

BREXIT BRIEF



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Introduction

The Brief seeks to provide up-to-date information on the progress and content of the UK-EU negotiations, and bring together relevant statements and policy positions from key players in Ireland, the UK and EU.

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

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Section One: State of Play

Brussels and London Ponder Article 50 Extension

As the countdown to Brexit is measured in days rather than weeks, the latest commentary from the RTÉ Europe editor, Tony Connelly, points to the fraught situation in London and Brussels, and in Dublin.

He reported that the European Council President, Donald Tusk, speaking on 25 February, made it clear that Prime Minister Theresa May faced diminishing options, arguing that, since there was still no majority in the House of Commons to approve the negotiated Withdrawal Agreement, and with so few days left before 29 March, the alternatives seemed to be a no-deal exit or an agreed extension. For Tusk, the extension option was the obvious rational decision, but he conceded that the Prime Minister continued to insist that she could avoid the extension scenario.

Twenty-four hours later, Prime Minister May told the House of Commons that if the Withdrawal Agreement was again rejected on 12 March, then Britain may have to seek a “short, limited” extension to Article 50. Mr Connelly reported that the likelihood of such a policy change had been the subject of speculation on the EU side for months. The sudden emergence of a game plan involving extension is seen as unsettling, making EU officials increasingly sceptical about the political scene in London.

The day after the House of Commons statement, the French President, Emmanuel Macron, commented that: “The time has come for the British to make choices. We don't need more time, what we really need is a decision [...] Under no circumstances would we accept an extension without a clear perspective on the objective of the extension.”

Mr Connelly reported that opinion in EU circles favours a short extension running up to the end of June, so that the European Parliament elections could go ahead without UK participation, since Parliament does not have to be legally constituted until the end of July. There is a clear insistence that whatever outcome there is to the continuing negotiations, the EU side will have to be sure that it can command a “stable” majority in the House of Commons capable of delivering necessary legislative provisions arising from the deal.

Prime Minister Concedes Possibility of Article 50 Extension

Prime Minister Theresa May made a statement to the House of Commons on 26 February, reporting on her efforts to find a satisfactory agreement with EU negotiators following the decisive Commons rejection of the Withdrawal Agreement and Political Declaration. She stated that she had spoken with the leaders of each Member State and that the negotiating teams are continuing their work. She spoke of the agreement of “a joint work stream to develop alternative arrangements to ensure the absence of a hard border in Northern Ireland.” She said that this work would be done “in parallel with the future relationship negotiations and without prejudice to them”. She made three further commitments to the House in her statement in relation to the meaningful vote, which will take place on 12 March:

First, we will hold a second Meaningful Vote by Tuesday 12 March at the latest.

Second, if the Government has not won a Meaningful Vote by Tuesday 12 March then it will – in addition to its obligations to table a neutral, amendable motion under section 13 of the EU Withdrawal Act – table a motion to be voted on by Wednesday 13 March at the latest, asking this House if it supports leaving the EU without a Withdrawal Agreement and a framework for a future relationship on 29 March. So the United Kingdom will only leave without a

deal on 29 March if there is explicit consent in this House for that outcome.

Third, if the House, having rejected leaving with the deal negotiated with the EU, then rejects leaving on 29 March without a withdrawal agreement and future framework, the Government will, on 14 March, bring forward a motion on whether Parliament wants to seek a short limited extension to Article 50 – and if the House votes for an extension, seek to agree that extension approved by the House with the EU, and bring forward the necessary legislation to change the exit date commensurate with that extension.

Prime Minister’s Negotiations and Consultations

The Prime Minister met the President of the European Commission, Jean-Claude Juncker, on 20 February to take stock of their efforts to deliver an orderly UK withdrawal. They made a Joint Statement which indicated that their discussions covered: guarantees which might be given with regard to the backstop which “underline [...] its temporary nature and give the appropriate legal assurance to both sides”; a reconfirmation of the mutual commitment of the UK and the EU to avoid a hard border on the island of Ireland and to “respect the integrity of the EU’s internal market and of the United Kingdom”; and the possible role for alternative arrangements in replacing the backstop in the future.

