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The withdrawal of the UK from the EU: a case of complex negotiation

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Introduction

As the title itself states, the very fresh withdrawal of the United Kingdom from the European Union was characterized by periods of great misunderstanding and turbulent negotiations. In my paper I will try to explain this complex negotiation by relating it to Robert Putnam's famous "two-level game" theory. Indeed, is it possible to find a double negotiation within the dialogue between the United Kingdom and Europe? Certainly, as we will see, it is a multi-level and multi-layered negotiation as the actors on stage have to juggle between international interests and domestic interests, both with their own considerable specific weight and, as Putnam suggests, if all the parties involved are unable to find common ground negotiation can only have an undesirable outcome. In the following chapters I will try to analyze first of all the basic historical reasons that led to the famous British referendum of 2016 in which the British people expressed themselves in favor of a split, then we will understand what are the withdrawal mechanisms that the United Kingdom has been able to activate within the European legislation and therefore we will understand how the important article 50 of the Treaty on European Union works. The center of my thesis is obviously the aforementioned theory of the negotiation as a game on two levels that will be widely explained and materially applied to the Brexit double negotiations, it will therefore be necessary and natural to understand how the individual negotiations took place both within the United Kingdom, within the European Institutions and between Member States, also analyzing the reaction of some European nations to the destabilizing withdrawal procedure. In the end, therefore, I will try to draw conclusions about the totality of the negotiation but also about its multilayered character.

Chapter 1 - Background and context

The complicated relationship between the UK and the European Union has a long history. Among the various forerunners of the European Union, the birth of the European Coal and Steel Community ("ECSC"), which was the first step towards the process of European integration by creating a common market for coal and steel between six founding countries (Belgium, France, Federal Republic of Germany, Italy, Luxembourg and the Netherlands), represents the first event that highlights how the relationship between the United Kingdom and the European Community has always been turbulent: on that occasion, in fact, the British government broke completely from the states that considered the ECSC to be an excellent attempt to reinvigorate the national economy, rejecting the project in its entirety, which was not considered suitable for the interests and expectations of the nation, and allocating only 10% of exports to the six founding countries of the ECSC¹. Furthermore, some concerns regarding the creation of the Community, the control of the Commonwealth, the British sovereignty with global ambitions and responsibilities and the strong national identity that detached it from the continent, led the United Kingdom to refuse the invitation of the Schuman declaration of 9 May 1950, with which the creation of the European Coal and Steel Community was proposed. In fact, the Schuman proposal took the British authorities by surprise: during the preparation of the Schuman plan, Robert Schuman did not give due consideration to the United Kingdom, which, according to him, had reservations on the matter. The plan took place so privately that even Renè Massigli, the French Ambassador to London, did not participate in it. Nonetheless, Massigli was commissioned to explain the plan's objectives to his British interlocutors, and, where possible, to persuade them. Britain's reaction was immediate: the British foreign minister, Ernest Bevin, promptly expressed his discontent with the plan, agreeing that the Schuman Plan would, yes, solve some economic problems in Western Europe, but opposing the prospect of a technocratic organization which

¹ A background guide to "Brexit" from the European Union, in *Economist.com*, available online

provided for a limitation of powers and which would intervene on the economic policy of the country. Furthermore, the United Kingdom believed that delegating some of the sovereignty to this organization would represent a point of no return on the road to Europe. Conversely, Schuman and Monnet were willing to break this stalemate, but they did not want to compromise on the potential supranational nature of the organization. On May 31, the British government reaffirmed its motives, and expressed its willingness to obtain a privileged position in the negotiations on the "*Schuman Plan*". Monnet immediately expressed his disappointment: he believed that the negotiations could not have been successful if they had not taken place between countries which all had the same goal and which had shown cohesion and unity to achieve it. When on June 3, 1950, the six countries that had agreed negotiations on the "*Schuman Plan*" published a "*joint communiqué*" in which they declared the pooling of coal and steel, and established the High Authority whose decisions would be binding for member states, the UK also issued a statement confirming that it would not accept the fundamental principles of the *Schuman Declaration*.² Moreover, despite the participation in the first preparatory work in the Spaak Commission as an observer, represented by the Undersecretary of the Office of Commerce Russell F. Bretherton, Great Britain, led by the conservative government of Anthony Eden, decided to abandon the Messina Conference of 1955, held on the initiative of the Italian Foreign Minister Gaetano Martino, with whom the constituent countries of the ECSC started the negotiations that led to the Treaties of Rome of 25 March 1957, and, therefore, to the creation of the European Economic Community for Atomic Energy ("EAEC").³ Once again, Britain was opposed to the idea of a European Customs Union, as it wanted to preserve the autonomy of its customs and its regime, to protect its industries and to maintain its links with Commonwealth partners.

After abandoning the work in the Commission at the Messina Conference of 1955, the government in London found itself faced with two options: either to risk finding itself isolated, while on the European continent

² *The Schuman Plan and Franco-British relations* (2016)

³ *The Intergovernmental Committee established by the Messina Conference* (2016)

the integration process was intensifying more and more, or to find an alternative. In this situation, the Organization for European Economic Cooperation ("OEEC"), created in 1948 to manage the economic assistance of the Marshall Plan in Europe, immediately appeared as the most favorable structure, which served the interests of the United Kingdom. Having tried in vain to sabotage the negotiations between the six members of the ECSC, the British government decided to start implementing the project, known as "Plan G", which involved the establishment of a free trade area with the exception of agricultural products. For London, the free trade zone had three main objectives:

- 1) Give the United Kingdom a more defined position within the Commonwealth's "Imperial Preference" system,
- 2) Confirm its dominant role within the OEEC and,
- 3) Finally, continue to have a certain influence on the development of European integration by maintaining close links between the aforementioned area and the Single Market.

Spaak, fearing that the British initiative might only be a tactical move, did not consider the UK plan as an alternative solution. It was when General de Gaulle, on November 15, 1958, rejected the British government's plan to create a free trade area⁴, that the United Kingdom managed to persuade six European countries of a very small size compared to six in the ECSC, Austria, Denmark, Norway, Portugal, Sweden and Switzerland in the creation of the European Free Trade Association ("EFTA", later established in 1959): the aim was to establish a free trade area that did not include any customs union or common external tariff, thus replacing the common market; the proposal of Great Britain initially did not go through because it was not appreciated by the countries of the Conference, but on November 20, 1959 the United Kingdom, together with the other six countries, signed, with the Stockholm Treaty, the birth of the EFTA.⁵

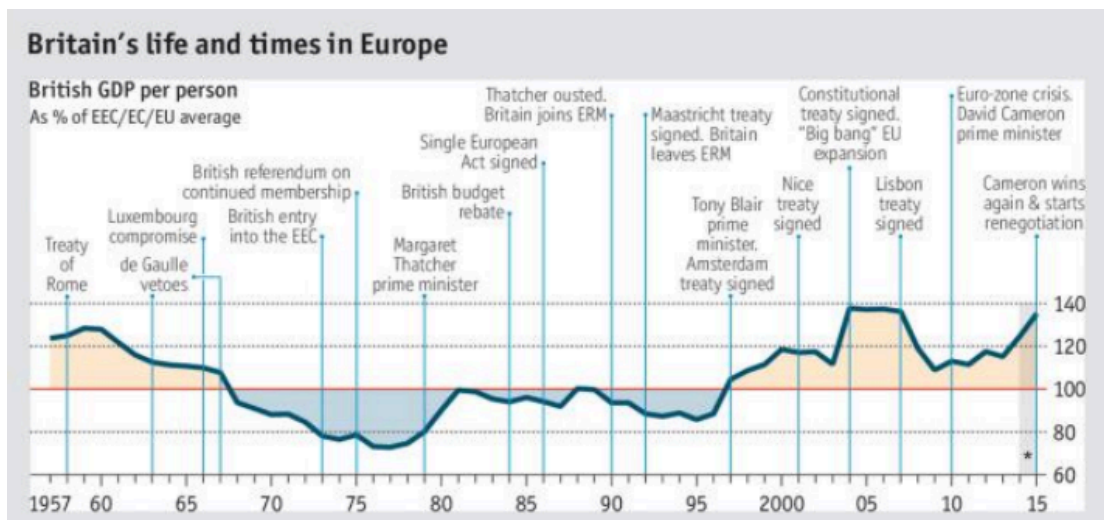
⁴ *The British proposal for a single free trade area* (2016)

⁵ *La Costruzione Europea*, in "ISPI" – Istituto per gli Studi di Politica Internazionale

Thus, the European Economic Community was born on March 25, 1957 and the United Kingdom tried to join it in 1961, but at his request was vetoed by De Gaulle's France, according to which Great Britain had no intention to join the European Community because it shared its fundamental principles, but because it considered it a lifeline after the crisis of the Suez Canal which had tested the Washington-London axis and had highlighted the flaws in the Commonwealth system. Subsequently, after a second opposition of the veto to the United Kingdom request by De Gaulle, the request for entry into the European Market by the United Kingdom was accepted in 1973 and marked the entry of that State into the EEC: in the negotiations for the Admittedly, Britain had to pay a very heavy financial stake but which, fortunately, was reduced thanks to the intervention of Margaret Thatcher's Conservative government and her 1984 speech in Fontainebleau. The entry fee to which the United Kingdom had to submit only increased the traditional British distrust of the European Union and, consequently, led to the Referendum on the stay of the United Kingdom in the European Community in 1975. The referendum question asked voters: "Do you think the United Kingdom should stay in the European Community (Common Market)?"⁶. The positive result of the Referendum (67.2% of voters voted for permanence) paved the way for European integration, which reached fundamental importance in 1993, when the Maastricht Treaty established the European Union ("EU"). Established on February 7, 1992 and entered into force in November 1993, the Maastricht Treaty did not replace the three original European Communities, hence the ECSC, EEC and EAEC, but included them "by establishing, moreover, forms of cooperation between the member states in two new subjects: the common foreign and security policy ('CFSP') and justice and home affairs ('JHA')". On this occasion, the new conservative premier John Major, at the negotiating table with the community bodies, managed to obtain a series of benefits, including the opt-out from the single currency and the Schengen Convention: the United Kingdom had been, in fact, forced to exit the European Monetary System ("EMS") on the so-called "Black Wednesday", i.e. September 16, 1992, when financial speculation forced the Bank of England to take the

⁶ J. WALSH, *Britain's 1975 Europe referendum: what was it like last time?*, in *The Guardian*, February 25, 2016, available online.

British pound out of the EMS and devalue it. The British Prime Minister, Gordon Brown, at the negotiating table of the Maastricht Treaty, excluded that entry into the Eurozone could take place in the foreseeable future but, despite this, he undertook to adopt a potential procedure that provided for the entry of the Kingdom United in the Eurozone, subject to approval by the Cabinet, Parliament and the British electorate in a referendum. This hypothesis never became a reality.



Source: <http://www.economist.com/news/special-report/21673510-why-british-opposition-eu-goes-deep-open-sea>

More recently, during the summit of the North Atlantic Treaty Organization ("NATO") in May 2012, Prime Minister David Cameron speculated on the idea of holding a referendum on the European Union to exalt the wing conservative Eurosceptic. A few months later, in January 2013, Cameron promised that in the event of his Conservative party victory in the 2015 general election, before calling a referendum on the UK's stay in the European Union, he would try to negotiate with the organization to get a more favorable regimen and benefits. He had in fact expressed:

"I am in favor of a referendum, (...) And when we have negotiated that new settlement, we will give the British people a referendum with a very simple in

or-out choice to stay in the EU on these new terms; or come out altogether. It will be an in / out referendum”⁷

The referendum bill was presented by Conservative MP James Wharton on June 19, 2013, in front of the House of Commons, gaining the full support of Cameron and, consequently, the Conservative party. It was also approved in second reading with 304 votes in favor and none against, but was blocked in December 2013, after being sent to the House of Lords. At this point, targeting a majority in the 2015 general elections, Cameron, during the electoral campaign, once again emphasized his intention to renegotiate the British membership of the Union and, later, to hold a referendum. On the other side of the coin, however, was the Labor Party of Ed Miliband who, between 2010 and 2015, had never expressed its intention to hold a referendum in / out, unless there had been a change in the European Union Treaties which provided for a transfer of powers from the United Kingdom to the Union. In May 2015, the Conservative party obtained a majority of seats in the House of Commons and, after the parliamentary law for setting the referendum, the European Referendum Act, was approved by both the House of Commons and the House of Lords⁸, on 10 November 2015 David Cameron, in a letter sent to the President of the European Council Donald Tusk, made official and "formalized [...] British concerns with regard to membership of the European Union"⁹.

In this regard, a clause providing for the right of withdrawal from the Union had not been recognized by the founding states, namely Italy, France, Germany of the West, Belgium, the Netherlands and Luxembourg, in the Treaties of Rome because of their deep trust and conviction in the European integration project, whose main objective was economic development but, above all, the achievement of lasting peace. So article 50 of the Treaty on European Union, introduced by the Lisbon Treaty in 2007, contains the

⁷ David Cameron promises in / out referendum on EU, in BBC News - UK Politics, 23 January 2013, <https://www.bbc.com/news/uk-politics-21148282>

⁸ Meg Russell, *Brexit and Parliament: The Anatomy of a Perfect Storm*, Parliamentary Affairs, published: 11 June 2020. <https://doi.org/10.1093/pa/gsaa011>

⁹ C. Curti Gialdino, *Verso la fase due della Brexit: promesse, insidie e risultati parziali del negoziato*, Bari, 2018

voluntary and unilateral withdrawal mechanism applicable to the Member State wishing to withdraw from the European Union. The fundamental objective of the Lisbon Treaty was to reform the way in which the European Union operated, at the institutional level (with the modification of the presidency of the European Council and the introduction of the High Representative of the Union for Foreign Affairs and security policy), and to make the decision-making process more equitable, by further delimiting the competences between States and the Union, within an international organization which has now increased to 28 member states: not only that, on this occasion democratic equality, representative democracy and participatory democracy are confirmed, but, aiming precisely at a strengthening of democracy and freedom within the Union, a formal procedure is introduced for the first time which provides for the exit of a member state from EU¹⁰.

1.1 The three phases of art. 50 TEU

The procedural and legal basis to which the United Kingdom has appealed to justify the desire of its population to leave the European Union is the famous withdrawal clause or otherwise known as Article 50 of the Treaty on European Union. In the referendum held on 23 June 2016, the citizens of the United Kingdom decided to leave the Union and the then British Prime Minister, David Cameron, who had wanted the referendum but who had campaigned mainly to remain in the EU, had announced his resignation within three months of the vote. In fact, he said, in his post-vote speech, that a new prime minister, chosen by the Conservative party, would replace him. According to the provisions of the rules established by article 50, the United Kingdom had first of all to formally communicate to the European Council its intention to leave the EU, by appealing to the withdrawal procedure, and only then to start a series of negotiations to define the modality of the withdrawal. Below is the text of article 50:

¹⁰ Il trattato di Lisbona (2017)

“1- Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2- A Member State that decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218 of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council of the European Union, acting by a qualified majority, after obtaining the consent of the European Parliament.

3- The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4- For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238 (3) (b) of the Treaty on the Functioning of the European Union.

5- If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49”¹¹

The procedure for withdrawing from the European Union consists of three main phases. Initially, the Member State must notify its intention to withdraw from the Union to the European Council; art. 50 do not comment on the way

¹¹ Article 50 TUE, eur-lex home, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016M050>

in which the State must communicate the notification of withdrawal, but only indicates the recipient and specifies that the formal declaration must be clear and unambiguous. This step activates the procedure of art. 50 and initiates the first phase, in which the President of the European Council (currently Donald Tusk) calls an extraordinary meeting of the European Council. The European Council adopts guidelines on withdrawal by consensus, or consensual decision-making process, "which allows the agreement reached by the participants to be reproduced in a text, but also to record any differentiated positions [of the minority]"¹². The adopted guidelines contain the general principles that will act as a guide for the negotiations between the European Union and the Member State in question, taking into account the common interest of all the States that make up the Union.

The second phase consists in the adoption of the aforementioned guidelines by the European Commission, which then has the task of presenting in a short time a recommendation on the opening of negotiations to the European Council. The recommendation is to be adopted by the College of Commissioners four days after the extraordinary meeting of the European Council. By authorizing the opening of negotiations, the Council opens the third stage of the withdrawal procedure and adopts the negotiating directives by means of a 'strong' qualified majority vote, which is foreseen in cases where the Council has to vote on a proposal that has not been presented by the Commission or High Representative. This decision is adopted if at least 72% of the Council members vote in favor and if the members who vote in favor represent at least 65% of the EU population. Once the directives have been adopted, the Union negotiator who is appointed by the Council is responsible for opening negotiations with the Member State in question. Generally, the negotiations must be concluded within two years from the moment in which Article 50 was activated.

