



Università degli Studi di Cagliari

**Ph.D. DEGREE**

HISTORY, CULTURAL HERITAGE AND INTERNATIONAL STUDIES

Cycle XXXIV

**TITLE OF THE Ph.D. THESIS**

PERPETUAL NEGOTIATIONS AND THEIR POLITICAL AND ECONOMIC  
IMPLICATIONS: THE BREXIT CASE

Scientific Disciplinary Sector(s)

SPS/06

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Final exam. Academic Year 2020/2021

Thesis defence: April 2022 Session



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In his research, he analyzes the political and economic changes between the United Kingdom and the European Union after the historic referendum in 2016, using his unique interdisciplinary approach of confronting relevant historical events, with mainstream political agenda, economic consequences of the decisions and socio-cultural impact of the changes on the local communities.

## **ABSTRACT**

The United Kingdom of Great Britain and Northern Ireland played an important role in the European integration process from Winston Churchill's idea of creating the “United States of Europe”, to becoming the first Member State in history to withdraw from the European Union. Ever since the first attempts of joining the Communities, their membership has met with reservations by the founding countries and mistrust regarding the British objectives towards the future development of the Community. The British relations with the EU have been uniquely marked with constant pursuit of better economic and political conditions of membership.

Over the years, as the Government in charge of the British Parliament changed, the United Kingdom has presented with different requirements for their continued permanence and substantial budgetary contributions. These renegotiations have been repeated several times during the forty-seven years of British membership, always requesting for additional concessions. The achieved agreements were twice associated with a national referendum to confirm British membership within reformed Community. However, the two referenda led to opposite effects: the first one validated the recommendation of the Government to stay in the EU; while the second one ended with Britain leaving the European Union, against the official Governments suggestions, leading to many years of uncertainty, damaging the economy, negatively influencing working conditions, British currency, with potential to destroy the integrity of the United Kingdom.

The aim of the study is to analyze both referenda results and the renegotiations of the membership conditions that led to them, by selecting the critical issues in the negotiating strategies, that were obstructing the agreements between the United Kingdom and the European Union, and by comparing several political agreements achieved by the United Kingdom in the process of negotiations at the correspondent stages of their membership within the European Union to demonstrate their political and economic implications. The research examined British, French, and American confidential diplomatic documents from the national archives, formal publications produced by Her Britannic Majesty's Government and those published by the European Institutions, as well as journals, letters and newspaper articles, documentaries, reports, and social media announcements made on the official accounts in different languages, including English, Italian, French, and Polish.

In conclusion, this study shows how the national interest of the singular EU members does not always comply with the European agenda and how it overcomes any Communitarian interest. Furthermore, the research points out how the use of referenda on the membership cannot be justified as a leverage mean for negotiating the changes to the membership terms determined by the European Treaties.



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## INTRODUCTION

Brexit (Britain + exit) is an unprecedented historic process of leaving the structures of the European Union by a Member State, which in this case was the United Kingdom of Great Britain and Northern Ireland. Brexit symbolizes the transformation of political thought and fundamental changes in British society, which have been revealed as a result of the Brexit referendum. This secession and the consequent arduous negotiations have been described as a crisis of European integration and compared to a divorce between the United Kingdom and the European Union. The term "Crisis" was etymologically a synonym of change and transformation, both used to describe moments of either great opportunity or great difficulty, which involved judgement and choice to change the status quo. Now we consider the crisis, as a problem that could not have been prevented from happening in line with the medical application, to indicate worsening or a terminal stage of the disease, so with highly negative meaning.

This separation has uncovered numerous and unresolvable differences of opinion among the European States, both on political and economic subjects, but before it has come to the British departure from the EU the United Kingdom of Great Britain and Northern Ireland has played an important role in the European integration process, from Winston Churchill's idea of creating the "United States of Europe", to becoming the first Member State in history to withdraw from the European Union. Ever since the first attempts of joining the Communities, their membership has met with reservations by the founding countries and mistrust regarding the British objectives towards the future development of the Community. The British relations with the EU have been uniquely marked with constant pursuit of better economic and political conditions of membership. Over the years, as the Government in charge of the British Parliament changed, the United Kingdom has presented with different requirements for their continued permanence and substantial budgetary contributions. After accepting the terms of entry by one faction of British politics, in less than two years, when the opposition took over the Parliament, the United Kingdom had already demanded to renegotiate those conditions. These renegotiations have been repeated several times during the forty-seven years of British membership, always requesting additional concessions. The achieved agreements were twice associated with a national referendum to confirm British membership within reformed Community.

This study focuses especially on those circumstances of renegotiations that were followed by a membership referendum. The two referenda resulted in opposite outcomes: the first one validated the recommendation of the Government to stay in the EU, while the second one ended with Britain leaving the European Union, against the official Governments suggestions, leading to many years of uncertainty, damaging the economy, negatively influencing working conditions, British currency, with potential to destroy the integrity of the United Kingdom.

The aim of the study is to analyze both referenda results and the renegotiations of the membership conditions that led to them, by selecting the critical issues in the negotiating strategies, that were obstructing the agreements between the United Kingdom and the European Union, and by comparing the agreements achieved by the United Kingdom in the process of renegotiations at the correspondent stages of their membership within the European Union to demonstrate their political and economic implications.

We have been able to procure both official and confidential documents and letters to reconstruct the renegotiation process from The House of Commons Hansard transcripts and from The National Archives of London. In particular, the research has examined British, French, and American confidential diplomatic documents from the national archives<sup>1</sup>, formal publications produced by Her Britannic Majesty's Government and those published by the European Institutions, as well as journals, letters and newspaper articles, documentaries, reports, and social media announcements made on the official accounts in different languages, including English, Italian, French, and Polish. In this study the fulfilment of the Britain's final trade agreement with the EU and its various stages of development have been examined from the first proposals made by previous Prime Minister although being repeatedly rejected by the Parliament. To provide the most possible objectivity, both sides of the Brexit vote spectrum have been analyzed, through the support of the economic figures, like the changes of the currency value in correlation to the political choices.

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<sup>1</sup> DOCUMENTS DIPLOMATIQUES FRANÇAIS, MINISTÈRE DES AFFAIRES ÉTRANGÈRES COMMISSION DE PUBLICATION DES DOCUMENTS DIPLOMATIQUES FRANÇAIS, 1964 TOME I (1<sup>er</sup> JANVIER - 30 JUIN); DOCUMENTS DIPLOMATIQUES FRANÇAIS, MINISTÈRE DES AFFAIRES ÉTRANGÈRES COMMISSION DE PUBLICATION DES DOCUMENTS DIPLOMATIQUES FRANÇAIS, 1964 TOME II (1<sup>er</sup> JUILLET - 30 DÉCEMBRE); FOREIGN RELATIONS OF THE UNITED STATES, 1964-1968 VOLUME XII, Western Europe Region, United States Government Printing Office, Washington 2001; FOREIGN RELATIONS OF THE UNITED STATES, 1964-1968 VOLUME XIII, Western Europe Region, United States Government Printing Office, Washington 1995.

This research examines the impact of the post Brexit political and economic situation through the study of the most conflicted areas, such as the fisheries, the level playing fields, and the border between the Republic of Ireland (EU) and Northern Ireland (UK), that were holding back the Brexit negotiations, with a risk of not achieving the treaty before the deadline.

The Brexit case has provoked numerous debates on the democracy, its role in society and its rules.<sup>2</sup> The rising question was whether specific socio-political and economic issues are to be decided directly by the people (as it was done through the Brexit referendum) or they should be filtered through an expert commission or decided by the Parliament. By definition, democracy from ancient Greek means “power of the people”. It is a system of government generally exercised, through a vote of the people. The vote can be casted directly in a referendum or election, and indirectly through the representatives chosen by the people, who later decide on their behalf. Democracy system is far from perfect. Already from the times of its creation in Ancient Greece, democracy was strongly criticized by the most famous philosophers of the time such as Socrates, Plato and Aristotle. Socrates, in particular, in attempt to highlight the dangers he saw in this system of governance. He has questioned the selection of decision-makers, by comparing the society to a ship, which would embark on a long and dangerous journey, and asking how it should decide the routes to take and who would be most competent to execute those decisions. The same logic could apply to the electorate, who faces important decisions on the future of the country. Socrates argued that the right to vote should only be granted to persons within competence, and not to subjects guided by random intuition. Paradoxically, Socrates has been sentenced to death by a “democratic” vote, with a same majority of the Brexit referendum: 52% to 48%.

Another paradox could be the use of the referendum by the United Kingdom, as a democratic tool, to justify the decision for leaving the EU, which was accused of being

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<sup>2</sup> E. Bell, *Brexit and the Illusion of Democracy*, <<*Socialism and Democracy*>> (2017), Vol. 31, No. 3, pp. 52-73; W. Hall, R. Tinati and W. Jennings, *From Brexit to Trump: Social Media’s Role in Democracy*, <<*Computer*>>, vol. 51, no. 1, pp. 18-27, January 2018; V.J. Seidler, *Making Sense of Brexit: Democracy, Europe and Uncertain Futures*, Policy Press 2018; P.D. Grabara, *The crisis of democracy in Europe: the Brexit case*, XI Interdisciplinary Conference of PhD students and PhDs: <<*Crisis and Transformations*>>, Tor Vergata University, Rome 2019; M. Kaldor, *Democracy and Brexit*, <<*Soundings*>>, Number 72, pp. 17-30(14), Lawrence and Wishart 2019; R.P. Bellamy, D. Castiglione, *From Maastricht to Brexit: democracy, constitutionalism and citizenship in the EU*, ECPR Press, London 2019 -<http://hdl.handle.net/1814/63225>; T. Christiansen, D. Fromage, *Brexit and Democracy: The Role of Parliaments in the UK and the European Union*, Springer 2019; R Rose, *How Referendums Challenge European Democracy: Brexit and Beyond*, Springer Nature, 2020.

undemocratic, while in that process violating the democratic rights of some of their own Union members, that did not support this decision.

## CHAPTER I

### Grounds for entry and initial agreements for the United Kingdom entry into the European Community 1973.

The British journey to the European integration has started long before The United Kingdom of Great Britain and Northern Ireland (UK) have joined European Communities on 1<sup>st</sup> January 1973. After the Second World War, Europe was rapidly reconstructing to catch-up with pre-war levels of economy. In the European Recovery Program, President of France Vincent Auriol described the basic principle that became the fundamental reason for the creation of what today we know as the European Union, saying that «Europe must unite herself if she wishes to recover and live, and if she does not want American assistance to be a gesture without future or a humiliating charity». French Government believed that the best way to do so would be by creation of a customs union between European countries, which was backed by the United States as a preferable option.<sup>3</sup> On the other hand, Britain preferred a free trade area solution, which would allow more freedom and require less political involvement.<sup>4</sup>

Winston Churchill has mentioned the concept of ‘The United States of Europe’ during his speech at the University of Zurich in 1946. He saw European integration as a ‘sovereign remedy’ to a potential threat of communism and a way to achieve freedom, peace and happiness.<sup>5</sup> Because of his involvement in creation of the Council of Europe, Churchill is considered one of the founding fathers of the European Union<sup>6</sup>, even though United Kingdom didn't want to participate in it from the start. As a leader of the opposition at the time, Churchill was only encouraging other countries to do what Britain was yet not willing to undertake.

The process of economic integration in Europe has started on 18 April 1951 with The Treaty of Paris signed by France, West Germany, Italy, Belgium, Luxembourg, and the

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<sup>3</sup> S. George, *An Awkward Partner: Britain in the European Community*, Oxford University Press 1994.

<sup>4</sup> A. Sapir, *European Integration at the Crossroads: A Review Essay on the 50th Anniversary of Bela Balassa's Theory of Economic Integration*, <<*Journal of Economic Literature*>> (2011), Vol. 49, No. 4, pp. 1200–1229.

<sup>5</sup> *Speech of Sir Winston Churchill, Zurich, 19th September 1946 -*

[https://archive.ph/20130218054245/http://assembly.coe.int/Main.asp?link=/AboutUs/zurich\\_e.htm#selection-653.1-661.27](https://archive.ph/20130218054245/http://assembly.coe.int/Main.asp?link=/AboutUs/zurich_e.htm#selection-653.1-661.27).

<sup>6</sup> *EU pioneers -* [https://european-union.europa.eu/principles-countries-history/history-eu/eu-pioneers\\_en](https://european-union.europa.eu/principles-countries-history/history-eu/eu-pioneers_en).

Netherlands, creating the European Coal and Steel Community (ECSC) that provided cooperation in the key industries by forming a set of institutions to synchronize coal and steel production between the EU6, which were: a High Authority to monitor compliance with the terms of the agreement, a Common Assembly of parliamentarians to hold the High Authority accountable, and a Community Court to adjudicate disputes between the High Authority and member states.<sup>7</sup>

The British Government chose not to join the project but was the first country that have appointed its Delegation to the ECSC in 1952 and signed an Association Agreement in 1954. In 1956 UK came up with the 'Big Europe' Free Trade Area project, that would include all of 18 OEEC<sup>8</sup> member states, in attempt to diminish French position and sabotage the European customs union before it would come to life. Their project failed because of lack of a common external tariff, privileging British Imperial connections with their Commonwealth countries, and because it did not offer any protection to the market from German competition.<sup>9</sup>

While discussing the European Trade Policy, Geoffrey Rippon said that all nations of Europe must stand together in defense of their common interest, and without Britain a six-Power common market might have an economic unity, but only Britain could provide the necessary weight, power, and strength for the common market to be strong enough to become a real power in the world.<sup>10</sup>

On 25<sup>th</sup> of March 1957, the 'inner six', as the six founding nations of the Community were called, successfully signed up The Treaty of Rome and The Euratom Treaty, establishing European Economic Community (EEC) and the European Atomic Energy Community (EAEC or Euratom) that came into being in 1958 and provided deeper and wider economic cooperation between six

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<sup>7</sup> B. Eichengreen, *European Integration*, in D. Wittman, B. Weingast (eds.), *Oxford Handbook of Political Economy*, Oxford University Press 2008.

<sup>8</sup> Organization for European Economic Co-operation created on 16/04/1948 to allocate and distribute Marshall Plan aid for the countries of Western Europe; A. Eden, *The Memoirs Of Sir Anthony Eden. Full Circle*, Cassell 1960; A. Eden, *The Eden Memoirs facing the Dictators*, Cassell 1962; W. Churchill, *Europe unite*, Cassell 1950; W. Churchill, *The unwritten alliance*, Cassell 1961.

<sup>9</sup> G. Christakis, *British Capitalism and European Unification, from Ottawa to the Brexit Referendum*, <<Historical Materialism>> (2017), Vol. 25 No. 1, pp. 90-129.

<sup>10</sup> Hansard, The Official Report of Parliamentary Debates, House of Commons (HC Deb), 26 November 1956, vol. 561, cc. 141-142 - [https://api.parliament.uk/historic-hansard/commons/1956/nov/26/european-trade-policy#column\\_141](https://api.parliament.uk/historic-hansard/commons/1956/nov/26/european-trade-policy#column_141).

members states. In response, Great Britain created an alternative cooperation bloc, referred to as “Outer seven” with Austria, Denmark, Norway, Portugal, Sweden, Switzerland and during The Stockholm Convention on 4<sup>th</sup> of January 1960 they set up The European Free Trade Association (EFTA).<sup>11</sup>

But the British government almost immediately regretted its decision. EFTA was not as dynamic as EEC. It was much smaller in economic terms and fragmented, as most of the countries were separated from each other, so the issues with transport infrastructure were a major problem. Equal access to continental markets became so important that British foreign trade and investment flows gradually shifted away from the Commonwealth, and the faster growing Western Europe overtook the amount of the British export over all the Imperial Preference markets.<sup>12</sup> As an export market EFTA was less competitive, less sophisticated, less demanding clearly inferior to that of the EC.<sup>13</sup> This led to the change in the perception about the Commonwealth and the economic opportunities of the EEC. The Confederation of British Industry justified interest in entering the common market with larger industrial base than the home economy could provide.<sup>14</sup>

The support and skepticism for joining the EEC was dividing all major political parties. Labour leader Harold Wilson didn't want to abandon preferential relations with the Commonwealth countries for what he perceived as marginal and problematical advantages of the common market.<sup>15</sup> Nevertheless, in 1961, The United Kingdom of Great Britain and Northern Ireland, together with Denmark, Republic of Ireland and year later Norway, have formally applied to become members of the three Communities (ECSC, EEC, EAEC), but unfortunately their applications were suspended over UK's entry after French Presidents veto in 1963. And even Labour came back to Government in 1964, majority of Parliament still preferred the advantages

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<sup>11</sup> *EFTA through the years* - <https://www.efta.int/About-EFTA/EFTA-through-years-747>.

<sup>12</sup> N. Rollings, *British Business in the Formative Years of European Integration, 1945–1973*, Cambridge, Cambridge University Press, 2007, p. 20, pp. 49-70; A. Horne, *Macmillan: The Official Biography*, Macmillan 2008; H. Macmillan, *Macmillan's Memoirs: Pointing the Way, 1959-1961; At the End of the Day, 1961-1963*, Harper & Row 1966.

<sup>13</sup> N. Aitken, *The Effect of the EEC and EFTA on European Trade: A Temporal Cross-Section Analysis*, <<*The American Economic Review*>> (1973), Vol. 63, No. 5, pp. 881-892.

<sup>14</sup> N. Rollings, *British Business in the Formative Years of European Integration, 1945–1973*, Cambridge, Cambridge University Press, 2007, p. 65.

<sup>15</sup> D. Gowland, A Turner, *Reluctant Europeans: Britain and European Integration 1945-1998*, Routledge 1999.

of the EEC at the price of losing the Commonwealth preferences. Britain applied again in 1967 to the EEC but again its request was vetoed by Charles de Gaulle.<sup>16</sup>

French President saw British membership as a trojan horse for the American influence.<sup>17</sup> He strongly doubted UK's interest in creating the Single Market and argued that Britain would require a “radical transformation” before joining the Community. In his words the British economy from working practices to agriculture was ‘incompatible’ with the Common Market at the time,<sup>18</sup> as EEC members almost entirely closed the GDP per capita gap with the UK. According to the article from BBC News, he also feared that the British special relation with the United States of America and their Commonwealth partners would be damaging to the European interests, as well as that it would introduce the English as a common language to be used in the Community.<sup>19</sup>

## 1.1 RELATIONSHIPS BETWEEN THE SIX AND THE UK

According to the French Diplomatic Documents the negotiations for the membership of the European Community were mostly conducted on the political and economic matters. From the economic perspective<sup>20</sup>, the UK and the Six disagree on the export conditions within and outside the Common Market. After General De Gaulle’s veto regarding UK’s to entering the EEC, the economical negotiations continued around several subjects, but mostly about the Free Market and Civil Aviation.

The talks regarding Free Market, were mostly based on fact, that the European Six did not consider the General Agreement on Tariffs and Trades (GATT) rules on tariffs beneficial to their

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<sup>16</sup> A. Tatham, *Enlargement of the European Union*, <<Kluwer European Law Collection - 4>>, Kluwer Law International 2009; C. de Gaulle, *Mémoires d'espoir, tome 1: Le renouveau (1958-1962)*, Plon 2014; C. de Gaulle, *Mémoires d'espoir, tome 2: L'effort (1962-...)*, Plon 2014.

<sup>17</sup> W. Horsley, *Fifty years of fraternal rivalry*, BBC News 2007-  
<http://news.bbc.co.uk/2/hi/europe/6453889.stm>.

<sup>18</sup> 1967: *De Gaulle says 'non' to Britain – again*, BBC News -  
[http://news.bbc.co.uk/onthisday/hi/dates/stories/november/27/newsid\\_4187000/4187714.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/november/27/newsid_4187000/4187714.stm).

<sup>19</sup> 1973: *Britain joins the EEC*, BBC News -  
[http://news.bbc.co.uk/onthisday/hi/dates/stories/january/1/newsid\\_2459000/2459167.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/january/1/newsid_2459000/2459167.stm).

<sup>20</sup> *Collection des télégrammes, Bruxelles – Delfra, DOCUMENTS DIPLOMATIQUES FRANÇAIS, MINISTÈRE DES AFFAIRES ÉTRANGÈRES COMMISSION DE PUBLICATION DES DOCUMENTS DIPLOMATIQUES FRANÇAIS (DDF), 1964 TOME I (1 er JANVIER - 30 JUIN)*, 27 January 1964, pp. 108-111.

economic interests. The differences in level of industrialization among the members have made it necessary to seek alternative arrangements. In the first instance, in order to pair the production differences among the countries the Six have accepted a reduction of the tariffs by 50% for the industrial goods and would need to find equivalent provisions for the agriculture and meat goods.

During the discussions in 1964, Britain's and the Six's views on the economical agreements appear to diverge, so that the Representative of EEC, Groeben encouraged the Six to join separate negotiations that once agreed among EEC members, then would be further discussed with the UK's minister of foreign affairs, Buttler. The proposal then would be extended to the other members of EFTA. The economical discussions in the area of civil aviation<sup>21</sup> were focused on the Concorde Project. After World War II, the European countries who benefitted from the "Marshall Plan" were willing to invest part of their funds in the industrial reconstruction, and the development of the civil aviation through the supersonic technology was crucial both to France and the United Kingdom.

In the UK, in 1956 a Supersonic Transport Aircraft Committee (STAC) was established to look at the question of supersonic flight. STAC delivered its report in March 1959. The UK's Minister of Aviation at that time, Duncan Sandys, has endorsed the STAC recommendations to the other members of the Cabinet colleagues, by saying: <<If we are not in the supersonic aircraft business, then it's really only a matter of time before the whole British aircraft industry packs in. It's obviously the thing of the future. It may pay. It may not pay, but we cannot afford to stay out>><sup>22</sup>.

As for France, following the elections of November 1958, General Charles de Gaulle was inaugurated as President of the Fifth Republic in January 1959, while the UK Government was conducting the first set of negotiations to enter the European Common Market. The UK Government was willing to establish European partnerships at all levels and Anglo-French ones in particular. General de Gaulle aimed to challenge the "American colonization of the skies" so that

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<sup>21</sup> *Aviation civile, 1946- 1986, DOCUMENTS DIPLOMATIQUES FRANÇAIS, MINISTÈRE DES AFFAIRES ÉTRANGÈRES COMMISSION DE PUBLICATION DES DOCUMENTS DIPLOMATIQUES FRANÇAIS (DDF), 1964 TOME I (1 er JANVIER - 30 JUIN)*, 29 January 1964, pp. 127-129.

<sup>22</sup> J. Costello, T. Hughes, *Concorde: The International Race for a Supersonic Passenger Transport*, Angus & Robertson 1976, p. 39.

he believed the supersonic project was a key investment to assert European independence.<sup>23</sup> The UK and French governments have decided to sign an international treaty, formally registered at the United Nations on 29 November 1962, which was composed of seven articles and stated each country had equal responsibility for the project. Both France and the UK would be bearing identical portions of the cost and would share equally the profits of the future sales.<sup>24</sup> On 14 January 1963, General de Gaulle has rejected Britain's request to join the European Common Market, but at the same time he ensured the supersonic project would continue by adding: <<Nothing would prevent the close relationship and direct cooperation, as these two countries have proved, by deciding to build together the supersonic aircraft Concorde>>.<sup>25</sup>

Although the aircraft industry was committed to the establishment of supersonic commercial flights, both the UK and France were facing considerable last-minute reservations from some of the politicians. Both the French Ministry of Finance and UK Treasury wanted to insert a break clause in the contract impeding either side to withdraw unilaterally in case of wrong evolution of the project or financial difficulties, but the Minister for Aviation at that time, Julian Amery, insisted to leave it out of the agreement.<sup>26</sup> In 1964-65 the UK Government attempted to terminate the Concorde project, as it became considerably too expensive for the UK.<sup>27</sup> On 26 October 1964 Harold Wilson wrote to French Prime Minister about economic difficulties his Government was facing and necessity of cutting the expenses of the Concorde project, due to its raising costs and other problems with this technology. British Minister of Aviation, Roy Jenkins, has flew to Paris to meet with his French equivalent and discuss this topic with the task of interrupting the Agreement on 29 October 1964. It appeared that UK have overlooked that there

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<sup>23</sup> *Ivi*, p. 41.

<sup>24</sup> *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic regarding the Development and Production of a Civil Supersonic Transport Aircraft*, Cmnd 1916, 29 November 1962.

<sup>25</sup> J. Costello, T. Hughes, *Concorde: The International Race for a Supersonic Passenger Transport*, Angus & Robertson 1976, p. 57.

<sup>26</sup> G. Knight, *Concorde: The Inside Story: Leap through the sound barrier*, (1976), p. 30.

<sup>27</sup> *Aviation civile, 1946- 1986 - DOCUMENTS DIPLOMATIQUES FRANÇAIS, MINISTÈRE DES AFFAIRES ÉTRANGÈRES COMMISSION DE PUBLICATION DES DOCUMENTS DIPLOMATIQUES FRANÇAIS (DDF), 1964 TOME I (1 er JANVIER - 30 JUIN)*, 29 January 1964, pp. 127-129.

was no break clause in the Anglo-French Agreement and the only way to end it would be to persuade the French to abandon the project.<sup>28</sup>

However, the French government refused to consider any break proposal or compromises put forward and by January 1965, the UK realized it could either break the contract with possibility of legal actions, or allow the project to continue, and try to save its relations with France. The French reaction is extensively reported in the written papers on Concorde.<sup>29</sup> The French position was uncompromising, as they suspected Britain to strike a new deal with the U.S. on the supersonic technology, particularly in view of Britain's sterling problems, which is why Jacquet has backed his position with the Treaty and reminded Jenkins that there was no withdrawal clause.

On November 19th, the French government sent a message to London stating three points:

1. The original agreement between Britain and France would not allow for any revision.
2. To delay the production of the aircraft would be commercially dangerous and allow the Americans to catch up.
3. In its re-designed, transcontinental shape, Concorde would have to be built, as planned.

Harold Wilson asked for the attorney general's (Elwyn Jones) legal opinion and in his view the treaty would allow the French government to sue Britain for a sum not far short of £100 million in the event of a British withdrawal from the project. After internal parliament consultations, the UK government decided for a compromise solution; the French must be persuaded to at least slow down the program.

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<sup>28</sup> *Collection des télégrammes, Londres, 1964 - M. COUVE DE MURVILLE, MINISTRE DES AFFAIRES ÉTRANGÈRES, À M. CHODRON DE COURCEL, AMBASSADEUR DE FRANCE À LONDRES. T. n° 18971 à 18975, DDF 1964 TOME II, Paris, 27 octobre 1964, pp. 393-394; Aviation civile, 1946- 1986 - COMPTE RENDU: Réunion tenue à Paris le 29 octobre 1964 au sujet de Concorde entre M. Marc Jacquet et M. Roy Harris Jenkins, DDF 1964 TOME II, Paris, 29 octobre 1964, pp. 397-399; Aviation civile, 1946- 1986 - M. COUVE DE MURVILLE, MINISTRE DES AFFAIRES ÉTRANGÈRES, À M. CHODRON DE COURCEL, AMBASSADEUR DE FRANCE À LONDRES. T. n° 19962 à 19964, DDF 1964 TOME II, Paris, 12 novembre 1964, pp. 451-452; Collection des télégrammes, Londres, 1964 - M. COUVE DE MURVILLE, MINISTRE DES AFFAIRES ÉTRANGÈRES, À M. CHODRON DE COURCEL, AMBASSADEUR DE FRANCE À LONDRES. T. n° 22237 à 22240, DDF 1964 TOME II, Paris, 18 décembre 1964, pp. 574-575.*

<sup>29</sup> *Aviation civile, 1946- 1986 - DDF 1964 TOME I and II.*

The French refused to discuss Concorde at all unless they received a categorical guarantee that the British would observe the treaty and build the plane. The so-called "knife and fork solutions" began to emerge for slowing down the rate of investment and uncoupling the prototype program from the decision to tool up for production. This meant that the prototypes would be hand-built without full production jigs. The BAC costs department produced sets of figures for six different combinations of compromise.

