

**BREXIT,  
THE EUROPEAN UNION,  
AND GLOBALIZATION**

**Political  
and economic  
perspectives**



**Giuseppe Ammendola**



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AUTÓNOMA  
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## Datasheet

### Title:

Brexit, The European Union, and Globalization  
Political and Economic Perspectives

### Author:

Giuseppe Ammendola

### Edition:

© OBSERVARE – Observatório de Relações Exteriores  
© Departamento de Relações Internacionais| Universidade Autónoma de

Lisboa

### Book Cover:

Bruno Filipe

### Year of Publication:

2019

e-ISBN 978-989-8191-98-4

DOI: <https://doi.org/10.26619/978-989-8191-98-4>

Handle: <http://hdl.handle.net/11144/4207>

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## Introduction

The issue of the British exit from the European Union, henceforth referred to herein as Brexit, is truly important. This paper is rooted in the belief that Brexit's consequences, no matter which legislative, regulatory, and policy paths will be chosen, are truly long-term. And they are also broader than originally thought in terms of overall influence on other countries' domestic and international political and economic thinking and actions.

In this paper, we shall identify events, factors, analytical frameworks, and opinions which have played, play, and probably will play a key role in understanding Brexit and its impact. Clearly the highlighted factors and views reflect subjective choices made by the author after looking at a literature that is extremely vast and diversified and characterized by very contrasting underlying national and world views. While the issues considered here are very complex, throughout this paper there has been an emphasis on conciseness and, hopefully, clarity.

We start by first examining the present economic relations between the United States and Europe, with some emphasis on the UK. We then look at the special relationship between the US and the UK in a European and global context, along political and economic lines. The approach here is historical, going from the period preceding WW1, to WW2, to the beginning of the Cold

War, to the birth of the European Economic Community, to the entrance of the UK in the EEC as part of the latter's first enlargement, to the end of the Cold War, to the nineties (including the Maastricht Treaty and the emergence of the World Trade Organization). In examining the new millennium we look at three major European integration issues: the failed Constitutional Treaty, the subsequent Lisbon Treaty, and the Eurozone and its crisis. Afterwards, we shift to a more British focus and examine the decision to hold the Brexit referendum, its campaign, and its results and the reasons for them. We then list the country models for the future trade relationship that the new Prime Minister had to consider. The road to the invocation of Article 50 by the UK in March 2017, the unexpected new elections held in June 2017, and their results are then looked at, with reference being often made to the Prime Minister's and other prominent political figures' public statements in the UK and abroad. We continue by looking at the July 2018 Chequers White Paper, which as a document gives a good sense of the breadth and complexity of the issues under negotiation. We then look at some of the most authoritative economic evaluations of Brexit, according to various scenarios. After that, we highlight the importance of the gravity factor in trade and the complexity of the challenges related to the very numerous treaty renegotiations triggered by leaving the EU. We then proceed to follow the public declarations by top European as well as Tory and Labor leaders with regard to the White Paper and their broader implications. Thereafter, we look at the Draft Withdrawal Agreement, its approval by the EU-27 side, and the challenges that the UK Prime Minister has had to confront in trying to have it approved by the UK Parliament. The Brexit deal and its alternatives, the multiple supportive and adversarial arguments put forth by the major political forces, the divisiveness engendered within and between political parties, regions of the UK, and its society are then discussed. We conclude with a list of areas where lessons from Brexit are being and will be learned in the future, including their global dimension. The general thrust of the paper is that the study of Brexit, regardless of its formal results in terms of EU-UK relations, on account of the breadth of its impact is going to be extremely useful to all categories of leaders in the US, Russia, and China and in all countries in Europe, Latin America, Africa, and Asia involved in any form of political and economic integration. There can be little doubt that henceforth the debate on globalization is not going to be the same.

## Economic Transatlantic Relations today

One first consideration that needs to be made is the extraordinary importance that the relationship between the United States and Europe has in the world economy.<sup>1</sup> No other set of regional business links is as interconnected and integrated.

In terms of global trade, together, the US and Europe accounted for 28.1 percent of exports and almost 33 percent of global imports in 2016.<sup>2</sup> In terms of the totality of EU imports, the main source country in 2016 was China accounting for 20.1 percent of the total, with the United States holding the number two position at 14.5 percent of the total.<sup>3</sup> In terms of the totality of EU exports, the top target country was the United States (20.7 percent), with China a distant second at 9.6 percent.<sup>4</sup>

Most interestingly, the relationship in terms of trade, while strong, is not the most important between the two areas. Far more significant is the fact that the US and Europe are the main origin and destination of each other's foreign direct investment (FDI) and that, as a percentage of global FDI, the United States and Europe together account for 64 percent of the outward stock and 56 percent of the inward stock.<sup>5</sup> Not surprisingly, US foreign affiliate sales in Europe are very significant: in 2016 they were about \$3 trillion, nearly half of the total US foreign affiliate sales worldwide and larger than the totality of US exports to the world (\$2.2 trillion).<sup>6</sup> Furthermore, sales in the US by majority-owned European affiliate firms were in 2016 \$2.4 trillion, a figure that is more than three times larger than that of US imports from Europe.<sup>7</sup> Further still, if one looks at services trade and investment, the US and EU are each other's largest commercial partners. And this arguably is a very strong factor in influencing positively the formidable global competitiveness of US and European services firms.<sup>8</sup>

The impact of the very large investment flows in both directions of the Atlantic is very significant in terms of research and development (R&D). Notably, in 2015 US affiliates invested in R&D in Europe \$31.3 billion, 57 percent of the total amount invested by U.S. foreign affiliates globally. In the United States, in 2015 R&D expenditures by European affiliates was \$41 billion, 72 percent of total R&D investments by majority-owned foreign affiliates in the United States.<sup>9</sup>

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Giuseppe Ammendola is Adjunct Professor at New York University where he teaches graduate level courses in international political economy and business. He is also an international business consultant. E-mail: ga17@nyu.edu

<sup>1</sup> Unless indicated otherwise, the data in this section are from the excellent Hamilton, Daniel S., and Quinlan, Joseph P., *The Transatlantic Economy 2018: Annual Survey of Jobs, Trade and Investment between the United States and Europe* Washington, DC: Center for Transatlantic Relations, 2018. .

<sup>2</sup> Hamilton vii.

<sup>3</sup> CIA, *World Factbook* estimates for 2016, available at <https://www.cia.gov/library> accessed on 9/18/2018.

<sup>4</sup> *ibidem*

<sup>5</sup> Hamilton vii.

<sup>6</sup> Hamilton, *ibidem*.

<sup>7</sup> Hamilton, ix.

<sup>8</sup> *ibidem*

<sup>9</sup> Hamilton, xii. Clearly national security considerations, on account of the trust existing among these nations, in general do not play a negative role in many of these technology flows.

Another relevant indicator, US-European cross-border data flows, is the highest in the world: 50 percent higher than the corresponding figure between the US and Asia in absolute terms and 400 percent higher on a per capita basis.<sup>10</sup> As one top US diplomat stated “...with the rapid growth in mobile computing and advent of the Internet of Things, big data analytics, and cloud computing, those flows are projected to grow substantially over the next decade, to the benefit of new digital companies, established industries, consumers, researchers, and governments on both sides of the Atlantic.”<sup>11</sup> Most relevantly, “[n]early half of all U.S. companies polled by the U.S. International Trade Commission indicated that they had an online trading relationship with the European Union, and almost half say that Europe is the region outside North America where they focus their cross-border strategy first, far ahead of other regions. [Similarly, o]ver half of European companies ... focus first on North America as their primary e-commerce market outside of Europe, again far more than on other regions.”<sup>12</sup> Once again, the interconnectedness between both sides of the Atlantic can arguably be viewed as a great contributor to the global competitiveness of the companies based there.

Last, but not least, in spite of much talk about US and European companies shipping jobs to Mexico and Asia, one has to note that most foreigners working for US companies outside the US are European, and, vice versa, most foreigners employed by European companies are American.<sup>13</sup> In 2015, US and European foreign affiliates employed directly about 9 million workers, an increase of about 2 percent from the previous year.<sup>14</sup> The employment level would be higher if one would include the jobs connected to trade flows and those indirectly connected to “nonequity arrangements such as strategic alliances, joint ventures and other deals”.<sup>15</sup>

The US economic relationship with the UK also cannot be overemphasized. Let us start with trade flows, which are very important. In 2017 the United States exported to the United Kingdom \$126.1 billion of goods and services and imported from the United Kingdom \$110.6 billion of goods and services.<sup>16</sup> To put these figures in perspective, US exports to the UK in 2017 were lower only than those to Canada (\$341.3bn), Mexico (\$276.7bn), China (\$188bn) while exceeding Japan’s (\$114.7bn).<sup>17</sup> On the other hand, US imports from China top the list (\$523.7bn), followed by Mexico (\$345.4bn), Canada (\$338.5bn), Japan (\$171.3bn), and Germany (\$153.3bn). US exports to the EU in 2017 were \$528.2bn while US imports therefrom were \$629.3bn.<sup>18</sup> The United States is the number one country destination of British exports of

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<sup>10</sup> Anthony Gardner “Perspectives on the EU’s Digital Single Market” a much quoted speech (also by Hamilton) given on September 15, 2015 and available at the useu.usmission.gov website.

<sup>11</sup> Gardner, *ibidem*.

<sup>12</sup> Hamilton, p. 30.

<sup>13</sup> Hamilton, xi.

<sup>14</sup> *ibidem*

<sup>15</sup> *ibidem*

<sup>16</sup> See [https://www.census.gov/foreign-trade/Press-Release/current\\_press\\_release/exh20.pdf](https://www.census.gov/foreign-trade/Press-Release/current_press_release/exh20.pdf) accessed on September 19 2018

<sup>17</sup> *ibidem*

<sup>18</sup> *ibidem*



goods and services.<sup>19</sup> As to be expected, of course, the EU is the largest overall destination for UK goods exports, accounting in 2016 for 48 percent of total UK goods exports, while goods imports from the EU were worth more than combined imports from the rest of the world<sup>20</sup>

Most interestingly, just as for the US-EU relationship, in the US-UK link the trade dimension--while important--is not as significant as the investment aspect of the economic interaction. In 2016, the stock of capital invested by the US in the UK reached a record \$682.4 billion, more than double the added up US investment in South America, Africa, and the Middle East (\$235 billion) and well over seven times the total US investment stock in China (\$92 billion).<sup>21</sup> The UK's foreign direct investment in the US went up to \$555.7 billion in 2016.<sup>22</sup> This is really an impressive figure, especially in light of the fact that the UK's total FDI stock was at the end of 2016 \$1.61trillion.<sup>23</sup>

Also, very interestingly, data for 2017 show that (on a historical-cost basis) the total outward direct investment position of the United States in the UK is \$747.6 billion, largely accountable by holding companies and finance and insurance<sup>24</sup> This contrasts with that in the Netherlands at \$936.7, largely explainable as Jenniges points out on account of "holding companies that likely invested funds in other countries"<sup>25</sup>, Luxemburg at \$676.4billion (the power of tax havens, one could argue), Canada at \$391.2 billion (because of Nafta and proximity, of course), and Ireland at \$446.4billion (low tax rates).<sup>26</sup> To put it directly, the US direct investment position in the UK is the second largest in the world, while with regard to the FDI in the US the UK has the top position both in terms of country of immediate foreign parent and country of ultimate beneficial owner.<sup>27</sup> The economic importance of the US-UK relationship is also highlighted by the fact that majority-owned US affiliates in the UK employed over 1.4 million workers in the UK, while UK majority-owned affiliates employed about 1.2 million Americans.<sup>28</sup>

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<sup>19</sup> CIA *World Factbook*, see above, accessed November 11, 2018

<sup>20</sup> See Office of National Statistics "Who does the UK trade with?" January 3, 2018 available at <https://www.ons.gov.uk/businessindustryandtrade/internationaltrade/articles/whodoestheuktradewith/2017-02-21>, accessed on November 11, 2018. A Brexiter would point out that the share of UK exports of goods and services going to the EU has gone down from 54 percent in 2000 to 43 percent in 2016. Ibidem.

<sup>21</sup> The data here are also from Hamilton, who uses US official data. He also points out that in 2016 the total US investment presence in China and India combined (\$125 billion) was "just 18% of the total U.S. investment in the UK." (p. vii) A quick computation breaks it down to about 14 (China) and 4 (India) percent respectively.

<sup>22</sup> Hamilton, p. 146.

<sup>23</sup> CIA *The World Factbook*, accessed sept 18, 2018. The estimated UK total fdi stock figure has only increased slightly in 2017 to \$1.63 trillion, ibidem.

<sup>24</sup> The source of data is Stutzman, Sarah A. and Abdul Munasib "Direct Investment Positions for 2017". *Survey of Current Business*, Bureau of Economic Analysis, August 2018. See also Jenniges, Derrick T. and Sarah Stutzman "Direct Investment Positions for 2016, *Survey of Current Business*, Bureau of Economic Analysis, July 2017. Both available at bea at [www.bea.gov](http://www.bea.gov). The estimated figure for the total stock of US direct investment abroad is \$5.6 trillion (December 31, 2017) (Stutzman).

<sup>25</sup> Jenniges, op.cit.

<sup>26</sup> Stutzman, op.cit.

<sup>27</sup> Smyth, Ryan and Jessica Hanson "Direct Investment by Country and Industry: 2017" *News Release*. Bureau of Economic Analysis. July 30 2018.

<sup>28</sup> Hamilton, p. 146

## The US-UK special relationship and Europe: before WW2

The US-UK “special relationship” looms very large in the triangular relationship among the US, Europe, and the UK.<sup>29</sup> Historically, it can be argued that the special relationship started with the Great Rapprochement of the 1890s. Some developments of a political, economic, social, and cultural nature helped. Let us look at some of them.<sup>30</sup> Firstly, there was the expansion of the suffrage to most adult men in Britain in the mid-1880s, which made Americans see Britain as more democratic and led more British to see the merits of the government by the unsophisticated and uncouth masses.<sup>31</sup> Next, there was the increasing British respect for the US Constitution’s emphasis on guaranteed rights as the best ideological and emotional response to socialism as well as a growing acceptance of “mixed marriages” between British and US citizens (e.g. Winston Churchill, born in 1874, the child of an English politician coming from an aristocratic family and an American socialite). The third development was a progressive decrease in American Anglophobia<sup>32</sup>, (even though it can be argued that it disappeared only in the late 1950s, after the resolution of the misunderstanding connected to the Suez crisis). This I would say in no small measure was linked to the fact that the United States economy was becoming the biggest on the planet, a position definitely reached by the end of the nineteenth century and which gave the former colony a greater sense of confidence. Last, there were Prussia’s victory over France in 1870 and the 1868 Meiji Restoration in Japan, which alerted Britain to the challenges to its empire that Prussia and Japan could represent.<sup>33</sup> It has to be noted that Russia’s challenge was also deemed significant at the time, and the presence in Africa of other European powers such as Belgium, Italy, Germany, Portugal, and Spain was also a cause of concern. It was

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<sup>29</sup> The literature on the subject is very large. See for instance Oliver, Tim and John Williams “Special relationship in flux: Brexit and the future of the US-EU and US-UK relationships” *International Affairs* 92: 3 (2016) 547–567, and references therein. See also Maddison, Angus *Contours of the World Economy: Essays in Macro-Economic History* (Oxford: Oxford University Press, 2007); Macdonald, James *When Globalization Fails: The Rise and Fall of Pax Americana* (New York: Farrar, Straus and Giroux, 2015) and my review of it: Ammendola, Giuseppe “When Globalization Fails: The Rise and Fall of Pax Americana by James Macdonald”, *American Foreign Policy Interests*, (2015) 37:2, 120-122; Findlay, Ronald and Kevin H. O’Rourke, *Power and Plenty: Trade, War and the World Economy in the Second Millennium* (Princeton, NJ: Princeton University Press, 2007); Cameron, Rondo A *Concise Economic History of the World* (Oxford, UK: Oxford University Press, 1993). Several of the key developments connected to the period preceding 1914 listed here are mentioned in the excellent Bromund, Ted R. “The Special Relationship: Anglo-U.S. Relations since 1776” in *Oxford Research Encyclopedia of American History*. Published online in June 2016.

<sup>30</sup> Bromund, op.cit

<sup>31</sup> Bromund, op.cit. It has to be noted that Britain trailed other Western nations in public support for education until 1870 when The Education Act was passed and, very slowly, education started to be more widely available. Cameron, op.cit., p.321.

<sup>32</sup> Bromund, op.cit.

<sup>33</sup> ibidem

clearly a multipolar world, where Pax Britannica had become a thinner concept and the British industrial supremacy was gone.<sup>34</sup> To the British, the most natural ally was clearly the resource-rich nation across the Atlantic where the same language was spoken.

Thus, the US-Britain relationship continued to improve. A case in point is a border dispute in 1895 between Venezuela and British Guiana. Britain accepted the United States' intervention on the side of Venezuela.<sup>35</sup> This was a confirmation of the by now fairly clear British acceptance/support of the Monroe Doctrine, which led to an arbitration process that ended largely in favor of the imperial power.<sup>36</sup> Cooperation between the United States and Britain was clear also in connection with the construction of the Panama Canal and during the Spanish-American War, which ended with the 1898 Treaty of Paris whereby the US gained almost all Spanish colonies. This latter development, which marked a most visible end to the United States' isolationism, could be linked to its becoming a world power. Because of this new role the US, the very country that had successfully gained independence from Britain over a century before, instead of siding with the anti-imperialist Boers against Britain, remained neutral during the Boer War (1899-1902).<sup>37</sup>

Before the outbreak of WWI in 1914 Britain, while not as dominant as at the end of the Napoleonic wars, still possessed most impressive strengths. Such strengths commanded great respect on both sides of the Atlantic.<sup>38</sup> While as an industrial power Britain had lost its dominant position, London was the major financial center and investment capital source of the world. It was the center of the gold standard system and a country truly committed to free trade (only the Netherlands and Switzerland coming fairly close). Interestingly, trade among industrialized countries was in general not as important as the flows of goods that the European powers had with their own colonies, dominions, or the other territories of recent European settlement.<sup>39</sup> In

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<sup>34</sup> Macdonald, op.cit.

<sup>35</sup> Bromund, op.cit.

<sup>36</sup> ibidem. Incidentally, over a century later, the decision in favor of Britain came to the surface again in the dispute between Guyana (no longer a British colony) and Venezuela. See David Connett "Guyana and Venezuela in bitter border dispute after oil discovery" September 26, 2015 *Independent* available at [www.independent.co.uk](http://www.independent.co.uk)

<sup>37</sup> Bromund, op.cit.

<sup>38</sup> Maddison (p. 381) estimates that in 1913 the US represented 18.9 percent of the world's GDP, followed by China (8.8), Germany (8.7), the former USSR (8.5), the UK (8.2), India (7.5), France (5.3), Italy (3.5), Japan (2.6), Belgium (1.2)

<sup>39</sup> Ravenhill, John (ed.) *Global Political Economy* (Oxford, UK: Oxford University Press, 2017) Fifth edition, p. 11. Given the vastness of the British empire, an outsider could understand the desire/fantasy among many Brexiters to return to a bygone era at times idealistically described in some school textbooks.

this sense, Britain's strength as a commercial and military sea power, while diminished in relative terms by WW1, was a huge source of international economic and political advantages. However, one point needs stressing about the world economy before 1914: it "was dominated, literally and figuratively, by Europe (especially western Europe) and the United States. In political terms, the overseas empires of West European nations—primarily the British, French, and Germans but also the Dutch, Belgians, Danes, and Italians—together with the vast land empire of imperial Russia gave them control of more than three-quarters of the earth's surface and almost as large a fraction of world population."<sup>40</sup> And for Britain, control of many strategic narrow waterways and choke points (e.g. Dover, Gibraltar, Singapore) helped in no small measure to its effectiveness in exerting its influence.<sup>41</sup> However, while sea power was important, the railroad expansion on the continental US and Eurasia proved to be a great game changer. This was not lost on Halford Mackinder who famously stated: "Who rules East Europe commands the Heartland; Who rules the Heartland commands the World Island; Who rules the World Island commands the World."<sup>42</sup>

Britain's concerns about the control of the huge landmass very proximate to it were more over Russia than Germany. WW1 disproved that, even though clearly after WW2 concerns over Russia (the heartland/pivot in Mackinder's view) proved to be more than justified. Further, the vital contribution of the United States to the Allies' victory is indisputable, while the view that many held in Britain that the naval blockade was the determining factor in the final result is fairly debatable.<sup>43</sup> Also worthy of note is that the disappearance of the Austro-Hungarian and of the Ottoman Empires after WW1 dealt a great blow to the concept of multiethnic empire. Nationalism continued to strengthen and would clearly play a big role in leading to WW2. The observation that after WW1 and in the inter-war years the Anglo-American relationship (and for that matter also the US-European one) went down on account of the US push for repayment of war debts, its levying of higher tariffs (most significant example Smoot-Hawley in 1930), and

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<sup>40</sup> Cameron, op.cit., p. 339.

<sup>41</sup> On the importance of sea power the work of Alfred Thayer Mahan is crucial. See his *The Influence of Sea Power Upon History, 1660-1783*, originally published in 1890.

<sup>42</sup> The quote is from a 1919 book that Mackinder wrote, *Democratic Ideals and Reality*, but the idea of the heartland/ pivot goes back to 1904. See Mackinder, Halford J. "The geographical pivot of history" *The Geographical Journal* Vol. 23, No. 4 (Apr., 1904), pp. 421-437. See also Venier, Pascal "The geographical pivot of history and early twentieth century geopolitical culture" *The Geographic Journal* Vol. 170, No. 4, December 2004, pp. 330-336.

<sup>43</sup> Macdonald, op.cit, p.81. Some remainers would see in this an early example of Britain's overestimating its strengths.

the US refusal to join the League of Nations thus not “giv[ing] the security guarantee to their wartime allies that they desperately wanted”<sup>44</sup> seems most valid and suggestive of a US nationalism that clearly turned out to be very myopic. Further, with the US ignoring the crucial security issues connected to the relationship between France and Germany as well as the growing threats that Japan’s expansion into Manchuria in the early 1930s represented to the Eurasia mass, one can with the benefit of hindsight see how WW2 was inevitable.<sup>45</sup>

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<sup>44</sup> Bromund, op.cit.

<sup>45</sup> Interestingly, in Mackinder’s view “Russia replaces the Mongol Empire” as the pivot/heartland. For him “Outside the pivot area, in a great inner crescent, are Germany, Austria, Turkey, India, and China, and in an outer crescent, Britain, South Africa, Australia, the United States, Canada, and Japan” H. J. Mackinder “The Geographical Pivot of History” *The Geographical Journal*, Vol. 23, No. 4 (Apr., 1904), pp. 421-437.

## From WW2 to the birth of the EEC

Great Britain's capital had already gone through 22 months of war and had experienced many bombings by June 12, 1941. On that day Great Britain, Canada, Australia, New Zealand, and the Union of South Africa, together with nine exiled European Governments whose temporary home was now London, signed the Declaration of St. James' Palace. The Declaration stated that "[t]he only true basis of enduring peace is the willing cooperation of free peoples in a world in which, relieved of the menace of aggression, all may enjoy economic and social security; It is our intention to work together, and with other free peoples, both in war and peace, to this end."<sup>46</sup>

Two months later, President Roosevelt and Prime Minister Churchill signed "somewhere at sea" a joint declaration, which came to be known as the Atlantic Charter.<sup>47</sup> It notably listed key common principles such as: support for freedom to traverse the seas; seeking no aggrandizement, territorial or other; respect of the right of all peoples to choose the form of government under which they will live; the granting access on equal terms to the trade and raw materials of the world; and bringing about fullest collaboration between all nations with the object of securing improving labor standards and social security. The "destruction of the Nazi tyranny" mentioned in the Charter became much more of a direct American goal after the Pearl Harbor attack on December 7, 1941 and the declaration of war against the US by Hitler four days later. It soon became clear to many more observers (as it had been to Churchill for a long time) that the flexibility that the United States possessed in terms of converting the largest industrial economy into an arms making juggernaut was indeed extraordinary and that the victory of the Allied Powers was only a matter of time. Such was the conviction of the final result that, as a matter of fact, it was during the war years that the United Nations (UN), the International Bank for Reconstruction and Development (IBRD), and the International Monetary Fund (IMF) were established.

With the United Nations, peace and security figured prominently as international goals for the no longer isolationism-aiming United States. The IBRD (better known as the World Bank) focused at first on the reconstruction needs of war torn economies, an objective that was central also to

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<sup>46</sup> See the UN website at [www.un.org](http://www.un.org).

<sup>47</sup> On the Atlantic Charter, see the UN website at [www.un.org](http://www.un.org) and also the US Department website at <https://history.state.gov/milestones/1937-1945/atlantic-conf>

the Marshall Plan. Created in 1947, the Plan's multilateral scope and long-term thrust proved to be much more effective than the very early post-WW2 US bilateral aid programs.<sup>48</sup> Its free-market orientation led Stalin to impede its acceptance by the countries in Eastern Europe that he had come to dominate. The IMF negotiations, which created the monetary order under the US leadership, also showed most clearly the centrality of the US dollar to the free world economies' trade flows while the end of the sterling as the key world currency soon became apparent.

At the beginning of 1946 Stalin announced that the Soviet Union would not be joining the Bretton Woods institutions (IMF and IBRD). The famous Long Telegram that diplomat/strategist George Kennan sent from Moscow on February 1946 to explain Stalin's decision (and which would anticipate implicitly the concept of "containment" that Kennan himself would later introduce) was "the first significant move in America's acknowledgement of the coming confrontation."<sup>49</sup> Winston Churchill's "iron curtain" speech given in March 1946 essentially explained the British view on the new state of affairs: "all the capitals of the ancient states of Central and Eastern Europe... Warsaw, Berlin, Prague, Vienna, Budapest, Belgrade, Bucharest and Sofia... and the populations around them [were now in] "the Soviet sphere", while the United States had reached at the same time "the pinnacle of world power", a "primacy" which came with "an awe-inspiring accountability to the future."<sup>50</sup> One year later, after Britain's admission of its incapability to muster the resources to protect Greece from falling under Communist control, President Truman gave a famous speech before a joint session of Congress on March 12, 1947. In the speech, which formed the basis for the Truman Doctrine, the President asked for the funds to provide aid to both the Greek and the Turkish governments (the latter feeling the Soviet pressure for enhanced access to the Turkish Straits) as well as for authorizing "the detail of American civilian and military personnel" to the two countries at their request, also for the "instruction and training of selected Greek and Turkish personnel".<sup>51</sup> The British post-WW2

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<sup>48</sup> Judt, Tony *Postwar: A History of Europe since 1945* (New York: The Penguin Press 2005), pp. 90 ff.

<sup>49</sup> Judt, op.,cit. p. 108. George Kennan's vision "of a long-term, patient but firm and vigilant containment of Russian expansive tendencies" is most famously articulated in the article "The sources of Soviet conduct" *Foreign Affairs* July 1947, which he published anonymously.

<sup>50</sup> Churchill's speech is available at <https://www.cia.gov/library/readingroom/docs/1946-03-05.pdf>. For an overview of the historical background of the European Community, from which several of the insights of the following pages are drawn see Ammendola, Giuseppe "The European Community, the United States, and 1992", *American Foreign Policy Newsletter*, February 1990, 13:1, 3-10. (Henceforth, Ammendola 1990)

<sup>51</sup> Truman's speech is available, among others, at <https://www.trumanlibrary.org/>. This "training" dimension is often forgotten and even more so the overall social interaction with locals that American personnel would have henceforth. But I would argue

weakness was also evident in connection with the USSR's attempts to increase its influence in oil-rich Iran, which were also successfully resisted by Truman after 1946. Most notably, in addition to specifically referring to the fact that "Great Britain finds itself under the necessity of reducing or liquidating its commitments in several parts of the world", Truman stated in the same speech that the US has "to help free peoples to maintain their free institutions and their national integrity against aggressive movements that seek to impose upon them totalitarian regimes. This is no more than a frank recognition that totalitarian regimes imposed on free peoples, by direct or indirect aggression, undermine the foundations of international peace and hence the security of the United States."<sup>52</sup>

One great area of agreement between the British and the Americans was on the need to rehabilitate Germany in order to improve overall Western European stability and strength. The awareness that true reparations would be impossibly onerous for the Germans, that the Marshall Plan funds were most needed by them, and that Soviet cooperation on achieving unification of the country was unthinkable (think for instance about the 1948 Berlin blockade) would lead to allowing in 1949 self-government status--in the form of a federal republic-- to the occupied Western areas of Germany.<sup>53</sup> Beyond this initial step, the road to European economic integration started truly visibly with the creation in 1951 of the European Coal and Steel Community (ECSC), viewed as necessary to prevent future conflicts triggered by the desire to control access to coal and iron. Moreover, and most importantly, the United States saw also the European integration process as an excellent way to strengthen politically and socially the Western European states, especially considering the threat represented by the Communist parties in several of them. The creation of the European Economic Community in 1957 was also encouraged by the United States. It can be reasonably argued that the risks that the member countries would erect together high trade barriers against the outside world were not deemed as too great (correctly so). After all, the trade regime that materialized in 1947 through the General Agreement on Tariffs and Trade (GATT) successfully moved to reduce quotas and tariffs, an

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that they both have in general contributed to making the US bases in Europe a good tool to improve relations between the US and the host country as well as the overall image of America.

<sup>52</sup> *ibidem*. Truman also recognized in the same speech the congruence of this position with the goals of the United Nations.

<sup>53</sup> Macdonald, *op.cit.*, p.177. It is very arguable that this gratitude-connected factor is one of the reasons why the Germans are stronger than the French in wanting the UK to stay in. On this "French exception" within the EU see for instance Revesz, Rachael "Brexit: More French people want UK to leave the EU than to stay" *The Independent*, September 4, 2017 where one reads that a major survey showed that "more people in Germany, Finland, Sweden and Denmark wanted the UK to remain part of the EU than those who wanted it to leave."



overall objective stemming from the compelling desire not to have a repetition of the trade wars of the 1930s.<sup>54</sup>

The creation of the North Atlantic Treaty Organization (Nato) in 1949 clearly was also a strongly European-centered initiative. Among its distinguishing features there were the headquarters located in Belgium, its collective defense nature, and the permanent UN member status of the US, the UK, and France. The entrance of West Germany in Nato in 1955 stemmed from American and British conviction of the necessity to strengthen Europe militarily in a more direct way.<sup>55</sup> Nato clearly conformed to the logic of Mackinder to provide a direct military counter to Soviet expansionism. Not a moment too soon, since the perceived Russian threat to Eurasia was felt much more strongly after communist leader Mao Tse-Tung's ascent to power in China on October 1949. The outbreak of the Korean War in 1950 added further to American and British concerns. As a consequence, the process of transformation of a former wartime enemy into an ally was accelerated: in 1951, with the Treaty of San Francisco, Japan was fully rehabilitated.

Most relatedly, the United States also shifted its position on decolonization. During WW2, the former British colony had stood by its principles of what we would call today self-determination and at first supported decolonization. However, the rising Communist threat in the Far East became a game changer. A well-known radio and television address given by then Vice-President Richard Nixon on December 23, 1953 captured the concept: "Why is the United States spending hundreds of millions of dollars supporting the forces of the French Union in the fight against communism in Indochina? ... If Indochina falls, Thailand is put in an almost impossible position. The same is true of Malaya, with its rubber and tin. The same is true of Indonesia. If this whole part of south-east Asia goes under communist domination or communist influence, Japan, who trades and must trade with this area in order to exist, must inevitably be oriented towards the communist regime. That indicates to you and to all of us why it is vitally important

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<sup>54</sup> See McDonald, *op.cit.*, p. 189. Of course, with regard to nontariff barriers, progress became more problematic since the late 1960s.

<sup>55</sup> This came after France's earlier opposition to Germany's full rearmament through the European Defence Community (EDC). The EDC essentially aimed at creating a supranational European army, but, in the end the French Parliament voted against its ratification in 1954. Calvocoressi, Peter *World Politics 1945-2000* (Harlow, Essex, UK: Longman/Pearson, 2001), p. 219. France's agreement to Germany's entrance in Nato came to be conditional on US support for the ill-fated French attempts to control Indo-China. See Judt, *op.cit.*, p. 284

that Indochina not go behind the Iron Curtain.”<sup>56</sup> More broadly, the British and the French were encouraged to continue to exert their influence if doing otherwise could lead to the establishment of communist regimes. On the other hand, the independence of countries which would not be headed by communist leaders would in general not be opposed.<sup>57</sup>

Two principles thus stood out in the American posture: one, guarantee the access in a fair way to important raw materials for the Western countries and two, carry out the containment policy and prevent any “domino effect”<sup>58</sup> The United States’ position pleased both the UK and the Western Europeans. However, a major source of controversy and misunderstanding materialized when Egypt’s President Gamal Abdel Nasser nationalized the Suez Canal in July 1956.<sup>59</sup> Shunning the uncertainties and slowness of a possible UN-connected solution, France, the UK, and Israel intervened militarily three months later. The United States, irritated at the fact that attention was drawn away from the USSR’s invasion of Hungary, felt that Britain and France were placing their own “colonial” interests above those of the Western alliance. Confronted with a significant run on the sterling (and the prospect of IMF and United States’ total lack of financial support), the United Kingdom had to bow to US pressure as well as a US resolution calling for a cease-fire and withdrawal of forces from Egypt that had been approved overwhelmingly by the UN General Assembly on November 2, 1956.<sup>60</sup>

In spite of its role in pushing for the withdrawal of British and French troops,<sup>61</sup> the United States’ gains in terms of public relations as a defender of non-aligned countries were arguably significantly diminished by the USSR’s claims that it was its strong threats—including nuclear ones—to Britain and France that really forced the two countries to back down. Most importantly, Britain and France learned two very different lessons. Britain saw its reputation as a colonial power significantly damaged and its colonies’ move toward independence rendered easier and

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<sup>56</sup> See Department of State Bulletin, January 4, 1954, available at

[https://archive.org/stream/departmentofstat301954unit\\_0#page/10/mode/2up/search/Malaya](https://archive.org/stream/departmentofstat301954unit_0#page/10/mode/2up/search/Malaya)

<sup>57</sup> One could note that, during the Cold War, an informal conversation with many US diplomats about the rationale for American support of foreign dictators opposed to communism would essentially include their uttering a sentence like “..yes, he is a bad guy...but he is *our* bad guy..”

<sup>58</sup> The reference to dominos and their fall one after the other was made famous by President Eisenhower at an April 7, 1954 press conference.

<sup>59</sup> On the Suez crisis, see for instance Judt pp. 292ff. and Calvocoressi 395ff.

<sup>60</sup> The British and French forces withdrew their troops within weeks. See for instance James M. Boughton “Northwest of Suez: The 1956 Crisis and the IMF” *IMF Staff Papers* Vol. 48, No. 3, 2001.

<sup>61</sup> Israel withdrew its troops as well but received a public US commitment guaranteeing its right of passage through the Gulf of Aquaba (Judt, p. 297).

more rapid.<sup>62</sup> From that moment onward the UK, when deploying troops (like in 1982 to retake the Falkland Islands, or after the end of the Cold War in the Balkans, Sierra Leone, and Iraq), would always make sure to have the US support. The special relationship would henceforth be viewed as one in which a key element was the UK's complete recognition that, from Truman onward, the United States had acquired the powerful systemic role possessed by its former colonial master.

France drew a different conclusion: the country's standing as a colonial power had been damaged by the American actions.<sup>63</sup> To the French, the closeness of the relationship between Britain and the United States meant that the former was not reliable. There was only one way forward: France would have to develop its own nuclear deterrent and create a special relationship with Germany that would lead to a strong Europe. In March 1957, with the Treaty of Rome, the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) were created. Composed of the same six countries that had founded the ECSC (Belgium, the Netherlands, Luxembourg, France, Italy, and West Germany), the EEC soon came under the dual control of Paris and Bonn, with the former playing a larger role in policy conceptualization and direction and the latter in footing the bill--but displaying some significant independence through its moves in the late 1960s and in the 1970s to improve relations with Eastern Europe. This Ostpolitik would raise some concerns among three key fellow Nato members- the US, UK, and France-even though German foreign policy would on the whole continue to be very supportive of Nato, the UN, and a federalist Europe.<sup>64</sup>

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<sup>62</sup> See for instance Judt and Calvocoressi about specific countries and the rise of Commonwealth.

