

23 987 Membership of the European Union

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On 29 March 2017, the United Kingdom formally announced its intention to leave the EU, by means of a notification letter pursuant to article 50 of the Treaty on European Union. Unless an extension of the period or a transitional period is agreed, Brexit will be effected exactly two years after this date, on 29 March 2019. In the meanwhile, negotiations will take place according to the treaty provisions on an agreement on the conditions for withdrawal, taking into account the context of future relations of the United Kingdom with the Union.

On 30 March 2017, the standing committee on European Affairs appointed from its number the members Anne Mulder (VVD), Omtzigt (CDA) and Verhoeven (D66) as co-rapporteurs to monitor the negotiations and other developments relating to Brexit on an ongoing basis, and to obtain more insight into the new future relationship between the EU and the UK. This rapporteurship is a follow-up to the report that former member Maij and member Omtzigt issued about Brexit on 21 March 2017 (Parliamentary Document 23987, no. 171).

With a mandate from the standing committee on European Affairs, the rapporteurs organised the following activities, which all committee members were invited to attend:

- a roundtable discussion about Brexit on 7 June 2017;
- a work visit to the EU institutions in Brussels on 25 and 26 June 2017;
- a work visit to Europol in The Hague on 3 July 2017;
- various political and official technical briefings by the Minister of Foreign Affairs and his officers working for the 'United Kingdom Task Force';
- discussions with the British Minister of State for Brexit, Mr David Jones, on 10 April 2017, and with the British ambassador to the Netherlands, Mr Peter Wilson, on 28 September 2017.

The report by the rapporteurs on their findings on the period from April 2017 to the present day is in the appendix. The report contains ten conclusions and recommendations addressed to the Dutch government and the Senate and House of Representatives. A report on the roundtable discussion of 7 June 2017 has already been drawn up, Parliamentary Document 23987, no. 188.

Rapporteurs

Anne Mulder
Omtzigt
Verhoeven

Appendix: Report of the rapporteurs regarding Brexit (April-October 2017)

1. Start of the negotiations

Following the letter of notification from the British government, the European Council met on 29 April 2017 to determine the political guidelines for the forthcoming negotiations with the United Kingdom. These political guidelines were developed into 'negotiating guidelines', adopted by the Council for General Affairs on 22 May 2017. Both fora met in article 50 formation, which means that (naturally) the United Kingdom, as withdrawing EU member state, was not present at them. The heads of state and heads of government sit on the European Council, while the ministers with responsibility for European affairs are represented on the Council for General Affairs.

Shortly after this, the negotiations between the EU and the UK actually commenced. The first round of negotiations was held in the week of 19 June 2017; the fifth and most recent round was held in the week of 9 October 2017. The negotiations are still in the first phase, which addresses the conditions for withdrawal. The EU is of the opinion that insufficient progress has been made as yet to be able to move on to the second phase, in which the future trade relationship – important to the Netherlands – will take shape.¹

In summary, this means that more than six months have passed since the letter of notification was handed over by the British government to the President of the European Council on 29 March 2017 – in other words, a quarter of the total period of two years that was set aside in the treaties to arrange the withdrawal of a member state in an orderly and controlled manner. In fact, there is actually less time for negotiations, because the withdrawal agreement will still have to be approved by the European Parliament before it can be concluded by the Council of the European Union.²

2. Possible scenarios for a Brexit

How exactly will the Brexit look? This question is highly relevant, but unfortunately it cannot yet be answered, because there are still so many unknown variables in the withdrawal process. Because this major dynamic is a given, in view of political developments in the UK, in the 27 member states and at the European level, the rapporteurs are proposing several likely

¹ See point 5 of the Guidelines for the negotiations adopted by the European Council (article 50) on 29 April 2017: *“While an agreement on a future relationship between the Union and the United Kingdom as such can only be finalised and concluded once the United Kingdom has become a third country, Article 50 TEU [Treaty of European Union] requires to take account of the framework for its future relationship with the Union in the arrangements for withdrawal. To this end, an overall understanding on the framework for the future relationship should be identified during a second phase of the negotiations under Article 50 TEU. We stand ready to engage in preliminary and preparatory discussions to this end in the context of negotiations under Article 50 TEU, as soon as the European Council decides that sufficient progress has been made in the first phase towards reaching a satisfactory agreement on the arrangements for an orderly withdrawal.”*

² This withdrawal agreement takes into account the context of future relationships. These future relationships will have to be arranged in a separate treaty between the EU and the UK at the appropriate time, however. When concluding this treaty, the provisions of article 218 of the Treaty on the Functioning of the European Union are applicable. This treaty must be ratified, after being concluded, by all EU member states; for the Netherlands this means that the treaty must be approved, consecutively, by the House of Representatives and the Senate.

scenarios along which Brexit could develop. In the description of these scenarios, they attach significance to making a distinction between process and content.

