



Your Right to Know:

The Case against Chequers and the Draft Withdrawal Agreement in plain English

18 November 2018

Summary: The case against the proposed Withdrawal Agreement

- 1. We would hand over £39 billion of taxpayers' money with nothing guaranteed in return.** Under the proposal the UK would agree a financial settlement with the EU of c.£39 billion, made up of various elements, including continued EU budget contributions during the transition period (up to December 2020), contributions to unfunded EU commitments and EU pensions. Despite offering this vast sum of British taxpayers' money the United Kingdom is not guaranteed any future trading arrangements, which are still to be negotiated.
- 2. The UK will remain a 'rule taker' over large areas of EU law.** The UK will continue to be bound by EU laws in vital areas such as social policy, environmental policy and employment policy, i.e. will obey EU laws, but have no further influence over how they are drafted. We will thus become a 'rule taker' and will have surrendered our sovereignty in these critical areas.
- 3. No exit from a 'backstop' Customs Union.** The agreement establishes a 'joint committee' which will oversee the UK's ability to proceed to a future trade relationship. If this relationship cannot be agreed by both parties the UK will enter a so called 'backstop' Customs Union with the EU, despite many public assurances to the contrary and directly at variance with the Conservative Party's 2017 General Election manifesto. We could only subsequently leave the Customs Union with the agreement of the EU. While we remain in a Customs Union we

would be unable to strike international trade deals without the EU's permission.

4. The Agreement creates internal borders within the UK.

Northern Ireland would become a 'rule taker' in further areas such as goods, agricultural products and VAT compared to the rest of the UK. This threatens the internal integrity of the United Kingdom and is completely unacceptable to the Democratic Unionist Party on whom the Conservative Party now rely for a majority in the House of Commons.

5. The European Court of Justice (ECJ) will remain in control of the agreement and large areas of EU law directly effective in the UK. The ECJ will remain as the final arbiter of the agreement and of the EU laws the UK will be subject to.

In summary, the combination of these measures means the United Kingdom will have not left the European Union but will instead be 'half in and half out'. This will mean that we will become a 'vassal state' many of whose laws will have been created abroad and over which we have no influence. This is completely against the spirit of the 2016 referendum in which 17.4 million UK citizens voted to leave the European Union.

Background

The UK Government / EU draft withdrawal agreement, under Article 50, was published on the 14th November 2018. The withdrawal agreement runs to 585 pages. This is almost twice as long as the 300 pages of the 2008 Lisbon Treaty. The draft withdrawal agreement was published alongside a draft political declaration on a permanent 'future framework' UK/EU relationship.

Final EU agreement on the withdrawal agreement will be subject to the approval of an "enhanced qualified majority" of EU Member States and the European Parliament.

In the UK, the House of Commons will be given a 'Meaningful Vote' on whether or not to approve the draft agreement and future framework. If this is approved by the House of Commons (which currently seems highly unlikely) Parliament will then need to pass a Withdrawal Agreement and Implementation Bill, in order to ratify what would become a legally binding international Treaty.

Key issue 1 – NOT taking back control of our money

Under the proposed agreement the UK would agree to pay to the EU a sum of approximately £39 billion. This would comprise a number of parts, including continued EU budget contributions during the transition period up to December 2020; unfunded EU commitments (known as Reste à Liquider or RAL – where the EU has committed to future projects it has not yet funded), and EU pensions, including for EU Commissioners and civil servants.

Having been through a period of considerable austerity in Britain, it seems difficult to justify paying such a huge amount of money, while the United Kingdom is not guaranteed any future trading relationship in return, as this is still to be subsequently agreed. This hardly constitutes taking back control of our money – rather it is handing over vast amounts of our money, for nothing in return and which could be better spent at home.

Key issue 2 – NOT taking back control of our laws

Under the proposals the UK would continue to be bound by EU laws in a number of critical areas, such as social policy, environmental policy, employment policy and customs. We will thus become a ‘rule taker’, which means we would have to continue to obey EU laws in these areas but having surrendered any influence over how they are drafted.

Furthermore, under the agreement the European Court of Justice will be the final arbiter of EU laws in power in the UK, putting our Courts, even our Supreme Court, in a junior position.

