eurotacts

9TH OCTOBER 2020

THE REALITY BEHIND EUROPE

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After Brexit will 'Defence' still be locked into the EU?

efence has been a major topic of concern for Brexiteers since 2016 and the problem still has not gone away even during the future relationship talks.

Now, in September 2020, there were still many unanswered questions. These three are the most important:

Are ministers unwittingly signing us up to an EU defence deal with a hidden legal 'trap'?

Do ministers know that EU defence powers have expanded since 2016, including over non-EU involvement?

Do they know staying attached brings a growing set of obligations to accept EU decision-making?

At times it seems that Westminster is not interested in asking these simple questions.

There is very little discussion, but when it does take place it is led by statements from pro-EU and EUfunded think tanks and politicians and their words are a poorly-informed PR exercise. Attachment to EU politicalmilitary mechanisms is mis-sold as 'ad hoc cooperation', 'whenever we choose' – when no such option exists.

They explore prospects for industrial benefit without ever mentioning the prevailing harm to industry and sovereignty. This language is inevitably promoted and at times seeded by the most senior civil servants, which in turn binds the hands of ministers.

It should be clear to anyone who takes the time to look beyond this language of UK officialdom that the

David Banks

EU's proposals for 'cooperation' actually mean deep and binding structural attachment which would increasingly put the EU in the driving seat.

To complete the circle of influence, UK defence industry was also led to believe the EU's coercive 'cooperation' proposals were somehow a cash prize and, in response, has been active in calling for attachment at semi-official roundtable events with ministers.

It is a tale of woe, but a few positive notes in August 2020 include the Government's apparent insistence that it will not allow the UK to be bossed by EU rules and decisions. This 'should' mean UK negotiators avoid uncomfortable commitments, but it would be naïve to imagine that Whitehall's worst EU fanatics are not currently trying to find a way around this.

In February, there was no mention of the word 'defence' in the UK's plan for the future partnership talks. Senior Whitehall officials said the UK had 'chosen not to priorities defence, for now'. Avoiding a devastating con trick 'for now' is not very reassuring.

Against this backdrop of uncertainties, hidden language and false briefings, it is essential to state that the pro-EU team, whether in Westminster or Brussels, is playing to win.

Two prominent EU-funded London think-tanks went public with elaborate expressions of support for the EU's new defence architecture in July. Within days, the EU repeated its message that it expected the UK to discuss its defence terms.

Sure enough, the spectre of EU defence proposals was evident again in EU-UK talks over the summer. One of the negotiating sessions discussed is 'Participation in Union Programmes'. The EU's negotiating strategy of February 2020 reveals this phrase includes their political structures for defence.

It is positive that the UK negotiator David Frost appears to be standing firm against the EU's perfidious agenda. He appears to be sincere about restoring undiluted democratic control over UK political decisions.

If our politicians have not been informed about how the EU's defence proposals undermine UK control, how can we be confident that Government and its appointed negotiator Mr Frost will spot the defence problem when it appears on the negotiating table?

It would take a simple statement from No10 to solve this problem. It is a mystery – and deeply concerning – that No10 has not already issued such a statement and so put this topic to bed.

The statement would say the EU's proposals for defence involve such deep commitment to growing EU rules, policy and payments that they are incompatible with the UK's goal of being an independent sovereign state and we refuse to even touch this spider's web.

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European Arrest Warrant remains a danger to UK citizens

ccording to Torquil Dick-Erikson, the European Arrest Warrant (EAW) remains a threat to British citizens' civil liberties, and to national security. Worryingly, even a no-deal Brexit may not be enough to free ourselves from it.

"How many in government, at any level, are aware that the European Court of Human Rights (ECHR) declared that up to five years in prison awaiting, not just trial, but a prisoner's first appearance in a public hearing in open court, is perfectly legitimate and a *'reasonable'* time' under the Convention's article 6, on the grounds that this preventive 'detention ... is intended to facilitate the preliminary judgement. investigation'? This rejecting an application from an Italian against Italy, dates from the mideighties, but is now necessarily a part of that Court's jurisprudence - its settled doctrine - and so is still relevant today. It demonstrates clearly the Court and the Convention have no place for habeas corpus.

