

A NEW DEAL FOR BREXIT

The Mechanics of making a Clean Break
from the European Union
by
Stephen Bush

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BASIC OBJECTIVE OF NEW DEAL

The United Kingdom must emerge from the current parliamentary, legal and negotiating mess as a fully independent country once again, like her own magnificent daughter countries – Australia, Canada and New Zealand. To do this we must separate the mechanics of our leaving the EU from negotiations over: our future trade, the future status of EU nationals resident in the UK, and the customs arrangements at the Irish-UK borders.

Just as the EU asserts constantly that its legal order cannot be infringed, so we must assert UK independence is likewise untouchable.

Since the rejection 3 times by the House of Commons of Mrs May's Withdrawal Agreement (WA), which was signed off by the European Council meeting of all 27 EU states on November 25th 2018, the British people have been left in limbo, with the prospect of being neither fully out of the EU, nor fully inside, a laughing stock in the world.

NEW DEAL PROPOSALS

1 A New Act of Parliament

The United Kingdom leaves the European Union unconditionally on June 30th (or possibly October 31st) by a new Act of Parliament, repealing the recent statutes prohibiting leaving without a deal.

2 WA Withdrawn

Mrs May's Withdrawal Agreement, and all undertakings, explicit and implicit therein will be withdrawn as the basis of a Treaty with the European Union.

3 Customs Standstill Agreement

The EU and UK to accept a customs, tariffs and regulation standstill agreement for 12 months, extendable by mutual agreement. In particular, the UK will apply tariffs on non-EU goods at rates equal to the EU's "Common External Tariff" (CET) for the duration of the agreement. **This will be an agreement between two sovereign jurisdictions – no money will change hands.**

4 WTO Informed

The World Trade Organisation (WTO) will be informed that this signifies a realistic intention to agree a long-term trade agreement between the EU and the UK, and therefore the existing tariffs regime will *not* be extended to third parties under the Most Favoured Nation (MFN) provisions¹.

¹ As provided for by Article 24 of the GATT treaty adopted by the WTO in 1995.

5 **Future Fishing Arrangements**

Negotiations will commence immediately on a long-term trade agreement. Any access to British fishing waters will be on a licensing basis, with income devoted to building a new British-built fishing fleet and processing plant. Conservation measures to be discussed with EU fisheries' interests, but decided by the UK.

6 **Common External Tariff (CET)**

Under 1, Britain will continue to levy tariffs on non-EU goods at their present level² (CET) for the duration of the 12-month standstill. As British tariffs the income from these will be collected by HMRC as at present, but not passed to the EU, as will happen if Mrs May's WA is ratified.

7 **Internet-based Remote Customs Declaration (CDS)**

HMRC is well-advanced towards a comprehensive internet-based Customs Declaration System (CDS) which will obviate the need for physical inspection at UK borders. This is *not* new in Europe. Switzerland has operated remote checks for some time with different time delays for road, rail, river and air freight declarations.

8 **CDS on UK-Republic of Ireland Border**

CDS should be fully installed first at the Northern Ireland-Republic of Ireland Border, coupled with a "trusted trader" scheme for small businesses, both systems incorporating the existing phytosanitary controls for animal movement within the island of Ireland. If needed HMRC should offer its help to the Republic of Ireland (ROI) to develop a version of CDS for north-south goods traffic and for non-EU imports which the ROI already has to collect the CET on. Calais-Dover would be the priority crossing for a fully working CDS in a major port.

9 **Basis of Financial Settlement**

A separate negotiation will be needed to agree any payments due to be paid under the EU's 2014-2020 budget, against the proof of work actually done, as in normal commercial practice. UK contributions to the EU budget and payments to the UK for agricultural subsidies and growth funds will, of course, cease the moment it leaves the EU: there will be no transition period as provided by the May WA in which we would

² I.e. at levels equal to the EU's Common External Tariff (CET).

continue to pay around £1 billion per month as shadow members of the EU. The UK could volunteer to pay the capitalised value of the pensions already being paid by the EU to British nationals, and the pensions earned by existing employees who are British citizens.

