

Portland



CLIFF EDGE

IS BRITAIN READY
FOR NO DEAL?

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Foreword

On 29th March 2017, the UK took the first step on its journey towards Brexit with the triggering of Article 50.

At that historic moment as the process of withdrawal began, Portland published Destination Brexit. Bringing together leading voices from business, diplomacy and politics, we charted the complexities of the coming negotiations with the EU, and the competing aims and motivations of the different parties in those talks.

As we approach the end of the year, the UK's journey to leaving the European Union is more uncertain than ever.

The negotiations between Brexit Secretary David Davis and the EU's Chief Negotiator Michel Barnier have been strained and have failed to show significant progress. The key issues of contention from eight months ago when the negotiations began – citizens' rights and Britain's exit bill – remain the key issues of contention now. With a third of the negotiating time available now spent, we are still in phase one of the negotiations.

The old Brussels mantra oft quoted is 'nothing is agreed until everything is agreed'. Therein lies the problem for Theresa May and her Government who need to secure agreement on all of the phase one issues before talks can move to the crucial consideration of what kind of continuing trade relationship the UK and EU will enjoy after Brexit.

With little progress being made, Theresa May has sought to press the reset button and change tact with a conciliatory speech in Florence aimed directly at European leaders. The Prime Minister addressed the issue of the UK's financial contribution to the EU, ceding ground to break the deadlock.

The change in mood music does seem to have yielded some results for the embattled Prime Minister. Last month's European Council Summit generated some encouraging comments from European leaders about the prospect of moving to trade talks towards the end of the year if progress could be made. But this should not be interpreted as a fundamental shift in the substance of the European position, and despite May's manoeuvres, the two sides still have some way to travel.

By

VICTORIA DEAN

Victoria Dean is Partner and Head of Portland's Brexit Unit. Previously Head of the Foreign Office's European Directorate, Dean spent the summer of 2016 on the Government's Brexit preparations.



“The UK’s journey to leaving the European Union is more uncertain than ever.”

Assuming agreement on the terms of divorce in phase one can and will be achieved, negotiations will then move to trade, where the stakes are high and the positions even more entrenched. The UK Government has already said that it will seek a bespoke arrangement that will not involve membership of the Single Market. The EU will be reluctant to give the UK a special deal, with Barnier having insisted that the UK will have to pick from a menu of options that already exist. If agreement on a continuing trading relationship can even be achieved, the proposed deal then hinges on ratification by some forty national and regional parliaments.

A perilous path lies ahead, with relatively little time to negotiate its dangers.

The UK’s negotiating power has also been complicated by matters more domestic. Eight months on from the triggering of Article 50, the Prime Minister’s authority has been undermined by a botched election that was designed to strengthen not weaken her position and that of her Government in the Brexit negotiations. Competing red lines in the Brexit negotiations are openly proposed by her Cabinet Ministers and backbenchers. Under pressure from her Party, Theresa May must be open to walking away from negotiations if the right deal can’t be achieved but there is some doubt that a parliamentary majority exists for a hard Brexit.

With the odds seemingly stacked against the UK being able to secure an advantageous future trading relationship with Europe, attention turns to the prospect of a no deal.

In this document, Portland assembles a distinguished group of contributors to examine what a no deal might mean for Britain, and if we’re ready for it.

First, [Chris Davies](#), a specialist in how organisations succeed in complex environments at consulting firm Korn Ferry, gives us an overview of the issues that should be pre-eminent in the minds of British business and how to plan around them.

Next, a prominent advocate for leaving the EU, [Iain Duncan Smith](#), cautions those who are pessimistic about Britain’s future should it walk away from negotiations with the EU. The former Secretary of State unveils his vision for a global Britain that could thrive, not just survive, outside of the EU.

The experienced former Cabinet Minister [Michael Portillo](#), brings a sobering analysis of the realpolitik, sounding an optimistic tone that the politically savvy in the UK and EU will ensure the eventuality of a no deal is avoided.

The practical realities of what a no deal would mean for trade are outlined by [Fergus McReynolds](#) and [Namali Mackay](#) of the EEF, the British manufacturers’ organisation. They distil the key barriers to trade that would be faced by British business without a deal in place. In their view, British manufacturing cannot afford a no deal scenario.

Next, we look beyond the M25 for views from Dublin and Edinburgh. The SNP’s International Trade Spokesperson [Hannah Bardell MP](#) suggests that a no deal scenario would leave the nationalist Scottish Government weighing up its constitutional options. [Tony Connelly](#), RTE’s Europe Editor, takes the pulse of Merrion Street, where the Irish Government are desperate to avoid a hard border and fervently hoping for progress come the new year.

[Radek Sikorski](#), Poland’s former Foreign Minister, sets the political context for us. He characterises the Brexit process as one that has so far been driven by ideology rather than consideration of the consequences for the country, but paints a picture of a UK Government that is beginning to understand what their commitment to a ‘hard Brexit’ actually means in practical terms.

Finally, [Joe Owen](#) of the Institute for Government turns his attention to what British business may see as the unthinkable, and examines the extent of the preparations being made in Whitehall for a fruitless outcome from the negotiations. He applies his forensic analysis to a question that may well be on everyone’s lips by early 2019: are we ready for a no deal?

Time for business to prepare

By
CHRIS DAVIES

Chris Davies is an Associate Client Partner at Korn Ferry, the people and organisation consulting firm. He advises clients on strategic change and organisational development, and has a particular interest in how organisations succeed in complex environments. His clients span the private and public sectors, from the Foreign and Commonwealth Office to global manufacturers. He was previously a civil servant in Whitehall, working on policy relating to international security.

The likely features of a no deal Brexit are well reported, as is the likely consequence: an increase in uncertainty. Although businesses can't do much to change that uncertainty, they can start thinking about the contingencies needed for a no deal.

There are four areas in particular that organisations should be thinking about:

Customs, tariffs and duties

The most obvious result of a no deal is the UK falling outside the Single Market and Customs Union without any replacement arrangements for market access. In this event, UK businesses are likely to need new capabilities around management of cross-border trade. HM Revenue and Customs estimates that 130,000 businesses will need to engage with customs for the first time, for instance, and the requisite skills will be in short supply in the UK labour force. Changes in the dynamic of European markets may also put a premium on business development outside the EU, another area where staff with the necessary skills and experience will be hard to find.

Supply chain changes

Forty-five years of economic integration mean that many UK businesses are part of a pan-EU supply chain. No deal will mean that these supply chains must change, in some cases at pace. In the short term, the main supply chain risk is likely to come from problems in managing customs capacity at the border; businesses that rely on lean manufacturing methods, in particular, will need contingency plans to handle the resulting disruption. Longer-term, businesses will need to consider how their supply chains could adapt in a no deal world. Research suggests that businesses on both sides of the Channel are already planning to "repatriate" some or all of these supply chains. In spite of the globalist message around leaving the EU, this might mean that some businesses need to refocus their attention domestically in the first instance, to secure both supplier and customer bases.

