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BREXIT UPDATE

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COMMONS' REJECTION OF THE WITHDRAWAL AGREEMENT

Context

On 25 November 2018, EU leaders endorsed the Withdrawal Agreement and a Political Declaration negotiated between the UK and the EU.

- the [Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#). This is a draft legal agreement setting out arrangements for the UK's departure from the EU.
- an [Outline Political Declaration](#) on the UK-EU future relationship.

SPICe briefings on the Withdrawal Agreement and Political Declaration are available at the links below:

- [An overview of the Withdrawal Agreement](#) (November 2018)
- [An overview of the Political Declaration](#) (November 2018)

Before the Withdrawal Agreement and Political Declaration can be ratified, one of the necessary conditions is approval by the UK Parliament.

On 15 January 2019, the House of Commons rejected a motion to approve the Withdrawal Agreement and Political Declaration by 202 votes to 432.

RESPONSE TO THE COMMONS' REJECTION

[SPICe Brexit Update #77](#) reported on the immediate reaction to the “meaningful vote” on 15 January from the Prime Minister, European Commission and Scottish Government. On 16 January, the SPICe Spotlight Blog [discussed the likelihood of various scenarios](#) after the outcome of the vote was known.

Further reaction is discussed below.

Statements in the European Parliament

On 16 January, the European Parliament [debated the UK's withdrawal from the EU](#) in plenary.

Melania Ciot, President-in-Office of the European Council (Romania), stated:

-  Today, having just learned the outcome of the meaningful vote in Westminster, we cannot but regret this outcome. This makes a disorderly exit by the UK more likely. Such a scenario will have serious consequences for all of us, but in particular for the UK. Addressing those consequences will no doubt call for the same unity, shared purpose and responsibility among Member States and the EU institutions.

Michel Barnier, Chief Brexit negotiator for the European Commission, stated:

“ What yesterday's vote showed is that the political conditions for the ratification of the Withdrawal Agreement are not yet there in London. We profoundly regret this vote...

When speaking of this future relationship... if the United Kingdom chooses to change its red lines, and to be more ambitious and go beyond a simple free trade deal in our future relationship, then the EU would be ready to immediately support this evolution and respond favourably.

An orderly Brexit remains our absolute priority over the coming weeks. However, as I speak, no scenario can be ruled out. This is particularly true of the scenario which we are trying to avoid: a no-deal scenario. It is 16 January today. We are only 10 weeks away from the end of March, the moment when the UK has chosen to become a third country. And today, 10 weeks away, the risk of a no deal has never been so high.

Irish Government

Reacting to a suggestion by the Polish Minister of Foreign Affairs, Jacek Czaputowicz that the functioning of the Northern Irish backstop [should be limited to 5-years](#), the Irish Government's [Minister for Foreign Affairs and Trade, Simon Coveney said](#):

“ We have spent 18 months or so in a difficult negotiation that resulted in a Withdrawal Agreement and all of the detail that was part of that. It's been made very clear repeatedly that the Withdrawal Agreement is not up for renegotiation.

Criticism of the Commission's phased approach to the Article 50 negotiations

Writing for Politico, [Bruno Maçães](#)' opinion piece, [How Brussels blew Brexit](#), says:

“ If this process were logical, the status of a small segment of the EU's border with the U.K., distinctive and vital as it may be, would be discussed during talks about the overarching relationship — where big issues such as trade and security will also be hammered out.

But the way the process was designed — to include the Irish border among the three main areas to be negotiated before the U.K. formally leaves the bloc on March 29 — means that both sides had to reach an agreement on a matter they were effectively not allowed to discuss.

PM meeting with First Ministers of Scotland and Wales

On 23 January, the Prime Minister and First Ministers of Scotland and Wales met to discuss the terms of the UK's exit from the EU. The UK Government [issued a press release](#) stating:

“ Both Ministers have been invited by the Prime Minister to attend all relevant meetings of a new Cabinet sub-committee that will bring together work on

preparations for the UK's exit from the EU, spanning both deal and no deal outcomes.

NEXT STEPS IN THE HOUSE OF COMMONS

The European Union (Withdrawal) Act 2018 contains some [procedural requirements](#) that follow from the Parliament's rejection of the Withdrawal Agreement and Political Declaration on 15 January 2019:

- The UK Government is required to make a statement which sets out how it “proposes to proceed” on exit negotiations.
- The Government is also required to move a motion “in neutral terms” that takes note of the statement.

In line with these requirements, the Prime Minister made a verbal statement on 21 January (see below). Alongside this, written statements were issued on [21 January](#) and [24 January](#) containing more procedural detail.

Prime Minister's statement – 21 January

On 21 January, the Prime Minister gave a [statement to the UK Parliament](#). On the suggestion her Government should rule out the possibility of the UK leaving the EU without a deal, the Prime Minister argued that

“ The right way to rule out no deal is for the House to approve a deal with the European Union, and that is what the Government are seeking to achieve. The only other guaranteed way to avoid a no-deal Brexit is to revoke article 50, which would mean staying in the EU.

