

## What kind of Brexit?

*Fabian Zuleeg*

The ruling of the High Court in the UK has rekindled hope for the opponents of Brexit. Some are envisaging a rejection of Brexit by Westminster, a general election that will return a strong Remain vote or even a new referendum, reversing the result of the first one. This ruling is not yet the final decision: an appeal to the Supreme Court seems certain. But even if it is upheld, the most likely final destination is still a hard Brexit.

### **New majorities?**

To reverse the results of the initial referendum would require a momentous shift of the UK's political system. There might be a theoretical majority against a hard Brexit in Westminster, but would this translate into a vote against the government? Many Conservatives, faced with eurosceptic constituency associations, will face deselection if they vote against Brexit. The pro-Brexit camp can also rely on some votes from Northern Ireland, while parts of the Labour party might be tempted by strong opposition to EU freedom of movement in their constituencies.

If it comes to a general election, it is far from clear whether there is a Remain majority. The Conservative party would campaign on a strong (and hard) Brexit stance, attempting to shut out UKIP, and Labour is currently unable to mount an effective opposition. A new referendum with a different result seems even more unlikely: if the supremacy of Westminster is established in the courts, why rerun an 'advisory' referendum?

### **Consequences of reversal**

Any reversal of the decision also bears significant political risks. There will be a sizable part of the British electorate that will see this reversal as a betrayal of democracy, which might even include some of the Remain voters. The argument is simplistic but compelling: the referendum was their chance to have their say and now the establishment in the UK and the EU tries to take away their rights. It would prove the arguments of the populists, not just in the UK but also in the rest of the EU.

In the subsequent UK General Election, a hard block of single issue voters would vote on Brexit alone, probably for a combination of UKIP and the pro-Brexit part of the Conservatives. Given the first-past-the-post system in the UK, this would most likely be enough to install an ultra-hard Brexit government, which would, as its first act, decide the immediate withdrawal from the European Union. Even with a delay imposed by the House of Lords, the supremacy of Westminster would prevail, leading to a quick and chaotic withdrawal, which would hurt the UK and the EU even more.

### **Softening Brexit?**

A reversal is thus not only unlikely but undesirable. However, some have argued that this court ruling might provide the leverage to turn the Government's negotiation position away from a hard Brexit and towards a softer version. In this scenario, remain supporters within the Government and the opposition could amend the negotiation position of the UK, leading to a better deal for the UK.

But what does this mean in practice? Hard Brexit means being outside the Single Market, which is predicated on an insistence on the Government's red lines: no control through external courts, no acceptance of rules made by others, no payment into the EU budget and no free movement of people. With little prospect of the EU-27 or the EU institutions changing their stance, it would need a political U-turn on any or even all of these issues to remain within the Single Market. Even after the court case, there is no appetite for giving in on these issues within the Conservative Party or indeed the UK population. Brexit would not mean Brexit in the eyes of many if these red lines are not adhered to.

The scope of softening Brexit thus remains limited. Certainly, there are some domestic concessions that can be used in an attempt to ensure lower domestic opposition to Brexit. This might include promises of additional powers to those parts of the UK that have voted to remain, or the prospect of more favourable post-Brexit conditions for certain groups or regions, for example with regard to migration, funding for particular sectors or state aids to particular industries. It could include promises of policy continuity in areas such as climate change or development aid.

But even if these can be delivered (which is not certain, given, for example, WTO rules), the key question will be who Theresa May will have to convince. Without an effective opposition, her main focus is the Conservative Party itself, while ensuring that UKIP cannot regain a foothold. A hard Brexit here is the central position, not an outlier. The more she moves to address the Remainers' concerns, the more she is losing support from the Brexiteers in her party and in the population. The political calculation will thus only allow quite limited concessions.

### **Preventing a dirty, quick and ultra-hard Brexit**

While the Court ruling has not changed the probability of a hard Brexit, at least it might make a dirty, quick and ultra-hard Brexit less likely. Dirty, in the sense of highly confrontational with the EU-27; quick, in terms of leaving even before the end of the two-year period stipulated in Article 50 (to, for example, prevent further payments into the EU budget); and ultra-hard, in terms of having no agreement at all (on the exit or on the future relationship) and no transition arrangements in place.

A hard but orderly Brexit, leading ultimately to some form of Free Trade Agreement between the UK and the EU, is in the interest of both if the prospect of 'no Brexit' is unrealistic or counterproductive. It will still be a hard Brexit, respecting the red lines of both the UK and the EU-27. But leaving the EU and remaining in the Single Market was always a difficult proposition, legally, technically and, most importantly, politically. The Court case might inject more rationality into the negotiation process but Donald Tusk's comment still holds – the only choice is between a hard Brexit and no Brexit – and the referendum has made it clear that no Brexit is not an option.

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