<sup>63</sup> For French leaders this was most painful in Algeria, which was considered an integral part of metropolitan France, unlike Morocco and Tunisia which were viewed more like colonies.

<sup>64</sup> See Judt, p.270ff and 497ff.

## From the Europe of Six to the End of the Cold War

The international economic system had been centered on the US running significant trade deficits since 1950 and on the use of US dollars for liquidity purposes.<sup>65</sup> By the beginning of the 1960s, it had become clear that the United States could not any longer handle alone the international monetary system, given the fact that foreign dollar holdings had come to exceed US gold holdings. Thus, as the promise of convertibility had become impossible to maintain, the US had to rely on the cooperation with other major Western countries through the Bank for International Settlements (to better handle the multilateral payments system) and the Group of Ten (to provide additional resources to the IMF). Therefore, the United States across the 1960s was capable to avoid restrictive monetary and fiscal policies and face more comfortably the burdens of financing the War in Vietnam and the Great Society programs. Furthermore, the overvalued dollar made investment outflows easier, leading US-based multinationals to gain a strong presence in Europe, which at times was resented.

The European integration process proceeded rather briskly in the 1960s. Notably: customs duties within the EEC were removed totally by 1968; EEC institutions gained greater powers; in the EEC, the principle of unanimity was replaced in some areas of decision making by qualified majority; the European Court of Justice (ECJ) declared in 1964 the primacy of community law over national law (Costa v. Enel decision); and the Common Agricultural Policy (CAP) was established to support farmers and achieve greater food security.<sup>66</sup> In the conflict between supranationalists and intergovernmentalists, which continues to this day, on the whole the former gained some important battles in the decade. While often against supranationalism when it felt it could not control it, France used its underlying logic to veto the access of too-close-to-America Britain to the EEC. This was in line also with the fear that many had of US corporations' economic dominance in Western Europe, described in *Le Defi Americaine*.<sup>67</sup> Britain, on the other hand, became affected by the rapidity of the decolonization process (think for instance

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<sup>65</sup> With regard to this section the literature is very large as well. See for instance Barry Eichengreen *Exorbitant Privilege: The Rise and Fall of the Dollar and the Future of the International Monetary System* (New York: Oxford University Press, 2012); Joan E. Spero and Jeffrey A Hart *The Politics of International Economic Relations* (Boston, Mass.: Cengage Learning, 2010); John Ravenhill (ed.) *Global Political Economy*, op.cit.

<sup>66</sup> Both the ECJ and the CAP would be bête noires for Brexiters, as we shall see later.

<sup>67</sup> Jean-Jacques Servan Schreiber stated in his 1967 book that "L'Europe a créé un marché, elle n'a pas créé une puissance" (p.116). In essence: Europe has created a market, it has not become a power (like the US). *Le Defi Americain* Paris, Editions Denoël 1967, available in English as Servan-Schreiber, J.J. *The American Challenge* (New York: Atheneum, 1979).

about the great increase in UN member states since 1945), by the realization of the diminished importance of its Commonwealth trade, and by its reduced global leadership capabilities. Perceiving the future of the European Free Trade Association (EFTA), which it had joined in 1960, as politically and economically inadequate, the Conservative Macmillan government took the historical step of announcing in July 1961 its application for EEC membership.<sup>68</sup> The UK's joining the EEC across the decade was, as noted above, vetoed by General de Gaulle who considered Britain as a "Trojan horse" of the US.<sup>69</sup>

The 1970s were a complex decade for the Western world. On the security front, the United States had arguably been distracted from the Atlantic alliance on account of: its own détente with Russia, culminating in the signing in May 1972 of the Strategic Arms Limitations Treaty (SALT) I and the ongoing negotiations for SALT II; its rapprochement with China; and the disentanglement from Vietnam. On the economic front, unpredictability rose. The end of the convertibility of the dollar into gold in August 1971 marked the beginning of the era of floating rates. The 1973 oil crisis (which also saw significant strains in the relations with Europe during the October 1973 war when Nato allies France, West Germany, and the United Kingdom were prominently noncooperative so as not to upset the Arab countries ) seemed also to usher in an era of emergence of other cartels in other key raw materials under the control by former colonies--which of course did not materialize. The increases in unemployment levels and inflation and poor or negative growth rates (stagflation) did not help in improving the relationship between Europe and the United States as they made coordination of monetary and fiscal policies nearly impossible.

In the 1970s the process of European integration proceeded with the 1973 EEC membership enlargement (UK, Ireland, and Denmark). The new French President, George Pompidou, decided to ignore his predecessor's views, seeing British membership as a useful counterbalance to the growing economic power of Germany. Britain, on the other hand, had been very impressed by the early achievements of the EEC. For instance, in the 1960-70 decade the GNP growth of the

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<sup>68</sup> The original EFTA countries were: Austria, Denmark, Norway, Portugal, Sweden, Switzerland, and, of course, the United Kingdom. Its main distinguishing feature was the lack of a common external tariff, unlike the EEC.

<sup>69</sup> See Blair, Alasdair *The European Union since 1945* (Harlow, Essex, UK: Longman/Pearson, 2010), p. 41. It has also to be noted that France left the integrated Nato command (but not the organization) in 1966. It would officially rejoin the command in 2009. See <https://www.diplomatie.gouv> website.

six member countries averaged 4.2 percent a year against the 2.3 percent figure for Britain.<sup>70</sup> Conservative British Prime Minister Edward Heath saw neither the Commonwealth nor EFTA as yielding as many benefits as access to the EEC, both in terms of trade opportunities and status.<sup>71</sup> Euroskeptics were very active in both the Conservative and Labor Parties and pushed for a referendum in 1975 on whether to stay in the EEC. The vote in favor of remaining was 2 to 1, which meant that there had been clear support from voters of both parties. Nevertheless, on the whole, for the rest of the decade there was not much visible progress on integration.<sup>72</sup> A little progress was achieved with the creation of the Court of Auditors and, arguably, with the signing in 1975 of the Lome' Convention, in line with British desire to support Commonwealth and Third World countries' access to the EEC markets. This latter could be viewed as consistent with the idea of growth of Europe by breadth more than depth, a position in general favored by Britain. In economic terms, by the end of the decade there was also common talk about "Eurosclerosis".

At the beginning of the 1980s, President Ronald Reagan moved to undo some of the damage suffered image-wise in the previous years: a president's resignation, the unfavorable (to say the least) end of the Vietnam War, the Iranian hostage crisis, and the Soviet invasion of Afghanistan. Most interestingly, "[i]n 1980, Europeans, who had expressed frustration over the Carter administration's perceived willingness to cut conventional forces and negotiate away nuclear weapons, were pleased to hear that... the new American president... reaffirmed his commitment to Western Europe."<sup>73</sup> Soon matters heated up between the two sides of the Atlantic, however. Significant discoveries of gas fields in West Siberia led to the joint Euro-Soviet planning of the construction of a 3,700 miles long pipeline to Western Europe. The US security concerns were clear: the USSR would gain valuable hard currency and a weapon (because of Western energy

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<sup>70</sup> See Blair, op.cit., p.49

<sup>71</sup> See Blair, op.cit., p.48

<sup>72</sup> One has to note however that "[f]rom the Paris summit of 1974 onward, it was decided that ...meetings [of heads of government] should take place more regularly and become more "institutional." The objective was to provide greater political impetus to the European integration process through informal meetings at the highest levels of decision-making." Ammendola, Giuseppe "European Institutions, the Constitutional Treaty, and the Treaty of Lisbon: Complex Realities in Motion" in Giuseppe Ammendola (ed.) *The European Union: Multidisciplinary Views*. (Stony Brook, New York: Forum Italicum 2008), pp 15-73, at p. 17. Henceforth Ammendola (2008a)

<sup>73</sup> Cowles, Maria G. and Michelle Egan "The Evolution of the Transatlantic Partnership" *Transworld Working Paper* no.3, September 2012 , p. 11 referring to Unwin, Derek W. *A Political History of Western Europe since 1945*, 5th ed., (London and New York: Longman, 1997).

dependency) to “blackmail” the US allies.<sup>74</sup> Therefore, the Reagan administration imposed a unilateral embargo prohibiting US companies and the European companies connected to them from exporting the equipment necessary for the construction and functioning of the pipeline. The European governments opposed vehemently the US move, desiring to reduce their dependency on the Middle East and reap environmental benefits from the reduced use of coal.<sup>75</sup> British Prime Minister Margaret Thatcher sided with the other Europeans. Concerned considerably over the impact on British companies which had contracts with the USSR, she told them to ignore the embargo “and ship their goods”.<sup>76</sup> In the event, at the end of 1982 the sanctions were lifted, also in acknowledgement of their relative ineffectiveness.<sup>77</sup> Most interestingly, “[w]hile Britain’s position over the pipeline was a rare example of it acting independently .. [from] Washington in the course of the 1980s, it was also an illustration of the benefits of Community membership, where the US retraction of sanctions had been influenced by a collective European position.”<sup>78</sup> The strength of the US-UK relationship was in any case seen, among others, very clearly in the 1982 Falkland war (where the US supported Britain) and the 1986 Libya bombing (Britain was the only European country that allowed the US air force the use of its bases).

From an economic point of view, broadly speaking, the early 1980s were characterized in the OECD countries by recessions, high unemployment, and stagnation in trade. In the second half of the decade, the industrialized countries saw growth rates improve and inflation rates decrease. Unemployment rates remained high on both sides of the Atlantic, however, fueling protectionist policies. The overvaluation of the dollar and relative undervaluation of the yen and the deutsche mark played a major role in US trade and balance of payments deficits leading to rise in protectionist pressures in the US.<sup>79</sup>

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<sup>74</sup> Yergin, Daniel *The Quest: Energy, Security, and the Remaking of the Modern World*. (New York: Penguin Books, 2012), pp. 336-7.

<sup>75</sup> *ibidem*.

<sup>76</sup> Yergin, op.cit. p. 337.

<sup>77</sup> See Gwertzman, Bernard “Reagan lifts sanctions on sales for Soviet pipeline” *New York Times* November 14, 1982. Also to be noted is the reassuring, to US leaders, increase in Norwegian oil and natural gas exports to Europe. See for instance <https://www.norskpetroleum.no/en/production-and-exports/exports-of-oil-and-gas/>

<sup>78</sup> Blair, Alasdair. *Britain and the World Since 1945*, (London and New York: Routledge, 2015), p. 106. Another exception was the disapproval of the US invasion of Grenada in 1983 expressed by Margaret Thatcher, who in general was a strong supporter of the US and President Ronald Reagan.

<sup>79</sup> See for instance Spero, op.cit., p. 83

In the decade of the 1980s, there was also some movement towards greater European integration. Acknowledging that the total removal of customs duties among EEC countries--achieved by 1968--had not meant true free trade across EU borders on account of different national regulations, the Twelve members of the EEC set out to deal with such differences.<sup>80</sup> The Single European Act (SEA), ratified in 1987, launched a broad six-year program to transform the Common Market into a single market. The SEA expanded the competence of the Community in the areas of social, environmental, and research and technological policies.<sup>81</sup> It expanded the powers of the European Parliament and of the European Commission. Most importantly, the SEA increased the number of instances in which the Council could use qualified majority voting instead of unanimity in taking decisions. For our purposes, it is most interesting to note that individual national governments tended to present the SEA to their home electorates in terms most favorable to their country and their own political stands. Notably, Prime Minister Margaret Thatcher stressed the importance of completing the internal market by 1992 and the role of British pragmatism in opposing the Brussels bureaucrats' "pipe dreams".<sup>82</sup> She did not mention the strengthening of the European defense identity that SEA provided for (arguably at variance with the British traditional support for the Atlantic Alliance) and, most importantly, the expansive nature of the European design along lines supported by France and Germany but not conforming to traditional British positions of preferring widening over deepening.<sup>83</sup>

The end of the decade was marked by dramatic developments to the east of the Europe of Twelve. In 1985, the new top leader of the USSR, Mikhail Gorbachev, upon assuming power started to move on multiple fronts. In security terms, it was clear to him that the global competition with the United States was economically unsustainable for his country: the arms race was just too expensive. Hence, the need to reach agreements to cut down on nuclear

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<sup>80</sup> The three new members were Greece, which joined in 1981 and Spain and Portugal in 1986. All three were acknowledged to have become true democracies and left their autocratic past behind them. Arguably, their admission into the club was in line with the UK's "widening" preferences (over the "deepening" ones).

<sup>81</sup> See the text of the SEA at the <https://eur-lex.europa.eu/> website. On the SEA see for instance Ammendola (1990) op. cit.

<sup>82</sup> See Blair *Britain and the World*, op.cit., p113. Prime Minister Thatcher clearly liked the fact that "since the fall of 1982, West Germany's liberal-conservative government had been reducing the role of the state in the economy, as.. [she] had been doing in Great Britain since 1979", as I pointed out in Ammendola (1990), p. 6. She also must have not been displeased at France's "feeling the effect of the consequences of the socialist-inspired unilateral expansion of aggregate demand in 1981, which collapsed as a result of the worsening of its trade account and vehement speculation against its currency." Ammendola, ibidem.

<sup>83</sup> See Blair, ibidem



weapons and to reduce the size of conventional forces stationed in Eastern Europe and foreign commitments in general (most notably in Afghanistan).<sup>84</sup>

In broad economic terms, there was no shortage of challenges either. First, there was a trade system among Communist countries that was certainly not efficient and growth-inducing. Second, the difference in standard of living between East and West, the result of markedly lower growth rates in communist countries for years, much lower productivity growth, and a marked disconnect between research and development had become too big and too difficult to hide in an era of progressively better communications. Further, it had become clear that the centralized and bureaucratic apparatus at the top of the USSR could not manage complex economic realities. The policies enacted by Gorbachev to meet these challenges, glasnost (openness) and perestroika (restructuring), led to demands for further change in central and eastern Europe and across the Soviet Union. Most relevantly, Gorbachev in a crucially important speech given at the United Nations on December 7, 1988 made it clear that the use of force and the threat of using it should not be instruments of foreign policy and that the realities “of social development in different countries” and other peoples’ views had to be accepted and respected, “learn[ing] how to live side by side while remaining different and not agreeing with one another on every issue”.<sup>85</sup> With a speed not anticipated by anyone (including Western security agencies), competitive elections were held across all the countries in the entire Soviet (soon to be former such) orbit. Poland, Hungary, East Germany (which would reunite with West Germany in 1990) Czechoslovakia (which would split peacefully into the Czech Republic and Slovakia in 1993), Bulgaria, and Romania (in spite of the Ceausescus’ unsuccessful violent resistance) all moved toward independence. Furthermore, the independence of the three Baltic states (Estonia, Latvia, and Lithuania) was recognized by the Soviet government in September 1991. Clearly, the issue of the European Community enlargement had become much more different, important, and complex.<sup>86</sup> An immediate example of the difficulty of confronting the challenges stemming from this more

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<sup>84</sup> For our purposes, it is interesting to note that “on August 26, 1987, Chancellor Kohl announced” that “the Federal Republic of Germany would dismantle its 72 Pershing IA missiles and not replace them with more modern weapons if the United States and the Soviet Union scrapped all of their INF [Intermediate-Range And Shorter-Range Nuclear Forces] missiles as foreseen in the emerging [INF] Treaty. This was a unilateral declaration by the FRG and... not part of the INF Treaty, which,” as “a bilateral U.S.-Soviet agreement” dealing with the elimination of intermediate-range and shorter range missiles would be signed in December 1989. *U.S. Department of State: Diplomacy in action*, available at <https://www.state.gov/t/avc/trty/102360.htm>.

<sup>85</sup> The speech is available at [https://astro.temple.edu/~rimmerma/gorbachev\\_speech\\_to\\_UN.htm](https://astro.temple.edu/~rimmerma/gorbachev_speech_to_UN.htm).

<sup>86</sup> See Ammendola, Giuseppe “Investing in the New Europe” in Ammendola, Giuseppe (ed.) *The European Union: Multidisciplinary Views* (Stony Brook, New York: Forum Italicum 2008), pp. 104-40. Henceforth Ammendola (2008b)

complex Europe can be seen in connection with British Prime Minister Thatcher's publicly voiced concerns over German reunification, which later on she came to regret.<sup>87</sup>

## After the Cold War

The Fall of the Berlin Wall in November 1989, the official declaration at Malta by George H.W. Bush and Mikhail Gorbachev the following month, and the end of the Soviet Union in December 1991 are all crucial milestones associated to the end of the Cold War. The United States had become the dominant world power and one could rather comfortably say that henceforth its policies would run across a wide range between two dramatically opposite positions. On one side, the prevention of the emergence of any alternative to its benevolent dominant power, a position most clearly connected to the "rejection ... of collective internationalism, the strategy that emerged from World War II when the five victorious powers sought to form a United Nations that could mediate disputes and police outbreaks of violence."<sup>88</sup> On the other side, the pursuit of multilateralism and cooperation, clearly an option vastly more diplomatic and much preferred abroad, including among the European allies.<sup>89</sup>

Certainly the end of the Cold War did not make the world simpler. Among the views about the future that pundits and policy makers in search of broad generalizations most often would mention, two stood out in the nineties. One was that the end of the Cold War represented the victory of democracy over communism and even more. As the most often cited supporter of this

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<sup>87</sup> Her statements derived from her worries of Germany's dominance of Europe. Her regret over such a stand is clearly stated in her memoirs published in 1993. See Blair 2015 pp. 108-9

<sup>88</sup> Macdonald p.219. The quote is from Patrick Tyler "U.S. Strategy Plan calls for insuring no rivals develop" *New York Times* March 8, 1992 and refers to a leaked Pentagon document.

<sup>89</sup> Notably, as a consequence of the uproar coming in the wake of the leaked document, this latter position was privileged officially by the White House. Macdonald, *ibidem*. It also arguably better addressed the concerns over the creation of a "Fortress Europe", which many believed could prevent US companies from effectively gaining access to EC markets after 1992. (Incidentally, the concern among US companies prompted many of them to rush their managers to get as much information as they could, including taking university courses, on the Europe 1992 Project. On the Europe 1992 Project, see Ammendola (1990), *op.cit.*) This led to the signing of a "Transatlantic Declaration" in November 1990 which established a regular political dialogue between the U.S. and the EC at various levels, including regular summit meetings. The cooperation centered on the areas of economy, education, science and culture. See the website of the US mission at the EU at <https://useu.usmission.gov/our-relationship/policy-history/io/>. With regard to concerns that US companies operating within the EC would be discriminated, see for instance Guay, Terrence R. *The United States and the European Union: The Political Economy of a Relationship* (New York: Routledge, 2012), where one reads (p.60): "Once US policymakers and businesses reflected on the implications of the Single Market Programme for US companies, the advantages began to clearly outweigh potential problems. The removal of internal barriers would help all businesses competing in Europe whether they were EC-headquartered or not. Harmonized product standards and fewer obstacles to getting products approved by regulatory authorities would reduce the amount of time that US companies had to spend dealing with national bureaucracies. In theory, the opening of public procurement would enable more companies to compete for government contracts."

view, Francis Fukuyama, put it in the summer of 1989: “The triumph of the West, of the Western idea, is evident first of all in the total exhaustion of viable systematic alternatives to Western liberalism.”<sup>90</sup> The death of communism had shown clearly in both economic (including consumerist dimensions) and political terms the superiority of the Western model and its representing a crucial arrival point, “the end of history”, according to Fukuyama. He did not and could not claim that conflicts would be a thing of the past; many places in the world had not yet reached (and were in actuality—and continue to be— still far from) the liberty and equality levels that had been attained in the West. But the superiority of the Western way of life had been demonstrated and the world could no longer be ideologically divided.

In 1993, Samuel Huntington provided an authoritative alternative broad view that challenged the one put forth by his former student Fukuyama. Huntington strongly resisted the concept of “end of history”, since other potential sources of conflicts were out there: “... the fundamental source of conflict in this new world will not be primarily ideological or primarily economic. The great divisions among humankind and the dominating source of conflict will be cultural. Nation states will remain the most powerful actors in world affairs, but the principal conflicts of global politics will occur between nations and groups of different civilizations. The clash of civilizations will dominate global politics. The fault lines between civilizations will be the battle lines of the future. Conflict between civilizations will be the latest phase in the evolution of conflict in the modern world.”<sup>91</sup> The wars in the former Yugoslavia which started in the early 1990s showed clearly the cultural and religious rifts in the old continent at “the meeting points of the old Austro-Hungarian and Ottoman empires, and of Catholicism, the Orthodox Church, and Islam and where national identities had been forged during the previous century with claims of self-determination.”<sup>92</sup> The 9/11 attacks, a decade later, would lead the supporters of the “clash of civilizations” view to reiterate most forcefully its validity.

The end of the Cold War also saw a significant increase in the acceptance worldwide of free-market principles. Trade, services (in spite of nontariff barriers), and capital flows increased considerably in the 1990s. Globalization became a much more widespread word and idea. Most

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<sup>90</sup> Fukuyama, Francis “The End of History?” *The National Interest*, Summer 1989.

<sup>91</sup> Huntington, Samuel P. “The Clash of Civilizations?” *Foreign Affairs*, Summer 1993.

<sup>92</sup> Freedman, Lawrence *The Future of War: A History* (New York: Public Affairs, 2017), p. 154 And, arguably, at least some people in Britain must have thought that being separated by water from such problems was a very good thing.

relevantly to our purposes, regionalism also became more important. The European integration process continued: the Maastricht Treaty signed in February 1992 by the then twelve members created the European Union (EU), which tried to balance supranational and intergovernmental preferences. The EU had a three pillar-structure. The first pillar included the European Community (EC), comprising the EEC, the ECSC, and Euratom.<sup>93</sup> New policies were added, the use of qualified majority voting was expanded, the powers of the European Parliament were increased through a new co-decision procedure that enabled it to block or amend legislation in a process where the Council could be thought of as representing the states and the Parliament the people, and the Commission saw its role as an agenda setter gain in importance.<sup>94</sup> The second pillar dealt with the Common Foreign and Security Policy (CFSP). The third pillar concerned Justice and Home Affairs (JHA). The second and third pillars, given their nature, were characterized by intergovernmental decision-making.

The first pillar, on account of its increased use of weighted and qualified majority voting was much more supranational in nature than the other two pillars. However, this was not so in one major respect, its most innovative dimension, the European Monetary Union (EMU). The EMU's foundations established at Maastricht aimed to create a single currency, the much needed necessary (but not sufficient) step to move the EU toward becoming a US-like political and economic entity. Three stages were envisioned to achieve this goal. The first stage, to be completed at the end of 1993, provided for the total freedom of capital movement in the EU. The second stage, to last until the end of 1998, provided for the creation of strong measures of coordination of national monetary policies while further strengthening the independence of national central banks. The third stage, to start on January 1, 1999, would see the creation of a common currency for all participating countries and the assumption of the responsibility to conduct a single monetary policy by the European Central Bank (ECB). During the first stage, the European Exchange Rate mechanism (ERM), the system of (almost) fixed exchange rate margins designed to reduce exchange rate variability and augment monetary stability in Europe, came under great pressure. Most notably, the UK's currency came under attack and was forced

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<sup>93</sup> On the three pillars, see for instance Laursen, Finn "The Treaty of Maastricht" in Jones, Eric et al. (eds.) *The Oxford Handbook of the European Union* (New York: Oxford University Press, 2012) pp. 121-34; Blair (2010), op.cit., pp. 79ff.; and Van Overtveldt, Johan *The End of the Euro: The Uneasy Future of the European Union* (Chicago: Agate Publishing, 2011).

<sup>94</sup> Blair (2010), op.cit., pp. 82-3; Laursen, op.cit., p.121.

out of it. As a matter of fact, Labor leader Tony Blair would later attribute his victory at the 1997 general elections to the harm done to John Major's Conservative government by the 1992 crisis.<sup>95</sup> As a clever observer pointed out: "Blair was understandably reluctant to repeat the experiment.... A euro that was the currency of not just nine European economies but also the UK and the City of London would have been an even more formidable rival to the dollar. But it was not to be... [although] the new currency [would turn out to be] an intriguing alternative to the dollar."<sup>96</sup> The UK asked and obtained an opt-out from the EMU and Denmark also did the same. Upon the insistence of Germany, several convergence criteria were established for the countries which wanted to join the single currency area. They were: one, an inflation rate that is not more than 1.5 percentage points above the rate of the three best performing Member States; a government deficit not exceeding 3 percent of GDP; a government debt not larger than 60 percent of GDP; a long-term interest rate not more than 2 percentage points above the rate of the three best performing member states in terms of price stability; and exchange rate stability, with a participation in ERM II for at least two years without severe tensions.<sup>97</sup> The challenges connected to meeting such criteria as we have seen above turned off the British substantially. Gordon Brown, who served as UK Chancellor from 1997 to 2007, acknowledged in 1997 the advantage for his country to join the Eurozone in terms of "transparency of costs, currency stability, trade, and long-term interest rates."<sup>98</sup> But his concerns outweighed the pluses because: "...interest rates appropriate for one part of the area were not necessarily right for another.... all [participating] countries were not growing in harmony and [also] because Europe's countries did not appear to have the flexibility necessary to adjust their economies to crises or even the tough discipline of a single currency."<sup>99</sup>

The second pillar, the Common Foreign and Security Policy, showed its limitations across the entire decade through the inability of the European Union to engage in diplomacy and intervene effectively in the former Yugoslavia. Only the US intervention, via Nato, in the end truly made a difference. It was a late intervention affected by multiple factors, including: the lesser interest in

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<sup>95</sup> Eichengreen, op.cit, p. 96

<sup>96</sup> ibidem

<sup>97</sup> See the official European Commission website at [https://ec.europa.eu/info/business-economy-euro/euro-area/enlargement-euro-area/convergence-criteria-joining\\_en](https://ec.europa.eu/info/business-economy-euro/euro-area/enlargement-euro-area/convergence-criteria-joining_en)

<sup>98</sup> Brown, Gordon *Beyond the Crash: Overcoming the First Crisis of Globalization* (New York: Free Press, 2010), p. 187.

<sup>99</sup> Brown, op.cit., p. 186.

foreign policy at the beginning of Bill Clinton's presidency (remember "it's the economy stupid"), the continued belief by the British that without US support no military or peace-keeping operation could be effective, concerns connected to both the complexity of troops deployment and the message that "Western inaction" could send "to potential aggressors elsewhere", and Clinton's change of mind once he realized that "...a policy of non-commitment was increasingly viewed as a[n electoral] liability." <sup>100</sup>

The third pillar, on Justice and Home Affairs, is connected to "a policy-making domain of the EU covering asylum and immigration policy, external border management, judicial cooperation in both civil and criminal matters, and police cooperation."<sup>101</sup> Clearly these are issue areas typically most associated to being "exclusive domains of member-state competence."<sup>102</sup> They were also destined to become more "supranational" in the years ahead through treaty changes.

The process of European integration saw in 1994 the addition to the EU of three more members: Austria, Finland, and Sweden. The economic developments of the previous years had led them to believe that being part of EFTA was not as advantageous as joining the Twelve. In a post-Cold war climate, the adherence to the CFSP was not seen as conflicting with their tradition of neutrality. Furthermore, their political, economic, and regulatory realities made integration fairly easy. Interestingly, Norway, also a member of EFTA, decided through a referendum to reject EU membership, arguably largely on concerns over loss of sovereignty on fisheries and energy. <sup>103</sup>

In terms of broad economic results, in the 1990s the European Union's growth rate was less than that of the United States. Notably, between 1992 and 1999 the average real GDP growth in the US was 3.6 percent.<sup>104</sup> The corresponding figures for the EU15 and Japan were 1.9 and 1.1 percent, respectively.<sup>105</sup> Unemployment in the EU was also higher. For instance, in December 1990 in the (future) Eurozone countries the unemployment rate was 7.7 percent whereas in the

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<sup>100</sup> Blair (2015), op.cit, p. 129- 31

<sup>101</sup> Monar, Jörg "Justice and Home Affairs" in Jones, Eric et al. (eds.) *The Oxford Handbook of the European Union*, op.cit, p.613.

<sup>102</sup> *ibidem*

<sup>103</sup> Norway, largely on account of the revenues coming from North Sea oil and gas, has the largest sovereign wealth fund in the world.

<sup>104</sup> Spero, op.cit., p. 111

<sup>105</sup> *Ibidem*. As we shall see later, in the new century the US continued to grow more rapidly than the Eurozone and Japan. Spero, *ibidem*.

United States it was 6.3. In December 2000, the respective figures were 8.4 versus 3.9 percent.<sup>106</sup> Further, the United States displayed greater economic flexibility and a superior ability to lead in the emerging information and telecommunications sectors.<sup>107</sup> The United States also moved in a more “regional” direction. The process had started already in the 1980s, because of US dissatisfaction with the slow movement of trade liberalization at the global level and the CAP’s distortion to world trade.<sup>108</sup> It accelerated with the coming into force on January 1, 1994 of the North American Free Trade Association (NAFTA), signed with Canada and Mexico and with the country’s pushing for a Free Trade Area of the Americas. Around the same time, multilateralism in trade reached a peak with the signing in April 1994 of the Uruguay Round and its leading on January 1, 1995 to the World Trade Organization (WTO)’s coming into effect, replacing the GATT.

The WTO maintains a list of Regional Trade Agreements (RTAs).<sup>109</sup> Most notably, “[i]n the period 1948-1994, the GATT received 124 notifications of RTAs (relating to trade in goods), and since the creation of the WTO in 1995, over 400 additional arrangements covering trade in goods or services have been notified.”<sup>110</sup> The increasing importance of services (especially as exports from the US and the EU) in world trade is clear as it is also the great difficulty of incorporating them in a multilateral WTO agreement--as the failure of the Doha Round would show in the new millennium.<sup>111</sup> Trade regulations show very clearly the complexity of interaction among the US and the EU and many developing countries. Notably, the Lome’ conventions permitted preferential access to EU markets for agricultural products from the ACP (African, Caribbean, and Pacific) countries, many of which had been former European colonies. Such products could be sold at prices that were much higher than those found elsewhere. For instance, in the case of

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<sup>106</sup> Data for the United States from the U.S. Bureau of Labor Statistics, Civilian Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/UNRATE>, last accessed on November 14, 2018; and for the Eurozone from the Organization for Economic Co-operation and Development, Harmonized Unemployment Rate: Total: All Persons for the Euro Area [LRHUTTTTEZM156S], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LRHUTTTTEZM156S>, last accessed on November 14, 2018.

<sup>107</sup> Spero, op.cit., p.110

<sup>108</sup> Ravenhill, op.cit., p. 158

<sup>109</sup> “RTAs in the WTO are taken to mean any reciprocal trade agreement between two or more partners, not necessarily belonging to the same region.” See WTO website at [https://www.wto.org/english/tratop\\_e/region\\_e/scope\\_rta\\_e.htm](https://www.wto.org/english/tratop_e/region_e/scope_rta_e.htm). Accessed on November 14, 2018.

<sup>110</sup> Same website. Accessed on December 16, 2017. “As of May 1, 2018 287 RTAs were in force. These correspond to 459 notifications from WTO members, counting goods, services and accessions separately.” See [https://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](https://www.wto.org/english/tratop_e/region_e/region_e.htm), last accessed on November 14, 2018.

<sup>111</sup> See Ammendola, Giuseppe (2008c) “International Trade, the Economy, and US Interests” February 2008, available at the [www.ncafp.org](http://www.ncafp.org) website.

bananas the EU established an import licensing system which discriminated against bananas coming from non-ACP countries, mostly from Central and South America where this trade involved to a large extent US agribusiness giants Dole and Chiquita.<sup>112</sup> Also pressured by their lobbying, the United States supported the challenges put forth by several non-ACP countries against the EU preferential treatment, first in the Gatt and then in the WTO. The US and the EU came close to a trade war but in the end, after the WTO ruled in favor of the plaintiffs, the EU decided to comply by cutting tariffs and also to move to negotiate agreements compatible with WTO rules.<sup>113</sup>

The Amsterdam Treaty, signed in October 1997 made good progress in an integrationist sense in the areas of social policy, migration and asylum, and combating organized crime.<sup>114</sup> Most interestingly, incorporating formally in the Treaty the Schengen Agreement (which had originally been signed in 1985), the EU moved toward the creation of a more substantial and mobile European labor market. With the membership enlargement lying ahead, the downward pressure on wages in richer EU countries deriving from the arrival of competitors from EU countries with lower labor costs was not difficult to predict. Security issues associated to greater ease of movement of people (EU citizens and not) would also increase, especially obviously in the new millennium. More broadly, several issue areas typical of the second pillar moved to the first pillar, “entailing the exclusive right of initiative for the European Commission and judicial review by the ECJ.”<sup>115</sup> The UK, Ireland, and Denmark wanted and obtained an opt-out clause. Most interestingly, and to make matters more complex, a new treaty provision introduced an “enhanced cooperation” clause that allowed “a subset of EU members...[to] go ahead with steps toward greater integration without having to wait for all to agree.”<sup>116</sup> This was reflective of the increasing acceptance of concepts like multi-speed or variable geometry.<sup>117</sup>

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<sup>112</sup> On the banana controversy, see Ravenhill, op.cit., pp.159-60; Miller, John “EU ends 16-year Banana Trade Battle” *Wall Street Journal* December 16, 2009.

<sup>113</sup> See: Ravenhill; Miller; and Ammendola (2008c)

<sup>114</sup> Vanhoonacker, Sophie “The Treaty of Amsterdam” Jones et al. *The Oxford Handbook of the European Union*, op.cit, p.144

<sup>115</sup> Vanhoonacker, op.cit., p.139

<sup>116</sup> Peet, John and Anton La Guardia *Unhappy Union: How the Euro crisis – and Europe – can be fixed* (New York: Public Affairs, 2014) p. 111

<sup>117</sup> *ibidem*



## The New Millennium

The New Millennium saw a continued effort by the EU to continue formally the integration process. The Treaty of Nice was signed by EU leaders on February 26, 2001 and came into force on February 1, 2003. A referendum in Ireland in June 2001 rejected its ratification, largely on the grounds that its electorate believed it discriminated against smaller states and that it could affect negatively Irish neutrality. In October 2002, another referendum in Ireland, heavily supported by its main parties, reversed the result.<sup>118</sup> The Treaty tried to deal with enlargement by reforming the European Commission and extending the use of qualified majority voting in the Council. The dichotomy large vs. small states in relationship to representation and voting proved to be a rather difficult one to overcome.<sup>119</sup> Another split was evidenced by the referenda in Denmark and Sweden, in 2000 and 2003 respectively, which rejected their entering the by then very real Eurozone.

On the foreign policy front, the new administration of George W. Bush “announced its opposition to several international treaties including the Kyoto Protocol on Climate Change, the Anti-Ballistic Missile Treaty and the International Criminal Court (ICC). By spring 2001, the European allies were complaining bitterly about the new US unilateralism”<sup>120</sup> and a bitter series of back and forth statements ensued. The Sept 11, 2001 terrorist attacks to the Twin Towers in New York City stopped these transatlantic controversies. On September 12, for the first time since the creation of Nato, Article 5 (which says that “an armed attack on one or more [members] shall be considered an attack on all”) was invoked.<sup>121</sup> The European allies were supportive of the US decision to attack Afghanistan. Things changed when Bush decided to attack Iraq. British Prime Minister Tony Blair sided with the United States, while France and Germany disapproved, leading Defense Secretary Donald Rumsfeld to label the two countries as part of “old Europe”, and adding provocatively that “if you look at the entire NATO Europe today, the center of

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<sup>118</sup> Remainers would point to such precedents when asking for a Second referendum to reverse the results of the June 2016 direct popular vote to leave.

