

***Professor Danuta Hübner, Ph.D.***  
***Chair of the Committee on Constitutional Affairs***  
***in the European Parliament***

**An 'Irish' deal for the transition: A transition to what?**

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Brexit comes in stages. The same is true for negotiations. There has been a deep sense behind the sequencing of the negotiation process in response to ill-conceived referendum, which was not and should have been not about the leaving but about the future outside the Union.

Sequencing proved very useful, as it has provided an opportunity to learn, to better understand the functioning of the European integration, what it is exactly that the UK will abandon. What is actually surprising in this context is that so far it did not influence the British red lines, which remain the three big Noes, no to single market, no to EU customs union and no to the ECJ jurisdiction. In addition to offering a learning process, the sequencing gave also some time for a reflection about the future relationship. So, actually, on the EU side which has been taking the British red lines seriously and with respect the sequencing has been also an opportunity to repeatedly ask whether UK wishes to continue with this commitment to the three noes. I believe also that sequencing has been providing information feeding a better understanding of no deal scenario.

There is a certain logic to the whole process of Brexit. There is the process of leaving with a clear date. There is then a process of transition. Both leaving and transition are covered by the same withdrawal agreement to which a political declaration on the future framework will be attached. It is clear that if there is no deal about withdrawal, there will not be any transition period as transition is just an arrangement related to withdrawal and does not have a separate legal basis. It is also clear that formal negotiations and conclusion of any agreement about the future relationship can take place only after the UK has become a third country. It is true that the United Kingdom will become a rather special third country whose history as a third country will run from full convergence with the EU to a most likely meaningful

divergence in terms of legal, institutional, political frameworks with all the consequences of this process. There will be a loss of real integration as a result.

What is also worth mentioning that mostly due to the lack of time there cannot be a bespoke transition agreement, for example maintaining the EEA membership by UK. Instead it is agreed that transition would be based on a prolongation of the European Union acquis, including new additions to it, without, however, regular British participation in European institutions and bodies. EU can offer a case by case approach to this.

For those who might still have doubts about the legal basis for any transition arrangements it is worth saying that article 49 of the TEU regarding enlargement is also silent on transition, still transitional arrangements have become a permanent feature of accession processes. I believe that transition period is an objectively useful element of the Brexit process, still more relevant for the British rather than EU interest.

We have heard over the last days that UK government is expecting a deal on transition in the next couple of weeks. It is actually hard to understand on what basis this expectation could be formulated, when at the same time diverging views on many if not most of EU draft proposal have been presented by the British side. There have been also statements on the British side regarding a possibility of selective prolongation of EU acquis which is rather unacceptable for the EU side.

Where are we now with the Brexit process?

On the 28 of February the European Commission will endorse Barnier's draft of withdrawal agreement including transition period. At the same time the draft will be presented to the Council at the level of Coreper and to the European Parliament Brexit Steering Group. And immediately after that the draft will be published. Then consultations with the member states will begin and European Parliament will prepare its reaction. What is also clear is that most of the draft will not come as a surprise as it reflects the Joint Report and other negotiation results. However, an important part of the draft will cover issues where there is no agreement between the two parties or even there is EU only position on issues which have not been yet negotiated or on which the British position is not yet known. Only after these intra EU consultations the draft will be presented to the UK. Then negotiations can take place.

The European Council which takes place on 22 March is expected to adopt some form of guidelines on future framework including probably wording on the future framework. How detailed this can be will depend also on the level of details and clarity of the British side on the future relationship. So let us hope that the British vision of the future framework will become public within the first week of March. And let us hope they will be ambitious in terms of the level of detail.

I mentioned before, when I was expressing my doubts regarding quick agreement on transition, that there are already well known diverging views on transition arrangements. They are actually rather substantial and cover issues like for example the duration of this period. The EU has been always clear on the demand of time limit to transition duration. Initially the UK insisted on a short what was called implementing period, there were strong statements on “not a day more”. Now, however, it seems like there is an expectation on the British side to have an open ended transition period. This is rather unacceptable as it goes against red lines of European institutions including the European Parliament. One of course has to be aware that any extension of the transition period would imply the need to recalculate the financial settlement deal as the extended period would bite into the next EU multi annual budget.

Then, we seem to have different understanding of the approach to international agreements issue during transition. The only solution acceptable to EU would most likely limit the EU role toward the third parties to the notification of the Brexit. It is not in the interest of the EU to open existing agreements. Whether the third parties would be prepared to accept for some time the UK rights within those agreements is hard to predict today. I can imagine that for a short period this could be the case. But it will be the responsibility of the UK.

We have heard also recently that UK would like to be consulted by the European Commission regarding our actions within international organizations. That would actually give UK more rights than member states have. We have heard also about the UK willingness to continue its leading role in military and civil operations of the EU. It is also hard to imagine.

We seem also to have a different approach to the issue of opt ins solutions regarding the area of what we used to call justice and home affairs. Here, the British participation in various committees would, in the EU view, be decided on a case by case basis while UK would prefer to have it clear ex ante. Also, it is rather unlikely that regarding new opt outs arrangements could be acceptable for EU as the UK will be a third country.

An important issue which I already signaled is the British expectations of a selective approach to the prolongation of the EU acquis.

And last, but not least, is the divergence regarding the cut off date for European citizens to acquire the rights envisaged in the agreement on citizens. There are arguments on the EU side that all those citizens who will be in UK with the residence intention during the transition, both those arriving before Brexit and those arriving during transition, should have the same rights. Like the businesses will. In short we see the cut off date as the end of transition, UK insists on the Brexit date.

We have already heard negative reaction of the British side to the potential proposal of the EU regarding the backstop option for the Irish border. You might remember that in the December 2017 Joint Report the two parties have agreed to a kind of hybrid structure for the Irish border solution. Three steps have been envisaged to avoid a no solution situation. The proposed complex structure of steps to be taken can, indeed, be seen as a perfect example of a constructive ambiguity. We start with the preferred option which would be the future relationship agreement including the continuation of the British participation in the EU customs union which would provide the solution to the border on the island. It goes against the British red lines which we take seriously so another option comes as a fall back position which is the obligation for UK to provide a solution for such a situation. And then the third option, a back stop, a default scenario if you wish. This is the duty of the EU to provide a solution when there is no agreement, UK is gone at the end of March 2019 and the hard land border realizes over night. So we need a solution that has to be operationally feasible at the Brexit date. We need it because we are committed to the peace process, because we know that many elements of this border which is a cross border place for business activity and peoples' lives on the island have been underpinned by the EU law and policies. We are also committed to protect CTA and

the provisions of the GFA. So this is what the back stop draft proposal is about, it is about regulatory alignment to avoid hard land border. Of course even full regulatory alignment is not enough for the food safety dimension, environment issue, public health. Also, enforcement mechanism will be needed. But nobody here questions the fact that the entire UK leaves the Union. We propose this absolutely unique, selective solution that will not be replicated anywhere out of the responsibility, accountability and understanding that legal certainty must be provided for an unexpected situation. And it is up to the British Government to see how to avoid any unintended consequences. There has been a lot of common technical work done in cooperation between the parties to identify all customs procedures and control measures which can be abandoned at the land border on the island. So there is shared knowledge on how to avoid risk of the land border. I am convinced the EU side is absolutely prepared to negotiate the first two options of the Joint Report. However, they require the UK initiative and proposal. We hear from the Commission that they will propose a protocol where the backstop option will be embraced. Of course, this form of legally binding document offers a flexibility of change and of its replacement with another legal form.

And let me finish by pointing to what many of us have seen crucial from day one of negotiation which is the time factor. It seems that the clock has started to tick faster.