Citizens' Rights and Immigration

Some 2.2 million EU nationals currently work in the UK, accounting for 7% of the UK workforce. The risk arising from a no deal settlement is both that



“Businesses can start thinking about the contingencies needed for a no deal.”

significant numbers of these employees leave, and that recruitment from the EU becomes more difficult. The drivers of this are two-fold. First, the technical settlement on citizens' rights and immigration may make it more difficult for employees to stay and move between the UK and EU. Second, a no deal outcome may undermine individuals' confidence, particularly EU nationals in the UK, leading to an increase in emigration.


In a tight labour market, it may be challenging to replace these staff, particularly the highly-skilled. Employers will therefore need to focus on ensuring they have both a well-developed proposition for employees, to reduce attrition, and development programmes in place to build the skills of their remaining workforce. In sectors which are more heavily reliant on EU nationals (e.g. retail, hospitality and manufacturing), businesses will also want to ensure their recruitment capabilities are up to the challenge of working at the scale, and in new recruitment pools.

Regulatory compliance and market access

A no deal Brexit is likely to make the regulatory environment for business more complicated, if only because non-EU states will use new trade deals as a chance to negotiate different regulatory settlements with the UK. Businesses will need to invest in their regulatory management capability, and there is likely to be increased demand for legal services in this area. Dispute resolution is likely also to see an increase in demand, especially as the mechanisms for managing any disputes are worked through. Businesses in the UK may start to experience

new competition from countries previously excluded from British markets - "what we might call the "chlorinated chicken threat", where companies from environments with lower regulatory standards gain access to the UK market and threaten to undercut UK-produced products."

More broadly, several areas of the services sector will be likely to see disruption, many of them well-advertised: from financial services, where passporting could well be disrupted, to aviation, thanks to the end of Open Skies arrangements. Businesses will need to understand the flexibility



"The prospect of a no deal Brexit should encourage business leaders to focus again on making their organisations agile and adaptable."

of their UK-based workforce, to relocate to EU Member States for instance, and there may be a drift of talent abroad as new trading centres emerge, for instance in Dublin or Frankfurt.

Each of these four areas would be challenging to address on their own. Together, they will force businesses across the economy to look again at their strategy. But combine these issues with wider economic forces – harnessing technology, competing with disruptive business models, managing continuing global competition, and responding to demographic shifts – and it is clear that the businesses that succeed will be those who can change the way they work, almost continuously.

Above all then, the prospect of a no deal Brexit should encourage business leaders to focus again on making their organisations agile and adaptable to ensure sustainability. That means considering the business' change capability: do you find it easy to refocus your business when new challenges or opportunities emerge? Do you have people who can lead change? And do you have a culture that helps sensible decisions be taken quickly, even when the situation is ambiguous? As uncertainty grows, being able to answer these in the affirmative will only become more important.



It's not a deal or no deal – it's a free trade deal or WTO deal

By The Rt. Hon.

IAIN DUNCAN SMITH MP

Iain Duncan Smith is a former leader of the Conservative Party, and was Secretary of State for Work and Pensions between 2010 and 2016.



While Theresa May is right to point out that we must have a proper post-Brexit free trade deal with EU countries, she is also right that

“no deal is better than a bad deal.”

It's been clear from day one that Brussels' top priority for Brexit negotiations has been money – and to be precise, extracting as much as it can out of Britain.

All the talk about requiring 'sufficient progress' on citizens' rights and Ireland has of course been a crude smokescreen to force the UK into paying a huge 'divorce bill' – as much as £90 billion – with nothing in return. So while Theresa May is right to point out that we must have a proper post-Brexit free trade deal with EU countries, she is also right that “no deal is better than a bad deal”. According to a Sky Data poll, 74% of the British public agree.

Indeed, she has put flesh on the bones of that statement by directing the Government to make arrangements for us to depart from the EU on World Trade Organisation terms – which would mean having to pay tariffs on goods and services we export to the EU. We are constantly told that such an arrangement would be cataclysmic, a cliff edge and a disaster. Yet the truth is far from that. Yes, we want a free trade agreement – which would replicate most current trade arrangements – but not at any price.

The alternative isn't nothing; it's a set of arrangements from within the World Trade Organisation which will not include a very specific trade deal between the UK and the EU. It does however allow for some flexibility on trade tariffs for a period between us whilst we continue discussing trade, should we choose to do so. So in truth, it's not a deal or no deal, it's a free trade deal or a WTO deal.

Pascal Lamy, ex-director-general of the WTO, has indicated that it might be necessary for the UK to depart on WTO terms, because a free trade agreement could take longer to complete and would be best done after the UK had left. Asked in a Chatham House interview whether Brexit talks could be completed within two years, he replied:

“Frankly speaking, no. When I look at the to-do list, which is this telephone book of issues that will need to be settled and negotiated, I don't think it can be done within two years. But what is probably doable is to have an interim agreement that settles most of the things that have to be settled short-term and that puts down the principles according to which we will negotiate the rest. On whether Britain falling back to WTO rules could be easily done, he said: “I think it can be easily done, provided there is a bit of goodwill on all sides. WTO lawyers can be reasonably pragmatic and if we agree that the main thing is that trade should be hampered as little as possible, I think that's not the most complex problem we'll have to solve... So, falling into the WTO rules is not an apocalypse.”

The point he was making in a sense is that no deal becomes a workable WTO pre-Free Trade Agreement deal. So of course the EU and the UK would make arrangements under WTO rules, allowing us to lower tariffs. This, in turn, would reduce prices of key commodities – particularly clothing and food – something that would benefit the poorest the most. It could also mean that British exports would become much more competitive.



“Britain is a major driver of trade liberalisation and at long last our individual voice would be heard again.”

Meanwhile, the UK would strike bilateral deals with non-EU countries such as the US, Australia, Japan and India. We could do this immediately, rather than waiting for the end of a transition period in March 2021 or later.

As we took our post-Brexit place as a full voting member of the WTO, we would have the same voting power as the EU and could encourage other countries towards further liberalisation of global trade. The truth is that Britain is a major driver of trade liberalisation and at long last our individual voice would be heard again. The result would be to make goods cheaper for British households and to create an innovative, dynamic economy. To achieve this, Britain would need to have control of its borders, tariffs and regulatory system from the moment of Brexit.

If the UK continued in the European regulatory environment or customs union, then we would suffer because other countries would think we were not serious about free trade.

To achieve our aims, five things are vital.

First, the UK and EU must have identical regulatory systems from day one of Brexit.

Second, our relationship must be based on WTO rules.

Third, while we would accept the common external tariff on all imports from outside the EU, we would be free to lower tariffs when and where we choose.

Fourth, we should immediately lobby the WTO to liberalise financial and other services – something which has seen little progress for 20 years.

Fifth, Britain must take the lead in many other areas such as electronic commerce.

This should be our ambition, to lead in global organisations setting key standards. This is why it is vital we now show how optimistic we are about the possibilities available to us. For its part, the EU must decide quickly which arrangement for Britain it wants.

Brussels negotiators should see Brexit as the beginning of a new and better arrangement. Crucially, it offers them the chance to move the way they want, with deeper and deeper integration, without the carping from the UK, while keeping hold of a good friend and ally.

For Britain's part, as an island trading nation, we will want to work closely with our allies and friends but remain free to choose a different course when our interests diverge.

That surely is the prize for both sides in these talks.



