

Theresa May's Letter to the Nation

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In light of extremely challenging parliamentary arithmetic, Theresa May has begun her attempts to 'sell' the 'deal' she has reached with the EU. Unfortunately, the letter reinforces widespread misconceptions of both exactly what a "deal" is *and* what the agreement reached with the EU actually says. The letter claims that,

"Today, I am in Brussels with the firm intention of agreeing a Brexit deal with the leaders of the other 27 EU nations.

She then goes on to state that,

"We will take back control of our borders, by putting an end to the free movement of people once and for all.

"Instead of an immigration system based on where a person comes from, we will build one based on the skills and talents a person has to offer.

She goes on to talk about the UK's contribution to the EU budget, control over coastal waters and the legal framework for EU legislation. The letter has been roundly criticised from many quarters, but in this blog I'd like to come at it from a slightly different angle. The reality is that the deal agreed does none of the things the letter claims. It never could.

This is because there is not one but *two* agreements that need to be negotiated. The first is simply a legal framework to ensure an orderly withdrawal of the UK from the EU, whilst the second maps out what the UK's future relationship with the EU will look like. What has been agreed is the first of these: the Withdrawal Agreement.

In very practical terms, this simply covers practical questions of *how* the UK withdraws from the EU. The first, key, thing that this does is establish a rather euphemistically named "transition period". The term "transition" is something of a misnomer as it implies that during this period the UK will be moving from one state to another.

In reality, in most important ways, the *status quo* will continue to apply until at least the end of 2020 (there is provision to extend the ‘transition’ period), although the UK will no longer have a vote on any EU issues. This means that, until the end of 2020, all EU rules and regulations will continue to apply to the UK. The UK will remain bound by the Court of Justice of the EU and freedom of movement will continue to apply. People will wake up on 30th March 2019 and nothing will have changed.

Almost all of the fundamental issues dealt with in Theresa May’s letter relate not to the Withdrawal Agreement but to the *second* agreement on what the UK’s future relationship with the EU will look like. This has not been agreed (indeed, negotiations have barely started). All that has been published is a political statement outlining what the two sides *might* like their future relationship to look like. In other words, *none* of these fundamental questions have been answered.

What kind of relationship does the UK want with the EU? If the UK wants to participate in EU agencies (and both Theresa May and common sense suggest that it probably should) then there will be a price attached. How much (and whether any other conditions are attached) is all to be negotiated. Fishing rights are up for grabs. Perhaps the UK will be willing to offer freedom of movement in order to secure a frictionless border with the rest of the EU. All of this is unanswered in the Withdrawal Agreement, and all is yet to be negotiated.

As Winston Churchill once said in a very different context, “[T]his is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning.”

Epilogue: What the Agreement Does

Much of the Agreement deals with practical issues, many of which are not contentious. For example, what happens to goods shipped from the UK on 31st December 2020 (during the transition when the UK remains, to most intents and purposes, a *de facto* EU member) but which arrive in another EU state on 1st Jan 2021 (after the transition has ended)? The Withdrawal Agreement answers such questions in a common-sense fashion, ensuring a consistent legal framework.

Some of the things addressed are more contentious. How much does the UK owe the EU to cover the remainder of the long-term obligations that we signed up to as a member? And how much should the EU reduce this bill by to account for the UK's share of certain EU assets. The Withdrawal Agreement gives the framework to answer this question (although the exact figure will not be known for many years).

The Withdrawal Agreement also lays out how both sides will treat people who moved when the UK was an EU member (and those who will move before the end of the transition period). EU citizens who have made the UK their home (and UK citizens who have moved to the EU) will be allowed to remain, as expected, but the Withdrawal Agreement specifies exactly what processes will be put in place to facilitate this. It also deals with corner cases, such as when spouses might choose to move after the end of the Withdrawal Agreement and when an EU national is married to a non-EU national etc. The process is not fool proof and there will undoubtedly be snags, but it does at least exist.

Finally, there are a number of 'protocols'. These address Northern Ireland, Gibraltar and the UK's military bases (Akrotiri and Dhekelia) in Cyprus. Far and away the most contentious is that on Northern Ireland. It is important to note, however, that the Protocol of this agreement will only come into force in the event that no future partnership agreement is agreed by the time the transition period ends.

The Protocol commits Northern Ireland to following a significant amount of EU legislation in order to ensure that there is no visible border on the island of Ireland. In practice, therefore, the Court of Justice of the EU will continue to act as the ultimate legal arbiter (in certain areas) in at least one part of the UK. The whole of the UK will also remain in a customs union with the EU (whereby we must charge the same tariffs on goods coming into the UK that the EU charges) until a future partnership is agreed. Moreover, there are a number of "non-derogation" clauses designed to stop the UK from "backsliding" in areas such as environmental protections and labour rights. This is in order to ensure that, in the event of talks breaking down, the UK cannot undercut EU standards in order to gain a perceived 'unfair'

competitive advantage (as in a customs union the EU cannot levy tariffs on UK products).