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**The “Chequers”
Proposal:
The Brexit White
Paper of July 2018**

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Introduction

This paper summarises the Government’s July 2018 White Paper on the proposed future relationship between the UK and the EU. The White Paper was 100 pages long so of necessity it highlights only the major proposals.¹

Some of the questions raised by the proposals are highlighted in boxes throughout the text. These are important issues for negotiation.

Chapter 1: Economic Partnership

The UK proposes a “free trade area for goods” with “no customs or regulatory checks at the border” and with “one set of approvals and authorisations in either market”. New arrangements for services and digital would mean the UK facing “more barriers to the UK’s access to the EU market than is the case today”.

Goods

- “A common rulebook for goods including agri-food” with a UK treaty commitment to ongoing harmonisation with the EU.
- “Participation by the UK in those EU agencies that provide authorisations for goods in highly regulated sectors” (notably aviation, chemicals & medicines).
- The phased introduction of a new Facilitated Customs Arrangement in which “the UK would apply the EU’s tariffs and trade policy for goods intended for the EU”, but “its own tariffs and trade policy for goods intended for consumption in the UK.”
- Tariff remittances to the EU would be decided on the basis of a formula with institutional oversight to ensure that the process is resilient and verifiable.
- To reduce frictions the UK would adopt a number of ‘facilitation mechanisms’ such as accession to the Common Transit Convention, mutual recognition of “Authorised Economic Operators” and self-assessments.

¹ HM Government, *The future relationship between the United Kingdom and the European Union*, Cm 9593, 12 July 2018

The EU’s negotiator Michel Barnier has said: “The EU cannot – and the EU will not – delegate the application of its customs policy and rules, VAT and excise duty collections to a non-member who would not be subject to the EU’s governance structures”. But the EU has said it would accept the UK remaining in the Customs Union or agree customs union-type arrangements.

- There would be arrangements to ensure that there would be “no tariffs, quotas or routine requirements for rules of origin on any UK-EU trade in goods”.²
- The ‘common rule book’ for manufactured goods would include “only those rules necessary to provide frictionless trade”, including environmental requirements.

The UK hopes to remain an ‘active participant’ in rule-setting bodies, but without voting rights and with diminished influence – and accepts that it could not have separate national standards. Is this an acceptable abdication of parliamentary control?

- “One set of approvals and authorisations in either market” would require “strong reciprocal commitments... and a robust institutional framework” to cover testing, conformity assessments, quality assurance, licensing, etc.
- The common rule-book for agri-food and fisheries would include sanitary and phytosanitary rules – but not wider food policy regulations such as marketing and labelling rules, or domestic production, e.g. the CAP or the CFP.

If the UK entered into trade agreements with third countries to accept products that did not meet EU standards (e.g. chlorinated chicken or hormone treated beef) how would the EU assure itself that such goods could not freely enter its market?

- Being outside the CAP, the UK would be free to adopt its own agricultural policy.

The Prime Minister says that her proposal would meet the UK and EU’s “shared commitments to Northern Ireland and Ireland... in a way that respects the EU’s autonomy without harming the UK’s constitutional and economic integrity” yet the White Paper is silent about how this would be achieved. How is it possible to reconcile ‘no border’ with the UK’s intention to leave the EU’s Single Market, Customs Union and VAT area?

Is it plausible that the EU would offer deep commitments on market access, and ‘national treatment’ to a third country that does not accept the four freedoms of the Single Market?

Services and Investment

² Known as “cumulation”: see European Commission, ‘Taxation and Customs Union: Common provisions’, 12 July 2018

The UK is looking for 'regulatory flexibility'. Its proposals include:

- general provisions to minimise barriers, seeking broad coverage within the GATS framework, and deep commitments on market access; national treatment (with minimal exceptions); free flow of day to day capital; and rules to ensure that new regulation is necessary and proportionate;
- provisions on the mutual recognition of professional qualifications;
- in financial services, the UK wants a new arrangement giving each party autonomy over decisions regarding access to its market, but with treaty-based commitments to underpin the operation of the relationship. These should be on the basis of reciprocal recognition of equivalence at the outset. Subsequent regulation in the UK and the EU should reflect a "shared intention to avoid adopting regulations that produce divergent outcomes in relation to cross-border financial services"; and

Is it plausible that the EU would grant the UK "autonomy over decisions regarding access to its market" or agreeing to limit its own (EU) freedom of action through a "shared intention to avoid regulations that produced divergent outcomes"?

- there should be a deep regulatory dialogue.

