



## ABS POLICY PAPER No. 18

### What next for BREXIT?

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#### Summary

On 25 February 2020, EU heads of state and government approved directives for negotiations on a new post Brexit partnership with the UK, based on the Political Declaration that is part of the withdrawal package. The British government published its mandate – “The Future Relationship with the EU,” on 27 February. Negotiations begin on 2 March. **The EU’s main objective is to conclude a tariff free, quota free, Free Trade Agreement (FTA) by the end of the transition period on 31 December 2020. The UK also wants tariff free quota free trade with the EU, by 31 December, but without the obligation to follow EU rules and regulations designed to ensure a “level playing field.” For the British Prime Minister, freedom to diverge from EU rules and regulations as befits an independent sovereign state, is the highest priority of all.** The Court of Justice of the EU is an obstacle to “independence.” The timetable is tight, in the view of most expert observers, impossibly so. On the other hand, it is not in the interest of either the UK or the EU for these negotiations to fail.

#### Detail

The British Prime Minister, Boris Johnson, has ordered Ministers and officials in future not to use the term Brexit, originally coined by one of David Cameron’s advisers. Brexit “got done”, when the UK left the EU on 31 January 2020 after ratification of the Withdrawal Agreement (WA) by both the British and European Parliaments. The WA, which now has the status of an international treaty, addressed three issues which, the EU insisted, had to be settled before negotiations on the future relationship could begin. These were:

- Northern Ireland
- Financial Liabilities
- Citizens’ Rights.

The WA also provides for a transition period until 31 December 2020 during which the UK continues to benefit from the advantages of membership and is bound by EU rules and regulations, albeit without membership of its institutions. The UK continues paying in to the EU budget during the transition period, which is to be used for negotiations on the future relationship, based on a Political Declaration, which is also part of the withdrawal package. In ratifying the WA, the British Parliament voted not make use of the provision for an extension of the transition period of up to two years. Any request for an extension would have to be

requested before 1 July 2019. It is hard to envisage negotiations on foreign policy, defence, security, research, students, agriculture, fisheries, or – of particular importance as the core of the Political Declaration - a substantive Free Trade Agreement (FTA), being concluded by 31 December 2020.

The UK has stopped describing the transition period as the implementation period. However, while the WA has been ratified, it now has to be implemented by both sides. In the case of citizens' rights this means measures, covering residence, pensions, employment, and social security coordination (health care) in EU member states and the UK, to implement in practice the lifetime guarantees set forth in the WA. Freedom of movement for British citizens resident in the EU is not part of the WA, a significant defect. Meanwhile, the European Parliament's Brexit coordinator, Guy Verhofstadt, British MP Alberto Costa, and the mayor of London, Sadiq Khan, are ventilating, again, the suggestion (which would require treaty change) of associate EU citizenship for British citizens covered by the WA.

**Implementing the Northern Ireland provisions of the WA will be a major challenge.** These provisions are designed to protect the Good Friday/Belfast Agreement (1998) which brought an end to the troubles (including terrorist violence) that began in 1968. There are already signs that the British government and the EU are indeed, as the Irish analyst Tony Connelly puts it, "poles apart" on how to implement the Irish Protocol. In brief, the sea border between Great Britain (GB) and Northern Ireland (NI) will become, on 1 January 2021, the EU Single Market's external border for trade in goods. Unless the EU and the UK have concluded an FTA providing for zero tariffs and zero quotas by 31 December, the UK will have to apply checks and controls on goods moving from GB to NI. But the new member (Brandon Lewis) of the cabinet responsible for NI has declared:

- "We are absolutely clear. As a UK government, we will not be having a border down the Irish sea."

**Thus, 2021 could begin without a substantive FTA and with a dispute over implementation of the WA.** If the UK appeared to be in breach of the WA, the EU would invoke dispute resolution procedures. A breach of the Good Friday/Belfast Agreement would go down badly in the US, affecting adversely prospects for a new US/UK trade agreement.

