

UK/EU: Brexit meant Brexit, but what does Article 16 mean?

The Brexit saga might be headed for yet another round of year-end deadlines. Talks between the EU and the UK continue this week. But in Brussels, fears are increasing that the UK might follow through on its threats and trigger Article 16, putting the application of the Brexit deal's Northern Ireland protocol on hold.

Leading Irish politicians have warned that the EU might react by disapplying the entire post-Brexit free trade and cooperation agreement. However, there is no direct line leading from the UK triggering Article 16 – which could happen as early as next week – to the EU scrapping the entire political and trade agreement. Instead, the EU's response will, as so often in the Brexit story, depend on what the UK really “means” by triggering Article 16.

The UK's relevant communication with the EU will be the key factor to watch. If the UK goes ahead and invokes the safeguard clause enshrined in Article 16, this gives both sides one month to find a solution for the issues raised, in this case, the UK's complaint that the protocol's current workings undermine peace and stability in Northern Ireland. Only if one side invokes special circumstances can the one-month period be circumvented, meaning that this is, in itself, a first factor to watch.

The base case should be that both sides will make use of the month-long consultation period, trying to reach further progress on issues ranging from easier medicines trade across the Irish Sea to simpler rules for traveling pets other than guide dogs for the blind. Progress has already been made on the former issue, and there is speculation that the European Commission has compromise proposals ready for the pets problem; these could be offered as another concession to the UK at a later stage. In contrast, scrapping the oversight of top EU courts will be impossible, not least because of the signal this would send to countries such as Poland.

If Article 16 were to be triggered next week, this would give both sides until mid-December to find a solution. If these talks were to fail and the EU chose the option indicated by the Irish government – disapplying the trade and cooperation agreement – this would leave another 12 months of talks – i.e., until December 2022 – before the deal would cease to apply and both sides would fall back to trade on WTO terms.

Over recent weeks, even traditionally careful EU members such as Germany have pushed the Commission to prepare broad retaliatory measures. This lends additional weight to the Irish warnings but should be understood as preparations for a worst-case scenario where the UK tries to circumvent the consultation under Article 16 or puts each and every Irish Sea control on hold right after the failure of such talks.

Short of this, less stringent retaliatory measures could include freezing cooperation in areas such as R&D, as well as the application of targeted tariffs. Other parts of the agreement, such as citizens' rights, would remain unaffected as long as the EU does not disapply the entire deal. But as discussed in the past, bilateral tensions with Paris could still lead to more

Carsten Nickel

Deputy Director of Research
+44 20 7186 8873
carsten.nickel@teneo.com

immediate complications in UK-EU trade, as more stringent French customs controls could complicate the entry of UK goods into the wider single market.

[Client Portal >>](#)

Carsten Nickel

Deputy Director of Research
+44 20 7186 8873
carsten.nickel@teneo.com

© 2021 Teneo. All rights reserved. This material was produced by Teneo for use solely by the recipient. This communication is intended as general background research and is not intended to constitute advice on any particular commercial investment or trade matter or issue and should not be relied upon for such purposes. The views expressed here represent opinions as of this date and are subject to change without notice. The information has been obtained from sources believed to be reliable but no guarantees can be given as to its accuracy, completeness or reliability. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic or otherwise, without the prior consent of Teneo.