The House of Commons Industry and Trade Committee revised the cost of Concorde in 1981.<sup>30</sup> During this inquiry the Department for Industry gave conflicting advice to the Committee as to whether one Government or another could have withdrawn from the project. Initially the Department gave the view that *<<under general international law either Government may in the event of changed circumstances at any time withdraw without payment of compensation or damages to the other>>*, but in a later correction the Department said that *<<the question whether either Government could withdraw unilaterally from the Anglo-French agreement of November 1962 without such payments [compensation or damages] would inevitably be controversial.>>*<sup>31</sup>

Concorde was only ordered by BOAC/British Airways and Air France. Despite its appeal with the public, the other airlines did not like it. The noise of the sonic boom induced most countries to refuse it to fly in their airspace which severely restricted its routes. The first passenger flights were on 21 January 1976. The French stopped them on 31 May 2003 and the UK on 24 October 2003. A decline in full fare paying business passengers, particularly after the Paris crash in July 2000, and sharply escalating maintenance costs led to the decision. The official line was that both the French and the UK governments agreed to end Concorde's flights, mainly because the costs of maintenance were going to be too great. The agreement would not appear to prevent one side from going it alone, but they would then have to shoulder all the costs.

From the political perspective in 1964 Europe's political union was considered to be crucial to the UK's government, in order to strengthen the European free market. The Times published an

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<sup>30</sup> *Industry and Trade Committee, Concorde (second report of session 1980-81)*, HC 265, 1 April 1981, para 55; for the Department's view see Memo 299 on p 66 and in oral evidence, Q117.

<sup>31</sup> G. Knight, *Concorde: The Inside Story: "Concord(e)"*, pp. 42-43.

article<sup>32</sup>, where the EEC and the European Common Market were pictured with sharp skepticism due to the differences among the Six members of the EEC. The French-German relations were under the eye of the British press and France itself looked at the German ally as "the weak ring", especially after the de Gaulle-Erhard disagreement over European unity, spreading into new areas: on the one hand, the different views over trade with Russia, on the other hand the positions over NATO posture in Southeast Asia.<sup>33</sup>

According to the UK government, Europe's political unity would provide stability in order to reach the needed economical agreements. The Six, on the other hand, aimed first at an economical joined policy before admitting other countries to the EEC.<sup>34</sup> On 8 October 1964, the Cabinet Ministers of West Germany, France, Italy, the Netherlands, Belgium, and Luxembourg held a two-day meeting, with three main items of business on their agenda:

- First, the consolidation of the three executive groups in the triangular community. One of the goals was the declaration of the principles of the EEC.
- Secondly, the unfinished Common Agricultural Policy and the abolition of customs for industrial goods.
- And thirdly the Community's relations with Austria.<sup>35</sup>

The Times underlined the need of political agreement to replace the three separate treaties (the Coal and Steel Authority, the Common Market and the Euratom) with a new all-inclusive

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<sup>32</sup> *POLITICAL DISUNITY IMPERILS THE COMMON MARKET; Growing Rift Between West Germany and France Is Seen Inhibiting The Program for Economic Unity of the Six* – The New York Times Archives - BRUSSELS 22 August 1964 <https://www.nytimes.com/1964/08/23/archives/political-disunity-imperils-the-common-market-growing-rift-between.html>.

<sup>33</sup> *Questions internationales européennes, Union politique européenne, 1964 - NOTE DE LA DIRECTION DES AFFAIRES POLITIQUES (sous DIRECTION D'EUROPE OCCIDENTALE) Union politique de l'Europe*, DDF 1964 Tome II, Paris 23 juillet 1964 pp. 95-99.

<sup>34</sup> Collections des télégrammes, Bruxelles-Delfra, 1964 - DDF 1964 TOME II, Paris 18 novembre 1964, pp. 465-468.

<sup>35</sup> From December 1961 to January 1963, Austria, together with Switzerland and Sweden, sought EEC associate status. From February 1963 onwards Austria steered a 'lone course', causing the Commission to consider various customs union projects and forms of association and to come up with a more precise formulation of the rather vague Article 238 of the EEC Treaty.

treaty, which meant each Member State would cede a part of its national authority to the community.<sup>36</sup>

In 1964, the EEC Ministers had agreed to uniform internal pricing and common external tariffs for beef, rice, and dairy products under CAP.<sup>37</sup> However, it did not represent a final answer to the community's agricultural problems. In fact, the harmonization of grain prices was still to be solved. The production cost of milk, cheese, butter, eggs, meat, pork, bread, and many other foods, and consequently their selling prices, was mostly affected by cereal prices. Without an agreement on grain, the Common Agricultural Policy could not be effectively reached.

In 1949, the idea of European unity was born through the shared vision of the political and economic integration of the six nations into a United States of Europe. At those times, Europe was dealing with the consequences of the WWII and experienced peril and privation. The French Government under Robert Schuman believed in greater good, peace and prosperity through integration, by the sublimation of national identities, and so did the French population. However, 15 years later, each of the Six was more focused on their own interests and unique views, more than a common policy. Under de Gaulle's government, the French vision of Europe has shifted to Europe “des Patries”, which would mean Europe composed of Independent nations united around France as the centerpiece.<sup>38</sup>

West Germany seemed to share an analog "egocentric" vision. In July, Chancellor Erhard politely dismissed the proposal of a partnership in a united Europe that would be built around a French-German axis, offered by General de Gaulle<sup>39</sup>, as this agreement would force Germany to renounce their political freedom for sake of creating the United States of Europe, and that would

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<sup>36</sup> *POLITICAL DISUNITY IMPERILS THE COMMON MARKET; Growing Rift Between West Germany and France Is Seen Inhibiting The Program for Economic Unity of the Six* – The New York Times Archives - BRUSSELS 22 August 1964 <https://www.nytimes.com/1964/08/23/archives/political-disunity-imperils-the-common-market-growing-rift-between.html>.

<sup>37</sup> *Common Market Farm Report*, N. 8, 15 July 1964, <http://aei.pitt.edu/85359/1/1964.8.pdf>.

<sup>38</sup> C. de Gaulle, *The Complete War Memoirs of Charles De Gaulle*, Carroll & Graf Pub 1998; C. de Gaulle, *Mémoires d'espoir, tome 1: Le renouveau (1958-1962)*, Plon 2014; C. de Gaulle, *Mémoires d'espoir, tome 2: L'effort (1962-...)*, Plon 2014.

<sup>39</sup> Cabinet du Ministre, Couve de Murville, 1964 - Tête-à-tête du Général de Gaulle et du Chancelier Adenauer à Bonn, DDF 1964 TOME II, 3 juillet 1964, pp. 15-18.

obstacle its future reunification with East Germany.<sup>40</sup> The UK expected West Germany would propose an organization to promote political unity among all the interested countries: the UK and their EFTA partner nations, as well as the Common Market Six. This would set the ground for West Germany to retain enough national sovereignty to reach the objective of reunification with East Germany.

Meanwhile, the European integration continued with The Merger Treaty on 8<sup>th</sup> of April 1965, in which the 'inner six' have decided to unite the institutions of ECSC, EEC and EAEC under the same Commission and Council of the EEC and even if legally they were still three separate and independent subjects, they became collectively known as European Communities (EC). The French veto over British membership was finally lifted when Georges Pompidou has replaced de Gaulle as President of France in 1969 and encouraged the UK to make a third and successful application for membership.<sup>41</sup> By this time attitudes to Britain joining the EEC had shifted in political and business circles in both the UK and France. French government and business opinion became increasingly aware that American firms were dominating high-tech sectors and were better at organizing integrated production networks in Europe than local companies. That's why, senior French civil servants and the country's main employer's organization, the Conseil national du patronat français, campaigned to reverse de Gaulle's policy regarding British membership.<sup>42</sup>

## **1.2 Political debate before entering the Community**

Negotiations to enter the European Communities began in 1970 under the pro-European Conservative government. At the time, most of the disagreements were related to the Common Agricultural Policy (CAP) and the UK's relationship with the Commonwealth of Nations.

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<sup>40</sup> *POLITICAL DISUNITY IMPERILS THE COMMON MARKET; Growing Rift Between West Germany and France Is Seen Inhibiting The Program for Economic Unity of the Six* – The New York Times Archives - BRUSSELS 22 August 1964 <https://www.nytimes.com/1964/08/23/archives/political-disunity-imperils-the-common-market-growing-rift-between.html>.

<sup>41</sup> H. Young, *This Blessed Plot: Britain and Europe from Churchill to Blair*, Overlook Press 1998.

<sup>42</sup> O. Geoffrey, *Industrial Policy in Europe since the Second World War: What Has Been Learnt? European Centre for International Political Economy*, Occasional Paper 1, Brussels, 2012.

The Community funding system stipulated that the revenues from the external tariffs on imports from the third countries, were considered as EC resources, and Britain was importing relatively more from their Commonwealth partners.<sup>43</sup>

British largest and most modern of the manufacturing corporations came to conclusion that complying with the CAP was a price worth paying for access to the European single market. Smaller firms were divided. Only the farmers' federation opposed entry.<sup>44</sup> After a week of debating over the concerns whether the conditions of entry were good enough for Britain, on 28<sup>th</sup> of October 1971, the House of Commons approved Her Majesty's Government's decision of principle to join the European Communities, with 356 MP's voting in favor of joining the EC and 244 against.<sup>45</sup>

The Treaty concerning the Accession of the Kingdom of Denmark, Republic of Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and the European Atomic Energy Community was signed in Brussels on 22<sup>nd</sup> of January 1972 by the representatives of all six member countries and the President of the European Commission Franco Maria Malfatti, as well as by new applicants including Denmark, Ireland, Norway and on behalf of the United Kingdom by the Prime Minister Edward Heath.

In order to implement the Treaty and for Britain to effectively become a full member of the European Communities (with its Institutions and Community law) it was necessary to adjust the local legislature with an Act of British Parliament. And so, on 25<sup>th</sup> of January 1972, Geoffrey Rippon, the Chancellor of the Duchy of Lancaster (supported by the Prime Minister Edward Heath, Secretary Maudling, Secretary Alec Douglas-Home, Chancellor of the Exchequer, William Whitelaw, Secretary Campbell, Secretary Walker, James Prior, Secretary Davies and Solicitor General) presented a European Communities Bill for its first reading in the House of Commons, to give parliamentary assent to Britain's membership of the EEC and to make provision in

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<sup>43</sup> N. Campos, F. Coricelli, *Why did Britain join the EU? A new insight from economic history*, 3 February 2015 <https://voxeu.org/article/britain-s-eu-membership-new-insight-economic-history>.

<sup>44</sup> N. Rollings, *British Business in the Formative Years of European Integration, 1945–1973* Cambridge, Cambridge University Press, 2007, p. 13.

<sup>45</sup> *EUROPEAN COMMUNITIES Hansard*, HC Deb 28 October 1971, vol. 823, c. 2217, <https://api.parliament.uk/historic-hansard/commons/1971/oct/28/european-communities>.

connection with the enlargement of the European Communities to include the United Kingdom, together with the Channel Islands, the Isle of Man and Gibraltar.<sup>46</sup>

The bill called “The European Communities Act 1972 (c 68)”<sup>47</sup>, also known as the ECA 1972, was in principle accepting all previous EEC regulations and directives and was introducing into the domestic law the changes required by the Treaty of Accession, and previous Treaties (Treaty of Paris, Treaty of Rome, Euratom Treaty, Merger Treaty and Budgetary Treaty). It would apply the Community Law with the judgments of the European Court of Justice to make legal provision for the United Kingdom to join the three European Communities (EEC, Euratom and ECSC), and what they offered, like participation of the United Kingdom in the Common Agricultural Policy, the Common Fisheries Policy and within the European Communities Customs Union, as well as the application of the common external tariff to all goods coming into the UK from outside the European Communities, fully incorporating those policies into British law by repealing some of the previous domestic legislation to allow it.

Even though it wasn't considered very long, as it only had 12 clauses written on 38 pages, it was subject to 300 hours of debate before becoming a law.<sup>48</sup> It is considered the most consequential enactment of the Heath's government and surely one of the most important constitutional bills in the history of United Kingdom, as it affected British law-making at all levels of administration (even those none existing at the time like the Northern Ireland Assembly or Scottish Parliament) for almost 50 years.

On 15<sup>th</sup> February 1972 the Bill was brought again to the House of Commons for its second reading, but the intense debate over it lasted for three days, until on 17<sup>th</sup> February Edward Heath concluded with a speech, arguing that in his belief it would be incomprehensible to tear up at that stage the same agreement, that United Kingdom have struggled to achieve for the last decade. That it would understandably create a mistrust in Britain's role in any future international agreements

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<sup>46</sup> European Communities Bill, Hansard, HC Deb, 25 January 1972, c. 1199, <https://www.theyworkforyou.com/debates/?id=1972-01-25a.1199.1>.

<sup>47</sup> European Communities Act 1972, c. 68, UK Public General Acts, The National Archives, <https://www.legislation.gov.uk/ukpga/1972/68/part/I/enacted>.

<sup>48</sup> *Into Europe*, UK Parliament, <https://www.parliament.uk/about/living-heritage/transformingsociety/tradeindustry/importexport/overview/europe/>.

and destroy British influence in world monetary and trade discussions for many years to come. In any case the unification process in Europe would not stop without British participation. Membership of the European Community would benefit UK's prosperity and its influence in the world. The bill in his view was not a luxury which could be dispensed with and thrown away after all the hard work of the last three Governments, irrespective of party, in securing the full membership and signing the Treaty. He also remembered the decision of principle taken in the House of Commons few months ago in October, when Parliament has agreed by a large majority (356 vs 244)<sup>49</sup> that Britain should join the Community on the basis of the arrangements negotiated, so in his opinion, failing to give legislative effect to that clear decision would be abdicating the Governments responsibilities, urging the Members to implement the Bill for the Second Reading.<sup>50</sup>

Prime Minister's speech was followed by a vote in which the Bill passed to Committee Stage before its third reading by a very small margin, with 309 votes in support and 301 against it. The Committee Stage lasted for the next four months, but the discussion on the Bill in the House of Commons kept going until 13<sup>th</sup> of July, when it was put to Order of the proceedings for its Third Reading. On that occasion Michael Foot (who in 1980 became the leader of the Labour Party) gave a speech, criticizing the nature of the Bill, how it was constructed by the Government and discussed in the Parliament. He complained that because of the ruling by the Chairman of Ways and Means, Robert Grant-Ferris, on 29<sup>th</sup> of February 1972, the House has never been able to discuss the individual aspects of the Treaty of Accession and the Clauses of the Bill side by side, as it was stated from the beginning of the proceedings that started in January.

According to the Ruling, the Bill was not to approve the Treaty of Accession or any of the other basic treaties, such as the Treaties of Rome, Brussels and Luxembourg, relating to the membership of the Communities<sup>51</sup>, so there was no point in discussing every article of these treaties, but only to approve the provisions of how they would be implemented into the British law by the Bill. In fact, at the end of the Committee stage, the Deputy Chairman of Ways and Means,

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<sup>49</sup> *EUROPEAN COMMUNITIES Hansard*, HC Deb 28 October 1971, vol. 823, c. 2217, <https://api.parliament.uk/historic-hansard/commons/1971/oct/28/european-communities>.

<sup>50</sup> Hansard HC Deb, 17 February 1972, vol. 832, c. 751, <https://api.parliament.uk/historic-hansard/commons/1972/feb/17/european-communities-bill>.

<sup>51</sup> Hansard, HC Deb 29 February 1972, vol. 832, c. 269, <https://api.parliament.uk/historic-hansard/commons/1972/feb/29/short-title-and-interpretation>.

who was officiating for the Chairman sent a letter in response to the concerns of the opposition in regard to fishery production discussed in the Treaty of Accession, and in regard to imports of New Zealand agricultural produce, Mrs. Betty Harvie Anderson wrote that neither of these amendments were relevant to the question of what legislative provision should be made in order to enable the United Kingdom to join the Communities and that these issues would be negotiated in the future, when the temporary arrangements of the accession would expire. Michael Foot accused the Solicitor-General of obscuring the nature of the Bill. He also said that the Bill should never have been introduced in a form which denied to the House of Commons the right to discuss the Treaty of Accession, and because of historic importance of the Bill, as he acknowledged, it should have been treated with the utmost care and not just squeezed through the Parliament. To justify his position, he recalled that out of the 96 Divisions in the Committee proceedings, there have been about 56 Divisions in which the Government's majority was 20 or less. There have been 17 Divisions in which the Government's majority was 10 or less and 6 Divisions in which the majority has been 6 or less. This means only about 18% of the disputes were clearly resolved and considering the Government's had overall majority of about 40 votes, in Michael Foot's opinion it meant the Bill of this importance wasn't supported by the Parliament with 'full-hearted consent'.<sup>52</sup>

The doubts raised in his speech have followed to the parliamentary liberties in this matter, as in this way it would be possible for the Government just by signing a treaty to implement even a monetary union with Europe, solely by a single vote. <<(…) the way in which the Government have drawn up the Bill, by the way in which they have forced it through under the guillotine and, most offensive of all, by the way in which they apparently made up their minds when they were part way through that they would permit no Amendment which would enforce a Report stage. By this combination of methods, the Government have denied to the House of Commons the possibility of discussing the most historic Measures which this country has taken in peacetime for many generations.>><sup>53</sup> However, the Government's position on the matter seemed to him 'absolutely inflexible' in the way they were 'committed to the proposition' and didn't consider any renegotiations, as if the bond to the European Communities was already complete. Another open criticism from his side was about the decision of Chancellor of the Exchequer Anthony Barber to

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<sup>52</sup> Hansard, HC Deb 13 July 1972, vol. 840, c. 1967, <https://api.parliament.uk/historic-hansard/commons/1972/jul/13/european-communities-bill>.

<sup>53</sup> *Ivi*, c. 1969.

float the pound sterling, which he did few weeks before, on 26<sup>th</sup> of June 1972. This decision taken in the moment of already high inflation in the country led to 4% devaluation of the British currency in just one week. It was also in direct contradiction with the Government's agreement to keep the pound's exchange rate within a narrow range, which could lead to monetary union with the rest of European countries.<sup>54</sup> Even though floatation was supposed to be a temporary measure, it ultimately devalued the pound from 2.62 GBP/USD at the beginning of June to 2.35 GBP/USD at the end of the December, just before entering the Common Market.

Towards the end of his speech Foot accused the Government of dancing to whatever music French President Georges Pompidou, who lifted previous veto and enabled UK to join the Communities, would play. He summarized the debates on the Bill with a phrase from Edmund Burke, saying: <<England has not forsaken her virtue to pursue her interest, she has abandoned her interest in order to prostitute her virtue.>><sup>55</sup> The Bill was after all transferring some powers away from the House of Commons on a very large scale to irresponsible executives and blurring the responsibilities for taxation. The most threatening claim was that the terms, which have been settled by the Government, would undermine British Parliament's sovereignty, freedom and democracy as a price of entry into Europe. Foot was referring to the Section 2 of the European Communities Act 1972:

<<All rights, powers, liabilities, obligations and restrictions and all such remedies and procedures provided by the Treaties are without further enactment to be given legal effect in the United Kingdom, shall be recognized and available in law, and be enforced, allowed and followed accordingly.>><sup>56</sup>

As well as <<any such provision (of any such extent) as might be made by Act of Parliament, and any enactment passed or to be passed, shall be construed and have effect in connection with the powers conferred by this Act to make Orders in Council and regulations.>><sup>57</sup>

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<sup>54</sup> *Chancellor orders pound flotation*, BBC News, 23 June 1972, [http://news.bbc.co.uk/onthisday/hi/dates/stories/june/23/newsid\\_2518000/2518927.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/june/23/newsid_2518000/2518927.stm)

<sup>55</sup> Hansard, HC Deb 13 July 1972, vol. 840, c. 1968.

<sup>56</sup> European Communities Act 1972, c. 68, PART I, Section 2(1), <https://www.legislation.gov.uk/ukpga/1972/68/section/2/enacted>.

<sup>57</sup> Ivi, Section 2(2).

This would substantially provide, the supremacy of the EU Directives (then Community law) and rulings of the European Court of Justice over existing laws in the United Kingdom. Also, British Parliament wouldn't be able to legislate against the EU law, irrespective of which law was made first in time.

According to the interpretation by subsequent UK court rulings in *Simmenthal* case in 1978:

<< (...) every national court must, in a case within its jurisdiction, apply [Community] law in its entirety and protect rights which the latter confers on individuals and must accordingly set aside any provision of national law which may conflict with it, whether prior or subsequent to the [Community] rule>><sup>58</sup> and confirmed in 1990 in the case of *R v Secretary of State for Transport*.<sup>59</sup> The supremacy of Community Law over the national law within the European Community of member states was not always explicit in the EEC Treaty, however it was well established in the jurisprudence of the Court of Justice long before the United Kingdom joined the Community, which would mean that any limitation accepted by its sovereign Parliament when it passed the European Communities Act 1972 was entirely voluntary. According to the conditions of the 1972 Act it was the duty of a United Kingdom court, to override any rule of national law found to be in conflict with any directly enforceable rule of Community law, when delivering final judgment.

So British courts would have to disapply UK law if it was inconsistent with the Community law. There always have been clear tensions between the doctrine of supremacy of the European law over the doctrine of Parliamentary sovereignty, considering that by UK's joining the EEC it permanently gave up some of its sovereign powers to the EU. However, in constitutional theory terms, British Parliament always kept its sovereignty since it could always repeal section 2 of the European Communities Act 1972, but chose not to do, until the European Union (Withdrawal) Act in 2018.<sup>60</sup>

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<sup>58</sup> Case 106/77 *Simmenthal* II [1978] ECR 629, paragraph 21, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61977CJ0106&from=EN>.

<sup>59</sup> Case of *R v Secretary of State for Transport, ex parte Factortame (No. 2)* [1990] 3 WLR 818, paragraph 18, [https://eur-lex.europa.eu/resource.html?uri=cellar:ff8d6d63-022c-4f23-9cea-4e79f37ca53f.0002.03/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:ff8d6d63-022c-4f23-9cea-4e79f37ca53f.0002.03/DOC_2&format=PDF).

<sup>60</sup> *European Union (Withdrawal) Act 2018, UK Public General Acts, c. 16*, <https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>.

The question of sovereignty was discussed in an internal document of the Foreign and Commonwealth Office (FCO 30/1048) before approving the European Communities Act 1972. The document was not available to the public until January 2002 according to the 30-year rule. In the document there were listed different policy areas like customs duties, agriculture, free movement of labour, services and capital, transport, and social security for migrant workers <<in which parliamentary freedom to legislate will be affected by entry into the European Communities.>> In conclusion FCO 30/1048 recommended that the value of the gained power and international influence, which is why it should be considered above formal transfer of power and sacrifice of Parliaments sovereignty.<sup>61</sup>

According to Foot, the only reasonable way to solve this matter of such significant consequence, in his view, would be to ask the people for their consent, and not just settle these issues by single digit majorities, therefore, to have a nationwide referendum that Prime Minister promised but failed to deliver (at that time).<sup>62</sup>

In the response to those critics and accusation, the Chancellor of the Duchy of Lancaster Geoffrey Rippon, who presented the Bill to the House of Commons, described those who oppose it as unreasoning, unjustified “dealers in fear” who have played upon the fears and anxieties of the electorate from start to finish. Then he commented with the words of President Roosevelt's from his inauguration in 1933, saying: <<the only thing we have to fear is fear itself>><sup>63</sup>.

In his view the opposition was misunderstanding the purpose of the Bill and the constitutional position that have always been in place on the international treaties, as they cannot be amended and never were supposed to, the Parliament can only decide whether to accept them as they are or not. He reminded the House, that all the major issues (like “the question of sovereignty, the protection of Commonwealth interests, agriculture, the relationship between standard and cost-of-living, the need to get higher wages through higher production, better

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<sup>61</sup>*Legal and constitutional implications of UK entry into EEC* (open from 1 January 2002), Records of the Foreign and Commonwealth Office and predecessors, The National Archives, 1971 (FCO 30/1048), <https://discovery.nationalarchives.gov.uk/details/r/C11018818>.

<sup>62</sup> Hansard, HC Deb 13 July 1972, vol. 840, c. 1973, [https://api.parliament.uk/historic-hansard/commons/1972/jul/13/european-communities-bill#column\\_1969](https://api.parliament.uk/historic-hansard/commons/1972/jul/13/european-communities-bill#column_1969).

<sup>63</sup> Ivi, c. 1974.

production costs through access to a larger market, and the advantages of variable exchange rates”) have already been discussed, at one point or another, since the talks of entry started back in 1956. As far as the decision of joining the European Community, there were no doubts that from economic and political points of view, it was clearly in the best interest of the country, as the ‘price to pay’ for entering was strongly overbalanced by the benefits of going in. The negotiated terms of entry were already accepted in principle last October by majority of 112 Members, and the Bill is an effect of that result, essential to make the necessary changes into domestic law required to enable us to give effect to our obligations under the Treaty of Accession and so to proceed to ratification.<sup>64</sup>

As far as the issue of sovereignty and the fear of losing it, Rippon assured it was coming from the total misunderstanding of the nature of the European Community which Britain was seeking to join, where the cooperation is built upon respect for the individuality of the Member States. The decisions taken are never against the vital interests of any of its members, and actively participating in the development of the Community is the only way to ensure own interests in Europe, by exercising sovereignty in a larger dimension. To sum it up he said: <<As an influential member of an influential Community we shall have more, not less, influence in the world over matters of international policy which vitally affect us>><sup>65</sup>. The Bill was the means to bring the domestic law into harmony with the European Law and as it was accepted from the start in the 1967 White Paper's analysis, United Kingdom was accepting in advance future Community law. That is why it was a priority to join the Common Market as soon as possible, to be able to influence the law and instruments while they were still proposals, as well as the size and the shape of the budget, which without a doubt will change over the years. In any case Britain have negotiated a proper percentage of their contributions to the budget, whatever they might be in the future.<sup>66</sup> The European Communities Act 1972 gave the British industries free access to much bigger market of over 265 million people at time and without tariff barriers that before accounted for up to 20% for some sectors. In addition, with a bigger market, the companies would take advantage of economies of scale, giving them more resources and more stability for long-term planning, and in consequence greater prosperity, security, faster economic growth, a higher level of productive

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<sup>64</sup> Ivi, c. 1977.

<sup>65</sup> Ivi, c. 1978.

<sup>66</sup> Ivi, c. 1981.

investment, greater real wages, a higher standard of living and a more civilized environment for the people.<sup>67</sup>

Scottish member of Parliament for the Labour Party, William Baxter of the Stirlingshire West constituency, has raised an issue described by Rippon as ‘antediluvian’ of <<whether or not Parliament had a right and responsibility to violate the Treaty of Union>><sup>68</sup> by signing the Treaty of Accession with EEC. Then the Duchy of Lancaster quoted in response Robert Gascoyne-Cecil, 3rd Marquess of Salisbury from his speech at Caernarvon on 11<sup>th</sup> of April 1888, saying: <<We belong to a great community of nations and we have no right to shrink from the duties which the interests of the Community impose upon us... We are part of the community of Europe and we must do our duty as such>><sup>69</sup>. Once again, he repeated that participating in the unification of Europe has been an objective of British Governments for many generations and even at the top of British imperial power and influence between 1815 and 1915, Britain could not afford to follow a self-isolating policy, which paradoxically was part of previously quoted Lord Salisbury's policy called ‘splendid isolation’ during his Government as Prime Minister at the end of the 19<sup>th</sup> century.

