

Negotiating Brexit

Lessons from the first round for the UK side

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AN AWKWARD PHASE

With agreement reached between the UK and the EU on 14 November 2018 on the terms of British withdrawal—pending ratification by both sides—the endgame of the first phase of the Brexit negotiations is upon us. Whatever the outcome in the UK Parliament, further negotiations will take place. It is therefore an appropriate time to take stock of how the first phase of negotiations was conducted.

The withdrawal agreement took longer than expected to negotiate, contained few significant deviations from the EU's initial position, and has suffered from protracted problems with domestic ratification in the UK. Learning the lessons from the first phase will help ensure these problems do not blight the agreement on the future relationship. There are three main considerations for the UK: how to manage expectations, how to adjust its negotiating strategy, and what changes to expect from the first phase.

MANAGING EXPECTATIONS

Managing the expectations of key stakeholders—political, regional, sectoral—as well as the public as a whole is crucial for ensuring interested parties are kept on board throughout the negotiations and any deal reached is perceived as reasonable and thus acceptable. This will help avoid another impasse like the present one when subsequent deadlines come close.

The government should be wary of setting itself up to fail by articulating unattainable goals. The infamous red lines elaborated by Theresa May, the British prime minister, in her Lancaster House speech (January 2017) served only to constrain her freedom of manoeuvre vis-à-vis the EU, since she could not offer trade-offs in any one area for valuable concessions in another.

While setting the bar higher than one would ultimately accept is a tried and tested negotiation technique, setting it unrealistically high is not credible. Insofar as the red lines were unrealistic, they also irked the European side and failed to establish what the EU regarded as a shared ground from which

KEY INSIGHTS

NUMEROUS STRATEGIC ERRORS WERE MADE BY THE UK GOVERNMENT IN CONDUCTING THE FIRST PHASE OF THE BREXIT NEGOTIATIONS.

MANAGING CITIZENS' EXPECTATIONS IN TERMS OF TRADE-OFFS AND BARGAINING POWER WILL AVOID A SECOND POLITICAL IMPASSE.

THERE ARE BARGAINING ADVANTAGES TO BE HAD IN KEEPING KEY STAKEHOLDERS ON BOARD THROUGHOUT THE TALKS.

GREATER DIVERSITY OF PREFERENCES AMONG THE 27 WILL GIVE THE UK MORE OPPORTUNITY FOR ISSUE-LINKAGE IN FUTURE NEGOTIATIONS.

reasonable talks could begin. The red lines also proved problematic for reasons of domestic legitimacy since it was almost certain that a number of them would be breached in any deal and that any gains would thus appear as losses in the public eye. Despite the short term political appeal of claims about future benefits, the credibility of the government will be undermined in the medium term when it is unable to deliver on what it promised.

The government must be more honest with the electorate regarding some of the trade-offs involved in withdrawing from the EU. While there may indeed be benefits or opportunities in some areas, costs will undoubtedly arise in others. A more honest conversation in this regard will help the government to manage expectations on what it will actually be able to deliver. If the choices are made clear to citizens at the beginning of the talks, it is more likely they will accept the outcome.

THE WITHDRAWAL AGREEMENT TOOK LONGER THAN EXPECTED TO NEGOTIATE, CONTAINED FEW SIGNIFICANT DEVIATIONS FROM THE EU'S INITIAL POSITION, AND HAS SUFFERED FROM PROTRACTED PROBLEMS WITH RATIFICATION IN THE UK.

This will also help to heal the political and social divisions on the UK side, which have failed to dissipate since the Brexit vote. Some commentators accuse the government of paying too little heed to the 48 percent of voters who chose 'remain'.

It is also important to manage citizens' expectations of what the UK can achieve relative to the weight of the EU27. The government's rhetoric of a "great global Britain" belies the asymmetry in bargaining power between

the UK and the EU. Britain needs a deal more than the EU because it stands to lose more from 'no deal' and because it has fewer alternative options. This will inevitably be reflected in the outcome. To make the most of bargaining from a weaker situation will require UK negotiators to wield diplomatic skill and be more receptive to compromise. It also requires that citizens' expectations are set in line with the likely distributional outcome of the deal, which is not the case at present. Over-stating the UK's negotiating strength could all

too easily result in a worse deal for Britain than would otherwise be the case.

REFINING STRATEGIES

It is also important for the government to reflect on the way it conducted the negotiations during the previous phase of talks and adjust its strategy to ensure a better outcome in subsequent talks. There has been a disjunction between what the UK wishes to achieve and how it goes about trying to achieve its aims.

