

WEBINAR REPORT

Brexit and its implications for health in the UK and Europe



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epra european
public health
alliance

About EPHA

EPHA is a change agent – Europe’s leading NGO alliance advocating for better health. We are a dynamic member-led organisation, made up of public health civil society, patient groups, health professionals, and disease groups working together to improve health and strengthen the voice of public health in Europe.



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Introduction

EPHA Deputy Director Sascha Marschang (SM) welcomed the participants and presented the agenda and speakers, noting that the webinar took place only days after the United Kingdom's (UK) snap General Election on 12 December 2019, which had given the ruling Conservative Party a comfortable majority that surprised many both inside and outside the UK. This will very likely result in the fulfilment of re-elected Prime Minister Boris Johnson's aspiration to "Get Brexit Done" already by the end of January 2020. However, what will happen afterwards in terms of negotiating a comprehensive, mutually beneficial post-Brexit agreement between the UK and the European Union (EU) remains unknown, especially given the short timeframe available for brokering a trade agreement by the end of the transition period, currently scheduled for December 31 2020.

SM added that, rather than speculating on the unknown, the objective of the webinar was to look at how the story has unfolded so far and what is currently on the table. EPHA's previous work in its thematic priority "Healthy Trade" explored the international trade agreements and ongoing negotiations between the EU and partners such as the United States, Canada, the Mercosur countries, Australia and New Zealand, which could provide some pointers on the types of relationships possible. EPHA also created a tool to enable public health organisations to assess the level of risk international trade agreements can pose to public health, in both an EU and post-Brexit context. Prior to the UK election, health-related concerns had featured prominently again on the leading parties' agendas, with Prime Minister Boris Johnson now promising billions of pounds of investment for the country's state-run but ailing National Health Service (NHS).

SM concluded the introduction by adding that the webinar had been designed to enable an interactive conversation among EPHA members and external partners working on Brexit, which could be followed up by further activities and potential webinars in 2020.

Lessons Learned in the UK

The framing of health in the Brexit debate, myths and disinformation....and what it means for advocacy

The first presenter, **May van Schalkwyk** (MvS) – a specialist registrar in public health at the London School of Hygiene and Tropical Medicine – focused on the UK context and the lessons learned from the way in which health had been framed in the EU referendum debate, which included a number of myths and disinformation. Following the result, the lack of publicly available information about the evolving negotiations with the EU had made it difficult for public health advocates to devise effective strategies, not least because they relied on leaked documents to get an insight into the UK government's vision. MvS argued that, compared to the many assertions made about health during the 2016 referendum campaign, the topic was conspicuously absent in the Brexit debate following the "leave" vote, only making a grand entry again in the run-up to the 2019 General Election. However, the potential impact of Brexit on the National Health Service (NHS) has remained a hot topic over the last three years, with notable concerns having been voiced over health workforce shortages (the NHS being highly reliant on foreign-trained nurses and doctors, many of whom are from EU Member States), future financing, the availability and development of medical products, vaccines and technology, its ability to keep up quality service delivery, as well as questions related to its leadership and governance.

In addition to a lack of transparency and reliance on leaked documents, which has posed a challenge to the active involvement of civil society, much of the evidence used in the Brexit debate has either been lacking in detail, manipulated or open to interpretation. A number of myths and assumptions were made about how easy it would be for the UK to secure an EU trade deal even in a “no deal” scenario. Moreover, the independence of the NHS and the influence of the US pharmaceutical industry were evoked in the context of a future UK-US trade agreement, which could potentially threaten health by extending multinationals’ rights to data exclusivity, removing barriers to issue patents, and allowing access to NHS data, at the expense of driving up drug prices and losing privacy protections. Hence it will be imperative for regulatory authorities to be actively involved.

MvS argued it will also be important for public health advocates to ensure that many of the progressive public health gains achieved in previous years, both in a British and a European context will not be rolled back or dismantled by hasty trade decisions that could exert long-term harmful effects, especially if no trade deal is agreed by the end of 2020. Regardless of whether or not the UK remained part of the EU, it is important to realise the UK’s important role in Europe and that both sides work together as well as possible. MvS added that existing bridges and networks need to remain in place as much as possible and new ones need to be built, to ensure that health and equity will feature strongly on the agenda, increase transparency in the context of trade negotiations, counter misinformation and protect existing public health policies that have served Britain and Europe well over the years.