10 **Future Status of EU Nationals in Britain**

While EU nationals working in Britain will be welcome to stay in their employment, for long-term residence they will not be in a more favourable situation than non-patrial Australian, Canadian and New Zealand nationals are. That is to say they can apply for “indefinite leave to remain” after 5 years lawful residence in Britain, and/or actual citizenship after a further one year. The European Court of Justice will have no say or jurisdiction over the status of the c. 3.2 million EU nationals resident in Britain, any more than it has over the c. 3.2 million EU nationals resident in Australia and Canada.

SHAMEFUL CAMPAIGNS TO REVERSE THE REFERENDUM DECISION

The limbo which parliament and government have landed the country in can be quickly brought to an end once *MPs of all parties are brought to realise* that it is their *bounden duty as democrats* representing British citizens in *our* Parliament (not theirs) to enact the final piece of legislation to take Britain out of the European Union.

The campaign to reverse the decision by the people to leave the EU waged by members of the Conservative and Labour parties, and officially all of the SNP, Plaid Cymru, the Green Party, has been a shameful disgrace. It is exactly the same as harassing an MP who has been duly elected in a parliamentary election on the grounds that they did not gain a large enough majority of their electorate – which applies to most of those MPs harassing the “Leavers”.

MPs need to redeem themselves in the eyes of the public

With some honourable exceptions, the bulk of Remainer MPs have brought chaos to Parliament and disgrace on the UK in the wider world. *All MPs* now need to vote through a new Act of Parliament, as proposed in the New Deal above, which (a) repeals legislation preventing the UK leaving the EU without a “deal”; (b) fixes an inviolable date when the UK will leave with or

without a deal, preferably with a deal, of course. Whatever their voting records in the last six months from November 25th, this would be redemption in the eyes of the public.

POSITION OF THE EU-UK NEGOTIATIONS AS AT 27TH APRIL 2019

The finality of the WA

In EU eyes the WA, as signed by Mrs May on November 25th, is *fixed, final, nothing can be changed*. The EU's settled intention, from the start of negotiations in April 2017 under article 50 of the Lisbon Treaty, is to turn the WA into an international Treaty deposited at the United Nations. EU officials have said this officially at least a dozen times, most recently in a joint letter to Mrs May from Donald Tusk, President of the EU Council and Jean-Claude Juncker, President of the European Commission (EC)³, between them the very pinnacle of the EU government representing all EU states.

The absolutely key point is that the EU does not see, has never seen, what the British have continually referred to as "negotiations" as negotiations between equals at all:

"It's not a negotiation, it's just the reverse of an accession process. We just apply EU law to your domestic system" – an EU Official, March 2019⁴.

The Irish border protocol in the WA

The biggest obstacle created by the EU is the Irish border issue. As this writer has noted several times before in print, the Irish border issue⁵, as taken over by the EU in October 2016, is an entirely confected problem devised by Michel Barnier, the EU's chief negotiator, and his officials specifically to exert leverage on Britain by involving an issue which caused 3,000 deaths over 30 years within the lifetimes of most of the EU officials.

As devised by Barnier, the problem is impossible to solve, because he simply wants to have no customs or regulation checks on goods passing through the Irish-UK land border. Attempts to

³ Donald Tusk and Jean-Claude Juncker to Prime Minister May, 14th January 2019.

⁴ Tom Montague, "How the UK lost the Brexit battle", 27 pages, published by Politico 2/4/19.

⁵ Stephen Bush, "New Customs Rules" letter in Daily Telegraph, 17/5/18, "Future UK-EU trade. No need for elaborate new tracking systems", Technomica paper 18/9, June 2018 and "Comparing Routes to Brexit", published by Global Britain, 12/2/19.

find a solution to the problem via the Political declaration can have only one outcome. A so-called backstop will operate from the end of the supposed transition period (December 2020) and Britain will be locked in a Customs Union *for ever* – there is no article 50 to get out of this new treaty without the EU’s agreement.