“...we should immediately lobby the WTO to liberalise financial and other services – something which has seen little progress for 20 years.”



Brexit deal will be settled at the last moment

By The Rt. Hon.

MICHAEL PORTILLO

Michael Portillo was a Minister for eleven years and held three positions in the Cabinet, including Secretary of State for Defence. Since leaving politics, he has devoted himself to writing and broadcasting.

Nothing about the progress of the negotiations between the EU and the UK has surprised me - except that

I did not foresee that the British government would call an election and lose its majority.

Although the EU institutions display contempt for democratic decisions, elected politicians still make the key decisions in the EU - including on Brexit. The German Chancellor and French President are pre-eminent.

So the comments from officials like Barnier and Juncker can be largely discounted. In the worst tradition of the EU, the Brexit deal will be settled at the last moment, but at least it will be decided by the politically savvy.

Although there has been much comment about how complex the matter is, it actually seems quite straightforward. The parties are close to agreement on EU citizens' rights, and there is goodwill on both sides to find a solution that keeps an open border between Northern Ireland and the Republic. The money cannot be settled until the whole deal is known, and as with any financial deal, agreeing the price appears difficult until the last moment.

“Elected politicians still make the key decisions in the EU. So the comments from officials like Barnier and Juncker can be largely discounted.”



Britain is looking for free trade with the EU.

Obviously there are no technical issues, since as a member today it is compliant with all EU law. There are precedents for such deals, since Norway, Iceland, Liechtenstein and Switzerland trade more or less freely with the EU, but are outside it; and they are excluded from the Common Agricultural Policy and the Common Foreign and Security policy amongst other things.

Whilst the first three of those countries are in the Single Market, Switzerland is not, nor subject to judgments by the European Court of Justice. It has been free to conclude a huge number of trade deals with non-EU countries.

Maybe the most challenging issue is the free movement of people. It is worth noting that this freedom goes well beyond the free movement of labour, which is actually all that would be required for the functioning of the Single Market. The agreement signed between the Swiss and the EU in 1999 allowed free movement to the self-employed, those with a job contract and the financially independent. That is a model that would certainly appeal to Britain, and probably to a number of EU states, which face public opposition to unrestricted movement by those seeking work or benefits.

It would seem indefensible for the EU to impose tariffs on trade with Britain - and therefore invite tariffs on its exports to the UK - for the sake of a “freedom” that is ill-conceived and widely unpopular.

“In the worst tradition of the EU, the Brexit deal will be settled at the last moment, but at least it will be decided by the politically savvy.”



The Brexit deal may depend on how self-confident EU leaders feel as the deadline approaches.

The Union has big problems. Whilst the media seems to have forgotten that the Euro ruined Greece and spread mass youth unemployment across southern Europe, the currency still looks doomed.

It was created to further the political ideal of a European state, not because it made economic sense. Meanwhile, nasty parties of the right are now powerful in France, Germany, the Netherlands and Austria, yet the EU has developed no clear policy on migration. What is more, Spain is under existential threat.

As we conclude our negotiations, sensible leaders of EU countries ought to think that the Union already has enough issues without adding an acrimonious settlement with the UK.

We now expect the British parliament will vote on the deal. The unexpected results of this year's General Election - particularly the boost to the majorities of many Labour MPs who had been fearful of the Brexit majority amongst their electorate - have made the Commons braver about defying the referendum result. But if the House votes down the settlement, constitutional chaos will ensue. If in the maelstrom there were a change of government, Labour would have to deal with it. Parliament will stare into that abyss and avoid it.

With all the uncertainty produced by the first referendum, the leaders of Britain's major parties are unlikely to want to

roll the dice again.

Will there be a second referendum?

If there is not, we will be unusual amongst European nations, because in the past Ireland, France and Denmark were required to vote again when their ballots defied the will of the European elite. But with all the uncertainty produced by the first referendum, the leaders of Britain's major parties are unlikely to want to roll the dice again.

There is a widely-held view that in a second referendum the young would stream to the polls to reverse the result. Maybe. But the British people don't like to be asked the same question twice. Brenda from Bristol had it right when on hearing that Theresa May had called an election, cried out "Another one?" The fact that the poll was unnecessary may help explain why it went so wrong for the government.

And remember Gerry Malone. The Conservative MP for Winchester lost his seat by just two votes to the Liberal in 1997. He challenged the result and the courts declared it void. The same candidates faced the same electors six months later, and Malone lost by more than 21,000 votes! The people had made their decision once and did not like to be badgered again.



The impact on trade: can we make no deal work?

By

**FERGUS
MCREYNOLDS AND
NAMALI MACKAY**

Fergus McReynolds is Director of EU Affairs and Namali Mackay is a Trade Advisor at EEF, which champions British manufacturing and engineering.



“The industry and the UK

cannot afford to walk away

from the EU without a deal”

Given the level of uncertainty already demonstrated to date in the EU-UK Brexit negotiations, the likelihood of the UK being left without a deal with the EU, is a distinct possibility. On this, the Government has made its position clear that it is approaching the negotiations from a standpoint that “no deal for Britain is better than a bad deal for Britain”.

In the British manufacturing industry’s view, this is not acceptable; the industry (and the UK) cannot afford to walk away from the EU without a deal.

It may come as a surprise to some that Britain is the 8th largest manufacturer in the world by output; employing 2.6 million people and contributing to 10% of UK output. And more so, that the strength of our manufacturing sector is firmly underpinned by the trading relationship with the EU (EU markets accounted for 48% of manufactured exports in Q2 2017). The trading relationship is often characterized by supply chains that weave in and out of the UK and Europe in complex patterns and for many British manufacturing companies that only trade with the EU this is the only trading environment they’ve ever known. To extricate the industry from this long established trading system will be costly and require a gradual adjustment process to ensure a smooth and successful transition to a new trading order. While over 70% of our manufacturing members have in the recent past held the strong view that membership of the EU Single Market (and Customs Union) was vital to their business models, they could now face a future in which the UK will not hold membership of either, with no compelling alternative to plan for.

Which brings us back to the notion that “no deal is better than a bad deal”. In a typical free trade agreement negotiation, it is understandable for the negotiating partners to take this stance, as walking away from the table would leave them no better nor worse off. In such a negotiation both parties are coming to the table from differing levels of market access and are attempting to meet a mutually beneficial middle point. Importantly, not being able to strike a deal, leaves both parties no worse off.

In the UK and EU relationship, negotiations are starting effectively at the other end - the mutually beneficial middle point - with the UK and EU currently being as aligned as possible with free and open access and regulatory convergence. For the UK to walk away from this scenario without any agreement in place would result in the loss of all preferential arrangements, an automatic reversion to basic international trading rules and minimal market access levels to all countries with which the EU has special trade agreements.



“The UK manufacturing sector’s most urgent need is for agreement to a sensible transition period.”

