
What should happen? What is likely to happen?

Notes on Brexit

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Introduction

The Brexit vote is the answer to a simple question: together or alone. Britain has decided to go alone. Britain believes it is better to confront current and future policy challenges with the tools of an independent nation state. In that sense, the referendum's key message is more about the UK than about the EU.

But clearly, the referendum vote is indicative of the broader challenges that many European countries (and the US) currently face: the rise of the neo-national temptation. Significant parts of voters in our countries live under the belief that current policy challenges such as migration, financial crises, security challenges or low growth can best be addressed by the traditional nation state behind closed borders.

I consider this belief to be a fallacy. And so do many proponents of European integration. It's not the curled-up hedgehog nation state that is going to bring back the stability and prosperity these disappointed voters are looking for. Still, there are many unresolved issues. And Europe needs to make a much clearer case how it can contribute to solving them within a system of multi-level-governance, best described as the "Federation of Nation States".

For this, the European Union together with the Nation States, needs to better deliver on the most important policy challenges: employment and growth; internal and external security; digitalization and education; climate change and energy; migration and integration; investment and financial stability.

Against this background, the pseudo-grand discussions on the institutional architecture of the EU that are popping up like mushrooms these days are not really helpful. What is needed is a focused debate on the functioning of the EU that leads to better policy-results. This would then produce its own narrative. Europe needs to become more pragmatic and less symbolic.

The biggest challenge today is to give this discussion some direction. This is not easy because the Brexit vote has produced massive uncertainty on so many fronts that it is difficult to see clearly what should happen next.

I think it is important to differentiate between what SHOULD happen and what is LIKELY to happen. I have a clear subjective perspective on where the Brexit discussion should lead us and have outlined the main points in this introduction. But is all this likely? Too many commentators (politicians, journalists, and think-tankers alike) do not carefully distinguish between what should happen and what is likely to happen.

Here are 6 simple questions that should serve as guidelines in the current debate. They range from highly specific to very broad. We have to answer the highly specific questions first, or else the long-term discussion makes no sense.

1 When will Article 50 be triggered?

What SHOULD happen?

If Britain is serious about the referendum result, then it should trigger Article 50 immediately. This is in the interest of both the UK and the EU. Uncertainty is likely to harm the economy. For this reason, once the process is started, it should be completed swiftly.

If Britain has second thoughts about the referendum result and would want to reconsider, then it is right not to create facts too early. From a legal perspective, it is not entirely clear whether an Article 50 request could be unilaterally withdrawn by the UK once the process is started. The EU-27 would probably have to agree and this would weaken the UK position in case of the desire to withdraw Article 50. Against that background, waiting before triggering Article 50 could be the better solution.

A good compromise between those two strategies would be for the EU and the UK to agree on a clear timetable now, taking into account the political transition process in the British government. This would create transparency and predictability, which is especially important for financial markets and investors.

What is LIKELY to happen?

As most current key policy-makers in the UK are opposed to Brexit, they seem to be eager to wait. I interpret Cameron's move not to resign directly after the referendum as a way to stop Boris Johnson from becoming prime minister (PM) – and it apparently succeeded. Had Cameron created a power vacuum, Johnson might have seized the moment. Now, Cameron is still at least formally in the driving seat and can steer both the first communication with the European Union and influence his succession. I expect him and the 'remain'-oriented Tories to try to appoint someone who can develop a very pragmatic approach to Article 50. For example, if Theresa May (who was on the remain-side, but not very active) became PM in September, she could take a fresh look at the situation. There would then be two broad options. (i) Article 50 would not be triggered because of the threat to the territorial integrity of the UK (Scotland, Northern Ireland, perhaps London) or because of the lack of parliamentary approval, or because of snap elections, or because of all of the above. The political and democratic implications of such a move would be far-reaching – but there are several cases of referenda that were not directly followed by governments. The EU referendum in the UK is not legally binding. (ii) Article 50 would be triggered, but Theresa May would still be likely to take a slightly distant and pragmatic approach to the negotiations, keeping the door open for a U-turn.

The key question in the UK could be whether politics will be influenced by the median Tory voter (who voted for Brexit), by the median UK voter (currently supporting Brexit but in the future possibly in favor of remain), or by the median MP (remain). As it is unlikely that parliament will be dissolved, it could well be the MPs who take over the positioning on how to run the Article 50 procedure. Should the parliament be dissolved, then there is also the theoretical option of a coalition of Labour and Liberal Democrats to campaign for a new referendum and for remain. Should they then win the election, there would be a solid legitimate basis for making the case to remain in the European Union.

2 Which negotiation under Article 50?

What SHOULD happen?

Clearly, Article 50 should not be considered as a negotiation in the narrow sense of the term. There are two issues.