There are others who think that what we need is more time, so they say that we should extend article 50 to give Parliament longer to debate how we should leave and what a deal should look like. That is not ruling out no deal, but simply deferring the point of decision, and the EU is very unlikely simply to agree to extend article 50 without a plan for how we are going to approve a deal.

She also argued against proposals for a second referendum on leaving the EU, including by making a reference to proposals for a further referendum on Scottish independence:

“ I fear that a second referendum would set a difficult precedent that could have significant implications for how we handle referendums in this country—not least, strengthening the hand of those who are campaigning to break up our United Kingdom.

On the same morning a [report in the Daily Telegraph](#) suggested that one of the proposals under consideration by the UK Government was adding text to the Belfast Agreement (often referred to as the Good Friday Agreement) in relation to border

commitments to avoid the need for the backstop proposals in the Withdrawal Agreement. In response, the PM stated:

“ I want to be absolutely clear, in the light of media stories this morning: this Government will not reopen the Belfast agreement.

The PM then said that she would, once again, take discussions over the functioning of the backstop back to the EU.

Moving onto negotiations on the future relationship, the PM made a commitment stating:

“ the Government will consult this House on their negotiating mandate

The PM outlined some mechanisms for doing this including consulting Select Committees, providing committees with confidential updates on negotiations, and updates to the House ahead of six-monthly review points.

The PM also referred to the role of devolved administrations stating:

“ While it will always be for Her Majesty’s Government to negotiate for the whole of the UK, we are also committed to giving the devolved Administrations an enhanced role in the next phase, respecting their competence and vital interests in these negotiations.

The PM then announced that the fee payable by EU Citizens who wish to apply for settled status in the UK after Brexit would be waived, and that any fees payed so far would be reimbursed.

Motion “in neutral terms”

The Prime Minister’s [verbal](#) and [written](#) statements indicated that debates on the motion in neutral terms will be scheduled for 28 January in the House of Lords and 29 January in the House of Commons. She said:

“ This motion will be amendable and will be debated and voted on in this House on 29 January, and I will provide a further update to the House during that debate. To be clear, this is not a rerun of the vote to ratify the agreement we have reached with the European Union, but the fulfilment of the process following the House’s decision to reject that motion.

The motion as lodged reads:

“ That this House, in accordance with the provisions of section 13(6)(a) of the European Union (Withdrawal) Act 2018, has considered the Written Statement titled “Statement under Section 13(4) of the European Union (Withdrawal) Act 2018” and made on 21 January 2019.

Amendments to the motion

At the time of writing 14 amendments have been lodged. These are available at [item 108 of the UK Parliament's Order Paper for 24 January 2019](#). More may be lodged in the days before the debate and will have to be relogged to be eligible for selection if the UK Government updates its motion.

It is for the Speaker of the House of Commons to decide which amendments are selected for debate.

What could “Parliament taking control” mean?

The UK Government conducts foreign policy, including negotiations with the EU on Brexit, using Royal Prerogative (rather than, for example, using powers given to them by Parliament). In addition, [standing orders give Government business precedence](#) at every sitting of the UK Parliament (with a few exceptions).

Some of the amendments lodged to the “motion in neutral terms” have been described as efforts to provide greater Parliament control over the Brexit process. For example:

- Amendments (b) and (d) aim to require the UK Government to seek an extension of Article 50.
- Amendment (e) in the name of Yvette Cooper is linked to the private members bill - [European Union \(Withdrawal\) \(No. 3\) Bill](#). The amendment aims to provide time on 5 February 2019 for this Bill to be tabled, subject to certain conditions, by suspending the standing orders which give Government business precedence in the Parliament.
- Amendment (f) in the name of Dominic Grieve aims to provide time on six dates across February and March where an amendable motion on Brexit is debated, by suspending the standing orders which give Government business precedence in the Parliament.

The provisions of the European Union (Withdrawal) (No. 3) Bill are [described by the House of Commons Library](#). This is a Private Member's bill in the name of Yvette Cooper and represents an iteration of the proposals put forward by Nick Boles.

The history of Royal Prerogative in foreign policy and the origins of the standing orders giving precedence to Government business is described in Professor David Howarth's blog, [Seizing control of Brexit](#). He concludes:

 For the Commons directly to engage in international negotiations... would be revolutionary... But giving ministers instructions, though unusual in foreign policy, would not be revolutionary... In many countries, legislatures set negotiating mandates for ministers.

... As for domestic policy, allowing the Commons to control its own agenda would be far from novel. Standing Order 14(1) took its present form only between 1945 and 1963.

In his Policy Exchange briefing, [The Contest to “Take Control” of Brexit](#), Sir Stephen Laws argues that

“our constitution has developed into one that now clearly both encourages and enforces a collaboration, rather than an adversarial relationship, between government and Parliament.

