9 August 2018

Dear Lord Boswell,

GOVERNMENT RESPONSE TO HOUSE OF LORDS EU COMMITTEE REPORT ‘UK-EU RELATIONS AFTER BREXIT’

Thank you for your Committee’s report on UK-EU relations after Brexit, published on 8 June 2018. The Committee’s detailed analysis of many areas of the UK’s future partnership with the EU is a welcome contribution. As the Prime Minister has said, leaving the EU does not mark an ending; it marks a new beginning for the UK and our relationship with our European allies.

The Government notes the Committee’s recommendation that the UK will need to articulate a long-term vision that speaks to the EU. In the recently published White Paper on the Future Relationship between the United Kingdom and the European Union, the Government has set out the UK’s ambitions for the future economic and security partnerships. It is our most significant publication on the EU since the referendum, and sets out the further detail that underpins the Prime Minister’s speeches.

At the same time, the recent joint publication of the topics for discussion on the Future Framework reflects the determination of both sides to achieve a broad partnership that stands the test of time after the UK leaves the EU.

I was grateful for the opportunity to respond to the debate on the Committee’s report, and I am now pleased to set out the Government response to the Committee’s recommendations below.

Kind regards,

LORD CALLANAN
MINISTER OF STATE FOR EXITING THE EUROPEAN UNION
Response - UK-EU relations after Brexit

The conclusions and recommendations in the report: *UK-EU relations after Brexit* have been grouped together and are covered in the sections below.

**The scope of the future UK-EU relationship**

- **The most constructive way to approach negotiations on the future UK-EU relationship would be for both sides to focus on their desired outcomes.** Instead, both sides appear to have approached the negotiations by focusing on ‘red lines’, closing off rather than opening up the options for establishing a fruitful and lasting relationship.

- **The Prime Minister set the tone in her speech to the Conservative Party conference in October 2016, and the Commission’s ‘Brexit stairway’, published in December 2017, was negative and prescriptive in its representation of the options for future relations. Even the European Council’s March 2018 guidelines, while paying lip service to the EU’s desire for a close partnership with the UK, do not set out a compelling vision for that partnership, but are predicated on reacting to the UK’s ‘red lines’.

- **We welcome the Government’s increasing realism, which suggests that it is beginning to understand the costs and compromises that will be needed to achieve a successful outcome. Both sides now need to change their mindset if a genuinely close and mutually beneficial partnership is to be achieved.**

As the Prime Minister has said, our decision to leave the EU does not mark an ending. It marks a new beginning for our relationship with our European allies. We want our future relationship to be a deep and special partnership, taking in both economic and security cooperation.

The Government has published a White Paper setting out a clear proposal for the future relationship we want to build with the European Union, and it acknowledges that to achieve this, pragmatism and compromise will be required from both sides.

At its core, it is a package that strikes a new and fair balance of rights and obligations. A balance that respects the result of the referendum and the decision of the UK public to take back control of the UK’s laws, borders and money, while protecting jobs, supporting growth and maintaining security cooperation.

Our proposal covers four areas: the economic partnership; the security partnership; cross-cutting issues and other cooperation; and the institutional arrangements that would support the relationship overall.

**Economic Partnership**

On the Economic partnership the Government is proposing the establishment of a free trade area for goods, enabled by:

- a common rulebook for goods including agri-food, covering only those rules necessary to provide for frictionless trade at the border;
participation by the UK in those EU agencies that provide authorisations for goods in highly regulated sectors - namely the European Chemicals Agency, the European Aviation Safety Agency, and the European Medicines Agency;

- a new Facilitated Customs Arrangement that would remove the need for customs checks and controls between the UK and the EU as if they were a combined customs territory, enabling the UK to control its own tariffs for trade with the rest of the world; and

- Zero tariffs across goods (including manufactured goods, agricultural, food and fisheries products), with no quotas.

These arrangements would avoid any new friction at the border, and protect the integrated supply chains that span the UK and the EU, safeguarding the jobs and livelihoods they support.

The free trade area for goods would also meet our shared commitments to Northern Ireland through the overall future relationship.

