

# Brexit: Pulling off a success?

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*Will the EU summit of 14-15 December 2017 usher in a new phase of negotiations on the exit of the United Kingdom from the European Union?*

*British Prime Minister Theresa May wants to make Brexit a success and to arrange a special partnership between the UK and the EU, a tailor-made partnership that would allow trade and finance to continue with minimal friction after the UK leaves the EU, while restoring the UK's national sovereignty, in particular by regaining the ability to limit the immigration of workers from the EU and by no longer being subject to the European Union Court of Justice (EUCJ). For the EU-27 countries, on the contrary, it must be made clear that leaving the EU incurs a significant economic cost, with no significant budgetary gain, that those who leave must continue to accept a major share of European rules and that they cannot claim the benefits of the single market without bearing the costs. Other Member States should not be tempted to follow the British example.*

*This post examines the negotiating positions of the EU-27 and the British government and the divisions in the UK in the run-up to the European summit. The negotiations, which have been going on for almost six months, are difficult and cover numerous issues: citizens' rights, financial regulations, the Irish border and the future partnership between the United Kingdom and the EU-27.*

*Will the EU summit of 14-15 December 2017 usher in a new phase of negotiations on the United Kingdom's departure from the European Union? As we approach the summit, the stakes are high*

for the British. On 23 June 2016, a majority of the British people voted in favor of leaving the EU, but it was not until 29 March 2017 that Theresa May officially notified the British decision to leave by triggering Article 50 of the Treaty on the European Union. This article stipulates that, "A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union." The triggering of Article 50 opens a two-year period to negotiate the exit of the UK on 29 March 2019.

The negotiations have been going on for almost six months. They are difficult and cover numerous issues. This is the first time a country has asked to leave the EU, and neither the UK nor the EU-27 want to lose out. For the British government, the key goal is to establish a future commercial and financial partnership with the EU. Theresa May wants to make Brexit a success and to arrange a special partnership between the UK and the EU, a tailor-made agreement that would allow trade and finance to continue with minimal friction after leaving the EU, while restoring the UK's national sovereignty, in particular by regaining the ability to limit the immigration of workers from the EU and by no longer being subject to the EU Court of Justice. For the EU-27 countries, on the contrary, it must be shown that leaving the EU incurs a significant economic cost, with no significant budgetary gain, that those who leave must continue to accept a major share of European rules and that they cannot claim the benefits of the single market without bearing the costs. Other Member States should not be tempted to follow the British example.

### ***The EU-27 position and the divisions in Britain***

On 29 April 2017, the European Council set out its negotiating lines and appointed Michel Barnier chief negotiator on behalf

of the EU. In the EU's view the negotiations need to focus initially on an "orderly withdrawal", i.e. exclusively on three points: the rights of European citizens in the UK; a financial settlement for the British departure; and the border separating the Republic of Ireland and Northern Ireland. The EU-27 has taken a tough stance on each of these three points and is refusing to discuss any future relationship between the EU and the UK before these are settled. It has banned any bilateral talks (between the UK and an EU member country) and blocked any pre-negotiations between the UK and a third country on their future trade relations. This has placed the United Kingdom in a difficult position, as companies (British and foreign) want to remove any uncertainties about UK-EU trade conditions after March 2019, and are threatening to cut their investments in the UK, or even to relocate within the EU-27, if this uncertainty is not removed.

The EU is in a strong position, since trade with the EU is five times larger for the UK than trade with the UK is for the EU. Moreover, the EU demonstrated its unity in the face of the British exit (as it did during the Greek crisis). In both cases, firm positions prevailed. More conciliatory lines did not come out in the European Council or in the European Parliament, as if the partisans of such positions were afraid to be accused of breaking Europe's unity.

The British, in contrast, are split into four positions that divide the ranks of both Conservatives and Labour. Among the supporters of staying in the EU, the Remainers, some, like Tony Blair and Michael Heseltine, who are very much in the minority, still hope that, in the face of difficulties, the United Kingdom will give up on leaving the EU. Lord Kerr, who drafted Article 50, has pointed out that the decision to trigger the article is reversible. But it would be contrary to British democratic tradition not to respect the popular vote. A new referendum could be organized, but in view of the polls there is no guarantee that a vote would have a different

result today than it did on 23 June 2016.

