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BREXIT – THE STAGE IS SET

- written by Colin Munro
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The Prime Minister of the United Kingdom Theresa May has triggered Art. 50 today setting in train Britain's two-year, slow-motion exit from the European Union.

One point is clear in the provision of Art. 50: two years after its activation the U.K. will no longer be a member of the EU, whether or not a deal has been struck on the terms of the divorce. For a deal to be concluded within its deadline, both sides need to have reached an agreement in just 18 months, October 2018, leaving enough time for the U.K. and European parliaments to sign off on the divorce terms. Only after the mandate is agreed and the two sides have negotiated over how to negotiate will the two sides actually get down to the divorce package. For BREXIT time is therefore short but the road is long.

An extraordinary meeting of the EU27 will take place on 29 April 2017. This summit will be critical. The overarching principle of the EU's negotiating mandate will be set here.

A detailed plan for how the Council's negotiating aims can be achieved will then be drawn up in the form of "Council directives", and will then be sent back to EU leaders for a final agreement.

It isn't until this stage that the EU's chief negotiator Michel Barnier will have a "mandate" within which he will work in the negotiations with Britain. This period between April – when the directive is sent to the Council, and June/July when the mandate is set - is crucial.

If the U.K. wishes to influence the EU's opening position, it needs to get in early, ensuring allies such as Ireland, Poland and Hungary fight to ensure the "mandate" is not so hard-line as to make a deal politically impossible for the U.K.

Officially the Council's position is agreed by a qualified majority vote. But it is customary for EU leaders to look for consensus on such important decisions. Once the mandate is set, it's set. With barely 18 months to agree on a deal, it is of neither side's interest to reopen the negotiating positions once they have been agreed. The final rubber stamp on the EU's negotiating mandate will be given by EU member countries. But the European Parliament can veto any deal. This could come as early as May but may stretch on July. This may either deal with at the level of the GAC or could escalate to leader level at another extraordinary meeting. One has to hope that on both sides there are clever negotiators who are able to look for solutions acceptable to both sides.

So, three to four months to agree on a mandate, six months to deal with the Exit package-including "the check"- and six months to agree on a comprehensive free-trade deal.

"Hands off our BREXIT" trumpeted the English edition of the Daily Mail on 14 March after the Scottish First Minister has called for a referendum on independence (Indy Ref2) between the autumn of 2018 and the spring of 2019, when the shape of the UK's BREXIT deal or no-deal should be clear. Nicola Sturgeon timed her announcement on 13 March to coincide with the passage of the Art. 50 Bill through Parliament. Royal Assent was received on 16 March. The Prime Minister is expected to write to the President of the European Council, invoking (triggering) Art. 50 at the end of March, after the celebration to mark the 60th anniversary of the Treaty of Rome.

Since Scotland voted (62%) against BREXIT, the Scottish government (SNP/Green coalition) has been arguing since 24 June 2016 that, at the very least, Scotland should remain within the Single Market (SM). SNP spokesperson, including Angus Robertson MP, amplified Sturgeon's announcement. If a SM deal can be achieved for Scotland or the UK as a whole, the Indy Ref 2 would be called off, at least for now. Then, the Prime Minister ruled out a referendum until after BREXIT. So, the European Parliament will be allowed a vote on the deal but neither the Scottish parliament nor the people. Theresa May has given Nicola Sturgeon a grievance. Exploiting grievances is the SNP forte. The pro-union Scotsman is aghast.

The Daily Mail's headline was thus on target. Nicola Sturgeon is making achievement of a hard BREXIT for the UK outside the SM and the Customs Union more difficult. That will become apparent when the latest attacks on the divisive nationalist ungrateful Scots dependent on English subsidies, diminished. Theresa May's recent speech at the Scottish conservatives spring conference could come back to haunt her:

- "one of the great driving forces behind the Union's creation was the remorseless logic that greater economic strength and security come from being united."
- "a new referendum would force people to vote blind on the biggest political decision a country could face".

May accuses Sturgeon of tunnel vision and playing politics. To put it no higher, the pot is calling the kettle black. Moreover, English condescension does not go down well in Scotland.

The stage is thus set for:

- a contest between little Englander and Scottish nationalism;
- arguments about Scottish independence, likely to be even more acrimonious than in 2014.
- Bitter arguments throughout the UK during the BREXIT negotiation about allowing "autarkic sovereignty" (to quote Lord Kerr) to prevail over economic wellbeing;
- a possible constitutional crisis centred on Scotland and Northern Ireland.

Northern Ireland (55% against BREXIT) is without a power sharing government, and the unionists have lost their overall majority in the Assembly for the first time since 1921. The Irish nationalist Sinn Fein party is calling for a referendum on Irish unity, a proposal regarded as premature by the Dublin government. The governments in London, Dublin and Belfast want to avoid even the appearance of a hard border between Northern Ireland and the Republic, something that might put at risk the peace settlement enshrined in the Good Friday Agreement (1998). The Scottish Government is following developments on the border issue closely, for obvious reasons.

