

# Brexit: Beyond the transition

**Andrew Duff**

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*Credits: AFP - Salzburg awaits its summit meeting*

The agreement reached by the British cabinet at Chequers is decisive for Brexit. The subsequent White Paper confirms the UK's objective of reaching a comprehensive, dynamic association agreement with the EU. There is still uncertainty, however, with respect to British policy on the movement of people and the regulation of customs and financial services. The institutions for joint governance of the association agreement are assured with the exception of the future judicial authority. Doubts remain over the capacity of the British state to manage the Brexit process, and over the ability of the UK parliament to scrutinise it.

Drafting the Political Declaration that must accompany the Withdrawal Agreement is the next critical step. The Salzburg summit on 20 September should confirm that there will be no extension of the Article 50 talks but that the transition period will be prolonged. In Britain, mainstream politicians of all parties should ready themselves to accept the Barnier package deal. A second referendum would risk the UK crashing out of the EU without a deal.

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#### ABOUT THE AUTHOR



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#### DISCLAIMER

The views expressed in this Discussion Paper are the sole responsibility of the author.

The meeting of the British cabinet at Chequers on Friday 6 July gave a decisive steer towards the UK's final post-Brexit landing zone, beyond transition.<sup>1</sup> Three crucial decisions were taken. Most importantly, the government accepted that a simple free trade agreement with the EU would be insufficient: frictionless borders for manufactured goods and industrial supply chains demand a deal that is better than Canada's. Accordingly, the cabinet agreed to seek a comprehensive and dynamic association agreement with the EU based on a process of regulatory alignment and joint governance. The breakthrough eases a solution to the Irish border problem and allows the EU 27 to prepare for life without the Brits.

Second, Chequers agreed to restore the collective ministerial responsibility of the cabinet which had been suspended since the referendum campaign. This decision led after a couple of days, as was surely intended, to the long-overdue resignation of the two worst ministers in the government, Foreign Secretary Boris Johnson and Brexit Secretary David Davis. Their fall was followed by the departure of a fanatic Brexiteer, Steve Baker, from a junior post in Davis's department. Lastly, Chequers confirmed the exit date of 29 March 2019. This issue was vital for Brexit hardliner Liam Fox, the trade minister, who continues to emphasise the importance of sticking to that date.<sup>2</sup>

Even though Theresa May finds it painfully difficult to articulate the case for the Chequers deal, she got what she needed. The majority of her MPs now seem to accept that a deal based on Chequers is better than no deal at all. On 16 July, the prime minister even struck a deal in the Commons with the militant Brexiteers, including four Labour rebels, who are led by the unusual Jacob Rees-Mogg. But by accepting their supposed 'wrecking amendments' to a trade and customs bill she implicated even these MPs in the continuing negotiations.

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At the same time, fourteen pro-European Tory rebels lost their battle to force the UK to stay in the EU customs union. But they may have not lost the war. Chequers advanced a novel proposal for a Facilitated Customs Arrangement, a concept so complicated that it is bound to take many months to negotiate as well as many more months to implement whatever is finally agreed. In practice, and as the initial reactions of Michel Barnier suggest, it looks as though the UK will have to remain in the customs union, entirely in line

with the EU customs code, for several years to come. Customs arrangements between the UK and the EU will not have changed materially before the date of the next British general election in May 2022.

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## THE WHITE PAPER

The White Paper following on from Chequers has been much criticised, especially by folk who have not read it.<sup>3</sup> True, like everything else this government publishes, it is a difficult read, often failing to disguise the gaps between paragraphs submitted by ministers at opposite ends of the Brexit spectrum. Words that lean forwards to soft Brexit are punctuated by others that lean back to reiterate earlier red lines. No wonder first reactions from Brussels and other capitals were guarded as the diplomats and epistemologists tried to figure it all out.

But the main thrust of the White Paper is clear enough. Proposing an association agreement between the UK and the EU, it notes that there is plenty of precedent for the EU to do a bespoke deal with Britain, in the mutual interest of both parties. The UK seeks a new balance of rights and obligations based on two pillars of economy and security, leading to a dynamic relationship "responding and adapting to changing circumstances and challenges".

## REGULATION

Chequers buried the hopes of some 'Leave' ministers that the UK can break free entirely from the EU's regulatory orbit. The cabinet foresees two types of agreement with the EU on regulatory alignment. The first is effective harmonisation of UK and EU law under a common rulebook. The second consists of reaching mutual understanding on equivalent regulation, where rules are approximate but not identical.

