

# The Wrong Path

A Brexit Transition?



EFTA 4 UK Discussion document 15/12/2017

## **Brexit Timetable:**

- **23 June 2016 - the UK votes to leave the European Union in a public referendum.**
- **29 March 2017 - Theresa May sends Article 50 letter to European Council President Donald Tusk to notify him of the UK's intention to leave the EU.<sup>1</sup>**
- **19 June 2017 – Negotiations formally begin in Brussels.<sup>2</sup>**
- **29 March 2019 - UK is provisionally scheduled to leave the European Union.<sup>3</sup>**

*“...Sed fugit interea, fugit irreparabile tempus”*

- Virgil

## Executive Summary



- The European Union has now agreed to move Brexit talks on to the second phase.<sup>4</sup>
- Her Majesty's Government is seeking a two year 'transition' or 'implementation' period after 29<sup>th</sup> March 2019.
- The European Council met today (15/12/17) and has released its Guidelines for the transition/implementation period.<sup>5</sup>
- It is our opinion that the government must not follow this proposed plan.
- If the UK agrees to the EU's plan, we will be relegated to a second class form of membership until 2021 that neither 'Leavers' nor 'Remainers' will find tolerable.
- There are two alternatives to this Brexit 'Limbo' plan.
- We could instead request an extension of the Article 50 period which would maintain all the rights, duties, obligations and benefits of EU membership until we are ready to exit the EU.
- Alternatively we could adopt an 'off-the-shelf' model such as the EFTA/EEA relationship with the EU which is enjoyed by Iceland. This approach would have many benefits.

## The Government's position

The Prime Minister has of late seemingly admitted that a bespoke deal cannot be agreed and ratified in time for 2019, so she is now proposing a 'transition' or 'implementation' period after the UK formally leaves the EU:

**"A period of implementation would be in our mutual interest. That is why I am proposing that there should be such a period after the UK leaves the EU. Clearly people, businesses and public services should only have to plan for one set of changes in the relationship between the UK and the EU.**

**So during the implementation period access to one another's markets should continue on current terms and Britain also should continue to take part in existing security measures. And I know businesses, in particular, would welcome the certainty this would provide. As of today, these considerations point to an implementation period of around two years."**<sup>6</sup>

How this implementation idea would work in practice is unclear. Since we would be outside of both the EU (European Union) and European Economic Area (EEA) after March 2019, the UK would be entering into an unprecedented legal and administrative grey area.

## The present situation

At present, our trade with the other EU 27 member states is based on our EU membership and its internal market.

Our trading relationship with the EFTA (European Free Trade Association) countries are based on the EEA Agreement, to which all EU members and three of the four EFTA states are signatories.

[N.B. The fourth EFTA state (Switzerland) trades with the EU based on a series of extensive bilateral agreements.]

It is the view of David Davis, Secretary of State for Exiting the European Union that: **"The UK is party to the EEA agreement in its capacity as an EU member state, so on exit day the EEA agreement will cease to operate in respect to the UK."**<sup>7</sup>

## **The EU's position**

The European Council's guidelines describe how they envisage a transition period working:

**“As regards transition, the European Council notes the proposal put forward by the United Kingdom for a transition period of around two years, and agrees to negotiate a transition period covering the whole of the EU acquis, while the United Kingdom, as a third country, will no longer participate in or nominate or elect members of the EU institutions, nor participate in the decision-making of the Union bodies, offices and agencies.**

**Such transitional arrangements, which will be part of the Withdrawal Agreement, must be in the interest of the Union, clearly defined and precisely limited in time.**

**In order to ensure a level playing field based on the same rules applying throughout the Single Market, changes to the acquis adopted by EU institutions, bodies, offices and agencies will have to apply both in the United Kingdom and the EU. All existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures will also apply, including the competence of the Court of Justice of the European Union.**

**As the United Kingdom will continue to participate in the Customs Union and the Single Market (with all four freedoms) during the transition, it will have to continue to comply with EU trade policy, to apply EU customs tariff and collect EU customs duties, and to ensure all EU checks are being performed on the border vis-à-vis other third countries.”**

## **A path we must not take**

It would be a mistake for the UK to agree to this transition period with the EU.

During this period, the UK would be in a form of limbo comprising the worst of all possible states – still making budgetary contributions, accepting Freedom of Movement (FoM), still subject to the European Court of Justice (ECJ) but without MEPs or other representatives in Brussels.

In addition to this, we would still be inside the EU Single Market and Customs Union, Common Fisheries Policy, Common Agricultural Policy and unable to make our own trade deals or set our own tariffs.

It would be the ultimate expression of ‘pay but no say’.

Even if we agreed to this transition agreement, we still wouldn’t know what our Brexit ‘end state’ would look like. As a result, businesses wouldn’t have the certainty they need until 2021.

Business needs certainty as soon as possible in order to make plans about the scale of future investment in the UK.

We cannot recommend strongly enough that the UK politely rejects this approach in favour of one of the two alternatives we set out in the following pages.

