

# Negotiating Brexit:

## Where Now?



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## *Where Now?*

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# FOREWORD

*Hussein Kassim, Simon Usherwood*

Amidst the political debate surrounding Brexit in the UK, the views of the EU27 are often overlooked. Or worse, they are assumed or imputed, with no reference to evidence or research. How often since 2016 have we read or been told that the EU will eventually accede to UK demands since “they depend more on us than we do on them” or that German car manufacturers will make Berlin – and through Berlin, all other member states – see sense? Similarly, as UK ministers embark on yet another charm offensive, the story is that if only HMG can speak directly to its counterparts and bypass “Brussels”, it can move the negotiations along towards a satisfactory conclusion.

In the wake of the October 2018 European Council, envisaged as the decisive moment when agreement on a withdrawal treaty was reached, we look at the view from other national capitals and the EU institutions. The aim of this publication is to collect the perspectives from the EU side on the state of the negotiations, what progress needs to be made, and what the future holds as the clock ticks towards 29 March 2019. It has been produced as part of a wider research project, “Negotiating Brexit: national governments, EU institutions and the UK”, which was set up to examine the responses of other member states, as well as the European Council, European Commission, and European Parliament, to the UK referendum and monitor their approaches to the Article 50 negotiations. Its purpose is to understand the attitudes, interests, and negotiating positions of the UK, partners. The project is funded by the UK Economic and Social Research Council (ESRC) under its ‘Brexit Priority’ scheme. Grant number: ES/R001626/1

In the pages that follow, specialists from the project address the following questions on the country on which they are expert:

- What was the reaction to the UK referendum? What approach has your government taken, and what considerations and influences have shaped it?
- What have been your governments main concerns in the Article 50 negotiations, and what are its priorities in negotiating the Withdrawal Agreement? What kind of future relationship between the EU and the UK would your government like to see?
- What are the prospects, especially after Salzburg and the run-up to the October European Council, for an agreement and orderly Brexit?

The conclusions are sobering. The EU27 remain largely attached to the principles adopted by the European Council on the Sunday following the UK referendum. Although they view the UK’s departure from the EU as a cause for regret, and many will suffer economic damage, the integrity of the Single Market and EU unity matter more. Importantly, they do not want a “hard border” in Ireland and they support the Good Friday Agreement. Furthermore, they believe that Michel Barnier is doing an excellent job as EU negotiator.

As editors, we should like to express our gratitude to the authors for contributing such insightful pieces, and to Richard at Anchor Print yet again for his excellent work.



Hussein Kassim



Simon Usherwood

For more information about the project, news, and future publications, see <https://www.uea.ac.uk/political-social-international-studies/research/negotiating-brexit>

Twitter: @NegotBrexit



# AUSTRIA AND BREXIT 2018: THE IMPACT OF THE AUSTRIAN EU COUNCIL PRESIDENCY

*Sonja Puntsher Riekmann*

What are the effects of Austria's 2018 EU Council presidency on Brexit negotiations? One is tempted to respond: none. Such was the reply of the Austrian Chancellor Sebastian Kurz in an interview of August 2018: "We play a very minor role in this". This echoed previous statements. While members of the Austrian government repeatedly described Brexit as the most important issue for the EU during their presidency, they also insisted that Austria stands fully behind the chief negotiator Michel Barnier and that the main task of the Council presidency is to ensure cohesion among the 27 member states. The extent to which the impressively consistent position of the 27 is due to Austrian policy is debatable. However, even though Prime Minister May held talks with the Austrian chancellor and the minister of European Affairs in August 2018, Austria's position remained unchanged, the Salzburg Summit ended with criticism of the Chequers plan and the isolation of the British Prime Minister. It is unknown whether the Austrian Presidency made any attempt to act as a broker. In an informal talk, a former senior official of the Austrian Ministry of Foreign affairs raised serious doubts about the preparedness of the Austrian government to

help with this difficult matter.

At the beginning of the Presidency in July 2018, Chancellor Kurz visited May in London and also met the Irish Prime Minister Leo Varadkar. In a press release, Chancellery Kurz emphasized the importance of good and close bilateral relations with the UK after Brexit: "We want to ensure that also after Brexit the EU and Great Britain work together as closely and well as possible. We need to avoid a hard Brexit and a hard border between Northern Ireland and the Republic of Ireland. As the member state holding the EU Council Presidency, we endorse chief negotiator Michel Barnier." And he expressed a wish to achieve clarity on the form of Brexit as quickly as possible. After his meeting with the Irish PM, the Austrian Chancellor reiterated his support for the Irish position "to definitely avoid a hard border". Visiting the border zone the Chancellor referred to the past conflict which he saw as resolved "precisely because a hard border solution had been avoided." He gave no hint about how a resolution might look this time, but referred once again to Barnier.

The Council Presidency saw two further UK

minister visits to their Austrian counterparts in Vienna in July and August 2018: Secretary of State for Business, Energy and Industrial Strategy Greg Clark and Secretary of State for Foreign and Commonwealth Affairs Jeremy Hunt. Perhaps the most interesting encounter was that between Clark and Vice-Chancellor Heinz-Christian Strache, who is also leader of the far-right Freedom Party (FPÖ). If Mr Clark had been hoping for a more sympathetic hearing from the FPÖ, he was disappointed. The FPÖ's anti-Europeanism and anti-immigration position had been reinvigorated in opposition under the leadership of Mr Strache against the background of the post-2008 Euro-crisis and refugee movements in 2015. These issues dominated the presidential election in 2016 in which the Eurosceptic candidate of the Freedom Party and the pro-European candidate of the Green Party competed in the run-off ballot, when for the first time since 1945 the candidates of the two traditional parties were defeated. Whereas the Green candidate Alexander van der Bellen finally won by 54%, in the campaign the Freedom Party candidate Norbert Hofer unveiled his sympathy for the outcome of the Brexit referendum and hinted about

the possibility of an “Öxit”. In the wake of the French presidential election campaign, Hofer also briefly supported Marine Le Pen’s advocacy of a withdrawal from the Euro. He eventually backed down from both positions claiming that they had been misinterpreted. What he really wanted was a change in the EU to avoid further exits.

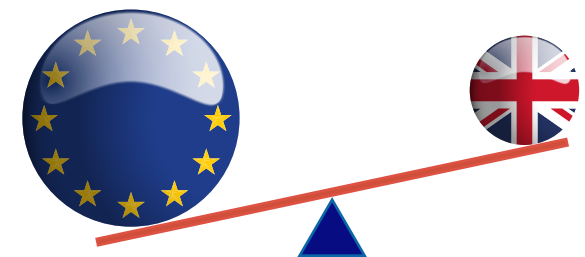
The national election of 2017 resulted in victory for the conservative People’s Party (ÖVP) The FPÖ came third behind the Social Democratic Party. It quickly became clear that a reprise of the traditional Grand Coalition had been ruled out by the new ÖVP party leader, Sebastian Kurz, who engaged in coalition talks with the FPÖ. While the two parties had by and large converged with regard to the migration issue – time and again Kurz had stylized himself as the successful closer of the Balkan route – the same was not true of their approach to the EU. Having been the political driving force behind Austrian EU membership, the new ÖVP had to integrate the Eurosceptic FPÖ, which was eventually achieved by including a commitment to the EU in the preamble of the coalition accord. At the same time, both parties agreed to the negotiation of a “subsidiarity pact” with EU partners, which would substantiate the subsidiarity clause of the Treaty on European Union, as a major goal of the Austrian Council presidency. Brexit was invoked as part of the justification for this measure. Commission President Jean-Claude Juncker reacted by setting up a task force on subsidiarity, which included a former

leader of the parliamentary party group of the ÖVP. The report produced meagre results, and the topic has since disappeared from Austrian public discourse.

Be that as it may, after Clark’s visit the FPÖ vice-chancellor appeared to have dropped his earlier view that the UK’s future would be bright outside the EU. In the joint press conference, he stated that as vice-chancellor, he was not in a position to predict the future. Although he opposed revanchism of any kind against London, he was not prepared to tolerate British cherry-picking, especially in regard to the four freedoms. He rejected the British criticism of the Commission as hardline and repeated Austria’s support for Barnier, “who is negotiating for the whole EU”. Somewhat surprisingly, Mr Strache praised the Commission that “from the start had aimed at reaching an orderly exit of the UK and at defining the basis for future relations.” This was intriguing as until then the Commission had been one of the FPÖ’s favourite targets for criticism. Mr Strache added that the overall goal is to construct a close relationship with the UK built “on a fair balance of rights and duties”. He welcomed the Chequers White Paper in principle, but expressed concern on a number of questions, though he only mentioned the Irish border as a concrete example. While at the time he avowed the Austrian presidency’s commitment “to do whatever it takes to ensure intense and fruitful negotiations”, there has been little visible activity on the part of the junior government

partner. If driving a wedge between the two coalition partners, or within the EU27, had been Mr Clark’s purpose during his visit to Vienna, then it clearly failed.

Significantly, Brexit is not an issue of contention between government and opposition. In the first place, all opposition parties are pro-European. Thus, while all of them regret Brexit, they have not come forward with any alternative approaches to the current negotiations. Second, the 2017 election has altered the party system. The SPÖ, which has become somewhat unstable, had had a hard time defining a new role for itself on the opposition benches. Torn by a left-right divide with particular regard to migration, it is in a process of leadership change. The outgoing party leader and former chancellor Christian Kern has left the helm in order to position himself as social democratic *Spitzenkandidat* for the EP elections in Austria and possibly beyond. The Green Party has been voted out of parliament and is party at drift. Positioning itself on Brexit has not been a major priority. The centre-liberal NEOS Party, meanwhile, regrets the departure of the UK as a liberal member state, but remains staunchly pro-European.



It has been the business chamber (WKÖ) and the representation of big industry (Industriellenvereinigung) that have expressed real concern about Brexit. They are fearful of the void that Brexit will create in terms of advocacy of market liberalism in the EU. The WKÖ believes that Brexit will damage the UK economy more than the EU, since the EU accounts for almost half of UK trade, while only 6.5% of EU exports go to UK and 3.8% account for imports from the UK. For Austria these figures are even lower. So although access to the UK market is important for Austria, it will suffer considerably less than Ireland or Germany, even if Austrian industry forms part of the supply chain for many German (automobile) manufacturers. The WKÖ fears that problems might arise from new tariffs and non-tariff trade barriers, the end of mutual recognition of technical norms, standards and educational certificates, difficulties with the availability and posting of skilled labour, as well as legal uncertainty and exchange rate risks. Hence, a swift negotiation of the withdrawal agreement to end uncertainty is paramount for Austrian entrepreneurs. On its website the WKÖ has posted a number of analyses of the consequences of Brexit for Austrian firms, checklists to prepare for all eventualities, and links to relevant European information sites. It has also set up a special office to help clients adapt to Brexit.

Moreover, during the election campaign of 2017 two major questions were voiced: Who is to fill the gap in the EU budget after the departure of such an important net-

payer? And who is to inherit the EU agencies currently located in London? After the shock had passed, not only the Austrian political establishment, but the public at large realized that there will be positive and negative implications of Brexit.

With regard to the first question, the reaction was immediate, unequivocal and largely consensual: Austria will not pay more into EU coffers. This was the message of the ÖVP finance minister and one which most parties in parliament lent their support. It was reiterated in the context of the Austrian EU Council presidency, which would oversee an important phase of the Multiannual Financial Framework negotiations. Two aspects were of major concern. First, if the current budget is to be maintained without UK's contribution, others have to step in or pay-outs will have to be cut. Second, the gap may make Brexit negotiations and settling the divorce bill more difficult. As a net contributor, Austria has an interest in keeping its contributions stable and is not prepared to compromise. Interestingly, though, in the course of 2018, the proclamations on the issue have diminished. It seems as if the Austrian government has gradually appreciated that it may be necessary to compromise, but would prefer to do so out of the public eye.

Austria also took part in the battle for the spoils of Brexit, i.e. European Medicines Agency (EMA) and the European Banking Authority (EBA). Despite the campaigning for Vienna as the ideal place to relocate them, Austria lost to Amsterdam and Paris.

## Conclusion

Whereas the Austrian government defined Brexit as one of the top priorities of its EU Council presidency, its own impact on negotiations appears to have been marginal. The government has time and again pointed to negotiations as the task of the Commission and Michel Barnier in particular, who enjoys the full support of the Austrian presidency. Austria defines its own role as consensus keeper among the 27 member states. In that respect it has been successful. Even the Eurosceptic coalition party FPÖ has refrained from voicing opposition to the EU and praised Barnier's negotiation skills – at least in public. The visits of PM Theresa May and other members of the British government to their Austrian counterparts during the presidency appear not to have produced results. The overall impression is that Austrian elites, as well as the public, have come to the conclusion that Brexit is irreversible and that it needs to be brought to a fruitful end soon so that certainty can be restored, in particular for Austrian business and firms.

# THE VIEW FROM THE CZECH REPUBLIC

*Petr Kaniok*

The discussions that started in the United Kingdom in 2013 when David Cameron delivered his Bloomberg speech did not receive much attention in the Czech Republic. The speech itself was noticed by only a small group of politicians: the then Prime Minister and ODS leader Petr Nečas; Jan Zahradil, an influential MEP from the same party; Přemysl Sobotka, vice-chair of the Senate; and Libor Rouček, a then MEP representing the Czech Social Democrats. And for a long time that was all – Brexit received no mention as a possible scenario, even in the governmental EU mid-term strategy that was published in May 2013.

UK-EU relations only started to attract attention in January of 2016. That same month, David Cameron visited Prague and discussed with Czech Prime Minister Sobotka the Czech positions on a deal on British membership. The Czech Republic expressed its support for some British demands, such as equal treatment of Eurozone and non-Eurozone EU countries, deepening of the internal market, and increased competitiveness. However, it rejected any attempt to limit the free movement of people. Even though there was also disagreement on social benefits, Cameron was given support for a majority of his demands.

The position of the Czech government did not change over the following months. In the beginning of February 2016, the coalition supported the UK's four main demands. The only significant reservation concerned social security/benefits, where the Czech government requested that the safeguard mechanism should apply only to newly arriving citizens. The Czech government also requested that the obligation to pay social benefits would remain with the country where the person lives or works. Regarding economic governance, the government warned against a deepening gap among Eurozone and non-Eurozone members. As the Czech government felt that its concerns were reflected in the deal agreed at the February 2016 European Council summit, it supported it without objection.

## The Referendum and After: Stability

The result of June referendum was perceived by the majority of Czech politicians – though not a minority of Eurosceptic hardliners – as very bad news for the UK, as well as for the Czech Republic and the EU as a whole. No major political party attempted a constructive interpretation of the result.

A day later, the Czech government signed a joint declaration of the Visegrad countries, which featured a key demand for the protection and equal treatment of EU citizens in the United Kingdom. The Visegrad platform was used repeatedly in the following months as a coordination tool, particularly prior to European Council meetings. Brexit and its consequences were also the main topic of a speech delivered by Prime Minister Sobotka on 30th June in the House of Deputies.





This speech outlined preferences for the first phase of the negotiations – a peaceful and rational divorce resulting in a fair deal, and the protection of Czech citizens’ rights and interests in the United Kingdom – which largely echoed those of the EU. The government’s position on the indivisibility of the four freedoms and the non-discrimination of EU citizens living in the UK has remained substantially unchanged. The same is true of the “follow the EU approach”. The government has repeatedly expressed its support for EU positions on Brexit. It called for a constructive approach to the negotiations and also warned against any effort to punish the United Kingdom.

In the first months after the referendum, Brexit was framed by some as a “window of opportunity” – to reform the EU, to recruit top British researchers, and to move agencies from the UK to the Czech Republic. Thus, the government bid (unsuccessfully) to provide a home for the European Banking Authority (EBA) in April 2017. However, interest in Brexit declined over the summer as political attention was directed towards the October 2017 parliamentary elections. The election results, which resulted in defeat for the Sobotka cabinet, reinforced the trend. The process of forming a new government took almost 9 months and politicians focused on domestic issues rather than on EU affairs. For example, Czech politicians did not respond publicly to Theresa May’s speech on future relations between the UK and the EU.

