

# BREXIT BRIEF

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Tony Brown

## Introduction

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

The Brief is part of a wider communications programme covering the work of the IIEA's UK Project Group – including commentaries, speeches, texts and event reports – which are highlighted on the Institute's website. ([www.iiea.com](http://www.iiea.com))

## Section One: State of Play

### Final Deadline for Negotiations Approaches

The EU-UK negotiations on the future relationship reconvened in London after the EU Chief Negotiator, Michel Barnier, emerged from quarantine following close contact with a colleague who tested positive. Mr Barnier travelled from Brussels on 27 November to enter into face-to-face talks with his opposite number, Lord David Frost. He had suggested that he might not travel unless there was a change of stance by the UK but a telephone call to David Frost led to the decision to book his seat on Eurostar. Negotiations had been continuing via video link while Barnier remained in isolation.

Time is running out for reaching a deal before the deadline of 31 December when the transition period ends. The necessary ratification processes – in the European Council and the European Parliament – present a major challenge. The European Council is scheduled to meet on 10-11 December. European Parliament sources argue that MEPs need to see a finalised text by 10 December if it is to be ratified by year-end. A vote could be delayed until 28 December under an emergency plan. Already, there is discussion of possible creative solutions in the form of an accelerated or streamlined process. But, failure to conclude talks in time to permit ratification to proceed or to agree such creative approaches could lead to a situation of 'no-deal by accident'.

As talks began, Michel Barnier reminded reporters that “the same significant divergences persist.” The issues still to be resolved remain governance (dispute resolution system), the so-called level playing field (fair competition) and fisheries. The UK Government’s stated intention to proceed with the Internal Market Bill which threatens to breach existing treaty commitments is a continuing cause of tension in the talks. The fisheries question presents serious political difficulties and Michel Barnier has conducted video-conference discussions with Fishery Ministers from eight coastal Member States including Ireland to seek a basis for compromise.

On the UK side the Prime Minister has stated that “the likelihood of a deal is very much determined by our friends and partners in the EU - there’s a deal there to be done if they want to do it.” He has also insisted that he is “confident that the UK will prosper mightily” outside the EU if there is a no-deal outcome. His Chief Negotiator, Lord David Frost has argued that any deal must “fully respect UK sovereignty” including over fishing waters and a regime for subsidising businesses. An agreement on any other basis is not possible.”

From Brussels, the Commission President, Ursula von der Leyen, has told the European Parliament that the EU negotiators are ready to be creative and to do all in their power to reach an agreement but that “we are not ready to put into question the integrity of the single market, the main safeguard for European prosperity and wealth.” She warned that the issues surrounding the Internal Market Bill had clearly demonstrated the need for clear rules, arguing that trust is good but law is better.”

The view from Dublin was expressed by the Taoiseach, Micheal Martin, who said that while both sides could see the “landing zone” the question remained of London’s

commitment to getting a deal done. Warning that no deal would be politically damaging for the UK he urged Boris Johnson to get the agreement done.

In a routine briefing of EU Ambassadors the EU Task Force has indicated that 95% of the Future Relationship Treaty has been completed. The majority of the key negotiation issues have “joint legal texts with fewer and fewer outstanding points.” The Treaty already runs to more than 600 pages (up to 1,800 pages including technical appendices), in the English language only. It is considered unlikely that the text can be translated into all 23 official languages within the timelines for ratification. President Macron is insisting that the text must be translated into French before he can give it his support. A diplomatic note to the Commission states that “A French version of the deal is key for Paris to approve the deal.”

The key negotiating issues include: Level Playing Field for Open and Fair Competition; Horizontal Arrangements and Governance; Fisheries; Trade in Goods; Trade in Services and Investment; Law Enforcement and Judicial Cooperation; Energy (Civil Nuclear Cooperation); Energy (Other); Thematic Cooperation; Participation in Union Programmes; Mobility and Social Security Coordination; Transport (Road); Transport (Aviation).

The European Research Group of Conservative MPs has warned that it will vote against any EU-UK agreement, or implementing legislation, if the deal does not respect UK sovereignty. This could leave the Prime Minister in the position of relying on the votes of Labour Party MPs. The Labour Party Leader, Keir Starmer, is reported to be prepared to impose a three-line whip in support of an agreement, arguing that a no-deal exit from the transition period would have consequences too damaging to permit the Party to stand aside or oppose.

Meanwhile, the UK-EU Joint Committee on the implementation and application of the Withdrawal Agreement has continued its constructive work under its joint Chairs, Chancellor of the Duchy of Lancaster Michael Gove and Commission Vice-President Maros Sefcovic.