Our proposal is that these close arrangements on goods should sit alongside different ones for services and digital, giving the UK the freedom to chart its own path in the areas that matter most for its economy, but acknowledging that there will be more barriers to the UK’s access to the EU market than is the case today.

Free movement will end; the White Paper explains our proposal for a new framework that would allow UK and EU businesses to provide services in either market – in line with the kind of arrangements we may offer to other close trading partners in the future.

The White Paper also sets out what we are proposing in areas such as energy – where we are seeking broad cooperation, including facilitating the continuation of the Single Electricity Market between Northern Ireland and Ireland and arrangements for trade in electricity and gas – and transport, where we want to develop an Air Transport Agreement, and explore reciprocal arrangements for road hauliers and passenger transport operators.

Finally, a relationship this deep will need to be supported by provisions giving both sides confidence that the trade that it facilitates will be both open and fair. So we are proposing to apply a common rulebook for state aid, establish cooperative arrangements between regulators on competition, and agree to maintain high standards through non-regression provisions in areas including the environment and employment rules, in keeping with the UK’s strong domestic commitments.

Security partnership

On the security partnership, Europe’s security has been and will remain the UK’s security, which is why we have made an unconditional commitment to maintain it.
Continued cooperation is in our mutual interest - to uphold our shared values, tackle common threats, and avoid unnecessary gaps in operational capabilities in order to keep our citizens safe.
That is why we have proposed a coherent Security Partnership that covers the breadth of our shared security interests. It should:

- Be informed by and keep pace with our shared security context;
- Protect shared law enforcement and criminal justice capabilities, including: mechanisms for rapid and secure data exchange; practical measures to support cross-border operational cooperation; and continued UK cooperation with EU law enforcement and criminal justice agencies, such Europol and Eurojust;
- Facilitate continued cooperation on foreign policy, defence and development; and
- Support joint working on wider security issues, including: asylum and illegal migration; cyber security; cooperation on counter terrorism; civil protection; and health security.

Cross-cutting and other cooperation

There are also areas that sit outside of these two core partnerships, where we want arrangements to:

- provide for the continued exchange and protection of personal data between the UK and the EU, and allow for ongoing cooperation between authorities;
- establish cooperative accords for science and innovation, culture and education, overseas development assistance and international action, defence research and capability development, and space; and
- address fishing, putting in place new arrangements for annual negotiations on access to waters and the sharing of fishing opportunities – with the UK an independent coastal state in control of its own waters.

Institutional arrangements

To make this kind of relationship work, both sides will need to be confident they can trust and rely on the commitments made to each other. So to underpin the future relationship, we are proposing joint institutional arrangements. These would:

- underpin the various forms of regulatory cooperation agreed between the UK and the EU, including in those areas where we are proposing to remain party to a common rulebook, respecting the UK’s sovereignty and providing for Parliamentary scrutiny;
- provide for the resolution of disputes, through a Joint Committee and in many areas binding independent arbitration – accommodating through a joint reference procedure the role of the CJEU as the interpreter of EU rules, but founded on the principle that the court of one party cannot resolve disputes between the two; and
- make sure both the UK and the EU interpret rules consistently – with rights enforced in the UK by UK courts and in the EU by EU courts, with UK courts paying due regard to CJEU case law where relevant to the common rulebook.

We are confident of securing a deal which is in the interests of both the UK as a whole and our European partners. It remains our view that it is pragmatic common sense that we should work together to deliver this outcome for both sides.
The benefits and costs of the new relationship

- The benefits that the UK and the EU could derive from a deep and durable partnership will come at a cost, and may entail trade-offs between economic and political considerations. There is no ‘free lunch’ for either side.

- Now that the Article 50 Withdrawal Agreement has been in large part agreed, the starting point for negotiations on the future relationship must be that failure to reach agreement will, by default, result in ‘no deal’—of which we said, in our Report on Brexit: deal or no deal, “It is difficult, if not impossible, to envisage a worse outcome”. The negotiations will be about achieving benefits from a new relationship, rather than preserving aspects of the UK’s EU membership.

