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# The Ghost of Christmas yet to come: Sir Ivan Roger's Brexit lecture full text

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**The full text of Sir Ivan Rogers' lecture, *The Ghost of Christmas yet to come: Looking ahead to the coming year(s) of the Brexit process*, hosted by Policy Scotland at the University of Glasgow on 25 November 2019.**

## The Ghost of Christmas yet to come: Looking ahead to the coming year(s) of the Brexit process

I'm very honoured to have been invited back to give a third lecture here today.

Given where we are now politically, still in the midst of much the biggest political crisis since the War, and arguably a major constitutional crisis too – I am going to talk today about the crisis that is likely to confront us at the Christmas yet to come – Christmas 2020. And when I came to think about it I realised that makes me the rather forbidding Ghost of Christmas Yet to Come – not silent, I'm afraid – or shrouded in a deep black garment – but pointing at a future which can still be changed but is highly likely to materialise if the message it brings is not heeded.

I make no apologies, as I am here today in the role of the Ghost pointing at what I think is the most likely future if nothing changes, for focussing today mainly on a future in which the Tories under Boris Johnson win a majority at the forthcoming election.

As a former civil servant, I long ago set aside the freedom to express personal political views, but I am as keenly interested in the possible outcomes as the rest of you. We can all read the polls,

and follow the work of the many experts including from this fair city (even though some of them are down the road in another fine Scottish University), and as we sit here today the version of the future I will concentrate on is a very likely one if things continue on their current course.

## 1. The Ghost of Christmas Past

Let's start though at the beginning, with the Ghost of Christmas Past who reminds Scrooge of some important moments in his past that have had a determining influence on the present. This ghost you may remember is a kindly one, and says to Scrooge "These are the shadows of things that have been, that they are what they are, do not blame me!"

Before the crisis which nearly brought Mrs May down at Christmas 2018, was the one that nearly brought her down at Christmas 2017.


There ought to have been a crisis at Christmas 2016 too, but at that stage, Mrs May was being lauded to the skies in her Party and the media for having made the errors that guaranteed her downfall, and gloomy spectres warning of future difficulties were very much out of favour.

The 2017 crisis was over whether we could even get to the end of the first phase of the Article 50 process.

The fateful December 2017 text which delivered the proposed Irish backstop solution, also gave Mrs May the promise she wanted of a transitional period lasting until December 31, 2020, contingent on the U.K. ratifying the Withdrawal Agreement, with which she could reassure the increasingly alarmed private sector that they would have time to prepare seriously for exit.

When I last spoke here 18 months ago in May 2018, we were a few weeks before the ill-fated Chequers proposal of Prime Minister May, and I was attempting – obviously in vain – to warn about the illusions running on all sides of British politics, and to urge that we have a more serious national debate about our choices post Brexit, which eschewed much of the sloganising which obscures rather than illuminates.

It was obvious by then that Mrs May was in deep, and probably terminal, trouble. And Chequers of course marked the departure of the then Foreign Secretary, Boris Johnson, as well as the then Brexit Secretary, David Davis. And therefore the start of effectively a near yearlong campaign from the Right of the Conservative Party to ditch their leader and go for a "harder" Brexit.

That campaign succeeded of course. Amidst all the accusations and counter accusations about who is most responsible for the most recent outbreak of "paralysis" in the House of Commons – and there is certainly plenty of blame to go round for our political shambles – it's always useful to remember that it is those protesting most loudly currently about Members of the Westminster Parliament thwarting the "Will of the People" who have so far gained most from the situation. 

The main reason Mrs May's deal failed three times to pass was, after all, that her own Party's Right voted against it each of the three times in sufficient numbers to kill it. But they had not at that point been able to remove her. Result: the paralysis they themselves sought, until they could remove her.

Many on the Tory Right wanted "no deal". They still want it – "no trade deal" that is, which is a slightly different, but still very problematic, beast – at the end of 2020 – the Christmas that is yet to come. And the people who yearn for "no deal" are currently pretty confident that the likely incompatibility between what they think they have so far persuaded Prime Minister Johnson to advocate and what the EU would ever agree, will still secure that outcome.

That may well still prove correct as I shall try and explain later.

Maybe it won't: and Johnson will pivot to an entirely different position from the one he is taking for the election.

But let's be clear to turn back could also turn out to be, as we have seen so often since the referendum, easier said than done.

Currently the view being peddled by these people is that following the election and the passing of the Withdrawal Agreement by a majority Tory government, there is a "tidal wave of investment" ready to roll into the U.K as soon the Withdrawal Agreement is passed. This is in my view rather farfetched. Investors, understandably, need to see the future relationship settlement, not just the Withdrawal Agreement, and to understand what it might mean for their investments, short, medium and long term.

There might well be short-term relief because of the greater clarity of political direction. And many U.K. assets are indeed under-priced. But nothing is truly resolved until you do – or fail to do – the trade and economic deal, negotiations on which have yet to start. There is no certainty whatever that those negotiations will end in a deal. And many reasons to believe they might not. I shall outline those later.

The failure to assassinate Mrs May politically via last December's Party vote of no confidence made no real difference in the end: the proponents of a hard Brexit wounded her badly enough for their purpose, and carried on paralysing her proposed deal in the Commons until they had brought her down. Of course they were massively assisted in doing so by people who made the exact opposite calculation: that paralysis would lead to the reversal of Brexit.

I think one is entitled to have one's severe doubts about the wisdom of their judgement too.

Both sides just doubled down.

There has, throughout this sorry saga, been a depressing absence of people searching for any Brexit resolution which might, over time, command really substantial majority public support

across the UK.

There has also been a resolute failure on both sides of the Channel to think enough strategically – geostrategically – about a relationship which is enormously important to the western world.

And which can either now go seriously pear-shaped for a really long time, or can still be rebuilt on new foundations. But only if there is the trust that is now largely missing on both sides.

There were, at the outset, some genuinely interesting ideas out there as to what could be built over time which might accommodate the U.K and perhaps a few others in a rather different shape of Europe – without in any way undermining the ability of the many who want to go ahead with much deeper integration from doing so.

But they bombed. Or perhaps rather, they WERE bombed. And I think the U.K's mostly dismal self absorbed debate has helped give others the excuse to think that none of this is about any problems with the European construction, rather than solely with the British political class.

