



# Reflections on Brexit and its Implications for Ireland

John Bruton

## Summary

This paper presents the testimony delivered by John Bruton, former Prime Minister of Ireland, on 27 April 2017, before the Seanad Special Committee on the Withdrawal of the United Kingdom from the European Union. The Special Committee was established by the Seanad on February 27th to consider the implications of Brexit for Ireland. Mr Bruton began his testimony by commending the committee for its work and also the government for ensuring, through effective diplomacy, that the particular problems of Ireland have been publicly recognised in the negotiating positions of both the EU 27 and the UK.

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It is important to say that Brexit is a British initiative, for whose consequences Britain must take primary responsibility. It was not forced upon them. In fact, as I will show, numerous concessions have been made by its EU partners to keep the UK within the EU Treaties, which it freely adhered to in 1973, and which its people overwhelmingly endorsed by referendum in 1975.

The context of the Brexit negotiations is changing all the time. In recent weeks, the EU economy has been improving. Election results in the Netherlands and France are more positive than many feared. Even the Trump Administration is beginning to see value in doing business with the European Union. The EU has remained united in its response to Brexit, a matter for which the Irish government can also take some credit.

### What is the alternative to a hard Brexit?

While I believe it may seem impossibly optimistic today, I believe that conditions can be envisaged in which, eventually, the UK voters might decide not to leave the EU at all, or to decide, after it has left, to rejoin.

Ireland should try to keep that possibility alive.

The terms for Brexit, as set out so far by Mrs May, will do incalculable damage to this island, politically, emotionally and economically.

We cannot simply wait for this to happen. While seeking to mitigate the effects of the hard Brexit that Mrs May has chosen, we must also do everything we can to ensure that, at the end of the day, there is no Brexit.

Apart from a few open questions, Theresa May has said what she wants. She wants out of the single market, out of the customs union, and “control” over immigration.

The open questions she has avoided so far are about the financial terms of the divorce, the status of EU citizens living in the UK and vice versa, and two aspects of a future trade agreement (if there ever is one), namely arbitrating disputes, and third-country imports getting into the EU via the UK.

The Article 50 letter, sent to Donald Tusk on 29 March 2017, did not tell us much more about the UK’s negotiating position than did Teresa May’s earlier Lancaster House speech of 17 January, in which she outlined a 12-point plan for Brexit, although it does not repeat the pledge to leave the Customs Union.

### How will the EU respond to Mrs May’s letter?

The European Council is meeting this week to agree the orientation it will give to the EU negotiators for the discussions with the UK due to start formally in June, and in earnest after a new German government is formed in September.

These orientations will be agreed by consensus, so every EU head of government will have to be satisfied.

In working out the orientation to be given to the negotiators, a crucial thing will be for the European Council to have in mind what would be its “best alternative to a negotiated agreement” (BATNA).

It is important to have such an alternative ready, because there is every possibility that no agreement will be reached within the two-year time frame for negotiation and ratification of a withdrawal agreement.

Mrs May has said that, for her, no deal at all is preferable to a bad deal. Her BATNA, so to speak, is no deal at all.

“No deal” would mean the UK simply crashing out of the EU overnight, sometime before the end of March 2019. This “no deal” scenario could lead to an overnight halt to flights, to trade and to commerce. There would be immediate, massive currency instability.

As pure negotiating tactics, maybe it not surprising that Mrs May would pretend that “no deal” would be better than what she would call a bad deal, but she is hardly serious.

“No deal” is something the UK cannot really afford. This “no deal” scenario put forward by Mrs May will, I expect, be probed during the UK election campaign to discover what it actually means.

The fact that it was put forward vindicates Tony Blair’s description of the UK government as, at the time of the Lancaster House speech, “not driving the (Brexit) bus”, but rather “being driven” by partisan and ideological forces it has not tried to control.

The EU country that would be worst affected by the UK crashing out of the EU, with “no deal”, would, of course, be Ireland.