In any case Rippon concluded just before the last vote on the Bill, announcing he was proud that Britain would finally rightful member in the counsels of Europe, both as competitor in the Common Market and as contributor to the European common future. Then the Bill has been approved by the House of Commons with the support of 301 members against 284 for its final Third Reading and has been moved to the House of Lords<sup>70</sup>.

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<sup>67</sup> H. Overman, L. Winters, *The impact of EEC Accession on the UK*, Centre of Economic Performance (2003 and revised 2006), Paper No 588, <https://cep.lse.ac.uk/pubs/download/dp0588.pdf>.

<sup>68</sup> Hansard, HC Deb 13 July 1972, vol. 840, cc. 1982-83, [https://api.parliament.uk/historic-hansard/commons/1972/jul/13/european-communities-bill#column\\_1969](https://api.parliament.uk/historic-hansard/commons/1972/jul/13/european-communities-bill#column_1969).

<sup>69</sup> *Ivi*, c. 1984.

<sup>70</sup> *Ivi*, c. 1987.

### 1.3 Treaty of Accession 1972

European Communities Act received Royal Assent on 17<sup>th</sup> October 1972<sup>71</sup>, and was deposited on the 18<sup>th</sup> October with the Italian government, which was the traditional European Communities treaty records holder at the time. In this way United Kingdom of Great Britain and Northern Ireland has ratified the Treaty of Accession<sup>72</sup>. In the Act there was no specific ‘entry date’ to the European Communities, as it was already established in Article 2 of the Accession Treaty. Both the Act and the Treaty came into legal force on 1<sup>st</sup> January 1973. Since then United Kingdom officially left the EFTA and became full member state of the European Communities. On the same day Denmark and Republic of Ireland entered the Common Market, raising EEC members number to nine. Norway at the end did not join the Community as the membership was rejected by its people in a referendum on 25<sup>th</sup> September 1972 and again in November 1994.<sup>73</sup>

British Prime Minister Edward Heath strongly supported European integration and was very optimistic about UK's future inside the Community, saying: <<this will enable [UK] to be more efficient and more competitive in gaining more markets not only in Europe but in the rest of the world.>><sup>74</sup> At the same time, he was clear that this would be a gradual progress that wouldn't happen “overnight”. At the time of joining the EC UK's GDP per capita was already on average 7% behind other members.

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<sup>71</sup> *European Communities Act 1972*, <https://www.parliament.uk/about/living-heritage/evolutionofparliament/legislativescrutiny/parliament-and-europe/collections/parliament-and-europe/european-act-1972/>.

<sup>72</sup> *Accession Treaty 1972*, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11972B/TXT&from=EN>; D. Gowland, *Britain and the European Union*, Routledge 2022; J. Smith, *The UK's Journeys into and out of the EU: Destinations Unknown*, Routledge 2018; D. Hannay, *Britain's entry into the European Community: report by Sir Con O'Neill on the negotiations 1970-1972*, Whitehall History Pub 2000.

<sup>73</sup> *1994: Norway votes 'no' to Europe*, BBC News, 28 November 1994, [http://news.bbc.co.uk/onthisday/hi/dates/stories/november/28/newsid\\_4208000/4208314.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/november/28/newsid_4208000/4208314.stm).

<sup>74</sup> *1973: Britain joins the EEC*, BBC News, 1 January 1973, [http://news.bbc.co.uk/onthisday/hi/dates/stories/january/1/newsid\\_2459000/2459167.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/january/1/newsid_2459000/2459167.stm).

### 1.3.1 Economic impact

Even though Britain was one of the few European countries that continued economically to grow during the War<sup>75</sup>, in the following years it was facing deep economic crisis, while the other European countries were quickly catching up with their economies and GDP per capita. In the result in about a decade before joining the common market, British average annual manufacturing productivity growth was 2.5% behind France and 1.6% behind Germany.<sup>76</sup> Since 1945, British GDP per capita was steadily falling and finally stabilized from the 1973, as an effect of joining the Common Market. This change in trend suggests significant benefits from the membership in the European Communities. In an article wrote by Nauro Campos, Director of the UCL Centre for Comparative Economics, Professor of Economics at the University College London and Fabrizio Coricelli, Professor at the University of Siena, Department of Political Science, Emeritus Professor Paris School of economics and Research Fellow, CEPR, on the reasons for the United Kingdom to join the EU, they argue <<that a fundamental yet relatively unappreciated feature of the relationship between Britain and the EU is a structural break>>, which they have detected by using Chow, Bai-Perron, and Zivot-Andrews tests, it had conventional levels of statistical significance.<sup>77</sup> Their study showed that EU membership was superior to the economic alternatives like the Commonwealth or bilateral free trade agreements..<sup>78</sup>

### 1.4 General elections 1974

Entering European Communities has been followed by a change of Government in a year of double elections. Poor economic situation in the United Kingdom, with the inflation reaching 20%.<sup>79</sup> Country also struggled with the energy shortages due to coal miners strikes resolved with a State of Emergency and rationing with three days working week labelled by the opposition as

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<sup>75</sup> According to *Maddison Project Database 2020*,

<https://www.rug.nl/ggdc/historicaldevelopment/maddison/releases/maddison-project-database-2020>.

<sup>76</sup> O. Geoffrey, *From Empire to Europe: The Decline and Revival of British Industry since the Second World War*, London, HarperCollins, 1999, p. 4.

<sup>77</sup> N. Campos, F. Coricelli, *Why did Britain join the EU? A new insight from economic history*, 3 February 2015 <https://voxeu.org/article/britain-s-eu-membership-new-insight-economic-history>.

<sup>78</sup> N. Campos, F. Coricelli, L. Moretti, *Economic Growth and Political Integration: Estimating the Benefits from Membership in the European Union*, CEPR Discussion Paper 9968 (2014).

<sup>79</sup> D. Sandbrook, *State of Emergency: The Way We Were: Britain, 1970–1974*, Allen Lane 2010.

the "dark ages", also substantially contributed to undermining the governing party and setting it on a losing course.

In February 1974 Labour won total of 301 seats but that was not enough for Harold Wilson to form a stable majority Government. Even though Conservatives lead by Edward Heath received a larger number of total votes, they have lost 28 of their previous seats, and the only possibility for them to stay in power was to form a coalition with the Northern Ireland's Unionist Party and Liberal Party, that unfortunately for Heath, didn't come through, as both smaller Parties refused to give their support to Conservatives, for different reasons.<sup>80</sup>

The Ulster Unionists withdrew their support to the Conservative Party in protest over the Sunningdale Agreement in 1973, while Liberal Party requested major electoral reforms in exchange for their support, that would mean much more seats for them in the future as their total votes received were underrepresented by the number of seats they have won. The Liberal Party received a half of the Conservatives votes all over the country but by the electoral system of representation, managed to get only 5% of the seats in confrontation with the Conservative Party, as with over 18% of the popular vote they were appointed only 2% of the share in the Parliaments seats. Edward Heath couldn't agree to that demand.

It was then for Harold Wilson to act as a temporary Prime Minister in search of coalitions in Parliament to achieve majority, but that didn't happen either. Nevertheless, he managed to make some progress in relatively short time and resolve some constant conflicts that were dividing Britain at that time. By working with the unions, Wilson's Government has eliminated the Pay Board and the Industrial Relations Act, imposed by Conservative Government, which led to the end of miners strikes and the infamous State of Emergency. At this point, Wilson's minority government called for another general election in the same year for October 1974, to finally reach the support needed for a minimal, but nevertheless overall majority in Parliament winning 319 seats, with less than 40% of the national vote.

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<sup>80</sup> C. Rossi, *Should I stay or should I go? Il referendum del 1975 nel Regno Unito. Londra e Bruxelles tra diplomazia e propaganda*, FrancoAngeli 2021; B. Pimlott, *Harold Wilson*, William Collins, London 2016; E. Heath, *The Course of my life: my autobiography*, Bloomsbury 2011.

### 1.4.1 Results of the elections 1974

For Edward Heath it was a third defeat out of last four elections, which became a reason for him to resign from the role of the Conservatives Party leader and paved the way for a young and prominent Margaret Thatcher to overtake his position in February 1975. Both elections in 1974 showed loss of confidence and support for the Conservatives, but other than that, it is worth noticing that both of those elections have showed a strong increase in support for the local parties in Northern Ireland, Scotland, and Wales. This was a clear sign for the two major Parties that they needed to address the issue of Devolution, which was already a key argument for the Liberals and SNP. These elections were especially a great success for the Scottish National Party (SNP) as it became a fourth largest party with 11 seats in the Parliament.<sup>81</sup>

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<sup>81</sup> S. Pilling, R. Cracknell, *UK Election Statistics: 1918-2021: A Century of Elections*, House of Commons Library, 18 August 2021, <https://researchbriefings.files.parliament.uk/documents/CBP-7529/CBP-7529.pdf>.

## CHAPTER II

### Renegotiations of the term of entry into the EEC

At the beginning of the negotiating process to join the EEC, Labour Party had the same idea as the Conservatives, that the decision of accession should be made by the British Parliament, rather than by asking people for their opinion in the referendum. As the main opposition party, they were criticizing the conditions agreed by the Conservative Government, and so in March 1972, with the objective of returning to power, using the support of the Conservative Eurosceptics, they have changed their approach.

At their party conference in October 1972 and in their 1974 election manifesto, the Labour Party has committed to fundamentally renegotiate the conditions that Britain had to accept by joining the European Communities, and to hold a first national referendum on the membership in the European Communities.<sup>82</sup> There were various interpretations of what “fundamentally renegotiation” would mean. The anti-marketeters were arguing it would be necessary to amend the Treaty of Rome in objection to the Common Agricultural Policy, but the Labour leadership was clearly aiming just to improve already existing conditions without changing any treaties, as it was never a possibility. This was the main argument for the Eurosceptics at that time to disregard those improvements, as superficial, and further motivate their position for leaving the Common Market. On the other hand, any ongoing renegotiation was an excuse to reject any negative statements about the British membership, as it could have been always replied, that those issues were supposed to change afterwards, which gave the “No” campaign much less time to properly organize.<sup>83</sup>

The renegotiating process led by James Callaghan has already begun after first election in February 1974, but the main talks took place at European Council meetings in December 1974 (Paris) and in March 1975 (Dublin).

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<sup>82</sup> *February 1974 Labour Party Manifesto, Let us work together - Labour's way out of the crisis, The Common Market*, <http://www.labour-party.org.uk/manifestos/1974/Feb/1974-feb-labour-manifesto.shtml>; D. Sandbrook, *State of Emergency: The Way We Were: Britain, 1970–1974*, Allen Lane 2010.

<sup>83</sup> V. Bogdanor, *True stories of the 1975 EEC Referendum*, The Open University, 8 April 2016, <https://www.open.edu/openlearn/people-politics-law/politics-policy-people/politics/true-stories-the-1975-ee-referendum>.

On 12 March 1974, the Prime Minister has set a debate about foreign affairs and related matters at the earliest opportunity, preferably the week after, when the Secretary of State for Foreign and Commonwealth Affairs, James Callaghan, would make his comprehensive statement about the Government's approach towards the renegotiations. In the meantime, Harold Wilson repeated:

<<the Government's policy will be exactly as we put it to the country. We shall enter into fundamental re-negotiation of the terms of entry into the EEC. When the negotiations are completed, however they have gone and whatever the outcome, the question of Britain's relations with the Community will be put to the British people; (...) through the ballot box, almost certainly a referendum, and their decision will be final>><sup>84</sup>

On 18 March 1974, Derek Walker-Smith has brought up the subject of the Government's representation in the European Parliament for <<safeguarding British interests, seeking amendment of the Treaty, and improving the democratic working of the constitution of the Community>><sup>85</sup>, which did not have any Labour Members in its delegation. It has been pointed out by Skinner that the current delegation Members were allegedly profiting from the travel expenses reimbursements. The Lord President of the Council Edward Short, did not contemplate this issue relevant at that time, as would be a part of broad renegotiation strategy, which accordingly with the Government's policy should immediately initiate radical renegotiation of the membership terms.

The Secretary of State for Foreign and Commonwealth Affairs, James Callaghan has made a statement to the House of Commons on the 19 March 1974, to initiate general debate of all foreign policy matters and to indicate the Government's general approach in detail on the question of UK's relations with the European Community.<sup>86</sup> He started his speech by remembering the pledge of the Labour Party manifesto, in seeking a <<wider co-operation between the European peoples>><sup>87</sup> and the importance of the British alliances for the purpose of defence, as well as wider range of trading arrangements. According to the Labour claims, the terms of entry to the EEC

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<sup>84</sup> Hansard, HC Deb 12 March 1974, Vol. 870, c. 73.

<sup>85</sup> Hansard, HC Deb 18 March 1974, Vol. 870, cc. 664-5.

<sup>86</sup> Hansard, HC Deb 19 March 1974, Vol. 870, cc. 859-70.

<sup>87</sup> *February 1974 Labour Party Manifesto, Let us work together - Labour's way out of the crisis, The Common Market*, <http://www.labour-party.org.uk/manifestos/1974/Feb/1974-feb-labour-manifesto.shtml>.

agreements by the previous Conservative Government in 1970, were not properly protecting British interests, which is why the current Labour Government would fundamentally renegotiate those terms of British membership.

The process of renegotiation would have offered solutions to address the deep scepticism that the British people felt about general objectives of the EEC and the political direction that Europe seemed to be taking, which is why the renegotiations would settle the foundations for the future relationship with the Community, before entering into definitive discussions on the concept or form of such a Union. Callaghan believed that the Community should accept more modest and attainable goals, especially in the light of the potential conflict of interests with the United States, which were threatening to retreat their protection of military forces from Western Europe if the Community would not cooperate with the States, both politically and economically, as according to Nixon the security, the economy and the energy were not separable.<sup>88</sup>

European objectives of the economic and monetary union were not realistic in the timetable projected at the Paris Summit, and any future proposals would have to be examined very carefully, before they would be accepted, in order to assure they do not obstruct British objectives. Callaghan has underlined that the renegotiations would be approached with a positive attitude of cooperation, seeking best possible relations with other members of the Community, but particularly with France and Germany, to avoid raising any conflicts between them and maintain current good relations, which would be in everyone's interest, averting possible allegations of British role as American "trojan horse". As Edward Heath reminded to the House of Commons in his first speech since he was succeeded by Margaret Thatcher, <<the European Community was founded for a political purpose (...) to absorb the new Germany into the structure of the European family, and economic means were adopted for that very political purpose.>><sup>89</sup>

And so, as a first step in Labour's Government approach, they would intensify the system of political consultation, cooperation and to work out common positions through joint discussion with the Community countries.

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<sup>88</sup> J. Reifenberg, Nixon's warning, from the Frankfurter Allgemeine Zeitung Nr. 65., 18 March 1974, [https://www.cvce.eu/obj/nixon\\_s\\_warning\\_from\\_the\\_frankfurter\\_allgemeine\\_zeitung\\_18\\_march\\_1974-en-e6072217-6221-4ad4-a36b-479b5afcc2c4.html](https://www.cvce.eu/obj/nixon_s_warning_from_the_frankfurter_allgemeine_zeitung_18_march_1974-en-e6072217-6221-4ad4-a36b-479b5afcc2c4.html).

<sup>89</sup> Hansard, HC Deb 9 April 1975, vol. 889, c. 1243.

As a next step, they would seek wider openness of the European market to the rest of the world, especially the Commonwealth countries and British allies. <<We believe that it would be advantageous to Europe as a whole if there were wider access to European markets for foodstuffs from such traditional suppliers as Australia, New Zealand, Canada, the United States, the Argentine and others. We regard this question of access as vital to ourselves in this country, whatever Europe may think about it.>><sup>90</sup>

Then the Labour Government would concentrate on renegotiating fair division of the financial burden imposed on Britain by the European budget and ensuring the opportunity for the Parliament at Westminster to fully scrutinize on the European policies agreed in Brussels. Callaghan stated that all of the pressing matters of great importance, like the agricultural prices, should be discussed in fundamental spirit of good faith to improve the policies of the Community as much for Britain as for the other members, but their long-term aspirations should not be based on the current position, as it was only temporary and would substantially change according to the future harvests. What was more important was the conception of the Community in relations with other States, and United Kingdom's membership was an important ingredient to shape those relations. British concerns with the political nature of the European development, unfortunately came together with the negative impact of the entry terms for British citizens and UK's traditional trading partners.

The principal approach in the renegotiations would be to present those issues in general to the Community and work on the details once obtaining the approval of the other members. The most urgent issue Labour Government intended to address was to fix the intervention prices for the 1974–75 season on agricultural products. Since Britain was already in a difficult inflationary situation, even the partial accountability of further increases due to the requirements placed on Britain by the Community were unacceptable, which is why Labour Minister of Agriculture would shortly attend the Agricultural Council meeting to safeguard British interests and make sure there would not be any additional price rises as a result of that meeting.

The second issue Labour would deal with in the renegotiations would be to review the aid policies and the arrangements for the Community's trade with Commonwealth and developing

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<sup>90</sup> Hansard, HC Deb 19 March 1974, vol. 870, c. 865.

countries. The renegotiations would be held in a series of parallel discussions approaching particular subjects, and it was under the examination whether it would be possible to achieve desirable results by agreements within the existing treaty framework, and only if reaching the vital improvements, would not be possible with this approach, they would first consider making the amendments to the Treaty of Accession, which they believed was the major possible obstacle. According to Callaghan they did not consider the Treaty of Rome as an obstacle to achieve their objectives, and they would only request amendments to it if after lots of discussions at the later stage of negotiations they would find it necessary, as it was clear that any treaty amendments would be impossible to achieve, especially in a such a short time.

<<Our purpose is to look at the operation of the Community in both the economic and the political spheres not in a spirit of destructive criticism but of constructive realism. We shall be willing to take adequate time for these important discussions and negotiations, though everyone will recognise that they cannot be dragged out indefinitely.>><sup>91</sup>

After Callaghan's speech, the debate in the House of Commons has raised the questions, like whether the sovereignty of the British Parliament would be discussed with the Community during the renegotiations, and about stopping the process of further integration during the renegotiations that could prejudge their outcome, which was mentioned in Labour's manifesto, until the membership would be confirmed by British people in the referendum. But the Minister of State for Foreign and Commonwealth Affairs, David Ennals, assured the Parliament that all the current obligations would be fully fulfilled, and the phrase from the manifesto was only referred to not entering any new commitments until the results.<sup>92</sup>

According to the confidential internal documents exchanged between the Government members, on 22 March 1974, the Foreign and Commonwealth Secretary has sent a secret Paper to the Cabinet<sup>93</sup> on his strategy in the renegotiations. In this paper he mentioned to his colleagues, that the European Unit has produced a paper regarding renegotiation objectives, divided by particular subjects, describing in general the options to choose from, which British officials should be considering. It would also become a basis of discussion for the Callaghan's opening statement

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<sup>91</sup> Hansard, HC Deb 19 March 1974, vol. 870, c. 869.

<sup>92</sup> Hansard, HC Deb 19 March 1974, vol. 870, c. 983.

<sup>93</sup> Paper by the Foreign and Commonwealth Secretary for ECS, ECS(74)5, FCO 30-2389 Renegotiation of terms of UK entry into EEC, 22 March 1974, MWE 14/548/8, pp. 28-32.

in the European Council on 1 April. To adapt those options in the renegotiations, it would be necessary to consider three closely related factors:

- a. the degree to which they seem likely to achieve the policy objectives;
- b. the chances of getting them accepted in the Community;
- c. problems of presentation at home and abroad.

At that time the British contribution to the European budget was in 80% the cost of the Common Agricultural Policy (CAP). As such an important expenditure, it was necessary to agree, whether it would be better for the United Kingdom to reduce it, or to increase their benefits from this policy, and to what extent. It was suggested that increasing social policy or new regional policy expenditure could help in achieving that aim.

<<The option of correcting the imbalance on the contribution side of the Community budget by a tariff on imported energy would have to be considered with the trade issues; and many of the Commonwealth trade issues such as butter and sugar are inseparable from the question of changes in CAP.>><sup>94</sup>

This was a confirmation that the renegotiation would have to be evaluated as whole. There was still an open question on the compatibility of those options with the Labour's manifesto<sup>95</sup>, but it was clear that United Kingdom should definitely make proposals to the Community during the opening statement in three main areas of discussion, which were:

- the Budget, where the Government needed to consider whether to increase the size of the Community budget to balance the exaggerated portion of it destined for the CAP, or to sensibly reduce the total budget and therefore all its elements;
- major changes to the Common Agricultural Policy;
- and safeguarding the economic interests of the Commonwealth and developing countries. On this issue British Government would work for the adoption of trade and aid policies of general benefit to those countries and to developing countries throughout the world, and to secure

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<sup>94</sup> Ivi, p. 29, Paragraph 3.

<sup>95</sup> February 1974 Labour Party Manifesto, Let us work together - Labour's way out of the crisis, <http://www.labour-party.org.uk/manifestos/1974/Feb/1974-feb-labour-manifesto.shtml>

arrangements which safeguard the interests of the Commonwealth suppliers that the previous administration has guaranteed, regarding the import of sugar from the developing Commonwealth countries after the Commonwealth Sugar Agreement would expire at the end of 1974.

It was still necessary to establish the details for those proposals. As for the other important issues, which remain to be settled in the Community, like the VAT harmonization and permanently fixed parities under the Economic and Monetary Union, Callaghan suggested it was not essential to put forward any proposals, as British interests in those subjects could have been safeguarded by their right of veto. Finally, in case the European treaties would not allow to adapt the relationship to satisfy British needs, especially in the field of Regional and Industrial policy, United Kingdom would reserve from the beginning the right to propose treaty amendments at a later stage. This possibility would have to be studied carefully and used only if British request could not be met otherwise. The choice of options to propose would also have to take into considerations that some of them would certainly require treaty amendment, and others like for example in case of the concessions for the New Zealand's butter and sugar, could be achieved within the existing treaty framework. In the light of extremely hostile position to the idea of amending the treaties reported to be common ground among the European Governments, and even if they would agree, the amendment process required ratification by each Member State, would be very difficult to predict and it would delay the agreement to the renegotiation proposals until at least a year. That is why, Callaghan recommended it would be wise not to initiate the renegotiations with the objective to amend treaties but focusing on policy discussions to see what could be agreed politically, and to keep the choice to amend treaties for later time, if absolutely necessary, to do so.

<<When we see how far we can get, we can consider whether treaty amendment is needed to put it into effect, or in order to carry things further.>><sup>96</sup>

At that stage Callaghan planned to propose this general renegotiation approach in his statement at the Council on 1 April, which should be made public, as the Government needs to address contemporarily both the Community as well as the British public opinion. This duality of the audience has placed the Government in a problematic situation of choosing appropriate

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<sup>96</sup> Paper by the Foreign and Commonwealth Secretary for ECS, ECS(74)5, FCO 30-2389 Renegotiation of terms of UK entry into EEC, 22 March 1974, MWE 14/548/8, p. 31, Paragraph 5.

approach, as usual strategy of initiating with an extreme request, to achieve eventual compromise in the negotiation at the desirable level, could downsize the final solution, and risk that the public would perceive it as a defeat, instead of a victory that the Government would be aiming at. For that reason, Callaghan preferred to prioritize the importance of the public relations aspects, under his direct supervision for better coordination. He also believed his opening statement should only seek to establish the procedure for the renegotiation of the proposals in substance and offer more details as soon as possible, without any fixed timetable<sup>97</sup>, while the rest of the ongoing discussions in the Community should be dealt with subject by subject, and decided the best solution to each case separately, until the end of the year.

On 25 March 1974, M.J.E. Fretwell from the European Integration Department has submitted to Michael Butler and Artur Galsworthy, with a copy to Cabinet Office a draft reply and supplementaries, agreed with the Cabinet Office and with the FCO Legal Advisers, for the possible questions during the debate in the House of Commons.<sup>98</sup> The draft contained a list of questions about the most concerning subjects and suggested answers to them in line with the Governments policy. He also informed them that Her Majesty's Government was taking action to strengthen Westminster control on EEC matters. They were considering a package of measures, like the conciliation procedure and certain changes to the budgetary procedures to involve the Parliament more closely in the budgetary process and to strengthen the European Parliament before the Council of Ministers. Leading with proposals of institutional improvements to the Community while remaining uncertain of British membership would be illogical.

Among many questions there was concern for the Government's intention regarding possible withdrawal from the European Community in case of unsuccessful renegotiation, which according to the Labour Party Manifesto, Government would put the matter to the British people: <<the Labour Government pledges that within twelve months of this election we will give the British people the final say, which will be binding on the Government - through the ballot box - on whether we accept the terms and stay in or reject the terms and come out>><sup>99</sup> - regardless of

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<sup>97</sup> Hansard, HC Deb 27 March 1974, vol. 871, c. 118W.

<sup>98</sup> Letter from M.J.E. Fretwell to Michael Butler and Artur Galsworthy, FCO 30-2389 Renegotiation of terms of UK entry into EEC, 25 March 1974, MWE 14/548/8, p. 3.

<sup>99</sup> October 1974 Labour Party Manifesto, Britain Will Win With Labour, <http://www.labour-party.org.uk/manifestos/1974/Oct/1974-oct-labour-manifesto.shtml>.

the outcome of the renegotiation and, if that was the public's choice, the Government would negotiate the withdrawal, with no breach of their international obligations.

Another repeating concern was regarding the Governments in-existent representation in the European Parliament, as most of the delegates to the EEC at the time were members of the Conservative or Liberal Party. According to the Article 138 of the EEC Treaty, it was left to the Westminster to establish the procedure of choosing their delegates: <<The Assembly shall be composed of delegates whom the Parliaments shall be called upon to appoint from among their members in accordance with the procedure laid down by each Member State.>><sup>100</sup>

On the wider issue of the political cooperation, British Government did not wish to forfeit any bilateral talks with third countries, especially within international organizations like NATO or United Nations, exclusively to the common position of the Community, as whole.

Government regarded the outcome of the Farm Prices Review as reasonable and satisfactory settlement, that has safeguarded the interests of the British consumers, and in particular, has accommodated the problems of British farmers on beef and pigs.

The Government of United Kingdom has emphasized the importance of maintaining close cooperation and friendly relations between Europe and the United States. Nonetheless they intended to conduct quiet talks with the Americans regarding the "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" number 2625 (XXV), adopted by the General Assembly of United Nations on 24 October 1970. They would also welcome any dialogue with the Arab countries, but only if it did not interfere with the American peacemaking efforts conducted by United States National Security Advisor, Henry Kissinger.<sup>101</sup>

On 26 March 1974, Michael D. Butler, who was the Assistant Under-Secretary for Foreign and Commonwealth Affairs for European Community, and previously a Head of European Integration Department, Foreign and Commonwealth Office, wrote to the Private Secretary, and in copy to Goulding, Elliott, Wright, about the results of the Committee on European Community Strategy (ECS) meeting. He sent the drafts of papers which were being prepared by the European

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<sup>100</sup> Art. 138, Paragraph 1 of the Treaty establishing the European Economic Community, Rome 25 March 1957

<sup>101</sup> Letter to Michael Butler from the European Integration Department, FCO 30-2389 Renegotiation of terms of UK entry into EEC, 21 March 1974.