The UK will accept the EU's rulebook on free trade in manufactured goods and farm products in order to eliminate tariffs, quotas and rules of origin requirements. It envisages one set of tests only to ensure compliance with EU norms in heavily regulated sectors, such as medicines and chemicals, where the UK expects continued direct engagement with the EU's relevant agencies. It will conform to EU state aids and competition policy. It undertakes to adhere to current EU standards on social, climate, consumer and environmental policies. The government agrees to the inclusion of a non-regression clause in the association agreement.



Britain envisages the same third country membership of the aviation authority (EASA) as Switzerland. Thanks to ‘cooperative accords’, the British also hope to continue participation in EU policymaking, on a shared cost basis, in science, culture and development policies.

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Although the common rulebook will apply mainly to areas of the current *acquis*, it is unclear from the White Paper where the UK expects the demarcation line precisely to be drawn between harmonisation and approximation. That ambiguity is particularly troublesome in areas, notably financial services, where EU regulation is strict but the British want flexibility. Here the UK is sending very mixed messages. On the one hand, the UK wants liberation from the EU regime, bravely accepting the loss of passporting for the City of London and restricted access to the rich eurozone market in return for global adventure. That is the view of Jon Cunliffe, Deputy Governor of the Bank of England.

On the other hand, Philip Hammond, Chancellor of the Exchequer, looks to establish a large degree of equivalence in financial services by way of reciprocal supervisory cooperation and regulatory dialogue. The White Paper does not tell us how much of EU banking union legislation the Treasury intends to parrot, although it indicates the need for British engagement with the European Securities and Markets Authority.

The EU, for its part, is concerned that the UK is adopting an excessively pragmatic approach to the highly regulated sector of financial services based on the ambiguous concept of voluntary regulatory equivalence. The EU is also worried by the British proposal for the Facilitated Customs Arrangement – “at the cutting edge of global customs policy” which would leave the UK part in and part out of the EU’s customs territory and common commercial policy. Michel Barnier spelt it out to the press on 26 July with respect to the Facilitated Customs Arrangement: “The EU cannot – and will not – delegate the application of its customs policy and rules, VAT and excise duty collection to a non-member *who would not be subject to the EU’s governance structures.*”<sup>4</sup>

How to manage ‘autonomous’ regulatory alignment with a third country throws up some basic problems of EU governance.

## GOVERNANCE

The White Paper embraces the concept of joint governance of the association agreement. Joint institutions will “underpin” (not oversee) the new arrangements under the political direction of a ‘Governing Body’ – in EU parlance, the Association Council. Beneath that, a Joint Committee, following on from the Joint Committee already agreed for the transition period, will do the technical work. It will “manage and monitor the implementation of the future relationship” and try to resolve disputes. According to the British, and contrary to normal EU practice, the Joint Committee and not the Commission would judge the degree and quality of regulatory equivalence in any given field. Were the Joint Committee not to agree on equivalence, the dispute could be sent by either party to an independent arbitration tribunal for a binding ruling (and not, as normal under the EU regime, to the European Court of Justice). The tribunal would comprise judges from the UK, the EU and a third country. The merits of whether independent arbitration is a viable option “should be assessed on a case by case basis across different forms of cooperation”.

The association agreement would oblige the British and EU courts to track each other’s performance. Where the common rulebook applies, either the Joint Committee or the tripartite tribunal could refer the matter to the European Court of Justice (ECJ) for a binding ruling. The UK courts would be obliged to pay due regard to ECJ case law (although they would not be able by themselves to make preliminary references to Luxembourg on points of law). Where the UK participates in EU bodies or agencies, it would respect the remit of the ECJ. If the Joint Committee makes a ruling with the status of international law, it will be up to the UK government and parliament to legislate accordingly. The EU could impose penalties if any of the rulings were breached, including the suspension of part or all of the terms of the association agreement in a proportionate, temporary and localised manner.

## JUDICIAL OVERSIGHT

The UK is insisting that it must not be bound directly by the jurisdiction of the ECJ, although it has conceded that in limited and specific circumstances it may be bound indirectly. Inevitably, the Commission feels queasy at Britain’s qualified-only acceptance of the jurisdiction of the ECJ. The EU will not accept an independent arbiter that would allow the UK greater freedom as a third country to undercut the single market than it had as a member state. The Commission insists on remaining the arbiter of regulatory equivalence to preserve the integrity of the internal market. This is what Mr Barnier means when he talks about the level playing field and the autonomy of EU decision making. While the tripartite tribunal is appropriate for traditional trade disputes between international trading parties, it is unacceptable to the EU as the judicial authority for the internal market. For the Union, that must be the Court of Justice.