<sup>119</sup> In terms of Brexit, there can be little doubt that “likeminded” small states do not particularly like the loss of a member state like the UK more often than not siding with them. These small states, it can be fairly convincingly argued, should miss its strong influence on the European integration process stemming from “its size and capabilities” together with its leading support for “Atlanticism, free trade, and intergovernmentalism” while effectively “balancing the Franco-German coalition”. See Wivel, Anders and Baldur Thorhallsson “Brexit and small states in Europe: hedging, hiding or seeking shelter?” in Diamond, Patrick et. al. *The Routledge Handbook of the Politics of Brexit* (Abingdon Oxfordshire, UK: Routledge, 2018), pp. 266-77, at p.275

<sup>120</sup> Cowles, op.cit., p. 16

<sup>121</sup> See for instance Edgar Buckley “Invoking Article 5” *Nato Review* Summer 2006 available at [www.nato.int](http://www.nato.int)

gravity is shifting to the east.”<sup>122</sup> In any event, the inability of US intelligence agencies to prevent the 9/11 attacks in spite of several early warnings cast a negative light on the overall US governmental leadership and managerial capabilities. Arguably, European governments did not look too good either when terrorist attacks hit unexpectedly Madrid in 2004 and London in 2005. The impact of terrorism on the EU extended to the very core of the integration and institution building process, leading to cooperation among member states expressed as a “solidarity clause”. Originating in a European Council statement issued after the Madrid bombings, the clause was inserted into the Constitutional Treaty first and then into its replacement, the Lisbon Treaty, both of which we now shall discuss.<sup>123</sup>

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<sup>122</sup> Rumsfeld’s transcript and actual video footage can be found at <https://www.youtube.com/watch?v=E0GnRjEPXn4>

<sup>123</sup> In the Constitutional Treaty the clause appeared as Article I-43 and in the Lisbon Treaty as Article 222 TFEU. See for instance Murphy, Cian C., *EU Counter-Terrorism Law: Pre-Emption and the Rule of Law*, (Oxford and Portland, Oregon: Hart, 2012), especially pp. 27ff.

## The Constitutional Treaty

The Treaty of Nice was characterized in its negotiating phase by an intergovernmental, closed doors, approach similar to that of the treaties which preceded it.<sup>124</sup> But various factors, including the events of September 11 and, most importantly, the upcoming membership expansion way beyond the number at the time (fifteen) led to the launch of an ambitious European integration project that would be characterized by significant openness. Inspired by the Philadelphia Convention that led to the adoption of the United States federal Constitution, a Convention on the Future of the European Union was set up under the aegis of the European Council. The Convention, headed by former French President Valéry Giscard D'Estaing, brought together in February 2002 105 “wise men” from the governments of the Member States and their parliaments (including the then ten not-yet-member states), the European Parliament and the European Commission and, “sensitive to the often-voiced objections that the EU edifice has been built by elites, input was accepted from... civil society organizations”, also taking advantage of the Internet.<sup>125</sup> “In July 2003, at the end of its work, the Convention for the Future of the EU presented its Draft Treaty, which became the object of discussion and negotiation in the October 2003 Intergovernmental Conference. The Conference did not proceed smoothly. It was brought to a temporary halt by a crisis in December on the two issues (emblematic of the broad representational challenges found throughout EU history) of the numbers of Commissioners and of the voting system in the Council of Ministers (where Poland and Spain resisted a dilution of their power). In March 2004 the Conference was reconvened. Compromise was reached on both accounts, taking advantage of the change in government in Spain and Poland’s desire not to feel isolated.”<sup>126</sup> In no small measure to increase its symbolic value, the Constitutional Treaty was then signed formally in October 2004 in Rome, the city where the European Economic Community was born in March 1957.<sup>127</sup>

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<sup>124</sup> Devuyst, Yuri “The Constitutional and Lisbon Treaties” in Jones et al.(eds.) *The Oxford Handbook* op.cit., p. 163.

<sup>125</sup> The quote is from Giuseppe Ammendola “European Institutions, the Constitutional Treaty, and the Treaty of Lisbon: Complex Realities in Motion” in Ammendola, Giuseppe (ed.) *The European Union: Multidisciplinary Views*. (Stony Brook, New York: Forum Italicum 2008), pp. 15-73, (at p. 16) on which this section relies extensively. As stated earlier, this source is referred to in the present article as Ammendola 2008a. On some of the challenges associated to civil society organizations’ participation via the internet see Cammaerts, Bart “The eConvention of the Future of Europe: Civil society and the Use of the Internet in European Decision-making Processes, *European Integration*, July 2006 28:3, 225-245

<sup>126</sup> The quote is from Ammendola, 2008a, p. 16

<sup>127</sup> *ibidem*

The Treaty, compared to the US Constitution, was arguably much less cogent and definitely much longer, consisting of a preamble, 448 articles, 36 protocols, 2 annexes and 50 declarations. It established the EU as a *single legal entity*, and specified: the areas of *exclusive and shared* (with member states) jurisdictions as well as the “powers... of a ‘supporting’ nature where the EU *supplements and coordinates* actions undertaken by member states”, and various institutional changes.<sup>128</sup>

The signature of the Constitutional Treaty in Rome by the 25 member states was not sufficient to ensure its ratification. As I pointed out: “Sure, at the beginning of 2005 opinion polls were indicating that about 70 percent of the population of the European Union was in favor of the Constitutional Treaty. And sure, within the European Parliament, 74 percent of the members had voted in favor of it. But a referendum ideally held on the same day across the whole European Union was not an option on the table. The principle of unanimity required state by state approval. And, if one looks at the European Parliament vote, one would have to heed the fact that the majority of the British, Polish, and Czech members were opposed to the Treaty.”<sup>129</sup> And continuing, I added: “[f]urther, the issues covered by the Treaty were too important and wide-ranging to think that they could be approved by national parliaments in all 25 European member states. The British for sure had to resort to a referendum. And had that taken place and had they voted against the Treaty, not too many tears would have been shed. Their commitment to “an ever closer Union” was always lukewarm at best, and those with a federal vision of Europe knew that Albion could never be reliably counted in and perhaps by going its merry way, a major foot-dragger would have been eliminated. But, before a popular vote on the Constitution by the euroskeptic UK took place, France went to the polls. A founding member of the European Union, with a strong tradition of leadership on integration in tandem with Germany, the country whose only former President alive had shepherded along the Constitutional Treaty was at first perceived to be certain to approve it. As the winter turned into spring, however, it became clear that the victory for the *oui* camp was not a *fait accompli* and, on the night of May 29th, exit polls revealed a truth that sent shock waves across the European Union. The *non* had won by a 55 to

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<sup>128</sup> Ammendola 2008a, pp.16ff.

<sup>129</sup> Ammendola 2008a, pp. 37-8 and also Quentin Peel “A treaty held hostage to expediency” FT.com website. Published: January 12, 2005, referred to therein.

45 percent margin on an electoral turnout of nearly 70 percent.”<sup>130</sup> Furthermore, I continued, “[o]n June 1, 2005, The Netherlands, another EU founding member, followed suit. The Dutch voted against the Constitutional Treaty in percentages that suggested even stronger opposition to the document. To inveterate federalists, it was two countries against nine who had already ratified the Treaty, but opponents would rebut that of the nine, only Spain had resorted to a direct popular vote.”<sup>131</sup>

Broadly speaking several factors have to be considered to understand the rejection of the Constitutional Treaty.<sup>132</sup> First, the length and the complexity of the document turned off the average French and Dutch voter (as it would have been the case in any other democracy). Second, “opponents of the Constitutional Treaty presented it as a document using free-market rhetoric to reduce the employment and social rights and benefits enjoyed in the [Treaty] founding member states”... in no small measure “doing the bidding of multinationals and international financiers.”<sup>133</sup> On the other hand, it is rather reasonable, I believe, that “... this elites-driven process had the rather laudable merit of trying to elevate standards [in important areas] for the less “disciplined and organized” member states. Thus, inducing compliance with EU rules across as many policy areas as possible was seen by many among these elites as the only way to bring about [needed] change in hard-to-reform countries.”<sup>134</sup> Clearly those emphasizing the former aspect of the integration process prevailed; also because, in general, while “[t]here is broad agreement on the need for structural reforms in the EU in order to achieve the full realization of the principles of free circulation of goods, services, capital, and people...” it is very difficult to perform at the regulatory and implementation level “a good balancing act among the equity, effectiveness, and efficiency considerations associated with the “social” model found in Western

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<sup>130</sup> Ammendola 2008a, p.38. Thereat, in note no. 102, p.66, I point out: “See the official French government site: [http://www.interieur.gouv.fr/sections/a\\_votre\\_service/resultats-elections/rf2005/000/000.html](http://www.interieur.gouv.fr/sections/a_votre_service/resultats-elections/rf2005/000/000.html). On the same website, interestingly, one can also see the results of the 1992 referendum which approved the Maastricht Treaty, which show the narrow margin of victory of those in favor of greater integration.” Today, a Brexiter would point out looking at the results (51.04 percent oui versus the 48.96 non) of the “20 Septembre 1992” referendum that France voters approved the Treaty of Maastricht by a smaller margin than the one that Brexiter achieved in their June 2016 referendum victory. See [https://www.interieur.gouv.fr/Elections/Les-resultats/Referendums/electresult\\_referendum\\_1992/\(path\)/referendum\\_1992/000/000.html](https://www.interieur.gouv.fr/Elections/Les-resultats/Referendums/electresult_referendum_1992/(path)/referendum_1992/000/000.html), accessed on November 14, 2018.

<sup>131</sup> See Ammendola 2008a and sources thereat.

<sup>132</sup> We are summarizing here the analysis offered in Ammendola 2008a, pp.38-41.

<sup>133</sup> Ammendola 2008a, pp. 38-40.

<sup>134</sup> Ammendola 2008a, note no. 106 p.66-7

European societies...”<sup>135</sup> The significant fiscal and monetary discipline and stability that the members of the Eurozone were required to pursue (and which in a few years would become much more widely debated because of the global financial crisis) became also connected to a blame game: national politicians often conveniently claimed that many things that were going wrong within their country were Brussels’s fault.<sup>136</sup>

Third, the expansion of powers given to the European Parliament was not successfully sold as reducing “the democratic deficit” of the entire European Union edifice. Nor, relatedly, were arguments on the incorporation of the Charter of Fundamental Rights or about increases in transparency and accountability put forth in an effective way.<sup>137</sup> Furthermore, the recent expansion of membership from 15 to 25 put opponents of the Constitutional Treaty in a position to play “on the fear of redistribution policies in favor of the new, poorer members (think for instance about the costs of a broad extension of the Common Agricultural Policy to them).”<sup>138</sup> Relatedly, “[c]ritics of the Constitution also decried the advantages that these Eastern European competitors would derive from their low wages and low regulation, linking these concerns with those stemming from the competition with China, India, and other non-EU emerging economies.”<sup>139</sup> Further still, “the Constitution was also presented by its opponents as a move toward Turkey’s entry into the EU, a significantly resisted idea all across Europe and certainly in France, especially in a climate of rising fears of Islamic fundamentalism and unimpressive economic performance.”<sup>140</sup> Finally, perhaps also as a confirmation of the success of Nato in Europe since WW2, “the prospects of a more effective military presence on the world scene through a single EU security and defense policy never seemed to truly interest the average voter.”<sup>141</sup>

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<sup>135</sup> Ammendola, 2008a, p. 39. It is difficult in thinking about Brexit to ignore the impact of these ideas on the Conservative and Labor parties’ internal and external debates since the 2016 referendum.

<sup>136</sup> Ammendola, *ibidem*.

<sup>137</sup> Ammendola 2008a, pp. 39-40

<sup>138</sup> Ammendola 2008a, p.40

<sup>139</sup> *ibidem*

<sup>140</sup> *ibidem*

<sup>141</sup> Ammendola 2008a, p.41

## The Lisbon Treaty

Within days after the negative vote by the electorates of two European Union original founding members (and interesting to notice, former colonial powers), if anyone had any doubts on the fate of the Constitutional Treaty, the British government on June 6, 2005 put them to rest by deciding to suspend the ratification process indefinitely.<sup>142</sup> After a “time for reflection”, in June 2006, the European Council invited Germany to use its forthcoming term as President of the European Union Council (a position that would be taken by Chancellor Angela Merkel) to prepare a report that would indicate the best way to proceed.<sup>143</sup> At the meeting of the European Council of June 2007, on the basis of the report and the work done by the Germans, it was agreed to convene an Intergovernmental Conference (IGC) and give it a mandate “to draw up a Treaty (hereinafter called “*Reform Treaty*”) *amending* the existing Treaties with a view to enhancing the efficiency and democratic legitimacy of the enlarged Union, as well as the coherence of its external action. The *constitutional concept*, which consisted in repealing all existing Treaties and replacing them by a single text called “Constitution”, *is abandoned*. The Reform Treaty will introduce into the existing Treaties, which remain in force, the *innovations* resulting from the 2004 IGC, as set out below in a detailed fashion.”<sup>144</sup> The Reform Treaty, which is now better known as Lisbon Treaty, came to be signed in its final form in Lisbon on December 13, 2007, and was expected to enter into force on January 1, 2009. Two major points need stressing upfront. One is the Lisbon Treaty’s *amending* nature. The other, is its retaining the institutional and procedural *innovations* of the Constitutional Treaty. Let us look first at the latter and then see their connection with the former.<sup>145</sup>

First of all, The Lisbon Treaty granted specific legal personality to the European Union, replacing the European Community.<sup>146</sup> The three pillar structure created at Maastricht (see supra) was terminated, even though the area of the former second pillar, the CFSP, continued to function under more intergovernmental decision-making procedures.<sup>147</sup> The Treaty also created

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<sup>142</sup> Devuyst, op.cit., p.165.

<sup>143</sup> Ammendola, 2008a, p.41

<sup>144</sup> Mandate for the 2007 IGC, available at [https://www.cvce.eu/en/obj/mandate\\_for\\_the\\_2007\\_igc\\_26\\_june\\_2007-en-f373c9eb-5bef-4773-a2fc-62122bf88394.html](https://www.cvce.eu/en/obj/mandate_for_the_2007_igc_26_june_2007-en-f373c9eb-5bef-4773-a2fc-62122bf88394.html) accessed on September 22, 2018. Emphasis added.

<sup>145</sup> For a more detailed description of these changes see for instance Ammendola, 2008a and notes therein.

<sup>146</sup> This meant that across all existing treaties the word “Community” was replaced by “Union”. Devuyst, p. 166

<sup>147</sup> Devuyist, ibidem.

the post of a full-time *President of the European Council* who would represent national leaders. Elected by heads of government for a term of 30 months, with the possibility of a one-term renewal, he or she would have the resources to organize at least four summits of heads of government a year.<sup>148</sup> Once again, the desire to improve stability and continuity is evident. A crucial dimension of the debate behind the creation of this position is highlighted by the fact that Gordon Brown, the successor of Tony Blair, ... referred to the President as “the servant of the leaders of the national governments”<sup>149</sup> “This emphasizing the intergovernmental nature of the Treaty of Lisbon was exactly what the British Prime Minister need[ed] to do in order to deflect heavy domestic criticism over his opposition to a national referendum.”<sup>150</sup> Most relevant to the future Brexit debates, “Gordon Brown, the British Prime Minister, in a move that received much praise by Europhiles across the continent, managed to have the Liberal Democrats in the House of Lords join his fellow Labor Party members in giving final approval to the Lisbon Treaty on June 18, 2008 in spite of strong opposition by the Conservative Party.”<sup>151</sup> There was also the creation of the post of *High Representative for Foreign Affairs and Security Policy*, who would also be Vice-President of the European Commission. It was clear very soon that for the High Representative the challenges stemming from achieving effective interaction with the President of the European Council and the President of the Commission would be compounded by the challenges involved in delegating major negotiating tasks in multiple geographical areas while also handling individual leading states’ role (think Germany and France, most notably).<sup>152</sup>

The powers of the *European Parliament* were strengthened by extending the co-decision procedure to more policy areas. And in a bow to local decision-making, each national parliament gained the right to issue an analytical opinion if it viewed a draft legislative proposal as not conforming to the subsidiarity principle.<sup>153</sup> The *Council of Ministers* saw its power to decide by

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<sup>148</sup> Ammendola, 2008a, pp.43-4

<sup>149</sup> See [www.parliament.uk](http://www.parliament.uk) and Ammendola, 2008a, p.44

<sup>150</sup> Ammendola, *ibidem*.

<sup>151</sup> Ammendola, 2008a, p. 51

<sup>152</sup> See for instance Ammendola 2008a, pp. 44-5 and “The role of the incoming European Union High Representative as a strategic coordinator” Sipri, at <https://www.sipri.org/node/861>.

<sup>153</sup> “In such a case, a national Parliament should present its views in writing to the President of the Parliament, Council and Commission within eight weeks from transmission of the last linguistic version of the draft legislative act in question. If enough national Parliaments do so, they will trigger the so-called “yellow card” or “orange card” procedures whereby the draft law must be reviewed. This mechanism is formally limited to questions on subsidiarity. Nevertheless, national Parliaments have used this opportunity to routinely transmit to the EU institutions their views on a much broader range of issues beyond subsidiarity.” European Parliament website at <http://www.europarl.europa.eu/relnatparl/en/about/subsidiarity.html>, accessed on November 15,



qualified majority voting (qmv) extended to more areas than before. The new qmv corresponds to 55 percent of the members of the Council (at least 16 of them) while also representing at least 65 percent of the total EU population.<sup>154</sup> Like in the case of the European Parliament, the principle of “degressive proportionality” was also applied, whereby medium and small states are given more weight than they should have if strict proportionality were applied to their population size (clearly another area where it is impossible to be “fair”).<sup>155</sup> Interestingly, the Treaty of Lisbon mandated a reduction of the number of *Commissioners* to two-thirds of member states (through a rotation system) with the purpose of making the Commission’s work more streamlined.<sup>156</sup> However, after the negative result of the first Irish referendum in June 2008, the European Council in December 2008 reinstated the rule “one member state-one commissioner.”<sup>157</sup> This principle was strongly supported by the Irish electorate and its reinstatement played an important role in the second referendum held in October 2009 where the approval vote removed the last obstacle to the Treaty of Lisbon’s coming into effect across the EU.<sup>158</sup>

With regard to the Court of Justice of the European Union (CJEU), the Treaty of Lisbon maintained its membership size at one from each member state, implicitly at variance with the impartiality that should be expected from the institution.<sup>159</sup> The Court’s powers in the area of freedom, security and justice were expanded and, limitedly, also in the area of common foreign and security policy (CFSP). Under the Treaty of Lisbon, the Court may also review acts of the European Council and decide on their legality at the request of a Member state when values such as respect for human dignity and for human rights are thought to be infringed.<sup>160</sup> And, “[s]imilarly, the Court of Justice will have jurisdiction under the same conditions in actions

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2018. Incidentally, as clarified thereat, subsidiarity means that the EU shall act only when Union actions are more effective than those taken at national, regional, or local levels.

<sup>154</sup> See the official European Council/Council of the European Union website at <http://www.consilium.europa.eu/en/council-eu/voting-system/qualified-majority/>

<sup>155</sup> See Ammendola, 2008a, p.46. Clearly an American reader thinks immediately about the Senate vs. House of Representatives representation.

<sup>156</sup> Ammendola, 2008a, p. 47

<sup>157</sup> See [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/137221.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/137221.pdf) accessed on September 22, 2018

<sup>158</sup> Other concessions were obtained by the Irish. On second referendums, a topic of great interest to those who want to see another popular vote on Brexit, see Atikcan, Ece Özlem “The Puzzle of Double Referendums in the European Union” *Journal of Common Market Studies* 2015 Volume 53.Number 5, pp.937-956.

<sup>159</sup> On the Court’s organizational, jurisdictional, and procedural changes see Court of Justice of the European Communities, Press Release No 104/09 available at [http://europa.eu/rapid/press-release\\_CJE-09-104\\_en.htm](http://europa.eu/rapid/press-release_CJE-09-104_en.htm)

<sup>160</sup> *ibidem*

brought by the Court of Auditors, by the European Central Bank and, from now on, by the Committee of the Regions for the purpose of protecting their prerogatives.”<sup>161</sup> Furthermore, “[t]he Treaty of Lisbon eases the conditions for the admissibility of actions brought by individuals (natural or legal persons) against decisions of the institutions, bodies, offices or agencies of the European Union.”<sup>162</sup> Most relevantly, the Charter of Fundamental Rights of the European Union has the same legal value of the Treaties.<sup>163</sup> But, as Valéry Giscard d’Estaing pointed out: the Charter was “withdrawn from the” Constitutional Treaty “and made into a separate text, to which Britain will not be bound. In the area of judicial harmonisation and co-operation, Britain will have the right to duck in and out of the system as it pleases. Having already weakened all attempts at further European integration – such as by refusing the title of Minister for Foreign Affairs – Britain has also been allowed to be the odd man out whenever it feels like it.”<sup>164</sup>

Most interestingly, from a political marketing point of view, the Lisbon Treaty had to be presented as a document of an “amending” nature and not of a “constitutional nature.” Giscard d’Estaing put it very well: “the noun ‘constitution’ and the adjective ‘constitutional’ have been banished from the text...., all mention of the symbols of the EU have been suppressed, including the flag (which already flies everywhere), and the European anthem (Beethoven's Ode to Joy)...[with the aim of] chas[ing] away any suggestion that Europe may one day have a formal political status... [but] otherwise, the proposals in the original constitutional treaty are practically unchanged. They have simply been dispersed through old treaties in the form of amendments. Why this subtle change? Above all, to head off any threat of referenda by avoiding any form of constitutional vocabulary.”<sup>165</sup>

In the end, the Lisbon Treaty was approved by direct popular vote only in Ireland – through a second referendum held in October 2009.<sup>166</sup> I noted above the length of the Constitutional

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<sup>161</sup> *ibidem*

<sup>162</sup> *ibidem*

<sup>163</sup> “However, the Charter cannot be invoked against the United Kingdom or Poland”, *ibidem* and Ammendola 2008a, p.49

<sup>164</sup> “Valéry Giscard d’Estaing: The EU Treaty is the same as the Constitution”, October 30 2007 available at [www.independent.com](http://www.independent.com). Opponents of Brexit may point out how this is another major example of the fact that the UK already has the best deal possible as an EU-28 member.

<sup>165</sup> *ibidem*

<sup>166</sup> The unpredictability of referendums lies at the basis of this reluctance across the EU to using them (see also what happened to the Constitutional Treaty). Brexiters would probably reject such approach decrying that it is the proof

Treaty, attributable to the fact that it “combined in one document all the previous treaties and was meant to take their place.”<sup>167</sup> Instead, The Lisbon Treaty maintains alive and amends the EU Treaty (TEU or Maastricht) and The Treaty Establishing the European Community (TEEC or Rome), with the latter being renamed Treaty on the Functioning of the European Union (TFEU).<sup>168</sup> Thus, on account “of its ‘amending’ nature, the [Lisbon] Treaty is in this sense even more arduous reading than the failed Constitutional Treaty, since in the [Lisbon] Treaty there are constant and very distracting references to articles present in the TEU and TEEC texts.”<sup>169</sup>

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of the power of Brussels and its Eurocrats. At the same time their rejection of a second referendum arguably runs counter to this very argument.

<sup>167</sup> Ammendola, 2008a, p. 42

<sup>168</sup> *ibidem*

<sup>169</sup> *ibidem*

## The Eurozone

The most significant economic development in the European Union in the new millennium, whose effects are still being felt at present in political and social terms as well, is the Eurozone crisis. There is an immense literature on its causes, its evolution and consequences, and lessons that can be learned from it. A very interesting recent addition to this literature by Tamim Bayoumi expands on a central insight that is in line with intuitive feelings that many of those who have lived, studied, and worked across the Atlantic have.<sup>170</sup> In essence, Bayoumi states, the Eurozone crisis is a North Atlantic one, since the Eurozone crisis and the US housing crisis are much more interconnected than typically thought.

Bayoumi starts first by examining the European banking system. He notes how the European banking system was not integrated at all at the beginning of the 1980s and how three important policy decisions changed this. First, in line with the 1987 Single European Act, the Commission moved to liberalize capital movements among member states and also third countries as well as to “synchroniz[e] European banking models” by supporting a “universal banking model... typical in much of continental Europe” whereby banks could carry out both commercial and investment banking activities.<sup>171</sup> This was a model in contrast with the US and UK requirements at the time whereby such activities had to be performed separately by commercial and investment banks. Thus, within the EU, on account of the principle of “mutual recognition” and of competition among national regulators who felt uneasy at penalizing their banks (by limiting them to a narrower range of services) against their foreign rivals, the universal banking model spread rapidly.<sup>172</sup>

The second major decision was taken with the 1992 Maastricht Treaty whereby--in line with the principle of subsidiarity--fiscal policy and structural reforms were left to individual member states, unlike monetary policy (and the euro).<sup>173</sup> Interestingly, the British who were typically very reluctant toward any step in a federal direction (as the opt-out on the single currency attests), were willing to move toward centralized EU banking supervision. This was because the

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<sup>170</sup> Bayoumi, Tamim *Unfinished Business: The Unexplored Causes of the Financial Crisis and the Lessons Yet to be Learned* (New Haven and London: Yale University Press, 2017)

<sup>171</sup> Bayoumi, op.cit., p.19.

<sup>172</sup> Bayoumi, op.cit., pp.19-20

<sup>173</sup> Bayoumi, op.cit., p. 23

UK banking system “was large even by European standards and therefore potentially costly to rescue” and also because UK authorities had no real oversight over the large assets on foreign banks with branches in the country.<sup>174</sup> In the end the Germans, who wanted bank supervision to be at the national level so as not to distract the ECB from its mandate to promote price stability, prevailed.<sup>175</sup>

The third major policy decision, a “Market Risk Amendment” taken in 1996 by the Basel Committee of the Bank for International Settlements, allowed major international banks to use their internal risk models to calculate their own capital requirements with regard to investment banking activities.<sup>176</sup> Most notable here is the support of the Federal Reserve which believed that sophisticated investors could carry out effective counterparty risk analyses and punish investment banks taking excessive risks by withdrawing their funds. This faith in the self-regulating powers of the markets revealed the closeness of US and UK regulators’ views, no doubt on account of similarity in culture (with language sharing all too often underestimated, I think), legal systems, and financial market configuration.<sup>177</sup> In any case, the decision gave large banks a competitive advantage over small ones, with the former enabled to enter more comfortably than otherwise into investment banking. A small number of banks from the core of the EU (Germany, France, the Netherlands, and Belgium) exploited this advantage to become even bigger (meta-banks).<sup>178</sup>

On this side of the Atlantic, a key transformation between the early 1980s and the new millennium was the elimination of the prohibitions for regulated banks to engage both in interstate and investment banking.<sup>179</sup> This contributed to the emergence of national banks but only two (Citi and JP Morgan) most aggressively pursued the European model of carrying out both commercial and investment banking activities.<sup>180</sup> During the same period, the unregulated

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<sup>174</sup> Bayoumi p. 24

<sup>175</sup> *Ibidem*. There was however also “a nod to the British view” allowing ECB supervision of banks (Bayoumi pp. 24-5), which a non-Brexiter would consider part of the influence of the UK in rule-making as a member of the EU.

<sup>176</sup> Bayoumi, *op. cit.*, pp.27ff.

<sup>177</sup> Bayoumi, *op.cit.*, p. 84

<sup>178</sup> Bayoumi, *op.cit.*, p.43. He offers as examples Deutsche, BNP Paribas, Crédit Agricole, ING, Société Générale, Commerzbank, Dexia, and Natixis.

<sup>179</sup> Bayoumi p. 45. The reference here is to the repeal of the McFadden (1927) and Glass-Steagall (1933) Acts, in 1994 and 1999, respectively. In the cited text, the former reference is implicit, the latter is explicit.

<sup>180</sup> Bayoumi, *op.cit.*, p.66 where one reads that these two emerging universal banks had capital buffers that “tended to be somewhat lower” than those of large US national banks prevalently engaging in commercial operations. See also p. 69 thereat.

investment banks, which Bayoumi prefers to call “shadow banks”<sup>181</sup> grew significantly in size. In Bayoumi’s narrative this latest development, together with the massive expansion of securitization, with regulated banks selling dramatically more mortgages through the well-known “originate and distribute” model, should have been a major source of concern. Most notably, Bayoumi notes that “[a]ssets of the broker-dealers at the core of the investment banking groups had increased steadily from just 2 percent [of] the economy in 1980 to 10 percent in 1990 and over 20 percent by the early 2000s.”<sup>182</sup> In addition to this major problem area, there was the growing European universal banks’ presence into the US markets. Remarkably, “[b]etween 1980 and 2002, foreign ownership of corporate bonds (which included securitized assets) doubled to one-tenth of the size of the US economy.”<sup>183</sup> Last, another major area for concern was the significant increase in house prices, which clearly rendered the possibility of a sudden drop in their value (euphemistically describable as a “major correction”) a significant threat for leveraged entities and investors. With the benefit of hindsight, one can comfortably say that these worrisome factors were underestimated or ignored on account of an excessive faith in the ability of investors to monitor and prevent market excesses.

Taken together, these factors all contributed to increase the overall vulnerability of the North Atlantic financial system. The boom of the new millennium led to great optimism<sup>184</sup>, which totally ignored the huge growth in lending by the core meta-banks in the North of the Eurozone. This lending massively financed the interconnected housing booms in the United States and the Eurozone periphery. The ensuing crisis would show clearly the faulty design of the Eurozone in terms of ability to resist negative shocks.<sup>185</sup> In this sense, the decision taken years earlier by

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<sup>181</sup> Bayoumi, p. 45

<sup>182</sup> Bayoumi p.70

<sup>183</sup> Bayoumi, *ibidem*.

<sup>184</sup> Most notably, on March 23-24, 2000 the European Council adopted the “Lisbon Strategy”, aimed to make in the next decade “Europe the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion”. Available at the [www.consilium.europa.eu](http://www.consilium.europa.eu) website. For an overview of the “Lisbon Strategy” benefiting from the assessment *ex post facto* of the achievements of the stated objectives, see for instance Bongardt, Annette and Francisco Torres “Lisbon Strategy” in the *Oxford Handbook on the European Union* (2012), *op.cit.*, pp.469-483. For an early enthusiastic assessment of the future of Europe put forth at the beginning of the new millennium, see for instance Rifkin, Jeremy *The European Dream: How Europe's Vision of the Future Is Quietly Eclipsing the American Dream* (New York: Tarcher, 2004).

<sup>185</sup> Bayoumi p.109 ff. For an alternative view, see Sandbu, Martin *Europe's Orphan: The Future of the Euro and the Politics of Debt* (Princeton, New Jersey: Princeton University Press, 2015), where, among other things, he maintains that the Eurozone does not need a fiscal and political union and that no substantial institutional changes are necessary. He adds that the correct approach is the return of responsibility for fiscal policies to national governments. Once again, one sees the importance of the supranational vs. intergovernmental divide as an analytical framework.

Gordon Brown to stay out of the Eurozone proved to be--at least in the eyes of many in Britain--the right one. Interestingly, Brown's prevailing over Tony Blair on this was made easier by the Danish referendum in September 2000 against euro membership. And, arguably, even more so by the fact that Blair's attention shifted to the New York terrorist attacks in 2001.<sup>186</sup>

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<sup>186</sup> Black, Jeremy A *History of Britain: 1945 to Brexit* (Bloomington, Indiana: Indiana University Press, 2017), p. 222

## The Brexit referendum campaign

After having examined some of the factors that have characterized the EU integration process with an eye to a few of those more closely connected to Britain and the US, let us examine some of the political and economic dimensions of the Brexit vote. We are going to look first briefly at the decision to hold a referendum and at the way the campaign was conducted.<sup>187</sup>

In the first place, it is fair to say that the decision to hold the referendum was entirely the responsibility of David Cameron, although one has to acknowledge that the reality in which it was taken was rather complex. The Conservative leader was experiencing great pressure from the backbenchers of his party on issues such as immigration and the concern that they would lose votes to the UK Independence Party (UKIP). UKIP was led by a very clever communicator, Nigel Farage, who had managed to get great visibility as a vocal member of the European Parliament. Farage's and the UKIP's very strong euroskeptical stance were pushing Cameron away from whatever limited pro-European ideas the latter had felt comfortable "taking" from Labour leader Tony Blair after assuming the Conservative party leadership in 2005 (and in any case Cameron never was a Euro-enthusiast). To complicate matters, already before the 2010 election, Cameron had promised to bring down the net number of immigrants from more than 200,000 a year to "tens of thousands."<sup>188</sup> In spite of the fact that this promise was hard to reconcile with the EU's principle of free movement, Cameron before the 2015 elections committed—if victorious—to hold a referendum on the European Union. The elections were won and before having the referendum, in February 2016, Cameron negotiated with the European Union an agreement that would give the UK "special status" within the EU, clearly trying to address the concerns that too much sovereignty had been transferred to the EU.<sup>189</sup> The

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<sup>187</sup> Some useful sources are, in no order of importance: Black, A History of Britain, op.cit.; Drozdiak, William *Fractured Continent: Europe's Crises and the Fate of the West* (New York: W.W. Norton, 2017); Macshane, Denis *Brexit, No Exit: (Why (in the End) Britain Won't Leave Europe* (London: Taurus, 2017); Kirchick, James *The End of Europe: Dictators, Demagogues, and the Coming Dark Age* (New Haven, Connecticut: Yale University Press, 2017); Menon, Anand "Why the British chose Brexit" *Foreign Affairs*. November 2017; Glencross, Andrew *Why the UK Voted for Brexit: David Cameron's Great Miscalculation* (London: Palgrave, 2016 )

<sup>188</sup> Prince, Rosa "David Cameron: net immigration will be capped at tens of thousands" *The Telegraph*, January 10, 2010, available at its website.

<sup>189</sup> See Landale, James "EU reform deal: What Cameron wanted and what he got" 20 February 2016, available at [www.bbc.com](http://www.bbc.com). The concept of "power repatriation" advocated by Cameron at the high point of the Euro crisis in 2011 was of course present during these negotiations. It is interesting to recall also the earlier retort (certainly on the mind of many EU negotiators henceforth) given by French President François Hollande in December 2012 that "Europe is not 'à la carte.'" See for instance Ross, Tim and Bruno Waterfield "Europe is 'for life', Francois Hollande tells David Cameron in EU power spat" *The Telegraph*, December 14, 2012.



agreement, in a nutshell, provided for: a commitment to clearly exempt Britain from the “ever closer Union” references included into the treaties; measures to block or veto commission proposals as long as 55% of national parliaments agreed; the establishment of limits to in-work benefits for EU migrant workers (temporally limited); and, with regard to the Eurozone, guarantees that countries not part of it (like the UK) would not be forced to fund Euro bailouts and would be reimbursed for the use of central EU funds to support the euro (but, with regard to financial regulation, the French made sure that the UK would not get rule-based benefits that would give the London based credit institutions a market advantage over other EU competitors).<sup>190</sup> The agreement did not adequately satisfy the Euroskeptics within the Conservative Party and, arguably, Cameron’s description of its merits did not impress much the voters during the campaign leading to the referendum.

Another area where Cameron proved to be strategically unwise was the management of party unity. Confronted with the pro-Brexit stance of two major conservatives like Boris Johnson and Michael Gove, Cameron let the desire to maintain party unity hold him back. Thus, also on account of his conviction that the result of the referendum would be to remain in the EU, he did not attack too strongly the conservative dissenters.<sup>191</sup> A major example is a poster designed by the pro-EU campaign picturing Boris Johnson sitting in Nigel Farage’s pocket, which Cameron vetoed. He opted instead for attacks on Nigel Farage only.<sup>192</sup> Further, it can be argued that Cameron was most unwise in not trying at all to “delay or defer the plebiscite” just as he was wrong in making it more difficult for younger voters to be on the electoral register.<sup>193</sup>

Party politics affected the behavior of the Labour Party significantly as well. Most notably, Labour elected in the fall of 2015 a leader from its far left, Jeremy Corbyn, who felt that the EU was a capitalist club promoting the interest of the business class over that of workers.<sup>194</sup> Further,

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<sup>190</sup> See Landale, op.cit.