When the ANO 2011 government, installed in office in December 2017, failed to win a vote of confidence, its concern about EU matters shifted to finances. Brexit was repeatedly mentioned in this context in terms of the future EU multiannual financial framework. However, even though acting Prime Minister Andrej Babiš had talks with Jean Claude Juncker, Michel Barnier and David Davis during the winter and spring of 2018, Czech involvement in the negotiations was low profile and went little beyond support for the EU approach or reiterating EU positions. Nor did the Czech position change after the second Andrej Babiš government – a minority coalition consisting of ANO 2011 and ČSSD was installed in the beginning of June 2018 – won a vote of confidence. The Czech position was reiterated in the new Czech PM’s meeting with Theresa May in Salzburg in mid-July 2018. In short, the Czech government was concerned about two issues: the protection of the rights of EU citizens based in the UK, and the indivisibility of the four freedoms.

### **Future Development: Keeping a Low Profile**

Czech politicians have not aspired to take a high profile as a player in Brexit. This is unlikely to change in the coming weeks and months for several reasons. First, the existing approach has proved effective and is producing results. Czech preferences that were articulated and advocated in the first phase of the negotiations have not been contested and remain part

of a wider consensus on the EU. The low profile approach has appeared to improve – and certainly has not damaged – the Czech reputation in the EU. Second, Brexit is not an issue that resonates with the public. There has been no serious discussion about a “Czexit”. Third, no significant political party has challenged the EU position as defined in February 2017, which demonstrates that the issue has almost no political salience and does not attract wider interest. Third, the ANO movements EU priorities lie elsewhere – with migration and the budget – not with Brexit.

To summarise, it would be mistaken to expect any significant Czech contribution or input in the final months of the Brexit negotiations. At the political level, the Czech government will very likely continue to follow and support the EU mainstream. From this perspective, Mr. Babiš’s comment to the BBC during the September informal European Council expressing hope for a second referendum in the UK should be regarded as an exceptional rather than a new turn in the Czech approach to Brexit.



# NEGOTIATING IN A LIGHT ROOM – BREXIT FROM A DANISH PERSPECTIVE

*Mads Dagnis Jensen and Jesper Dahl Kelstrup*

## The final count down

As negotiations over Brexit have progressed only slowly in 2018, a “no deal” scenario has become increasingly realistic. Danish officials did not consider “no deal” a possibility a year ago, but important and difficult issues remain in the negotiations, such that even if agreement is reached between the UK government and the EU27, it could be rejected in the House of Commons. As a result, preparations for a possible “no deal” have begun in Denmark and other member states. For example, more customs personnel have been employed.

## The Chequers deal

The impression from a Danish point of view is that the negotiations are proceeding well when it comes to technical matters. However, progress has been slow on matters of high politics. This is especially so on the issue of the Irish border, but extends also to the so-called “governance structure”: How can it be ensured that an agreement between the UK and EU will be honoured in practice? And, what role should the Court of Justice of the

European Union play? Needless to say, that this is a sensitive political issue for both the UK and the EU.

According to Danish officials, the EU27 made a conscious move to welcome the Chequers plan and the White Paper produced by the British government in July 2018, even though the content is very far from anything the EU could accept. For the purpose of the negotiations, it was important to recognise that the UK had finally produced a proposal, and the Chequers plan has created a new momentum in the negotiations. However, some of the finer details appear contradictory, which has prompted the EU to ask for clarification. In many cases, the contradictions reflect either compromises within the UK government, either as a strategy to postpone tough choices or an assumption that the UK can have its cake and eat it.

The EU27 reacted to Chequers deal and the White Paper in a meeting of the Council in late July 2018. From a Danish point of view, there was a good dialogue with the Commission on how to interpret the White Paper. The Brexit task force in Denmark gathered opinions and questions from various ministries and

stakeholders, which it took to the Commission. An important exercise has been to find areas of convergence between the EU27 and the UK. One such area is security where the future relationship seems promising. Moreover, the Chequers deal and White Paper recognised the principle of a level playing field in some areas of regulation and services.

The resignation of a number of UK ministers following the launch of the Chequers plan has influenced the dynamics of the negotiations. The interaction between Dominic Raab and the EU, for instance, has been more intense than was previously the case. Raab and Michel Barnier meet approximately once a week, which is a considerably more frequent as compared to David Davis who was rarely in Brussels. Thus, the exchange at the political level has intensified. Yet, the Chequers plan has not significantly changed the position of the EU – or of Denmark.

## No fudging

The key position for Denmark is that the UK cannot continue to “fudge”. There must be a balance between rights and obligations in any deal. In terms of the outcome of the

negotiations four possible scenarios are envisioned. First, a hard Brexit where the WTO rules will apply. Second, a free trade agreement where the UK gets some market access with a few extra commitments (the “Canada” option). Third, an EEA agreement where the UK remains part of the single market, but becomes a rule taker from the EU (the “Norway” option). A fourth bespoke model might also be possible as long as it follows the principle of parity.

The current UK position, however, is interpreted as a “fudge” in the sense that it wants to be in parts of the single market for goods without following the full set of common obligations. It is unlikely that the UK will get such a deal, as it would allow UK companies to follow different standards to those that apply to companies in the EU27 and thus to gain a competitive advantage. From Denmark’s perspective, it is important to make sure that Danish companies are not at risk of being outcompeted in the future because British firms have been allowed to play by rules other than those of the EU’s single market. As other countries in the single market account for roughly 50% of Danish exports a simple cost-benefit analysis suggests that the single market will remain more important than exports to the UK market, which accounts for some 5-8% of Danish exports. Although Danish agriculture will be among the industries most adversely impacted by Brexit, there is broad recognition among Danish stakeholders, including the Danish Farmers Association, that

the rights and obligations in the Single Market must go hand in hand.

## **Hard Brexit is not doomsday**

How Denmark should deal with a “no deal” scenario is being considered more seriously by the government. As negotiating trade agreements with third countries is the prerogative of the EU, Denmark would have to await the Commission initiation of a new process of (re)-negotiations with the UK in case of no deal. Preparations are therefore being made for coping with such a situation. The exercise is primarily administrative in terms of following the rules for engaging with third countries. As with other Brexit-related issues, the task force is asking ministries and stakeholders to collect intelligence on the areas that will be affected and to prepare contingency plans. The task force has also developed an overall plan developed for handling a “no deal” Brexit. In practical terms, the tax authorities have hired 50 new customs officers to cope with trade with the UK after Brexit.

From a Danish perspective, a “no deal” Brexit will be a significant administrative challenge but not doomsday. The default option will be to treat the UK like a third country. It is not in Denmark’s interest to be too specific about how it will deal with different types of Brexit as this explicitly or implicitly could play into the bilateral negotiations with the UK. Instead, Denmark is trying to coordinate as much as possible in EU27 to avoid breaking ranks and

undermine the EUs negotiating position. The same approach seems to be taken by other member states. A contributing factor behind the EU27s unity is the coordination taking place in transnational interest associations, such as Business Europe. Moreover, the strong unity among the EU27 is a function of the slow progress in the negotiations, which remain focused mainly focused on the general principles of the divorce rather than future interaction in specific policy areas.

## **The Danish negotiating position**

The Danish negotiating position is strengthened by the strong congruence between the aggregate interest of stakeholders and the position of the government. This is not a given as stakeholder interests are based on economic calculations, whereas the government interest also takes into account EU policy calculations and a broader geopolitical perspective. The position of the Danish government is based on a mapping exercise, which took place shortly after the results of the Brexit referendum in 2016 and has remained in place since. Still, whenever there are changes in the negotiations between the UK and EU, the various ministries and their stakeholders are consulted for their opinions on the possible consequences for their respective domains.

The Danish parliament is continually involved in the process, following its historically strong role in EU affairs. The parliament’s European Affairs Committee is kept informed of the

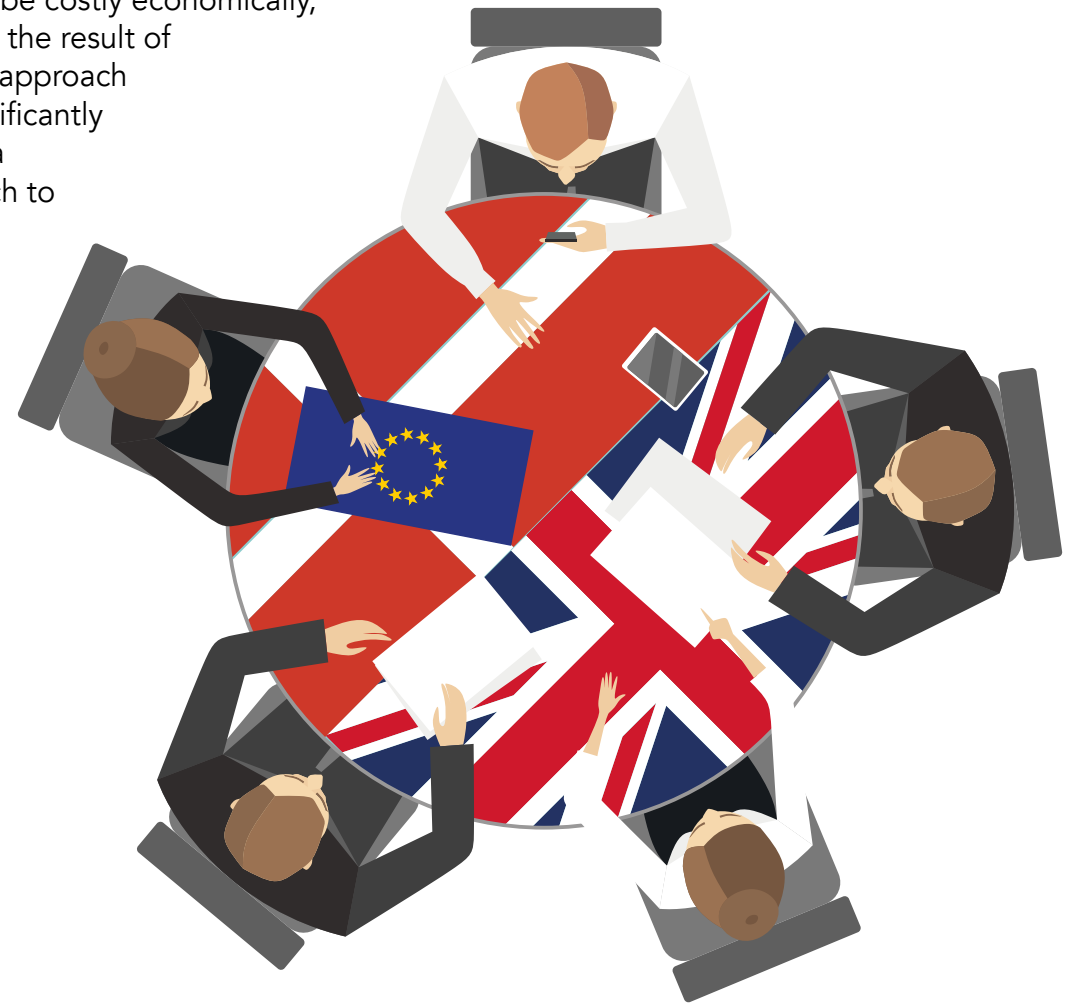
progress in the negotiations and the relevant ministers appear to obtain a negotiating mandate prior to important decisions taking in, for instance, the European Council. There is general support for the Danish negotiating position and tactics among parliamentary parties. The Brexit negotiations are perceived as a question of Danish national interests, which overrides everyday party political disagreements.

Among the broader public, Brexit and its impact on the EU and Denmark is not a highly political issue. Yet, the implications of Brexit have rather unexpectedly resulted in increased support for the EU in the public. That has been used as a vehicle by some politicians and stakeholders to make the case for the advantages of the EU in general and the single market in particular.

### Negotiating in a light room

Danish Business organisations have been approached by the British embassy in Denmark. The UK embassy has tried to convey the idea of a deep and special partnership, and to argue that it is in the interest of all that the UK gets a good deal. Nevertheless, for Danish business organisations, the single market is an asset that needs to be protected. A discourse on a deep and special relationship does not change that, and Danish business has been concerned not to allow a rift to open between the largest business organisation and the Danish government. Where Danish business does take a different view from

government, the issue is handled in outside the public eye. In the words of one of our interviewees, it has been “a bit too much light in the room” for the UK strategy to succeed, and even for the UK to think that it might succeed. In terms of coping with the potential distributional consequences of Brexit, policy coordination in Denmark has followed a horizontal strategy to minimize potential costs. Though Brexit will be costly economically, it is estimated that the result of a sector-by-sector approach would lead to significantly higher costs than a horizontal approach to the negotiations.



# BREXIT – A FRENCH PERSPECTIVE IN OCTOBER 2018

*Christian Lequesne*

## French society and Brexit

There is more debate about Brexit in France since Theresa May proposed her Chequers plan. Beyond the experts, most French people, as Europeans elsewhere in the EU, have found the negotiations with the EU27 a great deal less complicated than domestic debates in the UK. Will the PM secure parliamentary approval for her deal? Will there be a second referendum? If the Labour Party were to win the next general election, would it stop Brexit altogether? These have been the issues speculated about in French political debate since July 2018. Many in France are now alert to the possibility of a “no deal” and aware that such an outcome would require huge bilateral work to allow normal business between France and the UK to continue.

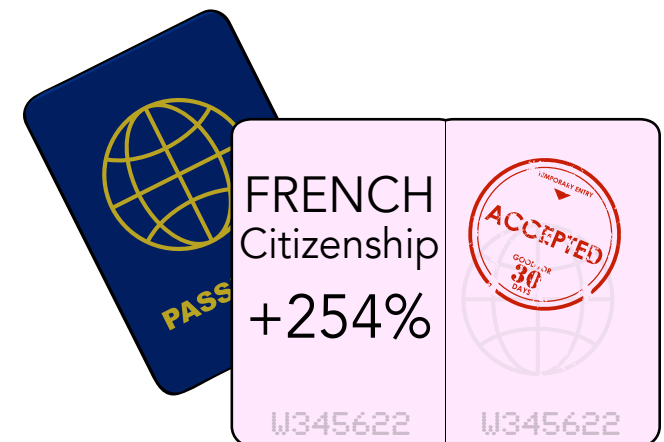
For the experts, it has never been easy to convince the French public that the UK has contributed positively to the EU since 1973. The areas where the UK’s influence has arguably been greatest – its contribution to the establishment of the Single Market and to the enlargement of the EU toward Central and Eastern Europe – are not achievements that are considered unequivocally positive in France. Indeed, they are often perceived to have taken the EU in a neoliberal direction

that ran counter to the “right model” for Europe.

The fate of the 300,000 French living and working in London is a greater concern. One not-unpopular view is that London-based expats decided to cross the Channel in order to avoid paying their taxes in France and are now facing the consequences of their decision. Of course, this is somewhat reductionist. It neglects the large number of young French people who work in all kinds of jobs – pubs, fast food, au pairing – because of limited job opportunities at home. For the moment, the French diaspora in London has not decided to go return en masse to France, even if for the first time in the last fifteen years, French and Franco-British schools in London (there are 14 in total) have received fewer applications for the school year from French families. There are also vacancies for residency permits – permanent for persons who have lived in the UK for at least five years and provisional for others. Some French citizens settled in the UK for longer have even applied for British citizenship, but they remain a minority.

If France has around 300,000 citizens living in the UK, between 150,000 and 400,000 UK citizens are permanently based in France.

Precise numbers are unclear, but British citizens are mostly to found in rural areas where they own properties. As yet, there has not been any xenophobic turn against British expatriates in the wake of the UK referendum. Small cities and villages in France are used to “their” Brits. Since 2016, British applications for French citizenship have increased by 254%. A considerable number are from the South-West of France, notably the Lot, the Dordogne, and Charente. Similarly in London, the French General Consulate has to deal with an increase in applications for French citizenship, mainly from the British partner in Franco-British couples.



## Economic worries and hopes

In France, worries about Brexit extend across several economic sectors. Fisheries is one. In 2017, Northern France, Normandy and Brittany vessels made 50% of their catches, representing revenues of €110 million per year, in British waters. French fishermen want to retain their fishing rights in UK waters. Transport companies, which operate between France and the UK, also worry for their future. The French food industry is concerned about the post-Brexit weakening of the pound, which had a negative impact on orders from across the Channel.



French-led banks and hedge fund managers in the City have monitored the negotiations without yet taking decisive action. For London-based French bankers, Jeremy Corbyn's election would be a bigger business threat than Brexit. Such an outcome could lead them to move – but not necessarily to France.

There are also moves in the opposite direction. Chanel Holding moved to London in September 2018. According to some business sources, the number of French-led SMEs and start-ups has increased since the 2016 referendum. These businesses want to ensure that they are firmly established before the UK's departure from the EU actually takes place.

