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# Brexit Disillusionment or the Revelation of the Cost of leaving the Union



On 29th March 2017 in application of article 50 of the Treaty on European Union (TEU) the European Council officially received notification on the part of the UK of its intention to leave the European Union. This separation will occur, if agreement on a postponement is not found, on 29th March 2019 at the latest.

On 29th April, 27 Members States (European Council) adopted the main guidelines[1] to undertake negotiations with the UK over the Brexit[2]. European strategy defines three periods of negotiation between the European Union and the UK:

- A period devoted to the discussion over the UK's exit of the EU leading to the transformation of the UK into a third country;
- A period to build the future relations between the UK and the EU notably including an agreement over trade relations;
- Possibly an intermediary gap between the two previous periods, taking the shape of transitory agreements.

At this stage the Europe's negotiating position comprises settling accounts, whilst planning the transformation of the UK into a third country, possibly then to recreate links with the Union. The negotiation strategy will be debated with the UK. The Union will only accept to discuss future relations after significant progress has been made regarding the terms of its exit. Theresa May might therefore find it difficult, given that this involves three obligatory stages, which each highlight the costs associated with the UK's exit of the EU:

- Settling accounts at the time of the exit;
- Acceptance the disappearance of the standards framing existing situations both for people and businesses;
- Addressing the re-emergence of tensions that have been dormant due to membership of the European Union.

1. <http://www.consilium.europa.eu/en/press/press-releases/2017/04/29-euco-brexit-guidelines>

2. For her part, Theresa May presented her British strategy for the organisation of the Brexit in a White Paper on 17th February 2017.

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### 1. THE SIZE OF THE PROBABLE COST OF THE EXIT IS A POLITICAL DIFFICULTY FOR THERESA MAY, WHATEVER ITS VOLUME

The calculation of the amount that the UK will have to pay the EU, on its exit and in virtue of its commitments, taken as a Member State and broken by the Brexit, will be a sensitive issue in the negotiations. On this point the British and the Europeans will debate technical arguments, subject by subject. This will involve the period deemed to be binding for the UK, of the application of the rebate debt, and even the contribution to the retirement pensions of European officials. All of these subjects will equally be issues of debate, seen as technocratic and inaudible to public opinion. They will be no less symbolic: they will reflect the complexity and the cost of the Brexit, beyond the simplifications and short-cuts that have typified public debate over leaving the EU.

Listening to some of those defending the Brexit prior to the referendum on 23rd June 2016, leaving the EU would increase the UK's budgetary margins by stopping Britain's contribution to the Union's budget, by enabling for example, greater credits to be attributed to the healthcare system. This vision of the exit of the EU is clearly challenged by the open debate regarding the calculation of the value of the various British commitments that will require payment. The final amount of the British debt, as imagined in the initial calculations will be around 55 to 60 billion €. Even if she negotiates bitterly and reduces this amount to its minimum, Theresa May will not succeed in making it less symbolic or less contradictory as expressed by the wish at the time of the vote on 23rd June 2016. Hence whatever the method of calculation and whatever the final amount that is to be paid, the costs because of Britain's community commitments at the time of the exit of the EU that the UK will have to pay, will comprise a political setback for Ms May.

From the European point of view these commitments are significant: they represent the most urgent, most visible and the most significant cost of leaving the EU. This will therefore be a message to those who, in other Union Member States, boast about exiting the Union whilst forgetting what this implies.

### 2. THE UNPRECEDENTED LEGAL VACUUM CREATED BY THE BREXIT IS A SERIOUS THREAT TO HUMAN RIGHTS

The exit of the EU means that from one day to the next the Union's normative corpus will cease to apply to the UK. Hence, Theresa May has indicated that the government would undertake the monumental work of copying the European texts into British domestic law, notably via the *secondary legislation* method (equivalent of French constitutional law orders)[3]. This ultimate contradiction in terms of the wish for British independence vis-à-vis the European Union will guarantee the continuity of affairs. However, it will not settle the status of British citizens living in the European Union and Europeans living in the UK.

In the negotiations to come The rights of British citizens living in the European Union are a priority for Theresa May. The same applies for the citizens of Europe living in the UK for the European Union; Donald Tusk and Michel Barnier have said that this point should be dealt with in the first phase of negotiations. This issue is therefore of equal importance for both sides, and it will call for negotiation at the outset of official discussions over the Brexit. The logical agreement would be symmetric, ie offering equal protection on both sides. Regarding the migratory question, two scenarios are to be ruled out in the first phase of negotiations put forward by the European Union:

- The status of European citizens living in the UK for more than five years will not change, in application of British law that is already in force; as of six years of residency they would even be able to acquire British nationality;
- European citizens arriving in the UK after the Brexit will potentially be subject to stricter British law, but which remains to be defined.

