

BREXIT AND THE FUTURE UK-EU TRADE
RELATIONSHIP
CONFRONTING THE CHALLENGES

Federico Ortino

King's College London, federico.ortino@kcl.ac.uk

Abstract. Brexit and the Future UK-EU Trade Relationship. Confronting the Challenges

Since the EU referendum took place in June 2016, the British government's task to implementing the vote to leave the EU has been monumental. With regard to the future trade relationship with the EU27, the British government has proposed a 'bold and ambitious' free trade agreement aimed at the 'freest and most frictionless trade possible'. The complexity of achieving such an agreement within the limited timeframe available has generated lot of controversy, uncertainty and anxiety. The aim of the paper is to bring some clarity with regard to the challenges ahead. A proper appreciation of these challenges is key in order for a transparent, inclusive and realistic debate about the objectives, features and timeframe of the future UK-EU trade agreement.

Keywords: Brexit, free trade agreement, protectionism, regulatory diversity

Since the European Union (EU) referendum took place in June 2016, the British government's task to implementing the vote to leave the EU has been monumental. The debate about the future trade relationship between the United Kingdom (UK) and the remaining 27 Member States of the EU (EU27) has been particularly controversial and has generated a high level of anxiety within business and the wider public. On the one

hand, the British government has relatively quickly drawn the so-called «Brexit red-lines» that will guide any future relationship (including trade) between the UK and the EU27. These red-lines include retaining control over immigration, control over law-making, control over global trade policy and freedom from the jurisdiction of the Court of Justice of the EU). The red-lines have remained relatively unchanged – notwithstanding the various calls to modify (and particularly to soften) them.

At the same time, the British government has emphasised the importance of trade for the UK economy, particularly trade in services. Services represent almost 80% of the UK GDP and roughly half of the UK total exports. Crucially, the UK enjoys a substantial trade surplus when it comes to services (particularly financial services). Accordingly, in order to reassure business (and the wider public) that there will be no dramatic changes in the regulatory framework under which they currently operate, the British government has called for «the freest and most frictionless trade possible in goods and services» with the EU after Brexit.¹ However, as clearly indicated by the British Prime Minister, the UK will not seek to retain membership of the EU Single Market (and Customs Union) but will instead pursue «a bold and ambitious» free trade agreement (FTA) with the EU.² Recognising that a traditional FTA would represent a marked restriction on the market access that currently exists between the UK and other EU Members States, the Prime Minister has recently called for ‘imagination’ and ‘creativity’ in designing the future FTA with the EU27³.

¹ HM Government, *Future Customs Arrangements: A Future Partnership Paper* (August 2017).

² Prime Minister’s Lancaster House Speech, *The government's negotiating objectives for exiting the EU* (17 January 2017). See also Prime Minister’s Letter to Donald Tusk triggering Article 50 TFEU (29 March 2017).

³ Prime Minister’s Florence Speech, *A new era of cooperation and partnership between the UK and the EU* (22 September 2017).

Controversy and related anxiety are linked, at least in part, with the complexity of achieving such a ‘bold and ambitious’ FTA within the limited timeframe available (currently by 29 March 2019). The aim of the paper is thus to bring some clarity with regard to the challenges ahead. A proper appreciation of these challenges is key in order for a transparent, inclusive and realistic debate about the objectives, features and timeframe of the future UK-EU trade agreement.

1. The function of trade agreements: combatting ‘protectionism’ and addressing ‘regulatory diversity’

Multilateral trade agreements (such as the World Trade Organisation, WTO) or bilateral trade agreements (such as the several hundred FTAs) are primarily aimed at combatting protectionism, that is government measures restricting international trade with the intent of protecting local business from foreign competition. For example, trade agreements address *clear protectionist measures* by (a) reducing or eliminating tariffs and quotas on trade in goods, and (b) prohibiting formally discriminatory laws and regulation affecting trade in goods or services. Trade agreements also address *hidden protectionist measures* by (a) prohibiting materially discriminatory laws and regulation including taxes, (b) imposing general substantive standards (for example, ‘sanitary measures’ need to be based on scientific evidence and ‘technical regulations’ need to be the least trade restrictive options reasonably available), or (c) imposing general procedural requirements (such as transparency in the regulatory processes, or ‘notice and comment’ on new proposed legislation).