Once the Prime Minister has written to the President of the European Council, invoking Article 50, the negotiations can begin. There will be, as far as the UK government is concerned, seven negotiations, on:

- the divorce (a term which the Prime Minister prefers to avoid): the BREXIT could be contentious;
- transitional arrangements which the UK government prefers to call BREXIT implementation;
- the outline of new agreements, notably on free trade in goods and services, between the UK and the EU;
- Scotland, including any deal on the Single Market, Customs Union, and IndyRef2;
- Northern Ireland, how to avoid a border regime that could threaten the 1998 ("Good Friday") peace agreement which brought the troubles to an end;

- Gibraltar which voted 96% (!) against BREXIT. Gibraltarians want to remain part of the UK, while Spain sees BREXIT an opportunity to recover sovereignty lost in the Treaty of Utrecht in 1974;
- The Great Repeal Bill to annul the European Communities Act of 1992 transposing EU law into UK law, ending the jurisdiction of the European Court of Justice (ECJ).

The UK government's basic objective is to escape from the jurisdiction of the European Court of Justice (ECJ) and "take back control" of immigration from the EU. It thus intends to leave the Single Market and customs Union. It has, for the time being, shelved Theresa May's ambition as Home Secretary, to withdraw the UK from the (Council of Europe) European Convention on Human Rights and Fundamental Freedoms (ECHR), on which the human rights provisions of the Good Friday Agreement are based.

The basic objective of the EU27 is that the UK should not have a better deal outside the EU than in it. The EU has invested heavily in the Northern Ireland peace process. But nobody has yet worked out how to avoid politically and economically damaging border controls if Northern Ireland is outside the Single Market and Customs Union. The EU's position on Scotland is at it was in 2014. An independent Scotland would have to apply as a new state according to Article 49. Spanish concerns over a possible precedent for Catalonia, persists.

There is as yet no public common position of the 27 on Gibraltar. The UK and Gibraltar governments insist that UK sovereignty over Gibraltar will continue.

The following outcomes are possible:

- Agreement on the terms of BREXIT; the outline of future agreements on trade in goods and services; the status of EU nationals in the UK and UK nationals in the EU, Scotland, Northern Ireland and Gibraltar, and transitional arrangements – a comprehensive "win/win" settlement.
- Agreement on BREXIT, including the status of EU and UK nationals, but no final agreement on Scotland, Northern Ireland or Gibraltar. The UK would be outside the Single Market and the Custom's Union.
- No agreements at all and the UK leaves – over the "cliff edge" – the EU at the end of March 2019.
- Agreement to extend the negotiating.
- The UK rescinds its Art. 50 notification as the disadvantages of BREXIT become clear (this is a theoretical outcome).
- The Scottish Parliament withholds legislative consent to the Great Repeal Bill, precipitating a constitutional crisis.

Also Theresa May has asserted that "no deal is better than a bad deal" chief BREXIT negotiator, David Davies, has admitted that no economic analysis of "no deal" has been carried out. Lord Kerr insists that not only is no deal always the worst deal, but also that pre launch testing is an imperative before entering into any negotiations. There has been none. No preparations for BREXIT were undertaken before 23 June 2016. It is hard to imagine either that a win/win settlement can be achieved in two years, or that the UK will withdraw its Art. 50 notification, or that the UK will actually crash out of the EU, recasting itself as some super competitive Singapore in the North Sea. Theresa May wants – or at least says she wants – "a country that works for everybody", paying special attention to those who are "just about managing." The second and fourth outcomes seem more likely – at least at this stage.

The UK Government sets great store by the so-called Great Repeal Bill. It would annul the European Communities Act of 1972, and transpose into UK law all European legislation that is not already directly applicable in the UK. The UK would then discard the undesirable bits. This will be presented to Parliament in May 2017 and would come into force on the day the UK leaves the EU. The supremacy of the ECJ would be terminated. Unlike the Article 50 Bill under the terms of the devolution settlement the legislative consent of the Scottish Parliament to the Great Repeal Bill might be required. The Scottish Government may find itself in a dilemma if it attempts to block the Bill and the UK leaves the EU, there would be legislative and constitutional chaos. Powers that would have been repatriated to Scotland might end up in London. In any event, the debate in parliament and the country on this Bill will provide opportunities for people to grasp the realities of the EU. David Davies said in October 2016: "It's very simple. At the moment we leave, Britain must be back in control and that means EU law must cease to apply."

Davies now concedes that BREXIT will not be simple. The negotiations on issues such as the dispute settlement, supply chain, tariffs, financial services, aviation landing rights, nuclear safety standards, the European Banking Authority, the European Medical Agency, Erasmus, Horizon, agriculture and fisheries, justice, home affairs, and security, and the acquired rights of citizens in the EU and the UK will all be complex and time consuming. Migrants from the EU are of vital importance to the UK in health and social care services, academia, financial services, agriculture and construction. The negotiations could break down over a BREXIT bill presented by the European Commission. The European Parliament could veto any deal.

