Brexit: the knowns, the unknowns, and what happens next? An FTI Brexit Bowl Breakfast with Sir Philip Lowe

15 July 2016

Sir Philip Lowe addressed the theme of "Brexit: the knowns, the unknowns, and what happens next?"[i] at the FTI Consulting Breakfast Club roundtable of 13 July 2016. The below text is a redacted version of his speech.

Sir Philip Lowe is a Senior Advisor in the Strategic Communications team at FTI Consulting. He is a former Director General of the European Commission for Competition, Energy and Development Cooperation. He reviews Brexit key players, key issues and economic consequences and suggests what business should expect in the coming negotiations.

BrexitResponseTeam@fticonsulting.com

Theodore Roosevelt's once famously remarked that public opinion frequently combined "the unbridled tongue with the unready hand." The evident lack of adequate preparation and assessment of the various policy options under Brexit before and after the vote is an obvious example of the phenomenon that Roosevelt warned against.

The vote for Brexit, which the new Prime Minister is committed to implement, presents challenges and opportunities both for the UK and the 27 remaining EU Member States. There are obvious risks and uncertainties around the process of disengagement of the UK from the Union, and the formation of a new UK/EU relationship. These risks can be controlled and minimised if there are a sufficient number of cool heads and clear thinkers on both sides of the negotiation.

Despite some recent legal debate on the subject, there is unlikely to be any need for a parliamentary vote to endorse either the referendum result or the decision to trigger withdrawal under article 50 of the Lisbon Treaty. However, once an agreement has been reached with the EU27 under article 50, it will be necessary for the UK parliament to repeal the European Communities Act of 1972. ("Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements").

This agreement, which will be decided by qualified majority on the EU27 side, is first and foremost about the "divorce" of the UK from the EU and the conditions under which it will be implemented. But the divorce agreement will also refer to the framework of the future relationship between the UK and EU. It is likely to include an agenda for detailed negotiations in specific policy areas such as trade, the single market and free movement of people. In principle this agenda could include target deadlines for the completion of specific chapters of the negotiations. These deadlines will where necessary extend beyond the two-year deadline for the article 50 agreement itself. On the EU side, an agreement on future UK/EU27 trading relations will require a unanimous vote of the EU Member States. Based on the recent Canada precedent, there will also be a need for ratification of the agreements by EU national parliaments.

The players

We will soon know ministerial portfolios on the UK government side (since then Theresa May has announced some senior appointments. Brexit will give rise to the creation of a new department for exiting the EU, with David Davis as the Minister in charge. Liam Fox will head a new department of international trade. Boris Johnson will be Foreign Secretary and Amber Rudd will be Home Secretary)

The degree of coordination at ministerial level in London will likely to be steered by Theresa May herself. There is already some coordination as far as dialogue with business is concerned under the chairmanship of current Business Secretary Sajid Javid or his successor (Greg Clark).

Over the next few months, there will be extensive consultation within the UK of business and other stakeholders to determine the priorities for the exit negotiations and those for the future UK/EU27 relationship. These consultations, as well as debates in parliament on government proposals, will determine when article 50 will be triggered and the UK's overall negotiating stance. The consensus view now seems to be that an article 50 letter will be sent towards the end of this year or at the beginning of 2017.

> *In dialogue with governments and parliaments, there is also a window of opportunity, starting already now, for the business community and other stakeholders, in the UK and elsewhere in Europe, to make both sides of the impending Brexit negotiations aware of the areas that should have most priority in the negotiation"*

Those who supported the Leave campaign are keen to start negotiations quickly. Some favour a clean break from the EU trade framework and from the single market. However, a number of prominent Leave voices in the government have argued for continued market single market access, including passporting for the City, participation in the Horizon 2020 R&D programme, in Erasmus and in ensuring free movement for students and researchers. The core of the negotiation as they see it is to maximise single market access while taking back control of immigration. This has led to discussion of several trade models, whether Norway-, Canada+, Switzerland + or a specific UK-related arrangement. (The result on trade could be even like Canada Dry: it may look like the EU and taste like the EU, but it will not be the EU!) However, there is recognition that EU market access will inevitably be less generous than the current situation given that unrestricted free movement of people is unacceptable from the UK point of view. At the same time, many, including those who supported Remain, are anxious to begin the search for alternative trading opportunities for the UK with other parts of the world, e.g. North America and Asia. That search for trading relationships, it is likely to be carried out in parallel to the renegotiation of the relationship with the EU.

