Speech by John Bruton, former Taoiseach, at the AGM of the ICMSA at 4pm on Monday 28 November in the Castletroy Park Hotel, Limerick

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THE MECHANICS OF BREXIT AND ITS EFFECT ON IRELAND

I am deeply honoured to have been invited to speak here today in the company of your President, John Comer, and of the Minister for Agriculture , Michael Creed.

I worked with the Minster’s father, Donal Creed, when Donal was spokesman on Agriculture for Fine Gael, and I was the then secretary of the Party’s Agriculture Committee. That was 1969, long before we joined the Common Market.

I remember many meetings with ICMSA at that time, and was always impressed by the seriousness and realism of the way in which your organisation represents its members and agriculture more generally. The fact that your President, John Comer, comes from Co Mayo is evidence of the broad national reach of ICMSA.

I have been asked to talk about Brexit. Everything I say will be a personal opinion, not representing anyone else.

Everyone would like to know what form Brexit will take, and how it will affect Irish farmers, and the rest of the country too. Unfortunately, it is next to impossible even to begin to answer that question until we first see what the UK will actually look for. Only then can we begin to speculate in an informed way about how the negotiation might go.

In what I say today, I will try to describe the mechanics of the three negotiations that will probably take place

+ the negotiation of a Withdrawal Treaty.

+ the negotiation of Treaty covering the Future Framework of relations between the EU and the UK and, possibly

+ the negotiation of an Interim Agreement, to apply after the UK has left the EU, but before a full Future Framework Treaty has been finalised and ratified

TWO NEGOTIATIONS....ONE ABOUT WITHDRAWING, THE OTHER ABOUT THE FUTURE

Article 50 of the EU Treaty says

“Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and 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.”

AGREEING GUIDELINES ON THE EU SIDE

It is important to note here that it will be the Commission that will do the actual negotiation with the UK, but it will do so under guidelines agreed by the Heads of Government of the 27 Member states meeting in the European Council. It will also have to bear in mind that the final deal will have to approved by the European Parliament too.

Given that the European Council operates by unanimity, and that its members are heads of government and each of them have countries to run at home, agreeing these guidelines will take time and be difficult.

Any one country can object to any part of the guidelines.

There are wide differences between EU member states in their sensitivity to developments in the UK. It is to be expected that

+ some will emphasise a continuing right for their citizens to live and work in the UK,

+ others will emphasise trade with the UK, and yet

+ others will emphasise how the make gains for their businesses from the exclusion of UK competition(for example in financial services).

THE FUTURE FRAMEWORK FOR EU/UK RELATIONS

It is also important to note that Article 50 says that the proposed Withdrawal Treaty shall take account of the” framework” of the withdrawing states” future relationship” with the Union.

There is no guidance in the Treaty as to what this “framework” document might say.

In their Referendum, UK voters were asked if they wanted to leave the EU, but their views were not sought on the sort of framework for future relations they would approve.

Nothing appeared on the ballot paper about

+ access to the EU market for UK produced goods or services, or about what UK voters would want the agreement with EU to say about

+ the status of UK citizens already living in EU countries after the UK has left

+ the status of EU citizens already living in the UK or about

+ the future rights of EU or UK citizens to live and work in one another’s jurisdictions or to avail of social service while there

DIFFERENT PROCEDURES FOR CONCLUDING THESE NEGOTIATIONS

Article 50 continues

“ That agreement (for the withdrawal of a state) shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. 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.”

So while the Council guidelines for the negotiation require unanimity, the actual approval of the final withdrawal Treaty can be done by qualified majority.

But there is a time limit because Article 50 goes on to say

“ The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period. “

This two year time limit applies to the Withdrawal Treaty, but there is no time limit for the negotiation the Framework for future relations.

If , within two years of the sending by the UK of its article 50 letter seeking to withdraw from the EU, a Withdrawal Treaty has not been agreed by the UK on one side, and a qualified majority on the EU side, the UK is simply out of the EU, with no rights at all on the EU market beyond those enjoyed by any state anywhere in the world.

This is a real doomsday scenario, but it is a realistic possibility, because the gaps in the negotiating positions between the UK and a potential blocking minority of EU states (26.3% of weighted votes representing at least 35% of the EU population) are very wide.

But, at least, the withdrawal Treaty can be approved on the EU side by a qualified majority (73.9% of the weighted votes representing 65% of the EU population).

Agreeing the terms of the Framework agreement with the UK, of which the Withdrawal Treaty must “take account ” will be even more difficult, because this Future Framework Agreement will probably have to be unanimously agreed by ALL 27 EU states and their parliaments, unless it is a very narrow agreement covering only trade in goods.

If it is wider than this, it is likely to be deemed a so called “mixed agreement”, which is an agreement that includes matters where the competence is shared between the EU and the member states.