After the most recent meeting of the Group Vice-President Šefčovič welcomed the clear political steer and commitment given by the UK so that the EU and the UK can reach mutually agreed solutions on all outstanding issues on the table, in particular with regard to the Protocol on Ireland and Northern Ireland. The UK side reiterated its commitment to upholding the obligations under the Withdrawal Agreement and protecting the Belfast (Good Friday) Agreement in all respects.

Northern Ireland business representatives have highlighted the need for progress in the Joint Committee's work on issues such as "at risk goods" and "rules of origin" for complex processed food products. They have called for an extension of the transition period for the region as they "simply will not be ready" for mandatory border checks on 1 January 2021.

## **Johnson – Martin Call**

Prime Minister Boris Johnson and the Taoiseach, Micheal Martin, spoke by telephone on 27 November. No 10 issued a Statement:

"The leaders updated one another on their respective efforts to tackle coronavirus and the steps they have taken to ensure people in the UK and Ireland can enjoy Christmas as safely as possible. They discussed shared challenges including the environment and committed to working together ahead of the UK-hosted COP26 summit next year.

They discussed the progress in the UK-EU trade negotiations and the Prime Minister underlined his commitment to reaching a deal that respects the sovereignty of the UK. The leaders also reaffirmed the need to prioritise the Good Friday Agreement and avoid a hard border on the island of Ireland."

## **Speech by Commission President von der Leyen, European Parliament 25 November 2020**

President von der Leyen spoke to MEPs about the Brexit negotiations:

"These are decisive days for our negotiations with the United Kingdom. But I cannot tell you today, if in the end there will be a deal. There has been genuine progress on a number of important questions: on law enforcement and judicial cooperation; on social security coordination. And also on goods, services and transport we now have the outline of a possible final text. In these areas there are still some important issues to agree, but they should be manageable.

However, there are still three issues that can make the difference between a deal and no deal. The crucial topics for the European side are of course questions linked to the level playing field, governance and fisheries. With very little time ahead of us, we will do all in our power to reach an agreement. We are ready to be creative.

But we are not ready to put into question the integrity of our Single Market – the main safeguard for European prosperity and wealth. This is why we need to establish robust mechanisms, ensuring that competition is – and remains – free and fair over time.

In the discussions about state aid we still have serious issues, for instance when it comes to

enforcement. Significant difficulties remain on the question how we can secure – now and over time – our common high standards on labour and social rights, the environment, climate change and tax transparency.

We want to know what remedies are available, in case one side deviates in the future. Because trust is good, but law is better. And crucially, in light of recent experience: a strong governance system is essential to ensure that what has been agreed is actually done.

Concerning fisheries: No one questions the UK's sovereignty on its own waters. But we ask for predictability and guarantees for our fishermen and women, who have been sailing in these waters for decades, if not centuries.

The next days are going to be decisive. The European Union is well prepared for a no-deal-scenario, but of course we prefer to have an agreement. I fully trust the skilful steer of our Chief Negotiator Michel Barnier. But one thing is clear: Whatever the outcome, there has to be – and there will be – a clear difference between being a full member of the Union and being just a valued partner.

I am fully aware of the challenges the current situation is creating especially for this Parliament and the ratification procedure. This is why I want to sincerely thank you for your support and understanding. As in the past, we will walk those last miles together."

## European Council Video Session

The European Council met, by video conference, on 19 November 2020. Unusually, no formal Conclusions were issued. The President of the Council, Charles Michel, spoke to media addressing the range of issues discussed.

He provided a brief update on the EU long-term budget (MFF) and the recovery package, agreed by unanimity in July. Pointing to the conditionality element of the deal he indicated that some Member States have indicated that they are not able to support the majority. We will continue the discussions to find an acceptable solution to all. "We need to stay united on this. This financial package is essential for our economic recovery. We need to implement it as soon as possible."

The President spoke of Terrorism. "We expressed our solidarity towards France and Austria. We will never shy away from defending our values and promoting our freedoms. And we will continue to fight the ideology of hatred, including online. It's crucial for us to look at the role of online platforms and set a stricter framework. We look forward to the commission's proposal on the Digital Services Act, which we expect in December."

Finally he covered the discussion on COVID-19 with its devastating human cost. "We are working 24/7 to defeat this virus. Let's continue to stand together, work together, and support each other. We will follow up at our next European Council meeting in December."

The President's presentation was notable insofar as there was no mention of Brexit. Brexit was not discussed by the leaders. Some commentators reported that there were informal exchanges between leaders on the subject but not as part of the formal business of the Council. These conversations highlighted the imminent deadlines and the need to consider the implications of a no-deal outcome.

