

# The Malthouse Compromise – an official explainer in full

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*Conservative Home has received an official explainer of the Malthouse Compromise, and offers it without comment for the interest of our readers.*

Parliament may shortly face a binary choice over leaving the European Union with an agreed Withdrawal Agreement (WA) or without one.

Many MPs find the WA in its current form unacceptable. Indeed the Commons have rejected it by a large majority. Others find the possible economic and logistical disruption of an exit without any WA equally troubling.

For too long the Brexit debate and negotiations have been stymied by a collective gamble over this choice. Each side of a naturally binary debate – Leave/Remain – was manoeuvring around this fall-back arrangement in the event of the WA's failing, to the extent that the WA itself was being neglected and consensus could not emerge about what it should and should not contain.

Our intention therefore was to create a degree of optionality to mitigate the binary quality of that choice – and to do so in a way in which those on both sides could accept a package as a whole that sought to address their concerns. The idea is that each side will find in the package proposals that they might not consider ideal but will find acceptable.

In this way we hope a consensus will emerge across the House and that we can have an eminently reasonable set of options to present to our EU partners which could command a majority – something the EU have quite rightly been asking to see for some time.

The structure of the compromise is to offer the EU a choice of two plans: Plan A is predicated on achieving agreement on a WA that addresses the principal weakness of the current version, the perpetual character of the Irish backstop, and its consequences for the Future Relationship between the UK and the EU.

Plan B assumes that agreement on a WA is not possible and that both sides accept a responsibility to act so as to minimize as far as possible the disruption that might arise to people and businesses in the EU and the UK.

Both Plan A and Plan B involve the UK's ceasing to be a Member State of the EU according to the timetable set by Article 50 of the treaties, that is on 29th March 2019.

In order therefore –

Plan A – “The Deal”:

Essentially we would offer the existing WA with two changes:

First we would extend the implementation period until no later than December 2021. This would involve more money, but also provide a longer period to agree the Future Relationship (FR), with an immovable deadline to act as an incentive for talks.

Second, to address the backstop, we recognize the legitimate concern on both sides of the border on the island of Ireland about the effects of Brexit on the settled border arrangements, and the profound commitment of all parties to the Belfast Agreement. However, it is clear that the current formulation of the backstop is not acceptable to the Commons, and some of the suggested solutions to this problem essentially mean the backstop isn't a backstop at all.

We therefore propose a different basis for the backstop that is capable of being permanent. In essence the nature of the new backstop is a basic free trade agreement and a brief is attached at Appendix 1. It is important to note that the NI border arrangement requires no new technology and relies on existing administrative processes.

All else in the WA remains the same, including, very importantly a guarantee of EU and British citizens' rights.

If this is not acceptable to the EU, or they require more time to consider it, we would propose our Plan B.

Plan B essentially creates a transitional standstill period, at the end of which the UK would overnight become a third country in practice but during which we would have time to avoid disruption in a number of ways:

1. We would keep plan A on offer for as long as the EU was willing to consider it,
2. We would offer to pay our net contribution (c.£10bnpa) in exchange for the Implementation Period as negotiated, until no later than Dec 2021, as a standstill period,
3. We would also offer legal text to support a GATT Art XXIV “zero for zero” temporary arrangement for execution either at the start of the standstill in the event the negotiated implementation period could not be secured or at the end of the standstill if the future relationship had not been concluded (more [here](#)).
4. Both sides would prepare for WTO terms fully.
5. We would create an opportunity to discuss our future relationship with the EU as it would apply from the end of the standstill period.

This transitional period would last until the end of December 2021, during which time we would pay our net EU budget contribution, and cover our other liabilities subject to arbitration (pensions etc.), and we would “stand still” on everything else – so we would remain a member of the customs union and single market, and the various other arrangements to do with security, aviation and so on. Again very importantly we would unilaterally guarantee EU citizens' rights.

In essence this structure throws a safety net around “No Deal” diffusing the drama and mitigating the possible damage on both sides, with plenty of time allowed to agree a future relationship, which is the desired outcome for everyone. It also allows other non-EU countries to see that the UK has proposed something eminently reasonable which protects our supply chains.

If this structure of two deals is offered to the EU, we would expect it to receive serious consideration by those concerned to achieve a resolution that works for both the UK and EU. Plan A is reasonable and workable and addresses the legitimate concerns about the Irish border. Plan B provides a transitional period in which we can settle remaining differences without unnecessary economic damage or logistical difficulties, retaining optionality for all sides. In both cases there is no prejudging of the form of the FR. Maintenance of the Common Travel Area on the island of Ireland is also an important part of both plans.

The only other option is slamming the door, which would seem irrational and unfair given that the EU have pledged to use best endeavours to agree a smooth and civilized exit. On this basis, given the widespread support for this compromise, and the demonstrated majority for it, we would welcome the opportunity to develop it further with the Prime Minister such that it could be offered to our EU allies as a profoundly reasonable solution.