A ROCKY PATH TO RATIFICATION FOR A FUTURE UK/EU FRAMEWORK DEAL

In this case, every member state parliament, as well as every member state government, will have to approve the Framework agreement with the UK.

This is what happened with the recently concluded EU Agreement with Canada, which, as you will remember, was threatened with a veto by Belgium, because under internal Belgian constitutional arrangements, all five subsidiary parliaments in Belgium must agree to any international treaty signed by Belgium, and two of them did not agree.

A similar threat to an Agreement with the UK could come from a decision to call referendum in a member state.

For example, the future of an EU Agreement with Ukraine has been put in doubt by its defeat in a referendum in the Netherlands, requisitioned by a petition of only 300,000 signatories out of a total population of 17 million, and on a turnout of slightly above the minimum required 30%.

It is easier nowadays to organise petitions online, so this could be another threat to a Framework Agreement with the UK, not just in the Netherlands, but in any other countries with similar petition/referendum provisions.

The UK could not really object to this happening because the UK itself, on 23 June, used a national referendum to make a decision affecting the whole of Europe in a profound way.

COULD THE UK CHANGE ITS MIND?

Could the UK change its mind, when it discovers that things are not turning out as its voters, and those politicians who favoured leaving the EU, hoped they would?

Article 50 says

“ If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.”

Article 49 requires the unanimous agreement of all existing member states, and of the European Parliament, to the readmission to the European Union of a member state, just as it would to a state applying to join for the first time.

In other words, the UK, seeking to rejoin the EU after having left, would be in exactly the same position as Serbia, Montenegro or Turkey is today.

A more interesting question is whether the UK, having written its Article 50 letter in March 2017, could decide, say in late 2018, just before the two year time limit would expire in March 2019, that it wanted to withdraw the letter, and stay in the EU after all , on the existing terms?

This is not an easy question to answer.

Article 50 doesn't say that notification once given can be withdrawn, but nor does it say that notification can't be withdrawn.

The prevalent view is, perhaps, that notice can be withdrawn prior to actual withdrawal from the EU but the position is not clear. If revocation of an article 50 notice was not accepted by all other EU members, the Court of Justice of the European Union would have to decide the point.

This may all sound a little fanciful at this point, but it is possible that, by late 2018, the UK might have a different view on EU membership to the one it had on 23 June 2016.

It would certainly have to organise another referendum, which could be difficult given the rigid two year deadline for complete exclusion, in the absence of an agreed Withdrawal Treaty.

But if the discussions on the Framework Agreement were going really badly, or if the economic costs of separation were just proving greater than expected, and if prospects did not look like improving, a majority of MPs might decide to consult the voters on the possibility of taking back the Article 50 letter.

Already there is some sign that UK opinion has shifted slightly since the 23 June Referendum.

Asked in a Eurobarometer poll last September, three months after the Referendum, whether they thought the UK benefitted from being in the EU

+ 56% in the UK said they thought the UK had benefitted, an increase of 5 percentage points on the previous poll and

+ only 34% said they thought it had not, a drop of 2 points on the previous poll

If that trend were to continue, things could look different in the late 2018 or early 2019.

But it would be very difficult politically to change course. National pride would be hurt. Telling voters they made a mistake is rarely a winning political strategy......even though voters do sometimes make mistakes

CONTENT OF WITHDRAWAL TREATY

Let me now turn to what I think will be the content of the two negotiations

First ,the Withdrawal Treaty negotiation and

Second, the Framework of Future Relations negotiation

My understanding is that the Withdrawal negotiation itself is likely to cover quite a narrow, but very contentious, range of issues.

These will probably include five broad topics

+ What the UK will have to pay to leave, what will be the UK share of any remaining financial commitments dating from its time as a member, covering matters such as pensions of EU officials , other obligations outstanding, less the UK ‘s share in EU assets

+ The mechanics and costs of moving EU institutions, like the Banking Authority and the Medicines Agency, out of the UK and into an EU country (perhaps Ireland)

+ The Rights of EU citizens already living in the UK, and UK citizens already living in an EU country. The rights of future migrants from the UK to the EU, and vice versa, will be for the Future Framework negotiation

+ The relationship of the UK with the WTO after it has left the EU

+ Special situations concerning the land boundary between the UK and the EU, as in Ireland and at Gibraltar. It is good that this being dealt with upfront, and not just buried in the wider Framework negotiations. But, obviously, the content of the final Framework deal, if there is one, is bound to affect what happens on the Irish border.

While these five issues are, on their face, straight forward, the UK contribution to the EU budget was elevated into a big issue in UK politics over the past few years. False statements were made before the referendum about the amount the UK would get back by leaving, and a gain of £350 million a week was promised by some who now hold high office in the UK government.

So this could become a very difficult discussion.

