Time to choose – real divergence or continued shadow EU alignment

The following article by Harry Western was originally published by Briefings for Brexit. We are grateful to them for allowing us republish it here…

The British government has failed to embark on significant divergence from EU policies since the UK left the EU customs union and single market. This reflects a variety of factors – general timidity, bureaucratic resistance and also the 'anchoring' effect of the Northern Ireland protocol. Now that the government has finally recognised the need to overhaul the protocol, the opportunity again arises for a radical reform agenda that will achieve real divergence in tax, regulatory and trade policy. But this will also require the government to address the other factors holding the UK back – in particular its own ambivalence and intellectual confusion about Brexit.

A key reason that Briefings for Britain contributors supported Brexit was the idea that the UK would be unable to tackle many of the deep-seated problems in British society without it. EU membership had tied the UK up in a web of constricting regulations, hollowed out the capacity for independent policy making and created a culture of complacency and parochialism in politics and the civil service.

We are not naïve enough to believe that the institutional inertia and narrow-mindedness created by EU membership can be changed overnight, but by any objective yardstick the government's progress to date on Brexit-related reforms has been poor. We outlined the disappointing Brexit scorecard back in March, and more recently we have also highlighted a number of specific failings such as the excessively protectionist trade deals with Australia and New Zealand.

In many areas, the government machine continues to simply shadow EU policies, either due to a lack of independent decision-making capacity, a lack of political direction, or a deliberate attempt to frustrate divergence. A notable recent example is the Treasury's plan to introduce a carbon border tax on imports – a greenwashed piece of protectionism (with significant potential impacts on world trade) aping the similar approach being planned by the EU.

The carbon border tax policy is partly a reaction to the potential negative effects of the UK's net zero agenda on UK competitiveness – but also reflects the fact that under the EU proposals and the Northern Ireland protocol, the carbon border tax will potentially apply to Northern Ireland's imports from the UK unless the UK shadows EU policies. This would harden the Irish Sea border that the protocol created even further.

This is only one of the many ways that the Northern Ireland protocol, over time, could act to split Northern Ireland off economically from the UK. Aside from significant inefficient trade diversion from GB supplies to more expensive EU ones, we have also recently seen that the UK government was unable to extend reductions in VAT to Northern Ireland. On top of this, each future regulatory change by the EU – and there will be many – that is not mirrored in the UK will also add to trade barriers between GB and Northern Ireland.

As a result, the economic costs to Northern Ireland from the protocol, which are already significant, can be expected to rise over time. But to the extent that the UK tries to mitigate this by remaining close to EU regulations, the costs to the whole of the UK from the protocol will rise too. An obvious example is the UK continuing to mirror EU food regulations – part of the deal to reduce checks on GB food goods going to NI but which prevents the UK dumping damaging and protectionist EU rules.

In this respect, the UK government’s belated decision to introduce legislation to reform the protocol and remove the barriers to internal UK trade that it created is very welcome. It potentially gets rid of one of the factors that has been holding back the UK’s post-Brexit progress.

However, much needs to change if a substantial degree of divergence is to be achieved. First, the government actually needs to deliver on the proposed changes to the Northern Ireland protocol. After 18 months of government threats to act that have not been followed through on, we must inevitably be sceptical about this. Pressures from within the government and from overseas could easily derail these plans. Or the government could try to foist another bad deal on Northern Ireland, such as getting some reduction in border checks in return for whole-UK alignment with EU regulations (this is almost certainly what the latest reported ‘offer’ from the EU side involves).

Second, the government needs to overcome the broader blockage to reforms created by its own timidity and by bureaucratic resistance.

The timidity partly reflects considerable intellectual incoherence about Brexit. As we wrote at the start of this year, the only UK government minister who seemed to fully grasp that the success of Brexit rests on bold moves in the regulatory and trade spheres was Lord Frost, whose departure from government was, as a result, a major blow.

Most government ministers and their officials still seem to be paralysed by fear about divergence leading to disastrous consequences for trade and the economy. That this is still the case is frankly astonishing given that the empirical evidence is now clear that leaving the EU customs union and single market has not led to the huge collapses in trade and

GDP that many observers predicted – and that the studies that predicted it now stand discredited. But perhaps it is not surprising given that UK government bodies such as the OBR continue to repeat unsupportable assertions about the negative economic impact of Brexit without challenge by government. Astonishingly, the government lavishly funds think tanks with a blatant anti-Brexit agenda and appoints strongly anti-Brexit individuals to key positions.

Evidence of bureaucratic resistance has also mushroomed in recent months. It is well-known that senior civil servants intensely disliked Brexit, but a much broader pattern of opposition is also visible. Most strikingly, NI civil servants resisted orders by the NI Agriculture Minister to halt border checks. But we have also seen Border Force and Home Office civil servants threatening to refuse to implement government policies.

And the Treasury remains a centre of anti-Brexit sentiment – still unrepentant for the intensely skewed anti-Brexit studies it produced in 2016-2018 – and seemingly hell-bent on frustrating any useful changes in tax policy. HMRC meanwhile has proved wholly incompetent at upgrading and modernising the UK’s border processes – a vital component of making a success of Brexit. As a result, EU food imports continue to get almost uncontrolled entry into the UK while those from the rest of the world face onerous border processes inherited from the EU: another brake on divergence in an area where it is desperately needed – the more so now, given rising food prices).

A totally new approach is required, putting policy-making in key areas in the hands of specialist teams external to the civil service, as the government so effectively did with the Covid vaccine taskforce.

If the government is to overcome these problems a great deal of political will and determination will be needed. As Lord Frost recently noted, Brexit means that for better or worse, the UK can now change everything again. But Brexit was only the door to a different future – politicians actually need to step through it. Perhaps the way that the UK’s bold and effective action with respect to Ukraine has worked out – and how it has built respect for the UK abroad – might open a few eyes. But it would be wrong to be too optimistic, based on the record of the last few years. Much needs to change and the government is running out of time to do so before the next election.