The Political Declaration

Accompanying the WA Treaty document is intended to be something called the “Political Declaration”, which has been modified over the 3 months from December in a vain (non-legally-binding) attempt by the British to alter the effects of the “Protocol on Ireland/Northern Ireland” should the WA ever be passed by the British Parliament. None of the proposed changes in the wording of the Declaration however has touched the basic provision in the WA protocol (which Mrs May signed off on) and that is:

If British proposals for registering and checking goods passing between Northern Ireland and the Republic of Ireland (ROI) are not acceptable to the ROI/EU, then Britain would pass into a Customs Union with the EU, policed and controlled by the EU’s Court of Justice in Luxembourg.

It is doubtful if there has ever been a proposal to dictate the future of one country by another in this way before. It is the sort of surrender condition inflicted on one country by another after major defeats in the field, as in fact were imposed on Germany at Versailles in 1919 after its defeat in the First World War.

The Irish Protocol first surfaced into public gaze in Mrs May’s July 2018 Chequers documents. Several Cabinet Ministers resigned, but Mrs May has sailed on, evidently oblivious to the humiliation and wrangling which Britain would be subject to if Parliament ever accepted it. Why should so many Conservative, Labour and LibDem MPs want the subjection of their own country to a group of other countries?

THE POSITION OF BRITISH MPS

MPs' voting record

It is clear that although MPs voted by 461 to 89 (second reading 448 to 75) to approve in March 2017 the triggering of Article 50 (the Brexit leaving process), and almost as big a majority approved the Brexit Withdrawal Act of July 26th 2018, which fixed a leaving date and provides for the repeal of the **European Communities Act (1972)**⁶, many, perhaps a majority of MPs have voted since November in ways actually to obstruct Brexit.

The one service to democracy and Britain's pride that MPs have done so far has been to stop Mrs May's one-sided Agreement (WA) three times – which ought to have brought about Mrs May's replacement as Prime Minister, but did not because of a collective failure of will on the part of the bulk of Conservative MPs.

As a direct consequence there is now a real risk that the bulk of the Labour party will join with large numbers of the Conservative party to pass the WA – out of sheer boredom and to be rid of the problem and to allow Mrs May to claim that she “has delivered Brexit” as she promised.

Madness of MPs to rule out “no deal”

A vote of 312 (mainly Labour) to 308 (mainly Conservative) on March 13th asserted that the government is now forbidden to walk away from negotiations without a so-called deal. This is now a Statute. The proposers of the motion declined to specify what they meant exactly by “no deal”.

It could mean that there would be no document signed by both parties – not even “agree to disagree”; no trade discussions; and separate approaches to the World Trade Organisation to inform them of the tariffs which both parties would impose on imports from each other⁷.

⁶ The ECA is the legal foundation for the application of EU directives and regulations in the UK

⁷ In this scenario, the EU would presumably impose its Common External Tariffs (CET) on UK goods exported to the EU.

What is certain is that if one party to a negotiation tells the world that it must have an agreement – any agreement – against a time-table at that – then it gives the other party a winning hand on every contentious issue.

And that is what has happened in the EU-UK negotiations.

The four key pinch-points in the May-EU negotiations

The four key pinch-points – the financial settlement; the role of the European Court of Justice (ECJ) in adjudicating on British-Irish border arrangements; the ECJ’s role in protecting the rights of EU citizens living in Britain; and the refusal of the EU to allow any trade negotiations to begin before the UK has left the EU; have all been decided exactly as the EU has wished, including, of course, the £40 billion they claim we will owe them by the end of the “transition” period (December 2020). All these provisions are in the Withdrawal Agreement (WA) brought back by Mrs May to the House of Commons in November 2018.

QUALITY OF BRITISH NEGOTIATORS

Why has Mrs May’s negotiation worked out so badly for Britain?

The number one reason is a lack of brains, experience and commitment in the leading negotiators on the British side. In my book (9th May 2016) “Britain’s Referendum Decision and its Effects”⁸, I anticipated the problem and spell out in chapter 11 the qualities which the individuals appointed should have, most particularly of course, a proven commitment to the objectives of the negotiation – namely the independence of the UK from the EU.

