

THE CHALLENGES OF TRANSITION



The **UK** in a
Changing Europe

Introduction

Among the multitude of issues raised by the process of Brexit, transition has never been seen as particularly important. It lacks the urgency of the Irish dimension, the emotive power of citizens' rights or the consequence of the shape of the future EU-UK relationship.

This report argues that – despite this – transition is a vital part of all of these other debates and that to neglect it raises substantial risks and concerns that touch upon democracy as much as they do upon practicality.

Far from being a merely transitory arrangement, it carries within the seeds of the future relationship, most importantly through the new and informal norms of behaviour that it will set down.

As a result, it is essential that in this final phase of negotiating the Withdrawal Agreement, we do not lose sight of the choices that are being made with regard to transition.

By Dr Simon Usherwood,
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Can transition work?

By Dr Simon Usherwood

What is transition?

The decision to limit Article 50 negotiations to the wrapping-up of the current EU-UK relationship, meant the discussion of the new relationship would only begin following withdrawal in March 2019. This implied that there would necessarily be a gap between the end of the former and the start of the latter.

This breaking up of the negotiations originally came from the EU and met some resistance from the UK, which wanted to conduct both elements in parallel. However, that position changed quite quickly in mid-2017, in part because of British uncertainty over the shape of what the future relationship might contain.

As a result, the British government has become increasingly bound to ensuring that there is something in place at the point the UK leaves the EU next March, for both political and regulatory reasons.

Importantly, transition is bound up with the notion of securing an agreement on the Withdrawal Agreement. Indeed, without such an agreement, there is no legal mechanism available to bridge the gap from membership to whatever new system is eventually agreed. The EU has been consistent in its position that transition can only occur via the Withdrawal Agreement, as part of the package that document contains.

What does transition contain?

The upshot of the developing negotiations is that transition serves a number of functions.

Firstly, it provides a legal underpinning to EU-UK relationship until a new legal document can be brought in to operationalise the new, long-term ties.

The model contained within the draft Withdrawal Agreement agreed in March 2018 is that of ‘membership minus’: the UK will continue to operate in effect like a member state, differing only in that it will have no rights to vote on decisions and only very limited representation in discussions.

That means continuing to abide by and apply EU law and decisions, including of the Court of Justice; maintaining its contributions to the EU’s budget; keeping access to EU programmes and activities, and; maintaining the free movement of goods, services, capital and people.

The logic of this is that since there will be a change between membership and the new relationship, and since that new relationship is undefined, there is only cost in changing practices for what is intended to be a short period, if those might have to change again – or even revert to have they used to be – further down the line. This model means there’s only one set of changes, at the point of moving from transition to the new relationship.

To put it differently, this model is the least complicated way of managing the transition period. The exceptions listed in the draft text cover only a small number of areas – mainly on security and border issues – for the reason that to agree a transitional arrangement that significantly diverges from the current one both requires time within the already-pressed Article 50 negotiation schedule and a sense of how it fits with the new relationship.

But this is not all that transition does.

Its second function is to provide a location for the negotiation of that future relationship between the EU and UK.

The draft text specifies that transition will only last until the end of 2020. This fits with the medium-term planning cycle of the EU under its multiannual financial framework, which determines budgetary arrangements and policy priorities. The EU27 has recently begun their discussions of the next cycle, running from 2021 to 2027, and will likely only conclude those in mid-2020.

Thus there is a planning incentive on the EU's side to move to the new relationship with the UK by that time, just as much as there is a desire on the UK's part to secure its definitive new arrangements.

As a result, in the immediate departure of the UK in March 2019, the EU will adopt new guidelines on the negotiation of a legal agreement to embody that new relationship, leading to a new round of negotiations and their ratification.

Importantly, this will see the UK being treated, in legal terms, as a third country, falling under the relevant legal bases in the EU's treaties, so Article 50 will no longer apply.

However, this also highlights the third function of transition: managing the on-going relationship between the UK and the EU.

While no longer a member state, the UK will still be deeply involved in the EU, and vice-versa. This is the result of both the 'membership minus' model and of the negotiations to move to the new relationship.