Unit, a draft of idea for paper recommending further strategy, and the decision of the ECS to deliberate on the Secretary of State's speech in the Council on 1 April, which he suggested should be still thought through and improved.

The day after in the House of Commons the session of Parliamentary questions for oral answers took place. In particular Lord Gladwyn, who was the Deputy Leader of the Liberals in the House of Lords from 1965 to 1988 and spokesman on foreign affairs and defense, who served at the time as a Member of the European Parliament from until 1976, has asked Her Majesty's Government "whether, pending any formally negotiated change in the terms of accession of the United Kingdom to the European Economic Community, they will abide by all their existing Treaty obligations", which was answered by Lord Goronwy-Roberts, the Parliamentary under-Secretary of State in the Foreign and Commonwealth Office, that "Her Majesty's Government will certainly fulfil their international obligations."

Some of the questions from Marten, Moate, Lane, Lee and Blaker were all answered together by the Secretary of State for Foreign and Commonwealth Affairs Callaghan, as he referred to his statement from the 19<sup>th</sup> of March, when he already gave his statement regarding his policy in the renegotiation with the EEC. Marten has followed with his concerns about feasibility of achieving fundamental changes to the whole concept of the Common Market in effect of successful renegotiation. That led him to believe it was more probable to fail in that task, which would almost certainly shift the British public to vote for withdraw from the EEC in the forthcoming referendum. In this context he asked the Government to consider starting a creation of a wider free trade area.

Callaghan replied he did not wish to address hypothetical situations about the outcome of the renegotiations, but as far as creation of wider trade areas, his Government has always claimed the need of world-wide trading partnerships. Lane believed that Labour's renegotiation of EEC entry terms was deceitful, with clear scope of continued obstructing of the Community from within and would not impress either the British public or the other Member States.

To Christopher Mayhew it was not logical that the Government would not increase their influence in renegotiations of the entry terms, by not sending Government representatives to the European Parliament for making a better case in negotiations for lower farm prices, a better regional policy, and a smaller British contribution to the EEC budget. Arthur Lewis has elaborated on the same issue, by pointing out that British delegates, currently representing United Kingdom

in the European Parliament, have failed to get elected to the House of Commons or did not stand for the seat in British Parliament, and therefore he believed, it was absolutely antidemocratic for them to be there.

According to Derek Walker-Smith's suggestion, as the primarily legislative function of the Community is vested in the Council of Ministers, which was mainly executive body, the Government would consider in future to conclude in public the legislative process of the Council of Ministers, as a contribution to the improvement to the democratic process.

Blaker: had the impression that pending the outcome of the renegotiation, no new commitments would be assumed towards other eight members of the Community, which would involve a conclusion on the Regional Development Fund that was already far advanced under the previous administration and would bring great benefits to the United Kingdom, but in the light of possible changes to the Community budget it was risking substantial size reduction, with all other regional funds. Moate's concern about restoring the powers of British Parliament over all Community enactments, including particularly Commission regulations, has been reassured in principle by Callaghan, but there was still uncertainty about the exact method. Jay wished to know if the Government has rebuilt the contacts with New Zealand, Australia and Canada to resume the previous close economic relations with them, which was confirmed by the Secretary of State, as there have already been some discussions with New Zealand's Deputy Prime Minister, Walding, regarding reassurances of long-term arrangements for rebuilding trade relations. Mrs. Winifred Ewing has asked whether there was a subject or person involved in the renegotiation, responsible exclusively for the safeguarding in particular the Scottish interests like agriculture, fishing industry and energy, which was not the case, as the renegotiation and protecting all interests was happening on a whole United Kingdom's basis. Callaghan has avoided the direct answer to the question posed by Russel Johnston about his clear position regarding British membership in the EEC in principle, which was described in the Labour Party manifesto.

Milne has suggested to ask British partners and previous members of EFTA how they obtained better terms of entry than United Kingdom, which Callaghan believed would have been more appropriate to ask the previous Government, when those terms have been agreed, but at that time it was irrelevant, as European institutions were already deeply embedded in the British

legislation, which is why he felt would be better to fix those solutions from within the EEC, rather than try to approach the whole entering process again from the outside.

The Secretary of State has confirmed to Rippon, that he has raised the issue of renegotiations of regional, social, industrial and aid policies to Chancellor Brandt and Herr Walter Scheel on his visit to Bonn. In his opinion Germany understood the reasons for British approach on many subjects, but did not agree with some of them, which is why it was necessary to continue the conversation with other members as well. According to the Secretary of State for Foreign and Commonwealth Affairs in his response to Christopher Mayhew, the results of renegotiating their membership conditions, would strengthen the democratic institutions of the Community and provide greater control over its work. In fact, Douglas Dodds-Parker has informed the House that some budgetary control proposals have already been largely adopted by Conservative delegate to the European Parliament Kirk and an Ulster Unionist Pounder, that would come into effect next year.

## 2.1 The Commission's attitude to the UK's proposals about the Community

In the evening of the 27 March 1974, Arthur Michael Palliser, Ambassador and Permanent Representative to European Communities, had a private dinner alone with the Secretary General of the European Commission, Émile Noël from France. Palliser has sent his report from this meeting to his colleagues from the Foreign and Commonwealth Office, the Cabinet and Department of Trade. The personal nature of the meeting has provided the atmosphere of strict confidentiality, that resulted in gaining useful information for adapting British renegotiation strategy in most acceptable way.

Firstly, it was said by the Secretary General, that the President of the European Commission, François-Xavier Ortoli, had deliberately avoided any discussion within the Commission about the British Government's approach, because he feared that different views of Member States would lead to broad discussion, that would inevitably get out to the press and public.

Secondly Noel has advised Palliser about two essential and non-negotiable arguments for the European Commission, which were:

- 1) maintaining the fundamentals of the "own resources" system, which should not be changed and;
- 2) avoiding amendments to either of the European Treaties. Both Treaty of Accession and the Treaty of Rome, were viewed as a matter of principle throughout the Community, as inviolable. On this subject Palliser, after a long, but conducted in friendly manner negotiation, has managed to convince Noel for a possibility of treaty amendments, but only as an instrument of last resort, and United Kingdom would have to be prepared to confront strong resistance on this issue by the rest of their European partners.

Noel personally believed it would be possible to substantially adapt the mechanics of the "own resources" and, if necessary, to amend the transitional provisions in the Accession Treaty, for example by extending the length of the transition period, by amendment to the Council Decision of 1970 rather than by amendment to the Accession Treaty itself. According to the Secretary, Community would be willing to stretch the rules under Article 7 of the Treaty of Accession, as long as the treaties themselves are left inviolate. Such arrangements would be the best way of convincing other Member States to accept these solutions if necessary.

Palliser has anticipated to Noel how the Secretary of State would present in general his statement at the forthcoming Council on 1 April 1974. Palliser wished to closely involve the Commission, to guide their renegotiation within the established council framework. To do that according to the Secretary there should be broad agreement within the Council to move forward with a renegotiation in the main areas requested by the United Kingdom, and it would require some discussions within the Council, so the Commission, at the request of the Council, could formulate their own proposals as the foundation for the subsequent work.<sup>102</sup>

John Beith, the Ambassador to Belgium, has wrote to J. Oliver Wright, who was the Senior Deputy Under-Secretary for Foreign and Commonwealth Affairs and in copy to Michael Palliser, about his useful talks with Paul M. J. Noterdaeme, regarding Belgian official position to the British renegotiation of the membership terms. He informed them, that mention of the “renegotiation” was seen in negative perspective. The attitude of the Community towards the British attempt to improve the membership terms was strongly dependent on the question of confidence, whether the British Government was trying to improve the functioning of the whole Community or simply seeking its own national advantages. It was unclear if United Kingdom would negotiate with an objective of staying within the Communities, or if other demands would rise subsequently in the course of negotiations, which is why United Kingdom should ensure to clearly state their requests from the beginning, and the whole renegotiation should be dealt with by the Council of Ministers as one package to avoid any confusion.<sup>103</sup>

Another suggestion was for the British Government to display more enthusiasm with a political Europe and help in the dialogue between Europe and the Arabs States. The last vital issue to bear in mind was to speak the same language, while visiting each capital and dealings with other Member Countries, to avoid ambiguity of translations.<sup>104</sup>

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<sup>102</sup> *The Commission's attitude to the UK's proposal about the Community*, Confidential letter from Arthur Michael Palliser, FCO 30-2389 TEL N. 1568, 28 March 1974.

<sup>103</sup> *EUROPE: RENEGOTIATION*, Letter from J. Beith to J.O. Wright, FCO 30-2389, 13 March 1974.

<sup>104</sup> Ivi, Paragraph 6.

### 2.1.1 French attitude towards the British renegotiation

Before the meeting of the Council of Ministers on 1 April 1974, an assessment of the French attitude towards the British renegotiation of the entry terms into the Community was sent to the Foreign and Commonwealth Office. It was difficult to have precise information, because the French were struggling with deep uncertainty, both about themselves and about UK. Although there was a lot of concern regarding this matter, the French have been assiduously playing the issue down in briefing the press, allowing British to seek the adjustments to Community arrangements, and then to judge their position in the light of what would have been achieved. French Government believed that the long-term intentions of United Kingdom would only be formed after they knew what exactly they could get out of the whole process of renegotiation. France expected UK to present a comprehensive statement of their requirements within the community framework, and then they would consider it item by item, as British did on the agricultural prices. France had a serious problem with inflation and the beginnings of Labour troubles. It was struggling both politically and economically at that time. In addition, President Pompidou was seriously ill, which resulted in increased uncertainty, in the light of the possible presidential election. All their previous European policies have become uncertain, which meant they would wait to discover British final objectives, before forming coming to conclusions.<sup>105</sup>

The French assumed, that by allowing United Kingdom to join the Community, that they accepted the existing structure and future development. The process of economic integration and monetary unity got blocked by monetary problems and necessity to float both French and British currency. Previous French project of political cooperation become unpracticable, as it depended on joint approach with United Kingdom, which were doubtful of its future membership in the Community, and United States, that struggled to accept the independent European identity. This made it difficult for the French to continue with their vision of European policy over energy. Problems in reaching those objectives would encourage the French out of self-interest, to preserve on principal existing structure of the “*acquis Communautaire*”: the Common Agricultural Market, including Community preference, the Customs Union, the existing financial arrangements of the Community. They would avoid any substantial changes, that could harm their account balance of expenditures and receipts with the Community, so they would look for solutions that would not

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<sup>105</sup> *BRITAIN AND FRANCE*, FCO 30-2389 TEL N. 388, 27 March 1974, Paragraph 3.

involve giving up anything themselves, but as far as renegotiation would remain within the Community framework, the French would not obstruct the process. First of all, because they would not want to stand alone in the opposition, as United Kingdom could expect some support of the rest of the Community members. And secondly, because otherwise British could in return use their veto to block other Community decisions. And finally, even when they pretended indifference to the British ultimate decision, they would be strongly influenced, if the UK would leave the Community as a result of not gaining the adjustments they required, which for France would be marked as failure of their European legacy, and if for some reason that would happen anyway, they would not like to be the solitary responsible for that outcome, as surely this decision would prejudice the pattern of their future relations without the UK.

<< All this suggests to me that the French will not be prepared to pay much of a price to keep us in the Community, but that they will play their hand carefully and may at first present a low profile. They will wait for our objectives and options to materialize. They may not themselves force issues of principle, though they will defend principles that they regard as coming under attack. They may prefer to leave the ideological running to others. They will be slow to form conclusions, publicly at least, about our longer-term intentions and will hope that these will be shaped by the process of the negotiation. But if the debate leads them to conclude that we mean to undo the system or to limit the further development of European construction, then at that point they will begin thinking about pulling the drawbridge up on us and they would expect that in those circumstances the others, by geographic and historical inevitability, would stay behind it with them.>><sup>106</sup>

In any case, if the French did not agree to any concessions, they would only need to maintain the status quo, since any changes would require their agreement, and even it would be painful, but the Community would survive British departure, as far as French were concerned. Which is why from the British point of view the best possibility of achieving the adjustments to the Community would be:

- to concentrate on material points and on progressive and piecemeal modification of the system from within it and to reserve public judgment on the future of Europe, on which in any case, French views were far from visionary.

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<sup>106</sup> BRITAIN AND FRANCE, FCO 30-2389 TEL N. 388, 27 March 1974, Paragraph 6.

- to state their needs in practical terms when renegotiating important points on the CAP, financial burden, and improved access for cheaper food supplies, and avoid the appearance of attacking the principles of the Community, which French would feel obliged to defend.

In the summary of renegotiation strategy, United Kingdom would need to show willingness to continue with political cooperation, but not in at the cost of direct confrontation with the Americans. UK would need to approach the French over the consultation, rather than over the European fundamental principles. French attitudes in renegotiation would be affected by the policies pursued by British on bilateral projects such as “Concorde” and the Channel tunnel, which is why it was essential for British purposes to maintain an effective dialogue with the French, as those arguments were very important for the public opinion and employment. There was an obvious interest in comprehensive solutions for sensible arrangements, while American opposition to the dialogue was evidently unreasonable, especially regarding the industrial collaboration.<sup>107</sup>

## **2.2 Reasons and preparations for referendum**

Since the beginning of negotiations to join the European Community, all of the leaders of the three largest parties in the United Kingdom were in favor of British participation in the Common Market, but they were not all as convinced regarding the conditions, and neither of them wanted a referendum in the beginning. Edward Heath believed it wouldn't be possible to achieve British membership in the Europe against peoples will, but decisions of this kind, in his opinion, should be resolved solely through the parliamentary system. The support for the Communities, however, was not always the case. Until late 1971 polls showed that majority of Brits were against joining. Public opinion than shifted towards integration to reach a small majority of 38% to 36% just after entering Common Market in January 1973.<sup>108</sup>

Considering all the major parties in the Parliament were supporting the idea of membership, there were no solid ground to declare it as a democratic decision without consulting

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<sup>107</sup> *BRITAIN AND FRANCE*, FCO 30-2389 TEL N. 388, 27 March 1974, Paragraph 8.

<sup>108</sup> V. Bogdanor, *True stories of the 1975 EEC Referendum*, The Open University, 8 April 2016, <https://www.open.edu/openlearn/people-politics-law/politics-policy-people/politics/true-stories-the-1975-ee-referendum>.

the public. And so, the strongest argument for having the referendum was, that even if the political alternative against membership would exist, it was still a fundamental decision of great importance, that should be legitimized by the citizens in absence of a written constitution. In other words, to avoid small majority governments, that in this case had only support of about 40% of the electorate, to make enormous changes, like this type of “transfer of power”, without full-hearted consent of the country.<sup>109</sup> At the same time every other joining nation has backed their entry with a public vote of confidence, with most of them confirming this decision. Only Norway has voted against it and did not join the EC. Even in France the enlargement of the Communities has been put to a referendum on 23 April 1972<sup>110</sup>, asking <<Do you agree with the new opportunities opening up in Europe, the draft law submitted to the French people by the President of the Republic, and authorising the ratification of the Treaty concerning the accession of United Kingdom, Denmark, Ireland and Norway to the European Communities?>>, which resulted in 68,3%<sup>111</sup> of public approval to lift the “veto” and allow United Kingdom, together with Denmark, Ireland and Norway to join the Common Market.

### **2.2.1 Other countries experiences with referenda**

Her Majesty’s Government have studied the experience of other countries, with particular attention to those such as Australia and New Zealand with political systems closely related to the United Kingdom, and to the referenda on entering the European Community held by Denmark, the Republic of Ireland and Norway in 1972. The British have also studied past referenda held in their EEC partner countries France and Italy, as well as those in the United States of America, in Switzerland, and in Sweden. All of the conclusions from the experiences of those countries were presented to Parliament by the Lord President of the Council in the end of February 1975.<sup>112</sup> The precise practices regarding the referenda in those countries were described as follows:

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<sup>109</sup> V. Bogdanor, *True stories of the 1975 EEC Referendum*, The Open University, 8 April 2016, <https://www.open.edu/openlearn/people-politics-law/politics-policy-people/politics/true-stories-the-1975-ee-referendum>.

<sup>110</sup> D. Nohlen, P. Stöver, *Elections in Europe: A data handbook*, Nomos Verlagsgesellschaft Mbh & Co 2010, p. 674.

<sup>111</sup> Ivi, p. 686.

<sup>112</sup> *Referendum on United Kingdom membership of the European Community, Annex B, Referenda in some foreign and Commonwealth countries, White Paper*, February 1975 pp. 12-17, [https://www.cvce.eu/en/obj/white\\_paper\\_published\\_by\\_the\\_british\\_government\\_regarding\\_the\\_referendum\\_o](https://www.cvce.eu/en/obj/white_paper_published_by_the_british_government_regarding_the_referendum_o)

In Australia the referenda were held to amend the Australian (Federal) Constitution and certain provisions of some State Constitutions. Occasionally they were also held to obtain the views of the electorate on politically sensitive issues. In outline, proposed alterations to the Federal Constitution were usually submitted to a referendum once passed by an absolute majority of each House of Parliament. In certain circumstances, a proposed alteration could also be submitted to a referendum if passed on two separate occasions by only one House in the event of a disagreement between the two Houses.

The Chief Electoral Officer arranged for the distribution of a pamphlet to every elector, showing the proposed constitutional alteration(s) together with the arguments for and against. Each argument was limited to 2,000 words and was authorized by a majority of its supporters in both Houses. Campaign expenses, including the cost of publishing referendum material, incurred by persons, political parties or other organized bodies must have been shown on returns submitted after the referendum. Returns were also submitted by newspaper proprietors, showing names and addresses of those inserting referendum material and amounts paid or outstanding. All returns were open to public inspection. There were no ceilings on expenditure, but Parliament was at that time considering a proposal to limit the referendum expenses of political parties. The total cost to the Government of the two referenda held in December 1973 (on prices and incomes) was about \$3 million (£1.9m at then current rates of exchange), for a population of 13 million, of which some \$700,000 (£450,000) was spent on the preparation and distribution of pamphlets. The ballot-paper specifies the title or titles of each proposed alteration and provided for a Yes or No answer to a question asking whether the voter approved of the proposed alteration(s). Voting was compulsory. Ample provision was made for postal and absent voting.<sup>113</sup>

A proposed constitutional alteration must have been approved by a majority of voters in the nation as a whole and also by a majority of voters in a majority of the six Australian States (electors in Australian territories were not eligible to vote at referenda to alter the Constitution). A proposed alteration may have failed even though approved by an overall majority of voters. Special provisions existed to safeguard the position of the States on proposed alterations to the Constitution seeking to alter matters such as the representation of the States in Parliament or an alteration of

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<sup>113</sup> Ivi, p. 12.

State boundaries. Out of 32 constitutional amendments submitted to referendum since federation in 1901, only 5 have been approved in Australia. The initial count was carried out in the Federal electoral divisions of each State and the results of the referendum were collated and published by the Chief Electoral Officer. The results showed the number of valid votes casted for and against the proposed alteration in each State and in whole country. The number of informal ballot papers was also shown.<sup>114</sup>

In Denmark under Article 42 of the Constitution, Bills passed by the Folketing (Parliament) may have been put to a referendum at the request of one-third of its members. Certain Bills were exempt, like on finance, taxation or Bills introduced for the purpose of discharging existing Treaty obligations. Under Article 20 of the Constitution, legislation involving surrender to an international body of powers vested in the authorities of the Realm would be submitted to a referendum, unless supported by five-sixths of the Members of the Folketing. Constitutional amendments were subject to Referendum under Article 88. Seven referenda have been held in Denmark since 1953.<sup>115</sup>

For the EEC Referendum, held under Article 20 on 2 October 1972, the Government and the Folketing undertook an intensive educational campaign. The Government issued twelve booklets on Community institutions and policies together with a compendium of 136 questions raised by the public and answered by a panel of Government experts. The Folketing issued a 16-page broadsheet which was distributed to every household containing articles for and against Danish membership and official statements by the nine major political parties. Government funds, managed by the Ministry of Education according to a strictly defined formula, were made available to parties and organisations involved in the information campaign; the total amount of public money spent was approximately £1 .4m for a population of 5 million.

In 1972 the Danish electorate was asked to approve the draft law enabling Denmark to become a member of the European Communities by answering either Yes or No, as required by the Electoral Law. Facilities existed for postal and absentee voting. A Draft Law put to referendum was deemed to have been rejected if a majority of those voting would vote against it and if the Noes comprised at least 30 per cent of those entitled to vote. As in elections, referenda results were

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<sup>114</sup> Ibidem.

<sup>115</sup> Ivi, p. 13.

declared for each individual polling station, of which there were several in each constituency. The total poll in the EEC Referendum was 90%: 63.3% of the votes were in favour of joining European Communities and 36.7% were against.<sup>116</sup>

In France under Article 3 of the Constitution, national sovereignty belongs to the people, who exercise it through their elected representatives or by referendum. Under Article 11, the President, on the proposal of the Government when Parliament was in session, or of the two Assemblies jointly, may have submitted to referendum any Government bill dealing with specified subjects. These were including ratification of a Treaty which, although not in conflict with the Constitution, would affect the workings of public institutions. A special provision existed under Article 89 on amendments to the Constitution, where the initiative belonged jointly to the President on the proposal of the Prime Minister and to Members of Parliament: the proposal must have been voted by both Houses in identical terms after which the President may have chosen to submit it to a referendum which would be binding. On two occasions, however, constitutional amendments have been taken under Article 11 rather than Article 89.<sup>117</sup>

Normal voting procedures were applying to referenda, and all political parties enjoyed the same propaganda facilities (television, radio, etc.) as in elections. Before the 1972 referendum on enlargement of the European Communities, each voter was sent, together with his ballot papers, an explanatory text containing a declaration by the President, the question to be set in the referendum, the decree submitting the Bill authorising the ratification of the Treaty of Accession to a referendum, the text of the Bill itself, the text of the Treaty of Accession, and a résumé of its annexes (complete texts of which were available in town halls).

Referendum questions were always put to the voters in the following form: "Do you approve of the Bill submitted to the French people by the President of the Republic and concerning ...?" The result was decided by a simple majority of votes casted, and facilities for postal and proxy voting were available. Votes were counted by polling stations and were announced for each department and for the nation as a whole; from these the figures for each parliamentary constituency may have been deduced. Published results included the number of eligible voters, of

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<sup>116</sup> Ibidem.

<sup>117</sup> Ibidem.

valid votes casted, and of yes and no votes. From these figures also the number of abstentions and of blank or spoiled votes could have been deduced.

In Italy the Constitution provided, under Article 138, for referenda on constitutional laws or amendments to the Constitution. These must have been requested within three months of the publication of the laws or amendments by one-fifth of the members of either Chamber or not less than 500,000 electors or five regional councils. Under Article 75, the two last also may have called a referendum for the partial or total abrogation of existing legislation, except for fiscal and budget laws, for pardons, amnesties and laws authorising the ratification of international treaties. A referendum could not be held on a constitutional law which has been approved during a second reading by two-thirds of the members of each Chamber.

The publicity campaign would begin formally thirty days before polling day. The promoters of the referendum (recognised as one group only) and Parliamentary parties were entitled to the same facilities as parties participating in an electoral campaign. No ceilings were imposed on campaign expenditure and the State paid the administrative cost. The Italian Parliament voted approximately £20m for the 1974 Divorce referendum, for a population of 55 million people.<sup>118</sup>

The question was formulated differently according to whether the referendum was on a constitutional question or the abrogation of legislation, but both required only a Yes or No answer. The issue was decided by a simple majority of valid votes providing that a majority of the electorate has voted. There was no postal vote in Italy. Votes were counted by constituencies, and the final result was declared by the Central Office for the Referendum, which stated whether the law concerned has received a greater number of valid affirmative or negative votes. In the 1974 referendum on the Divorce Law, results were available down to commune level.

In New Zealand subscribed to the doctrine of Parliamentary sovereignty but, under Article 189 of the Electoral Act of 1956, certain provisions of that Act may have only been amended by a 75% majority of the House of Representatives or by referendum. From time-to-time referenda have also been held on popular issues, as in 1949 when the electorate was consulted on licensing hours, betting regulations and conscription.

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<sup>118</sup> Ivi, p. 14.

Only two referenda have been held since the Electoral Act of 1956. In the double referendum held in September 1967 a proposal to extend the Parliamentary term was put to the electorate as required by the 1956 Act, together with a popular issue, the extension of licensing hours. Both were conducted in accordance with the 1956 Act, as further defined by special Enabling Acts of July 1967. The Government undertook an official information campaign outlining the alternatives and their implications. No rules of conduct or limits on expenditure were imposed on campaigners.

The ballot forms required voters to strike out one of two alternative proposals and the results were decided by the majority of valid votes casted. Facilities were available for postal and absent voting. Votes were counted locally. Although in both cases the national figure only was decisive, the Sale of Liquor Poll Act 1967 specified publication of the total number of valid votes for each electoral district and voting figures for and against the proposed extension of the Parliamentary term were also published in this way.

In Norway the Constitution does not provide for referenda but five have so far been held by means of enabling legislation: on union with Sweden, the Monarchy, two on prohibition and on membership of the EEC. Since the first two referenda, which were binding on the Government, all others have been consultative. However, the majority of the *Storting* (Parliament) agreed, without a vote, that the result of the EEC referendum, held on 24 and 25 September 1972, would be binding if a clear-cut majority emerged.<sup>119</sup>

In the EEC Referendum the Government provided information in a White Paper published in March 1972, a series of booklets on specialist topics available free of charge on application from June 1971, a general publication giving 100 answers to questions on all relevant subjects and a telephone information service. Public funds were also allocated to the political parties in proportion to their Parliamentary strength as in elections and to both pro- and anti-EEC organisations without conditions as to their use. The total cost to public funds was approximately £815,000 for a population of under 4 million.

The question put to the Norwegian electorate in 1972 was: "Should Norway become a member of the European Communities?" The required answer was Yes or No. Voting facilities

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<sup>119</sup> Ivi, p. 15.

were available for those absent from their constituencies. Votes were counted in electoral districts and a simple majority was accepted. Voting figures were declared on a constituency basis and figures for invalid votes were also available. The total poll for the EEC referendum was 78%, with 46.5% of votes casted for membership and 53.5% against.<sup>120</sup>

In the Republic of Ireland Under Article 46 of the Constitution, a Bill amending the Constitution must have been submitted to referendum after passing both Houses of Parliament. Under Article 27, a majority of the Upper House and not less than one-third of the Lower House could also request the President jointly for a referendum on a Bill "of national importance", but this procedure has not yet been used. The 1972 referendum on membership of the EEC was the fourth of six referenda held in Ireland. For the EEC Referendum the Government issued a White Paper and produced several publications on the terms of entry and their implications, covering points raised in detailed surveys of public attitudes. The cost of the official campaign was £45,000 for a population of just under 3 million. The three main political parties also produced leaflets in the form of an election address which were delivered post-free to each elector.

The question put to the electorate in the EEC referendum, in both official languages and in the standard form under Article 46, was: "Do you approve of the proposal to amend the Constitution contained in the under-mentioned Bill-Third Amendment of the Constitution Bill 1971?" The answer required was Yes or No. The Amendment in question, quoted in full on the official polling card, provided that the State might become a member of the European Communities and that no provision of the Constitution would invalidate laws etc. enacted by the State as a member of the Communities, or would prevent Community laws etc. from having the force of law in the State. Referenda on constitutional amendments were decided by a simple majority of electors taking part; postal voting was available only for the police and Armed Forces. Constituency results were counted and announced by local returning officers who reported them to the Referendum Returning Officer in the Department of Local Government. He declared the formal result on the aggregate of all individual votes. The total poll turnout in the EEC Referendum was over 70%, of which 83% of the votes were in favor, 17% were against membership.

