

# GETTING A BREXIT DEAL

Briefing on the  
UK Government  
Proposals on the  
Northern Ireland Border

7th October 2019



The Prosperity UK Alternative Arrangements Commission is a cross-party initiative seeking to support UK and EU negotiations to reach an agreement on Brexit.



Launched in April, our technical work in the UK, Ireland and in the EU has been informed by the work of 23 globally recognised experts in trade, customs and regulation from 23 countries including Australia, Canada, Belgium, France, the Netherlands, Sweden, Mexico, the UK and US.



Since July we have published recommendations on Alternative Arrangements to the Northern Irish Backstop, and proposed amendments to the Withdrawal Agreement and Political Declaration to enable a new Withdrawal Agreement to pass through the House of Commons.

You can read a summary of our work, Getting a Brexit Deal, [here](#).

You can read our Report on Alternative Arrangements to the Northern Ireland Backstop, published in July, [here](#).

You can read our proposed changes to the Political Declaration, published in September, [here](#).

You can read our proposed changes to the Withdrawal Agreement, published in September, [here](#).

## The UK Government's Offer to the EU

Prosperity UK's Alternative Arrangements Commission welcomes the UK Government's proposals, and believes that they create a landing zone for a negotiation. In this context, we have some comments on the criticisms which have so far been made of the UK proposals, and some recommendations to make to the UK, Ireland and the EU. As a threshold matter, characterisation of the proposal as a two borders proposal misunderstands how borders and checks actually work. The UK needs to reconcile protection of the Good Friday Agreement, no physical infrastructure or checks and controls on the border, protection of the integrity of the EU single market and Customs Union, as well as independent trade and regulatory policy in its proposals. The EU needs to safeguard all of those as well as its own independence in its proposals.

## Criticisms of the UK Proposals

Criticism of the UK's proposals falls into the following categories:

- 1. Costs to business and traders.** The UK proposal recognises this by including a number of funds for NI. Our proposals include some transitional adjustment funds for NI and IE small businesses which we estimate to cost £100m.
- 2. Smuggling.** Our report contains a detailed treatment of how smuggling can be tackled. But it is vital that stakeholders recognise that smuggling is not stopped by customs interventions. It requires a comprehensive and practical approach involving a high degree of intelligence collaboration and data sharing.  
  
[Click here](#) to read 'How to protect both the UK border and EU Single Market in a post-Brexit world' and [Click here](#) to read 'How to ensure the island of Ireland is no 'smugglers' paradise' post-Brexit' by Tony Smith, former UK Border Force Director General, Lars Karlsson, former Director of Swedish Customs and Shanker Singham, Chair of the Alternative Arrangements Commission's Technical Panel.
- 3. Status quo.** The EU has continued to argue that there can be no checks and controls in NI. But if the UK is leaving the EU then this position is untenable. If the EU and IE truly believe that there can never be a customs border on the island of Ireland, then no responsible UK government could accept that part of its territory could be part of another sovereign's customs territory, and on this basis no deal is logically possible. If this really is the EU's position then it would be better to recognise this now, so that appropriate planning can take place for the UK, EU and IE to manage that situation.
- 4. Level Playing Field (LPF).** We think LPF obligations must be negotiated in the context of the Free Trade Agreement (FTA) between the EU and UK. Labour and environmental chapters are common in Free Trade Agreements especially those signed by developed countries. This agreement will also include provisions on regulatory cooperation and good regulatory practice in any event.

## Our Recommendations

### 1. Customs

- The UK Government's proposals have been characterised as creating two borders for Northern Ireland (NI), one with Ireland and one with GB. This is a misunderstanding, based on an outdated view of how international borders operate. Today, borders are best described as a series of transactions, rather than a line in the sand.
- The UK is leaving the EU. This means that the UK (including Northern Ireland) and EU will be in different customs territories and that customs declarations of some kind will therefore be required between the UK and EU. It is impossible for any country to cede part of its own territory to the customs territory of another country or region – in countries with written constitutions such an act would be illegal. We therefore believe the UK Government is correct to highlight this issue and make it clear that for alternative arrangements to have any possible future application, the fact that NI will remain in the UK's custom territory must be recognised. If the EU's position is that NI can never leave the EU's customs territory, it is hard to see how a deal is possible.

### 2. How Customs works today – Customs Declarations and Customs Checks

- Customs checks and controls are much less onerous than has been portrayed widely in the media.
- Today, customs declarations are filed electronically and do not require physical infrastructure. Customs declarations are not the same as customs checks, which are designed to ensure fiscal compliance and are intelligence-led and targeted. In the case of the Irish border, customs checks will be primarily to check that firms are complying with rules of origin, because in the event of an FTA between the UK and EU (this is the UK's government's preferred Brexit end-state), no duties will be payable. Even in cases where duties are payable, then the number of physical checks will be around 1% of all goods. These checks can take place at premises and in facilities, including those of logistics service providers, as noted in the UK offer.
- The UK offer makes use of widely used customs "simplifications" – procedures such as trusted trader schemes (85% of the value of trade across the Northern Ireland border is carried by the largest companies which will qualify for these programmes which are already in use across the EU), Entry into Declarants Records and other customs simplifications. We believe that it would be possible to develop a world class trusted trader programme operational in 10-12 months, and that it would take 3-6 months to negotiate the necessary mutual recognition agreements for these arrangements. The existing AEO processes are well understood by both the EU and UK, and could be easily rolled over and mutually recognised during the transition period.