### The Future Partnership Negotiations: Process

Michel Barnier, will lead the EU's negotiating team, as in the case of the WA negotiations. Negotiations on the future relationship will be conducted under Articles 207 and 218 of the Treaty (Lisbon 2009) on the Functioning of the European Union. Article 207 deals with the common commercial policy (trade), while Article 218 provides the legal base for the EU's relations with third countries and international bodies. Member states normally steer trade negotiations with third countries through the Trade Policy Committee made up of representatives of each member state. An FTA would probably be a "mixed" agreement, and as such, have to be ratified, not only by the British and European Parliaments, but also by the parliaments of 27 member states. In this exceptional case, the Council of Ministers is establishing an ad hoc working party similar to that established for the WA.

The negotiations will cover other subjects besides trade. According to Martin Selmayr, (former Secretary General of the EC and Chef de Cabinet to EC President Juncker) who played a key role in the WA negotiations, the EC has again prepared meticulously for every conceivable scenario. However, while the EU 27 were united before and during the WA negotiations, unity may be harder to achieve and sustain in negotiations on the future relationship. Member states have different priorities in their relations with the UK. Fishing is a political issue in France for example, but not in Austria.

## The Future Partnership Negotiations: Issues

On the core issue (trade) the EU's position is that frictionless **trade** in goods and services with the EU requires alignment with its rule and regulations: no quotas, no tariffs, but also no dumping; and in services, equivalence. As one of the three largest trade powers in the world, it is in a position to dictate terms. The more the UK diverges, the greater the friction, and the greater the damage to the UK economy.

The UK has set out its stall, both on trade and, in what the tabloid media are describing as, an “**immigration** revolution.” The UK's new chief negotiator (David Frost, a former diplomat and chief executive of the Scotch Whisky Association) has stated (in a speech in Brussels) that:

- **The UK will not be bound by an EU imposed level playing field, but will set its own standards even if this means giving up unimpeded access to the EU's Single Market.** It does not seek an FTA that would keep the UK aligned to EU rules and standards. It will not be a “rule taker.”
- The UK regards the negotiation on trade as one between “sovereign equals” and is prepared to accept trade friction.
- “We bring to the negotiations not some clever tactical positioning but the fundamentals of what it means to be an independent country. It is central to our vision that we must have the ability to set laws that suit us – to claim the right that **every other non-EU country in the world has.**”
- **If the UK accepted EU alignment, “democratic consent would snap,”** echoing the leading Conservative pro Brexit MP, Mark Francois, who said on 17 September 2019 that:
- “if we don't leave the EU on 31 October, this country will explode.”

Where Theresa May strove for alignment on trade, **Boris Johnson seeks divergence.** Although Frost gave the – no doubt intended – impression of a tough inflexible negotiating stance, the two sides may not be that far apart. For example, the UK could decide as a “sovereign equal”, that it was in the national interest to preserve a level playing field, without quotas and tariffs, not least to avoid a trade border in the Irish sea. However, the claim about democratic consent snapping, should have been made by a politician, not a civil service adviser.

**The UK is ignoring facts,** which belie the conviction of the Foreign Secretary (Dominic Raab), that it will “win the next round”:

- 50% of UK imports come from the EU 27
- 43% of UK exports go to the EU27
- 9% of EU imports come from the EU.

As trading partners, the EU and the UK are not equal. For example, UK exports to Canada have grown since conclusion of the EU/Canada FTA, but still amount to less than 2% of the total. The UK exports more to Ireland than it does to China. **On 31 January, the UK surrendered the real sovereign equality inherent in membership of one of the world's three trading superpowers alongside the US and China.**

Brexit was contrived by a combination of lies, populism and the voting system for the House of Commons which is completely unsuited to decisions on issues of major constitutional importance. Trade friction was not mentioned by Brexit advocates in 2016. A majority of voters opposed Brexit at the election on 12 December 2019, but the Conservative party secured a majority over all other parties of 80. Nonetheless, **unlike trade, immigration (one**