So Ireland must use all its imagination and ingenuity with its EU partners to ensure that there is a better alternative than “no deal” available, to what Mrs May might consider a “bad deal”.

### Should the EU offer UK voters another option?

If the UK government is unable or unwilling, because of domestic politics, to work out a responsible “best available alternative to a negotiated agreement”, then the EU side should do so for it.

It should adopt such an alternative, alongside its line-by-line response to the UK’s negotiating demands.

Having a BATNA would also strengthen the EU’s negotiating position. It would provide something with which an emerging deal could be compared. It would also provide a basis on which the UK electorate could reconsider its decision of 23 June 2016, if it ever wants to do that.

As Tony Blair said, UK voters have a “right to change their minds”. After all politicians are allowed to change their minds, so why not voters?

If it was the UK voters who, in a referendum, sent their government on a mission towards Brexit, it would be reasonable that the same voters, rather than Parliament, should adjudicate on what will have been achieved (or not) by their delegates.

But if UK voters ever do change their minds about Brexit, it will happen slowly and incrementally.

Parts of the Brexit scenario, obscured during the Referendum, will become clearer during the negotiation. The unavoidable interconnections between EU freedoms, and EU rules, will emerge. So that this happens, it will be in the EU’s interest to ensure that there is maximum public understanding of the unfolding negotiations, at every stage.

Transparency will work in the EU’s interest. A running commentary is exactly what is needed, in the interest of public education!

When the UK public comes to see that the alternative to a single set of EU rules is either:

- no rules at all or
- multiple sets of contradictory rules for different jurisdictions,

citizens in both the EU countries and the UK may come to see EU membership in a different and more positive light.

They may, for the first time in many cases, see the EU as something that actually simplifies their lives, rather than the reverse.

In my view, the “best available alternative to a negotiated agreement”, the BATNA, that the EU side should adopt is an offer of continuing UK membership of the EU broadly on the basis that the UK was a member in 2015, before David Cameron’s ill-fated “renegotiation”.

The terms obtaining then were generous to the UK. They allowed it to opt out of the euro, Schengen, Justice and Policing cooperation, the Stability and Growth Pact and the justiciability in the UK of the European Convention.

Furthermore, the UK itself had also decided, without Brexit, that it would have a referendum of any new EU powers anyway.

In that sense, the UK was already having its cake, while eating it, before it ever decided on Brexit. These pre-2015 terms should be left on the table by the EU, but without the unjustifiable UK budget rebate.

President Antonio Tajani of the European Parliament made such an offer when he met the UK Prime Minister recently. That meeting was a very important initiative and underlined how central the European Parliament will be in this whole process.

Of course, at this stage, the UK would reject such an offer out of hand.

But, as the inevitable consequences of Brexit become clearer, UK public opinion might begin to see its merits, particularly when the offer is compared with the costs of simply crashing out of the EU overnight, with no deal at all, which is supposedly still Mrs May's fall-back negotiating scenario, or as compared with what she calls a "bad deal".

The resistance to keeping such an offer on the table is more likely to come from some existing EU member states.

Some members will point to the UK's insatiable demands, when it was a member, for opt outs, rebates and exceptions. Arlene Foster's analogy about feeding crocodiles may come to their minds. They will recall General de Gaulle's original veto of UK membership and his foresight that the UK would never settle in as a member. They might also argue that offering the UK a way back, after it has triggered Article 50, might encourage others to try it on too.

But if they sit back and think about it, they will, I believe, conclude that a UK inside the EU is better for the EU than a UK outside it, even with a trade deal.

Keeping the offer of resumed UK membership on the table would be good politics, and good economics, for the EU.

I mention in passing that Article 6.8 of the Vienna Convention, which sets out the law on treaties generally, explicitly allows revocation of a notice of intention to withdraw from a treaty.

A political declaration by the EU heads of government, at some stage in the coming months, in favour of facilitating an eventual UK resumption of EU membership, on its pre-2015 terms minus the budget rebate, would create a realistic yardstick against which UK citizens could compare the terms of Brexit at the end of the negotiations.