The power to issue arrest warrants, be followed by lengthy to imprisonment with no public hearing, without showing any evidence of wrongdoing, obviously confers a power of misuse and abuse on whoever holds it. It can be employed with spurious accusations against political adversaries; and in continental Europe, where this power is held by often unaccountable judiciaries, it is employed not infrequently.

The above judgement of the ECHR shows that a State's being a signatory of the European Convention is no guarantee at all that it will safeguard, say, *habeas corpus* rights to a prisoner. The Convention merely says a 'reasonable' time, but does not specify what is 'reasonable'. The Court says up to five years is 'reasonable'.

How many have noticed the EU has nominated Ms Laura Kovesi, a member of the Romanian judiciary, to

Torquil Dick-Erikson

be their first European Public Prosecutor (EPP)? Romania's judiciary is the most heavily criticised in Europe for corruption and for being used as a blunt weapon to repress political opponents. A joint report by The Freedom Association and the Research Centre on post-Communist Economies gives details, drawn also from material published in the *Guardian*, to show that even the Romanian showcase 'anti-corruption unit' ('DNA'), from whose ranks the new EPP is drawn, is itself riddled with corruption and political manipulation. Ms Kovesi is named on page 8 in the report as being the Chief Prosecutor, so at the heart of the sham 'anticorruption unit'. Yet she has been chosen as the EU's first, all-powerful, European Public Prosecutor.

Not enough publicity has been obtained for the Learned Opinion, given by Jonathan Fisher QC to Christopher Gill, as to the powers that the EPP will have to issue European Arrest Warrants (EAW's) against anybody in the UK, and that our judiciary will be powerless to resist this as long as we are subject to the Extradition Act 2003, which enforces the EAW in the UK. It is therefore unlikely that anyone in government circles is aware of this sword of Damocles hanging over all of our – and indeed their – heads.

On receipt of an EAW issued by the EPP, or by any judicial authority in a 'Category 1' country, our own judiciary is bound by the provisions of the Extradition Act 2003 and cannot ask to see, let alone assess, any evidence or lack thereof already collected against the prisoner by the issuing State. This fact is known (at least to Members of Parliament), but needs to be reviewed in connection with the above-listed facts. A threat to 'human rights' is allowed as grounds to refuse an extradition, but these have to be as defined by the ECHR – which, as

we have seen, is quite insufficient in terms of *habeas corpus* rights.

The wording of the Extradition Act 2003, which is the basis of the EAW. makes no explicit reference at all to the EU. The EU member states with whom EAW's are issued and received are simply listed and called 'Category 1 countries'. The fact that the EU as such is not mentioned in the text of the Extradition Act 2003 means that on the 31st December 2020, even if we leave with No Deal, the legal effects of the European Communities Act 1972 and subsequent amendments will at last fall away, but the Extradition Act 2003 will still stand regardless. So any 'judicial authority' in any 'Category 1' country (and this includes prosecutors) will still be empowered, after Brexit, to have anybody in the UK arrested, trussedup, and shipped over to any dungeon in Europe.

Parliament must therefore repeal or radically amend the Extradition Act 2003, so that a UK court, when faced with an extradition request from any foreign State, is empowered to demand to see and assess the evidence of a prima facie case to answer already collected by the requesting State. Should there be no such evidence, or if it be so flimsy as to show that there is in fact no case to answer, the UK court must have the power refuse the extradition request and order that the prisoner be freed at once.

The risk remains that an unamended or unrepealed European Arrest Warrant will be offered up as a bargaining chip for a UK-EU trade deal. Or even that it will remain standing in the case of a No Deal. In *either case* it would remain a fetter on our freedom and on our sovereignty.

The Extradition Act 2003 needs to be explicitly and radically amended: the repeal of the European Communities Act 1972 alone is not enough to free the UK of these entanglement."

EU happy to made changes to the Withdrawal Agreement in its favour

t appears that it is quite legal for the EU to change the Withdrawal Agreement (WA) but not the UK. For instance:

* The EU has already requested changes to the WA, only five months after it was signed.