In the event that no agreement has been reached upon expiry of the deadline, the treaties automatically cease to apply to the Member State that proposed the withdrawal, "Unless the European Council, in agreement with

¹² Ugo Villani, *Istituzioni di Diritto dell'Unione europea* 5, 2017.

the Member State concerned, decides unanimously to extend this deadline"¹³. In the opposite case in which an agreement has been reached, at the end of the set period, the Union negotiator brings before the Council and the European Parliament a proposal for an agreement: the agreement is adopted after obtaining the consent of the European Parliament which expresses itself by vote by simple majority, since the voting method that Parliament must adopt is not specified in the article. The agreement is finally concluded by the Council with a 'strong' qualified majority vote and with ratification by the withdrawing Member State, in accordance with its own constitutional rules.

Finally, as explicitly expressed in Article 50, any country that has left the European Union may subsequently request to join it again; in this case, the new accession will have to follow the procedure outlined in Article 49 of the Treaty on European Union. Note the fact that Article 50 remains silent on the possibility of revoking the notification of withdrawal, that is, interrupting the procedure once it has begun. In this regard, the European standard must be interpreted through instruments of international law, specifically the Vienna Convention on the law of treaties of 1969 which, in art. 69 govern the procedures for revoking a generic notification, explicitly providing the latter can be revoked "at any time before it has taken effect"¹⁴. Considering that the notification of withdrawal becomes effective only when the withdrawal becomes effective for the requesting state, the notification must be considered revocable within the two-year negotiation period, or before the approval of the withdrawal agreement.

1.2 The application of art. 50 to the Brexit case

The timing for recourse to Article 50 has become the main dispute after the referendum of 23 June. In his resignation speech, former prime minister David Cameron made it clear that there was no rush to proceed: "*A negotiation with the European Union will have to be undertaken by a new*

¹³ Art. 50 TUE

¹⁴ Art. 68 Vienna Convention: "the notifications or instruments provided for in articles 65 and 67 may be revoked at any time before they have taken effect".

prime minister and I think it is right for this new prime minister to take the decision on when to use Article 50 and start the formal process to leave the European Union¹⁵". Even Brexit supporters on the conservative side were determined to wait as they did not want the UK to sit at the negotiating table with leadership as weak as that of a resigning prime minister. The nationalist UKIP party, however, has called for the procedure to be initiated as soon as possible. The angry and disappointed European leaders wanted the UK to leave quickly so as to limit instability and prevent other countries from questioning their stay in the Union. German Foreign Minister Frank-Walter Steinmeier said: "*This process must begin as soon as possible¹⁶*" and former European Commission President Jean-Claude Juncker said: "*It makes no sense to wait until October to negotiate. the London exit¹⁷*". As much as Europeans wanted to speed up the UK's exit process, they had little legal means of doing so. In fact, there is no mechanism to force a state to leave the European Union. Article 50 can only be invoked by the state wishing to leave the Union and by no other member state or European institution. If anything, the only initiative allowed to the Union is the use of Article 7 of the Treaty of Lisbon, according to which the Union can suspend a member state if it believes that it violates the fundamental principles of freedom, democracy and equality. This article has never been relied upon.

In the Brexit process, the heads of state or government of the European Union "*asked the Council to designate the European Commission as the EU negotiator and welcomed its decision to appoint Michel Barnier as chief negotiator¹⁸*", a French politician and European Commissioner since 2009. The latter, throughout the duration of the negotiations, will not only systematically report on the progress of the negotiations to the European Council, the Council of the European Union and related preparatory bodies, but will also be responsible for involving the remaining Member States, which will have the task of giving guidelines to the negotiator and evaluating the progress of the work. For this reason, a specific group was created within

¹⁵ "*What is article 50 and why is it so central to the Brexit debate?*", The Guardian, 2016.

¹⁶ Ibidem

¹⁷ Ibidem

¹⁸ Domande e risposte: Articolo 50 del trattato sull'Unione europea (2017).

the Council headed by a permanent president, charged with "ensuring that the conduct of the negotiations respects the guidelines issued by the European Council and the negotiating directives adopted by the Council"¹⁹. The UK's withdrawal from the European Union followed a two-stage approach, resulting in an orderly process (at least in the first stage). The first phase of the negotiations started on 19 June 2017 resulting in six rounds of negotiations, after which, on 8 December 2017, the negotiators of the Union and the United Kingdom reached an agreement, the so-called joint report, on some fundamental aspects: specifically, the former prime minister Theresa May and the previous president of the European Commission Juncker, representing respectively the United Kingdom and the European Union, with the aforementioned document have undertaken to "protect the rights of EU citizens European Union who are located in the United Kingdom and citizens of the United Kingdom who are located in the European Union; settle all outstanding financial obligations undertaken during the UK accession period; address the unique circumstances of Ireland and Northern Ireland "²⁰. Subsequently, on 15 December 2017, the leaders of the European Union, after confirmation by the European Council that sufficient progress had been made to continue, invited the United Kingdom to clarify its position on the transitional arrangements and to future relations before the March European Council, thus initiating the second phase of the negotiations. On 19 March, the UK and EU negotiators reached a milestone, namely "an agreement on the joint EU - UK text with color coding of the draft withdrawal agreement which translates into legal terms the progress made in the course of the first phase of the negotiations "²¹.

The draft withdrawal agreement that the United Kingdom and the European Union reached on February 28 consists of a 119-page document containing 168 articles divided into six main parts: introductory provisions, citizens' rights, other issues relating to separation (for example question of goods placed on the market before the withdrawal date), financial settlement, transitional arrangements and institutional arrangements. Furthermore, it

¹⁹ Ibidem

²⁰ Article 50 on negotiations with the United Kingdom (2018)

²¹ Ibidem

contains the Protocol on Ireland and Northern Ireland, which implements the third option to be made operational in the absence of other agreed solutions, proposed in the joint report, to avoid the erection of a physical border on the island of Ireland: "the option foresees that the United Kingdom maintains full alignment with the Community rules of the internal market and the customs union and supports cooperation between North and South and the economy of the whole island"²².

It is important to note that the agreement was drafted by the European Union and then proposed to the United Kingdom, which made the necessary amendments based on its interests. As a result, it is unlikely that it will fully agree with the final document that the two sides will reach. Furthermore, some have observed that the European Union, having produced the first draft, has gained an advantage in the negotiation phase. However, the European Commission stated that:

*"[We are] publishing the draft Withdrawal Agreement today to allow for some time for an exchange of views with the Council and the European Parliament and to give as much time as possible to the EU and UK negotiators to reach a deal on the terms of the UK's orderly withdrawal from the EU"*²³.

Therefore, it made clear its intention to ensure the time necessary for the two parties, the United Kingdom and the European Union, to reach an agreement on the terms of withdrawal of the British state. In conclusion, the Commission stated that the draft drawn up should be considered a legal document rather than a diplomatic document.

Having therefore understood on what basis the United Kingdom was able to formally begin the process of withdrawal from the EU, the close negotiation phase begins but, before analyzing the Brexit negotiation in detail, it is necessary to understand what the theory of "negotiation as a game on two levels" that can subsequently be applied to Brexit.

²² Brexit: the draft withdrawal agreement (2018: 5 ss.)

²³ Questions & Answers: Publication of the draft Withdrawal Agreement between the European Union and the United Kingdom, Brussels 2018

Chapter 2 - UK-EU Negotiation Analysis: A Two-Level Game?

2.1 Two-level games: a metaphor for domestic-international interactions

Domestic politics and international relations are often somehow intertwined and various theories have tried to resolve what appears to be an enigmatic tangle. In recent years, Richard Haass in particular has argued, especially with regard to the United States, that many States have guaranteed almost "exaggerated" performance abroad, instead neglecting a number of fields internally, including economics, budget management and education. Haass uses a specific word to explain this situation: "underreach," meaning the inability to make the important links between foreign and domestic issues and the inability to act consistently abroad, even when better policy could be implemented. Regarding the rest of the world and therefore Europe, Haass believes that the new key variables in international affairs are "the unprecedented distribution of power in the world; the reality of globalization...a significant and growing degree of interdependence; and the wide availability of modern information and communication technologies"²⁴. He also focuses on the repair of the home level, which Haass calls "home restoration". This restoration therefore concerns all fields which, having been neglected for international issues, deserve more consideration: national debt, education, immigration, and so on.

It is useless to discuss whether domestic politics really determines international relations, or vice versa. The answer to this question is clearly: both, sometimes. The most interesting questions to ask are: when does this contamination occur and how?. The study of negotiation as a two-level game offers a theoretical approach to this problem; in fact it suggests a conceptual framework for understanding how diplomacy and domestic politics interact. A basic example of how diplomacy and domestic politics can get entangled with each other culminated in the 1978 Bonn conference. In the mid-1970s, a coordinated global reflation program, driven by "locomotive" economies, was

²⁴ *Foreign Policy Begins at Home: The Case for Putting America's House in Order*, Richard N. Haass, Basic Books, 2013, pg. 78.

proposed. of the United States, Germany and Japan, to favor Western recovery from the first oil shock. This proposal had received a powerful impetus from the arrival of the Carter administration in the US and was warmly supported by weaker countries, as well as by the Organization for Economic Cooperation and Development (OECD) and many private economists, who claimed it would help overcoming international payments imbalances and accelerating growth all around. Meanwhile, Jimmy Carter's ambitious US energy program had gotten stuck in Congress, while Helmut Schmidt in Germany led a chorus of complaints about Americans' uncontrolled appetite for imported oil and their apparent indifference to the falling dollar. All parties admitted that the world economy was in dire straits, but it was not clear who was more to blame, whether the tight German and Japanese fiscal policies or the very flexible energy and monetary policies of the United States.

At the Bonn summit, however, a complete package was unexpectedly approved; it was in fact the most obvious case of a summit that left all participants happier than when they arrived. In fact, Helmut Schmidt accepted a further fiscal stimulus, equal to 1% of GNP, Jimmy Carter committed to reducing the control over domestic oil prices by the end of 1980 and Takeo Fukuda committed to making new efforts to achieve a growth rate 7%. Overall, the Bonn Summit produced a balanced agreement of unprecedented breadth and specificity and, more remarkably, virtually all parts of the package were actually activated²⁵.

Most observers from outside at the time welcomed and were amazed by the policies agreed in Bonn, although those policies had been discussed in advance in order to respect the economic wisdom of this package²⁶. However, our attention must be focused on how the agreement was politically possible and not if it was economically wise. The research suggests, firstly, that key Bonn governments adopted different policies than they would have pursued in the absence of international negotiations, but secondly, that agreement was only

²⁵ Robert D. Putnam, "*Diplomacy and Domestic Politics: The Logic of Two-Level Games*", International Organization, Vol. 42, No. 3. (Summer, 1988), pp. 427-460. <http://www.guillaumenicaise.com/wp-content/uploads/2013/10/Putnam-The-Logic-of-Two-Level-Games.pdf>

²⁶ Ibidem

possible because a powerful minority within each the government actually favored the policy required at the international level on an internal basis. In Germany, the apolitical process favored by foreign pressure has been covertly orchestrated by the expansionists within the Schmidt government. Contrary to the metropolitan myth, the Bonn Agreement was not imposed on a reluctant or "altruistic" Germany. Indeed, officials in the Chancellery and the Ministry of Economy, as well as in the Social Democratic Party and Trade Unions, had privately argued early in 1978 that further stimulus was desirable at the national level, particularly in view of the upcoming elections in 1980. However, the opposition not from the Finance Ministry but also by the Free Democratic Party (part of the ruling coalition) and the business and banking community, especially the Bundesbank authorities, appeared very hard to overcome²⁷.

Publicly, Helmut Schmidt was reluctant to the end. Only his closest advisors suspected that, in reality, the chancellor "allowed himself to be pushed" into a policy that he preferred privately, but which he would have found expensive and perhaps impossible to implement without the consent of the top management. Similarly, in Japan the coalition of the Ministry of Trade and Industry (MITI), the Economic Planning Agency and some expansion-oriented politicians within the Liberal Democratic Party have pushed internally, using pressure from states such as first argument against the stubborn resistance of the Ministry of Finance (MOF)²⁸. In practice, without internal divisions in Japan, it is almost impossible for foreign demands to be met, however without external pressure it is even more unlikely that the expansionists could have bypassed the MOF obstacle. Later it was thought that 50% of foreign pressure and 50% of domestic politics was the right balance that allowed this to happen. Even in the American case, domestic politics has strengthened and has been strengthened by international pressure. During the preparations for the summit, US negotiators occasionally called on their foreign counterpart to put more pressure on the Americans to reduce oil imports. Top economic officials within the administration were in favor of a tougher energy policy, but they opposed

²⁷ Ibidem

²⁸ Ibidem

the president's closest political collaborators, even after the summit. Furthermore, congressional opponents continued to thwart oil price takeoff, as they had done with both Nixon and Ford. Finally, in April 1979, the president decided on a gradual administrative decontrol, bringing US prices to world levels by October 1981. In short, the Bonn Agreement represented a genuine coordination of domestic and international policies and, thanks to these, various significant policy changes were promised and implemented by the key participants. Furthermore, although this claim is necessarily more difficult to establish, these policy changes most likely would not have been pursued (certainly not on the same scale and at the same time) in the absence of the international agreement.

In each country mentioned therefore, there was a faction that supported the policy change required by their country at the international level, but that faction was initially outnumbered. Therefore, international pressure was a necessary condition for achieving these political changes. On the other hand, without internal resonance, international forces would not have been sufficient to produce the agreement, however balanced and intellectually persuasive the overall package was. Eventually, each leader became aware that his actions were in the interest of his nation, and not just in his own political interest, even though he did not have the consent of all his collaborators.

In this sense, the Bonn Agreement has successfully combined domestic and international pressure. Neither a purely internal analysis nor a purely international analysis could explain this episode. Interpretations expressed in terms of internal causes and international effects or international causes and internal effects would simply represent an analysis of a "partial balance" and would lose an important part of the story, namely, how the domestic politics of different countries got entangled in an international negotiation. The events of 1978 demonstrate that agreements of this kind can only be explained by "general equilibrium" theories that simultaneously explain the interplay of internal and international factors.

Over two decades ago, Richard E. Walton and Robert B. McKersie offered a "behavioral theory" of social negotiation that is strikingly applicable to international conflict and cooperation. They pointed out that the assumption of the unitary actor is often radically misleading. As US negotiator Robert Strauss testified regarding the Tokyo Round trade negotiations: "*During my tenure as Special Representative for Trade, I spent a lot of time negotiating with national components (both industry and labor) and with the members of the United States Congress when I have negotiated with our foreign trading partners.*"²⁹

The dynamics of many international negotiations can therefore usefully be conceived as part of a two-level game. Domestically, national groups pursue their own interests by pressuring the government in order to adopt favorable policies, and politicians seek power by building coalitions between those groups. Internationally, national governments seek to maximize their capacities to meet domestic pressures while minimizing the negative consequences of foreign developments. Central decision makers can ignore neither game if their countries remain interdependent, yet sovereign. Each national political leader appears on both tables, while on the other side of the international table sit his foreign counterparts and alongside him sit diplomats and other international consultants. Around the internal table instead, behind him, sit party figures and parliamentarians, spokesmen for national agencies, representatives of key interest groups and political advisers of the leader. The great complexity of this two-level game is that moves that appear rational for one player on one table (such as raising energy prices or conceding territory) can be imprudent for the same player on the other table. While there are powerful incentives for consistency between the two games, players will be able to tolerate some rhetorical differences between the two games, but ultimately the output will only be one.

The political complexities for the players in this two-level game are huge: at the international table, any key player who is not satisfied with the result can upset the gaming table and, conversely, any leader who do not satisfy his

²⁹ Robert D. Putnam, "*Diplomacy and Domestic Politics: The Logic of Two-Level Games*", International Organization, Vol. 42, No. 3. (Summer, 1988), pp. 427-460. <http://www.guillaumenaicse.com/wp-content/uploads/2013/10/Putnam-The-Logic-of-Two-Level-Games.pdf>

fellow players at the national table risks to be expelled from his spot. Sometimes, however, smart players are able to spot a move on a table that triggers alignments on other tables, allowing them to achieve otherwise unattainable goals. This metaphor of two tables represents the dynamics of the 1978 negotiations better than any other model based on just national actors.