Some commentators have highlighted the opportunities created by Brexit for the French financial sector. French politicians and representatives of financial services endlessly repeat in the media that Paris has the chance to attract financial companies from the City of London. But at the current time – beyond France's successful bid for the European Banking Agency, which will transfer from Canary Wharf to Paris – the number of financial sector workers that have actually moved from the City of London remains limited. HSBC reports a total of 1000 people, while Crédit Agricole estimates that 6-7% of their staff could move to Paris if London loses access to the European Financial Passport. Paris appears to be more attractive than other continental cities, and not only due to its size. Banks need square meterage for offices, houses for their staff, and bilingual schools for their staff's children. The latter appear to be in more abundant supply in Paris than in Frankfurt or Dublin.

## President Macron and Brexit

Brexit negotiations take place as President Emmanuel Macron is preparing an EU narrative

for the 2019 European elections. Macron has delivered several speeches on the EU, including at the Sorbonne on 26 September 2017. Macron's speeches are addressed mainly to the 20-25% of pro-EU French voters who supported him. The rest of the French population is either sceptical about or indifferent to the EU. A recurrent theme is that Brexit is an opportunity for France to re-launch the EU together with those who believe in it. Calls from the pro-EU camp in France for a strong Franco-German relationship are hardly new. However, Chancellor Merkel's political capacity to get things moving in her own party and in her coalition with the SPD is limited. The reaction to Macron's grand ambitions from Germany, in particular, and from the other member states more generally, has been muted to say the least.

As usual, the most difficult topics in the Brexit negotiations have been left to the end. Macron has always been clear that the UK cannot implement a Single Market à la carte. On this issue, he has the backing of a majority of member states. The French administration gives its full backing to the EU Negotiator Michel Barnier and his team on the question of the Irish border. At the same time, Macron has always been clear that the EU door remains open to the UK. A change of government in the UK or new referendum leading to the reverse of Brexit process would find support in Paris.

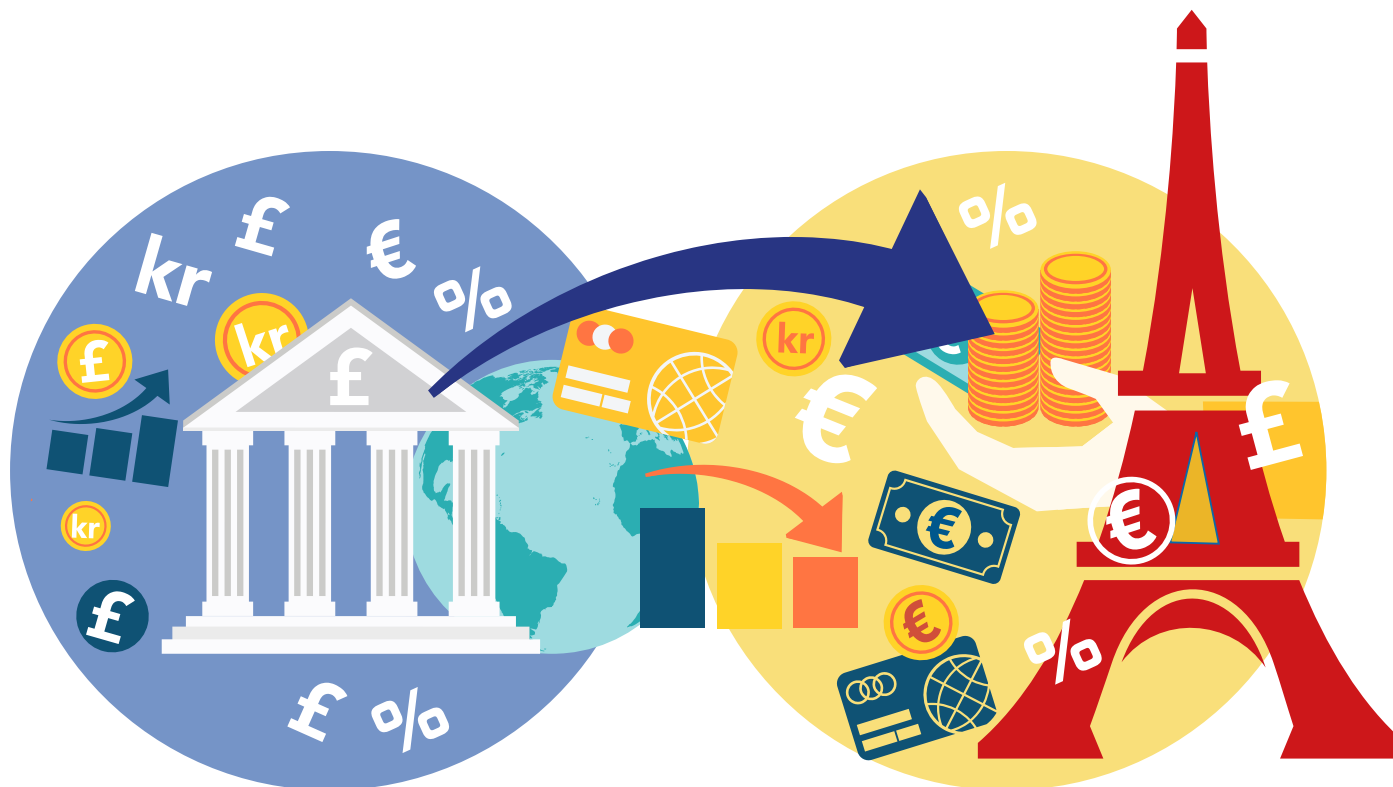
## Conclusion

France has its own Eurosceptic parties both on the left and right of the political spectrum. These parties secured 45% of the total first-round votes in the 2017 presidential election. But French Eurosceptic voters do not support a French exit from the EU along UK lines. Even exit from the Euro is not popular among French Eurosceptics. One of Marine Le Pen's mistakes during the presidential campaign was to put on the agenda the withdrawal of France from the Eurozone, as many FN voters, especially among the middle-class part of

her electorate, were against an exit from EU and from the Euro, due to worries about the impact on their savings. This explains why Le Pen had to create a somewhat strange narrative at the end of her campaign, saying that she wanted to go back to the French Franc but without renouncing the Euro – a proposal which makes little sense from an economic point of view. The resignation of Le Pen's lieutenant Florian Philippot from the FN is also linked to this debate. Philippot was heavily criticized inside the party for having wrongly recommended to Le Pen a retreat of

France from the Eurozone at the beginning of her campaign.

Even among the most established Eurosceptic party, Brexit is seen as a British idiosyncrasy that has its own logic, but is not an example that France should follow. Migration as an issue, which was key in Brexit, is much more important in the French critique of the EU than the question of leaving or remaining in the EU.



# NEGOTIATING BREXIT. THE GERMAN VIEW

*Eva Heidbreder*

## **A preference for, but increasing doubt about, an orderly exit and close relations**

Overall, the German position vis-à-vis the Brexit negotiations remains unchanged since the initiation of negotiations: continuing regret over Brexit that is considered a “lose-lose” situation; an unequivocal backing of the European Councils negotiation mandates to chief negotiator Michel Barnier; and, clear commitment to the necessity of an orderly Brexit. The notion of an orderly Brexit, from a German perspective, means above all an exit that is compatible with the EU’s legal principles. This includes workable solutions of the main remaining negotiation issue – the question of the Irish backstop and the free movement of people and products. In line with the European Council in Salzburg in September 2018, the Chequers plan is not considered viable in this respect. For both relevant political actors and for the wider public this fundamental legal understanding of the negotiations appears self-explanatory.

Notions of “political solutions” that do not follow a strict rule-of-law principle along Article 50 but suggest that the Brexit negotiations can be derailed on a purely political process have thus not resonated.

This was probably most clearly expressed in a German press conference in January 2018. Asked about the visit of two British cabinet members to Berlin, the official speaker of the Chancellor, Stefan Seibert, replied: “I can only speak for the Chancellery that no meetings are planned. I do not know who was contacted before this visit. I just know that [Chancellor of the Exchequer Philip] Hammond told the media beforehand that he was happy to meet German companies or economy in order to lay out the British position”.

Given the very straight and unchanged line that negotiations, firstly, are to be conducted according to Article 50 and, secondly, that the future of the EU27 and the integrity of the single market have absolute priority, German negotiators have mainly been frustrated about the lack of a reliable British government position. Economic actors have not diverged from the main line taken by the government. Apart from this, there is no substantial public debate over Brexit. While the government has considered the option of a “no deal” or “cliff edge” Brexit a possibility since the start of the negotiations, this is something that the media have only begun to discuss as the deadlines for a deal draw closer. The focus is mainly on the probable divesting effect on Britain and much less on negative effects for Germany.

## **The German government: little debate, few diverging voices**

Since the general elections in September 2017, German governmental politics have mainly focused on internal issues, above all quarrels within the coalition government. While there was some debate over Brexit in the initial phase after the referendum in 2016, the German government position that was soon after established in line with its EU27 partners has not been changed or substantially challenged since. Despite the changes in the Foreign Ministry – the current Minister Heiko Maas is the third in office dealing with the Brexit negotiations – has not changed the German approach in any respect. The Chancellor keeps her dominant role in EU-affairs and also Brexit issues. If anything, the German government is marked by continuity and absolute stability in its approach and position on Brexit. Unlike the French President Emmanuel Macron who has started to develop concrete measures in face of a possible “no deal” scenario such as employing new border posts, Angela Merkel and the government remain much less solid in their statements on Brexit. Instead of listing specific German measures for a “no deal” scenario, Germany continues to stress the will for a deal



and to uphold the EU's red lines.

German internal coordination is particularly remarkable for the fact that the 16 governments of the federal states – the Länder – have successfully established themselves in the German position-formation and internal coordination process. Building on a decision by the second German parliamentary chamber, the Bundesrat that represents Länder interests, the Länder are firmly integrated in the Brexit negotiations of the federal government.

They have established a significant practical role in German position formation, above all through an intense screening process on the implications of the British EU-exit for each Land.

This input has provided the government with a valuable source of information which has helped to establish a reliable administrative apparatus to coordinate overall position formation (including a representation of the Länder in Brussels where Länder responsibilities are concerned). The federal government and Länder governments share the same positions on general negotiation lines. Hence, in the Bundesrat recommendation for the European Council in May 2018, the Länder stressed that “as an export oriented, open economy Germany has the greatest interest that the future trade agreements with the UK, while fully guaranteeing the integrity and functionality of the EU single market, will offer the most possible open exchange of goods, services,

capital and persons in future. The Bundesrat notes with great regret that the government of the United Kingdom has repeatedly rejected a continuous membership of the customs union and the single market”. The fact that the Länder and the federal governments share the main prerogatives, i.e. protection of the single market and the future of the EU27 as priority over the strong wish for as close as possible future relationships with the UK, renders the official German position even more stable and consolidated.

The most decisive actor for the German Brexit position remains Chancellor Merkel. In response to the Salzburg Summit in September 2018, which rejected significant elements of the British PMs proposals, Angela Merkel stressed her strong commitment to a dignified Brexit process and the German commitment to continue the negotiations in a good atmosphere. While the Chequers proposals are considered to show a good number of common points (e.g. on internal security, external cooperation and other policies) a lot of work remains to be done. While she consistently stresses the government's commitment to good future relations and shared interests in selected areas, the EU's red lines – especially on the Irish border and on the integrity of the single market – remain non-negotiable.

Only occasionally have high-ranking politicians voiced a need to respond “more flexibly” to the UK demands. Most prominently,

Minister of Interior, Horst Seehofer, issued a letter calling for a more flexible approach in order to guarantee security after Brexit in July 2018. The letter did, however, not lead to any reaction as the government formally distanced itself from its content. While the official line remains firmly behind the shared EU27 negotiation principles and open in tone that stresses the priority of avoiding a “hard Brexit”, there has been for some time increasing stress on the frustration felt at the working level over a lack of reliable negotiation positions from the British governments side.

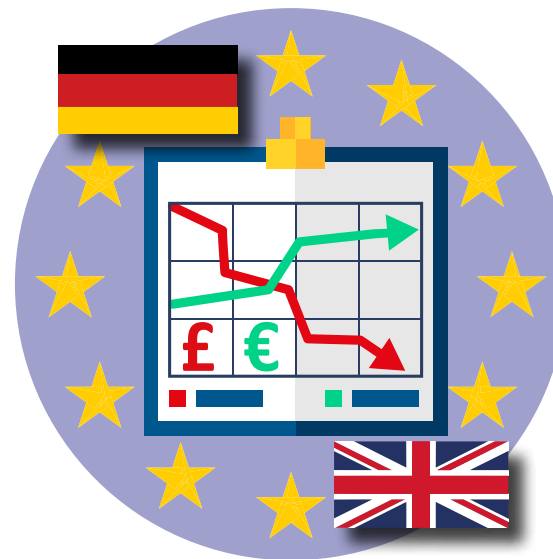
### **German industry: preparing for the unwanted scenario**

The dominant position in the German economy, including in particular the car manufacturing industry, is that the single market is more important than the British one. This position was established immediately after the referendum in 2016. Even if estimates predict that suppliers for the British car industry might lose between 14,000 and 18,000 jobs in case of a hard Brexit, there have been no serious signs of lobbying the government to derail from its firm single market first” approach. In contrast, there have been repeated calls by German car manufacturers on the British government to avoid the implications of a hard Brexit scenario, which would eventually lead to the relocation of production plants out of the UK.

More generally, German industry has voiced significant concerns over Brexit and takes the option of a hard Brexit scenario seriously. This has even led to some open opposition to the British government, calling on it to prevent a hard Brexit scenario. As the deadline for a deal in November 2018 draws closer and a “no deal” scenario is taken as an ever-more likely outcome, economic actors respond with a probable withdrawal from the British market. According to its Brexit Survey Deloitte states that in 2018, 72% of all companies surveyed have occupied themselves intensely with the Brexit implications (in comparison to 59% in 2017) and that the majority of the companies surveyed are starting preparations for a hard Brexit scenario that is considered a probable outcome by 50%. Activities most affected will be investments into the UK (33% have already stopped investments, in the car manufacturing industry even 47%) and an adaptation of supply chains as well as organisational and personnel management.

In addition, the city of Frankfurt has been in the headlines as a probable beneficiary of Brexit. While real estate prices in Frankfurt rose substantially, the number of companies and banks that have actually relocated remains limited – with UBS being one of the most prominent banks that has announced to move to Frankfurt in case of a likely “no deal” scenario. Most debates tend to concentrate on the competition between cities in the EU27 to attract business. In sum, German companies are mainly concerned with taking preparations

for a possible, if not probable, hard Brexit. The German economy considers that it is the British government that is primarily responsible for avoiding the generally unwanted hard-Brexit scenario, given that the German government’s negotiating position that prioritises the functioning of the single market is dominant and firmly supported.



### **The German media and public: watching the UK move towards the cliff edge**

Media reports on Brexit focus mainly on the British side and less strongly on the German position formation or implications for Germany. While German opposition parties have criticised the very reluctant and rather passive stance of the Chancellor, public

debate focuses more on internal politics than Brexit. Reactions to the Salzburg summit in September 2018 confirm mainly that Germany has a great interest in a joint deal with Britain but that the Chancellor “will not save Theresa May”, reflecting how the mainstream quality media does not challenge the government position outlined above but rather explains the background of the Brexit process. Whilst no major new opinion polls have been conducted since 2016 on positions on Brexit, a 2017 Politbarometer poll showed that Germans preferred a hard negotiating position vis-à-vis the UK. Prior to the May summit in 2017, only one per cent of Germans were in favour of the EU making “major concessions”, 13% were in favour of “larger concessions”, 42% for “not too large concessions” and 32% for no concessions at all. This shows public opinion also largely in line with the official German position.



# HUNGARY AND THE BREXIT NEGOTIATIONS: STRESSING UNITY BUT DEVELOPING SPECIAL TIES?

*Robert I. Csehi*

## Introduction

Brexit negotiations became much more visible in Hungary in 2018. Although there is still no public debate on the details of an agreement, and information regarding the position of the Hungarian government on particular issues is somewhat scarce, media coverage of the negotiations is much more frequent. This also involves news reporting on the scandals around the “Leave” campaign, from the alleged funding ties to Russia, to the breaking of UK electoral law. Nevertheless, the increased media attention given to Brexit is likely due to the approaching end-date by which a conclusion needs to be reached in order to avoid a “no deal” exit. Another part of the explanation is that European become politicized in Hungary during the 2018 elections. Prime Minister Victor Orbán’s governing party, Fidesz, used the same billboard image depicting migrants as the unofficial Leave campaign in the UK referendum. They also repeated emphasised the incapacity of the EU to address the refugee crisis throughout the campaign.