## Bank of England Governor on No-deal Brexit

Addressing the Commons Treasury Committee on 23 November 2020, the Governor of the Bank of England, Andrew Bailey, warned that the economic cost of a no-deal Brexit would be bigger in the long term than the damage caused by Covid-19.

He argued that failure to reach a deal before the end of the Brexit transition period at the end of December would result in severe disruption to cross-border trade. This would damage the goodwill between London and Brussels necessary for building a positive future partnership. He admitted that the fallout from Covid and the second national lockdown in England was having a much bigger short-term impact on the economy, but insisted that the long-term effects, of no-deal would be larger than the long-term effects of Covid. It was in the best interests of both sides, for the UK and the EU, for there to be a trade agreement.

The Governor's remarks came after an analysis by the London School of Economics and UK in a Changing Europe concluded that the long-term economic impact of a no-deal Brexit could be two or three times worse than that of the pandemic.

## Section Two: The Evolving Debate

### President-elect Biden on Brexit

President-elect Joe Biden has told RTE that he does not want to see a guarded border between the Republic and Northern Ireland after Brexit. In a press conference following his first announcement of key appointments he said that he had discussed the issue with the Taoiseach, the British Prime Minister and the

French President. "We want to make sure. We have worked too hard to get Ireland worked out. The idea of having the border north and south again being closed – it's just not right."

### Official UK Predictions and Warnings

The UK spending watchdog, the National Audit Office (NAO) has concluded that trade worth billions of pounds will face 'significant disruption' on 1 January 2021, regardless of whether a UK-EU trade deal is agreed. In a report published on 6 November 2020 the NAO dealt in detail with the implications of the significant changes to infrastructure and systems required after the end of the current transition period.

"The transition period is due to end on 31 December 2020, at which point the UK will cease to be part of the EU single market and customs union. From 1 January 2021 there will be changes in how the UK trades with the EU and in the customs, safety and regulatory checks required at the UK-EU border. Unlike for previous deadlines, regardless of the outcome of the negotiations there will be significant change at the border from 31 December.

Departments have built on their no-deal planning and, although hampered by the challenges of the COVID-19 pandemic, have made progress in recent months implementing the changes required to systems, infrastructure and resources. However, significant risk remains, in particular in relation to the arrangements required to implement the Northern Ireland Protocol. The government must continue to focus its efforts on resolving the many outstanding practicalities relating to both the Great Britain and Northern Ireland operating models and developing robust contingency arrangements if these cannot be resolved in time.

It is very unlikely that all traders, industry and third parties will be ready for the end of the transition period, particularly if the EU implements its stated intention of introducing full controls at its border from 1 January 2021. The government recognises that there will be disruption and is putting in place arrangements to monitor issues as they emerge. It will need to respond quickly to try to minimise their impact. There is a risk that widespread disruption could ensue at a time when government and businesses continue to deal with the effects of COVID-19."

A Cabinet Office briefing for UK ministers has warned of a 'notable risk' of a perfect storm of simultaneous crises as it completes its EU exit in the midst of the latest wave of the Covid-19 pandemic. The briefing, characterised as laying out a 'reasonable worst case' scenario, addresses the possible impacts of the last stage of Brexit across 20 areas of national life from oil and healthcare to travel and policing. The paper lists potential crisis points such as pandemic influenza, food and medicine supply disruption, problems in provision of essential services, potential labour shortages, financial pressures and even increased community tensions and industrial action. The Cabinet Office said it did not comment on the content of leaked documents but said it reflected "a responsible government ensuring we are ready for all eventualities."

The Chancellor of the Exchequer, Rishi Sunak, presented his 2020 Spending Review in the context of the Covid-19 pandemic. His statement contained no reference to Brexit, a point taken up by Opposition speakers. The statement was accompanied by the economic forecasts from the Office for Budget Responsibility. The Office forecasts that the UK economy will contract this year by 11.3%, the largest fall in output for more than 300 years. As the restrictions are eased, it expects

the economy to start recovering and growing by 5.5% next year, 6.6% in 2022 and then 2.3%, 1.7% and 1.8% in the following years. Even with growth returning, economic output is not expected to return to pre-crisis levels until the fourth quarter of 2022. The economic damage is likely to be lasting. Long-term scarring means in 2025, the economy will be around 3% smaller than expected in the March Budget.

