DAVID OWEN

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Our EU escape route exists already. Europe set it up

DAVID OWEN

At the end of next month the new British prime minister, whether it be Jeremy Hunt or Boris Johnson, will have to meet the outgoing president of the European Commission to discuss proposals for amending the withdrawal agreement so that the Irish backstop cannot have the effect of locking the UK permanently into the EU.

I doubt the EU will accept any form of words for doing this. It is too sensitive in Dublin, and adopting such a position on Ireland has been the clear hardline strategy of the commission itself. But without any amendment I suspect the House of Commons will make it clear once again that there is insufficient support to adopt the withdrawal agreement, nor to leave the EU without a deal.

Yet the European single market is designed to include countries inside and outside the EU that are signatories in their own right to the European Economic Area (EEA) agreement. The laws of the single market are part of the withdrawal agreement, which, in effect, keeps the UK within the single market until December 31, 2020.

The Bruges Group, a Eurosceptic think tank founded after Margaret Thatcher's speech in that city in 1988, has recently advocated a mechanism whereby the UK leaves the EU but remains a member of the EEA, "participating provisionally" in the European single market.

This term "provisional" is important: since May 2014 Croatia has been a provisional member of the single market without ratification. The UK could do the opposite, leaving the EU on October 31, 2019, to become a non-EU member of the EEA.

A "Canada+++" free-trade deal was offered by the president of the European Council, Donald Tusk, when it was clear the withdrawal agreement was proving difficult for the UK. It was an offer that should have been pursued. But the UK's status would be "provisional" in that it would be the intention to leave the EEA by giving the statutory 12 months' notice to coincide with the completion of a Canada-style EU-UK free-trade agreement by December 31, 2020.

Obviously, it will be necessary for the House of Commons to continue to legislate for the repeal of the European Communities Act 1972, which in its current form stops the UK being a member of the EEA when we leave the EU. That would need to be changed to say that the UK will give the required 12 months' notice to leave the EEA by December 31, 2020, thereby keeping to the same timetable for leaving the single market as in the withdrawal agreement.

One of the benefits of this strategy is that the new UK prime minister would drop Theresa May's bespoke treaty, which has been rebuffed three times by parliament. A different approach must be adopted. A "Canada+++" free-trade deal with the EU could be agreed by December 31, 2020.

This new strategy goes a long way towards meeting the EU's concerns about the Irish border. Proposals on the issue would be based on many of the established border controls between EU and non-EU states, such as between Sweden and Norway, except that there would be no fixed controls on the Irish border.

The present detailed SPS (sanitary and phytosanitary) measures to protect humans, animals and plants from diseases, pests and contaminants, part of the EEA agreement, would help in resolving the most urgent problems over the Irish border. The UK and Ireland should also urgently examine the use of drones, sniffer dogs — used successfully by Norway — and other technological solutions for monitoring and, if need be, inspecting traffic on either side of the border.

The UK would regain control of its fishing and agriculture policies as soon as October 31, 2019. The immediate political effect of leaving the EU this October would be a welcome end to widespread fears of another Edward Heath-style sellout over fishing.

The new prime minister would have to start talking immediately to Tusk and the chairman of the European Free Trade Association (Efta) council, currently Norway, but rotating every six months with the three other members. In this way the UK would be involving all 31 of the other signatory governments to the EEA agreement, not just the EU 27. Many of the worthwhile elements of the withdrawal agreement could be carried into this new EEA vehicle, and Tusk has a key role, independent of the commission, as leader of the European Council.

The aim would be for all EEA countries to agree to the UK remaining for a provisional period in the single market as a non-EU member of the EEA from October 31, 2019, to December 31, 2020. To avoid a legal clash, the UK would go on asserting that it is our right under international law to move to being a non-EU member of the EEA from October 31 this year. But the EU would not have to concede this UK claim and could merely grant "provisional" status.

There will be a cost to the UK under agreed terms that already apply to Norway and Iceland. The UK would be wise to pay the sum already negotiated with the EU to cover the cost of leaving, with phased payments to be completed on the signing of an EU-UK free-trade agreement. The total, however, would be much less than the £39bn sum quoted for May's deal.

An essential element in all these discussions is that the UK would not be a supplicant, as under article 50. It would be a proper negotiation, not the take-it-or-leave-it approach built into much of article 50.

Lord Owen was Labour foreign secretary in 1977-9 and a founder member of the Social Democratic Party; lorddavidowen.co.uk

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