

Brexit post-Article 50: between a rock and a hard place

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Anyone who reads my blog knows that I strongly supported Remain in the lead up to the Referendum on whether to remain or leave the European Union (EU) on 23 June 2016. However, a very small majority (52% of the 72.2% of the electorate that voted) was in favour of leaving the EU. [I have accepted that Brexit will happen](#) and, indeed, that it should happen.

I am neither a Remoaner (a blend of remain and moan) nor a doomster in terms of the UK's economic prospects post-Brexit, but I do remain as convinced as ever that the future will not be as bright outside the EU and could turn out to be catastrophic for the country. Whether the UK should remain a part of the Common Market, Customs Union, etc. was not debated in the lead-up to the Referendum. The British electorate was not asked whether it preferred to be better/worse off because of the specific Brexit route selected by the government.

The British Parliament has now passed the Brexit Bill and the Prime Minister, Theresa May, has signed the [notification to leave the EU](#) and triggered Article 50 on 29 March 2016, about 9 months after the outcome of the EU Referendum decision. So, it is worth pausing to consider the next stage of Brexit, following the official notification to leave the EU.

Below, I review the UK's and the EU's respective negotiating position before the political horse trading begins. The starting pistol for the official part of the Brexit process has stated, but it is increasingly evident that Britain is between a rock and a hard place.

Stage 1: The Negotiation Positions

UK Position (after 9 months)

Prior to the 29th of March, the UK's position was strangely vague. For far too long, it amounted to little more than facile slogans, such as Theresa May's "Brexit Means Brexit" and that Britain wanted to secure a "red, white and blue" Brexit.

I have previously argued (["Brexit and the Politics of Wishful Thinking"](#) and ["Muddling Through Brexit"](#)) that the British government, led by Theresa May and her merry band of Brexiteers (David Davies, Boris Johnson and Liam Fox) were totally deluded in imagining that they could have their Brexit "cake and eat it at the same time", namely that the deal to be negotiated with the EU would be "at least as good as the current situation" and that "a bad deal would be worse than no deal at all". Instead:

"The likelihood of actually securing a deal that is at least as favourable as the status quo is nigh on impossible (though the EU is first and foremost a political construct and since politics trumps everything else, the possibility cannot be completely excluded). The prospect of the UK having its Brexit cake and eating it at the same time appears to be a load of wishful thinking and delusion. Everyone but the Brexiteers can clearly see the writing on the EU wall... in capital letters, underlined and bold."

We have witnessed about 9 months of the Conservative Party primarily holding an internal discussion between its two main factions (Eurosceptics and the rest), while paying close attention to the editorial views of the more conservative right-wing press. This has been in stark contrast with the half-hearted efforts that the government has made to listen to the concerns of the 48% that voted to Remain, as well as the Scots and Northern Irish, let alone paying heed to the clear and consistent messages emanating from its EU negotiating partners.

Therefore, it was a relief that the [letter](#) sent by the Government on 29 March 2017 officially invoking Article 50, had a semblance of reality about it.

It insisted that Britain was the EU's "*closest friend and neighbour*", which raised a few eyebrows, and stressed multiple times that the UK government seeks "*a deep and special partnership*" with the EU, something that most observers could be forgiven for thinking had previously existed but that Brexit was intending to achieve the very opposite. But the letter showed that the government has also backtracked from the more nonsensical positions that has been floated:

- Away from curtailing the freedom of movement of people (while seeking the opposite for the perceived good bits, such as freedom of movement of goods, services and capital) before from 29th March 2017 rather than from 2019;
- Away from maintaining that a bad Brexit deal is better than no deal at all, suggesting some appreciation of the damage that would be wrought on the UK's economy from the "falling off the cliff" scenario.

It still left open the possibility of a "transitional agreement" or "implementation period" being negotiated if no trade deal is struck within the short period of time available: there are only 12-18 months of negotiations, followed by 6 months required for its ratification by "[super qualified majority](#)" representing 72% of member states and 65% of the EU's population.