Demonising the EU and portraying the Union as a bully in the first phase made the negotiations more fraught and uncooperative, undermining any sense of shared solidarity that might have facilitated greater generosity from the EU. It has also contributed to the further polarisation of the domestic environment and has reinforced perceptions at home that the UK will not be given a fair deal. The seeds of more helpful and cooperative dialogue were sown in such phrases as "Britain is not leaving Europe", but seem to have been drowned out by harsher language.

A direct implication is that the conduct of the negotiations and the chances of receiving domestic assent on any deal will be easier to achieve if the government tones down the EU bashing. The UK government would do well to note, in this regard, that Brussels is well aware of the government's messages to the domestic audience in the UK, many of which are unhelpful.

The secrecy surrounding the conduct of the first phase of the negotiations ultimately proved both unhelpful and pointless, since the EU was well aware of what the UK sought and the available options, meaning there was no information asymmetry to exploit. Moreover, the EU's commitment to full transparency not only made public much of what the British government would hope to keep under the radar, but also boosted the EU's reputation as a more reasonable negotiating partner. Attempting to keep British aims secret left UK constituencies in the dark and fomented divisions at the heart of government, even though May would eventually require the support of these actors.

The government failed to incorporate the interests and views of key players into its agenda, notably rebuffing the idea of cross-party initiatives and offering only to

consult with regional leaders. This is perhaps one of the most striking omissions in the government's approach to the Brexit negotiations. It also undermined the talks since May could not credibly claim to speak on behalf of the whole country and now faces determined opposition to her deal from all quarters. The EU managed its (greater) diversity better by ensuring all member states and institutions endorsed the mandate given to Michel Barnier, the chief negotiator for the EU side, and frequently checking in with them.

CHANGES TO EXPECT

Whether or not the May deal is approved by the UK Parliament, subsequent negotiations will be different in character in ways that carry implications for how the UK should adapt its strategy. The most significant change is likely to be the emergence of a greater diversity of preferences among the EU27. The EU deliberately chose to negotiate first on areas where the common concern was highest, greatly facilitating the adherence to a unified approach. Moreover, Article 50 gives the dominant say to the EU institutions, whereas future UK access to the single market, security, and defence will highlight areas of concern to individual member states. This does not mean that the UK should make divide and rule strategies the cornerstone of its approach. But it does offer more opportunities for linking issues and will enable the UK to make progress by agreeing to points likely to be especially sensitive for one or more of the 27.

The European political environment may change markedly over the next year. With the crisis of internal governance and movement on a number of Europe-wide initiatives, the EU will be less inclined to devote attention to the Brexit negotiations, so as to focus on other priorities. The EU institutions will look different, too, with a new Parliament from May 2019 likely to feature greater populist representation, and a new Commission President, new President of the European Council, and a change at the top of the European Central Bank. Angela Merkel has also committed to stepping down as German Chancellor at the next federal elections (set for 2021, though possibly sooner depending on what happens in German politics) and her influence is already waning.

CONCLUSIONS AND RECOMMENDATIONS

Whatever the outcome of the withdrawal agreement in the UK Parliament, further negotiations will take place

in 2019. It would therefore be wise to reflect on some of the mistakes made during the first phase talks. By way of summary, we offer four recommendations the UK government may wish to take on board in order to improve its performance in the forthcoming talks:

1. Honesty pays in the long run: The government must be more honest with the electorate regarding the trade-offs involved. "Brexit means Brexit" and other such slogans cannot provide the basis for an acceptable deal. Awareness of trade-offs will render the final agreement more acceptable to the public, who will not be surprised by outcomes they were not made aware of. It will also make the final agreement more legitimate in the eyes of citizens.

2. Grandstanding may feel good but it comes at a cost: Recognising the limits to the UK's bargaining power vis-à-vis the EU is not defeatism, but rather the first step in optimising the British negotiating strategy. Placing the emphasis on diplomatic skill rather than empty threats will ensure the UK gains a better deal than it otherwise would.

3. Engagement with key stakeholders is vital: Cross-party representation and inclusion of all UK nations in negotiating teams would strengthen the government's authority. It would also enable the government to speak more credibly on behalf of the UK as a whole, ensure the final agreement better represents the concerns of diverse constituencies, and commit their representatives to supporting the deal.

4. Adapting to an evolving political context is crucial: Greater opportunities for the UK to link issues will arise, reflecting the diverse preferences of the 27. This should not be seen as an invitation to persist with the failed strategy of divide and rule, since the unity of the 27 will not fall apart. But it does mean the UK must be prepared to be flexible and to engage bilateral channels. ■

DEMONISING THE EU IN THE FIRST PHASE MADE THE NEGOTIATIONS MORE FRAUGHT AND UNCOOPERATIVE, UNDERMINING ANY SENSE OF SHARED SOLIDARITY THAT MIGHT HAVE FACILITATED GREATER GENEROSITY FROM THE EU.

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