



Culture, Tourism, Europe and External Relations Committee

Note of meeting with Mr Michel Barnier, Chief Negotiator, Taskforce on

Article 50 negotiations with the United Kingdom

11 September 2017

Committee members present:

Joan McAlpine (Convener)
Lewis Macdonald (Deputy Convener)
Jackson Carlaw
Mairi Gougeon
Ross Greer
Rachael Hamilton
Stuart McMillan
Tavish Scott

Meeting:

Mr Barnier welcomed the Committee and thanked them for taking the initiative to come to Brussels. He indicated that he considered it important for the Committee, in the context of its role in the Scottish Parliament, to be informed on the Article 50 process, and that he was committed to promoting transparency in relation to the negotiations.

Mr Barnier told the Committee that the negotiations were unique, extraordinary and very complicated, and that there would be significant consequences for both the UK and the EU. He emphasised the importance of a public debate on the negotiations, including the citizens that the Committee represents. He also stressed the importance of working together on the challenges rather than facing them separately.

Mr Barnier set out the time period for the Article 50 agreement. He explained that October or November 2018 would be the effective deadline for reaching an agreement as five to six months would be needed for ratification of a treaty. On the EU-side this time would be needed for the Council, acting by qualified majority to agree the treaty after obtaining the consent of the European Parliament.

Mr Barnier explained that it was not a typical negotiation as usually a no deal scenario would imply retaining the status quo whereas in this case, a no deal scenario would mean the UK becoming a third country without a deal with the EU. A no deal scenario would have very serious consequences for the UK and the EU, and would mean the relationship between the EU and the UK going back forty years.

Mr Barnier reflected on what would constitute a fair deal. He observed that the UK had decided to leave the EU, although he recognised that the Scottish Parliament and citizens in Scotland had shown a greater attachment to the EU. He explained that while he negotiated only with the UK Government, his door was open to others.

Mr Barnier told the Committee that after the UK general election, Mr Davis had confirmed to him that the UK wanted to leave the EU, the single market and the customs union. Mr Barnier emphasised that for the EU Member States the single market was indivisible and that the autonomous decision making processes relating to the single market could only be for the EU Member States. A third country could not have a veto right on the EU single market. If the UK insisted on leaving the EU, the single market and the customs union, then there was a need to see what type of existing possibilities there were for the future relationship and what could be considered a balance between rights and obligations.

Mr Barnier indicated that a range of models existed for the UK's future relationship with the EU and in all of them there was a balance between rights and obligations. The EEA EFTA agreement provided for the adoption of EU legislation by the EEA EFTA member states, while the CETA agreement with Canada had fewer restrictions and obligations as Canada does not participate in the single market. It would not be possible to have Norwegian access to the single market and Canadian obligations – the models could not be mixed.

Mr Barnier told the Committee that the EU had already negotiated about 30 Free Trade Agreements (FTAs) with other third countries and all of these agreements had been negotiated in the context of regulatory convergence, rather than regulatory divergence. While the current position of the UK is one of full integration in the EU, the UK would diverge from the EU in the future. Mr Barnier said that the question that then arose from all sectors, including from trade unions, employers, civil society, NGOs and environmental organisations – was whether there would be any control over that divergence. He stressed that it was important both for citizens and the economy that there was no regulatory dumping. If negotiations move onto the next agreement, which will be a second treaty that will need to be ratified by the 27 Member States, the issues that are being raised by civil society are valid. Unless a way can be found to guarantee a level playing field, then the EU is taking a risk. That is why a public debate is very necessary to succeed at the second phase.

Mr Barnier said that sufficient progress needs to be made on the Article 50 process in order that there can be certainty for EU citizens, on the budget settlement and Ireland. Then negotiations can start on the second phase. The UK is a member of EU, which agrees budgets for a period of seven years. The results of those budgetary decisions are communicated in the form of policies and programmes for the next seven years. A message is sent to stakeholders on the policy commitments in the EU and all over the world, including, for example, aid for Africa. This has been agreed by 28 Member States and it is not expected that 27 Member States should

pay for it. This is not seen as a punishment but rather an agreed amount based on commitments.

Mr Barnier said that there were a lot of other issues that had not been resolved, for example Euratom. The Task Force had seen the UK positions, but these were limited. Mr Barnier expressed a desire to make progress on the negotiations so that he could go to the European Council and recommend that the negotiations on the new relationship can start as soon as possible at the beginning of next year.