2.2 The win-set

Consider the following model, which could be applied to any two-tier game and which involves negotiators, representatives of two organizations, meeting to reach an agreement between them, always bearing in mind that any provisional agreement must be ratified by the respective organizations. The negotiators could be heads of government representing nations, for example, or representatives of labor and management, or party leaders in a multi-party coalition. For the time being, we will assume that each side is represented by a single leader or "chief negotiator" and that this individual has no independent political preferences but is simply trying to reach an agreement that is attractive to his constituents.

Analytically, it is convenient to break down the process into two phases:

1. Bargaining between negotiators, leading to an interim agreement; so-called Level I.
2. Separate discussions within each component group on whether to ratify the agreement; so-called Level II.

This sequential breakdown into two phases, a negotiation phase and ratification one, is useful for the purposes of exposure. In practice, however, the effects on expectations will be quite important, as it is likely that there will be preliminary consultations and negotiations at Level II to define an initial position for the Level I negotiations. On the contrary, the need for Level II ratification will certainly affect the Level I bargaining. In fact, expectations of denial at Level II can interrupt negotiations at Level I without any formal action at Level II. In many negotiations, the two-tier process can be iterative, as

negotiators try out possible agreements and sound out the views of the components.

In more sophisticated cases, as we'll see below, the views of the components may evolve during the negotiations. However, the requirement that any Level I agreement must ultimately be ratified at Level II imposes a crucial theoretical link between the two levels. "Ratification" may involve a formal Level II voting procedure, such as the required two-thirds constitutional vote of the United States Senate for treaty ratification, but can refer generically to any Level II decision-making process required to approve or implement a Level I agreement, both formally and informally. Sometimes it is convenient to think of ratification as a parliamentary function, but this is not essential. Level II actors can be bureaucratic agencies, interest groups, social classes, or even the public opinion³⁰. The only formal constraint to the ratification process is that, since the identical agreement must be ratified by both parties, a preliminary Level I agreement cannot be changed to Level II without reopening Level I negotiations. In other words, the final ratification must simply be "voted" up or down; any modification to the Level I agreement is seen as a refusal, unless this is approved by all other parties in the agreement.

Given this set of rules and agreements, we can define the "winning set" for a given level II constituency as the set of all possible level I agreements that "would win", that is, that would get the necessary majority among the components, simply voting for or not. For quite different reasons, Level II payout frameworks are very important to understanding Level I agreements: one of them is that larger sets of wins make a Level I agreement more likely, *ceteris paribus*³¹. In fact, by definition, any successful agreement must be part of the Level II victory of each party to the agreement. Therefore, the deal is only possible if these sets of wins overlap and the larger each set of wins, the more likely they are to overlap. Conversely, the smaller the winning sets, the greater the risk of negotiations failing. For example, during the long pre-war

³⁰ Ibidem

³¹ Robert D. Putnam, "*Diplomacy and Domestic Politics: The Logic of Two-Level Games*", International Organization, Vol. 42, No. 3. (Summer, 1988), pp. 427-460. <http://www.guillaumencaise.com/wp-content/uploads/2013/10/Putnam-The-Logic-of-Two-Level-Games.pdf>

Anglo-Argentine negotiations over the Falklands/Malvinas, several attempts at agreements were rejected in one capital or another for internal political reasons; when it became clear that the initial British and Argentine victories did not overlap at all, war became virtually inevitable³².

A brief but important digression should be made on the possibility of defection of the parties during a two-level negotiation. The distinction must be made between voluntary and involuntary defection. Voluntary defection refers to the attitude of a rational negotiator of denial of an agreement in the absence of applicable contracts. Involuntary defection, on the other hand, refers to the behavior of a negotiator who is unable to keep a promise due to failure to ratify. Although these two types of defections are in some cases quite difficult to distinguish, the underlying logic is still very different. Prospects for international cooperation in a "self-help" anarchist world are often described as poor because politicians are generally labeled as people with incentives to cheat³³. However, as Axelrod, Keohane, and others have pointed out, the temptation to defect can be drastically reduced among players expecting to meet again³⁴. If politicians in an anarchist world were in fact constantly tempted to cheat, some features of the 1978 Bonn Agreement history would be very anomalous. For example, even if the Bonn agreement was negotiated with the utmost care, it did not contain provisions for the temporal balance, sequence or partial conditionality that could have protected the parties from unexpected defections. Furthermore, the Germans and the Japanese irrevocably promulgated their parts of the agreement more than six months before the US president took action on the decontrol of the oil price. Once that was done, the temptation to disown the president should have been pressing, but in reality virtually no one on either side of the takeover debate within the administration has rejected the Bonn promise. In short, the Bonn "promise" had political weight, denying it would have had high political and diplomatic costs. On the other hand, in any two-tier game, the credibility of an official commitment can be low, even if the reputational costs of renunciation are high, as the negotiator

³² Robert D. Putnam, "*Diplomacy and Domestic Politics: The Logic of Two-Level Games*", International Organization, Vol. 42, No. 3. (Summer, 1988), pp. 427-460. <http://www.guillaumenicaise.com/wp-content/uploads/2013/10/Putnam-The-Logic-of-Two-Level-Games.pdf>

³³ Ibidem

³⁴ Ibidem

may not be able to guarantee ratification. In the case of Bonn, unlike concerns about voluntary defection, concern about "delivery capacity" was a much more prominent element. In the post-summit press conference, President Carter stressed that "each of us was careful not to promise more than he could offer" and in fact a key point during the negotiations was Carter's ability to keep his energy commitments and the Americans, for their part, worked hard to convince others, firstly, that the president was subject to severe internal political constraints on energy matters, which limited what he could promise, but secondly, he emphasized that he could deliver on what he was ready to promise. The negotiators in 1978 then seemed to follow this presumption of each other: "He will do what he promised, as long as what he promised is clear and in his power."

Involuntary defection and the fear of it can be as fatal to the prospect of cooperation as voluntary defection. Furthermore, in some cases, it can be difficult for both the other party and external analysts to distinguish voluntary from involuntary defection, particularly as a strategic negotiator may try to misrepresent a voluntary defection as involuntary. This behavior in itself is presumably subject to some reputational constraints, in fact the credibility (and therefore the ability to conclude agreements) at Level I is enhanced by the (demonstrated) ability of a negotiator to "achieve" at Level II; this was one of the main strengths of the aforementioned Robert Strauss in the Tokyo Round Negotiations. Unintentional defection can only be understood in the context of a two-level game. So, to get back to the question of wins, the smaller are the wins, the greater the risk of involuntary defection becomes.

Another reason why the size of the winning set is fundamental is that the size of the respective Level II winning sets will affect the distribution of the joint gains resulting from the international agreement. The greater the perceived advantage of a negotiator, the more it will be supported by other Level I negotiators. On the contrary, a small national winning set can only be used as a contractual advantage, essentially the concept that is used is: "I would

like to accept your proposal, but I could never get it accepted at home"³⁵. Therefore, opposing the internal constraints on the basis of which one must operate is a basic technique to be used at the beginning of a negotiation that appears tough. Thomas Schelling first expounded this general principle by explaining that a negotiator's power often rests on a manifest inability to make concessions and meet demands³⁶. Of course, strategies like this run the risk of establishing an immovable position that is beyond the other's ability to concede, thus causing the likelihood of stalling or failure. Writing from the point of view of strategy, Schelling pointed out the ways in which sets of victories can be manipulated, but also explained that when the set of victories itself is beyond the negotiator's control, he may be able to exploit it influence of him. The example used is that of a Third World leader whose internal position is relatively weak, in fact he should be able to strike a better deal with his international creditors, all other things being equal, than a leader with a position internally more solid. To prevent such tactics, opposing negotiators may request that a negotiator secure "negotiating space" at Level II before opening Level I negotiations.

2.3 Determinants of the win-set

It is important to understand what circumstances affect the size of the win set. There are three sets of factors that are particularly important:

- The preferences and coalitions in level II
- Level II institutions
- The strategies of the negotiators in level I.

Let's consider them one at a time.

³⁵ Robert D. Putnam, "*Diplomacy and Domestic Politics: The Logic of Two-Level Games*", International Organization, Vol. 42, No. 3. (Summer, 1988), pp. 427-460. <http://www.guillaumenaicaise.com/wp-content/uploads/2013/10/Putnam-The-Logic-of-Two-Level-Games.pdf>

³⁶ Ibidem

1) **The size of the winning group depends on preferences and on possible coalitions among the members of Level II**

Any two-level theoretical assumption of international negotiation must find a basis in a theory of domestic politics, that is, it must describe the degrees of power and preferences of the protagonists of Level II. But it is possible to detect this also from the details of the level II policy, we can in fact deduce some principles that govern the size of the gaming tables, for example, the lower the cost of the "no deal" for the components, the lower the winning set. We recall in fact that the possibility of ratifying a proposed agreement is not opposed to a series of possibly attractive alternatives, but the counter-possibility is only "no agreement"³⁷. The lack of agreement often represents in the general vision a non-change of the status quo, although in some cases the lack of agreement can actually lead to a worsening of the situation. What some negotiating parties may have to bear are low costs for no deal, while others would be forced to high costs, and therefore, the former faction will be more skeptical of Level I deals than the latter. In light of this, some factions may offer: both generic opposition and generic support for Level I agreements, regardless of the specific content of the agreement, although obviously the decisions of the other components of the negotiation on ratification will be strictly conditioned by the specifics. The size of the set of victories (and thus the Level I negotiator's negotiating room) depends on the relative size of the: "isolationist" forces (opposing international cooperation in general) and "internationalists" (offering universal "support."). Universal support for international agreements is likely to be greater in smaller or more dependent countries with more open economies than in more self-reliant countries, such as the United States, where the costs of no-deal are generally lower for most citizens. All things being equal, more self-sufficient states with smaller payouts should enter into fewer international agreements and conduct more difficult business in the deals they do. In some cases, the no-deal assessment may be the only significant disagreement between Level II members because their interests are relatively homogeneous. International examples where domestic interests are relatively homogeneous, except for the no-deal assessment, could include

³⁷ Ibidem

the SALT talks, the Panama Canal Treaty negotiations and the Arab-Israeli conflict³⁸.

In these kinds of situations, a negotiator is unlikely to face internal criticism that a proposed agreement reduces the opponents' weapons too low, offers too little compensation for foreign concessions, or contains too little security guarantees for the other party, although in any case, opinions may differ on how much it is worth risking a negotiating stalemate to achieve these goals. The characteristic nature of such "homogeneous" issues is well highlighted by comparing it with negotiations where the preferences of the parts are more heterogeneous, so that any Level I agreement has an unequal impact on them. In these heterogeneous situations, internationally coordinated reflation can meet with internal opposition both from those who think that the demands go too far and from those who think that, on the other hand, they do not go far enough. Such models are even more common, as we will see shortly, in cases where the negotiation regards multiple issues, such as an arms deal involving trade-offs between sea and airborne weapons, or an employment contract involving take-home pay trade-offs and pensions. Walton and McKersie call these conflicts "factional" because the negotiator is trapped between contending factions within his own organization. The problems faced by Level I negotiators dealing with a homogeneous (or "border") conflict are very different from those faced by negotiators dealing with a heterogeneous (or "faction") conflict. In the first case, the more the negotiator can win at Level I, the greater his chances of obtaining ratification. In these cases, the negotiator can use the implicit threat of his hawks to maximize his gains (or minimize his losses) at Level I. Looking ahead and then at Level II, the negotiator's main problem in a homogeneous conflict is managing the discrepancy between the expectations of its constituents and the negotiable outcome. The effect of internal division is to increase the risk of involuntary defection and thus to prevent agreement at level I. The common belief that internal politics is the enemy of international cooperation undoubtedly derives from these cases. In the second case, the task of a negotiator working in a heterogeneous conflict is more difficult, but potentially more interesting. By trying to make the chances

³⁸ Ibidem

of ratification more and more likely, he can't just follow the "more, better" rule. Because, in some cases, these dividing lines within Level II can enter the Level I division and the Level I negotiator may be successful in finding silent allies on his opponent's home table. Therefore, transnational alignments can be created, implicitly or explicitly, in which internal interests push the respective governments to adopt policies that prove to be supportive for both sides, therefore, in these cases, internal divisions are welcome as they can effectively improve the prospects for international cooperation. Indeed, an internally divided government is more likely to be able to conclude a deal internationally than one that is firmly committed to a single policy³⁹. Conversely, imposing binding ex ante instructions on negotiators in such a case could rule out some Level I results which, in fact, would be ratifiable in both countries.

So far we have implicitly assumed that all eligible components will participate in the ratification process. In fact, though, participation rates vary between groups and issues, this variation often having implications for the size of the win set. For example, when the costs and/or benefits of a proposed agreement are relatively concentrated, it is reasonable to expect that those components whose interests are most affected will exert a special influence on the ratification process. For example, one of the reasons why level II games are more important for trade negotiations than monetary matters is that the "abstention rate" is higher on international monetary issues than on commercial ones. The composition of the Level II output (and therefore the character of the winning group) also varies with the degree of politicization of the issue. Politicization often activates groups less concerned about the cost of no deal, thus reducing the effective winning set. This is one of the reasons why most professional diplomats emphasize the value of secrecy for the success of negotiations. Another important limitation to overcome is the assumption that negotiations are only about one issue and loosening this assumption has powerful consequences for the game on both levels. It is likely that various Level II groups have quite different preferences on the different issues involved in a multi-issue negotiation. As a general rule, the group with the

³⁹ Robert D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games", International Organization, Vol. 42, No. 3. (Summer, 1988), pp. 427-460. <http://www.guillaumenaicse.com/wp-content/uploads/2013/10/Putnam-The-Logic-of-Two-Level-Games.pdf>

greatest interest in a specific issue is also likely to hold the most extreme position on this issue. It is therefore obvious that if each group is authorized to establish the Level I negotiating position for "its" management, the resulting package will almost certainly be "non-negotiable" and therefore not ratifiable. Therefore, the chief negotiator has to deal with trade-offs between different issues and the implication of these trade-offs for their respective sets of victories can be analyzed in terms of "iso-vote" curves or "political indifference" curves. This technique is analogous to conventional indifference curve analysis, except that the operational measure is the loss of grades, not the loss of utility. The central point is therefore simple: the possibility of package deals opens up a wide range of strategic alternatives for negotiators in a two-level game. One type of connection between the problems is absolutely crucial to understanding how domestic and international politics can get entangled. Suppose a majority of Level II members oppose a certain policy (for example, oil price decontrol), but some members of that majority would be willing to change their vote on that issue in exchange for more seats. work (for example, in export industries). If bargaining is limited to Level II, such a trade-off is not technically feasible, but if the chief negotiator can broker an international agreement that offers more jobs (say, through faster growth abroad), he can, in fact, overturn the initial result to the internal table. Such a transnational linking of issues was a crucial element in the already widely quoted Bonn Agreement of 1978. Note that this strategy does not work by changing the preferences of any national component, but rather by creating a policy option (such as faster export growth) that was previously beyond internal control. Economic interdependence multiplies the opportunities to alter national alliances (and therefore policy outcomes) by expanding the range of viable alternatives, creating political entanglements across national borders. Thus, we should expect the synergistic link (which is, by definition, explainable only in terms of two-level analysis) to become more frequent as interdependence grows.

2) The size of the winning set depends on the Level II political institutions

The ratification procedures clearly affect the size of the winning set. For example, if a two-thirds vote is required for ratification, the winning set will

almost certainly be lower than if only a simple majority were required. As noted earlier, the separation of US powers places a tighter constraint on the American set of victories than it is for many other countries. This increases the bargaining power of American negotiators, but also reduces the possibilities for international cooperation. It increases the chances of involuntary defection and makes potential partners more cautious in dealing with Americans. The "Trade Expansion Act" of 1974 modified US ratification procedures in an attempt to reduce the likelihood of Congressional tampering with the final agreement and thereby reassure American negotiating partners. However, to satisfy the sensitivities of Congress, an elaborate system of private sector committees was established to improve communication between Level I negotiators and their Level II members. Precisely this tactic is described in this case by Walton and McKersie: "Instead of taking the responsibility of directly persuading the principals (the Level II components) to reduce their expectations, the Level I negotiator structures the situation so that they (or their most immediate representatives) are convinced ".

