



# The EU's problem with May's plan for Brexit

by Charles Grant

Theresa May's scheme for the future UK-EU relationship has been attacked by both pro- and anti-EU Conservatives, which makes its passage through Parliament problematic. Yet the prime minister has proved resilient over the past two years and if any plan for Brexit can scrape through Parliament, it is likely to look something like hers. Whatever the views of British MPs, the scheme cannot work without the support of EU leaders. And their initial reaction, though polite, is negative.

May's white paper on Brexit would keep the UK de facto in the single market for goods and agricultural, as a rule-taker, and in something with the characteristics of a customs union. This would remove the need for border controls post-Brexit, thus protecting manufacturing supply chains and resolving the issue of the intra-Irish border. Service companies would have to cope with poorer access to EU markets, but May thinks the UK financial services industry is too big and important to be a rule-taker. May is probably right that her plan is the least-bad model for the UK economy that might work politically.

But the EU dislikes the idea of the British being in the single market for goods alone. It believes the four freedoms are indivisible: the UK cannot be in the market for goods without accepting free movement of people (as well as services and capital). It frets that if the bloc makes an exception for the UK, others – inside or outside the EU – will ask for special treatment, thereby undermining the institutional strength of the Union.

The European Commission emphasises that these days it is hard to disentangle goods and services, given that the latter contribute so much to the value of the former (consider the design, financing, marketing and servicing of a jet engine). And if the UK were free to undercut EU standards on services (say by regulating in such a way that business received cheaper credit) it could distort the level playing field for goods. This is not the strongest of arguments, given that the EU does not regulate many of the services involved in making goods. But it reflects the EU's great fear that the UK may undermine the level playing field by lowering standards on social, environmental, consumer and competition policies. The UK has promised not to do so but that is not good enough for the EU, which notes that the UK has not pledged to adopt any new standards that may emerge in these areas.

The EU worries that the UK is asking for something close to the Swiss model: Switzerland

is in the single market for goods but not services. The EU dislikes that model since the European Court of Justice (ECJ) cannot enforce its rulebook on the Swiss (who are resisting the EU's attempts to impose a new dispute settlement system that would involve the ECJ).

The Commission views May's plan for a 'facilitated customs arrangement' (FCA) – the complex, high-tech scheme for the UK to collect customs dues on behalf of the EU – as unworkable. It would have helped if she had spelt out her evident intention to stay in a customs union until the FCA works (if it ever does).

The Commission worries even more about the UK's proposals on governance. The white paper says the UK will "pay due regard to ECJ case law" for areas covered by the common rulebook, and that Parliament will normally update the rules as they change. But the Commission wants a more overt role for the ECJ and some involvement for itself in enforcement. It wants more automatic procedures for the UK to adopt additions to the rulebook. It does not like the British proposal for independent arbitration panels that would bind EU decision-making in certain areas. The white paper suggests that the EU should be able to fine the UK or suspend part of the agreement if it refuses to update a rule, but the EU regards that as insufficient to deter the British from deviating.

The line in Brussels – in the Commission and among many member-state representatives – is that given the UK's red lines (on the customs union, regulatory autonomy, the ECJ, payments to the budget and freedom of movement), the only possible deal is a Canada-style FTA, even if it is packaged into an association agreement, a format favoured by both the European Parliament and May. Is there a chance that national capitals could be open to a deeper relationship?

Some Central European leaders, fearing the geostrategic consequences of a Europe weakened by a hard Brexit, take a fairly benign view of the British plan. The Dutch say they have not yet made up their minds. Some Irish ministers sound positive, as do some Belgian politicians. Some continental companies, such as those making cars and aeroplanes, would like to keep the UK in the single market for goods. However, many European business lobbies take the line that the integrity of the single market matters more than a bit of lost trade with the UK.

A number of ministries in national capitals think the line set by the Commission, the Chancellery and the Elysée on Brexit is too tough. Thus

Horst Seehofer, Germany's interior minister, has complained that the Commission's attempt to keep the UK at arm's length on security co-operation could endanger public safety. But the way the EU has organised itself appears to make such views peripheral. The national officials in Brussels with whom the Commission deals tend to be generalists working for prime ministers rather than specialists from particular ministries. So far there is little evidence of member-states seeking to soften the Commission's line on Brexit.

Some EU officials see no need to reject May's plan formally; their priority is to get the UK to sign the withdrawal treaty, and they hope that a vague and sketchy political declaration on the future relationship – attached to the treaty – will suffice. But Britain's Parliament will not accept a withdrawal agreement that includes the Commission's 'Irish backstop' – leaving Northern Ireland in a regulatory union with the EU, if no other solution to the Irish border is found – without a declaration describing a plausible way of avoiding the backstop.

Ireland remains the most difficult issue in the Brexit negotiations. The EU cannot accept a land border in Ireland and the UK will not accept a sea border between the two islands. French officials suggest the latter would be more palatable for the British if the UK stayed in a customs union; there would still need to be checks for compliance with single market rules but these could be less obtrusive and strict than at other EU frontiers. But many British politicians would still see that as a threat to the UK's constitutional integrity. The strongest argument for May's plan is that it would ensure no hard border in Ireland or the Irish Sea.

Faced with the prospect of a no-deal Brexit, the EU might show some flexibility. But May would have to make concessions. She would need to commit to a customs union until some high-tech alternative became viable, a stringent mechanism for following new EU rules and a significant role for the ECJ. She has indicated flexibility on all three points. But she would find it harder to cede on payments to the EU and free movement of labour (both of which Norway and Switzerland accept as the price for market access). May's dilemma is that the paler her red lines become, the greater the risk that Conservative MPs will vote against her.

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