



Heading for disaster

How Britain's Brexit collision course with the European Union will exacerbate the Covid crisis

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PAPERS

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CONTENTS

1.	The marked shift in government policy to a much harder Brexit	4
2.	The December 2020 deadline and the return of 'no deal'	8
3.	The Northern Ireland protocol	10
4.	The level playing field conflicts that limit the scope and depth of the UK-EU free trade agreement	15
5.	The prospect of deadlock on fishing	21
6.	The government's narrowing vision for Britain's future relationship with the EU	23
7.	Conclusion	27

The marked shift in government policy to a much harder Brexit

From the commencement of the December 2019 general election campaign, British government policy has shifted towards a much harder Brexit. Theresa May's commitment to a "deep and special partnership" with our former EU partners lies in the dustbin of history. Even the warm sentiments contained in the political declaration¹ that Boris Johnson agreed with the EU's leaders, as recently as last October, have been tossed aside.

The scope of this dangerous new divergence was carefully analysed in a report of the House of Lords European Union committee², comparing the positions agreed in the October political declaration with the Council of the European Union's latest negotiating mandate³ and the British government's written ministerial statement⁴ and white paper⁵. The committee, in its measured and objective way (with some leading Brexiteers to be counted among its current membership⁶), detected that both parties had somewhat shifted their position. The select committee's report was debated in the Lords on 16 March 2020 as the Covid-19 crisis was coming to a head. This paper draws on that debate.

The EU Council Decision, in the judgement of the Lords select committee report:

"Taken as a whole... is a development of, rather than a departure from, the political declaration".⁷

By contrast, their view of the UK government's new approach was much starker:

"While the political declaration, whatever its limitations and ambiguities, embodied a shared understanding of the future relationship. That shared understanding has now disappeared".⁸

The political declaration Johnson agreed last October was a key element of what the prime minister memorably described as his "oven ready deal". As John Kerr put it in the Lords debate:

"The [government's] thesis seems to be the political situation is now different, so we can just pick and choose the bits [of the political declaration] we like. Aiming low increases the chances of getting something agreed by the end of the year", but it will be "a narrow deal, a shallow deal and a very bad deal, but if that is what we want, I think it is possible".⁹

1. Political declaration setting out the framework for the future relationship between the EU and the UK, laid before parliament on 19 October 2019.

2. Report pursuant to section 29 of the European Union (withdrawal agreement) act: Council decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement. Published 5 March 2020. HL paper 32.

3. COM 2020 (35): Annex to the Council decision authorising the opening of negotiations with the UK.

4. Written ministerial statement by the prime minister on UK-EU relations. HC debate, 3 February 2020. HCWS 86.

5. *The Future Relationship with the EU: The UK's Approach to the Negotiations*. Command Paper 211, 27 February 2020.

6. For example, the former chancellor of the exchequer, Lord Lamont of Lerwick, and Lord Cavendish of Furness.

7. Para 17, HL Paper 32.

8. Para 22, HL Paper 32.

9. Lord Kerr of Kinlochard. UK permanent representative to the EU 1990-95, UK ambassador to the United States 1995-97, permanent secretary, FCO 1997-2002. Secretary general of the European Convention 2002-03.

There has been a fundamental shift of ambition for the type of post Brexit relationship the UK is now seeking with the EU. In contrast to Theresa May's approach, for all Boris Johnson's warm words about our European friends, there is nothing deep about the economic partnership he is now seeking for Britain – a more accurate description would be distant – an outcome that is distinctly "*Canada minus minus, not Canada plus plus*", in the jargon David Davis¹⁰ made his trademark. Britain is now seeking nothing special from the EU: rather we want our relations with Europe to be on a par with every other friendly sovereign state in the world. Our own sovereignty and independence come first: the realities of our geographical proximity; the depth of economic interdependence on both sides of the English Channel; or our shared common interests and values with our nearest neighbours; these are all secondary to this higher cause.

This hardening of the government's Brexit policy started with Theresa May's overthrow, but its full extent only became visible in the first weeks of 2020. Theresa May viewed Brexit as an exercise in damage limitation. A cautious remainer by instinct, she could never bring herself to talk enthusiastically of Brexit's benefits. She defined Brexit in simple terms that rank and file Conservatives understood, as "*taking back control of our money, laws, and borders*".

However, despite this tough sounding rhetoric, she wanted a Brexit that kept the UK economically close to the EU, while permitting the British government to escape the EU's free movement rules. As an instinctive unionist she prioritised a Brexit strategy that did not risk the unity of the United Kingdom. She solemnly pledged to uphold the open border in Ireland in keeping with the Good Friday Agreement. And as a former home secretary, sustained close cooperation with our European allies on questions of security was a vital concern.

To achieve these objectives, she was prepared to bend her red lines: she pushed for regulatory alignment in goods; a Northern Ireland backstop that for a long interim period would effectively have kept the whole of the UK in the EU customs union; and an eventual deal on customs facilitation that would have resulted in 'frictionless' trade and the avoidance of new controls at the UK-EU border. She was less specific about services trade, keen to promote extensive mutual recognition arrangements, as long as the EU would give the UK leeway to relax the free movement obligations of the EU treaties. A tougher line on immigration both suited her personal instincts and as she saw it, met the main concern of leave voters in the referendum.

Boris Johnson's world view is different. Political scientists have no doubt that in 2016, fears of mass immigration produced the leave victory. Some would argue that Vote Leave's exploitation of immigration was cynical and at times xenophobic. For Johnson it was all part of legitimate hardball in playing the political game to win. In his eyes, the remainers' scare stories were just as exaggerated. As someone who boasts of his Turkish ancestry and is a natural

10. Rt Hon David Davis MP, secretary of state for exiting the European Union, 2016-18. Minister of state for Europe, 1994-97. Member of parliament for Boothferry, then Haltemprice and Howden, since 1987.

libertarian at heart, stopping immigration was never part of Johnson's personal motivation for backing leave. To the extent that he actually ever wanted to leave the EU, (about which there is legitimate doubt), Johnson the leaver had made his name as a Brussels journalist with horror stories, always hyped and frequently false, of Brussels bureaucracy and overregulation. His own view of his inner self told him he could be a new Churchill leading England (as Churchill would have put it) to a restored greatness. It was the Churchill of the grand imperial vision, with his sense of our country's unique history and place in the world, and his instinctive belief in the British buccaneering spirit across the open seas that stirred the Johnson imagination.

Johnson has convinced himself that a restoration of our sovereignty and independence (as Brexiteers like to describe it) is somehow a reassertion of British greatness. This fatally confuses 'power' with 'sovereignty'. Sovereignty is essentially a legal concept. Power is the ability to make things happen. The Johnsonian world view follows from this confusion and ignores the brutal realities of Britain's global position in the post-Covid world. Where the challenges of interdependence are mounting, the rules-based post-1990 international order is breaking down, with China-US tensions increasing and Britain choosing to detach itself from the EU power bloc.

