

## Ireland and the Brexit negotiations

In the first phase of the Brexit negotiations, Ireland played its hand very skilfully and achieved its objectives – at least on paper – notably concerning the avoidance of a hard border within the island of Ireland. However, the UK government, dominated by a small group of hardline Brexiters, continues to put out mixed, confusing and unrealistic messages. It still does not appear to know what its ultimate negotiating objectives are.

The December decision of the European Council and the revised Negotiating Guidelines set the framework for Phase 2. They adopted the proposal for a ‘transition period’, the arrangements for which will be set out in the Withdrawal Agreement to be agreed by March 2019. But it is already apparent that **Phase 2 poses immense problems**. As a result Ireland risks seeing the assurances it gained in Phase 1 considerably weakening if not eventually unravelling.

- First, the most likely scenario now is that that the UK will formally leave the EU on 29<sup>th</sup> March 2019, but will behave and be treated as if it were still a member, though without a vote, during the transitional period. So it would still be part of the Single Market and the Customs Union, would still pay into the budget and would apply the four freedoms. Good - so far as it goes. But there is a lot of detail about the transition in the various documents adopted in December, which will be anathema to the hardline Brexiters and which they will not readily accept.
- Second, the EU has entered into an estimated 750 trade and other agreements with third parties. From the moment the UK formally leaves the EU, these agreements would no longer apply to it; they would need to be renegotiated one by one and the ‘third parties’ might well be in no hurry to do so, particularly as the nature of the UK’s final relationship with the EU would still be unclear. The UK would be the most seriously affected country by this, but there would certainly be repercussions on other Member States. It is, in other words, a known unknown.
- Third, time is now very limited to negotiate the transitional deal and to have it ratified by the EU Council of Ministers, the European Parliament and the UK Parliament. It is not clear what will happen if one or other of these bodies rejects the agreement.
- Fourth, the anticipated Withdrawal Agreement will only include an “overall understanding on the framework for the future relationship”. In other words, with so much energy and time being devoted to negotiating the transitional deal, work on the ultimate settlement between the UK and the EU would barely commence before March 2019. To complete such negotiations within the likely twenty months of ‘transition’, until the end of 2020, seems an impossible task.

Increasingly, another alternative is being discussed in the media and social media: **to extend the Article 50 negotiating period**. The legal position would be clear. Britain would remain a member of the EU while substantive negotiations on the future relationship continued – and hopefully concluded. There would be no need to spend time on negotiating ‘transition’. True, there would be some problems: EP elections in June 2019; the next EU Multi-annual Financial Framework 2021-27 and so on. These matters, however, are soluble and less problematic than those of ‘transition’.

However, there is another aspect militating for an extension of Article 50 rather than ‘transition’. **Many British people - roughly half the population - including most young people who hold the future, and the majority of business organisations, think that Brexit is a spectacularly bad decision** which would both damage the UK, weaken the EU itself, and encourage the emerging nationalist trends observed across several countries in the world. Moreover, it seems that the British people are beginning to have second thoughts on the matter. This is not so much evidenced by people openly admitting to changing their minds, but rather, according to recent opinions polls, by **the growing numbers who think the negotiations are going badly and who think a second referendum should be held**. An extension of the Article 50 negotiating period, compared with a transitional

arrangement, has the enormous advantage of giving the **British people and the British government, the time to reflect on the Brexit decision and, if so inclined, to abandon Brexit altogether.**

Extension of Article 50 however requires unanimity of all Member States. At present neither party to the negotiations seems inclined to propose this.

- On the one side, many of the EU27, even if they would prefer that Britain remained a member of the EU, would just like to get the whole Brexit business over with in order to concentrate attention on other more important matters. Moreover, they would be disinclined seemingly to interfere in what is essentially a UK decision.
- On the other side, the present UK government, dominated as it is by a hardline group of Brexiters, wants the UK to leave the EU as quickly as possible. Indeed the present government would probably accept almost any transitional agreement so long as it enabled the UK formally to leave the EU on 29 March 2019.