More recently trade agreements have attempted to deal with *regulatory diversity*, that is the differences in regulation across States creating burdensome multiplication of regulatory requirements, such as multiple

safety standards for products or multiple licensing requirements for service providers. In principle, there are several instruments to address regulatory diversity, including: (a) recognition arrangements, whereby two or more countries agree to recognise either each other's conformity assessment procedures or each other's standards; (b) harmonisation of regulation, either through references to existing international standards, or through common (sectoral) disciplines; (c) supranational law making, supervisory and enforcement permanent institutions.

Depending on the extent to which countries are willing to address protectionism and regulatory diversity, one can distinguish between 'shallow' and 'deep' integration⁴. The WTO, as well as FTAs, fall in the shallow integration category as they mainly focus on partially and progressively eliminating tariffs and quotas, as well as prohibiting discrimination. On the other hand, the classic form of deep integration is the common (or single) market (as in the case of the EU), which involves the elimination of all protectionist measures *and* is aimed at reducing a wider set of regulatory barriers to trade (including services) through supranational harmonisation, regulation, and supervision. For example, with regard to financial services, the WTO mainly provides for partial market access and national treatment commitments, subject to broad prudential regulation carve-outs whereas in the EU, in addition to a general prohibition of any form of nationality discrimination and any unreasonable barrier to intra-community trade in services, there exists a complex system of supranational regulation, supervision and enforcement aimed at a high level of integration.

However, while there are marked differences between the EU Single Market and WTO/FTAs in terms of objectives and approaches, when it comes to actual achievements on the ground, those differences appear to

⁴ F. Ortino, *Legal Instruments for the Liberalisation of Trade: A Comparative Analysis of EC and WTO Law*, Oxford, Hart Publishing, 2004.

diminish somewhat. Particularly with regard to services, the ‘incompleteness’ or ‘un-singleness’ of the Single Market is the most evident, at least in some service sectors⁵. Trade integration across the EU (defined as the average of intra-EU imports and exports divided by GDP) is considerably smaller for services than for goods (6% vs 22%)⁶.

2. Main features of services FTAs

The general structure and content of those FTAs that include chapters on trade in services (so called ‘services FTAs’) is very similar to the GATS, the General Agreement on Trade in Services, which is part of the WTO. Accordingly, while the scope of application is in principle very broad including measures affecting both cross-border trade and foreign direct investment in services, the key obligations remain relatively limited, particularly in terms of the type of disciplines included in the FTA to tackle regulatory barriers to trade in services. Like the GATS, services FTAs principally focus on non-discrimination standards (both MFN and National Treatment), transparency requirements, administrative due process standards, and the prohibition of a limited set of ‘market access’ limitations (such as limitations on the number of service suppliers or service operations, or limitations on the participation of foreign capital in terms of maximum percentage or total value). Many of these provisions only apply to the extent that a contracting party has been willing to commit a specific service sector or sub-sector in its Schedule of commitments or/and subject to the conditions and limitations inscribed by the contracting party in its Schedule. Like the

⁵ See F. Erixon – R. Georgieva, *What is wrong with the Single Market?*, ECIPE Working Paper, 1/2016, p. 2, http://ecipe.org/app/uploads/2016/02/5Freedoms-012016-paper_fixed_v2.pdf.

⁶ European Commission, *Single Market Integration and Competitiveness Report 2016*, at 110 (<http://ec.europa.eu/DocsRoom/documents/20210>).

GATS, services FTAs provide, next to the general framework, for a few sector-specific disciplines (often in separate chapters) addressing for example, financial or telecommunication services⁷.

There are however, certain distinctive features of services FTAs that should be highlighted.

First, service obligations in FTAs are invariably part of a broader set of disciplines that, in addition to traditional issues regarding trade in goods (such as, tariffs binding, technical standards, and subsidies) include areas that are not found in the WTO (at least not to the same extent). These are, for example, ‘investment’, ‘competition’, ‘sustainable development’⁸.

Second, FTAs have produced some innovations with regard to scheduling approaches. While many FTAs follow the GATS approach of undertaking commitments on the basis of a positive list (subject to conditions or limitations), several FTAs have adopted the NAFTA approach of undertaking commitments on the basis of a negative list, whereby liberalisation commitments extend to all sectors except those that are expressly identified in the schedules of the participating members. The negative list approach has the advantage of being more transparent and predictable as the excluded sectors (as well as the non-conforming measures) need to be expressly identified in the respective members’ schedules.

