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Beyond negotiation: Connecting EU and UK

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It is difficult to talk about progress in Brexit, about what it actually means to progress on Brexit. We are aiming at something that is nothing to be proud of. So we measure the progress from the point of view of political capability to reach agreement on withdrawal on time.

Let me start by saying that I have not seen any study proving that the UK will gain from leaving the Union. Previous panels actually confirmed this - no studies, no gains.

So I feel tempted to say that there are moments when I am still hoping that somebody will call from London and call it all off. With the time passing, however, it is less and less likely. Unless a ratified Withdrawal Agreement establishes another date, all Union primary and secondary law will cease to apply to UK from 30 March 2019, UK becomes a third country. I realize that in previous panels this notion of the UK as a third country has not been mentioned. But yes, UK will be soon a third country for us on the continent. Without doubt this is a process that will come at a cost. For us, on the EU side it is also somewhat frustrating because we as the Union cannot act for old times' sake but think first of all of the Union's own interest.

Now that we start moving toward the future relationship, for the public at large it becomes even clearer that withdrawal of the UK from the European Union is not a one off event. It is a lengthy, law driven process, based on both political and legal grounds and with far reaching consequences for the life of people. On both sides of the channel. And yes, here we have studies showing that the British side will be more affected. So probably all those who claim that these negotiations are about damage control are right.

We are all involved in the process: European institutions as well as all Member States. Unity remains crucial, but also listening to each other. European Parliament is not a negotiator but will be providing consent at the end of the process. It has been involved in the process from day one. There is a Brexit Steering Group involving European parliamentarians through representatives of five political groups, providing a majority of around 75% and the chair of the Constitutional Affairs Committee is also the BSG member. This committee, AFCO, responsible for institutional consequences of withdrawal and final consent procedure, through which European Parliament will endorse or reject the final deal on withdrawal and transition, including also the political deal has become and will continue to be an open platform for hearings, debates, meetings with stakeholders.

Preparing for the withdrawal is not just a matter for the EU institutions, Member States and UK but also for private parties, citizens and businesses. For them uncertainty about the future is the major challenge. Probably uncertainty is the sensation that dominates.

Considerable uncertainties continue even on the content of possible Withdrawal Agreement and on Transition which at this stage cannot be taken for granted. Transition has the same legal basis as withdrawal deal. It can become a reality only if there is an agreement on withdrawal. And as we see it today there is no agreement on withdrawal if the Irish border issue is not solved. Indeed, agreement on withdrawal is still having gaps, unfinished or not even started negotiations on some separation related issues. Many of those remaining for negotiations are difficult, both politically and legally. The most difficult seems to be the Irish border issue but governance of the withdrawal is equally challenging.

It is probably worth mentioning that Brexit has appeared on our European agenda in difficult times when it comes to global environment. There are in the world global risks of political nature, divisive political and military conflicts, we negotiate in times when global shifts towards protectionism have become a reality. It is unfortunately not only about trade, it is also about general attitude to global standards. We see emerging protectionist ideas also in the Brexit context. We hear about changes in economic model or regulatory race to the bottom risk.

One can of course say that we started European integration without Brits, we will continue without Brits. Reforms will continue but appetite differs across Europe. Once again citizens will see on their television screens lack of unity of European and national leaders regarding the future. MFF negotiations might bring new divisions to the fore. Still, I believe that even we, on the EU side are not big fans of this divorce based on an ill-conceived referendum, we will spare no efforts to have a deal on time.

Where we are with the process? After this week negotiations, there are two more sessions planned for June. There is an ongoing work at technical level. There is progress but what is needed is a breakthrough that would give us Northern Ireland border solution before summer.

Priorities at this stage include finalization of the remaining separation issues, not at all easy if you think of governance, judicial and police cooperation in criminal matters, geographical indications, public procurement, intellectual property rights, data protection and many others.

Few words on the key issue we need to advance most before summer which is of course 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, a perfect example of a constructive ambiguity, have been envisaged to avoid a situation of no solution.

The preferred option 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 withdrawal agreement, UK is gone at the end of March 2019 and the hard land border emerges overnight.

We need therefore 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

this border is a cross border place for business activity and peoples' lives and a big part of it has been underpinned by the EU law and policies. We are also committed to protect the Common Travel Area and the provisions of Good Friday Agreement. The back stop draft proposal 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. We have heard immediate negative reaction of the British side to the potential proposal of the EU regarding the backstop option for the Irish border. This position seems to have slightly changed, still negotiations of Protocol, part of the Withdrawal Agreement have to be advanced. And, of course, enforcement mechanism will be needed. But what must be clear is that 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 a wealth of shared knowledge on how to avoid risk of the land border. I am also 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. Unfortunately the two proposals of the customs union, the partnership and the streamlined arrangement, unacceptable as customs union option, do not solve the Irish border issue either. My feeling is that if we do not achieve a major progress on the Northern Irish border and the governance then it might increase substantially the risk of no agreement by October and then the no deal scenario at the end of March. We are awaiting in the course of May a comprehensive British position on future relations.