### The EU negotiating position

I do not propose to go into detail here about how the EU side should conduct the negotiations with the UK.

Obviously it will keep the 27 member states informed at every stage.

Ireland will need to ensure that any deal guarantees that the UK will not engage in unfair or environmentally harmful trading practices, insist that there will be no unfair subsidisation of UK enterprises competing with Irish enterprises and obtain assurances that the EU will take immediate action if that happens.

We will have a special interest in the post-2020 agricultural policies of the UK and in ensuring that they do not introduce production subsidies that disadvantage Irish exporters, that the UK adheres to reasonable climate change emission standards and that it does not permit third-country imports that undermine traditional Irish exports.

We will need to protect our electricity and energy supplies, after the UK has left the EU's common energy policy. Ireland's network is entangled with that of the UK, and it is through the UK that we can access the rest of the EU network.

The EU has agreements on this with other countries, like Switzerland, which, although not EU members, contribute to the EU budget.

The EU will have difficulty offering the UK a better deal than it is giving to Switzerland on this or any other matter.

### The state of British knowledge of the EU and its impact on the negotiations

It is important to remember that Westminster politicians have never taken much interest in how the EU actually works, in its procedures and rules, and in the compromises that underlie its very existence. They have this in common with many politicians in the larger European countries, which treat the EU as a sideshow to national politics.

So, even though the Conservative Party sponsored the idea of holding a Referendum on leaving the EU, it did not give much thought to what leaving the EU might actually mean in practice. In a sense, it is now finding out how the EU works for the first time, just as they are leaving it!

Mrs May's first priority, after the Referendum, was party unity.

That may be why she told the Conservative Party Conference last year that she would go beyond the mere terms of the Referendum.

She would not just leave the EU. She would refuse to join the European Economic Area (EEA), unlike non-EU member Norway.

She would also refuse to join the EU Customs Union (CU), unlike non-EU member Turkey.

She would reject the jurisdiction of the Court of Justice of the European Union (CJEU).

This kept her party quiet.

But now come the actual negotiations. This is where Mrs May's rhetoric at the Conservative Party Conference meets the reality of a rules-based international trading system.

A rules-based international trading system requires a common system for making, amending, interpreting, and enforcing agreed rules.

In a rules-based international trading system, unpleasant compromises are essential if you are to persuade others to open up their markets to your exporters, to your bankers, to your planes and to your people.

In a rules-based international trading system, you cannot unilaterally make, amend, interpret and enforce the agreed rules, in a way that suits only you.

There has to be a common system that involves some concession of sovereignty.

You often also have to accept an external enforcer, like the European Commission or an International Court. This is a concession of sovereignty.

And, in another concession of sovereignty, you often have to accept an external body interpreting the meaning of the rules, an entity like the CJEU or a Disputes Panel of the WTO.

But this is unacceptable to those who have made national sovereignty into a religion. It is unacceptable to some of Mrs May's euro-hostile MPs, and to some of the supporters of Donald Trump.

Some have argued that if Ireland is inside the EU, and the UK is out of it, a special "bespoke deal" for the island of Ireland, or for the UK and Ireland, could be envisaged.

I do not see how this could work as far as trading standards and tariffs are concerned.

The CJEU would be the final arbiter of Irish standards, while the UK Supreme Court would make the final arbitrations as far as the UK and Northern Ireland standards would be concerned.

Ireland would be obliged to collect EU tariffs and enforce EU standards on any goods entering the EU through Ireland, and do so at the Irish border, unless we wanted to exclude ourselves from the EU Single Market.

Any precedent established for the UK and Ireland in this matter will be examined by the countries in European Free Trade Association (EFTA) and the EEA. They will want to be sure that their existing deal is better than anything offered to the UK, which has refused to join either EFTA or the EEA. This will be especially the case if those countries are contributing to EU funds on an ongoing basis, and the UK is not doing so.