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<sup>120</sup> Ibidem.

In Sweden Article 7:3 of the 1975 Constitution stated: "Provisions for an advisory referendum throughout the country shall be laid down in law." There was no standing legislation. Three earlier referenda, on prohibition (1922), right-hand driving (1955) and social security (1957) were also advisory, and their conduct was governed by special legislation in each case.

In 1955 and 1957 the State financed its own neutral information campaign, and no ceilings were set for total expenditure. In 1955 the question of right-hand driving was not a politically significant issue, and the pros and cons were put by two ad hoc committees established with government approval. The political parties were active in the *ad hoc* committees established in 1957, as well as on their own behalf. One million kronor (approx. £69,000) were made available to each side in 1955 and two million kronor (approx. £138,900) in 1957, for a population of 8 million.

In 1955 the electorate were asked to vote Yes or No to the proposed introduction of right-hand driving, and in 1957 they were given the choice of three proposals for pension schemes. On this occasion a blank vote was considered as a vote against all three, and the result was inconclusive. No majority requirements have been stipulated for referenda because of their advisory status, and the 1955 decision was reversed in 1967 without further recourse to referendum. The voting procedure and count have been based on the procedure in general elections, with postal and absent voting both permitted. Results have been published for constituencies and sub-constituencies as well as for the whole of the country.

In Switzerland at national level, all constitutional changes, and also certain international conventions, decided by the Legislature must have been approved by national vote (the so-called *referendum obligatorium*). Ordinary legislation may have also been submitted to a national vote (referendum) at the request of not less than 30,000 voters or of eight cantons unless a decree was declared by the Federal Legislature to be urgent and therefore temporarily exempt. At the cantonal level, in eight of the cantons, all laws must have been submitted to a vote (referendum). In seven others a vote would have to be held if a specified number of citizens demanded it. In a further three cantons certain laws must have been submitted to a vote and others must have been submitted if a specified proportion of citizens demanded it.

In national referenda, the national authorities provided the electorate with basic information. The various campaign groups who furnish additional information material did not

receive support from the public exchequer for that purpose. At the cantonal level local authorities provided information on the referendum issues. The question was usually one to which the voter was asked to reply Yes or No. If the Federal Government disagreed with the intent of a proposal made by a certain number of citizens a counterproposal would be submitted to a vote at the same time. Again, a simple Yes answer (for the proposal or the counterproposal) or No answer (for one or both proposals) was required.

Constitutional changes must have been approved by a majority of all votes casted and by a majority of cantons. For the adoption or rejection of legislation at national and cantonal level a simple majority of votes casted was sufficient. Votes were counted at communal and cantonal level (and at national level in national referenda) and published at cantonal (and national) level. Postal votes were only allowed for those in military service. Certain categories of sick or invalided persons may have voted by proxy. These results were published as an integral part of the overall vote.

In the United States of America, the Federal Constitution made no provision for referenda, but thirty-nine States provided for referenda on proposals passed by the State legislatures or at local government levels, and twenty-one States for legislative initiatives by a percentage of voters which varies from State to State. Both devices may have applied to constitutional amendment as well as to ordinary legislation, but at no level of government could the scope of a referendum exceed the competence of the legislative body concerned.

Those responsible for proposing an initiative, often organized pressure groups, were also responsible for their own campaign costs. There were no limits on expenditure. The cost of balloting, however, was generally sustained by the State or municipality, and in some States, like in Oregon and California, the State provided official literature on referenda issues.<sup>121</sup>

Proposals submitted to the electorate may have been complex, as in the 23-point environmental plan put to the vote in the 1972 referendum on pollution in California, but the answer required was usually Yes or No. Referenda were generally held at the same time as the biennial congressional and local elections and normal facilities for absentee (postal) voting were provided.

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<sup>121</sup> Ivi, p. 17.

Majorities required were different from State to State and could also vary according to the issue (amendments to State constitutions sometimes required more than a simple majority). Referenda votes were counted at precinct level, but the official results were normally reported by country and, in a few instances, by city. The overall figures for spoilt votes were also published by some States.<sup>122</sup>

### **2.3 Statement by the Prime Minister on British membership of the European Communities**

On 23 January 1975 Prime Minister Harold Wilson has made a statement in the House of Commons regarding the referendum on British membership of the European Communities.<sup>123</sup> It was the Government policy, declared in Labour Party manifesto<sup>124</sup>, to renegotiate the terms of EEC membership accepted by the previous Government at the time of the entry, and once the outcome would be known, to consult the British people by means of a Referendum, whether Britain should continue its membership or should it withdraw from the Community. After 15 years of discussions, negotiations and three attempts to join, Harold Wilson believed it was about time to settle this issue as soon as possible, because prolonged uncertainty was against anyone's interests and further delay on this decision was inhibiting the correct work of the Community. Under the condition that the outcome of renegotiation would be known, they intend in practice to hold the Referendum not later than the end of June 1975, and therefore the necessary arrangements would be proposed to the House. The Government would announce its decision, whether they would recommend to the public for continued membership of the Community on the basis of the renegotiated terms, or for the withdrawal, only after the results of the renegotiation would be known, but without a doubt giving the opportunity to the House to debate the question of substance.

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<sup>122</sup> Ibidem.

<sup>123</sup> Records of the Cabinet Office, Cabinet Memoranda, CAB 129-181-11 - *British membership of the European Communities - Statement by the Prime Minister*, 22 January 1975; Hansard, HC Deb 23 January 1975, vol. 884 cc. 1745-47.

<sup>124</sup> February 1974 Labour Party Manifesto, *Let us work together - Labour's way out of the crisis*, <http://www.labour-party.org.uk/manifestos/1974/Feb/1974-feb-labour-manifesto.shtml>; October 1974 Labour Party Manifesto, *Britain Will Win With Labour*, <http://www.labour-party.org.uk/manifestos/1974/Oct/1974-oct-labour-manifesto.shtml>.

In the light of the unique circumstances of this referendum, and strong differences of opinion on the subject of EEC membership, which was crossing party lines, the members of the Government, including members of the Cabinet, would be free to support and speak in favor of a different conclusion in the Referendum campaign. The rules for the test of public opinion would have to be made, which is why the Government proposed to publish a White Paper by the end of February, to enable the Government to take full account of the expressed views and to draft the necessary constitutional legislation for the Referendum. To enable the Referendum in June, the Bill would have to pass through all stages of the Houses and to receive Royal assent by the end of May 1975.

White Paper would set out the various possible courses and the Government's proposals on such matters as the information policy of the Government, the question of expenditure by campaigning groups, and arrangements for conducting the poll, counting the votes and announcing the result. Before the Easter recess, there would be a debate on the Paper in the House of Commons, which would be separate from the Parliamentary debate on the outcome of the negotiations.<sup>125</sup>

## **2.4 Referendum: the question on the ballot paper**

According to the Lord President of the Council, Edward Short<sup>126</sup>, it was it was very important to decide in the Parliament the exact words of the Question, which would be presented to the people in the referendum, and which should be also included in the Referendum Bill.

The first problem with the exact wording was regarding the way of describing the subject of the question phrase. There were three main choices, whether the subject would be simple but imprecise "we", or between "Great Britain" and "Britain", which was familiar but inaccurate, as it was excluding Northern Ireland. The final decision concluded the wording "The United Kingdom" would be used in the Bill and during the referendum, since it was both, technically correct and it emphasized the nation-wide aspect of the decision. Another reflection was regarding how to address the Community. In this case options "Common Market" and "the EEC", were

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<sup>125</sup> Hansard, HC Deb 23 January 1975, vol. 884 cc. 1747.

<sup>126</sup> Records of the Cabinet Office, Cabinet Memoranda, CAB 129-181-18 - *Referendum: the question on the ballot paper, Memorandum by the Lord President of the Council*, 10 February 1975.

familiar but technically not correct, as the decision would include all three of the original Communities, which is why the term “European Community” was found most accurate. Then the issue to resolve was in what exact words the question should be asked, like whether simply use a phrase “do you think that...” or some variant of it.

In the next part it was necessary to decide how the wording of effect would be described. Should the Question use the word “be” or “stay” [a member of the European Community], which was the word used in the Government Manifesto. There was also an issue of which side of the outcome would be suggested in the Question for the “Yes” response, so should the Question ask to agree with “staying in” or “coming out”. In this case the precise wording was very important, as different word used in the phrasing of the Question could incline the responses in certain direction and could have a significant effect upon the result. Although there is no reliable evidence to support this view, the Government wished to ensure that the words on the ballot paper would be as free from bias as possible.

Finally, and most importantly the doubt was, whether it would be a good idea to mention the outcome of the renegotiation. In the Government Manifesto it was promised: “We will give the British people the final say (...) whether we accept the terms and stay in or reject the terms and come out”, which was referring to the new terms of the renegotiation, but the referendum was not about accepting those terms by the public or not. It was about remaining a member of the European Community or leaving it, regardless of the terms in place.

The European Movement have proposed to present the Question as: “Do you wish the United Kingdom to remain a member of the European Community on the new terms negotiated by the Government and recommended by Parliament?” Another, much simpler suggestion was: “Should Great Britain be a member of the Common Market?”

Most elaborate proposition came from the Foreign and Commonwealth Office, which recommended the following way of consulting the public:

Firstly, at the top of the ballot paper there would be printed a statement: <<The European Economic Community (Common Market) was formed in 1957 by six countries: Belgium, France, Germany, Italy, Luxemburg and the Netherlands. Denmark, Ireland and the United Kingdom joined on 1 January 1973. The Government has announced the results of the renegotiation of the

United Kingdom's terms of membership of the European Community<sup>127</sup>, and then separately, with bigger letters would be given the Question: <<Do you think the United Kingdom should stay in the European Community?>><sup>128</sup> In the Lord President's opinion, the introduction to the Question was too long, which is why he suggested maintaining only the last phrase of it. The possible answers for the simplicity of choice were to be Yes or No.

Before the end of February White Paper<sup>129</sup> has been drafted about the efficient and fair organization of the national referendum on the United Kingdom's membership of the European Community. It stated that the referendum results would have fundamental implications for the future of the country, for the political relationship between the United Kingdom and the other Member States of the Community, and for the constitutional position of the British Parliament. White Paper was concerned only with the issues regarding organization of the referendum, like the organization of the poll, the provision of information to the voters and the scope of the legislation required.

During the referendum, the Government has decided to use whenever possible, including postal and proxy voting facilities. Usual procedures and practices applied to normal United Kingdom elections, like for establishing the poll size and necessary majority to provide a decisive result, which was agreed would be bounding for the Government, without any special restrictions, as to the turnout or majority share. It was believed that those parameters would be adequate to the importance of the event, and that the final result would have to be clear and conclusive. As declared previously by the Prime Minister, it was about to be a simple "Yes" or "No" answer to a single straight-forward question about staying in or leaving the Community in the light of the renegotiated terms of membership. The question itself would be approved by the Parliament and declared in the Referendum Bill, following consultations with the political parties represented in Parliament and the leading campaigning organizations. At that time the ballot paper would say:

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<sup>127</sup> Ibidem.

<sup>128</sup> Ibidem.

<sup>129</sup> *Referendum on United Kingdom membership of the European Community, White Paper*, February 1975. [https://www.cvce.eu/en/obj/white\\_paper\\_published\\_by\\_the\\_british\\_government\\_regarding\\_the\\_referendum\\_on\\_the\\_united\\_kingdom\\_s\\_continued\\_membership\\_of\\_the\\_eec\\_february\\_1975-en-e3b99468-b27d-46d8-b000-d06c13db0b87.html](https://www.cvce.eu/en/obj/white_paper_published_by_the_british_government_regarding_the_referendum_on_the_united_kingdom_s_continued_membership_of_the_eec_february_1975-en-e3b99468-b27d-46d8-b000-d06c13db0b87.html).

<<The Government have announced the results of the renegotiation of the United Kingdom's terms of membership of the European Community.

DO YOU THINK THAT THE UNITED KINGDOM SHOULD STAY IN THE EUROPEAN COMMUNITY? YES NO>><sup>130</sup>

There would be special arrangements for providing bilingual ballot papers at polling stations in Wales.<sup>131</sup> According to the Government, the electorate should include those on the Parliamentary election register at that time, together with peers (who were registered for local government elections but could not vote in Parliamentary elections). The polling stations, the same used for general elections, would be typically open from 7 a.m. to 10 p.m.<sup>132</sup> The Government was considering appropriate amount of independent observers at different stages of the referendum. Regarding different alternative methods of counting the votes, the Government has decided a central count to reflect the national character of the referendum and to make a single announcement of the result for the whole United Kingdom to secure its widest acceptance by the British people. Also, a national returning officer would be appointed. He would be responsible for the arrangements for counting the votes and certifying the result of the referendum.<sup>133</sup>

The White Paper would provide information regarding the Government activities and those of the outside organizations or individuals. The Government would be responsible for ensuring that the outcome of the renegotiation and their position in the referendum would be fully explained to the voters by the publication of a White Paper, and of a popular pamphlet containing a less technical version of the renegotiated terms and the Government's recommendation. After careful consideration, the Government would not be providing the public with additional information about the benefits of continued membership of the European Community, which more appropriately would be left to the media and the campaigning organizations. As for the referendum, the Government would help the public to familiarize with its concept by publicizing

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<sup>130</sup> D. Butler, U. Kitzinger, *The 1975 Referendum*, The Macmillan 1976, p. 61; *Referendum on United Kingdom membership of the European Community, White Paper*, February 1975., Paragraph 10, p. 4, [https://www.cvce.eu/en/obj/white\\_paper\\_published\\_by\\_the\\_british\\_government\\_regarding\\_the\\_referendum\\_on\\_the\\_united\\_kingdom\\_s\\_continued\\_membership\\_of\\_the\\_eec\\_february\\_1975-en-e3b99468-b27d-46d8-b000-d06c13db0b87.html](https://www.cvce.eu/en/obj/white_paper_published_by_the_british_government_regarding_the_referendum_on_the_united_kingdom_s_continued_membership_of_the_eec_february_1975-en-e3b99468-b27d-46d8-b000-d06c13db0b87.html).

<sup>131</sup> Ibidem.

<sup>132</sup> Ivi, Paragraph 16, p.5.

<sup>133</sup> Ivi, Paragraph 23, p.6.

the date and the procedures of voting, by sending to every household at public expense the common version of the instructions of the way in which the referendum would be conducted, as well as clear statements between 1,000 and 2,000 words prepared by main campaigning organizations of each of the opposing sides, that would provide answers to the same sets of questions. In this way the Government would provide that both sides of the case would be known to the public and that public interest in those issues would be stimulated. For any additional requests to the Government for factual information and interpretation of the renegotiated terms, the Government would establish a special information unit. The Government would welcome an initiative of the Independent Broadcasting Authority to run a series of short "referendum broadcasts" with equal broadcasting time available to the two main campaigning organizations. To its own editorial discretion IBA and BBC would ensure a fair balance between the opposing views in news and feature programs, as they were forbidden by statute from accepting political advertising. In case of possible imbalance of resources, it would still guarantee wide coverage to both sides, so there would not be any limitation on the expenditure. It would also be impracticable and could apply only after the legislation had received Royal Assent. However, as a matter of public interest, the total expenditure and the sources of income of the main campaign organizations, would have to be disclosed after the referendum. The same restrictions and requirements applicable during the general election campaign would apply to the referendum as far as possible. These restrictions would include a ban on the employment of paid canvassers and a requirement that all campaign literature and posters to bear the name and address of the sponsoring organizations. At the same time the Government did not believe that controlling activities of employers or trade unions, that might influence the views of their employees and members, would be an appropriate subject for legislation.<sup>134</sup>

A fair and effective referendum would require, nevertheless some assistance from public funds to the campaigning organizations, which would require statutory authority, so the Government would provide limited financial assistance, to be equally divided between the two sides, adequately representing campaigns for and against continued membership of the European Community.

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<sup>134</sup> Ivi, Paragraph 39, p.9.

The legislations for the holding of the referendum would be introduced by the Government around Easter-holidays. It would provide specific provision for various matters which would apply uniquely to the referendum by adapting the existing electoral machinery. It will specify the wording of the question, determine the date, appropriate financial provision, and appoint a figure responsible for counting the votes and announcing the result. Because of its importance, the committee stage of the Bill would be put to a vote in the Parliament and the Government would take account of any views expressed during the debates on the Bill.<sup>135</sup>

On 25 February 1975, the Committee on European Community Strategy (ECS) has reviewed the progress towards the renegotiation objectives on regional aids and steel policy.<sup>136</sup> The Labour's Election Manifesto from 1974 has set their objective for <<the retention by Parliament of those powers over the British economy needed to pursue effective regional, industrial and fiscal policies>><sup>137</sup>. The Cabinet was conflicted on this issue. From one side, the European Economic Community Treaty was concerned with preventing state aids which distort competition in so far as it affects trade between Member States. From the pragmatic point of view, the objective would be to establish if Britain would be able to take quick action if necessary and follow only those regional policies that they considered effective in the context of the Manifesto commitment. On the other side, the Commission had power to act under the Treaty and to take Member States to the European Court of Justice, so <<the power of Parliament to make regional policies could be effectively safeguarded, in accordance with the Manifesto, only by finding some ways of avoiding Community involvement which went beyond the reporting of aids and inter-Governmental consultation about them.>><sup>138</sup>

After an intense and deep discussion of all these considerations, the Cabinet concluded that Community rules for the co-ordination of national regional aids were in UK's interests because of the restraints imposed on other Governments, if they were compatible with British need to be free to follow the regional policies they required. The Cabinet has laid down five specific principles<sup>139</sup>

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<sup>135</sup> Ivi, Paragraph 42-43, p.9.

<sup>136</sup> Records of the Cabinet Office, Cabinet Memoranda, CAB 129-181-23 - *EEC Renegotiation: Regional aids and steel - Memorandum by the Prime Minister*, 25 February 1975.

<sup>137</sup> February 1974 Labour Party Manifesto, *Let us work together - Labour's way out of the crisis*, <http://www.labour-party.org.uk/manifestos/1974/Feb/1974-feb-labour-manifesto.shtml>

<sup>138</sup> CAB 129-181-23 - *EEC Renegotiation: Regional aids and steel - Memorandum by the Prime Minister*, 25 February 1975, Chapter I, Paragraph 2.

<sup>139</sup> Ivi, Paragraph 5.

which the Community rules would have to satisfy, which following intensive discussions with the Commission, have been met by indicating how the provisions of the EEC Treaty would apply to regional aids in a communication to be resolute at the Council of Ministers. Those principles were:

1<sup>st</sup> – The Community should not rule out “*a priori*” any form of aid likely to prove itself effective and no forms of aid were ruled out by the communication.

2<sup>nd</sup> - There should be no doctrinaire exclusion of forms of aid, notably labour and production subsidies, such as the Regional Employment Premium, on the ground that they are not related to investment and are not therefore “transparent”. The communication specifically accepted that the presence or lack of “transparency” would not prejudge the compatibility of aids with the Common Market.

3<sup>rd</sup> - The arrangements for reporting or consultation about aids would not hinder urgent action. The communication stated that, where changes to aid systems were justified by essential national problems requiring an urgent response, they would be considered compatible with the Common Market.

4<sup>th</sup> – UK would be able to vary the boundaries of our regions in their light of the assessment of need and when they would judge it to be necessary. The communication explicitly accepted that national Governments would be the best judges of which was required in their own countries. The statement about the factors requiring an urgent response has used the language derived directly from the Local Employment Act 1972.

5<sup>th</sup> - Any classification of the Community into areas for the purpose of the rules would take account of the complexity and special character of regional problems. The communication replaced the previous division of the Community into central and peripheral areas with a new classification into five categories which has taken close account of the differing circumstances prevailing in different areas of the Community.

From the constitutional perspective the EEC Treaty has given the Commission certain formal powers in respect of regional aid systems. But in the communication the Commission has declared in effect that there would be no interference with the regional policies the Government needed to pursue. For these policies the Government would remain wholly answerable to Parliament. The political reality was that the Member States in the Council of Ministers could

determine the effective substances of Community control over regional aids and other questions. The Commission's communication in the Council of Ministers has been therefore accepted by the majority of the ECS for the Parliamentary debate, as satisfactory in the line with the Manifesto objectives mentioned before.<sup>140</sup>

As the effect of the renegotiation, United Kingdom has managed to achieve main changes in budget correcting mechanism and got some market access benefits for import of the Commonwealth's sugar and the New Zealand's dairy products, like butter for example. The budget settlement previously benefited countries with large agricultural sectors, like France or Italy, but was unfavorable for Britain, that had to import most of its food supply.

During the renegotiations it was agreed for a corrective mechanism that took into consideration country's Gross National Product, and in some circumstances, the EC members could expect some reimbursements, if their payments were out of balance. This successful improvement of previously accepted terms has shown to the British public that the European Communities were more collaborative and opened to constructive dialog, that it was described by the Eurosceptics.<sup>141</sup>

Successful renegotiation of UK's membership terms was approved by majority of Wilson's Cabinet and on 9/04/1975 by the House of Commons, with a vote 396 against 170 to support new terms, which led to official Government position in supporting British permanence inside the Common Market and establishing the date for the referendum for the 5<sup>th</sup> of June 1975.<sup>142</sup> Interestingly however, only 138 Labour MPs supported their own government's position on staying in EC on the renegotiated terms, while 148 has voted against it.<sup>143</sup>

But all of this was only official reason for the Labour Party to make the referendum their electoral promise. The true motive for Wilson to reach out to the British people for their opinion was to keep the Labour Party from splitting. Referendum was compared by senior Labor leader,

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<sup>140</sup> February 1974 Labour Party Manifesto, *Let us work together - Labour's way out of the crisis*, <http://www.labour-party.org.uk/manifestos/1974/Feb/1974-feb-labour-manifesto.shtml>

<sup>141</sup> V. Bogdanor, *True stories of the 1975 EEC Referendum*, The Open University, 8 April 2016, <https://www.open.edu/openlearn/people-politics-law/politics-policy-people/politics/true-stories-the-1975-ee-referendum>.

<sup>142</sup> A. Evans - *Planning for Brexit: the Case of the 1975 Referendum*, <<*The Political Quarterly*>> (January–March 2018), Vol. 89, No. 1.

<sup>143</sup> C. Cook, M. Francis, *The first European elections: A handbook and guide*, Macmillan, London 1979.

James Callahan, to a “life raft” for the party. Labour across the country was strongly divided about EC membership, and internal conflict of opinions could split the party in two. At the time of joining the Common Market, Labour shadow ministers were divided in half on this issue, 12 for staying and 11 for leaving, that slightly improved after renegotiating membership terms to 16 against 7.<sup>144</sup>

Now most of the party leaders supported Britain’s renegotiated position within the Common Market<sup>145</sup>, but great majority of the trade unions present at the Party conference on 26 April 1975, like the Transport Workers and the Engineering Workers, were opposing EC membership.<sup>146</sup> It has been put to a vote that came short of receiving a necessary majority and the Labour Party as whole, did not support any side.

The promise of referendum in their manifesto was a compromise to save the unity of the Party, that did not directly contradict any of its members views and passed the responsibility of the decision to the public. To allow some freedom of personal views within the Party, Prime Minister Wilson made an unprecedented decision to suspend his Cabinet’s collective responsibility<sup>147</sup>, to avoid losing 30% of his ministers, and consented them to campaign for the referendum outcome they personally believed in, but only outside of the House of Commons, where their interventions were supposed to reflect the official policy. Out of 23 Cabinet members, 7 decided to oppose continuation of the UK’s membership in the Common Market. Representing anti-European views there were Michael Foot, Tony Benn, Peter Shore, Barbara Castle, Eric Varley, William Ross and John Silkin.

## 2.5 Legal provisions for referendum

Until 1970, the British law did not provide the procedures to legally organize a nation-wide referendum. Before that, referendums were badly perceived as an instrument of dictators, unconstitutional and in violation of parliamentary sovereignty. Nation-wide polls were used and instrumentalized by Adolf Hitler and still remembered at that time as fascist practices. Previous

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<sup>144</sup> V. Bogdanor, *True stories of the 1975 EEC Referendum*, The Open University, 8 April 2016.

<sup>145</sup> Hansard, HC Deb 18 March 1975, vol. 888, cc. 1456–1480.

<sup>146</sup> *1975: Labour votes to leave the EEC*, 26 April 1975, [http://news.bbc.co.uk/onthisday/hi/dates/stories/april/26/newsid\\_2503000/2503155.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/april/26/newsid_2503000/2503155.stm)

<sup>147</sup> Hansard, HC Deb 23 January 1975, vol. 884, c. 1746.

suggestions to hold this type of public vote, for example by Winston Churchill to continue with the wartime coalition government after 1945, were dismissed by Attlee as a device alien to all British traditions. As time has passed, we could realize that misuse of some democratic mechanisms is not a valid reason not to use them properly, the same way Stalin's one-party elections are not the motive not to have elections at all.<sup>148</sup>

As for the argument of the parliamentary sovereignty, it is in the Parliaments competences to freely and democratically decide whether to have a referendum or not, so there is no sovereignty loss, as long as the results are not legally binding.<sup>149</sup>

To make this referendum possible, the government has proposed on 26/02/1975 to hold a simple "Yes" or "No" vote with the same amount of public funding for both possibilities, description of who would be able to vote and that the votes would be subject to one centralized count for the whole United Kingdom, to underline the difference of this poll in respect of the traditional general election. The counting method have met some opposition and ultimately has been amended with separate counts for each administrative region of England, Wales, Scotland, and Northern Ireland.<sup>150</sup>

The approved winning condition was a simple majority. Referendum Bill was introduced for its first reading to the House of Commons on 26 March 1975. On 10 April 1975, after its second reading, the Commons voted 312 vs 248 in support of the Bill<sup>151</sup> and it has been given royal assent on 8 May 1975.<sup>152</sup>

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<sup>148</sup> V. Bogdanor, *True stories of the 1975 EEC Referendum*, The Open University, 8 April 2016.

<sup>149</sup> Ibidem.

<sup>150</sup> C. Cook, M. Francis, *The first European elections: A handbook and guide*, Macmillan, London 1979.

<sup>151</sup> V. Bogdanor, *The New British Constitution*, Hart Publishing, Oxford 2009; Hansard, HC Deb 10 April 1975, vol. 889, c. 1544.

<sup>152</sup> Hansard, HL Deb 08 May 1975, vol. 360, c. 481.

## 2.6 Governments official position

During the period preceding the referendum, the government has distributed to every household a pamphlet<sup>153</sup> stating the Governments position in support of the remaining in the European Communities and explaining to voters the main objectives of the Common Market such as:

- To bring together the peoples of Europe.
- To raise living standards and improve working conditions.
- To promote growth and boost world trade.
- To help the poorer regions of Europe and the rest of the world.
- To help maintain peace and freedom.

Then the pamphlet described the European Community links across the world, indication over 60 countries that had special trading relations with the EC, including twenty-two Commonwealth countries, that actually would be helpful for them if Great Britain would vote to stay in.