Without its previous representation and voting rights, the UK needs to have a forum in which it can manage both specific and more strategic issues with the EU. This is achieved by the creation of a Joint Committee to allow for debate, as well as a dispute settlement mechanism.

The latter of these remains to be agreed, since it concerns the relative powers of the EU's Court of Justice and of British courts, but the need for mechanism of some kind is not in doubt: there has to be some arbitration function that can provide definitive answers in cases of disagreement on points of law.

The first challenge of transition: legitimacy

The practical logic of a transition period, in the form that is provisionally-agreed by the UK and EU, is clear. As both a regulatory necessity and as a gesture of good faith, there needs to be something between the 'here' of membership and the 'there' of the new relationship.

But this comes with a profound challenge to political and constitutional legitimacy. How can the two parties, which both profess to uphold democratic ideals of representation and accountability, operate a system wherein those ideals take, at best, a back-seat?

The challenge is clearly strong to the British side of the discussion. All of the obligations of membership extend into the transition, but not all of the rights. Should the EU make a decision during this time that it would not have been able to if the UK could have voted, then how can a British government explain that to either Parliament or the general public? The model does not allow for any generalised mechanism of exceptions or exemptions from the application of EU rules and decisions, so much would hang on the work of the Joint Committee and whatever dispute settlement mechanism that could be agreed.

In practice, if transition keeps to its planned length, then the issue might not be so grave. The speed of EU decision-making, especially on major pieces of legislation, is slow enough that much of the output that might occur prior to the end of 2020 has already begun to wend its way through the system, so the UK is already shaping that agenda and detail of work.

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Moreover, the commitment in the draft Withdrawal Agreement to consult the UK on matters of particular relevance and the more general habit of EU decision-making to avoid divisive outcomes in legislating potentially further soften the blow. However, none of this can fully account for the inevitable uncertainty of what might come down the road.

It's also important to note that the EU has never given a non-member state voting rights of any kind, even in its closest of relationships, and there is no reason to see that changing for the UK. Thus, no other model of transition will address this challenge.

Indeed, the only option that would do this would be an extension that consisted of an extension of Article 50 to the end of the period, during which the UK would continue to be a full member state. Article 50 provides for such an outcome, with a Withdrawal Agreement still being concluded in time for March 2019, but with withdrawal itself coming at a later date.

However, this option is currently outside the range of possibilities being considered by either side in the negotiations, not least for the further uncertainty it would introduce into the future trajectory of the relationship. To take just one element of this, since the UK would not be a third state, the EU could not use its existing legal competences to open negotiations on the future relationship.

The second challenge of transition: negotiation

Even within the draft transition model, negotiations on the future relationship will be complex.

The UK will be simultaneously applying and enforcing EU decisions and negotiating what are likely to be substantial areas where these would no longer apply in future.

The Joint Committee is intended to provide a means of addressing issues around the first part of this, but does not have an explicit mandate to connect that to the second part, despite the likelihood that the two will be profoundly interlinked.

Given that much of EU legislation relies on member states translating decisions into national legal frameworks, there are issues of both time and appropriateness.

Often, the EU will give member states over a year to transpose legislation in this way, either by primary domestic law or by secondary statutory instruments. In the context of a Brexit transition period of 19 months, this might mean most deadlines fall past the end of 2020, so how far is the UK obliged to make any effort on that front, especially if it's on a subject where no future maintenance of EU practice is foreseen?

Again, this is partly offset by the legislation that is and will be agreed prior to March 2019 and which will need transposing before the end of transition, but it still highlights the dynamic nature of the current relationship and the potential for problems in this arena to affect the negotiations on the future one. In particular, the likely centrality of the Irish dimension and the potential for differentiated situations in the nations of the UK make this highly salient.

The third challenge of transition: extension

The most intractable challenge of the proposed transition relates to time.

As we have noted already, transition is designed to cover the period from one state of the relationship to another. But from what we know so far, the time being allocated to agree what that future state should be does not appear to suffice. And, more importantly, there look to be legal and political obstacles to getting more time.