As noted on page 221, this last condition would by itself have ruled out virtually all senior civil servants from the Treasury and Foreign Office. The appointment of chief negotiator should have been made by parliament after an open competition, with public testimony by individuals from a short list, as per the US senate hearings. Instead, the senior civil servants in the Cabinet Office quietly appointed one of the Treasury’s “high flyers”, a Mr Oliver Robbins, aged 42, with apparently no working experience of international negotiations, nor working knowledge of the

⁸ Published by Technomica, 264 pages, available from Amazon or download (free) from <http://stephenbush.net> .

European Commission's key directorates for trade and finance, and a dedicated supporter of Remain⁹ to boot.

Opposed to this individual and his colleagues have been razor-sharp EU officials, some with 25 years of negotiating with 50+ non-EU countries and organisations like the WTO about access to their precious Single Market, quotas and tariffs. Attempts by David Davis, nominally in charge of negotiations, to introduce a friendly, experienced New Zealander, the Rt Hon Sir Don McKinnon, fresh from negotiating a successful Free Trade Agreement between New Zealand and China, no less, seem to have been continually thwarted by a Civil Service determined to keep its incompetent, inexperienced grip on the EU negotiations. Surely the general public must think, could not just for once the Civil Service bypass Sir Humphrey and swallow its professional pride. But no.

The result is Mrs May's WA.

Even in a matter of new passports, the attitude prevails. The new passports without the EU designation are planned to be burgundy in colour. The symbolism of returning to traditional dark blue, like our daughter countries and the USA, has been entirely missed, or deliberately ignored by the official who signed off this atrocious decision¹⁰.



⁹ Mr Robbins was chairman of the Federalist (i.e. EU) club at Oxford University. Appointed to be the chief civil servant in the new Department for Exiting the EU, DEXEU, he quickly fell out with his political boss, David Davis, but instead of being sent back to the Treasury, he was sent to the Cabinet Office – a Remainer stronghold – whence he emerged as Britain's chief negotiator bypassing the DEXEU under Davis completely.

¹⁰ To rub salt in the wound, the new passports are to be printed abroad, doubtless using the existing supply of Burgundy ink, which allowed the printers to quote a low price.

The House of Commons votes on Alternative Agreements

In the sequence of indicative votes in February, the MPs voted on 8 preferences. Most were purely fanciful and all were injurious to Britain's interest. They were not even consistent among themselves: a second referendum with an unspecified question isn't an *alternative* to Mrs May's WA, just a way of hoping Brexit will be abandoned. None commanded a majority, thank goodness. One of the defeated preferences was "no deal", but none envisaged a different agreement entirely, as in this paper, because MP groups didn't suggest any. Instead of the dismal choices of the "indicative votes", now is the opportunity to pursue a "New Deal for Britain" which is what we should have conveyed to the EU on March 29th 2017, along with our notification of leaving.

MECHANICS OF OBTAINING A NEW DEAL FOR THE BRITISH PEOPLE

The legal/parliamentary/EU position on May 9th 2019

The EU has agreed that Britain can postpone its departure until October 31st. Mrs May, as Prime Minister, apparently hopes that Parliament will approve her Withdrawal Agreement (WA) in time for a UK departure date before June 30th. British MEPs, elected on May 23rd would not then take their places in the first day (July 1st) of the assembly of the new five-year European Parliament¹¹.

If MPs decide to adopt a different Brexit plan in line with the New Deal proposals below, there remain 5½ months for:

- (1) Parliament to adopt the new Plan;
- (2) A formal withdrawal of Mrs May's WA from consideration by the EU and replacement of it by the New Deal;
- (3) British business to continue preparations for this "New Deal" and "No Deal" if the EU refuses to engage on New Deal.

¹¹ The European Parliament has apparently made contingency plans to fill the 73 vacancies created by the absent British.

If the EU accepts New Deal

Then Parliament can ratify it by inserting an unconditional date of leaving in a new Leaving Act plus repeal of the legislation banning leaving without a deal (see above).

If the EU refuses to accept New Deal

Then the United Kingdom government, having demonstrated to the British people that it has tried to reach an agreement over two and a half years, must simply leave on the date specified in the new Leaving Act. On-going negotiations about mutual recognition of professional qualifications, medical approvals, aircraft landing rights, veterinary standards, the issue of truck drivers' permits, etc. will continue as is normal between any two neighbouring countries (PB Lilley & B Chilton)¹². The EU will be expected to apply its CET to British goods: the UK will apply its tariffs for non-EU goods to EU goods.