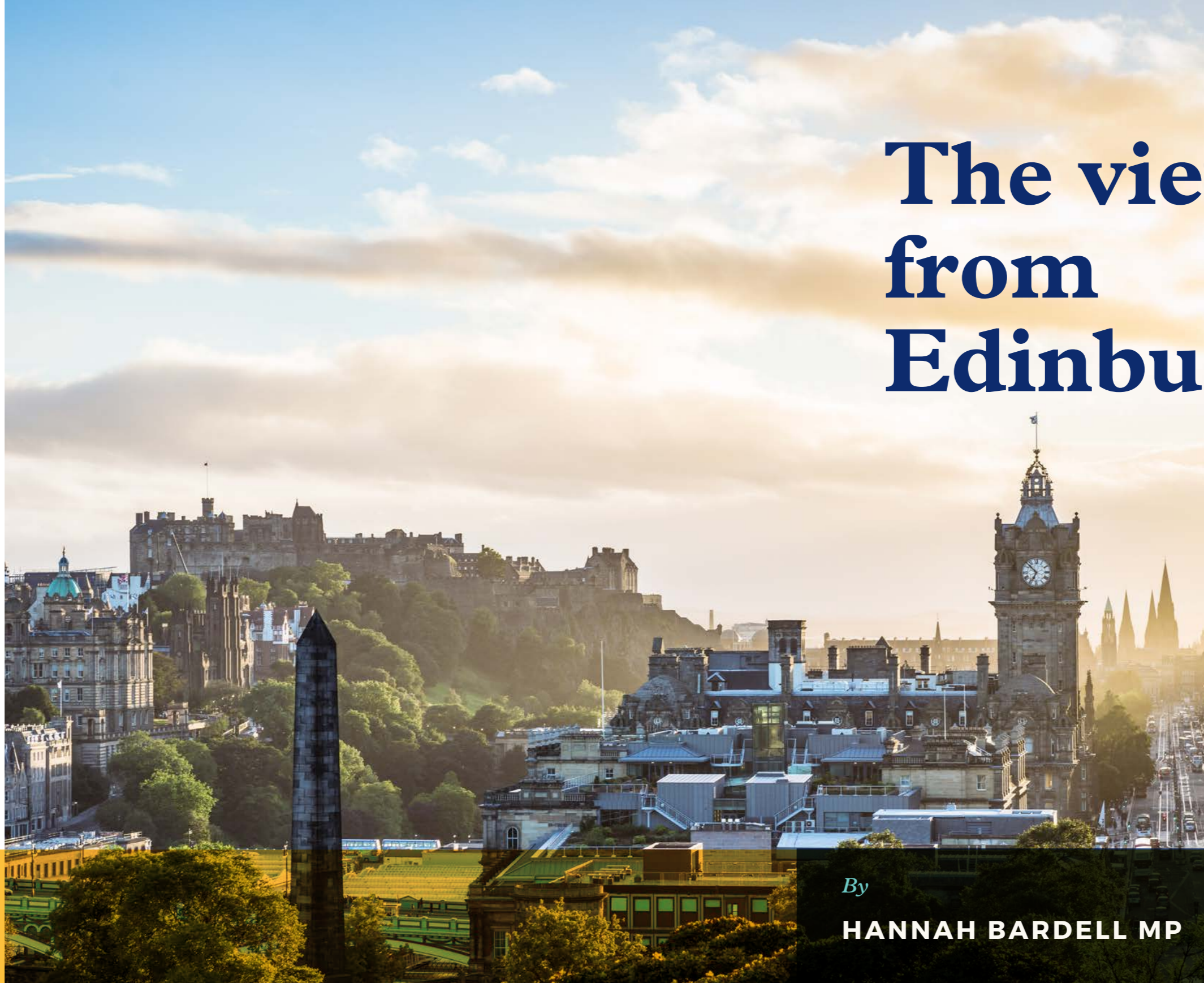
This will result in an immediate impacts at the UK/EU border and without the ability to cushion the impacts – significant costs.

Free access to the EU Single Market and Customs Union have been vitally important to British manufacturers and the most important facilitators of ‘frictionless’ trade with the EU, promoting a high degree of competitiveness amongst UK exporters. UK companies have operated in a zero tariff environment, with minimum non-tariff barriers and low costs of time delays, transport and facilitated movement across EU borders, in a uniform and single regulatory environment. Moving out of this arrangement - and suddenly - will incur significant costs. The manufacturing sector is working hard to understand, plan for and adjust to these changes. What it needs however is a reasonable timeframe to adjust, plan and deliver these significant adjustments to their supply chains and business models in the most efficient and cost-effective way. It is for this reason that the UK manufacturing sector’s most urgent need is for agreement to a sensible transition period to have the time to avoid a no-deal scenario. Without a transition period that allows for business continuity, the UK risks being positioned at the point of no return on a cliff edge.

A no deal scenario is likely to result in:

1. UK goods no longer circulating freely between the UK and EU
2. The existence of a hard border between the EU and UK, requiring new customs administration documentation and the need for goods to be checked to ensure compliance with EU standards, market and legal requirements
3. Loss of zero rate tariffs: without an agreed trade deal the current preferential zero rate tariffs between the EU and UK will cease to apply. The EU (and the UK) will have to apply tariff rates as they do to countries with which they don’t have a preferential trade deal
4. Reverting to higher WTO tariff rates for exports to the EU and trading partners under current EU FTAs: For the manufacturing sector, average tariffs for exports to the EU would increase to approximately 5.3%, however this masks significant tariffs for certain products such as automotive goods which could face tariffs of up to 10%
5. Potentially higher tariffs on EU imports: including component parts from the EU
6. Any UK tariff reductions would also have to be offered also to the rest of the world, under WTO Most Favoured Nation rules
7. Changes to and potential loss of inwards processing relief
8. Changes to current customs warehousing arrangements
9. New non-tariff barriers in the form of customs documentation and checks and administration
10. Having to meet new non-preferential rules of origin for exports to the EU: manufacturers will have to prove goods entering the EU from the UK are of UK origin, in accordance with a pre-agreed set of rules of origin agreed between the EU and UK
11. Higher compliance costs for any changed EU standards and
12. Loss of preferential arrangements under current EU FTAs with other countries.

The view from Edinburgh



By

HANNAH BARDELL MP

Hannah Bardell MP is the SNP's Spokesperson for International Trade.

Faced with a no deal scenario, any Government should look at what options are available to it...and we should not forget the

positive views expressed

by many in Europe about how welcome Scotland would be as an independent nation.

Certainty is what business and the country needs following the decision that was taken to exit the EU.

I have met with more than 30 businesses and trade bodies over the past few months, up and down the UK and I'm due to meet another 30 before Christmas. I have been trying to understand what Brexit means for them, either with or without a deal.

Whilst I have met with a range of sectors from financial services to food and drink and agriculture, each conversation has raised similar worries about new legislation, more onerous red tape and an overwhelming lack of certainty. Businesses that have capacity are putting in place contingency plans and working out what it means for them individually but they are waiting on tenterhooks for a message from the government. Their concerns about Brexit are deep, wide-ranging and complex.

The potential impacts of a 'no deal' are significant, ranging from planes being grounded the day after Brexit to prohibitive tariffs and fresh Scottish produce rotting in a protracted customs process.

Take airlines for example: airplanes could be grounded if EU airlines are unable to access UK insurance. I raised this in Parliament on 11 September 2017 and almost a full month later, Philip Hammond was the first Cabinet minister to admit that a 'no deal' could ground all flights. It took so long because the government has not done a proper assessment of the economic consequences if there was no deal.