The supposedly inviolable and unchangeable Withdrawal Agreement has already been proposed by the EU to be changed after they noticed errors in it.

In June the EU sought to "correct" parts of the WA. Below is examples of some of the points made in the EU's decision about this, published in June 2020.

* By oversight, two decisions of the Administrative Commission for the Coordination of Social Security Systems were not listed in Part I of Annex I to the Withdrawal Agreement and eight acts which are essential for the application of the rules of the internal market for goods to Northern Ireland were not listed in the Protocol Annex 2 to on Ireland/Northern Ireland. Those decisions and acts should therefore be added to those annexes. In addition, three notes are also necessary to further define the scope of application of certain specific acts listed in Annex 2 to the Protocol on Ireland/Northern Ireland. These notes should therefore be added to Annex 2 to the Protocol on Ireland/Northern Ireland."

- Council Decision (EU) 2020/769 of 10 June 2020

This makes a nonsense of the argument that the Withdrawal Agreement is inviolable. The EU itself already wishes to change it via the Joint Committee.

* The EU is preventing a simple border solution and is disregarding

international laws of the sea

Importantly, the EU and Irish Governments have prevented the Customs authorities of the UK and the Republic from speaking to each other to devise simple, alternative arrangements for the border between North and South – something crucial to preserve the integrity of the Good Friday Agreement.

On the fundamental international laws of the sea, Monsieur Barnier has made the extraordinary assertion that whilst the UK will have future sovereignty of its coastal waters, the UK should have no such sovereignty over the fish swimming within these waters. In international law this is nonsense.

* The EU has acted in bad faith throughout these EU-UK negotiations, breaking the terms of the Treaty.

The UK is entitled under international law to expect third countries to act within certain international norms. Of course the EU isn't a country but it likes to behave like one and is acting on the instructions of its 27 Member States, all of whom are obliged by international law to abide by certain UN Resolutions. Looking at just one of these: UN Resolution 2625 on "Principles of International Law Concerning Friendly Relations and **Co-operation** Among States" it requires, amongst other things, that:

"No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind." and

"Every State shall refrain from any action aimed at the partial or total disruption of the national unity or territorial integrity of any other State or country."

It is evident that the EU has acted in bad faith throughout these negotiations between the United Kingdom and the EU. This alone allows the British Government to repudiate the Treaty and pursue actions in the interests of the country and its people.

For example, the EU forbade the UK from speaking to governments around the world about future trading relations. It even forbade the UK from speaking to the individual governments of EU member countries.

The EU has quite evidently not acted 'in good faith' and nor has it used its 'best endeavours'. It has consistently attempted to impose unreasonable restrictions on withdrawal and trade talks with the UK. The EU has insisted (and is still insisting) on discussing its red lines first, before talking about the details of a trade agreement.

During these supposed trade talks the EU has imposed restrictive clauses on the UK which it has not used on any other major country in trade negotiations. These demands are not in any way consistent with the conditions which prevail in any free trade agreement between any other major countries in the world.

In short, the EU has acted in a punitive and hostile manner towards the United Kingdom, and the UK is now within its rights under international law to repudiate the Withdrawal Agreement on this basis.

Source:

Extract of a larger article by Brexitwatch.

EU's raw materials strategy

In an open letter to EU officials in response to the EC's roadmap on critical raw material announced early in September, a group of 234 NGOs

and academics have responded negatively, saying that: "Paradoxically, the expansion of mining to meet growing demands for renewable energy and other industrial transitions in the EU and beyond threatens the efficacy of global action to address the climate emergency,"

Brexit and Northern Ireland the real legal position explained

hile MPs are arguing for the right to insist that the House of Commons and not the elected government should decide any changes to the Withdrawal Agreement (WA) the real situation is ignored.

In an article by Martin Howe, chairman of Lawyers for Britain, he explains why we should forget the foaming indignation, this Brexit bill is perfectly justifiable.

"A single unified internal market is a key block in the constitutional foundations of the United Kingdom. The 1707 Articles of Union between England and Scotland, and those between Great Britain and Ireland in 1800, abolished all customs duties between the different parts of the United Kingdom. They also declared that the citizens of all parts should be 'on the same footing in respect of trade and navigation, and in all treaties with foreign powers'.