The negotiators of the association agreement will have to be particularly inventive in order to overcome the conflict over judicial oversight. There is likely to be a significant volume of post-Brexit litigation, at least initially, requiring a strong judicial system. I have argued previously that a totally new, joint EU-UK court with a weighted majority for the ECJ would do the trick.<sup>5</sup>

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Meanwhile, the UK will have to beef up its own regulatory apparatus if it is to be trusted by the EU Commission and Court of Auditors. The White Paper pleads that the UK is trustworthy, but the EU's experience is at variance. The record of Her Majesty's Revenue and Customs in catching smugglers and levying dues correctly is known to be less than satisfactory. The UK Border Force is badly understaffed. Money laundering in the City of London continues. Britain has taken a selective approach to implementing EU law in justice and home affairs, failing to act reciprocally. A reality check is needed on the British plea of "look at our record" on human rights: the recent decision of Sajid Javid, Home Secretary, to consider extraditing two Jihadists to the USA without a commitment on capital punishment has not enhanced the UK's negotiating position on Brexit.

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These apparent weaknesses in Britain's domestic regulation encourage the EU to be even more insistent on ensuring strong oversight of the association agreement. Chequers and the White Paper are insufficient. Having once accepted the regulatory paradigm of an association agreement, the British will now have to move further towards the logic of the EU's position. There is a strong argument for the creation of a new British surveillance authority to monitor the progress of regulatory alignment between the UK and the EU. The body would be independent of government but answerable to the Joint Committee and to the British parliament.

## **SERVICES**

The Chequers deal is limited on services, and the White Paper does little to clarify precisely what the UK wants. On professional services the UK proposes greater reliance on mutual recognition of qualifications,

with something extra (unspecified) for lawyers and accountants to ensure continuity. This is consistent with Britain's stance as a member state: that it is also a liberal policy explains why it has met in the past with resistance, especially from Germany.

The association agreement will have to deal with both goods and services. Recent free trade agreements recognise that the old distinction between the two is dead. Motor cars, for example, are sold in our digital era with in-built information technology plus a financing scheme. On digital services, where the government wants divergence from EU law, the White Paper is aspirational only.

## **MOVEMENT OF PEOPLE**

Chequers and the White Paper offer little on the movement of people. There is the promise of no change in practice to the treatment of students and tourists. For workers, the government proposes to design a 'mobility framework' which will supply employers with the labour they need on a temporary basis. The UK hopes to manage the flow of European workers through new legislation on social welfare, the right of establishment and cross-border services. The government should know that the more reservations it puts on the freedom of movement of EU workers and their dependents, the more the EU's 27 states will qualify their hospitality to Britons.

More details of the government's approach to asylum and immigration are expected in the autumn. Mr Javid is known to want to clamp down on the permanent immigration of EU citizens to the UK. But he knows from his initial discussions in the European Parliament that MEPs will not accept a deal that prejudices the rights of EU citizens either in the transition period or beyond.

## **SECURITY**

The UK wants a robust security partnership, including continued British engagement with Europol and Eurojust, guaranteeing the protection of personal and security data. Further chapters of the association agreement will cover intellectual property rights and civil and commercial law that may go beyond the EU's current commitments with other third countries. How to continue British participation in the EU's unitary patent scheme will also be explored.

The White Paper commits the UK to continued adherence to the European Convention on Human Rights. It also implies continuing respect for the EU Charter of Fundamental Rights, which had been controversially ruled out by the recent EU (Withdrawal) Act.

The government promises to respect EU legislation on data protection (GDPR) and law enforcement. It asserts the importance to the EU of continued

UK participation in the EU's mechanisms for internal security, such as SIS II for police and border surveillance, ECRIS and Prüm. It promises close UK collaboration in EU policies on cyber security, counter-terrorism, civil protection and public health.

The White Paper rather takes for granted that cooperation in foreign, security and defence policies will be straightforward in view of the Union's intergovernmental methods of working in these fields. Indeed, it implies that the present unsettled security situation in Europe and elsewhere reinforces the case for a special relationship between the EU and the UK. The government proposes that the Political and Security Committee of the Council should have informal sessions to which British representatives would be invited. Such political cooperation would oversee arrangements for the sharing of intelligence, the exchange of personnel, *ad hoc* UK participation in the EU's common security and defence missions and British engagement in the EU's sanctions regime.