The future EU-UK relationship will be negotiated under Article 218 of the EU's treaties, which relates to agreements with third states. In this, the EU has much experience and a recognised method of working.

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That experience suggests that even limited agreements can take several years to negotiate, with more substantial ones taking substantially longer. Even just the ratification process – which would require unanimous approval by the EU27 – would be unlikely to take any less than one year to complete.

Add to this, the uncertainty that surrounds the exceptional nature of this particular negotiation – moving to a less close relationship – and the lack of a consensus view either within the UK or between the UK and EU about what the future relationship should look like, and it is very likely indeed that having a new arrangement fully in place by January 2021 could happen.

Part of this can be softened by an interim application, pending ratification, as happened with the CETA between the EU and Canada during the delay caused by the Walloon parliament's problematic approval. But even this does not provide a failsafe for a situation where negotiations – for whatever reason – are not concluded by the end of 2020.

The draft transition model does not provide for extension of transition. This is explained by three factors. First, neither party want Brexit to drag on any longer than necessary. Second, it fits the financial planning, as discussed above. Third, there is a legal question about whether transition can be extended at all.

There is no provision for transition at all in Article 50 and several legal scholars have suggested that while a short, fixed-term transition might be within the terms of that provision, any extension – be that a one-off or a more generalised mechanism – would risk creating a situation that infringes on other treaty provisions. In particular, it would mean that the EU would have a de facto relationship with a third state, but not under the Article 218 provisions (which provide a different mechanism for being agreed).

Bound as it is, even if both the UK and EU had a material interest in extension, they could find themselves unable to do this, resulting in a situation that would be akin to a 'no-deal' outcome to Article 50, differing only in that it would occur at the end of 2020, rather than March 2019. And because the UK would not be a member state in the run-up to that date, the range of political solutions would be more limited.

A final set of challenges would still remain even if extension could take place.

Firstly, it would take the UK into the next cycle of financial planning, in which it has played no role in negotiating. The EU intends to remove the budgetary rebate that the UK has used to moderate its contributions, so potentially the country would be paying substantially more than at present, for a set of policies that would necessarily reflect British priorities much less.

Secondly, the longer that transition lasts, the more difficult become the first two challenges already outlined. That raises ever more difficult questions for all involved about how justifiable the model is.

And finally, a longer extension – and especially an open-ended one – will risk leaving the UK-EU relationship in a limbo, where there is much less time pressure to advance on the negotiations on the future relationship. That in turn will raise questions in the UK about whether it is an appropriate political response to the 2016 referendum, given what it involves.

While that might be a function of British political indecision, it will not change the reality of the situation, namely that this will have impacts on both the UK and the EU, as well as the continuing relationship.

Making transition work

This report offers a range of contributions that aim to explore these challenges and to stimulate wider debate. Both the proposed model and all of the potential alternatives pose substantial and significant challenges, so we hope that this will form a useful starting point to a discussion that otherwise risks falling under the radar.



The legal challenges of transition

By Dr Holger Hestermeyer

The Treaties, on which the European Union is based, describe the process for leaving the Union rather sparingly. When negotiating the treaties, the Member States did not spend all that much time thinking about how a State could leave the Union. Rather reasonably, they were, at the time, preoccupied with the construction, not the deconstruction of the Union.

One of the major challenges the process for leaving the EU poses is that it envisages only the negotiation of a Withdrawal Agreement and a framework for the future relationship rather than the actual future relationship itself before the withdrawing Member State actually leaves. It also imposes a strict two-year time limit (yes, extendable, but only by unanimous decision of the UK and the EU27) for the negotiation of the Withdrawal Agreement, after which the treaties cease to apply to the leaving Member State even if no agreement is reached.

This creates a problem: on Brexit day, the treaties cease to apply to the UK, but there is no – in fact cannot be any – agreement on the future relationship that will take their place. While the UK can provide for some continuity concerning its internal laws, all the rules that govern the UK's interaction with its neighbours and a good many of those that determine its relationship with the world would at times be replaced by outdated treaties, at times by nothing at all.