Maybe it was always a chimera to think there could be a Brexit resolution with serious majority public support. I personally don't think so, necessarily. It would, though, have required leadership we have not had from any side.

What is most striking now though, 18 months on from Chequers, is that no-one is seriously seeking such a solution that the public across the UK can support. And that all the illusions remain – on every side. Indeed, the debate has, if anything, regressed.

Back to an even more heated version of the debate at the time of the referendum, and almost as if none of the events of the last 41 months had happened.

And here we are, approaching Christmas 2019, without much sign that we've learned anything from the Ghost of Christmas Past.

## 2. The Ghost of Christmas Present: it's still Groundhog Day

The Ghost of Christmas Present, you will remember, is a jolly and initially rather reassuring figure, who seems initially at least to be promising feasting and merriment as well as peace and goodwill to everyone. However the story soon turns a little darker as we see beyond the bonhomie and start to consider what is going on for those who are not at the Christmas party.

I must confess I was rather tempted, when looking for a literary or film title for today's lecture to go for *Groundhog Day*. Another well-known story on the theme of whether we can learn from the past and the present in order to move forward into the future. I will come back to the *Christmas Carol* later, but one thing that put me off *Groundhog Day*, I must confess, was that I discovered that the Prime Minister himself was deploying – and deploring – “groundhogger”! I think my version of “Groundhog Day 2: Endless Brexit” is perhaps a little different from his.

Definitely a better film, though...

Because, for me, what's most "Groundhog Day" about the current debate is:

- First: Waking up at the same time every morning, not to Sonny and Cher, but to some Government Minister, sometimes even the Prime Minister, declaring on the *Today Programme* that a great comprehensive trade deal with the EU can be concluded very rapidly next year and is the "easiest in human history" because "we are aligned on day one". We heard the self same stuff from the very same people 3½ years ago when they told us that trade deals both with the EU and with all other major players round the world would be ready for the day after exit – which, as you will recall, was, at that point, slated for about 8 months ago... Not true then; not true now, for reasons I shall try and set out.
- Second: Seeing the UK political system as ever thinking purely tactically and short term, with the focus solely on the domestic political handling, rather than thinking about how, in the impending – and toughest – stage of the Brexit process, we avoid the exact repetition of the syndrome we experienced to our great disadvantage in the first stage. In practice, this Prime Minister is, for all the talk about "getting Brexit done", now basically replicating the strategy errors of 2016 and 2017 which brought his predecessor down. Though she was of course lionised in the media when making them as a cross between the new Boudicca and the new Iron Lady. This is diplomatic amateurism dressed up domestically as boldness and decisiveness. It may indeed work splendidly at home, where understandable public boredom and frustration with endless Brexit agonising of course plays well for it. But meanwhile the EU side is already, as in late 2016 and early 2017, methodically getting on designing the sequencing of the new process which will maximise its leverage in the next phase. Or indeed the next many phases, as I personally think there are several more to come. Brexiternity, indeed.
- Third: Hearing the trade-offs inherent in Brexit dismissed essentially as non-issues. We continue to be offered the prospectus that we can enjoy autonomy on trade and regulatory policy, on both goods and services, not simply migration, outside the Single Market and Customs Union, but, via a so-called "best in class" Free Trade Agreement, not suffer any downside in terms of market access into easily the biggest market for our goods and services. This is clearly untrue. It does not get any truer through endless repetition.

To be clear, illusions die hard on all sides of this debate. 3½ years on from the referendum, the EU 27 have, inevitably, "moved on", to use that ghastly phrase, and concluded that the next European Commission and Parliament mandates and the next seven year budgetary period will be without the U.K. and that they need to get on with their lives.

Remainers who think the clock can be put back are, I think, in denial about where mainstream Continental elite opinion is.

Jeremy Corbyn's statement that he will "get Brexit sorted", including having held a referendum confirming its sorting, within 6 months of taking office, frankly deserves the Brussels eye rolling it duly gets. As does the idea that he will not take a public position on which way the public should vote on the defining issue of the day, even after he has negotiated the deal he professes to

want. To govern is to choose, as they say.

The less said about Labour's position on negotiating a new migration deal with the EU in the event of a Leave victory in a second referendum, probably the better.

Most of the EU elites therefore now see a Johnson outright victory as the quickest route to getting the intended Withdrawal Agreement through. If he wants, in order to force it through, to overstate what changes he achieved to it, or claim that the new frontstop deal does not rather sell his former Democratic Unionist allies down the river in a fashion for which he would have excoriated his predecessor, so be it. "Whatever he needs to say..." they shrug.

The EU elites believe they can afford to wait and see, once the Withdrawal Agreement has passed, whether, as they would view it, the U.K starts to become more pragmatic again about the future relationship which could be built – over some years – or whether we are heading for several years in which we just do not do much together, and we see some pretty brutal contractions in two way trade and investment flows.

Put bluntly, they want to see whether a majority Johnson Government would be strong enough to ditch the "no dealers" and "clean breakers" within and beyond the Tory Party and acknowledge the reality of what the U.K. needs from a comprehensive trade deal with its main trading partners, or whether we are on another course altogether.

For much of that elite, the real mystery of Brexit remains that we were only, as they see it, in one third of the Union since 1992 in any case, having decided to opt out of both Monetary Union and Schengen. Quite a lot of people privately confessed they thought that we had found about the sweetest spot in the EU.

The puzzle for them is why the UK decided to turn its back on the Single Market, having been its most enthusiastic advocate, across all Parties, for three decades, and why the U.K. elite still seems determined to want to tell the public that a Free Trade Agreement could replicate all we liked about the "Common Market", when that is patently untrue, and it's just a matter of time before that becomes obvious to voters.

Fine: I do understand all that. But they too, I think, are a bit trapped in a version of the world we have long since lost. And it's time for the EU to think more clearly and strategically about its future relations with the U.K. Because they can get a lot worse than this yet.

So "Groundhog Day 2: the Brexit years" did feel a rather good working title. But in addition to it already having been deployed by the Prime Minister, there are two problems with *Groundhog Day*.

Firstly, that one way or another, in the world of the EU, the alarm will wake us up one day with the situation having changed whether we are ready or not.

Secondly, that in *Groundhog Day* Bill Murray discovers compassion, empathy, and unselfishness through the endless repetition of the same experiences, and I am afraid that while we appear to be trying this as a method I do not see any signs that going round and round in the same circle is helping us to learn anything.

