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## **Leaving Means Leaving**

**A 2020 Vision for a Managed No Deal**

**Alternative Arrangements To The Withdrawal Agreement by  
Leaving The European Economic Area**

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## Synopsis

Parliament's rejection of the Withdrawal Agreement between the UK and European Commission(1), and the Commission's unwillingness to renegotiate it (2) means Brexit without a Deal can still be managed to satisfy the 12 conditions laid out in the Prime Minister's Lancaster House Speech.(3) A withdrawal from the European Economic Area serves to provide a managed withdrawal from the EU by providing an "alternative arrangement"(4) to the Irish Backstop and the effective veto on the UK leaving by any single member state given a future UK-EU FTA requires unanimity within the European Council.(5)

The UK is a member of the EEA but cannot remain so outside the EU or EFTA. The Bow Group proposes a managed No Deal Brexit by leaving the EEA under Article 127(6) no earlier than March 29<sup>th</sup> 2020, and no later than 31<sup>st</sup> December 2020, the end of the current EU Multiannual Financial Framework by returning to the consensus of European nation states. To satisfy Conservative Party manifesto commitments and to maintain the confidence of the public, any managed No Deal must not in any way impede a comprehensive and credible Immigration Bill.(7)

## Introduction

On 23<sup>rd</sup> June 2016, the people of the United Kingdom voted to leave the European Union. It came from the people by the largest referendum and indeed largest democratic exercise. (8) It was no rejection of the values we share as fellow Europeans, indeed it was a declaration of our European rights, our British rights we acquired through centuries of evolution and through defence of Europe against some of the worst authoritarian regimes ever conceived in Europe. It was not passed to do harm to the European Union but to maximise our opportunities from independence and from a Global Britain. Instead, the referendum was a vote to restore, as we see it, our national self-determination.

In 2017 Parliament confirmed the result of the referendum by voting with clear and convincing majorities in both of its Houses for the European Union (Notification of Withdrawal) Bill. (9) The Bill was passed by Parliament and it received Royal Assent. In practice Parliament has found it hard to honour the result of the referendum. While it passed legislation to trigger Article 50 it failed to approve a withdrawal agreement negotiated by the Prime Minister.(10,11)

The Government and European Commission have provisionally agreed in essence a damage limitation exercise, the withdrawal agreement. (12) The Withdrawal Agreement is in reality a continuity of the terms of EU membership until the end of 2020 and then vassalage whereby the EU can agree by a majority to keep us within the customs union without representation but requires unanimity for us to leave.

The UK leaves the EU on March 29<sup>th</sup> this year (13) on WTO trade terms or else lands in economic vassalage with an internal border down the Irish Sea. This would be created through what has been termed the "Irish Backstop". For a sophisticated economy in a mature and vibrant democracy these options are widely seen as suboptimal. Recently Parliament has through the Brady Amendment agreed the Prime Minister return to negotiate the Irish backstop of the Withdrawal Agreement through "alternative arrangements". It has also passed the non-binding Spelman Amendment that leaving without a deal is unacceptable. (14)

## Why this is important

Parliament has had a formal vote on Brexit and it has decided on no deal by default, even if rejecting the Withdrawal Agreement was a tactic to bring the UK closer to the EU the reality is it has formalised withdrawal without a deal.

It has been raised by several groups of MPs that there is an impasse that must be cleared by a general election or a second referendum on EU membership, disguised as a so called People's Vote on the withdrawal agreement. (15,16)

The European Commission has refused to consider any amendment to the Withdrawal Agreement. Leaving with a deal negotiated by the UK and the Commission has been proven not possible (17). Leaving the European Union will be sudden or suddenly prevented by Parliament.

## Current Mechanism for Leaving the EU

The UK gave notice to leave the European Union in a letter to the European Council President Donald Tusk.(18) This matters because it confirms that regarding the succession of a member state it is the Council that is the Senior Service of the European Union and it remains an organisation, *sui generis*, of its member states despite legal primacy being given to the collective and not the individual state as long as it remains a member.

The UK and EU agreed the sequencing of talks would require first a withdrawal agreement and then, and only then, trade talks. (19) The inclusion of a "Brexit Bill" is a consequence of such as agreement effectively being an extension of EU membership without voting rights. The inclusion of a backstop to prevent regulatory divergence between Northern Ireland and the Republic of Ireland was a pre-requisite of the Commission before any withdrawal was formally proposed. Both are extremely unpopular in the UK, to the extent they are seen as hostile acts, and are formally unnecessary to leave the EU.