Key issue 3 – Being locked in a Customs Union without the ability to leave

Under the proposed agreement a ‘Joint Committee’ of both the EU and UK would be established to oversee the UK’s path to a future trade relationship – which has yet to be negotiated. However, if this relationship cannot be satisfactorily agreed by both parties the UK would be forced to enter a so called ‘backstop’ Customs Union with the EU. While we remain in a Customs Union (as we are at present) the UK would be unable to strike international trade deals with other countries such as the USA or China or indeed, any other country.

Moreover, and critically, once we enter the backstop we cannot leave without the consent of the European Union. This would be a major surrender of our sovereignty, despite repeated public assurances in Parliament to the contrary. It would also be directly at odds with the Conservative Party's 2017 General Election manifesto that stated unequivocally that following the referendum "we will no longer be members of the single market or customs union".

Key issue 4 – Undermining the integrity of the United Kingdom

The agreement creates internal borders within the United Kingdom, as Northern Ireland, if we enter the backstop, would be treated separately to the rest of the UK. Specifically, Northern Ireland would become a rule taker in further areas such as goods, agricultural products and VAT. This would create 'a border down the Irish Sea', despite repeated assurances to Parliament that no British Government would ever contemplate this.

The draft agreement contains a separate Protocol including clauses specific to Northern Ireland not affecting the rest of the UK. Treating Northern Ireland separately from the UK would only encourage separatism in Scotland, to the detriment of our United Kingdom.

The separate treatment of Northern Ireland from the rest of the United Kingdom is unacceptable to the Democratic Unionist Party (the DUP) on whom the Conservative Party now rely for a working majority in the House of Commons. If the DUP were to withdraw their support from the Conservative Party, because of these proposals, the Government would collapse.

Key issue 5 – The Agreement would be overseen by the European Court of Justice, not the UK Supreme Court

Under the proposals the European Court of Justice (ECJ) will remain in control of the agreement and those areas of EU law that remain effective in the UK. The ECJ will remain as the final arbiter of the agreement and of the EU laws the UK will be subject to. Again, this is wholly against the spirit of the referendum.

A better alternative - a “Super Canada” Free Trade Deal

The European Research Group (ERG) has argued for some time for a far better alternative which is an advanced Free Trade Deal, known as ‘Super Canada’ (or Canada+++). The Group has spent months trying to persuade the Prime Minister and senior pro EU officials in 10 Downing Street that this would present a superior alternative for the United Kingdom to Chequers and what is now the draft withdrawal agreement. However, these efforts have proved unsuccessful to date – and the Prime Minister appears completely wedded to the current proposals.

The ERG published a paper explaining the case for its alternative at the 2018 Conservative Party Conference. (‘Why an advanced Free Trade Deal – Super Canada – is superior to the Chequers proposal’). In addition, the Institute for Economic Affairs (IEA) has also published a highly detailed 134 page report this autumn, explaining in precise economic terms, how such an arrangement (which they call PlanA+) would work in practice.

In essence, Super Canada would involve taking an existing EU Canada trade agreement, which was signed in 2016 and updating this framework by adding on some additional elements, such as a security protocol and a protocol on data. The EU Canada agreement took several years to negotiate but this means that most of the ‘heavy lifting’ has already been done and many of the key issues have previously been thrashed out in a manner the EU has already agreed to.

A Super Canada trade agreement would not involve being in the Single Market or Customs Union and would not leave the UK subject to the authority of the European Court of Justice.

It would therefore honour the spirit of the 2016 referendum and the clear instruction to politicians from 17.4 million people that we should leave the European Union. It would also, incidentally, comply with the Conservative Party's 2017 General Election Manifesto commitment, on which almost every sitting Conservative MP was elected to Parliament by their constituents. (A handful of Conservative MPs qualified their election addresses on this issue).

Conclusion

For the reasons explained in this paper, Chequers and the associated withdrawal agreement mean that the UK would not, in reality, leave the European Union. Instead we would be left, effectively "half in, half out" (which the Prime Minister specifically warned against in her Lancaster House speech in January 2017).