In a *Christmas Carol*, in contrast, the Ghost of Christmas Present forces Scrooge to look at experiences which he does not know about and has not considered, teaching him to see not only the suffering of the poor but the potential for social unrest if society cannot meet the needs of those who Scrooge thinks can be dealt with by “the prison and the workhouse.” If we are to learn, we need to break out of the rut we find ourselves in, and pay closer attention to the world outside our own bubble.

### 3. Christmas Yet To Come: Christmas 2020

So now we come to the Christmas Yet to Come. I want to explain today why I believe the biggest crisis of Brexit to date actually still lies ahead of us in late 2020; to explain why that crisis is virtually inevitable and how I think it will unfold; and to a few offer thoughts as to what we should do from here.


As I said at the beginning, in the Christmas Yet to Come that is the version of the future that I am here to point to, we will imagine that a new Tory government is elected and speedily passes the Withdrawal Agreement which the Prime Minister put unsuccessfully to the House in the autumn. This is not the only future which is possible, but it is so likely that it is important we think about it in depth, and in all events to come through the exit process in the best shape, it will help us to be clear minded about what exit truly entails.

#### a) The Transition Period

If the Withdrawal Agreement were to pass, we enter into what laughably, Prime Minister May persistently termed this the “implementation period” – the IP – a term still in use by PM Johnson’s Ministers, despite the fact there is nothing to implement.

The reality is that it was and is a “standstill transition period” during which the U.K. carries on being subject to the jurisdiction of the ECJ, paying full contributions into the EU Budget, and being obliged to enact on its statute book laws made when no Brit has been in the room – either in the Council of Ministers or the European Parliament – when those laws were passed.

Rather understandably, in my view, this period of “full cost but voiceless and voteless” transition generates a considerable amount of grief on the Conservative benches, where it is widely viewed as an intolerable period of “vassalage” which must be curtailed.

But a serious transition period was ALWAYS going to be needed during which the Treaty covering the future relationship – trade, economic and security – would be negotiated. 

Because, contrary to what senior Ministers, including both the current and the former Prime Minister, as well as those most loudly complaining of vassalage, repeatedly said until well over a year after the referendum, there was no chance whatever of starting negotiating this Treaty until after we had left. Article 50 was always purely about settling the withdrawal issues, and elaborating a loose political framework for the future relationship.

The legal texts necessary for detailing and governing that future relationship were always going to be a matter for the period AFTER our legal exit and for a different negotiation under different articles of the Treaty. This stuff is really not rocket science, unless you are intent on not understanding it. Or perhaps intent on the public not understanding what you are doing.

Which is why people like me were tearing our hair out in 2016 about this transition. Knowing that it might last for years, not months. Wondering how, if at all, that could ever be democratically sustainable.

Because – and this is crucial – the legal texts to which I refer will have to be more complex, detailed and lengthy – and fuller of caveats – the further “out” of the European Union we choose to go, and therefore the further we want to go, the longer it will take to negotiate the necessary agreements.

This is the first critical point which Government Ministers either repeatedly continue to get wrong, or choose to mislead the British public about, when talking in these weeks about “getting Brexit done”.

The fact of “being aligned on day one after exit” does NOT make the negotiation of a trade deal easier.

The current alignment of U.K. and EU rules – what PM Johnson now refers to as the “state of grace” is wholly irrelevant: the only relevant question is where you aim to be on day two, day 200 and day 2000.

## **b) How quickly and easily can we get to where Prime Minister Johnson appears to want to take us?**

The publicly avowed Johnson intention is to be much more distant from the EU, and to adopt a model on both goods and services which is substantially more divergent from EU rules and standards.

He DOES NOT WANT a so-called “high alignment” model.

That is, after all, the whole basis of the appeal his redraft of the Political Declaration accompanying the Withdrawal Agreement had to the Conservative Right that Mrs May’s deal did not.





Hers kept us in their view too closely regulatorily aligned with the EU. They viewed that as wholly unacceptable. His liberates us to diverge much more radically.

For many, that was, after all, the whole point of exiting. Essentially, I think, because they believe that the main benefits of Brexit are the greater capacity to deregulate. Not that they wish to say that during an election campaign, which currently seems to be about both main Parties making lavish promises to spend money we haven't got.

That does not suggest to me huge faith that a deregulatory model actually has any real appeal to the great British public.

But that deregulatory purpose is now central – from food hygiene to financial services, from environmental to social regulation to state aids – to the EU perception of what Brexit is all about. Which is a further reason why the next phase will be more difficult, not less.

It has always been true that if Brexit turned out to mean diverging much more substantially than say, Norway, and leaving both the Single Market and the Customs Union, the exit process will take longer and be more difficult than Ministers are still professing to believe is achievable.

Why? Because if you actively want to remain rather closely aligned with the EU, you identify rights, such a free movement of goods, which will be granted in return for aligning – dynamically (ie on an ongoing basis after exit) – with a specified lengthy list of EU legislation after exit, providing you also agree a mutually acceptable adjudication and enforcement mechanism.

That is essentially how the European Economic Area Agreement works. As will, I presume, the Irish "frontstop" arrangement which replaces the backstop in the Johnson version of the Withdrawal Agreement.

Let's be honest about what is now proposed for Northern Ireland: the Prime Minister decided that this new arrangement was completely fine – indeed, a "great deal" – for Northern Ireland. But that it was wholly unacceptable for Great Britain. That's really told the EU quite a lot.

Will the UK have left the EU "whole and entire", as the Prime Minister puts it? Well, up to a point, Lord Copper. The reality is that the economic regime for Northern Ireland will be different from that of Great Britain. And both sides well know it, even if much of our media is not too keen on saying so.

The proposed arrangement is actually the sort of "high alignment" deal which could indeed be done quite rapidly. And in a relatively short legal text, which, as a consequence, can be hammered out fairly fast. The substantive provisions of the EEA agreement only amount to about 30 pages.

But that is precisely because those deliver greater trade integration – the comprehensive dismantling of trade barriers with the wider the European bloc beyond the EU, which includes the EEA countries – than this Government wants.

Under such an agreement, you would maintain a lot of your former rights. But that's because you would submit to a lot of your former obligations. And these obligations are very significant.