It was also judiciously silent on areas which has been subject to much speculation in the UK, such as:

- The role of the [European Court of Justice](#) in the future, which will almost certainly be needed in a future trade relationship or if a transition agreement/implementation period is needed, even if the Eurosceptics insist that it must go as soon as possible;
- The [Brexit bill](#) for leaving the EU (i.e. the divorce settlement), which the EU estimates to be in the region of Euro 60 billion, but which the hard Brexiteers insist should be close to zero or even involve a refund to the UK. Like all divorce settlements, it could be an explosive issue.

But the document only partially reflects reality. The muddled, wishful thinking in the UK's negotiating position continues in some important respects, such as:

- An ongoing lack of recognition that access to the EU's internal market requires accepting all four freedoms of movement, including of people;
- An ongoing belief that it is possible to negotiate sector-by-sector deals, such for the financial and automotive sectors;
- A continuing call for negotiation everything in parallel, which would represent a risk. If the aim is to do everything at the same time, it is possible that nothing will be agreed at all;

- A strong linkage of Britain's security responsibilities towards the rest of Europe with its desire to attain advantageous economic / trade terms. This aspiration was a political miscalculation that was immediately and comprehensively rejected by the EU, forcing the UK government to backtrack very fast from this particular "negotiation position."

EU Position (more or less from the beginning)

Upon receipt of the official British letter, the President of the European Council of 27 national leaders, Donald Tusk, counteracted with its own draft [negotiating guidelines](#). It showed that the EU 27 could move at least as fast as the EU 1 (UK). There is a consultation exercise at present involving all 27 Parliaments, which demonstrates the extend of the democratic process which the EU is following, as compared with what the British government sought to do, before being forced by the British courts to seek its own Parliament's approval for Brexit.

This degree of unanimity combined with the speed of the EU 27's response is an ominous sign for the UK, but is hardly surprising given the remarkably consistent messages emanating from the EC, Germany, France and every other EU head of state since June 2016. The most important elements of the EU's draft Guidelines for Negotiation are:

- The EU 27 insists upon the rights of EU nationals being fully respected until April 2019 or until any future transition arrangement comes to an end;
- The EU 27 insists upon the European Court of Justice maintaining its role until April 2019 or until any future transition arrangement comes to an end;
- The EU 27 will not tolerate a UK attempt to divide and conquer through individual approaches to EU member countries;
- There must be a phased approach to the negotiations, rather than everything in parallel;
- The UK must agree to the Brexit bill, at least in broad terms, before other discussions begin;
- The negotiations must prioritise the future of the EU residents in the UK and vice versa;
- The negotiations must avert a hard border between Northern Ireland and the Republic of Ireland, something which is easier to say than to do;
- The UK can forget pipedreams such as cherry picking what it likes and ditching the rest;
- The EU 27 will prepare itself for the possibility that the negotiations might fail.

In a nutshell: no sector-by-sector deals, no bi-lateral negotiations, no negotiations until the Brexit divorce bill is agreed, full freedom of movement during negotiations and any transition arrangement and no trade deal until the end of the Brexit negotiations (though I imagine the latter position may change).

These positions have been stated repeatedly and the discussions over 9 months carried out by May, Johnson, Davies and Fox should have made it abundantly clear what was in store, whatever the messages they may have been putting out to their own party, the right-wing media and country.

The only element which seems to have caught the UK government by surprise is the EU's position towards Gibraltar. The guidelines say: "*After the United Kingdom leaves the union, no agreement between the EU and the United Kingdom may apply to the territory of Gibraltar without the agreement between the Kingdom of Spain and the United Kingdom.*" which, roughly translated means that Spain will have a strong role in deciding the treatment of Gibraltar.

But should this part of the draft negotiation guidelines have come as a surprise? The facts are: we live in a post-colonial world; Gibraltar is a geographical part of the Spain (though this does raise the issue of Spain's own bits of North Africa, namely Ceuta and Melillia); the UK is well on the way to being an ex-EU-member, which results in a repositioning on the issue of Gibraltar; not surprisingly, the Spaniards have been lobbying behind the scenes, just as Britons have; and the EU cannot be expected to continue to maintain a neutral position towards Spain/UK in relation to Gibraltar.