The solution that clever EU and UK lawyers came up with is “transition”. The idea is to put provisions into the Withdrawal Agreement that say, roughly, that EU law will continue to apply to the UK, but the UK loses its institutional representation in the EU. The transition is supposed to bridge the time between Brexit day and the entry into force of the future relationship.

While there is still no agreement on the whole Withdrawal Agreement, the EU and the UK have now consented to the provisions on transition. They provide that the transition period will begin on Brexit day and expire on 31 December 2020. The parties could not agree on the name of the period, however. Article 121 of the current draft of the Withdrawal Agreement accordingly refers to it as “a transition or implementation period”. As the transition forms part of the Withdrawal Agreement, it will only enter into force if the parties conclude that agreement.

Amongst the many difficult legal questions that the transition raises, three seem particularly pertinent: is a transition period legal? Is the period long enough and can it be extended? What is the effect of transition on agreements with third countries?

The legality of transition

Two objections have been raised with respect to the legality of the transition period. The first is that the EU lacks the competence to agree on a transition.

Whatever you think of the EU's competences – whether you think it has too many or too few – the EU can only act within competences conferred on it in the treaties. If you skim the treaties, however, you will find no

provision explicitly granting the EU a competence to sign what amounts to a carbon copy of the EU treaties without institutional representation, especially one that in this case would seem to imply an extensive, mixed agreement.

The competence the EU wants to use is Article 50 of the TEU. That provision grants the EU the power to negotiate a Withdrawal Agreement with a withdrawing Member State. There are good arguments why such an agreement may contain a transition period; after all, the scheme imposed by the treaty itself separates withdrawal and future relationship and creates the need for a transition. But the competence is limited: it allows a stand-still transition, but not an agreement that under the name of “transition” actually regulates the future relationship.

Relying on Article 50 has yet another consequence: the EU can only agree on a transition in an agreement with a withdrawing member. After Brexit day, the UK is no longer a withdrawing member and the EU cannot sign a Withdrawal Agreement with it that is based on Article 50.

The second objection raised with regard to the transition period relates to the lack of institutional representation for the UK. The treaties provide that the Union is founded on the basis of the values of representative democracy (Art. 10, 2 of the TEU) and that it shall uphold and promote its values also in its relations with the wider world (Art. 3(5) of the TEU). As Piet Eeckhout has noted, extending EU law obligations to the UK without representation thus constitutes a problem.

One might justify a strictly time-limited transition on the basis that it is required to avert severe problems. Most legal acts passed by the EU during that time would still have benefited from UK input, anyway. However, the longer the transition is, the more this objection begins to bite.

The length of transition

The length of the transition raises yet more problems. If its purpose is to bridge the gap between Brexit day and the entry into force of the future relationship between the UK and the EU, the period as it currently stands is likely too short. The EU and the UK both have expressed ambitious plans for their future relationship and experience shows that such ambitious agreements take time to negotiate.

The obvious solution – simply agreeing on a new transition after this one expires – is not available. After the expiry of the transition period the EU can no longer use the legal basis of Article 50 as by then the UK will have left the EU.

There is a way out, however: the parties should include a provision allowing the extension of the transition period by a joint decision of the Commission and the UK government in the Withdrawal Agreement. This approach is not without risk, as a longer transition period poses more offense to the democratic principles cited above. However, it is preferable to risking a cliff edge without a way out. So far, the UK has not asked for a possibility to extend transition.

Agreements with third countries

Finally, the question arises whether the transition can also allow the UK to continue to profit from the EU Free Trade Agreements from which it currently benefits. The Withdrawal Agreement does what it can to achieve this result: The UK will continue to be bound by EU agreements and the Union will notify the other parties that the UK “is to be treated as a Member State for the purposes of these agreements”.

This, however, is a legal fiction. After Brexit and even during the transition period the UK is not an EU Member State. Whether third states will accept this fiction and act accordingly or not is up to them - and currently uncertain.



