

BREXIT BRIEF



Brexit Brief Issue 40: 11th May 2018



Introduction

Brexit Brief provides up-to-date information on the progress and content of the UK-EU negotiations, and brings together relevant statements and policy positions from key players in Ireland, the UK and EU.

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

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Section One: State of Play

Customs Union and the UK Cabinet Debate

The EU-UK negotiations have registered little in the way of progress in recent weeks, but in the meantime Prime Minister Theresa May has found herself locked into a divisive struggle on the direction of UK policy on the future EU-UK relationship. The crucial issue of UK membership of the Customs Union has divided opinion within the Tory party and across UK politics. It has been given added significance by its relevance to the Ireland-Northern Ireland border question. The decision to leave the existing Customs Union has strong support from Brexiters as it offers freedom to negotiate trade agreements around the world but causes great concern in business circles with the Confederation of British Industry insisting that Britain should stay in a customs union “unless and until a better alternative is ready.

The single most important Brexit priority for British manufacturers is to protect frictionless trade with the EU.”

The Prime Minister convened a meeting of the Cabinet Brexit sub-committee to consider her preferred solution to the customs union issue—the so-called ‘customs partnership’ involving simulation of the existing arrangements with special tariff arrangements for businesses engaged in UK-specific trade. The sub-committee rejected the customs partnership as unworkable, favouring a model based on a range of technical mechanisms. Theresa May refused to accept the rejection and instructed officials to work on ideas to improve the model and ‘dispatched’ the Business Secretary, Greg Clark to make the case for a ‘new customs partnership’ on high profile media programmes, to the fury of Brexiters.

The two models under discussion have been rejected in EU circles. The argument of the Brexit Secretary, David

Davis, that the best way forward is in the context of a broader trade relationship between the UK and the EU is seen as positive in Brussels and Dublin.

Prior to the sub-committee meeting, leading Brexiters delivered a 30-page 'ultimatum' demanding that the Prime Minister drop the 'customs partnership' option, arguing that it would be complex and expensive and would see the UK indefinitely trapped within the Union's customs arrangements.

The House of Lords and the Withdrawal Bill

The House of Lords has inflicted a series of defeats on the Government as consideration of the Withdrawal Bill continues. In a significant vote, the Lords approved an amendment which would give parliament a 'genuinely meaningful' vote at the end of the Brexit negotiations, with the option of ordering further negotiations. The vote was 335 to 244. The Government argued that the move was intended to give parliament the opportunity to stop Brexit altogether and the Prime Minister has stated that government will be 'robust' in its response to the defeats when the Bill eventually returns to the Commons.

A further pressure point exists in the pivotal position of the DUP in supporting the Government in the Commons. The party leader Arlene Foster has adopted an increasingly negative approach to both the EU Brexit Task Force led by Michel Barnier and to the Dublin Government, and the DUP is reported to have warned the Prime Minister that it will bring down the administration if Northern Ireland is forced to stay in the Single Market or the Customs Union after Brexit.

On 6 May, the Prime Minister wrote in the Sun on Sunday that she had an "absolute determination to make a success of Brexit by leaving the Single Market and Customs Union and building a new relationship with EU partners." She said that the UK was "making good progress towards that goal and we will carry on doing so with resolution in the months ahead."

The Framework for the Future Relationship – Complex talks ahead

The complexity of the overall Brexit situation is clearly demonstrated in the list of 'Topics for Discussion on the Future Framework' at forthcoming meetings of the UK and EU negotiating teams, which was published on 4 May. This includes six items under the Heading 'Basis for Co-operation' (structure; governance; interpretation and application; dispute settlement; non-compliance; participation and cooperation with EU bodies). The section on 'Economic Partnership contains eleven items (including agricultural, food and fisheries products; services and investment; financial services; transport; digital and energy). A further section on 'Security Partnership' deals with law enforcement; criminal justice; foreign policy; security and defence) while attention will also be given to data protection; cooperation on science and innovation/culture and education; and, fishing opportunities.

[Section Two: The Evolving Debate](#)

Michel Barnier in Ireland

The chief EU Negotiator, Michel Barnier, visited Ireland on 30 April and 1 May. He addressed the fourth plenary session of the All-Island Civic Dialogue in Dundalk and met the representatives of civic society groups, business groups, trade unions and NGOs. He held discussions with the Irish Human Rights and Equality Commission and the Northern Ireland Human Rights Commission. He met representatives of the Irish Maritime sector. He visited Newry for talks with Northern Ireland business leaders at the Intertrade Ireland offices. He then travelled to Derry where he met the City Council and the leaders of Donegal County Council to discuss the regional challenges of Brexit and the relevance of the 'backstop'.