What mattered to Johnson politically was the perception of his negotiating triumph in Brussels last October, tearing up Theresa May's hated Northern Ireland protocol and substituting another. The practical substance he successfully shrouded in obscurity, although he must have realised that, to say the least, the terms were constitutionally challenging. The painful cries of betrayal from his once loyal unionist supporters were crowded out by the shrieks of delight from the English Brexiteers. For them the scrapping of Theresa May's all-UK backstop ditched the requirement for regulatory alignment with Brussels, at least for Great Britain. It opened up the vista of their dreams: an arms-length free trade agreement (FTA) between Great Britain and the European Union, in which Britain could entirely free itself of EU jurisdiction. This 'Canada-style' trade deal had been, in the aftermath of the 2016 referendum, what the Brexiteers had proclaimed as the 'easiest trade deal to negotiate in history', that in David Davis's later words would deliver "*exactly the same benefits*" as UK membership of the European single market. We will soon find out how far that rosy forecast falls short of the truth.

All that stood in the way of this happy, and in their view logical and rational, outcome was the intransigence of the Brussels ideologues who wanted to punish Britons for daring to vote to leave the EU and set an example to any other member state tempted to show such defiance. Surely the big member states, anxious to protect their huge export surpluses with the UK, would call a halt on this self-defeating nonsense. For Brexiteers, the October deal created a moment of true hubris. Their longstanding goal was within their grasp. Once an 80-seat majority had been won in December 2019, and a government of Brexit true believers formed, they resolved to demonstrate to the bureaucrats of Brussels

that this was a British government that would not be pushed around by the paper tigers of the European Commission, who in their view lack all democratic legitimacy. By early 2020, this triumphalist shift in Brexiteer psychology had transmuted itself into a set of impossibilist negotiating positions.

The December 2020 deadline and the return of 'no deal'

Michael Gove announced that the government would not seek to extend the transition period beyond December 2020 in a *Today* programme interview on BBC Radio 4, shortly after the December general election had been agreed by the opposition parties in a Commons vote. This was despite the fact that the withdrawal treaty the prime minister had just signed on behalf of the United Kingdom allowed for a transition period of up to two years by mutual agreement. Gove proclaimed this new manifesto commitment around the same time as Nigel Farage's decision to withdraw Brexit party candidates from Conservative held seats: conspiracy theorists may detect a linkage. The Brexit party's move was certainly decisive in uniting the leave vote behind the Conservatives, whereas remain supporters were fatally split. Since the Johnson triumph, the new policy has now been legislated for in the EU Withdrawal Act, which gained the Royal Assent at the end of January 2020.

Since December 2019, the government has stepped up the bluster. As the Lords select committee noted,

"The government has now indicated that if the broad outline of an agreement is not clear by June, it may move away from the negotiations and focus on domestic preparations for the end of the transition period".¹¹

In plainer words, Britain would be back in the territory of preparing for 'no deal'. The government have invented a new euphemism for this:

"An Australia style trading relationship with the EU".

Australia trades with the EU on World Trade Organization (WTO) terms, the state of grace that Nigel Farage and other hard line Brexiteers have long espoused. In their minds' eye, they see no difference between trade arrangements between jurisdictions some 11,000 miles apart and trade across the English Channel between nation states that are part of a single continent. The facts suggest otherwise. Academic studies identify geographical proximity as the most significant factor in trade integration. Also, the EU, with the UK in the driving seat, has spent the last half century peacefully removing not only all tariffs and quotas, but internal barriers to trade, in order to create the wealthiest and most integrated single market in the world.

'No deal' is not perhaps as challenging a scenario as it would have been twelve months ago. The withdrawal agreement at least provides guarantees of rights for EU citizens living in Britain and UK citizens living on the continent. There is also the point that Gavin Barwell made to great effect in the Lords debate:

¹¹. Para 27 HL Paper 32

"In terms of economic significance... there is not a huge difference between the deal the government are seeking and 'no deal'"¹²

The Johnson government has already signalled that seeking a Canada-style FTA involves the end of frictionless trade as we know it. They now accept that their version of Brexit requires new bureaucracy and increased costs for UK importers and exporters. These burdens could be minimised, though not removed, by an ambitious FTA, but at present it is a 'barebones' deal that looks the more likely prospect.¹³

The Barwell judgement assumes though that business would have adequate time to prepare for 'no deal'. The Covid-19 crisis makes this assumption optimistic. The more business is unprepared for the new trading arrangements, the greater the likelihood of disruption at the ports as lorries join queues to check that their paperwork is in order. One factor that might mitigate these risks is the temporary reduction in cross-Channel freight traffic due to the Covid-19 economic lockdown. But not to anticipate a rapid recovery in freight traffic means assuming permanent disruption to the 'just in time' supply chains on which hundreds of thousands of UK manufacturing jobs presently depend.

The risk of potential chaos could of course be reduced by promises of goodwill on both sides. The British government announced unilaterally in June 2020 that it would wave through lorries arriving in the Channel ports without full checks for an initial six month period. Unfortunately such gestures of goodwill in continental ports cannot be guaranteed and would be in breach of EU law.

12. Lord Barwell, Conservative central office 1993-2010, MP for Croydon South 2010-17, Number 10 chief of staff, 2017-19.

13. Michael Gove announced in late April 2020 that up to 50,000 new customs agents might be needed, with the government setting up a customs academy for their training.

The Northern Ireland protocol

A major obstacle to 'goodwill' is a looming dispute about the interpretation and implementation of the new Northern Ireland protocol. The May 'backstop' had provided for the whole of the UK to remain *temporarily* members of the EU customs union, thereby avoiding the immediate need to institute a new customs border between UK territory and the Republic of Ireland. Greatly to the joy of businesses such as the car manufacturers, the May backstop put off the prospect of a new customs and regulatory border between the UK and the continent to the indefinite future, requiring the whole of the UK to abide by what was euphemistically described as a 'common rule book' for trade in goods (in effect EU single market rules). The May backstop would remain in place until such point as 'alternative arrangements' were in place that avoided the need for a hard border between Northern Ireland and the Republic of Ireland. Much effort was made to envisage what these alternative arrangements might be, but none to the satisfaction of the European Commission which dismissed a variety of hi-tech solutions as unviable for the foreseeable future.

