

# Parliament should have had a meaningful vote on the EU trade deal. But it did not.



*[Luke Cooper](#) and [Sam Fowles](#) write that contrary to received wisdom, Parliament does not have the power to overturn the UK-EU agreement. This means Parliament cannot bring about a ‘no deal’ by voting against the implementation bill.*

It is often said Brexit has exposed deep problems in British democracy. But while this opinion is widely held, there is little agreement on the nature of these deficiencies. Brexit was meant to be all about returning sovereignty to the UK Parliament, ‘taking back control’. Since 2016, however, British people have fewer rights and weaker democratic representation than at any point in the last half century.

There is no better example of this than the UK-EU trade negotiation. The deal sets out terms for the UK’s relationship with the EU for potentially decades into the future – though a ‘review period’ of the agreement is scheduled for every five years. It is one of the most important international agreements the UK has ever entered into. In 2019, UK exports to the EU were [worth](#) £294 billion, accounting for 43% of all UK exports. Yet, one of the first things Boris Johnson did after his 2019 General Election victory, was to drop his previous commitments to ensuring parliamentary oversight of the deal.

When Johnson re-tabled the Withdrawal Agreement Bill, he removed the provisions requiring the government to seek approval of its negotiating objectives from Parliament, the commitment to a final vote on the deal, and the need for the government to report to Parliament every three months on progress with the talks. The European Parliament, by contrast, was consulted on the EU’s negotiation mandate before talks began, regularly updated by negotiators, and the deal will not be even provisionally applied until MEPs have first considered it. MEPs will also have a ‘final vote’ to fully ratify the deal in the New Year.

By contrast, Brexit restored the ‘default setting’ for the UK Parliament’s role in ratifying international treaties. This dates back to the days of absolute monarchy and severely limits parliament’s role (as we explain below). In dragging negotiations out until the 11<sup>th</sup> hour, Johnson has massively squeezed the time available for MPs, experts, civil society, businesses and trade unions to read and scrutinise the deal. The trade agreement itself is 1240 pages long and was published in full on 26 December. MPs were then presented with a highly technical implementation bill on the afternoon of 29 December. The breadth of the issues to be considered is illustrated by clause 29 of the bill. This provides a “Henry VIII” power (a power to override primary legislation without a vote in parliament) to change *any law* that may conflict with the provisions of the Brexit deal. This measure could potentially impact the entire *corpus* of UK law.

MPs were given just a few hours to debate and vote on these documents on 30 December, as the agreement was rushed through Parliament to meet Johnson’s deadline. This is an inherently undemocratic way of working. A complex deal, with huge implications for the future of the UK, rammed through with no time for any serious debate or amendment. British MPs, who had little input into the UK negotiating position, were now asked to accept the outcome of Johnson’s negotiation without even a yes or no vote. They are asked only to vote on the implementation. There is no parliamentary vote on the deal itself.

## **Believe it or not, Parliament doesn’t get a vote on ratifying the UK-EU deal**

Parliament has no power to ratify or reject international treaties. While the UK was a member of the EU, the European Parliament had a right to scrutinise (and potentially reject) treaties that would bind the UK (as a member of the EU). For example, there was significant opposition to an EU-US trade deal from civil society, which was successful in convincing MEPs to wake up to its dangers. This meant that representatives, elected by UK voters, had a genuine vote on many treaties affecting the UK. Brexit brought this to an end. The negotiation and ratification of treaties now is a matter for the UK only and falls within the Royal Prerogative. Since the latter days of the 19<sup>th</sup> century, there has been a convention that the executive will consult parliament before ratifying a treaty. In 2010 that convention was formalised by an act of parliament: the Constitutional Reform and Governance Act 2010 (CRAGA).

CRAGA requires the executive to lay a treaty before parliament for 21 days before exercising the prerogative power to ratify. Parliament can delay ratification, by requiring the executive to provide further information, but it cannot reject a treaty outright. Parliament's power to delay requires it to pass a motion. But there's another twist. The executive also controls the parliamentary timetable. With a few minor exceptions, the government determines what parliament debates, when, and for how long. If, therefore, the executive wants to avoid a delay in ratifying a treaty, it can simply deny MPs the time to hold a vote.