The government's UK Internal Market Bill is needed to maintain the free flow of trade across the nation in the post-Brexit world. The UK will no longer be subject to the EU treaty rules on the free movement of goods and services or to the EU's State aid regime. Despite predictable protestations from the Scottish nationalists, the Bill's restrictions on their powers are similar to those under EU law (which for unaccountable reasons they seem to love so much). It is clearly necessary in an open internal market to have rules which prevent devolved legislatures or local authorities from subsidising local businesses in ways which would unfairly damage businesses in other parts of the country.

But two clauses in the Bill have generated a torrent of foaming indignation. These would allow the government to restrict the so-called 'direct effect' of two parts of the Northern Ireland Protocol, which is

Martin Howe QC

part of the EU Withdrawal Agreement (WA). The government will also include a similar clause in the Finance Bill in order to prevent the Protocol being weaponised by the EU to require the wholesale imposition of EU tariffs on all goods sent from Great Britain to Northern Ireland.

That would be flat contrary to the Act of Union between Great Britain and Ireland and would clearly alter the constitutional status of Northern Ireland within the UK. As such, it would amount to a major breach of the core principle of the Belfast (Good Friday) Agreement that NI's constitutional status cannot be changed without the consent of the people of Northern Ireland.

The problem arises from sloppy and hurried drafting of some of the clauses in the Protocol, coupled with egregious clauses in Theresa May's atrociously negotiated Withdrawal Agreement. These purport to impose on the UK the EU law concepts of 'direct effect' of treaties and the WA's supremacy over domestic law, even after we have ceased to be a member state, as well as giving the European Court of Justice binding powers of interpretation. These clauses defy universal international treaty practice, under which a sovereign state never subjects itself to binding rulings by courts of another treaty party.

The Protocol sets out the clear principle that NI is part of the customs territory of the UK, so goods should be allowed to flow from Great Britain to NI without tariffs. There are provisions for the UK authorities to levy EU tariffs on goods which are 'at risk' of crossing the open border into the EU. The problem is that the circumstances in which goods are to be treated as 'at risk' are not defined in the Protocol, and joint agreement is needed with the EU on the rules which would define this.

The EU has strong incentives to insist on a very wide definition of goods at risk, both because of its genuine but excessive paranoia about duty free goods leaking into the EU internal market, and because it has a strong economic incentive to make life a difficult as possible for British based exporters of goods into NI in order to advantage the EU's own exporters in the Republic and elsewhere. The problem is that if the UK refuses to agree a wide definition and insists on a more limited class of goods genuinely at risk of onward sale into the EU, then the default position if there is no agreement appears to be that ALL goods passing from GB to NI would be subject to duties.

Given its duties to safeguard the constitution and internal market of the United Kingdom and its specific responsibilities under the Belfast Agreement, the UK government cannot possibly allow such a situation to arise. Contrary to the rather puzzling remarks of Brandon Lewis, the Northern Ireland Secretary, there are good arguments that the government's clauses will not breach international law.

First, there is a general principle of international law that treaty powers should be exercised in good faith, and an EU blockage of reasonable 'goods at risk' rules under threat of using the treaty machinery to impose tariffs across the board could be classed as a bad faith exercise of treaty powers. The government's clauses will allow the UK to protect itself from abusive exercise of treaty powers by the EU and are therefore a justified measure under international law.

Secondly and more fundamentally, the alteration of the constitutional status of NI (which across the board tariffs on GB to NI exports would entail) would breach the core principle of the Good Friday Agreement. It is

Brexit and Northern Ireland the real legal position explained

not only an agreement between governments but also with representatives of the communities in Northern Ireland. International law does not justify a later treaty to which these community representatives are not parties being used to over-ride the rights they enjoy under the earlier treaty, especially where it involves over-riding such a fundamental right as the right to self determination of the people of NI.