The EU side in the negotiations will also have to respect the long-standing "Interlaken principles" of 1987, which say that, in negotiating privileged relations with non-EU states, the EU will prioritise integration between its own members over relations with non-members and will safeguard its own decision-making autonomy.

I think this reference to decision-making autonomy may mean that EU rules and the CJEU must take precedence over the decisions of any joint bodies the EU might agree to set up with the UK.

### Some of the practical problems of Brexit

I have been reading publications of Conservative-supporting think tanks, like the Bruges Group and "Leave means Leave", and they are discovering how much extra bureaucracy will be involved in the UK decision to leave the EU Customs Union and the Single Market.

The UK will have to introduce customs controls on the goods bought and sold between the UK and the EU. This will involve checking where the goods came from, if they are properly labelled, if they are safe and if the tariffs due have been paid. The delays will be substantial at the border in Ireland, at ports in the UK, ports in Ireland and ports on the continent.

Customs clearance alone will add 8% to the cost of goods arriving in the UK by sea from Ireland or the rest of the EU.

At the moment 90 million customs declarations have to be checked annually in the UK for goods arriving from outside the EU. Once the UK itself leaves the EU Customs Union, UK customs officials will have to check 390 million documents!

Some may think the UK could reduce these difficulties by being in the Customs Union for some goods, but not for others.

This is impossible under WTO rules. A customs union restricted to some countries is a departure from the WTO norm of non-discriminatory trade policy among all WTO members. A customs union is allowed by the WTO only if it covers substantially all trade. The UK will be trying to join the WTO on its own account, and attempting to break WTO rules from the outset may not be wise.

Even if the UK eventually decides to stay in the Customs Union, but leaves the Single Market, which would eliminate the collection of tariffs at the border and in ports, the origin of goods will still have to be checked, as will compliance with EU safety and labelling rules. This will take a lot of time, regardless of where it is done – at the border or in a depot, electronically or on paper. The cost of doing business will increase, and for no productive or constructive purpose.

By leaving the EU Customs Union, the UK will not only exclude itself from duty-free access to the EU market, which represents over 50% of UK trade, but it will also lose the benefit of trade agreements the EU has negotiated with 60 other countries, which account for a further 17% of UK exports.

For example, since the EU negotiated a trade deal with Korea ten years ago, UK exports to that country increased by 110%. Leaving the EU means the UK would give that up, at least temporarily, and perhaps permanently.

There may be opportunities for Ireland to replace some UK trade with Korea.

Japan has more investment in the UK than it has in the rest of the EU combined, but a lot of it is there in order to access the EU single market. Again this is an opportunity for Ireland.

Mrs May is also beginning to discover that her hard-line on immigration will have costs. Some 20% of employees on UK farms and 29% of employees in UK food processing plants are EU nationals, who will lose their right to live and work in the UK.

When the UK tries to negotiate trade deals with countries outside the EU, like India, it will find that it will face demands for more Indian migration to the UK, as Phil Hogan, European Commissioner for Agriculture and Rural Development, pointed out at an [event](#) organised by the Irish Farmers' Association Dublin on April 24<sup>th</sup>.

UK airports will find themselves losing business when the UK has to leave the EU Open Skies Agreement with the United States. More US transit traffic will be routed through Dublin.

The UK will also have to try to join the European Common Aviation Agreement as a separate member, if UK-owned airlines are to have the right to fly passengers between EU airports. Rival airlines will not make it easy for them to join.

A sudden “no deal” Brexit would leave the UK outside the EU’s Aircraft Safety Agency’s jurisdiction, without a ready replacement.

After Brexit, the UK will have to set up 34 new national regulatory bodies to do work now being done for the UK by the EU Agencies, from which the UK will have excluded itself, because these agencies come under the jurisdiction of the CJEU.

An example of this is Euratom, a body confined to EU members, which regulates nuclear safety. Amending the Euratom Treaty will not be simple.