The statement said that they “tasked the Commission’s Chief Negotiator, Michel Barnier, and Secretary of State, Stephen Barclay, with considering the process the European Commission and UK will follow”. Finally, the statement said that “additions of changes to the Political Declaration” were discussed, with a view to increasing “confidence in the focus and ambition of both sides in delivering the future partnership envisaged as soon as possible.”

The statement concluded by commenting on the “constructive” nature of the talks, and by urging their teams to “continue to explore the options in a positive spirit”. The statement said that progress would be reviewed in the coming days, and that President Juncker and Prime Minister May would talk again before the end of February.

Theresa May in Sharm el-Sheikh

The Prime Minister made a statement on 25 February during the EU-League of Arab States Summit in Sharm el-Sheikh in which she made reference to Brexit:

I held good meetings with President Tusk, Prime Minister Conte, Chancellor Merkel, Prime Minister Rutte, President Juncker and the Taoiseach. There is still more work to do, and my team will be in Brussels tomorrow working on the legally binding assurances that the UK Parliament needs in relation to the backstop. But what I have sensed in all of my conversations with my fellow leaders both here in Sharm el-Sheikh and in recent days is a real determination to find a way through which allows the UK to leave the EU in a smooth and orderly way with a deal.

Reaction

The Commission President, Jean-Claude Juncker, was quoted as saying: “When it comes to Brexit, it is like being before the courts or on the high seas: we are in God’s hands. And we can never quite be sure when God will take the matter in hand.”

The EU Chief Negotiator, Michel Barnier, has indicated that the EU is ready to give Britain “further guarantees, assurances and clarifications that the backstop should only be temporary.” He has also stated that he does not believe that the UK will have enough time to approve the UK Prime Minister’s withdrawal deal by the scheduled exit date. In reference to a technical extension of the negotiating period Mr Barnier said that “If there is a vote

on the 12th March and it takes two months to carry out the procedure, it would be justified.”

In another reference to the extension issue, Michel Barnier told the German newspaper *Die Welt* that “in the event of an extension, the EU27 would want to know, ‘what for?’ It is most unlikely that there would be a fundamental objection to extending the Brexit date but there must be a clear purpose for the extension.”

The Taoiseach, Leo Varadkar, is reported to have told his cabinet colleagues that he believes the Brexit deadline will be extended to June. He told a Belfast audience that the UK crashing out of the EU without a deal on 29 March is unlikely: “I think we will either have a deal or we’ll have an extension.”

The Attorney General and the Backstop

Following the Prime Minister’s Commons statement, the need to find a path towards a positive outcome in the Meaningful Vote on 12 March has launched a unique negotiating process in Brussels involving the UK Attorney General, Geoffrey Cox. With the Brexit Secretary, Stephen Barclay, Mr Cox has entered into a crucial set of talks with Michel Barnier and his team in Brussels. They have been mandated by the UK Parliament to obtain legally binding changes to the backstop sufficient to secure approval of the Withdrawal Agreement.

For the Attorney General, the challenge is to find a way to revise his legal opinion of last December in which he argued that the UK could become trapped in the backstop. He had referred to “a legal risk that the United Kingdom might become subject to protracted and repeating rounds of negotiations [...]” Talks to date have not produced a draft text, however. It is understood that Geoffrey Cox has moved from the original UK position of seeking a termination clause to the backstop and an expiry date to seeking an arbitration clause that could be unilaterally triggered.

Mr Cox, Mr Barclay and Mr Barnier are now operating within the so-called Brussels ‘tunnel’ designed to ensure a confidential setting for extremely difficult talks and legal assessments, carried out against the unique political situation in Westminster.

House of Commons Votes

On 27 February, the House of Commons held another series of votes on Brexit-related amendments to a Government ‘take note’ Motion. A Labour Party amendment reintroducing the party position on a customs union was defeated by 323 votes to 240. Following the Prime Minister’s statement, the Cooper/Letwin amendment on Article 50 extension was passed by 502 votes to 20, with significant Tory abstentions. An amendment on EU citizens’ rights was passed without a division. A SNP/ Plaid Cymru amendment on no deal was defeated by 324 votes to 288.