That is an urgent task. Free trade between the EU and UK ends at midnight on March 29, 2019. Without a deal, we face trading tariffs on day 1, and that will have a pronounced effect on key Scottish sectors. The sheep industry in Scotland is at risk of disappearing completely if lamb is allowed into the country cheaper than it goes out, and Scottish fishermen, fish processors and retailers could go bankrupt from tariffs imposed by the EU on fish exports and reduced access to the EU market.

The combination of tariff barriers, with delays created by new customs checks, risks a severe impact on food supplies and other goods that the UK imports from the EU.

Within hours to a few days, the additional costs of tariffs and delays will likely create problems for companies, supply chains and retailers that depend on goods traded with the EU27 — with impacts on almost every sector of the economy. Prices in shops would inevitably rise as a result.

Financial services contracts of all kinds, from insurance to loans and derivatives, would be disrupted because UK firms would not be able to continue servicing EU customers (or vice versa) under so-called passporting arrangements and UK contracts may also be disrupted because they still reference EU laws or bodies.

My own constituency of Livingston is at the heart of West Lothian where up to 5,000 jobs are sustained by exports to the EU. Due to its relatively strong manufacturing base, the proportion of West Lothian's international trade with its EU partners is estimated to be higher than the Scottish level. Resultantly, the impact locally of Brexit, either with or without a deal, would likely be worse than the Scottish level.



“The SNP Scottish Government’s focus has always been to preserve our place in Europe.”

The SNP Scottish Government’s focus has always been to preserve our place in Europe, for the benefit of business, the economy, and families everywhere and it remains the case that staying in the Single Market and Customs Union makes sense. Businesses and organisations I have talked to are, as anyone would, assessing all of their options.

I have talked to some who have privately indicated that were Scotland in the Single Market and Customs Union as an independent nation, that is a potential solution they could see to help their business, instead of having to move out of London or other parts of England to another EU city. This would ultimately be good for the whole of the UK, not just Scotland.

outcome of the EU negotiations, but it is deeply worrying to see such little progress. Faced with a no deal scenario, of course any Government and business should look at what options are available to it and we should not forget the positive views expressed by many in Europe about how welcome Scotland would be as an independent nation.

However, the key consideration now is getting certainty from the UK Government on the future trading relationship with Europe because if an announcement is not made before Christmas, the risk is businesses will trigger their contingency arrangements in the first quarter of 2018 and leave the UK for good.



The view from Dublin

By
TONY CONNELLY

Tony Connelly is RTÉ's Europe Editor. His most recent book, *Brexit and Ireland: the Dangers, the Opportunities, and the Inside Story of the Irish Response*, was published by Penguin in October 2017



Publicly and privately Irish officials see it as the worst possible outcome.

“The UK crashing out of the EU and reverting to WTO rules could therefore have a devastating impact on trade flows, especially in agrifoods.”

At the European Council meeting in Brussels on October 19th, the Taoiseach Leo Varadkar was asked what a no deal scenario would mean for Ireland. He shook his head: there were perhaps three hypothetical answers and he would not get into speculation.

Publicly and privately Irish officials see it as the worst possible outcome. Of all Member States, Ireland’s exposure to Brexit is the most extreme. The Economic and Social Research Institute (ESRI) issued an early warning in November 2015 that

Brexit could cut trade between Ireland and the UK by 20%.

The European Parliament reported in March 2017 that whereas Germany exports 2.8% of its GDP to the UK, Ireland exports 6.9%.

The UK crashing out of the EU and reverting to WTO rules could therefore have a devastating impact on trade flows, especially in agrifoods. Agra Europe estimates that 45% of Ireland’s food exports go to the UK compared to an EU average of 9%. Food production tends to take place in regions which are economically vulnerable (in counties Cavan and Monaghan 1 in 5 jobs depend on exports to the UK). The sensitivities are not theoretical: in the immediate aftermath of the referendum five mushroom producers went to the wall because of the slump in Sterling. Like other sectors in the food industry, customs delays will affect perishability, never mind the impact of tariffs under WTO rules.

On another level, the Irish peace process has been made more fragile by Brexit. The 1998 Good Friday Agreement elaborately created an expanded space in which previously intractable tribal identities could be partly reconciled; Europe’s endorsement and subsequent generous funding of the peace process helped further cement the Agreement’s gains. Brexit pulls the rug from under it by potentially removing a custodian of that shared space, cutting off funds, sending the two communities back into their trenches, and, worst of all, re-establishing a border that had been made invisible by both the Agreement and the Single Market.

Dublin’s diplomatic strategy has been to highlight the peace process over trade as a way to maximise sympathy and alarm. Ireland’s posture, indeed, shifted from the initial bilateral outreach to London, to an unambiguous move into the EU27 camp in 2017. This was partly due to a realisation that between July 2016 and the present that Britain still lacked a settled policy on its final Brexit destination, and partly due to the reality that Brexit was a strict negotiation between the European Commission’s Article 50 Task Force, under Michel Barnier, and London.

“Britain won’t get to move to Phase II until it delivers on Ireland.”

Through a formidable diplomatic effort, Ireland firmly embedded its hopes and fears into the EU’s Negotiating Guidelines, translated into Barnier’s more detailed Negotiating Directives. That catapulted the Irish question into the trio of priorities on which the UK must deliver “sufficient progress” in order to move into the next stage of talks, namely the future trading relationship (Phase II). In turn, Barnier, who as regional affairs Commissioner in the early 2000s acquired an intimate knowledge of Northern Ireland, has taken his rhetorical lead from Dublin when scolding the UK on what more they need to do on the

Irish issue (his language at news conferences is remarkably similar to that used in private by Irish officials).

Ireland therefore enjoys both comfort and leverage: Britain won’t get to move to Phase II until it delivers on Ireland. Over the summer, the UK’s somewhat insouciant attitude to the Irish dilemma has given way to a more compliant posture. London has now admitted that the Irish question is “unique” and “complex”; it has agreed to abide by the Task Force’s six Guiding Principles, the second of which spells out that a hard border must be avoided. The mantra from Dublin and Brussels has been that it is up to the UK to figure out how.



“Dublin’s fervent hope is that the talks have been quietly binding the UK to a more sober outcome.”



Therefore, Ireland has managed to reassure itself that no deal is both unthinkable and unlikely. But the government is uneasy. Dublin has an intimate and intuitive feel for British politics, and it understands the graphic dynamic pushing Theresa May back and forth between the demands of euroskeptic MPs and Cabinet colleagues, and the expectations of European capitals. The Irish government is one of a number which called for Michel Barnier to be given some flexibility in moving towards Phase II, a prospect that was thwarted, according to the Financial Times, by France and Germany.

Dublin now sees the October Council, in which Theresa May was given warm words but a fleeting concession on sequencing, as a short-term set back. The boat has been docked, paintwork unscratched, and is ready to pull out again for a December rendezvous. Dublin’s fervent hope is that, rather than heading towards the cliff-edge, the talks have been quietly binding the UK to a more sober outcome. The government is now saying more explicitly that not all the Irish issues will be solved before Phase II (“sufficient progress” will be, to coin a phrase, sufficient), a hint that it will not play hardball if it means holding up Phase II.

