



What's next after Theresa May's spectacular own goal?

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This was meant to be a Brexit election to strengthen the Prime Minister's hand. The result was precisely the opposite.

Her management of the Brexit process has become a long sequence of own goals: quit the customs union and single market; watch EU agencies re-locate to the continent, including importantly for medicines and banking; banking jobs begin to relocate; science, research and academia see their interests harmed; the budget settlement prospect becomes a big new negative; the Irish border question threatens; immigration from the EU is already declining and various sectors from fruit-picking to the national health service are at risk. Moreover, the UK's economic growth has slowed down and is now forecast to drop to 1% in 2018; the pound has lost 13% since the referendum; inflation is up; and consumer spending is down. The only solace available to Mrs May is that the Scots seem to be having second thoughts about independence.

But this election was her biggest own goal yet. The credibility of her Brexit negotiation method is shattered. She thought the British people could be satisfied with slogans about "Brexit means Brexit", or "getting the best deal for Britain", and the now notorious "no deal is better than a bad deal". Above all there was the failure to define and communicate a credible negotiation strategy. The Brexit White Paper of February 2017 contained serious contradictions, insisting that the UK should get 'seamless' market access while still leaving the customs union and the single market.

What's next?

Mrs May has the Queen's consent to carry on, since her party remains the biggest one in terms of the number of MPs. But a wide range of scenarios is now being discussed. Where does the will of the people now lie? According to a ['Survation'](#) poll conducted on Saturday, June 10th, two days after the election, a majority of 49% believe that the Prime Minister should resign, versus 38% who think she should stay in office. The narrow 52-48% majority to leave in the referendum is now almost exactly reversed, with a 51-49% majority to remain. However a large majority do not favour holding a second referendum (55% against, versus 35% for). A substantial majority favour a 'soft' Brexit rather than a 'hard' one (47% soft, 36% hard).

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But there are alternatives

What the Brexit story is telling us so far, so it seems, is that anything could happen. Let us examine four scenarios, all following from the broad interpretation of the election result now being discussed in the British media, and confirmed by the Survation poll cited above, that the British people do not like the idea of a 'hard Brexit'. The latter is variously interpreted as a range of possibilities from quitting the single market and the customs union, through to the 'no deal' with the default solution of allowing WTO membership to define future trade relations with the EU. At least four alternatives can be considered, as sketched below.

1) *Stay in the single market, but not the customs union.* This would mean in effect joining the European Economic Area (EEA), for which the UK entirely qualifies, as long as it does a U-turn on accepting the continued jurisdiction of the Court of Justice of the European Union (CJEU), and as long as all EEA member states agree to this arrangement. The EU member states might well accept, but the acquiescence of Norway, the major non-EU power in the EEA, cannot be taken for granted. The important advantage of this scenario is that there would be nothing to negotiate except the financial settlement. With the Article 50 guillotine due to fall in less than two years and with the risk of 'no deal' if the UK tries for a complex bespoke agreement, this is now a major point.

2) *Stay in the customs union as well as the single market.* There are strong arguments for and against this option. First, it would avoid a hard border between Northern Ireland and the Republic. It would also save important industries that rely on complex cross-channel supply chains, automobiles being the prime example (including BMW, Nissan and Toyota, with their plants in the UK). On the other hand, the customs union has serious inconveniences for economies that are not predominantly trading with the Union. Only about half of the UK's trade structure is with the EU, and other half is with the rest of the world. The big disadvantage here is that the UK would have to follow the EU's external tariff for its imports from the rest of the world, including its preferential deals (free trade agreements and other preferences). In the case of the EU's many FTAs, the UK would be obliged to grant tariff-free access for its imports, but would have no guarantee of receiving a reciprocal benefit for its exports. That would require the UK to engage in bilateral negotiations with (say) Mexico with no guaranteed outcome. Mexico is a pertinent example since Turkey, which is in the EU's customs union, has had to follow the EU's concessions for its imports, but has not been able to persuade Mexico to reciprocate. There is also the argument, much used by Brexit advocates, that the UK could go ahead and make FTAs in the wider world ahead of the EU. First soundings with the US, India and Australia, however, suggest that this approach would be far from straightforward.

3) *Go seriously for a deep and comprehensive strategic partnership.* This was in principle advocated in the Brexit White Paper, adding that the future trading relationship should be "as frictionless and seamless as possible". But this was not translated into legally operational terms. Worse, it was muddled by also stating the intention to leave the single market and customs union, which made the whole proposal contradictory, or maybe just a reflection of the inability of the government to make up its mind. The easiest route for the Prime Minister now would be

to propose an agreement that would be said to build on the White Paper, while in content it would lie between the EEA (as for Norway and others) and the DCFTA models (as for Ukraine and others). It could be more than the DCFTA by assuring seamless continuity with single market law, but less than the EEA regarding dispute settlement and the CJEU. The DCFTA model here has primary recourse to WTO-type arbitration, and only limited recourse to the CJEU. The UK would clearly state, as also under both the EEA and DCFTA models, the wish to accede to all EU agencies and programmes open to non-member states, and to favour cooperation on foreign policy, security and terrorism, etc. Switzerland actually has a regime with the EU that is not so different in substance to the above, but this was negotiated progressively in several packages over approximately two decades rather than two years, and the EU has explicitly rejected the repetition of any such 'cherry-picking' approach.

4) *Abandon Brexit, revoking Article 50*. This would be the most logical option; as President Juncker has said, "there is no good Brexit". Indeed, all of the foregoing scenarios are second bests. Therefore, it is best to renounce Brexit before it is too late, but maybe it is too late. There are two problems here, – one legal-technical and the other political-fundamental – quite apart from the question of how it might be engineered politically in the UK.

The first is whether legally the Article 50 declaration can be revoked. This question is currently heading towards the Court of Justice, via the Irish courts. But for the moment, no one seems to know.

The second and more fundamental consideration is that the EU27 has moved on, from regret, to getting on with a future without the UK. Most clearly France and Germany are now preparing ideas for the EU to move ahead, for example towards a European Defence Union, with a dedicated operational HQ decided last week and the beginnings of a defence spending chapter in the EU budget. These symbolise the way forward for a more muscular foreign and defence policy, without the UK as spoiler.

Conclusion

These four scenarios probably contain all the main possibilities for a good or second-best resolution of the mess that the UK has created for itself. It is now for Mrs May or her successor to choose. Above all, there is the need for a clearly defined and operational strategy, capable of being negotiated in under two years, which is why one or another of the above templates could be so valuable. This would represent a major course correction, after speeches declaring that there is no existing model to rely on, which only magnified the uncertainties. The second course correction would be to transparently publish the chosen strategy, thereby permitting the British public to see what is going on and to evaluate it. Most importantly, it would avoid a repeat of the kind of political surprise and disruption that is now being observed.