Third, while FTAs do not generally include innovations in terms of the type of disciplines tackling regulatory barriers to trade in services compared to those found in the GATS, some of the most recent FTAs do try to add to the GATS disciplines. The 2016 EU-Canada Comprehensive Economic and Trade Agreement (CETA) provides a

⁷ See F. Ortino, *Regional Trade Agreements and Trade in Services*, in S. Lester *et al.* (eds), *Bilateral and Regional Trade Agreements: Commentary and Analysis*, Cambridge, Cambridge University Press, 2015², pp. 213-244.

⁸ These are respectively chapters 8, 17 and 22 of the EU-Canada CETA, signed in 2016.

good example of a trade agreement attempting to add some disciplines addressing regulatory measures (including regulatory diversity) affecting trade in services. Chapter 21 of CETA on 'Regulatory Cooperation' aims to (1) «build trust, deepen mutual understanding of regulatory governance and obtain from each other the benefit of expertise and perspectives»⁹ and (2) «contribute to the improvement of competitiveness and efficiency of industry in a way that (i) minimises administrative costs whenever possible; (ii) reduces duplicative regulatory requirements and consequential compliance costs whenever possible; and (iii) pursues compatible regulatory approaches including, if possible and appropriate, through (A) the application of regulatory approaches which are technology-neutral; and (B) the recognition of equivalence or the promotion of convergence». However, Chapter 21 includes mostly best endeavour provisions focusing on process requirements and is excluded from the general State-State dispute settlement mechanism.

Fourth, services FTAs provide for additional level of market access and national treatment commitments compared to the commitments found in GATS schedules. Studies show that both the sectoral coverage and depth of market access and national treatment commitments achieved in FTAs with regard to either cross-border trade (mode 1) and commercial presence (mode 3) is on average more than double than that achieved by existing GATS commitments¹⁰.

⁹ The aim is «to (i) improve the planning and development of regulatory proposals; (ii) promote transparency and predictability in the development and establishment of regulations; (iii) enhance the efficacy of regulations; (iv) identify alternative instruments; (v) recognise the associated impacts of regulations; (vi) avoid unnecessary regulatory differences; and (vii) improve regulatory implementation and compliance», Art. 21.3(b).

¹⁰ Marchetti & Roy, p. 81.

3. Three options for an ambitious services FTA between UK-EU

Given the ‘Brexit red lines’ mentioned above and despite the wishes of the current British government, the future UK-EU trade relationship will be at best a ‘EU-Canada CETA-*plus*’ rather than a ‘EU Single Market-*minus*’. There exist three concrete options to improve CETA when it comes to trade in services in the future UK-EU FTA.

First, a goal for the future UK-EU FTA would be to agree *full* market access and national treatment commitments across all (or most) service sectors. As noted above, ‘full market access’ would prohibit certain quantitative limitations (as listed, for example, in Art XVI GATS) and ‘full national treatment’ would prohibit any (direct and indirect) discrimination based on the origin of the service or service supplier. This is something certainly achievable (as it would reflect the current situation under EU single market rules) and it would constitute a first in the context of a service FTA.

A second goal for the future UK-EU FTA would be to include both *procedural* and *substantive* standards, applicable on so called ‘domestic regulation’, which includes in particular all measures of general application affecting trade in services and measures relating to qualification requirements and procedures, technical standards and licensing requirements. Among the procedural standards, two should be highlighted:

– First, the service chapter of the future UK-EU FTA should include ‘notice and comment’ requirements, so that each party shall (a) publish in advance any measure of general application that it proposes to adopt and the purpose of the regulation, and (b) provide both interested persons and the other party with an opportunity to comment on that proposed regulation (TPP, Art 11.13.3).

– A second set of procedural standards should relate to certain basic due process requirements applicable, for example, to qualification and licensing procedures. According to such standards, a party’s regulatory authority shall (a) make an administrative decision on a complete application relating to the supply of a service within a specified term (say 3 months), (b) promptly notify the applicant of the decision, and (c) on request of an unsuccessful applicant, shall inform the applicant of the reasons for denial of the application (TPP, Art 11.13.10).