Lessons Learned in the EU27

Brexit, human rights and the sanctity of the internal market

EPHA Secretary General Fiona Godfrey (FG), who also spent three years as the Co-Chair of the British in Europe (and working closely with the “3 million” movement which supports EU citizens living in the UK), concentrated on a different set of lessons learned, namely her experience of working on citizens’ rights in the Brexit negotiations. Beginning with a reiteration of the EU’s core negotiating principles agreed in May 2017, FG argued that the European Council had made it clear from the beginning that the four freedoms of the Single Market were indivisible and that it was an absolute priority for the EU to preserve the integrity of the Single Market – however, at the same time the EU appears to have lost its own understanding of why this should be the case, with “protection of the Single Market for its own sake” – rather than to protect citizens or health - having been mainstreamed ideologically into EU thinking. This implied that any close partnership with the UK excluded the possibility to engage in “cherry picking” as part of a sector-by-sector approach; rather, such an agreement would need to be based on an appropriate balance of rights and obligations. The UK negotiators failed to grasp this crucial point, were unprepared and unable to devise a proper response as their tactics were based on UK political traditions, expecting a “zero-sum game”, in turn triggering a negative EU reaction.

FG continued by sharing insights into the experience of the negotiations on the citizens’ rights chapter of the Withdrawal Agreement. Moreover, FG noted that the Swiss model that has often been held up as an example for a future UK-EU relationship, had been very difficult to negotiate (with well over 100 bilateral agreements) and remained unsatisfactory to many, with the EU in the dominant position. The revised text of the Political Declaration agreed on 17 October 2019 between the EU and UK setting out the framework of the future relationship included parts on shared core values and areas of shared interest (such as science, innovation, possibly also ERICS); it mentions health six times but does not feature health per se despite a number of health-related articles that touched on important aspects of health in its economic

part (see slides for an overview of relevant articles). Interestingly, although collaboration with the European Medicines Agency and the European Chemicals Agency are mentioned, there is no explicit mention of future collaboration with the European Centre for Disease Prevention and Control, but this may be implied in Article 13.

Importantly though, in order to get what it wants in health policy, the UK will need to make concessions in other areas unrelated to health, including transport, fishing, immigration and free movement. The EU's logic is that the Internal Market always wins - even if health might lose out – and the strategy is to keep the UK closely entangled. However, EU national governments such as France and Spain have also warned the UK that the rights of British citizens might also depend on the UK playing ball in other policies like fisheries.

A summary of EPHA's work on international trade

EPHA consultant George Thurley (GT) provided an overview of the broader work EPHA has been undertaking over the last five years as part of its “healthy trade” work stream on various trade agreements (including CETA, TTIP, Mercosur) as well as on Brexit and the future EU-UK trade relationship. He pointed out that EPHA, as the only public health NGO working on trade at EU level has now developed significant expertise on the issue, and has produced two dedicated briefing papers^{1,2}, the aforementioned risk register and a specific report on the impact of Brexit on health. EPHA has also spoken at a number of key events, as well as supporting its members working on Brexit to share information and connect with other networks, such as the Brexit Health Alliance (which also released its own briefing³). Notably, EPHA has linked up with the Brussels Brexit Health Stakeholder Group and with UK-based EPHA members' campaigns such as the Faculty of Public Health's campaign to ensure that the “Do No Harm” public health duty (Article 168 of the TFEU) will influence future UK policy-making and be legally enforceable after Brexit. . EPHA has had several meetings with the UK Permanent Representation to discuss the progress of the file and participated in the hearing on Brexit and health organised by the House of Lords.

¹ EPHA (2017), The potential impacts of Brexit on trade

² EPHA (2018), Trade, Investment and public health

³ Brexit Health Alliance (2018), Protecting the public's health across Europe after Brexit

Lessons for the future

Implications of a new trade relationship between the EU and UK for health

EPHA Scientific Advisor for trade and investment policy Gabriel Siles-Brügge, University of Warwick (GSB), focused on the implications for health of a new trade relationship between the EU and the UK. Stressing that the current agreement only pertained to phase 1 (withdrawal) talks, which included certain provisions on the transition period, citizens' rights, and special provisions contained in the Northern Ireland protocol, he warned that the direction of travel regarding a future economic partnership currently appeared to be risky as a "bare bones" agreement would not address many of the crucial issues.

Notably, Boris Johnson's amendments to the Withdrawal Agreement/Political Declaration intended to facilitate regulatory divergence and an independent UK trade policy, entailed tangible dangers for health, as a potential future de-alignment from the EU was not addressed by the proposed "level playing field" provisions. Concretely, leaving the Single Market, would lead to a watering down of the precautionary principle (e.g. in sanitary and phytosanitary measures, pricing and reimbursement policies in the NHS).. The latter could bring many undesirable changes such as divergence on data privacy, cessation of the mutual recognition of qualifications of health professionals, and ending free movement of people. Moreover, there would be a broad parallelism between participation in the Single Market and in EU research programmes.