But if you want much greater divergence from your erstwhile model inside the trade bloc you are exiting, it is precisely because you do not intend to meet those obligations any more.

Fair enough. But, by definition, you must then start the negotiation "bottom up" not "top down".

And the question then becomes, for every sector of the economy, how far, if at all, beyond the baseline of commitments they make into the WTO, are both negotiating parties willing to commit.

And, by definition, this will be much MORE difficult, not less.

Because the questions then are how much scope for future divergence does the UK want in each area, and how much latitude the EU is prepared to negotiate.

The EU side also has to calibrate the consequential loss of access to its market which the desired UK degree of divergence might cost. Even coming to an unanimous agreement inside the 27 on the right answers will not be short or straightforward.

All of this then has to be written down in the Treaty. Which, by definition, will be binding on both parties.

To take the Canada-EU agreement, much cited, but I fear not very well understood, by the Johnson Government: the substantive provisions of the text run to 550 pages, and the total text including three protocols, 60 annexes and couple of hundred pages covering specific national exemptions sought by individual EU countries, runs to nearer 2000.

Just the process for calculating rules of origin takes up about 150 pages of the Canada deal, with specific rules covering products from barbeque sauce to soap.

Such is the hugely glamorous content of Free Trade deals.

But this stuff matters enormously to the profitability and hence future location of some of the most competitive advanced businesses in these islands. Incidentally, that is just as much for small and medium-sized fast growing businesses in new tech, as for those incumbent behemoths which I know Ministers tend to view as advocates of the status quo.

And there is just NO escape from balls-achingly technical and lengthy negotiations on rules of origin – and much else besides – if you deliberately leave your erstwhile trade bloc. There will be no new comprehensive trade deal without such provisions.

### **c) It is quicker and easier to take walls down than to put them up**

The reality of Free Trade Agreements, and the really hard grind of removing cross border barriers to trade – especially the non-tariff ones which are economically much the most important, but

politically, much the least talked about – is simply not the same as free trade sloganising, I am afraid.

Dreams of market-leading Silicon Valley type innovativeness away from sclerotic old Europe in exciting new advanced industries will remain just dreams if you do not address these issues, because these rules are completely critical for manufacturers of advanced goods and the components which go into them in any sector. Or are we fantasising now that on the technologies and industries of the future, this stuff does not count? I rather fear we are.

Please do not kid yourselves, as many at the top of Government seem to, that somehow because we were once an EU member, none of this will have to be negotiated from the bottom up with us.

And that we can have a gloriously thin Norway style document, negotiated top down instead, but with much greater divergence than Norway has in every area where we believe that suits us. This is completely to misunderstand the process and the legal consequences of leaving.

When former U.K. Trade Ministers, prominent in the debate, say things like “we will just be discussing whether to put up any trade barriers: its much quicker (than other trade deals)”, one can only watch and marvel at what planet they inhabit: the process of exit automatically entails the re-erection of trade barriers which, by law, are only removed for those who live within the town walls of the Single Market. In other words, when we exit we do not return to a world free of barriers, we return to the world as it actually is, which is full of barriers, notably non tariff ones, unless these have been removed by agreement. We have lived in a European world where more and more of those barriers within Europe have been taken down, and where we have helped reduce the barriers between that European world and more other jurisdictions than has any other trade bloc in the world. All those barriers go back up unless and until we agree with others to remove them.

Divergence is a lot more complex to manage than convergence. And vastly more unusual. Indeed, unprecedented.

Whereas it's easier when you negotiate a Free Trade Agreement with a country or bloc with which you have previously traded only on WTO terms; both you and they know when you start the list of key barriers you most want to dismantle: you would not agree to start the negotiation unless you did. in other words, you have some ambitions for the specific sectors in which you want to see barriers removed, and so does the other side.

Again, this is not rocket science.

Once you leave, unless and until you have a new, thinner, but still preferential, trading agreement, you simply have nothing beyond what you both have committed to with all other partners multilaterally in the World Trade Organisation. Only those who do not understand just how little

that gives you across key sectors of the economy are blithe about the prospect of “WTO only”.

### **d) The choices we make will determine the future we get**

So the choices you make about the future you want, have a determining effect on how easy it will be and how long it will take to get there. Our leaders need to be honest about this unless they are intent on continuing to tell people – wrongly – that we can escape supranational adjudication and enforcement, and end free movement of people, and still enjoy all the current benefits of access to the single market. If these are your priorities, and they certainly seem to be what has been driving the version of Brexit that we currently seem to be aiming for, then they are of course legitimate, but they do have automatic consequences.

We also hear from the same people that their post Brexit model is a plethora of bilateral free trade deals struck by a Britain with its own autonomous trade policy. As I have commented before, it seems to me to be extraordinarily perverse to be making the case as to why preferential deals are absolutely essential for the U.K. with every major market except easily its largest one: the EU.

Which operates and negotiates as a Single Market: the clue there is in the name!


Please also do not misinterpret what I am saying here as indicating that I believe we should have aimed / be aiming, long term at an EEA type model.

I do not.

I have never, as an ex Treasury official, thought that kind of model could work – as a permanent destination – for a large, diversified and services-rich, especially financial services, economy like the U.K. as opposed to a commodity rich, relatively small open economy like Norway's. Long term, we cannot end up a rule taker on issues on which the stability of our financial system could depend. This was always at the crux of many of our battles when inside the EU.

There was, however, a huge valid question about the nature and length of transition and the warmth of the waiting room we would be in during it, which needed proper consideration in 2016 before we invoked Article 50, and frankly never got it.

As should be obvious from what I have been saying, if we had opted for a shorter top down negotiation into a “known quantity” provisional landing zone, from which a subsequent negotiation over the model for greater divergence would obviously need to have been conducted, it might have been a happier and faster-acting choice.

The reason why this did not get proper consideration was because the then Prime Minister believed that an EEA model, even transitionally, prevented her ending free movement of people, which she viewed as her primary goal post the referendum. What motivated her was never  the kind of question which preoccupied people like me, namely how we are going to make a living in

the world.

That goal of ending free movement is shared by her successor. I'm not commenting here on his personal views or about the fact that the views on immigration policy he expressed as London Mayor were rather different; I'm commenting on what we are to understand is his policy as Prime Minister.