With regard to substantive standards, the future UK-EU FTA should include the requirement that domestic regulation should be ‘not more burdensome than necessary’. In other words, efficient regulation would be that which minimizes compliance costs (on the regulated service providers) while maximising the positive effects on welfare (such as consumer protection or financial stability). Such requirement is often referred to as the ‘necessity test’ or ‘cost-effectiveness analysis’ and it compares the relative costs and effects of different regulatory options. Whether a party chooses to regulate for a specific public purpose and the specific level of protection chosen by that party remain under the discretion of that party. However, the FTA would require each party to adopt the most efficient regulatory measure to achieve the chosen level of protection.

A third goal for a future UK-EU FTA revolves around tackling regulatory diversity. While the intent of the UK is to replicate the *acquis communautaire* upon Brexit, that cannot be taken as legally relevant in the context of negotiating a future FTA between the UK and the EU, as long as and to the extent that the future FTA itself contains such a requirement (which is unlikely, given the British government’s intention to repatriate regulatory sovereignty from the EU). However, forty years of regulatory integration may certainly help tackling (actual or potential) regulatory diversity going forward. Excluding some of the instruments

for deeper integration (such as supranational regulation, supervision and enforcement), the following two (interlinked) options should be considered for the service chapter of the future UK-EU FTA:

– A first option is to provide for the *recognition of equivalence*. Such provision would require each party to accept a qualification or license obtained by a service provider in its home State as equivalent to the qualification or license necessary to provide services in the territory of that party (the host State) at least as long as the home State objectively demonstrates that the home State's qualification or license achieve the host State's regulatory objectives¹¹. While trade agreements generally allow contracting parties to agree on the recognition of their respective requirements, at least in services, they do not require them to grant such recognition¹². Accordingly, a mandatory recognition of equivalence would certainly be an ambitious option.

– A second option is to encourage harmonisation through reference to existing *international standards* and/or establishment of *regulatory cooperation* between the two contracting parties. With regard to international standards, for example, the FTA may require that both contracting parties adhere to any specific international standards (as trade agreements do when it comes to technical and sanitary measures affecting trade in goods) and provide a justification whenever a party

¹¹ A similar clause features in current EU law with regard to the provision of certain financial services by suppliers based outside the EU (ie., having third-country status). A similar clause can also be found in the WTO Agreement on Sanitary and Phytosanitary (SPS) measures, which requires Members to accept the SPS measures of other Members as equivalent, even if these measures differ from their own, at least as long as the exporting Member «objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of SPS protection». See Article 4.1 SPS Agreement.

¹² See Article VII GATS, which provides that, for purposes of the fulfilment of its standards or criteria for the authorization, licensing or certification of service suppliers, «a Member may recognize the education or experience obtained, requirements met, or licenses or certification granted in a particular country».

decides to diverge, even partially, from such standard¹³. The FTA may also require that compliance with any such international standards will guarantee (or expedite) the recognition of equivalence mentioned above. With regard to regulatory cooperation, the future UK-EU FTA could build upon recent FTAs that focus on encouraging contracting parties to cooperate in the development, formulation, modification of their respective domestic regulation. Chapter 21 of the EU-Canada CETA, for example, deals with ‘Regulatory Cooperation’ and applies to the «development, review and methodological aspects of regulatory measures of the Parties’ regulatory authorities» affecting both trade in goods and services. While Chapter 21 CETA adopts soft/best endeavour language, the future UK-EU FTA could take a harder/binding approach to regulatory cooperation. Furthermore, regulatory cooperation can also facilitate and/or be a condition of the above mentioned recognition of equivalence.

All these options addressing regulatory diversity may apply across the board or to specific service sectors, only. As mentioned above, trade agreements often provide for specific disciplines applicable to different service sectors or sub-sectors (whether in distinct chapters or in distinct sections of the agreement), and a similar approach is likely and very much desirable for a future UK-EU FTA.

4. And three challenges

First, negotiating an FTA will require reaching a fair balance between gains and losses among the negotiating parties. The *exchange of benefits* may take place across different service sectors or between goods and services. For example, in the Uruguay round of trade negotiations, which lead to

¹³ One recent example in trade in goods is found in Annex 2-B on Motor Vehicles and Parts Thereof in the EU-Singapore FTA expressly identifying the relevant international standards for purposes of regulatory convergence.

the establishment of the WTO, it is often said that developing countries accepted disciplines on trade in services and trade-related intellectual property rights in exchange for concession on textiles and agriculture by developed countries. In the case of the future UK-EU FTA, the baseline is represented by the level of liberalisation commitment that would exist following Brexit without a bilateral trade agreement (ie., WTO terms). Accordingly, if liberalisation in financial services will be more advantageous to the UK (because of its current competitive advantage vis-à-vis the EU), the EU will demand, and expect to receive, an at least equivalent advantage in a different service or product sector (say transport or agriculture).