In terms of process: an orderly or disorderly departure

In order to prevent disruption of the EU – UK relationship (in the areas of trade, the economy, security, etc.) and legal uncertainty for civilians and businesses, a withdrawal agreement must have been concluded by 29 March 2019, or a transitional period or extension of the period must have been agreed by the EU and the UK by this date, during which such an agreement must be concluded.³ In this scenario, an orderly and controlled withdrawal takes place on the basis of an agreement, in which arrangements are made for guaranteeing the legal certainty of all citizens and businesses in the EU and in the United Kingdom, and for guaranteeing the continuity of the EU – UK relationship. It will be no surprise that this scenario is the emphatic preference of the rapporteurs.

On the other hand, if no withdrawal agreement has been concluded by 29 March 2019 and no extension period or transitional period has been agreed, the links between the EU and the UK will be cut abruptly and unconditionally. As of that day, the United Kingdom will no longer form part of the EU or the EU institutions; EU law will no longer have any effect in the British legal system, Dutch citizens and companies in the United Kingdom will no longer be able to invoke the legal protection of the EU. Furthermore, the UK will then no longer be part of the internal market of the EU; the four freedoms related to this will cease to exist, in both directions. This scenario (the cliff edge or ‘chaos scenario’) is seen by the rapporteurs as being extremely damaging to all parties, and therefore highly undesirable.

In terms of content: close to or far away from the status quo

Various scenarios can also be distinguished on the basis of content, if the EU and the UK succeed in reaching an agreement, and make arrangements in this regarding the future relationship, or its contours. One important factor – perhaps the most important – in this future relationship will be the economic component: to what extent and under what conditions will the EU and the UK gain access to one another's internal markets? Will the four freedoms still remain – fully or partially – after Brexit? Other factors relate to the way in which political cooperation is arranged in areas including security and defence, police and justice and migration and asylum. Thirdly, the position of EU citizens in the United Kingdom (and vice versa) must not be ignored.

A new relationship which is very close to the status quo – in which the rights of EU citizens are protected, the mutual trade relationship remains close and the political cooperation is maintained – is referred to by the rapporteurs as the 'soft Brexit' scenario. On the other hand, the opposite scenario, which in the new situation is very far from the current situation – for example in which EU citizens do not enjoy any legal protection in the UK, the trade relationship is subject to WTO rules and political cooperation is put on the backburner – is referred to by the rapporteurs as a 'hard Brexit'.

³ It is also possible that the United Kingdom will revoke the article 50 notification. According to legal advice given to the British House of Lords, this can take place unilaterally. The legal advice of the British government itself is secret. The European Commission and European Parliament are of the opinion that this can only take place if the 27 EU member states consent to the revocation. The issue of revocation of the notification, or what would happen if the United Kingdom or an EU member state does not ratify any treaty on the new relationship, could certainly become extremely relevant.

The rapporteurs realise that the terms hard and soft Brexit are open to multiple interpretations; they themselves apply these two definitions with regard to the content of the future relationship. In order to avoid confusion regarding the terms 'hard Brexit' and 'chaotic Brexit': the common denominator in these scenarios is that they involve a strong deviation from the status quo; however, in the case of a hard Brexit, this would take place in an orderly fashion on the basis of agreements made, so that the consequences of the withdrawal of the UK can take place in a controlled manner. In the other case, no agreement is concluded (and no extension period or transitional period agreed) and, as a result, a legal vacuum will be created on 29 March 2019, and in other areas the relationship will revert to multilateral treaties, in other words: chaos. The consequences could be extremely damaging for vital and sometimes also vulnerable sectors of the Dutch economy. The Netherlands must be prepared for this at that moment.

3. Progress on the negotiations

The rapporteurs have been informed about the progress of the negotiations through the letters of the Minister of Foreign Affairs and the reports on the website of the European Commission and the Council of the European Union. At the instigation of the EU27, as set down in the political guidelines, a phasing has been applied in the negotiations. Negotiations will only take place initially regarding the withdrawal agreement, which contains three components: the position of EU citizens in the United Kingdom (and vice versa), the border between Ireland and Northern Ireland, and the financial withdrawal arrangements. Only once sufficient progress has been made on these components can the European Council decide to proceed to the next phase in negotiations: the introductory and preparatory discussions on the framework for future relationships between the European Union and the United Kingdom.

