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Relations between the European Union and the United Kingdom: a final agreement in view?

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The United Kingdom officially left the European Union on 31 January 2020 following the signing of the exit agreement. This departure went hand in hand with the opening of a transitional period until 31 December 2020, during which the rules of the internal market continue to govern relations between the two sides. However, negotiations have not yet been completed, since the framework for the future relationship between the United Kingdom – which has now become a third country – and the 27 Member States of the European Union has yet to be established. The joint political declaration of 30 January 2020 accompanying the exit Agreement provides for : *"an ambitious, broad, deep, flexible partnership in trade and economic cooperation – with a comprehensive and balanced free trade agreement at its centre –, law enforcement and criminal justice, foreign, security and defence policy, as well as broader areas of cooperation"*[1]. Initiated in February 2020 the negotiations on the future Agreement have been hampered by the Covid-19 pandemic. The 27 Member States decided that the defence of their positions would, as with the exit Agreement, be entrusted to the European Commission represented by a single negotiator, the Frenchman Michel Barnier. On the British side, former diplomat, David Frost, is in charge of defending the positions of the British government led by Boris Johnson, however the former will be called to another post as Government Adviser for National Security from September 2020. Although face-to-face negotiations resumed in Brussels at the end of June 2020, in substance they have made very modest progress. Hence a legitimate question: can an agreement on the future relationship between the United Kingdom and the European Union be reached by 31 December 2020, while Boris Johnson's government has refused to make use of the possibility offered of extending the transition period and thus the negotiations until 30 June 2020? Is there a risk of ending the year 2020 without a *no deal* and to have economic relations between the United Kingdom and the European Union governed by the common law of the World Trade Organisation?

THE POLITICAL SITUATION REMAINS DIVIDED

Even before the negotiations began, both parties were keen to post several principles and red lines to set the framework.

On the British side, the roadmap presented by the Prime Minister to the British Parliament in February 2020 stresses the need for the United Kingdom to *"fully regain economic and political independence". It presents the future relationship with the European Union as one of "sovereign equals"*[2]. This sovereigntist rhetoric is constantly put forward by British negotiators. In contrast to the situation under Teresa May, Boris Johnson's comfortable 80 seat majority in the House of Commons has allowed him to hammer home the slogan of *"taking back control"* with little opposition within the Conservative Party. The British government has, moreover, been built mainly with strong Brexit supporters who embody a firm negotiating line with the European Union. For its part, the Labour Party lost too many seats in the December 2019 general election to be a strong opponent, although its new leader, Keir Starmer, has gradually rid the party leadership of the old anti-European left, close

[1] Official Journal of the European Union, *C 34, 31.01.2020.*

[2] *Her Majesty Government,* The Future Relationship with the EU. The UK's Approach to Negotiations, *communication from the Prime Minister to Parliament, February 2020.*

to his predecessor, Jeremy Corbyn, to return to a more centrist and clearly anti-Brexit line. Finally, British public opinion remains divided. According to a poll of 12 June 2020, 40% of those polled thought that Brexit was a good decision, against 47% who thought it was bad in retrospect. In the event of a new vote, only 33% of those polled were in favour of withdrawing from the Union, compared with 47% who were in favour of remaining in the Union. However, more than 25% of voters remained undecided. While British GDP is expected to fall by 11.5% in 2020 due to Covid-19, the business community is the one that most explicitly reminds Boris Johnson that the country's economy will not be resilient in the event of a *"no deal"*. Following Carolyn Fairbairn, president of the British employers' association CBI, 100 business leaders sent a letter to Boris Johnson at the end of June 2020 to tell him that a "*no deal*" would imply *"enormous additional damage"* for the British economy.

As for the European Union, reference is most often made to the joint declaration of 30 January 2020, calling for an agreement that is *"compatible with the principles of the Union, with particular regard to the integrity of the single market and the customs union, and the indivisibility of the four freedoms"*. Michel Barnier has regularly reiterated this, with the support of the 27 Member States. No Member State of the European Union wants to take the risk of making concessions to the United Kingdom which would threaten the integrity of the internal market, as this is a major interest of their participation in the Union. As in the negotiation of the exit Agreement, Brexit is not a subject which fundamentally divides the 27 Member States, but which contributes instead to placing the balance of power on the side of the European Union in the negotiations.