The UK wants to buy into the activities of the European Defence Agency and looks forward to a "collaborative and inclusive approach" to Galileo, the European Defence Fund and the EU's first steps towards permanent structured cooperation in defence (PESCO). It is hardly surprising that Mr Barnier was able to comment that the White Paper looked, in part, like an application to join the European Union.

## THE POLITICAL DECLARATION

What directly concerns Michel Barnier, of course, is not the White Paper (which does not need to be approved by the EU) but the conclusion of the Withdrawal Agreement and the drafting of the Political Declaration that will outline the framework for the future relationship.<sup>6</sup> The White Paper argues, perfectly reasonably, that the Withdrawal Agreement and the Political Declaration "form a package". It ends with an appeal to turn the Political Declaration into a legally binding treaty text as soon as possible after Brexit, and asks that a clause committing both sides to this appears in the Withdrawal Agreement itself.

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The Political Declaration will commit the EU institutions and its member states to the eventual conclusion of the association agreement. It will also seek to bind a future British government to that course (even if led by Jeremy Corbyn). In their respective pieces of Brexit legislation, both the UK and the EU will refer to the Political Declaration as a memorandum

of understanding accompanying the Withdrawal Agreement. In case of litigation, the UK Supreme Court and the ECJ will be bound to take note of its content.

British commentators are getting ready to dismiss the document as of little consequence. That is a mistake. The solemn Political Declaration of the European Council and the UK prime minister will have the status of EU soft law. It will be binding politically on both parties. If in due time Mr Corbyn or other unexpected events lead the UK and the EU in a direction different to that of the association agreement, the European Council would have to change course in a similarly solemn manner.

As far as the European Council is concerned, the Political Declaration may serve as the first draft of the mandate that will charge the Commission to negotiate the association agreement.<sup>7</sup> While the document will point clearly to the objective of the association agreement, the EU needs to leave itself sufficient flexibility for the negotiation itself, not pre-empting or precluding too much and leaving scope for some expression of national interests in what will be a treaty requiring ratification by all 27 states.

What both sides must avoid is the problem thrown up by the loosely drafted Joint Report of December 2017 in which the UK and the EU added unilateral paragraphs – and then quarrelled later about what they really meant. This time the 27 + 1 political chiefs will sign off on the heads of agreement text at the summit, but in subterranean Brussels (otherwise known as Coreper II) the ambassadors, lawyers and officials will be working hard to ensure that the meaning of every word of the Political Declaration is commonly understood.

There is still a question mark over how long and detailed the Political Declaration needs to be. Chancellor Merkel favours certainty, and she is difficult to gainsay. Somewhat boosted after Chequers, Theresa May is also pushing for a fairly granular document that will tie everyone down. But before the decisive meeting of the European Council in Brussels on 18-19 October, the prime minister has to face the ordeal of the Conservative Party Conference at Birmingham in the week of 30 September. Do not expect to see a public draft of the document before then. The otherwise commendable transparency of the Brexit process in Brussels is temporarily suspended.

## THE SALZBURG SUMMIT

Before Birmingham, on 20 September the whole European Council, including Mrs May, will meet in Salzburg. This is one of a series of informal summits introduced by President Tusk to advance his 'Leader's Agenda'. Besides making some elliptical statements regretting Brexit, Mr Tusk has seldom intervened directly in the Article 50 process, preferring to leave the heavy lifting to the Commission. As a result, he and the 27 leaders are relatively poorly prepared to discuss the details of their post-Brexit relationship with Britain.

British ministers – including Jeremy Hunt, the new turn as Foreign Secretary – have been touring the continent over August pleading for the Salzburg gathering to show clemency. Such *gran turismo* will have stiffened the leaders against being seen to interfere directly in the Article 50 negotiations. Donald Tusk had wanted the Salzburg summit to focus on US relations. But in truth the leaders cannot now avoid the Brexit question. Nor should they. The Political Declaration is most definitely *Chefsache*, commanding the direct attention of the heads of state and government.

When Theresa May fleshes out her concept of a ‘third model’ of a new partnership, the EU leaders should respond constructively.<sup>8</sup> While they will continue to insist on the principled indivisibility of the four freedoms, they should also be searching for pragmatic solutions, within the framework of Union law, that will limit the collateral damage of Brexit to the EU economy and salvage the international reputation of the EU. Unless the chiefs succeed in building a long-term sustainable relationship with the UK, the EU will suffer the consequences for many years of having a resentful, nationalistic and litigious neighbour on its doorstep. A good settlement for the British, on the other hand, outlined in the Political Declaration, could establish a precedent for new-style partnerships with all the EU’s neighbours. Norway, Iceland and Switzerland may well want to upgrade their own relations with the EU in emulation of the UK.