<sup>191</sup> Avoiding a tv debate against Johnson was most likely a mistake in this sense. See for instance Mance, Henry and Jim Pickard “How David Cameron could have avoided an EU Leave vote” *Financial Times* June 25, 2016

<sup>192</sup> See Oliver Wright “EU referendum: Nigel Farage to become poster boy for Remain campaign” 10 June 2016 available at [www.independent.co.uk](http://www.independent.co.uk). Interestingly, the former Belgian Prime Minister and strong EU supporter Guy Verhofstadt makes the point that “the real driving force behind the Brexit had nothing to do with Europe. The referendum had been [designed] ... as a big show put on to ensure the unity of the party, whatever the cost.. but ... [in the end] it deepened the divisions among the Tories, split the whole country, and dragged the rest of the EU down with it.” Guy Verhofstadt *Europe’s last chance* (New York: Basic Books, 2017), p. 198

<sup>193</sup> Macshane, op. cit., p. 118

<sup>194</sup> Drozdiak, William, op.cit., p. 36

he espoused the very debatable concept that any Labor electoral defeat was largely attributable to the party's not having supported sufficiently left-wing policies.<sup>195</sup> A champion of unilateral nuclear disarmament and massive industrial nationalizations (a most anti-Thatcher view), he also did not want to speak alongside Cameron. Corbyn also did nothing to coordinate the messages sent out by Labor representatives, which appeared often in great disagreement with one another. For instance, he was against controls over people coming into the UK, while many of other Labor members campaigned along strong Leave lines to oppose free movement.<sup>196</sup>

In terms of the number of articles making reference to political figures, the campaign's main voices for Remain were David Cameron and his Chancellor of the Exchequer George Osborn, while Conservative Party "infighters" Boris Johnson and Michael Gove preceded and followed respectively Nigel Farage on the Leave side.<sup>197</sup> Broadly speaking, the coordination and communication between the leaders of the two main parties in expressing reasons why Remaining was better than Leaving was truly poor.<sup>198</sup>

The role played by the media needs mentioning as well. Here are some observations. A study of the EU Referendum-related articles published online by 20 national news outlets over the official 10-week campaign (from April 15 to June 23) lists the policy issues in terms of priority.<sup>199</sup> At the top, the national media coverage dealt with the economy and immigration, in a rather polarized and divisive way. With regard to the economy, the Remain claim that Brexit would cost each household £4,300 per year by 2030 was discussed in over twice as many articles than the Leave campaign's claim that the EU cost the UK £350 million each week.<sup>200</sup> Any expert in political marketing would not be surprised at this difference because of the greater directness of the former claim. As a response, throughout the campaign, Leavers accused the Remainers of "scaremongering" even though, some would argue, they did the same by emphasizing the

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<sup>195</sup> Kirchick, James, op.cit., p. 172

<sup>196</sup> McShane, op.cit., p. 34

<sup>197</sup> See Moore, Martin and Gordon Ramsay *UK Media Coverage of the 2016 EU Referendum Campaign* available at <https://www.kcl.ac.uk/sspp/policy-institute/CMCP/UK-media-coverage-of-the-2016-EU-Referendum-campaign.pdf>, p.9 Henceforth, Moore.

<sup>198</sup> See Berry, Mike "Understanding the role of the mass media in the EU Referendum" available at <http://www.referendumanalysis.eu/eu-referendum-analysis-2016/section-1-context/understanding-the-role-of-the-mass-media-in-the-eu-referendum/>

<sup>199</sup> See Moore, op.cit. One finds thereat the qualitative and quantitative criteria used for their study as well as a listing of those news outlets which formally endorsed one side or another, with the numbers somewhat evening out.

<sup>200</sup> See Moore, op.cit. p. 8

negative links between economic issues and immigration, (especially the weight that immigrants imposed on public services). And this Leavers' strategy became even more evident as the referendum day got closer.

On the whole, the advantages deriving from agenda setting for the Remain camp proved to be illusory. Most notably, the press supporting Leave used in many cases very sensationalist language to belittle if not ridicule the Remain camp's "alarmist" emphasis on Brexit's economic costs. This was done to a very large degree through news reports rather than comment articles<sup>201</sup>, which most likely added significantly to their effectiveness. The agenda setting by Remainers prominently involved seeking and publicizing support from domestic and international politicians and institutions.<sup>202</sup> On the other hand, "Leave... successfully undermined the economic warnings of Remain by questioning the campaign leaders' honesty, their expertise, their motivation, and by presenting the whole economic narrative as a cynical strategy to frighten people into voting for the status quo."<sup>203</sup> More broadly, I might add, the general increased distrust toward "experts", considerably grown in the wake of the global financial crisis did not help at all the Remain camp.

Most relevant, in looking at media's impact during the referendum campaign and the influence of experts, is also the role played by the British Broadcasting Corporation (BBC), the largest tv broadcaster in the United Kingdom by audience share. In a nutshell, many Remain supporters have accused the public broadcaster of offering a "false balance" across the referendum campaign, giving equal time and treatment to the "lightweights" of the Leave camp; Leavers, on the other hand, while having largely acknowledged a balanced reporting on part of the BBC during the campaign, have been complaining about the BBC's espousal of the dark view of Brexit after the June 23 vote.<sup>204</sup> The BBC also stressed that the position of "experts" (broadly

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<sup>201</sup> Moore, op.cit., p. 54

<sup>202</sup> Moore, op.cit., p. 164

<sup>203</sup> Moore, op.cit. ibidem

<sup>204</sup> James Harding, as a top representative of the BBC, challenged both claims. See Harding, James "A truly balanced view from the BBC: don't blame us for Brexit", *The Guardian* September 26, 2016. Incidentally, the concept of balance reminds those on our side of the Atlantic of the "fairness doctrine", which was introduced in 1949 as a policy requiring the holders of broadcast licenses to cover issues of public importance in a fair and balanced way. The policy was terminated in 1987 and some think that it may have been a contributing factor in the greater party polarization in the United States. Also very relevant here is the "equal time" rule introduced in its original form in 1927 which requires broadcasters to offer equal time (on equivalent terms) to qualified candidates for public office. On the doctrine, see for instance Kathleen Ann Ruane "Fairness Doctrine: History and Constitutional Issues" *Congressional Research Service* July 13, 2011.

defined) including “President Obama, the governor of the Bank of England, the IMF, OECD, IFS, CBI, prime minister, chancellor and, yes, both David Beckham and Jeremy Clarkson [who] believed Britain should remain in the EU” was never represented ambiguously.<sup>205</sup> But, as we have stated earlier, the Leavers were successful in dismissing them.

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<sup>205</sup> Harding, *op. cit.*, where he states that “[n]o one who watched the BBC during the campaign could have been left in any doubt” where these prominent individuals stood.

## The Brexit vote results

The outcome of the June 23, 2016 referendum was fairly unexpected. As the referendum day got closer, most observers thought that the outcome would be tight. And the closeness in the numbers was significant indeed, but not in the direction expected, with a surprising Leave victory by 51.9 percent against the 48.1 percent obtained by Remain (the electoral turnout was 72.2 percent).<sup>206</sup>

A brief look at the geographical voting pattern is most interesting. Scotland voted unequivocally to remain (62 percent of the votes). In England, however, with the exception of London every region voted Leave. In Wales, “the vote share... almost exactly matched the overall national result (52.5 per cent Leave to 47.5 per cent Remain)”, while in Northern Ireland Remain prevailed (at 55.8 percent of the vote).<sup>207</sup> The implications in terms of country unity, while difficult to analyze, were and are not likely to be positive.

Some other broad considerations are as follows: areas with lower educational levels were associated to higher shares of the Leave vote, while the areas where educational levels were higher voted Remain; areas with high percentages of individuals in professional jobs and those with higher levels of median hourly pay also showed significant Remain preferences; and the Leave camp got better results in areas with large percentages of the population over 65 and less favorable results where the population was younger.<sup>208</sup>

Immigration as an issue was, as noted earlier, heavily referred to across the whole campaign. Most interestingly, “areas with most immigrants—notably London-- were among those most likely to vote Remain.”<sup>209</sup> But, and more interestingly still, “[w]here foreign born populations increased by more than 200% between 2001 and 2014, a Leave vote followed in 94% of cases... [which may lead one to conclude that large] numbers of migrants don’t bother Britons; high rates

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<sup>206</sup> Data from The Electoral Commission available at [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk).

<sup>207</sup> Menon, Anand and John-Paul Salter “Brexit: Initial Reflections 2016, *International Affairs* 92: 6 (2016) 1297–1318, at p. 1312. This article also has a good review of the relevant literature.

<sup>208</sup> Menon and Salter, *op.cit.*, p.1312-3

<sup>209</sup> “The immigration paradox: Explaining the Brexit vote” *The Economist*, July 14, 2016

of change do.”<sup>210</sup> This is a point that needs to be considered more often, I feel, when looking at anti-immigrant sentiments elsewhere in Europe and also in the United States.

The literature on the referendum is obviously very large,<sup>211</sup> but one major survey conducted on the referendum day deserves in my opinion particular attention because of some of the insights it offers.<sup>212</sup> Most notably, Lord Ashcroft Polls surveyed 12,369 people after they had voted asking them how they voted and the reasons behind their decision.<sup>213</sup> As for Leavers, nearly half of them (49 percent) stated that the biggest individual reason for wanting to leave the EU was “the principle that decisions about the UK should be taken in the UK”. One third (33%) of the respondents said the main reason was that leaving “offered the best chance for the UK to regain control over immigration and its own borders”, while 13 percent maintained that staying in the EU meant having little or no ability to decide “about how the EU expanded its membership or its powers in the years ahead.” Interestingly, only 6 percent considered the main decision for leaving that “when it comes to trade and the economy, the UK would benefit more from being outside the EU than from being part of it.” With regard to Remainers, 43 percent of them gave as the most important reason for their choice that “the risks of voting to leave the EU looked too great when it came to things like the economy, jobs and prices”. Almost one third (31 percent) of Remainers stated that staying in meant that the country would have “the best of both worlds”, maintaining access to the EU single market without the burdens of Schengen or the euro. Next, 17 percent of the Remainers stated that the main reason for their vote was that leaving meant that the United Kingdom would “become more isolated from its friends and neighbours”, while 9 percent offered as main reason “a strong attachment to the EU and its shared history, culture and traditions.”

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<sup>210</sup> *ibidem*

<sup>211</sup> See for instance: Matti, Joshua and Yang Zhou “The political economy of Brexit: explaining the vote” *Applied Economics Letters*, (2017), 24:16, 1131-1134; Hobolt, Sara B. “The Brexit vote: a divided nation, a divided continent”, *Journal of European Public Policy*, (2016) 23:9, 1259-1277; Johnston, Ron, Kelvyn Jones, David Manley “Predicting ‘Who Voted for Brexit’ through Ecological Analysis –an Example of the Problem of Confounding, and its Resolution”, available at the SSRN website, posted on February 9, 2018; and Clarke, Harold D., Matthew Goodwin, and Paul Whiteley *Brexit: Why Britain Voted to Leave the European Union* (Cambridge University Press, 2017).

<sup>212</sup> “How the United Kingdom voted on Thursday... and why” *Lord Ashcroft Polls* Friday, 24 June, 2016. Henceforth Lord Ashcroft 2016. Available online at the lordashcroftpolls.com website. Menon and Salter also acknowledge the merits of the survey.

<sup>213</sup> Lord Ashcroft, 2016. All quotes in this paragraph are from this source.

Another interesting consideration with regard to the vote derives from the fact that so many experts and political leaders as well as the financial markets were taken by surprise in spite of polls confirming extensively the closeness of the race. In this regard, “optimism bias” seems worth exploring.<sup>214</sup> One way to look at this would probably be, I would submit, to connect the higher capability to communicate of “experts” and the general (positive) perception of the media of the value of their opinion with the geographical and cultural closeness of the two (experts and the media) so as to introduce in the analysis also “the availability bias”.<sup>215</sup>

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<sup>214</sup> See notably on this Rice, Condoleezza and Amy B. Zegart *Political Risk: How Businesses and Organizations Can Anticipate Global Insecurity* (New York: Twelve, 2018), pp. 89-90

<sup>215</sup> Incidentally, one could make a similar case for the “unexpected” victory of Donald Trump in the US presidential elections.

## After the Brexit referendum

The day after the referendum David Cameron, the leader who in 2010 had returned the Tories to power after the thirteen Blair/Brown premiership years, resigned. A brief list of some of his policy choices prior to the referendum is interesting. It points to their complexity and, perhaps truly unavoidably, their politically divisive nature domestically and/or abroad.<sup>216</sup>

For instance, on the positive side, he claimed during the campaign-among others- ownership of the recovery from the financial crisis (with austerity measures viewed as too tough by many), and (to the uneasiness of some of his party notables) his support for the National Health Service (NHS), the environment, and international development. Also, in terms of ambivalence one has to note his cuts to defense spending during the first term (which were much disliked in the United States) and the u-turn on the same issue observed after the May 2015 elections. With regard to the relationship with the EU, the connection he established with French president Nicolas Sarkozy, which was instrumental in involving Nato to act in Libya, proved to be disastrous on account of the chaos that the collapse of the Gadhafi regime created (read: more immigrant/refugees crossing the Mediterranean). Even more directly connected to the EU, was the British opposition at the December 2011 European Council meeting to the new intergovernmental treaty modifying in a stricter way the Eurozone Stability and Growth Pact. Cameron and many British politicians were concerned that “the more intrusive economic surveillance... [by] Eurozone member states would extend to-or unwittingly handicap-- non-Eurozone countries ... [and] Cameron demanded a ‘repatriation of powers’ from Brussels back to London.”<sup>217</sup> His position was undoubtedly influenced by the Euroskeptic members of his party, concerns over the rise of UKIP, and the blame placed on Brussels for all negative domestic economic developments.<sup>218</sup> In the end, the treaty was signed on March 2, 2012 by all member

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<sup>216</sup> See for instance Alasdair Blair *Britain and the World since 1945* (London: Routledge 2015), op.cit.; Sandbu, op.cit.; Snowdon, Peter “David Cameron Will Be Remembered for More Than Just Brexit” available at time.com ideas July 14 2016; Jeremy Black *A History of Britain: 1945 to Brexit* (Bloomington, Indiana: Indiana University Press, 2017), op.cit.; Dorman, Andrew, Matthew R.H. Uttley, and Benedict Wilkinson “The Curious Incident of Mr Cameron and the United Kingdom Defence Budget: A New Legacy?” *The Political Quarterly*, Vol. 87, No. 1, January–March 2016

<sup>217</sup> Ashoka Mody *Eurotragedy: A Drama in Nine Acts* (New York City: Oxford University Press, 2018) p.334

<sup>218</sup> This “economic” blame placed on Brussels and the Euro by national politicians has played a pivotal role in the decreased enthusiasm for the integration process observed in other European countries in the last ten years.



states, except the Czech Republic and the United Kingdom, as formally outside the EU legal framework but de facto incorporated in existing EU regulations.<sup>219</sup>

It was this British ambivalence toward the EU integration process, including the Eurosceptics' reaction to the February 2016 agreement with the EU mentioned earlier, that led to Brexit and the challenges that Cameron's successor would have to face henceforth. And, as we have seen above, the agreement negotiated with the EU in February 2016, before the referendum, did not contribute to more party harmony for the Conservatives nor (arguably) to greater "Anglo" enthusiasm within the EU.

Party harmony was clearly damaged by the campaign. The most natural successor at the helm of the Conservative Party, Boris Johnson, was "stabbed in the back" by the more hard-line Leaver Michael Gove, who was concerned over the former's ability to lead the country.<sup>220</sup> Gove's decision to run for the premiership after having pushed Johnson aside, however, made him look as a betrayer unworthy of the position. That left as a front runner the home secretary for the previous six years, Theresa May. Throughout the campaign she sided, in a moderate way, with the Remain camp. However, after the results were in, she "offered 'strong leadership' and a promise to heal the country's divisions... [also famously stating] 'Brexit means Brexit and we are going to make a success of it.'" <sup>221</sup> Her message and her confidence proved most appealing to the majority of her colleagues, enabling her to become the new leader of the Conservative Party and, on July 13, the first female Prime Minister in 26 years.

Her confidence and leadership would soon be challenged by a plurality of actors and forces.

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<sup>219</sup> Nixon, Simon "How David Cameron Unwittingly Greased the Rails Toward Brexit" *Wall Street Journal* November 29, 2017; Mody, op.cit.; Sandbu, op.cit.; Stiglitz, Joseph E. *The Euro: How a Common Currency Threatens the Future of Europe* (New York: Norton, 2017); and Brunnermeier, Markus K., Harold James, and Jean-Pierre Landau *The Euro and the Battle of Ideas* (Princeton, New Jersey: Princeton University Press, 2016)

<sup>220</sup> Drozdiak, op.cit., pp. 39-40

<sup>221</sup> George Parker "May to 'make Brexit a success' as UK's first female PM in 26 years", *Financial Times* July 12, 2016, front page.

## Theresa May's government: the models and the issues

The first decisions that Theresa May had to take were the appointments for her Government. Most notably, and unexpectedly, she appointed Boris Johnson as Foreign Secretary. Other key appointments to the UK Brexit squad were David Davis (Secretary of State for Exiting the European Union), and Liam Fox (Trade Secretary), both hard-line Brexiters. It is fair to say that no one in the Government, or Parliament for that matter, had a clear idea of what they wanted. Before the referendum, Brexit was never clearly defined in terms of what it meant in practice. At the time of the beginning of Theresa May's Government, several non-EU countries provided trade models that were being considered.<sup>222</sup> Let us briefly look at them.

*The Norway model.* Norway, which in 1994 voted against joining the EU, is a member of the European Economic Area (EEA), together with Iceland and Lichtenstein. It has full access to the Single Market, and the free movement of goods, capital, services and people with the EU works in both directions. While required to adopt EU law connected to the Single Market, Norway is exempt from EU rules in agriculture, fisheries, justice, and home affairs. The country contributes to the EU budget and, while it can offer its views on the non-excluded policies and legislation, it cannot vote and it is not represented in the EU institutions.

*The Switzerland model.* Switzerland is not a member of EEA (as a result of a 1992 referendum), but belongs to the European Free Trade Association (EFTA). The latter includes also the three members of the EEA. EFTA is not a customs union and member states, while having a coordinated trade policy, have full rights to enter into bilateral third-country trade arrangements. Switzerland, the EU largest trading partner after the US and China, has a relationship with the EU characterized by a series of bilateral treaties. As a consequence, it has access to the Single Market but not in all sectors. Most relevantly to Brexit analysts, the country does not have full access to the single market in the banking sector and other service areas that together account for almost 80 percent of the UK economy. Switzerland also has to pay into the EU budget.

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<sup>222</sup> See "Five models for post-Brexit UK trade" available at [www.bbc.com](http://www.bbc.com) posted on June 27, 2016, accessed on August 5, 2018; Carpenter, Theresa and Graham Floater *Brexit: Impacts on UK and EU Trade*. CTEI Policy Briefs, available at the Centre for Trade and Economic Integration of the Graduate Institute of Geneva website. See also the official EU and UK institutions' websites.

*The Turkey model.* Turkey has a customs union with the EU limited to industrial goods for which it does not have therefore to face tariffs or quotas. The country does not contribute to the EU budget, and does not have access to the EU agricultural markets and services. It has to apply the EU common external tariff on goods imported from outside the EU (without much influence over it). It is also a significant “rule taker” in comparison with the countries that have Free Trade Agreements (FTAs) with the EU.

*The Canada model.* Canada and the EU have worked for years on the Comprehensive Economic and Trade Agreement (Ceta), so most of the issues connected to it were known before June 2016. Ceta came into force provisionally in September 2017.<sup>223</sup> The agreement, among others, removes all tariffs on industrial products traded between the EU and Canada, substantially liberalizes agricultural trade between the EU and Canada, guarantees access to Canada’s public procurement market, encourages more investment in both directions, and protects many of Europe’s flagship food and drink products (e.g. Italy’s Chianti wine and Greece’s Elia kalamatas olives). Canada makes no financial contributions to the EU budget and each party retains the ability to establish an independent international trade policy.

*The WTO model.* The model is often referred to in connection to the UK leaving the EU without an agreed trade deal. Under a “no deal” scenario after Brexit, the UK and the EU would be obliged to apply World Trade Organization (WTO) rules. This means that they would have to apply to each other the tariffs and other trade restrictions they apply to the rest of the world.<sup>224</sup> Essentially, this model means that the UK would have total freedom to enter trade agreements with other countries and to create independent national policies in all areas. It would also mean that UK exporters would confront higher tariffs in the EU and vice versa.

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<sup>223</sup> CETA: the EU-Canada free trade agreement, available at the [parliament.uk](http://parliament.uk) website; see also the EU commission website; and Dominic Webb, *CETA: the EU-Canada free trade agreement* July 20 2018 available at the House of Commons Library website.

<sup>224</sup> Five Models, op.cit. The “no deal” option has come to be seen with time more and more negatively by most analysts. See *infra*.

Awareness of these different models/scenarios (and, most importantly, their potential mix) did not necessarily mean full comprehension of their implications for the complex domestic and international negotiation processes, to which we now briefly turn.<sup>225</sup>

Theresa May addressed early on the issue of models. May stated that the UK and the EU should not use “necessarily a model that’s on the shelf already but [sic] saying: what is going to work for the UK and what is going to work best for the European Union; in ensuring that we can maintain that economic relationship which has been of benefit to us in the past, and we want to ensure that we can continue and build on in the future.”<sup>226</sup> Here one could note a desire to appear as a political innovator fully aware of the past and the challenges ahead on both sides. Theresa May also spoke about the need to develop a strong industrial strategy, stressing the need to “build an economy that works for everyone, not just the privileged few”, part of the central idea to unify the party and the country.<sup>227</sup> She also continued to defend her key inaugural speech expression “Brexit means Brexit...we are going to make a success of it. That means there’s no second referendum, no attempts to sort of stay in the EU by the back door, that we’re actually going to deliver on this.”<sup>228</sup> By the end of August of 2016 it was already clear that among the ministers there was considerable disagreement over the precise negotiating posture, with most significant divisions over market access and immigration.<sup>229</sup> This was clearly affected by the EU’s red line of free movement of people (one of the four freedoms)<sup>230</sup> and also by the complex relationship existing for non-EU members between EU market access and decision-making input. A most important factor that was fully understood by then was the great reluctance on the part of the EU to give the UK a deal that might be too “nice” and provide therefore an incentive for other countries to exit. Further, the concern over prolonged uncertainty over the negotiations

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<sup>225</sup> The hurdle was very high even for the people most directly involved in the negotiations, in no small measure on account of the totally uncharted territory that the UK (and the EU) was entering. The brief chronology and the considerations offered henceforth are largely based on speeches given by many key players and communications and interviews with the press. On their own they could be the object of a very interesting and extensive case study on political marketing and communication.

<sup>226</sup> This was in Rome at a press conference on July 27, 2016 when meeting with Prime Minister Matteo Renzi, <https://www.gov.uk/government/speeches/pm-statement-in-rome-27-july-2016>

<sup>227</sup> Quoted in “Theresa May chairs cabinet committee on economy” August 2, 2016 at [www.bbc.com](http://www.bbc.com),

<https://www.bbc.com/news/uk-politics-36951890>. Obviously here the idea, often repeated in the months ahead, is to show Labor that she can use some of their key messages. See *infra*.

<sup>228</sup> “No staying in the EU by the Back door, says Theresa May” August 31, 2016

<https://www.theguardian.com/politics/2016/aug/31/no-staying-in-eu-by-back-door-theresa-may-brexite>. This is one prominent example of Theresa May’s drawing “red lines”. See *infra*.

<sup>229</sup> See for instance Allen, Kate et al. “Post-Brexit Britain to seek ‘unique’ model as great trading state” *Financial Times* August 31, 2016

<sup>230</sup> The reference here is clearly to the four fundamental freedoms that were pursued since the 1957 Treaty of Rome: freedom of movement of people, goods, capital, and services and which have been at the center of the EU integration process.

was significant among business leaders; UK political leaders from all sides acknowledged that and claimed that their position –whatever it was- aimed at decreasing such uncertainty.

Awareness of the uncertainty over the UK's role as a bridge for the United States into the EU, along both economic and security dimensions, grew as well.

## The Birmingham speech and moving to invoke article 50

With Theresa May's speech at the Conservative Party Conference at Birmingham on October 5, 2016, and the discussions that it triggered, the above mentioned issues were expanded upon and more were added. The central theme, however, was pretty clear. In her speech the Prime Minister spoke about a "new centre ground of British politics ... where every single person ... is given the chance to be all they want to be" so as to eliminate divisions "between a more prosperous older generation and a struggling younger generation... between the wealth of London and the rest of the country."<sup>231</sup> The time had arrived "to reject the ideological templates provided by the socialist left and the libertarian right and to embrace a new centre ground in which government steps up — and not back — to act on behalf of us all."<sup>232</sup>

With an eye to the next election, Theresa May aimed to grab votes from the Labor Party while securing those of her own party, arguably in the conviction that nobody on the right could replace her. She saw her government as "providing security from crime, but from ill health and unemployment too. Supporting free markets, but stepping in to repair them when they aren't working as they should. Encouraging business and supporting free trade, but not accepting one set of rules for some and another for everyone else."<sup>233</sup> A crucial part of this getting back in control of the economy and society through more active government policies was the emphasis on two major goals in the negotiations with the EU: total immigration control and refusal to accept the jurisdiction of the European Court of Justice. Most tellingly, May added: "We are leaving to become, once more, a fully sovereign and independent country" while, however, also stating that "the Britain we build after Brexit — is going to be a Global Britain. Because while we are leaving the European Union, we will not leave the continent of Europe. We will not abandon our friends and allies abroad. And we will not retreat from the world... keeping our promises to the poorest people in the world. Taking the lead on cracking down on modern slavery wherever it is found. Providing humanitarian support for refugees in need. Ratifying the Paris Agreement on Climate Change. Always acting as the strongest and most passionate

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<sup>231</sup> The quotes are all from her October 5, 2016 Birmingham speech available, among others, at [www.independent.co.uk](http://www.independent.co.uk)

<sup>232</sup> The speech had also dimensions that many would call strongly populist, with her distancing herself pointedly from the London elite: "Just listen to the way a lot of politicians and commentators talk about the public. They find your patriotism distasteful, your concerns about immigration parochial, your views about crime illiberal, your attachment to your job security inconvenient." *Ibidem*

<sup>233</sup> *ibidem*

advocate for free trade right across the globe. And always committed to a strong national defence and supporting the finest Armed Forces known to man.”<sup>234</sup> Clearly Theresa May understood that the Brexit vote was a vote against globalization, but not against the historical global Britain and the needed more intense commercial relations with non-EU countries to compensate for Brexit. The Birmingham speech also stated unequivocally that Article 50 of the EU Lisbon Treaty would be invoked before the end of March 2017. The article gives any EU member state the right to withdraw unilaterally and sets a two-year deadline for the deal, after which the country leaves, “unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.”<sup>235</sup> In the following months this notification proved to be a contentious issue. The use on the part of the UK government of its prerogative powers to issue a declaration pursuant to Article 50 was considered by many experts as contrary to domestic constitutional law. These critics argued that it had to be preceded by an authorization given through an Act of the UK Parliament.<sup>236</sup> In the end, the issue had to be decided by the UK Supreme Court, which ruled in the Miller case that Parliament had to authorize the triggering of Article 50.<sup>237</sup> Also, very importantly, the Court denied that the devolved legislatures (Wales, Scotland, and Northern Ireland) had any say in the process, both in terms of approval and even consulting.<sup>238</sup> Thus, after Theresa May’s Secretary for Exiting the EU, David Davis, formally introduced the Notification of Withdrawal bill, the first reading of it took place on January 26, 2017.<sup>239</sup> Two months later, after an intense legislative process, Donald Tusk, the President of the European Council in Brussels was delivered a letter signed by Prime Minister May formally notifying him of the invocation of Article 50 as well as declaring the intention to withdraw from the European Atomic Energy Community ( Euratom).<sup>240</sup> Thus, the two years of official negotiations before the exit started.

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<sup>234</sup> ibidem

<sup>235</sup> Article 50.3 Official Journal of the European Union 9 May 2008 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2008:115:FULL&from=EN> .

<sup>236</sup> See for instance “The invoking of Article 50” *House of Lords, Select Committee on the Constitution*, published on September 13, 2016 available on the parliament.uk website.

<sup>237</sup> The judgement was given on January 24 2017. See the [www.supremecourt.uk](http://www.supremecourt.uk) website. See also Bowcott, Owen et al. “Supreme court rules parliament must have vote to trigger article 50” *The Guardian* January 24, 2017.

<sup>238</sup> Ibidem and “Brexit: Ministers ‘not legally compelled’ to consult AMs” *BBC News* January 24, 2017 available at <https://www.bbc.co.uk/news/uk-wales-politics-38723340>

<sup>239</sup> See the website [www.parliament.uk](http://www.parliament.uk) for the official description of the legislative process, which ended with the passing of the bill on March 13, 2017 and the Queen’s Royal assent on March 16.

<sup>240</sup> The letter, dated March 29 2017, is available online at [www.gov.uk](http://www.gov.uk)

The UK legislative process debates about leaving the EU, as well as the discussions they engendered outside Parliament, confirmed how divided the country was within and among parties and devolved jurisdictions and how complex the road ahead would be. For instance, an amendment to protect EU nationals' rights was voted down by 335 to 287.<sup>241</sup> A second amendment on the possibility to have a "meaningful final vote" on any deal at the end of the Brexit talks was rejected by 331 to 286.<sup>242</sup> The Lords accepted both decisions of the Commons, with a 274 to 135 and a 274 to 118 majority, respectively.<sup>243</sup> The government explained that the legislation had to be kept "straightforward" and the amendments would have complicated the process. Secretary Davis stressed that the second amendment would "hamper the government during its negotiations ... and questioned the motives of those arguing for it, claiming that they wanted to reverse the referendum result."<sup>244</sup> In fact, one should never forget that about 73 percent of MPs were in the Remain camp, with 56 percent of all Conservative MPs also pro-Remain.<sup>245</sup> Clearly, the desire to respect the "will of the people" expressed in the referendum played a crucial role in the parliamentary vote.

At any rate, by the time of the Parliamentary approval of the Withdrawal bill, several elements had become clearer to many in terms of the challenges ahead in the negotiating process. Most useful in this sense is the identification by an analyst at the rating agency Fitch of five crucial challenges to be confronted by Theresa May after the triggering of Article 50.<sup>246</sup> The first challenge that he identified is that "the UK will not be in full control of the negotiating agenda, and specifically the order in which the issues will be addressed."<sup>247</sup> Here the conceptual divide between consecutive vs. concurrent negotiations is useful, with the former type--which is the one that came to prevail-- placing the British "at a definite disadvantage. Similarly, the two-year deadline very much favours the EU, especially since all 27 member states must approve any extension. Both sides face serious internal divisions and must find ways of satisfying internal

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<sup>241</sup> See on this Asthana, Anushka et al., "Parliament passes Brexit bill and opens way to triggering article 50" *The Guardian*, March 13 2017.

<sup>242</sup> *ibidem*

<sup>243</sup> *ibidem*

<sup>244</sup> *ibidem*

<sup>245</sup> See Edwards, Jim "This is the size of the majority in the House of Commons against Brexit" November 3, 2016 available at [www.businessinsider.com](http://www.businessinsider.com)

<sup>246</sup> See McCormack, James "Brexit: Now Comes the Hard Part", March 13, 2017 available at <https://medium.com/fitch-blog/brexit-now-comes-the-hard-part-2121a2f85ca2>, accessed on September 27, 2018. By and large I would say they all have proven to be correct.

<sup>247</sup> *ibidem*



constituencies to maintain consensus.”<sup>248</sup> Notably, “... if less time is available, it becomes more likely a transition agreement would be needed to avoid what the prime minister has called “a disruptive cliff edge”.<sup>249</sup>

The second major challenge confronting the UK has to do with the financial terms, “the exit bill”, that the UK has to pay, including prominently the EU officials’ pensions (one can imagine the emphasis placed on this, understandably, by EU bureaucrats).<sup>250</sup> The third challenge revolves around Scotland and the possibility, given its strong Remain preference, to have another referendum over its independence. In the one held in 2014 the Scots voted against independence. But the Brexit results have made the possibility of a second Scottish independence referendum more real and UK “policymakers... in dealing with any Scottish requests” will have to pay “careful attention” because “government resources will already be stretched.”<sup>251</sup> Here the implicit reference is to the economic assistance that the UK government would have to possibly increase to a government with a budget deficit of 10 percent of GDP<sup>252</sup> and which in some Brexit-connected debates has been unceremoniously called ‘bribes to stay in the UK’. In a nutshell, “now [Scotland] has a stronger reason to quit the UK and attempt to stay within the EU on the grounds of identity. [However,] ... [t]he harder the Brexit, and thus the stronger the case for Scottish independence, the bigger the cost to Scottish exports of leaving the UK... [and] [a]n independent Scotland, even if it managed to rejoin the EU, would face a double blow of losing export markets to and fiscal transfers from the rest of the UK.”<sup>253</sup> To make matters even more complicated to analyze and predict, one can argue that while on the one hand an independent Scotland was not viewed favorably by the EU-28 in 2014, the EU-27 may not make the path to EU membership for Scotland much easy as well. Why? Because Spain would oppose setting a precedent that could encourage Catalonia’s separatism.

The fourth major challenge is the lack of unity among public and private sector groups over the most desirable outcomes. I would definitely emphasize that this is a clear theme present basically

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<sup>248</sup> Ries, Charles P. et al. “After Brexit: Alternate forms of Brexit and their implications for the United Kingdom, the European Union and the United States” *Rand Europe* 2017, p. viii

<sup>249</sup> McCormack, op.cit. This “time” dimension has been truly important throughout the whole negotiating process.

<sup>250</sup> *ibidem*.

<sup>251</sup> *ibidem*

<sup>252</sup> “Scottish independence and the Brexit paradox” *Financial Times* August 4, 2016

<sup>253</sup> *ibidem*

in all analyses of the Brexit negotiations one looks at. Most importantly, it needs to be stressed that the negotiations inevitably lead to “open debates within the UK... [exposing].. domestic political pressure points that could be strategically exploited by the European side. [True, i]t may be of some comfort that the EU is subject to similar internal disagreements, but the upshot of this is likely to be delays in formulating negotiating positions—an unfavourable outcome for the UK.”<sup>254</sup> Once again, this is connected to getting uncomfortably close to the “cliff edge” mentioned earlier. Moreover, in terms of unity, one should not forget that the two ideologies which led to the Leave victory are unlikely to coalesce again. One, followed by the nationalists who wanted back their glorious imperial past and resented being subject to outside laws and people and the other, espoused by the believers in free markets, resisting the distortive influence of Brussels.<sup>255</sup> The shared anti-EU approach was unlikely to continue to unite them, since “[t]he first [ideology] deeply resented globalization which was represented in their eyes by Brussels. The second [one, instead] objected to the obstacles thrown by Brussels in the path of that very globalization.”<sup>256</sup> And this was seen clearly when the followers of the two ideologies had to start to decide on specific courses of action after March 2017.

The fifth major challenge has to do with the management of expectations and uncertainties during negotiations. In addition to the basic impossibility to conduct negotiations without experiencing leaks, there are the inevitable ups and downs in terms of the perception that the UK and the EU might be getting closer to their objectives.<sup>257</sup> The impact on the financial markets will be monitored and “connected” (at times in very analytically debatable ways) to the negotiations, in turn perhaps affecting them. In any case it is very likely that the public opinion on Brexit will be affected by the economic and market news. And managing them is not going to be easy. Again, the possibility of “a greater role for Parliament in approving the final negotiated agreement” or of another referendum may increase.<sup>258</sup>

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<sup>254</sup> McCormack, op.cit.

<sup>255</sup> In this sense see Rona-Tas, Akos “Brexit: the conflict of globalization and democracy” in O’Reilly, Jacqueline et al. “Brexit: understanding the socio-economic origins and consequences” *Socio-Economic Review*, 2016, Vol. 14, No. 4, 807–854, at pp.845.

<sup>256</sup> *ibidem*

<sup>257</sup> McCormack, op.cit.

<sup>258</sup> *ibidem*

## New elections

Three weeks after the official invocation of Article 50 to exit the EU, Theresa May made a very unexpected move. On April 18, 2017 she announced that, in a Cabinet meeting she just chaired, it was agreed that the government should call a general election on June 8.<sup>259</sup> The justification was rather straightforward. She started by noting that since she became prime minister, the government had delivered the “certainty, stability and strong leadership” that the country needed. She added that “since the referendum, we have seen consumer confidence remain high, record numbers of jobs and economic growth that has exceeded all expectations.” Continuing, she said “[w]e have also delivered on the mandate we were handed by the referendum result. Britain is leaving the EU and there can be no turning back. And as we look to the future, the government has the right plan for negotiating our new relationship with Europe. We want a deep and special partnership between a strong and successful EU and a UK that is free to chart its own way in the world. That means we will regain control of our own money, our own laws and our own borders and we will be free to strike trade deals with old friends and new partners all around the world.”