However, not all significant ratification practices are formalized; for example, the Japanese propensity to seek the widest possible internal consensus before acting narrows the Japanese set of victories, in contrast to majority political cultures. Other internal political practices can also affect the size of the winning set. Strong discipline within the ruling party, for example, increases the advantage by expanding the range of arrangements for which the Level I negotiator can expect to receive support. On the contrary, the strengthening of party discipline in the main Western actions would reduce, all things being equal, the possibilities for international cooperation. The age-old discussion of the "strength of the state" and the "autonomy of the state" in negotiation is relevant here. The greater the autonomy of the central decision makers from their Level II components, the greater their winning set and therefore the greater the probability of reaching an international agreement. For example, central bank isolation from domestic political pressures actually increases the winning streak and thus the odds of international monetary cooperation. However, the two-level analysis also implies that, all things being equal, the stronger a state is in terms of autonomy from internal pressures, the weaker its

relative contractual position at the international level. For example, diplomats representing an entrenched dictatorship are less able than representatives of a democracy to credibly claim that internal pressures preclude some disadvantageous deal. This is yet another aspect of the puzzling ambiguity of the notion of "state force".

3) The size of the winning set depends on the strategies of the negotiators in Level I

Each level I negotiator has an unequivocal interest in maximizing the other party's set of victories, but always with respect to their own set of victories, his motivations are therefore conflicting. The bigger his winning set, the easier he can make a deal, but at the same time, the weaker his bargaining position towards the other negotiator. This fact often poses a tactical dilemma. For example, an effective way to demonstrate commitment to a certain position in level I bargaining is to garner the support of one's constituents, on the other hand, such tactics can have irreversible effects on the attitudes of constituents, hindering subsequent ratification of a compromise agreement. On the contrary, preliminary consultations at home, aimed at "softening" their constituents in anticipation of a struggle for ratification, can undermine the negotiator's ability to project an implacable image abroad. However, by ignoring these dilemmas for now and assuming that a negotiator wishes to expand his winning set in order to encourage ratification of an agreement, he can leverage both conventional collateral payments and generic "goodwill". The use of collateral payments to attract marginal supporters is, of course, quite familiar in game theory as well as in political practice. For example, Carter's White House has offered many incentives (such as public works projects) to help persuade hesitant senators to ratify the Panama Canal Treaty. In a two-tier game, secondary payments can come from unrelated internal sources, as in this case, or they could be received as part of international negotiation. The role of collateral payments in international negotiations is well known, however, the two-tier approach emphasizes that the value of an international collateral payment should be calculated in terms of the marginal contribution to the likelihood of ratification, rather than in terms of the overall value for the

beneficiary nation, because what matters in level II are not the total national costs and benefits, but their incidence with respect to existing coalitions and protocols. A transversal commercial concession is less effective than a concession that tilts the balance with an oscillating voter.

An experienced negotiator who is familiar with their respective internal tables should be able to maximize the cost-benefit ratio (for him and his constituents) of the concessions he has to make to secure ratification abroad, as well as the cost-effectiveness effectiveness of its own demands and threats, keeping an eye on the Level II impact of its initiatives, both at home and abroad. In this effort, Level I negotiators are often in collusion, as each has an interest in helping the other get the final agreement ratified. Indeed, they jointly move towards points of tangency between their respective curves of political indifference. In addition to the use of specific collateral payments, a chief negotiator, whose political position at home is high, can more easily obtain ratification of his foreign initiatives. While general goodwill cannot guarantee ratification, it is useful in expanding the winning set and thus furthering the Level I agreement, as it constitutes a kind of "universal glue" for his supporting coalition. Every Level I negotiator, in fact, has a strong interest in maximizing the popularity of its opposite number, as the popularity of Party A increases the size of its winning set, and thus increases both the odds of success and the relative bargaining leverage of the Part B. Therefore, negotiators should normally be expected to seek to reinforce each other with respect to their respective components. Partly for this reason and partly because of media attention, participation on the world stage usually gives a head of government a special advantage over his internal opposition.

Therefore, although the coordination of international policies is often hampered by high transaction costs, heads of government can also reap what we can call "transaction advantages", in fact the recent evolution of the Western Summit has placed more emphasis on advertising rather than on substance and that, it seems designed with the intent of appropriating these "transaction benefits" without actually seeking the kind of deals that might entail such costs. However, higher-status negotiators are likely to have more

collateral payments and more "goodwill" at home, and therefore foreigners will prefer to negotiate more with a head of government than with a lower official. Rather, reasoning in purely distributive and theoretical terms, a nation could have a contractual advantage even if its chief negotiator were just a simple employee. Thus diplomats act rationally, not just symbolically, when they refuse to negotiate with a lower-ranking counterpart.

2.4 Two-Level Game theory and the Brexit negotiation

The negotiation for the UK's exit from the European Union is the perfect illustration of Robert Putnam's two-tier game theory of international negotiations that we've just gutted. As we saw in the previous chapter, negotiations can only be successful if there is a "winning set" that can satisfy both levels. In this specific case, a multiplicity of internal ties proved overwhelming: the division of the Conservative party, the opinions of the people were not united and the diversity of votes in the 2016 referendum between Scotland and Northern Ireland. The then Prime Minister Theresa May was therefore confronted with different internal expectations.

However, the two-level game theory does not fully hold, although it adapts well to this type of negotiation, it does not take to 100% Brexit, as it assumes that the two negotiators are equal and that there are relatively consistent and consensual preferences advanced to level I, conditions that were not met in this case. This can be largely explained by the discrepancy between the political rhetoric needed at home and the reality of the balance of power in Brussels, what was rational at home was doomed to level I and vice versa. The negotiation, as already mentioned, took place in two phases: the first which ended in December 2017 with an alleged agreement on the bill on divorce, on the rights of EU citizens and a declaration on the Irish border, the second which instead ended on 22 November 2018, when the UK government signed a legally binding 585 pages withdrawal document with the EU, which covered the transition period up to December 2020, and a 25 pages political declaration on future UK-EU relations. The central point of the agreement revolved around the fact that the UK as a whole would remain in the EU customs union

throughout the transition period and possibly beyond, in order to prevent a hard border between Northern Ireland and the Republic to the south, the so-called backstop. This type of agreement turned out to satisfy neither the supporters of staying in the single market (“*soft Brexiters*”) nor the rest. The situation therefore saw a Parliament disgruntled and in the balance with the government that relied on the ten votes of the Democratic Unionist Party of Northern Ireland in order to remain in power so the ratification of this agreement in Parliament proved impossible, with different factions of different parties that have coalesced in opposition to the government.

In the case of the negotiation we are analyzing, it was difficult to define the winning set. According to Prime Minister Teresa May's first speeches, the government's goal was to leave the single market and customs union, withdraw from the jurisdiction of the European Court of Justice (CJEU), end the free movement of persons, obtain an agreement to enable frictionless trade and sign cooperation agreements with the EU on security issues (this dates back to May 2017). On the part of the EU, on the other hand, it was a question of maintaining the integrity of the single market, maintaining EU unity, preventing a hard border with Ireland, preventing the so-called "choice of cherries", i.e. preventing the Kingdom could choose between the four freedoms of movement which to maintain and which not to apply, and avoid the weakening of the regulatory regime (Council of the European Union 2017). At least at the beginning of the negotiation, there was very little or no overlap between the two, which means that one would have had to give in or there would have been no agreement. While a small winning set may be a contractual advantage as we studied from Putnam, it was unlikely that this would apply in this case due to the divisions within the inner constituency. The two main political parties were divided, with a wide spectrum of views ranging from promoting a second referendum, hoping to stay in the EU, to leaving in March 2019 without a deal and resorting to WTO rules. Theresa May was actually quite isolated in this varied landscape.

The Prime Minister's position was also undermined by the fact that, following the failed 2017 general elections in which he lost his majority and had to rely

on the votes of the DUP, he found himself a weak leader at home without a majority in Parliament and with a divided party. Also in July 2018, May faced the resignation of the Foreign and Brexit Secretaries and although she survived as Prime Minister, she enjoyed a low level of credibility in Brussels because, as Putnam pointed out, she could not guarantee ratification of an agreement in future. Another difficulty arose from the fact that the cost of no deal was higher for the UK than for the EU. If an agreement had not been reached by the end of March 2019, the UK would have faced the so-called "precipice", that is, a return to the basic WTO trade rules, with tariffs and border controls in place. Obviously, this scenario would have had far less dramatic consequences for the rest of the EU, which is less dependent on trans-channel links. The negotiators in Brussels were fully aware of this imbalance and were in an advantageous position to be able to impose their views.

The specific circumstances just described show that the traditional Putnam model cannot be fully applied to this negotiation. On one hand, there was no "objective" set of national preferences articulated by the Prime Minister nor widespread consensus. Her constituents at different national levels were divided and she lacked the kind of leverage described typical of the two-level game. On the other hand, the asymmetry in the bargaining power of the two negotiating groups in Brussels, never recognized by the British government, meant that the UK conditions would not be accepted. Despite everything, May felt compelled to deliver on what was promised to the country and refused to contemplate forms of a softer Brexit that would be more in tune with the reality of interconnected economies in Europe, but unacceptable to parts of her inner constituency. We can therefore affirm that Prime Minister Theresa May was trapped in a communicative discourse with her internal public, which made the necessary coordination and therefore successful negotiations impossible. In the next paragraphs I will analyze how the first and the second phase of the negotiations went.

1) ***The first phase***

Teresa May's legitimacy, as a former Remainer, was discursively underscored by the repeated tautology that "Brexit means Brexit", first expressed when she decided to run for the leadership of the Conservative party on July 11, 2016. This entire tautological outline was to underline the fact that Brexit had to be completed, that there would be no second thoughts and, obviously, no second referendum. But it completely lacked the strategy she would have to support how the UK would leave the EU or what their future relationship would be like. Her political views for negotiation, as she later expressed in her speeches and statements, were broad but clear. You developed a narrative around the 2016 referendum that interpreted the voters' choice in regulatory terms, as the (legitimate) goals of stopping EU immigration and recovering lost sovereignty:

“Our laws are made not in Brussels but in Westminster. Our judges sitting not in Luxembourg but in courts across the land. The authority of EU law in this country ended forever ... But let me be clear about the agreement we seek ... I want it to involve free trade, in goods and services. I want it to give British companies the maximum freedom to trade with and operate within the Single Market – and let European businesses do the same here. But let’s state one thing loud and clear: we are not leaving the European Union only to give up control of immigration all over again (May 2016a⁴⁰).

So we will take back control of our laws and bring an end to the jurisdiction of the European Court of Justice in Britain. Leaving the European Union will mean that our laws will be made in Westminster, Edinburgh, Cardiff and Belfast. Those laws will be interpreted by judges not in Luxembourg but in courts across this country (May 2017a⁴¹).

Yes, the United Kingdom will be a fully independent, sovereign country, free to make our own decisions on a whole host of different issues such as how we

⁴⁰ May, T. 2016a. “Speech to the Conservative Party Conference.” October 5. <https://www.independent.co.uk/news/uk/politics/theresa-may-speech-tory-conference-2016-in-full-transcript-a7346171.html>

⁴¹ May, T. 2017a. “The Government’s Negotiating Objectives for Exiting the EU.” Speech at Lancaster House, January 17. <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

choose to control immigration. But we still want to trade freely – in goods and services – with Europe (May 2016b⁴²).”

This kind of rhetoric could have been different, it was neither "natural" nor "objective", but it was built as a response to the success of the referendum campaign for leave. The theme of "Let's take back control", directly inherited from the referendum period, was present in these first speeches and remained constant throughout the negotiations. Already in October 2016, the central contradiction between wanting to abandon EU laws, controlling immigration on the one hand and trading freely with the EU (which implied acceptance of the four freedoms of movement) on the other was evident but it had never been recognized. There were only very brief and vague references to possible future difficulties: seven words after the EU Council in October 2016 and in his speech at the Conservative Party conference ("It will take a while to give and take") and few lines in the 2017 speech: "Of course, we recognize that we cannot leave the EU and let everything stay the same. Life for us will be different.⁴³" but overall, with her communication, May described the process as relatively simple. It is therefore clear that Theresa May expressed herself from the beginning on a series of principles or "red lines", intended not as preliminary declarations which would then evolve in the course of the negotiations to reach a realistic compromise but as non-negotiable elements. This was a tough bargaining tactic that later clashed with the reality of the balance of power in Brussels. This implied that the EU would do everything it could to reach an agreement or that it would have to make concessions in the negotiation without acknowledging it, a contradiction that ultimately weighs on. At the same time, she had not agreed on her strategy of hers with the different groups and subgroups within her party and Parliament in general (level II), so she did not have a consensual policy to defend in Brussels (level I). This was especially risky because she faced a united European Union speaking with one voice and never managed to divide her negotiating partners in Brussels.

⁴² May, T. 2016b. "Press Statement after the European Union Council." October 21. <https://www.gov.uk/government/speeches/european-council-october-2016-prime-ministers-press-statement>

⁴³ European Council. 2017. "European Council (Art. 50) Guidelines for Brexit Negotiations." April 29 <https://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brex-it-guidelines/>

This harsh rhetoric was intended to satisfy the "Leavers" in his own party, who were eager to enter into trade deals with third countries and would not agree to remain under the jurisdiction of the European Court of Justice. In the two-tier game, they were his main constituency because ratification depended on them. Her internal strategy was the classic one in a two-party system to maximize support within her own party, which was rational as long as her party had a majority in Parliament. But even within your own party, you have ignored supporters of a soft Brexit, where the priority was to mitigate the economic damage caused by leaving the EU and to stay as close to the single market as possible. After May lost her majority in the House of Commons in the June 2017 early general election, parliamentary arithmetic has become even more complex and the need to maintain unity behind her strategy more pressing. The fragmentation of parliamentary opinion and the lack of consensus at level II have been aggravated by the disruptive opinion of devolved regions. In Scotland, following the all-out Brexit outcome of the 2016 referendum, the government published its proposals in a document, "Scotland's Place in Europe", in which Nicola Sturgeon insisted on its "determination to ensure that the voice of Scotland be heard and acted upon"⁴⁴. He wanted the UK, or at least Scotland, to remain in the single market and customs union and for more powers to go to the Scottish Parliament. He did not stop there, in fact in March 2017, he formally asked the British government to grant the Scottish Parliament the power to organize a second referendum on independence, to which Teresa May replied that "now is not the time"⁴⁵. In a sense, then, the Prime Minister on this side was thus able to exploit Nicola Sturgeon's new relative weakness to limit the need to take Scottish views into account. But things turned out differently in Northern Ireland. The paradox here is that the DUP (Democratic Unionist Party) hard line on Brexit did not correspond to the wishes of the majority of the Northern Irish population, who voted to "remain" in the 2016 referendum. Indeed, it was the only party in the Northern Ireland, which supported the exit from the EU. But the collapse of the power-sharing assembly and government in Belfast in January 2017 gave the

⁴⁴ Hassan, G. 2018. "Still Different, Only Slightly Less So: Scotland." In *The British General Election of 2017*, edited by P. Cowley and D. Kavanagh, 125–148. Basingstoke: Palgrave Macmillan.

⁴⁵ *Ibidem*

DUP the opportunity to be the sole voice for Northern Ireland in London and therefore disproportionate power. This was also aided by the fact that the Irish border soon became the most difficult issue in the Brussels negotiations.

In contrast to the government's uncompromising communicative discourse in London, the image in Brussels was much more like a poorly concealed surrender. First, the Commission imposed a separation between the negotiation on the transition period and the negotiation on the final agreement, which the UK government first resisted and finally approved in December. This reduced May's strength in negotiating the transition period, as she was unable to use the trump card of future security cooperation. The government did not even have a say on the three issues to be discussed first, namely the Brexit bill, the rights of British citizens in the EU and European citizens in the UK and the Irish border. Hence, Theresa May accepted the principle of a transition period (or implementation) including free movement of persons, which was accepted by the Cabinet in July. You also had to accept that the jurisdiction of the Court of Justice was applied during the transition. All this was obviously very different from what was first stated immediately after the referendum.

2) The second phase

The second phase concerned the concrete aspect of the transition phase as Brussels refused to start talks on future relations between the EU and the UK until the matter was resolved. It ended with the November 2018 585-page deal on the transition phase and the political declaration on the future of UK-EU relations. During that time, May continued to uphold the same principles in the negotiations: continuing to ignore the fact that some of them were incompatible. The one qualification she added to her previous position, in an effort to reassure both her European partners and working class voters back home, was that there would be no social dumping after Brexit. The result of the internal negotiations was a proposal (the so-called Checkers plan) that was unacceptable to the Level I negotiators. Eventually, the government backed off in the face of pressure from Brussels and agreed to remain in the customs union during the period transition and possibly beyond if an agreement was not

reached at the end of 2020, in order to prevent a hard border in Ireland. But this time the contradiction between the two types of discourse came to a head when the House of Commons refused to ratify the agreement.