Let there be no uncertainty about this: from now on, if the EU must choose between the UK and Spain, Spain it will be. 'Twas ever thus is an expression that Britons should be familiar with, despite the ludicrously injudicious [sabre rattling](#) by Michael Howard, a hard Brexiteer Conservative MP who suggested that the UK might go to war over Gibraltar in the same way as it went to war over the Falkland Islands. This is not just nonsense. It is irresponsible, dangerous tosh. The EU and British government moved quickly to dampen this explosive development, but the tension has just started.

The European Parliament has also had its say on the matter. On 05 April 2017, it voted overwhelmingly in favour of its own [red lines for the Brexit negotiations](#), which amounted to a tough negotiating stance on Brexit. By a large majority, it voted to:

- Back the EU 27 position of “phased negotiations” in the Brexit divorce proceedings, rather than exit talks and discussions of a future trade arrangement to happen in parallel;
- Oppose any piecemeal economic relationships based on sector-specific deals, such as a special deal for the City of London;
- Insist that any transition arrangements to cushion the UK's departure, such as tariff-free access to the single market, can only last a maximum of three years;
- Stress the importance of securing equal and fair treatment for EU citizens living in the UK and British citizens living in the EU;
- Open the possibility that UK citizens might be able to individually apply to keep the rights they currently enjoy, etc.

The European Parliament will have to approve any agreement regarding the UK's withdrawal from the EU and will check whether its red lines have been complied with. Again, there is a bit of a contrast between how democratically the EU is treating the issue of Brexit as compared with the British government. For all the talk of a supposed EU democratic deficit, this seems like a pretty good process to me, unlike the UK being forced, kicking and screaming, by the British courts to allow Parliamentary scrutiny of Brexit. It is still unclear whether the UK Parliament will be given the opportunity to accept or reject the final Brexit deal.

Of Rocks and Hard Places

The empty internal talk within the Conservative party, the delusions of its Brexiteers over the last 9 months and the substance of much of the official [letter](#) sent by the British Government invoking Article 50 have been stripped away by the EU 27 and European Parliament.

The dynamics of the relationship between the EU and the UK changed the moment May came out with “Brexit means Brexit” and it is far from evident that we will witness a “red, white and blue” Brexit. It is as plain as day that the UK is the one with the cap in hand, asking for EU favours, just as it was in 1973,

when it finally joined the EU, having had its application vetoed twice by the French. The UK was in a weak position joining the club and is in an even weaker position leaving the EU.

The British government is now between a hard rock and a hard place in respect to Brexit, even if it is a situation of its electorate's own choosing.

Internal rocks

The UK rocks that need to be circumnavigated are ones with the Brexiteers have placed themselves. These include but are not limited to the following:

- An insistence to the public that Brexit will be painless: all the evidence before the government shows the opposite. During the Referendum, the much-maligned experts were derided by the Brexiteers for concluding that the country would be poorer because of Brexit. The experts are almost unanimously of the view that Britain will be even poorer if a hard Brexit takes place (i.e. without a trade deal with the EU and dependence on [World Trade Organisation](#) rules), something which is a distinct possibility;
- An insistence that Brexit will save money: the distortions and downright lies about spending the annual contribution to the EU on the NHS were broken immediately after the Referendum. Worse still, no one mentioned to the electorate that there would be a whopping Brexit bill. This will not go down well, especially with prominent Brexiteers insisting that Britain will not pay a penny more and might even get a refund from the EU;
- A suggestion that immigration will be controlled: the idea of an immigration points system was shelved by the leading lights of the Leave campaign shortly after the Referendum (just like the NHS dividend). Now, as it becomes increasingly apparent just how reliant the NHS and various other segments of the private and public sectors are on EU migration, the Brexiteers have already started to beat a retreat. Only it will be hard, if not impossible, to put the tiger that they have unleashed back in the cage. It will not be a pretty sight when the racist and bigoted segment that voted for Brexit (I am not suggesting that this is all, let alone most those that voted Leave) realise that their dreams of splendid nativist isolation will not be brought about by Brexit;
- Restive Eurosceptics: The Conservative party has a working majority of 17 Members of Parliament but a boat load of Eurosceptics who would like nothing better than a cathartic, hard Brexit. These MPs have been a thorn on the side of the Conservatives since the John Major days and they will continue to push Theresa May towards the exit door until the bitter end. Any compromise (after all, to negotiate is to compromise, especially if all the cards are staked in the favour of the EU) will be seized upon and the slim majority in Parliament will be threatened;
- British Parliament: the government has had to accept the courts' rulings that it cannot initiate Brexit without scrutiny by both Houses of Parliament. Parliament has voted the Brexit Bill through but it is not likely to be so amenable once the final terms of Brexit are known. There will be growing pressure to allow Parliament to take the final decision on Brexit and if it happens, no one can predict how the voting will go;
- The most complex negotiations since World War II: there is agreement that the scale, complexity and multi-dimensionality of Brexit represents the greatest challenge since WWII. However, all the indications are the British are unprepared. The PM is new, the Brexit ministers relatively inexperienced and the Brexit and Trade ministries are understaffed and underqualified in terms of trade, as the past 9 months show. This does not exactly inspire confidence;

