

Theresa May's Withdrawal Agreement: Some Reflections

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As reports last night of a draft Withdrawal Agreement with the EU emerged, we finally managed to get our hands on a copy by about 7.30pm. What followed was several hours of “digesting” the key points of this Agreement, along with a flurry of associated media interviews this morning (listen to David's interviews with [BBC Five Live](#) and [BBC Scotland](#) here and Alex's interview with [BBC WM](#)).

In essence, what has emerged is largely that which was anticipated in the build-up over the last couple of weeks; that the UK would pay a divorce bill of some £39 billion, that the mutual rights of UK and EU citizens would be upheld in their respective countries of residence, and that there would be a “backstop” to prevent the emergence of a “hard border” in Northern Ireland, should a new “Deal” not be in place upon the expiry of the transition period status quo ante transition period (which, according to the agreement, will start after we formally leave the EU at 11pm on March 29th next year and run until at least 31st December 2020).

In this sense, we should stipulate that this is a Withdrawal Agreement, not a new Economic Relationship. However, what is notable here is the concessions that appear to have been extracted on both sides to prevent a hard border in NI. The EU appear to have made a concession to the UK by allowing the entire UK to remain in a “temporary” Customs Union (excluding fishing) after the expiry of the transition period in December 2020, (although both parties could seek to “extend” the transition period – all the way to the year “20XX”!) so as to prevent the erection of new customs barriers between NI and the rest of the UK. The NI backstop arrangement could only be terminated through “joint agreement” on a “joint committee”.

In addition, large parts of the Northern Irish economy will remain in regulatory alignment with the EU (i.e., in effect partially remaining in the Single Market, particularly relating to sanitary and phytosanitary regulations) for however long the backstop lasts. The EU has also insisted that the UK must maintain regulatory alignment (i.e., a “level

playing field”) with the EU in areas such as environmental standards, competition policy and labour laws, so as to prevent the UK trying to undercut the EU during this period. These take the form of “non-regression” clauses to prevent the UK from weakening its standards in these areas.

As such, the UK will continue to be subject to jurisdiction by the Court of Justice of the European Union (CJEU) for the duration of the transition period, and for up to four years after the expiry of a transition period for any disputes arising during the transition. In addition, the EU have insisted that provisions regarding UK Government “state aid” to industry be subject to EU oversight for as long as the Northern Irish backstop is in place. The UK Government will be “consulted” on various matters pertaining to the adoption of new EU Directives during this period.

In short, we could sum up the above under the premise of “pay, obey and no say”, at least for the duration of the transition period (and, in many regards, the Agreement binds aspects UK policy as long as the backstop continues to apply)

Of course, as a Draft Agreement, it still needs to be approved in the UK Parliament, approved by a Qualified Majority Vote in the European Council (that arm of the EU consisting of representatives of the other 27 member states) and approved by the European Parliament. As such, given the vocal opposition already expressed by Tory Brexiters such as Jacob Rees-Mogg and Boris Johnson, the Labour Party, the DUP, the SNP and others, its passage through the House of Commons is far from guaranteed. Theresa May addressed Commons today and next month will see a Parliamentary vote on the Withdrawal Agreement.

If the Agreement is approved by all, we will then enter a transition period whereby a new trade deal will start to be negotiated on. This however, could take years, and in the interim the UK will remain, at least partly within the regulatory orbit of the EU (presumably it is the “non-regression” clauses rather than the transition that have led some to use the term a “vassal state”).

At this point it is worth reflecting on the statements made by key Brexiteers back in 2016: David Davis stating that the UK would get a

deal with the EU that gave “the exact same benefits”; Liam Fox stating that a new trade deal with the EU would be “one of the easiest in history” and Michael Gove purporting that the UK held “most of the cards”^[1]. The Draft Agreement released last night very much looks a far cry from these claims.

Moreover, there appears to be no quick end to the process of leaving the EU, and certainly no quick negotiating of a new deal, should the draft Agreement be adopted. The “Brexistentialist Dilemma” will continue to plague us for a long time to come. As such, it should come as little surprise that this morning has seen a flurry of ministerial resignations (with both the Secretary of State for Exiting the EU, Dominic Raab, and Secretary of State for Work and Pensions, Esther McVey, having resigned at the time of writing).

Reference

Draft Withdrawal Agreement: downloaded from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756374/14_November_Draft_Agreement_on_the_Withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union.pdf

[1] <https://www.theguardian.com/commentisfree/2018/nov/14/theresa-may-brexiteer-deal-solves-nothing-polly-toynbee>