



The UK policy paper on the future relationship with the EU

An analysis of the proposals

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The UK policy paper on the future relationship with the EU – an analysis of the proposals

Introduction

On 12 July 2018, the UK government published a policy paper with proposals for what the future relationship between the UK and the EU should look like.¹ The policy paper, commonly referred to as the “Chequers proposal” after the venue where it was presented to the wider public, is more concrete than the previous statements made by Prime Minister Theresa May in her four policy speeches on the subject during 2017 and 2018.² At the time of publication of this PM, negotiations are still ongoing between the EU and the UK on the withdrawal agreement. The EU has made clear that negotiations on the future relationship cannot begin until the withdrawal agreement has been concluded (however, the withdrawal agreement shall take the future relationship “into account”). The UK is set to leave the EU on 29 March 2019. If the EU and the UK manage to reach a withdrawal agreement, a transition period will commence during which EU rules are still applicable in the UK until 31 December 2020. Thus, the future relationship will apply from 1 January 2021.

The policy paper should be seen as the UK’s opening bid for negotiations on the future relationship. The UK has previously elucidated a number of restrictions, or “red lines”, regarding the future relationship that, to this date, are valid. The proposals in the policy paper aim to achieve as close a relationship with the EU as possible, while respecting, *inter alia*, these red lines:

- The jurisdiction of the Court of Justice of the European Union (CJEU) shall no longer encompass the UK and the supremacy of EU law over UK law shall no longer apply.
- The UK Parliament shall approve all pieces of legislation that apply in the UK.

¹ *The future relationship between the United Kingdom and the European Union.*

² Lancaster House 12 January 2017, Florence 22 September 2017, Munich 17 February and Mansion House 2 March 2018.

- The free movement of persons between the UK and the EU shall no longer apply.
- There shall be no “hard border” between Northern Ireland and the Republic of Ireland.
- The UK shall be free to pursue its own, independent trade policy.

The analysis only covers those areas of the policy paper that fall within the scope of the National Board of Trade’s area of expertise – the EU single market, international trade and trade policy. This is a summary in English of our more detailed analysis in Swedish of the proposals in the UK policy paper.³

Summary of the analysis

The Board’s analysis is that the policy paper as a whole is not satisfactory because it essentially builds on the premise that the EU would “outsource” the control of its customs union, customs territory and single market to a country that is no longer part of the union. In addition, some of the individual proposals would be burdensome, complicated and costly, and some are too generally formulated to be readily evaluated.

The proposals in the policy paper can be seen as an attempt to maintain the free movement of goods between the EU and the UK. Conversely, the free movement of services and persons will no longer apply.⁴

Additionally, the UK proposes to be trusted to maintain a “level playing field” with the EU in the areas of state aid and climate regulations (in the areas of the environment and social policy, the UK merely proposes to agree not to reduce the existing standards through so-called non-regression clauses). Therefore, the policy paper is an attempt to cherry-pick. The EU has repeatedly stated that such an agreement is not acceptable.⁵

However, it is worth pointing out that even *if* the EU were willing to accept that the UK could maintain one of the freedoms of the single market but not all four, there are other, legal-technical issues with the “Chequers proposal”. A central aspect of the proposal is that the CJEU’s right to uphold justice, its jurisdiction, would no longer encompass the

³ Kommerskollegium, 2018, *Storbritanniens vitbok om den framtida relationen med EU – En analys av förslagen*.

⁴ The free movement of capital is not explicitly addressed in the policy paper but is currently, in principle, free also towards third countries.

⁵ The president of the European Commission, Jean-Claude Juncker, repeated this in his State of the Union on 12 September 2018: “*If you leave the Union, you are of course no longer part of our single market, and certainly not only in the parts of it you choose*”.

UK. Therefore, a central part of the functioning of the EU single market would fall.

