Twitter Thread by Jon Worth



Jon Worth
@jonworth

OK, it can be avoided no more.

This is perhaps the most complex ■ on #Brexit I've ever attempted. But this issue really matters.

Business, possibly even lives, depend on getting this stuff right.

It is about the complexity of Brexit delay, and what to do about it.

1/25

If negotiations had gone to plan, it would have worked thus:

1■■ ■■&■■ agree a Deal, politically
2■■ That is then turned into a legally ratifiable text
3■■ Both sides then ratify - on ■■ side Member States and the EP, ■■ side the Houses of Parliament
4■■ Deal in force 1.1.2021

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The problem: we do not have 1■■ yet.

And with just over 16 days to go - including ■ - we do not have time for 2■■ and 3■■ and hence no 4■■.

We *might* have time for 2■■ - and that could prove to be significant (see tweet 7 below), but definitely not 3■■ on ■■ side.

3/25

Essential problem: by having spent so long talking (I think ■■ tactic has been to run down the clock - https://t.co/8EJZAJZHqz) the path to a normal ratification is now ■■.

Now ratification becomes harder - legally, politically, practically - with every passing hour.

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The most obvious stumbling block is...

■■■

... the European Parliament!

Parliamentary sovereignty, eh? A topic for another time.

Anyway, the EP has said it will not vote on a Brexit Deal this year.

https://t.co/m2GvroyskE

5/25

> Pretty clear again speaking to Mep's they won't countenance debating or ratifying any EU-UK trade agreement before December 31st #Brexit
>
> Mep's are pretty annoyed at the very suggestion that it would be provisionally applied and the ratification would be a simple rubber stamp.
>
> — Shona Murray (@ShonaMurray_) December 15, 2020

So even if 1■■ ■■&■■ agree, politically in the next few days, you cannot achieve 3■■ that both sides ratify.

But what about 2■■ - that there even is a text to ratify?

Here is where it gets interesting.

6/25

If there *is* a legal text available to ratify, ■■ Member States can approve by written procedure (i.e. swift), & ■■ Lords and Commons can pass primary legislation in a day if they need to.

But the EP says it won't be bounced into doing that. It takes scrutiny seriously.

7/25

So what's the solution?

PROVISIONAL APPLICATION of the Treaty is an option - i.e. meaning that the approval of the European Parliament would come after 1 January. The Council (i.e. the Member States) can decide whether to take that route.

https://t.co/zBoRrlzG7V

8/25

> 15/ It's understood that the Council legal service intervened this morning to say that the Lisbon Treaty makes it clear that the sole right of deciding whether or not to provisionally apply a treaty belongs to the Council (ie member states) at the moment of signature.
>
> — Tony Connelly (@tconnellyRTE) December 14, 2020

But of course the European Parliament refuses that - as it would just have to rubber stamp a Deal under duress and after the fact.

The EP might, after some howling, do it, but its MEPs are not happy.

https://t.co/Z0eJ6OtwWr

9/25

> Irresponsible and bitter. How can citizens and businesses 18 days before end of the transition period be subjected to this uncertainty?Furthermore secret negotiations far from any democratic control.Serious ratification is becoming increasingly impossible.Unworthy game #BREXIT https://t.co/TVsPZuSDp0
>
> — Bernd Lange (@berndlange) December 13, 2020

Also were EP to decide after the fact... what about other players?

This aspect has been a bit murky - it looks like Member States have OKed the idea a Deal would be an EU-only agreement, not a Mixed Agreement needing 27+ national ratifications.

https://t.co/vLfoQshDbn

10/25

> NEW: am told European Union is looking into way of fast-tracking any Brexit deal. Senior sources say it's now very likely to be an "EU-only" rather than "mixed" deal.
> Which, crucially, would mean it would NOT need ratification by all the member state parliaments
>
> — Adam Parsons (@adamparsons) November 16, 2020

But if the EP can decide after the fact, and time is then not so important, why shouldn't everyone *else* have their say then too?

Count yourself lucky, ■■, that Wallonia has no coastline!

https://t.co/sMKJqK8tOM

Basically: PROVISIONAL APPLICATION is a headache.

11/25

And there is another ■

PROVISIONAL APPLICATION only works if you have a text ready to ratify. And currently we do not... and we know that the Deal will be 600+ pages long.

12/25

I presume the non-controversial bits of the text have been translated already, but from agreement to ratifiable text... needs some time.

If there is no agreement by end of this week, perhaps start of next week at the *very latest*, forget this route as well.

13/25

Then we get to some even more ■ options.

Steve Peers has mused whether RETROACTIVE APPLICATION could work - essentially a Deal after 1 Jan, but the costs incurred (e.g. tariffs) in the interim reimbursed.

https://t.co/u8V5fq4ihy

14/25

> Retroactive application is a different issue though.
>
> — Steve Peers (@StevePeers) December 14, 2020

This one would be a practical nightmare - especially if it were not known how long that period would last. And businesses would have to make all their tariff calculations *anyway*.

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And you could combine RETROACTIVE APPLICATION with PROVISIONAL APPLICATION to shorten the interim period.

Confused yet?

Or, perhaps more importantly, do you think Boris Johnson understands this?

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Also RETROACTIVE APPLICATION essentially means a period of No Deal, although if it were known that a Deal were forthcoming that might limit the likely panic.

But...

■■■

... trade nerds to the rescue!

17/25

Another way to bridge the period of No Deal could be to use GATT Article XXIV 5(c) - to not apply tariffs in this interim period.

https://t.co/VU2lPCkK5o

18/25

> I hate to be that guy, but what if, following signature, tariff-free trade continued on January 1st prior to ratification as an interim measure justified on the basis of ... GATT Article XXIV 5(c).
>
> *flees* https://t.co/UgDMEgEfbZ
>
> — Sam Lowe (@SamuelMarcLowe) December 14, 2020

And you would probably not need an agreed legal text for that - both sides agreeing they would be OK with this would probably be OK.

https://t.co/V12xdXbnH8

But both sides would still have to want to do it...

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> Right - deal done; just not gone through internal EU-pre council sign off process
>
> — Sam Lowe (@SamuelMarcLowe) December 14, 2020

Using GATT Article XXIV 5(c) could also be complemented by the CONTINGENCY MEASURES proposed by the European Commission (these need to be approved by the European Parliament as well - vote 18 Dec)

They cover ■■■ & ■

https://t.co/5LUBrWkAds

20/25

Another solution would be a sort of STANDSTILL ARRANGEMENT - i.e. a couple of paragraphs Treaty (that, yes, would have to be provisionally applied - FTW!) that would essentially buy all the institutions some more time.

Detail scarce on this so far

https://t.co/H4N4eNTKLs

21/25

> So a new treaty between the EU-UK allowing for some sort of extension of current arrangements will be drawn up until the deal is ratified by the parliament.
>
> — Shona Murray (@ShonaMurray_) December 15, 2020

So what do we conclude here?

FIRST, time still matters - getting an agreement ASAP would keep the PROVISIONAL APPLICATION route open. Waiting until ■ to agree closes that route.

22/25

SECOND, any of these options is fraught with complexity and difficulty, and some combination of the 5 of them (PROVISIONAL APPLICATION, RETROACTIVE APPLICATION, GATT Article XXIV 5(c), CONTINGENCY MEASURES and STANDSTILL ARRANGEMENT) could be needed.

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There might, just might, be a way through all of this yet...

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... and all of this is because the man in 10 Downing Street is too scared to take a decision.

Thanks, Johnson.

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