While Brexit as an issue was not utilized

explicitly in the campaign, the Hungarian government developed closer ties with the UK. The strength of the relationship was reflected in a friendly visit by former Minister of Foreign Affairs, Boris Johnson, and support given to Orbán by the majority of Conservative MEPs in the European Parliament’s vote on the initiation of the Article 7 procedure against the Hungarian government. It is yet unclear, whether this will influence Hungary’s position in the Article 50 negotiations, although Orbán has signalled that the EU should treat the UK fairly and not be punitive. Public opinion is also favourable to a fair deal for the UK.

## Issues settled and issues that remain

The Hungarian government see resolving the problem of the Irish border as a key issue. Although the border is of little economic importance to Hungary, Hungary does not want a hard border, and supports the integrity of the single market. The transition period is also an important issue. The government endorsed the supplementary negotiating directives on the transition period adopted in January 2018, but was concerned that the period on offer was not long enough. In the

words of one government official, “we had an economic interest in a longer transition period”. Otherwise, Hungary was supportive of the idea that the whole of the *acquis* should continue to apply in the UK until the end of the transition period, and that the UK would no longer participate in the institutions and decision-making procedures of the EU.

Based on the December 2017 Joint Report, a draft Withdrawal Agreement was put forward to conclude the first phase of the negotiations in February 2018. The draft document underwent close scrutiny, and a number of alterations were initiated on the text. As a government official argued in Hungary, “the Withdrawal Agreement went through a lot of transformation...Hungary had at least twenty points in the text where we wanted changes. Some concerned our economic interests, while others would have had implications we wanted to avoid”. While government officials were unwilling to give chapter and verse, they reported that most were clarifications introduced in order to avoid unintended consequences. Another official observed that small member states seemed to be more active participants in the review process. When

a partial text on a number of the chapters in March 2018, Hungary had a special interest in citizens' rights and a strict approach to the UK's financial obligations.

Guidelines for the future relationship between the UK and EU were discussed in the same month. For Hungary, security cooperation was, and remains, a key issue. A few days before the June 2018 European Council meeting, Hungarian Minister of Foreign Affairs and Trade Péter Szijjártó stressed the need to uphold security cooperation with the UK. Noting that "Hungary regards the maintaining of security cooperation with Great Britain as extremely important", he called for the closest possible cooperation between the EU and the UK in defence and secret service after Brexit. Baltic and Scandinavian countries would need to call on British security capacity in the future.

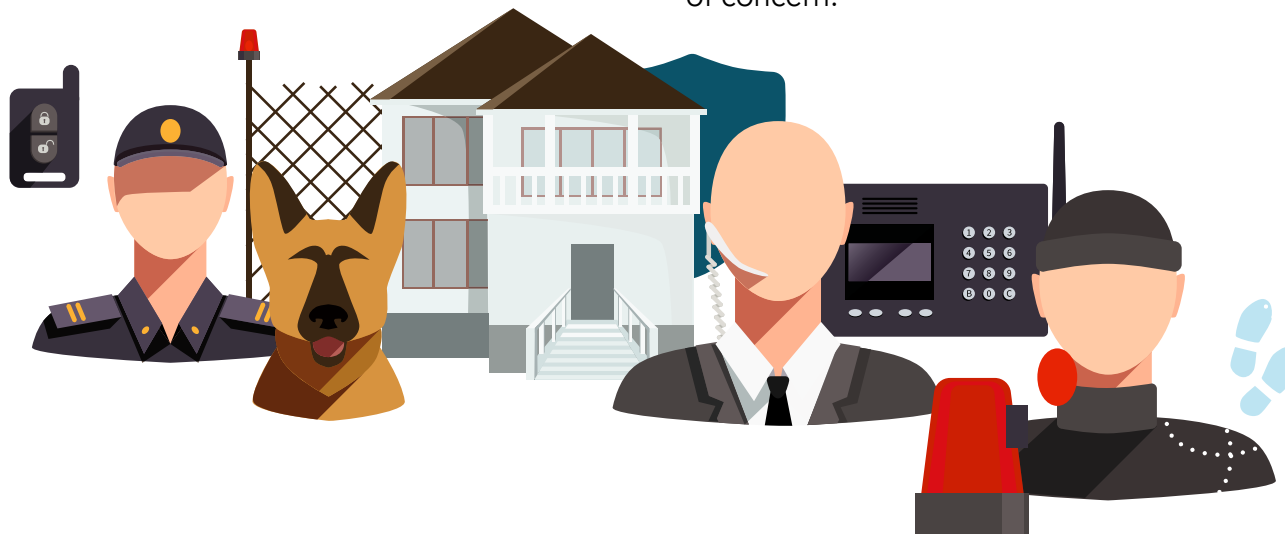
On the question of future economic relations, Szijjártó underlined that no agreement would be disastrous for the EU, as it would contribute to a further decrease of the EU's competitiveness in the global market. Hungary therefore wants the EU to negotiate the widest and most comprehensive free-trade agreement possible – a point stressed multiple times by Szijjártó.

When in July 2018 the UK government submitted its White Paper, Hungary did not issue a formal response. The reason, as a government official pointed out, is that Hungary is committed to the unity of the EU27 and that the EU27 are represented by the European Commission, and therefore it would be inappropriate to respond unilaterally. However, the UK proposals of a Facilitated Customs Arrangement, which has important ramifications for the question on the Irish border, and a common rulebook, were issues of concern.

## A special relationship between the UK and Hungary?

As the post-Brexit relations guidelines were being negotiated, the UK initiated a charm offensive in Hungary. First, Greg Hands, the UK's Minister of State for Trade Policy visited Budapest, where he talked about the relevance of trade relations between the two countries after Brexit. Soon after the Hands trip, Foreign Minister Boris Johnson visited his Hungarian colleague in Budapest in March, 2018. The two shared a family dinner together and went for a run on Margaret Island. In their joint press conference they stressed the strong relations between the two countries. Szijjártó talked about the unfortunate loss of the UK as an ally in the sovereigntist camp within the EU. Earlier that month he also claimed that Britain's decision to leave the EU was due to a failure on the part of Brussels, repeating a claim made by Viktor Orbán in the wake of the UK referendum. Johnson, on the other hand, assured his colleague that the UK was committed to guaranteeing the security of East-Central Europe. After Johnson's departure, Prince Andrew, the Duke of York visited Budapest as well as part of "Brexit diplomacy". On the question of a potential future charm offensive, a Hungarian official thought it rather unlikely, unless there was no progress made on the final agreement in the coming months.

In early June, Orbán received Michel Barnier, the Chief Brexit Negotiator of the European



Commission in Budapest. While the details of their meeting were not shared, the Hungarian Prime Minister stressed the unity of the EU27 in the Brexit negotiations and gave his full support to the EU Negotiator Michel Barnier in his effort to maintain this unity. However, this call for unity started to show some cracks in the late summer, early fall of 2018. First, Orbán met with Italy's Interior Minister Matteo Salvini, who criticized the EU, questioning its objectivity and good faith in the Brexit negotiations. Later, at the informal meeting on Brexit in Salzburg, Orbán stressed that the UK should not be punished, and instead a fair Brexit and good cooperation between the EU and the UK was needed. At the same event, Orbán called Nigel Farage MEP, and claimed that listening to him was an intellectual gift. This sudden *Annäherung* between Hungary and the UK was no coincidence. The European Parliament presented the Sargentini Report, a vote on which meant the initiation of the Article 7 procedure against the Hungarian government. Orbán's tactics seemed to pay off, at least partially, with 16 out of 19 Tory MEPs voting against the motion.

## Conclusion

Brexit has gradually gained more and more coverage the media in 2018, although the interest of the public remains low. The Hungarian government still stresses the relevance of unity among the EU27 in the negotiations, and welcomes the effort the European Commission, and Barnier are making to achieve an agreement. Hungary is supportive of the agreements so far reached, and the most relevant remaining issues include: the Irish border arrangement, the UK's potential participation in the customs union, and the future security and intelligence cooperation between the UK and the EU.

While Hungary is supportive of the united approach towards the UK, it did not stop the UK government from leading a charm offensive which peaked in Boris Johnson's official visit to his Hungarian colleague. Although the meeting did not break Hungary's commitment to a common EU position in the negotiations, it signalled the development of a special political relationship between the two countries which was clearly reflected in the EP vote on the

initiation of the Article 7 procedure against Hungary.

This act alone shows how great the political loss is for Hungary as it loses an ally, and the biggest member state in the sovereigntist club within the EU. How relevant this evolving relationship will be for the coming months in the effort to conclude the negotiations is yet to be seen. On the other hand, once the negotiations move from the withdrawal to the question of future relationship, these bilateral links are expected to play a more relevant role as special national interests will play a much bigger role. On the question of whether the government is preparing for a possible "no deal" Brexit, a government official simply pointed out that any responsible government is preparing for any potential outcomes in a Brexit-like negotiation situation.

# WAITING FOR GODOT: IRELAND, BORDER IRELAND AND THE BACKSTOP

*Brigid Laffan*

As it departs the European Union (EU), the UK has only one land border with the Union. When the UK leaves the EU, that border changes from an internal EU border to an external one. It so happens that this border was contested from its establishment and has witnessed violent sectarian conflict for over three decades in the twentieth century. Two developments in the 1990s rendered this border largely invisible: the single market programme and the Good Friday Agreement (GFA). The GFA was a peace agreement

involving two states and the communities in Northern Ireland based on human rights, equality and a parity of esteem between the two communities. The single market rendered the economic border largely invisible because it removed barriers to the free flow of goods and services. The timely convergence of these two separate changes normalised the border and transformed the lives of border communities.

Brexit disturbs territorial politics in the United Kingdom and undermines fragile attempts at reconciliation and forgetting in Northern Ireland. The GFA enmeshed an internal Northern Ireland power sharing agreement into wider North-South and East-West institutions, which served to transform the lived experience of sovereignty in this troubled part of Europe. The GFA took the hard edge off the intersection of states and identities on the island of Ireland; nationalists in Northern Ireland could identify as Irish or British or both.

In contrast, Brexit is not about pooling or sharing sovereignty. Rather it is about regaining it: control over borders, money and laws. It removes the shared scaffolding that joint EU membership offered British-

Irish relations and has led to strains in the relationship not witnessed since the 1990s. It remains the most contentious issue to be decided before agreement on the Withdrawal Agreement is achieved. The border is a key sticking point in the process of the UK's departure from the EU. This short article covers three dimensions of a very complex set of political relationships; first, it argues that Northern Ireland is different to the rest of Great Britain; second, it traces the elusive search for a backstop to the Irish border; and third it analyses the end game in the Brexit negotiations.

## **Northern Ireland is different**

When faced with the difficulties created by the Irish border for the Brexit process, UK Conservative ministers and politicians have sought to downplay its significance, frequently in ways that display a lack of understanding or care about the sensitivities associated with a contested border. Speaking in February 2018, the then Foreign Secretary Boris Johnson likened the challenge of the border to the collection of congestion charges between Camden and Westminster. His implication



was that Northern Ireland was just like any other part of the UK. In August, Jacob Rees-Mogg sparked a furious response when a video emerged in which he suggested a return to checks on the border “as we had during the Troubles”. David Davis, the former DExEU Minister, speaking in early September argued that the border issue was “heavily overemphasised” and that it was a straightforward” problem to address. Those living in Northern Ireland and on the border, have responded with an active twitter feed @BorderIrish and an extraordinary short film, “Brexit: A Cry from the Irish Border”, which identifies those UK politicians who are willing to play dangerous games with the normalisation of the Irish border and Irelands peace process.

Northern Ireland differs from the rest of the UK for a number of fundamental reasons. It is the only part of the UK that is governed by an international treaty, the Good Friday Agreement, that makes provision for it to cede from the UK with the consent of the people. It is the only part of the UK that can automatically re-join the EU, if it opts for unification with the rest of the island. The GFA guarantees the constitutional status of Northern Ireland as part of the UK, but this guarantee is contingent because the GFA allows for a change in that constitutional position by consent. Unlike the rest of Great Britain, Northern Ireland is a divided society that experienced a civil war that only entered its non-violent phase following the GFA and

related political agreements. Its population was divided by ethnic and national differences underpinned by religion as an identity marker. Unionism was wedded to the UK state and in its loyalist variety to the protestant people of Ulster. The unionist population is innately defensive because there are possible futures that it does not want. More recently, Unionist defensiveness was exacerbated by demographic shifts in the providence. In 1998, the DUP opposed the GFA, which it only came to grudgingly accept in the 2000s. Internal politics in Northern Ireland was mired in cross-community vetoes and following the last election, its Assembly has failed to produce a Government. Brexit has greatly exacerbated the North’s fragile politics and the dependence of PM May on 10 DUP votes to maintain her government reduced trust on the other side.



### The elusive backstop

The Irish Government, as a co-signatory and co-guarantor of the GFA, and in the interests of its own security as a state, regards the Brexit impact on the Irish border as existential and of the highest priority. It wants to ensure

that the UK’s departure from the EU will not undermine peace, the fluidity and invisibility of the border and the co-operation that has evolved as a result of the GFA. Ireland has worked with the Article 50 Task Force and its partners in the Union to ensure that the outcome on the border is one that will not end the normalisation that was achieved in 1998. This has demanded a high level of bilateral engagement with EU capitals and the maintenance of strong relationships in Brussels. The Irish and UK Governments together with the EU are not divided on the objectives for the border, which is no hard border on the island of Ireland. They are, however, very divided on how to achieve it. Ireland is insisting on a backstop agreement, that translates the UK commitment to the border into a legally binding commitment.

Since the launch of the Brexit negotiations, the search for agreement on a backstop brought deep differences between the UK and EU27 sharply into focus. There are differences about the substance of the backstop, the role it should play and its relationship to the future relationship between the EU and UK. The Irish Government backed by the EU26 want a legally binding backstop in the Withdrawal Agreement that provides an “all weather” time unlimited guarantee that regardless what happens, the UK commits to no hard border on the island of Ireland. From the outset, the UK sought to discuss the Withdrawal Agreement in tandem with the talks on the future relationship. It resisted the EU planned

phasing of the negotiations. The UK lost this battle before it began because the EU negotiating guidelines required sufficient progress on the Withdrawal Agreement before it was willing to open talks on the future relationship. The UK Government maintained from the outset that the Irish border issue was integral to the future relationship and its preferred way to address the border issue was via the future relationship. From the beginning of the negotiations, there has been a simmering tension on the relationship between the Withdrawal Agreement and the declaration on the future relationship.

By December 2017 the UK wanted to move to phase two of the negotiations as UK business was concerned by the uncertainty surrounding the process. This triggered the first crisis on Ireland in the exit negotiations. In the lead-up to the December European Council, the Irish Government signalled that from its perspective sufficient progress had not been made on the Withdrawal Agreement, especially on the border question, to warrant moving to phase two. Ireland was supported in this by the other member states and the Brexit Task Force. Speaking in Brussels on November 20, Michel Barnier said "What is ... unclear is what rules will apply in Northern Ireland after Brexit. And what the UK is willing to commit to, in order to avoid a hard border".

Under pressure from Brussels and facing demands from UK business for clarity about a transition period, PM May offered language

on the Irish border question that largely satisfied the Dublin Government. However, the DUP reacted strongly to what was agreed on Northern Ireland and refused to support the Government. By the 8th of December just a week before the December European Council, the London Government and the DUP arrived at a formula enabling the exit negotiations to proceed. The agreement was part of a joint report from the Brexit Task Force and the UK to the December European Council. Paragraph 49 of the document, reaffirmed the UK's commitment to the GFA and the avoidance of a hard border. It offered three options to deliver this:

- (a) to achieve these objectives through the overall EU-UK relationship;
- (b) should this not be possible, the United Kingdom will propose specific solutions to address the unique circumstances of the island of Ireland
- (c) that in the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all island economy and the protection of the 1998 Agreement.