So what, then, are MPs voting on with the Brexit deal? The bill before parliament is primarily an implementing instrument. Law, broadly put, manifests on two levels in this context: international law, and domestic law. Treaties, like the Brexit agreement, take effect in international law. They are basically contracts between states. If the UK is to fulfil its obligations under the Brexit agreement, then it must make various changes to its domestic law. The bill before parliament will give the executive powers to change domestic law so as to implement the Brexit treaty. The best way to describe what MPs are doing is that they are voting on how best to comply with the treaty.

The choice before MPs is not, therefore, whether they approve of the Brexit treaty, but what powers they will give to the government to implement the treaty. This is a question that has received almost no consideration in the public debate on the Brexit deal. This is primarily because legislators have been given less than 24 hours to review the bill before considering it in parliament. There should be forensic scrutiny of the extent and necessity of the powers that the government proposes to award itself. In the circumstances, however, this seems unlikely – indeed, perhaps simply impossible.

### **Why a 'no deal' is no longer possible**

It has been suggested that a failure to vote in favour of the Brexit deal is a vote for 'no deal'. Such a suggestion is, from a legal and constitutional perspective, entirely wrong. Similarly, a vote in favour of the bill is not a vote in favour of the deal. It is simply a vote to give the executive the powers set out in the bill. But, of course, those who reject the Treaty may choose to use the vote against it to demonstrate their opposition, given that they have not been granted a vote on the agreement itself.

What would happen if parliament voted against the bill? First, it would have no effect on the government's power to ratify the agreement. That power does not flow from parliament and parliament has no legal say over how it is exercised. The effect would, rather, be that the government may lack some of the powers it needs to implement the treaty in domestic law. This may, of course, lead to the UK finding itself in breach of the treaty at an early stage. A breach by a party does not, however, repudiate a treaty. The treaty remains in place. The other parties (in this case the EU) may choose to activate the dispute settlement and remedies clauses in the treaties. In the long term, they may impose sanctions to punish the UK for non-compliance. This, however, is a time-consuming process. More likely, the EU will afford the UK an informal "grace period" in which to make the required changes to domestic law.

It's worth noting that clause 32 of the bill allows the government to bypass the CRAGA procedure and ratify the Brexit deal without first laying it before parliament. This might be seen as a sort of de facto 'vote on the deal'. It's not. CRAGA is not the source of the power to ratify, it merely provides an obligation to consult parliament. Without clause 32 the government will still have the power to ratify the Brexit deal. The CRAGA obligations would remain (requiring the government to lay the deal before parliament for 21 days before ratifying). The deal, however, could be given 'provisional application' (meaning it is given effect subject to future ratification) in the interim. It could be, to all intents and purposes, as if the government ratified the deal on 31 December.

### **How to reform UK democracy**

The EU trade deal creates a baroque structure of institutional ties between the UK and EU. They demonstrate the on-going importance of the UK relationship with Europe and the impossibility of a 'pure sovereignty'. Our interdependence with Europe and the world will always require trade-offs and negotiation with other states.

The deal creates a new 'Partnership Council' for ministerial negotiations, 19 specialised committees and four working groups. Agreements made at this *European* level will continue to impact on British domestic law. Yet, the UK government will be subject to next to no democratic scrutiny or oversight on what they seek to negotiate with the EU. They will be undertaken under the auspices of the 'Crown in Parliament'. This is also the case for the other trade deals on the horizon. A US trade deal, in particular, [threatens](#) sweeping deregulation. But under the current system parliamentary oversight, let alone control, of this, or other, deals will be non-existent. It is a recipe for unaccountable power. This seems like the very opposite of 'taking back control'.

The alternative to this system could be based on simple steps, to restore a position of authority for parliament in international negotiations and either radically minimise or abolish the sweeping authority granted to the Prime Minister under the royal prerogative. We have called this reform agenda the [Not In Our Name Principle](#). It would establish a new role for parliament in foreign affairs and international negotiation based on:

- **Transparency, not secrecy.** Establish a right for parliamentarians, citizens and civil society to know the positions the government is taking in 'our name' in international forums and negotiations.
- **The right to mandate.** Give parliament the right to mandate particular positions taken by the UK government in international negotiations.
- **The right to a meaningful vote.** Parliament would have to ratify international agreements. This would end the right of government to sign and break international agreements without any input from Parliament.

We believe that Brexit supporters should in principle back this agenda, which will only become more important as the UK tries to navigate the choppy waters of the post-Brexit era.

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## About the Authors



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