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The Political Declaration is not a vague wish list, but an attempt to bind the UK to EU policies



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The author is a serving Civil Servant whose anonymity we are protecting.



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The Political Declaration accompanying the draft Withdrawal Agreement has been largely overlooked in the furore over the backstop and the resounding defeat at the meaningful vote on 16th January 2019. However, the letter written to the Prime Minister by Jean-Claude Juncker and Donald Tusk on 15th January confirms that:

a) “There is an important link between the Withdrawal Agreement and the Political Declaration, reflecting Article 50 of the Treaty on European Union. As stated in Article 184 of the Withdrawal Agreement and reflected also in Paragraph 138 of the Political Declaration, the European Union and the United Kingdom have committed to use best endeavours, in good faith and in full respect of their respective legal orders, to take necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the Political Declaration.”

b) “As for the link between the Withdrawal Agreement and the Political Declaration, to which you make reference in your letter, it can be made clear that these two documents, while being of a different nature, are part of the same negotiated package. In order to underline the close relationship between the two texts, they can be published side by side in the Official Journal in a manner reflecting the link between the two as provided for in Article 50 of the Treaty on European Union (TEU).”

It is therefore unwise to dismiss the Political Declaration as a “vague wish-list”. It is far from vague and binds the UK into most areas of EU policy (in many cases under EU law); and should any form of the current draft Withdrawal Agreement pass a second meaningful vote, this Political Declaration will undoubtedly form the basis for the future relationship.

The EU’s letter of 15th January did not include any legal text to make the backstop either optional or time-limited. It is unlikely that concessions will be offered on the backstop for the simple reason that it is required to compel the UK to follow both the timing and substance of the negotiations envisaged in the Political Declaration.

The following is a summary of my more detailed paragraph-by-paragraph analysis of the Political Declaration which you can see here (<http://2mbg6fgb1kl38ogtk22pbxgw-wpengine.netdna-ssl.com/wp-content/uploads/2019/02/Political-Declaration-analysis-for-BrexitCentral.pdf>).

General principles

- The preamble confirms the link to the Withdrawal Agreement. It commits the UK to “an ambitious, broad, deep and flexible partnership across trade and economic cooperation, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation.” Hard red lines are set by the EU with regard to an agreement consistent with “the Union’s principles” and rules, meaning that in most important areas, EU law will be supreme.

Core values and rights

- The UK will have to agree to EU human rights law “as an essential prerequisite” to trade talks.

Data protection

- The EU has placed assessment of UK databases, including the transfer of the personal data of UK citizens, first on the list of areas of cooperation.

Participation in Union programmes

- Participation in a wide range of EU programmes across science, culture, overseas development, defence, foreign policy and space is to be subject to EU law and requires a financial contribution from the UK to be determined by the EU.
- The UK commits to funding a shared PEACE PLUS programme in Northern Ireland and to exploring options to rejoin the European Investment Bank.

Economic partnership

- The economic partnership requires inclusion of the onerous non-regression clauses in Annex 4 of the backstop.
- A free trade area is proposed across all sectors with a customs union (“build and improve on the single customs territory provided for in the Withdrawal Agreement”) – i.e. in the backstop, where the UK must implement the EU’s common external tariff in full. This means the UK will not be able to operate an independent trade policy, despite statements to the contrary.
- The UK should adopt EU rules for goods (with no say) with full regulatory alignment.

Customs and the Irish border

- Paras 26-27 propose facilitative customs arrangements covering technology and administrative cooperation (trusted trader schemes, electronic declarations etc) to avoid a hard border in Ireland.
- The EU therefore admits in the Political Declaration that there is no need for the backstop or a

customs union to avoid a hard border in Ireland.

Services and investment

- The economic partnership covers all areas of services, with regulatory alignment.
- There is a risk of a supranational regulatory body through “structured cooperation” in financial regulation.

Public procurement

- Public procurement to go beyond WTO GPA commitments and will favour state-owned EU businesses.

Mobility

- Mobility provisions retain the prospect of preferential treatment for EU nationals, including access to social security benefits and some form of free movement (making it easier to cross borders).

Transport

- The EU seeks comprehensive agreements in the transport sector, particularly aviation, with the imposition of EU policies on standards (including working hours etc), although international agreements and bilateral arrangements with the EU27 could adequately cover this sector.

Energy

- The UK is expected to rejoin/align with the EU’s carbon pricing scheme. Any clauses linked to climate change will be enforced as part of the overall deal (France has already said it will veto trade deals with countries it deems non-compliant with environmental targets, particularly with those set out in the Paris Agreement).

Fishing

- Fishing is surrendered as a shared resource, with an agreement on quotas, management of stocks and continued EU free access to UK waters to be ratified by 1st July 2020. And should we enter the backstop, we will not be allowed to leave it unless we sign a fisheries agreement with the EU as set out in this linked Political Declaration.

Competition and “level playing field”

- Catch all to force UK alignment with EU rules on “state aid, competition, social and employment standards, environmental standards, climate change, and relevant tax matters, building on the

level playing field arrangements provided for in the Withdrawal Agreement” (i.e. replicating the “non-regression” clauses in the backstop). Could be used to trap us in the backstop.

Agriculture

- State aid provisions will allow the EU to influence the level of support available to British farmers, already set at a very disadvantageous level in the Withdrawal Agreement.

Security partnership

- Extensive provisions to lock the UK into the EU’s legal and judicial pillars through the criminal justice system, with operational activities and data exchange under EU rules. Obliges the UK to arrest people (including our own nationals) deemed to have committed “political offences”.

Foreign policy, intelligence and defence

- Ties the UK into the EU’s Common Foreign and Security Policy, commits the UK to common action with EU in international forums, joint military action under EU command structures, participation in and funding of EU defence agencies, operations under EU control.
- Defence manufacturing and procurement to be under EU frameworks. Intelligence sharing under EU frameworks.
- UK to consider continued funding the EU overseas aid budget under EU rules.
- Taken together, the provisions on foreign policy, defence, intelligence and cyber security mean that UK assets and know-how will be used to further the EU’s strategic objectives – a serious risk to national security, defence capability and existing international alliances.
- UK to participate in EU’s civil protection mechanism as “a participating state” – could lead to UK being asked to fund a Eurozone bailout, as in the past.

Institutional framework

- Envisages associate membership of the EU via a formalised “institutional framework”.
- Replicates the Joint Committee provisions of the Withdrawal Agreement with all questions of EU law (of which there will be many in view of the above) to be referred to the ECJ for a binding ruling. No international dispute mechanism at the WTO, for example.

Negotiations and timetable

- Power to start negotiations rests solely with the EU. Once the WA is ratified, the EU can take as long as it likes to start talks and string them out for as long as it wants. As the UK will be locked either into a transition period or the backstop, it can only influence progress by agreeing to the EU’s terms. The UK has already surrendered its leverage in the negotiations.

- Progress to be benchmarked to steps to remove the need for a hard border in Ireland. This establishes a direct link between leaving the backstop and agreeing a deal, thus reinforcing the fact that most of this declaration (all “should”, “must”, “will” not “may” or “might”) is already non-negotiable.
- There is no cut off point if agreement cannot be reached. A six-monthly review of talks does not suggest that progress will be anything.

The anonymous civil servant’s fully detailed analysis of the Political Declaration can be viewed below or by clicking here (<http://2mbg6fgb1kl38ogtk22pbxgw-wpengine.netdna-ssl.com/wp-content/uploads/2019/02/Political-Declaration-analysis-for-BrexitCentral.pdf>).

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