Free movement in the EU builds on common principles and rules that member states, firms and private persons trust to be equal for all across the single market. This trust is partly genuine (i.e. the member states choose to trust each other) but also, to a large extent, dependent on the mechanisms of control built into the EU system. These mechanisms consist of common committees where specific issues are discussed, cross-border government cooperation and standardisation cooperation by European authorities, information and problem-solving tools and, in the end, the CJEU.

It is the CJEU's role as the ultimate interpreter of EU law, the supremacy of EU law over national law, and the direct effect of EU law that guarantee that EU rules apply equally across all the member states.

Since the policy paper proposes that the CJEU's jurisdiction over the UK shall cease to apply, it is only natural, albeit unfortunate from a trade perspective, as it would lead to higher trade costs, that the free movement of services and persons is proposed to cease to apply between the EU and the UK after Brexit. However, it is more problematic that the policy paper proposes that the free movement of goods shall continue to apply through a "combined customs territory", a "common rulebook" for products and continued British participation in European standardisation organisations and various technical committees. The policy paper does indeed state that the British courts shall "pay due regard" to the rulings of the CJEU but, for businesses across the EU single market, it would not provide the same level of certainty that UK businesses are following the same rules that they must follow. Nor would it provide the same level of certainty to national market surveillance authorities in the EU that their UK counterparts are ensuring that the EU rules upon which the free movement of goods depends, including the principle of mutual recognition, are being complied with in the UK.

However, a number of proposals in the policy paper could mitigate the negative effects of Brexit compared to a no-deal scenario, and it should be possible to agree to them without compromising the integrity of the single market. The policy paper's proposal for close cooperation and dialogue between the EU and the UK on regulatory matters is perhaps the most obvious one. This would be achieved through ongoing cooperation between government authorities, continued British participation in various EU technical committees without voting rights and continued

cooperation between British and EU standardisation organisations. These forms of cooperation would lower the risk of regulatory divergence, different interpretations of rules and/or requirements for previously tested products to be tested again before they can be placed on the EU or British market. The proposed forms of regulatory cooperation are positive insofar as they would lower trade barriers between the EU and the UK compared to a situation without such cooperation. However, as stated above, the proposals are not sufficient to establish a “no-border” regime between the EU and the UK.

Regulatory cooperation and continued British participation in various EU committees and other forums, albeit without voting rights, would be especially valuable to a country like Sweden. The UK and Sweden, along with other like-minded countries, often agree on how free trade and free movement within the EU should be achieved. The UK’s departure from the EU therefore means that those countries are losing a powerful “ally” on such matters. Additionally, UK regulatory agencies are among the leading ones in Europe on matters such as financial services and data protection. Retaining the British voice, although without the vote, would likely be positive for the single market and EU trade policy over the long term.

In a similar vein, it is promising that the policy paper clearly states that the UK intends to pursue a free trade-friendly line with its newfound, independent vote in the WTO.

On a more technical note, the policy paper’s proposal for cumulation of origin is desirable. It would provide businesses with greater liberty to source parts and components and would lower the risk of disrupting established value chains. The proposal on cumulation is not dependent on the other proposals in the policy paper. However, the proposal would have to be accepted by the EU’s (and the UK’s possible future) FTA partners.

In sum, the National Board of Trade notes that there are a number of individual proposals in the “Chequers plan” that are desirable for the EU and the UK to agree on to lower trade costs after the UK’s departure from the EU compared to a situation where no agreement is reached. Continued regulatory cooperation between the EU and the UK is an example of such a proposal. Conversely, other individual proposals are less desirable because they are likely to be costly and complicated to implement in practice. The Facilitated Customs Arrangement is an example of such a proposal.

Most importantly, though, is that the “Chequers plan” as a whole is not desirable. Its core elements – no borders for goods trade between the EU and the UK and no jurisdiction of the CJEU in the UK – could lead to the hollowing out of the EU single market. Free movement in the EU is built on a guarantee that the rules apply equally for all in all the member states, while “Chequers” proposes free movement between the EU and the UK but weakens this guarantee.