

## It is generally accepted that there is no plan for the UK following the Brexit referendum.

It will be up to Theresa May as the new prime minister, along with her new team, elected by Conservative MPs and with an agenda that will have seen no endorsement by the electorate, to make proposals to Parliament on the next steps.

It is likely that the current reluctance to notify the European Council of a decision to leave the EU will continue for some time. It would be sensible to make sure that the government has a plan for the future before triggering the formal process of withdrawal. That process is not, in fact, particularly complicated. Article 50 of the Treaty on European Union merely contemplates an agreement on withdrawal, not an agreement on future trading relations. An agreement on the withdrawal of the UK could be reached within a period of a few months and would include a settling of accounts and matters, such as the status of nationals of the residual EU in the withdrawing state and of nationals of the withdrawing state in the residual EU. When the agreement is signed, the UK leaves the EU. It is clear that the EU-27 want this process to be completed as soon as possible.

There appears to be a common misunderstanding in the UK, but not in Brussels, that Article 50 requires that new trade arrangements should be agreed as part of the withdrawal agreement. This is based upon the fact that Article 50 says that the framework for the leaving state's future relationship with the Union should be taken into account. This simply means that different leaving states might have a different status following withdrawal and that should be (obviously) taken into account.

It is crystal clear that the withdrawal agreement would not include any trade agreement that would be contemplated by the UK government. The wording of Article 50 is itself clear. The Article also says that the Council should act on a *qualified majority* according to the provisions of Article 218 TFEU. This Article provides for the roles of the Commission and the Council and says that the Council should proceed by qualified majority except where unanimity is required, in the case of association agreements for instance. Article 205 TFEU explains this further by saying that unanimity is required for international agreements concerning trade in services or intellectual property, where such agreements include provisions for which unanimity is required for the adoption of internal rules. Where that applies, notably in relation to financial services, unanimity would apply. It is quite clear that such a situation cannot arise in relation to an agreement under Article 50. Furthermore, the Council and Commission may only negotiate agreements with third countries, and the UK would not be a third country until withdrawal takes effect.

The consequence is that a trade agreement could not be *formally* negotiated alongside the withdrawal process, at least in a manner that delayed actual withdrawal. The member states of the EU will wish to reduce the period of uncertainty as far as possible and a trade agreement might take more than five years to conclude. This has been explained by Cecilia Mallstrom, EU Trade Commissioner, in an interview with Mark Urban, when she emphasized "There are actually two negotiations. First you exit, and then you negotiate a new relationship, whatever that is."

The UK may find itself out of the EU within three months of the Article 50 notification, with no trade agreement to rely on.

One suggestion to avoid this is that the UK should apply to join the European Economic Area. This is sometimes called the Norway option but that is misleading. Norway is a member of the European Free Trade Association, which, besides Norway, boasts Switzerland, Iceland and Liechtenstein as its members. The UK would have no interest in joining EFTA, which has its own supra-national Surveillance Authority and Court.

Membership of the EEA could never be within the scope of Article 50, because new members must be approved by all of the participating states, including the EFTA states that are members of the EEA. However, the UK could clearly have informal discussions with all of these states to test the water. The EEA agreement basically covers the application of the four freedoms of the internal market to most sectors, excluding aspects of agriculture and fisheries. To maintain the benefit of access to the internal market, the EEA states must adhere to all of the rules of the internal market within their own market as well as when trading with the EU. Notably membership does not include the Customs Union, so that Norwegian companies still face the problem of customs control, which itself is a barrier to trade.

Norway is consulted on new legislation being adopted in Brussels but has no vote, and must therefore simply accept whatever is enacted in Brussels, or lose access to the internal market for the sector concerned. As an EFTA country, Norway is subject to the EFTA Surveillance Authority and the EFTA Court where there is no impact on the EU, but otherwise subject to the Commission and the Courts in Luxembourg.

Most importantly for the UK, an EEA member must accept the free movement of persons within the whole EEA/EU area. Norway is actually within the Schengen Area, where border controls are not permitted.

For this Norway makes a substantial contribution to the EU budget, but, unlike an EU member state, receives nothing back.

Joining the EEA would be wholly inconsistent with the prospectus of the Leave campaign in the UK. It would involve a reduction in sovereignty because the UK would have no say at all in legislation, including legislation regulating the City of London, and no additional immigration controls would be allowed. Those who voted for Brexit would inevitably feel betrayed.

One realistic option for the UK, apart from simply accepting the status of a third country relying on WTO rules, would be to notify its intention to leave under Article 50, negotiate withdrawal and then exit the EU, in the hope that a trade agreement could be reached. The trade agreement with Canada took nine years to negotiate, and it would be unwise to believe that such an agreement would emerge soon. UK businesses would have to learn to trade as a third country as far as the EU/EEA is concerned.

Alternatively, the UK could refuse to notify the Council under Article 50 and wait for the Council to agree that informal negotiations on a trade agreement should be undertaken. This would depend on the cooperation of the Council, which could not be guaranteed since it is clear that the EU-27 would find it very uncomfortable if the process of Brexit was delayed for a long period. Moreover it would tend to prolong a period of uncertainty that may damage the UK and the EU alike.

It is clear that the creation of a satisfactory new relationship with the EU is not likely to be an easy process, or one that is likely to be concluded in the near future. The world and the markets will be watching the interaction between the UK and the EU very closely, and if there are public disagreements it must be likely that there will be further shocks to the currencies and stocks.

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