
DCU Conference: “The Law and Politics of Brexit” - Ministerial Keynote

[Speech](#)

Minister Charlie Flanagan, T.D. - 20/4/17

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Keynote by Mr. Charlie Flanagan T.D., Minister for Foreign Affairs and Trade
DCU Conference: “The Law and Politics of Brexit”, Thursday 20 April 2017

Ladies and Gentlemen,

I would like to thank Professor Daire Keogh for his kind words of welcome. I would also like to acknowledge the superb efforts of Professors Gary Murphy and Federico Fabbrini and all the team at the School of Law and Government for organising this excellent conference.

This is indeed a timely event. The UK has formally notified the EU of its intention to withdraw from the EU. Negotiations between the EU and the UK will shortly get underway. And of course this week we have had the announcement of a general election in the UK.

We are embarking on a journey that potentially has far-reaching consequences, for Ireland, for the EU, but most particularly for the UK. As captured in today’s conference programme, the path forward remains clouded in uncertainties.

There is, therefore, a continuing need for dialogue and critical analysis. And – as the Taoiseach has stressed – “creativity, imagination and innovation”. I have no doubt that this conference will deliver on all these fronts.

Having said that, had you asked me twelve months ago if it would ever be my ambition to address a conference on this theme, no matter how well-attended or well-organised, my reply would have been a resounding no!

Indeed, it is still with a huge sense of personal regret that I address myself to this topic. My view – and the view of the Irish Government – is that Brexit is bad for Britain, bad for Ireland, and bad for Europe. But equally, we recognise that the result of the referendum of 23 June last must be respected.

I know this is a view shared by our European partners. I think President Tusk captured that mood of collective resolve, tinged with regret, in his personal remarks after setting out the EU’s response to Theresa May’s letter – “... what can I add to this? We already miss you.”

Developments and Context

Before addressing some of the themes of the conference, I would like to dwell a moment on its overall title, which is aptly chosen: “The Law and Politics of Brexit”.

Some ten months have passed since the referendum last June. In that time we have not progressed far down the legal path – indeed that is a process that has only just got underway with the triggering of Article 50.

Politics, however, never stands still. And I do believe that the politics of Brexit has already evolved since the referendum.

The immediate reaction to the referendum result was, of course, one of shock and indeed anger in many quarters. There was also great apprehension. Will other countries follow? Is this the beginning of the end for the EU?

Against this backdrop, commentary in the immediate aftermath of the referendum leaned towards a narrative of “punishing” the UK – reflecting a fear that a good deal for the UK would set a precedent that others might follow.

However, as the months have passed, we have seen the emphasis shift towards a growing determination among the remaining 27 Member States to make a success of the European Union.

From the Bratislava Declaration of August 2016 to the Rome Declaration last month, which marked the 60th Anniversary of the Treaty of Rome, we have seen a renewed confidence and conviction in the European project and the values that it represents.

This has not only been at a political level, but has also been reflected in public opinion. Not least in Ireland, where support for EU membership remains extremely high.

Therefore, the perspective among the EU27 is not about punishing those who leave, but highlighting, protecting and consolidating the benefits of EU membership for those who remain.

I think it is fair to say that the political perspective in the UK has also evolved – away from the rhetoric of the campaign and towards laying the foundation for a

positive future relationship with the EU.

I very much welcomed the tone of Theresa May's letter of notification, which was positive and conciliatory. Gone are the rallying cries of "no deal is better than a bad deal" and aspirations to "have cake and eat it". Rather, the letter emphasises the UK's desire for "a deep and special partnership with the EU" and makes clear that the UK, like the EU, wishes to avoid a disorderly exit.

In Ireland's case, the message to the UK and to our EU partners has been clear and consistent from the outset. The imperative of protecting peace on our island is above all a political matter, not a legal or a technical matter.

In this respect, Ireland's political journey over the last ten months has been more literal than figurative!

Since the referendum, I, along with the Taoiseach and my Government colleagues, have been engaging intensively with our EU partners to ensure that the unique Irish perspective on Brexit is understood - over 400 engagements and counting across government at either political or senior official level.

I have very much appreciated the willingness of our partners to listen and to take our views on board. Indeed, the visits have not only been outgoing. Several of our partners who have visited Ireland have gone out of their way to visit the border region themselves, in order to better understand the situation on the ground.