UK farmers and food producers will find themselves facing tariffs of 35% on dairy exports, 25% on confectionary and 15% on cereals. UK lamb production will be hard hit. These tariffs will have to be collected at the Irish border, and in Irish ports trading with Britain, and this will be the direct result of a sovereign UK decision.

If Mrs May wants to be able to make deals to extricate herself from some of these bad outcomes, she will need much more negotiating flexibility.

A lot will depend on what the Conservative Manifesto says. If it repeats the promise of a low cap on immigration, then Mrs May will have less negotiating flexibility after the Election than before.

### How to minimise the damage Brexit will do

As I have said, even if the UK decides to stay in the EU Customs Union after all, additional barriers to trade will go up at the border in Ireland, and between Ireland and Britain.

Ireland must use every legal means available to prevent this damage, including making full use of all the institutions set up in the Good Friday Agreement to persuade the UK to continue to adhere to EU standards within the UK, even after it has left the EU.

For example, if, after Brexit, the UK decides, as part of its agenda of “taking back control” “to develop new “British standards” for:

- packaging,
- plant safety,
- pharmaceutical safety or
- food safety,

the disruption to North/South trade in Ireland and to trade between Ireland and the UK will be immense.

Even slight differences in standards can add hugely to costs and can require expensive duplication of testing and production lines. This will be the case even if there are no tariffs. Similar regulatory barriers could arise for the provision of services sold between Ireland and the UK.

Increasingly, international trade agreements are in fact about standards rather than tariffs.

As the only EU country with a land border with the UK, keeping harmony between EU and UK standards will be disproportionately important for Ireland.

Since 1973, both parts of the island have been bound by almost identical rules, made under similar European Communities Acts, covering each jurisdiction, under which both of us have implemented EU laws, which have been interpreted in a uniform way by the CJEU.

All that may change on the day the UK leaves the EU.

The UK Prime Minister has announced that she will, later this year, introduce a “Great Repeal Bill”, to repeal the 1972 European Communities Act, under which EU laws automatically apply in the UK, and by which EU law has primacy over UK law.

The “Great Repeal Bill” would then come into full force on the day the UK actually leaves the EU.

This proposed “Repeal” Bill is misnamed because it will not actually repeal the EU laws, but simply declare that these same laws are now sovereign UK laws, independently of the EU, without altering a single comma.

But what happens after that?

### **Diverging standards could create new trade barriers**

The Great Repeal Bill will go on to provide a mechanism whereby the UK can then quietly repeal, or amend, these EU laws, one by one, without reference to the EU.

This will be done by Ministerial orders, which cannot be amended, and are rarely even debated. If these orders unilaterally change the standards to be met on the UK market, this could, overnight, erect a new barrier to trade with Ireland and across the border here.

The same will happen if a UK Supreme Court decision interprets a rule the UK has inherited from the EU in a manner that differs from the interpretation of the same rule by the CJEU. Overnight, we have a new trade barrier.

Of course, it will take many years for UK Ministers to go through every inherited EU directive and regulation, every amendment to them and every court judgement interpreting them, and then to decide on which one to keep, which to amend and which to replace.

But all this will be done behind closed doors, under pressure from special interests. All this could happen with no discussion with Ireland or with other EU countries. That is the logic of the Brexit rhetoric about “taking back control”.

Theresa May has promised that this process will be subject to “full scrutiny and Parliamentary debate”, but this seems impractical because so many EU laws are involved. And the scrutiny and debate, if any, will be confined to Westminster.

She said nothing about scrutiny in the Parliament in Edinburgh, or in the Assemblies in Belfast or Cardiff, let alone any consultation with Dublin!

This problem will get more and more severe as time goes on, as the UK seeks to justify its decision to leave the EU by introducing new rules and regulations of its own.

