

Brexit Negotiations: Phase One Completed?

Introduction

Phase one of the Brexit negotiations was concluded after the European Council agreed on the 15th December 2017 to move onto the next crucial phase of the negotiations.¹ After months of talks an agreement has been reached between the UK government and the European Union (EU) on three key areas of a 'divorce' settlement: Three areas which the Union's negotiators argued had to be addressed first before any movement was made toward discussions on trade and the future partnership between the UK and the EU. These issues were the rights of EU and UK citizens post-Brexit, the future status of the Irish border, and the financial settlement. Phase two will begin next year and will focus on the future relationship of the UK with the bloc; however, the three issues of the divorce settlement have not yet been enshrined into a legally binding agreement. The political guarantees given over the three areas have enabled the negotiations to move forward, but some of the details remain inconclusive and illusive. These three issue areas will have a great bearing on how the issues in phase two, especially regarding the future trade agreement, will be concluded. The subject of the negotiations in phase two also have the capacity to extend the talks by months potentially years.

The Negotiations of Phase One

The negotiations in phase one of the talks focused on the rights of EU citizens in the UK and UK citizens in the other 27 EU member states; the border between the Republic of Ireland and Northern Ireland; and the financial settlement.

Citizens Rights

The status and rights of EU nationals in the UK, and UK nationals in the EU was a matter of top priority for both sides.² With the UK leaving the bloc it posed the question of what would happen to more than 3 million EU citizens living in the UK, and

more than 1 million UK citizens living in the other 27 member states. What would be their rights post-Brexit considering that millions of EU citizens had decided to exercise their right to live, work and study in another member state?

The Irish Border

With the UK leaving the EU, the Single Market and the Customs Union the fear of a hard border returning to the island caused many to raise serious concerns not just about the economic impact, but also the societal impact, and the impact that Brexit would have on the stability of the island given that Northern Ireland leaving the Single Market would undermine the Good Friday Agreement. The Good Friday Agreement would have to be revised given that one of the parties would no longer be a member of the EU and would therefore make the current treaty invalid.³

The Financial Settlement

The financial settlement was undoubtedly going to be the greatest sticking point in the negotiations and one that has caused a great amount of anger from Pro-Brexit British Members of Parliament (MPs). This financial settlement is what the UK owes for various EU commitments and projects made as a member state. The amount owed has fluctuated a lot since the UK decided to leave the bloc however current estimations place the figure somewhere between €30 billion - €60 billion.⁴

What Has Been Agreed in Phase One?

After negotiations dragged on and fears that the UK government would miss an EU deadline on making progress on the three issues in time for the European Council summit in December, the announcement was made on the 15th December 2017 that an agreement had been reached on the three key issues and that sufficient progress had been made to help move the negotiations onto the second phase.

Citizens Rights

It has been agreed that there will be no changes to the rights of either EU nationals residing in the UK or UK nationals residing in the other 27 EU member states.⁵ Further discussion on the specific details of this topic will continue into phase two.

The Irish Border

It has been agreed by both sides of the negotiating table that no hard border should return to the island of Ireland.⁶ How this will be managed with regard to future trade and the Good Friday Agreement has yet to be determined.

The Financial Settlement

The UK government has said that it will pay a financial settlement however this exact figure still remains unclear; however, media sources reported that this figure will be in the region of £35-£39 billion.⁷ The exact figure will be finalized in phase two of the negotiations.

The Negotiations of Phase Two

Phase two of the agreement will begin next year and will focus on the future relationship between the EU and the UK. This will predominantly focus on the two year transition period and 'the framework for the future relationship'.⁸ To date, the UK government has stated that it wants a deep and close relationship with the EU and wants to begin discussing a trade agreement that closely mimics current standing arrangements.⁹ However, because the British government's current position is that it does not want to be in the Single Market or the Customs Union the EU's chief Brexit negotiator Michel Barnier has stated that the UK would get a Canadian-style trade agreement and that it would still take years to negotiate.¹⁰ The freedom of movement principle is absolutely non-negotiable for the EU as it is fundamental to the integrity of the Single Market. The UK would therefore

either have to abide by the freedom of movement and be in the Single Market, or have a Canadian-style trade agreement that would offer far less in comparison to what the UK currently enjoys.