Second, the negotiation of a future UK-EU FTA will need to take in to account any existing (as well as future) *most-favoured-nation (MFN) obligations* undertaken by the UK and the EU with third countries. While any preferential treatment granted in a future UK-EU FTA will be able to rely on the broad exception in Article V GATS for regional economic integrations, the same cannot automatically be said for the more limited MFN exceptions found in several of the EU FTAs with third countries (such as Canada, Vietnam and Korea). For example, in the EU-Canada CETA, the MFN reservations applicable to trade in services are limited to «any existing or future bilateral or multilateral agreement which: (a) creates an internal market in services and investment; (b) grants the right of establishment; or (c) requires the approximation of legislation in one or more economic sectors» (see Articles 8.15.2 and 9.7.2 and Annex II CETA). One wonders whether the future UK-EU FTA will entail any of the three above listed scenarios¹⁴.

¹⁴ The MFN exception in the EU-Vietnam FTA chapters on trade in services (investment and cross-border services) excludes MFN for «(a) any treatment granted as part of a process of economic integration, which includes commitments to abolish substantially all barriers to investment among the parties to such a process, together with the approximation of legislation of the parties on a broad range of matters within the purview of this Agreement [...] (c) any treatment resulting from measures providing

Third, there is a potential conflict between the aim of ensuring ‘the freest and most frictionless trade possible in services’, on the one hand, and the aim of repatriating regulatory sovereignty, on the other. The various options for a future UK-EU FTA highlighted above to address, in particular, regulatory diversity in the pursuit of a high level of service market integration, will inevitably entail limitations on the ability of the UK (and the EU) to regulate services. The key challenge for the UK and the EU will be *the extent to which* the two contracting parties will be able to agree on the various mechanisms suggested above in order to facilitate trade in services between them. All these various mechanisms (including reference to international standards, recognition of equivalence and regulatory cooperation) may in fact already be found in existing trade agreements. The real novelty and thus ambition will be (a) how many of the above mechanisms will actually feature in the future UK-EU FTA, (b) how many service sectors will be subject to such mechanisms, and (c) whether these mechanisms will be subject to strict obligation or left to the contracting parties’ best endeavours.

5. Transitional period

The difficulty of implementing Brexit is greater due to time pressure. Given the demands from those supporting Brexit, the British government formally notified its decision to leave the Union on 29 March 2017. According to Article 50, paragraph 3, «[t]he Treaties shall cease to apply to the State in question from the date of entry into force

for the recognition of qualifications, licences or prudential measures in accordance with Article VII of the General Agreement on Trade in Services or its Annex on Financial Services». A footnote to subparagraph (a) above reads as follows: «Within this paragraph and for greater certainty, the ASEAN Economic Community and the European Union are falling within this concept of ‘a process of economic integration’» (see Article 8.4.5 EU-Vietnam FTA).

of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period». Accordingly, the general understanding is that the negotiations with regard to the British withdrawal and the future relationship between the UK and the EU, as well as actually implementing all the needed changes in the law books as well as on the ground, will need to be concluded by 29 March 2019. This is, by every view, a very tight schedule.

The British government has recently recognised the need for a period of implementation (or transition) in order «to adjust the new arrangements in a smooth and orderly way». While in itself not altogether clear, the government's current thinking with regard to the kind of transitional mechanism appears to be aimed at 'simply' prolonging the current regulatory framework for a (limited) period of time: «a period of standstill», in the words of the Prime Minister in her Florence speech. This period of standstill would have the added advantage that people, businesses and public services would only need to confront one set of changes. Accordingly, in an ideal scenario, by 29 March 2019, the UK and the EU would have been able to agree on (a) the withdrawal agreement concerning in particular three key issues (the rights of EU nationals, the Irish border and the divorce bill) *and* (b) the future long-term relationship between the UK and the EU or at least the heads of terms of such relationship. The period of standstill would then provide everyone the time adjust to the new post-Brexit world, or, if needed, to add the necessary details to the agreement on the future relationship.