On **the EU side**, having already appointed a chief negotiator for Brexit (the Belgian diplomat Didier Seeuws), the European Council appears to be in the driving seat as far as negotiations with the UK, with the Commission providing the necessary technical assistance in specific policy areas. The European Parliament's assent is needed for the article 50 agreement but this is unlikely to be a decisive factor. Member state governments will be in charge.

The 27 EU Member States fall broadly into four categories: the original six countries together with Portugal and Spain, the Scandinavian countries, the Eastern Europe countries, and the specific case of Ireland. As a result of the most recent enlargements, the majority of countries in the EU27 share the longstanding UK view on the nature of the EU as a group of independent and sovereign countries who choose to pool sovereignty in specific fields in order to achieve better results than they can do separately. But there is no enthusiasm for more political union. Even among the original six, there is a radically different view, for example between France and Germany, as to whether there should be more Europe and in what areas. In this light, it is ironic that the UK has chosen to leave the EU now.

Getting full agreement within EU27, even on reaction to the UK's negotiation, will be a major challenge and will take some time to achieve. This could delay the adoption of agreements with the UK, especially on aspects of the future UK/EU relationship. Representatives from the Commission and the Parliament have so far taken a relatively firm stance in defence of the integrity of the European institutions and of the '*acquis communautaire*'. However, the political agreement between UK and EU27 must inevitably take into account broader views of the EU as reflected in the concerns and the opinions expressed by national governments and national parliaments. After all, the purpose of the EU is to complement and give added value on what is possible on national level and not to replace it. However, with some different shades of opinion across EU27, there is ongoing dissatisfaction with the EU's seeming inability to make progress in four key areas:

- Agreeing on an effective but humane immigration and asylum policy to manage the ongoing migration flows into Europe

- Strengthening the institutions and policies within the Eurozone
- Providing an additional boost to economic recovery through increased flexibility funding investment in new infrastructure, as a justifiable exception to budgetary discipline and austerity
- Institutional reform to increase the democratic legitimacy and support to the EU, through closer involvement of national parliaments in the work of the European Parliament and more active parliamentary control of the work of the Council of Ministers, both at national and parliamentary level.

Insofar as EU27 can start to show results in some or all of these areas, it would be able to deal a more confident hand in negotiations with the UK. Otherwise, the negotiations on an agreement between the EU27 are likely to get bogged down in recriminations between the national governments on the one hand and the Commission and Parliament on the other.

However, reactions to Brexit within the EU may not be wholly negative. The widespread view in Anglo-Saxon media and financial circles that Brexit will lead to the demise of the euro could well be wishful thinking. Eurozone governments and parliaments are likely to prefer further painful measures to underpin the euro rather than go back to the volatile and uncertain world of multiple national currencies.

Timing and substance of UK/EU27 negotiations

Given the concern to reduce the economic and political uncertainties surrounding Brexit, there is a general desire in the UK to initiate the process of the “divorce” as soon as possible, but not to trigger the process without having defined an ambitious but realistic negotiating position. In Brussels, the emphasis is on speed in order to prevent the UK question from dominating the EU’s political agenda for an indefinite period (“If t’were done, ‘tis best t’were done quickly” or as said in German “Lieber ein Ende mit Schrecken als ein Schrecken ohne Ende”).However opinions in other capitals, in particular Berlin, are prepared to tolerate a longer time-scale in order to ensure a constructive and consensual negotiation.

The trade and single market access options

In the **financial services sector**, as indicated in FTI’s snapshot briefing, the UK has exerted a strong influence on the raft of EU legislation which has been adopted or proposed since the 2007/2008 financial crisis. Its future influence on EU legislation is likely to proportionate to the degree of market access that it obtains as a result of the forthcoming negotiations.

The UK’s position on so-called **rollback of EU regulation** will be more nuanced than that of Leave campaigners before the referendum. There will be pressure to remove some iconic pieces of EU regulation such as protection of part-time and migrant workers but even these changes would seem to run counter to the more socially conscious policies recently announce by Theresa May. Likely as not, a lot of the laws which will be removed from the UK statute book will be also on Vice-President Timmerman’s list under REFIT for removal from EU law. In the health, safety and environmental areas, the UK is unlikely to want to repeal the majority of measures which reflect longstanding UK policy. Repatriation of trade and regulatory competences from the EU will nevertheless demand a significant increase in staff and resources for Whitehall departments and national agencies in the UK.

