

Issue 38

9 August

2017

BREXIT UPDATE

CULTURE, TOURISM, EUROPE & EXTERNAL RELATIONS COMMITTEE
#SPICeBrexitUpdate



FINANCIAL SETTLEMENT

Contents

UK Government's financial settlement figure	1
UK Government to set out more details on Brexit policies	2
Scottish and UK Government Ministers to meet in Edinburgh	2
The future of fishing after Brexit	3
Increasing Irish influence?	4
A Brexit Transition Deal: Ten Key Questions	5

About this paper

This regular paper produced by SPICe sets out developments in the UK's negotiations to leave the European Union, the process for which has now formally begun following the Prime Minister's triggering of Article 50 on 29 March.

The updates will provide information on the UK Government's approach to leaving the EU, along with details of the Scottish Government and the other Devolved Administrations positions. The updates will also provide information on developments within the EU with regard to the UK's departure. Finally the update will provide information on the key issues likely to be at play during the negotiations and in developing the UK's future relationship with the European Union.

As was clear during the referendum campaign and since the decision to leave the EU was taken, there is an abundance of information and analysis available, and this SPICe paper will try to cover the key issues by drawing on that information and analysis. This week's update focuses on speculation about whether the UK Government is prepared to pay a settlement figure when it leaves the EU and indications the UK Government is set to publish a number of new position papers on Brexit related issues.

UK Government's financial settlement figure

On 6 August, the Sunday Telegraph reported that the UK Government was [ready to pay £36bn Brexit bill](#) (£) as a financial settlement when the UK leaves the EU on the proviso it allows talks on a future trade deal to begin as soon as possible. According to the newspaper:

“Senior Whitehall officials have concluded that such an offer - the first time a precise figure has been proposed - is the only way to break the current deadlock in negotiations.

However, the UK will only agree to pay the sum - equivalent to €40 billion - if the EU agrees to negotiate the financial settlement as part of a deal on future relations, including a trade deal.”

The article also suggests that the UK Government “been able to ascertain that the EU's actual opening position is around €60billion, not €100billion, as the most extreme interpretation of the EU demands had previously suggested”

Following the article's publication, it was [reported](#) that a Downing Street source had said the figure, which was mentioned by Brussels sources quoted in the Sunday Telegraph, was “inaccurate speculation”, playing down the idea that such a high bill would be acceptable to the government or Brexit voters.

The Guardian [reported](#) that Günther Oettinger, the EU's budget commissioner, told Germany's Bild newspaper in remarks published on Monday that Britain would remain bound by some previous commitments and would “therefore have to transfer funds to Brussels at least until 2020”.

The potential disagreement over the financial settlement for the UK's departure revolves around the EU's desire to see the UK agree a "methodology" on the bill whilst according to the Sunday Telegraph, “British ministers are equally adamant this is tantamount to agreeing a final bill and they cannot sign cheques except as part of a final deal”.

Given the European Commission's stated view that progress must be made on the three key issues for the withdrawal agreement of citizens' rights, the financial settlement and the island of Ireland before talks on the future trade relationship can begin, it will be interesting to see whether this proposal from the UK Government will be enough to trigger movement towards the start of negotiations on a trade deal.

The House of Commons Library has published a briefing examining [The UK's contribution to the EU Budget](#) which includes a section on the proposed financial settlement to be agreed as part of the withdrawal agreement for the UK's departure from the EU.

UK Government to set out more details on Brexit policies

The Prime Minister's office has [confirmed](#) that the Government plans to publish a series of position papers on key Brexit related issues in the coming weeks. The policy areas covered by these papers are expected to include customs arrangements and Northern Ireland.

Sky News' [coverage](#) of the story suggested that some of the policy papers could be published in the next two weeks. The report quotes a source who explained the purpose of the policy papers:

"These papers are meant to facilitate collective decision-making based on facts and evidence."

Sky suggests position papers will be published on a range of issues from digital economy and data protection, to Northern Ireland, customs agreement and goods and services arrangements once Britain quits the European Union.

Scottish and UK Government Ministers to meet in Edinburgh

On 9 August, Scottish and UK Government Ministers will meet in Edinburgh to discuss how powers which are currently EU competences will be dealt with following Brexit.

