

Preamble – An assessment of the High Court ruling

Last week's High Court ruling that the British government cannot trigger Article 50 without Parliament's full backing added to the complexity of the Brexit process.

The paper below offers the basis for DiEM25's internal discussions leading to the formulation of DiEM25's position on the Brexit process.

But first here are three important aspects of the High Court's ruling, before the comprehensive analysis that follows:

1. Theresa May's government will appeal the High Court decisions and the matter will go to the Supreme Court, which may well overturn the High Court ruling, thus opening the door for the government to return to its original plan to trigger Article 50 in March 2017.
2. If the Supreme Court rules that Parliament should decide to trigger Article 50, PM May Parliament will almost certainly get the Parliamentary vote she wants. No Tory MP will dare vote against, in the present climate, and it is most likely that many Labour MPs, especially those with large majorities in their constituency favouring Brexit, will follow suit.
3. Even if 2 above is wrong, and Parliament votes against Article 50 being triggered, PM May will call an election, win it with an astounding majority, indirectly cause Jeremy Corbyn's demise, and get the next Parliament to trigger Article 50.

In each of these cases, DiEM25's view is that the two years after Article 50 is triggered are not enough to conclude *any* treaty with the EU, leading to hard Brexit by 2019 by default. The question that the paper below asks is: In view of the above analysis, what should be DiEM25's Progressive Internationalist position on the Brexit process?

DiEM25 before the Referendum

DiEM25 participated energetically in the UK referendum advocating a vote along the lines of 'In the EU and Against *this* EU!' Our radical proposal influenced the 'line' that Jeremy Corbyn's and John McDonnell's Labour Party adopted. We campaigned up and down the country, along with Labour, the Greens, the SNP and Plaid Cymru.

Nonetheless, a majority of British voters were not convinced that 'another Europe is possible', mainly because it was clear that the UK government would remain in the hands of the Tories. Faced with a choice of no change whatsoever and a Brexit that

clashed with the wishes of the greater part of the British and international elites, they opted for Brexit.

Progressives are now, as a result, in a bind:

- On the one hand, Brexit has unleashed the worst instincts of the xenophobic Right, with the Tories embracing UKIP's rhetoric and ideology and creating a toxic atmosphere that will, most likely, lead to a hard Brexit – with the loss of free movement, minimum environmental and labour standards, the repeal of the human rights charter etc.
- On the other hand, calls to scupper Brexit by annulling the referendum via a Parliamentary vote against the triggering of Article 50 (treating it as non-binding and merely consultative) violates DiEM25's commitment to democratic sensibilities and process.

In view of the above, it is important to tread carefully and give our members an opportunity gradually to converge to a common position on DiEM25's stance regarding Brexit. Before we formulate that position, it helps to re-state the basic principles that are involved, set out a strategy for the long term and, finally, home in on our optimal short and medium term tactics.

At this stage, it suffices to state the basic principles and set out our strategy:

Basic Principles

Our manifesto sets out four principles that are relevant to the Brexit debate. DiEM25 aims at:

- *A Democratic Europe* in which all political authority stems from Europe's sovereign peoples
- *A United Europe* whose citizens have as much in common across nations as within them
- *A Sustainable Europe* that lives within the planet's means, minimising its environmental impact, and leaving as much fossil fuel *in* the earth
- *An Open Europe* that is alive to ideas, people and inspiration from all over the world, recognising fences and borders as signs of weakness spreading insecurity in the name of security

These four aims, as they apply to the Brexit case, can be summed up in the following three objectives:

1. Keep Britain's borders (that are already open with the rest of the EU) as open as they currently are – especially between Northern Ireland and the Republic.
 - a. Argue that, while the people opted for Brexit, the referendum did not give a mandate to the government to end EU citizens' rights to travel and settle in the UK.

- b. Argue against the conflation of reclaiming democratic sovereignty from Brussels with putting up new barriers and restrictions to EU citizens. (E.g. make the point that the people of Norway also voted to stay out of the EU but Norway accepts freedom of movement/settlement for EU citizens – in other words, there is no automatic case for ending freedom of movement just because Brexit won).
2. Maintain the existing environmental and labour market protections whatever the outcome of the Brexit negotiations
 - a. Brexiteers promised Britain's farmers that their CAP benefits will be preserved after Brexit
 - b. Britain's environment and workers should also be promised that they will not be subjected to lower standards of protection after Brexit.
3. Combine 1 and 2 above with authentic respect for the referendum outcome in which the people of Britain clearly opted for Brexit.

