



HIGHLIGHT

A NEW CONSENSUS ON THE UK'S ROLE IN UNION EXTERNAL ACTION POST-BREXIT: TWO WINS FOR...?

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KEYWORDS: Brexit – EU – UK – withdrawal – transition – trade.

The nature of an unfolding Brexit is that once something is put to paper everything is later flipped on its head. The Withdrawal Agreement of last week, despite its dismissal by Theresa May, appeared to represent a consensus as to what role the UK would play in EU external relations during the transitional period.¹ This week, the new “agreed Withdrawal Agreement”,² described by David Davis as a “decisive step” forward³ (whilst others labelled it “*worse than a pint of cold sick*”⁴), demonstrates an altogether different consensus on this particular issue. So what has changed?

A lot as a matter of fact. The UK has made significant concessions on Northern Ireland, fisheries and accepted a hefty divorce bill. That said, it appears to have secured a double win in its external relations capacity. The first part of this win is, as the Brexit Secretary puts it, that the UK “will be able [during the transition period] to step out, sign and ratify new trade deals with old friends and new allies around the globe for the first

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¹ Discussed in the previous *Highlight* of this Author which is updated by this contribution, see L. Pedreschi, *Between Rhetoric and Reality: Consensus on the UK's Role in Union External Action Post-Brexit?*, in *European Papers – European Forum*, *Highlight* of 16 March 2018, www.europeanpapers.eu.

² The updated and agreed version of the Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (“Agreed Withdrawal Agreement”) can be found at www.gov.uk.

³ See Department for Exiting the European Union, *Statement in Brussels by David Davis, Secretary of State for Exiting the European Union*, 19 March 2018, www.gov.uk.

⁴ See A. COWBURN, *Tory MP lashes out over 'pint of cold sick' Brexit transition deal*, in *The Independent*, 19 March 2019, www.independent.co.uk.

time in more than 40 years”.⁵ The second is its continued ability “to act in international bodies in its own right during the transition period”.⁶ This departs markedly from the former consensus. However, a closer inspection of the relevant provisions suggest that this may be somewhat of a hollow victory.

The principal win is that the agreed Withdrawal Agreement makes clear that the UK can sign and ratify trade deals in areas of Union exclusive competence provided they do not enter into force during the transitional period.⁷ This is a victory for those subscribing to a *Global Britain* free trade agenda. But it is also a demonstration of pragmatism on the EU’s part. Two reasons support this interpretation. Firstly, the contours of what constitutes “negotiations” are blurry. It is likely that the UK would have begun conducting, at least informally, discussions during the transition period. Ceding this point to the UK removes a sticky issue (on which the UK is keen) from an already crowded negotiating table. More importantly, potential trade partners of Global Britain will want to know the terms of the EU-UK deal before signing the dotted line. These terms will materialise only during the second stage of negotiations (yet to commence). So while the UK may have the capacity to enter trade negotiations (that were likely to begin anyway), it is unlikely to have the partners to conclude them until terms are agreed with the EU. Consequently, the EU is given further leverage as the UK becomes anxious to exercise its new capacity.

The second (more minor) win is that the UK will be able to act in international bodies during the transition period. The detail of the agreed Withdrawal Agreement suggests that the extent this can be considered a win has been overstated.⁸ The previous version of the Withdrawal Agreement had allowed the UK to participate in international bodies in its own right. However, it could not participate in international bodies set up by agreements concluded by the Union, its member states on its behalf or where the two were acting jointly. The agreed Withdrawal Agreement maintains the *status quo* to the extent that the UK can participate where it acts in its own right. However, it also adds a further subsection that allows the UK “exceptionally” to *attend* (but not *participate*) in meetings where it considers its presence to be necessary for effective implementation.⁹ This does not benefit greatly the UK’s position. It is clear that the only improvement is that it will be to sit in on meetings of international bodies (for instance the Comprehen-

⁵ Department for Exiting the European Union, *Statement in Brussels by David Davis, Secretary of State for Exiting the European Union*, cit.

⁶ Statement attributable to Downing Street as reported in A. SPARROW, *Brexit transition deal breaks seven promises made by ministers, say campaigners – as it happened*, in *The Guardian*, 19 March 2018, www.theguardian.com.

⁷ Art. 124, para. 4, of the Agreed Withdrawal Agreement.

⁸ *Ibid*, Art. 124, para. 2.

⁹ *Ibid*, Art. 124, para. 2, let. b.

sive Economic and Trade Agreement Joint Committee) but not actually take part. Certainly, it can expect to be informed but it goes too far to argue that it will be able to join (let alone lead) the work of such international bodies.

Finally, both of the changes observed here should be viewed in light of what has not changed. During the transition period, the UK is to be bound by international agreements of the Union and the principle of sincere cooperation will continue to apply.¹⁰ On a superficial level, one could claim that the UK has won significant concessions in relation to its capacity to negotiate its own international agreements and to participate in those of the EU. But dig just slightly a deeper, as this *Highlight* has sought to do, and one quickly begins to question what exactly the UK has won and, more importantly, at what cost.

¹⁰ *Ibid*, Art. 124, paras 1 and 3.

