

President Macron and the Brexit Negotiation

By [Jean De Ruyt](#) and [Sebastian Vos](#) on May 12, 2017

On May 7, President-elect Emmanuel Macron greeted his jubilant supporters in the grounds of the Louvre to a serenade of the *Ode to Joy*, the anthem of the European Union. He had won the second round of the French Presidential election, dismissing the far-right Marine Le Pen's challenge by 66.1% to her 33.9%

A New Euro-Euphoria?

The new French President will face tough challenges in promoting his party, re-named “La République en Marche” in the two-stage Parliamentary elections on June 11 and 18. He will need to counter the resentment of the traditional parties who did not make it to the second round of the election, and also the anger of those who voted for the extreme left-wing Mélenchon, who will try to derail his first attempts at fixing the labor market with demonstrations in the streets.

But the fact that he received 2/3 of the votes in the second round while defending further integration of the EU is enough for the future of the block to look brighter again – after two *anni horribiles*.

Macron's election follows the defeat in December of last year of the populist Norbert Hofer for the presidency of Austria and the victory in March in the Netherlands of the Liberal prime minister Mark Rutte over the sulfurous Geert Wilders. With current local elections in Germany offering the Christian Democrats' unexpected success, the re-election of Angela Merkel in September once again seems likely. Only Italy continues to remain under threat of the populist “*Cinque Stelle*” movement – but the ease with which Matteo Renzi regained the chairmanship of his Democratic Party this month contributes further to a new wave of Euro-Euphoria.

The EU 27 and the UK in two Different Galaxies

Tempering this enthusiasm, however, is the fact that the Brexit negotiations have not even started, and that their chance of success continues to be as low as when Prime Minister Theresa May presented her “hard” position at the Conservative party conference in October 2016. After more than 10 months of “non-negotiation,” the positions on both sides have hardened, which was to be expected. The famously-leaked dinner in Downing Street on April 26 only made the general public more aware of this polarization.

In a spectacular show of unity, and with almost no debate, on April 29, the 27 EU heads of government agreed the “guidelines” for the negotiation (see [here](#)). These guidelines make clear there will be two phases in the Brexit negotiation, and that the second phase –

in which the future relationship will be discussed – can only start after the Council decides that “sufficient” progress has been achieved on the two main issues to be discussed to settle the “past”: the fate of EU citizens living in the UK and the settlement of UK financial commitments resulting from its membership of the Union.

In short, as the countdown began on March 29, if there is no satisfactory agreement on these two issues before the end of the two years, the UK will leave the EU on March 29, 2019, falling off the “cliff” with no parachute. A withdrawal with no agreement could happen even earlier, if the pressure from public opinion and the press in the UK is such that Theresa May does not have the political support to make the necessary concessions on time.

Let us look briefly at why these two issues are so difficult.

Citizens’ rights

The guidelines adopted by the 27 ask explicitly that EU citizens residing in the UK before the withdrawal date should continue to receive “equal treatment ... compared to UK citizens.” The British view is rather different: they would apply the most generous existing immigrant conditions to the EU citizens who want to remain. This would not, however, give them the rights they enjoy now – one example being the status of the spouse if he or she comes from a third country.

Maintaining an equivalent status will also generate a bureaucratic nightmare, since new legislation will need to be passed on a myriad of issues. And the question will also arise of a continuing jurisdiction of the European Court of Justice – which is anathema for the “Leavers” (and apparently for Theresa May herself).

This is a very emotional issue and, since reciprocity will be given to UK citizens residing in other European Union states, a solution will probably be found. But at this stage the positions are very far from each other, and a lot of technical as well as political effort will be needed.

The Financial Settlement

If the guidelines only define general principles for a “single financial settlement”, “covering all commitments as well as liabilities, including contingent liabilities”, the Commission “recommendation” for the negotiating mandate (see the text [here](#)) outlines in detail what the “methodology” for a financial settlement should be. Commission sources leaked to the press calculations based on their view of the methodology that might put the figure owed by the UK at close to 100 billion.