I am pleased that our efforts have yielded results. I warmly welcome the strong recognition in the draft European Council guidelines of the unique circumstances on the island of Ireland and the need for "flexible and imaginative solutions", including the wish to avoid a hard border, as well as recognising bilateral arrangements and agreements between Ireland and the UK. This an important reference to our wish, a wish shared by the UK, to maintain the Common Travel Area. I also welcome the references to Ireland in Theresa May's letter of notification, which also sets out the objective of protecting the peace process and avoiding a return to a hard border between our two countries.

I further welcome the supportive language in the European Parliament's resolution as regards Ireland's unique concerns. The European Parliament will have an important role to play in the forthcoming Brexit process and I am delighted to see that Danuta Hübner will address this conference tomorrow.

So, taken in all, while I am under no illusion whatsoever as to the difficulty and complexity of the legal process that lies ahead – and while I will not pretend that the EU and the UK are on the same page on all issues – I do take heart from the fact that the story of the past ten months has been more about convergence than divergence compared to where we started on 24 June 2016:

- A convergence of views amongst the EU27 on promoting a strong EU and adopting a unified approach to the negotiations;
- A convergence of views between the EU and the UK on the desire for a close partnership in the future and the need to avoid a disorderly exit; and
- A convergence of views among the UK and Ireland's EU partners on the need to protect the peace process and the Good Friday Agreement and avoid a hard border on the island of Ireland.

Article 50 Negotiations

This is the political landscape as we prepare to launch the negotiations between the EU and the UK – most likely in late May or early June. Throughout the legal process that lies ahead of us, Ireland will continue to engage closely with its EU partners and with the UK to sustain and to further promote this constructive approach from all sides.

It is clear that we will face some early challenges, particularly around the question of how the negotiations should be sequenced and the issue of the UK's outstanding financial liabilities. I am, however, optimistic that these challenges can be overcome. As concerns sequencing, we know that there will need to be at least two agreements with the UK.

The negotiations within the framework of Article 50 will have the objective of ensuring an orderly withdrawal of the UK from the EU.

The future EU-UK relationship is of critical importance to Ireland, but will be the subject of a separate and subsequent negotiation between the EU and the UK. This recognises the fact that the UK will become a "third country" once it leaves the EU.

Of course, as with all things European, it is not quite so clear cut! Article 50 states that the exit agreement should take account of the framework for the future relationship between the EU and the State in question. This aspect of Article 50 is of particular importance to Ireland. We therefore welcome the phased approach to the negotiations as set out in the draft European Council guidelines.

Such an approach would see a first phase focus on the key issues identified in relation to the UK's withdrawal from the EU. Should sufficient progress be made on these issues, a decision that will be taken by the Taoiseach and his fellow 26 leaders, a second phase could be launched alongside that of the withdrawal talks, focusing on the future EU-UK relationship.

I believe that this is a sensible approach and I know that this is a view that is also shared by EU partners. Indeed, this issue was at the heart of discussions between the Taoiseach and his Dutch and Danish counterparts this week.

A further critical issue will be the question of a transitional arrangement. It has

long been clear to us that finalising – and ratifying – an agreement (or agreements) on the future EU-UK relationship will be a challenging process that is likely to take some time. There will inevitably be a gap between the UK's withdrawal and the conclusion of such an agreement.

Like our fellow EU Member States, we have heard loud and clear the concerns of citizens and businesses about the need for certainty and clarity from day one of the UK's withdrawal. Therefore, Ireland strongly believes that a transitional arrangement should be agreed as part of the withdrawal process, in order to provide legal certainty and to avoid what has been termed as a "cliff edge" scenario, including with regard to trade, customs and other key sectors.

However, to move to phase two, we must first ensure we address the issues identified during phase one – this is the immediate task in hand. As you know, draft EU negotiating guidelines were circulated by European Council President Tusk to the EU27 Member States on 31 March.

These draft guidelines are currently being discussed by Member States, but progress to date would suggest that they will be adopted – as planned – by the European Council on 29 April. As part of the phased approach to which I have referred, the draft guidelines identify three headline issues in the first phase that will be in focus from the outset:

- Protecting the rights of EU and UK citizens and their families;
- Settling the UK's outstanding financial liabilities; and
- Border issues – including recognition of Ireland's unique circumstances.

Ireland's Unique Concerns

I shall turn to the latter issue first, which has been front and centre of the Government's engagement with our EU partners over the past ten months.

I think it is fair to say that there was already a high degree of awareness of the peace process and to a lesser extent, the Good Friday Agreement. However, there was less awareness of the provisions and operation of the Agreement and its successors and of the often fragile nature of politics in Northern Ireland.