Since the very start of the negotiations to join the Common Market, the Labour Party had its concerns about the Common Agricultural Policy and its implications on the potential rise in prices of food. They also feared the loss of economic sovereignty and limited autonomy, especially in socialist policies.<sup>154</sup>

According to opinion polls, British voters are “not very interested in constitutional issues” and more involved when it comes to pragmatic decisions with direct impact on their lives. In case of the 1975 referendum, the main public concern was about the food prices, that were already growing fast. Anti-European campaign was blaming this on the membership in the Common Market where there were happening some food dumping practices of unused and unsellable at Community prices agricultural products, many tons of milk powder and mountains of butter.<sup>155</sup>

The pamphlet stated the progress on the concerning questions of vital importance like “FOOD, MONEY and JOBS”, that were renegotiated and instead of suffering higher prices, Britain would

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<sup>153</sup> *1975 Referendum pamphlet, Britain's new deal in Europe*, HM Government (1975), <https://digital.library.lse.ac.uk/objects/lse:fug282yox>

<sup>154</sup> C. Cook, M. Francis, *The first European elections: A handbook and guide*, Macmillan, London 1979.

<sup>155</sup> V. Bogdanor, *True stories of the 1975 EEC Referendum*, The Open University, 8 April 2016.

gain in those areas of interest, getting back from the EC up to 125 million pounds a year respect the previous arrangements agreed by the Conservatives. The brochure was also addressing other particular issues that were previously raised as potential threats or problems for the United Kingdom as a result of entering the Common Market on the terms signed by the Conservatives, like the loss of the Parliament's power and sovereignty supported by 4 listed facts.

It was explained in detail one by one as resolved in the new renegotiated by Labour conditions, and therefore it was recommended by the Government to vote "Yes" for staying in the Common Market, but at the same time voters were given a free choice. In the words of the Prime Minister Harold Wilson: <<I urge all of you to use your vote. For it is your vote that will now decide. The Government will accept your verdict.>><sup>156</sup> Brochure also said: <<Now the time has come for you to decide. The Government will accept your decision — whichever way it goes. The choice is up to YOU. It is YOUR decision.>><sup>157</sup> It was also clearly explained what the potential effects of each decision would be, listening benefits of remaining a member of the EC and possible damaging consequences of leaving.

Together with the official government's brochures were delivered official booklets for the "Yes" and "No" campaigns. They were both paid for by the Government and arranged the delivery by the Post Office, but I was emphasized that the Government had no part in preparation of their contents, that were provided by the associated Campaign.

In January 1975 according to Gallup survey 55% of voters would choose leaving the Common Market, but in the light of new developments and renegotiated terms of membership, if considered successful by the Government, over 70% would agree with the Governments recommendation and in consequence vote to remain.<sup>158</sup>

## **2.7 Anti-European "National Referendum Campaign"**

The pamphlet promoting the vote to leave the Common Market was criticizing the terms of renegotiations as temporary concessions and not as fundamental as promised. It stressed the

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<sup>156</sup> *1975 Referendum pamphlet, Britain's new deal in Europe*, HM Government (1975).

<sup>157</sup> *Ibidem*.

<sup>158</sup> V. Bogdanor, *True stories of the 1975 EEC Referendum*, The Open University, 8 April 2016.

rising prices for food as avoidable, and consequential to the British membership, as well as danger of unemployment and becoming a subordinate “province” of European State, which was a common argument to Eurosceptics against the process of complete integration between European countries. It spoke directly to the basic fear of losing national independence, individuality, culture and traditions. Curiously, most people in Britain, did not blame Common Market for the inflation, as the phenomenon was notable around the world. More people believed it to be the part of increasing wages and only 17% held directly responsible the Common Market, so the large part of the anti-European propaganda did not a strong impact to persuade people to leave EC. <sup>159</sup>

After two and a half years of EC membership, citizens did not find the warnings of the anti-EC campaign very convincing. Moreover, the NRC was not able to dispel the widespread mood — particularly in the insecure economic situation of the mid-1970s — that it was risky to pull out of the EC, particularly with no clear alternative at hand. <sup>160</sup>

In the 1975 only few members of the Conservatives Party were involved in the “No” campaign, but instead it was strongly supported by local national parties, like the recently strengthened Scottish National Party, Welsh Plaid Cymru, Northern Ireland the Democratic Unionist Party and Ulster Unionist Party represented by the former Conservative minister Enoch Powell, who deserted Tories and indirectly called to support the Labour during the previous general elections, while standing for the Ulster Unionists in South Down, because he strongly favored the referendum idea, with objective to exit the Common Market, that without referendum was not possible. <sup>161</sup>

From the parties outside Parliament, the “No” campaign was supported by the National Front and the Communist Party of Great Britain. But mostly among the supporters of the vote “No” campaign was a variety of Labour MPs from both extreme wings of the party including Eric Varley and Douglas Jay from the right, but most from the far left, including many backbenchers and some of the cabinet ministers like:

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<sup>159</sup> Ibidem.

<sup>160</sup> J.H. Meyer, *The 1975 referendum on Britain's continued membership in the EEC*  
[https://www.cvce.eu/obj/jan\\_henrik\\_meyer\\_the\\_1975\\_referendum\\_on\\_britain\\_s\\_continued\\_membership\\_in\\_the\\_eec-en-eb67b6cf-33ef-4f79-9510-b6fab56d2509.html](https://www.cvce.eu/obj/jan_henrik_meyer_the_1975_referendum_on_britain_s_continued_membership_in_the_eec-en-eb67b6cf-33ef-4f79-9510-b6fab56d2509.html).

<sup>161</sup> D. Butler, U. Kitzinger, *The 1975 Referendum*, The Macmillan 1976, pp. 178-194.

Tony Benn - Secretary of State for Industry in the 1974 Government, was the initiator behind the referendum idea in the 1968, also known for increasing nationalized industry pay and providing better conditions for workers with a Health and Safety Work Act 1974, later appointed Secretary of State for Energy. After changing his position from the European supporter, at the time of referendum he sustained that the EC were strongly << dominated by Germany >> because all of the member countries, except Britain << have been occupied by Germany, and they have this mixed feeling of hatred and subservience towards the Germans >>. <sup>162</sup> He was also directly linking the rise in prices and half a million of lost jobs in Britain to the UK's entry into the Common Market. <sup>163</sup>

Michael Foot - Secretary of State for Employment, responsible for the Health and Safety at Work Act, Trade Union and Labour Relations Act and the Employment Protection Act, with a strong support across the trade unions <sup>164</sup> and very active and disapproving in the previous Parliamentary debates on the issue of joining the Common Market.

Barbara Castle - Secretary of State for Health and Social Services, known for innovative welfare reforms, the introduction of a non-contributory invalidity pension, reforms in child allowances, and the linking social security benefits to earnings rather than prices. <sup>165</sup> While she was advocating to leave the EC, she did not put her career on the line to back her views, instead she states in a debate with the Jeremy Thorpe, leader of the Liberals Party, that if people would vote to stay in the Common Market, she would stay as a minister to help save the country. <sup>166</sup> She also sustained that Britain was << lured into the market with the mirage of the market miracle >> <sup>167</sup>, which she believed to be false. In later years she even became a Member of the European Parliament.

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<sup>162</sup> T. Benn, *The Benn Diaries*, Hutchinson 1995, p. 432; T. Benn, *Arguments for Democracy*, London 1981; T. Benn, *Out of the Wilderness*, Diaries 1963-1967, London 1988; T. Benn, *Office Without Power*, Diaries 1968-1972, London 1988.

<sup>163</sup> M. Cockerell, *How we were talked into joining Europe*, The Independent, London 4 June 2005, <https://archive.ph/20130802205210/http://news.independent.co.uk/uk/politics/article224339.ece>.

<sup>164</sup> R. Johnson, *The Life and Legacy of Michael Foot*, Tribune 23 July 2021, <https://tribunemag.co.uk/2021/07/the-life-and-legacy-of-michael-foot>.

<sup>165</sup> A. Seldon, K. Hickson (eds), *New Labour, Old Labour: The Wilson and Callaghan Governments, 1974-79*, Routledge 23 February 2004.

<sup>166</sup> *Barbara Castle Labour's Greatest Woman*, Documentary - 21 February 2014, [https://www.youtube.com/watch?v=Nj0u\\_pnAw\\_s](https://www.youtube.com/watch?v=Nj0u_pnAw_s).

<sup>167</sup> *Ibidem*.

Peter Shore - Secretary of State for Trade, responsible for renegotiating the terms of British membership of the EC, while still strongly believing none of the changes would be enough, which led him to oppose UK's membership in the Common Market during the referendum campaign in 1975.

## **2.8 Pro-European “Britain in Europe” campaign**

Campaign “Britain in Europe” promoting solution to remain in the Common Market in their promotional booklet underlined among many positive aspects of the Community, the possibility to reject unwanted future policies, that only could be done as a full member, which gave United Kingdom possibility to consent and shape the Common Market to their advantage. Interestingly, the same procedure was described as a negative aspect of the EC, by the Eurosceptics, meaning difficulty in getting the approval of other members to accept British proposals.

The Labour camp has provided for the “Britain in Europe” campaign some very strong supporters of the Common Market including personalities like Shirley Williams, who publicly announced quitting her career in politics if the referendum results would decide for UK to withdraw from the EC. The “Yes” campaign was officially supported by Wilson and most of his cabinet,<sup>168</sup> including personalities holding three Great Offices of State: Denis Healey - the Chancellor of the Exchequer, James Callaghan - the Foreign Secretary and Roy Jenkins - the Home Secretary. Also 249 out of 275 Conservative Party members in the House of Commons have supported remaining in the EC, including its newly elected leader Margaret Thatcher, who for sake of the argument worked in harmony with her predecessor Edward Heath.<sup>169</sup> For the Conservatives, the whole idea of referendum was unnecessary and abhorrent. They were strongly against it, but as they couldn't keep it from happening, the only logical thing to do, was to support staying in the Common Market, that was recently achieved by their Government. The main arguments to remain

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<sup>168</sup> *Conservatives favor remaining in market*, Wilmington Morning Star, 4 June 1975, p. 5, <https://news.google.com/newspapers?id=M7QsAAAAIBAJ&pg=2825%2C608551>.

<sup>169</sup> *Ibidem*.

were “peace and security provided by the Community, better access to secure sources of food supplies, greater trade possibilities and opportunity to represent the Commonwealth in Europe.”

The third largest party in the Parliament, the Liberal Party, also consistently supported EC membership from the beginning. Furthermore, Social Democratic and Labour Party, Alliance Party of Northern Ireland, Vanguard Unionist Progressive Party, and also National Farmers Union and some trade unions among many other civil society groups supported the “Yes” campaign.

The “Yes” campaign was mostly focused on discrediting the leaders of the opposite side. Alistair McAlpine, the treasurer of the vote “Yes” campaign, described their strategy saying: <<The whole thrust of our campaign was to depict the anti-Marketeters as unreliable people – dangerous people who would lead you down the wrong path (...) It wasn't so much that it was sensible to stay in, but that anybody who proposed that we came out was off their rocker or virtually Marxist>><sup>170</sup>, like in the example of ridiculing the Tony Benn’s claim that “British entry to the Common Market for the increase in prices and half a million lost jobs in Britain”. He also confirmed that the banks, the Confederation of British Industry, representing British business and big industrial companies, have donated in total about 1.5 million pounds, which gave “Britain in Europe” ten times greater budget respect their opponents. The private sector was <<overwhelmingly pro-European>><sup>171</sup> and even the Anglican Church.

As it is often common to appeal to the voter’s fears, also in the 1975 “Yes” campaign strongly emphasized the negative outcomes of leaving the Community, as well as labelling politicians that would benefit from it as “extreme nationalists, protectionist, xenophobic, and backward looking”<sup>172</sup> In one of the slogans of their campaign, the “Britain in Europe” referred to the European Community as a safety net against the war, by claiming that it is <<Better lose a little national sovereignty than a son or daughter. Vote Yes to keep the peace. Keep Britain in Europe>><sup>173</sup>.

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<sup>170</sup> M. Cockerell, *How Britain first fell for Europe*, BBC News, London 4 June 2005, [http://news.bbc.co.uk/2/hi/uk\\_news/4609131.stm](http://news.bbc.co.uk/2/hi/uk_news/4609131.stm).

<sup>171</sup> M. Cockerell, *How we were talked into joining Europe*, The Independent, London 4 June 2005, <https://archive.ph/20130802205210/http://news.independent.co.uk/uk/politics/article224339.ece>.

<sup>172</sup> V. Bogdanor, *True stories of the 1975 EEC Referendum*, The Open University, 8 April 2016.

<sup>173</sup> *Britain in Europe* campaign poster, 1975, <https://i.imgur.com/O7Zcl8t.jpg>

Also, practically all of the British press, except the communist “Morning Star”, were supporting remaining in Europe, including the Daily Mail, that was warning about possible food supply disruptions in case of leaving the EU. The argument was seen as an issue between moderates against extremists and when it was presented like that, the anti's had no chance. British people have entrusted their Government, as well as their political and financial leaders, even though according to Enoch Powell, those were <<the very people who have always been wrong.>><sup>174</sup>

## **2.9 Results of the first referendum 1975**

On the 5<sup>th</sup> of June 1975, roughly two and a half years after the Britain entered the Common Market, nationally across all four countries of the United Kingdom was held under the provisions of the Referendum Act the first ever nation-wide referendum on the continued membership of the European Communities. It was not legally binding, however as declared before the referendum, the Government would respect the decision, whatever it might be.

The referendum question “Do you think that the United Kingdom should stay in the European Community (Common Market)?” was preceded by the statement that “The Government has announced the results of the renegotiation of the United Kingdom’s terms of membership in the European Community.” Only two options to answer were provided, “Yes” to remain or “No” to leave the European Community. According to prof. Bogdanor, it was a question of general principal, not the judgement of the specific membership terms, nor of those reached in the renegotiations.

The vote counting has started the next day and results have been announced by the Chief Counting Officer (CCO) Philip Allen at Earls Court Exhibition Centre in London around 11 p.m. As expected, but not that certain, the result proved overwhelming victory of Remainers. In this complex case, most people have entrusted their Government competence and leaders of the major

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<sup>174</sup> V. Bogdanor, *True stories of the 1975 EEC Referendum*.

political parties, who they respected, instead of widely divided and less popular “extremists”, without a clear leader.<sup>175</sup>

With the turnout of almost 65%, 66 out of the 68 local counting areas has returned majority votes to stay. 17 378 581 voters, so around 67%, gave their support in favor of staying inside the Common Market, while 8 470 073 (33%) voted to leave the Communities. In the evening, before the final count was announced, but the result was already clear, Harold Wilson spoke out to the public saying:

<<The verdict has been given by a vote and by a majority bigger than that achieved by any Government in any general election in history of our democracy. No one in Britain, in Europe or the wider world should have any doubt about its meaning. It was a free vote, without constraint, following a free democratic campaign conducted constructively and without rancor. It means that fourteen years of national argument are over. It means that all those who have had reservations about Britain's commitment should now join wholeheartedly without stint in the task of overcoming the economic problems that are sailors as a nation and work wholeheartedly with our partners in Europe, and our friends everywhere to meet the challenges confronting the whole world.>><sup>176</sup>

The originator of the referendum idea, Tony Benn, has accepted the result saying: <<When the British people speak, everyone, including members of Parliament, should tremble before their decision and that's certainly the spirit with which I accept the result of the referendum.>><sup>177</sup>

The result was later remarked by Prime Minister's advisor with words that <<Edward Heath took the establishment into Europe, but Harold Wilson took the British people into

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<sup>175</sup> Ibidem.

<sup>176</sup> *UK EEC REFERENDUM RESULT*, Story N. z019933, AP Television, London 6 June 1975, <http://www.aparchive.com/metadata/UK-EEC-REFERENDUM-RESULT/f3a7f3510ba3ef62319596b3de56049c?query=harold+wilson+referendum+results&current=1&orderBy=Relevance&hits=2&referrer=search&search=%2fsearch%3fstartd%3d%26endd%3d%26allFilters%3d%26query%3dharold%2bwilson%2breferendum%2bresults%26advsearchStartDateFilter%3d%26advsearchEndDateFilter%3d%26searchFilterHdSDFormat%3dAll%26searchFilterDigitized%3dAll%26searchFiltercolorFormat%3dAll%26searchFilteraspecratioFormat%3dAll&allFilters=&productType=IncludedProducts&page=1&b=56049c>

<sup>177</sup> 1975: *UK embraces Europe in referendum*, BBC on This Day, London 6 June 1975, [http://news.bbc.co.uk/onthisday/hi/dates/stories/june/6/newsid\\_2499000/2499297.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/june/6/newsid_2499000/2499297.stm); T. Benn, *The Benn Diaries*, Hutchinson 1995; T. Benn, *Arguments for Democracy*, London 1981; T. Benn, *Against the Tide: Diaries 1973–1976*, Hutchinson 1989.

Europe.>><sup>178</sup> Roy Jenkins said: <<It puts the uncertainty behind us. It commits Britain to Europe. It commits us to playing an active, constructive, and enthusiastic role in it.>><sup>179</sup> After the success of the “Britain in Europe” campaign, its president Roy Jenkins became the President of the European Commission from 1977 to 1981.

By analyzing the vote results among Scotland, Wales, England, and Northern Ireland, all the UK countries individually agreed to stay in the EC, but Scotland and Northern Ireland were visibly less supportive than the national average. In fact, the only 2 counting areas of 68 where majority of people voted to leave EC the Scottish Shetland Islands and the Western Isles.

Unfortunately, this vote of confidence did not put end to the British Euroscepticism.

In addition, instead of holding the Labour Party united, in the longer perspective referendum has uncovered deep differences within the party, that led to separation of the pro-European members, like Roy Jenkins and Shirley Williams<sup>180</sup>, who left after the next general elections in 1979 to form a new Social Democratic Party, that later merged with the liberals to form Liberal Democrats in 1988.

British people did not in fact become all of the sudden enthusiastic pro-Europeans, and underneath what was left out of the remained Labour Party members, continued to promote their position to leave European Communities without additional referendum, claiming the public were not told the whole truth before, which became Labor's official policy in 1983 under Michael Foot's leadership.<sup>181</sup>

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<sup>178</sup> V. Bogdanor, *True stories of the 1975 EEC Referendum*, The Open University, 8 April 2016.

<sup>179</sup> *1975: UK embraces Europe in referendum*, BBC on This Day, London 6 June 1975.

<sup>180</sup> R. Jenkins, *A Life at the Center: Memoirs of a Radical Reformer*, Random House 1993; S. Williams, *Climbing the Bookshelves*, Virago 2009; S. Williams, *A Job to Live: The Impact of Tomorrow's Technology On Work And Society*, Penguin 1985; S. Williams, *Politics is For People*, Allen Lane 1981.

<sup>181</sup> V. Bogdanor, *True stories of the 1975 EEC Referendum*.

## CHAPTER III

### Government of David Cameron - Reasons for the 2016 referendum (Cameron's negotiations with the EU)

In May 2010, for the first time since February 1974, the general election did not produce a majority Government, only this time the Conservative Party came short of majority by winning 36% of the national vote and effective 306 seats in the Parliament.

This time, however, Conservative Party leader David Cameron has managed to form a coalition with the Liberal Democrats, who following the elections were holding 57 seats, and by appointing Liberal Nick Clegg as his Deputy, David Cameron became the British Prime Minister on 11 May 2010. Already, before the elections, in 2009 Cameron has offered an alliance to the Liberal Democrats leader but got rejected<sup>182</sup> as Nick Clegg preferred to detach himself and his Party from the comparison with the Conservatives, as he believed the differences between their views were more substantial than what Cameron tried to show, probably to get some of their supporters to vote Conservatives if there was not much of a difference in their policies, as he argued.

This first Coalition Government since the Second World War was aiming to solve <<a huge deficit, deep social problems, a political system in need of reform>><sup>183</sup> and to do that both party leaders had to <<put aside party differences and work hard for the common good and for the national interest.>><sup>184</sup>

Aware of the challenges ahead, Prime Minister during his inauguration speech has underlined the objectives for the Government to protect the values of freedom, fairness and responsibility, while rebuilding stronger economy, society based on family and local communities, but most of all rebuilding the trust in the political system.

David Cameron was also a strong supporter for the Turkey to join the EU, that we declared on his visit to Ankara in 2010. Turkey's involvement in the Middle Eastern conflicts was a key ingredient for Cameron's strategy to establish more influence in the region, and as long as they were helping British with sanctions for Iran, stabilize the situation in Afghanistan or in Gaza,

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<sup>182</sup> B. Wheeler, *Clegg rejects Tory alliance call*, BBC News, 20 September 2009, [http://news.bbc.co.uk/1/hi/uk\\_politics/8264994.stm](http://news.bbc.co.uk/1/hi/uk_politics/8264994.stm).

<sup>183</sup> A. Hough, *David Cameron becomes youngest Prime Minister in almost 200 years*, Telegraph 11 May 2010, <https://web.archive.org/web/20100513031801/http://www.telegraph.co.uk/news/newstopics/politics/david-cameron/7712545/David-Cameron-becomes-youngest-Prime-Minister-in-almost-200-years.html>

<sup>184</sup> Ibidem.

Cameron was closing promoting Turkish entry to the European Union, comparing their situation to the French veto on the British membership in the 1960s. Turkey has officially started their entry negotiations with the EU in 2005 but has faced opposition from France. In Cameron's opinion Turkey's membership was "vital for our economy, security, diplomacy" and European Union would be "weaker" and "poorer" without Turkey.<sup>185</sup>

As the Prime Minister, David Cameron became known of the numerous referendums that were held during his mandate, like the Falkland Island's referendum, when their habitants expressed their absolute loyalty to the United Kingdom, but more importantly the Referendum about the Scottish Independence in 2014 and finally about British membership in the European Union in 2016. It was made possible as a result of the Elections and Referendums Act<sup>186</sup>, introduced into the British legislation by Tony Blair's Government in 2000, which has created the procedures for all future nation-wide referendums in the United Kingdom and set up the Electoral Commission to manage and supervise them.

On 15 October 2012, David Cameron, together with the Secretary of State for Scotland Michael Moor, First Minister of Scotland Alex Salmond and his Deputy Nicola Sturgeon, has signed the Edinburgh Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland, which allowed for the temporary transfer of legal authority and provided clear rules to be followed for smooth and lawful execution.

The United Kingdom Government and the Scottish Government both agreed that the referendum should have a clear legal base that should be provided by the Scottish Parliament and should command the confidence and deliver a decisive expression of the views of people in Scotland that everyone would respect.

United Kingdom and Scottish Parliaments have allowed under Section 30 of the Scotland Act 1998 for a single question referendum on independence to be held before the end of 2014 and should meet the highest standards of fairness, transparency and propriety, informed by consultation and independent expert advice.<sup>187</sup>, which was done by the Scottish Government. in a question to

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<sup>185</sup> *Cameron 'anger' at slow pace of Turkish EU negotiations*, BBC News 27 July 2010, <https://www.bbc.com/news/uk-politics-10767768>

<sup>186</sup> *Political Parties, Elections and Referendums Act 2000*, c. 41, <https://www.legislation.gov.uk/ukpga/2000/41/contents>

<sup>187</sup> *Scotland Act 1998*, c. 46, Part I, Section 30, <https://www.legislation.gov.uk/ukpga/1998/46/section/30>.

the Electoral Commission for a review on the referendum and the exact date, the wording of the question “Should Scotland be an independent country?” and other rules for the referendum and official campaigns were established in the Scottish Independence Referendum Act 2013.

The proposal of referendum to confirm British future in Europe was first announced by David Cameron during his speech at Bloomberg in London on 23 January 2013.<sup>188</sup> but the attempt already started as early as December 2011, when Cameron conditioned his submission to the Fiscal Compact on the introduction of an amendment restoring unanimity, which was effectively a British veto on financial services legislation. <<The Eurozone crisis led many Conservatives to believe that they now had more leverage over continental governments and the Commission as they could veto the reforms necessary to make the Eurozone sustainable.>><sup>189</sup>

### 3.1 David Cameron’s Bloomberg speech

He started his argument by remembering the sacrifice, determination and commitment of European founding fathers to put an end to the dark past of the European conflicts and in securing fundamental atmosphere of sustained peace, liberty and collaboration on which the European Union was created. But as the time has passed, so has the objectives of the European Union, and as Cameron stated, the main purpose of the EU has shifted from safeguarding peace to creating prosperity. In his opinion, that goal was threaten by the Eastern and Southern economies from outside of the European continent. He visioned the necessity of urgent changes in a race for the future. He claimed British geography of an island nation was essential in shaping their strong-minded values of independence and passion in defending their sovereignty. There is no actual correlation with being an island and the desire of freedom, as many continental countries had proven, but in my opinion, this was a nicer way of giving an excuse for British stubbornness. According to Cameron, this British mind set gave more practical approach to the European Union,

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<sup>188</sup> D. Cameron, *EU speech at Bloomberg*, 23 January 2013, <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>;  
<https://webarchive.nationalarchives.gov.uk/ukgwa/20130403100747/http://www.number10.gov.uk//news//eu-speech-at-bloomberg//>

<sup>189</sup> C. Georgiou, *British Capitalism and European Unification, from Ottawa to the Brexit Referendum*, <<Historical Materialism>> (2017), Vol. 25, N. 1, p. 116, [https://brill.com/view/journals/hima/25/1/article-p90\\_4.xml?language=en](https://brill.com/view/journals/hima/25/1/article-p90_4.xml?language=en).

as a way to achieve more prosperity and stability, by questioning from the beginning the reasons and aims of the European policies.

Prime Minister praised British historical openness to the world and to the refugees in need of asylum, as well as their part in fighting for free trade and against the Communism and protectionism. This led him to the point when he announced his positive vision for the future for Britain and for European Union, but on better conditions for both. This fundamental question of the common future would in his opinion surely raise some critics as of the timing, since Europe was suffering the effects of the 2008 crisis, but he believed it essential to address those issues, precisely to confront those problems. He has mentioned three main challenges for the future.<sup>190</sup>

**First** challenge are the problems in the Eurozone that are driving fundamental change in Europe to help the European common currency, but it profoundly affects all of the members, including those like Great Britain that are not part of the Euro, which is why, even though UK has no intention to adapt Euro, it is also in Britain's interest that Eurozone has the right governance and structures to provide long term security and stability, and not to compromise the access to the Single Market for those countries who are not part of the common currency.

**Second** challenge is a crisis of European competitiveness, and while there are some countries within the EU which are doing well, EU's output as a whole, according to projections, will fall by about 30% in next 20 years because of self-inflicted complex rules and restrictions on labour and businesses, that have not been dealt with properly.

And **third** challenge is a gap between the EU and its citizens which has grown dramatically in recent years. According to Cameron it represents a "lack of democratic accountability and consent" that is felt particularly in Britain." This results in growing frustration towards the EU, which is seen as something that is done to people rather than acting on their behalf, like the example of the intensified solutions required to resolve the Eurozone economic problems, that are being imposed on people without their say. Those decisions effectively weight on the living standards by increasing taxation, which is used to save other governments on the other side of the continent.