It can also be said that framing domestic law in a way which may arguably breach international treaty obligations in order to maintain a negotiating position is a technique employed by generally by states in their international relations, and also by the EU itself. The EU has a long history of disregarding adverse rulings by WTO disputes bodies, for example on subsidies to Airbus. The ECJ itself in a case called Portugal v Council decided that it should not give any direct effect to the WTO Agreements under EU law, because that would force compliance with the WTO obligations and so have the consequence of depriving the EU's legislative or executive organs of the possibility entering into negotiated arrangements.

Fortunately, the UK is in a position where our law allows us to ensure that the UK's negotiating position under international treaties is not undermined by our domestic courts having to impose international treaties as interpreted by a foreign court even where it is contrary to the foundations of our constitution. The WA and Protocol have direct effect and supremacy within the UK only by virtue of a section in the Act of Parliament which implemented the WA. Parliament can undo or revise what it has previously done and so can modify or remove under UK law the direct effect of clauses in the WA, and contrary to misconceptions circulating widely, the UK courts are bound to give effect to Parliament's will if expressed in clear terms.

If there were any doubt that Parliament has this right, section 38 of the Withdrawal Agreement Act preserves Parliamentary sovereignty and makes it quite clear that Parliament has the right to pass the clauses which the government is proposing and thereby override these errant clauses in the Protocol."

A pro-Brexit business voice

new think-tank was recently A formed called the *The Centre for* Brexit Policy (CBP) and is backed by cross-party politicians who support the UK leaving the EU. It has been formed to propose the critical policy changes enabled by Brexit that will boost national prosperity and well-being in years to come, as well as help ensure that Britain fully 'takes back control' when it leaves the European Union. The CBP aspires to trigger a deep and wide debate about what Brexit should mean for the UK over the next decade or two. By providing a focus for the development of post-Brexit public policy, the CBP hopes to help formulate an overarching framework for the UK that maximises the opportunities Brexit affords. This will be promoted to Government, Parliamentarians, and the public

A s the debate in the UK around the issue of contact-tracing grows due to the coronavirus, the Bureau of welcoming contributions from those who want to see Brexit open a new and fruitful chapter in our country's life.

The CBP has three core objectives:

• Identify the benefits and opportunities of Brexit across the full spectrum of economic, trade, social, foreign, defence and security policy areas proposing new policies for the Government's agenda.

• Continue to make the intellectual, evidence-based case for a 'real' Brexit and provide the Government with clear and constructive advice on how to deal with ongoing negotiation and implementation issues. A 'real' Brexit means regaining full control over our laws, borders, seas, trade, and courts.

• Check any attempts to dilute a real Brexit, as well as serving as a catalyst and rallying point for positive news stories that, over time, will be able to

Monitoring

Investigative Journalism has revealed that the new science of predicting and monitoring population movements is persuade and demonstrate the many substantial advantages of Brexit Delivery of these objectives is based on professional, substantive fact-based research by experts in their fields leading to authoritative reports, short papers, OpEds, events, and briefing meetings - both within and without Government. The CBP is supported by a cadre of expert CBP Fellows drawn from multiple disciplines to provide additional expertise and experience in developing an agenda for policy change that will ensure the British people benefit from Brexit. Additional support is provided by a CBP Business Forum to bring a business perspective to shaping CBP's agenda, provide input to policy proposals, and deliver a pro-Brexit business voice.

A chance at last to hear from a pro-UK business lobby unlike the CBI.

already here – and EU agencies have been testing it on refugees and migrants.

LETTERS

Tel: 08456 120 175 email: eurofacts@junepress.com

EU breaking

Dear Sir.

The more one looks at the way the EU organisation is trying to dictate on all issues to its members the further apart they are moving.

On covid-19 they are miles apart in their control issues but even further apart of immigration and democracy.

The EU is slowly finding out that unlike the UK who has for 40 years being paying money into the EU, despite its trade imbalance and putting EU rules and regulation into practise most of its members are only interested in what they can get out of membership. Without the largess of the UK these members will be still wanting to receive but not pay money in for their membership.

Europe is a very much divided continent and the EU organisation pretends to represent and speak for the whole of Europe. This ability to ignore reality has been with the EU since its inception and its pretence to be a country is being exposed as false every day.

