



## LX. COSAC

**Vienna, 18 to 20 November 2018**

Session II: Brexit – current state

Background Paper

## **Session II: Brexit – current state**

In a referendum on 23 June 2016, 51.89% of British voters voted in favour of the United Kingdom's withdrawal from the European Union. British Prime Minister Theresa May initiated the withdrawal process under Article 50 of the Treaty on European Union on 29 March 2017 by submitting written notification to the European Council. The withdrawal is therefore set for March 2019 following the two-year negotiation period provided for in the Treaty.

In March 2018, both negotiating parties agreed that there should be a transitional agreement guaranteeing the UK's access to the Single Market and the Customs Union until 31 December 2020 following the UK's withdrawal from the EU, which would also cushion the impact of Brexit on citizens and economic operators. However, the EU has made it very clear that such transitional rules will only become binding if they are agreed within the framework of a comprehensive withdrawal agreement. Without a withdrawal agreement, there will be no transitional rules, and the currently prevailing Single Market and Customs Union rules would therefore no longer apply between the UK and the EU starting from 30 March 2019.

### **Current state of play**

Negotiations have been sluggish in all areas since the European Council in March 2018. The outstanding issues include the withdrawal agreement, the protocol on Ireland and Northern Ireland as part of the withdrawal agreement and a framework for future relations.

The withdrawal agreement and the political declaration on a framework for future relations must be completed by autumn 2018 at the latest in order to meet the timetable for a proper withdrawal.

Since the end of August, the Commission has been in permanent negotiation mode at the technical level, and regular meetings have also been held between EU Chief Negotiator Barnier and British Brexit Secretary Raab.

At the informal meeting of Heads of State and Government in Salzburg on 19 and 20 September, it was stressed that both sides wanted to avoid a hard Brexit. An agreement was also reached to further deepen the negotiations in October.

At the European Council on 17 October in Brussels, Heads of State and Government of the EU 27 reaffirmed their full support for EU Chief Negotiator Michel Barnier and their continued determination to stand united. They also noted that sufficient progress had yet to be made despite intensive negotiations. Mr. Barnier is to continue talks with the United Kingdom in accordance with the guidelines already agreed by the European Council. The Heads of State and Government declared that they were ready to convene a special summit if and as soon as the EU's Chief Negotiator announced that decisive progress had been made.

### **Timetable and procedure pursuant to Article 50 of the TEU**

**By autumn 2018 at the latest:** The Commission is to conclude negotiations and submit the final proposal for a withdrawal agreement to the Council and the European Parliament. The European Council is to adopt the political declaration on the framework for future relations as an annex to the withdrawal agreement.

**By February 2019 at the latest:** The European Parliament is to approve the withdrawal agreement (simple majority, British MEPs participate in the vote) and the Council is to adopt it by an expanded qualified majority, i.e. 72% of the 27 MS (= 20 MS) representing 65% of the population of the EU 27.

**30 March 2019, 12:00 AM:** Withdrawal, unless the two-year negotiation period is extended unanimously by the European Council (a possibility provided for in Article 50(3) TEU).

**Starting from the date of withdrawal:** The future relationship is to be negotiated on the basis of a political declaration, and a transitional period lasting until the end of 2020 is to begin.

### **Withdrawal agreement**

The withdrawal agreement necessarily addresses issues related to withdrawal, including the withdrawal account, citizens' rights, the border between Ireland and Northern Ireland, goods circulating on the market and the transition period.

An agreement between the EU and the United Kingdom had already been reached in important areas in the run-up to the European Council in March, but there has been no significant progress since then. Overall, about 85-90% of the draft text has been negotiated at this stage and 75% had already been agreed prior to the March European Council.

Politically sensitive issues, on the other hand, remain unresolved, in particular key parts of the protocol on Northern Ireland, the governance of the withdrawal agreement, including the settlement of disputes, the role of the ECJ and geographical designations of origin.

On the Northern Ireland issue, the aim is to avoid a hard border with Ireland. The Commission has proposed a “backstop”, a fallback solution in the event that there is no solution defining the future EU-UK relationship, which would entail the creation of a common regulatory area between Ireland and Northern Ireland.

In the December 2017 Joint Report, the UK committed itself to a legally operational backstop solution in the withdrawal agreement, but rejected the Commission's proposal as it would create tariff and trade barriers between Northern Ireland and the rest of the UK. The Commission stressed that controls between Northern Ireland and the rest of the country are not to take place at the border but at companies' registered offices. Only veterinary and phytosanitary checks would have to be carried out at sea, but this approach is already being implemented in some cases.

The United Kingdom has placed a great deal of importance on avoiding a hard border within the framework of the future relationship. This is the purpose of the proposal for a free trade area for goods and “Facilitated Customs Arrangement”, thereby eliminating the need for the backstop. In principle, the Commission is not opposed to a national solution, but not in the form of the UK proposal, which contravenes the indivisibility of the four fundamental freedoms.

### **Framework for future relations**

The future relationship between the EU and the United Kingdom must be governed by a separate treaty under international law. However, such an agreement cannot be concluded until the United Kingdom has become a third country. The framework for future relations must therefore be set out in a **political declaration** accompanying the withdrawal agreement.