The state of play

Tory Remainers, e.g. the current PM, have undergone a spectacular metamorphosis into hard Brexiteers. On Labour's side, Brexit occasioned a coup against Jeremy Corbyn led by Blairites who advocated a second referendum (Nb. it was Owen Smith's main plank) or a Parliamentary vote to decide whether Article 50 should be triggered – with a clear intention of supporting that Parliament votes against its triggering. In short, reactionary forces are taking two extreme positions:

- On the Tory side, hard Brexit is gaining an upper hand, focusing on ending free movement and the right of EU citizens to work automatically in Britain. In addition, there are voices within Corbyn's supporters to go along with the PM's hard Brexit so as not to antagonise Northern English working class voters (ignoring the effect of this on the Scottish Left).
- On the Labour side, there is an attempt (by the same forces that tried to overthrow Jeremy Corbyn) to annul the referendum's result through a Parliamentary vote or a second referendum.
 - If Parliament gets to vote on Article 50 and does vote against triggering Article 50, it will be as if the referendum had no weight. The rage of the majority who voted for Brexit will be both huge and understandable.
 - In the case of a second referendum being called, it will most likely be interpreted as a repeat of the Irish 2008 referendum debacle – when the Irish were made to vote again, after having rejected the EU's Lisbon Treaty, until they returned the 'right' result. The effect of holding a second referendum will, then, be to widen the gap in favour of Brexit.

DiEM25's strategy

To serve our three basic objectives above at once, we need to defend freedom of movement plus environmental and labour standards without either seeking to annul the referendum (through a Parliamentary vote against the triggering of Article 50) or calling for a second referendum (at least until a much later stage). Moreover, we need to be realistic in the sense of understanding that during, at least, the next two years the terms of Brexit will be negotiated by an increasingly social conservative, xenophobic, Tory government.

With the above in mind, it is imperative that DiEM25's strategic aim is to win time using the Tories' own arguments e.g. about the importance of the Parliamentary process (and in so doing taking on 'our' side a significant portion of conservative-leaning voters and opinion makers). How much time? Realistically, a progressive government will not emerge in the next elections. It will take a minimum of two elections.

1. Burkean Tory Brexiteers, who are committed to Parliament's sovereignty, face a conundrum: They campaigned for Brexit in order to restore Parliament's sovereignty to its pre-EU level. But to implement Brexit they need to trigger Article 50. Logically, they should want this to be done by a decision or act of Parliament. Except that this Parliament is heavily skewed against Brexit.
2. At DiEM25 we also face a conundrum: We campaigned against Brexit but are also committed to democracy and referenda. So, to call for a Parliamentary block of Article 50's triggering would be to violate our principles.

Here is a proposal on how to pursue our strategic aim while resolving the conundrum 1&2 above:

A possible argument:

- i. For Parliament to express properly the people's sovereignty, its due process must be given time to unfold.
- ii. *This* Parliament does not have a mandate to make such a decision as Brexit did not feature in the pre-election campaign.
- iii. Due to ii above, the referendum outcome takes precedence over the views of *this* Parliament
- iv. Due to ii above also, the referendum outcome does *not* give carte blanche to Theresa May's government to proceed with a hard Brexit.
- v. Due to iii, Article 50 must be triggered immediately (in accordance with the will of the people, as expressed in the referendum)
- vi. Due to iv, Theresa May's government should not enter into negotiations with the EU except to seek a minimalist Brexit (honouring the referendum outcome) while giving the next Parliament the opportunity to embody the sovereignty of the British people in determining the kind of relationship they want with the EU.

A possible concrete proposal (consistent with the above argument/strategy):

Stage 1: Article 50 is triggered immediately¹

Stage 2: Upon its triggering, the government asks the EU for an EEA (Norway-like) link between the UK and the EU that will be activated at the end of the two years – i.e. in 2019. At that point, Brexit will take place but free movement, the customs union and the single market remain under the EEA terms. This EEA link should be agreed to last for at least the full term of one British parliament – i.e. from 2019 to 2023

Stage 3: The Parliament that is elected in 2018 or earlier will, thus, have an opportunity to debate fully its long-term relationship with the EU and fully to consult with Britain's nations, regions and civil society.

Summary

Respecting both the *Open Europe* that DiEM25 is committed to and the UK referendum result requires a strategy that avoids annulling the latter while empowering, and affording sufficient time to, the democratic process to bring about a progressive outcome consistent with the former.

¹ Should strings of transparency be attached to the triggering of Article 50 (i.e. approving its triggering conditional on a commitment by the government that it publishes its negotiation strategy)? The problem is that it is not possible to ask a government to reveal the possible compromises it is prepared to make in advance. In other words, its negotiating stance can only be transparent if it is not willing to make unforeseen compromises. And the only way this is possible and lead to an agreement is on the basis of an off the shelf EEA (Norway like) agreement.