The EU consistently refused – both the Commission and the member states – to put a firm end date on the May 'temporary' backstop, despite attempts at assurance in letters to Theresa May from the presidents of the European Commission and European Council.¹⁴ The fact that this issue could not be fudged was made crystal clear in the advice the then British attorney general, Geoffrey Cox, gave to the cabinet.¹⁵ Member states displayed an impressive unity of purpose in defence of the Republic's position on the Irish border. By their consistent support for a small member state, the EU demonstrated that one of its founding principles, the equality of member states, still counted. The British have always tended to sneer at the concept of EU solidarity and of course, it can break apart under the pressure of divided interests. Yet member state unity behind the Republic of Ireland's position came as a shock to Brexiteers who had always assumed that EU solidarity would break apart as larger countries on the continent began to count the cost of 'no deal' for their favourable trade balance in UK markets. The Brexiteers were caught out once again in imagining that what held the EU together was nothing more than a crude economic calculus.

The ambiguity over the temporary nature of the May backstop suited the EU negotiators as much as the UK. Its terms challenged the classic Brussels doctrine of the 'indivisibility of the four freedoms', as trade in goods was to be treated separately from trade in services, and freedom of movement of goods allowed without parallel freedom of movement of people. This flexibility on the part of the EU was never properly recognised in the UK. Hardline Brexiteers piled the pressure on Theresa May to terminate the proposed 'backstop'. In their eyes, it came to be seen as reducing the UK to the status of a 'vassal state' for an indeterminate period. Throughout this time the UK would be forced

14. Joint letter from the presidents of the European Council and Commission, 14 January 2019.

15. Letters from the Rt Hon Geoffrey Cox MP, attorney general, 13 November 2018 and 12 March 2019.

to accept new EU laws without having any decisionmaking power over them. Vassalage could only be ended by specific EU assent that some 'alternative arrangements' could be made to work. No trust existed that this point would ever be reached. The Brexiteers then concluded that nothing short of a so-called 'clean break' would satisfy their vision for Brexit.

The Brexiteers were right in terms of the backstop's legal effects: the question was whether the backstop was a price worth paying for maintaining peace in Ireland and preserving the unity of the UK, while at the same time facilitating a 'softer' form of Brexit for what would be an extended and possibly indefinite period. Theresa May lacked the political skills to win that argument in the Conservative party. She then left the decision to seek a cross-party agreement in support of her deal until far too late, when the Brexiteers had already resolved to bring her down. History may well be kinder to her endeavours.

Boris Johnson's success in ditching the May backstop depended on his willingness to make a different set of bold, but what may prove to be just as difficult, choices. The essence of the Johnson protocol is to separate the post-Brexit regulatory treatment of Northern Ireland from Great Britain. Northern Ireland 'de facto' remains in the EU single market and customs union: on many questions of trade and regulation, Northern Ireland will become indefinitely subject to EU jurisdiction, without of course having any say over those laws, at least while it remains a constituent part of the UK. In broad terms this was roughly the same proposition that the Commission had put forward eighteen months before in the draft withdrawal treaty published in spring 2018. Theresa May had promptly rejected this proposal out-of-hand as impossible for any British prime minister to accept!

The unstated problem for unionists with the Johnson backstop is that it gives a tremendous impetus to the case for Irish unity, even though some members of the Northern Irish business community could see the practical economic benefits of having the best of both worlds. Yet Northern Irish protestant politicians, who have defined their politics by stubborn defence of the Westminster union, inevitably took umbrage. In their view, the new protocol had been imposed without any proper consultation, altering, in a fundamental and unwelcome way, the constitutional status of Northern Ireland. It was in stark contradiction to a central principle underpinning the 1998 Good Friday agreement that no such fundamental changes in Northern Ireland's status could be agreed without the assent of the representatives of both Northern Irish communities. On the face of it, the new protocol amounted to a significant step towards a united Ireland. The mechanism for 'democratic' consent that the UK government instituted was feeble: Northern Ireland could only escape from the protocol by means of a cross-community consensus at Stormont that was never likely to be attained. How could a Conservative *and* Unionist prime minister have done this?

The answer seems clear. The prime minister has had considerable difficulty in facing up to the reality of what he has solemnly committed himself to. Yet he must have been aware of the basics of the proposition that he had personally agreed in conversations with Leo Varadkar and Jean-Claude Juncker. He went on to sign the withdrawal treaty on that same basis.

In the withdrawal treaty text, the European Commission did its best to sugar the pill. Northern Ireland would constitutionally remain part of UK customs territory. HMRC, not EU officials, would be responsible for administering the necessary controls. The preamble to the protocol loftily proclaimed:

“The Union and United Kingdom’s shared aim of avoiding controls at the ports and airports of Northern Ireland”.

Closer inspection of the text reveals however that these aspirations were explicitly limited and conditional. The aim to avoid controls at ports and airports is qualified by the words:

“To the extent possible in accordance with applicable legislation and taking into account their respective regulatory regimes as well as the implementation thereof.”

It went on to declare that :

“Nothing in this protocol prevents the United Kingdom from ensuring unfettered market access for goods moving from Northern Ireland to the rest of the United Kingdom”.

Unfettered access applies only of the movement of goods from Northern Ireland to Great Britain, not in the reverse direction. It also significantly used the word 'unfettered', not the Theresa May language of 'frictionless'. It is a classic example of how a subtle change in a single word in a diplomatic agreement can point to differences of huge consequence. What is a 'fetter' is a far more debatable and ambiguous question than an absence of 'friction'. In an appearance before the Lords EU select committee on 21 October 2019, just before the dissolution of parliament, the then Brexit secretary, Stephen Barclay, confirmed under questioning from Stewart Wood¹⁶ that the protocol would require two-way checks on goods passing between Great Britain and Northern Ireland.

In terms of the short-term politics, Johnson got away with his bold stroke. The withdrawal agreement was never put to full parliamentary scrutiny in advance of the general election. Armed with an agreement, any agreement, he gambled correctly on going to the country on a cry of 'get Brexit done'. Nevertheless, in a campaign speech to a group of Northern Ireland businesspeople, Johnson appeared to dismiss the prospect of customs controls across the Irish Sea as something he would never tolerate as prime minister.

16. Lord Wood of Anfield. Fellow of Magdalen College, Oxford, and former adviser to Gordon Brown and Ed Miliband.

"If anyone asked them in future to fill out paperwork, they should tell them to call Number 10 and he would tell them to throw that form in the bin."

Michael Gove, in a later interview, refused to confirm what Steve Barclay had said before the select committee and pushed the question aside as a matter for the future and the special joint committee set up under the terms of the protocol, to supervise the implementation of its provisions. However, the remit of this special committee is clearly set out in the text as to implement the provisions of the protocol, not to change its terms.