Framework for Mobility

After the transition, free movement of people would end. It would be for the UK to determine its own rules, building on current WTO GATS commitments, to support:

- reciprocal arrangements for visa-free travel short-term business purposes, and intra-corporate transfers, in line with current business visa policy, and to facilitate temporary mobility of scientists and researchers;
- reciprocal visa-free travel arrangements for tourism, and continuation of the EHIC health card; and
- continuation of Erasmus for students, and a UK-EU youth mobility scheme.

There is still no detail about this 'framework for mobility'. The EU has consistently insisted that the 'four freedoms' are indivisible. Is it plausible that it would allow 'frictionless trade' while allowing the UK to end freedom of movement, and to introduce mobility rules of its own choosing?

At the border, as now, tourists and business visitors should not routinely have to face questions about the purpose of their visit.

Competition

The UK would commit to:

- a common rulebook on state aid, to be enforced and supervised in the UK by the Competition and Markets Authority;
- “the non-regression of environmental standards” and other reciprocal commitments to co-operate internationally;
- high standards on climate change; and
- high levels of social and employment protections through a non-regression requirement for domestic labour standards; and high levels of consumer protection, with co-operation on enforcement, and a framework to work collectively on matters of continuing concern.

Does a ‘non-regression requirement’ for domestic labour standards mean that the UK will continue to apply, for example, EU working time and posted worker regulations?

Socio-economic cooperation

The UK’s proposes:

- an Air Transport Agreement to maintain aviation access between and within the territory of the UK and the EU, alongside UK participation in the European Air Safety Agency (EASA) and close co-operation in air traffic management;

Is the UK prepared to accept all the EU aviation Single Market rules in order to retain full access to the EU’s common aviation area?

- exploration of options for road transport, including reciprocal access for UK and EU road hauliers and passenger transport operators, with a permitting system if required;
- bilateral rail agreements to support the continued operation of the Channel Tunnel, and with Ireland on the Belfast-Dublin Enterprise line;
- exploration of options for the future energy relationship, including possibly maintaining the Single Electricity Market between Northern Ireland and Ireland;
- a new civil nuclear relationship based on a comprehensive Nuclear Cooperation Agreement (NCA) between Euratom and the UK;
- for civil judicial cooperation, the UK would seek to join the Lugano Convention which provides for cooperation between EU and EFTA but also explore a more extensive bilateral agreement with the EU;³ and
- exploration of options on intellectual property, including continued participation in the Unified Patent Court and unitary patent system.

Independent Trade Policy

In respect of non-EU countries the UK:

³ The Lugano Convention provides for parties to apply the same rules on civil and commercial judicial cooperation and commit to pay due regard to how each other’s courts interpret those rules.

- will seek continuity in its existing trade and investment relationships, including those covered by EU FTAs or other EU preferential arrangements;
- will seek to negotiate new trade agreements covering goods, services, investment and other matters consistent with its agreement with the EU;
- will be free to negotiate, sign, and ratify FTAs during the implementation period, and bring them into force from January 2021;
- will set its own goods tariffs and vary them as it chooses, independently of EU tariffs;

How will the EU assure itself that the UK's "risk and intelligence based" checks on goods tariffs represent an adequate protection against fraud?

- would have only limited freedom to change regulation in those areas covered by its common rulebook with the EU; it would discuss variances with the EU;
- would retain the freedom to make changes in other areas of regulation;
- would have its own seat and vote in the WTO and an independent trade remedies framework to protect domestic industry against unfair trade practices; and
- would maintain current access for the Least Developed Countries to the UK.

Chapter 2: Security Partnership

The UK's future security relationship with the EU should:

- protect shared operational capabilities;
- respect the sovereignty of the UK and the autonomy of EU decision-making;
- have an institutional framework that delivers a practical and flexible partnership, seeking to combine efforts to the greatest effect;
- keep pace with growing global challenges and evolving threats; and
- be underpinned by appropriate safeguards: (e.g. respect for human rights, comprehensive data protection arrangements and robust, appropriate governance arrangements).

The data exchange arrangements must allow for swift exchange of sensitive information and data, including but not limited to:

- UK undertakings to continue to follow the Passenger Name Record Directive and its accompanying safeguards and rules;
- alerts to police and border forces. The UK seeks to "maintain the reciprocal ability to transmit alerts in real time, with access to systems that allow for a timely and efficient response to these alerts through SIS II";
- continued UK participation in the European Criminal Record Information System; and
- continued UK participation in the Prüm data exchange system for DNA, fingerprint and vehicle registrations.