But officials are also anxious that any robust commitments that the UK accepts before Phase II commences can be made weather-proof, should the calamity of no deal come about.



Carrying Brexit to its logical conclusion

By

RADEK SIKORSKI

Radek Sikorski was Poland's Foreign Minister between 2007 and 2014. Also previously Defence Minister and Speaker of Parliament, Sikorski is currently a senior fellow at the Centre of European Studies at Harvard University.



**“What is surprising
and dismaying to the
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Continental Anglophiles such as myself have been worrying ever since the referendum whether the UK will chose a version of Brexit that will amount to shooting yourself in the foot, in the knee, or even more vital organs. Arguably, the first has already happened with Britain’s loss of EU commissioner for financial services and a marked loss of influence in Brussels. The second would be a Brexit that imposes a trade barrier between Britain and her largest export market. The third would be an uncontrolled falling out of membership from all the treaties and institutions that have the ECJ as the court of arbitration, as sketched out in the article 50 resignation letter.

To an informed observer, Britain’s EU debate is not so much an argument on the preferred model of Brexit as a crash course in how the EU actually works. Britain’s politicians are catching up on 30 years of miseducation by Fleet Street. Whereas a year ago, you could hear in London that it would be unfair for EU member states to impose trade barriers on a post-Brexit UK, the penny seems to have dropped that accepting a customs border is the meaning of withdrawing from a customs union. Whereas in the referendum campaign leading Brexiteers assured the public that leaving the EU would not entail withdrawal from the Internal



Market, realization is dawning that you can't participate in it without being a rule-taker from the EU. While a few months ago the British government argued that there was no reason for the EU to move its regulatory agencies from the UK on Britain's exit, the cold light of day makes it clear that not only will those leave, but the cost of creating national ones in areas hitherto regulated by the EU will be considerable. A few more months and - who knows - leading Cabinet members might even accept that Britain cannot simultaneously claim to be in compliance with the EU acqui and have freedom to set its own rules. The learning curve has been steep, but is still behind events.

What is surprising and dismaying to the admirers of Britain and the British culture of government is that decision of vital national importance seem to be being taken not on the basis of their likely consequences, but on the basis of ideology. One wonders, for example, whether a study of practical consequences was carried out before the Article 50 notification was sent, or was it written from the dogmatic insistence that everything that has ECJ in it must go. Did it go through an assessment process in the departments, like a draft treaty or a bill, or was foisted on the Cabinet without much thought?

Reading British papers, you get the impression that titanic negotiations are taking, or will be taking place on the shape of Britain's relationship with the EU. To a Continental eye, Britain simply needs to decide: participation in the internal market with all the obligations it implies, Turkey-style membership in the Customs Union with all the problems in Ireland, or real freedom under WTO but with a customs barrier at Dover. There will be plenty of practical issues to negotiate, but progress is unlikely until we know what Britain wants. If all three options look less attractive than membership, that is purposely so, because membership is meant to be a privileged relationship. That's why countries aspired to it and went through wrenching adjustment processes to get it. Bottom line seems to me to be that while the costs of Brexit will come first and last at least a decade, the benefits are distant and uncertain. Yes, moving house is always stressful, but in addition the new digs - which looked so appealing in the brochure - may have hidden faults and a bigger mortgage.

**"Things
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Faced with the reality of Brexit would it not make sense to have a second referendum to make sure that the British people really want it, given the conditions? Yes, perhaps, from the British perspective. From the EU's arguments cut both ways. It's true that if Britain held a second referendum and had a change of heart, the article 50 letter could, before March 2019, be withdrawn and we could all save ourselves a lot of trouble. But on the other hand, we would never hear the end of British whining about how unelected global elites have again foisted their will on the unsuspecting

British people. How Brussels makes you vote until you get it right. No, things having got thus far, you need to carry your experiment of life outside of the EU to its logical conclusion. If it works, we will all be emulating Britain, like privatisation after the 1980s. If it doesn't, you can reapply, this time with the full knowledge of what the European Union is, what it wants to become, and what the rules of membership are. We need Britain in the EU as a committed member, or not at all.

Is the UK going to be ready for a Brexit no deal?

By

JOE OWEN

Joe is a Senior Researcher at the Institute for Government, working on their Brexit programme. He has recently led their research on border issues and immigration, and regularly comments on Whitehall's preparation for exiting the EU.

This article is adapted from one that appeared on the Institute for Government website in October 2017.

“The UK’s journey to leaving the European Union is more uncertain than ever.”



Despite the Prime Minister’s best efforts in Florence, a diplomatic assault on European Capitals and a last-minute dinner with European Commission President Jean Claude Juncker, the UK did not get the outcome it had hoped for at the October European Council. According to the leaders of the EU27, there had not been ‘sufficient progress’ in the withdrawal talks. Negotiations about our future relationship with the EU remain on hold. But there are signs of some progress. EU lead negotiator, Michel Barnier, said a breakthrough is within reach. The EU27 are drawing up their negotiating mandate for talks on transition and the future UK-EU partnership. Everything seems to be gearing up for the December European Council.

Now would be a good time for the UK to set out exactly what it is hoping to achieve from the negotiations. Instead, the focus has been on the ‘no deal’ option.

Calls for the government to prepare for no deal have come from two sides. For the more risk averse, it’s seen as vital to have contingency plans in place. Others, who are keen to call the EU’s bluff, argue that unless you are able to walk away from the negotiating table, you’re going to get a bad deal.

The reality is that seriously preparing for no deal requires money to be spent, and quickly. The cliff edge is fast approaching.

Preparing to crash out of the EU on day one requires thousands of new staff, infrastructure and technology and changes to over 30 government departments and public bodies. And that is just to prepare the border. HMRC Boss, Jon Thompson, has said that no deal preparations could cost them up to £450 million.

On top of that there will be a need for new public bodies and regulatory agencies, such as a new Trade Remedies body announced in the Trade White Paper, and the replication of over 40 Free Trade Agreements that we are currently signatories of through our membership of the EU.

Two pages in a Treasury White Paper may be the most we’ve seen publicly about Government’s plans for ‘the contingency option’, but behind closed doors in Whitehall these plans have existed for months.

In the spring of this year, we were told that every department had drawn up two Brexit plans – one for ‘a negotiated outcome’ and one for ‘no deal’. They mapped out a route to March 2019 that would ensure the UK was ready for every eventuality.

We heard that departments were asked to, wherever possible, avoid relying on new technology. Large ICT programmes and hard deadlines often prove incompatible. Unfortunately for HMRC, all hopes are pinned on a new system that is already experiencing difficulties.

With less than three years from referendum to exit, these no deal plans were already squeezed into heroic timelines. Many of them included decision points that appear to have come and gone.

Take border agents. It takes about a year to train even the more generalist members of staff, and in a no deal scenario we need up to 5,000. If the Government is going to recruit, hire and train a new cadre of Brexit border agents it needs to at least have started the process by now.

The Government’s Customs White Paper talked about using ‘inland clearance’ – moving customs checks away from the ports where possible, to limit the demand placed on the physical border – which is something the Institute for Government recommended in our recent report on Customs. But that requires specialist facilities to be built and staffed.