In the Lords debate, John Kerr pointed out *"the government still seem in denial"* of what they had agreed. He spelt out the provisions of the protocol in plain terms in articles 5, 6, and 12.¹⁷ The annex to the protocol lists 75 pages of EU laws that will apply in Northern Ireland and not in Great Britain. Questions of interpretation and enforcement will be decided under EU jurisdiction, ultimately by the European Court of Justice (ECJ).

Kerr had recently been on a visit to Belfast with the select committee. What worried him more than ministers' apparent misunderstanding of the legal texts their government had signed, was the fact that the committee found:

"No evidence of any central or devolved government action to implement the protocol... no one from HMRC had of 25 February given the business community any indication of what to expect or how best to prepare."

Some 2,500 trucks a day cross the Irish Sea to and from Northern Ireland, totalling 850,000 movements a year. If experience at the Polish-Ukrainian border is taken as the model, each lorry would have to satisfy 45 different checks on entering the EU customs union, while outgoing vehicles would have to undergo 31. Kerr noted:

"The government in Dublin is well aware we are dragging our feet, so too is the Commission."

Given that the protocol is due to be implemented from 1 January 2021, he found this situation:

"Acutely disturbing, indeed shocking."

A successfully concluded FTA between the EU and UK would in some respects reduce scale of the necessary checks, but even an ambitious FTA would not avoid them. If the UK government sought to renege on its commitments under the protocol, the integrity of the EU customs border would be put at risk. On what is for the EU an almost existential question — the integrity of its single market — it would destroy any remaining trust.

17. Article 5 obliges the British government to collect on the EU's behalf the EU customs duties on goods moving from Great Britain to Northern Ireland, except for categories of goods where the EU and UK jointly agree there is no risk of them then moving to the Republic. Article 6 spells out how the EU customs code will apply to Northern Ireland and hence EU export checks on goods moving from the Northern Ireland to Great Britain. Article 12 gives the EU the right to monitor and supervise UK administration of the protocol under the ultimate jurisdiction of the ECJ.

Much more may well be heard of this ‘misunderstanding’ in the coming months. In Brussels there is a belief that the British government is set on radical changes to the protocol they signed only last October. The consequences for the whole UK-EU relationship could be catastrophic and there is so little time. Without an extension of the transition deadline, the new border arrangements are due to come into force on 1 January 2021.

However despite this tight deadline, the first meeting of the Ireland/Northern Ireland specialised committee, charged under the 2020 withdrawal treaty with supervising the implementation of the protocol, did not take place until 30 April 2020, more than six months after the withdrawal agreement was signed and only eight months before it is due to come into effect. Suspicions of British foot-dragging were heightened in April by the government’s aggressive rejection of a proposal to set up a European Commission office in Belfast, in order to supervise the new border arrangements. Four of Northern Ireland’s nationalist and non-aligned parties – the Alliance, the Greens, the SDLP and Sinn Fein – who together accounted for a majority of the Northern Irish electorate, had written a joint letter to Michael Gove on 5 April stating that they “*felt strongly that an EU office in Belfast is necessary*”. On 27 April, Gove flatly rejected this request. He did however concede that the British government would “*facilitate ad hoc visits by Commission staff*”, a minimalist interpretation of the protocol’s provisions, designed to assuage unionist sensibilities.

On 21 May, the Cabinet Office published a paper¹⁸ insisting that goods trade from Northern Ireland to Great Britain “*should take place as it does now*”. The paper was however largely silent on the questions of goods originating in the Republic of Ireland (or elsewhere in the EU) being exported to Great Britain through Northern Irish ports and airports. It was not clear how the notifications and controls that the EU would normally apply when goods leave its customs territory would be enforced, and the distinction made with goods originating in Northern Ireland itself. The Cabinet Office paper did concede that “*some limited additional processes*” would be necessary for goods arriving in Northern Ireland from Great Britain, but these “*would be kept to an absolute minimum*”. The Cabinet Office stated that the government saw no need “*to construct any new bespoke customs infrastructure*”. However, they accepted the need to expand “*some existing entry points*” for agri foods, where the government will uphold the current arrangement where the whole of Ireland is treated as a single area for regulation of livestock and agricultural produce.

In one sense it can be regarded as progress that the UK accepts the principle of controls on goods crossing between Great Britain and Northern Ireland. Yet the British underestimate the extent to which the integrity of the EU single market and customs union is an existential issue for the European Commission. They have so far kept their counsel on the detail of the British proposals, presumably in the hope that behind the scenes pressure can persuade the British to live up to their legal obligations under the protocol the UK signed. We shall see. One suspects that the implementation of the protocol could be a source of continuing tensions in UK-EU relations in 2021 and for years to come.

18. The UK’s approach to the Northern Ireland protocol, Cabinet Office paper 226.

The level playing field conflicts that limit the scope and depth of the UK-EU free trade agreement

The October political declaration committed the UK and the EU to an “ambitious, wide-ranging and well-balanced” economic partnership. It guaranteed “a level playing field for open and fair competition”, while ensuring that both parties retain their autonomy to achieve “legitimate public policy objectives”. Yet the British government has now dropped any specific reference in its published objectives to “open and fair competition” or a “level playing field”. David Frost, Britain’s chief negotiator¹⁹, went further. In a provocative speech in February, he described any Brussels imposed rules to create level playing field as challenging “the fundamentals of what it means to be an independent country”.

As David Hannay²⁰ pointed out in the Lords debate, Frost’s assertion contradicts the fact that:

“All the EU’s agreements with its neighbours – Norway, Switzerland, Ukraine – contain elaborate level playing field provisions.”

The British government claims the EU is now asking something it never asked of Canada in negotiating their FTA. Yet paragraph 77 of the political declaration (which to reiterate, Boris Johnson signed on behalf of the UK in October 2019) underlined the differences between the UK’s situation and Canada’s:

“Given the Union’s and the United Kingdom’s geographic proximity and economic interdependence, the future relationship must ensure open and fair competition, encompassing robust commitment to ensure a level playing field”.

The British government gives every impression of trying to renege on a principle that less than nine months ago it contentedly signed up for.

Not all the hardening of positions, to be fair, has been on the British side. France and other member states have toughened the language of the mandate that the Commission originally proposed to the Council. In the most egregious example, the Council decision demands that EU state aid rules should continue to apply ‘to and in’ the UK. In other words, the UK would be outside the EU, but remain fully inside its regime of state aid rules. The UK might have its own domestic agency responsible for enforcement, but for the legal interpretation of these rules, the UK would remain effectively under EU jurisdiction. Also,

19. Speech at Université Libre de Bruxelles, 18 February 2020.

20. Lord Hannay of Chiswick. UK permanent representative to the EEC, 1985-90. UK permanent representative to the UN, 1990-95.

whenever the EU adapts its rules or raises its standards, the UK is bound to follow, involving UK acceptance of so-called 'dynamic alignment'.