We are fortunate that some people in key positions have a sophisticated understanding of Northern Ireland, for example, as a former Commissioner for Regional Development, Michel Barnier has a particularly deep insight into the important role the EU has played in supporting peace on our island. And this valuable perspective is also shared by Danuta Hübner who will address you tomorrow.

However, naturally enough, in many countries – particularly those who joined the EU after 1998, I and my Government colleagues have had to go back to first principles in setting out the nature of the peace settlement on this island. And in all cases, a vital aspect of our ambitious programme of diplomatic engagement around the EU has been to underline the very particular legal challenges that the UK's withdrawal poses and the specific needs that will arise within the context of the forthcoming negotiations between the EU and the UK.

The Good Friday Agreement, which is an international agreement registered with the UN, provides for a unique political and constitutional settlement in Northern Ireland.

It contains important provisions on the constitutional status of Northern Ireland, whereby, subject to the consent of majorities of people in both North and South, Northern Ireland may become part of a united Ireland rather than remain in the UK.

I, and my Government colleagues, have stressed that any future arrangements between the EU and the UK should cause no legal impediment to the mechanism set out in the Good Friday Agreement for a united Ireland, established in accordance with the principle of consent.

Another issue that finds no parallel elsewhere in Europe is the provision within the Good Friday Agreement that recognises "the birthright of all the people of Northern Ireland to identify themselves – and be accepted as – Irish, or British, or both."

In essence, this means that virtually everyone born in Northern Ireland can of right choose to be an Irish citizen and therefore a citizen of the European Union. Throughout the withdrawal process, the Government will therefore be working to ensure that the rights currently enjoyed by Irish citizens in Northern Ireland as EU citizens are not diminished.

A further matter of vital national interest is, of course, to avoid a hard border on the island of Ireland. As the most tangible symbol of the peace process, the open border is essential to the continuing normalisation of relationships.

The avoidance of a hard border will require creative and imaginative solutions across a wide range of areas under the withdrawal negotiations. It is also clear that the nature of the future EU-UK relationship will also be highly relevant. Also, the closer the trade relationship, the easier it will be to maintain an open border.

Important in this context too will be the recognition by the EU of existing bilateral arrangements between the UK and Ireland, which are compatible with EU law.

In this regard, it is the joint objective of both the Irish and British Governments to maintain the Common Travel Area. The CTA is a bilateral arrangement that long predates our EU membership and plays a crucial role in facilitating the interaction of people on the islands of Great Britain and Ireland and its existence is recognised

by Protocol 20 of the EU Treaties.

The Taoiseach has stressed that Ireland's unique issues, particularly with regard to the border, are issues that will need to be solved by political leadership and – as I have said – the draft European Council guidelines provide a good foundation for progress and a strong indication that the Government's extensive programme of engagement with its EU partners has been effective.

However, the responsibility for political leadership does not only rest with the Irish Government and our UK and EU counterparts. Over the past weeks, since the Assembly election in Northern Ireland, I have been engaged in talks at Stormont Castle, aimed at forming a power-sharing executive.

I believe that, at this critical and challenging time for Northern Ireland as we approach negotiations on the UK's withdrawal from the EU, the restoration of a power-sharing Executive is essential.

The UK general election announcement does not change in any way Ireland's commitment to pursuing the best possible outcome for this island from the entire Brexit process.

However it will impact on the ongoing talks' process in Belfast to form a new Executive since a general election inevitably shifts the mind-sets of parties to campaign mode. Nevertheless, the acute need and demand for the devolved institutions in Northern Ireland remains, particularly so in the context of the UK's withdrawal from the EU. The Taoiseach recalled this imperative in his conversation with Prime Minister May on Tuesday.

It is worth noting that, prior to the last Stormont elections, the Irish Government had been working with the Northern Ireland Executive, through the North South Ministerial Council, to analyse the implications of Brexit in all areas of North South cooperation.

Moreover, both administrations last November agreed a set of common principles to guide our shared approach to managing the Brexit challenge. I want that shared work – that island of Ireland common approach - to recommence as a matter of urgency.

I am travelling to Belfast immediately after this engagement to meet again with the Northern Ireland parties in the hope that it may be possible to find an agreed basis for the re-establishment of a power-sharing Executive in the near future.

The interests of the people of Northern Ireland are best served by having a devolved Executive and Assembly and that is the mandate that the parties have to fulfil from the last Assembly election.

Article 50 - Shared Concerns

My engagement with EU partners, and that of my Government colleagues, has not been limited to Ireland's concerns. It has also been a listening exercise, with a view to understanding their key issues and priorities.

On the question of the rights of citizens, I think it is fair to say that the political will is clearly there on both the part of the UK and of the EU to provide clarity and legal certainty for the 4 million citizens concerned.