And if the goal of UK policy is a points-based system which makes no distinction between EU and non-EU migration, and focuses on attracting the highly qualified from wherever in the world, fine; but the inevitable EU response is the termination of the obviously linked free movement of services, plus the ending of the current arrangements for the mutual recognition of professional qualifications, which are critical to the cross border mobility of U.K. professionals.

Reciprocity works both ways, as the U.K. is about to find out.

The same will obviously apply on other key issues like public procurement. Of course you can always tilt the playing field towards your domestic suppliers if you want. That is obviously not, however, free trade, however you dress it up. And the consequence will just be that others tilt their market against your firms. Think of Buy America in the United States... Is that "free trade"? Of course not.

Candidly, I never understand those Ministers, which includes the most senior members of the Cabinet, who seem to think that we can and should abolish any type of European preference in our migration system, but that it would be outrageous then for the EU to reciprocate and treat UK citizens and mobile professionals precisely in line with those of other third countries.

Why is the fair answer to "we do not want any special EU preferences and old obligations in our system any more: we have left the EU" not "well, we do not want any special British preferences and old obligations in our system any more: you chose to leave it"?

Just please don't tell me that either position is a particularly rational view about life with your nearest neighbours.

The implications of this for U.K. services firms, above all, is one of many dogs which has yet properly to bark in this process. But bark it will, when it becomes apparent to the private sector that continuities they wrongly thought were close to laws of nature will disappear at the end of 2020.

I find that firms are only now just waking up to the huge implications on professional mobility.

And much of the UK services sector still harbours hopes that, having essentially been forgotten or ignored by two successive Prime Ministers to date, their interests will, to some degree at least, be catered for in any FTA. I fear they will be sorely disappointed: because the EU has simply no intention of offering more here to an ex member than it does to other major third countries.

De facto, the last 2 U.K. Prime Ministers are arguing for a “no deal” on services.

And that’s on ALL services, not just financial services, on which the financial stability case for divergence is demonstrably stronger. We actually export far greater volumes of non financial services. And the EU is massively our biggest market for those services.

Ministers just do not ever want to tell businesses that is actually what they are doing, or tell the public why it’s a great idea.

It’s back again to the parallelism between rights we want to exercise and obligations we are prepared to take.

So, then.....

If we truly only wanted even something along the lines of – though better than – Canada–style deal, because we cannot live with anything more than Canadian–level obligations, it will be laborious to get there. And it will end with a painfully long, complicated legal text, which has to be negotiated issue by issue, sector by sector, exemption by exemption, but still be ratified as a single text in every national Parliament, and some regional ones, of the EU.

It will in other words be harder, not easier, to do Johnson’s Brexit deal than May’s.

As it was already harder to do May’s than to replicate a Norwegian type deal. Or even a Swiss type deal, which has a lot of rule–taking as well as some divergence, but is so legally complicated, with a huge number of legal agreements, that it has been being negotiated and renegotiated over decades, not years.

I had not, incidentally, noticed that Switzerland had ceased to be a proud sovereign nation, and was now SWINO – Switzerland In Name Only. I simply don’t accept the Farage and European Research Group view that the only authentic “real” Brexit must involve much a more radical rupture than Switzerland, which never joined the EU, has ever wanted.

Switzerland has no intention of joining the EU, but it seems to live happily enough with choices on the trade–offs we both face which now get described as treasonous here.

It also lives in a near–constant negotiation with the EU. So will we. Even if we go “no deal”. Maybe it’s time to tell the public that?

These are all choices. There is no such thing as the “one and only true Brexit”, let alone a Will of the People” that has only been divulged to a chosen – by themselves – few. We do not, thankfully, live in a Leninist or Robespierist state.

For the moment, though, we seem to be off to Canada. Without our services sector.

**e) What does the coming year hold: will we get there?**



As if all this inevitable complexity is not enough, the transitional period, originally conceived of as 21 months long – itself thought too short for the negotiating purpose by virtually all experts – has of course shrunk in half.

Even if we assume PM Johnson, with an overall majority, gets the Withdrawal Agreement through by the end of January 2020, just 11 of the originally planned 21 months are left.

So let's be heroically optimistic, and say that, within, say 6 weeks of the passage of the Withdrawal Agreement Implementation Bill, the EU side can reach unanimous agreement – and unanimity is required – on what it wants from the negotiations.

Let's be even more heroically optimistic and say that the UK Cabinet can sign off on the same timescale on an agreed account of what it wants from the negotiations, which is more serious than just a pious shopping list of demands for a Single Market level of rights without any of the obligations, which the other side, for both the legal and substantive reasons I have explained, immediately dismisses as for the birds.

We then have about 9½ months from, say, mid March next year, to negotiate, conclude and ratify the entire deal.

And to be clear, ratification, to permit entry into force, unlike on the Article 50 process we have lived for the last few years, will entail ALL national Parliaments passing the deal.

Which is no easy bar to jump. As indeed the Canadians found out in both Wallonia and – over migration issues – in Romania and Bulgaria.

Why? Because it is inconceivable that the EU 27 will agree a deal with the U.K. under sole European Commission authority – or competence, to use the EU jargon.

And we cannot very well abuse European nation states for that because it was always a cardinal objective for British Governments when we were in the EU to ensure that national administrations and legislatures retained rights in the conclusion and ratification of all trade deals.

Oddly enough, many others agreed with us – on sovereignty grounds. And several of us in the Council even took the Commission to Court over the EU–Singapore free trade deal over this precise question.

One can always provisionally apply the EU competence elements of a deal which has yet to be ratified everywhere. But we have to be in no doubt that the trade deal will require full Parliamentary ratifications everywhere else, not just here.

One cannot – more's the pity – easily reap a quick, balanced "early harvest" of good things which do not need ratification by everyone else.



The political implications of this are completely obvious on issues like fisheries and food

standards, which are every bit as politically contentious elsewhere as in the U.K.

And again, a deal here with us, post our exit from the Common Fisheries Policy and the Common Agricultural Policy is – self-evidently – much harder for the EU than one with Canada because it's of much greater consequence for both sides.

I am not saying – never have said – that no trade deal of any sort is possible next year.

I AM saying, as I was well over three years ago, that a serious, wide coverage, FTA cannot and will not get done in that time. And I know no-one the other side of the Channel who thinks otherwise.