Cameron believed, if those challenges were not dealt with properly and quickly, it would result in drifting away of the British people from the European Union that he wanted to be a

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<sup>190</sup> D. Cameron, *EU speech at Bloomberg*, 23 January 2013.

success, as he claimed, but that could only be achieved by improving the mutual relationship. And in order to do that European Union should respond to the challenges he has mentioned before, by doing something different and not just by repeating and/or increasing already existing measures, as to do so would only mean to repeat and increase all of the already existing problems. The solution he proposed to overcome those challenges for the better future were based on five fundamental principles:

1. First would be to reform EU institutions to increase competitiveness, which he visioned in extending the Single Market and increasing the trade in services, energy, and digital sectors, that are the engines of a modern economy. He wished to reduce the problems concerning some territories, where the prices were substantially higher due to the delivery costs, which made their business less competitive. He also wanted to increase global free trade by making deals with the US, Japan, and India, and promoted exemption for the smallest companies from additional EU Directives. He claimed it was the decision-making process within the EU that was sclerotic, ineffective, and only by decreasing bureaucracy we could become more competitive. That meant reducing some of the European institutions, and their budgets.

2. The second reform he mentioned, should in his view apply more flexibility to the rules, which according to Cameron should not be applicable in the same way to all the member states, in order to provide quicker response time as a network to the economic and political developments, instead of slow responses of a bloc.

There were already different areas of the European Union in which not every member was participating, such as the euro area or the Schengen area, and all 27 EU members could not be satisfied with the same conditions because of those differences.

<<We need a structure that can accommodate the diversity of its members - North, South, East, West, large, small, old and new. (...) seventeen members are part of the Eurozone. ten are not. Twenty-six European countries are members of Schengen - including four outside the European Union - Switzerland, Norway, Liechtenstein and Iceland. Two EU countries - Britain and Ireland - have retained their border controls. Some members, like France and Britain, are ready, willing

and able to take action in Libya or Mali. Others are uncomfortable with the use of military force. Let's welcome that diversity, instead of trying to snuff it out.>><sup>191</sup>

Cameron emphasized in particular, the difference in the British opposition to the increasing economic and political integration within the Union, which as he said Britain would never embrace in full, because as he said the “essential foundation was the single market and not the single currency”, and as Britain had no interest in becoming a part of the Eurozone, they did not wish to participate in additional institutional changes that the involved countries would have to face in near future.<sup>192</sup>

He argued that this flexibility in picking and choosing the parts of the rules to oblige could be a better way of binding EU members closer together, rather than contradict the fundamental commitment of “ever closer Union”, that in his view was pressured upon some of the unwilling members, like in this case Britain. According to Cameron, the European Court of Justice has been interpreting this pledge by applying it on the states rather than peoples, which resulted in constantly increasing European centralization, which was not the objective for the United Kingdom. He argued that the Britain would feel more comfortable in the EU if that objective declared in the Article 2 of the Treaty of Rome was specified to be none mandatory, which would give United Kingdom, and other member states who desired, the possibility to grow faster, as they wouldn't be “held back by the others”.<sup>193</sup>

He believed his vision of flexibility and freedom of member states was substantially different from what he perceived as increasing of the political union, but nevertheless still as effective, basically limiting itself to few strategic areas of common interest and attracting more members to join.

<<We believe in a flexible union of free member states who share treaties and institutions and pursue together the ideal of co-operation. To represent and promote the values of European civilization in the world. To advance our shared interests by using our collective power to open markets. And to build a strong economic base across the whole of Europe. And we believe in our

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<sup>191</sup> D. Cameron, *EU speech at Bloomberg*, 23 January 2013.

<sup>192</sup> D. Cameron, *For the Record*, HarperCollinsPublishers 2019.

<sup>193</sup> D. Cameron, *EU speech at Bloomberg*, 23 January 2013.

nations working together to protect the security and diversity of our energy supplies. To tackle climate change and global poverty. To work together against terrorism and organized crime. And to continue to welcome new countries into the EU.>><sup>194</sup>

3. The third principle Cameron has mention would need to be reformed, was the return flow of competences, back to the member states, as promised in a Treaty by the European Council at Laeken ten years before. This promise, in his view, ha never been properly implemented, and it was about time to analyze the balance of competences, following the British example, to objectively <<examine whether the balance is right in so many areas where the European Union has legislated including on the environment, social affairs and crime>> and <<nothing should be off the table>> to decide which policies should the EU keep doing and which are not necessary, like for example setting the working hours of the hospital doctors in the UK by the EU, irrespective of the views of British Parliament and practitioners. Cameron was referring here to the “Working Time Directive”, which has imposed European rules on employment, such as limiting the working week hours and giving EU workers a minimum number of holidays each year, because as in the 2010 Conservative Manifesto, Cameron’s party would <<work to bring back key powers over legal rights, criminal justice and social and employment legislation to the UK>>. <sup>195</sup>

4. His fourth principle, linked to the previous one, would be increased role of the national Parliaments, <<which are, and will remain, the true source of real democratic legitimacy and accountability in the EU>> and it should be recognized in the way the EU does business.

5. The last of five principles to reform the EU he mentioned was fairness, which in his opinion was lacking in the management of the Eurozone crisis, and in effect endangering the integrity of the Single Market, without any economic motive, as they should be separate, the same way Schengen area is different than the Single Market. According to Cameron, the main reason of British membership in the EU was the ability to shape the rules and participate in the Single Market, which is why its integrity and fairness were so important to the United Kingdom in particular.<sup>196</sup>

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<sup>194</sup> D. Cameron, *EU speech at Bloomberg*, 23 January 2013.

<sup>195</sup> *2010 Conservative Manifesto, INVITATION TO JOIN THE GOVERNMENT OF BRITAIN*, p. 113, <https://manifesto.deryn.co.uk/wp-content/uploads/2021/04/Conservative-UK-Manifesto-2010.pdf>

<sup>196</sup> D. Cameron, *EU speech at Bloomberg*, 23 January 2013.

Reforming those five aspects of the European Union: competitiveness, flexibility, return flow of competences, back to the member states, democratic accountability, and fairness, was in his view, the best way for the EU to deal with increasing public disillusionment, which was spreading across Europe, especially in the UK. The reason for this growing Euro-skepticism was that the EU has been shifting in a direction that British people have “never signed up to”. According to Cameron they felt many of the European rules and regulations to be unnecessary, and without any practical purpose. They didn’t agree with some of the judgements of the European Court of Justice and didn’t like the idea of increasing political integration on European level, which with each Treaty was giving more power to the European Institutions, taking it away from the British Parliament. In result of all those worries, the democratic consent of the British people for the EU membership has reached its low and in order to secure Britain’s place in the Union, the British people should express their consent by a in/out referendum.

Cameron explained that the British citizens were already asking themselves this question and it would be unwise not to address this issue quickly. <<That is why I am in favour of a referendum.>><sup>197</sup> But as he said, it would be irresponsible to create this kind of uncertainty for business and Europe as whole, to decide on this matter at this moment. <<A vote today between the status quo and leaving would be an entirely false choice>><sup>198</sup>

Before such a momentous decision about the future of the country could have been made, people should give British Government a chance to repair the relationship with the EU, to be certain <<what is it exactly that we are choosing to be in or out of?>><sup>199</sup>

Cameron advised that the EU after implementing the measures to save the Eurozone, would be a completely different organization, which should be taken to consideration before making a final decision, but while this transformation needs some time to happen, his Government would like to help in shaping the outcome for better and “real choice”, which he described as:

<<A real choice between leaving or being part of a new settlement in which Britain shapes and respects the rules of the single market but is protected by fair safeguards, and free of the spurious

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<sup>197</sup> Ibidem.

<sup>198</sup> Ibidem.

<sup>199</sup> Ibidem.

regulation that damages Europe's competitiveness. A choice between leaving or being part of a new settlement in which Britain is at the forefront of collective action on issues like foreign policy and trade and where we leave the door firmly open to new members. A new settlement subject to the democratic legitimacy and accountability of national parliaments where Member States combine in flexible cooperation, respecting national differences and not always trying to eliminate them and in which we have proved that some powers can in fact be returned to Member States. In other words, a settlement which would be entirely in keeping with the mission for an updated European Union I have described today. More flexible, more adaptable, more open - fit for the challenges of the modern age.>><sup>200</sup>

Cameron remembered that Britain was not the only European country that was arguing for powers to flow back to national Parliaments and the exemptions Britain has already managed to achieve like:

- no obligation to bail-out Eurozone members,
- staying out of the fiscal compact,
- in process to return some existing justice and home affairs powers,
- securing protections on Banking Union
- and reforming common fisheries policy.

Most of those reforms could be designed without changing the European Treaties, but Cameron agreed with Commission President Barroso's opinion, on a necessity of a new Treaty, to secure a "long term future of the Euro and to entrench the diverse, competitive, democratically accountable Europe". The changes that Britain was seeking could be enacted not only for Britain but for all the EU members. However, if the new Treaty was not going to happen any time soon, Britain should be ready to negotiate the changes of their membership with the EU. Then Cameron has announced that if they win general elections in 2015, the Conservative Party under his leadership, will negotiate a new settlement with the EU and after that, within the first half of the

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<sup>200</sup> D. Cameron, *EU speech at Bloomberg*, 23 January 2013.

next parliament. They would give the British people a simple in or out referendum with a choice, either to stay in the EU on these newly negotiated terms, or to come out and leave the EU. To accentuate the importance of the choice, he paraphrased the words of Harold Wilson from 1975 Government's pamphlet guaranteeing the British people: "this will be your decision".<sup>201</sup>

Then he suddenly changed his attitude from criticizing the European Institutions to emphasizing the importance of EU membership for the economic future of the United Kingdom, the same way British NATO membership was guaranteeing their national security. He argued the strength in numbers gives more power and influence to handle any international situation, and even if the British people would have chosen to leave the EU, they would still remain linked by their legal commitments, as well as in trade terms and by geographical proximity. It would also deeply affect many British citizens working or living in other EU countries. But most of all, even if they left the EU, they would still be profoundly affected by the EU decisions, without any possibility to express their consent or lack of it. Exiting the Single market would also be devastating for British businesses and British jobs. Cameron has backed his point of the importance of the membership in the Single Market, which resulted in attracting high amount of European incoming investments since 2004 and it was absolutely crucial to the British national interest to remain a full member with full voting privileges, so the Prime Minister has rejected the claim that Britain would be better off with the EU on the similar terms to those of Norway or Switzerland. Leaving would also weaken British position and influence in the international affairs, with the United States, China or India.

<<We should think very carefully before giving that position up. If we left the European Union, it would be a one-way ticket, not a return>><sup>202</sup>

To avoid any regrets, the Prime Minister said this argument should be put to proper, public debate, and avoiding any exaggerating claims from the opposing sides, for the British people to make their best and reasonable choice. And considering the extraordinary steps, which a year ago would have seemed impossible, that EU has already taken to keep the Eurozone together, David

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<sup>201</sup> 1975 *Referendum pamphlet, Britain's new deal in Europe*, HM Government (1975), <https://digital.library.lse.ac.uk/objects/lse:fug282yox>.

<sup>202</sup> D. Cameron, *EU speech at Bloomberg*, 23 January 2013.

Cameron has asked other EU members to help Britain in achieving their reasonable goals of a new relationship in the European Union, as it was also in an interest of the EU to keep Britain as a member, and in the result, all the member states would benefit from the reforms proposed by the UK. <<EU without Britain, without one of Europe's strongest powers, a country which in many ways invented the single market, and which brings real heft to Europe's influence on the world stage which plays by the rules and which is a force for liberal economic reform, that would be a very different kind of European Union.>><sup>203</sup>

In conclusion David Cameron has pledged his position to campaign defend the British membership in the EU under the new arrangements with all his heart and all his soul, that he was confident to achieve, when it would come to the referendum, meaning the Conservative Party would win 2015 general elections.

<<Britain's national interest is best served in a flexible, adaptable and open European Union and that such a European Union is best with Britain in it (...) I will not rest until this debate is won. For the future of my country. For the success of the European Union. And for the prosperity of our peoples for generations to come.>><sup>204</sup>

### **3.1.1 Reactions to Cameron's speech**

David Cameron's speech has met with a vast range of reactions all around the world. The opposition strongly criticized it and claimed he had been pressured to call for a referendum by rising Euroscepticism within the Conservative Party and by the UK Independence Party. Cameron has already pledged to hold a referendum on the Lisbon Treaty in 2007 and by the end of 2011 Cameron knew that promising a referendum after the 2015 general election was the only way to keep the Conservative Party united. On the one hand it has satisfied the Europhobe backbenches, who are unhappy with the current relationship between the UK and the EU and on the other it was

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<sup>203</sup> D. Cameron, *EU speech at Bloomberg*, 23 January 2013.

<sup>204</sup> *Ibidem*.

supposed to provide United Kingdom with guarantees in the new EU relationship emerging out of the Eurozone crisis.<sup>205</sup>

<<There was only one thing the party would agree on over Europe and that was to have a referendum... It avoided civil war on Europe during the election.>><sup>206</sup>

The pledge of the referendum has been very warmly welcomed by the Nigel Farage, the leader of the UK Independence Party, as his party's greatest achievement so far, but would like it to happen even sooner. Prime Minister's speech did not meet with the same optimism from Liberal Democrats, his coalition partners. His Deputy, Nick Clegg, has warned that this pledge would cause uncertainty and create a "chilling effect" on jobs and growth in the UK.

Promising a referendum after the negotiation of the new status was based on the misguided assumption that it would create a necessary leverage for the EU to allow Britain any concessions in order to keep them among its members. This negotiating strategy unfortunately did not take into account that the vital importance of the EU membership for Britain, which made the threat of leaving completely uncredible. Even the closest partners of Great Britain, like the United States, were warning that they wouldn't be interested in negotiating a trade deal with Britain alone if it wasn't for their affiliation with the European Union.<sup>207</sup>

Another way to use the Eurosceptic attitude in the country to rise the pressure in the negotiations, was to start a narrative of the negative impact of increasing immigration on the public services which Conservative Party was promising to reduce. It was blamed on the EU that has failed to provide adequate immigration policies. This led to proposal of annual limits on immigration from outside the EU, additional controls on immigration for citizens from the new EU Member States, and stricter immigration rules for EU citizens already present on British territory. This growing nationalism in Britain based on criticism of the struggling European Union and raising immigration that was starting to feel uncontrollable, has been taken advantage of by the UK Independence Party (UKIP) led by Nigel Farage, which has managed to get over 4,3

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<sup>205</sup> C. Georgiou, *British Capitalism and European Unification, from Ottawa to the Brexit Referendum*, <<Historical Materialism>> (2017), Vol. 25, N. 1, p. 116.

<sup>206</sup> G. Parker, A. Barker, *David Cameron's Adventures in Europe*, Financial Times Magazine, 22 January 2016, <https://www.ft.com/content/26cbc524-bfb4-11e5-846f-79b0e3d20eaf>.

<sup>207</sup> S. Donnan, Top US Trade Official Warns on Brexit, Financial Times 28 October 2015, <https://www.ft.com/content/9c6135b8-7dbe-11e5-98fb-5a6d4728f74e>.

million votes with a 26,6% of British support in the elections to the European Parliament on 22 May 2014. This meant UKIP has become the biggest British party in the European Parliament at the expense of the Conservatives, having twenty-four out of seventy-three seats destined for the United Kingdom. Labour raised their representation to twenty seats, while the Conservatives were left with nineteen.<sup>208</sup>

### 3.2 Scottish independence referendum

As a result of the Edinburgh Agreement, Scottish Parliament was given legal authority from the Westminster to hold a legally binding referendum on Scottish independence from the United Kingdom before the end of 2014, which was planned for 18 September 2014.

Since 2007, the First Minister of Scotland, Alex Salmond has encouraged “A National Conversation” on “Choosing Scotland’s Future – Independence and responsibility in the modern world”, by distributing informative materials on the subject, and promoting Scottish independence.

Among many arguments for and against, most important were whether an independent Scotland would remain a member of the European Union on the grounds of Article 48 TEU and a question of what currency would Scotland use after becoming independent country. According to the governor of the Bank of England, maintaining pound sterling would be "incompatible with sovereignty".<sup>209</sup> As for the EU membership, Viviane Reding, Vice-President of the European Commission, has clarified that <<a new independent region would, by the fact of its independence, become a third country with respect to the Union and the Treaties would, from the day of its independence, not apply anymore on its territory>><sup>210</sup>, while the rest of the United Kingdom would remain a EU Member. Also the president of the European Commission José Manuel Barroso

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<sup>208</sup> European Parliament, *Results of the 2014 European elections*, <https://www.europarl.europa.eu/elections2014-results/en/country-results-uk-2014.html>.

<sup>209</sup> P. Inman, P. Wintour, *Scottish independence: currency union "incompatible with sovereignty"*, The Guardian 9 September 2014, <https://www.theguardian.com/business/2014/sep/09/currency-union-independent-scotland-unworkable-bank-governor>

<sup>210</sup> Letter from Viviane Reding - Vice-President of the European Commission Justice, Fundamental Rights and Citizenship to Christina McKelvie, Convener European and External Relations Committee, Brussels, 20 March 2014, [http://archive2021.parliament.scot/S4\\_EuropeanandExternalRelationsCommittee/Inquiries/Letter\\_from\\_Viviane\\_Reding\\_Vice\\_President\\_of\\_the\\_European\\_Commission\\_dated\\_20\\_March\\_2014\\_\\_pdf.pdf](http://archive2021.parliament.scot/S4_EuropeanandExternalRelationsCommittee/Inquiries/Letter_from_Viviane_Reding_Vice_President_of_the_European_Commission_dated_20_March_2014__pdf.pdf)

confirmed that an independent Scotland would have to apply for EU membership under the Article 49 of the TEU, which would require ratification by each member state<sup>211</sup> and that it would be "extremely difficult, if not impossible".<sup>212</sup>

In consequence on the day of the referendum 55,3% of Scots has voted "No" to the independence from the United Kingdom.<sup>213</sup> The referendum has attracted a lot of attention with a turnout of 84,6%.<sup>214</sup> According to a poll conducted by Lord Ashcroft, the main arguments for the "Yes" voters were deep "disaffection with Westminster politics", and "the principle that all decisions about Scotland should be taken in Scotland", as well as concerns about the NHS.<sup>215</sup>

Prime Minister David Cameron was "delighted" with this result, while Alex Salmond has praised the democratic success of the referendum itself, following the uncommon participation, and however he has accepted the results, he has declared the Scotland should continue to campaign for its independence as "dream shall never die"<sup>216</sup>, but without him as the leader of the Scottish National Party and as the First Minister of Scotland. After his resignation, he was replaced by his Deputy Nicola Sturgeon.<sup>217</sup>

### 3.3 2015 General Election

Even though "Yes Scotland" has lost in the referendum, it has given the Scottish National Party a momentum of unprecedented support, following the great interest on the argument of Scottish independence, which resulted in their huge success during the 2015 general elections, at

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<sup>211</sup> S. Carrell, *Barroso casts doubt on independent Scotland's EU membership rights*, The Guardian 12 September 2012, <https://www.theguardian.com/politics/2012/sep/12/barroso-doubt-scotland-eu-membership>.

<sup>212</sup> *Scottish independence: Barroso says joining EU would be "difficult"*, BBC News 16 February 2014, <https://www.bbc.com/news/uk-scotland-scotland-politics-26215963>.

<sup>213</sup> *Scottish referendum: Scotland votes 'No' to independence*, BBC News 19 September 2014, <https://www.bbc.com/news/uk-scotland-29270441>.

<sup>214</sup> C. Jeavans, *In maps: How close was the Scottish referendum vote?*, BBC News 19 September 2014, <https://www.bbc.com/news/uk-scotland-scotland-politics-29255449>.

<sup>215</sup> M. Ashcroft, *How Scotland voted, and why*, Lord Ashcroft Polls 19 September 2014, <https://lordashcroftpolls.com/2014/09/scotland-voted/>.

<sup>216</sup> *Scottish referendum: Salmond to quit after Scots vote No*, BBC News 19 September 2014, <https://www.bbc.com/news/uk-scotland-29277527>.

<sup>217</sup> L. Brooks, *Nicola Sturgeon confirmed as next leader of the SNP*, The Guardian 15 October 2014, <https://www.theguardian.com/politics/2014/oct/15/nicola-sturgeon-confirmed-snp-leader>.

the expense of Labour and Liberal Democrats with 56 seats won out of 59 Scottish constituencies and about 50% of the popular vote. Overwhelmingly poor performance of Labour Party and Liberal Democrats led to the immediate resignation of the Labour Party leader Ed Miliband, and previous Deputy Prime Minister Nick Clegg as the leader of Liberal Democrats, who have done really bad across the country by losing 49 seats. They have lost most of their seats to the Conservatives, which was why Nick Clegg has concluded, his party should never agree to the coalition government ever again. The principal winner of the 7 May 2015 elections was David Cameron who was re-elected as the British Prime Minister, with Conservative Party surprisingly reaching the majority Government of 330 seats.<sup>218</sup>

Based on the Conservative Party Manifesto<sup>219</sup>, this outcome has given Cameron public consent to call and arrange for the in/out referendum of the United Kingdom's membership in the European Union. Cameron's uncertain position was related to the outcome of his renegotiations of the new agreement between the UK and the EU, that Cameron was determined to accomplish, and if succeeded he would campaign for Britain to remain as a member of "reformed EU".<sup>220</sup>

As far as Eurosceptics advocating for the referendum were concerned, United Kingdom has existed long before creation of the European Union, and would continue to exist after leaving, which wasn't so obvious for the EU, that has never lost a member state before and nobody could know for sure what kind of long-term implications it would have.

<<Economic history can throw valuable new light on the current re-examination of the rationale for membership.>><sup>221</sup>

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<sup>218</sup> O. Hawkins, R. Keen, N. Nakatudde, *BRIEFING PAPER, General Election 2015*, Number CBP7186, House of Commons Library 28 July 2015, <https://researchbriefings.files.parliament.uk/documents/CBP-7186/CBP-7186.pdf>; *General Election 2015: results*, <https://www.parliament.uk/business/publications/research/key-issues-parliament-2015/parliament-politics/general-election-2015-results/>; *Election 2015 Results*, BBC News <https://www.bbc.co.uk/news/election/2015/results>.

<sup>219</sup> *2010 Conservative Manifesto, INVITATION TO JOIN THE GOVERNMENT OF BRITAIN*, <https://manifesto.deryn.co.uk/wp-content/uploads/2021/04/Conservative-UK-Manifesto-2010.pdf>

<sup>220</sup> *EU referendum: Cameron sets June date for UK vote*, BBC News 20 February 2016, <https://www.bbc.com/news/uk-politics-35621079>.

<sup>221</sup> N. Campos, F. Coricelli, *Why did Britain join the EU? A new insight from economic history*, 3 February 2015 <https://voxeu.org/article/britain-s-eu-membership-new-insight-economic-history>.

### 3.4 Negotiations of the New Status in the EU

The negotiations officially started during the European Council meeting (EUCO) on 25 June 2015, when David Cameron has privately spoke to the Council President Donald Tusk about his proposals, and then throughout the proceedings he set out his plans for the referendum. President Donald Tusk has commented on the argument that this was only the first step in the renegotiation process, that would be continued at the next European Council meeting in December, but he has specified that:

<< (...) The fundamental values of the European Union are not for sale and so are non-negotiable. We should consider British concerns, but only in a way which will be safe for all Europe. >><sup>222</sup>

The other key issues of the meeting were dealing with the economic crisis, migration problems, and situation in Greece, which were all linked in some way to the official motivations for the Cameron's renegotiation of the UK-EU relationship.

On 7 September 2015 at the Bruegel Annual Dinner in Brussels, which is a closed-door session that offers Bruegel members and partners the opportunity to discuss the European economics in more relaxed atmosphere, the President of the European Council, Donald Tusk gave a speech in which, he has mentioned for the first time "potential Brexit" as a one of the issues on the European Council agenda to deal with. He underlined the necessity of loyalty and unity among EU states, as only a collective response could bring positive results, and even though it would take more time than he hoped, confronting those problems should not provide any reason to question basic European principles.

About two weeks later, after informal meeting regarding migration and refugee crisis in Europe, Donald Tusk has met with David Cameron again in person to discuss the state of play on the UK in/out referendum. During the next EUCO meeting on 15 October 2015, the European Council was informed by Donald Tusk about the preliminary discussions between EU and the UK's officials, and about the British plans regarding the referendum. David Cameron has committed to set-out in writing specific concerns of the United Kingdom by early November.

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<sup>222</sup> D. Tusk, *Remarks by President Donald Tusk following the first session of the European Council meeting*, European Council 26 June 2015, <https://www.consilium.europa.eu/en/press/press-releases/2015/06/26/tusk-remarks-first-press-conference/>.

And so, on 10 November 2015, British Prime Minister has sent a letter to President Donald Tusk, in which he has set out the four specific areas, that he believed were requiring reforms, as foundations of “a new settlement for the United Kingdom in a reformed European Union.”<sup>223</sup>

Those areas seeking reforms and widely concerning British public, and potentially beneficial to all Member States were:

- Economic Governance,
- Competitiveness,
- Sovereignty and
- Immigration.

David Cameron did not propose any specific legal solutions to resolve those concerns, as he believed they could be achieved in different ways that he would leave to negotiation, with the spirit of “flexibility” as a key ingredient of success. He recalled exceptions of the protocols and instruments approved for Denmark and Ireland that were respecting their unique situation and did not disadvantage any other Member State.<sup>224</sup>

According to the Protocol 15, Britain already had a permanent opt-out from the single European currency, and they would not request a right of veto in the matters of the Eurozone. In the first area to reform in the EU that he called “Economic Governance”, Cameron proposed creation of legally binding principles, that will respect the integrity of the Single Market, and also the legitimate interests of the nine Member States outside of the Eurozone, which should be safeguarded, respected and enforced. Those principles would be based on:

- acknowledgement EU has more than one currency,
- recognition that no business should be discriminated or disadvantaged in any way based on the currency of their country,
- protection of the integrity of the Single Market,
- voluntary and not obligatory participation of non-Euro countries in the changes regarding Eurozone,

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<sup>223</sup> Letter from D. Cameron to D. Tusk, *A NEW SETTLEMENT FOR THE UNITED KINGDOM IN A REFORMED EUROPEAN UNION*, London 10 November 2015, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/475679/Donald\\_Tusk\\_letter.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/475679/Donald_Tusk_letter.pdf).

<sup>224</sup> Ibidem.

- exempt from supporting Euro currency with any form of taxation or other financial liability for non-Euro countries,
- returning the competences of financial stability and currency supervision to the national central banks in non-Euro countries.
- collective discussion and decision by all members on any issues that affect all Member States<sup>225</sup>

The second area raised by Cameron was necessity to increase EU's "Competitiveness", by scaling back unnecessary legislation, to generate economic growth and create more jobs across Europe. In his opinion it was also important to move further towards a single digital market, the Capital Markets Union, and possible trade deals with America, China, Japan, and ASEAN, but most of all EU should lift the burden of too many regulations weighting over the businesses in a clear long-term commitment.

To increase competitiveness and productivity <<EU should also do more to fulfil its commitment to the free flow of capital, goods and services>><sup>226</sup>, but he did not mention here the free movement of people. The third area of Cameron's concern about the European Union was the question of national "Sovereignty", that was frequently asked in Britain, which is why he advanced three specific proposals in this area:

1) to end Britain's obligation to work towards an "ever closer union" as set out in the Article 2 of the Treaty of Rome, in a formal, legally binding and irreversible way, so this commitment will no longer apply to the United Kingdom.

2) improve the role of national parliaments with a new arrangement, so they could possibly stop any unwanted legislative proposals.

3) fully implement EU's commitments to subsidiarity, with clear proposals to achieve "Europe where necessary, national where possible".<sup>227</sup>

In addition, David Cameron asked for guarantees that EU institutions will fully respect UK's Justice and Home Affairs Protocols, and that National Security should always remain the sole responsibility of Member States.