UK transition and trade

By David Henig

There is a common perception that alongside negotiating a future economic partnership with the EU the most important job of the UK government after the date of Brexit is to negotiate new trade agreements, starting with the USA, New Zealand, Australia and possibly applying to join the Comprehensive and Progressive Trade Pacific Partnership (CPTPP). Common, not least among Ministers and senior officials in the Department for International Trade. And wrong.

Ask experienced trade negotiators and commentators from other countries what the UK's priorities should be, and they will all say that we'll need to sort out our future economic relations with the EU first. Some will also point out the work we have to do at the World Trade Organisation to re-establish our independent membership.

Businesses will tend to more vocal on issues of continuity, such as maintaining the trade agreements we benefit from as EU members, the EU dialogues with other countries which often raise their issues, and the information provided by EU websites about trade. In more detailed conversations both groups will go on to ask what the UK's trade policy will actually be as a non-EU member, such as whether we will be actually do as we claim and be more liberal on agriculture, or change regulations.

Meanwhile, one of the biggest issues our businesses will demand from government, that is rarely mentioned by anyone but likely to be the biggest challenge of all from day one, will be influencing emerging regulations in the EU that will affect them.

Getting structures in place

Needless to say, putting in place the structures to deliver all of this would be a formidable agenda for any country, let alone one which has just gone through the political turmoil of Brexit-dominated division. Although civil servants have to a degree been preparing since June 2016, day-one readiness has never been the predominant concern, and there is little evidence that the scale of the challenge is fully understood, regardless of whether there is a Withdrawal Agreement.

Yet the performance of the government in addressing these issues from day one will affect businesses. Without government intervention barriers to trade will grow for our businesses, and we will lose competitiveness. On trade our success in a transition period must be judged by the extent in which we are able to reduce overall barriers, or at least limit the number of new barriers faced.

The most unglamorous, frequently tough, yet ultimately rewarding part of trade policy is resolving UK export issues across in the world, and from April 2019 this trade diplomacy will be the sole responsibility of the UK government. Globally, under a Withdrawal Agreement existing EU trade agreements may continue to apply to the UK, but even if they do, discriminatory treatment received by UK companies will probably no longer be raised by the EU in their trade dialogues.

Perhaps there is a problem with illegally branded Scotch Whisky in a third market, not an uncommon

occurrence. This was previously mainly the responsibility of the EU to resolve, now it will be down to the UK alone. The Withdrawal Agreement is silent on this whole area.

As far as we know there are as yet no trade dialogues established to replace most of those the EU has, although a system for the UK to capture these issues should be live.

Another basic task will be to replicate information currently provided on the EU website for exporters, such as which trade agreements apply. Compare the relevant EU and UK websites and the scale of work will be apparent.

Within the EU much will depend on the implementation of the Withdrawal agreement. It is not clear whether UK companies with problems can still resolve these within the Solvit network, or whether these will have to go through the UK-EU dialogue. Similarly we will need to know about any changes to the way UK companies can challenge decisions, or the way decisions are challenged in the UK. In the event of no deal of course the challenges for the UK government will be immediate, and the dialogue with the EU presumably minimal.

Managing influence on trading partners

On top of these day-to-day issues a major job for government is always to try to influence regulations proposed by our main trading partners that could affect our businesses. Again at the moment the EU helps with that task globally, but the more pressing issue will be to influence EU regulations, given the EU will remain our most significant trading partner.

It will be a huge task to find out what is happening with individual regulations at the EU, let alone influence them, once we are no longer in the room. Norway's permanent diplomatic presence in Brussels is larger than that of the UK, a reflection of the increased difficulties they face in the same situation. In the first few months elections to the European Parliament and formation of the new Commission may reduce the size of the task, but Brussels influencing will soon become one of the most important jobs of the UK government.

The UK's international trade negotiations are already under way, to establish our own schedules at the WTO, and to replicate, when required, existing trade agreements to which we are a party as EU members. Both are running into difficulties, as trade negotiations tend to do, but neither should be an immediate problem in an implementation period. In this situation it is expected that most countries will be happy to continue applying the agreement to the UK, and the UK has more time to complete WTO talks, where agriculture quotas are the big issue.