It is not difficult to imagine what these words sounded like to a critic: excessively and unrealistically self-congratulatory, overly optimistic in economic terms (especially in the long-run), dismissing the losses connected to leaving the EU, overestimating the gains, and mentioning a plan that nobody was sure it was really existent or worthy of such a name. The prime minister continued explaining that she had changed her mind on the election. Up to that moment, she had always thought that there should be no election before 2020. But, she added, the political divisions in Westminster were too dangerous for the future Brexit negotiations (they weakened the position of the UK government) and too destabilizing for the country on account of the uncertainty they engendered. Thus, she added, “I have a simple challenge to the opposition parties. You have criticised the government’s vision for Brexit, you have challenged our objectives, you have threatened to block the legislation we put before parliament. This is your moment to show you mean it, to show you are not opposing the government for the sake of it, to show that you do not treat politics as a game”. The choice, in her words, was between “strong and stable leadership” (an expression repeated innumerable times across the campaign) “or a

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<sup>259</sup> The speech is widely available on the internet. See for instance “Theresa May’s general election statement in full” available at [www.bbc.com](http://www.bbc.com), April 18, 2017. All the quotes in this paragraph and the next one are from this speech.

weak and unstable coalition government led by Jeremy Corbyn.” Clearly, her desire for an early election was considerably affected by very favorable opinion polls at the time of her speech.<sup>260</sup> In any case, the House of Commons complied with her request, with a vote of 522 to 13, amply going beyond the required 2/3 majority.

The campaign of the following weeks was most interesting to watch, even from outside the UK. Perhaps nothing captures better the nature of the fight than a speech that James Corbyn gave in Manchester on May 9, 2017.<sup>261</sup> Corbyn made two central points. First, he said that Theresa May’s claim that “she wants to build a fairer Britain, that she cares about working people” goes against the “Tory record”. He reminded listeners of her party’s public spending austerity policies in low income housing, health access, schools, and tuition. He also recalled how the “three decades of privatization- from energy and rail to health and social care – has made some people very rich but it has not delivered richer lives for the majority.” Most directly he added that, after all, “[i]t was this Tory leader who sat [as Home Secretary] alongside David Cameron in government for six years.” The second major point, clearly connected to the first, was against the Conservative Party’s claim that “this election is about Brexit and who can play at being toughest with Brussels.” Instead, Corbyn stated, the “election isn’t about Brexit itself. That issue has been settled.” Remainers in his party (especially those thinking about a second referendum) did not like this sentence, for sure. “The question now is what sort of Brexit do we want – and what sort of country do we want Britain to be after Brexit?” Corbyn answered the question he posed by saying that Brexit had to be “jobs-first”, had to protect “the future of Britain’s vital industries,” and to pave “the way to a genuinely fairer society, protecting human rights, and an upgraded economy”. He added that the latter meant, among others, “decent jobs,...security at work, affordable homes for all, a fully funded NHS and schools, training and skills, an end to rip-off privatisation, fair taxation and a fairer, more equal country.”<sup>262</sup>

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<sup>260</sup> See for instance, Eaton, George “The greatest gamble for Theresa May was not calling an early general election” *New Statesman* April 19, 2017

<sup>261</sup> The speech is available for instance on the [www.mirror.co.uk](http://www.mirror.co.uk) website. All the quotes in this paragraph are from this speech.

<sup>262</sup> *ibidem*

## The results of the June 8, 2017 election

The surprise announcement on April 8 2017 was followed by another surprise when the results of the June 8 election became known.<sup>263</sup> The voters, rather than transforming Theresa May's small majority into a large one, took it away from her. True, she got 42.5 percent of the vote, obtaining more votes than Tony Blair's New Labour in its supervictory in 1997. But she went from having 331 MPs, a small majority in a Commons with 650 seats, to 318 seats. Labor, on the other hand, won 262 seats. Thus, while the Conservatives lost 13 seats and the majority, Labor gained 30 seats (showing that it benefited comparatively more from the highest voter turnout--69 percent--since 1997). The comparison with the referendum results is most striking: 51.8 percent for Leave vs. 48.2 for Remain whereas, on June 8 2017, 42.4 percent of the votes went to Conservatives against 40.0 for Labor. In other words, the elections confirmed that the country was deeply divided.

The loss of 21 seats by the Scottish National Party (it would make henceforth its push for a new independence referendum much less powerful) and the unimpressive or not outstanding results of the Liberal Democrats, the Green Party and--in Northern Ireland--of the Democratic Unionist Party (DUP) and Sinn Féin, as well as those of smaller parties also pointed to the return to a two-party system. However, the new reality also was that the Conservative Party no longer had the numbers to rule alone and needed a partner. As a matter of fact, to stay in power, Theresa May had to reach an agreement with the DUP.<sup>264</sup> The DUP agreed to support the Government, among others, in areas related to all motions of confidence, the budget, national security and, most importantly, "on legislation pertaining to the United Kingdom exit from the European Union.... [while s]upport in other matters will be agreed on a case by case basis."<sup>265</sup> Still, given the fact that the DUP on social issues is very conservative (e.g. it opposes same-sex marriage and abortion in most instances), one can easily understand the controversial nature of the deal. At any

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<sup>263</sup> On this section, see Shrimpsley, Robert "A nation divided: back to the 70s and a two-party state" *Financial Times* June 10, 2017; "How to turn a chaotic election result into a better Brexit", *The Economist* June 17, 2017; Hunt, Alex and Brian Wheeler "Theresa May: 10 reasons why the PM blew her majority", June 14, 2017 available at [www.bbc.com](http://www.bbc.com); Thorsen, Einar, Daniel Jackson, Darren Lilleker (eds.) *UK Election Analysis 2017: Media, Voters and the Campaign* available at <http://www.electionanalysis.uk/> ; Cutts, David and Tim Haughton "Five things we just learned from the U.K. elections" June 9, 2017 available at [www.washingtonpost.com](http://www.washingtonpost.com) ; "Whodunit? Post-mortem of Britain's electoral upset" *The Economist* Jun 17, 2017

<sup>264</sup> See *Confidence and Supply Agreement between the Conservative and Unionist Party and the Democratic Unionist Party*, updated June 28, 2018, available at [www.gov.uk](http://www.gov.uk)

<sup>265</sup> *ibidem*

rate, the prime minister clearly made a gigantic error of assessment in deciding to have the early June election: her soon to start negotiations with the EU were undoubtedly rendered more challenging as the complexity of the issues as well as the divisions within the UK became more clear and pronounced, and the confidence in her ability to handle them diminished.

Let us offer some brief additional examples and considerations on how this mix of complexity, divisiveness, and perceived inadequateness in handling them became more apparent during and immediately after the electoral campaign. In the first place, Theresa May did not debate on TV her main challenger Jeremy Corbyn, nor other party leaders. This conveyed the impression that she either was fearful of debates and/or of her record, or that she felt that her final victory was a done deal.<sup>266</sup> There was also an overall underestimation of the effectiveness of Corbyn's messages against the seven years of austerity under the Tories.<sup>267</sup> Most notably, especially in comparison with the Birmingham speech, the social care component of the Tory message did not come across as adequate at all. Labour was also vastly more effective in terms of online campaigning and overall voter targeting, while the Tories arguably were not too good at getting the "wavering" labour voters.<sup>268</sup> In point of fact it has been argued that "big boosts for Labour in Remain-voting areas suggest that Brexit motivated many".<sup>269</sup> It has also been pointed out, in terms of the hard vs. soft brexit divide, that the business lobby came after the election more openly in favor of a softer exit, a position not far from that of UK civil servants, generally supporting "the least-disruptive Brexit possible."<sup>270</sup> This view is naturally connected to the widely shared idea that, because of the election, the [now] "May's minority government will need to adopt a much more conciliatory tone on Brexit,<sup>271</sup> triggering a not too difficult to predict significant hostility on the part of the Conservative Euroskeptics. Also adding to the complexity of the picture is how the terrorist attacks at Manchester Arena and the London Bridge did not seem to favor the Conservatives particularly. Interestingly, the positive ratings on security of the chief UK Brexit negotiator fell during the campaign from 47 to 41 percent while Corbyn's went

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<sup>266</sup> In this sense, for instance, see Hunt and Wheeler, op.cit.

<sup>267</sup> "Whodunit? Post-mortem of Britain's electoral upset" *The Economist*, June 17,2017; Hunt, op.cit.

<sup>268</sup> Cutts, op.cit. and Hunt, op.cit.

<sup>269</sup> "How to turn..." *The Economist*, op.cit.

<sup>270</sup> *ibidem*

<sup>271</sup> McGowan, Lee *Preparing for Brexit: Actors, Negotiations, and Consequences* (New York and London: Palgrave, 2018), p. 124.

from 14 to 15 percent, perhaps also on account of Theresa May's cuts to police numbers (which Labour cleverly criticized).<sup>272</sup>

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<sup>272</sup> See Warrell, Helen "Terror attacks shaped UK election but failed to lift May, experts say" *Financial Times* June 8, 2017

## The Transition Period is negotiated

In the months after the June 2017 elections, the interactions of the players referred to above continued and certainly affected the UK negotiating team, which also was influenced of course by the feedback received officially and behind closed doors by its EU-27 negotiating squad counterpart. The latter, in turn, tried to project officially as much as possible an image of strong unanimity.

The official negotiations between the UK and the EU started after the British elections in June 2017. A crucial moment arrived in March 19 2018, when a transition deal was announced together by Michael Barnier, the chief EU Brexit negotiator and David Davis, the UK's Brexit secretary.<sup>273</sup> Most prominently, with the agreement, the UK secured a 21-month Brexit transition period (based however on the assumption of reaching some sort of Brexit deal). This was necessary to avoid or reduce the risk of a cliff-edge exit, much feared by businesses--many of which, however, had already started to take steps to relocate or at the very least stop UK expansion. The need to placate the fears among UK businesses of a hard Brexit triggered abruptly on March 29,2019 forced the UK negotiators to make major concessions in the area of sovereign rights. In essence, in the transition period lasting to the end of 2020, Britain agreed to abide by all EU rules while having no say in the decision making process and thus being definitely just a "rule taker".<sup>274</sup>

It is not difficult to imagine the disappointment of the Eurosceptic Tories, still however capable of tolerating the agreement as long as it would in the end lead to a "clear Brexit."<sup>275</sup> Most importantly, "trade experts doubt that a comprehensive trade deal of the sort that Mrs May wants can be negotiated, let alone ratified, that quickly. And the text of the transitional deal leaves it

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<sup>273</sup> In the March 19 Draft Agreement three different color-coded areas appeared in the document: "*text in green* is agreed at negotiators' level, and will only be subject to technical legal revisions in the coming weeks. For *text in yellow*, negotiators agreed on the policy objective. Drafting changes or clarifications are still required. *Text in white* corresponds to text proposed by the Union on which discussions are ongoing." See "*Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community* highlighting the progress made (coloured version) in the negotiation round with the UK of 16-19 March 2018", available at the European Commission website.

<sup>274</sup> See for instance Barker, Alex et al. "Brexit transition deal avoids cliff-edge for UK" *Financial Times*, March 20, 2018. Notably Nicola Sturgeon, Scotland's first minister, decried the "massive sellout of the Scottish fishing industry", obviously referring to the going against earlier UK ministerial promises that the country would gain control of its coastal waters from the EU in March 2019. Barker et al., *ibidem*.

<sup>275</sup> See Barker et al. referring specifically to Conservative MP Jacob Rees-Mogg.



unclear whether an extension will be legally possible, let alone politically so.”<sup>276</sup> This is an observation that is essentially in line with any interview or speech given by trade negotiators that I have come across. The Brexit process is thus characterized not just by complexity and divisiveness within each camp (arguably more in the UK), but also (heretofore) by an underestimation by many who should have known better (and much earlier) about the time needed to reach an agreement. And, arguably here too, the May government appears to have been most inadequate.

Article 50 required a qualified majority in the EU Council and a majority in the European Parliament. But a trade agreement covering multiple and connected policy areas under the preserve of 27 member states would be considered a “mixed agreement”, which must be ratified by EU member states in accordance with their domestic ratification procedures.<sup>277</sup> And, to add to the complexity and length of time, “[i]n federal Member States, ratification procedures also involve approval by the chamber of the national parliament representing the regions (such as the Bundesrat in Germany) or the approval of the regional and community parliaments (as in the case of Belgium), whenever competences of sub-federal entities are concerned by the agreement.”<sup>278</sup>

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<sup>276</sup> “There’s something fishy about Britain’s Brexit transition deal” *The Economist* March 22, 2018

<sup>277</sup> See *A guide to EU procedures for the conclusion of international trade agreements*, October 25, 2016, available at the European Parliament website. See also Henley, Jon and Dan Roberts “Reality check: will it take 10 years to do a UK-EU trade deal post Brexit?” *The Guardian* December 15, 2016. On this issue, see *infra*.

<sup>278</sup> See “*A guide to EU procedures..*”, *ibidem*

## The July 2018 Chequers White Paper

After the March 19, 2018 draft agreement, it had become abundantly clear that the UK had to move toward providing more specific proposals. That is what the next major document in the Brexit process, the White Paper (also referred to as “the Chequers white paper”, “the Chequers plan”, “the Chequers agreement”, “the Chequers deal” or just as “Chequers”) released on July 12 2018, aimed to offer.<sup>279</sup>

The document, some prominent aspects of which we shall briefly examine here, is entitled “The future relationship between the United Kingdom and the European Union”. It starts with a declaration: the Government by March 29 2019 will leave the EU and start “to chart a new course in the world”, delivering “on the *result of the 2016 referendum* – the biggest democratic exercise in this country’s history.” In so doing the Government “will have reached a key milestone in its principal mission – to build a country that works for everyone. A country that is stronger, fairer, more united and more outward-looking.” Thereafter, the White Paper continues, it is in order “[t]o fulfil that mission [that] the Government is advancing a detailed proposal for a *principled and practical Brexit*.” The document mentions several key speeches given by the Prime Minister since the referendum and claims that the proposal “addresses questions raised by the EU in the intervening months” with the clear purpose of showing that the May Government has paid attention to its negotiating counterpart’s concerns so as to strike “a *new and fair balance* of rights and obligations”.

Across the document, the reader never forgets the crucial distinction between rule-taker vs. rule-maker as well as the uncharted territory both parties are entering. The White Paper states clearly the need to respect “the *result of the referendum* and the decision of the UK public to take

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<sup>279</sup> The document is “The future relationship between the United Kingdom and the European Union”. Presented to Parliament by the Prime Minister by Command of Her Majesty. Available at [www.gov.uk/government/publications](http://www.gov.uk/government/publications). All the quotes in this section are from this document (the boldface text in the original document is here in italics), unless otherwise indicated. Among the sources that look at one or more aspects of the White Paper there are: Morris, Chris “Brexit: What does the government White Paper reveal?” July 12, 2018 available at [www.bbc.com](http://www.bbc.com); Watts, Peter and Andrew Eaton “A definitive UK vision for Brexit?” July 13, 2018 available at the Hogan Lovells [brexit](http://brexit.com) website; Kettle, Martin “Brexit white paper won’t win over MPs or the EU” July 12, 2018 *The Guardian*; Humpe, Christophe et al., “The Chequers’ White Paper: Towards a bespoke EU / UK trade agreement?” July 23, 2018, available at [www.mcfarlanes.com](http://www.mcfarlanes.com); Allen, Nicolas et al. “Britain’s Brexit plan revealed: experts react” July 12, 2018 available at <https://theconversation.com/britains-brexit-plan-revealed-experts-react-99862>; Booth, Stephen and Aarti Shankar “The Brexit White Paper offers a compromise approach for negotiations” July 2018 available at the Open Europe website, [openeurope.org.uk](http://openeurope.org.uk)

back control of the UK's laws, borders and money". What is most interesting about this decision, in the eyes of an American observer but also most likely in the eyes of someone living in many if not most Western democracies, is the excessive political weight given to a small majority of 51.9 to 48.1 percent in making a decision that is so impactful politically, economically, legally, and socially. In political terms, such an observer would note that the Brexit referendum, given that it aims to change four decades of UK life along so many dimensions should have required a weighted majority. In addition to questions of comparison with the weighted majority typically connected to constitutional changes in democratic systems with a written constitution (including the US, and in any case worthy of deep examination by legal scholars), one cannot fail to notice *prima facie* a major difference between the 1975 and the 2016 referendums. While one has to acknowledge the smaller turnout rates of the former (64 percent vs. 72 percent), the percentage of those who in 1975 voted to stay in the EU was 67.2 versus 48.1 in 2016. Thus the earlier result is certainly more convincing in terms of its "definitiveness".<sup>280</sup>

With regard to the UK-EU Economic Partnership, the White Paper offers an interesting proposal of a free trade agreement: the UK and the EU would "maintain a common rulebook for *goods including agri-food*." Thus, as one analyst pointed out, "there would be reciprocal recognition that goods produced in the territory of one adhere to the standards of the other. As it is unlikely that the EU would change its own rules to accommodate UK divergence from its standards, the language of a 'common rulebook' appears to be code for the UK adhering to EU standards relevant to the movement of goods now and in the future."<sup>281</sup> Such adherence, as the White Paper states, is clearly necessary to "*protect the uniquely integrated supply chains and 'just-in-time' processes* that have developed across the UK and the EU over the last 40 years, and the jobs and livelihoods dependent on them." In light of this and other aspects of the White Paper which are of a decidedly rule taking nature, one can better understand the resignation from the government of hard Brexiters Boris Johnson and David Davis shortly before the official issuance of the White Paper.

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<sup>280</sup> On the two referendums, see for instance Ben Clements "The referendums of 1975 and 2016 illustrate the continuity and change in British Euroscepticism" July 31, 2017, available at [blogs.lse.ac.uk](https://blogs.lse.ac.uk)."

<sup>281</sup> Gilmore, Andrew "The UK white paper on the future relationship with the EU" available at [www.ijea.com](http://www.ijea.com) . In the White Paper one also reads, with regard to the rulebook, that "the UK would make an upfront choice to commit by treaty to ongoing harmonisation with the relevant EU rules, with all those rules legislated for by Parliament or the devolved legislatures."

Then, the Chequers White Paper reads: “participation by the UK in those EU *agencies that provide authorisations for goods* in highly regulated sectors – namely the European Chemicals Agency, the European Aviation Safety Agency, and the European Medicines Agency – accepting the rules of these agencies and contributing to their costs, under new arrangements that recognise the UK will not be a Member State” is part of the “Government’s vision”. This need to strike a balance among protection of business interests, workers’ incomes and jobs, and the referendum results against a background of ongoing shuttling between rule making and rule taking is observable in many places in the document. How to achieve it through the “new arrangements” is where the road ahead would get most difficult. This is very evident also with the proposed “phased introduction of a new *Facilitated Customs Arrangement* that would remove the need for customs checks and controls between the UK and the EU as if they were a combined customs territory, which would enable the UK to control its own tariffs for trade with the rest of the world and ensure businesses paid the right or no tariff, becoming operational in stages as both sides complete the necessary preparations.”<sup>282</sup> Here the challenge of removing customs checks between Northern Ireland and Ireland is most relevant. And this is a big challenge indeed. Brexit can lead to very significant divergence of rules and/or supervisory practices between Northern Ireland and Ireland. The more tariffs, regulations and taxes exist, the more the free circulation and exchange of goods is hampered and with it the more incentives materialize for cross-border smuggling.<sup>283</sup> Moreover, the fact that “EU membership and 20 years of peace have obviated the need for any physical infrastructure on the border” cannot be ignored.<sup>284</sup> But, because of its very nature, the EU requires that a country leaving the single market must have a hard border. And that is something that the Prime Minister and the Northern Irish Democratic Unionist Party, which supports her minority government, cannot accept. And, here again the time element comes powerfully to the fore, because the White Paper offers a “backstop” designed to avoid a hard border if the UK exits the EU in March 2019 without a trade

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<sup>282</sup> But here, not surprisingly, there is “the very serious problem of how to determine where goods are ‘intended’ with necessary fiscal-contractual certainty, and without requiring new and heavy bureaucratic burdens” as Michael Emerson pointed out in “Theresa May’s Brexit model: many questions, not least ‘why Leave?’” July 16, 2018 available at the CEPS website [www.ceps.eu](http://www.ceps.eu)

<sup>283</sup> On these issues see Neumann, Peter R. and Rajan Basra “The Crime-Terror Nexus in the United Kingdom and Ireland”, which tellingly state: “Given that practically all border communities voted against Brexit, and that many have retained their sympathies for the Republican movement, cross-border smuggling will – if anything – become more acceptable.” p. 17 available on the [crimeterrornexus](http://crimeterrornexus.com) website.

<sup>284</sup> The quote is from Raines, Thomas “Why Theresa May Can’t Figure Out Brexit” July 13, 2018 available at [www.fortune.com](http://www.fortune.com)

deal.<sup>285</sup> And, once again, the difficulty of the issue is manifest. Specifically, referring to the British plan to maintain the whole “UK temporarily [after March 2019] inside the EU’s regulatory area for goods”, Michael Barnier stated that “[w]e have doubts it can be done without putting at risk the integrity of the customs union, our common commercial policy, regulatory policy and fiscal revenue.”<sup>286</sup>

In the Chequers White Paper one also reads that there will be “new arrangements on *services and digital*, providing regulatory freedom where it matters most for the UK’s services-based economy, and so ensuring the UK is best placed to capitalise on the industries of the future in line with the modern Industrial Strategy, while recognising that the UK and the EU will not have current levels of access to each other’s markets”. This desired regulatory flexibility for the UK is understandable on account of the fact that services represent about 80 percent of the UK’s GDP. However, at the same time, one could also argue that in the White Paper the interests of the services sectors are subordinate to the less economically significant goods sectors, with the former’s access to the EU market openly acknowledged to be reduced.<sup>287</sup> This is again very complex. For instance, another analyst states that the special arrangement that is being proposed in the White Paper “allowing British banks to operate in EU markets... [is] based on a beefed-up version of mechanisms which are already in place, and which enable the EU to grant access to the banks of non-member states (as the UK will be, after Brexit) if their regulatory frameworks are judged to be “equivalent””.<sup>288</sup> And here some conceptual points should be highlighted.

In general terms, London financial firms, because of the uncertainty associated to the Brexit process, have been involved in extensive contingency planning with regard to operations and staff movements.<sup>289</sup> To understand this better, it is important to consider how the UK’s negotiating position has moved “downward”. In the single market, the City’s firms can operate through a passporting system which gives them “automatic” access to other EU countries’

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<sup>285</sup> Khan, Mehreen and Alex Barker “Barnier questions UK Brexit backstop position” *Financial Times*, July 26, 2018

<sup>286</sup> *Ibidem*. Barnier’s quote is found therein and was part of the remarks Barnier offered at a press conference with Dominic Raab, the UK’s new Brexit secretary, held in Brussels on July 26, 2018. The two transcripts can be found, respectively, at the European Commission and Gov.uk websites.

<sup>287</sup> See Green, David Allen “One cheer for the Brexit white paper” *Financial Times*, July 16, 2018 and Watts, Peter and Andrew Eaton “A definitive UK vision for Brexit? July 13, 2018, *op.cit.*

<sup>288</sup> Salter, John-Paul “Services” in Allen, Nicolas et al. “Britain’s Brexit plan revealed: experts react”, *op.cit.*

<sup>289</sup> See “Mutual unrecognition: The City resigns itself to limited access to the EU” *The Economist* July 19, 2018 available at the [economist.com](http://economist.com)

markets or, to put it differently, without distinct regulatory or capital requirements.<sup>290</sup> As a consequence of the Brexit vote, the UK government since January 2017 had to move “downward” toward a negotiating position of “mutual recognition”, whereby the UK and the EU would have recognized each other’s regulatory regimes, permitting easy access in both directions.<sup>291</sup> But such a proposal was not inserted in the White Paper. Advisedly so, since it was seen by the EU negotiators as too close to the single market regime and therefore not suitable to be granted to a (soon-to-be) nonmember.<sup>292</sup> With the EU certainly drawing a “red line” with regard to mutual recognition, the UK decided to propose in the White Paper an expanded version of the “third country equivalence regimes which provide limited access for some of its third country partners to some areas of EU financial services markets [ because t]hese regimes are not sufficient to deal with a third country whose financial markets are as deeply interconnected with the EU’s as those of the UK are.”<sup>293</sup> Therefore, the White Paper went on stating as its key objectives the keeping of “the economic benefits of cross-border provision of the most important international financial services traded between the UK and the EU – those that generate the greatest economies of scale and scope – while preserving regulatory and supervisory cooperation, and maintaining financial stability, market integrity and consumer protection.”<sup>294</sup>

This sounds great but unfortunately this “reciprocal recognition of equivalence” seems very difficult to implement since, as the White Paper continues, “future determination of equivalence would be an autonomous matter for each party”, achievable through “extensive supervisory cooperation and regulatory dialogue”. Such dialogue essentially requires joint institutional arrangements (*new* ones, an attentive reader would think) so as to, among others, “maximise the chance of maintaining compatible rules, and to minimise the risks of regulatory arbitrage or threats to financial stability” and find “a mediated solution where equivalence is [not] threatened by a divergence of rules or supervisory practices.”<sup>295</sup> One should also note the reference to the need to avoid “unnecessary fragmentation of markets and increased costs to

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<sup>290</sup> See Morris, Chris “Brexit: What does the government White Paper reveal?” , op.cit. and “Mutual Unrecognition”, *The Economist* op.cit. According to data from the UK’s Financial Conduct Authority, approximately 5,500 UK financial firms currently have EU passporting rights, (Morris).

<sup>291</sup> See The Economist, “Mutual Unrecognition”, *ibid.*

<sup>292</sup> *ibidem*

<sup>293</sup> See White Paper, p.29

<sup>294</sup> *ibidem*

<sup>295</sup> White Paper, *ibidem.*

consumers and businesses”, implicitly stating that the City of London as a financial center is best positioned to achieve that. But, undeniably, for several countries in the EU-27 the desire to maintain access to London’s deep markets is very subordinate to that of pushing companies to relocate on their respective national territory. For instance, France has taken the stand that certain categories of firms should have to establish a branch or subsidiary within the EU, even in the presence of an equivalence regime.<sup>296</sup>

The word “new” across the document is also impossible to miss. Most relevantly, in addition to the several times it was mentioned in the text referred to above, one notes the “need to strike *new* deals around the world, in particular breaking *new* ground for agreements in services” which is mentioned by the Secretary of State Raab in the foreword to the White Paper. He adds that the plan outlined in the White Paper would “maintain frictionless trade in goods between the UK and the EU through a *new* free trade area”. Moreover, Raab states that “a hard border” between Northern Ireland and Ireland would be avoided “without compromising the EU’s autonomy or UK sovereignty” and “an unrivalled security partnership, and an unparalleled partnership on cross-cutting issues such as data, and science and innovation” would be built (new, again). And, reiterating a theme present across the entire document aiming at reassuring Brexiters, he points out that “...to bolster this cooperation, we will need a *new* model of working together that allows the relationship to function smoothly on a day-to-day basis, and respond and adapt to *new* threats and global shifts while taking back control of our laws.” Unfortunately, the concept of “new” in the relationship almost automatically makes readers think that more complexity would be added to the EU institutional and procedural machinery, while also suggesting to other member countries that there could be the possibility to negotiate and conclude “cherry picked” individualized deals with the EU to their advantage. Clearly, EU negotiators cannot and will not look at such proposed changes favorably.

Migration is also discussed in the Chequers White Paper. In it, one reads about the need of “addressing specific concerns voiced in the referendum by ending free movement and putting in place a new immigration system”, linked also to the vision of a security partnership with the EU that moves cooperatively to deal with asylum issues and to fight illegal immigration and its

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<sup>296</sup> *The Economist*, “Mutual recognition”, op.cit

causes, as well as terrorist- connected challenges. Further, while “[t]he UK will continue to be an open and tolerant nation, and will want to continue to attract the brightest and best, from the EU and elsewhere”, it is stressed that “[a]ny future mobility arrangements will be consistent with the ending of free movement, respecting the UK’s control of its borders and the Government’s objective to control and reduce net migration.” With regard to business and trade, the White Paper states that in light of “the depth of the relationship and close ties between the peoples of the UK and the EU, the UK will make a sovereign choice in a defined number of areas to seek reciprocal mobility arrangements with the EU, building on current WTO GATS commitments” and, at any rate “in line with arrangements that the UK might want to offer to other close trading partners in the future”. Once again some EU negotiator may think dismissively: “new” and “cherry picking” and, most importantly, in any case where the UK is seeking benefits close to those of a full member of the EU, violating one of the non-negotiable four freedoms. Furthermore, a major official UK analytical report criticized the very limited proposals about immigration contained in the White Paper.<sup>297</sup> According to the report, details are lacking on family reunion, migration for work (including medicine, nursing, social care, agriculture) or study, and self-employment. It reads: “Given that the European Commission and the UK Government have said they expect immigration arrangements to be reciprocal, this means we also have no idea what this will mean for British citizens wanting to work abroad.”<sup>298</sup> And here, in addition to the evident uncertainty associated to the two parties’ behavior during the negotiations, the time element comes to mind again: too little of it to decide on too many things.

With regard to the UK’s future security rapport with the EU, the White Paper states that “the UK seeks an ambitious partnership covering the breadth of security interests including foreign policy, defence, development, law enforcement and criminal justice cooperation”. The Paper acknowledges the connections existing among these dimensions and the need to have “a single, coherent security partnership... to address: the roots of terrorism and prevent attacks; identification of terrorists and efforts to bring them to justice; instability in the neighbourhood and work to prevent offering a haven for organised crime; migration challenges affecting Europe; the provision of development funding across the world; and the use of data in a range of

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<sup>297</sup> House of Commons, Home Affairs Committee *Policy Options for future migration from the European Economic Area: Interim report*, published on July 31, 2018. Available at [www.parliament.uk](http://www.parliament.uk)

<sup>298</sup> *Ibidem*, at p. 11



contexts.” In reading these broad affirmations, one should not forget some underlying factors. First, the UK has been in this area, at least in some respects, a force promoting European integration. For instance the Common Security and Defence Policy was “an Anglo-French initiative.”<sup>299</sup> Also to be noted is the overall importance of the UK, which while accounting for 15 percent of the EU’s GDP is responsible for 25 percent of “all defence equipment procurement spending.”<sup>300</sup> More broadly, in any case, it is accurate to say that “much foreign and security collaboration is intergovernmental, so is far less embedded in the EU legal framework than other sectors”, with for instance a notable exception in data sharing—which is under EU law and therefore ultimately the European Court of Justice.<sup>301</sup> In point of fact, the UK maintains that information sharing “has to be underpinned by UK access to the Schengen Information System and other relevant databases. However, Barnier has argued that this is only possible for countries that do not participate in Schengen if they are willing to pay a fee to do so.”<sup>302</sup> In a similar Anglo-skeptic way, one observer has pointed out that in response to the UK’s stating its “readiness to contribute equipment to future EU operations”, the EU-27 have “question[ed] the legal basis of such contributions.”<sup>303</sup> This is in line with the view that the broader conduct of the Brexit negotiations has greatly diminished the trust between the two sides: with, among others, the flexibility requested by the UK clashing against the rules-based approach favored by the EU.<sup>304</sup>

Further, another major development shows the challenges created by Brexit in this area. Operation Atalanta, the first EU naval mission in 50 years (launched in December 2008), successfully reduced the attacks by pirates and robbers off Somalia’s coast: they were 237 in 2011 and in 2017 the attacks were just nine.<sup>305</sup> And yet, on July 30 2018 the EU Council made a most telling official declaration. It “extended the mandate of EU NAVFOR Somalia Operation Atalanta *until 31 December 2020.*” And, most importantly for our discussion here, “The Council also decided to *relocate the European Union Naval Force (EU NAVFOR) Operational*

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<sup>299</sup> Menon, Anand “The Brexit White Paper: what it must address – foreign and security policy”, July 12, 2018 available at [ukandeu.ac.uk](http://ukandeu.ac.uk). Among others, the need to move toward greater integration also through foreign and security policy was evident both in the drafted Constitutional Treaty and the Lisbon Treaty. See Ammendola, 2008a

<sup>300</sup> Menon, *ibidem*

<sup>301</sup> Menon, *ibidem*. To Brexiters, an unpleasant acknowledgement of the role of the ECJ.

<sup>302</sup> Dennison, Susi “Chequers Mate”, August 29, 2018; available at [ecfr.eu](http://ecfr.eu)

<sup>303</sup> Dennison, *ibidem*. Clearly one cannot avoid thinking here about the UK’s interest to protect its defense sector.

<sup>304</sup> In this sense, Dennison, *ibidem*

<sup>305</sup> Barber, Tony “Will Brexit erode the UK’s role in European defence?”, August 1, 2018, available at [ft.com](http://ft.com)

*Headquarters* from Northwood (UK) to *Rota (Spain)*, and to *Brest (France)* for the Maritime Security Centre Horn of Africa (MSCHOA) as of 29 March 2019. It appointed *Vice Admiral Antonio Martorell Lacave* from the Spanish Navy as *new Operation Commander* to take command from Major General Charlie Stickland on the same date. The relocation and change in command are required due to the UK's decision to withdraw from the EU.”<sup>306</sup> Furthermore, the EU has communicated to UK military staff that they will not have their secondments renewed after Brexit.<sup>307</sup> Last but not least, one should not forget the criticism that the Trump administration- since taking office in January 2017- has leveled at the UK with regard to its not investing enough on defense.<sup>308</sup> As it is well known this is a criticism that has been leveled at many Nato allies, but in the case of the UK, given the “special relationship” between the two countries, it is most significant in terms of prestige damage.

In any case it has to be noted that Michael Barnier, in his authoritative public assessment of the White Paper, declared himself “pleased with the progress in our talks on foreign policy and external security” and emphasized the “shared understanding on how to organise our future close cooperation, including on sanctions, defence capabilities and crisis management.”<sup>309</sup> He also acknowledged the importance of the UK’s membership in the UN Security Council and stressed that “this EU-UK cooperation in defence will be in addition to what we already do in NATO, and to bilateral agreements between the UK and certain Member States.”<sup>310</sup>

However, in line with what we pointed out earlier, Barnier stressed the greater difficulty in finding common ground with regard to the future economic relationship between the EU27 and the UK. Essentially rejecting the customs proposals contained in the Chequers White Paper,

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<sup>306</sup> “EU NAVFOR Somalia Operation Atalanta: Council prolongs the Operation and decides on new headquarters and new Operation Commander” available at the European Council website: <https://www.consilium.europa.eu/en/press/press-releases/2018/07/30/eunavfor-somalia-operation-atalanta-council-decides-on-new-headquarters-and-new-head-of-operation/> accessed on October 14 2018. The boldface text in the original document is here in italics. The move from London of the European Banking Authority (to Paris) and the European Medicines Agency (to Amsterdam), decided by the EU27 ministers on November 20, 2017 comes inevitably to mind. See <https://www.consilium.europa.eu/en/policies/relocation-london-agencies-brexite/>

<sup>307</sup> Bond, David and Alex Barker “UK military secondments to EU to cease after Brexit” June 5, 2018 available at [www.ft.com](http://www.ft.com)

<sup>308</sup> Barber, Tony “Will Brexit...” *ibidem*.

<sup>309</sup> Statement by Michel Barnier at the joint press conference following his meeting with Dominic Raab, UK Secretary of State for Exiting the EU, Brussels July 26, 2018 available at [http://europa.eu/rapid/press-release\\_SPEECH-18-4704\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-18-4704_en.htm) and at <https://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=1159374> Not surprisingly, these and other positive remarks diplomatically (pun intended) appear at the beginning of the speech. Mr. Barnier, then proceeds with his attack on the White Paper.