The Scottish Government's Deputy First Minister, John Swinney and the Minister for the UK's Negotiations for Scotland's Place in Europe, Michael Russell will meet with First Secretary of State Damian Green and the Secretary of State for Scotland David Mundell. Ahead of the meeting, the [BBC](#) quoted Damian Green on the issue of repatriated powers suggesting a common UK-wide approach would be necessary in some areas adding:

"There will be other areas where I intend that the Scottish and UK governments can make progress in identifying policy areas that could be released to Holyrood under the new legislative arrangements."

"We expect there will be a significant increase in the decision-making power of each devolved administration and we want to address this in a way which delivers certainty and continuity for people and businesses across the UK."

In response, Michael Russell told the BBC:

"The bill - as it currently stands - means that Westminster would take exclusive control over significant areas of devolved policy, such as support for Scotland's farmers and food producers and many aspects of environmental protection and control of our seas."

"We know that the UK government has its eye on more than 100 policy areas. That is a direct threat to the devolution settlement which the people of Scotland overwhelmingly voted for in 1997."

"Both we and the Welsh government have made it clear we could not recommend legislative consent to the bill as it stands, and today we will make clear that changes must be made to protect devolution."

The future of fishing after Brexit

On 3 August, the BBC and other media reported that during a ministerial trip to Denmark, the UK Environment Secretary, Michael Gove [confirmed that some foreign trawlers will still have access to UK waters after Brexit](#). According to the BBC report, Mr Gove said British fishermen would not have the capacity to land all of the fish in British territorial waters and as a result some access would therefore be granted to vessels from other countries.

The BBC compared Mr Gove's comments to an interview he gave on the Andrew Marr show on 2 July in which he said that no foreign boats would be allowed to fish within six to 12 miles of the UK coast, and, as an independent coastal state after leaving the EU, the UK would be able to extend control of its waters up to 200 miles from its coastline.

In response to Mr Gove's reported remarks in Denmark, the Scottish Fishermen's Federation [tweeted](#) comments from its Chief Executive Bertie Armstrong who said:

"It's clear from our meetings with government that control over UK waters will be in our hands after Brexit. We will be out of the CFP and we will decide who fishes where and for what. Our position is clear: we must have first call on quota.."

On the UK fishing industry's future after Brexit, [Cable](#), the new Scottish magazine devoted to International Affairs published an article in its August edition examining [Brexit and fisheries](#). The article by Graham Avery (a former European Commission official) suggests that those in the fisheries industry who voted for the UK to leave the EU to allow control to be retaken of British fisheries might end up disappointed. Graham Avery cites the UN Convention on the Law of the Sea as being an obstacle to taking full control over fisheries:

"Whether or not agreement is reached on future UK/EU trade relations, the possibility for the UK to take unilateral action on fishing quotas is circumscribed by the fact that, inside or outside the EU, it is bound by the United Nations Convention on the Law of the Sea, signed in 1982. This international agreement says that a coastal state has the right to control fishing within its 200-mile zone, but must also 'seek to agree upon the measures necessary to coordinate and ensure the development of shared stocks'. This clause is designed to avoid states setting catch limits unilaterally, which usually leads to overfishing and damage to stocks. Michael Gove's recent announcement that the UK will leave the London Fisheries Convention, signed in 1964, under which mutual fishing rights within 6-12 miles were agreed with six neighbouring countries, does not change the situation in respect of the UN Convention."

Graham Avery also argues that as "virtually all commercial fisheries in British waters are 'shared stocks' that are also found in the waters of other EU member states and/or Norway", it is important that shared management approaches are taken to manage stocks. The author recognises that whilst the UK Government accepts that future

fisheries quotas will need to be negotiated, he suggests it's unlikely the EU will grant everything the UK wants and concludes:

“Some will criticise this analysis as defeatist or ‘unpatriotic’. But there is no realistic prospect of the UK obtaining agreement for a ‘better’ allocation of fishing rights than the present one. Indeed, it may even lose (or have to pay for) British fishing rights in North Norwegian waters that are currently ‘paid for’ by transfers to Norway from other member states’ fishing allocations.”

Increasing Irish influence?

Writing in the Irish Times, its regular columnist Fintan O'Toole has [suggested](#) that the inability of the UK Government to reach an early position on Brexit and the shift towards seeking a transitional agreement has now led to a shift in the balance of power and given the Irish Government an opportunity to influence matters.

