

Brexit Insight Issue 12:

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The Brexit saga is only getting more and more confused, as UK ministers publicly contradict each other over the best way forward. The air is thick with arguments about hard and soft Brexits and ways out of the dilemma Mrs May has created for herself, and for the rest of us. In truth, nobody yet knows what's meant by Brexit, either hard or soft, and that includes the British government itself. The result is confusion all round. This issue of the Brexit Insight tries to lessen the confusion by differentiating between a hard and a soft Brexit, as well as between a Customs Union and the Single Market. It examines the options available to both sides and tries to provide business with some pointers about the negotiations ahead. The news is not good.

Hard Brexit

The place to start is Mrs May's interpretation of the referendum result. She took it to mean that the UK would have to leave the EU, fully and completely. There would be no half way house, no cherry-picking, as she called it. 'Out' meant out of the Single Market, out of the Customs Union, out of the ECJ's jurisdiction, and out of the EU budget.

All this was made clear in her Lancaster House speech last February, the definitive statement of UK policy from which she has never departed. This formula was repeated by the Chancellor in an interview the day before the Brexit talks opened. That seemed pretty conclusive. It's still

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the interpretation being peddled by David Davis, the UK negotiator. So, if there is a definition of 'Hard Brexit' then there it is: out of everything that involves sharing sovereignty with other Europeans. Except, of course, in that same speech Mrs May immediately qualified what she meant by totally out. Hence the confusion.

Soft Brexit

She said that, although leaving the Single Market, the UK also wanted access to it for particular business sectors and that, although leaving the Customs Union, the UK was also open to some



form of association with it. What all this meant has been left up in the air ever since.

Despite the confusion, most UK commentators believed she was driving Britain down the road towards an uncompromising divorce with the EU and some argued that a less fundamentalist interpretation would be preferable, indeed essential. After all, the main preoccupation of business is twofold: to maintain access to the Single Market and to avoid the re-introduction of customs barriers. In so far as there is a definition of a 'Soft Brexit' then there it is. No barriers to trade with the EU. The problem is that nobody knows how to get to that happy state. The problem is politics, as it always is.

Red Lines

Up to now the UK government's overriding objectives have been to introduce controls over immigration and to end the jurisdiction of the Court of Justice, as well as to end payments into the European budget. These red lines are

politically inspired, which is fine, except that they severely limit the possibilities for an economic deal. In the UK, politics and economics are at loggerheads. And politics has won.

On the face of it, the red lines rule out membership of both the Single Market and the Customs Union. They also rule out membership of the European Economic Area, often referred to as the 'Norway model', as well as a bespoke deal, such as that concocted for Switzerland. The only workable model currently available is a free trade deal under the WTO (which would leave out services and agriculture). In so far as there's a definition of a hard Brexit then there it is.

Fantasy Solutions

Talk of a soft Brexit in some form or another is no more than wishful thinking. It's a fantasy solution because of the way the EU was designed to work from the beginning. Uniquely, it's based on a combination of a customs union and a Single Market (see box below) and has been

The Customs Union and Single Market

The Customs Union ensures free trade between EU countries as well a uniform trade policy towards the rest of the world. In short, the customs union provides business with access to the playing field and denies it to non-members. On the other hand, the Single Market ensures that the playing field is level for all the business players within the customs union. It is a set of rules which eliminates all barriers to trade between EU countries.

The Customs Union was established by the Treaty of Rome, which the UK signed in 1972 and joined a year later. The Single Market was made possible by the Single European Act, which the UK signed in 1985, and by raft of EU legislation over subsequent years. The EU Court of Justice and the European Commission were established by the Rome Treaty to ensure that the Customs Union worked to everybody's benefit.

Changes in EU treaties require the unanimous agreement of all 28 member states, which means approval by their national parliaments and, in some cases, by the people in a referendum. It is a long and hazardous process.



painstakingly put together these past seventy-five years. The whole structure is based on the free movement of goods, services, capital and people. No easy achievement.

The problem for the UK is that whereas these four freedoms are indivisible it wants to divide them. It also wants to free itself of the dispute resolution mechanism (the ECJ) while being free to trade with those who are bound by it. That would be to strike at the heart of the legal system which governs the commercial life of business in the EU and is just not going to happen.

The Negotiations

The prospects of a sensible win-win deal have not been helped by the fallout from the UK election. The mood music is getting darker. The big red line ahead is the Brexit Bill, the money the UK will have to pay to settle its debts on leaving the EU. For the EU this is non-negotiable. For the UK it is unthinkable. The irresistible force meets the immovable objective. Unless there is a deal by Christmas then the negotiating timetable will be in trouble. And the prospect of a 'cliff-edge departure' ever more likely. Not good news to say the least.

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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