At the same time, existing EU precedents in terms of trade policy/regulatory cooperation outside of the European Economic Area (EEA) context were not encouraging from a health policy perspective as they involved only limited commitments on mode 4 (movement of natural persons) and recognition of professional qualifications, while any regulatory cooperation on pharmaceuticals included at most a mutual recognition of Good Manufacturing Practices. Trade agreements were about eliminating barriers to trade first and foremost, whereas the proposed EU-UK agreement will lead to the imposition of barriers to some degree. There were also additional, broader dangers related to regulatory cooperation and coherence in a trade agreement, while another precarious cliff edge situation looms in December 2020 at the end of the transition period, which might expose the limits of a 'quick and dirty' free trade agreement.

To avert a chaotic Brexit fallout for health, GSB stressed the importance of engaging in pro-health advocacy from the earliest stages of the future economic partnership negotiations, in both London and Brussels, although it should be noted that on 8 January 2020, the UK Parliament voted to reject amendments to Withdrawal Agreement Bill giving it a legal say in setting the mandate for the next phase of talks or oversight of the negotiations.⁴ The European Parliament and Council of Ministers, however, do have a role in approving EU trade agreements, and the Member States will also approve the Commission's negotiating mandate. It would be crucial to move the debate away from an economic framing of Brexit revolving around GDP and jobs, focusing on the emotively-resonant issue of health policy. In policy terms, health advocates could push for an extension of the transition period to minimise potential disruption and avoid delegating decision-making to non-majoritarian bodies, e.g. Joint Committees, which might remove transparency by taking it out of the spotlight. Least damaging to public health would be an arrangement as close as possible to the EEA, i.e. involving UK Single Market participation.

The Brexit Health Alliance: Latest Updates

The final speaker was **NHS Confederation European Office representative Ilse Bosch** (IB) who provided an update of the work of the Brexit Health Alliance (BHA) of which they are part. The BHA is a very broad coalition of partners including charities, industry associations, academic voices and public health officials, who work together to provide briefings, organise events, lobby political stakeholders and work with relevant committees. She updated participants on the current situation, that it was expected that the Withdrawal Agreement Bill would now be debated and passed in the UK Parliament before the 31 January deadline, while the Withdrawal Agreement will be presented for ratification by the European Parliament also by the end of the month. The new Political Declaration on the future EU-UK relationship negotiated by Prime Minister Johnson indicates a less close relationship with the EU, which may mean greater divergence in the regulatory sphere and more trade friction. Reviewing the Brexit timeline, she added it was unlikely that the transition period would be extended after December 2020, given Prime Minister Johnson's stated opposition to this course of action.

IB highlighted some of the BHA activities that will occur over the following months in order to set out its "key asks" to try and influence the negotiating mandate of the EU-UK future relationship (Jan-Feb 2020), which included engagement with Members of Parliament to ensure health is on the table. During the Brexit transition period, the BHA would undertake continuous monitoring of relevant developments and advocacy, while taking stock of progress made in relation to the "key asks". Their immediate priorities focus on safeguarding patient safety and wellbeing, which can only be achieved if health features as a top priority in the UK's negotiating mandate and if the health community is actively involved in shaping the negotiations. While it will be desirable to reach early agreements, the BHA's longer-term priorities include robust agreements between the UK and the EU on patient safety (e.g. through shared regulatory frameworks), access to medicines and medical devices (e.g. via continued cooperation and harmonised standards), furthering medical research (e.g. allowing the UK to carry on as a participant in European research initiatives), setting high standards for public health (including solid coordination mechanisms against cross-border threats to healthcare), and ensuring citizens' rights to treatment (e.g. continuation of UK citizens' right to healthcare in EU Member States).

During the discussion, FG advised the participants to strongly focus their advocacy efforts on London and to maintain the relationship with EPHA and its members. She also highlighted that EU law would continue to apply in certain sectors until the UK passed its own legislation. GSB added that the current "Brexit fatigue", which could be observed at both ends - including among policymakers - was not helpful, and health advocates needed to address this as the Brexit outcome had to be people-centred first and foremost. Participants expressed their frustration that there was "nothing in the middle" and stated it would be particularly important to see what will happen in January.

Rounding off the webinar, SM thanked all contributors and reiterated that the webinar marked not the end of a process but the beginning of a new dialogue with EPHA members and partners based in the UK, Brussels and elsewhere to ensure the highest possible level of public health protection in the EU-UK future relationship.



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