Labour Party Policy Change

Ahead of the defeat of the Party’s amendment setting out its policy position on Brexit, which centred on the concept of a customs union and Single Market alignment, the Party Leader, Jeremy Corbyn told his parliamentary party that, if defeated on its own approach, Labour would back another public vote on leaving the European Union. The Party would back moves to compel the Government to delay Brexit rather than leave without a deal on 29 March.

This change in policy follows a strong campaign by the Shadow Brexit Secretary, Keir Starmer and the Deputy Leader, Tom Watson, concerned about the possibility of further defections from the party to the new Independent Group and conscious of the continuing strength of the Remain element in the party. An internal briefing paper indicated that Labour would argue for the inclusion of the ‘remain’ option in any referendum. Some 70% of Labour voters voted to remain in 2016.

The new policy has been widely welcomed by MPs but it

will be opposed by some Labour MPs in constituencies with big leave majorities. One MP was quoted as saying that “I think it would be deeply divisive. It has a corrosive impact on the sovereignty of parliament and it is not clear to me still what should be on the ballot paper.”

Independent Group Created

On 18 February, a group of seven Labour Party MPs announced that they had resigned from the Party and would sit as an Independent Group in Parliament. They were followed two days later by an eighth Labour MP and three Conservative MPs.

All of the group cited the evolving Brexit situation as the main cause of their decisions to break with their parties. As the ex-Tory Anna Soubry has argued, it was a statement that the UK’s politics was “broken” and in need of change: “Our problems go deeper and wider than Brexit but Brexit is the biggest one we face – an existential crisis for our economy and our society, writ large thanks to the inability of our rotten parties to do their job.”

Among the former Labour Party members, the issue of anti-Semitism was a significant, not least for Luciana Berger, who complained of sustained personal hostility arising from her Jewish identity. The Tory members raised the issue of the perceived control of policies and priorities by the European Research Group and the DUP, constituting a clear shift to the right.

The Group has named the former Labour Party MP, Chuka Umunna, as its spokesman. This appointment leaves the question of choosing a leader to one side until the group takes the step of constituting itself as a political party. All of the Group members have been allocated specific responsibilities, with Anna Soubry as Brexit spokeswoman. Gavin Shuker was named as group convenor, charged with organising meetings and events.

Members of the Group will open talks with the Electoral Commission to discuss the moves that must be taken to register as a party entitled to put up candidates across the

country in any snap election. The Group believes that it must be ready to offer the electorate a new, centre-ground, option.

Oireachtas No Deal Legislation

Debate has commenced in Dáil Éireann on the ‘Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill’, known as the Omnibus Bill, required to provide an effective legislative basis for responses to a no-deal situation. The Tánaiste, Simon Coveney, introduced the key elements of the Bill:

[The Bill] focuses on protecting our citizens and supporting the economy, enterprise and jobs, particularly in key economic sectors. The Bill forms part of the extensive preparations that are underway across Government and across the EU. Our preparations include a range of measures such as the recruitment of customs and SPS officials, preparations at our ports and airports, and a range of financial and advisory supports for businesses to help them to prepare for Brexit.

[The Bill] puts in place necessary measures for the application of transition period under the Withdrawal Agreement. It also provides continuity in key arrangements with the UK, notably in the context of the Common Travel Area. In doing so, it seeks to protect our citizens and support the economy, enterprise and jobs, in key economic sectors. There will come a time - and I promise you all this - where the word ‘Brexit’ will no longer dominate the lens through which the British / Irish relationship is viewed.

Section Two: The Evolving Debate

Irish Developments

The Taoiseach held discussions with Prime Minister May on the margins of the EU-League of Arab States Summit in Egypt. He has also visited Belfast to meet Northern Ireland business organisations. Other Government Ministers have been meeting with their European and British counterparts: The Tánaiste met the EU Chief Negotiator, Michel Barnier, in Brussels and the UK Minister for the Cabinet Office, David Lidington, in Dublin. The French Finance Minister, Bruno Le Maire, was welcomed to Dublin by Finance Minister Paschal Donohoe. The Minister of State for European Affairs, Helen McEntee, visited the Baltic States for discussions on Brexit and the future of Europe.