State aid is not the only area where the EU wants to guarantee a level playing field for the future. They propose binding provisions in the trade treaty designed to avert the risk of a 'race to the bottom' on standards. This level playing field would cover the social dimension including a floor of minimum labour standards, but also consumer protection rules, environmental regulations and crucially climate change commitments. In these areas, the EU would be happy for the UK to design its own system of regulatory supervision and enforcement but there would be a jointly agreed system of dispute arbitration and jurisdiction (ultimately involving the ECJ on points of EU law) in which future EU standards would be accepted as a 'reference point'.

British objections to these arrangements take on a surreal air. The British government insists it has no intention of weakening existing EU standards in any of these areas, what in the language of the negotiators are called non-regression commitments. It will not however commit to automatic future ('dynamic') alignment, nor to any common system of legal enforcement or sanctions for non-compliance with the non-regression commitments it is prepared to make. Indeed the British government is now resisting the inclusion of these non-regression commitments in a trade treaty with the EU, on the grounds that this would hand the EU cover under international law for imposing trade sanctions on the UK if the EU judge in future that any comparative weakening of UK standards is putting EU business at a competitive disadvantage. Instead the EU should rely on taking Britain at its word.

The government protests that the EU is going back on its word. In 2018 Michel Barnier offered the UK the option of a Canada-style FTA. However, these level playing field conditions are not new demands the EU have suddenly made. As Gavin Barwell explained in the Lords, in all the meetings he attended between Theresa May and European leaders, insistence on a level playing field was *"always and consistently the EU's position"*.

The Commission's article 50 task force produced a detailed paper²¹ on the level playing field on 31 January 2018, more than two years ago. This paper made clear that the EU side would expect any comprehensive agreement to include governance arrangements for: ongoing management and supervision; dispute settlement; and enforcement (sanctions). On state aid, the Commission also made clear that:

"International rules do not adequately address the (potential) distortive effects of subsidies on investment, trade and competition and the close integration of the UK in the EU economy and its value chains, the longstanding and deep trading relations, and the geographical proximity of the UK to the EU. [This all] means the UK-EU agreement will have to include robust provisions on state aid to ensure a level playing field with the member states."

21. TF50 (2018) 27. 31 January 2018.

The EU was always clear that the situation of the UK and Canada was not comparable. The scale of market access allowed in any FTA would depend on UK acceptance of these level playing field principles. Yet, in Barwell's view, the government:

"Appears [to be] rejecting not just dynamic alignment but any enforceable non-regression clause... [and] asking the EU to trust us to keep our word."

These arguments may come across as technical and nitpicking. But the principles behind these level playing field arguments go to the heart of what leavers imagine Brexit is supposed to be about, and remainers most fear. For years the Brexiteers have made the argument that one of the 'opportunities' of Brexit, as they see it, is to escape the incubus of EU regulation 'holding Britain back'. Yet the government now denies that its motivation for Brexit was ever to indulge in a 'race to the bottom' on consumer, environmental and labour standards. Boris Johnson has departed from many essentials of Theresa May's approach, but significantly not her insistence that outside the EU, the British government intends to maintain and build on the EU's high standards. This is despite the consistent record of many Brexiteers in making the case for Brexit as a deregulatory project designed to liberate British business from burdensome EU rules that would in Nigel Lawson's words "*complete the Thatcher revolution*".

One would like to take May and Johnson at their word. Their position must partly reflect a political calculation that many voters who supported Brexit, did not do so because they wanted to lower Britain standards of environmental, consumer and labour protection. However, given the government's disavowal of any intention to initiate a deregulatory race to the bottom, it strikes the EU side as odd that Britain then refuses to make a binding commitment to a form of continued regulatory alignment. Is this because they want to keep the option open for the future of a deregulatory push for competitive advantage? The British government claims their objection is rooted in a basic question of sovereignty. But why get so exercised about sovereignty if one has no intention of using it to change and/or weaken EU laws? Let us consider these level playing field controversies in terms of their practical impact.

On state aids it has long been recognised that there are few long-term winners in a competitive bidding war between member states (and nations and regions within member states) to subsidise loss making enterprises. There is however a case for state aid as part of a major business restructuring, to incentivise corporate investments which might otherwise be diverted to other parts of the world and to promote jobs and growth in disadvantaged regions. The state aid rules attempt to make this distinction between 'good' and 'bad' state aid. The UK has been a strong supporter of this regime and had a decent record of abiding by EU rules more rigorously than other member states. It seems implausible that a British government, particularly a Conservative government, (former opposition leader Jeremy Corbyn might well have given a different

answer) would want, in terms of practical policy, to be free to out-compete EU member states in the scale of their subsidies to the private sector.

This is particularly true of the situation emerging from the Covid-19 emergency. Government intervention to support hard hit companies is on the rise across Europe. In the past months, almost half of Commission approved state aid claims have been for German businesses. Some member states fear they lack the fiscal clout of Germany to match its willingness and capacity to bail out firms in trouble. State aid rules offer some protection against the law of the jungle. Would not this be to the advantage of the UK?

The Johnson government of course looks at the state aid question in terms of sovereignty, not its practical effects. But the reality is that Europe is a highly integrated economic area. Most large companies are no longer 'British'. They see themselves as European or global. To take one obvious and very large example, the survival of Airbus manufacturing in the UK is not just a question for the British government. In practice, Britain cannot separate itself from EU debates about state aid. If Britain tries to go its own way, in defiance of a European common position, it will simply expose itself to the risk of unpredictable and disruptive trade sanctions.

Rejecting the principle of a level playing field could have huge implications for jobs and livelihoods. If Britain refuses to make these commitments in a properly enforceable way, British industry could well face the constant threat of trade sanctions from the Commission. Trade defence instruments could legitimately be imposed if the UK seeks to introduce any significant measure of what it regards as unfair competition. This would create a highly unstable business environment for future business investment.

According to recent reports, such as James Forsyth's *Spectator* article on 20 June 2020²², Britain is open to a compromise whereby the UK would avoid making level playing field commitments in an FTA, but accept that if Britain exercised its sovereign right to diverge, and the EU took the view that these moves represented unfair competition, then the FTA would hand the EU the right to impose retaliatory tariffs. This would be a thoroughly bad compromise. For the private sector it would not remove investment uncertainty: the car industry might find itself facing a 10 per cent tariff at short notice.

Even more damaging would be the consequences for the longer term UK-EU relationship. It is unlikely that post Brexit the pressures for regulatory divergence will somehow disappear inside the Conservative party. For some, not to diverge would seem a betrayal of Brexit. The result would be continuing argument and dispute over regulatory and trade issues between Britain and the EU. This would result in a mutual lack of trust that would damage the relationship and limit the potential for wider UK-EU cooperation. Britain's dogmatic insistence on its new sovereign rights post-Brexit could come at a high economic and political price.