Michel Barnier gave the keynote address to the Civic Dialogue, noting the importance of protecting the open border and the Good Friday Agreement. Some key quotations from his speech are presented here:

Over the last 20 years, the Good Friday Agreement has meant - of course - far more than just removing customs and physical barriers. It removed borders on maps but also in minds.

The Good Friday Agreement created wide-ranging cooperation between North and South, and between communities [...] All of this was made possible thanks to the open border.

So, there is no way back [...] The consequences of Brexit should not and must not lead to the return of a hard border, neither on maps nor in minds.

[...] In December, the UK agreed that, unless and until another solution is found, Northern Ireland will maintain full alignment with the rules of the Single Market and the Customs Union which support North-South cooperation, the all-island economy, and the protection of the Good Friday Agreement [...] both sides in this negotiation are firmly committed to a backstop. It is a guarantee to avoiding a hard border on the island of Ireland.

To be clear: without a backstop, there can be no Withdrawal Agreement. This is an EU issue, not only an Irish issue.

The backstop is not there to change the UK's red lines. It is there because of the UK's red lines. The UK's decision to leave the Single Market and the Customs Union creates a risk that the hard border will return. This is why it is necessary to have a self-standing backstop solution.

[...] the backstop is needed in order to respect the integrity of the Single Market and the EU's Customs Union. Since we all agree that we do not want a border, and since the UK agreed to respect Ireland's place in the Single Market, then that means goods entering Northern Ireland must comply with the rules of the single market and the Union Customs Code. That is our logic. Simple as that.

Let me conclude: agreement on the orderly withdrawal, including the backstop for Ireland, will pave the way for constructive negotiations for a broad partnership for the

future – not only on economics and trade, but also on a lot of areas of thematic cooperation – I am thinking of aviation, Erasmus + for the young, on internal and external security, defence and foreign policy.

The Taoiseach, Leo Varadkar, also spoke at the Civic Dialogue, addressing the issue of the border and the Good Friday Agreement, among other matters:

In December, a political declaration, the Joint EU UK Report committed both the UK and the EU to protection of the Good Friday Agreement and for everyone born in Northern Ireland to continue to have the right to Irish and therefore EU citizenship. It is significant that the United Kingdom committed to avoiding a hard border with no physical infrastructure or related checks or controls.

We have consistently said that our preference is for this to be achieved, not through a unique solution for Northern Ireland, but rather through the new future relationship between the EU and the UK, in a manner that allows us to continue trading as we do now - on this island, and also between Ireland and Britain. I do not want a hard border between Dublin and Holyhead, between Rosslare and Fishguard, any more than I want to see one between Dundalk and Newry, or Larne and Stranraer for that matter.

We still have much work to do. The European Council will review all the withdrawal issues at our meeting in June, with a view to finalising work on the withdrawal agreement in October. It is essential that we see real and solid progress by June if the negotiations are to move forward. There is less than a year until the UK leaves. And without a solution to the Irish border there can be no Withdrawal Agreement. Let there be no doubt about that.

Michel Barnier at Hannover Messe

Michel Barnier also spoke about EU Brexit policy in his address to the annual technology seminar 'Hannover Messe'. In his address, he noted that even with the UK's current red lines, the EU's intention is to reach an ambitious and wide-ranging free trade agreement with,

among other things, zero tariffs and no quantitative restrictions on goods; customs cooperation to facilitate goods crossing the border; rules to limit technical barriers to trade and protect food safety; an open market for services, in which companies from the other party have the right of establishment and market access to provide services under host state rules.

He went on to say that the future partnership should go even further, and laid out four key points in this regard:

First, in our future partnership we would like ambitious provisions on the movement of people, including related areas such as coordination of social security and the recognition of professional qualifications.

Secondly, we offer socio-economic cooperation, for instance we propose an air transport agreement, combined with aviation safety and security agreements. The UK could also participate in certain EU programmes, for instance in the field of research and innovation, where participation of third countries is allowed. That said, it would be on a different financial and legal base than today.

Thirdly, since data flows will be important for several components of the future relationship, it should include rules on data. As already made clear by the European Council, for personal data, it will be for the EU to take adequacy decisions, where the level of protection in the UK is equivalent to that of the EU.

Finally, given the UK's geographic proximity and economic ties with the EU, the future relationship must be based on a strong level playing field. It is in our economic interest – in your businesses' interest – not to be undercut by unfair competition. So there will be no ambitious partnership without common ground on competition and state aid, social and environmental standards, and guarantees against tax dumping. This will require adequate enforcement and dispute settlement mechanisms.

Irish Developments

The Irish Government continued its programme of Brexit preparation with the fourth plenary meeting of the All-Island Civic Dialogue on Brexit in Dundalk and the final Regional Citizens' Dialogue on the Future of Europe in Navan (following sessions in Cork, Donegal and Galway). The National Citizens Dialogue on the Future of Europe took place on for 9 May 2018 at the Royal Hospital Kilmainham.