- The UK proposal suggests that all of these can be implemented by the end of the transition period, December 2020. We believe it would be sensible to build in an additional buffer zone to ensure that all of NI's customs simplifications can be ready in time. In this scenario, the UK would leave the EU Customs Union by the beginning of 2021 with NI following no later than 12 months after the UK to allow time for all these processes to be completed.
- It would be better for the UK and EU to agree a system where the UK leaves the Customs Union and NI also leaves within a short period time, rather than a permanent customs mechanism which prevents NI from remaining fully within the UK customs union.

[Click here](#) to read 'What is a border? Demystifying customs controls and checks in Northern Ireland' by Shanker Singham, Chair of the Alternative Arrangements Commission's Technical Panel.

### 3. Regulatory Arrangements

- The UK Government has gone further than expected by providing for two all-island regulatory zones for agrifood and SPS goods, plus industrial goods. This is a significant concession by the UK Government, and by the DUP who have supported this proposal. Pushing regulatory checks into the ports and harbours of the Irish sea will allow new technology as it is developed to make these checks progressively less intrusive. Just as the Single Epidemiological Unit which exists today is not regarded as a border between the UK and GB, so these checks will become less and less intrusive.

[Click here](#) to read 'Numerous checks on livestock already occur in Northern Ireland – but no additional border checks need be required post-Brexit' by Shanker Singham, Chair of the Alternative Arrangements Commission's Technical Panel.

[Click here](#) to read 'How to protect both the UK border and EU Single Market in a post-Brexit world' by Shanker Singham, Chair of the Alternative Arrangements Commission's Technical Panel.

### 4. Consent Mechanism

- The issue of consent applies both ways and consent mechanisms need to satisfy both the peoples of Northern Ireland and Great Britain, as well as the people of the EU including Ireland. The former is addressed through the approval of the NI Assembly and Executive, the latter by having a consent mechanism that allows buy-in from all sides, as well as via the approval of satisfactory operation of Alternative Arrangements by the Joint Committee.
- The consent mechanism proposed by the UK requires the approval of the NI Assembly and Executive every four years, starting during the transition period. There are problems associated with this mechanism. The current mechanism proposed, based on the Belfast/Good Friday Agreement (GFA), does allow 30% to block affirmative resolutions,



which will likely be difficult for the Irish and EU to accept without some modification. We suggest increasing the required blocking percentage (perhaps to 40%) would help build greater consensus between all of the communities of Northern Ireland while at the same time protecting minority views, which was the original intention of the GFA.

- We recommend that the consent mechanism is triggered when the UK diverges in SPS. We think a single application of the consent mechanism (rather than the review every four years) would be a simpler and more business friendly approach; it would also recognise the reality that the UK is not diverging immediately, and so there is no need for a decision in the transition period. A single application of the consent mechanism would allow the common regulatory zones to stay in place until a decision was taken to follow the UK in its divergence.
- If at a future date, NI decides to follow the UK in divergence, the EU will need to be satisfied that the appropriate mechanisms exist to allow the checks that we outline in our report to be put in place. We think 12 months is too short a transitional period. Instead we recommend a 2 year period for goods and a 3 year period for SPS goods.
- We believe the consent mechanism should be negotiated on the Island of Ireland between the UK and Irish governments, involving all of the parties to the GFA and those who have equities in the process. External, non-parties to the GFA should be wary about tampering with its delicate structure.

## 5. Single Electricity Market (SEM)

- We recommend that the SEM is retained without the need for a consent mechanism to apply. In practice, there is no great concern surrounding the operation of the SEM and its advantages outweigh any disadvantages. We note that in order to make the SEM work, NI is already exempt from certain aspects of UK energy law (and therefore a regulatory difference exists today).

## 6. Level Playing Field ("LPF") Obligations

- Level Playing Field obligations are not necessary if the common areas apply only to NI and not the whole of the UK. In this event NI is a rule-taker and so the disadvantages of being a rule taker must be borne in mind by the EU as it considers the appropriateness of subjecting Northern Ireland only to LPF obligations. When the UK and the EU negotiate an FTA, this will include provisions on labour, environment, competition and state aids as trade agreements between developed nations generally do. These obligations will provide the EU with the assurance that it quite reasonably seeks that there will be no "race to the bottom" on labour and environment standards in the UK (there is no evidence that such a move is supported by the UK Government).

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