### **Appendix 1: The New Backstop**

- A revised Withdrawal Agreement (WA) which can be negotiated with the EU, thus avoiding No Deal and honouring the referendum result, whilst protecting the national interest.
- Our proposed new backstop would guarantee departure from the Customs Union, Single Market and all EU rule-making for the entire UK.
- It can be negotiated because it builds on the EU’s own offer (rather than asking them to compromise the single market) and the concept has already been positively received by the EU privately (they will not publicly back it whilst a permanent customs union is on the table).
- It retains the vast majority of the draft WA but crucially removes the four poison pills that have prevented the draft WA from finding widespread support in Parliament and the country at large.
- One of the reasons that Parliament is hostile to the Prime Minister’s current proposal is that it would place the UK in a “single customs territory” by virtue of the backstop, giving the EU no incentive to make concessions in future trade negotiations (thereby putting UK interests such as fishing at great risk). It should be noted that any single customs territory that is not the full Customs Union will require checks and customs certificates, such as Turkey is required to use.

- This alternative WA proposes a new Free Trade Agreement (FTA) with zero tariffs and no quantitative import restrictions, and a Customs and Trade Facilitation Chapter that will deploy advanced customs and trade facilitation measures which include specific solutions for the Irish border, so the leverage would be the same on both sides. It also addresses the non-regression clauses so as to make them two-way and of the language that would be used in any trade agreement, allowing any potential end state arrangement.
- The new backstop does not imperil the Union as it represents a permanent solution to the Northern Ireland / Ireland border making it both a backstop and a front-stop. It does not require any differences between NI and GB beyond those that exist today.
- The new backstop will include a Free Trade Agreement in Goods, a Customs and Trade Facilitation Chapter, as well as: commitment by all parties not to place infrastructure on the Northern Ireland border; the UK adopting EU rules of origin; regulatory recognition such as in sanitary and phytosanitary (SPS) measures; in facility and inland clearance; and level playing field provisions on areas such as labour – in other words normal practice in FTAs.
- This reformed WA is likely to command a majority in the House of Commons – it is already supported by both leave-backing and remain-backing MPs and, crucially, the DUP.

#### The main changes to Withdrawal Agreement

1. No “single customs territory” between the UK and the EU, allowing the UK to regain control over its tariffs and regulations which are required to carry out negotiations for trade agreements with other countries. This makes the UK a credible trade partner for third countries after 29th March 2019.

2. A new backstop to replace the Northern Ireland Protocol which is based on what the permanent solution to the Irish border should be. This maintains the territorial integrity of the UK and allows the UK to regain control over its tariffs and regulation. Crucially to address the concerns of the Republic of Ireland, this arrangement is capable of being permanent – a front-stop – It includes:

- A free trade agreement in goods: zero tariffs and no quantitative restrictions, providing for tariff-free trade in goods plus UK-EU regulatory cooperation.
- No infrastructure on the Irish border: a commitment by all parties not to place infrastructure on the border.
- Regulatory recognition based on deemed equivalence because we will be identical on day one of Brexit: on sanitary and phytosanitary (SPS) and animal health measures and mutual recognition of conformity assessment, with measures to ensure that the animal health and disease control zone on the island of Ireland can be maintained.
- Level playing field provisions: on labour, the environment, competition and state aid, consistent with normal practice in FTAs, as opposed to the highly one-sided commitments in the Withdrawal Agreement.

- A Customs and Trade Facilitation Chapter with an Irish border protocol: an agreement to deploy advanced customs and trade facilitation measures, including specific solutions for the Irish border.

This will allow us to use a range of proven solutions for our customs procedures, while reducing the burden of formalities on traders and avoiding congestion at ports, and include the principle that any necessary formalities and inspections are carried out with the minimum of delay and, to the maximum extent possible, away from the border. This will employ:

- Inter-agency cooperation and information sharing, and recognition of the other party's inspections and documents for certification of conformity with country or import or export
- Simplified procedures and data processing at departure and destination for the import, export and transit of goods
- Expedited procedures for qualifying operators, with mutual recognition of trusted trader schemes like authorised economic operator (AEO) programmes, and making them available to as many traders as possible
- Self-assessment for importers to declare imports periodically and account for duties payable, plus support to encourage uptake.
- Inland, in-facility checks and participating in EU systems (such as TRACES) so all SPS related goods will be registered with these systems.
- Inland, in-facility checks for small businesses (who are already filling out VAT forms).
- Adherence to international standards of the WTO and other appropriate bodies
- Special facilitations for specific sectors like agriculture.

3. We would propose an extension of the Implementation Period to 31 December 2021, but no further.

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