By March 2018, the Council of the EU had decided that negotiations on the future UK-EU relationship could begin. But they stopped immediately because the government did not submit specific proposals to the Commission for fear of inflaming spirits in London. Meanwhile, Scotland continued to be totally marginalized in this second phase due to lack of influence over the government. Nicola Sturgeon tried to take advantage of the Irish border dispute to gain special status for Scotland after Brexit. The controversy escalated in February 2018 when the Welsh and Scottish governments decided to pass legislation to transfer EU powers to Edinburgh and Cardiff, although the British Prime Minister had repeatedly insisted he was working for the whole of the UK in its Brexit negotiations. Checkers' plan was May's relatively successful attempt to reconcile the different factions of his party behind a strategy for the transition period. But it quickly became clear that May would not be able to sell it to Brussels, not least because it was the only acceptable option for her national constituency. When the government published its white paper in July, reactions from Brussels were initially softened, as the task force did not want to further weaken Teresa May's position. The Commission therefore welcomed the principle of a UK plan but made it clear that it did not find its content satisfactory. The negotiating impasse therefore remained as conservative discontent with the Prime Minister increased as local elections in May produced disastrous results for the party. The emergence of the new Brexit Party led by Nigel Farage and its success in the European elections at the end of the month, where it won more than 30% of the votes, sealed the fate of Teresa May, who could not manage the negotiation of the two-party game levels.

In this case, the two negotiations took place on parallel and antagonistic lines with May split between different speeches in Brussels and London. Analyzing his rhetoric, from a constructivist perspective, proved useful in understanding his failure to reach an agreement in Brussels that would have been acceptable

in London. Theresa May managed to get away with success in the first phase of the negotiations, but the gap between what she said in London and what she ultimately did in Brussels was too great. Other factors also meant that this negotiation was yes on two levels but did not fully reflect Putnam's theory: first, the internal electorate was much more fragmented and divided than the model, thus making it impossible for the government to defend a line. clear in Brussels or use it as a springboard in the discussion. As a result, the winning set was incredibly small. Second, the bargaining power of the British government was much less than expected, which in turn was due to its future position outside the EU, which reduced its leverage, especially compared to countries like Ireland, which it could count on the EU to support it precisely by using its status as a member state. More generally, the government's attitude showed a fundamental misunderstanding of the functioning of the EU and illustrated its weak socialization in the European institutions despite over forty years of membership. The constant use of "regain control" rhetoric has led the government to downplay the political and economic importance of its relations with the continent when addressing its internal audience and ultimately overestimate its bargaining power in Brussels.

Chapter 3 - UK internal negotiation

3.1 From a Hard to a Soft Brexit

Coming to the end of three and a half years of often torturous negotiations regarding, firstly, the terms of the UK's exit from the EU and, secondly, future relations, the negotiating leaders were wise enough not to go over the line by December 31, thus choosing to agree on a so-called *soft brexit*. Before getting to that, the situation was obviously mixed.

UK did not have an existing institutional structure on which to base the Brexit process and had to set up and set up two entirely new departments: the *EU Exit Department* (DexEU), set up to specifically manage withdrawal negotiations,

and the *Department for International Trade* (DIT)⁴⁶. The number of staff members in existing departments also increased significantly as Brexit put tremendous pressure on all of Whitehall, with departments overloaded and struggling to separate Brexit from ongoing activities⁴⁷. This rapid increase in new employees, combined with high staff turnover, has led to a lack of British political experience, expertise and institutional memory⁴⁸. Sir Ivan Rogers' resignation as UK ambassador to the EU in early 2017 was a response to the government's reluctance to engage effectively with the British representation and its extensive experience. This concern was echoed by an MP who reflected on the Brexit process: "Not a day goes by when the lack of knowledge within Westminster and within the public administration is not revealed, Brexit is in the spotlight on a collective lack of knowledge of the nature of our EU membership" (Interview, 16/5/2019). An additional difficulty faced by the public administration in providing a coherent negotiating approach was the lack of unified political leadership. Since the start of the negotiations there have been tensions between the Prime Minister's office and DexEU, and while formally the Secretary of State for DexEU was the chief negotiator, the effective leadership has been transferred to the Cabinet and Prime Minister Theresa May.

The lack of unity within the executive was also seen among the internal components of the United Kingdom, not least in Parliament, where divisions between and within parties were evident. The main division was between who had supported the "Leave" and who had voted "Remain" in the referendum. Even in some narrow parliamentary committees, which are normally seen as a consensus part of Parliament, there were significant divisions. This reluctance to consult with Parliament became evident when the government planned to

⁴⁶ Scottish Parliament. 2017. Note of meeting with Mr. Michel Barnier, Chief Negotiator, Taskforce on Article 50 negotiations with the United Kingdom. 11 September. https://www.parliament.scot/S5_European/General%20Documents/CTEER_2017.10.10_Note_of_meeting_with_Mr_Barnier.pdf

⁴⁷ Simões, E. 2011. Outcome and process accountability in negotiations: A motivated information-processing approach. *Psychologica* 55: 351–368.

⁴⁸ Martill, B., and U. Staiger. 2018. Cultures of negotiations: Explaining Britain's hard bargaining in the Brexit negotiations. Dahrendorf Forum IV, Working Paper No. 04, 14 September.

autonomously trigger Article 50 of the Treaty on European Union. However, objections were raised, and in January 2017 the Supreme Court ruled that the Article 50 could not be triggered without parliamentary legislation. As a result, the government introduced a “Notification of Withdrawal Bill”, which was approved by Parliament. However, the government rejected the two amendments proposed by the House of Lords about protection for EU citizens in the UK on the grounds that this would constrain its negotiating position. After Article 50 was triggered in March 2017, May, who hoped to strengthen her hand in the withdrawal negotiations by increasing her parliamentary majority, called a snap election. However, the strategy backfired, and in the general election of June 2017 the Conservative Party lost its small overall majority, forcing the government into a confidence-and-supply arrangement with the Democratic Unionist Party. The government thus entered into the withdrawal negotiations with a largely divided Parliament. This lack of consultation contributed to Parliament’s failures to ratify the Withdrawal Agreement on three occasions. Even if May insisted she had negotiated the best deal possible with the EU, it was difficult for many MPs to accept this argument, as they felt distanced from the negotiations. With the parliamentary deadlock, May had to ask for two extensions of the 2-year term provided for in Article 50. The first request extended the initial deadline from March 29 to April 12, 2019, and the second until October 31, 2019. During the second extension, attempts have been made to find compromises through inter-party talks with the Labor Party, but they have failed because it has been seen to take place too late. Given Labor's preference for remaining in a customs union with the EU, Labor leader Jeremy Corbyn has met with Barnier numerous times to explore this idea, thus clearly deviating from the UK's official position and sending competing messages to Brussels. In the end, May’s position became unsustainable, and she had to resign. Following a lengthy election process in the Conservative Party, Boris Johnson replaced her as PM in July 2019. However, the change in leadership did not result in further consultations with Parliament. On the contrary, Johnson started his term by advising the Queen to suspend Parliament for over a month. Although the Supreme Court later ruled that this advice was unlawful (Marshall 2019)⁴⁹, it was clear that he felt little

⁴⁹ Marshall, J. 2019. Proroguing parliament. Institute for Government, 3 October. <https://www.institutef>

accountability towards Parliament. This was also exemplified by his expulsion of 21 Conservative MPs who voted against the government, and in favor of legislation to block a no-deal scenario at the end of the second extension, which led to a number of ministerial resignations, and the Conservative Party's share of MPs decreasing even further. Johnson embarked on intensive negotiations with the EU to reach agreement on a slightly altered Withdrawal Agreement and Political Declaration just before the second extension expired. Yet, to allow for proper scrutiny, Parliament, which had not been consulted during the course of these negotiations, voted for an amendment requiring the PM to ask for a third extension. The EU granted the extension until 31 January 2020. Recognizing that the Agreement was unlikely to obtain parliamentary approval with the existing parliamentary arithmetic, the PM called a general election on 12 December 2019, which led to a significant Conservative majority. Rather than engaging with MPs, the PM thus opted for replacing them, and in this way paved the way for the Withdrawal Agreement Bill to be passed by Parliament, which voted 330 to 231 in support. In terms of the devolved administrations, there was a lack of genuine engagement throughout the withdrawal negotiations. Furthermore, there was a strong feeling that the views of Scotland and Wales were not taken into account. The government was criticized for suppressing disagreements, rather than engaging with it and trying to find solutions⁵⁰. In Scotland, which voted "Remain" by 62% in the referendum, the government argued particularly strongly that Scotland should not be taken out of the EU against its will, and that a lack of consultation with Scotland on Brexit would lead to a second Scottish independence referendum⁵¹. Consequently, when the former PM, May, ruled out single-market membership, a compromise favored by the Scottish Government, Prime Minister Nicola Sturgeon and Scottish Parliamentary Representatives started engaging directly with Barnier, exploring possibilities of a closer EU-Scottish relationship. This engagement, which again illustrates the lack of unity on the

[orgovernment.org.uk/explainers/proroguing-parliament](https://www.orgovernment.org.uk/explainers/proroguing-parliament).

⁵⁰ Parliament. 2017. European Union Committee—Brexit: Devolution, 19 July. <https://publications.parliament.uk/pa/ld201719/ldselect/lducom/9/910.htm>

⁵¹ Gamble, A. 2018. Taking back control: The political implications of Brexit. *Journal of European Public Policy* 25(8): 1215–1232

UK side and how domestic constituents engaged with the EU according to a competitive logic, increased throughout the withdrawal negotiations. While the government significantly strengthened its majority in the 2019 election, so did the Scottish National Party, which increased its number of MPs from 35 to 48. None of these MPs voted in favor of the Withdrawal Agreement, and there are now increasing demands for a referendum on Scottish independence from the UK⁵².

In a normal negotiation, parties taking integrative approaches signal their willingness to engage in negotiations and understand each other's motivations and priorities. Negotiators' attention is focused on identifying interests, rather than positions, with interests defined as underlying desires and concerns that motivate people to propose creative ideas and alternatives. While the positions, for example the choices that have been previously decided, are likely to highlight the differences between the parties, interests are often more compatible, allowing negotiators to find mutually acceptable solutions, as in the case of the final part of the Brexit negotiation. In identifying interests, the parties undertake an exploratory process before finding solutions that satisfy these interests. Rather than arriving with a firm brief, the parties approach the negotiations with openness and a common problem-solving attitude, and complementary strategies include proposing items on the agenda that are seen to benefit both sides. Conversely, negotiators who follow a distributive logic (such as that followed by the UK) enter the negotiations by presenting predetermined positions that are often developed without considering what might be possible for the other party. Once these positions have been presented, negotiators cling to them more and more, making it difficult to depart from them.

Rather than engaging in a problem-solving process, the UK negotiators primarily perceived the negotiations in terms of win-loss or zero-sum, in which the parties had to defend their positions and push the negotiating partner to

⁵² Scottish Parliament. 2017. Note of meeting with Mr Michel Barnier, Chief Negotiator, Taskforce on Article 50 negotiations with the United Kingdom. 11 September. https://www.parliament.scot/S5_European/General%20Documents/CTEER_2017.10.10_Note_of_meeting_with_Mr_Barnier.pdf.

make concessions. Once a position was adopted, often without meaningful justice or consideration for what was actually possible, negotiators became attached to it and any deviation was seen as a sign of weakness. References to willingness to "drop" negotiations, preparations for a "no-deal scenario", "need us more than we need them" and "we can win" are all hallmarks of a distributive approach. Moreover, even before the start of the withdrawal negotiations, the United Kingdom had taken a position by drawing red lines on the free movement of persons and independent trade agreements, but this position was adopted without considering compromises in terms of future EU-UK relations. Once the negotiations have entered the framework of the future relationship and the EU has presented the different options available, the UK instead of engaging in an exploratory and open process on how to stay as close as possible and minimize the economic impact negative of Brexit, it has continuously defended its line and leaving little room for flexibility⁵³. Similarly, even though the EU had clarified the legal and practical reasons for the sequence of negotiations, Prime Minister May's letter which triggered Article 50 in March 2017 repeatedly stressed that the two negotiations should have taken place in parallel, to allow the UK to use its strength in some areas, such as security, and to gain concessions in others⁵⁴. While it was quick for officials around the negotiating table to understand that this was not possible, the British political narrative continued to focus on the need for parallelism long after the negotiations began. A future commercial agreement between the two parties was considered to be negotiable within the 2-year term. However, this stance on parallelism was not anchored in actual preparations for a UK trade policy or considerations on future relations with the EU. This was evident when the European Council agreed that enough progress had been made on withdrawal issues to start discussing the future in December 2017 and it took the UK more than 6 months to develop its future proposal for a report⁵⁵. This was somewhat disconcerting for the EU, given the UK's insistence on

⁵³ Martill, B., and U. Staiger. 2018. Cultures of negotiations: Explaining Britain's hard bargaining in the Brexit negotiations. Dahrendorf Forum IV, Working Paper No. 04, 14 September.

⁵⁴ PM's O ce. 2017. Prime Minister's letter to Donald Tusk triggering Article 50. 29 March.https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604079/Prime_Ministers_letter_to_European_Council_President_Donald_Tusk.pdf.

⁵⁵ European Council. 2017b. European Council (Art. 50) meeting—Guidelines. <https://www.consilium.europa.eu/media/32236/15-euco-art50-guidelines-en.pdf>.

parallelism and the feasibility of reaching a trade agreement in principle with the EU before March 2019. The proposal which was finally presented in July 2018, through the "Checkers White Paper" on future relations between the UK and the EU, outlined the creation of a "free trade area for goods", supported by a "common regulation for goods" on "rules necessary to guarantee frictionless trade at the border" and the introduction of a "facilitated customs" preparations⁵⁶. Again, the UK position did not consider what would be acceptable for the EU, in particular in terms of the integrity of the EU single market and respect for the indivisibility of the four freedoms of movement of goods, services, capital and people. However, the EU recognized the positive elements in Checkers' proposal and saw it as a basis for discussion. However, the UK presented the document as a non-negotiable end point instead of a starting point for negotiations.

The positional approach continued during Johnson's leadership, although it focused more on timing, than content. He insisted on not asking for a third extension to Article 50 in order to "get Brexit done", thereby prioritizing the date, rather than the terms, of the UK's exit. To placate concerns about the impact on trade in the case of a no-deal scenario, he argued that an FTA could be negotiated during the transition period. Given that there would be no transition period without the Withdrawal Agreement, this illustrates the tendency in the UK not to focus on the withdrawal and the agreement on the future relationship as two separate deals, but to merge them in the overall Brexit narrative. In addition, Johnson stuck to the position of maintaining the December 31, 2020 deadline of the transition period, as negotiated by his predecessor. During the transition, which is regulating the EU-UK relationship at the time of writing, the UK is no longer part of the EU institutions, but is subject to EU rules and remains a member of the single market and the customs union. The purpose of the transition is to allow time to implement the Withdrawal Agreement, as well as negotiating the future EU-UK relationship. Although the final Agreement entered into force almost a year after the initially

⁵⁶ HM Government. 2018. The future relationship between the United Kingdom and the European Union. Department for Exiting the European Union, 12 June. <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>.

envisaged Brexit date of 29 March 2019, and thereby significantly reduced the time available to negotiate the future relationship, Johnson's government was committed to the position of getting things done and not extend the transition deadline. This commitment was further strengthened by the legislation ruling out an extension to the existing transition period beyond December 2020.

During the negotiation, in some periods we have seen that there were positive signals from both camps, with a potential deal imminent, but in others there seemed to be almost insurmountable obstacles, in particular, the extent to which companies can receive government financial support and access to countries coastal areas of the EU. What is clear, however, is that the whole process was a mixed bag, when analyzed the UKs position using the trading principles we saw in Putnam's theory, it is possible to make some general observations on which trading techniques were used.

At the international level, it was necessary for Great Britain to build strong relations ahead of time, that is, even before the 2016 referendum and therefore to be able to understand, during the negotiations, what the counterpart (EU) was interested in. A flashback from four years ago, in fact, reminds us that the Prime Minister of the time, David Cameron, was shuttling between European capitals trying to renegotiate the terms to try to keep Britain's EU membership firmly, however this type relations did not work because, after a while the British people were called to choose in a referendum. While Cameron still claims to have achieved a good result, it is clear to many that what he did was not enough, particularly on the issue of free movement. So let's try to understand what went wrong: first, the British government should have formed lasting alliances in Europe much earlier as this type of early relationship building is one of the keys to the success of the negotiations. Last minute shuttle diplomacy turned out to be too small, too late. Secondly, the EU lacked "empathy" as it failed to put itself in the shoes of the UK, perhaps if the EU had probably been a bit more flexible about freedom of movement, it would probably have succeeded to keep one of the largest and most important countries of Europe within the EU family.

