



EDITORIAL

“GETTING BREXIT DONE”: IT IS JUST THE BEGINNING, NOT THE END

After 47 years of membership, the United Kingdom has left the European Union at the end of January 2020. Boris Johnson, the UK's Prime Minister and prominent, if not accidental, face of the Vote Leave camp was at freedom to strike a gong and tick a box on his “to do” list. According to Downing Street 10, Brexit was done and dusted, exactly as promised during the election campaign of 2019. With this, the election leitmotif: “Getting Brexit Done” has joined its predecessor “Brexit means Brexit” in the pantheon of catchy, but painfully empty slogans that can be parroted *ad nauseam*. But, truth to be told, Brexit is far from being done, and removal of the “B-word” from the official governmental megaphone does not change a thing. For anyone *au courant* with EU affairs, it is rather obvious that the hardest part of Brexit is yet to be delivered.

The entry into force of the Withdrawal Agreement (Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 12 November 2019, www.ec.europa.eu) is a watershed moment in the history of EU integration. For the first time the European Union has lost a Member State. The United Kingdom may have not been the most passionate about the integration project; it joined the Communities not out of love but convenience. The consecutive governments in London for years have successfully pleaded the UK's uniqueness in order to gain a plethora of opt-outs and exceptions. Still, though, the United Kingdom was one of the biggest and, by the same token, influential members of the club. It was also a considerable contributor to the EU budget, even though it benefited from a rebate ever since the then Prime Minister Margaret Thatcher uttered her famous “no, no and no”. But, in 2016 the voters have spoken and the majority, however slim, expressed a desire to part the ways with the European Union. The pertinent question at this stage is how to shape the post-marriage of convenience relationship. Almost five decades of joint history, combined with economic integration and interdependence as well as the geographical proximity between the two sides dictate a robust and comprehensive framework. Alas, while this view is shared in Brussels, it has completely gone missing in London. With this in mind it is apt to take stock of recent developments.

The Withdrawal Agreement – which provides a legal framework for Brexit – regulates primarily the separation issues. It deals, *inter alia*, with the acquired rights of EU and UK migrating citizens, the UK contributions to the EU budget and future arrange-

ment for Northern Ireland. Furthermore, it also serves as a foundation for the transitional period, keeping the UK outside of the EU institutional framework but inside of the Internal Market and all other EU policies. So, Brexit is not done yet; it is in progress. The end of transition is penciled in for 31 December 2020, with a possibility of a single extension, either for 1 or 2 years. The *raison d'être* is logical and persuasive: to give extra time to negotiate an agreement/or agreements governing their future relations. Sadly, "no extension" has become a mantra on the UK side of the fence; at least for now it is hard to see how the Conservative government in London could be persuaded to maintain the status quo for another one or two years. The end result is that both sides may run out of time, which in turn would lead to a cliff-edge scenario. If that were to happen, it would properly cut the ties between the two sides. While the trade would be governed by the WTO framework, all other areas of co-operation would cease with an immediate effect. As shocking as it may be, this seems to be a possible end of the Brexit debacle. But before we get there the EU and the UK will surely embark on the negotiations. In this respect, the Political Declaration (Revised Political Declaration, 17 October 2019, www.ec.europa.eu), which was agreed to alongside of the Withdrawal Agreement, was meant to serve as a beacon for safe navigation. This, however, may not be the case after all. During the first weeks after UK's formal departure from the European Union we have witnessed a rather dramatic bifurcation of priorities. Not surprisingly, the European Commission took the Political Declaration as a point of departure in its work on the draft negotiation mandate. At the same time, the authorities in London started to act as if the Political Declaration was not worth the paper it was written on. Tony Barber has argued in *Financial Times* that the EU and its Member States are "waking up" late to the UK's change of stance.¹ While this may be partly true, it does not take into account the simple fact that the EU is a rule driven organisation. Thus, even though the Political Declaration is not binding, the EU takes it seriously. After all, it also bears the signature of the UK's Prime Minister. It is a gentlemen's agreement, which presupposes that there are gentlemen on both sides of the table. This, of course, is a presumption that is proving to be a fallacy. There is a number of reasons why the EU and its Member States should be alarmed. Firstly, the emerging UK's position backtracks from the commitments made in the Political Declaration (and worse, in the Withdrawal Agreement). The main contentious dossiers include the ultimate role of the Court of Justice in the dispute settlement *modus operandi*, the regulatory alignment required from the UK and the need for checks to be conducted on goods crossing the sea between the Great Britain and Northern Ireland. While the first two are explicitly dealt with in the Political Declaration, the latter is regulated in the binding tailor-made Protocol annexed to the Withdrawal Agreement and will serve as a point of departure for the Joint Committee entrusted