For most Remainers, Brexit will indeed take place, and what is needed now is to minimize its economic cost. Some Remainers, especially in Labour, are currently advocating a “soft Brexit”, which would allow the UK to remain in the single market. But, given the conditions imposed by the EU-27 (respect for the “4 fundamental freedoms” – free movement of goods, services, capital and labor – and maintaining the CJEU’s authority), Brexit would then ultimately simply deprive the United Kingdom of having a voice in the decisions that it would have to implement. Proponents of a soft Brexit are also in favor of a transition period (provided for by the Treaty, subject to the unanimous agreement of the EU countries), which would postpone for two years the UK’s exit and avoid the risk of it leaving the EU on 29 March 2019 without a negotiated agreement.

The most ardent Brexiteers are willing to run the risk of a “hard Brexit”, i.e. leaving with no agreement with the EU. The UK would no longer have to contribute to the EU budget (about 0.5 GDP point per year in net terms), and it would have the status of a third country under WTO rules. The United Kingdom would then renegotiate trade agreements with all its partners, including the United States. Border controls would be reinstated. Proponents of a hard Brexit are not in favor of a transitional period, which they feel would only delay the moment when the United Kingdom “would regain control” and prevent it from negotiating agreements with non-EU countries. In the case of a hard Brexit, the risk is that the multinationals would relocate their factories and head offices to continental Europe, that in general it would become less attractive to invest in the United Kingdom and that a large part of the euro zone’s banking and financial activities would leave London for Paris, Frankfurt, Amsterdam or Dublin.

London could, however, play the card of tax competition (in particular by cutting the corporation tax rate) and become a

regulatory paradise, especially in financial matters. However, it would be very difficult for the United Kingdom to free itself of international constraints (agreements such as COP21, on the fight against tax optimization, on the exchange of tax and banking information, or Basel III). The financial conditions for the UK's departure would be subject to a judicial settlement. For more ardent free marketeers, Brexit would help to strengthen the UK's laissez-faire model. However, it is unlikely that the United Kingdom, whose legislation is already very liberal, would enjoy a substantial growth shock induced by even more liberal reforms.

The British government is evolving an intermediate position. In 2016, when Theresa May was a minister in David Cameron's government, she called for voting to stay in the EU, but she is now aiming to make Brexit a success: the UK must become a champion of globalization ("A global Britain") and of free trade, in the British liberal tradition, which must turn its face towards the open sea. The country also has a trade surplus vis-à-vis its non-EU partners, primarily with the United States, and has maintained historical ties with the Commonwealth countries, while it has a large trade deficit with the EU countries (although it runs a surplus in services).

Theresa May has taken note of the EU-27 position that the UK will not be able to remain in the single market if it does not respect the four "fundamental freedoms". She is nevertheless trying to maintain privileged trade and financial relations with the EU by setting up a specific free trade partnership. Since the UK wants to be able to regain control of its borders, manage the entry of workers from the EU, and no longer submit to the EU Court of Justice, and unlike the EFTA countries refuses to submit to standards on which it will have no say in exchange for free access to the European market, Theresa May is proposing that a "specific and in-depth partnership" be established between the UK and the EU. In

addition, since her September 2017 speech in Florence, she has called for a two-year transition period from March 2019 to March 2021.

Theresa May held early parliamentary elections in June 2017 in an effort to strengthen her Tory majority in Parliament. In fact, Labour's attacks on austerity and on Tory positions favouring a reduction in welfare benefits led to the loss of the Tory majority. Theresa May had to reach an agreement with the Democratic Unionist Party (DUP), a Northern Ireland pro-Union party that is conservative on social affairs, but opposed to austerity and to any compromise with the Republic of Ireland. Theresa May has therefore entered the Brexit negotiations with a weakened and divided majority, with some of her ministers (David Davis, Secretary of State for Brexit Negotiations; Boris Johnson, Secretary of State for Foreign Affairs; Liam Fox, Secretary State for International Trade) declaring themselves ready to take the risk of leaving without an agreement.

On 15 November 2017, the UK Parliament finally passed the EU Withdrawal Bill, called the "Great Repeal Bill", ending the application of EU law in the UK and giving the government the task of transposing (or not) European laws and regulations (i.e. 12,000 texts) into British law. However, it was agreed that any agreement signed with the EU will be submitted to Parliament, with the latter's refusal implying an exit with no agreement.