Hopefully it will not be necessary to remind the EU of its commitment under the WTO Trade Facilitation Treaty, which came into force in 2017, not to put unjustified obstacles in the way of EU-UK trade, or its commitment to lowering tariffs as expressed by its own Trade Commissioner, Karl de Gucht at the conclusion of WTO talks in Doha 2012.

Also Article 7a of its own Lisbon Treaty enjoins the EU to “*develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness characterised by close and peaceful relations based on co-operation*”.

How Members of Parliament should engage with these proposals

These proposals give the parties and individual MPs the right to argue for any long-term arrangement they fancy, but with the absolutely crucial difference from up to now that they will argue in the House of Commons when Britain is **already an independent country**, and not paying the EU all the while.

¹² “30 Truths about Leaving on WTO Terms”, published by Global Britain in February 2019, including the 9-month agreement (ending 31st December 2019) between the UK Civil Aviation Authority (CAA) and the EU’s Aviation Safety Agency (EASA). The visa-waiver travel agreement is not an EU scheme – it includes 37 countries in all – the 5 Anglophone countries, 27 EU, 4 EFTA and Japan.

If MPs should wish to push the trade negotiations in the direction of a permanent customs union with the EU, then the proposition can be argued right in the open with all the advantages and disadvantages displayed for British manufactures and farm products. However MPs will find the perspective of being part of an independent country like MPs in Canada were when (2017) they made a trade deal with the EU, will be very different from today, when they still retain the character of supplicants of the EU.

Likewise, those who favour a Canada-type Free Trade Agreement with the EU, will be able to show how they would solve the “Rules of Origin” problem if the EU, as is likely, would insist on this. One thing will be immediately clear when the UK is independent, we will not be an EU rule-taker any more. Even if we agree with the EU on specific regulations – we will do the deciding in the House of Commons. In any event, we will not be paying anything like £40 billion for the privilege.

ALL MPS COULD SIGN UP TO THIS NEW DEAL

This is a plan around which all MPs (except the Green MP), mindful of their obligations to honour Brexit, not as party members but as individuals, could vote through the House of Commons as a one-off *nem con* resolution and put it to the EU. While passed by members of all parties, it will fall to the government to implement it. It will therefore be vital that the principal architects of Mrs May’s Agreement be replaced by dedicated pro-Brexit people with the brains, experience and dedication needed to do the job. A leaflet posted to every household in the land will explain to the British people what is being done in their name.

It will demonstrate that Parliament can “get its act together”, and can *on this one supremely important issue*, rise above party politics, as is devoutly wished by all British people.

About the Author



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Some other publications by Stephen Bush on the EU-UK relationship (mostly available at www.britain-watch.com on the European Union pages.

1. Britain's Future: Independence or Extinction – No Middle Way (1990) published by Prosyma Research Ltd. 24 pages.
2. The Meaning of the Maastricht Treaty (1992) (with Gill Bush) published by Prosyma Research Ltd. 45 pages, ISBN 0 951 7475 17.
3. Business, Industry and a New Relationship with the European Union, (1997) published by Prosyma Research Ltd, 30 pages, ISBN 0 951 747 5 25.
4. A Brexit Blueprint: Britain Revitalised and Independence Regained (2014) published by Institute of Economic Affairs (IEA) 134 pages. This was one of the six finalist essays in the IEA 's International Prize for the best post-Brexit blueprint.
5. Britain's Referendum Decision and its Effects (2016) published by Technomica, 268 pages, ISBN 9 780 993 110894
6. Negotiating Brexit with the European Union, Technomica paper 18/6, 19 pages, 8th March 2018.
7. Future UK-EU trade: No need for an elaborate new tracking system. Adapt existing Customs and VAT systems, Technomica paper 18/9, 1st June 2018.
8. Comparing Routes to Brexit, 20 pages, published by Global Britain 15th February 2019.

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