## **Alternative One: Extend the Article 50 negotiation period**

If we want as a nation more time to discuss our new relationship with the EU, it would be far easier to simply extend the Article 50 period; which is allowed for, under the treaty **[Art50(3)]**.

If we did so, there would be no uncertainty or legal confusion as we would still be an EU member state, with all the rights, benefits, duties and obligations thereof.

Some commentators believe that the government couldn't persuade the public of the merits of this approach, but the alternative – a transition in which we are de facto in the EU but have no MEPs or say is surely more unpalatable?

The EU may object to this approach, because there is a European Parliament election scheduled for 2019. They might not wish to have UK MEPs for only two years of a five year term, especially as we have already invoked Article 50.

However, the EU doesn't want a sudden 'cliff-edge' Brexit any more than we do. As a Civitas think-tank report stated:

**“Whereas 3.6 million UK jobs are linked with exports to the EU, 5.8 million EU jobs (excluding the UK) are linked with EU exports to the UK.”<sup>8</sup>**

By extending the Article 50 period, we could exit safely and smoothly, when a new EU-UK relationship has been fully agreed.

## **Alternative Two: Rejoin the EFTA and maintain EEA access**

The UK could apply to rejoin the European Free Trade Association (EFTA) which the UK helped to create in the 1960's.

Through EFTA we could maintain access to the European Economic Area (EEA) which underpins European trade in both goods and services.

If we left the EU and returned to EFTA we would be free from the:

- EU Common Agriculture and Fisheries Policies;
- EU Customs Union;
- EU Common Trade Policy;
- EU Common Foreign and Security Policy;
- EU Justice and Home Affairs
- EU Monetary Union (EMU).

EFTA Countries don't come under the ECJ but instead the less ideological and more 'hands-off' EFTA Court.

In addition, we would regain our seat at the World Trade Organisation (WTO).

If the UK does rejoin EFTA, it will be applying to take part in its existing trade portfolio - 27 free trade agreements (covering 38 countries including Canada).

Unlike the EU, EFTA has a unique 'two-track' trade deal system. EFTA's negotiators work to negotiate trade deals for the bloc as a whole, while allowing member states to negotiate their own bespoke trade deals.

An example of this is that all of EFTA has a trade deal with Hong Kong, but EFTA members Switzerland and Iceland have separate trade deals with China.

We believe that most of the states that EFTA has signed FTAs with would agree to our participation, and we could find that many of the countries we currently have preferential trade relationships via the EU would also wish to carry on 'business as usual'. This would make the UK in EFTA a world-leading Free Trade nexus.

## Conclusions

Mrs May is hoping for something she won't get – namely a 'Super-Canada' deal, and she hopes to get to this via a 'transition/implementation' period which seems to be unattractive, unworkable and have little basis in established law.

If the UK was guaranteed a “**Canada+++**” deal at the end of it, then it might be worth going through two years of humiliation, however this is unlikely.

We know that the EU's chief negotiator Michel Barnier has repeatedly stated<sup>9</sup> that the UK's choice is between a Canada-style agreement; or a Norway Style agreement, but no 'hybrid' deal is available.<sup>10</sup>

Since there is no super deal waiting for us at the end of this proposed transition, we must take stock of our options. We can either ask for the Article 50 period to be extended or make a choice between the existing options.

The 'Ukraine' and 'Canada' options have their own pros and cons, but neither will provide the UK with a smooth orderly Brexit.

Our best hope for a 'Smart Brexit' and to avoid a 'no-deal' crash out therefore, is for the UK to apply to rejoin the **European Free Trade Association** (EFTA), (which the UK helped to create in the 1960s) and then broker a deal with Brussels using the EFTA countries as precedents.

This should be relatively quick and straightforward, leaving time for the UK to deal with the myriad of other Brexit-related tasks it needs to deal with.

Whatever we decide, we must not accept the embarrassing transition period which the EU outlined this week. It would be the wrong path for the UK.

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#### References

<sup>1</sup> <https://www.gov.uk/government/publications/prime-ministers-letter-to-donald-tusk-triggering-article-50>

<sup>2</sup> <http://www.bbc.co.uk/news/uk-politics-40321271>

<sup>3</sup> <http://www.bbc.co.uk/news/uk-politics-32810887>

<sup>4</sup> <http://www.bbc.co.uk/news/uk-politics-42368096>

<sup>5</sup> <http://www.consilium.europa.eu/media/32236/15-euco-art50-guidelines-en.pdf>

<sup>6</sup> <https://www.gov.uk/government/speeches/pms-florence-speech-a-new-era-of-cooperation-and-partnership-between-the-uk-and-the-eu>

<sup>7</sup> <http://www.independent.co.uk/news/uk/politics/brexit-single-market-david-davis-eu-uk-ministers-formal-action-needed-latest-updates-a7934101.html>

<sup>8</sup> <http://www.civitas.org.uk/content/files/ukeutradeandjobslinkedtoexports.pdf>

<sup>9</sup> <https://www.politico.eu/article/brexit-trade-barnier-dashes-britains-hopes-of-something-better-than-canada-deal/>

<sup>10</sup> <http://efta4uk.eu/brexit-the-truth-dawns/>