I said before how important is the involvement in preparation for Brexit of private stakeholders. I would say that the chief EU negotiator and his negotiating team, European Commission and all of us, legislators, institutions and authorities have to do our job. But I would urge business communities to prepare for frictions which might emerge if there is no agreement on withdrawal which would mean no agreement on transition. It is in nobody's interest and we do everything to avoid this

scenario. But it is not excluded. So preparations are essential. We need awareness raising. And, as regards preparedness, it is crucial to say that any transition period should be used to the fullest extent. Transition will be useless if it is seen as two more years for firms to do nothing as the transition, if taking place, will mean the prolongation of the existing *acquis*. Contingency planning is crucial even if transition is a status quo.

If we agree that for business community looking at Brexit from prudential perspective means that they have to continue contingency planning like if there was no withdrawal agreement, and hence no transition either, then it is clear that the only certainty available to them is that uncertainty will last till the last moments of March 2019. Industry has to prepare their future structures and models and strategies and for this it is essential to know the directions for the future regulatory frameworks. And this is not only about rules and standards, it is also about regulatory and supervisory cooperation. They also have to prepare how to cope with regulatory divergence. For this it is certainly not enough to have a dispute settlement mechanism in place.

For EU it will be a new situation to have a new, big third country just around the corner, a large market, outside internal market, outside the ECJ jurisdiction. There will be new challenges to the way we work with third countries. We have to take also into account that in some sectors, like investment funds, we still have areas largely controlled nationally. We also know that single market does not work perfectly in every member state so there might be openings for distortions.

I also think that for the Union it is important to see the global dimension of the process of change triggered by Brexit. We have to decide whether we want to be an open global market capable to confront new risks. These are political choices but businesses have to know it, make their preparedness and decisions on future around these assumptions.

Then, a more specific challenge relates to adapting our legal and supervisory framework to the new situation created by Brexit. This means reflecting on the future relationship between the UK and the EU as well as making targeted changes to our legislation when needs be. The European Commission has already started this preparation with some amended regulations on financial sector, most likely tens of legislative proposals adjusting existing legal acts, and specifically our legal and

supervisory framework to Brexit situation will be presented to co-legislators in the months to come.

The debate on the future relationship is in its early stage, but many elements of it are on the table. Of course, the British red lines have left a limited scope for possible options. In short it will most likely have to be about some sort of FTA plus services, some sort of customs union including agriculture, some sort of regulatory cooperation, some sort of cooperation agreement on internal and external security and some other agreements on sectors like research, Erasmus, fisheries, aviation etc. EU will keep its regulatory autonomy but some sort of platform for regulatory cooperation might be considered.

Some experts say we need to take into account the probability of UK departing from regulatory framework already during transition. That is finally the British rationale for leaving. We will have to be prepared to cope with it. We know only too well that normal infringement procedures last years, transition period will last twenty one months. Other experts say we start the new adventure with UK from full convergence of rules. But of course convergence challenge is not only about rules but very importantly also about supervision. We do not know yet what conditions for the future the Brits will ask for. It is probable that in some areas they will voluntarily keep the EU regulations. This would mean that costs for economic operators will not grow much. But we have to prepare the framework for a situation of divergence. This risk of regulatory divergence will be taken seriously. One can ask a question why would UK for whom EU will continue to be a big important market want to diverge.

If EU stays as a large market then keeping a double regulatory model for external and internal market would not make sense. In case of less relevance of EU markets the risk of divergence will be greater. So yes in some sectors there might be a divergence temptation. So it is clear that legal instruments will have to exist.

Let me add to this reflection the issue of level playing field, one of those crucial and horizontal where we should aim at the clause of non-lowering standards. This will be difficult to negotiate. As the Union we need an in depth analysis of where the risk of strong divergence could take place and what instruments we would need to prevent it.

Economic interests will have to come now more strongly to the fore in the negotiations.

The British red lines are there and we take them seriously. But EU has to respect fully its legal constraints as well. The British perspective is not the only one on the table. For us a frictionless border comes with the logic of single market. But Brexit continues to be for the British side about politics. It is only when economic rationale comes to the fore then red lines can be softened or changed.

Some say that when it will come to the negotiations on the future, UK will be a weaker party. If red lines do not change, border frictions become a reality. Michael Leigh mentioned in your previous panel that supply chains will be broken, also in industries which are among the most important for the industries of EU 27. The importance of the supply chains for industries such as car industry or aerospace industry is well known. But there is more.

Today structural change is a permanent feature of industrial growth, adjustment process will create new supply chains, the loss of efficiency will be temporary. The same will be true for other industries, including financial services. But of course all those potentially affected have to take into account the short term risks. Also on EU side.

And to end on a more cheerful note let me remind us all that there is in the Treaty on the European Union Article 8. According to this article the Union shall develop a special relationship with neighbouring countries, as close as possible, in the interest of all our citizens and businesses, and founded on the values of the Union and characterised by close and peaceful relations based on cooperation. So there is a hope.