

Brexit Insight Issue 11:

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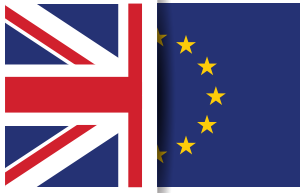
A Fortnightly Analysis for Senior Executives

Issue No.11 | 27 June 2017



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By Brendan Halligan



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The Talks Begin

At last, the talks about Brexit have begun. They opened on Monday 19 June 2017 and are scheduled to end in November of 2018, providing all goes well. This issue looks at the terms of reference agreed between the parties and assesses their implications. It remains true that the first big obstacle to be overcome is the so-called Brexit Bill. Unless that's disposed of by Christmas, progress on the trade side will be problematic.

UK Capitulation

There had been fears that the talks would not get off the ground at all due to fundamental disagreement over the agenda. That didn't happen because the UK negotiator, David Davis, capitulated completely and fully accepted the EU proposals which had been circulated earlier. Terms of reference were agreed and made public when the session concluded.

Divorce Proceedings Only

The terms of reference made clear that the negotiations will be restricted to the Article 50 divorce proceedings. They will be broken into two parts, with the first phase devoted to Citizens'

“The Brexit Bill hangs like the Sword of Damocles over discussions on the future EU/UK relationship”

Rights, the Financial Settlement, other Separation Issues and should be concluded before Christmas. There is no reference to the second phase, but it will commence as soon as phase one is finished.

Consequences

There are two immediate consequences. First, the so-called Brexit Bill will figure in the opening round and, second, talks on a future trading relationship will not be conducted alongside the divorce proceedings, as Mrs May had wanted. That means that we're looking at five years of negotiations (two years for withdrawal under Article 50 plus at least three years to negotiate the future relationship), rather than the fast settlement she had originally hoped for. But this was always on the cards.



Terms of Reference

It's only when "sufficient progress" has been recorded on the Brexit Bill (and on citizens' rights and the Northern Ireland border) that the talks will move on to discussing a "framework" for the future UK relationship with the EU. As to what constitutes "sufficient progress" is a political decision to be made by the leaders of the 27 Member States. In plain terms it means that the UK should in principle accept that there's a bill to be settled before departing the EU, something it hotly disputes. So, the Brexit Bill is a huge point of contention and hangs like the Sword of Damocles over discussions on the future EU-UK relationship, as the EU had always wanted and as the UK had previously rejected. It would seem that the UK is caught between a rock and a hard place.

The "Framework"

Assuming that Phase One is completed satisfactorily, the talks will move on around Christmas to discussing the new EU-UK relationship, but they will be confined to sketching out a "framework". There is no definition of what's meant by a "framework" although it's mentioned in the famous Article 50. Detailed negotiations on trade and other matters can only start when the UK has actually left the EU, a point that's still not widely understood in Britain.

Implications

The reaction to the first day of the negotiations has been predictable. That the UK agreed to the terms of reference put forward by the EU speaks volumes about the negotiating strengths of the two sides.

The self-confident assertions of Mrs May and David Davis that they could dictate the agenda and the timetable have given way to a more placatory tone, no doubt as a consequence of the recent election results. For the moment, the UK has to stick with its stated ambition of replacing membership of the Single Market and Customs Union with something equivalent, as the Queen's Speech confirmed. The official line is that nothing has changed, whereas it's obvious that there's been a sea-change within the past month. Any movement on the official hard line awaits developments within the Tory party. There, anything is possible, of course.

Next Issue

The future trade deal will lead to either a hard or a soft Brexit. Since the difference between them is so important to business, the next issue will examine both and also explore the distinction between the Single Market and the Customs Union.

Brexit Brief

The IIEA's "Brexit Brief", edited by Anthony Brown and Andrew Gilmore will appear fortnightly in view of the gathering pace of the negotiations. The most recent issue can be [read here](#).

Brexit Insight

Brexit Insight also appears fortnightly, alternating with the Brexit Brief. That means we'll be issuing updates and analysis on a weekly basis. The previous issue can be [read here](#).

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, President of the Institute.

As an independent forum, the Institute does not express any opinions of its own. The views expressed in the article are the sole responsibility of the author.



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