The situation of European citizens living in the UK for under five years will still have to be addressed, which is more uncertain and which will, for its part, be the focus of negotiations with the Union. Unless a dangerous period of tension is desired, it is unthinkable to imagine mass expulsions or a costly complication

3. Policy paper dated 30th March 2017: "Legislating for the United Kingdom's withdrawal from the European Union".

of the lives of these citizens. Negotiations will focus on the definition of the “acquis” of these citizens, i.e. the rights which they will continue to enjoy. For the European negotiators it will be important to maintain perfect equality of treatment between the citizens of all Member States, in order to prevent the segmentation of the negotiations and the creation of internal divisions. The upkeep of reciprocal acknowledgement of diplomas and professional equivalences will also have to be discussed.

Negotiations regarding citizens’ status could be doubly disadvantageous to Theresa May: the status of British citizens in Europe (and to a lesser extent that of Europeans in the UK) is of concern to the British, whilst the attenuation of promises regarding the closure of Britain’s borders is a disappointment to them. The migratory issue indeed formed the core of the debate which ultimately led to the vote in support of the Brexit. Theresa May said in her general policy speech on 17th January 2017 that the immigration of European citizens to the UK should be restricted in application of the mandate that had been given to her by the referendum on 23rd June 2016. However although her mandate obliges her to take symbolic steps she could not risk causing harm to British citizens living in a Union Member State. On 4th April last Theresa May indicated that the free movement of people could be part of the transitory measures once the first stage of negotiations had been completed. In this case after 2019 it would apply for the time required for the redefinition of relations between the UK and Europe.

### **3. THE TRANSFORMATION OF A MEMBER STATE INTO A THIRD COUNTRY HIGHLIGHTS CONFLICTS THAT LAY DORMANT THANKS TO THE EUROPEAN UNION**

As part of the first phase of negotiations put forward by the EU, three specific points are to be the focus of decisions: the border between Northern Ireland (Ulster) and the Republic of Ireland, Gibraltar and the sovereign British military bases on Cyprus.

The Cypriot question should not be of any major difficulty. It will notably involve guaranteeing the

application of the agreement between the UK, Greece and Turkey that created two sovereign military bases– Akrotiri and Dhekelia, for a surface area of 254 km<sup>2</sup> – and to guarantee the status and rights of European citizens working on these bases.

Gibraltar will be a bigger problem. As the negotiation strategy of the European Council stands, it is provided that Spain’s approval would be necessary for the application of an agreement over the status of Gibraltar. This territory of 30,000 inhabitants enjoys an extremely favourable situation: it is part of the European Union without being in the Customs Union and in virtue of this it does not raise any VAT in imports. The Brexit revives the Spanish claim on Gibraltar. Since the re-opening of the border with Spain in 1985, the latent tension between Spain and the UK had faded into the background. With the UK being changed into a third country, Spain’s claim has become real and audible.

Finally the border between Northern Ireland and the Republic of Ireland will be one of the greatest perils of the Brexit. The opening of this border to the free movement of goods and people helped to lower tension between the communities. Without any real separation between the two Irelands, the Northern Irish conflict lost one of its reasons for being. Although nothing indicates that the re-establishment of the border would cause tension in the mid or long term, it is certain that this situation would represent the disappearance of one of the factors that has played in favour of peace in the region. It is the Union’s goal to find an arrangement that maintains the present balance whilst respecting European law. This armed conflict which led to 3,500 deaths is still recent: paramilitary groups involved in the troubles were progressively disarmed in the 2000’s and it was in July 2007, less than ten years ago, that Britain’s military operations officially came to an end in Northern Ireland.

Beyond extremely theoretical considerations regarding the unification of the two Ireland, in this case Northern Ireland (Ulster) would automatically enter the European Union, following the precedent of East Germany, both European and British negotiators have common interests regarding relations between

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Northern Ireland and the Republic of Ireland. On both sides the guarantee is has been given that a specific solution will be sought. However the agreement will be legally and technically difficult to draw up.

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A year has had to pass since the referendum on 23rd June 2016 for the UK to realise what the real, immediate, tangible costs of leaving the European Union will be. The negotiation calendar, as put forward by the Europeans has the merit of having highlighted these costs.

Before evening considering the economic cost of Brexit, the UK's transformation into a third country is taking the shape of a bill of several tens of billions of €. It also looks as though the situation of some citizens – both British in Europe and Europeans in the UK, will be seriously compromised. Finally it is leading to the reappearance of certain conditions that may encourage tensions that we thought appeased, notably regarding the conflict in Northern Ireland. Brexit reminds us of how great a factor the European Union is in terms of guaranteeing peace.

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