



Brexit's Path Forward

Why It'll Be No Cakewalk

By Matthias Matthijs and Andrew Whitworth

For some reason, every time British Foreign Secretary Boris Johnson is asked to discuss the upcoming Brexit negotiations with the EU, he uses a food metaphor. He is hard enough to follow for his fellow Englishmen, and it must be infinitely worse for non-native English speakers. Imagine the confusion felt by Italian Foreign Minister Paolo Gentiloni when he learned that Johnson's preferred approach to exiting the EU was to be "[pro-secco but by no means anti-pasto.](#)" Gentiloni has now been threatened with an actual [prosecco trade war](#) if the United Kingdom does not get favorable divorce terms with the EU. The best Gentiloni could come up with in retaliation was a prospective ban on fish-and-chips exports from the United Kingdom. Never since the 1970s "cod wars" with Iceland has the British menu been so contentious.

Denying that his country will face any hard choices in the forthcoming Brexit negotiations with the EU, Johnson has claimed his government's policy is like his own attitude towards cake, that is "[pro-having it and pro-eating it.](#)" In other words, he believes that the United Kingdom can maintain access to the European single market, control immigration, sign its own trade deals, and end the jurisdiction of the European Court of Justice over British affairs. Not everyone on the continent shares Johnson's take on cake, however. Jeroen Dijsselbloem, the Netherlands' influential finance minister who also serves as chairman of the Eurogroup, described Johnson's vision as "[intellectually impossible](#)" and "[politically unavailable.](#)" Luxembourg Prime Minister Xavier Bettel remarked that on top of having its cake and eating it too, Britain also wants [a smile from the baker.](#) President of the European Council Donald Tusk, for his part, simply observed that there would be [no cakes on the table for anyone—only salt and vinegar.](#)

Five months after the referendum, the tradeoffs and the process of Brexit negotiations still seem to bewilder most parties involved. Article 50, the legal mechanism that triggers a country's exit from the EU, was only added to the Lisbon Treaty [in the hope that it would never be used.](#) As such, how it is supposed to work in practice is unclear. Confusion thus persists on three main issues: the fragile and complex constitutional settlement of the United Kingdom; what kind of country the United Kingdom wants to be post-Brexit; and its future relations with the EU.

THE CONSTITUTIONAL QUESTION

The term “Brexit” is an empty signifier (even if Prime Minister [Theresa May](#) is fond of responding to questions of its meaning with “Brexit means Brexit”). “Brexit” thus gains its political force by being all things to all people. The trouble comes when it is time to actually implement the process, something May is only finding out now. Despite enjoying massive [popular support and poll leads](#) for her Conservative Party over Jeremy Corbyn’s Labour opposition, she seems to have stumbled at the first hurdle. By being unable to formulate, in broad terms, how she sees the United Kingdom’s future relationship with the EU, she has invited endless speculation and created a climate of quasi-permanent uncertainty for both the private and public sectors as well as citizens.

This is surprising because to a large extent, May has already won the hardest battle. She has made [Brexit](#)—whatever it may mean—inevitable and largely won acquiescence (if not outright support) from the British public to leave the EU in some form. Those opposing Brexit (the “[remoaners](#),” as they have been snidely designated by the “Leave” side) have passed through the five stages of grief: denial, anger, bargaining, depression, and acceptance. By shifting the terms of the debate onto “hard” versus “soft” Brexit (that is, relatively how much or how little economic integration will remain between the United Kingdom and the EU after the divorce), the government has made any attempt to actually keep the country in the EU seem extreme and indeed outright anti-democratic.

But despite managing to have won the public debate for a full Brexit, May has played her cards all wrong. Consider her remarkable decision to refuse parliament a say in the Brexit process. May has repeated ad nauseam that her government does not even plan to [provide updates to the parliament](#) on the negotiations. So much for “taking back control” and reinstating Westminster’s parliamentary sovereignty, [the watchwords of the Leave campaign](#). In response, the government was taken to court by a range of plaintiffs—both Remainers and Brexiteers—precisely over this apparent abuse of executive power. The case revolved around who would be allowed to trigger Article 50, which sets a two-year deadline at which point the member state is automatically removed from the EU and treated as a “third country.”

May’s government, which contended that it should trigger the article without the explicit approval of the House of Commons, [lost its case](#) under the straightforward principle that “what Parliament gave, the Government could not take.” That is, since the United Kingdom joined the EU through an act of parliament, and in so doing conferred EU rights on British citizens, the government would be abrogating these rights unilaterally by not going through parliament to initiate a British exit from the EU.

The government is now appealing to the Supreme Court, which is widely expected to uphold the lower court’s decision in a verdict that is expected to come by mid-December. May seems to have prepared a back-up plan in the form of a [short bill to place before parliament](#) in case of defeat. The bill would authorize her government to activate Article 50 by the end of March 2017 at the latest. No one

is quite sure why she does not just get this bill passed now and drop the appeal. The opposition Labour party has said it [will not attempt to block invoking Article 50](#), and it is unlikely that many members of parliament would want to vote against the referendum's outcome. As Sir John Kerr, the British diplomat who has been credited with writing Article 50 and now a member of the House of Lords, has argued, they would ["not have the guts."](#)

There is a large fly in the ointment, however. The Scottish Parliament and Welsh Assembly have joined the appeal case as interested parties. They argue that, since Brexit would alter their constitutional arrangements with Westminster, they have the right to veto any potential outcome. This will be a serious test for the United Kingdom's semi-federalized structure. The majority of Scots voted to remain in the EU, and the Scottish Nationalist government is committed to that outcome. Moreover, Scottish First Minister Nicola Sturgeon has already prepared a bill to hold another independence referendum if her government considers it to be in Scottish interests. The situation with Northern Ireland is perhaps more worrying still. [Its high court has ruled itself out of any role in the debate](#), and has decided that the Brexit process is a political issue for Westminster alone. But a hard Brexit may lead to a hard border with the Republic of Ireland, the absence of which has been a pillar of the peace process. Unfortunately, it is not fanciful to talk of a renewed outbreak of violence in the region, even though there have been no signs of tensions thus far.