- Fair weather press friends: the influential diehard Brexit bloodhounds (Times, Telegraph, Daily Mail, Sun and Express) will be sniffing around for any signs of slacking by the UK government in the negotiations. They can be relied upon to whip-up a nationalist fervour and to viciously turn on Theresa May's government at the first sign of perceived weakness;
- A disunited kingdom: the Scots are insisting on a second independence Referendum, once the terms of the Brexit divorce are known. The Brexiteers' arguments to justify Brexit will come back to haunt them: sovereignty, control of own borders and all the rest will be used against [The Union](#) and it is hard to see the counter arguments to avert a break-up, other than the economic one. Scare tactics worked in the first Scottish Referendum but failed to stop Brexit and will almost certainly fail to prevent Scotix (Scottish exit) second time around. This is especially so because the Spanish government's confirmation that it would [not veto a Scotland application for EU membership](#). It could also lead to the same development in Northern Ireland (Irexit), since a bad Brexit deal could spur the reunification of the Republic of Ireland and Northern Ireland. Unlike Scotix, Irexit would lead to automatic EU membership of the EU, since the Republic is already a member. I will not speculate about Wales or Gibraltar for now, but the prospect of a rather DisUnited Kingdom emerging cannot be entirely discounted.

So there are, to put it mildly, quite a lot of potential internal Brexit rocks for the Conservative boat to circumnavigate, even if the Labour Party is shamefully incapable of presenting any sort of meaningful opposition in Parliament at present.

External hard places

The external or EU Brexit hard places have been well-known since mid-2016. These include the following:

- The house always wins: it is the EU 27 that will determine the rules of negotiation (draft Negotiation Guidelines and Red Lines). Moreover, the EC (Jean-Claude Juncker), the EU Council (Tusk) and the Parliament (Guy Verhofstadt) must agree to the terms of Brexit and/or a future trade deal. Not only that, but there will also be multiple opportunities for EU member states (Sangria anyone?) to derail any potential deals, not to mention the quirky regional parliaments, such as in Belgium, which almost scotched the EU-Canada Trade Deal. Whatever the Brexiteers may imply, the UK really has much more to lose from the failure of negotiations than the EU. There is no doubt whatsoever that the EU holds all the aces in this Brexit game of cards;
- United by Brexit: for all the Eurosceptic allegations that the EU is fragmented, incapable of action, sclerotic, etc., one thing is clear: there is absolute unanimity in respect to the stance on Brexit. This is coupled with a steely determination among the EU 27 not to allow the UK to divide and conquer, not to allow the UK to cherry pick what it likes and drop the rest and not to allow the UK to secure anywhere as good a deal as that conferred on its club members. The Brexiteers and their right-wing press buddies will undoubtedly foam at the mouth, rant and rave as the negotiations get underway, but this will only foment even greater division in the UK itself (48% voted to remain and this chasm in British society can only grow and become more bitter), as well as between the EU and UK. It will be of no use: the EU 27 will remain united and firm in its resolve. Anything else would be tantamount to the end of the EU itself;
- A hard deadline (12 - 18 months): there is very little time to agree the terms of Brexit: the French and German elections will result in delays and when the real negotiations start, the EU will insist

on settling the key issues first, including the Brexit divorce bill, status of EU national in the UK and vice versa and the Northern Ireland border. Any of these could result in significant delays before the real horse trading begins, let alone trade negotiations. It will take 6 months for any deal to be ratified. The longer the Brexit negotiation game goes on, the stronger the EU cards will become. This does not bode well for the UK's ability to have its Brexit cake and eat it as well;

