

The older Milipede – partly right but partly very wrong indeed

Before the referendum, at least one well-known pro-remain politician talked of leaving the country if we voted to leave. Unfortunately, not only has there been no indication that Red Ken has kept to his word and cleared off to somewhere like North Korea, where he would probably feel far more at home, but also some equally odious politicians whom we thought we had already got rid of have re-emerged from obscurity to give us their pennyworth on the subject of our future relationship with the EU.

David Miliband (remember him?) has recently chipped in to the Brexit debate, saying that we should have a second referendum which would include the option of staying in the EU. He was critical of Theresa May for her decision to start the two-year countdown to Brexit by triggering Article 50 without knowing the outcome.

Irksome as it is to find oneself in agreement with this arch-Blairite and remoaner, unfortunately, he is correct – at least on this point. The government does not seem to know what it wants. Yes, in the long term, it wants a deal with the EU which will give us considerable access to the single market without being subject to the “four freedoms” – in other words, a bespoke trade deal like CETA. But utterances from HM Government have been very heavy on the “deep and special” relationship but very light on detail. Furthermore, how are we to get there? We are hearing talk of a transitional deal or “deferred withdrawal”, as David Davis calls it, but while it is no pleasure either to be agreeing with someone like the former Chancellor Alastair Darling, he is right in saying, “you can only transition to a destination.”

Such outlines as have been released about the proposed transitional deal are distinctly unsatisfactory. The “deferred withdrawal” would see the UK spending a further two years after March 2019 as an honorary member of the EU with no voting powers. We would continue to apply all the EU *acquis* and to pay into the EU budget, but would be totally passive, with no input into the EU’s processes. This would be not only a betrayal of Brexit but “a legal minefield” according to Chris Bryant, an EU expert at lawyers Brewin Leighton Paisner. Even this arrangement simply cannot be agreed, signed and ratified in time for Brexit Day.

Mr Bryant then went on to say that the government doesn’t seem to have got to grips with the need to pin down even a transitional deal legally. “Vague talk is not going to cut the mustard.” This is the problem. The government is convinced that the EU will agree to some sort of transitional deal, but when David Davis was asked about what legal authority the EU had for this, he was very evasive – and with good reason.

This exchange with the SNP MP Joanna Cherry in the Select Committee on Exiting the European Union on 25th October is particularly enlightening:-

Q67 ***Joanna Cherry:** Can I go back to the transitional period or the implementation period? What is your understanding of the legal basis for a transitional deal or an implementation period?*

***Mr Davis:** The presumption we have been working on is that it comes under the Article 50 proposal. It was raised with us by the Commission. The European Parliament sees it in those terms. I am assuming the Commission legal service does. But in many ways it is a question almost for the Commission rather than me.*

Q68 ***Joanna Cherry:** Do you have any legal advice of your own as to the basis of a transitional deal or*

implementation period?

Mr Davis: I am not going to share the legal advice for the reason I gave earlier: that is the convention. But our belief is that it fits under Article 50.

Q69 **Joanna Cherry:** Legal advice exists, and it is your belief that it is under Article 50.

Mr Davis: I am not going to be drawn any further on that. I said I believe it is going to be under Article 50.

Q70 **Joanna Cherry:** Article 50 does not actually say anything about transitional deals or implementation periods.

Mr Davis: Article 50 does not say very much about anything, if you read it. It is the blandest and unhelpful phrase you are ever likely to come across, but there we are: that is that.

Q71 **Joanna Cherry:** What it does make clear is that, during any period of deferred withdrawal, the treaties would continue to apply, so if we went into a period of deferred withdrawal under Article 50 we would still be in the single market; we would still be in the customs union; and we would still be under the jurisdiction of the European Court of Justice. That is correct, isn't it?

Mr Davis: My response to that is the same as my response to Mr Bone: we are not looking for deferred withdrawal; we are looking for an implementation period.

