Three Days is a Long Time in Politics

On Wednesday Theresa May notified the President of the European Council, Donald Tusk, of the UK’s intention to leave the European Union. The six-page letter triggering the Article 50 process is here.

And the response? Donald Tusk was clear: ‘There is no reason to pretend that this is a happy day, neither in Brussels, nor in London. After all, most Europeans, including almost half the British voters wish that we would stay together, not drift apart. As for me I will not pretend that I am happy today.’ Tusk’s sorrowful generosity of spirit is in sharp contrast with the triumphalism of some pro-Brexit supporters in the UK.

David Davis’ Statement to the House of Commons (30 March 2017) on legislating for the UK’s withdrawal from the EU as a result of ‘last year’s instruction from the people of the United Kingdom’ (see it here or read it in Hansard) gave political sketch writer John Crace plenty of scope for wit.

Following the statement, Keir Starmer opened the debate by quoting from the White Paper, ‘The Government proposes using existing types of statutory instrument procedure’ but pointing out: ‘There are no enhanced safeguards for that sweeping use of powers.’ He went on to argue that ‘there have to be clear principles for converting EU law into domestic law. All rights and protections derived from EU law must be converted into domestic law, with no limitations, no qualifications and no sunset clauses.’ In reply, David Davis, who gave somewhat dismissive responses to members of the House who had the temerity to question his Statement, seemed to imply that Starmer’s carefully worded contribution was disloyal to the interests of the UK.

That was in Westminster. The following day, in Malta, Donald Tusk outlined the next steps from the point of view of the European Council. He outlined four issues for the first phase of negotiation: the status of EU citizens living in the UK; the need to prevent a legal vacuum for companies; the honouring of financial commitments, and the situation of Northern Ireland.

Meanwhile, in another part of the EU, on 29 March the European Parliament (EP) had presented a draft motion for a resolution on the Brexit negotiations, which will be debated and voted on by the full house on Wednesday 5 April. Article 50 requires that the EP gives its approval to the final agreement, and its lead negotiator is MEP Guy Verhofstadt. The text of the draft motion sets out the conditions for a final approval by the EP of any withdrawal agreement with the UK. In its present form, it may not encourage the UK negotiators. Take, for example, paragraph 6: ‘[The European Parliament] Recalls that … it would be contrary to Union law for the United Kingdom to begin, in advance of its withdrawal, negotiations on possible trade agreements with third countries’. Paragraph 7 warns against bilateral agreements between the UK and individual EU member states that have not been agreed by all 27. This may not mesh well with Theresa May’s statement in her letter that ‘we believe it is necessary to agree the terms of our future partnership alongside those of our withdrawal from the EU’.

The EP Statement of Positions is due in late April, and the Council’s Guideline on negotiation is scheduled for agreement at a meeting on 29 April. For a detailed account of the legal and procedural issues involved in the UK’s withdrawal from the EU, see here.
The outcome negotiations may seem more immediately critical in some parts of the UK than others. Donald Tusk’s statement on 31 March noted the need to ‘seek flexible and creative solutions aiming at avoiding a hard border between Northern Ireland and Ireland’, and added, ‘It is of crucial importance to support the peace process in Northern Ireland.’ In Scotland, where Brexit has fuelled the pressure for a second referendum on independence, the Scottish Parliament has published *Brexit: What Scotland thinks: summary of evidence and emerging issues*.

What’s next? A short video on the Council [website](http://example.com) sets out the process. Donald Tusk has already ruled out early negotiations on the UK’s future relationship with the EU: “Once, and only once we have achieved sufficient progress on the withdrawal, can we discuss the framework for our future relationship. Starting parallel talks will not happen.” The Timeline up to last Wednesday is [here](http://example.com) and the clock is ticking. Let’s hope that the UK does not end up like [Larry the Cat](http://example.com), sitting on the wrong side of a closed door.

**Margaret Watson, EDC Librarian**

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(The views expressed in this piece are the author’s and may not reflect those of the Bodleian Library)