The implications of Brexit for **competition policy** are not necessarily significant on in substance (strong convergence of EU and UK policy traditions). There will be some more complexity on process, for example a two-stop shop for mergers. In addition the removal of state aid control, combined with recent renewed interest in a public interest test for mergers may enable the new government to adopt a much more interventionist industrial strategy to underpin its ambition to develop new trading relationships elsewhere in the world.

In the **agricultural sector**, the level of regulation applied to the sector is unlikely to change, although there could be more emphasis on environment-related, rather than production-linked support. Maintaining the existing level of income support to UK farmers will be politically more challenging within the UK rather than within the EU. Reaping the benefits for UK **fishing** fleets of the repatriation of existing fishing boxes will depend, among other things, on how fast depleted stocks of fish can be restored.

On **foreign and security policy and development**, the UK has always had a foot out, so there is not a great deal of change there. However UK and EU policies have generally been convergent and it would not be surprising to see an EU+1(UK) formation being adopted in many international bodies.

The economic consequences of Brexit

There have been many forecasts and warnings about the recessionary effect of the Brexit decision and the forthcoming negotiations. Paul Krugman has rightly warned against overly pessimistic predictions. However, the longer uncertainties remain over the Brexit process, the more likely it is that investment decisions involving UK markets and companies will be put on hold or downsized. The potential impact on foreign direct investment and longer term corporate strategies is arguably more significant than any short-term recessionary effect. At the same time, if the new UK government is able to make progress over the next two years in trade negotiations with partners outside Europe, this could boost business confidence and offset the negative impact of prolonged negotiations with the EU.

Looking ahead, what should business do?

For both the UK but also other EU governments, the next twelve months before major elections in other EU countries should be considered as a window for opportunity to define a framework which will chart the exit of the UK from the EU, and its future relationship with the rest of Europe. In parallel, the EU has the opportunity to make progress on a number of initiatives, such as the strengthening of the Eurozone, which could relaunch economic recovery in EU27 and restore confidence in the Union. In addition, the discussions on Brexit in EU27 and in the UK need to take into account Europe’s declining role in world trade and financial markets (notwithstanding London’s uncontested role as a global financial centre) and its increasingly limited political significance on the world stage.

In dialogue with governments and parliaments, there is also a window of opportunity, starting already now, for the business community and other stakeholders, in the UK and elsewhere in Europe, to make both sides of the impending Brexit negotiations aware of the areas that should have most priority in the negotiation. These could relate to sectors where existing EU membership brings string benefits to both sides, but also to other areas where the benefits of existing cooperation can be preserved even if the UK has no formal agreement with the EU, such as on single market access.

On the UK side this would require trade associations, as well as individual businesses, to make their views and interest known to the government and parliament. On the EU side, similar interventions need to be made to the Commission, to the European Parliament, as well as to national governments and parliaments.

Sir Philip Lowe is a Senior Advisor in the Strategic Communications team at FTI Consulting. He is based out of Brussels and London.

He is a former Director General of the European Commission for Development Cooperation, Competition and Energy.

He was one of the first Directors of the EU's Merger Task Force and headed the Competition department as a whole between 2002 and 2010. He played a key role in shaping the structure and policies of DG COMP.

Prior to joining FTI Consulting, he held a number of senior posts in the European Commission, including Head of Cabinet to Neil Kinnock, the former Vice-President of the European Commission for Administrative Reform and to Bruce Millan, then European Commissioner for Regional Policy.

From 2010 to 2013, Sir Philip was the Director General of the European Commission's Energy department (DG ENER), where he helped to spearhead the ongoing development of integrated and competitive energy markets in Europe.

He served as a non-executive Board Member of the UK's Competition and Markets Authority from 2013 until 2016.

He chairs the Institute of Florence Annual Competition Law Workshop.

---

[i] See also Sir Philip Lowe's article *BREXIT – Define the moment before the moment defines us* for Friends of Europe

Philip Lowe
+32(0)2 289 0930
Philip.lowe@fticonsulting.com

Louise Harvey
+32 (0)2 289 0935
Louise.harvey@fticonsulting.com

CRITICAL THINKING
AT THE CRITICAL TIME™

About FTI Consulting

FTI Consulting Inc. is a global business advisory firm dedicated to helping organisations protect and enhance enterprise value in an increasingly complex legal, regulatory and economic environment. FTI Consulting professionals, who are located in all major business centres throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, regulatory issues, reputation management and restructuring. The views expressed herein are those of the author(s) and not necessarily the views of FTI Consulting Inc., its management, its subsidiaries, its affiliates, or its other professionals, members or employees.

www.fticonsulting.com