Q72 **Joanna Cherry:** But if it is the case that, as a matter of law, all you could have under Article 50 was a deferred withdrawal, we would not be leaving on 29 March 2019, would we?

Mr Davis: That is not what we have been negotiating for. The phrase "deferred withdrawal" has never been used to me by the Commission. The phrase they use is "transition period". Our term of art is "implementation period".

Even the most unsatisfactory idea of being a passive honorary EU member requires the EU to agree and such an agreement would require it to go through almost as complex a legal process as a long-term deal. There is no indication that Mr Davis has appreciated this important point. His answers suggest that he cannot explain the legal basis under which the “transitional deal”, “implementation period”, call it what you will, can be agreed. Once we leave the EU on 29th March 2019, the treaties no longer apply to the UK, including the Lisbon Treaty, with its Article 50, so it will have to be something else. But what?

Furthermore, what guarantee is being offered that the transitional arrangement, if agreed, really will only last for two years? David Davis was not convincing in his reply here too when questioned by Sammy Wilson MP over this. Ironically, he then went on to say that “no deal” still remains an option.

But is it really? The “no deal” option assumes that “with one bound, we will be free.” In other words, there may be a few little glitches but we would still survive – and indeed prosper – if we cut our ties at a stroke in the event of the talks getting bogged down. There are many reasons to be highly sceptical that things will run anything like so smoothly.

In summary, the government seems to believe there are only two positions in which the UK could find itself in March 2019 and both would be disastrous. The first would see us essentially still in the EU in all but name, the second is cloud cuckoo land. – or rather, a massive headache for many businesses which could well lead to a very severe recession.

Where the Government is going wrong in its thinking on both the proposed long and short term relationships with the EU is its assumption that if any nation has aligned its own regulation with that of the EU, the EU will happily treat it as an honorary member of the club. This is to miss the whole point of the EU project – it is not a trading bloc but a

political construct. The sheer complexity of Brexit has already shown to us just how much independence we have already surrendered thanks to Edward Heath's manic determination to shackle us to this construct.

So Miliband is right in saying that the government should have worked out its exit strategy before triggering Article 50. Even all this time later, less than a week before the mid-point between last year's referendum and Brexit day, the government still seems caught between a rock and a hard place when it comes to devising a strategy which would enable us to leave the EU satisfactorily.

His other comments, however, are totally and completely wrong. "Those of us who are outside the country take absolutely no pleasure in the low ebb to which Britain has sunk. Brits abroad look at the fact other countries see us in retreat, having lost our way" he said. For all the muddle of the negotiations at the moment, this is not a country in retreat nor one which has lost its way. Rather, we are groping our way slowly and indeed very awkwardly towards something better. It may be a long tunnel, but one day, there will be some light at the end. To reiterate a point made above – and indeed, on many other occasions on this website – the Brexit negotiations have laid bare just how many areas of public policy have been surrendered by our government as a result of 43 years' membership of the EU. It has been like an octopus, wrapping its tentacles around our political institutions and slowly squeezing the life out of them. We want to escape before it finally throttles us. If we have sunk to a low ebb, it's because of our membership of the EU, not because we voted to leave.

The Brexit vote was a vote to re-join normality – a reflection of our desire to be a successful nation state once again and a vote of confidence in ourselves that we can do it. I doubt if any of us involved in the campaign to free the UK from the EU have had the slightest doubt that it was the right thing to

do. Successful nation states are flourishing in Asia, North and South America and Australasia. Nearer to home, Norway, Iceland and Switzerland are happy outside the EU. Indeed, in Switzerland, one minister recently said that in his country only “a few lunatics” want to join the EU. It will take some time to readjust and there is no denying that the government is in a mess over its Brexit strategy at the moment, but even if Miliband and his like cannot hide their contempt for the UK electorate’s decision to regain its freedom, we did the right thing and we will be vindicated – eventually.

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