In this month of July, each party is therefore approaching the negotiations with red lines. For the United Kingdom, there is no question of remaining bound by the Union's legal order and no concession affecting the overall functioning of the internal market is acceptable to the 27 Member States. Each side is aware of the limits set by the other in a context in which time is running out following the United Kingdom's refusal to extend the transitional period. However, the European Commission would have liked to have had this extra time. Michel Barnier's team regularly reminds David Frost of the realistic constraint of completing the negotiations by October 2020 at the latest, so that the agreement can be submitted to the European Parliament and national parliaments before entering into force on 1 January 2021. Faced with a United Kingdom that is unquestionably playing a game of haste, one of the major risks is the Union's acceptance of unclear compromises, such as the Protocol on Ireland and Northern Ireland during the exit negotiations, which would then leave the British with the latitude to implement them as they see fit. Since none of the 27 Member States wish to bear the responsibility for a "*no deal*", the UK is seeking to gain the upper hand in the negotiations.

ONGOING THEMES OF NEGOTIATION

At the end of four rounds of negotiations, Michel Barnier concluded on 2 July 2020 that *"serious differences remain"* and met with the British delegation on 20 July to try and make progress. At this stage, several points of divergence seem to prevail over a consensus. Five issues can be pinpointed which remain unresolved.

1. The structure of the agreement: the European Union has wanted, from the outset, an agreement with a single institutional framework which can cover all aspects of the future relationship. For the Union, the relationship with the United Kingdom has to be addressed, since this country was a Member State for 47 years and, as such, is integrated to a level beyond compare with any other third countries. On the other hand, the British Government recalls its objective of regaining sovereignty and fears a global agreement that would continue to tie it too closely to the European institutions. This is why the United Kingdom would prefer a series of sectoral agreements, one of which would organise free

trade. London's preferred strategy also aims "to cherry-pick" advantages, thereby eliminating, as much as possible, all the obligations that the UK had as a member state. In the end, the question of the single institutional framework will be the most important one for the Union. Its acceptance by the British would certainly make it possible for two or three differentiated agreements to coexist.

2. A level playing field in economic trade: in view of the scale of trade (in July 2020 53% of the UK's imports and 47% of its exports were with the European Union), the European Union is prepared to agree to free trade without customs duties on the sole condition that both parties agree on a mechanism for the compulsory adjustment of competition rules in the social and environmental fields, as well as state aid to companies (which has tended to increase in the United Kingdom with Covid-19). This condition is particularly important for the Member States whose trade with the United Kingdom is the highest in terms of GDP and which do not want to face the effects of neo-liberal-inspired normative deregulation: first and foremost, Ireland, but also Germany, the Netherlands and Denmark. Michel Barnier is ready to find an operational compromise on this subject to align regulations, without this having yet given rise to very precise positions. On the British side, we cannot rule out a compromise whereby the United Kingdom would retain the right to deviate from European standards in certain areas such as state aid, while accepting the Union's right to impose additional customs duties in return. The European Union is struggling with this, because a free trade agreement cannot be limited to the tariff issue alone. Moreover, it is aware that this type of arrangement might lead to a shaky compromise which, like the Protocol on Ireland and Northern Ireland, may leave room for a broad interpretation by the United Kingdom in its implementation.
3. Fisheries: This is a sector which accounts for a very small share of the GDP of both the UK and the EU (1.5% of EU GDP in 2020), but on which often highly localised jobs depend. The fisheries sector typically leads to politicization in the Member States that is far greater than the objective weight it represents in the economy. In the United Kingdom, the sovereignty of fish stocks was widely brandished as a slogan by Brexit supporters in the June 2016 referendum. For their part, English and Scottish fishermen's associations have explicitly supported a tough Brexit. Under the rules of the Common Fisheries Policy, nine EU member states (Belgium, Denmark, France, Germany, Ireland, the Netherlands, Poland, Spain and Sweden) have catch quotas in British waters. They earn 4.9 times more than UK fishermen do in EU waters. For example, 50% of the income of Belgian fishermen is earned in UK waters. It is therefore logical that a number of EU Member States want a status quo after 1 January 2021, with access to British fishing grounds and unchanged technical measures. The United Kingdom responds to the European Union that it wishes to regain its full sovereignty and calls for quota-by-quota negotiations. But there is a second dimension to the fisheries dossier, which is access to markets. A majority of the catches of British vessels are not sold in the United Kingdom (*low seafood consumption*), but are exported to four European Union member states: France, the Netherlands, Ireland and Spain. These countries, all of which have fleets, are encouraging Europe to play on access to the European market for British products in order to demand concessions in terms of access rights. This market-access link operated by the states explains the British government's preference for a separate fisheries agreement which would have the advantage of disconnecting the issue of catches from that of trade. As the economic balance of power is not completely on the side of the European Union on this issue, the 27 Member States of the European Union are for the moment displaying the principle of their unity by reserving compromises for the end of the negotiations.