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### **There will be no prolongation of the Article 50 process.**

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Two strategic decisions await the summit meeting. The first is to emphasise that there will be no prolongation of the Article 50 process. If Mr Barnier continues to make progress towards the Withdrawal Agreement, an extension of his timetable will in any case be unnecessary. Mrs May will not ask for an extension, knowing full well that to do so would break her party. But she needs the summit to puncture the delusion of British Remainers who imagine that the EU 27 are ready to indulge in procrastination. The EU is keen to move on to other matters. Short of a constitutional crisis in Britain, the Union will not postpone Brexit.<sup>9</sup> It would be best to say so at Salzburg.

Secondly, the leaders should invite the Commission to include in the Withdrawal Agreement a provision permitting an extension of the transition period. Given the complexity of the impending negotiation of the association agreement, especially relating to customs and the Irish border, such flexibility is very much in the EU’s interest. If Mrs May is too shy to ask for more time for her ‘implementation period’, she should be forced to. Brexiters will not like it, but business and public administration on both sides of the Channel badly need a longer transition period than that presently agreed.

If Salzburg is a success, rapid progress can be made to complete the Withdrawal Agreement at the October European Council. The main outstanding problem concerns the backstop for the Irish border. Negotiations continue. Because failure to agree benefits no one, and threatens everyone, there cannot not be an acceptable compromise on Ireland. The context will change, and improve, once the Political Declaration opens the way to the negotiation of the association agreement.

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#### **THE ‘MEANINGFUL’ VOTE**

The European Parliament will insist on close scrutiny of the Political Declaration, knowing that it holds the power to seek verification from the European Court that the Withdrawal Agreement and the Political Declaration conform to the EU treaties.<sup>10</sup> MEPs will be particularly watchful of the way in which the Political Declaration tackles governance issues, the long-term treatment of the Irish border, and the permanent status of EU citizens in Britain.

Scrutiny by the Westminster Parliament is no less important – but far more difficult. To date, British parliamentarians have focused on procedural matters to the detriment of substance. It is clear that Mrs May’s misjudged general election in 2017 has not succeeded in exorcising the ghost of the 2016 referendum: most MPs, whatever their better judgement about Brexit, are still confounded by the result of the popular vote which they were (almost all) complicit in promoting.<sup>11</sup>

Nevertheless, in due course the prime minister has to table the Withdrawal Agreement plus the Political Declaration for a ‘meaningful vote’ at Westminster. Pundits claim that there is no majority in the Commons for anything. That, of course, is nonsense. Every parliamentary vote produces a result. Under Britain’s wondrous constitution, a simple majority of one can be full of meaning. So what will happen?

A small minority of militants on both sides of the argument will want to oppose the package. But an unholy alliance between die-hard Leavers and Remainers will not look credible and will hardly gather public support. None of the opposition parties have been able to come up with a viable alternative to a deal based on Chequers that would be acceptable to the EU. Remain MPs do not agree about how bad a bad deal would have to be in order to overturn the referendum result.



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To date, the debate at Westminster has been curiously disconnected from the reality of the EU talks. Once an Article 50 deal is tabled for scrutiny, however, it should become clear that this is the EU's final offer. Having laboured hard to deliver two versions of a new settlement for Britain, the rest of the EU is in no mood and in no fit state to devise a third. In 2016 the EU offered David Cameron a deal on continued membership which was rejected in the referendum. If Parliament refuses the EU's 2019 offer of an association agreement, there will be no going back to the drawing board: Europe has run out of tolerance with the British.

If no deal is reached in the Article 50 talks, or if the deal reached is subsequently rejected by the British Parliament, the EU's contingency plans will be put into operation and it will extricate itself from the UK as best it can on 29 March. Soon afterwards, in any event, normal business will be suspended in Brussels until the new Parliament and Commission is elected and Mr Tusk's successor takes his place in December.