## **Taoiseach on Irish Business Readiness**

The Taoiseach, Micheal Martin, has expressed his concern at continuing complacency in the SME sector, reflected in failure to make essential preparations for the significant changes, such as new customs formalities, in trade with the UK from 1 January 2021. Speaking at Dublin Port on 24 November 2020, he described the UK's departure from the EU, coming into effect at the start of 2021, as the most significant fundamental economic change facing the country in more than 50 years. Even if there is a deal the implications for businesses and companies will be very significant. The important questions arising were dealt with in a Government Statement:

"Businesses need to prepare now for the arrival of Brexit on January 1st, when the UK will no longer apply the rules of the EU Single Market and Customs Union. Time is running out for businesses moving goods to, from, or through the UK (excluding Northern Ireland), to get ready and avoid disruption to their operations, regardless of the outcome of the negotiations.

There are now just 50 days until the end of the transition period. Whatever the outcome of the ongoing EU-UK negotiations, Brexit will bring real and lasting change, businesses must act now to ensure they can continue trading smoothly with the UK (excluding NI) from

1st January 2021. Businesses need to assess whether they have taken all the necessary steps to prepare for Brexit. The Brexit Information Hub is an excellent support service. It provides businesses with all of the practical information, training and advice they need to get Brexit ready in one central location.”

Revenue has reported that two-thirds of businesses in key sectors -construction, agriculture, forestry and fishing – that trade with the UK have not yet registered for customs in advance of Brexit. By contrast, more than 90 per cent of pharma companies have registered. Revenue insists that “businesses who have not prepared for Brexit or who have not fully completed or thought through their preparations will be immediately impacted.”

Dail Eireann has passed the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020. The Bill includes measures to protect the Common Travel Area and continues Irish-UK cooperation in healthcare and higher education.

## UK Brexit Border Control Tests

Brexit border control tests were carried out in Kent on 24 November 2020. Long queues of freight lorries built up along the M20 motorway with many parked on the hard shoulder, leading to a decision to close the entry and exit slip roads. Highways England tweeted “M20 coastbound – the entry slip is now closed due to heavy congestion in the area due to delays at Eurotunnel.”

A spokesman for the Channel Tunnel said that “the backlog of traffic built up this morning during tests conducted by the authorities in preparation for Brexit.” The French authorities were conducting tests on border checking procedures at the Eurotunnel terminal in Folkstone.

Traffic returned to normal after the completion of the tests but it is understood that further tests will take place intermittently in the weeks leading to the end of the transition period.

Transport Infrastructure Ireland which manages the Dublin Port Tunnel and the national road network, has warned that congestion caused by delays from Brexit border checks on trucks arriving into Dublin Port from the UK could result in major traffic disruption in the Port Tunnel, the nearby M50 ring road and the motorways and roads across Dublin. About 6,000 heavy goods vehicles move through Dublin Port every day. Every morning the number of vehicles arriving at the port represent about 12km of road space.

## Sovereignty

The former Irish Ambassador to London, Bobby McDonagh, has argued in the *Irish Times* that there is an urgent need to explain the meaning of sovereignty to a UK Government which insists that the EU is ignoring the fact that the UK has become a sovereign, independent nation. “Hopefully it will dawn on London that the EU’s negotiating position is entirely compatible with these stated British objectives.”

“The quest to enhance sovereignty has been and remains at the heart of the Brexit project. However, sovereignty is complicated. It is not an heirloom to be to be secretly buried at Stonehenge and to be dug up for inspection only during the summer solstice. Rather, real sovereignty must be deployed with pride and confidence. And the necessary corollary of valuing one’s own country’s sovereignty is recognising that others equally value their sovereignty.

Moreover, the EU collectively, as well as its member states individually, is likewise sovereign. The EU has the right to determine the laws governing the access of goods, including British goods, to its market. As the most open trading entity in the world, the EU is willing to use its sovereignty to enter into reasonable trade deals with others, including with the UK. However, it is unmoved by any suggestion that UK sovereignty has some special sacred status.

The real question is not whether the UK has so-called trade sovereignty but rather whether it will exercise such sovereignty sensibly. To turn down a fair Brexit trade deal, far from demonstrating national control, would signify national impotence.”

## Section Three: Background Material and Further Reading

### Background Material

**European Commission** Speech by President von der Leyen at the European Parliament Plenary on the preparation of the European Council meeting of 10-11 December, 25 November 2020. [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_20\\_2204](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_2204)

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## Further Reading

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**The Institute of International and European Affairs,**

8 North Great Georges Street, Dublin 1, Ireland

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

E: [reception@iiea.com](mailto:reception@iiea.com) W: [www.iiea.com](http://www.iiea.com)