To date there has been nothing to suggest that any infrastructure is being built in the South East to give the Eurotunnel and Dover the inland facilities they will require in the case of no deal.

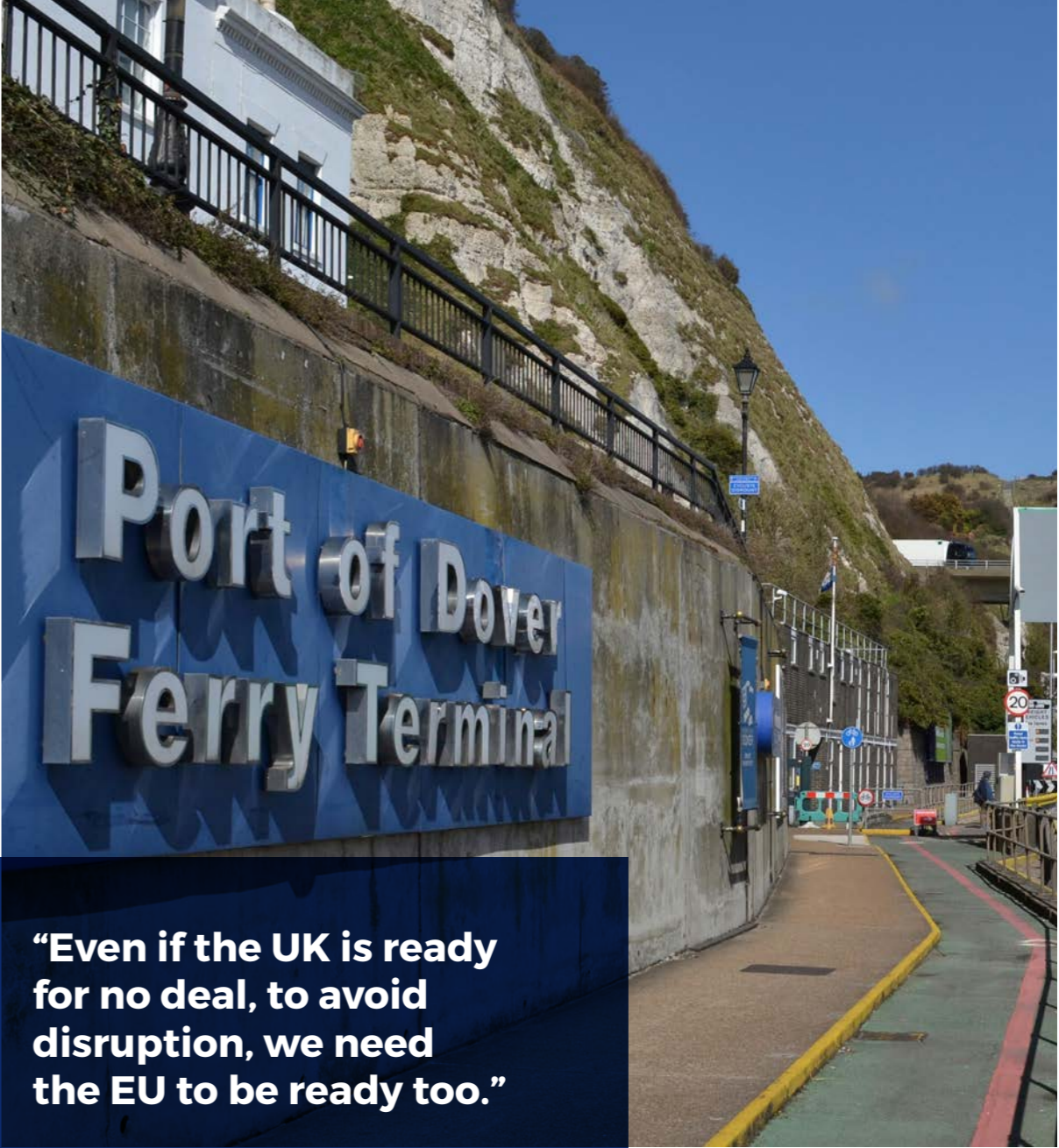
Past changes to the border suggest that there is not enough time to properly prepare for no deal.

Major changes at the border take time and government is just one of many players in the process. There are port operators, customs handlers and freight forwarders, all of whom need to prepare for no deal and all of whom will not want to spend money until they are sure it is necessary.

The Union Customs Code was agreed in 2013, introduced in 2016 and government and business had until 2020 until they needed to be compliant. In the past, and for relatively straightforward changes, businesses were given 18 months to adapt once the UK government had finished work on a change. They now have less than that to prepare for a no deal scenario.

Even if the UK is ready for no deal, to avoid disruption we need the EU to be ready too.

“Past changes to the border suggest that there is not enough time to properly prepare for no deal.”



“Even if the UK is ready for no deal, to avoid disruption, we need the EU to be ready too.”

Even if the UK’s border is ready for Brexit, ports could turn to gridlock if there are issues in Calais, Rotterdam or other European ports. The famous queues of lorries along the M20 in Kent in 2015 were a result of problems in Calais, not Dover.

While the Government must prepare to walk away with nothing in March 2019, there will be high hopes for sufficient progress come December.

Appendix: Implications of no Brexit deal

In the same way that there are different versions of the deal which Britain could reach with the EU, there are different possible avenues for 'no deal'. One, as the Chancellor Philip Hammond has alluded to, would be viewed as an 'amicable' scenario where issues like citizens' rights, regulatory equivalence and the Common Travel Area are resolved to avoid chaos, but without deals on trade or customs. The other possible scenario is a 'hostile' no deal where these issues are left in limbo and we do not really know what would happen. Although the first, amicable 'no deal' scenario is much more likely, either eventuality is possible. In the following pages, we examine the implications of each of these scenarios on key policy areas.

UK-EU trading relationship

Scenario	Implications
Deal	<ul style="list-style-type: none">• The UK and EU reach agreement on new terms for preferential trading. The exact form of that arrangement would depend on the content of the agreement.• The EU has previously stated that this would involve the UK picking one of the models already in existence – EEA, EFTA or the Ukraine model, for example. However, the UK Government has ruled out these models. As a result, it is difficult to predict what a bespoke agreement on trading terms – if that is possible – might look like.
Amicable no deal	<ul style="list-style-type: none">• However, the UK and EU could agree equivalence deals on a sector-by-sector basis where it would make sense for both sides to agree to this in industries like finance and law, for instance.
Hostile no deal	<ul style="list-style-type: none">• If no trade deal is agreed with the EU, trade between the UK and the EU27 would shift to 'WTO rules'.• In summary, trade on WTO terms would involve:<ul style="list-style-type: none">- no preferential tariffs. This could result in tariffs of up to 40% levied on UK manufactured goods.- additional requirements on meeting regulatory requirements of the jurisdiction to which a business is exporting.- third country for services status. This would negatively impact on the UK's trade in services, which account for 80% of the British economy and in which it has surplus of £24 billion with the EU.