Joan McAlpine MSP, the Committee Convener, thanked Mr Barnier for meeting the Committee, saying that the whole Committee very much appreciated his openness and time commitment in such a busy period.

She explained that Scotland as a country had voted by 62% to remain in the European Union in the referendum of 2016 and this was acknowledged in the 5 April resolution of the European Parliament on the Article 50 negotiations.

She told Mr Barnier that the Committee had spent the last fifteen months considering the implications of EU withdrawal for Scotland. It had sought to do this by engaging with hundreds of stakeholders and individuals across Scotland to ascertain their views. It had also commissioned academic research on the economic implications of Brexit for Scotland, which are extremely serious in terms of job losses.

The Committee's evidence gathering and research has resulted in several reports which the Committee had brought to share with Mr Barnier. The reports showed that Scotland has many distinct priorities in its relations with the EU. Its agriculture, food and drink, tourism and health sectors are particularly dependent on European workers. The arrival of European citizens in the 21st century reversed Scotland's 20th century population decline and has enriched Scottish society and the Committee wanted the future of European citizens in Scotland to be safeguarded. Scotland's leading universities attract more Horizon 2020 funding per head than elsewhere in the UK. Scotland is an exporting economy and 42% of those exports go to the EU.

The Convener explained that the Committee represented different political parties with different views on the future relationship between the UK and the EU. However there had been unanimity in the majority of areas considered in the Committee's reports. The Committee members wished to maintain a close relationship with the EU and the majority favoured continued membership of the single market. The Committee also believed that Scotland's voice should be heard in the negotiations.

The Convener then asked about what the UK needed to do in relation to the financial settlement, citizens' rights and Ireland to make enough progress for Mr Barnier to recommend to the EU27 that the negotiations could move to the next phase? She also asked whether it would be acceptable for Mr Barnier as the European Commission negotiator for the UK Government to include the devolved administrations in the Brexit negotiations?

Mr Barnier told the Committee that he received them with pleasure and that his door was open to them. He said that he had also received Scotland's First Minister and the Welsh First Minister as well as other actors, but that he negotiated only with the

UK Government. It was the UK Government's responsibility as to how it composed its negotiating team, and not something for which Mr Barnier had responsibility.

In relation to the financial settlement, Mr Barnier said that there was no UK paper but that the European Commission had published a paper covering the multiannual commitments agreed by the European Council, which the UK had therefore signed up to, as well as the legal bases for a range of budgetary commitments. Mr Barnier stressed that the European Commission worked on the basis of the law and the decisions taken together. The decisions taken in the Council were intergovernmental decisions and the UK had to accept responsibility for budgetary commitments that it had agreed to beyond March 2019. Mr Barnier stated that he negotiated on behalf of the EU27 and that there was a clear position on the financial settlement and that while there were sensitivities, he was waiting for a clear position from the UK.

Lewis Macdonald MSP, the Committee's Deputy Convener, asked Mr Barnier whether it would be possible for the UK to remain in the single market and the customs union in the short-term under transitional arrangements and could that give time for negotiations on the future relationship?

Mr Barnier indicated that he was ready to negotiate a transition if the UK asked for it and that the European Commission was ready to respond and discuss the issue. He referred to the European Council mandate, agreed by the EU27 Heads of State and Government, which provided for a prolongation of the *acquis communautaire* for a limited period of time if the UK was ready to ask for it.¹ Such a request would be discussed in the context of the whole architecture of the EU, including the four freedoms as well as regulatory, budgetary, supervisory instruments and the role of the Court of Justice.

Mr Barnier said that the less time that there was to resolve issues, the more there would be a need to work with existing models, and the simplest of these to apply in a transitional period would be the status quo. This would also allow for progress on the future relationship agreement.

Jackson Carlaw MSP referred to the decision that Mr Barnier had to make on whether sufficient progress had been made on the Article 50 negotiations to the European Council. He asked whether the European Council would meet in December, or earlier to discuss this, if Mr Barnier could not recommend to the October European Council that sufficient progress had been made, and whether the EU had a view on the future relationship that it would like with the UK?