CONTENT OF FUTURE FRAMEWORK TREATY

The Future Framework negotiation will be a much wider one and will take in matters of direct relevance to ICMSA members, such as

+ whether the EU Common External Tariff will have to be levied on agricultural products coming into Ireland from the UK, or Northern Ireland

+ how the origin of imports from the UK will be verified to ensure that they are not dumping third country products on our market,

+ how veterinary and food safety standards will be verified, and how and by whom smuggling will be suppressed.

+ whether geographic indicators will be recognised

+ if there will be a tariff free quota to allow existing trade levels to continue or if all trade will bear the appropriate tariff

The tariff issue will be particularly difficult in the food sector, because this is the sector in which the EU has the highest tariffs, and restrictions, on third country imports in order to protect the incomes of EU farmers.

Everything depends on what sort of food and agriculture policy the UK decides to follow outside the EU. Will they go for a “cheap food” policy like they had before they joined the EU 40 years ago or will they retain current supports for farmers and rural life?

There is no indication so far as the what choice they will make, at least after 2020.

Negotiations about product safety, rules of origin, and related issues will arise with all products and services, even those to which no tariff applies, because once it has left the EU, the UK will be free to depart from recognised EU standards.

If the UK rejects the jurisdiction of the European Court of Justice, as Prime Minister May says she will, there will no longer be a referee to interpret the rules of the shared market, and all markets need a referee.

If one wants to assess the likely complexity of a Future Framework Agreement the UK and the EU will have to negotiate with one another, one has only to look at the content of the Agreement the EU has concluded with Canada.

As well as tariffs and trade, that agreement had to cover

+ product testing and standards....would each side recognise the other side’s tests for every product or would there be duplication?

+ mutual recognition of professional qualifications....a huge field

+ the right of EU and UK firms to sell goods and services to government entities in one another’s jurisdictions

+ protection from discrimination against EU investors in the UK and vice versa

+ access to fishing grounds

The EU and the UK negotiators will not only have to reach agreement on the substance of how these matters are to be handled, but they will also have to agree a procedure for settling disputes about interpretation, because the UK, outside the EU, will not accept the rulings of the European Court of Justice (ECJ)

But probably the most contentious issue in the Future Framework negotiation will be right of people to emigrate to the UK from the EU, and vice versa.

Control of Immigration was not, initially, one of the UK’s complaints about the EU.

The Blair government actually opened the UK to central and east European EU immigrants, in 2004, before it was obliged to under the Accession Treaties for those countries.

But, during the Referendum campaign, immigration became the central debating point ,and leaving the EU was presented as the way of “taking back control” of immigration.

The case was over stated.

Of all immigrants moving to the UK in 2014,

+ 13% were UK citizens returning home.

+ 42% were EU nationals emigrating to the UK. But the biggest number,

+ 45%, were non EU nationals moving to the UK.

The UK already had full “control” over 45% of all immigration which came from non EU countries, and the Minister who exercised that control then, the Home secretary, is now the Prime Minister.

But in politics, perception is sometimes more important than reality, and immigration from the EU is perceived to be a problem by UK voters.

The EU side has taken a firm line on this. There will be no participation of the UK in the EU Single market without free movement of people to work. If capital is free to move, people should be free to move too. No Single market without free movement. Discrimination on the basis of nationality is excluded within the EU, and a state should not be able to leave the EU, introduce such discrimination, but still have all the other benefits of access to the EU market. If that option were the open, others EU members would be inclined to follow the UK out of the EU.

The fact that there must be unanimous agreement, by all 27 EU countries, to the Future Framework is relevant here. Countries like Poland will not be keen on a breach of the free movement principle.

WILL AN INTERIM DEAL BE NEEDED IN 2019?

I think it should be clear, from all I have said, that finalising a Framework Agreement with the UK within the two year time frame will be so difficult as to be almost impossible.

The Agreement with Canada took six years to negotiate and it was much less complex than any agreement with the UK would be.

So what happens, in late March 2019, when the 2 year deadline is reached, if the Withdrawal Treaty has been agreed, but if the Future Framework negotiations are still going on, with no certainty whether they are going to succeed or not?

In this case, some form of interim agreement with the UK might have to be reached. This might involve the UK leaving the EU, losing its voting rights, but still retaining full access to the EU market until a final Framework Agreement was reached.

There will be almost as many knotty questions to answer about that sort of an Interim Agreement as there would be about a Final Agreement.

For example, what contribution would the UK then continue to make to the EU budget?

Would there be a time limit on the Interim Agreement, and could it be extended?

Would the UK accept the jurisdiction of the ECJ during the Interim?

Would an Interim Agreement have to be approved by the parliaments of all 27 member states?

Does the EU Treaty allow for such an Interim Agreement?

CONCLUSION

My conclusion from all of this is that the decision of the UK Conservative Party to have a referendum on EU membership, without a clear alternative being known, was unwise because it will lead to a huge diversion of time and talent away from more constructive purposes.

It poses disproportionately great challenges to Ireland and will require us to build alliances in every EU country, and to do that we will need to understand the interests of other countries almost as well as we understand our own.