22. *Is the Brexit deadlock about to be broken?*, James Forsyth, *Spectator*, 20 June 2020.

The heated debate over level playing field commitments goes to the heart of whether in a UK-EU FTA, tariffs and quotas can be avoided on trade in goods. This would represent the most politically visible achievement of an FTA. It would also make the Northern Ireland protocol much easier to manage, at least until the UK establishes, as the present government fully intends, differential tariffs with other trade partners in future FTAs.

However, the high public profile given to tariff and quota free access for trade in goods downplays the economic importance of market access in services, where tariffs are an irrelevance. From the point of view of the UK national interest, it is arguable that trade in services should be of equal if not higher priority than trade in goods. In goods the UK has a huge deficit with the EU: in services a large and buoyant surplus. Yet without the benefit of the EU single market, UK service providers face significant obstacles to continued ease of market access.

These obstacles are often complex and subtle. Differing national regulatory regimes are still important in some sectors. But the single market, in theory at least, grants providers of services rights of establishment and operation in any member state with legal and enforcement remedies. EU rules provide for mutual recognition of professional qualifications. 'Free movement' presently allows UK citizens to offer their services in any EU member state. No FTA that the EU has ever signed outside the European Economic Area (EEA) offers service industries such advanced freedoms.

What is presently on offer from the EU are equivalence regimes in areas like financial services and digital regulation, where the Commission decides whether a country's rulebook delivers the goals of the EU rule book and if a third country departs from that, it can at the Commission's discretion, lose its equivalence rights. In services the UK is pressing the EU to maintain as far as possible the status quo: it is demanding far more than the EU agreed with Canada in their FTA.

However the British government has done little to justify such liberal treatment. Government proposals on the immigration regime at the end of the transition period offer no special rights to EU citizens: indeed it is the central claim of the home secretary, Priti Patel, that her policies will remove the 'unfairness' of the free movement rights EU citizens currently enjoy. At the same time notions of equivalence are imperilled by the government's insistence that the prosperity of 'Global Britain' depends on its boldness in pursuing a divergent path to the EU. Essentially the UK is asking to 'have its cake and eat it'. The consequence will be reduced market access and long term loss of opportunity for British service industries.

Paradoxically, the City of London (financial services account for about a third of Britain's total UK service trade with the EU) may survive the new regime the

best. Although the European Central Bank may over time insist that certain activities in financial trading are located within the Eurozone, London has huge advantages as a financial centre serving the whole of Europe that no other city can match. These competitive advantages may be eroded but they are unlikely to disappear. The British strengths most under threat are in sectors as diverse as law and management consultancy, aviation, culture and design, architecture, films and broadcasting, and perhaps even sport. The sadness is in the loss of opportunity for some of Britain's brightest and best young people.

The prospect of deadlock on fishing

Fishing remains the other major obstacle to a limited FTA. The EU has taken a political decision to put fishing at the front of the negotiating queue, initially insisting on an agreement by June this year. The protection of EU fishing rights in British waters has effectively become a precondition of reaching a wider FTA. The UK points to the legal reality that post-Brexit, the UK becomes an 'independent coastal state', like Norway and Iceland, outside the jurisdiction of the EU's common fisheries policy (CFP). Britain proposes to allow continental fishers access to UK fishing grounds on a system of quotas, agreed on a year by year basis, in negotiation with the UK as a fully sovereign entity making autonomous decisions outside any form of treaty-based EU jurisdiction.

On both sides of the Channel and North Sea, fishing is an issue of marginal economic significance, but extreme political sensitivity. UK fishing communities have – from the beginning of Britain's EU membership in 1973 – complained of a rotten deal from the EU. The CFP was instituted at the last moment before the UK joined, when Britain had virtually no say in how it would work. British fishermen have some justice on their side. There is politics here too. Scottish Conservatives have used fishing as a weapon against the pro-European SNP. Similarly, in the fishing communities of South West England, Brexit supporting Conservatives have railed against the pro-EU Liberal Democrats.

As Sheila Noakes, one of the most committed Brexiteers in the House of Lords put it, the escape from the CFP is "*symbolic of what it means to be a free nation*". Michael Gove, whose adopted parents were in the Scottish fishing trade, has promised, from his now elevated position in the Cabinet Office supervising the Brexit negotiating strategy, that the demise of the CFP's control of UK fishing, would lead to a renaissance of 'tens of thousands' of new jobs in the sector. Gove also believes as a committed conservationist in strict controls on total catches. The logic of his position is that these new UK jobs would therefore come at the expense of fishing communities in France, Spain and other coastal EU states. This cannot be a happy or acceptable prospect for President Macron, facing a difficult reelection battle in France in April 2022. As so often is the case, the British make the mistake of thinking that their own political problems are unique and exceptional.

The facts of life in fishing limit the scope for simplistic assertions of sovereignty. Half the fish landed in UK ports is not consumed in the UK, most of it exported to the EU, while Britain imports lots of fish landed on the continent. The potential imposition of EU tariffs on UK exports, in the event of a failure to agree an FTA, would gravely disrupt this mutually beneficial trade. The interests of UK fishing communities are also in conflict. In Scotland, for example, the

west coast's salmon, lobster and shellfish exporters take a different view to east coast deep sea fishers.

It currently appears that the EU's rigid position may be softening. On the face of it, the EU is arguing that there should be no change in existing fishing rights as a result of Brexit. Gavin Barwell argued in the Lords debate, that this is "not reasonable". As a general argument, the EU always insisted in talks with his former boss, Theresa May, when she pleaded for as little change in the status quo as possible, that with Brexit it was simply not possible that nothing would change. On fishing the EU has now to accept that reality itself.

Politics, however, demands that any change in the status quo should be cautiously phased and measured. A compromise would be to guarantee continental fishers the certainty of a high but gradually declining proportion of their existing catch as time unfolds. Whether Michael Gove is in the mood for such flexibility must be open to doubt. Any deal will be a hard sell in fishing communities after the extravagant promises that are still being made. As David Hannay put it in the Lords debate, it is nonetheless:

"Not too late to achieve mutually beneficial arrangements on fisheries which give our fishers a better deal than they had in the past, so long as we do not take an all or nothing approach".

The government's narrowing vision for Britain's future relationship with the EU

Aside from these fierce disputes over level playing field commitments and fisheries, it is the UK government's narrowing vision for the future EU relationship which is the most alarming aspect of the shifts in UK government policy since the general election. But it has so far received the least attention, because of the typical British preoccupation with trade that underplays the wider political role of the EU. The EU relationship is not just economic. EU cooperation now plays a vital role in national security.

