

# Brexit: deal, no deal, bad no deal

Blog post by FS & EU Institutions Practice Lead Denzil Davidson, 06 October 2020

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It has become something of a ritual in the past three months for political leaders on both sides of the Channel to urge the UK's and EU's negotiators to work "intensively" to resolve the Brexit impasse. Following Saturday's call between Prime Minister Boris Johnson and Commission President Ursula von der Leyen they are to work [intensively](#) again. But intensity of negotiation does not necessarily entail movement on substance, and movement on substance is what is needed now.

We are not yet at crunch time, but it is within sight. The European Council on 15/16<sup>th</sup> October will be an important political moment but it is not make or break. EU leaders have been clear that if a Council later in the month were needed to approve an agreement then it would be held. The unavoidable constraint is the time needed to turn any agreement on principles into a full legal treaty text and ratify it. The end of this month is the latest at which that could happen, and more pessimistic officials believe that a failure to reach agreement by the end of the third week would make timely ratification practically impossible.

The questions of substance have been familiar for months: state aid, other level playing field issues, governance, and fisheries. On the first two the British Prime Minister will need to move some distance towards the EU's position to secure agreement. Although state aid has led the headlines, the question of standards on environmental, social and employment policy has not gone away. The EU still expects a commitment to non-regression from current standards. If that really turns out to mean preserving in perpetuity current EU legislation on the UK statute book then there is a problem. On governance, the British government's behaviour over its Internal Market bill has made the EU determined to have tough enforcement mechanisms. Trust between the UK and the EU had become low. It turns out there was further to fall.

Both sides also know that they must move further on fisheries access and here the politics is more untested. It is not clear whether the governments whose fishing communities have used British waters have prepared them for inevitably lower access after the transition period. And Downing Street should be thinking hard about what its MPs for fishing communities will accept: a parliamentary revolt by them would command widespread support on the Conservative benches. Relying on Labour votes to get a free trade agreement through Parliament is something Boris Johnson will absolutely not want to do.

Despite parliamentary rumbles of discontent, Mr Johnson's stock of political capital is still considerable. He knows the landing zone for agreement. With the possible exception of fisheries, no opposition from within his parliamentary party, and certainly his cabinet, would stop him getting it through. Equally, no one can stop him if he decides not to reach an agreement. The choice is his alone. An agreement will fall short of his advisers' ideal Brexit: it would probably mean some small constraint on the UK's future policy options. He will also consider the costs of no agreement.

The important point here is that there are in fact two no agreement scenarios. There is the simple failure to agree a free trade agreement. If the UK fulfils its legal obligations under the Withdrawal Agreement, including the Northern Ireland protocol, this could be a relatively amicable disagreement. There should be a range of narrow bilateral agreements to allow basic co-operation, for instance on flights, and some positive equivalence decisions would not be inconceivable. On this basis, the economic relationship might, over time, be built back up.

The second is a disorderly breakdown in which the UK is seen by the EU to be in breach of its legal obligations. Given the provisions breaching the Northern Ireland protocol in the Internal Market bill and the pledged measure on tariffs in the forthcoming finance bill, this is where the UK and the EU are currently heading if there is no free trade agreement. In this scenario there are likely to be no bilateral agreements and little cooperation for some time. There should be the temporary unilateral measures both sides set out in case of no deal last year.

This scenario comes with a dynamic that means things get worse before they get better. The measures in the Internal Market bill do not really threaten the integrity of the EU's single market. But in the EU's eyes the envisaged proposal to require, as the default, no tariffs to be paid for goods going from Great Britain to Northern Ireland very probably would. Moreover, in a world where the UK experiences the economic disruption of no free trade agreement, aggravated by an uncooperative relationship with the EU, political pressure will grow to unpick other parts of the Withdrawal Agreement. The focus would be on the other new barriers to trade between Great Britain and Northern Ireland created by the protocol as well as the UK's remaining financial obligations.

These would not only raise new obstacles to the restoration of orderly UK/EU relations. If Ireland becomes a hole in the single market into which goods that have not paid the EU's external tariff and which may not meet the EU's regulatory standards can pour, then Ireland will face a choice. Either it enforces a border for goods with Northern Ireland or it can expect, in time, other EU member states to impose one on trade between it and them. This is the choice Ireland has striven to avoid since the Brexit referendum. Having to make it would put British/Irish relations back decades; Ireland would also likely appeal to its fellow EU members for solidarity. Ireland's choice of border would additionally affect stability in Northern Ireland.

This is a recipe not just for a very distant economic relationship but for broader damage to other areas of cooperation. Both sides will feel embittered and leaders on both sides will claim to be the injured party. Mutually inflicted pain and mutual resentment and recrimination are unlikely to lead to positive politics. This month we shall all discover whether these leaders can find the flexibility and a small measure of political courage to prevent such an outcome.