On 20 October 2017, the government leaders of the EU27, united in the European Council (article 50), drew up an interim review of the negotiations after five rounds. The general picture of the European Council is that, across the board, insufficient progress has been made to be able to proceed to phase 2 of the negotiations. The rapporteurs regret this, and refer in this context to the insufficient preparation on the British side. Domestic political developments in the United Kingdom, such as the early general elections on 8 June 2017 and their aftermath, and the unrealistic expectations regarding Brexit among a number of British politicians, have placed considerable demands on the consistency and coherence of policy positions taken by the British government in the negotiations.

Zooming in on three separate components of the negotiations, the European Council has ascertained that a certain amount of progress has been made on the 'citizens rights' and 'Ireland' components.

With regard to the Ireland component, the rapporteurs note that both sides agree on the principles, namely maintaining the Good Friday agreement and the free movement of persons between Ireland and Northern Ireland, but that this will be impossible without checks on goods either at the border between Northern Ireland and Ireland or at the border between Northern Ireland and Great Britain. Both options appear impossible, and the parties are therefore discussing imaginative solutions, without anything concrete being proposed.

With regard to the citizens' rights component, the rapporteurs note that the uncertainty of EU citizens in the United Kingdom and British citizens in the EU27 member states is becoming

critical. These people are entitled to clarity and future prospects and cannot wait any longer to know which rights they will have after Brexit. The rapporteurs urge the negotiating parties to put their words into action and quickly offer clarity.

'The bill as bottleneck'

With regard to the 'financial arrangement' component, the European Council notes that, while the UK has expressed willingness to meet its financial obligations, this is not yet resulted in a concrete commitment to meet all its obligations. On the one hand, the rapporteurs are pleased that the British government has shown willingness to meet its obligations in the current Multi-Annual Financial Framework, so that net payers (such as the Netherlands) will not pay more, and net recipients will not receive less. On the other hand, it remains unclear to what extent obligations which continue after 2020 will be covered financially as a result of the departure of the United Kingdom from the EU.

As a result, the financial arrangement is currently the primary political obstacle to sufficient progress in the negotiating process. Both negotiating parties cannot allow themselves to concede too much in this area: for a large proportion of the British population, every divorce amount will feel like it is too high, partly due to the referendum campaign in which the image was created that the UK would actually pay less money to the EU. For the 27 remaining EU member states, a considerable discount on the divorce amount would be problematic, because the British would then be rewarded for bad behaviour. In order to overcome this negotiating problem, the divorce amount will have to be objectified as much as possible, and accompanied by financial and legal substantiation.

If the negotiation problem is not resolved, the rapporteurs are concerned that the negotiations will, sooner or later, become bogged down in the financial arrangement. This makes the risk of the 'chaos scenario' more likely, resulting in uncertainty and instability on both sides of the Channel. The Netherlands should not underestimate this situation, and should prepare itself thoroughly for this scenario. If necessary, an extension of the negotiating period or transitional period between the EU and the UK should be agreed, if this could hold off the 'chaos scenario'.

The conclusions of the European Council on 20 October 2017 appear to offer an opening for this. In its next meeting on 15 December 2017, the European Council will again address the situation in the negotiations: if sufficient progress has been made, it will adopt additional guidelines for the framework for the future relationship and a possible transitional period, in line with the guidelines of 29 April 2017. That would enable phase 2 of the negotiations with the United Kingdom to begin at that moment. In preparation of this possible result, the EU27 member states have been invited to start internal discussions, together with the EU negotiator.

The coming period should therefore be used, in the opinion of the rapporteurs, to explore and develop the possibilities for a new partnership with the UK after Brexit from the Dutch perspective. Such a parallel process would benefit preparations at the national level, and would not be at odds with the necessity for unity within the EU27. Various participants in the roundtable discussion in the House expressed their ideas and suggestions on this, in the interest of certainty and continuity in the relationships with the UK. The Netherlands has major economic interests in the UK; as an open export economy, the Netherlands would benefit greatly from a wide-ranging trade agreement.

Brexit also offers opportunities for the Netherlands as a trade nation with attractive business conditions for new activities. The relationship with important transatlantic countries such as the United States, Canada and Brazil could gain new potency; with the withdrawal of the UK, the Netherlands would become a logical point of access to the European market.

