



## **BREXIT: A CLASSIC EXAMPLE OF HOW NOT TO STRUCTURE A DEMERGER**

### **MVConversations with João Macedo Vitorino**

#### **Comparing Brexit to a corporate demerger highlights failings at both UK and EU level, and the consequences of delivering what the people 'want' rather than what they actually 'need'.**

The first rule of a demerger is you do not enter into one without a demerger plan. This is your baseline and starting point. But it should also be the end point if no plan is submitted to the shareholders. If you compare Brexit to a corporate demerger, one of the major distinctions is how everything has been clouded by politics. The UK Government put their 'demerger' from the EU to a public vote without so much as a plan in place nor any kind of detailed informative packet circulated to give the people the facts upon which to base their decision.

"This is where Brexit has inverted the entire logic of a demerger," explains João Macedo Vitorino. "There was no plan, and no scenarios given that truly outlined the costs of a 'demerger'. The shareholders of one side (the UK people) were asked 'stay or leave' but they weren't told what either actually meant. It has only been after the vote that all this has come to light, the Irish backstop being a classic example." If leaving is a possible scenario for every EU country, he adds, then the EU regulators should have in place a 'demerger plan' for those countries that choose to opt-out of the EU. The EU treaties should also have a full chapter dedicated to this, instead of taking for granted that being an EU member is such a privilege that no one will ever want to leave.

#### Informative Voting

In a demerger, the shareholders have a right to information, a right to understand what each scenario involves so as to be able to make an informed decision. The UK Government should have made all this information accessible, as should the EU. "Without this, in the strict sense, they are in breach of the minimum requirements for a corporate resolution and so any resolution voted upon should be nullified," he explains. And this has been a failing of both parties involved.

The UK is still an EU-member, but in the public eye the EU appears to be acting as if Brexit is solely a UK problem. "At EU level, the demerger has been discussed, but the shareholders haven't been consulted," says João Macedo Vitorino. "We have a 'demerger' where one side has put the decision to an (uninformed) public vote, while the other side's shareholders (the rest of the EU citizens) haven't had a say. EU citizens have not been asked what they think about the process nor the agreement put forward by the European Commission, something which should have been done as this decision affects us all as 'shareholders' in the EU."

#### All but rational thinking

A second but fundamental issue when entering into a demerger process is you need to have reasons behind the demerger and explain 'why' you are considering it before it has happened at all. And this 'why' has to be for the good of both companies' shareholders. Brexit 'has been sold', but rather than being 'sold' it is unfortunately based solely on UK internal political reasoning. "If you are motivated by issues



such as immigration or internal security, then you forget about your own country's needs," he explains. "In the UK, foreign labour continues grow and its economy over the past 40 years is based on an open market and its standing as the financial centre of the European Union." Not discussing this beforehand was not 'in the people's interests' but it was pure politics. Politics also took the lead on the EU side: EU representatives speak of the protection of EU citizens in the UK and of UK subjects in the EU, but the main concern is to set an example to other potential EU-leavers of the pain that leaving the EU can cause, says João Macedo Vitorino. "We cannot forget that certain individual national interests enter into play with the UK leaving the EU, which explains the different views we have seen in relation to extending the article 50 deadline."

#### A Lose-Lose Situation

Another consequence of not having a well-formed demerger plan is the lack of method when it comes to compensation mechanisms or knowing the ratio exchange between both parties. "A demerger, when it happens, is always seen as a win-win situation for both parties, otherwise, parties do not follow through with it. When you compare it to Brexit, what's so unique here is how there is a clear view assumed by all politicians and both sides that we're in a lose-lose situation," says João Macedo Vitorino.

Therefore, what should obviously have been addressed from the start is how you mitigate those losses. In a demerger you make a simulation that takes into account the costs and risks and adjusts accordingly, as well as establishing the allocation of assets, intercompany debt, tax positions, demerger expenses, consequences for employees, etc, he adds. There has been no mitigation of costs nor risks, and the 'assets' in this case are the advantages gained from forming part of the EU, and the losses that will be sustained upon leaving on both sides, neither of which were outlined prior to the definitive vote.

#### Fated to fail

Ultimately, while the comparison between Brexit and a demerger are structurally different, what we can say is that in Brexit everything is missing, says João Macedo Vitorino. "If this had been a demerger in the corporate world, it would have been doomed from the start. There was no demerger plan, no full disclosure of facts and information, and only the shareholders of one of the parties were consulted, although blindly."

Many demergers measures fail precisely because the shareholders cannot agree on compensations, division of assets, etc, before taking the final decision to demerger. But they fail with the agreement of both parties, and before any form of decisive voting has taken place. "We're discussing the first demerger between two EU countries and, without a precedent, we should be even more careful to ensure we get it right, proceeding only if it's in the best interests of both parties," he concludes. For Brexit, therefore, the logical conclusion would be to stop this now. But just like the lack of demerger plan, 'logic' is another thing that has been missing from the get-go.