

Is the Withdrawal Agreement Legal ?

Doubts have recently been expressed about the legality under EU laws of the backstop in the Withdrawal Agreement (WA). Could this be the tip of the legal iceberg and much more of the Agreement be unlawful or illegal? Significantly, the Withdrawal Agreement does not appear to have been independently reviewed for veracity, fitness for purpose and compliance with the treaties and laws of the EU, nor with international law. Consequently, the extent of any illegality is unknown. But as the WA is such a complex, politically-charged document with potentially wide-ranging ramifications, it would be reasonable to have cautionary misgivings.

The Withdrawal Agreement appears to conflict with EU Treaties and Law

Article 8 of the Consolidated Treaties of the EU states:

- 1.

- 2.

The above can be seen as complementary to other treaty obligations relating to human rights, in particular those concerning commitments to full employment (Article 3 (3)). So

how well has the EU done in complying with these principled treaty requirements for peace, prosperity and political stability?

Any reasonable person would likely conclude that the EU's behaviour in negotiating the Withdrawal Agreement was more akin to that of a hostile power, determined to permanently subjugate a friendly neighbour into a powerless vassal state. Perhaps that was the intention all along might is right? There are plenty of reports, including from British ministers, that at least some of the EU officials negotiating the draft Withdrawal Agreement were acting in bad faith, seeking to punish the UK for leaving rather than seeking a cooperative and mutually beneficial agreement.

The Backstop and other WA content breaches Article 50

There is also evidence that the scope of negotiations went far beyond the intentions of Article 50. Ambassador (rtd) Leonidas Chrysanthopoulos, Former Secretary General of the Black Sea Economic Cooperation Organization, was on the inside of the negotiations to include Article 50 in the Lisbon Treaty. He has revealed that Article 50 was only intended to cover financial arrangements for a Member State leaving the EU. The rest of the Withdrawal Agreement, including the backstop, is outside the intended Article 50 scope.

Article 50 of the Consolidated Treaties of the EU states:

2.

At most, the backstop could have been included, as non-binding, in the Political Declaration which accompanies the Withdrawal Agreement. This applies to other content of the

review. However, given the EU's track record of ignoring its own laws when it suits it, this is unlikely. During any review and redrafting, some sort of temporary measures would be required in order to comply with the Consolidated Treaties of the EU. To be lawful, these measures (possibly through the use of legal fictions) would need to be intended to maintain peace, prosperity (including full employment), and political stability.

So, if the EU were to lawfully comply with its own treaties and laws, the UK could be enjoying frictionless trade as at present, minimum disruption in leaving the EU on 29th March 2019, and be asserting its national sovereignty, following a democratic political agenda as a free country.