The British/Irish Intergovernmental Conference, set up under the Good Friday Agreement, must make this a permanent agenda item. It will have to meet much more often to keep up with the rapidly moving EU and UK regulatory agenda, to spot divergences that might create new trade barriers. It will need a substantially enhanced secretariat, and as the initiator of Brexit, the UK government should come forward with concrete proposals to this end.

Some of the laws being repatriated from the EU by the UK deal with matters that now fall within the competence of the devolved assemblies. These assemblies will be able to make new rules of their own, which may differ from one another, raising the theoretical possibility of new barriers to commerce within the UK itself.

The exact same former EU regulation could be interpreted in one way north of the Irish border, and in another south of the border.

### **An Ireland clause in the UK’s “great repeal bill”?**

What can we do to prevent all these disruptive and costly trends?

In my testimony in the [House of Lords](#) on 21 October 2016, I suggested that the proposed “Great Repeal Bill” should contain a special “Ireland clause”.

This clause would require any UK Minister, or a devolved UK Assembly, which is contemplating making any unilateral UK amendment to an inherited “EU-UK” law, to give public notice of his or her intention to do so.

It should then become a formal obligation to consult both the Irish Government and the Northern Ireland Assembly on the matter.

Such an “Ireland clause” should also provide for the monitoring of any divergences between the interpretations by the CJEU and the UK courts of the EU laws inherited by the UK.

In this way, one could identify anything that might cause a problem for any part of Ireland, or for Anglo-Irish relations. It would reinforce the work of the British-Irish Intergovernmental Council, to which I referred earlier.

This would not avoid all the problems that will arise from Brexit, but it should ensure that every step is taken with proper deliberation and foresight, and that further damage is not inflicted by accident.

### The Good Friday Agreement

There is another aspect of Brexit to which I must refer. That is its impact on the Good Friday Agreement.

The consent principle in the Good Friday Agreement said that the constitutional status of Northern Ireland, defined as its status as either part of the UK or part of a united Ireland, could not be altered without the consent of the people of Northern Ireland. That is not affected by Brexit.

But it is arguable that Brexit changes the constitutional status of Northern Ireland, in another sense, by taking it out of the EU.

This type of constitutional change was not envisaged at the time the Agreement was being negotiated, but, if Brexit had been on the cards then, I am sure the negotiators would have attempted to deal with the matter.

Brexit will impact living standards in Northern Ireland. The CAP provides 60% of the cash income of Northern Irish farmers. The 57% of all exports from Northern Ireland that go to the EU will suffer.

Strand Two of the Good Friday Agreement covers North/ South relations, and a strong North/ South dimension was important in ensuring the overall balance of the Agreement.

One of the key elements in Strand Two is the Special European Programmes Body, which helps spend EU monies on projects that promote closer North/South relations.

When the UK takes Northern Ireland out of the EU, all that will change, and, in the absence of EU monies, Strand Two will lose an important part of its content.

The UK government, which is the initiator of Brexit, has to take responsibility for all these issues, and propose alternative ways forward, to strengthen both Strand Two and Strand Three of the Agreement. This will require the continued use of the review procedures in the Good Friday and St Andrews Agreements, in light of Brexit, as it evolves. This is a matter your Committee will probably wish to explore.

## What Ireland should do now

In making its preparations, Ireland should act on the assumption that the UK will leave both the Customs Union and the Single Market. While we should work for the best, we should prepare for the worst.

In our efforts to get the best outcome, and indeed to help the UK, we will only get the support we deserve from the other EU states if we show we are fully committed to keeping the EU together. We cannot allow a perception to develop that we are half-hearted about preserving and strengthening the EU. As a member of the eurozone, we are necessarily in the EU for the long haul.

Acting on the assumption of a hard Brexit, Ireland should adopt an aggressive strategy to improve its overall competitiveness, in other words, improve its ability to survive the worst outcome.

To deal with a bad Brexit outcome, Ireland must become hyper-competitive. The right action agenda is to be found in the “Competitiveness Challenge”, presented to the government by the National Competitiveness Council.

As the Report points out, we start from a good position.

