



The Bottom Line

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WILL BREXIT EVER BE FINAL?

Summary

Almost eight months into Brexit, significant issues remain unresolved between the UK and EU. British Prime Minister Boris Johnson is attempting to rewrite the Northern Ireland deal he signed, and the UK's attempt to create parity in legal matters has been rebuffed.

Background

The UK formally left the EU on January 31, 2020. A year of 'transition' followed to allow each of the parties to prepare for post-Brexit realities. The negotiations did not stop during the transition, however. At the heart of the disagreement was the EU's insistence that if Britain wanted tariff-free access to its single market of almost 450 million people, it could not be allowed to dramatically undercut the European economic model, with its tough standards on workers' rights, climate change and subsidies. If Britain did significantly undermine the "level playing field", its market access should be curtailed. After almost 50 years of membership of the European club, Johnson wanted sovereignty, pure and simple. The final agreement contained provisions and oversights that are creating difficulties for the UK now.

The Lugano Convention is a crucial instrument in cross-border civil and commercial disputes. It was signed in 2007 between the EU and the member states of the European Free Trade Association (EFTA); Norway, Iceland, Switzerland and Liechtenstein. Its purpose is to provide clarification over which national courts have jurisdiction in matters brought before them, and acts as an agreement for cross-recognition of legal judgements in member countries' courts.

Current Status

At the heart of one issue is the Northern Ireland Protocol, which was included in the Brexit deal to avoid the return of a physical border between Northern Ireland, which is part of the United Kingdom, and Ireland, which is a member of the European Union. The European Union worried that a physical barrier could once again become a source of tension, and it would not agree to police the border between Ireland and Northern Ireland to protect the integrity of the EU market. Johnson, who helped lead the campaign for Brexit, instead agreed that Northern Ireland would remain subject to EU market rules, and to check goods flowing from the United Kingdom to Northern Ireland. EU officials have already rejected the UK call for a renegotiation on this topic, which trade experts say amounts to a brazen attempt to press the European Union to agree to demands that it already rejected during several rounds of talks.

In a statement this week, US Democratic Congressman Brendan Boyle rebuked the UK government's approach to Northern Ireland and highlighted "strong bipartisan" support for the Good Friday Agreement. "The British government negotiated the Northern Ireland Protocol, agreed to it, and its Parliament voted for it. Yet almost immediately after it went into effect, the British government has tried to evade its responsibilities under the protocol," he said.

Boris Johnson has spent decades agitating against the European Union and the last five years battling to free the United Kingdom from the shackles of regulation from Brussels. Now he's in the awkward position of finding himself at the mercy of EU leaders for permission to re-join the Lugano Convention, or risk devastating Britain's multi-billion-dollar legal services industry, which, like banking, was not addressed at all in the original Brexit agreement. In a recent ruling, the European Commission has formally rejected the UK's application to join the Convention, declaring it is 'not in a position to give its consent to invite the United Kingdom to accede.' The Commission claims that the UK, as a third party, should go through the Hague Convention for matters of jurisdiction, as the Lugano Convention is only for EU and EFTA countries, of which the UK is neither.

Impact

Unfortunately, relations between Brussels and London are dire. The UK's attempt to renegotiate a key part of the Brexit deal is uniting EU member states against it once more. "It's politically uncomfortable for Johnson that the EU is starting to react to what it sees as our bad behavior," says Anand Menon, professor of international politics at King's College London. "Lots of Brexiteers said from the start of the Brexit process that London taking a hardline stance wouldn't result in retaliation from Brussels. This is one of the first examples where we are being damaged internationally and the EU holds the keys, and it gives us an idea of how much they think our reputation has changed," he adds.

For the UK, the new checks on goods moving between mainland Britain and Northern Ireland have created chaos, upended supply chains, added costs to businesses, and reduced the availability of certain products in Northern Ireland supermarkets. According to the UK government, at least 200 businesses in Britain have stopped servicing the nation due to post-Brexit red tape. The effect of the UK being refused entry to the Lugano Convention will be significant. It will mean parties will be unable to secure a judgement in their own country which could then be enforced in another. They will instead have to commence proceedings in the country in which they wish a judgement to be enforced, and depending on the laws of that country, perform the process all over again. This will greatly increase the complexity and costs of cross border disputes.

RESOURCES

[Why would anyone trust Brexit Britain again? \(CNN\)](#)

[The Lugano Convention - What it is, and why it matters \(Griffin Law\)](#)

[The explosive Brexit spat that no one is talking about could slam the UK economy \(CNN\)](#)

[EU pauses legal action against UK over Northern Ireland protocol \(The Irish Times\)](#)