The major threat for the U.K. as I see it, is therefore not that nothing at all gets done next year.

But that, because we are under immense time pressure, and known to be desperate to “escape vassalage” by the end of 2020 – something to which the Prime Minister daily keeps committing, and the Tory manifesto commits – the EU side just sees a huge open goal opportunity and repeats its playbook from the Article 50 process.

After all, it thinks it worked really rather well. It's rather hard to argue that tactically it didn't...

So it entirely dictates the contents and pace of what does get done, runs the clock down towards the next cliff edge, and confronts a desperate U.K. Prime Minister with a binary choice between a highly asymmetrical thin deal on its terms, and “no deal” towards the end of next year. If all the time pressure is on him, you can safely assume he will make a lot of concessions in the endgame, and yet still have to emerge blinking into the light claiming victory.

If the EU can then button down in legally binding form what it feels it most needs out of a deal on that timescale, then it may feel “job done”: its members are scarcely going to want to have to negotiate, then ratify a whole series of further deals with the U.K. thereafter, if they feel their key objectives have already been secured.

As the U.K. discovered – much too late – in the late Spring of 2017, in the Article 50 process it had unwisely triggered without understanding or negotiating how it would play out, once the 27 set their negotiating directives in stone, those very largely dictate the scope and ambition of the negotiation which unfolds.

The same is highly likely to happen with this more complex negotiation.

There are very big elephant traps here for the U.K Prime Minister in 2020. He is currently digging them deeper.

The EU is acutely conscious that, in order to have more than the 9 months or so I described in which to negotiate, the UK Prime Minister would have to decide he needed an extension of the transition period by no later than July 1st, 2020.



This date is in the Withdrawal Treaty. So it's not a date which can be shifted except by a Treaty change. There is no serious prospect of any such Treaty change, as that too would require national ratifications.

So, as often in this process, markets, the media and the wider private sector are much too complacent that some means of kicking the can down the road and substantially extending the negotiating process would be found, if there were a majority Johnson Government, with five years ahead of it. That looks very problematic to me.

I also struggle to see PM Johnson wishing to extend.

It's not primarily that it would involve a screeching U-turn from what he is promising the public and Party now.

He after all has just executed one of those on the backstop question by doing a deal for which he would have excoriated his predecessor for giving way on fundamental principles of constitutional integrity.

The EU noticed with some admiration that he nevertheless could sell a Withdrawal Agreement when Mrs May couldn't – and they frankly never believed she could – and that is why, given he had dropped overnight the stuff on "alternative arrangements" at the Irish border which they viewed as hogwash, they were prepared to jump to the frontstop solution to replace the backstop, despite real qualms as to how on earth you make it operable.

But I think the EU collectively concludes from this that, come the end of 2020, the same story will play out, and that he can be induced to sell a deal stacked in their favour as a U.K. negotiating triumph, if only in order to have done with the issue politically. Or to find a different way to extend purgatory.

But on the question of whether to extend, he surely is most unlikely, just 3 months after the potential start of negotiations, already to have reached the conclusion by June that the following six months will not suffice.

He also knows that the moment he extends, he will be straight into a new budgetary negotiation about the U.K's contribution over the one or two years of an extension. Which might involve eating lots of words. He further knows that the Right, which will have been strengthened inside his Party if he has won the election, will decry an extension as an intolerable prolongation of vassalage.

I should be very clear indeed here: my point is not – absolutely not – to welcome this thinking on either side of the Channel.

Far from it.



I fear it all points to a repetition next year of exactly the syndrome we have suffered for the last three. And a repetition of the myopia on which ultimately lands us with a poor and deteriorating relationship on multiple things that really matter, economically and strategically.

I am just stating the likelihood – I personally frankly think near-certainty right now – that the incentives on both players now play out this way.

Put crudely, the EU will feel that, in the time available, rather little serious work can get done, and will think that is no bad thing, as it can fully exploit UK desperation to get something over the new line. Why not take advantage of yet another Prime Minister who has unwisely boxed himself in?

They are talking up a deal, not because they have become undying fans of Brexiteers but because they can see there's an opportunity here for something that works pretty nicely in the EU's interest.

The U.K. will think that the overwhelming political objective is to deliver "full exit" by the end of 2020 (let's forget the little local difficulty that you told the public that you were "getting Brexit done" the year before.)

So a quick and dirty deal, with precious little substance beyond zero tariffs and quotas has appeal, despite the economic reality that the vast majority of the barriers to trade which we need to keep dismantled are the non-tariff ones. And despite the obvious fact that a tariffs and quotas only deal is obviously more in, say, French and German interests than our own

We could, as in the Spring of 2017, be on tramlines to this rather rapidly.

Put another way, the jelly will be setting on a potential endgame in 2020 as soon as the EU negotiating mandate starts to appear in print. That is now only just over 3 months from today. Reality does come at U.K Prime Ministers rather quickly these days. I will come back to this in a minute.

## **f) The road to Christmas 2020 – how it might look from Brussels**

More specifically, though, how do I believe the EU might aim to organise next year?

And why do I believe there will be a major crisis before the end of 2020?

The EU's methodology will, exactly as in 2017, be essentially to say to the U.K. that it is our own red lines which have entirely governed the ambition – or lack of it – in their negotiating mandate.

So, they'll say: we accept, as we always said, from Tusk and Juncker level from early autumn 2016, that if you want divergence and disalignment, a relatively "thin" FTA is the most which can be negotiated.



Were you to change your views as you go along about any of your red lines, we would of course be open to reconsidering the level of ambition, but time is very short... I think we have seen that film before.

(And incidentally, they did indeed say that – repeatedly. Repeatedly also making clear that the offer, which was equally repeatedly publicly welcomed by key members of the ERG, applied only to Great Britain, not to the whole U.K. That is precisely what has eventually led us to the different economic deal for Northern Ireland. The ERG were only ever fair weather friends to the DUP: their fundamental objectives differ greatly.)

On that basis, they will say, you will note there is nothing in our negotiating mandate on services, financial or other. Because you have made clear you do not want it, and want the regulatory autonomy to diverge. Your choice.

We therefore will, autonomously at 27, make a judgment as to whether we can apply our existing equivalence regimes in financial services for third countries to you. But this is a matter for us alone, not negotiation with you. And you are not getting special treatment.