- The two sides therefore need to start by identifying beneficial outcomes, associated costs, and areas of mutual interest. If they do this, and are prepared to compromise on their respective ‘red lines’, there is every reason to believe that agreements can be reached, and benefits realised.

- We agree with the Government that North-South cooperation, and the avoidance of a hard border between Ireland and Northern Ireland, will be best secured within the framework of the overall UK-EU relationship, but we also understand why both sides have agreed to address them as part of the ‘Phase 1’ negotiations. The phasing of the negotiations thus means that the UK Government urgently needs to take key decisions of principle, on trade, customs, regulatory alignment and the movement of people.

The Government notes the Committee’s view of trade-offs between economic and political considerations. As the Prime Minister acknowledged in her Mansion House speech, there are some hards facts that we all need to face up to.

The Government also acknowledges the Committee’s recommendation on how the UK should approach the forthcoming negotiations. The proposal advanced in the White Paper underpins the vision set out by the Prime Minister at Lancaster House, in Florence, at Mansion House and in Munich, and in doing so addresses questions raised by the EU in the intervening months – explaining how the relationship would work, what benefits it would deliver for both sides, and why it would respect the sovereignty of the UK as well as the autonomy of the EU.

We believe our proposal is the right one for the UK and for the EU. It would respect the referendum result, and deliver on its promise, while ensuring we leave the EU without leaving Europe - striking a new balance of rights and obligations that is fair to both sides.

We are holding regular discussions with the EU negotiating team, outlining our positions on a wide range of topics. Following the publication of the proposals in the White Paper, we hope and expect negotiations with the EU to be further accelerated and intensified.

We are confident that a deal is in the interests of both sides, so we continue these negotiations anticipating success. We do not want or expect a no deal outcome. However, a responsible government should prepare for all potential outcomes, including the unlikely scenario in which no mutually satisfactory agreement can be reached.
The Government also notes the Committee’s comments on the phasing of negotiations, and the need for decisions in relation to trade, customs, regulatory alignment and the movement of people.

The White Paper sets out the UK’s proposal for the establishment of a free trade area for goods, enabled by a common rulebook for goods including agri-food and the phased introduction of a new Facilitated Customs Arrangement that would remove the need for customs checks and controls between the UK and the EU.

In combination with no tariffs on any goods traded between the UK and the EU, these arrangements would avoid any new friction at the border, and protect the integrated supply chains that span the UK and the EU, safeguarding the jobs and livelihoods they support. The free trade area for goods would also, crucially, meet our shared commitments to Northern Ireland through the overall future relationship.
Models for the future relationship

- The various models proposed for the future UK-EU relationship all deliver benefits, but all do so at a cost. Compromises will be needed if the two sides’ respective ‘red lines’ are not to preclude the deep partnership to which both aspire.

- From the UK’s perspective, the greater the benefits sought, for instance in respect of trade in services, the greater the compromises that will be needed.

- The existing models, such as EEA/EFTA, or a Canada-style Free Trade Agreement, are helpful in clarifying the options, but they must not be allowed to dictate the terms of the negotiations. Existing models fail to capture the full possibilities of the UK-EU relationship— but a gesture of good will, from one or other side, may be needed to unlock these possibilities.

- We note the European Parliament’s support for a UK-EU Association Agreement, and applaud the Parliament’s readiness to contemplate innovative approaches to the future UK-EU relationship. We also note that Association Agreements are by their nature dynamic and evolutionary, and that a UK commitment to such a partnership could bring about a positive change in the tone and language of the negotiations.

The Government welcomes the Committee’s helpful analysis of the variety of EU relationships with third countries. These relationships take a variety of forms, from the Comprehensive Free Trade Agreement with Canada (CETA), to the EU’s Association Agreements. Taking these models into consideration, for both the UK and EU to meet its objectives, we agree with the Committee that we need to look beyond precedents, and find a new balance.

As the Prime Minister said in her Mansion House speech, a CETA style arrangement would mean a significant reduction in our access to each other’s markets compared to that which we currently enjoy. A Norway-style agreement would also mean the UK having to adopt at home – automatically and in their entirety – new EU rules, over which in future we will have little influence and no vote.