However, whilst the UK government is currently of the position that it does not want to be in the Single Market, its position on the Irish border means the UK's options are limited. In order to ensure that no border returns the prevailing opinion is that the easiest way to achieve this is to have regulatory alignment between the Republic of Ireland and Northern Ireland; thereby avoiding a hard border.¹¹ Under this scenario Northern Ireland would effectively be in the Single Market whilst the rest of the UK would not be. The 'problem', however, stems from the Conservative party's coalition partners, the Northern Ireland Democratic Unionist Party (DUP), who have categorically stated that they do not want to operate on a different regulatory standard than the rest of the UK.¹² This places a great deal of complexity on these negotiations. The British government has proposed that the UK's regulations would remain close to the EU's in order to facilitate the creation of a trade deal that bears close resemblance to its current arrangement;¹³ however unless the UK offers full regulatory alignment this will not be accepted by the EU because they have to "avoid upsetting existing relations with other third countries".¹⁴ Other forms of cooperation will also be discussed within phase two including "the fight against terrorism and international crime, as well as security, defence and foreign policy."¹⁵

Key Challenges of Phase Two

There are a plethora of intricate and complex challenges ahead in phase two; however the issues of constructing the framework for the future trade deal and the proposed transition period will cause the greatest amount of heated debate in the negotiations, and further consternation for businesses and citizens.

The Trade Deal

By far the greatest priority for the UK government is the construction of the framework for the future relationship with the EU with regards to trade and this alone has the potential to delay negotiations for months if not years. The British government has been given a deadline of three months to finalize its vision of the future trade deal with the EU.¹⁶ In brief, the British government ideally wants near to full access to the Single Market without accepting the EU's principle of free movement or paying into the EU budget and having some regulatory freedom. This policy however is impossible. The EU's chief negotiator Michel Barnier has already stated that this is impossible and that the Single Market cannot be divided up in this way.¹⁷ Protection of the integrity of the Single Market is vital for the EU and the UK will not be treated as an exception. The UK may be an important part of the European economy, but the integrity of the Single Market is vital for the EU's existence and this will not be sacrificed. How this thorny subject will be resolved will be a topic of intense debate that has the capacity to prolong talks for months if not years.

A further problem concerns the promise of no hard border between Ireland and Northern Ireland. Because of the DUP's stated demand that Northern Ireland must have the same regulatory standards as the UK in theory the only way this can be achieved is for the UK as a whole to have full regulatory alignment with the EU.¹⁸ This means the UK would have left the Single Market in name only which is something pro-Brexit members of the Conservative Party are vehemently against.

The Transition Period

The position of the EU regarding the proposed transition phase is very clear: In its stipulated guidelines for the next phase of Brexit negotiations the European Council agreed that during the transition period the UK would cease to be a full member of the EU and have instead a 'third country' status.

"As regards transition, the European Council notes the proposal put forward by the United Kingdom for a transition period of around two years, and agrees to negotiate a transition period covering the whole of the EU acquis, while the United Kingdom, as a third country, will no longer participate in or nominate or elect members of the EU institutions, nor participate in the decision-making of the Union bodies, offices and agencies."¹⁹

However, during this transition period the UK will have to abide by all EU laws and regulations during this limited period of time.

"All existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures will also apply, including the competence of the Court of Justice of the European Union. As the United Kingdom will continue to participate in the Customs Union and the Single Market (with all four freedoms) during the transition, it will have to continue to comply with EU trade policy, to apply EU customs tariff and collect EU customs duties, and to ensure all EU checks are being performed on the border vis-à-vis other third countries."²⁰

For the EU, this position is non-negotiable and it has already caused problems for the Prime Minister with her pro-Brexit Cabinet colleagues and the pro-Brexit backbench MPs in the Conservative Party who argue that the UK will become a "vassal state" of the EU.²¹ How exactly the Prime Minister will perform this near impossible balancing act of satisfying both the EU and her pro-Brexit party members will likely be a cause of many political headaches in the months to come.

Conclusion

The complexity of the negotiations has the potential to drag on for months potentially years. The EU's position has been made clearly and loudly: It is now up to the UK to decide how it wishes to proceed and what future it wants with the EU. Realistically the UK has very few options: It can stay in the Single Market and Customs Union in which case it would have to accept all four

freedoms and pay into the EU's budget. It could leave the Single Market but have full regulatory alignment with the EU, in which case the UK leaves in name only. Or the UK leaves the Single Market and has a Canadian-style trade agreement that will be merely a shadow of the relationship that the UK currently enjoys.

Naively optimistic pro-Brexit supporters in various circles believe that there can be a new model in which the UK can enjoy all the benefits but not accept the same rules. This, however, is totally impossible for the simple fact the EU is committed to protecting the integrity of the Single Market. Any deal of this nature would undermine the very essence of the EU project and risk further member states wanting preferential treatment. The UK government, therefore, has very limited options if it continues to be committed to leaving the European Union. Whichever option Britain decides for will determine the future of the UK for years to come and is limited in fact to a simple choice: Participate in the Single Market, or leave the largest trading bloc in the world and risk the disintegration of the United Kingdom itself.

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Notes

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