### ***The state of negotiations on the eve of the 14-15 December summit***

Five rounds of negotiations were initially planned in 2017, from June to October. The objective was that, by the European summit of 19-20 October, sufficient progress was to be made in negotiations on the three points set in April so that the EU-27 countries would agree to start negotiations over the future partnership. On 19 June in the first round, David Davis

accepted the EU's request for sequencing. Thus, only the three points desired by the EU-27 have been discussed, while for the UK government (and the country's businesses), what is crucial is the future partnership. At the end of the fifth round, on 12 October 2017, the EU's chief negotiator Michel Barnier declared that the negotiations on the financial aspects were deadlocked and that he could not propose to the October 19<sup>th</sup> European summit that discussions be started on an agreement. Barnier hoped, however, that progress would be made in time for the 14-15 December EU summit. On 20 October, however, the European Council nevertheless agreed to the possibility of a transition agreement and proposed that preparatory talks be held for the December summit, which would therefore be crucial.

With regard to the rights of citizens, especially the 3.2 million EU citizens living in the UK, Theresa May proposed that all EU citizens who had settled in the UK by 29 March 2017 could obtain a residency status that guarantees them the same rights as British citizens in terms of employment and social rights. This would be automatic for those who have resided there for more than 5 years, and for the rest when they reach 5 years of residence. The negotiations hit stumbling blocks on the reference date (March 2017 or 2019?), on maintaining the right to family reunion and especially on supervision of the application of the agreement by the EUCJ, which the EU-27 is demanding in order to ensure that the UK does not tighten its regulations, but which the UK cannot accept (it could, however, agree to the establishment of an arbitration tribunal).

On the issue of the Irish border, both parties have agreed to preserve the peace agreement in Northern Ireland and to maintain the absence of a land border, so as not to put obstacles to the lively trade between the two parts of the island or to freedom of movement between the two areas (30,000 people a day cross the border), which is difficult if the

United Kingdom is no longer in the single market or in the customs union. The Republic of Ireland is refusing any hard border, and threatens to veto any agreement that would erect additional barriers between the Republic and Northern Ireland. It is asking for special status for Northern Ireland, which would keep it in the customs union. The DUP, working in a contrary sense, opposes Northern Ireland staying in the customs union after Brexit, or at least any agreement that would not apply to the whole of the United Kingdom; the British government, desirous of maintaining the integrity of the United Kingdom, must refuse to allow Northern Ireland to be subject to EU regulations with a border between Northern Ireland and the rest of the UK. The DUP proposes setting up an invisible border, which will require great creativity. On this point, the EU-27 believes that it is up to the UK to make acceptable proposals. Faced with the difficulties of reconciling the irreconcilable, the two parties could agree to postpone the issue to the end of negotiations on their future partnership.

On the issue of the financial settlement, the positions seem to have drawn closer. On the EU side, some 60 billion to 100 billion euros were mentioned as a British contribution to the European expenditures already committed, while the United Kingdom did not want to tackle the issue of a financial settlement independently of negotiations on the future agreement. In September 2017, however, Theresa May made it clear that the UK would honour its financial commitments to the EU, namely its share of spending in 2017-19, its commitments for 2020, the investment expenditure committed beyond that, and its share of the pensions of European officials. The United Kingdom is to pay between 45 and 50 billion euros. As part of the negotiations on the future partnership, the UK government could commit to possible future contributions to the functioning of the single market.

Although none of the three initial negotiating points are



really resolved today, it seems that the EU-27 will agree that negotiations on the future partnership can begin in 2018. This will require the EU-27 countries to agree on a common position, which will mean postponing the beginning of a new round of negotiations until March 2018. It is likely, and desirable, that the European Council meeting of 14-15 December accepts the British request for a two-year transition period in order to eliminate the risk that it could leave without an agreement in March 2019.

It will then be necessary to come to an agreement on the future partnership between the EU-27 and the United Kingdom. The EU-27 must not give in to the temptation to punish a departing country by applying only WTO rules to it, which would also harm EU exports to Britain, especially as the EU has a current account surplus of 130 billion euros vis-à-vis the country. Similarly, industrial cooperation agreements (Airbus, arms, energy, etc.) can hardly be called into question. It seems impossible for the EU-27 to accept that the UK remains in the single market and chooses which rules it wishes to apply. The minimum would be a trade agreement, modeled on the Canada-EU Comprehensive Economic and Trade Agreement (CETA). The most promising outcome for both parties would undoubtedly be to reach an agreement for a balanced commercial partnership that would serve as a model for creating a third circle in Europe, which could eventually make it possible to bring on board Norway, Iceland, Switzerland, Ukraine, Turkey, Morocco and other countries, and which would avoid leaving third countries to face a choice between keeping their national sovereignty and the benefits of trade liberalization.