<sup>310</sup> *Ibidem*,

he forcefully stated: “The EU cannot – and will not – delegate the application of its customs policy and rules, VAT and excise duty collection to a non-member, who would not be subject to the EU's governance structures.”<sup>311</sup> Such statement was also justified by his reference to the EU's own legal and governance constraints. Most importantly (and very pointedly), Barnier added that just as the UK wants to gain back control of its money, law, and borders, the EU is determined to maintain control of its own money, law and borders. Barnier also stressed that his negotiating position has always been clear: “the EU is open to a customs union... which would help to reduce friction at the border...”<sup>312</sup> Here the importance for the EU of the 1998 Good Friday Agreement (GFA) clearly comes to mind, in light of its beneficial direct impact on a EU-27 country (Ireland) and with it the recognition that “when it was concluded the GFA clearly presupposed that both Ireland and the United Kingdom would both be members of the European Union – [with] no one even contemplat[ing] the idea that one of them might leave the EU.”<sup>313</sup> At any rate, Barnier explained that “a customs union... would come with our Common Commercial Policy for goods.”<sup>314</sup> And here the attentive listener/reader cannot forget the “rule making” approach central to the EU-27 negotiating thrust, which obviously was and is strongly resisted by the “no more rules taking” Brexiters. Further, Barnier continued, “President Juncker's visit to Washington yesterday shows the importance of our Common Commercial Policy. It shows that we are stronger together.”<sup>315</sup> It is very easily arguable that the reference here is to the concept that those who leave the EU are not wise because by themselves they have a weaker negotiating stand.

Furthermore, Barnier added, “[a]ny customs arrangement will also have to be workable and must protect EU and national revenue, without imposing additional costs on businesses and customs authorities.”<sup>316</sup> And here I would argue that this point can be connected with the never too much analyzed “new” dimension and the burdens that it imposes from a bureaucratic point of view and economically.

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<sup>311</sup> Ibidem.

<sup>312</sup> Ibidem

<sup>313</sup> McCrudden, Christopher “The Good Friday Agreement, Brexit, and Rights” A Royal Irish Academy- British Academy Brexit Briefing, October 2017, available at the [www.thebritishacademy.ac.uk](http://www.thebritishacademy.ac.uk) website. Most interestingly, McCrudden's remark anticipates nearly verbatim what Barnier said in French in the Q&A session at the press conference we are examining.

<sup>314</sup> Statement by Michel Barnier.

<sup>315</sup> ibidem

<sup>316</sup> Ibidem.

Last, but also very importantly, one should note that, in response to UK's Brexit secretary Dominic Raab that there was a need to link the Brexit divorce bill to the deal on future relations, the EU's chief negotiator adamantly countered: "It is quite clear that what has been agreed in December and agreed in March has been agreed for good," directly referring to the deals May signed with EU leaders months earlier.<sup>317</sup>

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<sup>317</sup> See Boffey, Daniel and Jennifer Rankin "Michel Barnier kills off Theresa May's Brexit customs proposals" *The Guardian*, July 26, 2018. This concept of issues "not being subject of renegotiation" would appear again in multiple contexts in the controversies associated to the November 2018 withdrawal bill. See *infra*.

## Brexit's economic impact

Another issue area profoundly affecting negotiations with the EU and within the UK itself is that of Brexit's economic impact. Broadly speaking, the debate sees Remainers as viewing it very negatively, while Leavers accuse their opponents of supporting a "Project Fear", and ignoring all the positive economic aspects of Brexit.<sup>318</sup> Let us look at some interesting ideas put forth by both sides.

One major study by the Centre for European Reform (CER) states that the UK economy is 2.5 percent smaller than it would be if the UK had voted to stay in the European Union.<sup>319</sup> It also adds that, even if the UK has not (yet) left the EU, calculations updated to the second quarter of 2018 show that "the damage is growing."<sup>320</sup> According to this study, the good performance in the months following the June 2016 referendum was attributable to consumers' drawing down their savings. However, since the beginning of 2017, the CER study continues, the UK's rate of growth has been half that of other advanced economies. Furthermore, the damage suffered by public finances is assessed at £26 billion per annum – or £500 million a week.<sup>321</sup> Another study clearly states that if the White Paper proposals are adopted in full one should expect a GDP loss of about 2.5 percent against a "soft-Brexit" model forecast over the next decade, without adding a loss of productivity which could be "material".<sup>322</sup> Further, in this same study it is stated that "any fiscal gains from a lower financial contribution to the EU will be more than offset by a loss to GDP."<sup>323</sup> Further still, in terms of the nation-based trade models mentioned earlier, this latter study sees the White Paper as in line with the EU-Switzerland

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<sup>318</sup> On the origins of the term "Project Fear", whose application extends not just to economic but also to political and social dimensions, see Jack, Ian " 'Project Fear' started as a silly private joke during another referendum, but now it won't go away" March 11, 2016 at *The Guardian* website. In the article one reads that Rob Shorthouse, the communications director of the Better Together (No to Scottish independence) campaign in the 2014 referendum mentioned the term "Project Fear" at the Scottish Tory conference in June 2013 to some journalists present there, who promptly reported it. That was "a joke phrase" as he put it afterwards, to characterize the Scottish independentists' "constant dismissal of every legitimate point raised by anyone and everyone as scaremongering." However, this turned out to be "a godsend for the SNP [the top party in favor of independence from the UK], which could now rebrand every unionist objection to independence as nothing more than scary propaganda." The fact that the term was introduced in jest to define how to handle the opponents' campaign, on account of its backfiring, shows how tricky political marketing—and among others, the use of humor in it—can be.

<sup>319</sup> Springford, John "The cost of Brexit to June 2018" *CER Insight*, September 30 2018, available at [www.cer.eu](http://www.cer.eu)

<sup>320</sup> *Ibidem*. The methodology followed centered on comparing the 'real' UK to a UK that did not vote to leave the EU. This latter, "synthetic" or "doppelgänger", UK was created using data from other advanced economies.

<sup>321</sup> *Ibidem*

<sup>322</sup> See Kara, Amit et al. "Prospects for the UK economy" *National Institute Economic Review* no. 245 August 2018. In this latter study, the "soft Brexit" model is characterized by the UK maintaining a high level of market access for goods and services to the EU and not having its financial markets subject to dislocation.

<sup>323</sup> Kara, *ibidem*

arrangement. This points to the high likelihood of the EU insisting in its negotiations on “concessions on the movement of people, the role of the Court of Justice of the European Union and a budgetary contribution,”<sup>324</sup> exactly the kind of demands Tory Brexiters consider against the result of the referendum.

The Brexiters look at economic studies showing a large negative impact of Brexit on the UK economy with profound skepticism. For instance, one economist in this camp criticizes the methodology followed by the CER study and its conclusions deriving from the comparison between the UK’s GDP growth and a group of countries whose growth pattern had been similar to the UK up to the 2016 referendum.<sup>325</sup> Essentially, he argues that “it is ... wrong... to simply ascribe to Brexit [the observed] difference in growth between the UK and other major economies.”<sup>326</sup> In other words, “the majority of the 2.5% Brexit hit to GDP estimated by the CER was in fact [just] a normal cyclical downturn in the UK economy.”<sup>327</sup>

In general, as it has been noted above with regard to the Brexit campaign, most official institutions have judged the exit of the UK from the EU as negative from an economic point of view, especially in the long run. Among those criticizing the analytical approach pursued by these against-Brexit studies and their results, I believe that one study stands out.<sup>328</sup> The study by Coutts et al. starts noting UK economic forecasters’ poor record. It stresses the failure to predict the 2008 crisis, the significant over-estimation of the speed of recovery, and the inability to learn from its errors that the economics profession showed in analyzing the economic impact of Brexit. The authors deny the view widely held in academic and media sources that the UK’s economic performance improved after becoming a member of the EU (then EEC) in 1973. Interestingly, in making their argument that there is no such evidence, Coutts et al. state that “the UK joined the EEC just as the [post-WW2] EU6 catch-up [with the US] ended. The UK thus joined on a false prospectus that accession would accelerate growth.”<sup>329</sup> At the same time, a very interesting three-way comparison among the UK-EU-US is offered: “In 1950 per capita GDP in

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<sup>324</sup> Kara, p. F11.

<sup>325</sup> Gudgin, Graham “Is Brexit damaging the UK Economy?” October 2018, available at the Briefings for Brexit website.

<sup>326</sup> Gudgin, *op.cit.*

<sup>327</sup> Gudgin, *ibidem*. Gudgin adds that only a very small portion of the GDP decrease can be attributed to Brexit, with “the boost from a depreciation in sterling ... offset[ing] the mildly negative confidence effects.”

<sup>328</sup> Ken Coutts, Graham Gudgin, and Jordan Buchanan “How the economics profession got it wrong on Brexit” Center for Business Research, University of Cambridge. Working Paper no. 493, January 2018. Henceforth Coutts et. al.

<sup>329</sup> *ibidem*. Something that suggests to this reader that this was a good factor in explaining the 1975 referendum results.

the EU6 was only half that of the USA. By 1979 it was close to 90% of the US level. This meant that catch-up with the technological frontier represented by the USA was largely complete by the end of the 1970s. After that, growth could not be faster than the USA unless innovation, skills and efficiency rose above US levels, which they did not. Growth thus settled down at close to, or a little below, the US rate... [and, to extend the comparison, t]here is no sign that joining the EU improved UK economic growth relative to the USA. The only small improvement came after 2000 and was due to a minor slow-down in US growth.”<sup>330</sup> Obviously, once again, it is difficult to forget how the idea of the US as a technological frontier adds and has always added to its economic, social, and political attraction and made it a reality to imitate both in the UK and the rest of the EU.

The Coutts study also highlights how the very negative short-term forecasts (among others on GDP, unemployment, equity prices) made by the UK Treasury were off the mark, largely on the ground of wrong assumptions.<sup>331</sup> Instead, the Coutts study states that the impact of the referendum on GDP, including the uncertainty on consumption and company and household investment (and factoring in the offsetting impact of the 10-15 percent sterling depreciation), was small in 2017 and expected to be so also in 2018. The Coutts study continues by leveling substantial criticism at the Bank of England’s short-term forecast contained in its August 2016 Inflation Report, maintaining also that its network of agents had not consulted effectively firms across the country to understand the uncertainty in the UK and its economic impact.<sup>332</sup> The study also criticizes an OECD evaluation published in April 2016. While more moderate than those of the UK Treasury, the OECD predictions still were negative for 2017 and 2018. Most interestingly, and in line with some of the criticisms raised across the entire document, the Coutts study emphasizes the fragility of the assumptions used in most against-Brexit research which it calls “educated guesses about an economic shock that never occurred before.”<sup>333</sup> Once again, the total novelty of the Brexit referendum should never be forgotten.

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<sup>330</sup> Coutts et al., op.cit., p.5. On some key views on economic growth in general see Ammendola, Giuseppe “Some Trends and Perspectives on Globalization, Economic Growth, Equality, and Development” *Janus.net, e-journal of International Relations*, Fall 2011, available at [www.observare.ual.pt](http://www.observare.ual.pt). Henceforth Ammendola 2011.

<sup>331</sup> See Coutts et al., p. 9 The sources of the official studies criticized can be found thereat.

<sup>332</sup> Coutts et al., p. 11. On the issue of uncertainty see infra.

<sup>333</sup> Coutts et al., ibidem.

The rest of the Coutts paper deals with the long-term effects of Brexit, which most of the official reports referred to therein regard as negative or very negative. The analytical approaches employed include gravity models, computable general equilibrium models, and macroeconomic forecasting models. Coutts et al. conclude, in referring to most of the economic reports on Brexit that they contain “flaws of analysis, and a treatment of evidence that leads to exaggerated costs of Brexit.”<sup>334</sup> An examination of their arguments goes beyond the scope of this paper. However, it is clear that the economic models mentioned above in order to be more reliable should be better at incorporating as diverse factors as the impact of trade on productivity, tariff and non-tariff barriers, and the use of elasticities to estimate the possible changes in trade volume. On the other hand, and very reasonably, it has also to be noted that many economists against Brexit say that in reality the very negative economic impact will be truly measurable only after the UK has exited the EU.

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<sup>334</sup> Coutts et al, p. 39



## Two major areas of economic uncertainty

One thing can be concluded from the reading of Coutts and the other studies mentioned: that long-term forecasts about Brexit are most challenging and in this sense obviously only time can tell. Let us look now at two broad and important issue areas connected to the economic debate between Leavers and Remainers: gravity and treaty negotiations.

In commercial terms, gravity (a crucial assumption in many of the models referred to earlier) essentially means that a country trades more with the countries that are close to it: the closer the distance, the greater the trade flows. To an American, the intensity of the trade between the US and Canada immediately comes to mind. In this sense in the Brexit debate, an anti-Brexiter could point out that “the UK has more than twice as much trade and investment with the EU than it does with the US., [and that] the UK has exported more to Ireland than China in nine of the past ten years, despite China’s economy being nearly 40 times the size of Ireland’s.”<sup>335</sup> Further, “[n]one of the other major emerging markets, Brazil, India or Russia, are in the top twenty markets for UK exports.”<sup>336</sup> This concept of proximity could be dismissed by Brexiters by stating that “we are well placed to make historic deals with the US, India, Indonesia and a host of others - but only if we’re outside the customs union.”<sup>337</sup> And here of course rejecting rule taking and gaining back rule making (and trade negotiating power) come to mind as concepts dear to Brexiters . Further, Brexiters would add that when the UK joined the EEC in 1973, the EEC-9 represented one third of global GDP but now, the EU-27 (after the UK leaves) would account for only 15 percent, in spite of the much larger number of member states.<sup>338</sup> This implicitly speaks of the diminished importance of Europe, about whose integration process there were ambivalent attitudes in the UK from the beginning. An anti-Brexiter would in turn counter on this latter point that the UK had the great advantage of being in the single market without the constraints of Schengen and the single currency. I think that this position enjoyed thus far, stemming from the “cherry picking” that took place years before the referendum, would be challenging to reinstate as a re-entering member of the EU (after having become a non-member).

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<sup>335</sup> Posen, Adam S. “Drawbridge Economics: The Brexit Reality Check Is Coming” November 13, 2017. Available at the Peterson Institute for International Economics website.

<sup>336</sup> *Ibidem*

<sup>337</sup> Halligan, Liam “Staying in customs union is not an option” *The Sunday Telegraph* October 14, 2018

<sup>338</sup> Halligan, *op.cit.*

With regard to the diminished role of Europe in relative global GDP terms, an anti-Brexiter would acknowledge that (and reasonably refer to China's significant growth as a crucial factor to account for it). But he or she would also argue that there is no guarantee whatsoever that the UK would be in a position to negotiate better deals. Size matters, once again. For instance, in negotiating "solo" with the US it is difficult to imagine a situation, even with a President not thinking too strongly in "America First" terms, where the UK would get any preferential treatment. That is why in general non-Brexiteers decry the diminished negotiating power stemming from going alone.

It is the renegotiation of treaties, as a matter of fact, that is the other major issue area that we now briefly look at since it is a great source of economic (as well as political and social) uncertainty. It does not take much to realize how difficult it is to incorporate in economic analyses issues such as number of treaties, subject areas, specificity of content, and time needed to complete. Most notably, a major study conducted by the Financial Times states that after the UK leaves the EU in March 2019, 759 international treaties with 168 countries will have to be renegotiated.<sup>339</sup> More specifically, as the Financial Times estimates: in the area of "Trade", that is "bilateral deals and the countries whose approval is needed to recreate multilateral arrangements", the number of international arrangements to be renegotiated is 295; with regard to "Regulatory co-operation", basically "everything from antitrust to data sharing", the number is 202 ; as to "Fisheries (access waters or sustainable stocks)", where "Britain's exit means [its loss of] fishing access rights but ... [its gaining the] freedom to renegotiate its own... [and the opening of] opportunities with Norway", we are talking of 69 arrangements; with regard to "Transport (mainly airline services)" the number of treaties to renegotiate is 65; as to "Customs (controls on goods transport)", the number is 49 and notably, the agreements in this area that the EU has with Switzerland and Turkey will be difficult "for Britain to replicate"; as far as "Nuclear (fuel, parts and know-how)" is concerned, "a US-UK nuclear deal is essential for the flow of fuel and spare parts for reactors...[and, of course] it would need Congressional approval"; last, in "Agriculture", clearly very often a political minefield, 34 agreements would have to be renegotiated.<sup>340</sup> In other words, contrary to the widely held perception before the referendum

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<sup>339</sup> See McClean, Paul "After Brexit: the UK will need to renegotiate at least 759 treaties" *Financial Times* May 30, 2017; McClean, Paul et.al "The Brexit treaty renegotiation checklist" *Financial Times* August 20, 2017; House of Commons International Trade Committee "Continuing application of EU trade agreements after Brexit", published on March 7, 2018.

<sup>340</sup> McClean "After Brexit", op.cit.

that Brexit was something between Brussels and London, “in practice Britain’s exit will open more than 750 separate time-pressured mini-negotiations worldwide.”<sup>341</sup>

Let us note just a few of the uncertain elements affecting any analysis on the 759 agreements, which became more widely discussed after the article 50 notification to the EU. First, the very number (759) is an estimate.<sup>342</sup> Second, the agreements in question were reached using a large number of experts from the EU countries, including the UK. With the June 2016 referendum decision, the UK must muster its own human resources to review each agreement, approach each individual non-EU country and specific relevant decision makers, plan and make trips, and carry out a negotiating process affected by the legal and practical limitations imposed by Brexit, including of course time-related ones.<sup>343</sup> Most relevantly, the negotiating manpower was and is not easy to find and/or develop, especially within the time constraints imposed by the Brexit process. Furthermore, in spite of foreign secretary (former, after June 2018) Boris Johnson’s claims that “nations were ‘already queuing up’ to do deals”, in practice many countries were prone to adopt a wait and see approach; in other words, before making commitments, they wanted to know the results of the EU-UK talks.<sup>344</sup>

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<sup>341</sup> Ibidem

<sup>342</sup> See House of Commons “Continuing applications” op.cit.

<sup>343</sup> McClean, “After Brexit”, op.cit

<sup>344</sup> Ibidem. An article written months after the publication of the Chequers White Paper offers apparently a different estimate of the number of international agreements that the EU has signed around the world, but confirms implicitly the challenges that we just mentioned. See Blitz, James and George Parker “UK has ‘rolled over’ only 14 of 236 EU international treaties” *Financial Times* October 29, 2018 available at ft.com. In any case, to understand the difficulty of just determining the number of treaties to be renegotiated by the EU, see “EU trade-related agreements” available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmtrade/520/52005.htm>, accessed on November 10, 2018. Thereat, one reads, among others: “Professor Dür told us that ‘overall the number looks plausible’, although he was unable to ‘exactly replicate the number of 759’ using the DESTA Database. According to a rough calculation made for us by Professor Dür, 759 agreements would amount to somewhere in the order of 36,400 pages of text (including annexes and appendices).”

## Salzburg and the Labor and Tory Party Conferences

The reactions following the Chequers White Paper's issuance in July 2018 that we mentioned earlier should have been a sufficient indication of the troubles that the UK would have to face in the weeks after Westminster's summer recess, although even some clever observers did not see them.<sup>345</sup> A most sobering moment came at the Salzburg, Austria, meeting of the EU leaders-- which took place on September 19-20. Optimists in Theresa May's camp were hoping to use positive words coming from the EU leaders with regard to the White Paper against the Eurosceptics in their own party and arguably, also, in the Labor Party.<sup>346</sup> Instead, in response to the UK Prime Minister's insistence that the Chequers Brexit proposal was the only way forward,<sup>347</sup> Donald Tusk, the European Council President, directly attacked the document. He stated that "the suggested framework for economic cooperation will not work, not least because it risks undermining the single market."<sup>348</sup> In addition to this major negative statement, Tusk also stressed that "there would not be any withdrawal agreement without a solid operational and legally binding Irish backstop"<sup>349</sup> and confirmed the EU member states' joint support for the EU Commission's negotiating work. Arguably, this sent also the message that the EU as a whole would look very unfavorably at any attempt made by the UK to "divide and conquer" the EU-27 on any issue under examination.<sup>350</sup> French President Emmanuel Macron's criticism was even more direct: "Brexit shows us one thing: it's not that easy to exit the European Union. It's not without cost. It's not without consequences."<sup>351</sup> And he added that the Leavers during the referendum campaign in 2016 "who predicted easy solutions... are liars. They left the next day

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<sup>345</sup> This is once again a testament to the great unpredictability that has characterized the whole Brexit process. See for instance Bagehot "Back from the brink: At last, things may be turning in the prime minister's favour" *The Economist*, September 22, 2018, printed edition.

<sup>346</sup> On the Salzburg meeting see for instance Parker, George et al. "EU ambushes May over Brexit plan" *Financial Times*, September 20 2018; "Theresa May faces the nation after her Salzburg humiliation" September 21, 2018 available at [www.economist.com](http://www.economist.com); "Donald Tusk: Theresa May's Brexit trade plan won't work" *BBC*, September 20, 2018, available on the BBC website; Adler, Katya "What just happened in Salzburg? The EU view" *BBC* September 20, 2018, available on the BBC website.

<sup>347</sup> Adler, op.cit.

<sup>348</sup> "EU: UK post-Brexit economic plan will not work, would undercut single market" September 20, 2018, video available on the [www.efe.com](http://www.efe.com) website.

<sup>349</sup> *ibidem*

<sup>350</sup> The EU cohesiveness was always implicitly and explicitly doubted by Brexiters. By and large they were proven wrong with regard to the negotiating process, which was characterized throughout by strong closeness among the EU-27.

<sup>351</sup> See Parker, George et al. "EU ambushes..." op.cit.

so they didn't have to manage [the process].<sup>352</sup> Needless to say such statements were strongly resented in the UK by the Brexiters.<sup>353</sup>

At any rate, Theresa May's response at the criticism for her plans for Brexit was also seen by many as inadequate. One interesting, and definitely very critical, observation by a non-Brexiters in examining her response at Salzburg reads: " 'I'm negotiating hard to give the British people what they voted for,' she said mindlessly, playing for time. Except she wasn't. Almost no one had voted for the level of helplessness that was all she apparently had to offer. If the EU did have concerns, she continued, reluctantly admitting that – just possibly – there were objections to her Chequers plan, then she wanted to sit down and hear them. The last 24 hours were now a total blank. She had completely forgotten she had spent them sitting down listening to the EU's concerns."<sup>354</sup> Another view, unlike the previous pro-Remain one, shows a mix of criticism and support for Theresa May: "...her European counterparts are still treating her like a punching bag. If Mrs May decides in response to undergo a Damascene conversion into a no deal Brexit-backing PM, she won't just get Brexiteer applause. She may well find former Remainers ....joining in."<sup>355</sup>

At the Conservative Party conference that was held two weeks later in Birmingham the complexity and divisiveness of Brexit were again confirmed. In her October 3, 2018 keynote speech Theresa May strongly defended her plan.<sup>356</sup> Most interestingly, although not explained explicitly in these terms by most commentators, her defense moved to counter the positions held by three broad groups of her domestic opponents.<sup>357</sup> First, she stated "... if we all go off in different directions in pursuit of our own visions of the perfect Brexit - we risk ending up with no Brexit at all." Unequivocally, this was directed mainly at the Brexiters in her party. Second, she

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<sup>352</sup> The quote is from, Booth, William, "Britain's May tries to sell Brexit plan as European leaders call it unworkable" *The Washington Post*, September 21, 2018.

<sup>353</sup> And it is not difficult to imagine how pleased many in the UK were with the French protests by "les jeunes gilets" against Macron's government, which started less than two months later in mid-November in the streets of Paris.

<sup>354</sup> Crace, John "Theresa May in denial after her Salzburg ordeal" *The Guardian*, September 20 2018.

<sup>355</sup> Bennett, Asa "The EU's brutality to Theresa May is turning Remainers into the hardest of Brexiteers" *The Telegraph* September 21, 2018.

<sup>356</sup> Interestingly, she did not refer to it by name, most likely recognizing the negative connotations that the term "Chequers/White Paper" had acquired by then. Unless otherwise indicated, the following quotes are from her speech, available online, for instance on *The Telegraph* website. On the speech, see for instance Sabbagh, Dan et al. "The five key themes of Theresa May's conference speech" *The Guardian* October 3, 2018; "Parker, George et al. "Theresa May links her Brexit plan to end of austerity in UK" *Financial Times*, October 3,2018; "Theresa May papers over Tory party's growing cracks" The Editorial Board *Financial Times*, October 3,2018; Stewart, Heather "Theresa May pledges end to austerity conference speech" *The Guardian*, October 3,2018.

<sup>357</sup> On these three broad groups, see *infra*.

stated her opposition to those (in the Conservative and Labor Party) as well as in the rest of Westminster (like the Greens, who are also worried by Brexit's possibly very negative impact on environmental regulations) who want a second referendum. Theresa May rejected the notion that it would be a "People's vote", since the people had voted to leave already and politicians should not try to overturn their decision. It was essentially undemocratic, she said, for politicians to tell "people that they got it wrong the first time and should try again."<sup>358</sup>

Last, and much more extensively, she attacked the views held by the Labor Party's leader Jeremy Corbyn and his supporters. In the first place, she stressed that while "Conservatives will always stand up for a politics that unites us rather than divides us," Labor's leadership no longer subscribes to this view. "The Jeremy Corbyn party" no longer is "... proud of our institutions... our armed forces... of Britain." Of course, she specifies, there are Labor MPs who still have this healthy pride but they are "star[ing] blankly from the rows behind." Here the message is clear: the Labor Party is very divided and we Tories are not--or at least she is exhorting her fellow party members to support her so as to promote such a view.

The other broad attack Theresa May mounted against Labor had to do with the economy and was designed also as a rebuttal to the rather efficacious speech given by Jeremy Corbyn a week before at the Labor Conference in Liverpool.<sup>359</sup> Corbyn in his speech made big promises about what his party would do once it gained the majority in Westminster after new elections, including: nationalization of utilities (a concept that he made legitimate again after years of broad political rejection); much greater workers' role at the top of companies; more extensive child-care subsidies; more police officers on the streets (an interesting way to get new votes); and strong renewable energy plans--with large creation of related jobs ( a clear bow to the Greens). If one adds Corbyn's opposition to the "greed-is-good deregulated financial capitalism, lauded for a generation as the only way to run a modern economy, ...[and which] crash[ed] to earth with devastating consequences" and his point that "Labor speaks for the new majority" and

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<sup>358</sup> One should notice that the proponents of a second referendum love to point out that prominent Tory Brexiters and Euroskeptics ( among them Jacob Rees-Mogg) before the June 2016 referendum proposed two separate people's votes on the UK leaving the EU. And, most importantly, they supported holding a second referendum after the negotiations with the EU had been completed. Hence, pro-EU MPs and experts accuse these Brexiters of "backtracking" from a previous position. See on this Kentish, Benjamin "Final Say: Leading Conservative Brexiteers told to explain speeches showing they supported second referendum on final deal" *The Independent* August 4, 2018. It has also to be noted that second referendums, as we have seen above, have been part of the EU integration process.

<sup>359</sup> The text of the September 26, 2018 Jeremy Corbyn's Liverpool speech is available for instance on *The Spectator* website.

aims at “a fairer society,” true to its nature of being a party “for the many not the few,”<sup>360</sup> the successor of Cameron had her work cut out for her.

Theresa May started her attack to Labor on the economy indirectly by stating that the Conservative Party would soon put an end to its fiscal austerity policies (which had been a major object of criticism by Labor): after ten years from the financial crash, “people need to know that their hard work has paid off.”<sup>361</sup> She then went on promising better cancer care and more affordable housing. After that, she reminded the listeners of the responsibility that Labor leaders had with regard to the financial crisis, which started in 2008 when they were in power. Most tellingly she said: “Thanks to Labour, the country was not prepared. The government ended up borrowing £1 for every £4 it spent... [and i]t fell to our party to clear up the mess.” She added: “Eight years on, how have we done? Our economy is growing. The deficit down by four-fifths. Unemployment at its lowest since the 1970s. Youth unemployment at a record low. Households where nobody works down by almost a million.” Then, very pointedly, May added: “In Liverpool last week, all Labour offered were bogus solutions that would make things worse.... when you nationalise something, people pay for it twice - once when they use the service, and again every month through their taxes.... Even some in the Labour Party admit their programme of nationalisation, and their endless expensive promises, would cost £1 trillion.” And, she continued: “Labour would have to pay for it by raising taxes higher and higher. Of course, everyone should pay their fair share.” A clear acknowledgement, albeit a vague one, of the need to respect some principle of progressiveness in taxation. However, “when you raise taxes too high, businesses cannot afford to invest [and] take on new employees.” Then, they have no choice but to “move abroad, create jobs in other countries, pay taxes somewhere else, and leave us poorer.” And, in an implicit reference to the financial crisis, “they also have to increase borrowing again.” Thus, across her speech she stresses the importance of opportunities given to all individuals to benefit from the economic change which is coming through the hard work of a party “fixing markets and not destroying them.”<sup>362</sup> “A party”, using language directed against

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<sup>360</sup> *ibidem*.

<sup>361</sup> This and following quotes are all from Theresa May’s October 3, 2018 Birmingham speech. See *supra*.

<sup>362</sup> *Ibidem*. It has to be noted that most economic observers, while finding James Corbyn’s proposals very costly to the economy, also think that Theresa May’s way of abandoning austerity without increasing taxes or resorting to additional borrowing would be extremely hard to put into effect. See for instance Parker, George et al. “Theresa May links her Brexit plan to end of austerity in UK”, *op.cit*.

Corbyn's idea of inclusiveness, that is "not for the few, not even for the many, but for everyone who is willing to work hard and do their best."

It can be seen from the elements highlighted here that the Corbyn and May speeches to their respective party audiences reflect broad themes found, with variations, in the political debates in most countries of the Western world. Also, it is not surprising that all the references to Brexit found in both speeches tend to show how their respective positions (her deal vs. his renegotiation of it if winning new elections) aim to be consistent with their respective broad party narratives and strategies.



## The Draft Withdrawal Agreement

Brexit negotiations continued intensely. By the time of the European Council meeting on October 17, 2018, however, it had become clear that “not enough progress had been achieved.”<sup>363</sup> Two issues stood out. One, the Irish border question, on account of its challenging sovereignty aspects. The second one, the transition period, because of its impact on multiple areas and also its close connection to the first issue. Such unresolved issues did not prevent Theresa May from telling the Commons a few days later that in light of the progress made on issues such as the future status of Gibraltar (where clearly Spain’s position had to be factored in) and a protocol on UK military bases in Cyprus (another EU-27 member), 95% of the Brexit withdrawal agreement and its protocols had been agreed upon.<sup>364</sup> The Autumn Budget delivered on October 29 helped her somewhat. In his presentation, the Chancellor of the Exchequer, Philip Hammond, explained that public borrowing had been lower than expected and the fiscal benefits deriving from this would permit more spending on NHS and social services. He also stated that “austerity is coming to an end, but discipline will remain,” picking up from Theresa May’s remarks at the Tory annual conference mentioned earlier.<sup>365</sup> These statements were also meant as a response showing government control to the estimated 700,000 protesters marching in London on October 20 to demand a new referendum.

A major development took place on November 14, 2018. Theresa May’s government cabinet approved the draft text of the Withdrawal Agreement (WA) negotiated between the EU and the UK.<sup>366</sup> The withdrawal agreement covers citizens’ rights (EU citizens in the UK and UK nationals in the EU); the transition period (a.k.a implementation period); the financial settlement (“a fair settlement of the UK’s rights and obligations as a departing Member State”); and protocols on Northern Ireland (including the backstop agreement), Cyprus (“protecting the

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<sup>363</sup> See “European Council, 18/10/2018” available at the EU [www.consiliun.europa.eu](http://www.consiliun.europa.eu) website

<sup>364</sup> See for instance “Theresa May says 95% of Brexit deal is done” *BBC* 22 October 2018, available at [www.bbc.com](http://www.bbc.com).

Incidentally, the use of percentages by both negotiating sides in defining progress was rather frequent across the whole process.

<sup>365</sup> See for instance Sabbagh, Dan “Hammond says end of austerity is in sight as he boosts spending” *The Guardian*, October 29 2018, where one also reads that Jeremy Corbyn quickly noted that in reality the improvements in the budget that Hammond was mentioning were “half measures and quick fixes while austerity grinds on.” Still, adding again to the complexity of the picture, one has to note that “an unexpected rise in the UK tax burden — now on course to hit its highest level since 1986-87 — will fund chancellor Philip Hammond’s pledge to bring austerity to “an end” in the years ahead, according to official forecasts.” Giles, Christ “Hammond to miss target of balancing books” *Financial Times* October 30, 2018.

<sup>366</sup> The full text of the WA, published on November 14 2018, TF50(2018)55, is available at the European Commission website, [https://ec.europa.eu/commission/sites/beta-political/files/draft\\_withdrawal\\_agreement\\_0.pdf](https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement_0.pdf)

interests of Cypriots living and working in the Sovereign Base Areas in Cyprus” while “maintaining the UK’s international commitments in respect to” its SBAs), and Gibraltar.<sup>367</sup> This last one “will form part of a wider package of agreements that address issues of importance to citizens and businesses in Spain and Gibraltar and reflect the parties’ desire to work together in support of the shared prosperity and security of the area.”<sup>368</sup> Together with this draft withdrawal agreement, a document 585 pages long, the UK government cabinet approved also a political declaration on the future of the UK-EU relationship. This latter is a much shorter document, which was enlarged from 7 to 26 pages within a week.<sup>369</sup> This second document deals with the post-Brexit relationship between the UK and the EU. Unlike the WA, the political declaration is not legally binding.

The two documents have been strongly criticized, even from inside Theresa May’s team. As a matter of fact, on November 15, the Prime Minister suffered a significant political setback when her Brexit secretary Dominic Raab quit the cabinet.<sup>370</sup> He cited in his letter of resignation two main reasons.<sup>371</sup> First, he said that in his opinion the regulatory regime proposed for Northern Ireland to avoid a border “presents a very real threat to the integrity of the United Kingdom.” Here the national interest theme is evident. “Second,” he added, he could not “support the indefinite backstop arrangement, where the EU holds a veto over our ability to exit.” A clear reference to the time dimension. Then he explained that “[t]he terms of the backstop amount to a hybrid of the EU Customs Union and Single Market obligations. No democratic nation ever signed up to be bound by such an extensive regime, imposed externally without any democratic control over the laws to be applied, nor the ability to decide to exit the

<sup>367</sup> “Explainer for the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union. 14 November 2018” *HM Government*, November 14, 2018, available at [www.gov.uk/government/publications](http://www.gov.uk/government/publications).

<sup>368</sup> *Ibidem*. The issue of co-sovereignty could figure prominently in the discussions in the transition phase and be potentially a significant source of friction in a post-Brexit reality between an EU-27 country and the UK. Most relevantly, it has to be noted that the threat of a Spanish rejection of the WA led to an agreement with the EU and the UK on the eve of the November 25 EU leaders’ meeting (see *infra*): a statement was adopted “making clear that Spain will have a veto over any future EU-UK agreement concerning Gibraltar.” Brunson, Jim et al. “Spain seals deal with EU and UK on Gibraltar” *Financial Times* November 24, 2018.

<sup>369</sup> Barigazzi, Jacopo et al., “UK, EU agree draft plan for post-Brexit ties” November 22, 2018, available at <https://www.politico.eu/article/draft-text-aims-for-ambitious-wide-ranging-post-brexit-partnership/>.

Henceforth we shall refer to the 26 pages-long version, “November 22 Draft Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom, agreed at negotiators’ level and agreed in principle at political level, subject to endorsement by Leaders” available at the <https://www.gov.uk> website. The version on the European Council website, <https://www.consilium.europa.eu>, is 36 pages long, but the text is identical.

<sup>370</sup> Other cabinet members’ resignation followed. See for instance Crerar, Pippa and Matthew Weaver “McVey and Raab quit as May addresses MPs over Brexit deal” *The Guardian*, November 15, 2018.

<sup>371</sup> The November 15, 2018 letter can be found for instance on The Irish Times website: [www.irishtimes.com](http://www.irishtimes.com). The following quotes in the text are clearly from this letter.

arrangement.” Clearly, a strong statement against the rule taking dimension of the agreement. Moreover, the difficulties of interpreting words in one single way across this whole process are also captured in the letter when Raab adds that he “cannot reconcile the terms of the proposed deal with the promises we made to the country in our manifesto at the last election.” No reader would not see here also the connection with party divisions. Raab then immediately continued: “This is, at its heart, a matter of public trust.” It is hard not to note how many UK politicians in talking about their position on Brexit have used the expression “public trust” and the need to maintain it.

