

# Muddling Through Brexit

by rpinto\_anglodeutsch - Wednesday, November 30, 2016

<http://anglodeutsch.eu/muddling-through-brexit/>

My previous Brexit post was on the theme of [Brexit and the Politics of Wishful Thinking](#). A few months later and the politics of wishful thinking has given way to the phase of the politics of muddling through or trying to do something while being disorganised and/or do not knowing how to go about doing it.

## Brexit soundbite vs sound plan

Five months after the Referendum, little progress has been made in terms of defining what Brexit actually means. The British Prime Minister, Theresa May, came up with the political soundbite: “... [Brexit means Brexit, and we're going to make a success of it](#)”. However, she and her Government appear to be determined not to spell out exactly what Brexit actually means for British people and businesses, or indeed how they plan to go about achieving it. They insist that they do not want to give away their negotiating hand, thus disadvantaging the UK but, as Brexit approaches, it is becoming increasingly evident that they neither have a plan nor much of a set of negotiating cards.

Beyond the soundbite, the Government’s Brexit position is becoming a bit clearer in some respects:

- The Government will officially trigger Article 50 and thus start the Brexit process at the end of March 2017 (presumably 01 April 2017 or April Fool day): this has been announced by Theresa May herself and it is known that there is a 2 year timescale for negotiating Brexit;
- The UK will (almost certainly) leave the single market/customs union: the only firm British policy position is that the Government will neither accept the freedom of movement of people nor the European Court of Justice. This is the logical outcome of the insistence upon “full control of our borders” and laws. This is not compatible with anything but “hard” Brexit.

But beyond this, the Brexit waters are as muddy as ever in respect to the key strategic issues. What is increasingly clear though is that even before Article 50 is triggered, a full-blown constitutional crisis threatens to derail Brexit, the Government and possibly the United Kingdom itself.

## Constitutional crisis dead ahead

The key issue is whether Parliament will be allowed to vote on Brexit or not. The British Government is trying with all of its might to divorce the EU on the strength of the referendum outcome. Its assumption is that a vote by Parliament is unnecessary was rejected by the High Court on the basis that this course of action is unconstitutional. Cue pandemonium in Government, outrage among Brexit supporters and a disgraceful [onslaught on the British judges/courts](#) by the right-wing media (i.e. the “Enemies of the People” headline) targeting both the judges involved (so much for the rule of law) and the legal ruling itself, namely that it is a fundamental principle of the UK constitution that the Queen’s powers cannot be used by the Government via the Royal Prerogative to change or do away with rights under British law, unless Parliament gives it authority to do so.

Although the judgement is pretty clear, the Government is appealing it. This is a curious decision given that it is an established constitutional principle and Brexiters have strongly argued in favour of British courts ruling over British matters. The expectation of experts is that the Supreme Court judges will [maintain the existing ruling by probably a margin of 11:0](#). With these sorts of odds, it is a peculiar Government that would pursue a lost cause and risk frittering away its precious political capital and legitimacy.

If the appeal fails, the Government would have no choice but to go through Parliament or appeal again. The latter would mean referring the case to the European Court of Justice since its jurisdiction clearly covers European matters such as Article 50. This would represent a bitter irony for those who would have British courts rule over British matters and thus withdraw from the European Union and European Court of Justice! Such a move would not only smack of desperation, it would put the European cat among the Brexiter pigeons so is most unlikely to be pursued by the British Government, not least because it would derail its timetable for invoking Article 50 by April Fool's Day.

Therefore, should it be forced to operate constitutionally by the Supreme Court (i.e. should it be given a bloody nose by the courts), the Government's intention is to present to Parliament a [Brexit Bill](#) with the express intention of minimising debate (reportedly it amounts to three lines of text and the House of Lords has been told to behave, otherwise its powers will be curtailed), minimising scrutiny (the whole thing will be over in three days) and minimising delay (time is clearly running out) in triggering Article 50.

The majority of MPs are known to be pro-Remain, however, it is highly unlikely (but not impossible) that they would seek to thwart the majority of British adults who voted for Brexit. Were they to do so, the implications for British democracy would be impossible to guess but the mother of all constitutional crises can be safely predicted.

