

A transition will void all international agreements

Press Release from Fishing for Leave, 20th February 2018

The implications of the transition should be of grave concern. What is proposed is not only an existential threat that could see our fishing industry culled, but a diplomatic and constitutional suicide pill the result of which would be an anathema not only to “taking back control” but to the point of a transition itself.

A transition is not part of leaving the EU under Article 50 – it is part of a new ‘transition’ treaty as both David Davis and Steve Baker have candidly admitted. This is significant as it means we will not be party to current agreements, but the transition is a new treaty that stands alone.

The EU terms are the UK must adhere to all EU law but as we will no longer be an EU member should have no say. This is the EU sensibly safeguarding its interests – our government is doing the opposite.

The implications of Clause 14 and 15 of the transition terms have a severe impact on all international agreements the UK is party to through the EU.

They defeat the whole *raison-d’etre* of HM Governments for a transition – trade. For the fishing industry it means the “transition” could void UK participation in all international fisheries agreements that we were party to as a member of the EU.

TRADE

Clause 14. During the transition period the United Kingdom will remain bound by the obligations stemming from the agreements concluded by the Union...while the United Kingdom should however no longer participate in any bodies set up by those agreements.

The intention is that the UK will still have obligations to the EU to adhere to the consequences of agreements concluded with non-EU countries in respect of the EU vs UK transitional relationship. In doing so this maintains the integrity of the EU's dominions and also appears to placate the UK position of everything continuing as is.

However, since the withdrawal agreement cannot bind non-EU countries, they will no longer have obligations to the UK as we will no longer be an official member of the EU but merely maintaining regulatory alignment in an EU vs UK deal.

The UK would only be able to be recognised within such agreements if other non-EU countries agree to continuing existing obligations in force through another agreement with the UK.

The negotiation of such an agreement between the UK and non-EU 'third countries' is the subject of the next transition Clause 15 which seemingly makes that an impossible contradiction.

Clause 15. Any transitional arrangements require the United Kingdom's continued participation in the Customs Union and the Single Market (with all four freedoms) during the transition. During the transition period, the United Kingdom may not become bound by international agreements entered into in its own capacity in the fields of competence of Union law, unless authorised to do so by the Union.

The UK will be unable to negotiate and sign treaties within the transitional period, even if those treaties only come into force afterward – we will only be able to begin to negotiate treaties AFTER the transition period.

This means that other non-EU nations will have no obligations to recognise the UK being party to agreements signed by the EU as the UK will no longer be an official member but also a 'third country' when the 'treaties shall cease to apply' under Article 50 and our membership terminates on the 29th March 2019.

However, the catch 22 paradox is that to obey the transition the UK will not be able to enter into any agreements with other non-EU countries to seek recognition that the UK is party to EU arrangements with those countries even if they wanted to.

THIS MEANS WE WILL BE ON WTO TERMS FOR 65% OF OUR TRADE AND UNABLE TO SIGN NEW DEALS.....WHICH IS THE WHOLE REASON LOCKING OURSELVES INTO THE EU WAS MEANT TO AVOID!

In respect of fisheries this could mean any agreements the EU has signed with other coastal states would no longer be binding for the UK as we wouldn't be officially a member only a vassal state which has agreed to maintain regulatory alignment with the CFP.

This catch 22 between Clause 14 and 15 means the UK could lose agreements on access to Norwegian and Faroese waters for our pelagic and largest whitefish vessels.

The EU can't be any clearer that this is the case;

As part of the EU Commission document 'Internal EU27 preparatory discussions on the framework for the future relationship: "International Agreements" 6th February 2018' the EU makes explicit the consequences regarding international agreements concluded by the EU:

Point 13: "Following the withdrawal, the United Kingdom will no longer be covered by agreements concluded by the Union or by Member States acting on its behalf or by the Union and its Member States acting jointly".

The EU then continues;

In principle, as a non-Member State, the UK would be able to negotiate international agreements But

1. the *bona fide* application of the Withdrawal Agreement prohibits conflicting obligations
2. duty of sincere cooperation

iii. explicit provisions in the Withdrawal Agreement: “During the transition period, the UK may not become bound by international agreements entered into in its own capacity in the fields of competence of Union law, unless authorised to do so by the Union.”

The Withdrawal Agreement can oblige the UK to respect “the obligations stemming from the agreements” However, the Withdrawal Agreement cannot guarantee the extension of the benefits from those international agreements to the UK!

IT CANNOT BE ANY CLEARER! How will the UK be party to continuing EU deals?

How will the UK be able to seek and agree recognition with other non-EU third countries?

It would be interesting to hear a proper government and DexEU response to how the UK can conclude a future “deep and special” trade deal with the EU under the transition as David Davis professes is required if Clause 15 bars us from concluding agreements... the Government tried (and miserably failed) to do so in;

HM GOVERNMENT – TECHNICAL NOTE: INTERNATIONAL AGREEMENTS DURING THE IMPLEMENTATION PERIOD – 8th February

In this document the Government asserts that

4. ...the implementation (transition) period would be based on the existing structure of EU rules and regulations.