**million Poles since 2004) from the EU was an issue in the referendum campaign, in parts of England and Wales.**

**The Home Secretary (Priti Patel, Minister of the Interior) has just announced a new, allegedly Australian style points based, immigration system,** that will come into effect when free movement of persons from the EU ends on 31 December 2020. The proclaimed objective is to encourage the brightest and the best from all over the world to come to global Britain. It may indeed attract more IT specialists from countries such as India. It is also designed to reduce significantly low skilled and low paid immigration from the EU. **UK borders will be closed to low skilled workers who do not speak English.** Such immigrants were portrayed during the referendum campaign as changing the character of communities, clogging up schools and social services. So, that is the political point of the new system. British visas will become very expensive at GBP1,220 person (GBP900 in a “shortage” occupation such as computer programming). British visas will cost double Australia’s, and vastly more than those for Canada, France or Germany. Priti Patel’s answer to the argument that sectors such as social care, construction, tourism, and agriculture, do not need holders of doctorates, is as follows:

- Recruit among over 8 million “economically inactive” Britons.
- Raise the skill levels of local people
- Raise pay levels.

Most of the 8 million are retired, long term sick, studying, or caring for relatives at home. The immediate adverse impact could be in social care. If elderly, infirm people cannot be looked after in care homes, or in their own homes, hospitals, which are already overcrowded and short of staff, will come under even greater pressure. Raising pay and skill levels will require more than a few months to take effect.

**Much will also depend on how the system is “delivered.”** The Home Office’s record does not inspire confidence, and the Home Secretary’s even less. In November 2017, Priti Patel was sacked from her post as Cabinet Minister for Overseas Development after dressing up a controversial unauthorised political visit to Israel as a family holiday. She then attacked Theresa May for not boasting about the economic opportunities of Brexit. And as for the divorce bill, she would have told the EU to “sod off.” She does not get on well with the civil servants on whom she will have to rely if this scheme is to get off the ground.

## Other Economic Issues

These include, **intellectual property, public procurement, energy** (the UK has left EURATOM), and **fishing**, which is politically contentious, not only in the UK but also in member states such as France, Spain and Denmark. Agreement on fishing quotas for 2021 should be reached by 1 July!

## Travel, Transport and Mobility

Under this heading fall:

- Visa free travel for short term – up to six months – **visits.**
- Students (**ERASMUS**), **youth exchanges.**
- **Research** (UK hitherto a major beneficiary of EU funded programmes)
- Arrangements for **actors, musicians, and professional sportsmen and women.**
- A comprehensive **Air Transport** Agreement
- **Freight** services, **road haulage** and **rail** transport (Channel Tunnel).

## Justice, Home Affairs and Internal Security

Under this heading fall:

- **Counter terrorism, combating organised crime, trafficking in human beings and money laundering without the advantages of EUROPOL, the European Arrest Warrant (ease of extradition of suspects) and access to various data bases.**
- **Data exchange and protection.**
- **Illegal migration.**
- **Exchange of information between intelligence agencies**
- **Judicial cooperation of all kinds.**

## Foreign Policy and Defence

Justice, home affairs and internal security issues are intertwined with foreign policy and defence. **Both sides aim for the greatest possible cooperation and the least disruption.** For the UK one problem will be not having a seat at the EU table. Will it be ready to participate in EU initiatives and programmes, without playing a leading role commensurate with its status as a Permanent Member of the UN Security Council? How will intelligence agencies retain access to EU data bases?

In February 1969 de Gaulle proposed privately to the UK a “Directoire” consisting of the UK, France and Germany to lead and coordinate European foreign, defence and security policy. The UK perceived this as a trap to split it from the five countries that favoured early UK accession to the EEC, and from the US, and to weaken NATO. So, the UK went public, leading to one last acrimonious dispute with the irascible general, who retired later that year.

Now **the Franco British Lancaster House Treaties (2010) may provide solutions in this area.** They provide for far reaching cooperation and coordination between the two European nuclear P5 powers, albeit within a NATO and EU framework.

## Overseas Territories

The UK has 14 overseas territories (UKOTS) of which nine were directly associated with the EU. **Gibraltar** became part of the EU at the time of UK accession in 1973. Gibraltar, like other UKOTS is a low tax, financial services centre, and a hub of the online gambling industry in the EU. The wishes of 96% of the electorate to remain in the EU have been ignored. EU member states have agreed that **Spain will have the right to veto any agreements** reached between the UK and the EU based on the Political Declaration. Gibraltar is not within the scope of the present negotiations. Spain meanwhile may see an opportunity to pursue its claim to the territory. With regard to the **UKOT Sovereign Base Areas in Cyprus** existing arrangements will continue, including use of the Euro!