The Government’s Brexit Updates report on contingency planning measures, both nationally and in conjunction with the EU, to deal with a possible no-deal situation. Practical advice regarding Brexit has been published under the title ‘Brexit & Business’ and covers transport and logistics, staffing, banking, trading with the UK, certification, data protection as well as the broad range of Government Brexit programmes, funds and supports.

Revenue has reported a significant increase in the number of traders getting prepared for Brexit. On 20 February, Revenue reported a 330% increase in applications for Economic Operators Registration and Identification (EORI) numbers in the month of February, when compared to the month of January. An EORI number is needed by any trader who imports or exports goods into or out of the EU. A Brexit Review meeting of the Retail Committee Forum was addressed by Minister Heather Humphreys while the Regional Enterprise Plan for the Mid-West was launched – nine such plans are being launched to support regional economies into the future. Issues in the Fisheries sector were discussed in Brussels and Paris. A programme of Brexit events includes an Enterprise Ireland Webinar, a Customs information

Seminar and meetings on, for example, ‘the Implications of Supply and Use of Chemicals, Machinery and Related Products in Irish Business’.

Agriculture Minister, Michael Creed, welcomed confirmation from the EU Commissioner for Agriculture, Phil Hogan, on flexibilities on State Aid limits for farmers and processors. State Aid for an Irish cheese producer was approved by the Commission.

US Trade Proposals

The US administration has released its ‘negotiating objectives’ for a possible trade agreement with the UK. The 18-page document states that the US is looking for “comprehensive market access for US agricultural goods in the UK through the reduction or elimination of tariffs”, which issue has been the cause of longstanding dispute between the US and EU. The US is also seeking the removal of “unwarranted barriers” related to “sanitary and phytosanitary standards” in the farm industry. The US has argued for years that European countries have unnecessarily limited American exports of meat and grains based on safety considerations.

Access to the British food and agriculture market is likely to become the major political obstacle to finalising a trade agreement. The US Ambassador to the UK has written an article in *The Telegraph* in which he criticises current EU regulations and describes warnings over US farming practices as “inflammatory and misleading”, and writes of the EU’s “museum of agriculture” approach. Downing Street has denied that it will accept lower food standards, stating: “We have always been very clear that we will not lower our food standards as part of a future trading agreement.”

No Deal Implications for UK

In her statement to the House of Commons on 26 February, the Prime Minister informed MPs that the Department for Exiting the European Union had published a report on the Implications for Business and trade of a No-Deal Exit

on 29 March 2019. The report outlines the Government’s preparations for a no-deal Brexit as a contingency plan, as well as assessing the implications of a no-deal Brexit for trade, business and the economy. In her statement, the Prime Minister warned of the impact of leaving without a deal with the EU, or with other countries and organisations, and of the dangers of an abrupt exit: leaving with no transition would mean that many UK business would have little time to prepare. She also referenced a published long-term analysis of a no-deal scenario. This estimated that “the UK economy would be 6-9% smaller in the long term in a no-deal scenario” after 15 years than it would have been without any change. She also stated that there would be “significant variation” across the UK, with the Welsh economy predicted to contract by 8.1%, Scotland by up to 8%, Northern Ireland by 9.1% and the North East of England by 10.5%. The Prime Minister said that:

The impact is expected to be more severe in Northern Ireland than in Great Britain, and to last for longer. This is because of Northern Ireland’s unique circumstances, including in particular its geographical position as the only part of the UK with a land border with the EU, and the current lack of an Executive in Northern Ireland.

She also stated that while “Government has been accelerating its preparations for a no-deal scenario since September, with a particular emphasis since December 2018”, the remaining time before the Brexit date in March “does not allow Government to unilaterally mitigate the effects of no deal. Even where it can take unilateral action, the lack of preparation by businesses and individuals is likely to add to the disruption experienced in a no deal scenario.”

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The Institute of International and European Affairs,

8 North Great Georges Street, Dublin 1, Ireland

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

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