¹ See T. BARBER, *Johnson's Brexit goals are independence and power*, in *Financial Times*, 18 February 2020, www.ft.com.

with adoption of detailed rules. In its opening salvos, the UK Government has argued it has no desire to agree to the first two items on the list and, likewise, it does not accept that there may be any friction in trade between the two parts of the UK separated by the Irish Sea. Taken at face value, such a volte-face may be received as a signal that the United Kingdom and its negotiators are not to be trusted. This may have profound implications for the forthcoming negotiations with the EU as well as countries around the World. Why one would engage in negotiations with a partner who is not trustworthy and happy to break its prior commitments as it finds it fit? The feeling may be exacerbated by the cacophony coming from different UK officials. In the first weeks of February they've employed the *modus operandi* known way too well from the negotiations of the Withdrawal Agreement. Once again, the EU operated under a strictly defined and clearly structured negotiation mandate, while the UK started by making its positions known *qua* speeches delivered by a variety of representatives. It was only at the end of February when its formal mandate was published. It clearly shows that gone are the days when T. May's frictionless trade based on a comprehensive agreement was the mainstream desiderata. The new mantra is a Canada style free trade agreement, which – contrary to what Boris Johnson claims – does not offer a tariff free trade for all goods. The alternative plan, according to the UK's Prime Minister, is an Australian style deal. As diplomatically pointed out by Ursula von der Leyen, the President of the European Commission, such a model does not exist. Whether it is yet another example of Boris Johnson's flexible relationship with the truth, or a purposeful figure of speech to cover up a “no deal” and trade under WTO rules is irrelevant. Yet it shows how miles apart in their negotiation objectives the two sides are. All of this creates a rather toxic climate, which may preclude a successful completion of negotiations.

Why it is all happening now is hard to tell, but a few options seem possible. Firstly, this may be a part of grand negotiation strategy designed at Downing Street 10 by the Prime Minister and his entourage. Such bulldozer tactics would aim to push the European Union to the wall and, should the UK not get what it desires, just to walk out of the talks and engage in the well-practiced *modus* of blaming Brussels for everything. An open threat in this respect is included in the UK's negotiation mandate. If it were to materialize, it would only prove that the very same team acted in bad faith during the renegotiation of Political Declaration in the fall of 2019. Secondly, it may also imply that once again London will engage in the Japanese style kabuki theatre. To put it differently, all this muscle flexing is merely a smokescreen aimed at hard core Brexiteers, who – when the time comes – pay little attention to the small print but focus on rhetoric instead.

So, what one can expect from the forthcoming negotiations? Surely, a lot of staged drama, the UK tabloids screaming of EU bullies and treason as well as posturing on both sides of the English Channel. The devil, however, will be in the detail. If, contrary to its economic interests, the UK opts for a very basic trade agreement focusing on goods, it is likely to have it served on the plate. Anything more than that will see the negotia-

tors going in circles and discussing endlessly the regulatory alignment, the role of the Court of Justice and the other usual suspects. For such charades there is very little time left. One thing is certain, though. The Brexit spectacle has come to the end of Act 1. After a short interval, a way more dramatic Act 2 has begun. There is no detailed and comprehensive script, just a few sketches. Inevitably, it will be largely improvised.

A.L.