The aim of this paper has been to explain to the people of the United Kingdom in plain and simple English, what these complex legal proposals really mean for the future of this country. They would mean, in short, that we had surrendered our destiny and breached the spirit of the 2016 referendum. This is why the ERG is so strongly opposed to them.

APPENDIX

The Agreement in more detail

Internal NI/GB border: The backstop provides for an all UK Customs Union and regulatory and other alignment in Northern Ireland. This would mean that goods from Northern Ireland entering the EU market via Ireland would be EU compliant. Goods from Great Britain would not be. This would entail checks on GB goods going into Northern Ireland to ensure they do not enter the EU's single market.

For this reason, Article 7 of the Ireland / Northern Ireland Protocol guarantees "*unfettered market access for goods moving from Northern Ireland to the rest of the United Kingdom*", but not the other way around.

No backstop exit: The 'backstop' in the Ireland / Northern Ireland Protocol, is on the face of it supposed to be temporary. However, the decision on when it might end is not one the UK can take alone.

Article 1(3) of the protocol gives the following condition for when the backstop can end: "*This Protocol sets out arrangements necessary to address the unique circumstances on the island of Ireland, maintain the necessary conditions for continued **North-South cooperation**, avoid a **hard border** and protect the **1998 Agreement** in all its dimensions.*"

Article 20 of the Protocol sets out when these conditions can be met: "*If at any time after the end of the transition period the Union or the United Kingdom considers that the Protocol is, in whole or in part, no longer necessary to achieve the objectives set out in Article*

1(3) and should cease to apply”... “the Joint Committee shall meet at ministerial level to consider the notification.”

How the European Court of Justice will remain in control: The European Court of Justice (ECJ), will be given jurisdiction to rule over the withdrawal agreement including the transitional period, the potentially-permanent ‘backstop’ and the financial settlement.

The ‘backstop’ would tie the UK into a Customs Union with the EU where its customs rules, external trade policy, regulations in Northern Ireland and - via the ‘non-regression’ clauses - social, environmental, employment and state aid policy, would all be decided in the EU.

The financial settlement would cost the UK c. £39bn with the final sum adjudicated by the ECJ. This sum would not be conditional on gaining a final permanent trade agreement. It would be payable even if the UK remained trapped in the ‘backstop’.

Also under the ‘backstop’, Northern Ireland would be subject to EU regulations, (remaining in the Single Market for goods) while the UK would not. This would create internal UK borders down the Irish Sea (as well as regulatory borders at Calais and other UK/EU borders).

The European Court of Justice’s jurisdiction in the Agreement.

The jurisdiction of the ECJ stems from the following articles:

- Over the Transition Period: Article 4(1) *“The provisions of this Agreement and the provisions of Union law made applicable by this Agreement shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its Member States.”*
- On cases arising under the Transition period for 4 years afterwards: Article 87 *“the European Commission may within 4 years after the end of the transition period, bring the matter before the Court of Justice of the European Union.”*
- Over EU Citizens rights: Article 150: *“References to the Court of Justice of the European Union”...“which commenced in the first instance within 8 years from the end of the transition period.”*
- Over the financial settlement: Article 160: *“Articles 258, 260, and 267 TFEU shall apply on respect of the interpretation and application of applicable Union law referred to in Article 136 and Article 138(1) or (2)..”* Articles 136 & 138 relate to the financial settlement.
- Ultimately over the arbitration panel set up under Article 171: Article 174: *“The Court of Justice of the European Union shall have jurisdiction to give such a ruling which shall be binding on the arbitration panel.”*
- Over the ‘backstop’: Article 14(1) of the Ireland/Northern Ireland Protocol *“the authorities of the United Kingdom shall be*

responsible for implementing and applying the provisions of Union law made applicable by this Protocol..”

- Over the ‘backstop’: Article 14(4) of the Ireland/Northern Ireland Protocol *“In particular, the Court of Justice of the European Union shall have jurisdiction as provided for in the Treaties..”*

It binds the UK into EU social, environmental, employment and state aid policies: Annex 4 of the Ireland / Northern Ireland protocol sets out a number of ‘non-regression’ clauses that will bind the UK into following EU polices including ‘common standards’ on environment, social and labour Law, taxation and state aid directly under the ECJ.