4. The governance of the agreement is also a stumbling block. The European Union wishes to establish a comprehensive dispute settlement mechanism in case of any breaches of the agreement and, in particular, a level playing field. Such a mechanism implies an interpretation of European standards that the EU logically wants to entrust to the European Court of Justice. This request makes use of an institution that Brexit supporters have presented as the symbol of the infringement of national sovereignty throughout the referendum campaign. The United Kingdom is therefore standing by its position of refusing to make any reference to the work of the judges in Luxembourg, without a real solution having been found for the time being.
5. Finally, there remain the sovereign areas of cooperation: internal security and justice on the one hand and the common foreign and security policy on the other. The European Union would like to see them included in the overall agreement. For its part, the United Kingdom attaches importance to internal security and justice, for which it is requesting very broad cooperation, including the exchange of DNA data, fingerprints and criminal records. The Member States of the European Union are also in favour of this, but would like the United Kingdom to agree to commitment to the fundamental rights defined by Europe and the powers of the European Court of Justice. This is an area where there seems to be room for improvement, however, as it affects the day-to-day security of both parties. On the other hand, the United Kingdom is refusing any negotiations over the Common Foreign and Security Policy, despite the fact that Europeans have expressed expectations, particularly with regard to the harmonisation of sanctions against third parties. The British position can be explained by the desire to preserve the independence of its diplomacy, but also by a long-standing reluctance to institutionalise its cooperation. This in no way means that the United Kingdom will not have exchanges on foreign and security policy with the European Union and, in particular, France and Germany, bearing in mind that the last ten years have marked proximity on many issues (the Iran denuclearisation treaty, the situation in Ukraine or the Arab-Israeli conflict). However, the United Kingdom would like this cooperation to remain purely informal, for example within the framework of the E3 (Berlin-London-Paris). It is highly likely that the European Union will not insist too much in the negotiations on the Common Foreign and Security Policy, which has always been subject to a strong intergovernmental logic.

At the end of July, therefore, much work remains to be done to reach a mutually satisfactory compromise. Agreement on the future relationship between the United Kingdom and the European Union should, in this respect, be a major focus for the German Presidency of the Council.

THE MEMBER STATES OF THE EUROPEAN UNION AND NEGOTIATION

While the European Union has witnessed a number of very divisive debates between Member States since the Greek debt crisis, Brexit has, on the other hand, been a subject on which the coherence of positions has been very clear. The British negotiators had to accept this reality as soon as the exit treaty was negotiated and abandon their initial hopes of dividing their 27 European partners, notably France and Germany. The European choice to entrust the negotiations to Michel Barnier played a role in defending unity. More fundamentally, the political and economic interest of all Member States in preserving the integrity of the single market in the face of British demands was the essential factor of cohesion. Several Member States traditionally close to the United Kingdom within the European Union, such as Sweden, the Netherlands, Poland and the Czech Republic, have never deviated from the unity rule because the internal market remains a fundamental element of their membership. The British negotiators, accustomed in their political

culture to playing on the anteriority of informal solidarities, have sometimes found it difficult to understand this reality, as Peter Wittig former German ambassador in London explains[3].

Among the member states, France and Germany have not shown any essential difference in negotiating the agreement, although French President Emmanuel Macron often adopts a tougher rhetoric than German Chancellor Angela Merkel when British demands seem questionable. The British press, often quick to give an intergovernmental reading of the European Union, likes to emphasise Germany's weight and interest in defending its industry's exports in the future relationship with the UK. There is a great expectation in London that the German Presidency of the Council will reach a pragmatic agreement that will help prevent a "no deal". That is forgetting a little quickly that the German Chancellor will never compromise the solidarity woven around the European rescue plan for the progress of Brexit at all costs. As she told the European press on 29 June, any agreement presupposes "that both sides want it", i.e. it cannot be reached at any price.

