

Brexit – Looking Forward

International conference held at the National Museum of Iceland on August 29

Preface

This is an executive summary on the International conference ‘Brexit: Looking Forward’, which was hosted by the Institute of International Affairs of the University of Iceland in collaboration with Iceland’s Ministry for Foreign Affairs. The conference took place on August 29, 2019, at the National Museum of Iceland. The conference is organised as part of the Erasmus+ co-funded project Post-Brexit Europe: Lessons from the EEA (PELEEA).

The UK is set to leave the EU no later than 31 October 2019. However, it is still largely unclear under what conditions the UK will leave and how future relations with the EU will be shaped. This conference looked at the current state of affairs and assessed future trajectories in EU-UK relations. What policy areas are likely to form part of the EU-UK future relationship? What might the institutional framework of this future relationship look like?

Programme:

- i. *Welcome words* by **Pia Hansson**, Director of the Institute of International Affairs of the University of Iceland.
- ii. *Opening address* by **Guðlaugur Þór Þórðarson**, Iceland’s Minister for Foreign Affairs

Session I: Scope of the EU-UK future relationship

- iii. *Presentations* by **Hugo Brady**, Advisor and speechwriter to Donald Tusk, the President of the European Council, **Larissa Brunner**, Policy Analyst at the European Policy Centre, and **Sam Lowe**, Senior Research Fellow at the Centre for European Reform.
- iv. *Panel discussions*. Panellists were **Henry Haggard**, Chief of Staff of the United States Mission to the European Union, **Julie Smith** (Baroness Smith of Newnham), Reader in European Politics at the University of Cambridge, and **Maximilian Conrad**, Head of Department and Professor in Political Science at the University of Iceland.

Moderator: **Stefán Haukur Jóhannesson**, Iceland’s Ambassador to the United Kingdom.

Session II: Institutional framework of the EU-UK future relationship

- i. *Presentations* by **L. Alan Winters**, Director of the UK Trade Policy Observatory in the University of Sussex, **Halvard Haukeland Fredriksen**, Professor at the Faculty of Law at the University of Bergen, **Steven Blockmans**, Head of EU foreign policy, Head of Institutional Affairs at CEPS and Professor of EU External Relations Law and Governance at the University of Amsterdam
- ii. *Panel discussions*. Panellists were **Christian Frommelt**, Director of the Liechtenstein Institute, **Georgina Wright**, Senior Researcher at the Institute for Government and **Jóhanna Bryndís Bjarnadóttir**, Minister Counsellor at the Ministry for Foreign Affairs
- iii. *Concluding remarks* – A future model for the UK: Lessons from the EEA?

Moderator: **Jóhanna Jónsdóttir**, Brexit Coordinator at the Ministry for Foreign Affairs

Session 1: Scope of the EU-UK future relationship

Hugo Brady - State of play regarding the future EU-UK relationship

- It is of vital importance to settle the so-called legacy issues of the British membership to the EU. The three issues are 1) settling the issue of Britain's budgetary payments to the EU budget, 2) guaranteeing the rights of EU citizens in Britain and the rights of British citizens living in the EU states, and 3) the EU wants to make sure that there is no hard border in N-Ireland. A no deal should be avoided as a no deal is a big risk and a big deal.
- *The EU view of future EU-UK relations is in six key areas:* 1) trade and cooperation – it will not be the same as it is currently, no free trade deal can simulate the Single market; 2) law enforcement and criminal justice – they wish to have close cooperation but as the UK cannot stay in the European Court of Justice it cannot remain as close as it is now; 3) foreign policy – no joint decision making; 4) security and defence – the EU's role is currently small so Brexit will not affect it greatly; 5) research – hoping to work well together, e.g. with the European research council and; 6) data protection – hoping to find a common ground.
- A big part of the UK's economic relationship is service based (like the EU). Therefore, although a free trade agreement (like EU-Canada) could be arranged, it only covers goods, not services.

Conclusion: the UK and the EU are attempting to work together on these above-mentioned issues. The UK and the EU are highly connected in many areas so they must find a solution. The UK's undetermination poses a problem.

Sam Lowe – What does the UK want from its future relationship from the EU?