In terms of security and combating terrorism, it is desirable that cooperation be continued, for example between the security services, police, justice departments and through Europol.

4. The House and its access to information

Although it is understandable that negotiations are taking place in private and subject to confidentiality by the EU and on behalf of the governments of the EU27 member states, it is also essential that the national parliaments and the European Parliament are adequately informed regarding positions taken in, progress on and the results of the negotiations with the UK. This is because the parliaments have a formal authority in the conclusion of the agreements. In the context of ratification of any treaty regarding the new relationships, the approval of the House of Representatives and the Senate is required within the Dutch constitutional system. The conclusion of the withdrawal agreement requires the approval of the European Parliament (by simple majority) and of the Council of the European Union (by enhanced qualified majority).⁴⁵ The approach of the Dutch government for this Council will be notified to and discussed with the House of Representatives in advance. Finally, the two-year period (for the creation of the withdrawal agreement) will only be extended if all member states of the EU27 – and therefore implicitly the parliaments of the EU27 – agree to this.

In light of this, the Committee for European Affairs made information arrangements with the Minister of Foreign Affairs on 9 February 2017 specifically for the Brexit dossier (see Parliamentary Document 23 987, no. 172). The rapporteurs have seen attempts to communicate the Dutch positions in good time and clearly. The committee has received several useful political and official briefings. At the European level, public and other position papers can be consulted through the website of the European Commission. The rapporteurs are less satisfied about the information provision regarding Brexit documents which are classified 'limité' (deferred public status). The rapporteurs regret that no access is possible as yet to a 'Brexit portal'; the setting up of a reading room as an alternative, as has been suggested by the Minister of Foreign Affairs (see Parliamentary Document 23987, no. 173), is considered by the rapporteurs to be less than optimal. The rapporteurs propose that the committee on European Affairs makes additional information arrangements with the Cabinet on this point.

Particularly in the second phase, which will involve many technical dossiers, it will be very important that the members of the House will also be able digitally to read the documents, make notes and call in experts.

The rapporteurs are also very much in favour of interparliamentary cooperation and exchange of information and positions within the EU27. With the withdrawal of the United Kingdom, the Netherlands will have to look for new allies within the EU, as the Advisory Council on

⁴ The European Parliament has to approve the agreement. The EP takes decisions by a majority of the votes cast, see article 82, Regulations of the EP.

⁵ The Council takes decisions by a modified qualified majority on the conclusion of the withdrawal agreement (at least 72% of the members of the Council which represent those participating member states the population of which forms at least 65% of the population of all participating states, see article 238(3)(b) Treaty on the Functioning of the European Union).

International Affairs (AIV) also recommended in its report 'Brexit means Brexit'. The rapporteurs are looking forward to the advice/follow-up advice of the AIV which the House of Representatives requested at the proposal of the Committee for European Affairs (Parliamentary Document 23 987, no. 185). They feel it is important that the House of Representatives and/or the Committee for European Affairs invest in relationships with other Parliaments, not only in the COSAC context, but also bilaterally.⁶ Committee work visits to Berlin, Paris and Brussels should be prioritised, as far as the rapporteurs are concerned. The contact groups in the House of Representatives could act as a useful a welcome platform in this respect. The rapporteurs are of the opinion that the contacts between the British and Dutch Parliaments must be intensified, because contact in the EU context will disappear.

5. Conclusions and recommendations

The rapporteurs reach the following conclusions and make the following recommendations on the basis of the findings described in the report.

1. What for a long time was thought to be impossible has suddenly become conceivable: a chaos scenario, in which UK leaves the EU abruptly on 29 March 2019, without a withdrawal agreement, transitional period or joint framework regarding the new relationships. The Netherlands needs to prepare for this chaotic 'no-deal' scenario.
 - This means that the government departments must be prepared. Scenarios need to be developed for many sectors, and supervisory bodies will have to check whether government departments and companies are properly prepared. For example, there will need to be greater supervision and control by customs, the Royal Netherlands Marechaussee and phytosanitary and other inspection departments.
 - Economic sectors such as the logistics sector, agriculture and fisheries must also be prepared for the no-deal scenario. It would be logical for businesses and their sectoral associations to take the lead in this, and that the government should be as helpful as possible with necessary measures to mitigate the effects of this scenario.
2. Nevertheless, this chaotic 'no-deal' scenario does not need to occur, if the EU and the UK succeed in reaching an agreement. Prevention is better than cure. The negotiations will have to be accelerated, or extra time will have to be bought with an extension period or transitional period. In any event, a solution must quickly be found to the financial settlement for Brexit, to prevent this component becoming a bottleneck or frustrating progress in other components. The parties will need to agree on a technical, financial/legal method or formula at the meta level, according to which the withdrawal amount can be determined objectively.
3. There are major benefits to a strong relationship with the United Kingdom after Brexit, not only economic ones, but also in political terms in terms of cooperation in the areas of security, defence, police and justice. The Netherlands, in particular, has an interest in a comprehensive trade and partnership agreement, in which the new relationships are set down. After all, according to the EU treaty, the withdrawal agreement takes into account the context of future relationships. The Cabinet must therefore now establish, in cooperation with the relevant socio-economic and social stakeholders in each sector, what the Dutch interests are in developing and implementing a strategy to ensure that these