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However, if the withdrawal package is agreed as planned in the autumn, MPs and peers will face another complicated piece of primary legislation in an EU (Withdrawal Agreement) Bill. This measure will cope with the transition period (in UK parlance, the 'implementation' period) during which the UK, to all intents and purposes, will remain subject to EU law. The proposed bill will put back on the statute book much of the content of the European Communities Act 1972 which the EU (Withdrawal) Act 2018 has just removed. Another White Paper, published on 24 July, does its best to explain.<sup>12</sup> To date, Westminster seems ill-prepared to undertake serious scrutiny of the 600 or so pieces of separate subsidiary laws seen as indispensable to accomplish the Brexit process let alone the blizzard of tertiary

legislation (Statutory Instruments) that the government must table to execute secession and then fill the legislative vacuum. The Brexit process is destined to continue, possibly indefinitely.

## THE 'PEOPLE'S VOTE'

Some Remainers, wanting to continue the abdication of Parliament, are campaigning for a second referendum. Most of these people actively promoted the 'In/Out' referendum in 2016, and pledged to respect its outcome. Their excuse for changing direction is that a 'people's vote' on the facts of the final deal is necessary to redress the distortions of the first campaign and to settle Britain's European question for good (a claim also made, of course, before the first referendum). Notwithstanding the problem that the Withdrawal Agreement and Political Declaration are not in truth the final deal (which will only emerge in a few years' time), a panicky referendum in present circumstances promises to be catastrophic. Opinion polls suggest that a majority is forming against a hard Brexit, but that a rerun of a referendum on 'Leave' versus 'Remain' would be just as close as the first: certainly the assumption that Remain would win handsomely is an arrogant one not supported by the facts.

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Advocates of a 'people's vote' have yet to explain what question they wish to put to a referendum. Some want it to decide between the Withdrawal Agreement and no deal. Others want a referendum to choose between no deal and the *status quo ante*. Yet others want multiple choice questions. All are deceptive. The first option is not acceptable to Parliament; the second is no longer acceptable to the EU; the third is a joke. In effect, referendum voters would be put in an invidious position.

The campaign would not turn on the quality of Mr Barnier's treaty. The argument on the streets, in fact, would be about nationalism, xenophobia and democratic betrayal. The pound would tank. The fragile UK constitution would be put under further immense strain, with the certainty that parliament at Westminster would again emerge emasculated and its discredited political parties split asunder. The nation would end up even more divided in terms of social class, generation and province, potentially pitching into a revolutionary situation.

Instead of toying with populism, it would be better for politicians of all persuasions to shoulder their responsibility for the national interest. Parliament should not veto the Barnier deal.



Once Brexit is done, Mr Barnier's Task Force 50 will be disbanded and serious negotiations for the association agreement will commence under new EU management. A general election in Britain no later than May 2022 will determine Britain's future as a European country. The options will include continuing to develop the association agreement or to apply again to join the European Union as a full member state.<sup>14</sup>

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<sup>1</sup> See *Brexit: Last Call*, European Policy Centre Discussion Paper, 4 July 2018.

<sup>2</sup> The date is ordained in EU law as being two years after Mrs May triggered the withdrawal process. It can only be extended by a unanimous decision of the European Council and the UK (Article 50(3) TEU). A different date could be set in the Withdrawal Agreement as the day on which that Agreement enters into force. The UK Parliament has established the date by law in the EU (Withdrawal) Act, but could alter it by a Statutory Instrument.

<sup>3</sup> *The Future Relationship between the United Kingdom and the European Union*, Cmnd 9593, 17 July 2018.

<sup>4</sup> My emphasis. Barnier has not ruled out the concept of an FCA.

<sup>5</sup> For instance, *Brexit: Dealing with withdrawal symptoms*, European Policy Centre Discussion Paper, 5 September 2017.

<sup>6</sup> Article 50(2) TEU.

<sup>7</sup> The legal base of an association agreement is Article 217 TFEU and for its negotiation, Article 218.

<sup>8</sup> Letter from the Prime Minister to Conservative MPs, 6 July 2018.

<sup>9</sup> A short postponement of the secession date after 29 March might be agreed for technical reasons – such as the polishing of a legal text – but not so long as to complicate the holding of the elections to the European Parliament (23-26 May) with Britain still a member state.

<sup>10</sup> Article 218(11) TFEU.

<sup>11</sup> The referendum legislation was passed in June 2015 by 544 votes to 53 (Scottish Nationalists).

<sup>12</sup> *Legislating for the Withdrawal Agreement between the UK and the EU*, Cmnd 9674, 24 July 2018.

<sup>13</sup> See for example Mark Elliott, *Britain's constitution is buckling under the weight of Brexit*, Prospect, 31 July 2018.

<sup>14</sup> Article 50(5) TEU.







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