

Brexit Negotiations: the Current State of Play

By Professor Alex de Ruyter, Centre for Brexit Studies

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In this piece for the CBS blog post series, I thought I would step back and see where we are so far in the goal of leaving the EU, and consider some (of the many) issues that will require an urgent fix.

As [Tom Enders, CEO of Airbus](#) muses about the Cabinet Chequers meeting today regarding “white smoke, black smoke or no smoke,” being emitted after the meeting, there are now less than 9 months until Britain formally leaves the EU on 29th March 2019 *unless Article 50 is rescinded or the negotiating period extended*.

Here we need to draw a distinction between the withdrawal agreement (i.e., that part specifically related to the “divorce” from the EU) and the negotiations around our “future relationship” with the EU.

The latter at present is rather nebulous (to say the least), with the Government continuing to insist on a “frictionless” (or as “frictionless as possible”) trade deal with the EU, whilst in turn being accused by EU negotiators of continued “cherry-picking” and “magical thinking”.

In public, the EU maintains any withdrawal agreement needs to be agreed by October in order to provide time for ratification. The UK Government (particularly David Davis) has challenged this. However, in private, EU leaders/officials acknowledge that an agreement by the end of December would give sufficient time for ratification.

This is because, in contrast to some perceptions, ratification of the withdrawal agreement “only” requires the consent of the EU Parliament and a qualified majority in the European Council.

In theory, this could be undertaken rather quickly. However, debate over whether December gives sufficient time for ratification is almost an irrelevance at this point: the chances of meeting an October deadline are now rapidly diminishing towards zero and December appears optimistic.

Indications from EU leaders in private are that they would consider extending the Article 50 negotiating period (to allow loose ends to be tied up and ratification).

However, this requires the *unanimous* support of the European Council (and, obviously the UK Government). We should also note that any extension on this basis would be for *months* rather than *years* (an important point in the event that the UK wishes a hard Brexit).

If we turn to what is needed to get the UK a “transition period” (where we would continue to stay in the Single Market and Customs Union after March 29 next year up to December 31st 2020), so as to allow more time to cushion the impact of Brexit on businesses, the issues of Northern Ireland, the “divorce bill” and the rights of EU citizens living in the UK need to be settled.

Of these, Northern Ireland is the most problematic at this point. The UK has agreed that trade between Northern Ireland and the Republic should be “frictionless” and is committed to avoiding any border infrastructure.

However, given present technologies, this would require (at a minimum):

- A rather comprehensive customs agreement (in all probability it would require a fully-fledged customs union), AND
- Continued adherence to the regulatory environment of the Single Market in goods (crucially including all phytosanitary standards)

Both these issues appear to be major sticking points at present.

The EU is prepared to treat Northern Ireland, but **not** Great Britain as being within the Single Market for goods. This implies a divergence between Great Britain and Northern Ireland – a “red line in the Irish Sea” – that is unacceptable for Unionists and unpalatable for the UK Government.

There are enormous tensions within the governing party over whether the UK should remain in a customs union with the EU. As such, our judgement is that the UK is likely to have to make significant concessions in order to resolve the dilemma in Northern Ireland.

The situation is now urgent – the EU is making preparations for a “no deal” Brexit next year. Although these will avoid “Armageddon” (their words), the situation will be uncomfortable (and grow increasingly uncomfortable) for British businesses seeking to deal with their European counterparts.

The NHS is making preparations to ensure the continued supply of essential drugs. All existing EU Free Trade Agreements with third parties will cease to apply to the UK (unless grandfathered) and Open Skies agreements will need to be put in place to avoid planes being grounded on 30th March.

These are all likely to be considerably less favourable than arrangements that the UK currently has. Significant concerns remain over the absence of customs infrastructure (on both sides, but particularly in the United Kingdom).

Failure to agree ongoing membership of EU regulatory bodies (notably around aerospace, chemicals and medicines) will cause severe disruption. For services businesses, “passporting” rights would end at 11pm on 29th March 2019 in the event of a “no deal” exit.

There are also issues around UK hauliers being able to board a ferry or train and drive throughout the EU to deliver parts or final goods.

If we leave the Single Market then we will default to a situation whereby the UK will have a maximum of 1224 permits to distribute among those 75,000 vehicles! You can imagine the disruption this would cause.

Finally (for now), leaving the Single Market could also have consequences for digital downloads (e.g., Netflix) and broadcasting. Post-Brexit we will default to the *European Convention on Transfrontier TV*, passed in 1989, when the UK only had four TV channels.

This could hit British broadcasters who want to make their content available abroad, as the UK is one of the largest beneficiaries of the rights conferred in the Digital Single Market, perhaps in part due to the popularity of English language broadcasts.

You can see our excellent blog piece by Jessica Guy and David Hearne on this [here](#).

In summary, the European Council have agreed that the transition period of *de facto* continued EU membership without voting rights can be agreed and ratified simultaneously with the withdrawal agreement, giving an additional 20 months in which to agree and ratify the “future relationship”.

However, if the future relationship touches any areas of shared competency (and any broad trade agreement or EEA membership would), it will need to be ratified by the European Parliament, obtain unanimous agreement in the European Council and be ratified by every member state (and potentially requires the assent of several sub-national parliaments as well).

It promises to be an interesting few months going forward, to say the least...

NB: This post is based on a talk Professor de Ruyter delivered to an [Opentext](#) Event at Altitude 360 on 4th July 2018.