The British approach to its financial commitments is radically different. Many Leavers interpret Article 50, according to which after two years “the treaty ceases to apply” to the UK, to mean that, after that date, there is no further obligation to reimburse.

Some commentators even argue that not only will the UK not be liable for anything, but that the EU should rather reimburse it for the share of EU assets it will have to abandon.

Insiders in Brussels acknowledge that the final solution to the financial issue will probably be a fixed global amount decided as a political compromise. Meanwhile, the “methodology” mentioned in the guidelines will need to be agreed – and it will require a major effort from the UK side to agree to any formula. Even if Theresa May, in her 29 March letter, seemed to admit that a “fair settlement of the UK’s rights and obligations has to be determined”, her current campaign statements are not preparing British public opinion to swallow this.

The Future Relationship

What the future relationship between the UK and the EU will not be is already clear: the UK will leave the internal market and the customs Union, and will no longer need to respect the four freedoms linked to it. The two sides have already agreed that there will be no “cherry picking” – that is, no sectorial agreements or partial membership of the internal market. In their guidelines, the 27 announce that they stand ready to negotiate a “balanced, ambitious and wide-ranging” free trade agreement with the UK. They add that they also stand ready to establish “partnerships in the fight against terrorism and international crime, as well as security, defense and foreign policy”.

The new trade relationship will resemble free trade agreements concluded recently by the EU with “Western” countries, like the CETA with Canada. The advantage is that it will be negotiated in reverse: starting with the current membership situation, there will logically be major efforts to keep the trade relation as close as it is now. But the devil will obviously be in the numerous technical details, and might well extend the text to the same 2,000 pages of the CETA.

Meanwhile, there are already discussions among the 27 about the current trade agreements between the EU and third countries in which import quotas have been fixed, including a substantial share for the UK. Will these quotas need to be shared among the remaining member states or will the UK take a part of them in a parallel negotiation?

Another sensitive issue is the transition period. Since the new free trade agreement will probably need to be ratified by all parliaments of the member states, a transitional period will be needed during which the current trade relationship will be preserved, in order to avoid the “cliff edge.” But even if the UK will no longer be a member, during this period it will have to respect the rules of the single market, including the four freedoms. This will also be very difficult to accept in London, where the Leave camp will suspect the Remainers of attempting to prolong this transition forever.

The Moment of Truth

The EU Council is currently examining the Commission's "recommendation," and the General Affairs Council will meet to approve it on May 22. The negotiation between the UK and the EU will then probably start in the second half of June when the new British government will be in place.

Not very much will happen in the first three months of the talks. July will be used for exchanging positions and hearing clarifications. August will be light, for reasons of the sacred EU Summer break, however urgent matters may be. In September, attention will be squarely on the German elections. Only after that will a first serious discussion take place, most likely around the October European Council.

This might well be the (first) moment of truth. In the guidelines, the European Council was careful to reserve the right to decide if "sufficient" progress has been made in the first phase to start the negotiation on the future relationship – the only "positive" part of the negotiation from the British point of view. If not, the Article 50 clock will continue to tick.

Macron's election and the renewed spirit of Euro – optimism will help prepare this dangerous moment in a more positive spirit than would have been the case with Marine Le Pen or Mélenchon. And Angela Merkel's probable fourth term will also help make the situation more serene. The Brexit negotiation will proceed more easily if negotiators on both sides can count on a comfortable majority behind them.

This does not mean that Macron and Merkel will be flexible on the principles mentioned in the guidelines. One can expect them to be tough and to rally most Member States to their intransigence. Only the Netherlands, Ireland, Denmark and maybe Belgium will continue to push for an early start on the negotiation on the future – vital to their economic ties with the UK. But as far as the first phase is concerned, the 27 have no choice but to remain united in pressing the UK to agree with their "methodology" for settling the past.

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