

Taking Stock

Where are we with the Brexit negotiations and where would we like them to be going?

It's hard to find any sort of consensus about the former, let alone the latter. Are we being led deliberately towards a Brexit in name only or are we about to see our side walk away from the negotiations and rely on so-called "WTO rules" to govern all our future international trade? Was Article 50 always a trap which was going to end up locking us into the EU?

Given the multiplicity of deeply-held views, this piece could end up being just one other person's opinion. I hope not. In summing up where we are now, I have read a fair number of different commentators and weighed their opinions before writing this summary.

Firstly, I think it is beyond dispute that the talks have not gone brilliantly from the UK's point of view, but at least we can be thankful they did not grind to a halt last December as some had predicted.

David Davis and his team got off to a bad start by agreeing to the EU's sequencing – in other words, "sufficient progress" had to be made on the Irish border issue, the rights of EU citizens resident in the UK and the "divorce settlement" before we could proceed to other issues. Under Article 50 of the Lisbon Treaty, there was no requirement for him to agree to this.

Next comes the transitional arrangement. This was our side's idea and does not reflect well on our politicians and civil servants. Not that long ago, we were hearing from some quarters that a trade deal between the EU and the UK would be "the easiest in human history" because of our regulatory conformity. It has since dawned on at least some politicians

(although possibly not even all of them, even now) that this isn't the case.

The mistake is a very fundamental one because it reveals a profound ignorance of the purpose of the whole European project. We have always viewed the EU as a trading bloc – after all, that was what Edward Heath sought to emphasise in the early 1970s. He did occasionally talk about the sharing of sovereignty, but he didn't exactly bend over backwards to explain even to Parliament what we were joining. Of course, Heath knew the truth and now our team is having to learn the hard way. The EU is primarily a political project and trade issues are only a means to an end.

It is also a very rules-bound organisation. Belatedly, our team is discovering that “flexibility” is not a popular word in Brussels. Treaties with precise wording govern every aspect of the EU project. The EU's chief negotiator, Michel Barnier, knows its workings inside out and unfortunately, comes across as far more on the ball than David Davis.

Is Barnier an ogre? Does he want to punish the UK? Is he merely a puppet whose strings are being pulled by Berlin? A delegation of pro-Brexit businessmen met him in Brussels recently. One of them, CIB Committee member John Mills, described him as “tough and charming”. Essentially, he wants these negotiations to succeed but not at the expense of the integrity of the EU's single market. The European project unquestionably took a knock when we voted to leave and he as much as any senior figure in the EU is committed to damage limitation and keeping the show on the road. The EU has other crises on its hands and Brexit is an unwelcome distraction. After all, it was our decision to leave. Given these factors, Barnier is merely sticking to the EU rulebook which he knows so well. There is no evidence of any personal animosity towards us or our politicians. His biggest gripe is that we don't seem to know what we want from Brexit.

This is essentially where our request for a transitional arrangement comes in. There have been pro-withdrawal groups, including the Campaign for an Independent Britain, even before we joined the European project in 1973. We have been good at arguing the case for independence and ultimately persuaded over 17 million voters of our point of view. We have been less good at explaining **how** we can leave seamlessly and this has been the root of the Government's problems.

The Transitional deal, at least if it is negotiated according to the rules laid down by the European Parliament, will be very bad news for us. It seems to be being pursued purely because the Government knows that a full trade deal will not be ready by March 2019; in other words, it buys us more time. Theoretically, there is a "sunset clause" – it will only last 21 months, but what if the trade deal isn't signed by the end of this period?

The significant and surprising support for this transitional deal seems to be based entirely on the assumption that this won't be a worry. If there's something good to look forward to, these 21 months of being essentially controlled by Brussels is a price worth paying. This is a fallacy, however, as this piece helpfully explains.

The dilemma we face is that while there is widespread agreement about where we actually want to be after Brexit, there is no agreement on how to get there.

Apart from diehard remoaners, most people would probably agree on all or most of the following:-

i) The ECJ must have no power whatsoever to interfere in the government or legal process in the UK – including those EU citizens currently resident here. We must remove ourselves from Europol and the European Arrest Warrant – in other words, we are back to being a normal sovereign independent country as far as criminal justice is concerned.

- ii) Fisheries and agriculture must be 100% under domestic control (and fishing should not be managed on a quota system)
- iii) We must be separate from the EU's military machine, including in the areas of procurement.
- iv) We should not make any contribution to the EU's funds apart from covering our costs where we wish to participate in a specific scheme such as the Erasmus student exchange.
- v) we must have complete control of our borders
- vi) we must have complete freedom to set our own levels of taxation, benefits and tariffs.

Agreeing our long-term goal is the easy bit. The problem is that we may never get there unless the Government can define in terms which the EU can understand what we want in the immediate post-Brexit period. The transitional arrangements might at least keep industry happy inasmuch as no new guidelines need be given for life could continue for a further 21 months more or less as it does now, but this is only kicking the can down the road. If we find ourselves bogged down in a transition arrangement along the lines already discussed and this period is then extended to (and beyond) the next General Election, we may find ourselves stuck in a sort of limbo which would please no one and would leave many voters vulnerable to the remoaners' propaganda and thus eventually crawling back into the EU. Alternatively, if we walk away from the negotiations altogether, the net result could be a sudden and severe recession. In this instance, once again we could be faced with a clamour to re-join.

This would be a tragedy. The key to preventing this happening is to focus on the unacceptability of the current transitional proposals. While many leave voters are strongly opposed to any further membership of the European Economic Area, as a stopgap, it is much less awful, as Nigel Moore argues here. What is more, according to Profesor George Yarrow, unless we

give notice that we are quitting the EEA before 29th March of this year, we will still be in it on Brexit day by default, as leaving the EEA is totally separate from leaving the EU.

Yarrow's thesis has not been put to the test, but then, Brexit as a whole is breaking completely new ground. It is hardly surprising that the path has not been a smooth one. All the same, progress has not been satisfactory thus far and although on balance, I think that the Government's poor performance has been borne out of an inability to master the issues as quickly as anticipated rather than out of a devious plan to stifle Brexit, Mr Davis and his team desperately need to up their game if we are to achieve a successful Brexit in just over a year's time.