When it comes to actually devising a transitional framework several options have been put forward including, for example, rejoining the European Free Trade Association (EFTA) and free ride on the European Economic Area agreement, extending the negotiating period

beyond the 29th March 2019 (as per the last sentence of Article 50(3) TFEU), or agree to extend the EU Single Market and its *acquis* for a limited period of time after Brexit.

Here, I want to suggest one further option that has not yet been fully considered. It is based on a textual and purposive interpretation Article 50(3) TFEU. As noted above, Article 50(3) provides that the treaties shall cease to apply to the State in question «from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2» unless the period is extended. The suggestion is that the agreement on withdrawal reached at the latest by 29 March 2019 will expressly specify that its entry into force will take place at a later date (for example, two years later, on 29 March 2021). This would have several practical and political implications: (a) by postponing its entry into force, the status quo is preserved for the chosen period of time, (b) at least formally, it would be subject only to a qualified majority vote in the Council and consent of the European Parliament pursuant to Article 50(2) TFEU, (c) while Brexit day would be effectively postponed, withdrawal from the EU would have been finalised, so that at least that part of the negotiations would be over, and (d) it would provide additional time to finalise the details of the future, more complex relationship (including ratification and implementation by the UK and the 27 EU Member States).

The UK and EU could also agree that in the transitional period certain provisions of EU law would be suspended or disapplied (for example, the election of the British members to the European Parliament in 2019). However, moving away (at least substantially) from the status quo may bring about additional legal and political difficulties that may not be overcome in the limited time remaining. Pragmatism will (need to) dictate the extent of this tinkering.

Does the option suggested here conform with Article 50(3)? I believe it does. The crucial question is how one interprets ‘that’ in ‘failing that’. Does it mean a negotiated and concluded withdrawal agreement pursuant to Article 50(2) albeit one that will not enter into force until a later date (which is beyond 29 March 2019)? Or does it mean a withdrawal agreement that, while having been concluded, fails to enter into force within the two years (that is by 29 March 2019)? I believe that there are strong arguments for the former reading. First, ‘that’ must refer to the existence of a withdrawal agreement, rather than to the entry into force of one such agreement. The Italian and Swedish versions seem to support such an interpretation as they read respectively «*in mancanza di tale accordo*» (‘failing such agreement’) and «*om det inte finns något sådant avtal*» (‘if there is no such agreement’)¹⁵. If the two years were supposed to set the maximum period for the withdrawal to actually happen (with or without an exit agreement), the drafters could have easily specified that in Article 50(3) with language such as «and at the latest». Equally the option of extending the two year period as per the last sentence of Article 50(3) only refers to the case no agreement has been reached. It does not apply to the scenario where a withdrawal agreement has actually been reached but its entry in to force has been postponed to a later date.

Second, the commentaries to the various (constitutional treaty) drafts of what is now Article 50 make clear the underlying rationale of the provision on withdrawal. They state in relevant part as follows: «while it is desirable that an agreement should be concluded between the Union and the withdrawing State on the arrangements for withdrawal and on their future relationship, it was felt that such an agreement should not

¹⁵ The French and Spanish versions are similar to the English one. The French version of Art 50(3) reads as follows: «Les traités cessent d’être applicables à l’État concerné à partir de la date d’entrée en vigueur de l’accord de retrait ou, à défaut, deux ans après la notification visée au paragraphe 2, sauf si le Conseil européen, en accord avec l’État membre concerné, décide à l’unanimité de proroger ce délai».

constitute a condition for withdrawal so as not to void the concept of voluntary withdrawal of its substance»¹⁶. In other words, the ultimate objective of Article 50 is to reach an agreement on withdrawal to ensure an orderly exit, while the two-year deadline is there to reassure the withdrawing Member that its decision to withdraw from the Union will not be ultimately frustrated. Accordingly, the interpretation suggested here conforms with both the text and the spirit and purpose of the provision.

6. Concluding remarks

Rome was not built in a day and neither the EU. While Brexit does not have to take as long, it is important to be clear and upfront about the challenges facing the country in implementing the decision to leave the EU. As the government's goal should be to follow a Brexit strategy that will be acceptable in terms of process and outcome by a large majority of the country (thus including parts of those that have voted to remain in the EU), this can only be achieved by presenting the challenges facing the country in a clear and up-front manner. This will in turn provide greater certainty, fewer anxieties and fundamentally a more legitimate future relationship with the rest of the EU going forward.

¹⁶ Presidium of the European Convention, Title X: Union Membership, CONV 648/03 (2 April 2003) at 9.