

Brexit Insight Issue 1:

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| **BREXIT** Insight

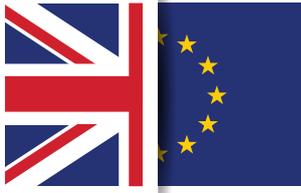


A Weekly Analysis for Senior Executives

Issue No.1 | 11 Jan 2017

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By Brendan Halligan



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Prime Minister May appeared before the House of Commons Liaison Committee just before Christmas. She answered questions for an hour on Brexit. Her answers can be taken as authoritative. The main points to emerge were as follows.

- 1. Triggering Article 50:** The withdrawal process will be initiated by triggering Article 50 before the end of March. (This could be delayed by the forthcoming Supreme Court decision expected by the end of the month).
- 2. Two parallel Negotiations:** There will be two parallel sets of negotiations, one on the UK withdrawal under the EU Article 50 of the Treaty on European Union (TEU) and the second on the new UK/EU relationship under Article 218 of the Treaty on the Functioning of the European Union. She strongly emphasised that there will be two sets of negotiations, a point missed by many commentators. (The EU negotiators see it differently and currently believe the negotiations will be sequential).
- 3. Two years to negotiate:** Article 50 TEU sets a time limit of two years to complete the withdrawal negotiations. She expects them to be completed, along with the negotiations on the new relationship, by the end of March 2019. She emphasised this a number of times saying that she didn't intend to seek an extension of the two year period. Many in Brussels consider that this is too optimistic.
- 4. The Great Repeal Act to be Introduced:** All relevant EU law will be transposed into UK law by a Great Repeal Act to be introduced into Parliament in the next session. It will come into force the moment the UK leaves the EU. At that point the European Court of Justice will cease to have jurisdiction in the the UK.
- 5. Transitional Period Essential:** She expects there will be a transitional period for various aspects of the withdrawal process and the phasing in of the new UK-EU relationship. She emphasised this was only common sense and said any such arrangements would be to facilitate adjustment to the post Brexit regime. She declined to give examples but kept repeating that "transition" simply meant "adjustment" and that there was no hidden agenda to extend the UK's membership of the EU. (This is a complex issue and probably one of the major points of dissension with the recently resigned Ambassador to the EU, Sir Ivan Rogers).



6. **UK “Plan”:** She announced she would make a major speech on Brexit early in the New Year in which she would provide more details of the UK’s approach to Brexit. She described this as a ‘Plan’, although that remains to be seen. The speech is expected on the 16th of the month.
7. **UK Priorities:** Her government has three priorities: reduce immigration by imposing border controls, remove the UK from the jurisdiction of the European Court of Justice and restore UK control over the expenditure of taxpayers’ money. She repeated these priorities a number of times.
8. **Customs Union:** It follows that if the UK were to impose border controls it would mean leaving the Single Market. She made no comment on that but said that going further by leaving the Customs Union was a complex question for which there was no answer as yet. She refused to be drawn further on the matter.
9. **“Best Possible Deal”:** She kept repeating that she wanted was “the best possible deal for the UK” without specifying what that meant in practice. This phrase is the new mantra.
10. **Ireland:** There was a low key exchange on Ireland with the Chairman of the Northern Ireland committee during which she repeated the line that she didn’t want a return to a hard border with the Republic. She didn’t say how this was to be achieved in the context of imposing controls on immigration from the EU and refused to be explicit about the future of Irish citizens living in Britain indicating that the position of all EU citizens in the UK was for discussion. She talked of a trade-off between the rights of UK citizens in the EU and of EU citizens in the UK, with the implication that Irish citizens would be part of the trade-off.

Commentary

It is the practice of the House of Commons that the Prime Minister of the day appears before the Liaison Committee usually three times a year. The committee members are the chairs of the other select committees. Normally, the proceedings consist of a brief opening statement from the Prime Minister followed by questions from the members to which the Prime Minister gives verbal replies. The meeting on the 20th December was her first appearance before the Liaison Committee and followed the established pattern.

She was authoritative throughout the session on Brexit and displayed full mastery of the issues. She is clearly in charge.

Her mantra of “Brexit means Brexit” should be taken at face value. It literally means what it says. For her, Brexit means UK withdrawal from the EU by the end of March 2019. There will be no half-way house. It is clear from her prioritisation of the government’s objectives that immigration comes first. Consequently, control of the UK borders is being given priority over any economic considerations.



Logically, that means the UK will leave the Single Market since continued membership would be incompatible with each of her three objectives viz. controlling the borders, ending the role of the ECJ and regaining control over expenditure. That put the focus on membership of the EU Customs Union as the logical fall back position but she refused to be drawn on whether or not she favoured such a proposition, simply saying that the issue was complex.

If membership of the Customs Union is to be ruled out then the only way forward is a trade deal between the EU and the UK. That would bring the WTO rules into play.

It was also clear from her answers that she hopes to complete both sets of negotiations within the two years specified in Article 50 of the TEU. She pointed out that all EU Member States will want the package agreed and ratified before the European Parliament elections scheduled for May 2019. If there was to be any slippage in that timetable the negotiations could take at least another year and would run the danger of becoming embroiled not only in the European Parliament elections but also in the UK General Election the following May 2020. Understandably, she would wish to avoid that.

Regarding the conduct of the negotiations she was adamant that the two sets of negotiations on withdrawal from the EU and concluding an EU/UK trade deal would run in parallel and be finalised together. She referred to the wording of Article 50 in making that point.

Unfortunately for Mrs May this view is not shared by EU negotiators who believe that the UK must leave the EU before negotiations under Article 218 TFEU can formally commence. The rationale for that belief is that Article 218 deals with “third countries” i.e. non- EU states. Obviously the UK will not become a “third country” until Article 50 takes affect. It’s a catch 22 situation and solving this conundrum will require much ingenuity - and goodwill.

The Brexit Insight is produced by the IIEA Brexit Project Group chaired by Dáithí O’Ceallaigh, former Ambassador to the UK. This issue is written by Brendan Halligan, Chairman of the Institute.

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