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Brexit, the road ahead

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The outcome of the referendum on the membership of the UK in the EU represented a watershed both for the country itself and the EU. Never in the history of the EU had a member decided to leave the club.¹ The path the UK must take to extricate itself from the maze of institutions, treaties and policies that define the EU is such a huge task it is even hard to gauge just how the process is progressing. This Focus reviews the major challenges that need to be tackled by the UK before exiting the EU and the most significant hurdles it faces.

The UK is expected to leave the EU in March 2019, after which EU treaties will no

longer apply in the UK. Formal negotiations between the UK and EU began on 19 June 2017 and are expected to finish by the end of 2018, in time for both sides to ratify the agreements before the deadline of March 2019. This period might also see a transition agreement being reached which would, de facto, prolong negotiations beyond the deadline.

There is therefore very little time for these negotiations although the issues to be decided are both numerous and complex. Broadly speaking, the UK faces two challenges. Firstly, the British government must transpose relevant EU law into UK law.² If not, there will be a legal vacuum in several areas once the UK exits the EU. Examples include workers' rights, bank regulations and quality standards of non-EU imports. To speed up this process, the plan is to give the government temporary powers (known as a Henry VIII clause) to amend these laws without the need for parliamentary scrutiny. Nevertheless, parliament would impose guidelines on the government regarding the exercise of such powers. Although this may appear to be mere parliamentary procedure, in practice it could seriously destabilise the political situation. This is due, on the one hand, to the government being able to legislate at will and, on the other, to its currently weak state, with a very small majority in parliament.

Secondly, the UK needs to negotiate the terms of the withdrawal from the EU and a future trading relationship with the EU. In this respect, both sides have agreed to start with the terms of separation. Specifically, they are debating the rights of UK citizens living in the EU and EU citizens living in the UK at the time of Brexit; the problems related to the Republic of Ireland/Northern Ireland border,³ and how much the UK should pay the EU (known as the financial settlement or Brexit bill) to honour the financial obligations undertaken by the UK when it formed part of the EU. This last point is the main hurdle to negotiations since the idea of the UK paying to leave the EU is naturally very unpopular in the country.

As soon as the European Council deems enough progress has been made regarding such issues, something which is expected to occur around the end of this year, negotiations will be able to move on to the treaties that will define the UK's future relationship with the EU.

As we have already mentioned, this stage of the negotiations should be completed by the end of 2018 but the two sides are quite likely to agree a transition period. Both the Labour Party and some in the Conservative Party are in favour of the UK remaining in the single market for several more years to enable a very gradual transition. The EU might accept this proposal if the UK continued paying into the EU budget, which would mean the 2014-2020 budgets could remain unchanged. In fact, this formula could help to move the aforementioned Brexit bill negotiations forward.

Apart from a transition agreement, the EU also wants the treaty ultimately agreed with the UK to respect the balance of benefits and obligations entailed by access to the single market. The UK would like an ambitious agreement regarding the free movement of goods and services with the EU. However, in exchange the EU is likely to demand concessions related to the principles of free movement of people and capital, and potentially contributions to the European budget. The more inflexible the UK is regarding these points, the less ambitious the EU trade deal is likely to be. Some also believe that the relationship established with the UK once it leaves the EU should be sufficiently unfavourable to deter other member states from exiting the EU in order to benefit from a similar deal.

The UK is likely to put pressure on its main EU trading partners (such as Belgium, the Netherlands and Portugal) or on those countries whose citizens most wish to work in the UK (from Eastern Europe) in a bid to secure more favourable conditions. However, the final agreement will not have to be unanimously supported by all EU member states but rather a qualified majority,⁴ thereby limiting the UK's ability to create divisions within the EU. In fact, the UK government has recently softened its «red lines» stance, i.e. those issues it considers to be non-negotiable, such as the European Court of Justice having no jurisdiction whatsoever over the UK once the country leaves the EU. This highlights the country's unfavourable negotiating position at present.

1. Greenland, which left the European Economic Community in 1985, could be deemed the only exception.

2. Estimated at around 12,000 laws.

3. The Good Friday agreement removed the «hard border» between the Republic of Ireland and Northern Ireland. However, this would reappear once the UK leaves the Customs Union.

4. Minimum 20 member states of the EU-27, representing at least 65% of the EU-27 population.



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