The agreement of the DUP was achieved by adding a paragraph 50 which specified "that the United Kingdom will ensure that no new regulatory barriers develop between Northern Ireland and the rest of the United Kingdom, unless, consistent with the 1998 Agreement, the Northern Ireland Executive and Assembly agree that distinct arrangements are appropriate for Northern Ireland". In the immediate aftermath of the Joint Report, members of the London Government appeared to back pedal. The then Minister for DExEU, David Davis, said that the agreement "was a statement of intent more than anything else. It was much more a statement of intent than it was a legally enforceable thing".

The appearance of backtracking in London led the Article 50 Task Force to begin to formulate a protocol on Ireland, which would be added to the Withdrawal Agreement. In the early part of 2018, the Task Force began drafting the Withdrawal Agreement and as part of this exercise it formulated a draft protocol on Ireland, which it published on 19th March, 2018, as it wanted robust legal commitments from the UK on the Irish border. The Draft Protocol would effectively keep Northern Ireland in the EU's customs and single market territory but as a fall-back option to be used only if other solutions could not be agreed. Under this version of the backstop EU tariffs and rules of origin would apply to non-EU goods, as would EU VAT and excise rules, EU product safety and quality standards (e.g. food, chemicals and consumer goods) and



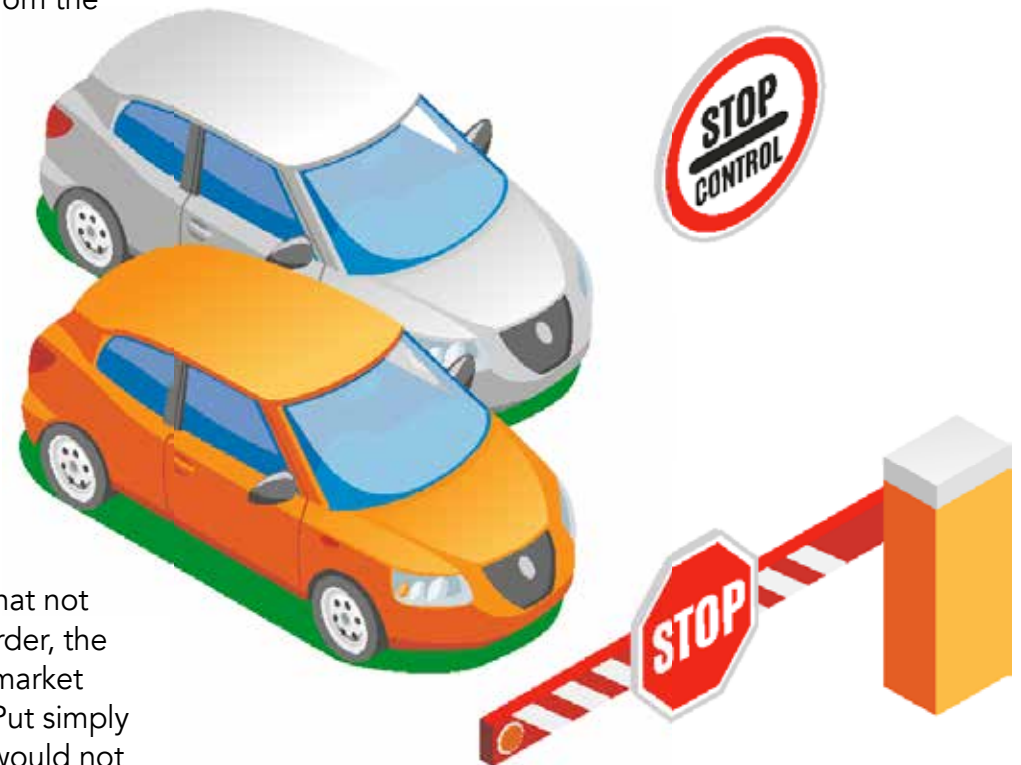
EU rules on animal health and welfare. The backstop, which the Commission argued, was the working out of the December Agreement met with considerable resistance from London. However, in an effort not to derail the future relationship talks, the UK PM wrote to Donald Tusk on the 19th of March. In the letter, the UK PM reiterated her commitment “to the Joint Report in its entirety, including reaffirming the UK Government’s view that the Belfast or Good Friday Agreement of 1998 must be protected in all of its parts” and further said “I am committed to agreeing in the Withdrawal Agreement operational legal text for at least the so called backstop option”. The PM argued in this letter that there was further work to be done on the backstop but she was not backtracking from the December commitments. This was the minimum necessary to get the future relationship talks started.

Following the intensive discussions in March, the UK has failed to engage on the backstop. London has not come up with a solution that avoids a hard border in Ireland that is compatible with its preferences to exit the single market and the customs union. The June European Council conclusions on the Article 50 negotiations were intended as a stark warning to the UK. The European Council expressed “its concern that no substantial progress has yet been achieved on agreeing a backstop solution for Ireland/Northern Ireland” and reminded the UK that “negotiations can only progress as long as all commitments

undertaken so far are respected in full.” Speaking in the Irish parliament on 21 June, Commission President Jean-Claude Juncker said “other Member States, and Ireland in particular, should not pay the price for that choice. This is why when it comes to Brexit, I have always said that it is a case of ‘Ireland first’. He went on to say “There should be no return of a hard border. We need common rules to preserve North-South cooperation. And most importantly, this means the Good Friday Agreement should be preserved in its entirety. Every line. Every letter”. This remains one of the key challenges facing the EU and the UK as they attempt to construct an orderly withdrawal of the UK from the EU.

Given the centrality of the border issue for the Withdrawal Agreement, the EU Chief Negotiator, Michel Barnier has attempted to address London’s concerns by seeking to de-dramatize the issue. His strategy is to map all of the checks that must be conducted to ensure that not withstanding a soft border, the integrity of the single market could be maintained. Put simply that Northern Ireland would not

become a backdoor for the entry of illegal goods into the EU market. This the EU will not accept. There are four types of checks that must take place in order to protect the single market; customs, EU standards, animal and plant hygiene and Value Added Tax (VAT). The EU is hardwired to come up with solutions to technical problems related to all of these checks and it may well agree a differentiated approach that allows for some checks at source, at distribution centres, at ports and on the ferries themselves. There are already some checks at the port of Larne relating to animal and plant health but nothing involving Northern Ireland is ever just technical.



## Towards the endgame

If the UK is not to crash out of the EU on 29 March 2019, there needs to be a Withdrawal Agreement and a political declaration on the future relationship by end January at the latest although all parties have indicated an earlier end-date to allow time for ratification as the Withdrawal Agreement is an international treaty. The European Council in October, a possible special Brexit European Council in November and the scheduled December European Council provide the negotiating forums for the final deal. All is contingent on serious work being accomplished in the bilateral negotiations between the UK and the EU Negotiator. The UK's attempt to sideline Michel Barnier has spectacularly failed. If anything his position has been enhanced.

The Salzburg informal summit has soured the atmosphere between the two sides and this has been compounded by the febrile nature of the Conservative Party conference. Salzburg was never intended, as an important meeting point on Brexit but PM May wanted the EU27 not to stymie her Chequers deal, which is her desired settlement for the Irish border and the future relationship. At a bilateral meeting with PM Varadkar in Salzburg, PM May informed him that the UK would not be ready with its backstop proposals by October. The EU27 have been waiting for these proposals committed to by the UK for over nine months. Given the time constraints this was met with disbelief and a resolute reiteration of where Ireland stood on this matter. President Donald

Tusk in his post summit press conference described the economic element of the Chequers plan as "unworkable". The Irish Government continues to press the London Government for proposals. The Minister for European Affairs, Helen McEntee speaking on Irish radio said on UK backstop proposals that "so what we have asked is that they give this information, that it's in written form, that it's a legal document, because the backstop has to be a legal document and that they give it to the task force as quickly as possible". After the Conservative Party conference, there is a narrow window of opportunity to get the talks back on track.



The Irish Government will not shift its position that a legally guaranteed backstop is essential for agreement to the Withdrawal Agreement. Support for the Irish position among the member states and the Article 50 Task Force has been rock solid. This is largely because

Ireland has invested heavily in multiple bilaterals with its partners and EU institutions and has persuaded them that its arguments on the need for a backstop are compelling. Ireland's partners do not see the Irish border as an issue of regulation and customs but as central to a peace process that resonates with the Union's self-identity. Many regard the UK's stance on the border as dangerous to a fragile peace.

The UK government for its part is dependent on 10 DUP votes for its survival that adds a challenging political dimension to its management of the border issue. The DUP opposed the GFA and were regarded as the most defensive unionist party in Northern Ireland. As the end game of the negotiations draw near, the DUP has doubled down on its objections to any checks on the UK-Ireland sea border; its leader, Arlene Foster, has publically argued that "we cannot have either a customs border or a regulatory border down the Irish Sea". This runs counter to reports that the London Government is contemplating a proposal that makes provision for a UK wide customs arrangement for goods and regulatory alignment in Northern Ireland. At time of writing, there is no UK proposal on the table that offers a legal text on the backstop.



# POPULIST ITALY AND BREXIT

*Marco Brunazzo and Vincent Della Sala*

Brexit was not on the Italian political radar for most of the last year as debate was consumed first by the election campaign, a protracted negotiation to produce the most Eurosceptic government in Italian history and then a state of high tension as the “government of change” tried to convert its rhetoric into action. On the surface, the Lega-Five Star Movement (M5S) government should have been good news for the Brexit side, as there was now a government of a large member state that did not see leaving the EU as necessarily problematic. Indeed, the Minister for European Affairs, Paolo Savona, has had a long-standing Plan B for Italy’s withdrawal from the Euro. While the M5S leadership insists Europe is Italy’s natural “home”, it sits alongside UKIP in the European Parliament; the Lega’s ally in the EP is France’s National Rally of Marine Le Pen. If Prime Minister May was looking for a sympathetic ear in the Council, Rome would seem like a good place to call upon.

## **A year of missed opportunities?**

The consistent line that has run throughout Italian discussion on Brexit since June 2016 has been that Italy was not exposed to any great direct risks because of the limited

amount of commercial and economic links between the two countries. The overriding concern was and remains the fate of Italian nationals in the UK. Brexit has been seen as an opportunity not only for the EU to gain new momentum but also for Italy to exploit Britain’s absence, from attracting EU agencies from the UK to new power dynamics with France and Germany to assume a more prominent role in the Council and other EU institutions. On both these fronts, Italy’s Brexit opportunities were more apparent than real.

The recent growth of the Italian pharmaceutical industry, expected to surpass Germany’s in 2018 as Europe’s leading producer, was seen as giving the country the edge to claim the European Medicines Agency (EMA). The Gentiloni government had lobbied, some would later say not hard enough, to re-locate the agency from London to Milan. But it was not able to convince most northern member states nor neighbouring Slovenia to back its bid. When it lost out to Amsterdam on a coin toss, it missed an opportunity to realise important economic gains from Brexit.

Not winning the EMA was perhaps a symptom of a greater missed opportunity, as it revealed that rather than giving Italy greater weight

at the table with France and Germany, Brexit could possibly mean that Italy is increasingly a distant third. It did not help that there was no effective government for the first six months of the year and the new executive led by Giuseppe Conte that came to power in June does not seem interested in nurturing a close relationship with either Paris or Berlin. Italy had often looked to the UK as a counterweight to the French-German axis and it has few options if it is isolated by the larger member states. If anything, the sovereignist nature of the current government has pulled Italy closer to political leadership in Hungary and Poland, widening even further the distance from France and Germany.

## **Enter the populists**

A measure of the depth of change in Italian politics since the March 2018 elections is that the two parties in government received around 30% of the vote in 2013, close to 50% in 2018 and are currently polling consistently around 65% in opinion polls. The two major parties that dominated Italian politics for over two decades and were stalwarts of Italy’s traditional pro-European stance, the PD and Forza Italia, have become minor background voices in political debate. As we will see

below, there is some ambiguity about the consequences for the Brexit debate to have two Eurosceptic parties leading the country and talk of a "QuitItaly" might be premature. However, a profound change has taken place and it raises questions about whether Brexit played a role and what role it will play in shaping Italy's position in a post-Brexit EU.

All this should be good news for Leavers and the British government. The previous Renzi and Gentiloni governments were never of the view that a hardline needed to be taken in negotiations with the UK in order to discourage others thinking of leaving, but they were strong supporters of the EU who looked to Brexit as a way to propel towards deeper integration in areas such as monetary union. They also did not want Brexit to seem too easy and seamless so as to discourage any nascent move in Italy to follow suit. The formation of a new government that put Italian sovereignty at the centre of its political project certainly created the possibility that a dissident voice might start to emerge amongst the member states as negotiations with the UK hit a critical point in the second half of 2018. Matteo Salvini, deputy prime minister and leader of the Lega, has said publicly that the EU (presumably the Commission) is not negotiating in good faith and that Prime Minister May should walk away with "no deal" if the wishes of the Brexit vote are not respected. He has been the most strident in defence of what he sees as the "will of the people" expressed in the June 2016

referendum.

Yet, the new Italian government has not produced any cracks in the united Council front. As with many other issues, there is always a distance between what leading ministers and party leaders say and what the government does. There are a number of reasons why Italy has not broken with the Council, all of which suggest that the government will not seek to break the consensus in the Council on either the sequence nor the content of the Brexit negotiations.

First, Italy is engaged in a high stakes negotiation with its EU partners and the Commission on two issues that figure prominently on the domestic political agenda and are significant for the future of the EU: immigration and Eurozone rules on fiscal discipline. Italy's commercial ties with Britain are not important enough to risk losing political capital necessary on other issues. While Britain and most other parts of Europe focused on the very public rebuke of Prime Minister May and her Chequers proposal at the Salzburg summit in October, all the attention in Italy looked to the continuing failure to find agreement on the migrant question. Moreover, Italy is increasingly faced with the prospect of being isolated by France and Germany, as well as the growing alliance of northern member states, especially with respect to the current governments willingness to abandon previous commitments on public

finances. The Conte government would be ill-advised to risk losing the little influence it has on an issue such as Brexit that is not politically salient nor a priority for its electoral base.

Second, Salvini and others who presumably would like to see Italy leave the EU do not have any incentive to have negotiations break down and for post-Brexit Britain to be isolated. Support for the EU and the Euro has increased in Italy since June 2016 so Italian Eurosceptics have to tread lightly and have little to gain in seeing negotiations with London end badly. Prime Minister Conte, reporting to Parliament before heading off to his first Council meeting in June stated quite clearly that the aim was to have a negotiated settlement that was acceptable to both sides and would be the basis of continued mobility for goods, protection for EU nationals in the UK and continued cooperation on security questions. Conte stressed the need not to isolate Britain and to develop a post-Brexit partnership. Neither he or his government have taken any concrete measures to be seen as standing alone in defence of Brexit.

Third, some producer groups, such as Coldiretti representing farmers, have started to produce reports of the costs of Brexit to their members, especially of a total break. The cost to the agricultural sector, according to Coldiretti's estimates, would be over €3 billion annually in exports to the UK: higher than the cost of Russian sanctions that the current government has railed against. Confindustria,

the largest employers' association, had expressed its concerns about either a "no deal" scenario or one with continued uncertainty over questions of trade and capital mobility. These are two important sector representatives politically, especially as the Lega sees large parts of their membership as an important electoral base.

Both the Lega and M5S have expressed very public and strident support of the Brexit vote and/or UKIP, suggesting that May is likely to find a friendly voice at the negotiating table. But it is hard to see how the current governments position will be all that different from what had been the position of the Gentiloni government. The Italian position has been to stand behind a common EU27 position but to be sympathetic to a bespoke agreement that takes into consideration the exceptional features of the British case that made it more than just a Canada or Norway. The economic costs of Brexit for Italian exporters and industry have crept into public discussion, with Confindustria emphasising uncertainty about a market that represents over 5% of total Italian exports was certain to incur costs for Italian industry. The M5S-Lega government has tried to ensure that those interests, along with the costs to the EU budget and protection of Italian nationals, have priority over any ideological affinity towards what Brexit represents to Eurosceptics.

The more important point is not so much what position Italian governments take

on Brexit but the very real likelihood that both the void created during the period of government formation and the deep divisions that exist within the government mean there is no interlocutor for London or Brussels of any consequence in Rome. British attempts to find allies on the continent will probably leave London wondering whom to call in Rome. The real danger is not that there could be a government in Rome that looks with envy to Brexit but that there might not be one at all or one that is too politically weak to express a position on key issues such as the Commissions conditions, the Irish border question or the British demand to have a role in EU agencies. Prime Minister Conte has no political experience and few political resources that he can call upon to shape government policy. The two controlling figures in the government, Di Maio and Salvini, alternate between railing against Brussels and expressing their credentials as committed to Italy's place in the "European" home.