They are in part a consequence of EU reliance on UK money to fund its operation and a sense that the UK is an unreliable (democratic) negotiating partner. They are part a consequence of continued Irish irredentism towards Northern Ireland that has simply not abated following the Good Friday Agreement in 1998.



## Lancaster House

In her Lancaster House Speech, which has allowed the Conservative Party to unify around a position, the Prime Minister promised to meet 12 goals:

- Providing certainty and clarity
- Taking control of own laws
- Strengthening the Union
- Protecting UK's historic ties with Ireland and maintaining Common Travel Area
- Controlling immigration
- Securing rights for EU nationals in UK and UK nationals in EU
- Protecting workers' rights
- Ensuring free trade with European markets
- Securing new trade agreements with other countries
- Ensuring UK's pre-eminence in science and innovation
- Cooperating in fight against crime and terrorism
- Delivering a smooth, orderly Brexit

The White Paper in February 2017, (20) built on this speech. Its negotiating aims were, according to the House of Common's Briefing Paper, "Brexit: Red Lines and Starting Principles":

- Engaging constructively and respectfully, in spirit of sincere cooperation.
- Putting UK citizens first.
- Aiming for comprehensive agreement with EU
- Minimising disruption and giving as much certainty as possible.
- Emphasis on UK's relationship with Republic of Ireland and importance of NI peace process.
- Beginning technical talks on detailed policy areas quickly, but prioritising the biggest challenges.
- Continuing to collaborate to advance and protect shared European values.
- Ending jurisdiction of EU Court in UK, but honouring international commitments and following international law.
- Recognition that future relationship agreement will need dispute resolution mechanisms.
- Devolved Administrations to be fully engaged, and specific interests of Scotland, Wales and Northern Ireland, and other parts of England secured.

- Government to work with Irish Government and Northern Ireland Executive on issues concerning economic, social and political context of land border between Northern Ireland and Ireland.
- Free Movement Directive will not apply and migration of EU nationals will be subject to UK law. New system will allow UK entry to brightest and best, students, academics; may be phased implementation so businesses can prepare for new arrangements.
- Prioritising securing status of EU citizens already living in UK and of nationals in other Member States.
- Continued protection of workers' rights to give certainty and continuity to employees and employers.
- Prioritising trade in goods and services, including financial services, between UK and the EU, but not membership of Single Market and no aim to adopt model adopted by other countries (EEA); working with BSI on future relationship with European Standards Organisations.
- Leaving EU means leaving EURATOM, but UK wants to collaborate with EU partners in science, research and nuclear energy.
- Prioritising maintaining positive environment for businesses, investors and consumers, stability of data transfer.
- A mutually beneficial new customs arrangement.
- No more UK contributions to EU Budget, but will make appropriate contribution to any EU programmes in which UK participates.
- Commitment to cooperation on cyber security and fight against terrorism.
- No deal for the UK is better than a bad deal

## **Withdrawal Agreement**

The UK and EU reached a provisional withdrawal agreement that can be entered by a qualified majority of the European Council but can only be exited following unanimous approval of the European Council as this will be required for any future free trade deal. (21)

It goes far beyond the concept of withdrawal and preconditions the UK to a specific direction regarding the future relationship which is not necessary and binds future parliaments. It keeps the UK as a member of the EU without voting rights until at least 31st December 2020 and likely much longer than this for the above reason. The UK will pay at least £39 billion and this will rise with the length of the agreement. It creates a catch 22 whereby the UK will not be able to negotiate trade deals while in a customs union but prioritises a future trade deal with the EU as the index trade deal the UK reaches.

In essence any EU member state, including Ireland, has a veto on the UK leaving the EU Customs Union and so any formal Irish backstop is replaced by a UK wide backstop if scrapped. If the UK ratifies to the Withdrawal Agreement it ends any independent role as a global power, trading nation or credible Permanent Member of the United Nations Security Council given that it will be an economic vassal, no matter how prosperous, of the European Union. We have run out of rope with this strategy. We must find another one and quickly.

## **Solution: Withdrawal from the EU by leaving the EEA**

The argument over whether the UK wants a hard or soft Brexit has been corrosive and futile for as long as we are uncertain of when or even if we leave the EU Customs Union a premium is placed on status quo, mutatis mutandi, and forces MPs to trade off sovereignty against economic risk.