The Republic of Ireland is the Member State most concerned by the Brexit, both economically and politically. However, Dublin's essential interest was shown in the exit agreement. It was imperative to avoid the re-establishment of a land border between the Republic of Ireland, a Member State of the Union, and Northern Ireland, a territory of the United Kingdom, and to keep Northern Ireland within the customs territory of the European Union, which was regulated by the Protocol on Ireland and Northern Ireland. As the United Kingdom is the Republic of Ireland's first partner for imports and second for exports, the question of a level playing field remains crucial for Dublin, which fully supports Michel Barnier's position. The same applies to the right of access of Irish fishermen to British waters.

After Ireland, Denmark and the Netherlands are among the European Union Member States most concerned by the future relationship with the United Kingdom, both in terms of trade and fisheries. Both are committed to the "level playing field" provisions to guard against unfair normative competition. For example, the Netherlands wishes to attract service activities that were previously established in London without having to give them up afterwards. The Dutch firmness on the internal market does not prevent this country from regretting, on a political level, the departure of the United Kingdom, which was a fulcrum for its positions on free trade or budgetary rigour within the Union. From this point of view, the Netherlands has a tendency to want to play a political role previously devolved to the British, by appearing to be the leader of the "New Hanseatic League"[4] on euro area issues or so-called "frugal" states in the negotiation of the post-Covid rescue plan.

The four Visegrad countries (Hungary, Poland, the Czech Republic and Slovakia) have always considered the United Kingdom to be a useful counterweight to the Franco-German couple within the Union. They therefore have regretted the Brexit, despite the ideological closeness of certain political forces (such as Fidesz in Hungary or PiS in Poland) with the pro-Brexiters. While the integrity of the internal market seems fundamental to their interests, these countries do not express strong public positions with regard to the negotiations on the future relationship between the United Kingdom and the European Union. For them, and for Poland in particular, the key issue was the right of their emigrants to remain in the UK after 1 January 2021, which was partly settled by the Exit Agreement. While Poland was attentive to the provisions of London's new migration policy, which aimed to attract only skilled workers and high wages, it did not hesitate to negotiate bilaterally with the United Kingdom in May 2020, following Spain, Luxembourg and Portugal, a reciprocity agreement guaranteeing the right of citizens residing in the other country to vote in local elections.

In the end, the Member States of the European Union are showing a common front with regard to the negotiations led by Michel Barnier. The nuances will perhaps be felt at the end of the negotiations, between those countries ready to go slightly beyond

[3] "Brexit: Ex-Botschafter warnt vor zu selbsgefällingen Blick aus GroBbritannien", Der Spiegel, 19 June 2020.

[4] Created in February 2018, the New Hanseatic League is a group of 8 Member States (Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, the Netherlands and Sweden) advocating budgetary rigour within the Union.

the terms of the Joint Declaration to move towards an agreement, and those ready to assume a "no deal" in the face of British demands considered exorbitant. But while no European Union member state wanted the Brexit, none really wants a "no deal" either.

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In July, negotiations between the United Kingdom and the European Union are therefore far from over. Many sensitive issues remain unresolved. The September timetable will necessarily be busy because of the UK's desire to reach an agreement applicable from 1 January 2021. The German Presidency of the Council will have a crucial role to play in conducting the discussions with London. The fact that Germany is in charge of the final compromises is fortunate. Respect for the "powerful" partner is part of the British Conservatives' approach to foreign policy. But London would be wrong, however, to delude itself that the Berlin-chaired Council will be completely benevolent. The European negotiator Michel Barnier will know how to recall the red lines and Germany will not go against them out of both industrial interest and European solidarity considered important by Angela Merkel. There is a strong chance that an agreement will be reached between the United Kingdom and the European Union, leading Boris Johnson to make last-minute concessions while maintaining his brave rhetoric on "regaining control" aimed at his pro-Brexit electorate. If the negotiations fail and thus result in a "no deal", the big loser will be the United Kingdom because of the strong economic interdependence that still binds it to the European Union. Faced with a British government that often seems to prefer ideology to facts when it comes to Brexit, totally countering all assertions about alleged political pragmatism in the UK, the major British entrepreneurs will be present to remind the tenant at 10 Downing Street of what reality really means. But will that be enough?

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