As the White Paper sets out, the future relationship is likely to consist of a number of separate agreements, each covering different elements of economic, security and cross-cutting cooperation. The majority of these individual agreements should sit within the overarching institutional framework. Precedent suggests that the UK’s proposal would take the form of an Association Agreement between the UK and the EU, and we welcome the Committee’s comments on this.

Both the UK and the EU want good access to each other’s markets; both want competition to be fair and open; and both want reliable, transparent means of verifying commitments and resolving disputes.

We also want to continue cooperating across the full range of security - from foreign and defence policy, to law enforcement and criminal judicial cooperation.
The UK and the EU will continue to face common threats, which are evolving and growing in complexity, and we will share the same values. Continued cooperation is in our mutual interest.

We have always been clear that we wish to develop a new partnership with the EU which builds on the breadth and depth of our shared interests and values, and goes beyond any existing third country arrangements.

We are confident that this is in the interests of both sides, so we continue these negotiations anticipating success.
Reaching the finishing line

- **Time is short:** in a matter of weeks the framework for future UK-EU relationship will be finalised, in the form of a political declaration annexed to the October European Council conclusions. We are concerned at the delay and uncertainty that has surrounded the Government’s development of detailed, workable proposals.

- **While the ‘political declaration’ may not be legally binding,** we accept that at least at a political level it may bind future European Councils, and thus limit the options available to the UK in future negotiations. This makes it all the more important that the Government bring forward these proposals in timely fashion, so as to influence the drafting of the declaration.

- **Given the closeness of the referendum result,** the Government must articulate an inclusive vision for future UK-EU relations, commanding broad support, in order to achieve an acceptable and durable outcome.

- **The Government will also need to articulate a long-term vision that speaks to the EU.** That means using the language of partnership, accepting that costs and compromises will be necessary, and acknowledging that the EU may evolve, post-Brexit, towards greater political and economic integration.

- **In summary,** the Government’s forthcoming White Paper will be judged against the following key principles:
  - It should focus on achieving benefits from the future UK-EU relationship, rather than on defending ‘red lines’;
  - In particular, it should identify and build on areas of mutual UK and EU interest;
  - It should acknowledge that the benefits to be realised by means of the new relationship will come at a cost, requiring compromises and trade-offs;
  - It should express an inclusive vision of future UK-EU relations, commanding broad support; 106 Q 22 107 European Union Committee, The EU referendum and EU reform (9th Report, Session 2015–16, HL Paper 122), paras 254 and 257 UK-EU relations after Brexit 43
  - It should use the language of partnership between the UK and the EU, and should acknowledge the potential evolution of the EU post-Brexit.

- **The EU will then need to reciprocate.** So far it has adopted a reductive approach, without fully acknowledging the importance to the EU’s long-term security and prosperity of a close and lasting partnership with the UK. That must change.

- **Most negotiations start with ‘cherry-picking’,** as each party focuses on its own interests. The success of the negotiation can then be measured by the willingness of all parties to compromise, as they discover mutual interests and deliver shared benefits.

The Government notes the Committee’s recommendation that the UK will need to articulate a long-term vision that speaks to the EU. The White Paper sets out a clear proposal for the future relationship we want to build with the European Union.
This proposal is a precise, responsible and credible basis for moving our negotiations with the EU forward to achieve a deal that works in our mutual interest.

The White Paper is our most significant publication on the EU since the referendum. It communicates our ambition for the UK’s future relationship with the EU, in the context of our vision for the UK’s future role in the world.

Since the negotiations started we’ve made a great deal of progress – securing the rights of four million citizens and agreeing the structure of a financial settlement as well as reaching agreement on the terms of a time-limited implementation period and on a majority of the text of the Withdrawal Agreement.

We hope to see our negotiations accelerate and intensify following the publication of the White Paper and we remain confident of reaching agreement on the Withdrawal Agreement and Future Framework by October.

DEPARTMENT FOR EXITING THE EUROPEAN UNION