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BREXIT: TROUBLED NEGOTIATIONS FAILED. WHAT NEXT?

Jean-Luc Soulier
January 30, 2019

We are only two months ahead of the expiry of the two-year timeframe provided for by Article 50 of the Treaty on the European Union that will entail the automatic exit of the United Kingdom from the European Union, unless if this timeframe is extended or if an agreement on a transition period is reached. Following the UK Parliament's rejection of the withdrawal agreement concluded in Brussels on November 25, 2018, a no-deal Brexit seems less and less avoidable.

In a Law dated January 19, 2019 and published in the Official Journal on January 20, 2019, the French Parliament has just authorized the Government "to take measures by way of Ordinances to prepare for the United Kingdom's withdrawal from the European Union."

Before briefly describing the ins and outs of this Law, it appears essential to recall the events that led to this imbroglio in order to fully grasp the issues at stake, both for the United Kingdom and for the other 27 Member States of the European Union.

The unholy alliance within the UK Parliament between brexiters who oppose the withdrawal agreement and those who call for a new referendum has spelt the end of the agreement negotiated by Theresa May.

Both the most ardent brexiters and the proponents of a new vote saw in the withdrawal agreement nothing less than the continuation of the United Kingdom's membership of the European Union until December 31, 2020, or even December 31, 2022, without the prerogatives of a fully-fledged Member State and without any guarantee on the rules that will apply after expiry of the transition period. In short, for both sides, it was taking a step back for a better jump... into the void.

Following the June 23, 2016 referendum, the United Kingdom is the first member of the European Union that used the withdrawal option provided for under Article 50 of the Treaty on the European Union.

According to the provisions set forth in said Article 50:

- Either a withdrawal agreement is reached within the two-year timeframe that started running on March 29, 2017, date on which the British Prime Minister officially notified the United Kingdom's decision to withdraw. With only two months to go before the deadline, no one believes any longer that this will

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happen.

- Either the European Council unanimously decides to extend this period in order to allow for further negotiations. This scenario also seems unlikely since the positions now appear to be irreconcilable following the rejection of the November 25, 2018 agreement by the UK Parliament.
- A third scenario seems to be envisaged today: delaying the United Kingdom's exit from the European Union by a few months to enable everyone to take the measures made necessary by a no-deal Brexit. A unanimous decision of the European Council should also be required but unanimity is more likely to be obtained here than in scenario #2 above. This third scenario raises however a significant issue: Will in this case the United Kingdom take part in the elections to the European Parliament scheduled in May 2019 whereas, according to the advocates of this solution, its exit from the European Union should take place no later than in July 2019?

The risks associated with a disorderly exit of the United Kingdom on March 29, 2019, both for the United Kingdom itself and for the other 27 Member States of the European Union, are substantial. The term "chaos" is used insistently in the statements made by politicians and by journalists on both sides of the Channel.

If no deal is reached and if the two-year timeframe provided for under Article 50 is not extended, entire sections of regulations, in all areas and on all topics, would vanish from UK law on March 29, 2019 at midnight, in particular those derived from European Regulations that are directly applicable and have not, therefore, been transposed into national law^[1].

In order to avoid this worst-case scenario, the UK Parliament has already adopted a "Great Repeal Bill" that transposed into national law all of the European provisions that are directly applicable, with the objective to subsequently sort out this considerable volume of texts.

In addition, the United Kingdom will no longer be part of more than 40 European agencies, including the European Medicines Agency and the European Banking Authority currently headquartered in London and that will have to relocate.

Lastly, it will automatically withdraw from tenths of free trade agreements entered into by the European Union, and will have to renegotiate one by one more than 1,700 bilateral and multilateral agreements to which it is currently a party simply because it is a member of the European Union.

The Law of January 19, 2019 "authorizing the Government to take measures by

way of Ordinances to prepare for the United Kingdom’s withdrawal from the European Union” can be regarded as an implicit indication of the dangers, as perceived by French public authorities, of a no-deal Brexit for our fellow citizens and our national interests.

The Law is structured around three axes.

In a nutshell, the first one is primarily designed to protect the British citizens residing in France, the second one to protect the French citizens who reside or trade in the United Kingdom, the third one to enable the emergency construction of the necessary infrastructures for restoring border checks by trying to hedge, by way of derogations, against long paralyzing administrative procedures by neighbors or environmental associations.

On January 17, 2019, following a work meeting with the relevant Ministers, Prime Minister Edouard Philippe announced the forthcoming adoption of five ordinances over the next three weeks. The first Ordinance will govern the rights of British citizens in France and the four others will enable (i) the emergency construction of the necessary infrastructures for restoring border checks, (ii) businesses set up in the UK to continue running road transport services in France, (iii) the continuity of certain financial activities – in particular in terms of insurance – once the United Kingdom loses its financial “passporting” rights, (iv) transfers of defense equipment to continue between France and the UK.

We will comment these Ordinances as and when they will be published.

So, to be continued in next issue(s)!

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Notes

[1] Cf. article entitled **Brexit: Issues at stake in troubled negotiations**

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