The grandeur that its leaders love to surround themselves with and their lack of democratic accountability and desire to be seen as a world power will only result in a costly failure. The economic cost and the lack of democracy is being felt by the member especially Hungary, countries Denmark, Spain, Greece and Italy. BERNARD REYNOLDS London

Parliamentary games

Dear Sir,

Yet again we hear the siren voices from MPs for control of any UK alterations to the Brexit Withdrawal Agreement, interestingly though they do not mind the EU making what ever demands it wishes.

History has taught us that if the government are allowed to interfere

with the UK leaving the EU on 31st December 2020 they will do anything they can to prevent this from happening. The electorate has spoken the MPs have been given instructions but like the unelected Lords they continue to work against the democratic wishes of the citizens they are supposed to represent.

Failure to leave at the end of 2020 will result in the total loss of democracy and as we have seen around the world that can create problems outside the control of the government.

A dangerous situation is facing the UK unless parliament obeys the requirements placed upon it by the electorate that it is there to serve. RICHARD SHAW Lancashire

UK contracts and the environment

Dear Sir,

The time has surely come for the government to make sure that government contracts are only given to UK based companies that employ UK workers.

When a UK company obtains a government contract it means jobs for UK workers that pay tax in the UK therefore profiting the country as a whole. Even though a contract like ship building may be cheaper to be given to a foreign country the overall cost to the UK exchequer will be less if produced at home.

Now that covid-19 has caused such huge job losses the government are duty bound to create jobs for UK workers instead of jobs and profits for foreign companies.

EU membership has resulted in the loss of jobs in the fishing industry, car manufacture, steel industry, ship building and many other areas due to the rule of having to offer contracts to other EU members as a price to pay for membership.

The need to teach the new

generation of the skills that have so often been lost due to manufacturing outside the UK is one of the urgent requirements we need now.

Now is the time for action on jobs and the return to local manufacturing, not just political posturing.

To produce in the UK can also help save the planet from pollution as unlike many other countries we can at least control our emissions by law and correctly enforce them.

In the past we have to our shame, outsourced production of our needs to countries that are happy to damage the world environment.

THELMA MATHEWS Coventry

WTO

Dear Sir.

What are the chances of Dr Liam Fox becoming the next Director-General of the World Trade Organisation (WTO)? The former occupant Mr Robert Azevêdo left the post on August 31st. Fox has been short listed and a decision was still pending in late September.

Dr Liam Fox in his presentation to the WTO Special General Council included the following statement.

"There is too little political will to make compromises needed for the multilateral trading system and too make little vision to these compromises easier. We must rediscover that political will and find the right language to explore our vision about the opportunities that trade can bring to a new generation."

The WTO is an important organisation and as the UK becomes even more reliant on its rules for fair trade with the reduction of tariff barriers where ever possible a sensible leadership becomes a necessity.

I hope he gets the job as he is a true believer in free trade and would be an excellent choice.

SIMON CROWTHER West Midlands

This year as all large group meetings are not possible due to the coronavirus, it is anticipated that all future meetings will be virtual and available on line.

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Thomas Grant, Visiting Professor of Politics and Law

PUBLIC MEETING (ONLINE) @gres.hm/political-lawyer Registration required at: www.gresham.ac.uk

Thursday 29th October, 6.00 pm

"John Evelyn: Britain's First Environmentalist"

Gillian Darby

PUBLIC MEETING (ONLINE) @gres.hm/john-evelyn Registration at: www.gresham.ac.uk

Monday 2nd November, 1.00 pm

"Bonnie Prince Charlie and the Jacobites"

Murray Pittock, University of Glasgow

PUBLIC MEETING (ONLINE) @gres.hm/bonnie-prince-charlie Registration at: www.gresham.ac.uk

Tuesday 10th November 6.00 pm

"What Do We Owe Society"

Martin Daunton, Visiting Professor of Economic History

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UK budget November currently appears cancelled due to covid-19

Current date for 31st December completion of EU/UK Transition Deal and exit from the EU

2021

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Slovenia takes over EU Council Presidency	1st July
2022	
France takes over EU Council Presidency	1st January
Czech Republic takes over EU Council Preside	1st July ncy
2023	
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