The same applies on data. (A much bigger issue than tariffs, for much of corporate Britain.) We shall decide autonomously at 27 whether your existing data protection legislation warrants an adequacy determination under the General Data Protection legislation, on the same basis as we have accorded it to other third countries. That's not up for negotiation with you, so it's not in the mandate.

On free movement, we note that you still intend to end it. And the corollary of that, given the indivisible then of the four freedoms which underpin the Single Market, and your clear views on the role of a supranational Court, is that the benefits of the other three freedoms do not apply to you, and that market access for your firms, on both goods and services, is seriously impacted. Your choice, not ours.

On some other issues – from aviation to road haulage, these are not for this agreement and not for now. Sure, we shall get round to an Open Skies Agreement on aviation with you – as one bloc of 27, and not individually. But it won't contain the nine freedoms of the Single European Skies deal, so it will pose major problems of ownership structure for British Airways, for example, as it will not go beyond the first four freedoms in aviation.

On goods, then, we note you want zero tariffs and zero quotas across the board. And we are open to that.

But just a few points you Brits need to understand here.

First: It's obviously your sovereign right not to align in industrial sectors, which the previous Prime Minister said she intended to – and others, like the Swiss, who want better access to our

market, do.

(To be clear, the words "as close as possible relationship in goods" inserted by Mrs May in the Political Declaration were deliberately removed at the request of Mr Johnson. As I say, he wants divergence, not alignment.)

But it's our sovereign right to set the rules under which firms can export into our market, and we are not changing those rules just because you have left.

So, let's take chemicals as one example (there are legions more): the third country rules under REACH (the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation) are going to apply to you unaltered.

So your exporters will have to find an importer in the 27 who is prepared to take responsibility that their products meet EU requirements; because EU rules will be unenforceable directly in the UK. They will have to make two filings, one with our Regulator, one with yours, even if the rules remain precisely the same. And those filings are seriously complex. But that again was your choice, guys: you can't live with supranational jurisdiction, remember. This disadvantages UK firms, and encourages them to relocate plants, but tough. And over time, if your regulatory decisions and ours diverge, that's also just tough I am afraid: you want market access, you meet our rules.

(A parenthesis for this audience: regulated chemicals are in just about everything in daily life...)

Second: you are a big, competitive and geographically close market, so if you want zero tariffs and zero quotas to continue – and that's better than any other non-member gets – we aren't going to agree that without formal Trade Treaty agreements about not undercutting and dumping.

And that's real Treaty-based conditionality we demand, in the form of dynamically aligning with our rules if you want fuller market access than other non member trading partners: on food standards (you can forget much access to our market for your agricultural products if you shift to US standards), on subsidies to industry, on energy (there won't be a deal with us at all without a corresponding one on climate policy, committing to a carbon pricing level in line with ours on an ongoing basis), on environmental and social regulations.

Third: fish. We just won't do zero/zero deal at all unless we sort out a fisheries deal as part of the trade deal, which protects our boats' access to your waters and replicates what we currently get on fish stocks and catches. And because your fish processing industry relies very largely on exporting into our market, if we do not give you duty free access, we can probably close a large chunk of your industry down. But you can forget any chance of a zero/zero trade deal flying in the Parliaments of our fishing member states, unless we sort this.



Now, let's be clear. These are negotiating positions. And you stick them in print – early – in your

mandate partly to demonstrate to the other side you are serious and have precious little room for manoeuvre. It's called trade negotiations.

### **g) The final scene: through the iron gate**

If the UK under this Prime Minister takes a less supine approach to negotiations, and has a more united Cabinet, I presume it will at least try and put out its own positions and priorities, and some attempted reasoning behind both, more publicly than we have in the last three years, when the tempo and the transparency have come from the other side.

Secrecy never works in trade negotiations. Again, the U.K is about to find that out. Not just with the EU, either.

Though there is of course always the risk that all that anyone then notices and writes about is what you tried for and failed to get. So you end up obscuring or minimising what you want, in order to maximise the chance of being able to sell it.

But....

I look at the likely dynamics of next year if we face this approach from the EU, as I believe we shall within about three months, and I am really not sure I see how or why any deal gets done.

We would end up with what exactly? A very thin, Canada minus minus deal with zero tariffs and quotas, but only with extensive "level playing field" permanent conditionality.

And only provided we do a deal on fish in which it is very hard to see why the 8 fishing member states will be prepared to see any losses as a result of Brexit in what is a pretty zero sum game sector. Or if they did, why the deal would pass their legislatures. Their moment of maximum leverage on fish is next year, and they know it.

And in macro terms: the blessed German car makers and beloved French knicker makers achieve their zero tariff access to the U.K. market – and in goods, the EU, as we keep on hearing, has a huge trade surplus in goods with us.

Whereas the U.K's access to their market in services, in which we have a huge trade surplus with them, and in which the EU market is as big as our next 8 put together, including the US and China, goes a long way backwards.

Sure: there'll be some added sugar elsewhere to make the medicine go down. But that would be the core of it.

Well, chapeau, as they say, to the Eurocrats if they can pull that one off, and persuade the U.K Prime Minister to sell it as a huge success.

Maybe the Party which obsesses about bilateral trade deals as if they were primarily about tariffs



and quotas, when they simply are not, can even be sold it.

But I must confess I still very much doubt it.

I suspect all those, including some in the Cabinet, who have been exceptionally unkeen to see economic impact assessments of any the options on the table, dismissing all forecasters' models as bunk, might suddenly become publicly super keen on what the economic modelling shows about the value to the U.K of that deal...

As opposed to a "no deal" exit. About which we would then hear all the usual guff about how it really gives us greater leverage in the years to come.

The problem with that being that literally everything I have mentioned, and plenty more besides, still then has to be negotiated with a bloc that has few good reasons to want to start bothering.

I think I know all the objections I will hear to this prognosis of what 2020 probably holds.

That the Prime Minister's revealed preference is for a "deal" not "no deal". That he has demonstrated the agility and determination to get one and will have the authority in the Party post any election victory to force it through. That we said it could not be done this autumn, but it has been. That he is not Theresa May. And so forth.

But, as I say, on the future relationship, all he has actually done is go for a "thin FTA" model which was explicitly on offer from the other side – for Great Britain – from the very start. It's not a massive negotiating success to amend a Political Declaration to point in a direction which suits one's negotiating opposite numbers just fine.