First, there should be a unilateral carving out of the UK from the EU Treaties and institutions. This is mainly a legal exercise and should be dealt with as such. There is nothing the UK can offer in exchange for “concessions” by the EU – because there are no such things as “concessions” in that process. This first part of the procedure should be kept totally separate from the second part.

Second, when it comes to discussing the future relationship between the EU and the UK, there could be some negotiations (contributions to EU budget, access to single market etc.), but here it is mainly the UK’s role to clearly express which model it would like to pursue. The EU will then have to assess whether the requests are reasonable and respond accordingly.

In this context it is important to note that Article 50 puts the EU-side in the driving seat: If no agreement is reached within 24 months, the secession simply takes effect. There is no way for the UK to unilaterally prolong that period. Only a vote by the EU27 can give more time. This is why it is the right approach not to start an informal Article 50 process before the formal request has been formulated by the UK.

During the first part of the Article 50 process (“carving out”), the EU should take the toughest possible stance to (i) clearly show that it is a bad idea to leave the EU, and (ii) to signal that the only way for the UK to reach a better result is to withdraw its request and go back to the status quo ante.

During the second part of the Article 50 process (“future relationship”), the EU should then work out a plan for an associated membership that would be slightly more than today’s European Economic Area (EEA), but offer significantly fewer privileges than full EU membership (see the discussion on associated membership below).

What is LIKELY to happen?

Once Article 50 is triggered, there will be two different interests on the EU-side and two different interests on the UK-side. On the EU-side, there will be those who push for the swift and unilateral action described in the previous paragraph (France, Luxembourg). But there are others who are likely to favor giving the UK some kind of enhanced associated membership outside the Treaty, for example to keep close economic ties (Germany, Ireland) or for external security reasons (Poland, Baltics). In the UK, the nature of the two groups is likely to be different: the old leave-camp is likely to push for the enhanced associated membership – possibly jointly with some former remain proponents, whereas other former remain proponents are likely to try to get the UK to withdraw Article 50 altogether. It is hard to predict the outcome of that process. My best guess today is that Britain would either withdraw Article 50 (possibly after a new referendum) or try to obtain some kind of new associated membership status, which would be less than “in” but more than “out” (see next point).

3 Is there scope for an enhanced associated membership?

What SHOULD happen?

I take the view that the EU needs to rethink how it deals with closely associated countries. To me, this needs to be a much broader discussion than the discussion on the UK alone. It's also about the future relationship of Turkey with the EU – and perhaps in the future also relevant for Ukraine. Clearly, Norway and Switzerland could take over such a new status.

That new status of “associated member” (AM) should be built outside the Treaty (or based on a different Treaty) and be an enhanced EEA status. It should include full access to the single market, but mainly oblige the AM to (i) implement all four freedoms, and (ii) contribute to the finances of the EU. The change with respect to today's EEA would be that AMs could be given observer status in certain relevant Council formations, obtain the right to submit opinions on some legal acts of the EU, participate even more closely than under the EEA in external trade agreements (without formally participating in the negotiations, however), join the ESM, join Schengen, and a few other elements of this type. What's decisive here is that the very different solutions for Norway and Switzerland become clarified and list all the prerogatives and duties of the associated members in a transparent and coherent manner. This would facilitate discussions with Turkey and other countries who could be interested in this AM status.

What is LIKELY to happen?

As discussed above under the outcome of the possible Article 50 negotiations, there are several possible outcomes, of which an associated membership is one. I currently think this is the second most likely outcome behind the UK staying in the EU.

But the key political issue for the UK is likely to be freedom of movement. This decision, on whether the UK can accept full freedom of movement or not, is likely to shape its overall position on any kind of associated membership.

4 Should the EU further integrate as a reaction to the Brexit vote – or rather stop integration now because of the rise of Euroscepticism?

What SHOULD happen?

The EU-27 would be ill-advised to push for a more-of-the-same approach for further deepening of the EU and/or the Economic and Monetary Union (EMU). But the EU-27 would be foolish to simply muddle-through and keep the current context of EU integration as is.

What should take place is a renovation of the European Union that is based on a few core principles, which in my view would have to comprise the following points:

- Some involvement of national parliaments (NPs) in EU decision-making. This point is important to end the latent competition between the European Parliament (EP) and the NPs on who should provide legitimacy to the EU level when it gets involved in national decision-taking (e.g. on economic issues).
- A revamp of the EU budget. If there is one opportunity in Brexit, it's that the current construction now needs to be reviewed in-depth anyhow. The EU should take this opportunity and discuss (i) introducing true own resources for the EU, (ii) ending the peculiar 7-year multiannual financial framework (the EU is the only non-socialist entity that still thinks a 7-year plans is a good tool to run a budget), and (iii) make the budget more flexible, under the direct authority of the EU Commission and control of the European Parliament.
- A strengthening of the political role of the European Commission – mainly through a clear recognition that the “Spitzenkandidaten” process will be kept. The Commission should also no longer have one Commissioner per Member State.
- A clear competence ordering between the EU and the Member States. This process is not only important to finally clarify the relationship between euro-area and non-euro-area countries, but also to clarify whether everything the EU does needs to be carried-out at the EU level. I am aware such a “competence review” is not the friend of many federalists, but it is important to strengthen the EU in the future.
- A deepening of EMU. The Euro is not viable in its current institutional set-up. There needs to be more risk-sharing and more sovereignty-sharing, but it should be combined with much stronger channels for legitimacy. With a possible Brexit, the relative importance of EMU would increase. The institutional framework has to take this into account.
- A stronger and fairer economic EU that has the tools to fight against entire generations or regions being disconnected from economic growth. There needs to be more solidarity through investment vehicles, grants, and risk-sharing.
- A widening of EU actions into new but crucial areas such as deepening the digital single market, allowing for a regulatory “Economic Schengen” to build truly integrated “borderless sectors”.
- An EU that more explicitly allows for differentiated integration (see point 5 below).
- Further principles or policy-areas might be added to this list.

What's important in that list of arguably very different points is that Europe creates procedures and instruments than can deliver. The discussions on grand design are less helpful than specific adjustments in key areas. In that sense, the role of national parliaments or the revamp of the EU budget should not give rise to endless discussions on the grand design or the *finalité*, but rather make sure what doesn't work today can work tomorrow.

What is LIKELY to happen?

What is most likely is that we will see a combination of ad hoc muddling-through with more-of-the-same.

5 Should there be a multi-tiered Europe?

What SHOULD happen?

As discussed under 3), the EU should define a status for closely associated members. This can take place in two ways: (i) outside the Treaties (as would be the case if the UK left and such a status would be developed), or (ii) inside the Treaties, but with a clearly separated status that would be very similar to being outside the Treaties. As discussed above such a status could also be applicable to Turkey.

But the EU should also clarify the different types of membership within the EU-27 (or EU-28) context. In particular, economic and monetary union requires certain forms of deeper integration that can't be achieved if the guiding principle is the "one-size-fits-all-illusion of the EU-28". There needs to be an EU Finance Minister – in charge mainly of the euro area. There needs to be a specific committee of the EP dealing with the euro area. There will be a need for tax-harmonization instruments, social-security harmonization instruments, labor-mobility instruments, banking matters etc. that would only be applicable to euro-area countries.

The EU needs to clarify that EMU countries can move on and build such initiatives without the "outs" having a say on them. To facilitate such a process, the EU should establish a list of competencies and clearly state who should be allowed to vote on such matters. One weaker way would be to apply enhanced cooperation more broadly, but it hasn't really worked thus far, so this would be my second best solution.

What is LIKELY to happen?

This depends mainly on the European Commission. To me, the question whether the illusion of the EU-28 (or now EU-27) is being upheld is one of the core political choices of the Juncker-Commission. The Treaty allows for much more differentiated integration than is currently taking place in areas as diverse as energy, refugees, or EMU. I predict the current Commission will not push for more differentiated integration. But I can imagine a Commission after the next EP elections to push this agenda more forcefully.

6 Should there be Treaty change?

What SHOULD happen?

Many of the reforms and improvements described above will require Treaty change. Whether the Treaty can be changed beyond cosmetic adjustments within the next decade is a key political question. I would argue that a Treaty change should be tried, but only if the core principles of a better EU are reflected. Even though it means taking a risk, I believe a Treaty change based on these principles could win support in all EU member states – and pave the way into the newly created status of associated membership for those countries that would not be able to ratify such a new Treaty.

What is LIKELY to happen?

I expect EU governments and the EU institutions not to have the courage to move towards Treaty change within the next decade. We will see the combination of muddling-through and more-of-the-same briefly alluded to above.

Conclusion: Britain in 10 years – in or out?

The EU needs to draw the right lessons from the Brexit decision. It is not weakened or dysfunctional. The Brexit vote is an opportunity to improve the functioning of the EU – not to please Eurosceptics, but to push the EU to deliver results. The logic is simple: most of the current political challenges cannot be resolved in small and closed nation states. This is why the EU is important. This is why it should be self-confident. And this is why it should be vigorously defended against critics.

Britain should stay in the European Union. I don't belong to those who believe the EU could integrate better or quicker without Britain. It's silly both for the EU and the UK to go into this divorce.

Will Britain leave? I stick my neck out: Britain will still be a member of the EU in 10 years. Everyone will realize that it is materially very hard or even impossible to implement the separation. This is why there will be a natural bias towards the status quo. Realpolitik is tenacious. And this is good. You can't unscramble scrambled eggs.