The UK government continues to believe that it will have a strong negotiating hand in the forthcoming negotiations. What does it consist of?

The UK's strongest suit is in Europeans' defence and industrial cooperation where the EU manufacturers need frictionless supply chains with UK firms (the UK has Europe's largest defence manufacturing sector); military capability especially anything involving power projection; intelligence capability including counter terrorism. Much will depend on how the UK plays this card. It cannot be seen to adopt a Trump style transactional approach to its NATO commitments (under Article V of the Washington Treaty an attack on one is an attack on all) to EU member states such as Poland and the Baltics.

Opinions are divided on the UK as transatlantic bridge in the Trump era. The Financial Times argues that Trump is a disaster for BREXIT. Cosying up to him is seen as distasteful, and perhaps useless, in many EU members states.

Financial Services are a vital part of the UK economy, generating a large surplus for the current account. Although the City of London will continue to prosper post BREXIT other EU financial centres such as Paris, Frankfurt, Milan and Dublin will seek to attract business. Not everyone on the EU trusts Anglo Saxon, light touch regulation, perceived as having contributed to the financial crash of 2008. Again, much will depend on how the UK plays this card. Meanwhile, the UK is famed for the ease of doing business. It ranks in seventh place in the World Bank's ranking behind Denmark and Norway, but just ahead of Sweden. But if the frictionless supply chains of the automotive or pharmaceutical industries are interrupted post BREXIT, and work permits for key personnel are difficult to obtain, this ranking may slip.

How, one may ask, has EU membership damaged the UK's reputation for ease of doing business up to now? Why are Denmark and Sweden doing so well? The answer, of course, is that most red tape is home made, as every Austrian entrepreneur knows.

To sum up: the UK does not have a strong negotiating hand. It is in a weak negotiating position.

Professor (of German at Cambridge University) Nicholas Boyle argues that the referendum result expressed the will, not of the “British” people, but of a narrow majority of English people who have not yet come to terms with their place in the world. They are not willing to cooperate and compromise with their fellow Europeans, including the Scots and the Irish on a basis of equality. They hold fast to an illusion of untrammelled sovereignty. Many still believe that they are superior, especially in view of the country’s achievements in two world wars. Boris Johnson’s ideal is Winston Churchill.

Theresa May’s approach is the quintessence of little England. But even the prime Minister is not superior to the Daily Mail. She has just performed what is, politically, a dramatic U-turn on the budget, annulling a modest increase in national insurance contributions by the self-employed, to which the Daily Mail and a number of Conservative MPs had objected (as contrary to a 2015 election manifesto commitment). This episode confirms that the pro BREXIT media wish to marginalize the Chancellor of the Exchequer, discrediting any evidence emanating from the Treasury, of the negative economic consequences of BREXIT. The prime Minister herself continues to attach top priority to escaping from the ECJ. The economic wellbeing of the country is of secondary importance. But there will be no complete escape from the ECJ if the country is to have a comprehensive FTA with the EU.

She is also putting the union at risk. At the Scottish Conservative party conference on 2 March she argued that the “government was not a platform from which to pursue constitutional obsessions”. Nicola Sturgeon should “get on with the day-to-day job”. The lack of self awareness in relation to BREXIT, a constitutional obsession if ever there was one, and problems affecting, e.g. the NHS, is astounding. Lack of self awareness is compounded by an apparent refusal to regard the Act of Union (1707) as the merger of two previously sovereign and equal states. With the honourable exception of Sir Keir Starmer, David Davis’s shadow, the Labour Party in the House of Commons and the country, is failing to contest any of this.

The government gives the appearance of relying on advisers who provide “loyal information”. Like the Soviet Union’s politburo they accept only information which fits their world view. A hitherto cautious lady who based her decision as Home Secretary (Interior Minister) on careful study of the evidence, now gives the impression of being a high stakes gambler, just like her predecessor. Boris Johnson meanwhile, is court jester.

The EU’s determination that the UK should not have a better deal outside the EU than in it suggests that Barnier, Juncker and Verhofstadt are in no mood to help the English overcome their (to quote Professor Boyle again) “illusions stemming from a narcissistic identity crisis”. It is going to be a rough ride.

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For queries please refer to: -

Dr. Alexander Christiani, Ambassador ret. achristiani@hotmail.com

Vicepresident of the Austro-British Society/ABS (Österreichisch-Britische Gesellschaft), and Head of the ABS Expert Council (Expertenrat)

Colin Munro, Ambassador, ret. colinmunro2002@yahoo.co.uk

Member of the Austro-British Society/ ABS (Österreichisch-Britische Gesellschaft), and Member of the ABS Expert Council (Expertenrat)