Ireland has the fifth-highest productivity in the OECD, after Luxembourg, Norway, the US and Belgium.

In the “ease of doing business” category, Ireland ranks in 5<sup>th</sup> place in the EU after Denmark, Finland, Sweden and Germany.

We should now aim at first, not fifth, place in both of those tables!

The Competitiveness Council shows where there is room for improvement.

Our immediate competitor in many areas will still be the UK.

Comparing Ireland with the UK, using the World Bank Rankings measures of “ease of doing business”, the Competitiveness Council Report says that for a business wanting to:

- get electricity, Ireland is in 33<sup>rd</sup> place, while the UK is in 17<sup>th</sup> place in the world;
- obtain a construction permit, Ireland is in 38<sup>th</sup> place, while the UK is in 17<sup>th</sup> place;
- enforce a contract, Ireland is in 90<sup>th</sup> place in the world, while the UK is in 31<sup>st</sup> place (our case clearance rate in our courts is the worst in the EU);
- trade across borders, Ireland is in 27<sup>th</sup> place, while the UK is in 13<sup>th</sup> place; or
- secure credit, Ireland is in 32<sup>nd</sup> place, while the UK is in 20<sup>th</sup> place.

The remedy to each of these problems is different. It will usually involve action by several government departments. So a “whole government” approach will be needed, with a narrow focus on dramatically improving Ireland’s competitive position in every area where our costs of doing business are too high.

The Taoiseach, and his office, are in an ideal position to drive this, because he has unique authority to clear away roadblocks caused by disputes between departments. Making Ireland hyper-competitive and able to withstand the hardest of hard Brexits would provide a unifying agenda for the New Politics, going beyond the Programme for Partnership government, which after all was agreed when Brexit seemed unlikely.

In fairness, the figures quoted by the Competitiveness Council show that for registering property, Ireland is 41<sup>st</sup> place while the UK is in 47<sup>th</sup> place, and for ease of paying taxes, Ireland is in 5<sup>th</sup> place while the UK is in 10<sup>th</sup> place. But even there we can do better.

If our aim is to be hyper-competitive, that must influence our policy on public-sector pay claims. That aim strengthens the case for setting up a “Rainy Day Fund” to meet unexpected fiscal shortfalls, and the case for a strong Independent Parliamentary Budget Office.

We should not spend today what we are unsure we will actually earn tomorrow.

As our population ages and the retired population inevitably increases, we will not be able to afford any work disincentives in our tax and income support systems.

We cannot afford to have so many households where no one is working, an area where Ireland is apparently worse than any other EU country.

Nor will we will not be able to afford to narrow our tax base, as some propose. In fact we should be broadening it.

The likelihood of a hard Brexit should be the signal for a comprehensive action plan to make the Irish economy hyper-competitive, starting now, even before the UK starts negotiating its withdrawal terms.

### **The EU is a fragile, voluntary union that can only work if there is give as well as take**

Meanwhile Ireland must work to make the EU more effective, and more visibly democratic.

Ireland must help the EU shake off its pessimism. It must defend the EU from unfair criticism. But it must also come forward with ideas for the reform and improvement of the EU.

There is no denying that the Brexit decision was a blow to the EU and created a risk that the remaining 27 EU countries will start pursuing national interests at the expense of the common EU interest. So far there is no sign of this, and Ireland can claim a lot of credit for that.

The 27 EU states need to act resolutely to strengthen EU-wide democracy, to ensure respect for EU rules and to show that the EU can do business efficiently with the rest of the world.

The European Union is not a monolith. It is a voluntary Union of 28 states, with no independent tax-raising power.

It operates on the basis of rules, which its 28 members must freely respect. If they fail to do so, the EU ceases to mean anything.

These rules are made under the authority of the EU's Treaties, which have been ratified by all member states, and the Treaties can only be amended if all 28 states agree.

If unanimity is the rule, the more members the EU has, the harder it becomes, by a form of geometric progression, for the EU to amend its Treaties.