On the EU side things moved along more smoothly and, on November 25, EU leaders approved in Brussels the exit treaty. The package agreed upon consisted of the withdrawal agreement and the political declaration on the future of the relationship between the EU and the UK. Unilateral statements by leaders of the EU-27 countries confirmed that the bloc would not be tame in its future negotiations “on everything from fishing rights to Gibraltar.”<sup>372</sup> National interests of individual EU-27 countries could not be easily cast aside, especially in negotiating with a (future) non-member. In line with the complexity of the issues and even the emotions involved, European Commission President Jean-Claude Juncker stated: “Those who think that by rejecting the deal will have a better deal will be disappointed in the first seconds after the rejection.”<sup>373</sup> Here one could argue that this was said to help Theresa May, in the full awareness that the deal would be disliked in the UK by both Euroskeptics and Euro supporters and could be difficult to approve in a very divided Westminster. In other words, Juncker was sending the message that new elections in the UK and/or a new government (including a Labour one) would not change anything.

Another element that emerged from reading the statements to the press given by prominent EU-27 leaders is sadness. Notably, German Chancellor Angela Merkel said: “It’s tragic that the UK leaves the European Union,”<sup>374</sup> while Juncker stated that the summit “is neither a time of jubilation nor of celebration. It’s a sad moment, and it’s a tragedy”<sup>375</sup> and Dutch Prime

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<sup>372</sup> Barker, Alex and Mehreen Khan “Sombre EU leaders bid farewell and sign off historic exit treaty” *Financial Times* November 26, 2018.

<sup>373</sup> Brzozowski, Alexandra et al., “Sadness the flavour of the day as EU27 approve Brexit deal” *Euractiv*, November 25, 2018

<sup>374</sup> *Ibidem*

<sup>375</sup> “European Union approves Brexit deal with United Kingdom” Associated Press, November 25, 2018, available on the USA Today website.

Minister Mark Rutte noted "I believe that nobody is winning. We are all losing because of the U.K. leaving."<sup>376</sup>

At this point in time, in fact, the EU losses as a consequence of Brexit had become clearer. Brexit-related dislocations such as higher barriers to trade, capital flows, and labor mobility will have a negative long-term effect not just in the UK, but also in the EU-27.<sup>377</sup> Notably, the links between the euro area and the United Kingdom are very significant. As a major IMF report stated: "First, the United Kingdom ranks among the euro area's three largest trading partners, accounting for 13 percent of euro area trade in goods and nonfactor services. Second, supply-chain linkages imply substantial indirect trade links through third countries. Third, financial linkages are tight, with bilateral capital flows, spanning FDI, portfolio investments, and bank claims, amounting to some 55 percent of euro area GDP in 2016."<sup>378</sup> Empirical analysis by IMF staff put the long-run real GDP fall at 0.8 percent in the case of a standard free trade agreement and at 1.5 percent in case of a default to WTO rules.<sup>379</sup> Further, "under a relatively benign "Norway" scenario where access to the single market is preserved while membership in the customs union is lost, the estimated loss of output is negligible."<sup>380</sup> Not all EU-27 countries are impacted the same way. Ireland would suffer the most. In the case of a "hard Brexit" scenario, its loss would be close to 4 percent and only slightly inferior to that of the UK. The Netherlands, Denmark, and Belgium would follow with a loss of around 1 percent.<sup>381</sup> In general, the more any country trades with the UK, the larger the Brexit-related damage to its GDP will be.<sup>382</sup>

On the minds of the EU leaders of course there were also national budgetary considerations, with outturns for 2018 falling short of Stability and Growth Pact requirements<sup>383</sup>

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<sup>376</sup> Ibidem

<sup>377</sup> "Euro Area Policies" IMF Country Report No.18/223 July 2018, available on the IMF website.

<sup>378</sup> Ibidem p. 7

<sup>379</sup> Ibidem

<sup>380</sup> Ibidem. This, as we have seen, is a scenario connected to significant "rules taking" and most disliked by Brexiters.

<sup>381</sup> Ibidem

<sup>382</sup> Chen, Jiaqian et al. "The Long Term Impact of Brexit on the European Union" *IMF Blog* August 10, 2018 available at the IMF website, where one reads: "Our study does not look at the effect of uncertainty about the future relationship between the EU-27 and the UK, or the transition to the new relationship. It focuses entirely on the long-term impact, when all parties have fully adjusted to the new relationship. The ultimate consequences will take years to materialize and will depend on the eventual deal between the EU 27 and the UK." Once again, the uncertainties connected to time and complexity loom very large.

<sup>383</sup> IMF "Euro Area Policies" op., cit, p.15. The countries at risk of falling short of SGP requirements mentioned thereat are: Belgium, France, Latvia, Italy, Portugal, Slovakia, and Slovenia.

and the challenges to integration that they comport. Moreover, as the IMF report pointed out “[p]ublic debt ratios are projected to remain above 90 percent of GDP in more than one-third of euro area countries at end-2019.”<sup>384</sup>

With regard to the EU budget itself, the IMF report stated that Brexit “is prompting an overhaul” of it that “should be used as an opportunity to seek efficiency gains.”<sup>385</sup> This is a positive way of putting it but there is clearly a “hole... left by the likely loss of the U.K. net contribution (after the transition period)” that needs to be closed and which will undoubtedly be “part of wider discussions around the next multiannual financial framework.”<sup>386</sup> Most relevantly, the IMF report noted that “[t]he EU budget proposal for 2021–27 envisages a streamlining of existing policies to fund new priority areas, including border control, defense, research and innovation, and the digital economy, and—appropriately—a paring back of outlays on the common agricultural and cohesion policies.”<sup>387</sup> It is difficult to think that the cutting of funds in two areas (CAP and Regional and Cohesion Policy) so deeply embedded in the European integration process since the 1960s will not be very challenging politically and socially. Also worthy of note is the discussion in the IMF report of the challenges connected to avoiding financial disruptions deriving from Brexit. Among those discussed, one should note the need to enhance oversight arrangements in the areas of multilateral netting and collateral pooling across currencies and instruments carried out by central clearing counterparties (CCPs) based in London which “provide material savings, supporting market liquidity and price discovery.”<sup>388</sup> This is an area where systemic risk concerns are very present. Not surprisingly, the IMF document pointed out how the EU needs to improve oversight capacities and corrective tools with regard to foreign bank branches and investment firms. The report noted that the late 2017 Commission proposals “to strengthen the coordination of the European Supervisory Authorities (the European Banking Authority, ESMA, and the European Insurance and Occupational Pensions Authority)” aim to “limit systemic risks.”<sup>389</sup> A pro-Remain observer would point out here that the relocation of the

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<sup>384</sup> Ibidem.

<sup>385</sup> IMF “Euro Area Policies, op.cit., p.14

<sup>386</sup> Ibidem.

<sup>387</sup> Ibidem

<sup>388</sup> IMF “Euro Area Policies, op.cit., p.29. The document covers multiple financial issues, which like those we mention here often present crucial euroclearing and/or too big to fail challenges.

<sup>389</sup> Ibidem. ESMA is the European Securities and Markets Authority and is based in Paris, while the European Insurance and Occupational Pensions Authority (EIOPA) is based in Frankfurt.

European Banking Authority from London to Paris after the UK's withdrawal for the EU reduces the power of the City and certainly does not help with the management of systemic risks in a globally integrated financial world.

## The Withdrawal Agreement: selling the deal in the UK

On November 26, 2018 Theresa May addressed the House of Commons. Some of her statements are quite interesting. She started by saying: “At yesterday’s Special European Council in Brussels, I reached a deal with the leaders of the other 27 EU Member States on a Withdrawal Agreement that will ensure our smooth and orderly departure on 29th March next year; and, tied to this Agreement, a Political Declaration on an ambitious future partnership that is in our national interest.”<sup>390</sup> Anyone can note her efforts from the beginning to reassure and appear in control, even though the typical criticism against her plan (and throughout her negotiations) has been that the UK will have less control once it leaves the EU. She went on: “this is the right deal for Britain because it delivers on the democratic decision of the British people.” Once again, I would argue that to an American and most Europeans a decision of such a huge magnitude in its future impact should have been taken with the popular and elected officials’ majorities typical of countries with written constitutions. Also very importantly, a major criticism by Remainers is that voters in the referendum were not given adequate information about the number and size of the problems connected with leaving the EU. Then, continuing, she said that the deal “takes back control of our borders...our laws... and our money.” Here she tries to stress, using a sentence repeated by her and all Brexiters countless times, that the three key objectives of the referendum campaign have been achieved. Here the hope is also that *repetita iuvant*, trying thus to take advantage of one of the oldest principles of marketing (including for sure political marketing). Unfortunately for Theresa May, the expression she continued to use has been attacked in various ways as overly optimistic or inaccurate, or downright mendacious. And the very speech itself was followed by a plurality of MPs of “every shade of opinion” rising up and criticizing it.<sup>391</sup>

Theresa May’s speech marked the beginning of a two-week campaign to sell at home the Brexit deal signed the day before.<sup>392</sup> There was a date approaching, December 11, when the UK parliament would have to vote on the deal and the risk of rejection was acknowledged to be very high. The three main issues covered in the withholding agreement were the object of significant criticism by her opponents. First, the safeguard of the rights of more than 3 million EU citizens

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<sup>390</sup> A transcript of the speech is available at the [www.gov.uk](http://www.gov.uk) website.

<sup>391</sup> Bagehot “Don’t write off the prime minister’s deal just yet” *The Economist*, November 29, 2018

<sup>392</sup> The campaign involved also traveling across the entire country trying to reach the public and businesses, so as to put pressure on MPs (not with great success).

in the UK and over 1 million UK nationals in the EU-27 countries went beyond her preferred time limit, which was March 29, 2019. Instead, “all those arriving to live in the UK at any point up until the end of the transition period, which could last until the end of 2022 should it be extended, will enjoy the rights that EU nationals have today to make Britain their home, to live, work and study.”<sup>393</sup> Second, the divorce bill was set at £39bn, “to cover its contribution to the EU budget until 2020”... as well as “accumulated other outstanding commitments such as pensions for EU officials.”<sup>394</sup> Clearly, in both cases, Theresa May was accused of caving in, with her critics questioning her ideas of “control” and “red lines”. The third and most controversial issue, the Irish “backstop [,] means” that “the whole of the UK will remain in the EU customs union, while Northern Ireland will have to follow single market rules. Brexit supporters loathe the backstop, fearing it will leave the UK “shackled” to EU rules.”<sup>395</sup> Here again there is the objection by pro-Brexit May’s critics that this is intolerable rule taking (and a major violation of UK sovereignty), which could extend the loss of control “forever”.

In general, in Westminster and outside, those who attack May’s claim that the UK has gained back control fall in three large categories (each with complex waxing and waning sub partitions). First there are the hard-line or strong Brexiters (largely but not exclusively from her party), who claim that her negotiation has resulted in a withholding agreement that is not respecting the will of the people because it does not give back control to the UK. They maintain that the “red lines” stressed by her at the beginning of her negotiations and connected to border, laws, and money have been ignored in the WA. And they claim that there is no better confirmation of this than the many resignations from her government team by those holding this view (e.g. Johnson and Raab).<sup>396</sup> Then there is Labor, which wants new elections that would permit its leaders to be at the helm of a new government. The agreement would then be renegotiated, along lines that are more beneficial to the people of the UK, especially those who

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<sup>393</sup> Boffey, Daniel and Jennifer Rankin “Brexit deal explained: backstops, trade and citizens’ rights” *The Guardian* November 25, 2018.

<sup>394</sup> *ibidem*

<sup>395</sup> Boffey, *ibidem*, where one also reads that “wary EU countries think the plan benefits the UK,” (any strong Brexiter would disagree) “so [they] insisted the UK respect EU social and environmental rules to avoid undercutting their companies.” This latter business dimension clearly is liked by the Greens.

<sup>396</sup> There have been two waves of resignations connected to Brexit, as we have seen: one linked to the July 2018 Chequers White Paper and the other to the WA. See “List of resignations from the second May ministry”, available on Wikipedia.

<sup>397</sup> With critics of Labour maintaining that its leader’s desire to govern takes precedence over anything else.



are less privileged.<sup>397</sup> Both these groups of critics claim that they could negotiate better deals.<sup>398</sup> However, it would seem that neither of them has presented a more convincing plan (if at all) and they both conveniently ignore the total unwillingness of the EU to renegotiate the WA and the strong time constraints that exist not just on account of the March 29, 2019 deadline but also in light of the European Parliament elections scheduled for May 2019. Then there are those who, like the Greens and many in the Tory and Labour camps, who believe that the British people need to exercise their power through a new referendum, given that the electorate was not appropriately informed during the campaign of all the problems that the exit from the EU would create for the country. Here there are also significant time constraints but one could expect that, under this latter scenario, the EU-27 could cut some slack in light of its overall preference for the UK to remain in the EU.

There can be little doubt that the Prime Minister's task of defending the agreement in Parliament has been very difficult indeed, especially in light of the fact that for the first time since 1974, a general election (the one unwisely triggered by May in 2017) resulted in a government without a majority. As we seen above, Theresa May has to rely on the conditional support provided by the Democratic Unionist Party with its 10 MPs. In light of the fact that the DUP declared that "it will vote down her deal" and that "Labour, the Scottish National party and the Liberal Democrats" are against "her deal, Mrs May's majority would be wiped out. And that is before taking into account the position of more than 90 Tory critics of the agreement."<sup>399</sup> Thus, talking about May's deal failing to gain approval, at least on a first attempt basis, became widespread. And it became an issue of numbers: a loss by more than 100 votes most likely leading to not just the end of the deal but also of her job while a more "respectable" loss could permit her to go back to Brussels and (hopefully), after receiving minor concessions, return for a second vote which could be a good one for her.<sup>400</sup>

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<sup>398</sup> With the hard Brexiters also stating that "no deal" is better than "a bad deal" like the one proposed by Theresa May.

<sup>399</sup> Parker, George "May braces for Commons showdown" *Financial Times* November 26, 2018

<sup>400</sup> Bagehot "Don't write off the prime minister's deal just yet", op. cit.

Several developments would show most clearly the very significant challenges that Theresa May's government had to face in the House of Commons. On December 4, the government was found in contempt of parliament for refusing to release the full legal advice given by Attorney General Geoffrey Cox. The vote was 311 to 293 in a motion also ordering the immediate publication of the advice.<sup>401</sup> The advice basically confirmed what Raab had said about the Irish backstop arrangement: the EU holds a veto on the UK's ability to leave. Needless to say, Brexiters were most upset about this heretofore undisclosed document. On the other hand, it has to be noted that MPs supporting Theresa May maintained that the government was correct in defending the principle that legal advice from the Attorney General should be confidential.<sup>402</sup> In other words, government's effectiveness should not be undermined.

On the same day, December 4, there was another confirmation of the very strong doubts existing in the Commons over May's Brexit deal. With a 321 to 299 vote against the government, a proposal was approved allowing parliament to have significant control on what happens if the withdrawal agreement, scheduled for vote on December 11, was rejected.<sup>403</sup> Led by Conservative MP Dominic Grieve, a former attorney general, 26 pro-European Tories joined forces with Labour and all opposition parties (including even the government-supporting DUP<sup>404</sup>) to "allow MPs to table amendments to any motion on EU withdrawal that would follow a defeat of May's deal" [on December 11. Then] "MPs could vote to rule out leaving the EU without a deal, to pursue a Norway-style membership of the European Economic Area (EEA) or to call a second referendum."<sup>405</sup> In other words, assuming that Theresa May lost the December 11 vote, "the government has to report back on its plans within 21 days, according to the EU Withdrawal Act. Mr Grieve's amendment establishes that MPs can now assert their point of view by amending those plans — whether to [1] come out against a no-deal Brexit, [2] call for a

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<sup>401</sup> MacLellan, Kylie "May's government loses contempt vote over Brexit legal advice", Reuters December 4, 2018. The text was published the day after the government was found in contempt of Parliament. The text can be found at [www.gov.uk](http://www.gov.uk).

<sup>402</sup> See Mance, Henry et al., "Theresa May suffers double defeat on Brexit deal" *Financial Times* December 5, 2018

<sup>403</sup> Mance, Henry "Assertive Grieve amendment gives power to the parliamentarians" *Financial Times* December 06, 2018; Mance et al., "Theresa May suffer double defeat on Brexit deal" op.cit.; "The consequences of saying no to Theresa May's Brexit deal" *The Economist*, December 8, 2018; Staunton, Davis "What's next for Brexit after May's humiliating defeats?" *The Irish Times*, December 5, 2018.

<sup>404</sup> The voting against May's withdrawal deal by the DUP does not mean that the party will vote out the government. The "confidence and supply" parliamentary agreement with the Tories remains. In this sense, see "DUP will vote down deal but back Tories, says Nigel Dodds" BBC, December 5, 2018.

<sup>405</sup> Staunton, ibidem.

second referendum or [3] recommend Norway-style membership of the EU's single market."<sup>406</sup> One important aspect of this amendment is the weakening of Theresa May's claim that her deal is the only alternative to the (very problematic) no-deal scenario. This means that MPs may have fewer problems rejecting her deal. At the same time, however, this strengthened her hand in trying to convince Brexiters to support her when voting on December 11. In this case, she could maintain that her deal would be better for them than the three options mentioned above.

Just as the political picture, the economic one for the government plan was hardly comforting. Let us start with a major government report published on November 28, 2018.<sup>407</sup> The report acknowledges at the beginning that "[a]s the UK leaves the European Union it does so with strong economic fundamentals. The economy is growing, unemployment is low and real wages are rising."<sup>408</sup> But a Brexiter has little time to rejoice out of this implicit admission that the world did not come to an end after the 2016 referendum. The report, in comparing potential future Brexit policy scenarios against today's arrangements, shows that "higher barriers to UK-EU trade would be expected to result in greater economic costs."<sup>409</sup> For instance: after 15 years, UK's GDP could be 3.9 percent smaller, while a no-deal Brexit could lead to a 9.3 percent decrease.<sup>410</sup> In presenting a major report from the Bank of England, released on the same day, governor Mark Carney also said that Mrs. May's agreement would leave the size of the economy up to 3.75 per cent "lower than it would have been if [it] had continued growing at the [pre-referendum] May 2016 trend".<sup>411</sup> And, much more shockingly, the Bank of England report stated that in the case of a no-deal disorderly Brexit GDP would fall rapidly by 8 percent and housing prices by 30 percent.<sup>412</sup> By comparison, the respective numbers for the global financial

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<sup>406</sup> Mance, Henry "Assertive Grieve", op.cit.

<sup>407</sup> HM Government *EU Exit: Long-term economic analysis* 28 November 2018, available at [www.gov.uk](http://www.gov.uk). See also for instance BBC "Brexit will make UK worse off, government forecasts warn" November 2, 2018; Castle, Stephen "All Brexit Deals Worse for Economy Than Staying, U.K. Government Says" *New York Times* November 28, 2018; "Brexit and the economy: How to make yourself poorer" *The Economist*, November 29, 2018; Giles, Chris and George Parker "May forced to concede all Brexit roads will lead to a poorer Britain" *Financial Times* November 29, 2018.

<sup>408</sup> HM Government, op.cit., p.3

<sup>409</sup> *ibidem*, p.5 Two major studies by two respected think tanks also view negatively the government's proposed Brexit deal. For instance, the National Institute of Economic and Social Research said that the government deal would reduce GDP per capita by 3 percent while the UK in a Changing Europe arrived at a central estimate of 1.9 percent. See "Brexit and the economy: How to make yourself poorer" *The Economist*, op. cit. The studies, very much referred to in the press, are available on their respective websites: [niesr.ac.uk](http://niesr.ac.uk) and [ukandeu.ac.uk](http://ukandeu.ac.uk).

<sup>410</sup> HM Government, op.cit, p. 7 Here the 3.9 percent figure refers to a May's White Paper based model.

<sup>411</sup> Giles, Chris "May forced to concede", op.cit.

<sup>412</sup> "EU withdrawal scenarios and monetary and financial stability: A response to the House of Commons Treasury Committee" Bank of England November 2018, p. 52, available on the BoE's website.

crisis which started in the first quarter of 2008 were -6.25 percent and -17 percent.<sup>413</sup> Thus, in the Bank of England analysis, a disorderly exit without a deal would result in the sharpest contraction rate seen since WW2.<sup>414</sup> Of course, true to his role, Mark Carney emphasized that both the central bank and the financial system were ready for any eventuality. However, he explained that the rest of the economy may be unprepared for a cliff-edge Brexit with only 14 percent of small businesses having made preparations for it and 250,000 businesses never having heretofore filled out a customs declaration.<sup>415</sup> This latter statement, and the overall negative assessments of the future impact of the government deal, no deal, Norway-like, and other options offered by most economists was seen by those who favor staying in the EU as completely confirming the validity of their view. To Theresa May, the analyses meant that her option, among those which were respecting the will of the British people as expressed in the 2016 referendum, was the best.<sup>416</sup> To Labor, the analyses suggested the need for new leadership (achievable through new elections) to negotiate a better deal and above all move toward a more equitable economy. And to hard Brexiters, they were again proof of the ongoing nature of “Project Fear” and the ignoring also the importance of political factors pushing the British people to gain back their freedom from the EU.

But back to politics (and law), another event took place just before the December 11 voting deadline that undoubtedly displeased the Brexiters. On December 10, the European Court of Justice ruled that the UK’s MPs could in principle vote to withdraw unilaterally their Article 50 notification. Rejecting arguments from both the UK government and the European Commission, the ECJ stated: “That possibility exists for as long as a withdrawal agreement concluded between the EU and that Member State has not entered into force or, if no such agreement has been concluded, for as long as the two-year period from the date of the notification of the intention to withdraw from the EU, and any possible extension, has not

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<sup>413</sup> *ibidem*

<sup>414</sup> Giles, Chris “May forced to concede” *op.cit.* See also Partington, Richard “Bank of England says no-deal Brexit would be worse than 2008 crisis” *The Guardian* November 28, 2018 where one also reads the opinion of two top economists from both sides of the Atlantic maintaining that the Bank’s estimates are “too severe”.

<sup>415</sup> Binham, Caroline et al., “BoE warns of sharp decline under disorderly Brexit” *Financial Times* November 28, 2018

<sup>416</sup> Actually, there was here another “red line” that her government through Chancellor Phillip Hammond had drawn and was crossed, as per these analyses. In the autumn of 2016 at the Conservative Party conference he said: “It is clear to me that the British people did not vote on June 23 to become poorer.” Speech published on October 3, 2018 and available at [www.conservativehome.com](http://www.conservativehome.com)

expired.”<sup>417</sup> The decision, stemming from a case brought by a group of pro-Remain Scottish lawmakers fostered renewed calls for another popular referendum, which had in any case been on the rise in the past few months.<sup>418</sup> Most importantly, the Court stated that the UK’s unilateral revocation of the notification “would have the effect that the United Kingdom remains in the EU under terms that are unchanged as regards its status as a Member State.”<sup>419</sup> In other words, as “Aidan O’Neill QC, the lawyer who led the case for the parliamentarians” put it: “[The ECJ’s] finding would preserve the UK’s existing opt-outs on the social chapter and the Schengen internal security treaty, its greater flexibility on VAT rules, its rebate and its decision not to join the euro.”<sup>420</sup> It is considerations like this last one that makes Remainers state that the UK should not be giving up on March 29, 2019 the best possible relationship it could have with the EU.

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<sup>417</sup> See the Court of Justice of the European Union, Press Release No 191/18, Luxembourg, December 10, 2018 on the [www.curia.europa.eu](http://www.curia.europa.eu) website. See also Carrell, Severin “Brexit: UK can unilaterally revoke article 50, says ECJ” *The Guardian*, December 10, 2018 and Randerson, James and Charlie Cooper “UK can withdraw Brexit notification, ECJ rules” December 10, 2018 at [www.politico.eu](http://www.politico.eu).

<sup>418</sup> I would submit that observers from outside the UK (including me), since the formation of the second May government and certainly more so from the issuance of the Chequers White Paper were more inclined to think that the probability (and certainly the desirability) of a new referendum had been underestimated by most of the British press.

<sup>419</sup> Court of Justice, *op.cit.*

<sup>420</sup> Carrell, Severin “Brexit UK can unilaterally revoke article 50” *op.cit.*

## Postponement

On the same day of this ECJ ruling, the Prime Minister took a decision that came as a shock. After she and senior ministers had for days (some of them just hours before) publicly insisted that the vote on the withholding agreement would take place in the Commons in spite of the very significant opposition from MPs, Theresa May canceled the scheduled December 11 vote.<sup>421</sup> In her words: “We have now had three days of debate on the Withdrawal Agreement setting out the terms of our departure from the EU and the Political Declaration setting out our future relationship after we have left. I have listened very carefully to what has been said, in this chamber and out of it,” at which point many MPs burst out laughing, “by members from all sides. From listening to those views it is clear that while there is broad support for many of the key aspects of the deal,” laughs again, “on one issue – the Northern Ireland backstop – there remains widespread and deep concern. As a result, if we went ahead and held the vote tomorrow the deal would be rejected by a significant margin. We will therefore defer the vote scheduled for tomorrow and not proceed to divide the House at this time.”<sup>422</sup> She then went on to speak in favor of the principle of a seamless border, which in any case basically everyone in the audience accepted, and tried to defend the negotiated backstop arrangement. After all, she added: “I still believe there is a majority to be won in this House in support of it, if I can secure additional reassurance on the question of the backstop and that is what my focus will be in the days ahead.”<sup>423</sup> This in the minds of most listeners sounded very hard to believe, also since no change to the withdrawing agreement would be considered by the EU-27 (that was a “real red line” drawn by them, a Theresa May critic would say). Still, she continued to repeat that hers was “the very best deal that is actually negotiable with the EU.”<sup>424</sup>

One analyst captured well the feelings among many MPs in the audience, (especially those who laughed, as a critic of hers could argue). As he very sharply pointed out: “Mrs May’s chaotic retreat from the vote” just the day before, shows “... that we have entered a zombie premiership. A confidence vote, a leadership challenge and the collapse of her EU exit deal are

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<sup>421</sup> See for instance: BBC “Theresa may calls off MPs’ vote on her Brexit deal” December 10, 2018 available on the BBC website and Hall, Macer “ Better Deal or No Deal” *Daily Express* December 11, 2018

<sup>422</sup> The video of Theresa May’s December 10, 2018 speech before the House of Commons is easily available on Youtube

<sup>423</sup> *ibidem*

<sup>424</sup> *ibidem*

the only staging posts left on this road.”<sup>425</sup> Most interestingly, this same analyst noted that when she introduced the agreement the month before, Theresa May stated that the only alternatives to her plan were “no deal or no Brexit”.<sup>426</sup> Now, he maintained that her emphasis had shifted to the “no Brexit” alternative. In other words, he expressed the view (held by many at this point) that Theresa May believed now that “the most likely alternative to her deal is not a hard Brexit but a second referendum.”<sup>427</sup> Thus, he continued, Theresa May was sending a “not very subliminal message to Brexit backers that” because of Remainers’ growing confidence in and out of Parliament, they (the Brexiters) were “risking what they have worked so hard to secure.”<sup>428</sup>

Another interesting view, making reference to her sudden declaration to postpone the vote on the withdrawal agreement and to her earlier decision to have an early election in June 2017 (both of them contradicting earlier “strong” statements to the contrary), was expressed by another analyst: “From now on, all her firm declarations and solemn vows will be dismissed as hollow, empty words.”<sup>429</sup> He continued, showing the clarity that the British pine for, by stating that “Britain needed the catharsis of Tuesday’s vote. Not for therapeutic reasons, but rather to begin the process of escape from the Brexit quagmire. The vote would have been the first stage in a much-needed process of elimination, whereby MPs would begin to confront the various options and eliminate them one by one.”<sup>430</sup> Clearly this is a Remainer’s opinion, but the desire for clarity is arguably common to both camps. He continued: “May would have been defeated. Labour might then have tried, as they have promised, to bring down the government and trigger a general election. That effort would almost certainly have failed. And then the Commons could have got on with the serious business of assessing the Norway-plus scenario and a second referendum, eliminating one or the other until finally a last option was left standing.”<sup>431</sup> Incidentally, the suffix “plus” added to various of the options/models cited above (e.g. Norway-plus, Canada-plus), often repeated two or even three times reflects, at times in a somewhat comical way, the number of variants being considered by all sorts of actors and players.<sup>432</sup>

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<sup>425</sup> “Shrimpsley, Robert “Last-minute vote retreat exposes a zombie premiership” *Financial Times*, December 11, 2018

<sup>426</sup> *ibidem*

<sup>427</sup> *ibidem*

<sup>428</sup> *ibidem*

<sup>429</sup> Freedland, Jonathan “The country will pay the price for May’s Brexit vote delay” *The Guardian*, December 10, 2018

<sup>430</sup> *Ibidem*. And here the importance of time comes again to mind.

<sup>431</sup> *Ibidem*

<sup>432</sup> See for instance “Tusk slams UK slurs on EU, urges ‘Canada plus plus plus’ Brexit deal” *Reuters* Oct 4, 2018, available at [cnbc.com](http://cnbc.com)

Shortly after Theresa May's decision on December 10 to postpone for fear of rejection the UK parliamentary vote on her decidedly unpopular Brexit deal, the British witnessed another dramatic political development.<sup>433</sup> On December 12, a motion of no confidence on their party's leader was tabled by at least 48 Conservative Party MPs. After some intense backroom lobbying, in the evening Theresa May ended up winning the vote of confidence, by a margin of 200 to 117. The result was not very impressive and showed clearly to the world that over one third of her MPs felt she should not be in her position of authority. Moreover, in order to muster her votes she had to promise that she would not lead the Tories into the next general election, due in 2022. And, while formally not subject to additional internal challenges for a year, almost immediately after the vote Tory rebels started to call for her to quit.

Abroad things did not go much better for Theresa May. In discussions with the EU's top leaders that took place during the December 13-14 European Council meeting in Brussels, she sought again to get concessions on the withdrawal agreement that could make it easier for Westminster to accept her deal.<sup>434</sup> But she was not successful. For instance, with regard to the most controversial question, "EU leaders... [while t]hey said they hoped not to use the temporary [Irish] backstop," at the same time, to her chagrin, they also "rejected a time limit or a unilateral British right of exit."<sup>435</sup> Most interestingly, the UK Prime Minister even mentioned that she could have a vote in Parliament on the WA a few days later, with the certainty that it would be turned down for good. Especially in light of the outstanding importance of the Irish backstop question, nothing captures better the answer to such a warning/threat than the Irish Prime Minister Leo Varadkar's pointed criticism. He stated that the EU could not accept a treaty approval process in which any country "comes back every couple of weeks following discussions with their parliament looking for something extra . . . you can't operate international relations on this basis".<sup>436</sup> And here one cannot fail to notice how stronger the voice of a member country is in an EU context compared to that of a soon-to-be nonmember.

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<sup>433</sup> See for instance "Theresa May lives to procrastinate another day" *The Economist*, December 13, 2018; Parker, George "Where now for Brexit after May's confidence vote?" *Financial Times* December 13, 2018

<sup>434</sup> See for instance Parker, George et al. "May threatens to crash Brexit deal after summit showdown", *Financial Times*, December 15, 2018.

<sup>435</sup> "As Theresa serves up a turkey, Brussels pouts" *The Economist*, December 18, 2018,

<sup>436</sup> Parker, George et al. "May threatens", op.cit.



Back in the United Kingdom, on December 17, 2018, Theresa May announced that the vote in Parliament on the Brexit agreement would take place in the week of January 14, after the Christmas recess and more than a month after it was originally scheduled and just 10 weeks before the March 29, 2019 leaving date.<sup>437</sup> She stated: “I know this is not everyone’s perfect deal... It is a compromise. But if we let the perfect be the enemy of the good then we risk leaving the EU with no deal.”<sup>438</sup> Throwing at her a comment many would find difficult to disagree with, the Labor Party leader said: “The prime minister has cynically run down the clock trying to maneuver Parliament into a choice between two unacceptable outcomes: her deal and no deal.”<sup>439</sup> And clearly, in this context, reference to a second referendum was basically unavoidable for Theresa May who claimed that holding it “would say to millions who trusted in democracy that our democracy does not deliver...” and “... further divide our country at the very moment we should be working to unite it.”<sup>440</sup>

Justine Greening, a Conservative MP and a former cabinet minister, gave in my opinion one of the best answers to this line of reasoning.<sup>441</sup> To start with, she blamed the Prime Minister for “still not allow[ing] parliament a say on her deal” adding that of course, “every day it passes the clock is ticking down.” Here is the time element again, since with her kicking “her Brexit can down the road once more... [Theresa May] is leading Britain down a path that she acknowledges risks an “accidental” no-deal Brexit.” In any case, Greening pointed out that the longer the delay in the vote on the WA, the greater the damage to “Britain, its reputation and my party.” Greening also stressed that many MPs, like herself, who the week before helped May with the party confidence vote did so in order to “avoid chaos” but did not intend to “give her a blank check.”<sup>442</sup> Greening stated that “the Conservative party needs a different strategy to find a way through. Her deal will not pass parliament, but neither will any other. A blocking group of MPs exists for every proposal — leaving us left with only a vote of the British people in a second referendum.” To this, she added that the alternative of having a general election might lead to a

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<sup>437</sup> Lawless, Jill and Danica Kirka “ Britain’s Theresa May calls Brexit deal vote for week of Jan. 14” December 17, 2018 available on the [www.pbs.org](http://www.pbs.org) website.

<sup>438</sup> Ibidem

<sup>439</sup> ibidem

<sup>440</sup> ibidem

<sup>441</sup> Greening, Justine “Parliament must vote on Brexit now — and be ready for a second referendum” *Financial Times*, December 17, 2018. The quotes in this paragraph are all from this opinion piece.

<sup>442</sup> Greening estimated that the number of Tory MPs being comfortable with leaving the EU with no deal was around 80 to 100 against the more than 200 Tory MPs totally against this option. Ibidem. She also wanted of course a vote before Christmas.

government headed by Jeremy Corbyn, which clearly no Tory wanted. Thus, she continued, “we need to realise that Brexit is not about party politics. And, anyhow, Labour has continually fudged its Brexit plan and” stating something which I believe by now everybody has realized, its leadership “will face the same problems as the prime minister” if in her position. Further, and in line with what we saw earlier, Greening stated that by “the summer ... it was clear that...[May’s] Brexit game plan would not work. Leave voters were telling Conservative MPs that they did not feel the proposals would deliver the Brexit they voted for. Meanwhile, Remain voters asked what the point was of leaving the EU to keep following most rules anyway.” More broadly, Greening stated that the problem with May’s deal is not so much the Northern Ireland backstop as the fact that “Britain is leaving the EU with no real sense of what is ahead.” Thus, she concluded, “a second referendum can break the gridlock and give Britain the direction it so badly needs.”

## The new year

After the Christmas recess, the long awaited vote on the withdrawal agreement took place. On January 15 Theresa May's Brexit deal was rejected by the House of Commons by 432 votes to 202. This was a truly historic margin, the biggest defeat ever experienced by any UK government, rendered possible by the large number of the Prime Minister's fellow Tory MPs (118 out of 317) who voted against her.<sup>443</sup> Given these crushing numbers, the tabling of a no confidence Motion by the leader of the Labour Party was a most natural move. However, when on the next day the vote took place, the Prime Minister easily won by 325 votes to 306. Clearly, Conservative MPs wanted to avoid the risk of a snap election that could result in a government led by Labour.

A few days later, on January 21<sup>st</sup>, Theresa May had to present to the UK Parliament a Brexit "plan B".<sup>444</sup> Two themes stood out. First, she promised to give Parliament a greater role in the next phase of negotiations, which her critics viewed basically as window dressing. Second, along lines already heard before, the Prime Minister spoke about getting a better solution to the Irish backstop set-up, viewed by Brexit hardliners as greatly infringing upon UK sovereignty. With regard to the related cliff-edge concerns, she said: "The right way to rule out No Deal is for this House to approve a deal with the European Union."<sup>445</sup> She also repeated that she considered the Article 50 revocation proposals (essentially remaining in the EU under current terms) as going against the will of the people as expressed in the referendum. With regard to a Second Referendum she stated that it "would set a difficult precedent that could have significant implications for how we handle referendums in this country - not least, strengthening the hand of those campaigning to break up our United Kingdom."<sup>446</sup>

On January 29, 2019 the UK Parliament voted on several amendments to the Brexit legislation.<sup>447</sup> The first one, proposed by Jeremy Corbyn, would have required a Parliamentary

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<sup>443</sup> Parker, George et al. "Theresa May's Brexit suffers historic defeat" *Financial Times*, December 16, 2019

<sup>444</sup> The speech is available at [www.gov.uk](http://www.gov.uk).