Another fundamental principle is to pay close attention to the negotiation process because any action taken will surely have a weight in the future. In negotiations, it is almost impossible to overestimate the importance of process control. However, the EU did just that in the first part of the negotiation: it was the moment when the UK's withdrawal from the EU was negotiated. The EU insisted that the only important issues were: the support of Northern Ireland, the rights of EU and UK citizens and the financial liabilities of the UK, and that these were agreed before discussions on the future relationship were even held. By doing this, Europe certainly achieved a major victory in phase one as a result; the UK had less influence in phase two (the negotiation phase of future relations). But it is important to point out that in the second, advanced phase of the negotiations, the UK may have been able to use the issue of future financial commitments as a lever to put the EU in check. While the UK may have gained an advantage in the second stage of negotiations internationally, internally it is always crucial to remember the interests of stakeholders who are not sitting at the table during the negotiation. Communicating with those who are not at the table is as important as communicating with those who are. After all, there is a wide range of parties that have a strong interest in these negotiations: individual European countries, parliamentarians from both UK and EU sides, industrial groups and the general public on both sides. Again the image here is mixed. It can be safely said that the EU's lead negotiator, Michel Barnier, has been diligent in providing updates on the status of negotiations to member countries, European ambassadors and the European Parliament, while the same cannot be said in the UK, where the industrial groups were kept in the dark about the whole process. On this question, the response of the Foreign Minister of the moment and now Prime Minister Boris Johnson was exemplary. In fact, in response to business concerns about a no-deal Brexit, he said verbatim "*Fuck business*". Thanks to this certainly very strong response, relations with the most important stakeholders have not improved much since then. Of course, the UK's biggest stakeholder is the British people and that is why it is important to understand if the UK had an honest conversation with the population about the difficult compromises that needed to be made during the negotiation, the answer is no. This is because the British establishment never sided with the people on

controversial issues, and as a result, obtaining consent for the deal and the concessions that needed to be made seemed impossible.

Another fundamental principle of how international negotiations work is to be a partner can be trust. Negotiations, especially the particularly complex ones like the one we are analyzing, are built on a basis of trust and respect and on the knowledge that once the agreements have been agreed and signed, there is no going back unless both parties decide to renegotiate. This principle was called into question when the British government took the decision to draft legislation, the draft law on the internal market, which prevailed over one of the elements already included in the possible withdrawal agreement by the European Union, namely support for Northern Ireland, and which also violated international law. This move by the UK has caused the EU to be more demanding about the governance and enforcement mechanisms of a future trade deal, in order to ensure that the UK keeps its word. The United Kingdom has caused the tone of the international negotiation to escalate and make possible the decision to apply the so-called "hard Brexit".

In order to be able to sign an agreement that could be beneficial not only for Europe but also and above all for the United Kingdom, the latter had to adhere to one of the bases of the negotiation process: not to let internal political pressure hinder the achievement of pragmatic solutions. Indeed, this principle translates into the way in which the UK summit handled the issue of water control between Europe and the UK. Because while the right to control one's waters certainly has a strong symbolic importance and is a fundamental issue for many conservative parliamentarians, the real great negotiators tend to put pragmatism before politics and look at negotiation holistically, so that they can make the choice is right for the whole country and not just for one part of it.

After the year Boris Johnson had, and the worst economic crisis of the last 300 years caused by the COVID-19 pandemic, the British Prime Minister could not really afford a no-deal outcome, which, while unpleasant for the EU, did it would have been even more for the UK as, as we all know, the EU market is eight times the size of the UK. Sometimes, in the negotiation process, deadlocks

can be broken by the intervention of heads of state or other influential people outside the negotiation teams talking directly to each other to help regain momentum towards an agreement. Some examples of this practice are the already known telephone conversations between British Prime Minister Boris Johnson and Ursula Von Der Leyen, President of the European Commission, or this was also the case with the conclusion of the Withdrawal Agreement when Prime Minister Boris Johnson met with the then Irish Taoiseach, Leo Varadkar, in private talks to agree on some outstanding issues relating to customs and the Irish border⁵⁷.

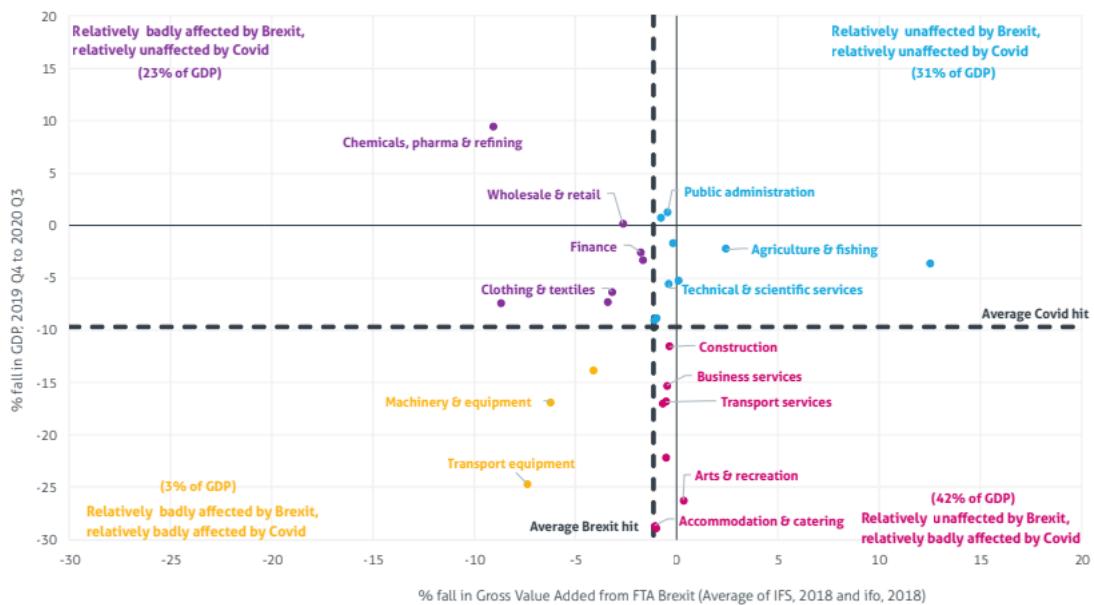
3.2 Impact of the COVID-19 pandemic

The UK economy, as well as most of the world's economies, has been hit hard by the coronavirus pandemic and any recovery has been delayed by a winter resurgence of the virus and renewed public health restrictions. Although the UK and the European Union have managed to reach an agreement on a future trade deal, the UK's relationship with its main trade partner will change substantially. Indeed, the pandemic is likely to lead to disruptions from early 2021 and long-term economic effects. Dealing with one of these shocks in isolation would be difficult for businesses; dealing with both will be even more difficult for the UK. Companies have spent time and resources in 2020 looking for ways to stay afloat despite the pandemic and this has left them less time to focus on preparing for the end of the transition and have weakened financially as they try to withstand short-term disruptions, and adapt to the long-term consequences of the UK leaving the EU. Brexit and the coronavirus seem like two shocks almost perfectly designed to substantially affect the entire UK economy. Brexit has and will continue to affect most of those sectors that depend on cross-border trade with the EU. Meanwhile, the coronavirus has hit non-tradable services the most, those that rely on face-to-face contact. This means that few sectors come out unscathed: it is estimated that 69% of the economy is hit hard by at least one between coronavirus and Brexit.

⁵⁷ Paul Fisher, “*Lessons From Brexit on How (Not) to Negotiate*”, Harvard Business Review, December 08, 2020 - <https://hbr.org/2020/12/lessons-from-brexit-on-how-not-to-negotiate>

Rishi Sunak, the Chancellor of the Exchequer, has launched a series of COVID measures, from wage subsidies to low-cost loans, to help businesses and households overcome a severe but temporary shock. These policies will remain in place in 2021 and could therefore be used by businesses to help them also cope with the effects of Brexit at the end of the transition period. However, these momentary policies are not well designed to help companies adapt to Brexit in the long term. Although the coronavirus is predominantly an acute but temporary shock to the economy, the UK's new trade relations with the EU will not only create some short-term disruptions as new systems are put in place, but also will permanently change their international competitiveness⁵⁸.

Figure 1 The impact of coronavirus and FTA Brexit on GDP in different sectors



Source: Institute for Government analysis of Office for National Statistics, UK GDP low level aggregates, November 2020, Levell, P and Norris Keiller, A, 'The exposure of different workers to potential trade barriers between the UK and the EU', Institute for Fiscal Studies, October 2018 and Felbermayr, Groschl and Steininger, Brexit through the lens of new quantitative trade theory, ifo, March 2018.

⁵⁸ Gemma Tetlow and Thomas Pope, "Brexit and coronavirus - Economic impacts and policy response", *IfG INSIGHT | DECEMBER 2020*
<https://www.instituteforgovernment.org.uk/sites/default/files/publications/brexit-coronavirus-economic-impact.pdf>

COVID-19 has made the world a very different place. In January 2020, at the dawn of what was to become one of the most disastrous pandemics in history, it seemed highly likely that the UK would conclude its transition agreement with the EU later this year, establishing a bilateral relationship on terms dictated by the World Trade Organization (WTO) or a rudimentary trade agreement, an outcome initially known as a “hard Brexit”. Consequently, it was thought that this would make a recession in the British economy more plausible, with obvious negative effects on the pound. Therefore, the likelihood of a destabilizing Brexit had increased significantly and the negotiations on future trade relations between the UK and the EU had not made much progress, so more intense negotiations were envisaged.

In January it was possible to envisage four different scenarios for the end of the transition phase:

- 1) No agreement / WTO
- 2) Limited agreement
- 3) Close alignment
- 4) Extension.

In the subsequent period, the totality of the risks was oriented towards one of the most destabilizing scenarios (no agreement or limited agreement) and to a greater extent than in January. This is because, any agreement involving close regulatory alignment linking the UK to the EU would have required one of two unlikely developments: either the UK government would have to renounce its commitment to voters or the EU would have to compromise the integrity of the single market. What about the other two scenarios? While it was reasonable to assume that the British government and the EU would have preferred an agreement, time was running out and it was not yet clear how to reconcile the fundamental differences. The impact of COVID-19 has pushed Brexit down the order of both the EU and the UK. For the Union in particular, strengthening the European project through its new Recovery Fund was much more important than Brexit.

The key point, however, is that both scenarios would have disrupted trade relations between the UK and the EU, without a service agreement and with the

reintroduction of customs and regulatory controls for goods. Yes, the UK would likely apply a moderate approach on its side of the border, but there was no guarantee the EU would do the same. For this reason, both outcomes would have been considered Hard Brexit scenarios at the time of the 2016 referendum. In fact, four years ago an exit under the conditions set by the WTO was not even considered by most people.

It is therefore legitimate to understand whether COVID-19 had change the positions of the two parties in the Brexit trade talks. But answering the question “did the COVID-19 crisis make a difference?” requires us to also answer another couple of related questions: “to whom?” and “how?.” Before the pandemic outbreak, the EU’s chief negotiator, Michel Barnier, had signaled the will of the EU to extend the deadline on many occasions, and his offer has since been reiterated. Even more clearly, however, the British government has rejected the offer, toughening its position, instead of loosening it, and repeatedly threatening to let the talks end without a deal as the health emergency has progressed. One might speculate that this was just a negotiating strategy on the side of the UK, designed to maximize its interests before caving in and finally accepting an extension. Much was indeed at stake for the UK in the course of the three scheduled negotiation rounds.

There were three main contentious issues dividing the UK and the EU. The most important, and least resolvable was the so-called “level playing field”. This refers to the adoption of the same rules with respect to workers’ rights, environment, brand protection, security and the quality of products. The EU insisted these rules are shared between the two trading partners to avoid any unfair competition on the side of London. UK, on the other hand, wanted total freedom to be able to craft its own rules, as this could be an important element of future trade negotiations with other partners, such as the US.

The second point of contention was the fight over fishing. The EU would like to keep fairly open access to British waters after Brexit, given their fishing potential. There are many fishing companies in northern EU countries, as well as in France, for which fishing in British waters is vital. The Johnson government is set to limit

the access of foreign commercial fleets to its waters substantially, following to the so-called method of “zonal attachment”. On this issue it is not unlikely that a satisfactory agreement can be found.

Then there was the question of the jurisdiction of the ECJ and of the European Court of Human Rights. The EU insisted on preserving the jurisdiction of those two courts for EU citizens and companies in the UK, while the British government was very strongly opposed to this option.

Well at the end of December 2020 the agreement between the United Kingdom and the European Union was finally signed but, having been this choice in the balance until the end, critics say that the propensity of the British Prime Minister for last-minute decisions complicated coronavirus management and narrowed the window for greater scrutiny over any trade deal with the EU. Taken together, Prime Minister Johnson's approach to the pandemic and Brexit talks has shown his willingness to put off tough decisions until the end, a weakness that has complicated Britain's handling of the pandemic. Sam Lowe, a trade expert at the Center for European Reform said: *"The PM's modus operandi is to leave difficult decisions until the last minute in the hope that something better will come, as evidenced by his approach to Covid-19"* and Tim Bale, professor of politics at Queen Mary University in London, said: *"The price of this psychological defect and its political consequences is paid in lost lives in the case of Covid; whereas with Brexit, livelihoods could be lost if some companies fail due to uncertainty caused by the delay in making a decision."* Due to the strong virality of the virus and the so-called *"English variant"* which seems to afflict the British community the worst, the UK has suddenly seen itself at a distinct disadvantage during the negotiations. The country, in fact, like most European nations, is on the verge of an economic crisis of important proportions; therefore aggravating the situation with a "no deal" scenario would have been counterproductive. Without any margin for error, Prime Minister Johnson therefore had to accept compromises to avoid an economically ruinous collapse in the talks⁵⁹.

⁵⁹ Mark Landler and Stephen Castle, *"Brinkmanship or Bluster? On Brexit and Pandemic, Boris Johnson Leaves It Late"*, The New York Times, Published Dec. 20, 2020 and Updated Jan. 4, 2021

Chapter 4 - European Negotiation

4.1 Negotiations in the European institutions and among Member States

Having therefore learned how negotiation within the UK has evolved and how British negotiators have applied the fundamental principles of negotiation, we can shift our focus on the negotiation process within the European institutions and among Member States.

Immediately following the official announcement of the UK referendum result, on 25 June 2016, the Council appointed Didier Seeuws as Head of the UK Special Task Force at the General Secretariat of the Council. Subsequently, on 27 July 2016, Jean-Claude Juncker, President of the European Commission, appointed Michel Barnier, former European Commissioner and French Foreign Minister, as EU chief negotiator for the Brexit negotiations. Instead, on 8 September 2016, the Conference of Presidents of the political groups of the European Parliament, appointed Guy Verhofstadt MEP, president of the Alliance of Liberals and Democrats for Europe group, and former Prime Minister of Belgium, as Brexit coordinator of the European Parliament. In addition, under the leadership of EU Chief Negotiator Barnier, a special unit of around 50 people, the so-called "Article 50 Task Force", has been set up within the Commission to lead the negotiations with the UK⁶⁰.

Although the Commission had not previously negotiated any withdrawal agreements, it drew on its extensive expertise and experience in negotiating trade agreements with countries around the world and accession agreements through its enlargement process. This was evident in the appointment of Sabine Weyand as second to the aforementioned EU negotiator Michel Barnier. Both Barnier and Weyand are two important personalities in the field of negotiation, the former already in the past Commissioner, was also important in the 2000 Intergovernmental Conference for the Treaty of Nice as head of institutional affairs for the European Commission and Weyand, for her part, came from the Commission's DG Trade and had extensive experience in

⁶⁰ Maurice, E. 2018, "Brexit, lessons in negotiations for the European Union." European Issue 494, Brussels: Foundation Robert Schuman.

international negotiations. Since the beginning of the withdrawal negotiations, the EU negotiators, Barnier, Weyand and the "Article 50 task force", have engaged in close inter institutional consultations with the Council and the European Parliament, both of which had to ratify the agreement. While having no existing configurations to deal with Brexit, the Council quickly established the "Ad Hoc Working Group" on Article 50 to support the Permanent Representatives Committee (COREPER) and the General Affairs Council in withdrawal negotiations. Following the start of the withdrawal negotiations on 19 June 2017, EU negotiators engaged weekly with the Working Group and COREPER and, on a monthly basis, with the General Affairs Council. In addition, the European Council was briefed before, during and after each round of negotiations with the UK⁶¹.