The security partnership should include but not be limited to:

- efficient extradition between Member States and the UK, safeguarding the benefits of the European Arrest Warrant (EAW);

The highly complex dispute-settlement procedures proposed in Chapter 4 are not designed to deal with disputes about the rights of individuals – yet this would be necessary if the UK wanted to safeguard the benefits of the EAW.

- continuing co-operation between judicial, police and customs authorities in different states, including evidence exchange on the basis of Mutual Legal Assistance (MLA), and the European Investigation Order (EIO); and
- continuing participation in Joint Investigation Teams (JITs) including the ability to initiate them.

The UK wishes to continue to participate in EU Agencies, in which context it will respect the remit of the Court of Justice of the European Union (CJEU). In particular, the UK wishes:

- to maintain its current contribution to Europol which will require a deeper co-operation agreement that the EU has previously concluded; and
- to maintain the UK and the EU’s capacity to cooperate in tackling serious cross-border and organised crime through Eurojust.

Foreign Policy, Defence and Development

The UK proposes a “tailored partnership” with the EU. This might cover:

- consultation and regular dialogue:
 - between officials, with ad hoc invitations to meetings such as the Political and Security Committee (PSC) in informal session;

“Ad hoc” invitations to the PSC in “informal session” is less ambitious and less effective than earlier aspirations to remain a part of decision-taking in CFSP. Is this enough?

- between EU27 leaders and the UK Prime Minister and at other political levels;
 - in information and intelligence sharing;
 - reciprocal exchange of expertise and personnel to promote collaboration in areas of mutual interest; and
 - co-operation in multilateral fora, such as the UN, G7, G20, etc.
- mechanisms to discuss and coordinate sanctions;
- arrangements to enable cooperation on crisis management operations, including using civilian and military assets and capabilities to promote global peace and stability, where it is mutually beneficial;
- commitments to support European defence capability development and planning;

- commitments to continue to work together on global development challenges; and
- continued UK and EU co-operation on EU strategic space projects including Galileo, which the UK sees as a core component of the future security partnership.

Will the EU will accept that the UK could participate fully in Galileo from outside the Single Market?

Wider Security Issues

There are a number of wider security issues including:

- asylum and illegal migration where the UK proposes ongoing operational cooperation, a new legal framework to return illegal migrants and asylum-seekers to a country they have travelled through and continued UK access to Eurodac (biometric and fingerprint database) or equivalent;
- a new UK-EU strategic dialogue on cyber security. The UK's National Cyber Security Centre should continue to work with the EU's Computer Emergency Response Team, and the UK would continue to share classified threat intelligence assessments with European allies; and
- a new UK-EU framework for dialogue on counter-terrorism, working together on emerging threats, new capabilities and new opportunities.

Chapter 3: Cross-cutting and other co-operation

Data protection

EU Member States can transfer personal data freely with EEA countries, and with countries that have been granted an Adequacy Decision. As the UK has already adopted GDPR, it would hope to have an Adequacy Decision agreed before the end of the implementation period.

Co-operative accords

The UK proposes new co-operative accords to cover, for example:

- science and innovation, and space;
- culture and education;
- overseas development assistance and international action; and
- defence research and capability development.

The UK would seek to maintain current levels of access and involvement insofar as it could, making appropriate financial contributions.

The UK also hopes that the EU will maintain its PEACE programme to promote reconciliation in Northern Ireland, and would maintain its own financial contribution to this.

Fishing

The UK will seek a framework for reciprocal and fair access to waters and the allocation of opportunities, based on the most up-to-date scientific methodology (rather than ‘relative stability’), promoting sustainable fishing and respecting the UK’s position as an independent coastal state. The UK, the EU and coastal states should agree to annual negotiations on access rights and fishing opportunities for UK, EU and coastal state fleets.

Until now the EU has insisted on the principle of ‘relative stability’, and will seek to balance fishing access rights with market access rights.

Chapter 4: Institutional Arrangements

The UK seeks an overarching institutional framework for its future relationship with the EU. It is for the EU to determine this, but “precedent suggests... an Association Agreement.”

The EU has long been open to the idea of an Association Agreement (and the EP has proposed the outline of one) – so this would be a plausible institutional framework.

It is likely that a number of separate agreements will be needed, with some – such as a core Free Trade Agreement (FTA) and on internal security – legally binding, while others – such as external security cooperation – should be based on political commitments. The relationship needs to be adaptable, with the option to add further agreements over time.