The UK must leave the Single Market on its own terms and in its own time. The EU must have certainty over both of these and avoid fiscal and economic instability. Good faith and dignity are essential and the UK must take the lead in determining its future.

A theme is emerging within Euroscepticism of a so called managed no deal (22). For it to be managed it must be in agreement with the EU. Given the failure of the Commission method we must return to the Senior Service of the EU, the European Council of Member States.

They are all contracting parties of the European Economic Agreement as are Iceland, Liechtenstein and Norway. The UK has not formally given notice to leave the EEA and this has been claimed by some Remainers to be a way of staying in the Single Market, while others believe it ends with our EU membership.(23)

The UK can force clarity on this matter and take advantage of continued EEA membership being impossible without EU or EFTA membership by announcing its intention to leave under Article 127 (24) of the European Economic Agreement. This means a minimum of twelve months given to contracting parties to leave whereby they form a diplomatic conference to decide next steps.

Unlike the EU, the EEA requires no withdrawal agreement but only a notice to leave. Given we are legislated to leave the EU the UK can cite this as pressure to give formal notice to leaving the EEA no earlier than March 29<sup>th</sup> 2020.

Recent work by senior Eurosceptics has sought to consider invoking Article 24 of GATT (25) to maintain tariff free trade with Europe once we leave for up to ten years while a new deal is negotiated. It is clear from the text of GATT that is an attractive route but it can only apply to existing, new or interim trade arrangements. It is a notification of agreement and this requires partners to agree with.

It would be highly advantageous for the UK to have more than twelve months to conclude a myriad of trade deals and to do so from a legal certainty that existing trade ties continue while this happens. In the event of a successful continuation of tariff free trade for the UK supported by the EEA member states the UK would be wise to offer to leave no later than 31<sup>st</sup> December 2020. This coincides with the completion of the EU's Multiannual Financial Framework and the earliest point at which the EU has agreed we leave the EU. It means a constructive start to the relations with the new Commission due to start in October and this could be set as a deadline to deliver Article 24.



## Conclusion – A Choice of Two Futures

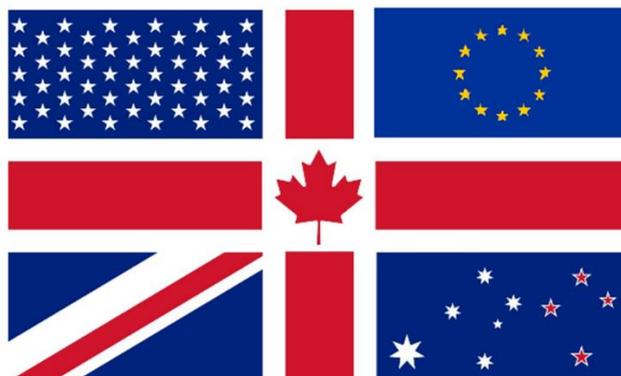
Such an offer could be made prior to a diplomatic conference when serving notice to leave under Article 127. This creates options for the UK, a default withdrawal after twelve months or else an agreed withdrawal after 21 months. We would be offering the EEA and therefore the EU two “Pay As You Go” options:

1. An Anglosphere Red White and Blue Brexit where we remain in the EEA for 12 months and focus on a rapid free trade deal with the United States, Canada, Australia and New Zealand.
2. A Global Brexit where we remain longer in the EEA, for 21 months, to allow more time for trade talks with multiple potential partners with our tariff schedule preserved

It would mean:

- No Irish Backstop
- No extension of Article 50
- No second referendum
- British Leadership and Ownership of Brexit
- No further vote in Parliament needed to confirm a withdrawal agreement
- Managed withdrawal mandated by leaving the EU with Parliamentary approval.
- No continued membership of the Single Market and Customs Union
- No ECJ jurisdiction after we leave the EEA
- A managed no deal, or the start of a new relationship with Europe.
- No barriers to a comprehensive and credible Immigration Bill
- Security to negotiate free trade deals immediately post-Brexit
- A dignified, stabilising, amicable divorce from the European Union

This withdrawal notice under Article 127 satisfies the 12 red lines and principles of the Lancaster House Speech and is a legal means by which the UK can lead the Brexit process. It does not bypass the Commission but includes it alongside its members and meets the criteria for “alternative arrangements” to the Irish backstop in Brady’s amendment.



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