⁶ COSAC stands for 'Conference of the Parliamentary Committees for Union Affairs of Parliaments of the European Union'.

interests are given a primary position in the negotiating mandate of the EU negotiator for the second phase. At the same time, the Netherlands must also get a clear picture of what sectors other member states or the United Kingdom may try to achieve competitive advantages in.

4. Moreover, the conclusions of the European Council invite the commencement of internal discussions in the EU27 against the background of the possible transition to phase 2 of the negotiations on 15 December 2017. In view of the fact that this phase is starting relatively late and the negotiating package will be extremely sizeable, the Netherlands should accept the offer of a limited transitional period made by the British Prime Minister May. In addition to a content which is as objective as possible, less time pressure will contribute to the best possible result for the Netherlands.
5. Special attention should be paid to the position of Dutch nationals in the United Kingdom. The starting position is maintaining the current rights (and obligations) which Dutch nationals enjoy in the UK. Nevertheless, Brexit will have indisputable consequences for their personal situation. It is of great importance that these citizens get clarity on their rights as quickly as possible. They cannot wait until the very last moment before Brexit. The rapporteurs see the Brexit helpdesk of the Dutch Embassy in London as a good first step in providing information and assistance to these citizens, but this can only become optimal once there is clarity regarding their rights and the consequences for their personal situations.
6. It is important that the House of Representatives be able to follow and monitor the negotiation process and the Dutch contribution well. The committee on European Affairs has made specific information agreements in this context with the Minister of Foreign Affairs. The Brexit documents must immediately be made available electronically for members of the House of Representatives. The House of Representatives must be able to be supported by experts in interpretation of the technical documents. The importance of this will become even greater during the second phase.
The rapporteurs make the suggestion to the EU27 that the transparent directive of the EU also be declared applicable to the EU27 fora, and to make more explicit arrangements regarding openness of the negotiations. The words "these will be the most transparent negotiations ever" have not yet been fulfilled.
7. The Netherlands needs to make new alliances without staring blindly at the old relationships within the EU, and without getting cold feet in the face of the French-German axis. The AIV studies are a good start, as have been the summits held by the Benelux with Nordic, Baltic and Visegrad countries, among others. The House of Representatives needs to intensify the work of the United Kingdom contact group, in view of the fact that contact with British MPs in the interparliamentary EU fora will disappear. The Netherlands also needs to explore the transatlantic opportunities of Brexit in relation to countries such as the USA, Canada and Brazil. With the withdrawal of the UK, the Netherlands would become a logical point of access to the European market.
8. Continued cooperation between the UK and the EU in the area of security, in particular the existing exchange of information in the context of combating terrorism and crime, must be ensured.

9. There must be legal clarity, in good time, regarding what will happen if the European Parliament does not approve the withdrawal agreement (because the required simple majority of votes is lacking) or the Council of the European Union does not conclude the agreement (because the required enhanced qualified majority of votes is lacking). It is also currently unknown what the legal consequences will be of any revocation of the article 50 notification by the United Kingdom. The legal departments of the European Council and the Council of the European Union should be asked for advice on this.

10. The subject of 'Brexit' will remain high on the European and national agendas until 29 March 2019, and possibly even longer. It is certainly to be recommended that one or more rapporteurs again be appointed and mandated to continue to monitor the negotiations on behalf of the Committee for European Affairs, and to organise opinion-forming activities for the committee. The mandate for the new rapporteurs could be primarily focused in this respect on exploring a new partnership model between the EU and UK from a Dutch perspective, and strengthening the information position of the House of Representatives through work visits, inviting persons involved in Brexit and the interparliamentary network, so that the House of Representatives can effectively monitor that the Cabinet is well prepared in the various phases of the Brexit negotiations and for a possible chaotic Brexit.