There are, then, good reasons to believe that the populist and Eurosceptic Italian government will not, paradoxically, be an ally of Brexit Britain. Yet, there are also good reasons to worry that the government's anti-EU rhetoric and support for Brexit from some of its components will begin to have an effect on Italy's position. The Lega and M5S are a strange coalition, with many deep policy divisions and often competing to be seen as the most "radical" and perhaps the most anti-EU. At some point, ratcheting up the

rhetoric may compel one or both of the parties to turn words into actions. Breaking with the other member states on Brexit probably would not cost the government very much in terms of electoral support and could even be seen as a sign of its commitment to asserting the principles of national sovereignty. It is not likely to happen but a politically weak government hostage to two competing parties that control it might take policy decisions that defy Italy's long history of supporting European integration and even public opinion favourable to the EU.

Whether the Conte government sticks with Italy's EU partners or makes a break in the final stages of the Brexit negotiations may be of little interest or use to supporters of Brexit and to the British government itself. It is a government that is not very attentive to details or to the slow, methodical work that is necessary to build alliances and coalitions around complex issues such as Brexit. Italian politics and political leaders have been and continue to be distracted by internal issues that even pressure from important producer groups, such as Confindustria and Coldiretti, is not enough to get the government engaged on the possible costs of Brexit. The good news for Remainers and supporters of the EU is that the populists in power have not created a powerful ally for Brexit. The bad news for Italy and perhaps the EU is that it also has meant a government that is increasingly isolated and less consequential on important questions such as Brexit.

# APPROACHING THE FINAL STAGE OF BREXIT TALKS: LITHUANIA'S POSITION

*Ramūnas Vilpišauskas*

## Outstanding issues

From the start of Brexit negotiations Lithuanian authorities emphasised two issues: protecting the rights of Lithuania's citizens in the UK – at over 200,000 people, the largest Lithuanian community abroad; and respect by the UK of its financial obligations to the EU, estimated at €40-45 billion. Both issues formed part of the withdrawal agreement which, according to the EU, had to be agreed before negotiations on the future UK-EU relationship.

In early October 2018, the Irish border remained the main outstanding withdrawal issue. Lithuania supported the EU position on finding a backstop option as a condition for moving forward. In other words, a solution acceptable to Ireland will be acceptable to Lithuania. The Canary Islands were considered as one possible solution of how customs checks of goods entering Northern Ireland could be carried out.

As the end of the negotiations approaches without significant progress on the Irish border, Lithuania has stressed the importance of a deal. As well as the need to protect the rights of Lithuanian citizens in the UK, the question of the UK contribution has assumed considerable

significance since Lithuania is a net beneficiary with a particular interest in preserving funding for cohesion, agriculture, infrastructural connections and the closure of the Ignalina nuclear power plant, as well as the need to maintain legal certainty for trade relations between the UK and Lithuania after Brexit (during the transition period).

Lithuania has continued to support the main principles of the EU's negotiating position, including retaining the integrity of the EU single market and its customs union. In this respect, it supports the view that Chequers is not acceptable because it would provide the UK access to part of the single market – free movement of goods – while allowing it regulatory divergence in services, which are an important item in the cost structure of many goods. This would allow the UK business to gain a competitive advantage, in view of the powers it would grant to UK customs and regulatory institutions. The opposition to Chequers is based on the possibility that it will establish a precedent for other countries, although trust in the UK institutions and concerns about regulatory and fiscal competition also play a part.

The rhetoric of “no cherry-picking” has been criticised by some analysts in Lithuania as too inflexible, since it could potentially alienate the UK in the future. However, for a country like Lithuania – an open small economy situated in a geopolitically risky neighbourhood – the unity of the EU is not so much about the formal application of “no cherry-picking”, which arguably has not always been practised by the EU, even when establishing the single market – one only has to remember the services directive, which was full of exemptions – but about the unity of the EU and preventing further fragmentation.

Security co-operation with the UK post-Brexit is also an important issue for Lithuania. The UK's contribution to the security and defence of the transatlantic community, including in the EU's neighbourhood and in forging a common position towards Russia, was stressed in a joint letter from the Polish, Lithuanian and Romanian Ministers of Foreign Affairs in September 2018. They urged that the EU's cooperation with the UK in foreign and security matters should be separated from the issues that are still causing disagreement. The EU should seek in its future relationship with the UK “an ambitious and close future economic

and security co-operation, taking into account UK's red lines", which stresses close co-operation with the UK in the area of the CFSP/ CSDP and recognises the UK's special role in Europe's security matters. In formal terms, preference is given to a comprehensive EU-UK agreement similar to an association partnership agreement which would cover a wide range of issues – trade, economic, security and other areas along the lines of EU-Ukraine DCFTA. Close co-operation regarding mobility of persons based on reciprocity and equal treatment of EU member states is also sought.

### **Possible scenarios**

From Lithuanian point of view, domestic politics in the UK, especially within the Conservative party, has been the key factor causing uncertainty in the negotiations. For this reason, there was little public criticism of the Chequers plan, even though key elements were not regarded as acceptable. In addition, expectations regarding the outcome of the Salzburg informal EU Summit were low and the assessment of its outcome was that "no real talks" took place. As the Lithuanian President Dalia Grybauskaitė stated at the time, it was particularly important that the UK government should decide how it intended to exit the EU and that PM Theresa May needed a firm mandate to negotiate. Further progress and the need for a November meeting of the European Council is seen as dependent on the outcome of internal debate within the Conservative Party and its support for May. If she is able to move forward on the Irish border,

while agreeing broad outlines for the political declaration on the future relationship between the UK and the EU, flexible wording of the political declaration would give time to find agreement on the specifics of the future UK-EU relationship during the transition period.

If there is no progress on the Irish issue, then other scenarios, including postponing the date of Brexit or extending the transition period, were discussed informally. However, this would create complications linked to the legal changes required for the representation of the UK in the EU institutions, such as the European Parliament and the start of a new financial framework post-2020.

In May-July 2018, the Ministry of Foreign Affairs began to collect data from other ministries and institutions of Lithuania on the potential effects of "no deal". Although intended to facilitate domestic preparations for Brexit, it also signalled to UK negotiators that Lithuania and other EU member states are ready for such a development. Business organisations in Lithuania such as the British Chamber of Commerce also advised companies to start preparations for such a scenario. The growth of Lithuanian exports has already slowed since 2016, mostly due to the devaluation of sterling, while business deals have been put on hold until there is more certainty on the future relationship between the UK and the EU.

Lithuanian officials stress that it is "extremely" important to have an orderly withdrawal of the UK, since the damage of not concluding a

withdrawal agreement would be "too high". As President Grybauskaitė underlined at the Salzburg Summit, it is in the interests of Lithuania and the whole EU to avoid a chaotic Brexit. A "no deal" would put Lithuanian citizens residing in the UK in uncertainty, and would damage the EU economically and financially. "No deal" should be avoided "at nearly all costs".

Such a formulation creates flexibility for the final phase of negotiations. By stating both the importance of keeping in mind the long-term goal of a strong, integrated and united EU while maintaining a close relationship with its strategic special partner UK, it presents contradictory objectives, the compatibility of which eventually will depend on the dynamics of negotiations. Lithuania and the EU more generally are inclined to insist on a backstop solution for the Irish border and reject Chequers until the very last night of the negotiations.

### **Impact of Brexit on coalition politics within the EU**

The prospect of the UK's departure has already created a new political dynamic among smaller EU member states, who are searching for potential coalition partners to balance the German and French couple within the EU institutions. Lithuania, Latvia and Estonia have traditionally cooperated with the Nordic EU member states, for example, by regularly meeting in the format of the Heads of state and government (NB6) within

the margins of EU Summits. Since late 2017, this format was expanded to include the Netherlands and Ireland and became known as a “New Hanseatic League”. Its member states have met mostly within the format of Ministers of Finances. They are described as fiscally-conservative, trade-friendly governments focused on national reforms and implementation of the exiting EU budgetary rules rather than further deepening of the EMU and creating new institutions.

They presented their first common position on the architecture of Economic and Monetary Union (EMU) in early March 2018, urging the EU to debate the reforms of the EMU in a more inclusive EU wide format, proceed with national reforms and implementation of budgetary rules, focus on EMU reform initiatives which have public support in member states, stressing real value-added of reforms rather than far-reaching transfer


of competence to the EU level. They identified completion of the banking union and transforming the European Stability Mechanism (ESM) into a European Monetary Fund as priority areas. In July 2018, these eight EU member states presented their joint position on the capital markets union, referring to the UK’s exit from the EU as “a catalyst to further redouble our efforts in further developing and integrating EU capital markets”. In late July 2018, the group was joined by another eight EU member states (described as “Hansa Plus”) to declare the support for the renewal of efforts to advance with the removal of barriers to the single market, urging the European Commission to undertake a stock-taking of existing barriers and inefficiencies by December 2018 “to make Europe more attractive for business and investment and deliver well-being for its citizens” – something that has been a

traditional priority of the UK within the EU.

It remains to be seen whether such new groupings as the “New Hanseatic League” have an impact beyond signalling their preferences on select issues, such as responsible fiscal policy or removing barriers within the single market. On some issues, such as the size or spending structure of the EU budget, the preferences of the Baltic States diverge from the rest of the group. Moreover, Sweden and Denmark are not members of the euro zone and the banking union, which limits their influence in Euro-group decision making. Still, Brexit is likely to have an impact on coalition politics within the EU which could reinforce the importance of issue-based coalitions, especially if there is further progress beyond the Meseberg declaration in co-ordinating French and German positions on EU reform.







# POLISH PERCEPTIONS OF BREXIT: BETWEEN THE RIGHTS OF UK-BASED POLES, DOMESTIC POLITICS AND THE IDEA OF A LESS INTEGRATED EUROPE

*Natasza Styczyńska*

The result of the referendum on the United Kingdom's membership in the European Union came as a surprise for many politicians and commentators in Poland, as well as Polish public opinion. The first reactions were emotional, especially since public debate before the referendum had not foreseen a "leave" vote. In the first months after the results were announced, the main topic of discussion was the practical consequences of Brexit. Commentators highlighted its significance for bilateral relations – economic exchange, Polish citizens' prospects for continuing to live and work in the UK, and the future of British products and businesses in Poland. Once Brexit negotiations officially got underway, it became clear that the most important issues for the Polish government would be the rights of UK-based Poles, maintaining good economic relations, and defence. The Brexit problem is not a frequent topic of discussion, however, and media reports usually focus on the resolutions made at EU summits or during bilateral visits. As with other major European or international events,

Brexit is exploited by the main parties for their own political objectives and mobilising support among the electorate.

The announcement of the referendum and the subsequent election campaign came during a turbulent period in the European Union, which was struggling with the largest wave of migration, as well as growing populism and a revival of nationalism. Poland saw a distinct change in the discourse on "Europe" following the presidential election in May 2015 and parliamentary election five months' later. The ruling Law and Justice party (PiS), part of the European Conservatives and Reformists Group in the European Parliament, favours radical reform of the European Union and opposes deeper political integration. However, Poland's position became considerably more pragmatic, with the judiciary reforms implemented by PiS a bone of contention with the European Commission. Information on the European Union in the Polish media is dominated by the question of the next steps following the triggering of Article 7 of the Treaty on

European Union. Brexit negotiations are much less discussed.

Poland's position was expressed in discussions between Prime Minister Beata Szydło and her British counterparts David Cameron and then Theresa May. The appointment of Mateusz Morawiecki as Szydło's replacement in January 2018 and the ensuing government reshuffle did not affect Poland's position or approach to the Brexit negotiations. After a brief meeting with May at the EU summit, Morawiecki stressed that strategic relations and partnership between Poland and the UK were confirmed". It was also reported that he had highlighted the need for more detailed discussion on the organisation of the EU budget, underscoring the importance of budget issues for Poland's position during the negotiations.

The Polish government's position on Brexit was published on 29 March 2017. The document expressed the hope that after leaving the European Union, the UK would become one of Poland's most important partners. It

emphasised that Poland regretted the result of the referendum, but respected the will of the British people. The document went on to note that the UK should respect EU law until Brexit became a reality. A special Brexit working group was set up in the Polish parliament, as part of the Committee for EU Affairs. Secretary of State for European Affairs Konrad Szymański represents the Polish governments position in negotiations with the United Kingdom. Analysis of press reports, official documents and transcripts from meetings of the committee gives an indication of the areas that Poland regards as important in the Brexit negotiations. The main concern is to make Brexit as painless as possible, with transition periods and continued close cooperation between the EU and the UK.

## Poles in the UK

The rights of the Polish diaspora in the United Kingdom is the first priority. Poles comprise the largest number of EU citizens living in the UK. Estimates suggest that more than a million Polish citizens are permanent residents. The vast majority work in the services and building sector. The rights of self-employed individuals and entrepreneurs are also at stake. Poles have registered approximately 40,000 small and micro-enterprises in the UK. Minister Szymański insists that these rights should also apply to the families of employees and company owners. The potential and controversial introduction of visas for EU citizens has also been covered in the Polish media.

At the same time, the Law and Justice government is encouraging some of the Poles living in the UK to return home. Polish ambassador to the United Kingdom Arkady Rzegocki admitted in an interview with the Daily Telegraph that such a campaign was underway. During a joint press conference with Theresa May, Prime Minister Morawiecki spoke about how it was in Poland's interest to attract at least part of the Poles resident in the UK to return home country. According to a Polish Ministry of Investment and Economic Development report, as many as 200,000 Polish citizens might leave Britain. Research suggests, however, that even if they are considering leaving, most Poles favour a move to another EU country over Poland.



## Trade

The UK is second only to Germany among Poland's trade partners. It was also among Poland's five main export markets in 2017, with 6.4% of Polish production sent to the UK. Trade increased markedly after Poland joined the EU, and Poland currently enjoys a positive trade balance, with a considerably larger value of exports to the United Kingdom than the import value. According to experts, however, the development of exchange has slowed significantly. In 2016, the UK was Poland's second most important export market, but in 2017 it had fallen to third. In this context, Poland wants to maintain close economic cooperation. The greatest threat is likely to come from a lack of agreement, since Oxford Economics analysts predict that a "no deal" Brexit will cost Poland 0.8% of GDP, i.e. around 18 billion PLN (€4.2 billion).

## The future of the EU budget

As one of the largest beneficiaries of EU funds, Poland wants no changes in the EU budget until the end of the current term. The Polish government argues that all the obligations concerning the 2014-2020 budget should be respected to prevent the United Kingdom's exit from the EU from causing negative consequences for less wealthy member states.

## Security

Security issues receive considerably less attention in the media, yet the statements of

Polish diplomats and experts and transcripts of Commission meetings reveal it to be one of the priority areas. Discussions mostly concern relations with NATO and the post-Brexit shape of the Common Security and Defence Policy. In Poland there are fears that the United Kingdom's departure will result in changes to the balance of power between the EU and Russia. Poland looks on the Russian Federation as a threat, and saw the UK as an ally in the fight against Moscow's influence. Britain is considerably more cautious and mistrustful of the Russian Federation than that of other large member states, notably Italy and France. Poland regards the UK's departure from the EU as deeply unfavourable.

The Polish media presented Prime Minister May's visit to Warsaw in December 2017 and the signing of a joint defence treaty covering training, military exercises, information sharing and defence industry cooperation as evidence of the excellent relations between the two countries, regardless of any difficulties in the Brexit negotiations. They also highlighted the fact that apart from Poland, only France had such a treaty with the United Kingdom.



# BREXIT AND SPAIN: CHANGE, CONTINUITY AND RISK

*Salvador Llaudes and Ignacio Molina*

## **Change of government with no change of priorities**

In June 2018 Pedro Sánchez replaced Mariano Rajoy as Prime Minister, an event that had the potential to have significant impact on the Brexit negotiations. Such a change was certainly unexpected. Only a week before, Rajoy had secured an agreement on the budget with both Ciudadanos (a liberal party) and PNV (a Basque nationalist party). Nevertheless, a court sentence had a marked effect on public opinion, putting into question the testimony of the former Prime Minister – as well as condemning the corruption in the Popular Party – and was more than enough to retire the long-time leader of the PP.