At the Dundalk meeting, IBEC launched the results of a major survey which shows that a large majority of companies are now actively engaged in Brexit planning, with 21% already having contingency plans in place. The issues of most concern to companies are: customs and certification barriers; future regulatory divergence and exchange rate volatility.

The Tánaiste and Minister for Foreign Affairs and Trade, Simon Coveney, visited Derry to address the Londonderry Chamber of Commerce. He welcomed the UK Minister for the Cabinet Office, David Lidington MP to Iveagh House for discussions on Brexit and strengthening Ireland-UK relations. The Minister for European Affairs, Helen McEntee, welcomed the Estonian Minister for European Affairs, Matti Maasikas, who reaffirmed his country's support for Ireland in the Brexit talks. The Minister for Agriculture, Food and the Marine, Michael Creed, convened a high-level meeting with representatives of the Fishing Industry and visited Paris and Berlin for discussions with his counterparts on the implications of Brexit.

Michel Barnier has indicated that Ireland will provide a key pressure point at the June meeting of the European Council as efforts continue to obtain clarity about the UK's position on its future relationship with the Union. He told the representatives of the EU27 that the risk of a breakdown in the negotiations later in the year will be heightened if there is no progress on the Irish issues. His view is reported to have the full support of both France

and Germany. Germany argues that “it is essential that the Irish issue is not left open to the end and then isolated.”

Stephen Collins in *The Irish Times* argues that Barnier is correct but that this reality faces the Irish Government with a major dilemma since the support it has obtained in opposing a hard border could lead to a disorderly exit by the UK which would hit the country harder than any other Member State. Achieving a positive outcome

“will be a test of political skill on the part of the EU and the British to find an acceptable formula but may also require the Government in Dublin to settle for a compromise that could be portrayed as a climbdown from the tough line it has taken to date.”

UK Labour Party

Divisions on Brexit within the British Labour Party emerged strongly following the party’s disappointing results in the English local elections. *The Guardian* reported that:

“With Jeremy Corbyn increasingly under pressure from Remainers to develop a more distinct and robust pro-EU policy, Labour peers said they were outraged that the party appeared to be trying to block their efforts in the Lords to achieve a soft Brexit that would allow the UK to remain involved in the internal market and provide a solution to the Irish border problem.”

A series of key votes in the House of Commons will take place in the months ahead on which, it is argued, Labour will have to take a clear stand. According to *The Guardian*, a number of key questions remain to be answered:

“Should the Lords adopt a position keeping Britain in the Single Market would the party front bench move to overrule it in the Commons? What would be the response of anti-Brexit Labour supporters to the party acting to remove the country from the Single Market which provides firm protections for both workers’ and environmental rights?”

Commissioner Hogan in Seanad Eireann

Commissioner Phil Hogan, addressing Seanad Eireann on 26 April 2018, urged the British Prime Minister to face down the ‘immoderate ideology’ of leading Brexiters and reconsider her position on remaining in a customs union with the EU. He argued that the UK is trying to invent a new kind of border that will not work because it is trapped in the self-imposed contradiction of its Brexit position.

“The EU must be satisfied the UK’s invention will work or it is the backstop. The deadline is set for June. No decision, no withdrawal treaty. No withdrawal treaty, no transition.”

The Commissioner responded firmly to the proposal by Jacob Rees-Mogg that the UK should consider applying the common external tariff on Irish beef, asking *“You’ve got to ask the EU: does it want to sacrifice the economy of Ireland on the altar of EU ideology?”* Hogan described these remarks as *“unhelpful and irresponsible.”*

David Davis at Parliamentary Committees

The Brexit Secretary, David Davis, addressed both the House of Commons Exiting the EU Committee and the House of Lords European Union Committee in the last week of April.

He told the Lords Committee that the viability of the of the first of three options for the border outlined in last December’s joint report depended on an agreement on a comprehensive free trade deal.

“If we have a tariff-free trade agreement and a light-touch customs agreement that makes Northern Ireland simpler than if we don’t have those things. So it’s all three we want because I would consider it not a success if we were falling back on option C.” (Option C is the ‘backstop’ that would see Northern Ireland remain in regulatory alignment with the EU following Brexit) David Davis went on to say “whether we can do all that by June. I’m not at all sure. But we are certainly aiming to complete it by October.”

He insisted, at the Commons Committee, that he would consider it a failure if the UK was forced to extend its

membership of the EU Customs Union,

“The best solution from a British perspective was a comprehensive free trade agreement combined with a deal to recognise shared regulations and customs procedures: If you don’t have a tariff or a quota then that makes all of the customs agreement options easier. It doesn’t make them go away but it makes them easier. The issue then comes down to regulatory issues and rules of origin.”

Section Three: Background Material and Further Reading

Background Material

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