[Sir Stephen Laws \(Policy Exchange\) also argues that](#) any changes to the law to secure a postponement or cancellation of the repeal of the European Communities Act 1972, or for holding a second referendum, would “revive or create substantial commitments to public expenditure”. Laws argues that according to the centuries old constitutional relationship between Government and Parliament, any such financial commitments can only be authorised “if it has been recommended by the Crown”.

In the context of backbench legislative proposals, the question of whether the UK Government can advise the Queen to withhold Royal Assent from legislation has arisen. This has been discussed by various academics and commentators including:

- Professor Mark Elliott (Public Law for Everyone), [Can the Government veto legislation by advising the Queen to withhold royal assent?](#)
- Sir Stephen Laws (Policy Exchange), [The risks of the “Grieve amendment” to remove precedence for Government business](#)
- Nick Barber (UK Constitutional Law Association), [Can Royal Assent Be Refused on the Advice of the Prime Minister?](#)

In a separate [article for Prospect Magazine](#), Professor Mark Elliott also discusses what he views as the missed opportunity for the UK Parliament to “take control” two years ago:

“If there was ever a time in the Brexit process when parliament had leverage over a government that has, throughout, been intent upon maintaining tight control, the period between the Supreme Court’s judgment in Miller and the enactment of the requisite legislation was it. At that point, parliament could opt to put itself, at least to some extent, in the driving seat. It could, for instance, have legislated so as to give the government only contingent authority to trigger Article 50. The exercise of that power could have been made conditional upon the government presenting parliament with a set of negotiating objectives that met with parliamentary approval. Doubtless, it would have been difficult for parliament to agree upon what those objectives should have been, but at least this would have required the government to adopt a clear position, and would have enabled parliament to evaluate that position, at an early stage in the process—and, crucially, before the two-year Article 50 clock had begun to tick.

TRADE ARRANGEMENTS

House of Lords vote to delay the UK Trade Bill

The Trade Bill is intended to allow the UK to continue its existing trade policy as far as possible immediately after Brexit. Among other things, it is designed to allow for the UK to “roll over” existing trade agreements where this is possible and join the Agreement on Government Procurement (GAP).

The role of devolved administrations has been discussed throughout the process and [legislative consent has been sought](#) from the Scottish Parliament – a vote on this legislative consent has not yet been held. On 30 August 2018, the Scottish Government published [proposals for a formal role for the Scottish Government and Scottish Parliament in the development of future UK trade arrangements](#).

On 21 January, the House of Lords [approved the following motion](#) by 243 votes to 203:

“Baroness Smith of Basildon moved, as an amendment to the motion that the House do now resolve itself into a Committee on the bill, at the end insert “and resolves that the committee’s report be not received until Her Majesty’s Government has presented to both Houses proposals for a process for making international trade agreements once the United Kingdom is in a position to do so independently of the European Union, including roles for Parliament and the devolved legislatures and administrations in relation to both a negotiating mandate and a final agreement.”

This motion from Baroness Smith, who is Leader of the Opposition in the House of Lords, calls for the UK Government to set out the role of devolved legislatures in the development of future trade deals, before the Trade Bill progresses to its next stage.

Scottish Government proposals on agri-food tariffs

On 16 January, Cabinet Secretary for the Rural Economy, Fergus Ewing [wrote to the UK Government](#) on arrangements for agri-food tariffs in a no deal scenario:

“...my officials have provided to yours a proposal for the targeted use of tariff rate quotas to achieve a balance in the protection of both consumer and producer interests, as well as maintaining negotiating capital. I understand that similar thoughts on the use of TRQs has also come forward from a number of stakeholders. I would therefore urge you to give urgent and serious consideration to this proposal.

Scottish business survey on Brexit risks

On 20 January, the Scottish Government published a [survey commissioned by the Directorate for International Trade and Investment from Ernest Young](#) which:

“summarises the risks to Scottish businesses from a “no deal” Brexit (i.e. on WTO terms) and captures the views of over 80 businesses and trade associations from a cross-section of sectors who participated in a dynamic consultation.

The report concludes with a list of potential policy actions.

REPORT: SEVEN BREXIT ENDGAME SCENARIOS

A report published by UK in a Changing Europe and the Bingham Centre set out [seven scenarios for the Brexit endgame](#) from a UK perspective. This first of these scenarios has now been superseded leaving six broad options as identified by the report:

- Try again (to approve a Withdrawal Agreement)
- No deal
- Referendum
- General election
- Revoke Article 50
- National Unity Government

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About this publication

This regular paper produced by SPICe sets out developments in the UK's negotiations to leave the European Union, the process for which formally begun following the Prime Minister's triggering of Article 50 on 29 March 2017.

The updates provide information on the UK Government's approach to leaving the EU including the domestic legislation necessary to ensure a smooth transition in terms of the UK statute book, along with details of the positions of the Scottish Government and the other Devolved Administrations. The updates also provide information on developments within the EU with regard to the UK's departure. Finally, the updates will provide information on the key issues likely to be at play during the negotiations and in developing the UK's future relationship with the European Union.

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