In short, however Brexit plays out, the process will be fraught.

THE MYTH OF A SOFT BREXIT

May has stressed her commitment to getting "the best deal for Britain," but what that might mean is also far from clear. She has her so-called red lines, the most important of which are national control over immigration from the rest of the EU and the end of jurisdiction of the European Court of Justice over British affairs. These naturally preclude the United Kingdom's continued membership in the Single Market, a point that does not seem to have hit home in Westminster. Membership in the Single Market is binary: you cannot pick and choose which bits of it you want to keep. This is not just a negotiating position; being a member entails accepting the EU's four freedoms of movement—of goods, services, capital, and labor. Taking any one of those out stops it being a "single" market and makes it just another flavor of a free trade agreement.

This is also true for membership in the European Union Customs Union (EUCU), which May has hinted can be used while still allowing the United Kingdom to explore new trade opportunities overseas. But a country simply cannot negotiate its own trade agreements with the rest of the world if it is part of the EUCU, which by definition implies a "common" external trade policy, overseen by the European Commission. May's government surely understands this, but it has not been willing to admit outright that the British government does indeed plan to leave the customs union. [Johnson clumsily did](#), and was promptly lambasted. But

the truth of the matter is that Liam Fox, May's newly installed international trade secretary, is nothing more than a commercial "emperor without clothes" as long as the United Kingdom does not firmly commit to leaving the EUCU.

In other words, there is no real "soft" Brexit that could accommodate the United Kingdom within EU-integrated structures while granting it the international freedom it craves. The choice, therefore, as Donald Tusk has suggested, is [between a hard Brexit or no Brexit](#). Since some form of Brexit seems inevitable, we have to bank on it being a hard one. The only way to mitigate it might be to opt for a [long transition period](#). Thus the United Kingdom would leave the EU on time, that is, two years after triggering Article 50 in March 2017, but its existing arrangements with the EU would continue for five to ten years after the country formally leaves the bloc.

THE VIEW FROM THE CONTINENT

Many continental governing elites seem as confused as their British counterparts about how Brexit negotiations will play out. They seem to think that the difficulties of the process and undesirability of the result mean that, when it really comes down to it, Brexit will never actually happen. The hope is that a change in popular will following an economic downturn, endless court battles and parliamentary procedural delays, and the impossibility of devising a "good" solution, will lead to a change of heart by the government. It could also potentially lead to the fall of the government, or a new referendum that would return a different result.

This is delusional. It underestimates May's determination, whose entire mandate is to deliver on Brexit—to say nothing of party management and fighting off the UK Independence Party's (UKIP) electoral challenge. If anything, former Prime Minister [Tony Blair's desire to lead the movement to "frustrate" Brexit](#) will only increase Brexit's popular appeal. Continental European elites' denial is every bit as bad as the British government's refusal to understand how serious the rest of Europe is about further EU integration. Brexit may not be seen as a good solution to whatever problems the EU and United Kingdom have, but to pretend it came about purely due to political failure in Britain is willful blindness. It does not take former UKIP leader Nigel Farage to point out the [EU has its own issues at the moment](#), every bit as severe as those facing his own country.

The reluctance on the part of continental elites to acknowledge the many crises facing the EU may be driving the other principal reaction to the Brexit vote, which is a desire to "[punish](#)" the United Kingdom and force a hard Brexit. Doing so is considered a way of deterring other populist, anti-EU movements, of showing the real costs of deciding to leave the EU, and of enjoying a certain *schadenfreude* at a reluctant member state's comeuppance for its annoying behavior. These sentiments are yet one more sign pointing in the direction of a hard Brexit.

EVERYBODY LOSES, NO MATTER WHAT

Brexit will be bad for the United Kingdom, according to expert consensus. But it will also be bad for Europe, according to the proudly non-expert consensus now running Westminster. It is hard to dissent from either view. The current debate is over who will be worse off. Brexiteers believe the EU has just as much to lose as the United Kingdom. Mario Draghi, president of the European Central Bank, has said that Britain, rather than the Eurozone, will “first and foremost” feel the pain of Brexit. The win–win logic of integration has turned into the lose–lose dynamics of disintegration.

The trouble for the EU, however, is that “no Brexit” would also be bad for the union. When the population of a troublesome major member state is asked whether it wants to stay in the EU, and answers in the negative, it is a problem if it does not get its way. The EU already has a reputation of doing what it wants regardless of domestic disquiet among its democratic member state populations. It would be bad for democracy at all levels to make Brexit essentially impossible in terms of process and end point. It would reveal the EU, just like the Eurozone, to be The Eagles’ “Hotel California” that many skeptics accuse it of: a prison you can check out of any time you like but you can never leave.

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