For example, British participation in the European arrest warrant (EAW) has simply been abandoned, tossed outside without a Home Office ministerial statement of explanation and without any debate or vote in parliament. As recently as 2014, Theresa May as the then home secretary undertook a painstaking review of all the different justice and home affairs measures which Britain had signed up for in the Lisbon Treaty in 2009, but had been given the opportunity to opt out of after five years. After much anguished deliberation, and on the unequivocal advice of the nation's leading security and police experts, she came to the view that participation in the EAW was far too valuable to lose. Brexit does not prevent our continued participation in the EAW. The government has unilaterally decided that because such sensitive mutual cooperation can only take place under the rule of law, Britain cannot be part of it, because we would have to remain under a regime of law in the final analysis interpreted by the ECJ.

On the rest of the security agenda, the government insists on its support for pragmatic cooperation between national authorities. However, any agreement cannot "*constrain the autonomy of the UK's legal system in any way*".

John Kerr in the Lords pointed to the fact that because the British government "*robustly rejects the idea of any role for the court of justice*", this will have wide-ranging consequences. Police and security forces cannot exchange data which is vital in the fight against terrorism without there being commonly accepted rules for how and in what circumstances this can be done.

Countries that have lived under fascism and communism within living memory will never accept anything otherwise. Yet, the government has now decided that it cannot accept that the rulings of British courts on these questions should be subject in the last analysis to the oversight of the ECJ. Rejection of any role for the ECJ is not required of Brexit per se, only of a highly purist and sovereigntist definition of Brexit. This position of course has long been an

article of faith among ideological Brexiteers. It has not however, until the last few months, been explicit government policy.

The Northern Ireland protocol that Boris Johnson agreed as part of his withdrawal agreement is crystal clear that in any dispute about its interpretation, the ECJ remains the final arbiter on any point of Union law. In the Lords debate, Gavin Barwell pointedly read out a passage of the political declaration which Boris Johnson signed, stating that:

"Should a dispute raise a question of the interpretation of provisions or concepts of Union law, the arbitration panel should refer the question to the ECJ as the sole arbiter of Union law for a binding ruling."

What the British government signed up for in October, it casually overturned the following February, without any willingness on its part to subject such a crucial change of policy to parliamentary scrutiny!

In prime minister's questions on 10 June 2020, Boris Johnson's predecessor, Theresa May, asked for reassurance that:

"As from January 2021, the UK will have access to the quality and quantity of data that it currently has through Prüm, passenger name records, the European Criminal Records Information System and SIS-Schengen Information System-II".

The prime minister was not able to offer that reassurance. In truth, the negotiations on these vital security questions are bogged down in arguments about the need for judicial supervision of executive agency cooperation in conformity with European standards of human rights.

The EU is trying its best to be accommodative of the British position. Given the government's new red line ruling out any intrusion of the ECJ on British sovereignty, it has sought to underline the importance of Britain's acceptance of the European Human Rights Convention. As the rulings of the Strasbourg court are legally quite separate from the ECJ, one might have assumed that this was a reasonable ask of the British government.

However, as Gavin Barwell emphasised in the Lords debate, while the political declaration stated that:

"The future relationship should incorporate the government's continued commitment to respect the framework of the ECHR."

the British government is now insisting that:

"The agreement should not specify how the UK or EU member states should protect and enforce human rights."

The Johnson government still claims its policy is to accept the ECHR, but it will not affirm that position in an international treaty with the EU. The government appears to believe that a system of executive cooperation between police and intelligence agencies can be made to work without any binding framework of legal oversight. It seems their objection is nothing to do with the EU per se, but to the notion that the courts should exercise such oversight. This appears to be in keeping with their wider preference for strengthening the executive at the expense of the judiciary and their scepticism about judicial activism in the field of human rights. The government is now replaying at European level unresolved arguments within the Conservative party about the status of human rights protections.

As a consequence, the EU has toughened its own stance to clarify that any UK departure from the ECHR status quo will lead to the automatic suspension of the provisions of the UK-EU agreement that depend on them. As Gavin Barwell put in the Lords:

"If we could resolve the issue of the ECHR [on security issues] the two parties are not that far apart."

We shall soon see if that tone of qualified optimism is justified. As for cooperation with the EU on foreign policy questions, the government's new policy now dismisses the prospect of a 'joint institutional framework'. All it wants is 'friendly dialogue and cooperation'. To this end, John Kerr recounted in the Lords debate how the British government had specifically *"rejected the idea that one of the negotiating groups should cover external relations topics"*. This ignores the view of most international relations experts that institutions matter to outcomes. They create a framework of regular meetings at ministerial or senior diplomatic level. They bring officials together in way the develops close ties with their opposite numbers in other countries. They facilitate an instinctive mutual understanding of what underlies each government's approach. They make common positions easier to forge and reforge as week by week, as situations develop and change. As David Hannay put it in the Lords, the government should ask themselves a simple question:

"Will we have more or less influence on the formulation of EU policies if we refuse systematic cooperation?"

Instead of opening the door to continued close European cooperation, the government want to limit contacts to ad hoc exchanges.

Where is the government's ambition for building up the equivalent of the Five Eyes intelligence partnership among our European friends, for strengthening European cooperation within NATO, and for establishing common European positions in vital international organisations such as the WHO and other UN bodies? Their attitude does not measure up to the need for ever closer

cooperation with our neighbours who most closely share our values and interests.

Most significantly of all, the government now rejects the notion of an overarching institutional framework for the UK-EU relationship. The possibility of a UK-EU association agreement was included in the political declaration but has now been ditched by the UK. The government seems to prefer a suite of agreements to a single association agreement, repeating what John Kerr described it as:

"The EU's unhappy experience with Switzerland. We were one of the many member states to agree that the Swiss experiment should never be repeated. I expect the others still feel the same."

Cynics may question the value of such formal structures as typical of the institution building that the EU so loves. Yet without a clear partnership framework, the UK-EU relationship runs the risk of being characterised by, and always at risk of being poisoned by, interminable trade disputes. There has to be something in place that keeps everyone's eyes on the big picture: our common defence of the values of democracy, human rights and the rule of law. As Gavin Barwell put it in the Lords in an appeal to his fellow Conservatives:

"Let us not mislead ourselves that an association agreement [with the EU] is somehow inconsistent with the [Brexit] decision of the British people."

Conclusion

Politics and events have both intervened to ensure that what emerges from the current UK-EU negotiations will match none of the adjectives which successive British prime ministers once signed up to achieve. There will be nothing 'deep and special' about the future UK-EU relationship, and little that is 'ambitious' and 'wide-ranging'.