All he has sacrificed to get there via his Irish Sea border pivot, the clear consequences of which he now denies, is the explicit support of the DUP, whose support he will anyway not need if he wins the election. And that on the issue which was the obstacle to going for the more mid Atlantic, the "more divergent, less alignment" exit that he wants.

So maybe he would again next year simply try and snap up something which is demonstrably already on offer, and declare success?

Maybe.

But the price of level playing field conditionality and a fisheries deal will be very steep, and both will be very hard to swallow for the wing of the Party that put him into the Premiership.

They might of course swallow "level playing field" if he tells them it does not really mean anything, and that once we are free, we are unstoppable. I expect the EU side will seal that bolthole in any text. It's their biggest single preoccupation, after all.

And taking on his Party's Right, to which his leadership will have added in the next Parliament, is



not the same as abandoning the DUP.

On the EU side, I know readers of this –and there will be some – will say: so what, concretely, are you asking us to do? Soft pedal the defence of our own fundamental interests?

And if so, why on earth should we? We are not a charitable foundation for the rescue of distressed Tory gentlefolk who have boxed themselves into positions which they subsequently regret when they finally understand what they entail.

Our priorities are the defence of what we have chosen to carry on building together and the U.K has chosen to leave. It's not our job to make leaving easier, or not to exploit U.K disarray to get the best deal we can for ourselves, when your politicians have lied about the inevitable consequences of leaving.

To which my answer would be: no, I agree with you that the defence of the integrity of your project has to be paramount, and that internal solidarity must trump any relationship with a third country, even a big ex member and strategic partner. I also personally fully accept that exit has unequivocal, and in my view, very substantial, legal consequences which cannot be evaded, but still are being evaded by our political class.

I agree I do not think you could have saved Mrs May from herself, especially given her successor's determination to remove her.


But...this relationship hugely matters to you. If we are all honest and sober, it has deteriorated, is deteriorating and could continue to deteriorate. Rather a lot.

There is no law of nature which dictates that the relationship with an exiting U.K must end up thin, sour and conflictual. And it would be a thoroughly bad thing for all Western democracies should it do so.

We have far larger fundamental similarities on our view of the world than we have differences, and we have plenty that, in a sane world in which we could think beyond next week or next year, we would find new ways to work on together.

But you do risk, in a hardball repetition next year of the tactics of the last couple of years, ending up with a deal which simply does not fly politically.

And which, even if it did, far from warming U.K public opinion, would alienate it. Yet you consistently say you want to create the conditions in which the U.K. rethinks its long term position, and wants greater proximity to you.

There comes a point when simply repeating that the thinness of the gruel on offer is just a function of what U.K. political leadership says it wants, and that unless and until it says  something else, there is no real conversation to be had, is actually just a substitute for having a

policy, rather than a policy.

In the end, you too must have a collective preference, or be able to forge one, for how the relationship should evolve over the next decade or two. So saying that you have none, and the closeness or depth or warmth is entirely a consequence of British political choices is, to put it no more strongly, simplistic. Or, to coin a phrase, something of an opt-out.

The U.K. trade negotiation is much the most economically consequential one on your plates for the mandate ahead, despite the breadth of EU ambitions to do even more than the huge volume of deals you have accomplished in the last five years: on which, bravo. The UK is easily your biggest security partner in this hemisphere.

You also have real and major questions about the best future architecture for all your projects. In which Brexit could have represented – could surely still represent – something of an opportunity to think again about differentiated integration in ways which try and escape the sterility of the debates we had a couple of decades ago. The EU is now more diverse and differentiated than it has ever been before, and the EU's neighbourhood more fractured and more threatening.

Might it not be a better idea to think bigger and bolder about models of differentiation across the Continent, and reflect more deeply about where you want to end up with the U.K. – and others – on a 20-year, not 20-month perspective?

Or do you truly think a whole series of salami-slicing negotiations in which a large chunk of the U.K. public could progressively become more convinced that we are being screwed, is guaranteed to get the right reaction?

If so, I am not sure we are watching the same film.

What, concretely, does that mean you should do? Not, in my view, immediately just plunge into a purely internal negotiation at 27 to bolt down the parameters of 2020 in a lengthy negotiating text, and only surface to talk to London thereafter, once you have effectively cast the die for how the year is bound to end: in yet another of these rolling crises and another scramble to extend, to fudge or to jump off the cliff.

You have, I think, to test out whether any sort of "reset" is deliverable after the formal act of exit, before plunging straight to textual negotiations which will cement positions. That requires leaders' discussions, not conclusions-driven processes.

You have to test whether, when the UK Chancellor says, as he did just yesterday: "our (trade) deal's a lot more ambitious than these sorts of generic free trade deals that were in the previous forecast by the Treasury", whether this indicates real U.K. ambition for a comprehensive free trade agreement, coupled with any real understanding of what that entails.



Or whether "duty free, quota free, no alignment, freedom to diverge across all goods as well as



services, but domestic U.K. legislation on workers' rights, consumer protection and environmental legislation" is the summit of the ambition.

The two are not remotely the same, as you do not need me to tell you.

If it's the latter, I believe we may be heading inexorably both to a "no trade deal" short-medium term, and a very difficult relationship after that. That is in neither side's best interest. But it might require real vision from both to avoid it.

Towards the very end of the Christmas Carol, Scrooge says to the Ghost: "Are these the shadows of the things that Will be, or are they the shadows of the things that May be, only? ... Men's courses will foreshadow certain ends, to which, if persisted in, they must lead. But if the courses be departed from, the ends will change!"

The Ghost here today has not been a silent one, but as I look ahead to the very likely crisis this time next year, and to the decade ahead, I hope I have at least managed to point both to some courses which are better not persisted in, but also explained why all the big choices in Brexit, which matter hugely for the U.K. but also for others too, lie ahead of us.

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## About Sir Ivan Rogers

Sir Ivan has served in a variety of positions in the civil service including senior roles under prime ministers from Tony Blair onwards.

He was the Permanent Representative of the United Kingdom to the European Union from November 2013 until his resignation on 3 January 2017. In this position, he was the UK's most senior negotiator with other Member States and the European institutions.

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## Post navigation

← The Ghost of Christmas yet to come: Looking ahead to the coming year(s) of the Brexit process