However not solving these by the end of the implementation period will be highly problematic, and in trade agreement terms 1 year 9 months is not a long period of time. At the moment it seems a number of countries will want to make changes to the existing EU agreements, while agreements with Norway and Turkey may need to be negotiated from scratch, as it will not be possible to replicate these if we are not remaining a member of the single market or customs union respectively. Of course these negotiations are likely to be taking place in the shadow of ongoing negotiations for the future economic relationship with the EU. These negotiations will influence all of our other negotiations, since the extent to which we can make offers with regards to tariffs and regulations will be dependent on what we ultimately agree with the EU.

Divergence

The uncertain status of the future EU economic relationship means that one of the most fraught issues post April 2019 is likely to be whether UK regulations should diverge from the EU's approach. Any divergence is likely to be hard fought, as it would make a future Free Trade Agreement or closer EEA relationship more difficult, and increase the cost of doing business. It is therefore likely that business organisations and former

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remainers will be keen to stay close to EU regulations, whereas former Brexiters are likely to seek greater divergence.

There will also need to be a full discussion about sensitive areas like agricultural trade. For example, the extent to which we want to change the EU's high tariff walls, and what impact that will have on UK farmers, will be a significant debate, bringing in issues of EU versus US trade and animal welfare to name but two. These issues will not be quick to resolve, and have largely been left unanswered since the referendum.

All of this activity means that in reality bilateral trade negotiations will not be the high priority often presumed. Australia, New Zealand and the US are all major agricultural exporters, with differing food safety regulations to the EU, so balancing their asks with domestic policy choices and an EU agreement will not be straightforward.

The same applies to joining the TPP, which also contains clauses that may be controversial because they touch on the process for setting drug prices in the NHS. Politically progress will be demanded, but trade deals are not quick to negotiate even without other distractions. There may be pressure to complete a US trade deal by the end of President Trump's first term, but if this involves rejecting EU food standards, and therefore definitively requiring Irish sea or land checks, one can imagine fierce domestic debate.

In summary we are looking at a country tired of debating the EU relationship having to continue doing just that, while simultaneously putting in place much larger business support and global dialogue structures, and battling against the clock to replicate existing trade agreements and put in place new WTO schedules.

Any country would struggle to do this, all the more while also negotiating with both EU and US ("a nightmare to negotiate with both at the same time" as a senior trade negotiator in another country once told me), so problems on the way are almost certain. What is perhaps even more worrying is that thus far the Government has not revealed most of their plans to parliament, business, or other stakeholders. Doing so will now be painful, but more honesty will be necessary as the delivering the whole programme is simply not going to be possible. Choices will have to be made, and structures put in place to support those choices. If it isn't already clear, it will soon become apparent during any transition period that we cannot have everything we want on trade.



Transition and Ireland/ Northern Ireland

By Dr Mary C Murphy

For Ireland, the Brexit discussion has focused heavily on the Irish issue. This has meant an unrelenting emphasis on securing a Brexit deal which ensures no border on the island of Ireland, and achieving a backstop provision which guarantees this scenario. The expectation is that this will be achieved in the context of the Withdrawal Agreement, and before the transition phase begins.

The Irish government supported a status quo, time bound transition period. This was seen as an important means of ensuring stability for Irish business and citizens. However, beyond the mechanics of the transition arrangement, there has been little public discussion of the risks and concerns which may transpire during the transition period. As a remaining EU member state, these risks and concerns are less acute for Ireland, than are for the UK as a whole. However, they are important to Irish interests insofar as they pose difficulties for Northern Ireland and impact on Irish business and citizens.

Legitimacy

Northern Ireland's devolved institutions collapsed in January 2017 following a serious breakdown in relations between the two main political parties – the Democratic Unionist Party (DUP) and Sinn Féin. The political vacuum there since then has meant that Northern Ireland has been unable to contribute to the Brexit process in any sort of determined or unified way. There is no functioning Northern Ireland Assembly; the North-South Ministerial Council (which facilitates dialogue between Northern Ireland and Ireland) has been in abeyance; and Northern Ireland has not participated politically in meetings of the British-Irish Council or the various Joint Ministerial Councils (JMCs).