The overarching institutional framework should include a Governing Body to provide political direction and a Joint Committee to underpin technical and administrative functions.

The Governing Body should meet biannually at leader level, including at least once a year between the UK Prime Minister and the heads of state and governments of the Member States of the EU.

The Joint Committee (with sub-committees as required) would steer the relationship, as agreed by the Governing Body and resolve disputes.

In areas where it commits to a common rulebook, the UK would need to be able to share its views as those EU rules are developed. While the UK would not have a vote, its experts should be consulted on the same basis as Member States.

Is it plausible that that the EU would be prepared to consult a third country about potential rule changes ‘on the same basis’ as it consults Member States?

Where the UK had made of legislative and regulatory commitments, the governance and institutional arrangements would need to ensure that:

- there was technical dialogue in the Joint Committee to oversee their application;
- the rules could be relied on by individuals and businesses and interpreted consistently by UK and EU courts; and

- there were arrangements in place for UK participation in EU bodies and agencies, where this was required to enable the agreed cooperation.

Proposed regulatory and legislative changes on either side would be dealt with through the Joint Committee, which would agree whether the relevant agreement needed to be updated to reflect the change.

If the UK and the EU could not agree, the Joint Committee would endeavour to maintain the functioning of the relevant agreement. If this was not possible, proportionate rebalancing measures could be proposed (e.g. requesting financial compensation). Where there was no agreement, the relevant part of the future relationship could be suspended.

Ensuring consistent interpretation

When courts in the UK or the EU interpreted provisions of national legislation intended to give effect to the agreements, they could take into account the relevant case law of the courts of the other party, while respecting the independence of the different courts.

The Joint Committee, however, would keep the case law of CJEU and senior UK courts under review.

Dispute Resolution

A formal dispute would be raised in the Joint Committee. If it could not be resolved by negotiation after a defined period, either party could refer the issue to an independent arbitration panel, which would include members from both parties (and specialist expertise where required). The decision of the panel would be binding on the parties.

Where the UK and the EU had agreed a common rulebook, a dispute might arise about their correct interpretation. The UK recognises that only the CJEU can bind the EU on the interpretation of EU law, and therefore in these instances, there should be the option for a referral to the CJEU for an interpretation, either by the Joint Committee or the arbitration panel. The CJEU would only have a role in relation to the interpretation of those EU rules to which the UK had agreed to adhere as a matter of international law.

The Joint Committee or arbitration panel would then have to resolve the dispute in a way that was consistent with this interpretation.

Dealing with non-compliance

There are two main scenarios:

1. first, if a dispute was not resolved by the Joint Committee within a defined period of time and the agreement did not provide for independent arbitration; and
2. second, if either the UK or the EU considered that the other party had not complied with a decision by the Joint Committee or arbitration panel within a reasonable period.

The complaining party should be able to take proportionate and temporary measures – also localised insofar as possible – including financial penalties or, as a last resort, temporary suspension of specific obligations.

These are highly complex procedures that are presented as ‘balanced’ between UK and EU, though there is no reason to think that the EU would be willing to accommodate UK decisions to depart from the ‘common rule book’. Why has the UK not considered adopting existing procedures for handling EU/EFTA disputes?

Accountability at home

The agreements that the UK will conclude with the EU will require domestic legislation to give them effect in the UK. The UK Parliament will need therefore to consent to the proposals, including for a common rulebook in specific areas.

There will also be a role for the devolved administrations and legislatures in shaping the UK Government's position ahead of discussions in the Joint Committee, and in ensuring that changes to common rules are reflected in law across the UK.

Conclusion

This paper is confined to an analysis of the Chequers proposals as published in July 2018. It does not take account of four amendments proposed subsequently to the *Taxation (Cross-border Trade) Act 2018* by Brexit supporters and accepted by the Government.⁴ Three of these amendments make the Chequers proposals even more problematic in that they prohibit the UK collecting EU import duties unless the EU agrees to collect duties on behalf of the UK, forbid UK participation in the EU's VAT system and forbid separate customs arrangements with the EU for Northern Ireland.⁵ An additional amendment required any customs union to be approved by Act of Parliament but that does not affect the Chequers proposals, which would require primary legislation to be implemented if they were agreed with the EU.

September 2018

⁴ See *Taxation (Cross-border Trade) Act 2018*, c. 22

⁵ A description of what happened during the passage of the Bill is given in Charley Coleman, *Taxation (Cross-border Trade) Bill: Briefing for Lords Stages*, House of Lords Library Briefing LLN-2018-0089, 31 August 2018



Senior European Experts

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