

The Consequences of “no deal”

By David Hearne

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In my last blog post, I discussed the constraints facing the EU in negotiations over Brexit and concluded by expressing concern that the UK government has failed to adequately understand the domestic constraints faced by the EU. Similarly, as the Salzburg summit demonstrated, EU leaders at times misread the political situation in the UK and underestimate the challenges facing a government that is as deeply divided as the country at large. As such, whilst there now appears to be renewed optimism^{[\[1\]](#)}, the risk of a ‘no-deal’ outcome remains significant in spite of the fact that it is in neither side’s interest.

As such, this article seeks to explore in a little more depth exactly what such a scenario might involve and the challenges it poses. To begin with, the phrase “no deal” is something of a misnomer. As both its opponents and supporters alike are keen to observe, the EU has become deeply embedded in a huge number of areas of British law and society. Firstly, it is important to keep a clear distinction between the so-called “withdrawal agreement” and what the UK government has rather euphemistically named the “future partnership”. Since the end of 2017, when the EU deemed that “sufficient progress” had been made vis-à-vis the former, talks have dealt with both concurrently. The withdrawal agreement (sometimes referred to in the press as the “divorce”) is the document that is designed to allow an orderly withdrawal from the EU. It is this that Article 50 of the Lisbon Treaty refers to with its 2-year timetable.

In the UK’s case, this involves settling 3 main issues:

1. The rights and responsibilities of UK citizens living in Europe and EU citizens living in the UK after 29th March 2018.
2. The financial settlement of outstanding liabilities (related to financial obligations the UK has undertaken as an EU member, including its share of pension liabilities of past and current staff).
3. The Northern Irish border (where the EU and UK both want to maintain “frictionless” trade and avoid any physical infrastructure on the border).

Additionally, the UK and EU have agreed a so-called “transition” or “implementation” period to last until the end of the current multiannual financial framework (31st December 2020). During this period, the UK would remain a *de facto* member of the EU (i.e. it would continue to be a member of all EU agencies, part of the Single Market and inside the European Union Customs Union), subject to the jurisdiction of the Court of Justice of the EU but without any voting rights on the European Council. Similarly, it would lose all its MEPs and

thus have no voice in the European Parliament. Such a transition period is contingent upon successful completion and ratification of the withdrawal agreement.

If a withdrawal agreement is not signed and ratified by 11pm on 29th March 2019 (the date when the UK ceases to be a member of the EU *de jure*) then the UK will immediately become a third country vis-à-vis the EU. This is a problem precisely because the UK's membership of the EU encompasses a vast range of issues that fundamentally relate to many areas of the UK's national life.

All countries in the EU are members of a number of EU agencies including the European Aviation Safety Agency, the European Medicines Agency, the European Chemicals Agency, Euratom (which deals with nuclear safety) and others. It is possible for a non-EU country to be a member of some of these (Switzerland, for example, is a member of the European Aviation Safety Agency) but it would require negotiation and agreement, particularly if the UK is not part of the European Economic Area. This is highly unlikely in the absence of a withdrawal agreement. As such, the UK would, overnight, cease to be a member of any of the above agencies. This would have huge implications for aviation (where parts manufactured in the UK would all need to be re-certified). It would have major ramifications for the ability to carry out even relatively routine aircraft maintenance in the UK. A multi-billion pound industry would, overnight, struggle to function.

The same would be true for the European Chemicals Agency, which deals with a frankly bewildering array of chemical compounds. This would affect diverse industries such as vehicle manufacture (for which hydraulic fluids, adhesives, anti-corrosion coatings, sealants and paints area all regulated), aircraft manufacture (for which highly specialist coatings are a particular concern) and many others. If the UK ceases to be a member of the European Chemicals Agency overnight then UK companies that are currently certified as REACH compliant would lose their rights to be able to sell into the EEA (31 countries). The automotive industry is heavily affected by REACH and loss of continuity in this regard could pose challenges^[2].

The same is true, naturally, of pharmaceuticals with regard the EU Medicines Agency. None of this touches upon the challenges associated with haulage, customs barriers (and the need to prove correct payment of customs duties, including rules of origin compliance) and the need to prove that the goods in question adhere to EU regulation. On the services side, much has been said about the loss of passporting rights for financial services firms but less has been said about the legal products that often go alongside this (some of which might also be affected by the end of passporting). Similar difficulties apply with regard the leaving of the digital single market and end of the audio-visual media services directive (as discussed in a previous blog post [here](#)).

What will be the post-Brexit rules on cross-border haulage services? This will need to be agreed: at present, providing hauliers have the correct licenses they can effectively treat the EU as a single country. Post-Brexit this will not automatically be the case. Indeed, it is difficult to see how this will be done without some form of freedom of movement for drivers. Can such issues be overcome? Undoubtedly. Is the political will there? Probably. Nevertheless, it will require political agreement on yet another issue. The same is true for flights: no sensible person wants to ground flights and there is no sensible reason why the UK should not maintain a far-reaching “open skies” deal with the EU. Nevertheless, this requires proactive action: such an agreement needs to be drafted and signed. More generally, the UK needs to ensure that it has bilateral open skies agreements with non-EU countries. At present, it has some 111 of these. A further 17, however, are provided by virtue of its EU membership and will need to be renegotiated^[3]. These include important flying partners like the USA, Canada, Iceland, Norway, Switzerland, Morocco and several others.

The upshot is that talk of “a deal” or “no deal” is a complete misnomer. There are a large number of issues that need to be worked through and many agreements that need to be signed. Moreover, even in the event that a withdrawal agreement is signed and ratified, the UK will only have a further 21 months before it faces the same challenges all over again. Ultimately, an orderly withdrawal from the EU is not the work of a moment (or even a year) but is likely to take a significant length of time. The lesson is that even when there is a huge amount of goodwill and desire for success, there remains much work to be done.

References

[1] Wishart, I. (2018) *EU Ready to Offer U.K. ‘Super-Charged’ Free-Trade Deal*, Bloomberg: New York. Available at: <https://www.bloomberg.com/news/articles/2018-10-05/eu-is-said-ready-to-offer-u-k-super-charged-free-trade-deal>

[2] European Automobile Manufacturers’ Association, 2018, *Automotive Industry Guideline on REACH*. Available at: https://www.acea.be/uploads/publications/AIG-4.0_English.pdf

[3] Department for Transport, 2018, *Flights to and from the UK if there’s no Brexit deal*. Available at: <https://www.gov.uk/government/publications/flights-to-and-from-the-uk-if-theres-no-brexit-deal/flights-to-and-from-the-uk-if-theres-no-brexit-deal>