Nevertheless, if the EU27 were, at an appropriate moment over the course of the next fifteen months, to propose an extension to Article 50, instead of a transitional arrangement, then there is a good chance that the **UK Parliament would insist on the UK government accepting such a proposal, even if this was against the government's own inclination on the matter.**

Time is a great healer. It would be in the interests of all parties to give the British people and their government time to reflect on the decisions which have been and are being taken. **Whatever final deal is agreed, 'transition' is a one way street – out of the EU. By contrast an extension of the Article 50 negotiating period allows for turning back, if, in the end, the British people were inclined to do so.** This is the argument that we, a small group of British citizens resident in Luxembourg and former senior EU officials, are trying to make. We have already individually emailed all 678 MEPs from the EU27 with this proposal – see the Appendix for a copy of the underlying memorandum. The responses we have received are overwhelmingly favourable. But, while Members of the European Parliament may be sympathetic to this idea, and collectively are enormously influential, the initiative rests with the Member States and the European Commission.

Perhaps such a proposal is already being quietly discussed among the Member States, waiting for the right moment to bring it into the public domain. If not, at least one Member State would need to float it with the others and open a conversation among them. Accordingly, we are now approaching a few Member State governments. But we hope that Ireland, the country which has most to lose from Brexit, and which is greatly respected for its contribution to the Phase 1 negotiations, might be persuaded if necessary to make the first move on this matter.

**Fundamentally the EU is about bringing peoples together - reconciliation even. Nowhere has this been more visibly successful than on the island of Ireland.** There is now a serious risk of these achievements of recent decades falling apart - unless there is a change of heart on the part of the British people and their government. **Ireland has every right to feel let down by Britain, but we hope it may have the wisdom to put these feelings aside and seek reconciliation. That, however, may take rather longer than the fifteen months that now remain before 29 March 2019.**

Stephen McCarthy  
Luxembourg  
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## Appendix

### An alternative response to Brexit

The purpose of this memorandum is to present an alternative proposal as to how the '27' Member States could intervene and push Brexit in a more sensible direction, or even stop Brexit altogether, if they chose so to do.

The essential idea is simple and can be stated in a few sentences. The present British government has been captured by a small group of hardline politicians who have always opposed Britain's membership of the EU on dogmatic grounds, but who do not represent the views of the British people as a whole – certainly not British businesses nor the half of the population who would have preferred Britain to remain in the EU. And many of those who voted for Brexit in the referendum did so for reasons which have little to do with Britain's real relationship with the EU. **The British people now need to be given time to think through the practical implications of leaving the EU, to have the opportunity to reflect further on whether Brexit really is in the interests of the country and possibly change their mind.** It is also probable that political priorities will change as other political events come to seem more important, and there remains the real possibility that the British electorate will elect a new government in the near future.

The proposal is, therefore, that the '27' Member States should, at an appropriate moment, voluntarily (i.e. without being requested by the British government) decide unanimously to **extend the Brexit negotiating period under Article 50 of the Treaty from two to five or six years – not an unreasonable time for such a complex negotiation. At the same time the '27' should refuse any transition period, which only complicates matters and muddies the waters.** The present British government would probably wish to refuse such an 'offer', but, faced with the possibility of a disastrous alternative, it seems most likely that the British Parliament would insist that the government did indeed accept it. The negotiations so far have shown that there are any number of difficult detailed but important issues which have to be properly dealt with and that the two-year period for departure provided under Article 50 of the Treaty is wholly inadequate for resolving them. As these issues are worked through, it may become clearer just how unsatisfactory Brexit will be for Britain, which may affect public opinion in the country.

Britain has been a difficult but ultimately effective Member of the EU. Many EU Member States would on balance prefer Britain to be in the EU than outside. Others might be more hesitant. So it is important to note that under this proposal the **'27' would not be asked to take a view on Britain's continued membership**, but merely to decide on whether the negotiations should be extended. At some future date the British government may then seek to withdraw its Article 50 notice; **that** would be the point at which the '27' would have to decide on Britain's continued membership or not. In the meantime, of course, they would have to find a way of excluding Britain from their ongoing discussion of other issues, not least the EU's future direction.

John Bruton, a former Taoiseach of Ireland, has made the same argument as I have set out here, though for somewhat different reasons: <http://www.euractiv.com/section/uk-europe/opinion/blind-forces-are-in-play-in-the-brex-it-talks> . Importantly Bruton proposes extending the negotiating period to six years, during which period there would have to be another UK general election.

If you believe there is any merit in this proposal do please share it with your colleagues.

Stephen McCarthy

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