

The Headless Chickens are Coming Home to Roost: Summarising the Sorry State of the EU-UK Withdrawal Negotiations

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The United Kingdom is expected to leave the European Union on 29th March 2019. If more distant observers sense the situation to be somewhat confused, they are on the right track – but have surely not yet grasped the true chaos enveloping a once relatively stable west European state.

In order to understand the UK's current predicament, one needs to appreciate six important contextual points. First, the institutions of the UK state were almost completely unprepared for the outcome of the 2016 referendum or indeed the impetuous decision of the May Government to implement that referendum outcome in a relatively extreme manner. Secondly, the UK remains utterly divided about the future direction of travel, not least in terms of its relations with the EU, with deep fissures evident not only in British society but also (perhaps especially) within the Conservative Government. Thirdly, ideological Europhobia has taken advantage of the situation to emerge from its essentially hard right fringes and become perhaps the most vocal and confident force in British politics. Conversely, the moderate and surely still significantly more representative mainstream (in the Labour and Conservative Parties alike) often gives the impression of having been rendered virtually impotent.

Fourthly, for all of those reasons, it is unsurprising to find that the UK Government's approach to the Article 50 TEU negotiations has wavered between the weirdly unrealistic and the wildly incoherent. The UK has consistently struggled to comprehend basic issues around the sequence and timing of the negotiations; it appears confounded by the unified front of the EU27 and often unwilling to respect the integrity of the process they have mapped out; it seems barely capable of processing let alone engaging with the EU's emphasis on the importance of building mutual trust; and of course, the British come across as obsessed with their own historically imbued exceptionalism. Fifthly, it is important to recall that a significant constituency within the triumphant Leave campaign positively want these negotiations to fail: after all, a complete break that would set the UK free from the tyrannical embrace of the “EUSSR” (and / or kickstart their

plans for some ill-defined political and cultural revolution) was key among their motivations and ambitions. Last but far from least, one of the primary strategic objectives of the Leave campaigners, within as well as outside Government, is now to construct a narrative that can be sold relentlessly and effectively to the British people: responsibility for everything that might go wrong, over the months and years and decades to come, lies firmly with everyone else in the world, from the fifth column of internal traitors and saboteurs to the vengeful foreigners in Brussels, Paris and Berlin.

It is against such a background that one needs to consider the three sets of EU-UK negotiations which now need to be completed. (Let's set aside the equally massive and urgent additional tasks, e.g. of preparing the UK internally for the consequences of withdrawal without causing serious regulatory and administrative malfunction; and of regularising or indeed rebuilding the UK's international legal relations with a wide range of countries and organisations).

- The “separation agreement” will deal with the immediate issues required to ensure an orderly departure of the UK from the EU. In December 2017, the European Council decided that “sufficient progress” had finally been achieved in these initial negotiations. Work will now continue with a view to reaching full and final agreement on the full range of separation issues: after all, most remain incomplete (such as the protection of migrant EU and UK citizens’ rights or the precise calculation of the UK’s “divorce bill”); some considerably so (especially the unique and serious challenges facing the island of Ireland); while others have barely even been discussed (e.g. the protection of existing IP rights, the completion of ongoing public procurement procedures, the legitimate use and protection of pre-withdrawal shared data etc).
- Negotiations are now about to commence on a “transitional agreement” designed to ease the pain of what would otherwise be an imminent as well as abrupt UK departure, giving public and private actors more time to prepare for the inevitable changes and potentially extensive disruption. The two sides agree that transition should be based – as far as politically possible and legally feasible – on a temporary prolongation of existing EU law and policy to the UK, but with the latter excluded from participation in the EU’s institutional frameworks and decision-making processes. The UK hopes that political agreement on the relevant terms can be secured within weeks. But major differences remain: not only as regards the duration of transition (the UK suggests around 2 years, the EU is offering 21 months, businesses want much longer); but also, e.g. about the UK’s treatment of EU nationals who arrive during transition or the EU’s insistence that the UK automatically comply with any new changes in EU law during transition.
- In March 2018, the European Council is due to adopt guidelines that will steer preliminary and preparatory discussions with the UK about the framework for a future relationship. In the meantime, the Union is still calling for the UK to offer some modicum of clarity about the British position. After all, the UK has been proposing a “deep and special partnership” with the EU for over a year, but without yet offering any detailed and credible proposals for what such a new and bespoke relationship should look like. Even by the dawn of 2018, we know almost nothing concrete about the UK’s vision for the future. Faced with that vacuum, the European Commission has been formulating its own views: a trade agreement of the sort already in place with Canada or South Korea

and now also lined up with Japan; together with an additional agreement on cooperation in the fields of security and defence.

The current plan is that a definitive legal text covering separation and transition, plus a political declaration on future relations to accompany the new treaty, should be finalised by October 2018 (so as to allow sufficient time for both the EU and UK to secure their respective institutional approvals). But the future framework for EU-UK relations will only be properly settled after withdrawal, with the two sides saying it should be done by the end of transition – but even the latter offers no guarantee of sufficient time to conduct, conclude and ratify such complex and sensitive multilateral negotiations. Whatever happens, British voters – the sheep as well as the goats – can soon look forward to learning the true meaning of “taking back control”.