- There are different routes that the UK could take in the context of trade.
- From a trade perspective, the EU's rules are being exported to the UK. The UK is in the EU's influential regulatory sphere even if it chooses a no-deal scenario.
- The UK cannot make its own rules regarding trade. Therefore, the UK can decide to greatly integrate with other regulatory superpowers away from the EU's sphere, such as moving towards the US in certain areas, make free trade agreements – i.e. reorienting the UK economy. If this pivot away from the EU economy sphere is wanted by the UK, one of the only ways to create the conditions necessary to deliver it is no deal. The reason is that the trade agreement with the US as opposed to a trade-off is unpopular. But the British population believe that a trade deal with the US can offset the economic loss due to Brexit – based on perception (polls etc).
- The UK cannot fully extricate itself from the EU regulation regime and still have an open border in Ireland. If there is a certain regulation regime, there are going to be controls, which could compromise the Good Friday Agreement. However, it is likely even in the case of a no-deal the discussion on N-Ireland will continue and will likely end up with specific arrangements and plans for that area.

Conclusion, it is unclear what the UK is going to decide to do just yet but there are trade-offs inherent for whatever it chooses. Lowe argues that it will have a similar economic relationship to Switzerland – very integrated on goods but less on services.

Larissa Brunner – Is the EU’s position on cherry-picking set in stone?

- There are four areas that are important to the EU regarding Brexit: a) State aid, b) environmental standard, c) labour and social standards and d) taxation. The EU – UK have agreed on a blueprint on the context on the withdrawal agreement on these areas.
- They agreed a) that in the transition period and backstop arrangement EU rules would continue to apply; b and c) approved non-aggression clauses, but that means that labour cannot fall below certain standards; d) non-ambitious measures, difficult as it touches on sovereignty. They commit to good government, OECD and other international standards. However, if the UK leaves without the withdrawal agreement it is not bound by the rules such as the level playing field rules.
- In an extreme scenario, the UK could move away from the European model of trade/investment and put the European economic model under pressure. The UK might lower its standards to compete outside of the framework of the EU which is troublesome for the EU because it might undermine its own competitiveness. If the other EU states felt they had to lower their standards for competitiveness, it could mean a regulatory race to the bottom. The EU cannot use existing approaches to address this as the WTO rules on state aid only covers goods, not services, which is a problem as services account for a large part of UK’s GDP and exports to the EU. Moreover, non-regression clauses suffer from weak implementation and enforcement and international frameworks tend to be less stringent than EU rules.
- The UK government is likely to seek hard commitments that can bind future governments. However, a UK divergence from the EU will not occur, because existing policy preferences are not going to change overnight. If the government would try to change the economic system dramatically it would encounter significant resistance.

Conclusion: The EU’s cherry picking is not necessarily set in stone, but it needs to protect its fundamental principles, its economic and social model. It must prevent the UK undermining it by cherry picking in those areas.

Panel discussions

There were 3 main threads in the panel discussions

- i. N-Ireland featured prominently in the discussions and the issue of a backstop. There are concerns over the N-Ireland border and possible checks or physical infrastructure. Panellists noted that nobody wants Ireland to go back to instability and the key with the backstop is that it is a proxy – i.e. what does Britain want to be as a country after they leave the EU? The backstop was not designed for the whole of the UK.
- ii. The question of whether the 2016 referendum was legitimate or not was discussed: considering wording of the referendum, the breaking of financial laws and Russian interference. The conclusion was that both Johnson and May use/d the referendum as a mandate for Brexit and from the start it has been taken as politically binding by almost all politicians. Furthermore, the damage has been done to British politics whether or not a new referendum will be held.

- iii. Regarding trade and the course of the negotiations, it is still unclear what the UK wants. There is a lot of noise surrounding Brexit but, in the end, there are only three options: no deal, remain or deal. The decision *has* to be made.
- iv. *Conclusion of Session I*: most speakers agreed that at least in the long run that there might be a regulatory divergence between the EU and the UK.

