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Deal or no deal?

Why the UK parliament must reject a fudged Brexit agreement

Just before Christmas, the 27 remaining EU countries finally agreed there had been 'sufficient progress' on the three main issues of phase one of the Brexit negotiations: budgetary liabilities (the 'divorce bill'), rights of EU citizens living in the UK and UK citizens in the EU27, and the land border between Ireland and Northern Ireland. It was time to move to stage two.

Yet the text of this joint agreement gave rise to numerous conflicting interpretations within hours of its release. And this was supposed to be, in the words of European Council President Donald Tusk, the 'easier part of the task', before moving onto the far more important second phase.

The sense that the December deal was a fudge to keep talks going – given that everyone bar the most hardcore right-wing Brexiters wants to avoid a cliff-edge no-deal in March 2019 – has not gone away in the new year.

The gauche remarks from the UK Secretary of State for Exiting the EU, David Davis, claiming the joint agreement was 'more a statement of intent than a legally enforceable thing' have led many in other EU countries to question the UK government's seriousness.

Rules is rules

If phase one was fraught, phase two negotiations on a future post-Brexit EU-UK relationship are going to be even more difficult. British Prime Minister Theresa May, who is preoccupied with preventing civil war between the europhile and europhobic wings of her Conservative party, will have to admit that many of the objectives she claims to be seeking are unachievable.

In particular, maintaining the 'full benefits' of the single market while diverging from its rules will prove to be mission impossible. The EU has been very clear on this, saying that full participation in the single market means playing by the same rules as everyone else, including its enforcement mechanisms.

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As became apparent in the frenzied last-minute bargaining with the Democratic Unionist Party in December, the Northern Ireland part of the deal will be where contradictions in the government positions will be laid bare.

The phase one agreement promises to maintain regulatory alignment between Northern Ireland and the Irish Republic, so there is no 'hard' border between the two. This means the UK as a whole will need to stick with EU single market rules that affect north-south commerce on the island of Ireland, In practice, that means *most* of the rules.

In which case, why not maintain *all* of them to keep full UK participation in the single market?

A divided house

Depending on how it's interpreted, the phase one agreement can also be taken to imply that the UK will follow the customs arrangements it presently adheres to as a member of the EU customs union. Such a 'soft' Brexit – staying effectively in both the single market and the customs union – is what many economists recommend anyway to avoid a significant hit to the UK economy.

But following the EU's single market and customs union rules, despite not being a formal member, is not what every Brexiter had in mind. They were divided on this, even during the referendum, with some assuring us we'd stay in single market and others saying we should leave it.

The government currently says we should leave, with Environment Secretary and staunch Brexiter Michael Gove insisting the UK should be able to pass laws with 'full freedom to diverge from EU law on the single market and customs union'.

They fear, of course, that a situation in which the UK will be required to follow the rules of the single market without having a say in what they are — rule-takers rather than rule-makers — will, in the words of arch-Brexiter Jacob Rees-Mogg, make it a 'vassal State'.

This would inevitably give weight to the argument that Britain would be better off abandoning Brexit completely, remaining in the EU and having a say on the rules.

Ticking time-bomb

And trying to be half-in half-out will inevitably come up against the frequently reiterated EU position that there can be no 'cherry-picking'. In other words, the agreed EU market rules, including the four freedoms (goods, services, capital and people) are indivisible. There can be no deal where the UK can ignore some of the rules, or get better terms outside the EU than it has as a member.

Furthermore, as the potential exit date of 29 March 2019 inexorably approaches, businesses, sectors and citizens are realising there are a whole host of issues beyond the future terms of trade that will affect them.

These range from the relatively minor – such as pet passports – through the major – such as maintaining industry standards across a whole range of goods including food, medicines, chemicals, mechanical components and food safety – to the mega: landing rights for UK planes in other countries after 29 March next year.

All this is supposed to be sorted during the phase two negotiations and settled by the autumn in order to allow time for approval by the Westminster and European Parliaments. But will it? Theresa May isn't just dealing with a tight deadline. Any compromise on these issues will entail her facing down one side or another of her divided cabinet and party.

To avoid an immediate showdown, Theresa May may go for a minimalist withdrawal agreement that simply takes Britain out of the EU in March 2019. Everything else would be settled later over a two- or three-year transitional period, during which time the status quo would remain in place.

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If so, Parliament will be offered a pig in a poke: a Brexit deal that leaves all the key questions unsettled. One can already hear May saying, 'Don't worry! We've still got three years to sort things out'.

or another of her divided cabinet and party.

But it would be a huge gamble. It would mean a Brexit that just postpones the cliff edge. It would mean accepting Brexit with no guarantees:

That our industry won't eventually face barriers to our main export market. That our universities won't be taken out of European research programmes. That our hospitals won't lose access to Euratom's radioactive isotopes for cancer treatment. That our farmers won't be taken out of European markets. That our police forces won't lose their ability to co-operate across Europe through Europol. That Britain's financial sector won't lose access to the European market.

It would mean accepting much else besides, altogether damaging our economy, costing billions and sacrificing jobs.

If a bad deal or a phantom deal is what the UK government comes back with, it will be Parliament's duty to reject it and trigger a re-consideration of Brexit itself.

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