<sup>445</sup> *ibidem*

<sup>446</sup> *ibidem*

<sup>447</sup> "Brexit amendments: What did MPs vote on and what were the results?" January 29, 2019 at [www.bbc.com](http://www.bbc.com). The amendments are presented here and in our text in the chronological order they were discussed during the day. A look at the voting breakdown confirms once again the deep divisions existing in Parliament over Brexit-connected issues. See also Walker, Peter "Full list: amendments to May's statement on defeat of her Brexit bill" *The Guardian*, January 29, 2019; Sparrow, Andrew,

vote on options to prevent the UK's leaving without a deal; it also supported a form of customs union. The second amendment, proposed by the pro-independence parties SNP and the Welsh Party Plaid Cymru, called on the government to postpone Brexit and rule out no deal. The third amendment, proposed by Conservative MP Dominick Grieve, would have forced government to give MPs the opportunity to discuss a range of alternatives and vote on them before the end of March. The notion of pursuing Parliament control is very clear here. The fourth amendment, proposed by Labour MP Yvette Cooper, would have required the Prime Minister to ask the EU for an extension of the two-year limit on Article 50 if her deal was not approved by Westminster by February 26. The fifth amendment, proposed by Labour MP Rachel Reeves, required the government (in case the PM did not succeed in passing a deal through Parliament by February 26) to ask the EU to postpone Brexit. All these amendments were not approved by Parliament. Instead, the amendment proposed by Caroline Spelman (Conservative) and Jack Dromey (Labour) was approved by 318 to 310. The amendment, of an advisory and not legislative nature, stated that the UK shall not leave the EU without a deal. Most importantly, the amendment proposed by Conservative MP Graham Brady (the voice of Tory backbenchers) was also approved, by 317 votes to 301. It required the backstop to be "replaced with alternative arrangements to avoid a hard border". Clearly, a move to please the Brexiter Conservatives but, given the EU's refusal to reopen the withdrawal agreement, of debatable usefulness in terms of negotiation.

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Kevin Rawlinson, and Martin Farrer "As it happened – MPs vote for Brady's Brexit amendment to renegotiate backstop" *The Guardian* January 30, 2019. As if the amendments mentioned in the text were not enough to convey the complexity and the number of the issues under discussion, one should note that there were also amendments not selected by the Speaker John Bercow or withdrawn. For a list, see for instance Walker, op.cit.

## Brexit: lessons to be learned

The lessons that one can learn, by looking at Brexit from a plurality of angles as we have attempted to do in this paper, are many and most of them will be evident in all their implications only years from now. We shall try here to briefly list, on the basis of our analysis/narrative a few of the most useful categorizations of the factors not foreseen before the referendum that are or will be at the basis of valuable policy lessons-- not just for the UK but also for all the countries in the world that are grappling in one way or another with regional economic and political integration in an ever more connected world.<sup>448</sup>

The first category of lessons will center on the huge underestimation of the challenges associated to leaving the European Union. As we have seen, there is a great economic closeness between the European Union and the UK. As a member, the latter has also traditionally performed an important function as a stepping stone to do business in the rest of the EU, thanks also to its great geographical proximity. The United States and other non-EU countries have taken advantage of the possibility to use the country where the most international language in the world is spoken as their basis to access an advanced market of over 500 million consumers. The study of the evolution of the European integration process, as we have seen, while showing throughout the UK's ambivalence—think about its opt-outs—should have been a useful guide to understand the institutional and regulatory connections between the UK and the EU. Therefore, to think that Brexit could be an event and not a process, and a long and involved one at that, was profoundly mistaken. During the referendum campaign the uncertainties, complexities, and costs of Brexit were not clearly explained by experts, who in any case arguably had not fully understood them. When Theresa May triggered Article 50, it was too soon: she prematurely set a clock in motion, which showed how the complexities of undoing 45 years of institutional and regulatory integration were just ignored. Among others, as noted earlier, the number of treaties that needs to be renegotiated was severely underestimated just as the complexity and time

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<sup>448</sup> “Brexit and Parliament. The Noes have it” *The Economist*, January 19, 2019, provides a useful related analytical framework which benefits among others from several of the ideas put forward by Ivan Rogers, the Permanent Representative of the United Kingdom from November 2013 to January 2017, when he resigned. We start from and expand *The Economist's* categorization, on the basis of the factors and perspectives we looked at. Two interesting speeches given by Ivan Rogers, one on December 13 at the University of Liverpool and one on January 22, 2019 at the UCL European Institute are easily available on the web.

required to do it. Moreover, the negotiating power of a nation no longer in control of an empire was grossly overestimated, especially when interacting with an entity like the EU-27 where some members like Ireland and Spain may have opposite interests to the UK on some issues. Further, the end of the role of the UK as a voice of the United States in the EU supporting Washington's economic and security interests is not to be dismissed. In fact, arguably, the US President has to hold a different view from the one he had as a presidential candidate. And in any case, in the long run, very few people can envision scenarios where the historical, cultural, and linguistic links between the US and the UK, added to the economic and security ones, are better utilized than by staying in the EU as a full member. In other words, with the UK helping shape EU policies in a way that tends to be more favorable to the US than otherwise. And this can be argued with a realist approach in mind but also recognizing the values inherent in better exporting democratic ideas beyond the North Transatlantic area. There are also costs for the European Union from Brexit, economic and political. An EU-27 is less strong than an EU-28 with Britain in it. However, it is very hard to dispute that on account of the economic and political costs that Brexit will impose on the UK, the "centrifugal" forces in other EU members (e.g. in France and Italy) have toned down if not eliminated their exiting rhetoric and goals.

The second category of lessons will revolve around political decision-making and referendums. To an American observer and others from most democracies with a written constitution, truly important changes of a political and institutional nature require weighted majorities. To put it directly, to such non-UK observers a referendum with a small majority, without the additional validation of a weighted majority in the main elected body, and also arguably without the additional weighted voting of subnational assemblies cannot change institutions and policies so dramatically as Brexit does. Given the much greater information about the issues that the UK voters have at present, from an outsider's point of view, another referendum seems to be the way to go. After all, and most Brexiters would disagree because it is not convenient to them to accept this argument, what counts is the most recent will of the majority of the people. However, while probably rather fair, this is not such an easy option, also because its design would be rather complicated. The main problem would be reconciling different views that go from a purely binary choice (in or out) to asking the voters to rank their preferences (e.g. staying, government deal, out without a deal) to have a two-stage referendum (asking first whether voters want to leave the EU and then, if they decide in the affirmative, have

them choose the specific method).<sup>449</sup> Whichever of these options would be chosen, there can be little doubt that the losers would blame the method used and the way questions were posed as unfair and a significant reason for the loss. Perhaps this is the reason why in countries with a written constitution, major institutional and political changes require the main elected bodies to pass them with weighted majorities and not a simple act of Parliament like in the UK. Further, to the puzzlement of any outside observer, the June 2016 referendum was technically advisory-only.<sup>450</sup> Questionably, at least to an outside observer, it came to be viewed as politically binding. And further still, with the benefits of hindsight, a referendum on a subject like Brexit might have been more appropriate and meaningful at the end of a process characterized by extensive negotiations and public debates, not before or at its start.

The third category of lessons will center on Brexit's contribution to party divisions. In the case of the Tory Party, they were most visible within the Cabinet, with all the resignations from Cameron onwards attesting to that. But in Parliament divisions did not become very evident only within the Tory Party. The Labour Party had them as well, although they truly came to the fore later, as for instance the January 29, 2019 vote on the amendments has shown.<sup>451</sup> And then the decision on February 18, 2019 by seven Europhile Labour MPs to resign from the party and become an independent group in Parliament left no doubt as to the big rifts within the party, with that between a very "socialist" leadership and a strong "social-democratic" pro-EU component figuring most prominently. Two days later three pro-EU Conservative Party MPs resigned from their party, on account of its moves rightwards, away from the "centre ground of British politics"<sup>452</sup> Joining forces with the now eight Labour defectors, they formed a group that has come to be known as "The Independent Group" (TIG). One commentator captured the nature of this new force stating that "[i]t is already the most significant breakaway group in almost four

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<sup>449</sup> See "A People's Vote: Second time lucky" *The Economist*, December 8, 2018

<sup>450</sup> See for instance Uberoi, Elise "European Union Referendum Bill 2015-16" Briefing Paper no. 07212, 3 June 2015, p. 25 available at the [www.parliament.uk/commons-library](http://www.parliament.uk/commons-library) website.

<sup>451</sup> Some could have argued until very recently that the splits within the Conservative Party in Parliament, in the membership, and within its electoral base are greater than its main rival in Westminster. But that might have been largely stemming from the decisions taken by Theresa May. The greater specificity in terms of policy proposals and strategies that Jeremy Corbyn would have to offer soon was destined to result in bringing to the surface the truly significant splits existing within his own Labour party. Of course the opinion among many that Corbyn "has presided over a foul resurgence of anti-Semitism, misogyny and entryism" have certainly contributed to such divisions. The Editorial Board "The centre strikes back in British politics" *Financial Times*, February 21, 2019.

<sup>452</sup> "The three Tory MPs' joint-resignation letter as they quit to join the Independent Group" is available at [www.politicshome.com](http://www.politicshome.com).

decades for a parliament in which the two main parties have formed the government of the day for almost a century, largely restricting smaller groups to the political fringes.”<sup>453</sup> Another comment is also very interesting: “a new centrist political force that is economically responsible, socially aware and takes an open view of the world is much needed.”<sup>454</sup> This is a group that will have to find a way to work with the Liberal Democrats which, as a centrist force, would be a very natural ally in Parliament and outside.<sup>455</sup> Much will depend of course also on future defections, with the Labour Party appearing much more likely to experience them. In line with our overall analysis the same commentators state: “The Brexit referendum of June 2016 was a political earthquake. Nominally about Britain’s long-troubled relationship with Europe, the vote to leave pointed to deeper schisms in society.”<sup>456</sup> Another proof of the uncertainty-inducing and position-shifting impact of Brexit came in late February 2019 with a major change in Labor’s position. Jeremy Corbyn had supported Brexit and promised to deliver it in the 2017 Labour’s election manifesto. However, Corbyn announced on February 25: “The Prime Minister is recklessly running down the clock, in an attempt to force MPs to choose between her botched deal and a disastrous no-deal. We cannot and will not accept. One way or another, we will do everything in our power to prevent no-deal and oppose a damaging Tory Brexit based on Theresa May’s rejected deal. That’s why we are committed to also putting forward or supporting an amendment in favour of a public vote to prevent a damaging Tory Brexit being forced on the country.”<sup>457</sup> This shift with regard to a second referendum showed an implicit recognition of the power of the threats to the Labour Party that the defectors represent. A vote by British lawmakers by 323 to 240 on February 26 against a Labour Party’s proposal for a permanent customs union with the EU reinforced the changed Labour official position in favor of a second referendum. And, of course, it displeased the Leavers in Corbyn’s party. Further, in the same week, another proof of internal party divisions came from another shift, this time in the Conservative Party, with Theresa May “shifting tack to allow the option of a delay to the date

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<sup>453</sup> William, James “Brexit defections reveal frayed fabric of UK politics” Reuters February 21, 2019.

<sup>454</sup> The Editorial Board, “The centre strikes back in British politics”, op.cit

<sup>455</sup> “Work[ing] with other parties, including the Scottish and Welsh nationalists as well as ...the Greens” also makes sense, of course. “British politics: Splitting image” *The Economist*, February 23, 2019.

<sup>456</sup> Ibidem.

<sup>457</sup> Quoted in Crerar, Pippa and Mikey Smith “Corbyn backs second Brexit vote” *The Daily Mirror*, February 26,2019.



that Britain leaves the EU.”<sup>458</sup> And, in so doing, clearly also displeasing the hard Brexiters in her party.

The fourth category of lessons has to do with the negotiating strategies employed by Prime Minister May, which most observers think show a noncooperative style. When she got her position in July 2016, largely by default because of the excessively controversial statements made by her rivals, she did not move in the conciliatory manner to be expected by the moderate remainder she had been during the referendum campaign. Instead, she acted from the beginning as the determined representative of the winning 52 percent and, in doing so she played a pivotal role in increasing divisiveness in the country. She did not reach remainers for input, did not explain the negative economic consequences deriving from exiting from the EU, and did not clarify that the complexities of the process meant that there could be truly many different Brexit plans and paths. Instead, she created “red lines” which were very one-sided and basically impossible to accept by the EU-27. They basically meant that the UK would leave the customs union and single market, no longer allow the free movement of people, and accept only the decisions of UK courts. This is all connected to the fact that, in Theresa May’s words, the decision to leave was given by the people of the UK “with emphatic clarity”<sup>459</sup>, an overstatement of the will of the nation (again, at the very least from an outsider’s point of view). Her secrecy in negotiating throughout, her not listening to the advice of diplomats and public officials with insiders’ expertise on the workings of the European Union, her presenting a document like the Chequers White Paper which was immediately dismissed by the EU top negotiators, all are factors that point to inadequate leadership. And basically nothing captures better the leadership image that Theresa May and the Brexiters offered to many across the entire negotiating process than President Donald Tusk’s words at a press conference on February 6, 2019: “I have been wandering what that special place in hell looks like for those who promoted Brexit without even a sketch of a plan on how to carry it out safely.”<sup>460</sup> This is clearly an inflammatory statement and from a political marketing point of view probably unwise. It understandably was strongly criticized by Downing Street as well as many Brexit supporting MPs and many in the UK who

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<sup>458</sup> Mance, Henry “Labour party formally backs referendum on Brexit” *Financial Times*, February 27, 2019

<sup>459</sup> “Britain’s after Brexit: A Vision of a Global Britain” speech by Theresa May at Conservative conference, October 2, 2016, available at the [www.politics.home.com](http://www.politics.home.com) website

<sup>460</sup> See for instance “Donald Tusk: Special place in hell for Brexiteers without a plan” BBC News February 6, 2019.

resent attacks from outsiders. But it can be argued that what made the statement relatively more tolerable was that it was preceded by a phrase connecting the Irish backstop solution already agreed upon to the absolute commitment of the EU to peace, a fundamental value at the beginning of the European integration process; thus, from this perspective, going against the backstop directly threatens peace in an area beset for a long time by significant loss of life.

A fifth category of lessons will come from issues connected to public policy management. A typical student of the subject, when thinking about agenda setting or problem definition, program design, legitimation, budgeting, implementation, and evaluation<sup>461</sup> would easily see that in most public policy areas as a result of Brexit the UK government has not been particularly effective. In other words, it is difficult to disagree with those who claim that Brexit's impact on the government cabinet's time and energy has prevented it from confronting the significant "problems facing Britain- weak productivity growth, inadequate housing, crumbling social" and health "care, and a grim-long term outlook", among others.<sup>462</sup> The government's internal divisions, its use of inquiries, consultations and reviews has come to be increasingly seen as thinly disguised indecision. If one adds the parties' in-house rivalries, the difficulties to muster a majority (especially after the June 2017 elections), and a civil service too distracted by Brexit and spread too thin, one can understand why many talk about paralysis in British politics. The austerity programs started in 2010 have not helped, especially on the front of equality. For instance, tax cuts benefiting more affluent households and spending cuts in public services (from hospitals to schools) affecting disproportionately senior citizens and low-income households with children have contributed to the divisiveness within the country. Their impact has made the promises repeatedly stated by the Prime Minister to help those "left behind" sound very empty. And here, from this outsider's point of view, there is the misleading political marketing by Leavers' during the referendum that cast Brexit as the solution to the problems created or intensified by the austerity program. True, the European Union has not been a model of

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<sup>461</sup> The policy analysis literature is of course immense. Its application to international issues and to countries beyond the Anglo-American sphere has also increased with time. For an early example of a major analytical framework employed in examining an issue of international political and economic nature see for instance Ammendola, Giuseppe *From Creditor to Debtor: The US Pursuit of Foreign Capital- The Case of the Repeal of the Withholding Tax* (New York and London: Garland, 1994; New York and London: Routledge, 2019 )

<sup>462</sup> "The absent agenda" *The Economist* January 26, 2019; see also Observer Editorial "The Observer view on the baleful distraction of Brexit" *The Guardian* December 15, 2018 where reference is also made to the cuts in police officers in spite of increases in violent crimes and to the delays in large infrastructure projects; see also Hetherington, Peter "Theresa May will need more than warm words to revive left-behind Britain" *The Guardian* January 15, 2019

successful problem management and solving in areas ranging from economic growth, to deficit spending, to the euro, to employment, to migration, but the UK leaders have found it very convenient to blame Brussels for problems that in many instances were of domestic origin. And, in fairness, this putting the blame on Brussels has been often heard in most if not all of the EU member states. Local politicians have found it very convenient to do so especially since the beginning of the second decade of the euro's life, which has coincided with the beginning of the financial crisis.

Another area where the lessons to be learned will be truly significant has to do with devolution. This is a truly vast subject and, given the different political and economic realities existing in Scotland, Northern Ireland, and Wales, only a few very broad considerations are possible here. As we have seen, Scotland and Northern Ireland voted by a fairly large margin to remain, while Wales voted to remain in percentages similar to those of the whole UK. Also, as we noted above, the UK Supreme Court denied that the devolved legislatures had any say with regard to the authorization to invoke article 50. Another set of disparities stems from the fact that as the House of Lords' European Union Committee pointed out "[t]he devolution settlements have developed incrementally and asymmetrically since 1997, as more overlapping and shared competences have been introduced."<sup>463</sup> The Committee added that "EU law is interwoven with the devolution settlements, and throughout this period, the supremacy of that EU law, and its interpretation by the Court of Justice of the EU, have helped to hold the UK together and maintain the integrity of its internal market."<sup>464</sup> Here, notably, once again the issues of complexity, "red lines", and peace with Northern Ireland come to mind. Also it is worth adding how, in one study's words, "[d]evolution arrangements have been loosely structured in an informal system of inter-governmental relations, creating over time tension between the principles and exercise of Parliamentary sovereignty, on the one hand, and the 'permissive autonomy' of regional governance, on another. Such tension has been heightened by Brexit."<sup>465</sup> In point of fact, a crucial conflict can materialize with the repatriation of legislative powers from EU level to Northern Ireland, Scotland, and Wales. Notably, and this is clearly relevant to the challenging issue of conducting international negotiations, there is the problem that "keeping

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<sup>463</sup> European Union Committee, House of Lords "Brexit: devolution" published on July 19, 2017 available at [www.parliament.uk](http://www.parliament.uk)

<sup>464</sup> *ibidem*

<sup>465</sup> Komarova, Milena et al. " Briefing Paper 5: The Impact of Brexit on Devolution in Northern Ireland" January 14, 2019 *The Center for Cross Border Studies*

powers at the centre will threaten the stability of existing devolution arrangements and could cause irreparable harm to the relationship between the devolved administrations and Westminster” and this is why “Brexit will require the UK and the devolved nations to co-operate actively in a way that has not always been necessary within the EU structures.”<sup>466</sup> And here, once again, the stopgap measure comes to mind as a way to attempt to retain the undoubtedly peace-promoting impact of the EU on Northern Ireland and which Brexit could affect very negatively. Most tellingly, in response to the European Union Committee report mentioned above, the UK Cabinet declared that “[t]he UK government has been clear it will negotiate on behalf of the UK, taking into account the specific interests of every nation and region of the UK, working closely with the devolved administration.”<sup>467</sup> Here one cannot ignore how the whole issue of the representation of the devolved administrations at the negotiating table with the EU, when discussing matters relevant to them, is likely to be a source of controversy. Among others, the impact of the end of the flow of EU Structural Funds will have to be tackled. This means seeing how promises such as those made in the 2017 Conservative manifesto to create, with the money coming back to the UK, a new “Shared Prosperity Fund... to reduce inequality between communities across our four nations” so as to assist in “deliver[ing] sustainable, inclusive growth” will translate into policy.<sup>468</sup> More broadly, there can be also little doubt that the analysis of the connection between devolution and Brexit will provide interesting insights into the links existing between identity politics and globalization.

Brexit also will offer interesting lessons in the area of national security. One interesting major recent example comes from a common public stand taken by some experts concerned about the Withdrawal Agreement’s impact on it.<sup>469</sup> Notably, “the draft withdrawal document actually commits us to a European defence role without any say in its formulation, and would effectively end the UK’s successful policy of denying the European Commission the

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<sup>466</sup> Jack, Maddy Thimont et al. “Devolution after Brexit: Managing the environment, agriculture and fisheries” Institute for Government, April 2018.

<sup>467</sup> Cabinet Office, Chris Skidmore MP “Response to the Lords of European Union Committee Brexit: Devolution” September 14, 2017 available at [www.parliament.uk](http://www.parliament.uk)

<sup>468</sup> The Manifesto can be found for instance at: “2017 Conservative Manifesto: full text” *The Spectator* May 18 2017.

<sup>469</sup> See for instance Dearlove, Richard “The security and defence threat posed by May’s Brexit deal” *Financial Times*, November 24, 2018; Isaby, Jonathan “Former MI6 chief accuses Theresa May of ‘surrendering British national security’ to the EU”, available at the [brexitcentral.com](http://brexitcentral.com).; Craig, Jon “Ex-MI6 and defence chiefs warn Tory MPs to vote down Brexit deal that ‘threatens national security’” January 10, 2019, available at the [sky news website](http://skynews.com).

development of a military or security role.”<sup>470</sup> Clearly this reference to the loss of sovereignty pleased the hard Brexiters and emphasized the blurred nature of the Prime Minister’s red line of “taking back control”. It also reminded everyone, especially in Washington, of the UK’s Anglo-American role in the EU. Notably, one reads also that the “[withdrawal] document suggests that...the prime minister actually bargained away, without telling us, some of those assets to our national security in a manner that could weaken Five Eyes and our partnership with the US.”<sup>471</sup> The reference to the US, UK, Canada, Australia, and New Zealand link could also be seen as part of the economic connections among the Five that the UK hopes to make stronger by leaving the EU. Moreover, this deal is a “surrender ... to an undemocratic organisation, the European Commission [with] the last two years [demonstrating] how untrustworthy and hostile towards the UK the EC is, notably [ through ] its use of the Irish border as a weapon.”<sup>472</sup> Incidentally, but importantly, the idea that the European integration process has not been truly democratic, with only very few direct consultations of the people across the years, is fairly reasonable (Brexiters in general make this point) and heard also in other EU countries. But, once again there is here another contradiction, as Remainers would point out that following this logic a new referendum must be held so as to respect the greater information now available to voters and the fact that many of those who voted against staying are of an age that will not permit them to see the full negative impact of Brexit, which instead younger and new voters will.

In any case, the Prime Minister’s team denied that the withdrawal agreement in any way reduced the security of the United Kingdom. One Labour leader interestingly stated that “the deal is a bad one for our security but... leaving the EU without any agreement at all would make things even worse.”<sup>473</sup> It is not a difficult prediction to make that, in this area just as in other ones connected to Brexit, multiple and often contrasting opinions will continue to appear. In any case, the launching of a common defense pact, and above all its implementation, will have to confront significant credibility issues. And, probably and hopefully, some of the concerns about the United States’ diminished interest in Europe (triggered by the strategic pivot shift to Asia championed by the Obama Administration) are excessive. Again, time will tell.

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<sup>470</sup> Dearlove, op.cit.

<sup>471</sup> *ibidem*

<sup>472</sup> Isaby, op. cit.

<sup>473</sup> Craig, op.cit. The leader referred to here was Labour MP Stephen Doughty.

## Globalization

As we have seen, many of the issues discussed in this paper are connected to the global economy. Thus, with regard to the lessons for globalization that Brexit can offer, it is very reasonable to say that they will be many and that at this point in time they are also very difficult to anticipate. The Governor of the Bank of England Mark Carney has made some broad relevant points in a speech given at a very critical moment of the negotiations: “Trade tensions abroad and Brexit debates at home are manifestations of fundamental pressures to reorder globalisation.”<sup>474</sup> The trade tensions he refers to are those among the US, China, and the EU and stem from the more aggressive trade policies pursued by President Trump.<sup>475</sup> Then, Carney added: “It is possible that new rules of the road will be developed for a more inclusive and resilient global economy. At the same time, there is a risk that countries turn inwards, undercutting growth and prosperity for all. Concerns over this possibility are already impairing investment, jobs and growth, creating a dynamic that could become self-fulfilling.”<sup>476</sup> For sure, the Bank Governor sees the merit of “the current cycle of globalisation” stating that it has “lift[ed] a billion people out of poverty and rais[ed] output per capita up 40% in both the UK and globally since the mid-1990s.”<sup>477</sup> However, at the same time, Carney identified three major imbalances threatening the sustainability of the present globalization’s cycle.

First, there are “*external imbalances*, with large trade surpluses emerging in some regions and big deficits in others.” Such imbalances are more difficult to deal with, Carney explained, because emerging markets currently account for 60 percent of world GDP, up from 40 percent twenty five years ago.<sup>478</sup> If one adds the fact that “the US dollar is as dominant today as it ever was... this contributes economically to higher risks of sudden stops and politically to greater mercantilist pressures.”<sup>479</sup> Then, Carney added that globalization “has contributed to higher *imbalances of income and wealth* in many countries... [with] the benefits of trade ... unequally

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<sup>474</sup> Mark Carney “The Global Outlook”, a speech given on February 12, 2019, is available on the Bank of England website.

<sup>475</sup> Ibidem, where one can see that the weighted average bilateral tariffs between the US and the EU are fairly close (before and after escalation), while those between China and the US show a greater starting imbalance (much higher Chinese tariffs) and greater escalation by both the US and China.

<sup>476</sup> Ibidem. Once again, never underestimate the role of expectations.

<sup>477</sup> ibidem

<sup>478</sup> Ammendola (2011) “Some Trends and Perspectives on Globalization, Economic Growth, Equality, and Development” *op.cit.* confirms that this growth trend has been very clear for years.

<sup>479</sup> Carney, *op.cit.*, On the economic theories influencing emerging markets see for instance Ammendola (2011).

spread across individuals and time. Consumers get lower prices and new products, and further benefits from higher productivity over time. Some workers, however, lose their jobs and the dignity of work, or see their ‘factor prices equalised’. In plain English, their wages fall.”<sup>480</sup> And, clearly, any reader will think of the many individuals whose jobs are outsourced and whose vote went to leave the EU and, in the United States, to a man who promised to help them. Further, to them, it is little consolation that the “experts” claim their loss is often attributable to greater automation and that theirs is a problem experienced in other advanced economies. And, it is fair to say, most expert economists totally abstain from assessing trade agreements’ specific distribution impacts. The third threat to the sustainability of the current globalization cycle, Carney continued, comes from the “*imbalances of democracy and sovereignty*.”<sup>481</sup> Here, he makes reference to what Dani Rodrik calls “the fundamental political trilemma of the world economy” whereby the latter states that “we cannot simultaneously pursue democracy, national determination, and economic globalization.”<sup>482</sup> In Carney’s words: “Common rules and standards are required for trade in goods, services and capital, but those rules cede or, at best pool, sovereignty. To maintain legitimacy, the process of agreeing those standards needs to be rooted in democratic accountability.”<sup>483</sup> Globalization, Carney went on, has to be “more inclusive [and] sustainable” with “part of the solution [being]... a more flexible and open trading system for services and for small and medium enterprises (SMEs).”<sup>484</sup> Here, the fact that the withdrawal agreement is basically silent on services comes to mind, while the reference to SMEs suggests an implicit recognition of the strength of the German business system and its ordoliberalism. As a matter of fact, Brexit reflects a dichotomy encountered in economic policy management and thinking across the world. On the one hand there is neoliberalism, with its emphasis on trying to avoid as much as possible state intervention in the market (*laissez-faire*). On the other hand there is ordoliberalism, which is centered on the idea that markets cannot be left to themselves and there must be a government fighting companies’ efforts to limit competition. Along these lines, it is worth noting what one clever EU observer said: “Smaller

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<sup>480</sup> Carney, op.cit.

<sup>481</sup> *ibidem*

<sup>482</sup> Rodrik, Dani *The Globalization Paradox: Democracy and the Future of the World Economy* (New York: Norton, 2011) p. xviii. Rodrik’s work is truly important in the field. See for instance Ammendola (2011).

<sup>483</sup> Carney “The global outlook” op. cit. And the European Parliament, one could argue, may not be “legitimate” enough. Moreover, Brexiters and Remainers would each obviously look at the trilemma’s goals differently and as Rodrik (2011), has broadly pointed out years before the issue surfaced, that, in general, “our troubles have their roots in our reluctance to face up to these ineluctable choices.” p. xix.

<sup>484</sup> Carney, *ibidem*. Once again, the European Parliament elections and their broad legitimacy come to mind

companies pay more taxes relative to their income than large multinational corporations. The economic policies that followed the financial crisis ended up widening income and wealth differences.”<sup>485</sup> And, in a way that shows the interconnectedness of many of the issues we have discussed, he immediately added that “[l]arge immigration flows created insecurity, as did the arrival of new technologies. When you call voters deplorable — or patronise them, as happened in the UK after the Brexit vote — you add insult to injury.”<sup>486</sup> Here comes to mind the consideration that criticism of or condescension toward voters who follow “populist” leaders or ideas most often ignore these voters’ complaints in terms of both feeling left behind and being afraid of losing their identities.

Returning to the Governor’s remarks, he continued: “Consider the UK as a leading indicator of a nascent global trend. UK business investment has fallen 3.7% over the past year despite the ongoing expansion, high business profitability and accommodative financial conditions. With fundamental uncertainty about future market access, UK investment hasn’t grown since the referendum was called and has dramatically underperformed both history and peers.”<sup>487</sup> Here the risk of a no-deal Brexit comes to mind and with it the fact that thousands of UK companies have already moved ahead with their emergency plans to cope with it, as the British Chambers of Commerce attested at the beginning of the new year.<sup>488</sup> Thus, Carney added, “similarly, a prolongation of global trade uncertainty could undermine the global expansion...” and “...[m]ost fundamentally, the larger and the more permanent the disruption to global trade—the greater the deglobalisation—the greater the reduction in both activity and supply capacity of economies. The latter—a material hit to supply—is something that advanced economies have not experienced since the mid-1970s. In this scenario,” Carney continued, “the combination of slower growth, smaller surpluses in Asia and higher risk premia could move global interest rates higher, increasing the burden of corporate and household debts and challenging the creditworthiness of some sovereigns.”<sup>489</sup> In drawing this analogy, the governor plausibly offered an implicit criticism of the relatively little attention being paid to Brexit in the US and arguably

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<sup>485</sup> Münchau, Wolfgang “The crisis of modern liberalism is down to market forces” *Financial Times*, December 23, 2018.

<sup>486</sup> *Ibidem*.

<sup>487</sup> Carney, op.cit. Another reference to uncertainty.

<sup>488</sup> See for instance Inman, Phillip et al. “UK firms plan mass exodus if May allows no-deal Brexit” *The Guardian*, January 26, 2019.

<sup>489</sup> Carney, op.cit.



even in the EU. Instead, Carney maintained (very reasonably, I think) that Brexit is important because it is “in many respects, ... the first test of a new global order and could prove the acid test of whether a way can be found to broaden the benefits of openness while enhancing democratic accountability.”<sup>490</sup> And, most interestingly, the Governor went as far as saying that “Brexit can lead to a new form of international cooperation and cross-border commerce built on a better balance of local and supranational authorities.”<sup>491</sup> In these respects, Brexit could affect both the short and long-term global outlooks.”<sup>492</sup> Moreover, injecting his opinion about the negotiations, he ended by saying that “it is in the interest of everyone, arguably everywhere... that a Brexit solution that works for all is found in the weeks ahead.”<sup>493</sup>

The three imbalances identified in Carney’s speech—external, of income and wealth, and of democracy and sovereignty—also are used de facto in the arguments put forth by those who talk of Europe as a declining force in world affairs. For instance, recent concerns over Germany’s near-zero growth and the February 2019 GDP growth forecast revision for the euro area in 2019 downward from 1.9 to 1.3 percent were definitely seen by Euroskeptics as a confirmation of their views.<sup>494</sup> More broadly, “economic output in the eurozone was lower in 2017 than it was in 2009; over that same period, gross domestic product grew 139% in China, 96% in India, and 34% in the U.S., according to the World Bank.”<sup>495</sup> Critics of the EU integration process essentially maintained that both widening (the eastward EU membership expansion) and deepening (the increased integration of the EU, with its most visible manifestation being the introduction of the euro) were failures. And, looking at this in terms of power, one observer stated very pointedly: “Neighbors like Russia, Turkey, Israel and the Arab states flout the EU’s wishes at will. European influence in Washington, already declining in the Obama years” (the “pivot to Asia” comes to mind), “has reached a nadir under Donald Trump...” and “China takes Japan and India more seriously than it takes the EU.”<sup>496</sup> These are opinions widely held by Euroskeptics on the Continent and, of course, Brexiters. However, also

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<sup>490</sup> Ibidem . This could be interpreted arguably as a reference to the not-too-great democratic accountability in EU decision-making.

<sup>491</sup> Ibidem. Here a scholar of the European integration process would be inclined to connect such a statement with the principle of subsidiarity, formally introduced in the Maastricht Treaty.

<sup>492</sup> Ibidem.

<sup>493</sup> Ibidem.

<sup>494</sup> Jones, Claire “Germany avoids slipping into recession by a whisker” *Financial Times*, February 14, 2019 and European Commission *European Economic Forecast Winter 2019* (Interim) Institutional Paper 096, February 2019

<sup>495</sup> Mead, Walter Russell “Incredible Shrinking Europe” *Wall Street Journal* February 12, 2019

<sup>496</sup> Ibidem.

in light of Theresa May's negotiating difficulties, there can be little doubt that for now "Europe remains formidable as a consumer bloc" and therefore as a regulator.<sup>497</sup>

The three dimensions referred to in Carney's speech and especially the third one, that of the imbalances of democracy and sovereignty, are particularly relevant to the European integration process. During the Brexit referendum campaign many pro-Europeans were concerned that other countries may follow suit with their own referendums. This fear of "contagion" clearly proved to be unjustified as it became evident what kind of economic and political prices an exiting country had to pay. However, the creation of a common front against the UK did not lead to greater integration among the EU-27. Anti-EU parties and interests, after having seen during the Brexit referendum the power that came from going against the status quo (the power of a protest vote), have decided to work from the inside the current EU institutional arrangements. The May 2019 European Parliament elections offer definitely the opportunity to anti-EU parties and forces to advance their views in areas as different as: migration and connected concerns about integration and national identities; economic and industrial decline; the euro; foreign trade; EU budgetary issues; the relationship between democracy and the rule of law in Hungary, Poland and other EU members; terrorism threats; and Russia's comeback. Pro-Europeans used not to be very concerned. In previous elections, the very diverse and often opposite positions advocated by anti-EU parties were a source of great reassurance for the supporters of an ever more integrated and outward-looking Europe. However, the risks of the possibility of a high voter turnout among dissatisfied Europeans, of a low turnout instead among the supporters of European integration, and of strategic alliances among very diverse anti-EU parties and interests are more real than they have ever been. As the only body directly elected in EU as a whole, the European Parliament's results will reverberate all over the world, in spite of the relative diminished importance of Europe. It will be very interesting to see how pro-European forces will organize their campaigns to confront such challenges. It will be a clash of ideas revolving around a key dichotomy: intergovernmentalism against supranationalism. And, most importantly, this battle will not be over with the elections. It will be affected, at least subtly,

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<sup>497</sup> *Ibidem*

by different multi-speed integration proposals and scenarios. And, almost assuredly, much more so and more openly in the years ahead.

## Conclusion

As we have seen, it is clear that Brexit is not an event but a process. Complexity, uncertainty, and unpredictability have characterized it from the spring 2016 referendum campaign onward. The historical, economic, political, legal, social, and cultural realities that have affected it and that have been impacted by it are countless. Whatever its formal end result, the way we look at regional integration and globalization will never be the same. Rich and varied avenues of additional exploration will certainly continue to emerge from the study of Brexit's evolution and impact.