Session II: Institutional framework of the EU-UK future relationship

L. Alan Winters – Trade and Institutions: Ends and Means

- i. There is a fundamental trade-off between the degree of integration with the degree of sovereignty. Costs and uncertainty are mainly reduced by constraints on government discretion.
- ii. The previous UK government did not discuss trade-offs and the current one does not believe in it – they believe they can have their cake and eat it = the UK has basically ignored this trade-off.
- iii. Winters discussed five institutional arrangements that might lie behind different trade solutions. First, a WTO Brexit (basically a no-deal Brexit), which shows that even a no-deal Brexit is not free of some institutional structure. Second, a simple FTA – preferential trade in goods but with different tariffs and ROOS that need to be enforced, otherwise it is formally like the WTO. It can be exited/suspended if it's not working. Third, a deep and comprehensive FTA-CETA, where there is a broader menu of goods, services, a little mutual recognition and cooperation – as good as FTA's get. But it's still largely WTO level border formalities – which Canadians characterise as 'burdensome. Four, EU Association Agreements, typically a deep and comprehensive FTA plus other cooperation which varies from agreement to agreement. Finally, joining the EEA, which means complete access to the Single Market but de jure sovereignty not de facto and major limitations in the customs union as the UK needs customs alignment for the Irish border.

Conclusion: whatever the UK chooses there is a fundamental trade-off between the degree of integration with the degree of sovereignty which cannot be ignored. There are some possibilities for institutional arrangements, but none that are quite similar to EU membership.

Halvard Haukeland Fredriksen – The EEA two pillar system: an institutional template for the future EU-UK relationship?

- i. Fredriksen set out to answer whether the EEA two pillar system can serve as an institutional template for the future EU-UK relationship? Short answer: no, it probably cannot. At least not without considerable adjustments.
- ii. The aim of the EEA Agreement is full participation of the EFTA States in the EU internal market (within the scope of the agreement) without any transfer of sovereignty from either the EFTA States nor the EU to any EEA institutions
- iii. Key compromises in legislative process, a) no joint decision making but some EEA EFTA participation in EU decision shaping, b) Possibility for EEA specific amendments. Sometimes

necessary for institutional reasons, institutional adaption. However, substantive adaptations very rarely accepted by the EU, c) A Veto right with a catch. Each of the EFTA states can block the incorporation of novel EU legislation into the Agreement but the EU may respond by suspending the affected parties of the relevant Annex. (art. 102 (5) EEA). This has never put to the test: the Nuclear option.

Conclusions: Why has the EEA Agreement worked? It has worked because both sides really want it to work. The EFTA states managed to cherry-pick their agreement with the EU, they got full access to the single market and managed to keep two of the most sensitive policy areas, agriculture and fisheries, outside the agreement. However, in order to do this, they have given up their right to participate in the decision-making. Could the EEA Agreement work for the UK? In theory yes, but only with sufficient amounts of pragmatism, trust and loyal cooperation, on both sides. Main problem: UK acceptance of the fact that the rules of the common market are made in Brussels? The EEA Agreement could serve as a template, at least parts of it, but perhaps the Swiss agreement would be a better template

Steven Blockmans – Institutional arrangements between the EU and European non-member states

- i. Brexit is just one dimension of EU relations with its neighbours the legal mainframe for these relations is article 8 TEU.
Article 8: 1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation. 2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.
- ii. Art. 8 TEU typically serves as a legal basis for association agreements and deep & comprehensive FTAs with ENP countries, but it could cover other neighbours too. But ENP is split between and within East and South, AA/DCFTAs v. other EaPs; Progressive MEDs v. failed and conflict states; Priorities diverge fundamentally: integration for AA/DCFTAs v. security-migration-terrorism nexus with MEDs
- iii. Meanwhile, an increasing collection of association agreements, all somewhat in suspended animation: EEA, CH, Western Balkans, Turkey, Brexit UK (?). With increasingly impressive common set of instruments (deep FTAs, common TBT & SPS, customs code & PEM rules of origin, legal approximation, energy and transport networks/communities, EIB & EBRD investments, agencies & programmes)

Conclusions: ENP obsolete; ‘Wider Europe’ is bac. Are we foreseeing big continental-regional integration area? With UK, Ukraine, Turkey as 3 most important strategic neighbours. Do we need to move to the EEA 3.0