Spanish priorities regarding Brexit during the first phase of negotiations when the PP headed the government were in order of importance: maintaining the unity of the EU27; the situation of citizens; the economic impact of Brexit; and Gibraltar. After only four months in office, these priorities have not really changed under the new government. In fact, the stance is pretty much the same, and this is explained both because of no important changes in the Ministry of Foreign Affairs team dealing with Brexit and a similar pro-European approach from the new top politicians that

play a role in these negotiations: the Prime Minister, Pedro Sánchez, the Foreign Minister, Josep Borrell, and the Secretary of State for European Affairs, Marco Aguiriano.

There is moderate satisfaction with how the situation has developed in all of those priority issues. Regarding the first, the efforts by the EU27 not to succumb to the constant “divide and rule” approach by the UK have been remarkable, with unity maintained so far. On citizens, after some unsatisfactory proposals, the UK finally agreed last December to respect the core of the EU’s red lines. Also, a transition period was requested by the UK, including the commitment to respect the rights of everyone coming to the UK until the end of 2020 when the transition is due to end. A financial settlement was also agreed in December, which was warmly welcomed, and while it is still very early to say how future relations will be in economic terms, the new Spanish government considers, as did the previous one, the closer the better.

On Gibraltar, there was already a victory for Spain in the European Council April 2017 guidelines, which stated that: “After the United Kingdom leaves the Union, no agreement between the EU and the United Kingdom may apply to the territory of

Gibraltar without the agreement between the Kingdom of Spain and the United Kingdom.” Since then, there have been many rounds of negotiation between the UK and Spain, dealing with the most sensitive questions for Spain at this stage, including tax evasion, tobacco smuggling, environmental issues and the question of the airport. Importantly, sovereignty is not currently under negotiation. Spain prefers to focus on rebalancing a situation that has been too beneficial for Gibraltar since Spain joined the European Communities in 1986. Progress is slow, but has been positive, as its demands to create a protocol for Gibraltar – similar to those for Ireland and Cyprus – in the Withdrawal Agreement, underlining once again the specificities of the Rock, have been accepted.

## **Much ado about nothing**

During the negotiations – to the despair of European partners (including Spaniards) – the British authorities have had a tendency to ramp up the pressure every time an important deadline appears on the horizon. The need for a sort of crisis before finally accepting the deal was most evident in December 2017 and September 2018. Moreover, the UK has continually tried to “divide and rule”

the remaining EU27. such efforts have been particularly intense with a number of countries, including Spain, due to their strong interests to maintain a close relationship with the UK. Yet the UK has not achieved anything of substance, especially so in the case of Spain, whose national project since the dictatorship has been to develop a deep connection with the European Union. Democratization, social progress, modernization of the country or rule of law are deeply associated with the EU.

Spain recognised the efforts made by the 2018 White Paper, although it agrees with the EU27 that the unity of the four freedoms is indivisible, as underlined in the Salzburg Summit and contrary to the interests of the UK. Therefore, something else will have to be put on the table if Theresa May wants to end the negotiations with a deal.

## **A “no deal” that would be too expensive**

Some in the UK have floated the idea that a “no deal” scenario may arise due to a supposed intransigence on the Gibraltar question coming from the Spanish side. This reading comes from a misunderstanding of the European Council guidelines of May 2016. Although the Spanish government was happy with the inclusion of the clause on Gibraltar’s status after Brexit takes place, Spain has no greater power than any other member state regarding negotiations. As Article 50 states, the agreement shall be concluded on behalf

of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament”. Moreover, as important as Gibraltar is for Spain, the country would never put it over the Commissions stance on Brexit negotiations or, even, over the strong ties the UK and Spain maintain.

To understand this last question, we have to go back to basics and see how strong the relationship really is. Several hundred thousand Spaniards and Britons live in the UK and Spain respectively, more than 18 million British tourists travel to Spain a year, more than 300 Spanish firms do business in the UK and more than 700 British firms do so in Spain. In 2017, UK was the third trade partner (after France and Germany) for Spanish exports of goods and services, reaching €37.9 million. Any disruption would be dramatic. In this sense, a recent report by KPMG shows very interesting data: out of 1,899 Spanish firms interviewed, 64% of them said contingency plans were needed (31% had already elaborated them and 19% were already implementing them). The financial sector is the most conscious, with 83% of the firms affirming the need to elaborate those contingency plans (and 44% already implementing them). On the other hand, in the chemicals less than 50% have started.

## **Conclusion: a constructive approach with so much to lose**

The result of the Brexit referendum was

an unhappy one for Spain. But however important the loss of one key Atlanticist pro-trade ally in the European Union might be, Spain is ready to move forward with the EU27. The European project is too important for the country. Therefore, Spain’s attitude towards the Article 50 negotiations has been very constructive, while at the same time it has underlined the importance of not punishing the UK unnecessarily. With that, Spain has received a positive response to its concerns about Gibraltar, both in the European Council April 2017 guidelines and, presumably, in the attached protocol in the Withdrawal Agreement.

Spain’s interests lie behind reaching an agreement with the UK. The sooner the better, the stronger the better. This has not changed with the new government. The intense personal and economic links between both countries make it of essence to minimize the disruption: there, in short, is a lot to lose.

# SWEDEN. A BROAD AND DEEP DEAL – PROTECTING THE INTEGRITY OF THE COMMON MARKET

*Mats Braun*

Sweden has traditionally been one of the countries in the EU that has the most similar outlook to the UK regarding the future of the integration project as well as on particular issues. Brexit therefore complicates the Swedish quest for influence within the Council. Suggestions have been made that Sweden will need to find new special partners” within the EU and strengthen its cooperation with Nordic and Baltic neighbouring states. Sweden is also likely to suffer from Brexit in economic terms. Sweden has a small and export-oriented economy which is likely to be in particular negatively affected by Brexit. According to estimates from the Stockholm Chamber of Commerce losses of 0.3% of Swedish GDP in 2019-2020 and approximately 8,200 jobs are expected.

The Swedish government has dealt with Brexit by commissioning investigations into the consequences of Brexit from various government agencies. Among others, these include work on the consequences on trade, on research and innovations, on Swedish work within the Council, on trade, on the financial markets and on the social security system. The detailed investigations presented to the

government and available to the public on the government’s website suggest that Sweden is well-prepared for Brexit. Yet, the many unknowns regarding the final Brexit deal (or no deal) leaves many questions unresolved.

In addition, despite the action of authorities and business associations there is a lack of awareness of the consequences of Brexit, in particular among small and medium sized firms. There are approximately 7,000 small and medium sized companies in Sweden trading only with EU countries, including the UK. They are not used to dealing with customs or other formalities and are not prepared for trade outside the EU. They are likely to be badly hit by Brexit. It is also expected that trade patterns will change as a consequence of Brexit, and that the remaining EU market will become increasingly even more important for Swedish businesses.

## **The importance of the single market and rejection of the Chequers plan**

Despite traditionally having similar priorities as the UK within EU negotiations, there has not been any broader understanding for the British intention to exit. What traditionally

united Swedish and British interests within the EU was a strong focus on the single market. The Swedish position in the Brexit negotiations so far is consistent with this traditional focal point. The main aim of Swedish officials is the protection of the single market and its integrity. With this ambition the Swedish government views it as crucial that the EU27 keeps a united position. Swedish Government representatives have stated repeatedly that they would like to see a broad agreement that covers as many areas as possible. The Swedish minister for EU affairs, Ann Linde, has argued against the idea of a Canada plus agreement. From a Swedish perspective such an agreement would not correspond to the relevance of the UK and the British market as a trading partner for Sweden, or for EU at large.

However, the Chequers plan has also been criticized by Swedish representatives as another attempt at cherry-picking. The government initially welcomed the plan in so far, that it actually provided a starting point for negotiations. The Swedish government, in line with the general EU position, has repeatedly stressed that the UK needs to

come up with concrete proposals, and that too much valuable time has been lost waiting for British proposals. The Chequers plan, however, was viewed as being too narrow and as an attempt to breach the integrity of the single market. From the Swedish perspective it is not possible to single out goods, excluding the other components of the single market. Sweden, would among others, like to see an agreement also including the services sector. In 2015 the UK was Sweden's third largest export market for services and fourth largest market for goods.

## The EUs increasing popularity among Swedes

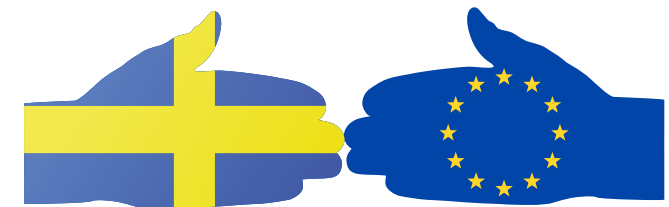
Theresa May visited Stockholm and the Swedish Prime Minister Stefan Löfven in April 2018. The visit received substantial coverage in Swedish newspapers, and journalists concluded that the visit indicated a special relationship between Sweden and the UK. Löfven used the opportunity to repeat his regrets regarding Brexit but also to call for a deep and broad agreement for the future. The visit, however, was dominated by security discussion and concerns regarding Russian activities in the light of the Skripal events. Earlier during the year Prince William and Catherine also visited Stockholm. It is difficult to estimate how much such visits might enhance British popularity in Sweden, but the country has long been highly influenced by the UK in cultural terms and it is only in the long-term that Brexit would be likely to have

any implications on such connections. London is for instance the most popular city among Swedish students studying outside of Sweden.

If the impact of Brexit on Swedish perceptions of the UK is far from clear, it seems more obvious that the Brexit negotiations so far have strengthened Swedish support for EU membership. For a long period in particular in the 1990s and at the turn of the century Sweden was commonly referred to as a Eurosceptic country. The country's membership vote in 1994 was a won by a narrow margin. However, over the last decade Swedish voters have gradually become more supportive of the country's EU membership, and this trend seems to have been further enhanced by the Brexit process. In autumn 2017, 56.1% of respondents argued they view the Swedish EU membership positively, which is the highest figure ever in the country. In the campaign for the 2018 general election both Eurosceptic parties in the Swedish parliament the Left Party and the rightwing populist – the Swedish Democrats, downplayed their Euroscepticism, and even if both countries want Sweden to leave the EU, they argued they will not push for a referendum on Swedish membership during the next term.

Obviously the more long-term impact on public opinion is likely to depend on the nature of the final outcome. The Prime Minister Löfven stated in relation to the informal European Council in Salzburg in September 2018 that he thinks "reason actually wins" in the end. However, the

main problem for the negotiations in his view has been the polarization of the issue in the UK. The stumbling block from a Swedish perspective remains the Ireland border issue, where the UK is yet to present a credible solution. In 2007 research carried out at Gothenburg University suggested that Swedish diplomats had British diplomats as their preferred first partners for consultations. That is when a new issue would appear Swedish diplomats would rather call up a British colleague than one of the other Scandinavians. The reasons were both an indication that the countries were likely to have a similar opinion on the issue, but also the reputation of British diplomats. Even if British diplomats may be as well qualified as ever, this era is gone. The position of UK for Sweden will be different whatever the outcome of the negotiations and then it will not matter that Theresa May dances to ABBA.



# THE UK: THE DARK HEART OF BREXIT

*Simon Usherwood*

Perhaps the most perplexing paradox of the entire process of Brexit has been the tension between the seeming simplicity of the UK's decision to leave the EU and the difficulty of turning that into reality. The issue has occupied the entire British political system during the past three years, yet little as yet is uncontested or settled. In part, that reflects the depth of divisions of views amplified and generated by the 2016 referendum, but it also reveals a lack of elite consensus and underlines the complexities of the Article 50 process itself. Unfortunately, more heat than light has been generated.

To set this in context, even the decision to leave the EU is more contested within the UK than any other member state: no other country has politicians or pressure groups that actively campaign to reverse the process. Even among those who do accept the decision, there are a surfeit of plans and ideas of how to do, none of which command the clear support of most people.

This confused and confusing situation is the result of the very high level of politicisation of the topic in the UK. If other states have found it easier to settle and pursue a policy line on the matter, then that has been made simpler by the generally much lower level of popular and political interest. That said, even

Ireland or the Netherlands – probably the most affected states – have not seen anything like the difficulties found in the country that triggered the whole thing.

## **The structure of “doing” Brexit**

The most useful framework for understanding how Brexit has unrolled in the UK remains that of domestic party politics. Key decisions have been made primarily on the basis of intra-Conservative and inter-party lines of contestation, from the timing of Article 50 notification to the general election in 2017 to the troubled emergence of a set of policy preferences around the so-called “Chequers plan”. While the EU might have set the schedule and the broad agenda of Article 50, the UK's engagement therewith has been strongly conditioned by this domestic frame.

This is reflected in the organisational model chosen in the UK for managing Brexit. By choosing to create a new Department for Exiting the EU (DExEU), Theresa May sought not only to minimise the extent of civil service capture of the process, but also to place a potential challenger to her authority, David Davis, in a position where he could not claim that Brexit policy was not as he wished. Similar diversionary roles were found for Liam Fox at the new Department for International Trade

(DIT) and Boris Johnson at the Foreign Office: organisational efficiency took a second place to party management.

Indeed, the move to create new units also allowed May to put in place a parallel negotiating structure within the Number 10 office, which has become progressively more important as negotiations have proceeded, especially since the production of the December 2017 Joint Report.

This highlights a second feature of the structure of May's approach to Brexit, namely that the circle of decision-makers should be kept as small as possible around her. The dual structure for negotiation has been a clear manifestation of this, along with the vociferous response to according Parliament a role in the notification, negotiation and ratification of Article 50. Using the referendum as a *carte blanche* mandate, May has consistently argued that it is for her to lead and shape negotiations in a way that allows her to “ensure the result is respected”.

Given May's relative political weakness – especially since the 2017 election, where she failed to capitalise on a substantial lead in polling over the Labour party – there has been uncertainty about which individuals and organisations might have a role to play in negotiations. The Foreign Office has been



marginalised as DExEU and DIT have carved out roles for themselves, while Parliament has built on the role secured for it in Article 50 notification by the Supreme Court in Miller to build up both scrutiny of talks and a “meaningful vote” on the final Withdrawal Agreement.

As such, Brexit does not fit easily in any prior model of treaty negotiation or even of EU policy, reflecting both the novelty and the consequence of the process. However that novelty also carries with it increased transaction costs for those involved, as they navigate an unfamiliar terrain.

## Brexit policy

Despite the efforts to centralise policy-making around Number 10, the most striking feature of the resultant policy is the extent to which it is contested. This was always likely to be an issue, given how the decision to leave the EU occupied such a prominent place in British political discourse and how unwinding membership will have such far-reaching impacts on government regulation, public policy, economic and social structures. In brief, no political, economic or social interest in the UK is unaffected by Brexit and so all have a clear motivation to shape what that Brexit looks like.

However, what is more remarkable is the inability of any one political discourse or ideology to achieve a dominant, let alone predominant, position. Much of the first year after the 2016 referendum was spent with

numerous attempts to provide explanations as to the “meaning” of the vote to Leave.

Of these, it was Theresa May who came closest to success with the phatic slogan “Brexit means Brexit” being used to underpin a relatively distant post-membership relationship, with the UK outside the single market and customs union, but with scope for cooperation in several other areas, notably security. This reflected May’s longer-term unhappiness with free movement of people and the role of European courts, both of which she took as challenges to British sovereignty. However, the substantial weakening of her political position from June 2017 made it very much easier for internal and external opponents to challenge her policy line.

Curiously, the one frame that has stuck in the UK has been the language of “hard” and “soft” Brexit, which depends almost entirely on the degree of economic integration, rather than the immigration issue that had been so prominent in the period up to June 2016. Immigration has become much less of a political hot potato in the past two years, and polling shows that most will make a judgement about the success of any deal on the basis of personal economic impact.

While this downplaying of immigration might have been expected to allow more scope for consensus-building, that does not seem to have been the case at all. Critically, the absence of a coherent set of underlying preferences – and thus red lines – has meant critiques of May’s policy have been easy to

make.

In particular, the trilemma of leaving the single market, preserving the UK’s “territorial integrity” and commitment to the Good Friday/Belfast Agreement arrangements for Northern Ireland/Ireland has proved predictably intractable. While the Joint Report marked a significant unblocking of progress in Article 50, it did so through a postponement of resolving the Irish dimension rather than through its resolution. The setting out of the three options allowed both the EU to secure its backstop and the UK to claim that alternatives could be pursued.