Member States, for their part, have expressed strong support for the approach taken by the EU negotiators. An Article 50 Working Group official pointed out that "the people in the task force are very knowledgeable in the political field, as well as being hardworking and very good at what they do." (Interview WP on Article 50 Official, 10/1/2018). Regarding the inter institutional consultations, it was stressed that "the information flows are excellent ... people are basically very satisfied with the approach they are taking [the Article 50 task force]. We define the direction of the journey and we register regularly"⁶². These supportive statements made it clear that it would make no sense for the Commission to "run away" and then pay a bribe to the UK that Member States would certainly not be happy with.

The negotiators' aim was to understand and protect the interests of all Member States; this was evident in their strong support for Irish concerns of avoiding a rigid border between the Republic and Northern Ireland. The conversation between the European Institutions and the Member States regarding the withdrawal of the United Kingdom was certainly a delicate topic to be addressed and for this reason, Barnier regularly visited the Member States to meet national political, economic and social representatives and to assess

⁶¹ Ibidem

⁶² Ibidem

appreciation of the negotiations. At the highest political level regarding Member State consultation, the 27 Heads of State or Government of the Member States met in the form of European Council in the presence of Barnier. It was obviously not the first and last time that the Council met, as there were several special meetings of the European Council to ensure that there were no unnecessary delays on the part of the EU. As a result, all Member States have devoted an enormous amount of time and resources to the entire Brexit process and have had to significantly increase their administrative capacity both in their representations in Brussels and in the relevant national ministries. Precisely on this point, a "Brexit Steering Group" has been set up in the European Parliament, chaired by Verhofstadt, to prepare and coordinate the parliamentary position on Brexit. In order to have great coordination and unity of purpose, the steering group worked closely with the Conference of Presidents and the committees concerned.

One aspect should be underlined: the fact that the Parliament had its own coordinator (which it did not have in any of the previous EU international negotiations) reflects the great importance attached to these negotiations by Parliament, which, as an institution, it had expressed since immediately wanting to be properly involved in the negotiations. Indeed, in its first resolution on the subject, it made its full involvement a precondition for its consent to the withdrawal agreement (European Parliament 2017)⁶³. EU negotiators engaged with the European Parliament regularly through the Brexit Steering Group, both to keep MEPs updated on negotiations with the UK and to listen to their concerns. Close involvement of the EP was considered crucial, particularly in the area of citizens' rights, to ensure parliamentary ratification and this meant that the general opinion within the Parliament was very positive about the influential role-played.

This shows how the EU has moved quickly to create the institutional structures needed to deal with Brexit, setting high levels of expertise and an

⁶³ European Parliament. 2017 European Parliament Resolution of 4 April 2017 on negotiations with the United Kingdom following its notification that it intends to withdraw from the European Union. 2017/2593(RSP). P8_TA(2017)0102. http://www.epgencms.europarl.europa.eu/cmsdata/uploa d/b9a0c645-21c2-4117-b933-04689cf7cb46/European_Parliament_Resolution_5_April.pdf.

effective system for inter institutional consultations. While these institutional structures largely mirrored the EU's general processes for conducting international negotiations, they were structures that had to remain distinct so as not to let Brexit affect ongoing EU activities⁶⁴. The engagement of EU negotiators with the Council and Parliament has also been far greater than in any previous negotiations, and this broad consultation process has helped to create an unprecedented level of unity and cohesion within the EU.

The negotiators of the European institutions were fully aware of the concerns and interests of all national components and made sure they were respected and shared throughout the negotiation process with the UK. Consequently, there have never been reasons to expect failures in the ratification of the Withdrawal Agreement by the EU. In fact, when the two parties finally reached a final agreement on 17 October 2019, it was approved on the same date by the European Council and approved by the European Parliament on 29 January 2020 with 621 votes in favor, 49 against and 13 abstentions. As can be seen, what emerged was an unusually strong parliamentary majority, which goes far beyond the simple majority required for EP consensus, and confirms the remarkable unity between the political groups during the withdrawal negotiations. Indeed, although only a strong qualified majority of the 27 member states was required, the Council unanimously adopted the decision to conclude the Withdrawal Agreement on 30 January 2020. Another aspect that emerged from the negotiations is that throughout the negotiation there was also a strong discipline in terms of lines of communication. Member States and MEPs were in full agreement that it was Barnier and his team who were negotiating on behalf of the EU and that any attempt by the UK to "divide and conquer" had to be anticipated and overcome smoothly for the Union⁶⁵. At times, individual Member States and the European Parliament have engaged directly with the media and the UK, but have never strayed from the EU's united approach. The logic followed by the Member States and the Union has been one of support rather than competition

⁶⁴ European Council. 2017a. Guidelines following the United Kingdom's notification under Article 50 TEU. EUCO XT 20004/17, 29 April. <https://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brex-it-guidelines/>.

⁶⁵ Nicolaïdis, K. 2017. Brexit arithmetics. In *Negotiating Brexit*, ed. J. Armour and H. Eidenmüller. Munich/Oxford: C.H. Beck/Hart Publishing.

and the UK's attempts to circumvent the Task Force and negotiate directly with individual Member States have consequently failed.

Although the EU did not agree with the UK referendum result, it immediately signaled its readiness to engage in negotiations as soon as the UK activated Article 50. There was an awareness that times were tight due to the 2-year limit set by article 50 (for which the closure was absolutely scheduled for 2020). The EU negotiators, in consultation with the Member States and the European Parliament, then began to identify the main interests and issues to be addressed during the negotiations to ensure that the European Council had the right and necessary basis to formally adopt the negotiating guidelines already on April 29, 2017, just one month after the activation of the withdrawal mechanism by the United Kingdom. It can be seen from these guidelines that the aim of the Withdrawal Agreement was to limit damages and mitigate the losses of the UK leaving the EU. The guidelines, which were translated into negotiating directives adopted by the General Affairs Council on 22 May 2017, instructed the EU negotiators to reach an agreement aimed at "minimizing the uncertainty and disruption caused by Brexit for our citizens, businesses and Member States, to resolve issues relating to citizens' rights, the Irish border and financial commitments"⁶⁶. Because, as we saw in the previous chapter, the UK had not published any negotiating details, the EU guidelines became the only reference basis for negotiations during the opening of negotiations on 19 June 2017, this situation proved to be a double-edged sword for the European Union as EU negotiators at the time were seen as dominating the negotiations, but this was possible mainly because the discussions were based on their guidelines, given the lack of UK proposals. The EU then proceeded to organize the negotiating agenda, however this agenda did not reflect predetermined positions according to a distributive approach, but rather identified the main problems to be solved almost like a list whose solutions had to be found during the negotiations between the two parties.

⁶⁶ European Council. 2017a. Guidelines following the United Kingdom's notification under Article 50 TEU. EUCO XT 20004/17, 29 April. <https://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brex-it-guidelines/>.

For the European Union itself it was clear that these negotiations, which represented the unprecedented challenge of a member state's detachment and which did not reflect the traditional "give and take" negotiations, had to be approached rather with a problem-solving attitude summed up in the concept of "nobody wants to defeat anyone"⁶⁷. At the extraordinary meeting of the European Council on 25 November 2018, Barnier explained how his team had "negotiated with the UK, never against the UK" and that the deal was "necessary to build trust between the UK and the EU"⁶⁸.

On the EU side, issues of citizens' rights and financial commitments were resolved relatively quickly, as EU guidelines focused on legality and methodology and, despite some UK positions at the political level, such as using the uncertainty of the state of EU citizens as one of the "main cards" in the negotiations⁶⁹, the dynamic that emerged at the table was mainly supplementary.

However, to find the solution to one of the most difficult issues in the negotiations, avoiding a hard border with Ireland, EU negotiators had to work harder to reach an agreement. The final solution can be seen as the result of an interest-based approach by EU negotiators, in close cooperation with their British counterparts, within the narrow confines created by the UK's so-called "red lines" on exit from the single market and customs union, from the EU's legal obligations and its compliance with international trade rules and from the commitment of both parties to respect the "Good Friday Agreement"⁷⁰. The first solution proposed came in the form of a backstop, which saw Northern Ireland remain in a single customs territory with the EU, in order to avoid

⁶⁷ European Council. 2018. Invitation letter by President Donald Tusk to the members of the European Council (Art. 50) ahead of their special meeting on 25 November 2018. Press Release, 24 November. <https://www.consilium.europa.eu/en/press/press-releases/2018/11/24/invitation-letter-by-president-donald-tusk-to-the-members-of-the-european-council-art-50-ahead-of-their-special-meeting-on-25-november-2018/>.

⁶⁸ Reuters. 2018. EU leaders' comments at special Brexit summit. 25 November. <https://www.reuters.com/article/us-britain-eu-highlights/highlights-eu-leaders-comments-at-special-brexit-summit-idUSKCN1NU07U>.

⁶⁹ Elgot, J. 2016. Liam Fox: EU nationals in UK on of 'main cards' in Brexit negotiations. *The Guardian*, 4 October. <https://www.theguardian.com/politics/2016/oct/04/liam-fox-refuses-to-guarantee-right-of-eu-citizens-to-remain-in-uk>

⁷⁰ Usherwood, S. 2019. *Will the EU budge? The current negotiations. Brexit and the backstop: everything you need to know*. London: *The UK in a Changing Europe*.

border controls on the island of Ireland after the Kingdom's exit. United. However, when it became clear that this proposal, agreed upon by both sides' negotiators, had little domestic support in the UK, particularly due to the Democratic Unionist Party's refusal to accept any customs border in the Irish Sea, or any border constitutional, political or any economic differentiation between Northern Ireland and the rest of the United Kingdom⁷¹: the negotiators re-engaged in discussions and managed to come up with a new support solution that would have kept all the United Kingdom within the single customs territory. They believed that such a solution would satisfy the internal rifts in British politics and facilitate the ratification of the agreement. This solution was then included in the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement, which was concluded by the EU and the UK in November 2018.

During subsequent ratification failures within the UK, the backstop has become the focus of criticism. At this point the EU expressed its reluctance to renegotiate the agreement, due to the fact that the negotiators had spent a year and a half looking for a solution but also because it was not clear how any changes would satisfy those national groups in the UK who refused the backstop. However, with new leadership in the UK, following the 2019 elections, the EU was ready to resume negotiations and listen to new proposals. Through intense negotiations in September and October 2019, the Protocol on Ireland/Northern Ireland was then revised and the backstop was replaced by an agreement whereby all of the UK leaves the EU Customs Union. However, to avoid a definitive border on the island of Ireland, Northern Ireland will apply EU customs rules and maintain regulatory alignment with Europe, effectively establishing a customs and regulatory border in the Irish Sea⁷².

This demonstrates how the EU has taken an open approach and engaged in the famous "creative thinking" in order to find a solution that avoids a hard border with Ireland, while also recognizing internal sensitivities in the UK and

⁷¹ Menon, A., and M. Bevington. 2019. *Where did the backstop come from?. Brexit and the backstop: everything you need to know*. London: The UK in a Changing Europe, pp. 10–11.

⁷² Parliament. 2019. The October 2019 EU UK Withdrawal Agreement, 18 October, <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8713>.

complying with the commitment of Johnson to renegotiate the agreement before the second extension, which expired on October 31, 2019. Although Johnson was forced to ask for another extension until January 31, 2020 for ratification purposes, the changes to the Withdrawal Agreement allowed him to claim a negotiating victory as we saw in the previous chapter, his subsequent victory in the December general election allowed him to push through the deal without the support of the DUP, which has maintained concerns about a border along the Irish Sea.

One area where the EU was criticized for taking an inflexible approach with the other side was the sequence of negotiations. Although Article 50 on the right of withdrawal of countries from the Union gives general guidelines to follow, it does not describe a precise structure for negotiations. Indeed, in addition to specifying that the EU must "take into account the framework for its future relationship (in this case the UK) with the Union" in negotiating and concluding the Withdrawal Agreement, the EU insisted on accepting the withdrawal before discussing future relations between it and the United Kingdom⁷³. This position has been strongly expressed and endorsed by the European Council, the Member States and the European Parliament, which have made the EU negotiators unable to accept the UK's request to conduct the two rounds of negotiations in parallel. The EU, recognizing that withdrawal issues were increasingly of an integrative nature, feared that if the two negotiations were conducted in parallel, it would face traditional distributive bargaining on issues of a different nature⁷⁴. In this case, it can therefore be seen that the EU took a less integrated approach, which nevertheless had a solid legal and practical basis.

It was clear that detailed discussions on the future relationship would complicate and delay the agreement on the more legal, technical and integrative issues of the withdrawal, which had to be concluded as stated within the two years deadline. After all, it was in the interest of both sides to be able to agree on a withdrawal agreement within this deadline, and the EU was

⁷³ Craig, P. 2017. *The process: Brexit and the anatomy of article 50*. In *The law & politics of Brexit*, ed. F. Fabbrini. Oxford: Oxford University Press.

⁷⁴ Maurice, E. 2018, "Brexit, lessons in negotiations for the European Union." European Issue 494, Brussels: Foundation Robert Schuman.

confident that the negotiations of the future relationship agreement would take longer. Consequently, even if the two negotiations had been conducted in parallel, the UK would never have known whether it would be worthwhile to conclude the agreement on the future relationship before having to accept the withdrawal agreement⁷⁵. The fact that the EU convinced the UK to accept the sequence of negotiations as early as the first round underlines the aforementioned logic of pragmatism which was ultimately generally accepted by both sides.

However, although formal negotiations on the future relationship were not initiated until after the UK's exit, the EU was opposed to the UK's concerns about the sequence of negotiations, and expressed willingness to initiate discussions on the framework for future relations as soon as "sufficient progress" was made on withdrawal issues⁷⁶. Once the European Council agreed that sufficient progress had been made, the EU negotiators immediately outlined several options for this report, ranging from free trade area (FTA) to joining the single market and showed their willingness to discuss both. However, the options were immediately reduced by the red lines. The fact that it then took the parties nearly 2 years to agree only on the final framework for the future relationship reflects also the improbability of completing both rounds of negotiations by the deadline of Article 50.

During the negotiations, one of the characteristics of the EU negotiators is that they have adopted high levels of transparency, both internally and vis-à-vis the UK and the general public. They found transparency essential to the success of the negotiations and the Commission stressed that the "unprecedented nature" of the UK's exit required a "tailored approach to transparency" and that it itself, as the institution of EU, aimed at "guaranteeing a maximum level of transparency during the negotiations", a report on the progress of the negotiations confirmed that they were actually "carried out with

⁷⁵ Craig, P. 2017. *The process: Brexit and the anatomy of article 50*. In *The law & politics of Brexit*, ed. F. Fabbrini. Oxford: Oxford University Press.

⁷⁶ Council of the EU, 2017, *Directives for the negotiation of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union*. XT 21016/17, 22 May. <https://www.consilium.europa.eu/media/21766/directives-for-the-negotiation-xt21016-ad01re02en17.pdf>.

unprecedented transparency"⁷⁷. This transparency is also evident from the fact that the publicly given documents include: negotiating agendas, EU position papers, non-EU documents, EU text proposals, fact sheets, speeches and agreements reached and most importantly is that the EU has staked so much on this concept that it does not at all believe that this could undermine its negotiating approach or risk obtaining distributional advantages from the United Kingdom. Given the non-distributive nature of the issues at stake, EU negotiators considered this open approach to be effective in identifying the true interests of the two sides, interests that largely overlapped and did not require compromises between two opposing poles. Both sides agreed on the importance of protecting citizens' rights; ensure an orderly withdrawal with a phasing out of existing cooperation procedures; and keeping an open border on the island of Ireland. None of these issues revealed dynamics in which the parties tried to conceal bottom lines from the other party. As a result, EU negotiators had nothing to lose thanks to their transparent approach, if anything, they benefited from it: it helped raise awareness of the Brexit process, not only among Member States and MEPs, but also among the general public. Transparent negotiation was used to facilitate and encourage debate and participation by bringing together civil society across the Union and helping national parliaments engage in "informed discussions, answer citizens' questions and engage in public debate"⁷⁸.

The Brexit process turned out to be much more difficult and complex than some predicted in 2016 and the initial expectations that predicted a kind of domino effect from other member states who would have expressed their willingness to leave the EU did not materialize. Instead, recent surveys indicate a growing appreciation for the European Union among citizens of Member

⁷⁷ European Commission, 2017b, *Communication to the European Council (Article 50) on the state of the progress of the negotiations with the United Kingdom under article 50 of the Treaty on European Union*. COM92017, 8 December, https://ec.europa.eu/commission/publications/communication-commission-european-council-article-50-state-progress-negotiations-united-kingdom-under-article-50-treaty-european-union_en.

⁷⁸ Barnier, M. 2017, *Discours par Michel Barnier à la 57ème COSAC. SPEECH/17/1469*, Valetta: 29 May. http://europa.eu/rapid/press-release_SPEECH-17-1469_en.htm.

