

Brexit: a solution at hand

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People need to understand that the EEA is, for the moment, the only game in town.

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If the increasingly impotent politicians wanted any guidance as to how to deal with the nightmare of a post-Brexit Irish border, all they have to do is look at the [EEA Agreement](#) [European Economic Area Agreement]. Right from day one, this has been staring them in the face.

In particular, they should be looking at Chapter 3 (Article 21) and then [Protocol 10](#) on the simplification of border controls and formalities, and [Protocol 11](#) on mutual assistance in customs matters.

As one might imagine, though, these are the provisions which form the regulatory basis for trade between Norway and Sweden, a border which is relatively free-flowing but not entirely frictionless. Truckers **can find** that clearance during busy periods can take as long as an hour and a half to get their loads cleared.

As a result, numerous voices have argued that, for all its advantages, the so-called "Norway option" would not provide an entirely adequate solution for a border-free Ireland.

But what the pundits fail almost completely to understand are two things. Firstly, the nature of the EEA agreement is that it is infinitely flexible. Neither the Agreement nor the Protocols set out the finite details of the arrangements and such as are agreed can be changed through established mechanisms via the EEA Joint Committee.

These changes can be introduced either as specific amendments to the EEA Agreement or via EEA relevant legislation promulgated by the EU and adopted into the EEA *acquis*. There is no technical limit to the number of changes, nor the frequency, permitting a process of ongoing development.

Secondly, and having regard to the first point, the Norwegian land border with Sweden – which has been continually under scrutiny as the possible model – is considered to be unfinished business. With technological and procedural enhancements planned over the next ten years, the movement of goods is expected to be even smoother than it is at present.

Many of the limitations on freedom arise from policy differences between Norway and the EU, and especially in relation to VAT, duties on alcohol,

tobacco and vehicles, and from minor differences in the rules relating to the import of medicines, waste, explosives, fireworks and hazardous substances.

However, with online registration of controlled imports, with prior issue of transit permits, it is anticipated that vehicle traffic through existing customs posts will be reduced by as much as 70 per cent within five years. Many of the goods which currently require physical checks will be routed to sites away from the borders, where they will be cleared.

One exception would be animal and plant material but this problem is much reduced because of the adoption of the "official controls" on foods of animal origin – and the plant equivalent - removing the need for border inspections for produce from EEA states.

The take-home point from all this, therefore, is that while the Sweden-Norway border, as it stands, is an example of what can be achieved under the EEA regime, it is not the definitive model and would not have to be copied exactly if applied to Ireland.

Any Irish border arrangement would come out of a bespoke agreement which would take into account the special needs of the island and, even then, would be amenable to continuing development and improvement. But, like Norway, where the Union Customs Code [UCC] was adopted and entered into force in October-November 2013, while its substantive provisions starting to applying in May 2016, the UK would also continue with the UCC.

One special feature that could be adopted, though, is the border agency cooperation system. In 1960 and 1969 respectively, Norway signed

agreements with Swedish and Finnish authorities, This allows a division of labour where the national border authorities of each country are allowed to provide services and exercise legal powers not only on behalf of their home state, but that of their neighbouring states as well.

When goods are exported from Norway, either a Swedish, Finnish or Norwegian customs office may take care of all paperwork related to exportation from Norway and importation into the before mentioned countries. This is also the case when goods are imported into Norway.

As a result it is unnecessary to establish customs offices and deploy customs officers on both sides of the border. It is decided through bilateral negotiations which country or countries will manage a border post, as well as the allocation of costs.

Thus, if trucks do have to stop, it is only at one customs checkpoint. Then, each country's enforcement personnel have the right to operate up to 16km (10 miles) into each other's territory, with mobile inspection units operating within the zone.

Altogether, a "bespoke" EEA system, melded with the latest technology, would resolve all the underlying problems in Ireland, with the border as near invisible as makes no difference. Controls would be applied, but there would be no barriers to traffic at the borders.

The problems, therefore, are neither technical nor procedural, but political. They stem entirely from Mrs May's decision to take us out of the Single Market (EEA). And, despite the blathering of the masses, the customs union is completely irrelevant. Within the EEA, tariffs and quotas disappear. A separate deal on ROO [Rules of Origin] can also be

accommodated within the agreement, and we retain our AEO [Authorised Economic Operator] approvals.

Turning it round, there is no solution to the Irish problem without the UK's participation in the EEA Agreement. The barrier, then, is Mrs May. Either she has to change her mind or she has to go.

Given that she does not change her mind, possibly the time for her to go is after the 29 March 2019, when we actually leave the EU. Then, under a new premier, the UK could use the transition period to negotiate with Efta, with a view to re-joining, and with all the EEA contracting parties with a view to re-joining the EEA.

If both coincide with the end of the transition period – which is the *status quo* option – then we will have administrative continuity and disruption will be minimised.

On that basis, the Efta/EEA option is not dead – merely delayed. And if we follow the principles of *Flexcit*, the current proposed transition becomes a transition to a transition. However, we cannot rule out negotiations during the transition period on reform of the EEA, to incorporate co-decision on rule-making, as Delors originally proposed.

Any solution though, will require a vastly improved level of competence on the UK side, together with a far better appreciation of how the EEA Agreement is structured and how it works. Moreover, the mantras have to be ditched, and people need to understand that the EEA is, for the moment, the only game in town.