Those two options – avoiding border checks through a comprehensive trade arrangement or through the use of new technologies to obviate their use – have framed much of the subsequent debate in the UK, ultimately crystallising in the June 2018 Chequers plan, agreed by the Cabinet, and almost immediately weakened by the resignations of DExEU Secretary of State David Davis and Foreign Secretary Boris Johnson.

Chequers – elaborated and extended in the subsequent White Paper of July 2018 – sets out a model for the future UK-EU relationship, based on a “common rulebook” for goods, facilitated customs arrangements and a joint institutional framework. Coupled to continued alignment of phytosanitary standards, it was asserted that this would allow for the avoidance of any hard Irish/Northern Irish border while still allowing the UK to exit from the single market.

Quite aside from the EU response to this, domestic opinion was highly critical of the proposal. Opposition parties argued that this model would involve higher economic costs and might call into question the status of those citizens living in the others territory. Within the Conservative party, the plan was seen as a step towards further softening by May from the much more limited Canada-style free-trade agreement that could mark a more determined break with the EU.

Importantly, while this debate remains at the heart of British debates on Brexit, it is important to underline that Chequers does not immediately apply to the remaining outstanding issues in the Withdrawal Agreement. As much as it suggests a model for post-membership arrangements on the island of Ireland, that does not necessarily have to be captured within the text that parties are currently negotiating, although some reference would logically be made in the accompanying Political Declaration.

As a result, while May suffered a very public rebuke by the EU for her plans at the Salzburg meeting in September 2018, and a difficult party conference in Birmingham, that does not automatically preclude an agreement being reached in time for approval ahead of 29 March 2019.

That said, while the Joint Report did open the way to the publication of the draft text of the Withdrawal Agreement in March 2018, progress since then has been minimal, with UK political energies being taken up with

the discussion about that future relationship, leaving technical negotiators without a clear mandate to close the final major sections on the Irish dimension and governance.

## The final negotiating stretch

Where Salzburg was more immediately consequential was in the announcement by Donald Tusk that an additional European Council in November would only be called if there was “maximum progress” in talks by the time of the October meeting.

Given the structure of talks, this implied an almost immediate movement following Salzburg. However, once again domestic politics has constrained May very severely. While she gained some sympathy for her treatment in Austria (and on Tusk’s Instagram account), the looming arrival of her party conference in early October meant that she was not in a position to advance concessions, even if she were so minded. With disquiet (and worse) in her party and her Cabinet and with an eye to the eventual ratification of the deal, the need to hold things together through the conference was very evident, in both interviews and speeches.

The more difficult question is whether May is actually minded to make concessions in any case. As much as her defence of Chequers is based on it being the only substantial plan on the table on the UK side, the events in and around Salzburg suggest that she might genuinely feel that it is also going to become acceptable to the EU too. This was most

evident in the continuing rounds of bilateral probing through the late summer, to try and exploit any weaknesses in the hitherto-highly coordinated EU27 response. The absence of any substantive suggestions on how to bridge the remaining gaps in the negotiations and the abrasive language that it was “now the EU’s turn to compromise” combined to deprive May of the anticipated warm words to help move things along.

Given that strength of feeling within the Conservative party in Birmingham, it remains hard to see how May can give any ground on Chequers directly. While opposition parties have indicated that they will vote against any “final deal” that embodies Chequers, again there will be a question mark over whether a fudge is possible, with the Withdrawal Agreement being held up as a more interim step to whatever deal emerges in the post-withdrawal negotiations on the future relationship.

In this, May might find herself aided by the progressive strengthening of opposition to leaving without a deal, as the costs, uncertainties and reputational damage have come more sharply into view. However, as with so much of the British experience of Brexit, there remains very much more that is defined in terms of what it not wanted, than in terms of where a positive consensus might lie and how it fits into the wider conception of what a post-EU UK might look like.



# THE VIEW FROM “BRUSSELS”

## THE EUROPEAN INSTITUTIONS AND THE EU27

*Hussein Kassim*

The EU institutions have worked closely with the governments of the EU27 and with each other since the UK vote in June 2016. Member governments and the EU institutions established a common understanding soon after the result of the referendum was known, which they have pursued since with a unity of purpose that has surprised many. Despite the differing costs and consequences that Brexit is likely to have for them individually, member governments have continued to prioritise EU solidarity over their own economic interests.

Moreover, the arrangements put in place to exchange information between member governments and the EU institutions and to manage negotiations on the EU side have functioned extremely effectively. Although Article 50 is silent on how exactly responsibilities should be allocated, the European Council and the European Commission devised a system that has worked to the satisfaction of all parties on the EU side. From the evidence of repeated charm offensives and attempts to address heads of state and government directly, only London, it seems, does not appear to recognise that the EU27 see Michel Barnier as

the negotiator acting on their behalf.

### “United, we stand”

The EU27 signalled their unity shortly after the result of the UK referendum became known in a pre-prepared text issued by the President of the European Council Donald Tusk. Tusk had cleared this text with them and the governments of the 27 shared his concern to preserve stability and promise business as usual. They underlined their regret at the outcome of the vote and noted that they would welcome its reversal, but also indicated that they would respect the wishes of the British people. The UK would become a third country, without the privileges of EU membership, but the EU would try to ensure an orderly exit and thereby limit the damage caused by the disruption. In working towards the UK’s departure, the EU’s stability would be the EU27’s paramount consideration, and the protection of EU interests their main priority.

These positions were more fully articulated when the European Council met in an informal grouping of the EU27 for the first time on the Sunday following the referendum. In

their statement, they set out four principles: there would be no negotiation with the UK before London had formally triggered the Article 50 process; although the UK should remain a close partner of the EU, there would have to be a balance between its rights and obligations in any future relationship; the four single market freedoms – goods, capital, services and people – would be treated as indivisible in any negotiation; and the terms of the UK’s withdrawal from the EU would need to be completed before discussion of the UK’s future relationship with the EU, including a trade agreement, could begin.

These principles, agreed by the political leaders of the EU in the wake of the referendum vote, have remained largely unchanged since. They inform the instructions that the EU negotiator, Michel Barnier, has followed since his appointment.

### Process

Although it was never in doubt that the Commission would lead the negotiations with the UK, agreement was needed on how a historic process of such political and

diplomatic sensitivity should be managed. The creation of a working group in the Council Secretariat in June 2016, chaired by Didier Seeuws, led to speculation that the Council was making a bid to take ownership, while the appointment by Commission President Jean-Claude Juncker the following month of French former Commissioner, Michel Barnier, to head a Task Force on negotiations with the UK, was interpreted as a sign of inter-institutional rivalry, which officials on both sides deny.

The procedural arrangements for the negotiations were outlined at an informal European Council on 15 December 2016, which reaffirmed much of the substance of the 29 June text. It underlined the intention “to conduct the withdrawal negotiations in a spirit of trust and unity among us”, which has been cardinal throughout the process. The European Council agreed that it would define negotiating guidelines, after which the General Affairs Council would officially initiate the negotiations, “adopt negotiating directives on substance as well as on the detailed arrangements governing the relationship between the Council and its preparatory bodies on the one hand and the Union negotiator on the other”. Noting that Michel Barnier had been appointed to head a Commission Task Force on the negotiations with the UK, the document stipulated that the General Affairs Council would also “nominate the European Commission as the Union negotiator”.

To ensure that Commission and Council would work closely together, the text set out two further provisions. First, the negotiators team should “integrate a representative of the rotating Presidency”, include a representative of the President of the European Council in all negotiation sessions, and report systematically to all levels of the Council. Second, a dedicated Working Party with a permanent chair would “ensure that the negotiations are conducted in line with the European Council guidelines and the Council negotiating directives, and provide guidance to the Union negotiator”. These arrangements were endorsed in the first set of negotiating guidelines, which the European Council adopted in April 2017, in response to the UK’s triggering of Article 50 the previous month.

Cooperation between the Council and the European Commission has taken place much as envisaged, as officials in the two institutions, as well as in the national permanent representations in Brussels, have confirmed. The European Council, the Council of the European Union, and the European Commission work closely together at all levels. There is regular and frequent contact between the institutions from President to President, the heads of their respective cabinets, Secretary General to Secretary General, and Deputy EU negotiator Sabine Weyand and chair of the Brexit Working Group in the Council Didier Seeuws, and between the Article 50 Task Force and the Council Working Group. Draft documents, including those

that have become major reference texts, are routinely shared.

The arrangements ensure the continuous involvement of the governments of the EU27 in the process. Moreover, points of substantive negotiation are developed through discussions among the EU27 on balancing rights and obligations. There are also regular bilateral conversations between the President of the European Council and national leaders, and between the EU negotiator and member governments. This has cemented a sense of unity among the EU27 and dispelled anxieties that the large member states – Germany and France – are secretly colluding and likely to impose their own *fait accompli*.

The process has ensured that the EU institutions and the governments of the EU27 communicate the same message. An important example is the Irish border, where both Tusk and Juncker, and the national capitals have repeated that there should not be a hard border and that the Good Friday Agreement must be respected. On most issues of process and substance, representatives of the EU institutions and of national have very noticeably “sung from the same hymnsheet”.

## The negotiations

The procedural arrangements described above highlight that Barnier as EU negotiator follows guidelines that are defined by the political leaders of the EU27, that he is

constantly in contact with the governments of the EU27, and that his activities and actions are constantly monitored by representatives of the national capitals. Although some operational decisions – for example, the decision to follow a policy of transparency – may have been taken by Barnier or his deputy, Sabine Weyand, they are not out of line with the wider approach of the European Council or the EU27.

A similar point can be made about both the structure of the negotiations and their substance, which are based not on the decisions or whim of the EU negotiator, but guidelines set out and agreed by the EU27. This includes: the stipulation that a UK withdrawal agreement must be agreed before any opening of negotiations on the UK's future relationship; the separation and sequencing of the withdrawal negotiation into first and second phases; and the identification of the three issues on which progression from the first to the second was made contingent – EU citizens, settlement of the UK's financial obligations, and the Irish border. Since the latter has proved so important it is worth reproducing the relevant provision in full:

“The Union has consistently supported the goal of peace and reconciliation enshrined in the Good Friday Agreement in all its parts, and continuing to support and protect the achievements, benefits and commitments of the Peace Process will remain of paramount importance. In view of the unique circumstances on the island of Ireland,

flexible and imaginative solutions will be required, including with the aim of avoiding a hard border, while respecting the integrity of the Union legal order. In this context, the Union should also recognise existing bilateral agreements and arrangements between the United Kingdom and Ireland which are compatible with EU law.”

All were laid down in the guidelines adopted by the European Council on 29 April 2017, which formed the basis of the text agreed by the General Affairs Council on 22 May.

Whether for domestic political reasons or because it does not take the EU's approach seriously, the UK has repeatedly appeared to overlook that the fact that Barnier is conducting negotiations on the EU's behalf, that he has a mandate from the EU so to do, and that only the EU negotiator has the authority to negotiate for the EU27. National governments and representatives of EU institutions have reiterated this point on several occasions. PM May, for example, is reported to have insisted in a meeting with Commission President Juncker in May 2017 that she would take the lead in negotiations in the final stages and also to have wanted to make the proposal concerning EU citizens resident in the UK to other member states in person.

Barnier has proved himself an effective negotiator, who has won plaudits for his desire to make the negotiations succeed. He maintains constant contact with national

capitals, is highly visible, and accessible. He and his team have been credited with undertaking the extra diplomatic efforts and exploring ways of navigating impossible impasses. For example, in the run-up to the Salzburg summit, he proposed three ways of “de-dramatising” the Irish border question, with checks undertaken away from the border, that were intended to de-politicise the issue. More generally, President Tusk, President Juncker and Barnier himself have sought to create positive atmospherics before big negotiations. In the run-up both to Salzburg and the October European Council, for example, they have each talked up the prospects of reaching an agreement, emphasizing that 80% of the agreement is in place, despite their reservations on the Chequers plan that PM May had put forward.

At the same time, the EU side has been frustrated by the UK's approach to the negotiations. While the unsavory rhetoric of senior politicians, including Boris Johnson, David Davis, and most recently, Jeremy Hunt, has been noted in Brussels, the EU has been taken aback by the length of time it took the UK to deliver its White Paper after it had triggered Article 50. It has been perturbed by the persistence of “magical thinking” on London's part on, for example, the compatibility of leaving the single market, maintaining the UK's territorial integrity and avoiding a hard Irish border, the possibility of retaining “frictionless trade” once the UK is a third country, the refusal to accept that the

UK's red lines leave only a narrow range of options on the table – despite the efforts of Barnier to point this out with his now-famous step diagram PowerPoint slide – and the UK's reluctance to take seriously the EU as legal order rather than an infinitely flexible political arrangement.

Although it understands that the PM is in a precarious position at home, and has attempted to be diplomatic – as with the Joint Report, Chequers and the issue of the backstop in relation to the Irish border in September and October 2018 – so that her position is not undermined further, they were distinctly unimpressed by the apparent ultimatum amounting to “my Chequers plan or nothing” that she delivered at Salzburg, the UK's seeming preparedness to regard the backstop commitment in the December 2017 Joint Report as reversible, and the view that “none of it is agreed until it is all agreed”, which disregards the “withdrawal agreement before negotiations on future trade” condition on which the EU has insisted from the start. Used to the UK's formerly formidable diplomacy, they have been surprised by the maladroitness of its politicians.

### **The possibility of “n- deal”**

While negotiating on behalf of the EU is one treaty-given responsibility of the European Commission, guardian of the treaties is another. In this latter capacity, the Commission has undertaken two important

exercises. The first is to communicate the consequences of the UK's departure to a range of audiences, including other institutions, member governments, stakeholders and, arguably, the UK itself. In late 2017 and early 2018, the Commission published a set of slides that spelt out what third country status would entail for the UK. For each of many sectors and activities, the texts outlined the options remaining once the red lines laid down by the UK PM – as well as the negotiating guidance set down by the European Council in April 2017 – had been taken into account.

Second, with the slow progress of negotiations since December 2017 and concern increasing about the possibility of no deal, the Commission has launched an information campaign. With the European Council renewing its call to member states, EU institutions, and stakeholders to step up their work on preparedness at all levels and for all outcomes. In June 2018, the European Commission's Secretary General, Martin Selmayr, identified areas where regulatory provision has already been made and those where legislative action is still necessary. The Commission has now published more than 60 “preparedness” notices that inform citizens and identify what actions need to be taken by governments, business and other stakeholders, in order to limit the disruption flowing from no deal. The documents, which cover a full range of sectors and activities, are based on a detailed review of EU law and

attendant operational requirements.

More recently, in the wake of the Salzburg summit, and following the failure to reach agreement on outstanding issues – essentially, the Irish border, in the run-up to the October European Council – the Commission has suggested that, should no progress be possible in the negotiations, a meeting of heads and state of government in November may be necessary to prepare for a “no deal” rather than to sign off an agreement, as at one-time had been proposed.

### **The European Parliament**

Although it has no formal role in the negotiations, the European Parliament is still influential. First, Barnier regularly meets MEPs to discuss Brexit and the Article 50 Negotiations. Second, since its consent is required for the withdrawal agreement, the Parliament is a veto player. As the Parliament's lead representative on Brexit, Guy Verhofstadt MEP, President of the Alliance of Liberals and Democrats for Europe, has already made several interventions, where he has been critical of the UK's position. He will lead preparation of the Parliament's position together with the EP President and the party leaders, relevant parliamentary committees, including the Constitutional Affairs Committee, chaired by Danuta Hübner, and coordinate and prepare Parliament's consideration of the UK's withdrawal as chair of the Brexit Steering Group.

## Conclusion

The EU's response to the UK referendum has been marked by agreement and unity of purpose that has been noticeably absent from its reaction to other challenges, such as those

posed by the Eurozone crisis or by migration inflows. The EU institutions have worked closely together, and the European Council and the European Commission have been in constant touch with the EU27. Even more impressive, perhaps, is the seamlessness of the message from national governments with very approaches to the EU that, although the UK's departure from the EU will cause disruption and some economic harm, the EU and the EU single market must come first. The other chapters in this present publication reaffirm this finding.

consequences, and the formidable negotiating partner that the EU27, united behind the EU negotiator and effectively managing the process, has turned out to be.



By contrast, the UK has found it difficult to set out what it wants and therefore to engage constructively. Divisions within the Conservative Party and the cabinet have, of course, militated against presenting a coherent and enduring position. More practically, however, there is little evidence to suggest that UK politicians have come to terms with the complexity of the choices that confront them, the need to make trade-offs with sometimes unpalatable



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