

The EU's potential lifeline for Mrs May's Brexit

The European Union (EU's) Brexit negotiators from Mr Barnier (chief negotiator) downwards must have long since realised that Mrs May, Mr Davis and the Department for (not) Exiting the European Union are incapable of serious negotiations. Meaningful progress towards leaving the EU in an orderly way including suitable agreements, arrangements and infrastructure is practically non-existent; there is a mountain of detail yet to climb. What, then, can the EU do to rescue the process and Mrs May, since Mr Barnier has previously stated on more than one occasion that he can't negotiate with himself?

The view from Brussels must be of a weak prime minister leading a fractious, divided party and government, who has a poor grasp of detail and instead relies on spin, wishful thinking and dithering. Even the output from the Department for (not) Exiting the European Union is poor and vague to the extent of being practically useless. Their website, where comprehensive information and practical guidance on Brexit, and hyperlinks to further sources of information should be available, is more of a case study in superficiality, grandstanding and self-aggrandisement. There is not even a link to the European Commission's website on Brexit preparedness. So whose job is it to help prepare the UK for Mrs May's decision to leave the Single Market and – by extension – the European Economic Area, EEA?

By contrast, the output from the European Commission, setting out its increasingly uncompromising position, is clear, focused and comprehensive. Right from the beginning, the EU has been making the running. Its dedicated website illustrates the impressive (or terrifying) detail of their 'public' vision of where Mrs May and Mr Davis's Brexit is heading and the implications, which appear to look like

'falling off a cliff edge' to many UK businesses. Its advice to stakeholders (available [here](#)) repeatedly spell out, in as much detail as possible, what will undoubtedly happen across a wide range of activities and policy areas when the UK becomes a 'third' country after leaving the EU (on 29th March 2019) and the EEA. It is quite likely EU officials often frustratingly ponder the question, "Do our British counterparts and their political leaders understand any of this, and do they actually care what it all means?" The problem for our team of negotiators is that they do not seem to know and understand EU laws and regulations, their rationale and implementation. This is essential if they are to develop appropriate strategies, negotiating positions and challenges to the EU's tough, logical and systematic stance.

From the EU's perspective they have helpfully agreed to a transition period limited to 21 months which is necessary to give Mrs May time to negotiate a free trade agreement. In reality, much longer is probably needed. However, the EU's terms for this transition period – which have still not been agreed – would be very unpopular in the UK and thus may never be accepted given Mrs May's weak position in Parliament. The EU's terms would make the UK into a temporary or maybe even permanent EU Vassal State where Brexit means Brexit in name only. Crashing out of the EU without transition arrangements and not having any form of mitigation of the consequences of 'third' country status (the "cliff edge", in other words) is becoming increasingly likely.

The European Commission is well aware of political developments in the UK and of the consequences of no deal scenarios (given the detail on their website). Its negotiators also have to confront the contradictions in Mrs May's position. Frictionless trade (as required by Mrs May and Mr Davis) is not possible as a 'third' country outside the Single Market (and the EEA). Time is running out for businesses both here and in the remaining 27 Member States of the EU to

adjust. Time is also impractically short to put in place new facilities and legislative frameworks needed by a 'third' country such as border inspection points, designated entry points and the recruitment and training of staff. What can the EU do, if it is so disposed or there is some behind-the-scenes collusion going on, to extend Mrs May a lifeline and avoid the 'cliff edge'?

Any EU-sponsored lifeline needs to protect their interests. It has to operate within the EU's objectives, legal framework, and established practices. It mustn't 'rock their boat' or set any potentially disadvantageous precedent. It also needs to be sellable across a wide range of opinion in the UK, addressing as far as possible rational fears and aspirations.

The only viable option for an EU-sponsored lifeline is to facilitate the UK re-joining the European Free Trade Association (EFTA) and use this as a basis for retaining membership of the EEA for at least the transition period. It appears that the European Commission may be seriously evaluating the EFTA/EEA route for transitional arrangements for the UK, as noted by an EFTA Court judge (Mr Carl Baudenbacher) giving evidence to the Commons Committee for Exiting the EU on 7th February 2018 and reported in the Telegraph on-line.

The EFTA/EEA option is not perfect, but as a holding position while something better is negotiated, it is much better than the transitional deal currently on offer. Hard Brexiteers could be won over by the facility to control immigration through unilaterally invoking Article 112 (the Safeguard Measures) of the EEA Agreement. Further, the EFTA route to EEA membership gives members outside the EU a say in EU legislation affecting the EEA, is largely free (although 'voluntarily' Norway does contribute to regional development funds) and is outside the jurisdiction of the European Court of Justice (ECJ). The EEA *Acquis* or body of law is about a

quarter of the total EU *Acquis* since it only relates to successful functioning of the EEA in other words, issues relating to trade. And EFTA members can make their own trade agreements with other countries. Membership of the EEA solves the problem of maintaining a soft border in Ireland between the Irish Republic and Northern Ireland. It also gives us full control of fishing in our Exclusive Economic Zone. Those worried about the economic effects of the 'cliff edge' could be won over because the EFTA/EEA option prevents this allowing practically frictionless trade to continue. The EEA agreement (for EFTA members) can be adapted to suit their interests. Thus the UK (within EFTA) could get a customised version.

We cannot know what the European Commission is covertly doing and how far its efforts, if any, have progressed to save Mrs May, the UK and the EU from her folly. However, given the efforts it has visibly extended to help enterprises both here and in the 27 remaining Member States to understand and adapt to the implications if Mrs May does not change her decision to leave the Single Market, nobody knows better the potential disaster she is determined to inflict and how it can be avoided.

Photo by thaddselden