There has been no agreement on a future **economic partnership**. The UK's desire for access to the Single Market for goods, but not for the other three freedoms, jeopardises the integrity of the Single Market.

According to the Commission, the narrow scope of the "common rulebook", the harmonisation of product standards with the exception of social and environmental standards, would violate all of the foundations necessary for creating a level playing field. The lack of harmonisation with regard to services attached to goods will also entail distortions in competition. Therefore, only two possibilities remain: either participation in the Single Market or an ambitious free trade agreement. There is a great deal of agreement on the essential points related to external and internal security.

The EU positions on the future relationship are contained in the March 2018 guidelines drawn up by the European Council. The UK's positions are detailed in a 98-page white paper dated 12 July 2018, referred to as the Chequers plan.

#### **EU position (pursuant to the EC (Art. 50) guidelines adopted in March 2018):**

- A partnership with the United Kingdom that is as close as possible. The current British positions, however, limit the extent of a possible partnership.
- Principles: Indivisibility of the four fundamental freedoms, no "cherry picking" by way of sectoral access, striking a balance between rights and obligations, ensuring a level playing field, denying the same rights and obligations to a non-Member State, ensuring EU decision-making autonomy, i.e. barring the United Kingdom from participating in EU institutions, agencies and other bodies as a third country, respecting the role of the ECJ.
- A free trade agreement forming the core of economic relations:
  - Circulation of goods: The aim is to cover all sectors, excluding customs duties and quantitative restrictions
  - Appropriate cooperation on customs
  - Voluntary cooperation on regulatory matters
  - Market access for services in accordance with host country rules
  - Other areas of interest to the EU (e.g. access to public procurement markets, investment, protection of intellectual property)
- Cooperation in areas including transport, EU programmes (e.g. research and development, education, culture), the movement of natural persons, coordination on social security, a framework for professional recognition, cooperation on family law, etc.
- Specific partnerships in police and judicial cooperation in criminal matters (cooperation as a third country); security, defence and foreign policy (cooperation as a third country), data protection (pursuant to EU adequacy rules applicable to third countries)
- Governance: Governance must ensure effectiveness and legal certainty while taking into account the content and depth of future relations and the autonomy of the EU legal system (including the role of the ECJ).

#### **British position (pursuant to the Chequers plan, the white paper dated 12 July 2018):**

- The core of the future economic partnership is to be a free trade area for goods, with the United Kingdom remaining aligned with EU product standards ("common rulebook").
- No harmonisation with regard to services
- The United Kingdom has proposed a Facilitated Customs Agreement aimed at avoiding customs controls: two customs tariffs enabling an independent trade policy.

- These elements – a free trade area for goods and the Facilitated Customs Agreement – are intended to prevent a hard border between Ireland and Northern Ireland, thereby eliminating the need to resort to a backstop for Northern Ireland, a consensus on which is to be reached as part of the withdrawal agreement.
- The United Kingdom plans to end the free movement of persons and instead create a new mobility framework to be presented in the autumn.
- The United Kingdom seeks a close security partnership with the EU.
- In most areas, the United Kingdom seeks cooperation that goes beyond “traditional” third country cooperation.
- Governance and dispute resolution are to be handled by a Joint Committee and by an arbitration tribunal, with the possibility of referral to the ECJ. Should EU law be applicable, British courts are to “take due account” of ECJ case law, but without the possibility of submitting requests to the ECJ for preliminary rulings.

### **Preparedness**

Brexit preparedness entails ascertaining the need for action, making preparations and taking the measures necessary as a result of Brexit.

This is based on two possible exit scenarios:

**“Deal”**: If the withdrawal agreement is ratified before 30 March 2019, the result will be a (largely) regulated withdrawal (incl. transitional phase until 1 January 2021 while EU law remains in force in the UK).

**“No deal”**: If the withdrawal agreement is not ratified before 30 March 2019, there will be an unregulated withdrawal (no transition phase, EU law will no longer be applicable in the UK as at 30 March 2019).

In March 2018, the European Council called for work on Brexit preparedness to be continued at all levels and take all possible scenarios into account. In June, the European Council again called on all EU institutions, Member States and stakeholders to step up their focus on preparedness.

Since April 2018, the Commission has published 68 “technical notes” for various areas, including information for stakeholders on the possible effects of a “no deal” Brexit.

To date, the Commission has submitted eight legislative proposals which will be necessary regardless of scenario, including the relocation of the European Banking Authority and the European Medicines Agency, type approvals and changes to energy efficiency targets.

A further need for action at EU level is external preparedness, i.e. the decoupling or adaptation of databases and IT systems and the provision of information on the UK’s withdrawal to third countries and international organisations.

The United Kingdom also published 25 “technical notes on preparedness” in August and a further 28 in September.

### **Issues for discussion:**

- What steps should be taken next to conclude the withdrawal agreement in due time and to prevent an unregulated withdrawal of the United Kingdom?
- What will the EU’s future relationship with the United Kingdom look like post-withdrawal?