- EU members are more important than outgoing members: the EU appears to have handed Spain a big stick to beat the UK with. This is not just the apparent Gibraltar veto, based on the draft negotiating guidelines. Even if this is negotiated away (something that the British government will go all guns blazing for, as it were), the Spanish Parliament will have to approve the overall Brexit deal. This is a pretty large stick to beat the UK into submission with. Many national and regional government have the same capacity. Put simply, if they wish to, they have got the UK over a barrel;
- Experienced and hardnosed negotiating team: The EC's Chief Brexit Negotiator is the highly experience [Michel Barnier](#), combined with his Deputy, [Sabine Weyand](#), a trade expert and behind them stands Jean-Claude Juncker. The EU Council have the highly experienced ex-Polish Prime Minister, [Donald Tusk](#). And finally, the EU Parliament have an old hand at negotiations, namely [Guy Verhofstadt](#). This amounts to a formidable team of EU negotiators. By contrast, UK has Theresa May, David Davies, Liam Fox and Boris Johnson. There is no UK civil servant that is of the same calibre or experience in trade matters as the EC officials. Which side would you bet on to get the best Brexit deal?

Brexit Countdown

The UK has 12-18 months to agree Brexit and a trade deal (highly unlikely) with the EU.

The countdown has started and there is very little time, given the multiplicity, multidimensionality and complexity of the issues involved. The process of EU accession can take 10 years. The process of EU divorce will be a lot faster but after 44 years, whether the Brits realise it or not, the EU is interwoven into the very fabric of British life, economy and law.

The Brexit clock is ticking louder by the second. Any disagreements, delays, posturing, prevarication, haggling, intransigence, etc. in the negotiations favour the EU 27, rather than the soon-to-be-ex-EU 1.

This means that it is likely that the UK will have to repeatedly compromise or risk "[falling off the cliff edge](#)" of a hard Brexit, since it cannot count on any extensions in the timetable, unless the EU 27 agree to it. This is not likely to be achieved unless the EU 27 feel that sufficient progress is being made and, even then, is likely to be limited to 3 years. Trade deals can last a decade to hammer out.

On the other hand, the UK has become decreasingly influential in the EU. It has either voluntarily removed itself from active engagement or was not able to engage because it is outside the Eurozone. Following Brexit, this has reached a point where the UK is irrelevant to the future of the EU, except in the short-term context of the Brexit divorce settlement. It was not even part of the recent low-key celebration of 60 years of the Treaty of Rome.

This is the new reality for Britain and for Britons in Europe. The British government is caught between a rock and a hard place. So are British citizens and the rights and benefits accumulated over almost half a

century, whatever the UK government may claim about preserving them.

No matter how often the [letter triggering Article 50](#) repeats the desire for a “deep and special partnership” with the EU, that was in the past. The future is nothing of the sort and may deteriorate further, once the serious negotiations start in earnest. This will be doubly so, once the hard Brexiteers and the English right-wing newspapers begin to see their long-held delusions crushed between the rock of EU determination that ex-EU members cannot have the same benefits as current EU members and the hard place of ensuring that Britain does not fall off the Brexit cliff edge.

The outcome of this dreary process will be the final Brexit. The jubilant Eurosceptics will have regained the prize of the UK’s sovereignty and full control over the island. It will come at a heavy price to the rest of society and the economy. But they will undoubtedly consider it a cost well worth paying.

The only crumb of comfort (if such it is), is that the UK government will thereafter no longer be able to pin the blame for anything and everything that is wrong with Britain and its welfare state on “Europe”, the whipping boy of choice, or EU immigrants, the scapegoats for all the UK’s long-standing social policy failures.

What happens next is certain to be interesting, but it will not be a pretty sight.

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