### A club that cannot amend its rules will fossilise

A club that has no power to change its basic rules will eventually fossilise and die.

The EU's 28 members are, in theory, sovereign equals, regardless of differences in population or wealth. But voting weights do recognise differences in size on all issues where unanimity is not required.

The EU makes trade deals on behalf of its members, using the extra bargaining power it derives from its size. But because it negotiates on behalf of 28 states, not just one, it can be harder for the EU to finalise a trade deal than it would be for one state, negotiating alone.

In the case of some trade deals, it is sufficient for them to be ratified by the European Parliament alone. In others, all national parliaments and some regional parliaments must ratify too. In these cases, the EU has much more difficulty being an effective trade negotiator.

### Compromises between national interests needed if EU is to do trade deals

Likewise, if it becomes too difficult for the EU to complete trade agreements, because a few states within the EU hold up the agreement in order to advance a national interest, then the EU's utility as a trade negotiator will fade away.

This was an argument advanced by some of those who favoured Brexit, namely that the UK could negotiate its own deals more easily outside the EU, without having to wait for 27 other countries to agree.

The European Commission conceded, under pressure from national governments facing early elections that the EU-Canada Comprehensive Economic and Trade Agreement (CETA) had to be ratified by the national parliaments of the 28 states, as well as by European Parliament and the 28 governments.

This was a risky decision and may hamper the EU's ability to do trade deals in future.

If the EU's deal with Canada had failed because the Walloon Parliament in Namur failed to ratify it, years of work by Canadian and EU negotiators would have gone down the drain.

Other countries would then begin to doubt if negotiating with the EU is worth their time. The Brexit advocates would have won part of their argument.

A lot more is at stake here than the content of the agreement with Canada.

## Treaty change must also be possible

It has become accepted wisdom in every EU capital now that EU Treaty change is off the agenda, owing to several developments:

- The requirement to have a referendum in Ireland on a Treaty change involving a transfer of sovereignty,
- the voluntary decisions of France and the Netherlands to have referenda on certain EU matters, and in the Netherlands even on a minor agreement with Ukraine, and
- the expectation that a Treaty change would be preceded by a cumbersome Convention.

The net result of all these developments is that the EU will not consider Treaty changes, even ones that might make it more democratic.

If that remains the case, the EU will eventually freeze up, because it will not be able to respond to new circumstances, and its member states will have to look to other less democratic or transparent institutions than the EU, to advance their collective interests. One could even see NATO being called into service for more broadly defined “security” purposes.

I agree that there is no need for a comprehensive review of the Treaties so soon after the Lisbon Treaty came into force. But it should be possible to introduce changes to the Treaty in response to concerns that emerged in the UK referendum campaign, such as changes to make the EU more visibly democratic and accountable.

For example, Treaty changes could be envisaged to:

- 1.) elect the President of the European Commission directly, in a two-round election, by the entire electorate of the EU,
- 2.) allow the eurozone countries to elect the President of the Euro Group in a similar fashion and
- 3.) empower national Parliaments of the EU, if a minimum number agree, to require the Commission to put forward for consideration a legislative proposal within the EU competence in the Treaties. National Parliaments already can delay EU legislation, so why not allow them make a positive proposal?

## Respect for rules by member states is an existential necessity

If one (or more) member states gets into the habit of failing to respect EU rules or directives, the EU ceases to be operational, particularly if the states failing to respect the rules are the bigger ones.

Last year, France threatened to flout an existing EU directive, because efforts to amend it in a direction France wanted are being blocked by the national parliaments of 11 EU states under the procedures introduced in the Lisbon Treaty.

In response, the then French Prime Minister, Michel Valls, threatened not to implement the directive at all, in an action that would completely undermine EU rule-making. He said: “If it is not possible to convince [the 11 states to accept the amendments France wanted] ... France will not apply this directive.”

That is a direct threat to the EU from a founding state. It is dangerous and should not be countenanced.



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