

Briefing note - Option C – as set out in the Withdrawal Text

Implications for Goods and Services under the protocol

Key points:

- The scope of the protocol is to create a “common regulatory area (that) shall constitute an area without internal borders in which the free movement of goods is ensured”.
- common customs and regulatory area across the island of Ireland, resulting in joint customs procedures between UK and EU at some point before entry onto the island;
- remaining within the customs territory also results in zero tariffs, no quotas, no import VAT on NI-EU trade;
- however, NI becomes a rule taker for customs, VAT, agricultural standards, fisheries, energy, the environment and state aid;
- European Court of Justice maintains jurisdiction in NI; and
- the UK will cease to have access to EU network and information systems and databases at the end of the transition period.
- The protocol addresses freedom of movement of goods but does not cover trade in services on the island of Ireland.
- This leaves the tradable services sector exposed in Option C and further clarity is required.

Briefing:

- implications for internal UK trade are not set out; this is for the UK to determine;
- it is uncertain whether NI will benefit from the Common Commercial Policy. Billy and Federico’s view is that NI could not benefit from both EU and future UK FTAs and were CCP to be granted, this would disrupt NI-UK trade;
- the exact role of the CJEU will require further negotiation;
- it is unclear whether NI will continue to benefit from the Common Agricultural Policy and the Common Fisheries Policy, though it will be required maintain agricultural and fisheries standards; and
- lack of access to network and information systems and databases will have implications where these are used for intelligence based customs procedures.
- While the protocol does not deal with trade in services on the island of Ireland, some aspects which facilitate cross-border services trade are covered in the withdrawal agreement text:
 - Freedom of movement of persons within the Common Travel Area (CTA) is recognised but the level of market access for service providers will have to be determined in further negotiations on the EU-UK future relationship.
 - Mutual recognition of professional qualifications (MRPQs) – From the end of the transition period the UK (and NI) would be categorised by the EU as being a 3rd country.

Common Regulatory Area

Key points:

- The text outlines that UKG may be invited to attend EU meetings concerning the application of the Protocol. If NI does not have observer status for those areas where EU law must be applied there would be concern our ability to implement legislation.
- As the annexes are for negotiation, we do not know how broad the scope of this will be. Logically it would follow that to avoid border checks all areas of goods should be in alignment. This will need to be clarified as negotiations continue.
- Conformity of goods, for example of motor vehicles, is an area where the UK has indicated they would like to pursue high alignment. Checks between the GB and NI could be unnecessary if the UK was in alignment in those same areas as NI. However, this would involve a trade-off of power over regulation for access to the Single Market which the UKG has made it clear is not acceptable.

Briefing:

- The draft withdrawal agreement sets out that the annexes will provide lists of the areas within the common regulatory area.
- The detail of the annexes has not yet been included, however we understand that in terms of free movement of goods this annex will follow that of the EEA.
- This would draw on the following, which are included in the EFTA Annex 2:

Motor Vehicles	Medicinal Products
Agricultural and Forestry Tractors	Fertilizers
Lifting and Mechanical Handling Appliances	Dangerous Substances
Household Appliances	Cosmetics
Gas Appliances	Environment Protection
Construction Plant and Equipment	Information Technology, Telecommunication and Data Processing
Other Machines	General Provisions in the Technical Barriers to Trade
Pressure Vessels	Free Movement of Goods - General
Measuring Instruments	Construction Products
Electrical Material	Personal Protective Equipment
Textiles	Toys
Foodstuffs	Machinery
Energy	Tobacco
Spirit Drinks	Cultural Goods
Explosives for Civil Use	Medical Devices
Recreational Craft	Marine Equipment

- It is unclear if participation in the single market for goods would involve all of these product categories.
- It is unclear how NI would be involved in the regulatory agencies for goods, as the protocol lays out that UK agencies would no longer act as 'leading authority' for 'risk assessments, examinations, approvals and authorisation procedures'. Norway, Iceland and Lichtenstein each have their own regulatory agencies. Billy and Frederico have advised that it is not likely that NI would need its own authority.
- In terms of implementing EU law, for those elements that require national legislation - would the UK Parliament (and Departments) continue to draft legislation implementing these?