

Lord John Kerr, author of Article 50

A report by William Horsley

Lord (John) Kerr spoke to a crowded AEJ meeting in London on 15 September, after a heated parliamentary debate on the 'EU Withdrawal Bill' exposed deep divisions within both the Conservatives and Labour parties about the current path to Brexit, and a week before Prime Minister Theresa May is due to make an important policy speech on Brexit in Florence on Friday 22 September. In Britain, fresh doubts have been cast on the future course of Brexit by the Labour party's direct challenge to the government's approach and by loud demands from industry, business, science, universities and other sectors to avoid a 'hard Brexit'.

Lord Kerr criticised fundamental mistakes made by both sides in the negotiations in Brussels, which are seen as going badly. He warned that the UK may be heading for a 'precipice' in its relations with Europe, and urged Theresa May to take the initiative by presenting clear and positive proposals in her coming Florence speech. The author of Article 50 also said that the UK could still revoke the letter of intent to leave and stay inside the Union on the same terms as before last year's referendum. He made six main points:-

1 First, the UK government may be deluding itself about its ability to shape the rules of the Brexit game about the terms of a 'transitional period' following the UK's planned departure in March 2019. The Chancellor of the Exchequer, Philip Hammond, said the UK would not allow the EU to adopt 'protectionist agendas disguised as arguments about financial stability'. But John Kerr says 'Out is Out': the UK will have no seat in the European Council and no MEPs and will not be able to influence the EU's decisions. He suggests the UK should heed the words of the chief EU negotiator, Michel Barnier -- 'That is *not possible*'-- spoken in response to a British suggestion that the UK would fix its own economic regulations and standards after Brexit and have them recognised by the EU.

2 After the UK has left the EU it cannot go back in 'by the same door', by putting the Article 50 process into reverse. The UK will then become a non-member State, and to re-join it would have to go through the regular accession process. That process might be quite quick, he says, but the UK would lose all the concessions it now enjoys, including the rebate that Mrs Thatcher won for the UK in the 1980's.

3 Any extension of the 2-year negotiating period is unlikely because it would require the unanimous agreement of the 27 other states and because the UK has been such a fickle negotiating partner. The UK triggered Article 50 before it had worked out its position on Brexit, John Kerr says, and it wasted another 3 months having a general election before the talks could start; now the EU has 'moved on'. The EU 27 regard immigration and the risks emanating from Putin's Russia as more important than Brexit, which was not mentioned at all in the pre-election TV debate in Germany between Angela Merkel and her Social Democratic rival Martin Schulz.

However, if a British prime minister were to say 'Give us 6 to 9 months to consult the people' over the Brexit deal that emerges in late 2018, by means of a second referendum or some other form of 'democratic consultation', John Kerr believes the EU side might agree to give the British more time.

4 The UK has alienated its EU partners by behaving as if it is 'already two-thirds out'. John Kerr sums up the problem, saying: 'If you are going to ask for favours, don't insult them.' He cites a string of basic mistakes on the UK side: Theresa May's failure to attend the EU's celebration of 60 years since the

Treaty of Rome in March; Boris Johnson's scornful boycott of the EU foreign ministers' special meeting after Donald Trump's election; and the lack of solidarity the UK showed over major issues including the influx of Syrian refugees and bailouts to avert more crises in Eurozone states. The first rule of diplomacy, Kerr says, is: 'Turn up at meetings!'

5 This was the surprise item in John Kerr's 6-pack of 'big thoughts on Brexit': in case the UK should change its mind before the Brexit date, he says, it *can* legally withdraw its notice of intent given in the letter sent by Theresa May to European Council President Donald Tusk on March 29 this year. That situation would arise if the UK decided that the country's 'intent' to leave had changed. Would the UK lose its cherished rebate from the UK's contribution to the EU budget? 'No!', says Lord Kerr: the rebate was unanimously agreed by EU leaders, and the UK would continue to have a veto over its removal as long as it is a member state.

Such a U-turn by the UK would sorely test the patience of its EU partners, and John Kerr suggests that in that situation – a hypothetical one for now -- Britain might win back some credit from the core group of Eurozone countries by declaring that in future non-Eurozone states would not stand in the way of Eurozone measures aimed at achieving long-term stability among states using the euro currency .

6 Lord Kerr says the UK is in the right in the dispute over the 'sequencing' of the Brexit talks. As the author of Article 50 he says the EU has ignored the article's carefully-drafted wording, which calls for the Union to negotiate an agreement with a Member State that intends to withdraw 'taking account of the framework for its future relationship with the Union'. Instead, the EU 27 have demanded that the UK must first show sufficient progress on three specific areas – including the emotive issue of the amount of money it should pay into the EU's budget – before the future relationship can be discussed. The result is that any meaningful exchange about future relations looks like being pushed back to the end of this year, leaving less than 12 months before the deadline for an overall agreement to be approved by the European Parliament.

What is to be done? John Kerr urges Theresa May to use her big speech on Friday to set out a positive framework for the 'deep and special partnership' she has said she wants with the EU after Britain leaves. He suggests the UK could improve the climate greatly by offering to pay a substantial sum to the EU during a transition period of two to three years after Brexit, and proposing a strong defence, security and intelligence partnership with the EU 27. In the end, he says, 'No deal would be very bad for Britain'.