## The Future of the United Kingdom

**Brexit calls into question the future of the United Kingdom as presently constituted.** The Parliaments in Belfast, Cardiff, and Edinburgh, withheld consent to the Withdrawal Act. But as power has only been “devolved” to these administrations, which in any event do not have jurisdiction in foreign affairs and defence, withholding consent had no legal effect. But the political impact will be considerable. The dominant **Scottish National Party** is campaigning for an early referendum on **independence** on the grounds that circumstances have changed since David Cameron advised Scots (in 2014) who wanted to stay in the EU (62% in 2016) to vote to stay in the UK. In **Northern Ireland** support is building for **unification** with the Republic of Ireland. Thus, the government in London will face difficult constitutional issues regarding the

future of the union as it pursues negotiations on the subjects covered by the Political Declaration, combined, possibly, with a dispute over implementation of the Northern Ireland Protocol in the Withdrawal Agreement.

## Dispute Settlement

The WA provides for Joint Committees of Ministers and officials to deal with any disputes. There should be Joint Committees to supervise future agreements. Matters concerning interpretation of EU law will be referred to the **Court of Justice of the EU (CJEU)**. There is also provision for mediation. One thing is clear: the CJEU will continue to have a considerable impact on the UK, with regard to the WA. Future agreements between the UK and the EU will involve Union law, for example on data protection. It will be interesting to see how the British side fudges this issue.

## The Council of Europe (COE)

The EU's mandate contains a warning that if the UK should denounce the European Convention on Human Rights and Fundamental Freedoms (ECHR), or abrogate the right of individual petition to the Strasbourg court, all bets would be off. The ECHR is a bone of contention in the Conservative Party. Theresa May wanted to leave the ECHR and thus the COE, while remaining in the EU! COE conventions will be relevant to future agreements on human rights, justice home affairs, security and data protection.

## Comment

The EU is not a sovereign state. Nor is it an international organisation such as the Council of Europe. It is a unique polity with some of the characteristics of a state, including a Parliament, a Council of Ministers, a bureaucracy (The Commission) and a Court of Justice. The common currency, the Euro, is used by 19 member states. The Euro is also the second most important reserve currency after the US Dollar. The EU's ability to conclude trade agreements mean that, in economic terms it is a superpower. It contained in 2019 four of the ten largest economies in the world (Germany, France, UK, Italy). It is also a regulatory superpower. Doing business with the EU means accepting its rules and regulations, as Japan and the US have done on data protection. Thus, exporting food, goods and services to the EU requires compliance with its consumer protection standards and regulations. It is difficult to see what the UK would gain from divergence, beyond the illusion of sovereignty. It is easier to see what it would lose, economically, and in terms of the UK's weight in the world, especially if Scotland should become an independent state.

The vote for Brexit in 2016 and for a Conservative Party led by Boris Johnson in December 2019 was, in part a protest by people living in run down parts of England, in part a vote by a complacent prosperous English electorate, profoundly ignorant of what the EU is, what it does, and the benefits the UK derived from it. The tabloid media and successive British governments share responsibility for this ignorance.

The veteran, and very distinguished journalist, David Dimbleby recently described Boris Johnson in an interview for German TV (ARD) as a liar who would do or say anything to be Prime Minister, aping Donald Trump. Dimbleby thus echoed the former Conservative Attorney General, Dominic Grieve, who described the Prime Minister (in a TV interview), as a "pathological liar." Dimbleby argued that as the difficulties of implementing Brexit mount, Johnson will be found out. "He will not last."

It is not in the interest of either the EU or the UK for the forthcoming negotiations to fail. Perhaps this lose/lose situation can be turned into one in which the UK does quite well, and

the EU even better. The picture should be clearer in June when the UK will have to decide whether to seek an extension to the transition period after all.