As the German chancellor Angela Merkel put it in a Guardian interview published on 27 June 2020:

"It would of course be in Britain's and all EU member states' interests to achieve an orderly departure. But that can only happen if it is what both sides want. What matters is not our wishes but only the reality before us, in other words, first of all what Britain wants. With prime minister Boris Johnson, the British government wants to define for itself what relationship it will have with us after the country leaves. It will then have to live with the consequences, of course, that is to say with a less closely interconnected economy. If Britain does not want to have rules on the environment and the labour market or social standards that compare with those of the EU, our relations will be less close. That will mean it does not want standards developing on parallel lines. We need to let go of the idea that it is for us to define what Britain should want. That is for Britain to define – and we the EU 27 will respond appropriately."

There is still a reasonable doubt as to whether there will be any FTA at all. If there is an agreement (as I judge most likely) it will at best be, in the jargon a 'barebones' trade deal, sufficient perhaps to prevent immediate disruption to trade, maybe with some provisional arrangements on security added on, but not much more. In consequence, the economic ties that over 47 years of EU membership have bound Britain ever closer to its principal markets on the continent, will have been significantly weakened and will weaken further as businesses make their own dispositions in the light of new marketplace and regulatory realities. No one can forecast precisely what this will mean for the British economy a decade or so hence. Brexit-supporting cynics think that any adverse consequences will be lost in the unprecedented recession most economists believe will follow in the wake of the Covid-19 emergency. Brexit believers put their faith in the shock that the economy is currently going through and the hope that a new more successful and dynamic economic model will emerge from all the temporary chaos and grief to carry Brexit Britain forward with new momentum.

They may of course be proved right. But it is not a 'remoaner' refusal to accept the reality of Brexit that makes one more than a little sceptical. In my view, the 'barebones' FTA that may emerge this autumn will not offer a settled basis

for future economic and political cooperation between Brexit Britain and the European Union. Instead the prospect is for continuing mini trade wars over such issues as fishing quotas and level playing field disputes, magnified by Brexiteer assertions of sovereignty and divergence from EU law and practice as the symbol of it.

Whether future political leaders on both sides of the Channel can rise above this continuing cacophony of noisy argument and petty dispute – to cooperate closely on the big common challenges our nations face such as Covid, terrorism, migration, the climate emergency, and relations with China and Russia – must remain an open question.

Fundamentally, what will have driven this outcome is the Johnson government's determination to 'get Brexit done'. This is the campaign slogan that won Johnson last December's general election. It is also the binding theme that unites the present day Conservative party, much as it remains divided by different visions of Brexit. On the one hand there are the hyper-globalisers keen to see Brexit – again in Nigel Lawson's words to "*complete the Thatcher revolution*" – liberate Britain from the incubus of EU regulation and chart a new course as a buccaneering, free-trading global nation. On the other hand, there are the newly-victorious Conservative representatives of the 'left behind' towns and old mining districts whose voters somehow imagined that 'Europe' or 'Brussels' was an alien threat to their traditional way of life, voted leave as a cry of protest, and were outraged by the perception that the Westminster elite had for more than three years been conspiring to ignore the decision of the people in the 2016 referendum.

'Get Brexit done' drove the Johnson government to set aside any question of an extension to the December 2020 deadline for completion of the future relationship talks, even though article 132 of the withdrawal treaty (that Boris Johnson signed only last October) explicitly allowed for such an extension of up to two years. A pledge was made early in the general election campaign that there would be no Brexit extension beyond the end of this year. That pledge was carried into UK law in the January 2020 withdrawal act.

The Covid-19 emergency presented the British government with a perfectly legitimate excuse for backtracking on this commitment (which in legislative terms could easily have been done by statutory instrument provided for in the withdrawal act). The government could have made a powerful case to parliament for such a decision based on: the disruption caused to the negotiating timetable by having to conduct meetings on line; the necessary diversion of civil service resources from the negotiations to tackling the Covid-19 crisis; the lack of political time and space for ministers and heads of government to resolve outstanding clashes of position; and the practical difficulties of putting new border arrangements in place by January 2021 given the pressures on both the civil service administration and more especially, business, given the disruption Covid-19 caused.

In the face of these facts, one might imagine that any rational government would have abandoned what was already an exceedingly ambitious timetable. However, for the Johnson government, 'getting Brexit done' trumped all these arguments. The opportunity provided in the treaty for an extension passed at the end of June. The negotiations are now on a course of either agreement by September, or bust. The final three months of the year will be needed to polish the legal text and then secure ratification. This self-imposed timetable inevitably limits the scope of what can be agreed.

The reality of Brexit does not however alter two simple facts of life.

Firstly, Britain's geographical proximity to the rest of the European continent is god-given. No attempt to ringfence the British Isles from the affairs of its continental neighbours has lasted for any sustained length of time since the Middle Ages.

Secondly, the EU is a powerful entity that Brexit Britain will have to live with. Brexit has not destroyed the EU, as some of its most enthusiastic devotees once hoped. If anything, opinion polls suggest it has strengthened popular commitment to the EU in many member states. The EU is not a perfect entity: as a highly complex hybrid of supranationalism and intergovernmentalism, it is in a constant state of evolution. With the exigencies of politics it goes through many ups and downs, evolving from one crisis to the next. But the will to make it work remains a powerful force in the vast majority of member states, in face of all the populist pressures on it. The EU had a bad start to the Covid-19 crisis, but it now looks as though it may emerge stronger and more integrated from it, if the essence of the Merkel-Macron plan becomes a reality.

The EU accounts for 40 per cent of UK trade. It is a massive regulatory presence on the global stage. Security cooperation with the EU is vital to safety on our streets and most of its members are our NATO allies. It may not punch its weight politically as much as it could, but in international relations, it can and does make a difference. For all these reasons, Brexit Britain cannot avoid seeking a strong and cooperative relationship with the EU.

The likely outcome of this year's 'future relationship' negotiations suggest that on this crucial test, this rushed effort will have been a failure. Much will be left to the future and there is legitimate room for doubt as to whether the present British government is equal to the task.

We need to talk about Brexit again. The negotiations on Britain's future relationship with the EU are on a collision course for failure. To avoid this will require mutual give and take. Principally, the British government needs to climb down from its self-imagined pedestal of Brexit triumph. In this new and urgent analysis for Policy Network, Labour peer Roger Liddle argues that the UK faces huge economic risks in piling on top of the grave Covid-19 emergency with the negative impacts of 'no deal', or a very 'barebones' trade deal, which is probably where we are heading. Equally, the success is imperilled of Britain's future relationship with our European friends and allies beyond Brexit. As former European adviser to the then British prime minister Tony Blair, and later advisor to the president of the European commission José Manuel Barroso, Liddle's vast expertise alerts to the desperate need for a dramatic rethink. It has to start in London, in the office of Boris Johnson, the prime minister, now.

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