

Incompatible red lines

What lies behind Britain's 'hard exit'

by Brian Reading in London

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Theresa May's speech on Tuesday made either 'hard Brexit' or remaining a member of the European Union the UK's only binary option. The latter, it hardly needs to be said, is wholly unlikely. Securing an early 'hard' exit from the bloc is possible, but obtaining unanimous agreement to a 'soft' exit among the 27 remaining EU members is a forlorn hope. The same is true of extending the negotiating deadline beyond March 2019.

All member governments agree that their priority is to prevent the EU from disintegrating. Too much has been invested in it. Maintaining the single market with free movement of goods, services, labour and capital, as well as the primacy of EU law subject to the judgments of the European Court of Justice, is sacrosanct to European leaders. These are the EU's red lines.

The British prime minister's red lines, on the other hand, are UK immigration controls and the primacy of Westminster legislation. Having recognised that these priorities are incompatible with continued access to the single market, she discarded the latter. 'Hard Brexit' is inevitable, and the real negotiations on degrees of market access will commence after the UK leaves the union.

The UK Supreme Court will reveal on 24 January whether notification to leave under Article 50 of the Treaty of Lisbon is subject to UK parliamentary approval. The terms of the article leave irrevocability undetermined. The court may ignore this issue as neither party to the case has raised it. Regardless, parliament must eventually sanction Brexit by repealing the 1972 European Communities Act, the statute which legislated the UK's accession to what is now the EU.

Given the central incompatibility of the British and EU positions, any pre-Brexit negotiations may take place but they will be farcical. The remaining 27 member states will not retreat from the EU red lines. Michel Barnier, the European Commission's chief Brexit negotiator, has hinted at a partial retreat, though this is surely a bluff. He says the City of London is such an important financial centre for all the EU that access should not be denied. Germany and France will reject this. The same is true for any other pre-Brexit 'offer' of softening. Whatever is temptingly offered cannot be unanimously delivered.

An early exit will become imperative to end uncertainty. Market access negotiations will begin only after Brexit and will take years. Meanwhile, the EU fears Britain will do faster deals with other economies, with some already queuing at the world's sixth largest import market's doorstep.

'Hard Brexit' becomes a done deal in March 2019 at the latest, or when May pulls the plug beforehand. This raises the possibility of an early general election and/or second referendum. The choice depends on public opinion. A second referendum would not be so different from the last, with emotion likely to prevail over reason. May's 'Iron Lady' nationalism appeals to emotion, while realism depends on the economy. If gloomy forecasts are vindicated, Brexit opposition could increase.

An early election cannot be ruled out, though it is difficult to engineer. Either two-thirds of parliament must vote to hold it, or the government must be defeated on a vote of confidence without a new executive taking its place within 14 days. The June referendum showed that many members of parliament were at odds with their constituents. Some will not be reselected or will lose their seat. If May were to thwart a vote of no confidence the matter would be settled and 'hard Brexit will mean hard Brexit', to paraphrase the prime minister's favourite and oft-maligned phrase. For May and her Conservative allies, this is a gamble worth taking sooner rather than later.

Business, the City and markets must make plans for 'hard Brexit'. Many large corporations, such as HSBC and UBS, are already doing so in the wake of May's speech – it has been announced that each bank may move up to 1,000 jobs to continental Europe. Others are deliberating along similar lines. Pragmatic decisions are needed, not a war of words. Probably we shall see both.

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