Inside Story of the Irish Response’ to provide an updated account of the current state of play in the UK’s withdrawal, and the Irish perspective on the negotiations.

Section Four: Background Material and Further Reading

2016 - 2017
Timeline

23rd June 2016	●	The UK votes to leave the EU
24th June 2016	●	David Cameron signals his intention to resign as UK Prime Minister
26th June 2016	●	European Council appoints Didier Seeuws as head of Brexit Taskforce
13th July 2016	●	Theresa May becomes the new Prime Minister of the UK
9th September 2016	●	European Parliament names Guy Verhofstadt as the European Parliament's Brexit negotiator
16th September 2016	●	Bratislava Summit of 27
1st October 2016	●	Michel Barnier starts role as Head of EU Commission Brexit Task Force
6th December 2016	●	Michel Barnier holds first press briefing on Brexit, notes Northern Irish issues
17th January 2017	●	Theresa May outlines the objectives and principles for the UK's withdrawal
24th January 2017	●	UK Supreme Court Ruling on Article 50
2nd March 2017	●	Northern Ireland Assembly elections. No new executive formed.
9th-10th March 2017	●	Re-election of Donald Tusk as European Council President
13th March 2017	●	UK Houses of Parliament pass the Article 50 Bill without amendment
25th March 2017	●	60th Anniversary of the Treaty of Rome
29th March 2017		<u>UK invokes Article 50</u>
5th April 2017	●	European Parliament adopts resolution on the UK's withdrawal from the EU
19th April 2017	●	Theresa May calls for snap General Election on 8th June 2017
29th April 2017	●	European Council adopts its guidelines for the Brexit negotiations
7th May 2017	●	Emmanuel Macron defeats Marine Le Pen to become President of France
22nd May 2017	●	The General Affairs Council of the EU authorises the opening of negotiations with the UK
29th May 2017	●	European Commission releases draft position papers on Article 50
8th June 2017	●	UK General Election results in a hung Parliament. Minority Conservative government formed with support from the DUP

18th June 2017	●	President Macron's Party wins largest share of vote in French Legislative Elections
19th June 2017	●	<u>Negotiations between the UK and EU begin</u>
22nd-23rd June 2017	●	European Council Summit
1st July 2017	●	Estonian Presidency of the Council of the EU begins
17th-20th July 2017	●	<u>Round two of UK-EU negotiations</u>
28th - 31st August 2017	●	<u>Round three of UK-EU negotiations</u>
22nd September 2017	●	Theresa May's Florence speech
24th September 2017	●	German Federal Elections. Chancellor Merkel elected to fourth term.
25th-28th September 2017	●	<u>Round four of EU-UK negotiations</u>
1st-4th October 2017	●	Conservative Party Conference
9th-12th October 2017	●	<u>Round five of EU-UK negotiations</u>
15th October 2017	●	Austrian Parliamentary Elections. Sebastian Kurtz ÖVP wins the largest share of vote
19th-20th October 2017	●	European Council Summit
9th-10th November 2017	●	<u>Round Six of EU-UK Negotiations</u>
19th November 2017	●	Coalition negotiations in Germany collapse
8th December 2017	●	EU and UK make 'sufficient progress' on Phase One issues
14th-15th December 2017	●	European Council authorises opening of Phase Two
1st January 2018	●	Bulgarian Presidency of the Council of the EU begins
	●	You are here!
22nd-23rd March 2018	●	Timeframe for preliminary agreement on transitional arrangements
March 2018	●	Expected timeframe for talks on Future Relationship to begin (TBC)
28th-29th June 2018	●	European Council Summit
1st July 2018	●	Austrian Presidency of the Council of the EU begins
October 2018	●	European Council Summit
December 2018	●	European Council Summit
1st January 2019	●	Romanian Presidency of the Council of the EU begins
29th March 2019	●	<u>Deadline for UK withdrawal</u>
May 2019	●	European Parliament Elections

2017 - 2019
Timeline

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