This is merely the start of the Brexit troubles brought on by an inept Government, not the end of it.

The [Scottish and Welsh Parliaments](#) argue that invoking Article 50 would involve a "fundamental alteration" in the UK's constitutional arrangements and the rights of their people without their Parliaments being consulted. For example, the majority of Scots voted to remain in the EU. Since the Scottish and Welsh governments have been granted the right to make separate court cases to gain a say over the Brexit process, there is the possibility that the Supreme Court might award their Parliaments a veto over the Article 50 decision. This is yet another risk in the Government's Brexit "strategy".

Separately, a further Brexit case is being brought by a private individual and has also been referred to the Supreme Court. Mr [Raymond McCord](#) is arguing that the UK cannot choose leave the EU without the consent of the people of Northern Ireland. These issues, affecting Scotland, Wales and Northern Ireland are of great importance to the future of the UK. The possibility of Great Britain emerging from the Brexit process down the line as Little England is remote but cannot be dismissed (or that quite a few Brexiters might actually rejoice at such an outcome).

All this has the potential to plunge the British Government and thus the United Kingdom into a full-blown constitutional crisis, as well as rip the Brexit timetable to shreds. The Government must be fully aware of this, which is perhaps why its overall approach amounts to "Brexit means Brexit".

### Muddling through

As if that set of thorny issues was not enough, assuming that the British Government manages to navigate all of these pitfalls and triggers Article 50, there are further uncertainties which mean that the Government is hardly in control of the Brexit process.

The first of these is whether there will be a referendum to approve the Brexit negotiations or not. There is a strong case for a further referendum to be held. The 37% of eligible British adults who voted to leave the EU (overall, there was a majority of 52% that voted to Leave) were making a simple “in” or “out” choice. However, at the time and indeed for a period of up to 2 years after Article 50 is triggered, it was and remains totally unclear what that binary choice actually means.

For example, the “in” or “out” vote could not take into consideration such momentous decisions as whether the UK would remain a part of the Single Market and Customs Union (such as Norway, Switzerland, etc., which are part of the European Economic Area) or a much more radical change (such as hard Brexit, dropping completely out of all EU trade and other treaties and relying entirely on the World Trade Organisation). The voter could not possibly be aware of the magnitude or of the practical implications of a decision to exit the EU, since this has never happened before.

At the moment, the Government flatly rejects the option of a 2<sup>nd</sup> referendum. I personally do not agree with this position. The British public should be given the option of voting on whether the outcome of the Article 50 negotiations is to their liking/expectations or not, rather than “buying a pig in a poke.” This is an apt English colloquialism which means that something is sold or bought without the buyer knowing its true nature or value, especially when buying without inspecting the item beforehand.

All the evidence emanating from the other 27 EU countries is that they will have no choice but to drive a hard Brexit bargain. The UK may still be hoping to achieve its [Brexit plan](#) of “having its cake and eat it” as well, but this is once again wishful thinking on the part of the Brexiters. The risk of the “European Project” falling apart following a generous Brexi settlement is simply too great for our European partners to contemplate.

In other words, it is critical to allow the British voter to decide whether s/he really wishes to accept the final negotiated terms of the EU-UK Brexit deal. There is a growing band of cross-party Members of Parliament buying into the 2<sup>nd</sup> referendum option. It and when the Government does trigger Article 50, the country should be given the opportunity to decide on the terms and conditions of the UK-EU deal prior it being ratified by Parliament.

A related question is whether the country should hold a General Election. An entirely new Government with a new political agenda closely determined by the referendum held in June 2016 has sprung-up since the resignation of David Cameron in June 2016, a few months after the last General Election. Especially if there is not to be a 2<sup>nd</sup> referendum and/or a Parliamentary vote on the negotiated EU-UK deal, this would give the country an opportunity to approve the negotiations of this new Conservative Government, as well as its totally new political agenda and emphasis since the Brexit referendum. Not surprisingly, Mrs May and her Government have flatly rejected this option.

The British Government’s Brexit strategy amounts to little more than winging it and muddling through

(while also failing to communicate with the public). Such “strategies” are vulnerable and can change very quickly when challenged by the courts, a determined Parliament and/or the EU partners on the other side of the Brexit negotiating table.

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