Mr Barnier said that he was taking a constructive approach to the negotiations and wanted to find an agreement based on sincere commitments. He said that they were some distance away on citizens' rights and very far away on the financial settlement.

¹ Paragraph 6 of the European Council Guidelines state "To the extent necessary and legally possible, the negotiations may also seek to determine transitional arrangements which are in the interest of the Union and, as appropriate, to provide for bridges towards the foreseeable framework for the future relationship in the light of the progress made. Any such transitional arrangements must be clearly defined, limited in time, and subject to effective enforcement mechanisms. Should a time-limited prolongation of Union *acquis* be considered, this would require existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures to apply."

Therefore he thought it unlikely that he would be able to recommend that sufficient progress had been made to the October European Council.

He stated that he wanted to discuss transition and the new relationship as soon as possible. He also stated that if the UK was able to confirm that it wanted to remain in the single market then it would be possible to have a Norwegian model. That was the only model that involved staying in the single market. Mr Barnier also indicated that there was a common interest in relation to collaboration on defence, terrorism and security, which could form a second pillar of a new partnership. He stressed that there was a lot to be done in relation to the fight against terrorism and the UK leaving the EU meant that it was also leaving Europol and the European Defence Agency.

Ross Greer MSP referred to the relatively young system of devolution in the UK and that the UK Government was outlining positions on civil justice and education which were devolved competences without consulting the Scottish Government. He asked Mr Barnier if he was aware that the UK was offering positions outside its own competence and what was his view of that?

Mr Barnier told the Committee that he was extremely interested in this debate, but that he could not comment on internal constitutional matters. He assured the committee that he was listening to them and interested in what they had to say.

Tavish Scott MSP referred to time-sensitive seafood exports from Scotland, including his own constituency of Shetland, and asked what the economic consequences and cross border practicalities were for that industry in Scotland under the new relationship agreement?

Mr Barnier said that this would be considered as part of the negotiations on the new relationship with the UK. He recognised the issues relating to fisheries and agriculture as he had been a Minister for Agriculture and Fisheries in France and had been involved in a number of negotiations on quota agreements. He recognised that fisheries could be a sensitive issue and referred also to the importance of international fisheries agreements. This would all be considered in the context of the new relationship agreement as part of a wider discussion on trade.

Stuart McMillan MSP said that one of the key issues in Scotland was EU citizens living in the UK as well as UK citizens living in the EU and asked how the EU would seek to protect their rights and ensure that the agreement would be implemented in good faith?

Mr Barnier indicated that the EU was a Union of people and that the resolution of the position of EU citizens was the EU's key priority. He explained that he wanted to find an agreement based on principles, notably continuity and enforcement of rights and non-discrimination as the position of four million people was concerned. For the EU the guarantee of rights was important and it believed that the Court of Justice of the European Union should have jurisdiction in relation to EU citizens' rights, whereas the UK wanted the UK courts to have jurisdiction within the UK. As the UK had produced a more detailed written paper on EU citizens rights, Mr Barnier considered that progress could advance in this area and he drew the Committee's attention to the [joint technical note summarising the UK and EU positions](#) that had been produced using a colour coded system to show areas of progress.

Rachael Hamilton MSP introduced her question to Mr Barnier by remarking that more Scotch whisky was sold in one month in France than Cognac in one year.

Ms Hamilton acknowledged to Mr Barnier that the EU had recently produced a position paper on intellectual property and asked if Mr Barnier agreed that all of the 3,500 geographical indications currently registered across the EU including Scotch whisky, Cognac and Champagne must all have continued GI protection in both the UK and the EU after Brexit?

Mr Barnier referred to products from his region of Savoie that had geographical indications and recognised the importance of geographical indications and the attachment that existed to them. He said that the intellectual property for these products rested with those who produced them and that there was a potential to continue in the future on the basis of recognition of those products.

Mairi Gougeon MSP referred to the recent leak of a UK Government paper on immigration and asked whether it undermined the negotiations in terms of the thinking that it exposed?

Mr Barnier acknowledged that he was aware of the leak but would comment only on official documents and that was why he practised transparency in relation to the negotiations. He emphasised the importance of preserving the rights of EU citizens in the UK , and UK citizens in the EU, for their whole lives. Once agreement had been reached with the UK it would then be for the UK to develop its policy, but he considered that there was a lot that the EU and the UK could do together in the future.