In its negotiating directives, the EU has adopted the same position. It has stated that “the Union acquis should apply to and in the United Kingdom [during the implementation period] as if it were a Member State”. This is echoed in the Commission’s paper on Transitional Arrangements in the Withdrawal Agreement, which states that EU law “shall be binding upon and applicable in the United Kingdom” during the implementation period.

EU law and agreements are binding on the UK as agreed in a transition treaty between the UK and EU. Such a treaty cannot bind the other non-EU ‘third country’ nations who the EU has an agreement with.

6. This would be achieved by agreement of the parties to interpret relevant terms in these international agreements, such as “European Union” or “EU Member State”, to include the UK.
7. Such an approach could be used both to ensure the UK’s continued participation in mixed EU third country agreements... At present the UK as an EU Member State is bound by obligations, and benefits from the rights... It is proposed, with the agreement of relevant third countries, that those rights and obligations continue to apply to the UK on the EU side of the agreements for the duration of the implementation period.

The UK can’t sign agreements with other parties as Clause 15 of the Transition terms forbid the UK from entering any agreements, deals or treaties with other non-EU ‘third countries’. In addition to this the words ‘proposed’, ‘could’..... would... should.... mean that the position the government is digging itself into relies on the EU and other countries benevolently recognising the UK to be party to EU agreements.

Rather than leaving cleanly and being free to operate as an independent sovereign nation the transition (by the

governments own admission) digs this country into a subservient position with no guarantee of being party to any international agreements through the EU.

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WHAT THIS MEANS FOR THE FISHING INDUSTRY

In respect of fisheries all the Clauses above means that although the UK will follow the CFP as a vassal state (through the terms of a transition treaty between the EU and UK) countries such as Norway, Faroe and Iceland have no obligation to recognise the UK being party to EU arrangements and even if they wanted to Clause 15 means the UK can't sign any deal as an EU satellite.

Yet because the UK will have submitted to an EU vs UK "transition" agreement we will have agreed to re-obey the CFP where we re-agree to give the EU our fishing waters and resources to divide out as the EU see's fit through relative stability and agreements it reaches internationally.

This would mean the UK would still have the EU catching 60% of the resources from our waters and the EU would be able to use UK whitefish and pelagic quota as negotiating capital but we would be unable to take back control and then use our position of strength as a new independent coastal state to make our own mutually beneficial agreements with our Nordic neighbours.

The UK would continue to lose out in the CFP but also lose access to Norwegian and Faroese waters for the most powerful

catchers in the UK fleet. We would lose twice rather than gain twice by walking away. We would be hit 4 times over in a transition where we lose international agreements but are still in the CFP;

We would see some of the most powerful catchers in the UK Whitefish fleet displaced from Faroese and Norwegian sector waters.

These vessels would be back into an already stretched UK sector with the EU still pocketing half of our whitefish resources.

It would see our pelagic fleet lose access to Norwegian waters for mackerel and atlanto-scandiv herring

The EU can further exploit UK quota (especially pelagic) to make deals to benefit the EU27 fleet due to our compliance with the CFP.

To stick the final nail in the coffin a continuation of the quota system where fishermen have to discard in order to find the species their quota allows them to keep conjoined with a fully enforced discard ban can be used by the EU to finish the UK fleet.

Under the discard ban rather than address the cause of the discard problem, that a quota system does not work in mixed fisheries, the symptom of discards is banned. Under the discard ban a vessel must stop fishing when it exhausts its smallest quota allocation – these “choke species” will bankrupt 60% of the UK fleet as detailed by the governments own figures through Seafish.

This would destroy our catching capacity and allowing the EU to claim the “surplus” of our resources we would no longer be able to catch under terms of UNCLOS Article 62.2 due to such a culling of our fleet.

Signing up to a transition on will see the ruination of what is left of the UK fishing industry when Brexit should be its salvation. Another 2 years of the CFP and a continuation of the quota system will see our fishing industry become yet another British industry consigned to museum and memory.

CONCLUSION

Under the auspices of this proposed transition “deal” (more an edict to obey) the UK will be on WTO with the rest of the world, unable to conclude deals with the rest of the world until after the transition and will be locked into maintaining regulatory alignment whilst obeying the entire Acquis (with continued freedom of movement).

The UK will be trapped in the CFP where our fishing industry will be culled to make way for the EU fleet whilst also losing any access to Faroe and Norway which will diminish fishing opportunities further.

It is nearly unbelievable that the political establishment could contemplate locking the 5th most powerful nation in the world into such a subservient position especially against the expressed wish of the British people to leave the EU in its entirety as voted for in the biggest vote in British history.

A TRANSITION MEANS BRITISH FISHERMEN ARE STARING DOWN THE BARREL OF A GUN!