

# BREXIT and its Implications

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# What is the Brexit Process about?

- Something never done before.
- UK to leave the EU after referendum of 23.06.2016.
- In terms of Art. 50 Lisbon Treaty – which is untested.
- Art 50 = Exit clause for members withdrawing from EU.
- Divorce proceedings triggered on 29 March 2017.
- The process ahead: i) **Complying** with applicable law, ii) **forging** new relationships, iii) Many **political** decisions  
iv) Deciding exit & **future trade** with EU & the world.
- Ramifications wider than EU-UK relationship

# What does Art. 50 say?

- Withdrawal per national constitutional requirements.
- Notify the EU Council. In the light of the guidelines provided by the Council, the Union shall negotiate & conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.
- That agreement shall be negotiated in accordance with Article 218(3) of the EU Treaty. (*Commission submit recommendations to Council...to adopt a decision authorising negotiations & nominate Union's negotiator.*)
- It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament. (**Mixed Agreement implications.**)

# What does Art. 50 say?...cont'd

- The EU Treaties shall cease to apply to this State from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
- The withdrawing Member State shall not participate in the discussions of the EU Council or in decisions concerning it.
- A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
- Re-joining is subject to the procedure in Art. 49.

# What has happened thus far?

- Referendum of 23.06.2016 & its unique politics.
- PM's 12 Point Plan of 17 Jan 2017 (**Hard Brexit. No access to the Single Market -- gains full control over immigration. Tax haven?**)
- PM's 6 pages notification letter of 29.03.2017 ("**deep and special partnership**" with a link to security.)
- EU's draft guidelines for negotiations 31.03.2017. (**Strive for certainty, 2 stages, security a different issue, 3m EU citizens.**)
- UK to settle divorce bill of €60 bn. (UK budget contributions, cost of divorce, pension liabilities, moving EU agencies based in UK, research funding, re obligations accepted by EU re 3<sup>rd</sup> states.)
- EU Council meets 29 April to approve guidelines & mandate
- Elections in France and Germany.
- UK's Great Repeal Bill. (Scotland, Northern Ireland, Wallis )
- In mean time EU acquis continues to apply to UK

# What happens over next 2 Years and how? EU view

- Preserve integrity of the Single Market
- Aim for UK as a close Partner, but prepare for failure too.
- No sector-by sector approach
- Nothing is agreed until everything is agreed
- A phased approach & EU acts as one
- For an orderly withdrawal
- Optimal certainty – no legal vacuum
- Reciprocal guarantees for citizens/their rights a priority
- Withdrawal agreement to include dispute settlement re application and interpretation of withdrawal agreement.
- Ireland, Cyprus and Gibraltar got special mention.
- It all ends on 29 March 2019, after 43 years, unless....

# What happens over next 2 Years and how? EU view....cont'd

- **First phase:** Disentangle UK from EU
- Clarity for businesses and citizens
- Re requirement “*take account of the framework for future relationship*”: An “*overall understanding*” during 2<sup>nd</sup> Phase.
- Preliminary discussions to this end as soon as sufficient progress has been made in the first phase towards an orderly withdrawal.
- Future relationship needs a second phase.
- Will be concluded once the UK has become a “*third country*”.
- Will “seek” transitional arrangements (**for EPAS too?**)
- Three sets of negotiations now: i) withdrawal, ii) preliminary discussions on framework re future relationship, iii) transitional arrangements.
- Then comes 2nd Phase: future trade relationship (Arts. 207 &

218)

# What happens over next 2 Years and how? UK view

- Restore national self-determination & re-invent UK trade governance.
- Leaving EU but not leaving Europe.
- Convert EU acquis into UK law. Ensure continuity.
- *Deep & special partnership*: economic & security
- No membership of the Single Market.
- Fair settlement of rights & obligations.
- Avoid harm to Ireland & peace process. No hard border.
- Agree terms of future partnership *alongside* withdrawal.
- *Bold and ambitious* **FTA** between UK-EU.
- More ambitious than anything before – include crucial sectors such as financial services & network industries.