Since June 2017, Northern Ireland representation in Westminster is filtered solely through the DUP and one Independent Unionist MP, as the seven Sinn Féin MPs do not take their seats in Westminster: No nationalist SDLP or Unionist UUP MP was returned. The DUP supports Brexit and also supports the Conservative Party through the Confidence and Supply Agreement which was agreed following the 2017 general election. The DUP position on Brexit is at odds with that of other political parties in Northern Ireland, and out of step with public opinion which voted in favour of Remain in 2016.

Northern Ireland governance is currently overseen by the Secretary of State for Northern Ireland, and local civil servants are charged with maintaining public services.

Even before the transition period commences, the question of legitimacy is a highly charged one in Northern Ireland, as the principles of representation and accountability are already challenged by the unique political situation. The prospect of a further assault would risk alienating Northern Ireland even more from democratic norms and practices, and potentially unsettle an already under-represented and increasingly disaffected population.

One means to improve legitimacy and representation for Northern Ireland during (and after) the transition period, is to confer voting rights for European Parliament (EP) elections on those in Northern Ireland with an

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Irish passport. Sinn Féin has also proposed that the two additional EP seats which Ireland is set to receive as the UK leaves the EU should be elected from a new Northern Ireland constituency. The DUP is strongly opposed to this proposal, and other Irish political parties have expressed only limited support.

In Northern Ireland, even proposals to plug the legitimacy gap demonstrate and expose differences and disagreements between the two political blocs.

Negotiation

The most troublesome of Brexit issues is the Irish issue. It is intended that the issue will be dealt with in the context of the Withdrawal Agreement. The Irish government and the EU are adamant that there will be no Withdrawal Agreement without agreement on the backstop. However, there is no hard and fast guarantee that this will necessarily transpire.

If the only impediment to reaching agreement in October/November 2018 is the Irish issue, it may be fudged in some way, and then dealt with more substantially during the transition phase in the context of the future UK-EU relationship. This would effectively mean that the Irish issue remains live during the transition period.

Importantly, the UK would be negotiating this issue as a non-member state, and so the ability of the EU to leverage its preferences in the way it has been able to within Article 50 talks would decrease.

There are risks associated with prolonging ambiguity on the Irish issue. It is troublesome for the Irish government in that it fails to provide clarity for business and citizens, and it limits the extent to which British-Irish relations can return to 'normal' following a bruising period in the bilateral relationship.

Unionists and nationalists in Northern Ireland conceive Brexit contrarily, and favour differing ways of resolving the Irish issue. The resulting politicisation of Brexit has complicated the relationship between the two communities, and added to the mix of factors preventing longer-term accommodation. A protracted period where Brexit and the Irish issue remains sentient limits the extent to which political relationships can evolve beyond the current stalemate. This poses challenges for political stability in Northern Ireland at a time when the need for stability is paramount in the context of cementing peace and reconciliation.

Extension

The Irish government is not averse to the extension of the transition period, but is bound by the broader EU political, economic and legal reluctance to string out the transition process. The maintenance of stability for Irish businesses and citizens is considered vital. For Ireland, the Brexit stakes are especially high. There is a sense that if adjustment to the timetable is needed to avoid a no deal scenario, then this should be considered. A prolonged UK 'membership minus' status delivers a status quo situation for Ireland which facilitates 'business as usual' and protects key Irish interests.

A Brexit transition process with the potential to undermine democratic ideals of representation, accountability and legitimacy is likely to be felt and experienced more acutely in Northern Ireland than in other parts of the UK. Adding an additional layer of ambiguity to Northern Ireland's already democratically deficient political situation may exacerbate lingering tensions and produce destabilising effects.

For a region such as Northern Ireland, which is still in the process of transitioning away from conflict, the need for clarity, certainty and stability is critical. A Brexit transition period which does not deliver on these fronts poses potentially troubling challenges and difficulties.



Watch our video about the transition period featuring Dr Simon Usherwood, Deputy Director at The UK in a Changing Europe here:
<http://ukandeu.ac.uk/multimedia/brexit-transition/>



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