Customs

Scenario	Implications
Deal	<ul style="list-style-type: none"> A wide-ranging deal has the potential to include streamlined processes around customs. For its part, the UK Government has published a White Paper on Customs in October 2017. At the heart of the Government's plan is a Customs Bill which will make provisions for a standalone UK customs system on Brexit day one, applying the same duties to every country with which it has no special deal. This duty would be decided by secondary legislation before we leave the EU. The Government has also outlined measures which would reduce congestion and upheaval at borders, include HMRC checks "inland as much as possible" and forcing companies to give pre-notification of shipments to the authorities. A transition period would also allow preparation time for the new system.
Amicable no deal	<ul style="list-style-type: none"> The key benefit of an amicable no deal would be if a transition period was agreed, allowing time for preparation for the new system.
Hostile no deal	<ul style="list-style-type: none"> The new customs system would need to be fully operational on day 1 of Brexit, presenting substantial challenges for the UK Government to prepare the infrastructure in advance of Brexit and for businesses to familiarise themselves with the new system.

UK trade with the rest of the world

Scenario	Implications
Deal	<ul style="list-style-type: none"> UK and EU may agree to UK negotiating and signing Free Trade Agreements (FTAs) with third countries during a transition period. This may be particularly applicable to the transposing of EU Agreements with third countries. On a trip to Japan in August 2017, Theresa May said the UK will seek to replicate the terms of existing EU FTAs with third countries.
Amicable no deal	<ul style="list-style-type: none"> UK will be free to negotiate and sign FTAs with third countries around the world. This may or may not be allowed during any transition period.
Hostile no deal	<ul style="list-style-type: none"> UK will be free to negotiate and sign FTAs with third countries around the world.

Transition

Scenario	Implications
Deal	<ul style="list-style-type: none"> UK and EU will likely agree a transition period for the UK's exit from the EU. In her Florence Speech in September, Theresa May outlined the UK Government's preference for a time limited, two year "implementation period" to give businesses and citizens certainty to adjust to the new relationship between the EU and UK. It remains to be seen what the details of any transition agreement might be – for example, if the UK will be free to sign FTAs with third countries during the transition period.
Amicable no deal	<ul style="list-style-type: none"> It is possible – but uncertain – that a transition period may be agreed.
Hostile no deal	<ul style="list-style-type: none"> There would likely be no agreement on a transition.

UK financial contributions to the EU

Scenario	Implications
Deal	<ul style="list-style-type: none">• In her Florence Speech in September, Theresa May outlined that the UK would honour all of its liabilities under this EU budgetary period, which ends in 2020.• Theresa May also outlined that thereafter, the UK would continue to contribute financially to EU programmes that it wished to participate in on a ‘pay-to-play’ basis.• The exact monetary figure that the UK will pay to the EU will be a subject of negotiation, however it is very likely that a financial commitment will have to be made by the UK to secure a deal.
Amicable no deal	<ul style="list-style-type: none">• It is possible that the UK may be able to neogitate separate deals and ‘opt-ins’ for certain EU programmes and regulators, for which the UK would likely make a financial contribution.
Hostile no deal	<ul style="list-style-type: none">• There would be no further budgetary commitments from the UK to the EU.

Irish border

Scenario	Implications
Deal	<ul style="list-style-type: none">• With both the Irish and British Governments keen to avoid a hard border, an agreement which mitigates against the impacts of that will be a fascinating exercise in political flexibility.• The route to a soft or no border would involve either the UK remaining within the Customs Union – which the UK Government has ruled out – or the EU agreeing to a bilateral customs and trade agreement between Britain and Ireland. The EU holds exclusive competence to negotiate trade deals with third countries.• The absence of a Northern Ireland Executive also makes reaching an agreement more difficult politically, with talks having to take place in different combinations of the UK Government, the Irish Government, the Democractic Unionist Party, and Sinn Féin.
Amicable no deal	<ul style="list-style-type: none">• It is possible that there may be an agreement to implement some measures designed to soften the border.• This may involve digitised borders and technology like automatic number-plate recognition, to intelligence-led intervention like licensing of hauliers, and random stops.• The Republic of Ireland views it as Britain’s problem to solve, with Taoiseach Leo Varadkar saying in July 2017: “What we are not going to do is design a border for the Brexiteers. They are the ones who want a border, it is up to them to say what it is, to say how it would work and to convince their own people, their own voters, that this is a good idea”.
Hostile no deal	<ul style="list-style-type: none">• With no agreement, there would likely be a hard border between the Republic of Ireland and Northern Ireland.

Immigration and citizens’ rights

Scenario	Implications
Deal	<ul style="list-style-type: none">Agreement reached on citizens’ rights, and the UK is free to introduce a new system of immigration subject to the terms of the agreement.Freedom of movement may continue, or continue with some restrictions, during a transition period.
Amicable no deal	<ul style="list-style-type: none">Citizens’ rights may be agreed in a limited deal separate from a deal on trade.A separate deal of this kind has been called for by European Parliament President Antonio Tajani.In her open letter to EU citizens on 19 October, Theresa May said “We are in touching distance of agreement”.
Hostile no deal	<ul style="list-style-type: none">Formal freedom of movement ends, and entitlement of EU nationals to reside in the UK, or of UK nationals to reside elsewhere in the EU, could technically disappear overnight.UK would need to design a new system of requirements for EU nationals, and may do so on the basis of bilateral agreements with individual EU Member States in return for UK resident rights.

Other areas of UK – EU co-operation

Scenario	Implications
Deal	<ul style="list-style-type: none">Many of the areas of non-trading and economic cooperation with the EU would be expected to be covered in the comprehensive deal.In her Florence Speech, Theresa May outlined that she desired ‘deep and wide-ranging partnership’ on security, certain EU programmes, and data sharing. This may also extend to building a framework for future cooperation on health and medicines, and aviation.
Amicable no deal	<ul style="list-style-type: none">It is likely that in the absence of a deal on trade, separate agreements would cover areas of priority for both sides that are relatively straight-forward to agree, for example continuing open access for aviation.
Hostile no deal	<ul style="list-style-type: none">The implications of a no deal are wide-ranging for a variety of different sectors. In aviation, for example, there could be a ‘legal abyss’ where air services agreements do not exist. In drug approvals, there may be a substantial backlog of applications for approvals to the UK’s National Institute for Health and Care Excellence, which would in turn lower patient access to new drugs.Overall, this would create a high level of regulatory uncertainty for a wide-ranging number of sectors and the UK Government would come under significant pressure to deliver urgent remedies.

What we do

In this uncertain environment, many organisations are facing difficult questions. How and when will the UK withdraw from the European Union? What impact will this have? Is there scope to influence the settlement? And how best to communicate with employees about what these issues mean for them?

Portland's Brexit Unit was established to help clients answer these questions, and ensure that their organisation has the right strategy for approaching Britain's exit from the EU. We provide counsel on the implications of Brexit for both British businesses and international firms operating in the UK and around the world.

This varies from top-level insight and advice on the political, economic and regulatory implications of Brexit, through to developing a corporate position, and engaging employees, government and media around the settlement.

The Brexit Unit brings together a range of experts from senior levels of government and both sides of the campaign to provide high quality advice on how Brexit is likely to affect their business, how they can most effectively influence negotiations, and what action they should be taking to prepare for the final outcome as they engage with government, EU decision makers and policymakers.

If you would like further information about Portland's services and how we can help you, please contact:



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