# What happens over next 2 Years and how? UK view....cont'd

- If no agreement –trade on WTO terms. (**All EU and other trade then on MFN basis = cost increases.**)
- Security/terrorism cooperation then weakened.
- Agree soon on a *high level approach*.
- Manage evolution of regulatory frameworks (**NTBs!**)
- Dispute settlement part of future relationship.
- Businesses in UK, EU, and in third countries should be able to plan. Avoid cliff-edge.
- *Implementation periods* necessary to adjust to new arrangements.

# What happens over next 2 Years and how? **Negotiating Process**

- This a '**mixed agreement**': Unanimity among 27 members, consent of European Parliament, and agreement of 38 national and regional parliaments, including Wallonia....
- Art 50 concerns the divorce & the divorce alone -- can be concluded by qualified majority in Council.
- The more relaxed procedure of Art 50 cannot be used to circumvent Art 207 & 218 TFEU re future relationship.
- UK's negotiating strategy: (i) What concessions? (ii) What is default position? (iii) Bargain from a position of power? (iv) Negotiating capacity.

# What happens over next 2 Years and how? **Negotiating Process...cont'd**

- Negotiations may take years and shape UK's economic future: i) Terms-of-trade effects (weak pound) ii) production-location & investment decisions iii) trade policy can be used to raise profits of domestic firms
- Post-Brexit EU still world's largest market & UK's biggest trading partner
- UK needs a deal more than EU does.
- Default= WTO. More restrictive than EU in services - reduced access to EU markets for UK service producers.
- Free labour mobility between UK and EU would cease.
- No passporting rights for UK-based firms.

# What happens over next 2 Years and how? Negotiating Process...cont'd

- As 2-year limit approaches, UK needs an agreement.....
- EU has an incentive to slow down negotiations, as time passes its bargaining power increases.
- UK to seek transitional arrangement for as long as necessary.
- Art 50 trigger cannot be reversed. One of 3 outcomes: (i) a divorce agreement, perhaps accompanied by transitional arrangements; or (ii) an agreement to extend the negotiating period; or (iii) no agreement. EU Treaties simply cease to apply at end of 2 years (a disorderly Brexit).
- UK has not negotiated own trade deals for 43 years.
- Trade policy now back as part of UK domestic politics.
- Effects of trade policy do not stop at national borders.

# Assume there is a UK-EU FTA: What rules govern UK's other Int. Trade?

- Trade under WTO rules. What does this mean?
- But since 1973 UK an EU member— Int. trade in goods regulated by EU CET, tariff quotas etc.
- UK is a WTO member but sans new Tariff & GATS Schedules. Old schedules predate WTO
- How will EU tariff rate quotas be decided?
- New negotiations with WTO alongside Art. 50?
- Interim arrangement and a WTO waiver? Details later?
- And if there is no deal with the EU?

• Are WTO talks just as urgent now?  
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# Implications for SACU & Africa?

- **Re EU:** EU of 27 will continue to have the rights and obligations as before re its international agreements.  
[SADC EPA]
- The UK will no longer be covered by agreements concluded by the EU. (WTO schedules etc)
- EU expects UK will honour its international commitments accepted while an EU member.
- Which are these agreements? (EPAs, FTAs, climate?)
- *Constructive dialogue & common approach re 3rd country partners & int. Organizations as part of*

# Implications for SACU & Africa? ....cont'd.

- UK a major investor, source of remittances, development aid donor, and trade partner.
- RSA, Nigeria and Kenya most affected. RSA banks & Funds.
- How to fit SADC-EPA/Africa into Art 50 logic and when?
- What does promise to avoid *cliff edge* really mean?
- Promises do not count in Int. trade.
- UK's own FTAs with Africa? About what?
- How generous will UK be? Services, finances, investment important for London.
- UK's own GSP as restored WTO member?
- A special relationship with Africa? What and how?
- What could Commonwealth do?

# What should African Policy Makers plan for now?

- Clarify many aspects... what do we trade with UK & EU at what rates? Impact on currencies.
- Who does what when? What is the plan?
- Should EPAs be included under Art. 50 talks re *transitional arrangements*?
- When to start negotiating FTAs with London?
- About what? Days of soft landings might be over.
- What is the **commercial reality** – where do SACU grapes and SA wine land? How then to Tesco shelves?

Does it matter for us how EU will trade with EU? **YES!**