O'Toole suggests that the UK Government's decision to look for a transitional arrangement following departure from the EU changes the dynamics about the way departure terms will be considered. O'Toole points out that whilst the withdrawal agreement will only require the approval of a qualified majority of EU27 Governments and leaving without any agreement would remove any role for the Irish Government, a transitional deal (*presumably if it was separate from the withdrawal agreement*) would require the unanimous support of all EU27 Governments and as such the Irish Government now has some power over Brexit:

“To understand this new weakness, we have to recall that there were two possible scenarios in which the Irish Government had very little power. One was that the UK would simply walk away from the EU without any deal, the car-crash Brexit for which British prime minister Theresa May's old mantra, “No deal is better than a bad deal”, was meant to be the overture. If that happened, Ireland was completely impotent.

The other possible scenario was the straightforward one set out in article 50 of the Lisbon Treaty. The UK and the EU would negotiate a full exit deal by March 2019. In this case, Ireland would have very little power either. Even if the deal was a betrayal of our interests, we could not veto it...

...If there is a new assertiveness in the pronouncements on Brexit of Taoiseach Leo Varadkar and Minister for Foreign Affairs Simon Coveney, it is because the balance of power has shifted in Ireland's favour. The two scenarios in which Ireland has no real muscle are effectively off the table.”

On the likelihood of the UK seeking a transitional deal, O'Toole wrote:

“But – from an Irish perspective – this changes everything. Under article 50, it is indeed possible for the member state that is exiting to seek to extend the remit of the EU treaties beyond the stipulated two years.

This is what a transitional period would have to mean.

But – and here’s the rub – this can be done only with the unanimous consent of every other member state. In other words, Ireland has a veto.

We can now block the implementation of a transitional deal even if Germany and France and every other member state wants it to happen. The chaotic foolishness of the Brexiteers has, to coin a phrase, allowed us to take back control.”

On how the Irish Government might look to exert this new found influence, O’Toole is less clear though he does refer to the Irish Government’s priority for any agreement:

“the Irish Government’s absolute need (and the need of the people of Northern Ireland) to avoid a hard Border on the island of Ireland.”

O’Toole concludes the Irish Government now have the power “under EU law to derail the whole Brexit process”.

A Brexit Transition Deal: Ten Key Questions

With it appearing more likely the UK Government will seek a transitional deal between Brexit and the introduction of a new trading relationship (if one can be successfully negotiated), Dr Kirsty Hughes, Director of the Scottish Centre on European Relations has written about the [ten key questions](#) that should be asked about the prospects of a transitional deal. These questions include:

- How long a transition deal might last?
- What the nature of the transitional deal is in relation to the single market and customs union?
- Who decides the transition deal?
- How will free movement of persons be dealt with in any transitional deal?
- Will there be a deep and comprehensive UK-EU27 relationship at the end of a transition period?
- Could the UK end up deciding to stay in the EEA – a soft Brexit?
- If the UK has a single market and customs union transition, could it decide at the end of the three years to stay in or re-join the EU?

Given the suggestion by Fintan O’Toole that Ireland has increasing influence as it could potentially block a transitional deal (see the article above), Dr Hughes comments about who decides a transitional deal are of interest. Dr Hughes wrote that the mechanism for agreeing a transitional deal would depend on if it was part of the withdrawal agreement or a new separate agreement:

“The transition arrangement will need to be part of the UK’s divorce or exit deal with the EU27. Then it will come under the Article 50 rules that specify a super-qualified majority to agree the deal – and a majority vote in the European Parliament. If the

transition arrangements were treated as a separate deal, they would risk needing ratification across EU member states.

The European Council decision on the transition deal, within the exit deal, will have to be squared with arrangements for the UK to be temporarily in the EEA (i.e. the EFTA and EEA four will need to be brought on board). There may be concerns on the UK unbalancing the EEA (and EFTA) but equally, without an EEA transition, Norway, Switzerland, Iceland and Liechtenstein face their own potential cliff edge in terms of the future trade deals they will need to agree with the UK (separately from the EU27) when the UK leaves the single market and customs union.”

Iain McIver
SPICe Research

BREXIT UPDATE

#SPICeBrexitUpdate

CULTURE, TOURISM, EUROPE & EXTERNAL RELATIONS COMMITTEE

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Iain McIver on extension 85294 or email iain.mciver@parliament.scot. Members of the public or external organisations may comment on this briefing by emailing us at SPICe@parliament.scot. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at sp.info@parliament.scot.

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

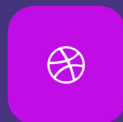
Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP.

www.parliament.scot

Keep up to date with the Committee via the following links:



@SP_European



www.parliament.scot/europe



europe@parliament.scot



YouTube