States⁷⁹. The European Ombudsman confirmed that the high levels of transparency have given various benefits to EU negotiators, as "they have increased their legitimacy in the eyes of the public and have helped to keep the EU together, as Member States, the European Parliament and citizens were kept informed and included at every stage of the process"⁸⁰.

Thanks to their open and transparent approach, EU negotiators have also become the first point of contact for many media, helping them to control the public narrative on Brexit.

4.2 Negotiation within Member States: France, Italy and Germany as case studies

In the previous paragraphs we analyzed the different negotiation styles of the United Kingdom and the European Union, but speaking of the latter it is important to understand how the Member States reacted to the 2016 Referendum and what strategies they implemented in order to manage at best the changes that will be generated by the agreement now signed in December 2020. In particular, three politically, economically and internationally important countries: Germany, France and Italy, have reacted differently but with the aim of pursuing the same objectives.

Germany, after the British referendum that saw the victory of the "leave", tried to maintain a rather "nuanced" position, that is more willing to forgive what the German government thought were "British neuroses" and was therefore also possibly favorable to allow more time to be able to keep the old Anglo-Saxon ally anchored. In fact, Germany was better off avoiding the shock of an unfriendly divorce, given the European interest in cultivating collaborative relationships in various key sectors. Germany, on the strength of

⁷⁹ Eurobarometer 2019, *Closer to the citizens, closer to the Ballot*. European Parliament, Survey 91.1. <https://www.europarl.europa.eu/at-your-service/les/beheard/eurobarometer/2019/closer-to-the-citizens-closer-to-the-ballot/report/en-eurobarometer-2019.pdf>.

⁸⁰ European Ombudsman, 2019, *Ombudsman commends EU record on Brexit transparency*. Press Release No 2/2019, 11 February. <https://www.ombudsman.europa.eu/en/press-release/en/109859>.

its position as a great European economic power, has maintained a condescending attitude during the negotiations with the strategy of transparency maintained by the European negotiators but still quite detached. In fact, for internal reasons, it is today less interested in European changes than for example France is; and it feared instead, with the English withdrawal, a gravitation of London and its economic market towards extra-European powers.

Brexit, on the other hand, in recent years has increased the perception of German domination and with it has added pressure to form coalitions in order to counterbalance its power in the European sphere, especially in discussions on the Eurozone. Paradoxically, then, as a consequence of what has been said above, Germany could actually become weaker, that is, less able to get what it wants, in a European Union without the United Kingdom. Meanwhile, from an international point of view, the expectations of Germany and her role in the EU are likely to increase further. It has therefore become clear that for both parties Brexit will bear an economic risk that can be quantified on the basis of the final post-Brexit scenario that is now emerging. The economic damage varies considerably depending on the final institutional set-up, possibly revealed by trade negotiations. German export firms have already suffered significant losses in trade with Great Britain in the past four years of trading. Exports to that country (which still stood at over 89 billion euros in 2015) fell to less than 79 billion euros in 2019, while exports to other EU countries increased. In 2020, the UK ranks fifth among Germany's customers.

In terms of political weight, Germany with Brexit sees the EU's center of gravity shifted to the south-east, to the European Parliament, but above all to the Council. In fact, with the UK as a member, the north (defined as Germany, Sweden, Denmark, Finland, Ireland and the Netherlands) had a blocking minority of 36.8%. Without the UK, that share dropped to 27.8%, too small for a veto. Even when Austria and the Baltics are included, the north can be canceled. The exit of the UK therefore leaves huge political and financial gaps in the EU. Strangely, Chancellor Merkel's EU policy remains somewhat enigmatic as she condemns the choice of the United Kingdom but at the same

time she does not expose herself clearly against what is one of her major European trading partners.

As the UK left the EU's economic orbit on 1 January, the Union has regained confidence. Aided, in part, by a renewed Franco-German partnership and encouraged by the early arrival of Biden's Democratic administration in Washington. In the meantime, therefore, it is not only Berlin that dominates the scene but also and above all Paris, which in recent times has become the dominant player in the bloc's foreign policy. In fact, France is leading the debate on everything from relations with Washington and Moscow to the expansion of the EU's military capabilities. Central to the re launch of the Eurozone is therefore the Franco-German partnership, which strengthened with the exit of the only EU member state equal to them in economic and strategic terms. Just a year ago, France and Germany were at loggerheads on many of Europe's biggest challenges. Germany had watered down most of French President Emmanuel Macron's radical proposals to reform the euro zone. France, on the other hand, was blocking EU enlargement. German Chancellor Angela Merkel rejected Macron's criticism of the North Atlantic Treaty Organization and was cautious about Paris's efforts to sever ties with Russia. This all changed over the past spring. Leaving behind a decade of opposition to issuing common debt, Merkel backed in May the European Commission's proposal to issue debt to finance a bailout package that would distribute hundreds of billions of euros to member states to help them during the pandemic. Two months later, the EU approved the 750 billion euro Recovery Fund. With the United Kingdom leaving the EU, France, also a veto and nuclear member of the United Nations Security Council, is one of the few European countries with a global military presence and a willingness to deploy it. For years, the UK had blocked EU efforts that it feared would undermine NATO's work. Furthermore, the United Kingdom, being very critical in European foreign policy, would probably have pushed the Union towards close coordination with the United States on the challenges posed by China, economically undermined by the pandemic.

The one just described is an important change for the French leadership within the Union, as in 2016, after the referendum, the French nation seemed to be another of the countries in the balance. It is in fact worth remembering the joy shown by Marine Le Pen, head of the French Front National, which has always been in favor of a split between France and Europe, who commenting on the results said: "Today it is not Europe that is dead, but the EU. Nations are reborn"⁸¹. In fact, at that moment the leadership and legitimacy of President Hollande was wavering but this did not prevent him from expressing his full concern for the British question. While Le Pen therefore reiterated his intention, in the event of his victory in 2017, to start a "Frexit", the rest of the country condemned the selfish action of the United Kingdom. Subsequently, Emmanuel Macron's France pushed during the negotiations for a rapid closure of the affair, all in all hoping that Brexit would really happen and in a short time, a certainly less accommodating and moderate attitude than the German one just seen. Paris's calculation was that the exit of the United Kingdom would give France an increased role as the only European nuclear power and a member of the UN Security Council. Furthermore, Macron believed that the European reforms he had long aspired to were a little easier to implement without the strong and constant opposition from London. On the other hand, France (so the majority of Europeans) feared commercial competition with an economic power like the one that the United Kingdom could become by implementing a strong "deregulation" with respect to the continental market. For this reason, when the negotiating tables discussed a new trade agreement between the EU and the UK, it was not so easy or quick for London to obtain the kind of status it aspired to. However, Paris was ready to grant Great Britain, recognizing its technological and military weight, special agreements on security and defense.

As for Italy's position regarding the withdrawal of the United Kingdom, we immediately note that Italy has been a strong supporter of British accession to the European Community from the earliest days. The motivation for this support was twofold: first of all a long tradition of friendship which, with the

⁸¹ Tullia Penna, *Brexit, le reazioni politiche*, 24 giugno 2016 -<https://www.rivistaeuropae.eu/politica/brexit-le-reazioni-politiche/>.

exception of the Second World War, dates back to the support of the United Kingdom during the Risorgimento. The second reason is that Italy hoped that Britain could provide a welcome balance to the dominance of the aforementioned Franco-German partnership. Despite the various attempts by the Italian side, this strategy has always led to disappointment; The fact is that, in addition to being uncomfortable with the roles of France and Germany, Britain and Italy have very few common interests, the most important of which is probably that both countries are strongly pro-US and attached to NATO. One of the rare times the two nations lined up against France and Germany was when Berlusconi, then Italian Prime Minister, decided to side with George W. Bush and Tony Blair and support the war in Iraq. Another area where the interests of both countries have often been aligned is trade and the UK's lesser influence on the ratification of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and the TTIP negotiations. Despite everything, Italy was very present during the first phase of pre-negotiation in which David Cameron attempted to negotiate the conditions for the continuation of UK membership of the EU, and, in 2016, the Brexit vote was greeted with regret and dismay. The Italian premier of the moment Matteo Renzi, urgently convened a summit at Palazzo Chigi, at the presence of the Ministers of Foreign Affairs, Economy, Economic Development, the Governor of the Bank of Italy and the undersecretary to the presidency of the Council with responsibility for the secret services. Following the meeting and telephone conversations with the French President François Hollande and the German Chancellor Angela Merkel, the premier chaired a mild and sweetened press conference, describing Europe as "the home of our children and our grandchildren. It is a house that needs to be renovated, refreshed, but it is the house of our tomorrow"⁸².

It should also be noted that, in recent years, Italy has returned to being a country of emigration. It is estimated that in recent years between 60,000 and 100,000 young Italians have moved abroad to look for job opportunities, mainly in other parts of the EU. In addition, around 600,000 Italians work in

⁸² Tullia Penna, *Brexit, le reazioni politiche*, 24 giugno 2016 -<https://www.rivistaeuropae.eu/politica/brexit-le-reazioni-politiche/>.

Great Britain. For Italy, in fact, the terms of the cost/benefit calculation with respect to Brexit are perhaps the clearest: our exports certainly benefit from British membership and in a geopolitical key, London has on several occasions been a precious side to balance the weight of "Franco-German couple". In short, from the Italian point of view, the primary interest is that London remain as closely linked to the EU as possible. This would have offered more options to a country like ours, which is already suffering from the shift towards the east of the continental center of gravity of the EU, with a relative marginality of Italian interests towards the south. It can be argued, on the other hand, that in the absence of London, Italy could now become a natural third permanent partner of France and Germany; but this seems a theoretical hypothesis without great confirmation in the facts. Too risky, in the end, to bet everything on this.

5. Conclusion - The UK-EU complex negotiation

5.1. An integrated approach

Comparison of EU and UK approaches in withdrawal negotiations demonstrates how the EU has pushed towards the integrative end of the negotiating spectrum, with extensive internal consultations, willing to engage in open and interest-based discussions aimed at problem solving and high levels of transparency, while the United Kingdom has been more oriented towards the distribution goal, putting less effort and less consultation with national components, are therefore two predetermined positions with different levels of transparency.

While the rational expectation was that both sides would adopt integrative approaches, this did not materialize. The clash of approaches highlights how the UK underestimated the complexity of the negotiations and rather than perceiving Brexit as a common issue that needed to be addressed with a problem-solving attitude, it saw withdrawal from the Union mainly in terms of distributive bargaining and adapted his approach accordingly. Since, as specified in Putnam's two-level game theory, a fully integrative dynamic

emerges only if both parties perceive negotiation in the same way, the clash of approaches has led, in line with the distributive logic, to relational tensions and levels decreasing confidence. After all, even though support for the EU has increased among European citizens since the UK referendum, the EU wants to ensure with the agreement signed at the end of December 2020, that the UK, as no longer a member of the Union, "cannot have the same rights and enjoy the same benefits as a member"⁸³, in order not to create a precedent with Brexit.

5.1. Multi-layers and Multi-levels negotiation

Developing proper negotiation strategies in the Brexit process has included its multi-level and multilateral nature, amplified by the existence of multiple separate negotiations with distinct process rules. Furthermore, in addition to these characteristics, it is necessary to take into account the substantial links between the various dimensions, from reputation and relationships, to symbolism, up to future negotiations on the EU budget and a hypothetical but not impossible referendum on Scottish independence.

While all negotiations have significant substantive and analytical dimensions, the nature of the communication and emotions remain highly relevant. The definition of the first phase of the Brexit negotiations was lacking in these respects. Indeed, the UK's approach has been narrow and sometimes shortsighted. Starting a negotiation without preparation, with a negligible understanding of complex dimensions and with simultaneously unclear and contradictory objectives is inevitably problematic.

The UK's internal competition to influence strategic objectives and preferences for negotiations following the outcome of the referendum in June 2016 has led to very exaggerated and simplistic analysis and rhetoric. This was combined with overly optimistic bias and selfish assessments, not least to the extent that the substantive benefits of a trade deal would dominate EU decision-making. However, the numerous public statements by political figures

⁸³ Council of the EU, 2020, *Directives for the negotiation of a new partnership with the United Kingdom of Great Britain and Northern Ireland*. 5870/20, 25 February. <https://www.consilium.europa.eu/media/42736/st05870-ad01re03-en20.pdf>.

were not limited to internal consumption, but had communicative and emotional consequences within the EU. Both dimensions of the negotiation therefore required much more careful management.

Considerable attention must be paid to the balance of power in both the UK and the EU. The control over critical resources and processes is undoubtedly important. However, the nature of power in negotiation, which is fundamentally concerned with the ability to move an outcome in the desired direction, is subtler than we might think. This is especially true when the situation changes from a two-party negotiation to a multi-party, multi-level negotiation. In this context, power is not just about the dynamics between the UK and the EU; it is also about internal multi-level negotiations. Overall, power becomes the ability to manage multiple dimensions towards a successful conclusion. It is therefore quite possible for one or both parties to limit their freedom of action in such a way that the possible settlement area narrows. In light of the foregoing, the achievement of good results in negotiations is rarely achieved by taking "absolute" positions and one has to balance managing internal expectations and respecting promises made internationally.

The dominant analytical method in negotiations advocates maximizing trade-offs between issues based on relative preferences to optimize outcomes, following the principle that "nothing is agreed until everything is agreed." While very successful, such bargaining based on the interests, as seen in the previous chapters, has its limitations. Such an approach in fact undermines the stated objectives of building a new partnership, and questions moral rights or legitimacy and is perceived as a difficult bargaining approach that increases the risk to elicit mutual action. Brexit negotiations span a wide range of issues and interests, from financial services to fisheries and so on, all of which contain many sub-issues and interests. The art is to identify where interest-based bargaining can be applied legitimately and successfully.

The tense relationship between the UK and the EU has amplified the tendency to adopt power-based approaches, not least with the EU's action to put a moratorium on negotiations even before the formal activation of Article 50. Thus the EU has managed to maintain cohesion between the 27 countries,

as well as control over the process of determining the power advantages inherent in activating Article 50. Increase power-based negotiation tactics, including issuing implicit threats from UK to adopt a tough and closed economic model was not helpful in maximizing the chances of a positive outcome for all parties. The questionable credibility of such tactics, however, did not stop the UK from increasing the complexity of the negotiations as steps were taken to further protect interests that would have been of lesser importance in a partnership-based relationship. In the first phase of the negotiation, positional power-based approaches dominated but, as we learned from Putnam's explanation, to be successful, negotiators must carefully manage internal expectations and adopt a clear understanding of the other party's perspective. More critically, they must consider creative options that would be mutually beneficial.

But on this point we must be careful, the absence of these steps does not mean that there can never be the prospect of an agreement. In fact, history has meant that all the countries of the world had to clash with a totally external agent at all levels and layers of negotiation, the spread of the COVID-19 disease. In internal negotiation, therefore, there are variables incomes including: a pressing economic crisis, the urgent need for injections of liquidity within the economy, an increasingly high unemployment and an unprecedented health crisis. The negotiation therefore shifted to more relaxed and condescending tones, avoiding a further extension of the process and putting aside all the limitations posed in the first period. By doing exactly that, at the end of December 2020, with the ratification of the agreement between United Kingdom and the European Union, the real two-level game was put into practice.

Abstract

On 31 January 2020, the UK left the European Union after 47 years of membership. In this thesis I therefore tackle the complex negotiations between the United Kingdom and the European Union, I will deepen the conceptual distinction between integrative and distributive bargaining to compare the approaches of the EU and the United Kingdom in the negotiations that led to the Withdrawal Agreement. While it is rational to expect both sides to have adopted integrative approaches, given the complicated nature of the issues, the long history of cooperation, and the parties' mutual interest in maintaining a close relationship in the future, the confrontation will show that it was primarily the EU to focus on an integrative approach, through: broad internal consultations, the willingness to engage in open discussions aimed at solving problems and high levels of transparency, while the United Kingdom has further closed itself to consultation with national components. Given the multi-layered and multi-level nature of the negotiation, it will be understood in the paper that domestic politics and international relations are often inextricably intertwined. Precisely for this reason, the Brexit negotiation can be defined as an imperfect form of "game on two levels", in fact, when national leaders must obtain ratification (formal or informal) from their constituents for an international agreement, their negotiating behavior reflects the simultaneous imperatives of both an internal political game and an international game. The text also analyzes: the role of preferences and internal coalitions, the institutions and political practices within some EU Member States such as Germany, France and Italy, the strategies and tactics of the negotiators, the uncertainty and the internal reverberation of international pressures.

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