On this basis, while the detail will be complicated, I believe that an early agreement in principle on the reciprocal protection of citizens' rights is achievable. This would not only be important for EU and UK citizens, but would also be important for building confidence at an early stage of the negotiating process.

On the question of the UK's financial liabilities, I have also found common ground with all my EU interlocutors. This is not about punishing the UK or issuing a "bill" for leaving. It is simply a very legitimate expectation on the part of the EU that the UK should honour any financial commitments that it has already entered into.

Like all EU Member States, Ireland has a strong interest in ensuring that all commitments under the current MFF are honoured, including the CAP, as part of a fair and balanced outcome.

We need to recognise, however, that this is a politically sensitive issue. I do not believe that it will be helpful for the opening stages of the negotiations to focus on the final amount. Rather, I believe that we should focus at the outset on agreeing in principle that a financial settlement is required.

The process could then proceed by agreeing a methodology for calculating the UK's outstanding commitments, which should cover all legal and budgetary commitments. It is, however, imperative that we do not allow the negotiations to become bogged down on this issue and unduly delay progression to the second phase of the process - the future EU-UK relationship.

Towards a Future EU-UK Relationship

The future EU-UK relationship is of immense concern and interest to Ireland.

We know that Brexit will have a disproportionately large impact on our economy. And we know that achieving the closest possible trading relationship between the EU and the UK in the future will be a crucial mitigating factor in this regard.

I have been greatly encouraged during my consultations to date by the fact that we are far from alone in this respect.

Yes – we are more exposed than others. But it is also true that the UK is an important trading partner for many Member States.

Ireland will therefore find plenty of support among its EU partners for a trade deal that is ambitious and as wide as possible in scope.

Given that this closely matches the UK's objective of a deep and special partnership with the European Union, it would seem that we are set fair for easy progress.

Not quite! There are many aspects that will need careful consideration to avoid the politics of Brexit coming up against a brick wall that is the law of Brexit.

- What, if any, link will a future trade deal have with the UK's migration policy?
- How do we avoid regulatory divergence?
- How will the implementation of a future agreement be monitored and enforced?
- What dispute resolution mechanism is envisaged?
- How do we ensure a level playing field between the EU and the UK, for example in terms of standards and state aids?
- How will we manage the regulation of data, a key enabler for so many facets of our cooperation?

These are not questions to which we have answers as of now.

What is certain is that Ireland wants the closest trading relationship between the EU and the UK and we will work hard to ensure that key sectors of the Irish economy are protected in such an agreement.

However, what is equally clear is that promoting a strong and well-functioning single market is also essential to Ireland's continued economic development.

We will, therefore, work hard, as part of the EU27 team, to ensure that any future agreement respects the integrity of the Single Market and promotes a level playing field between the EU and the UK.

New Alliances / Future of Europe

In closing, I would like to recall the Taoiseach has situated all of our preparations, all of our contingency planning and all of our political engagement around Brexit within a wider context - Ireland at the heart of a changing European Union.

My own meetings with counterparts have only served to reinforce a sense of place and sense of belonging within the European Union. Our discussions around Brexit have not only focused on the negotiations themselves, but also on identifying new opportunities for reinforcing cooperation, either on a bilateral basis or with groups of other likeminded states.

Some Member States, especially those whose broad approach to economic issues such as trade and the digital single market is consistently similar to ours, have expressed an interest in co-operating further with us.

I also welcomed the adoption of the Rome Declaration, which marked the 60th anniversary of the Treaty of Rome and was a fitting endorsement of the value and achievements of the EU since its creation. It also underlined that our future peace and prosperity is best preserved and promoted through the EU.

The European Commission's White Paper on the Future of Europe, which was presented to coincide with the 60th anniversary celebrations presents a number of scenarios for how the EU might develop in the medium term.

I welcome this paper, which I hope will stimulate a Europe-wide discussion and debate. Of course, a key goal of this debate should be to engage citizens across all 27 Member States. Indeed, if Brexit has a silver lining, it is almost that it has brought the EU back to the front of people's minds.

And I might venture that the 68% rise in requests from Britain and Northern Ireland for Irish passports in the first quarter of this year gives rise for optimism. It suggests that EU citizenship is valued. So long as delivering for our citizens is at the heart of what we do, I have every confidence that the EU will emerge stronger and more united in the future.

On this note, I would like to wish you every success over the coming days. I have no doubt that this conference will make an important contribution to the debate at both national and European level and I look forward to hearing its outcomes.

Thank you.

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