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<sup>225</sup> Letter from D. Cameron to D. Tusk, *A NEW SETTLEMENT FOR THE UNITED KINGDOM IN A REFORMED EUROPEAN UNION*, London 10 November 2015.

<sup>226</sup> Ibidem.

<sup>227</sup> Letter from D. Cameron to D. Tusk, *A NEW SETTLEMENT FOR THE UNITED KINGDOM IN A REFORMED EUROPEAN UNION*, London 10 November 2015.

And in the final, fourth area of EU's reform proposals, British Prime Minister has addressed the problem of "Immigration", that was putting too much pressure on the British schools, hospitals, and public services. In his opinion, both, demographic growth in the United Kingdom, with the prospects to become the most populous country in the EU by 2050 and net migration of additional 300,000 people each year, were not sustainable for Britain.

<<We have taken lots of steps to control immigration from outside the EU. But we need to be able to exert greater control on arrivals from inside the EU too.>><sup>228</sup>

Cameron was asking for new arrangements to restore a sense of fairness to the British immigration system and to reduce the current very high level of unplanned population flows from within the EU into the UK, that have been much higher than predicted, and as he argued it was a challenge shared by more Member States. In 2004, when few of the Eastern European countries have joined the European Union, the British government chose not to apply the seven-year transition period for the free movement of labour from new member states, as did the French and German governments.<sup>229</sup> Now Cameron's solution would be to exclude the new countries joining the EU in the future from the free movement of people until their economies have converged with existing Member States. Additionally, EU would need to improve protections against any abuse of free movement, like extending re-entry bans for fraudsters and people who conspire in fake marriages, by increasing powers to deport criminals and stopping them coming back, as well as preventing their entry in the first place. Cameron pointed out that it was <<easier for an EU citizen to bring a non-EU spouse to Britain than it is for a British citizen to do the same>><sup>230</sup>, which is why it was important to address the judgements of the European Court of Justice on that issue that helped to create this difficult situation.

To discourage even more Europeans from coming to the United Kingdom, Cameron has proposed so-called "emergency brake". Which would reduce their access to British welfare system, until they prove to live and contribute for at least four years before they can be eligible for in-work benefits or social housing, and it should be forbidden to send child benefit overseas.

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<sup>228</sup> Ibidem.

<sup>229</sup> C. Georgiou, *British Capitalism and European Unification, from Ottawa to the Brexit Referendum*, <<Historical Materialism>> (2017), Vol. 25, N. 1, p. 106.

<sup>230</sup> Letter from D. Cameron to D. Tusk, London 10 November 2015.

To conclude his letter, Prime Minister underlined the size of the United Kingdom's economy, with its contributions to the EU, and his belief the reforms he was proposing were absolutely "reasonable and in the wider interests of the European Union as a whole." The final agreement would have to be legally-binding, irreversible, and where necessary supported by new Treaties, and reaching an agreement in every one of his reform areas was essential for him to recommend for British people to vote remain in the forthcoming referendum on UK's membership in the EU.

<<I hope and believe that together we can reach agreement on each of these four areas. If we can, I am ready to campaign with all my heart and soul to keep Britain inside a reformed European Union>> <sup>231</sup>

The copy of this letter was also sent to the President of the European Commission, the President of the European Parliament and all Heads of State and Government in the European Council. On the same day David Cameron gave a speech on Europe at Chatham House, at the Royal Institute of International Affairs, setting out his case for European reforms, and updating the British public on the process for the renegotiation.

This speech was a mixture of Prime Minister's letter to European Council and his Bloomberg speech from three years ago, with some additional explanations, but also possibly confusing, when for example confronting his pledged to "campaign to keep Britain inside reformed EU with all his heart and soul" and then contradicting himself by saying:

<<Like most British people, I come to this question with a frame of mind that is practical, not emotional. Head, not heart.>><sup>232</sup>

But firstly, Cameron has confirmed he will deliver on his electoral promise to hold a referendum on the EU membership by the end of 2017, which would be the most important decision for the British people to take at the ballot box in their lifetime. He added that the challenges that he mentioned three years before were still facing the European Union. More than that, other serious emergencies have joined the list of issues on the European agenda, which as he

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<sup>231</sup> Letter from D. Cameron to D. Tusk, London 10 November 2015.

<sup>232</sup> D. Cameron, *Prime Minister's speech on Europe*, Chatham House 10 November 2015, <https://www.gov.uk/government/speeches/prime-ministers-speech-on-europe>.

said has reinforced the importance of his previous arguments even more. Reforming European Union was for David Cameron a matter of economic and national security of the United Kingdom.

In addition to the Eurozone crisis, overregulation, and lack of democratic accountability in the European Union that was particularly felt in Britain, Cameron has added a fourth challenge EU would have to face, posed by the migration crisis, that if not properly confronted, would only get worse. In his opinion, the main point of the EU membership was not participation in all of the Euro-schemes but the involvement in making the EU rules, not just adopting them, which is why Cameron stressed to the public, about his involvement in securing “first ever real terms cut in the EU budget” two years ago. Next, he was planning to replace the Labour’s Human Rights Act with a new British Bill of Rights, to reduce the impact of the European Convention on Human Rights on the British courts and Parliament, and so the EU Charter of Fundamental Rights, would not create any additional rights, other than those agreed in the Lisbon Treaty.<sup>233</sup>

David Cameron was considering how to assume in the United Kingdom a structure similar to the Constitutional Court in Germany that reviews legitimacy of the European legal acts in respect of their national constitutional freedoms, whenever they attempt to transfer any powers on the European level. To justify his claim plans in dealing with the migration crisis, by limiting the free movement of labour within the EU, Cameron emphasized how <<Britain is one of the most open and cosmopolitan countries on the face of the earth>><sup>234</sup>, but the fact across the United Kingdom we could find many communities from different parts of the world, it does not mean they are well integrated or feel like calling Britain their home for that matter, especially when it started to feel quite clear that they were not welcome at all. The discussions about the immigration have led to many episodes of open racism and even violence against people from so called Eastern-Europe. At the same time according to Cameron, over a million Brits have been benefitting from their right of free movement to live and work anywhere else in the EU, which he did not want to take away from them. But as he said, this right has never been “unqualified”, and to deserve it, new EU Member States would need to converge their economies to other members, before UK would open their borders for their citizens, to avoid the “mistakes of the past”.<sup>235</sup> Cameron has supported his claims with some out of context and misleading statistics, like the percentage of

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<sup>233</sup> D. Cameron, *Prime Minister's speech on Europe*, Chatham House 10 November 2015.

<sup>234</sup> *Ibidem*.

<sup>235</sup> D. Cameron, *Prime Minister's speech on Europe*, Chatham House 10 November 2015.

recent European migrants receiving UK benefits. He has mentioned during his speech that 40% of those recently arrived from the European Economic Area were receiving on average £6,000 a year in work benefits. In 2014-2015 United Kingdom has spent a total of £168 billion in benefits.<sup>236</sup>

Considering that Cameron has mentioned an unsustainable amount of 330,000 European migrants coming to Britain in last year, if 40% of them have received on average £6,000, it would mean a cost of £792 million. Even if we take the entire population of about 3 million European-born, living in the UK in 2015 we would get an exaggerated 7.2 billion pounds a year in working benefits. That is without considering their labour contribution to the British economy. This in the context of the whole United Kingdom would be only 0.4-4% of total annual spending, and that is because 40% of benefit claims was still below national average of 64% families in Britain, that were receiving on average £8,275 a year in social benefits.<sup>237</sup> According to the United Nations, Department of Economic and Social Affairs database from 2015, Polish born citizens were the second foreign population in Britain after the Indians, and by far the highest coming from the EU. In 2015 there were over 700,000 Poles living in the UK, 500,000 Irish, 320,000 Germans, about 150,000 Italians and French, 116,000 Lithuanians, 100,000 Turks, 89,000 Romanians, 56,000 Hungarians and 51,000 Bulgarians. According to studies by C. Dustmann and T. Frattini for UCL in 2014, migrants have actually been net contributors to the United Kingdom and paid more in taxes than they received in benefits, helping to relieve the fiscal burden on UK-born workers and contributing to the finance of public services.<sup>238</sup>

To discourage further arrivals Cameron's Government has already cut off the possibility to claim Universal Credit for EU citizens while looking for work, and if unsuccessful within 6 months they would be required to leave Great Britain. In the Conservative Party manifesto, the Government has promised to reduce migration from the European Union. As Cameron wrote earlier this day to the European council President, Donald Tusk, they have proposed that <<people coming to Britain from the EU must live here and contribute for 4 years before they qualify for in work benefits or social housing. And that we should end the practice of sending child benefit

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<sup>236</sup> *Government expenditure on benefits in nominal terms in the United Kingdom from 2000/01 to 2020/21*  
<https://www.statista.com/statistics/283954/benefit-expenditure-in-the-uk/>

<sup>237</sup> G. Osborne, *Benefits in Britain: separating the facts from the fiction*, The Guardian 6 April 2013,  
<https://www.theguardian.com/politics/2013/apr/06/welfare-britain-facts-myths>.

<sup>238</sup> C. Dustmann, T. Frattini, *THE FISCAL EFFECTS OF IMMIGRATION TO THE UK\**, <<*The Economic Journal*>>, Royal Economic Society 2014, <https://www.cream-migration.org/files/FiscalEJ.pdf>.

overseas.>><sup>239</sup> Mostly, among right-wing press, that were supporters of the Conservatives and the xenophobic members of the British public, the debate over the immigration was concerned with incoming migration “waves” from Romania and Bulgaria, that just ended their seven-year period of limitation of the free labour movement, after joining the EU in 2007. The other “immigration threat” to the Great Britain that was spreading, was based on the potential entry of Turkey to the EU, that David Cameron himself was publicly promoting. In his speech he backed up his expertise, with five and a half years of experience as Prime Minister, of participating in 39 European Council meetings, which gave him the inside knowledge of many benefits from the EU membership, as well as where were the problems, that he believed he could resolve with his carefully designed package of EU reforms.

<<We shouldn’t have to choose between having effective migration control and being a member of the European Union. I want both, and I’m determined to get both. The British people want me to get both.>><sup>240</sup>

Cameron believed that United Kingdom was entitled to more privileges in proportion to the amount of British contributions to the EU budget and the size of UK’s economy and military power. <<We believe very strongly that if a major Member State has major concerns, then it is entitled to expect those concerns to be addressed.>><sup>241</sup>

He pretended from the European Union the flexibility to satisfy British requests, otherwise it would threaten the future existence of the EU, and if there did not manage to reach an agreement, he would not rule out leaving the EU.

This so called “cherry-picking” to have the “best of both worlds” has often been seen as selfish, narrowminded, egocentric thinking, based on historic imperialistic claims of superiority.

<<Already, we have ensured that as British people, we can travel freely around Europe, but at the same time we have maintained our own border controls.

We have kept our own currency while having complete access to the single market.

We cut the EU budget for the first time ever, while protecting the British rebate.

We successfully took Britain out of the Eurozone bailout mechanism – the first ever return of powers from Brussels to Westminster.

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<sup>239</sup> D. Cameron, *Prime Minister's speech on Europe*, Chatham House 10 November 2015.

<sup>240</sup> Ibidem.

<sup>241</sup> Ibidem.

Through our opt-out from justice and home affairs matters, we have achieved the largest repatriation of powers to Britain since we joined the EU.>><sup>242</sup>

Always thinking what is best for British politicians to win more votes and receive more contributions to their party, and not about the best national interest, however every proposal was obviously described as such.

Unlike in the 1974 renegotiations, David Cameron did not have any plan or preference, what would the United Kingdom actually had to do if they would decide in the referendum to leave the European Union. When confronting this hypothetical situation, Cameron has avoided the direct answer, by declaring he was campaigning for the British membership in the successfully reformed EU, which he was confident to accomplish. By using the examples of Switzerland and Norway, he argued the irony of EU's greater political interference upon those countries, that can choose to accept the directives, but they don't participate in making those rules, and if they don't accept them, they won't keep full access to the Single Market.<sup>243</sup>

Leaving the EU would also endanger losing the access to over 50 EU's free trade agreements around the world, which would be long and difficult process to recreate all of them from scratch, without the leverage of the EU's economic potential. Cameron has also remembered that some of his latest successful political interventions in sanctions on Russia or Iran, were only achievable through the EU, thanks to the collective response. British presence and voice inside the organizations like the EU, NATO and UN Security Council are crucial for the UK's national security and international influence, which is why British people should carefully consider their decision, as it will be a "once in a generation choice", and whatever they decide the British Government will respect that decision, without further renegotiation or another referendum.

By the end of his speech the Prime Minister has addressed those campaigning for Britain to leave the EU, saying:

<<And to those who are campaigning to leave but actually hoping for a second referendum – I say decide what you believe in. If you think we should leave – and leave means leave – then campaign for that and vote for it. But if you are actually arguing for a better relationship between Britain and

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<sup>242</sup> D. Cameron, *Prime Minister's speech on Europe*, Chatham House 10 November 2015.

<sup>243</sup> *Ibidem*.

the European Union, then don't campaign to get out. Work with me to get that better deal for Britain.>><sup>244</sup>

Finally, he concluded he had no doubt that with patience, goodwill and ingenuity, Britain could secure a better deal and provide prosperity for generations to come. After his speech, Prime Minister has received some questions, particularly about substantiality of the reforms, as many in Britain argued that they were not enough for the United Kingdom to feel completely comfortable in the EU. At the same time, from the European side, the requests were perceived as “asking too much” and “impossible” to achieve.<sup>245</sup>

In some following questions, Cameron was asked which terms to leave the EU would be better than the status quo, as the Prime Minister expressed in his speech the disadvantages of the Norway and the Swiss style options, that would mean he believed the Turkish customs union solution would be better or leaving on the World Trade Organization terms, which would interrupt all of the relations with the EU. This question was obviously very provoking, to understand that none of the scenarios of leaving the European Union would be better for Britain than what they already have as members, and now risking losing for few upgrades.<sup>246</sup>

Leaving the European Union under the WTO rules would cost United Kingdom at least about £13.75 billion a year in tariffs and customs duties only, considering the value of British imports from the EU of £293.9 billion a year in 2015.<sup>247</sup> That accounted for 52.9% of their total imports in goods, which is why many economists made the case, that despite the fact that United Kingdom was contributing to the European budget almost 8 billion pounds more than it received, it would lose even more if they decided to leave the EU. At the same time UK was exporting to the EU in 2015 42.4% of all exported goods worth 223.3 billion pounds. Also, the total amount of trade between UK and EU provided jobs to 3,4 million British citizens, which proved that European Union was Britain's most important trading partner.<sup>248</sup>

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<sup>244</sup> D. Cameron, *Prime Minister's speech on Europe*, Chatham House 10 November 2015.

<sup>245</sup> Questions to PM after his speech, Chatham House 10 November 2015, <https://www.gov.uk/government/speeches/prime-ministers-speech-on-europe>.

<sup>246</sup> *Ibidem*.

<sup>247</sup> M. Ward, *Statistics on UK-EU trade*, Number CBP 7851, House of Commons Library 3 December 2021, <https://researchbriefings.files.parliament.uk/documents/CBP-7851/CBP-7851.pdf>.

<sup>248</sup> A. Rak, *Koszty ewentualnego Brexitu. Co dalej z GBP?*, Comparic 19 February 2016, <https://comparic.pl/koszty-ewentualnego-brexitu/>.

Lord Stuart Rose, head of the lobbying group for Great Britain to remain in the European Union "Britain Stronger in Europe" has stated that those who are campaigning for Brexit are proposing very unprovable arrangement. They do not accept any more payments from the Britain to the EU budget and at the same time wish to keep full access to the common EU market and free movement of British people into the EU but not the other way.

According to "The Guardian", and former British Prime Minister John Major, London was taking a dangerous course, playing with the possibility of leaving the EU, while the rest of the world was uniting forces.<sup>249</sup>

In his answer, David Cameron has stressed he did not campaign to leave the European Union, but to get a better deal for Britain in the EU and stay on the new terms. However, if he would not be successful in that endeavor, all of the options would be possible, and only if that happens, he will think what solution would be best.

It also did not matter at this time what could happen in Northern Ireland or in Scotland, as according to Cameron there was a very strong support for the renegotiation and for the referendum in all parts of the United Kingdom. He believed people would get well informed about all the arguments during the discussions and they would decide responsibly.

On 7 December 2015, President Donald Tusk has sent a letter to the European Council about the good progress achieved in the negotiations so far. The issues still lacking an agreement were the question of social benefits and free movement, and substantial political differences, which meant in practice they had an agreement only in the area of "Competitiveness" and needed more time for precise drafting and choosing exact legal form for the final deal. Tusk has also updated the members about the timeline, that the remaining political dilemmas related to this process should be addressed during the European Council meeting in December, where during the substantive political discussion it should be possible to prepare a concrete proposal for final approval in February 2016.<sup>250</sup>

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<sup>249</sup> P. Wintour, *John Major issues warning over leaving EU*, The Guardian 16 December 2015, <https://www.theguardian.com/politics/2015/dec/16/john-major-issues-warning-over-leaving-eu>.

<sup>250</sup> *Letter by President Donald Tusk to the European Council on the issue of a UK in/out referendum*, European Council 7 December 2015, <https://www.consilium.europa.eu/en/press/press-releases/2015/12/07/tusk-letter-to-28ms-on-uk/>

And so, the next stage of the Cameron's renegotiation with the EU took place on 17 December. Donald Tusk described it as a "make or break" moment<sup>251</sup>, as all of the leaders had a substantive and constructive debate on the UK plans for an (in/out) referendum and they all agreed on a common approach, but other than a political exchange of views, not much has actually changed in practice on the agreement. Tusk confirmed what previously German Chancellor Angela Merkel have stated that the EU will not surrender the principals of free movement of people or non-discrimination policies, but the negotiations will continue, to find necessary solutions in all four areas of concern until the next EUCO meeting in February, when a draft proposal should be ready.<sup>252</sup>

As a likely attempt to shape the British public view on the final agreement and help the Prime Minister to persuade his country to remain in the EU, President Tusk has underlined that the proposals of compromise made by David Cameron were "fair but also substantial". However, the House of Commons European Union affairs committee has already stated that even if the negotiations reach "absolutely binding promises" for changes, the Treaty on Union will not be able to be amended before the referendum has been scheduled. Other 27 countries would have to ratify treaty changes. In some countries like Ireland, Denmark, the Netherlands or France, more referenda would have to be held on that matter, and it is impossible to predict how each of them would vote.

This was significantly increasing the possibility of British withdrawal from the European Union, and if Cameron failed in his negotiations with the EU, it would certainly tip the scales towards Brexit.<sup>253</sup> The next report on the progress in the negotiations was delivered by Donald Tusk during his speech on 19 January 2016 at European Council. In his words <<the result of the referendum is more unpredictable than ever before>>.<sup>254</sup>

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<sup>251</sup> *Remarks by President Donald Tusk following the first session of the European Council meeting, 17 December 2015*, <https://www.consilium.europa.eu/en/press/press-releases/2015/12/17/tusk-remarks-european-council/>.

<sup>252</sup> *Report by President Donald Tusk to the European Parliament on the outcome of the December European Council, 19 January 2016*, <https://www.consilium.europa.eu/en/press/press-releases/2016/01/19/tusk-december-euco-report-european-parliament/>.

<sup>253</sup> *Sondaże: Brexit coraz bardziej prawdopodobny*, Polskie Radio 17 December 2015, <https://www.polskieradio.pl/5/3/Artykul/1558789,Sondaze-Brexit-coraz-bardziej-prawdopodobny>.

<sup>254</sup> *Report by President Donald Tusk to the European Parliament on the outcome of the December European Council, 19 January 2016*.

President Tusk met with David Cameron in person again on 31 January 2016 to finalize their agreement and a draft proposal for a new settlement for the United Kingdom within the European Union was ready on 2 February 2016. It was addressing all four of the areas distinguished by David Cameron. President Donald Tusk then has sent a letter to the other EU Member States, explaining the content of the agreement for further approval of its conditions at the next EUCO meeting. As he highlighted in the letter, his main objective of his mandate was to keep the unity of the EU, which is why he has satisfied all of the British requests, without undermining the fundamental EU principles. He also has mentioned it was not only up to the British people, but also for the other 27 EU members to decide whether they would accept this settlement. In President's Tusk opinion, this agreement was a good compromise, which included European Commission political declarations.<sup>255</sup>

### **3.4.1 Negotiation's outcome**

President Tusk has briefly described the contents of the proposal, divided in areas of interest, which were called "baskets" by the EU.

The draft agreement on the "economic governance", would set out principles of mutual respect between Eurozone countries, heading towards strengthening of the Economic and Monetary Union and non-Euro members, to safeguard their rights and competences. Those principles would be supported by a mechanism providing necessary reassurances, however, it would not include the right to "veto" the Eurozone decisions, nor delay them if they were urgent, but those decisions would not create any budgetary responsibilities for non-Euro states. The precise circumstances for triggering this mechanism would still have to be discussed. Draft agreement on competitiveness, backed by more detailed European Council Declaration and a draft Commission Declaration, would set out EU's commitment to improve competitiveness, by regularly simplifying legislation and reducing burden and compliance costs on business. In sovereignty basket, the proposed Decision of the Heads would recognize special situation of the United Kingdom under the Treaties

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<sup>255</sup> Letter by President Donald Tusk to the Members of the European Council on his proposal for a new settlement for the United Kingdom within the European Union, European Council 2 February 2016, <https://www.consilium.europa.eu/en/press/press-releases/2016/02/02/letter-tusk-proposal-new-settlement-uk/>.

and guarantee no obligation to additional political integration. It would also reinforce respect for subsidiarity, the opt-out regime of Protocols 21 and 22, as well as national security responsibilities, so the draft legislative acts where there were objections from majority of at least 16 Member States on the grounds of subsidiarity, would be discontinued, unless the specific concerns could have been addressed in other way. This was not exactly what David Cameron has asked for, as he did not get the power to stop unwanted legislation, only to start a discussion on the concerning subject, which would be judged by the Council. However, EU would only be able to take action on the transnational issues. And finally, to address the UK concerns on social benefits and free movement, an agreement including a draft Commission Declaration would clarify the interpretation of current rules, to reduce the abuse of free movement in full respect of current treaties and maintaining the principles of freedom of movement and non-discrimination. In the specific case mentioned by Cameron, EU legislation regarding the export of child benefits would be changed, but instead of completely prohibiting exportation of child benefits to the other countries, it would be indexed to the standard of living level of the country of destination. Finally, it would provide for so-called “emergency break” in event of exceptional circumstances. David Cameron wanted to ban all in work benefits for migrants in the first four years of working in the UK.<sup>256</sup>

This was regarded as most controversial part of the proposal, and according to Professor Catherine Barnard from the Faculty of Law at the University of Cambridge, it was clearly discriminatory and against the principle of equal treatment secured in the Article 45 of EU: <<freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.>><sup>257</sup> European Commission has agreed in the “new settlement”<sup>258</sup> for the UK to an <<alert and safeguard mechanism to respond to situations where the inflow of

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<sup>256</sup> Letter by President Donald Tusk to the Members of the European Council on his proposal for a new settlement for the United Kingdom within the European Union, European Council 2 February 2016; D. Cameron, Prime Minister's speech on Europe, Chatham House 10 November 2015.

<sup>257</sup> Consolidated version of the Treaty on the Functioning of the European Union - PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE IV: FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL - Chapter 1: Workers - Article 45 (ex Article 39 TEC), Official Journal 115 , 09/05/2008 P. 0065 - 0066, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E045:en:HTML>.

<sup>258</sup> A NEW SETTLEMENT FOR THE UNITED KINGDOM WITHIN THE EUROPEAN UNION, c. 69, Section D, Paragraph 2 (b), European Council 23 February 2016, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XG0223\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XG0223(01)&from=EN).

workers from other Member States is of an 'exceptional magnitude' over a long period of time.>><sup>259</sup>  
If this situation would occur the Council could authorise a Member State to restrict access to non-contributory in-work benefits to Union workers newly entering its labour market for a total period of up to four years from the commencement of employment.<sup>260</sup>

This would not be a complete ban for whole four years but the access to those benefits would gradually increase during period of time, to allow for full access after four years. This “emergency brake” would apply only to newly arriving workers for limited time of seven years, which was the duration of the transitional period provided by the Accession Acts from 2004, that the UK chose not to invoke at that time. The Decision also states that these measures should not result in EU workers enjoying less favourable treatment than third-country nationals in a comparable situation.<sup>261</sup> This mechanism would require further amendment to existing EU law and regulations once the UK would confirm their membership in the referendum. However, the controversial part remains, as even if this measure would be authorized for the United Kingdom by the EU, there is no guarantee neither that the UK’s Parliament would approve it, nor that the Court of Justice would accept this procedure as compatible with the Article 45 of the EU Treaty.

Nonetheless, most of the substance of this draft proposal was a legally binding and ready for the discussion on possible incorporation into the Treaties at the time of their next revision, but it still needed to be approved by all 28 EU Member States. Donald Tusk has concluded his letter, by encouraging the recipients to approve it with words:

<<To succeed we will all need to compromise. To fail would be compromising our common future.>><sup>262</sup>

After sending the letter, European Council President has started a final round of intensive individual consultations to secure an extensive political support for this proposal and find solutions to all unsolved issues. On 4 February 2016, Donald Tusk has met with David Cameron in occasion of a conference about Syria and the region, in London. To address the number of remaining political issues that still needed to be decided, like the questions of future treaty changes, like so-

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<sup>259</sup> *Ivi*, Section D, Paragraph 2 (b).

<sup>260</sup> *Ibidem*.

<sup>261</sup> *Ibidem*.

<sup>262</sup> *Letter by President Donald Tusk to the Members of the European Council on his proposal for a new settlement for the United Kingdom within the European Union*, European Council 2 February 2016.

called emergency brake for non-euro area countries, like the safeguard mechanism on access to in-work benefits, and finally like the concept of ever closer union, Tusk's negotiating team members have met with representatives of all EU Member States on 5 February, on 8 February with representatives from Belgium, Germany, and Italy. Then President Tusk has met in person with President Schulz on 10 February and the representatives of European Parliament from Belgium, Germany, and Italy: Guy Verhofstadt, Elmar Brok and Roberto Gualtieri on 12 February. Donald Tusk has also been meeting with the Prime Minister of Belgium Charles Michel, the French President François Hollande, German Chancellor Angela Merkel, the Prime Minister of Greece Alexis Tsipras, the President of Romania Klaus Iohannis and the Czech Prime Minister Bohuslav Sobotka, who held the presidency of the Visegrad Group including the Czech Republic, Hungary, Poland and Slovakia. According to President Tusk, the most difficult subject to settle was the issue of social benefits. Tusk had to clarify that the safeguard mechanism on access to in-work benefits is not designed to apply to EU citizens currently working in the UK. This proposal protects the freedom of movement, while helping the UK to address its concerns when it comes to their specific system of in-work benefits.<sup>263</sup>

President Tusk has also invited all of the leaders to discuss the strategy in managing the migratory crisis during the upcoming European Council meeting. He clearly made his point, that excluding the most affected countries, like Greece, from Schengen area would not resolve this situation. It was necessary a common response at the root of the problem and improve the protection of all EU's external borders, with full support of all EU members to those struggling with the crisis.

<< I want leaders to engage in an honest discussion on where we stand on all the elements of our strategy. Most important is the protection of our external borders to stem the flow of migrants. Likewise, we must step up the return of economic migrants. We must increase our humanitarian assistance to Syria's neighboring countries. We must make sure our agreement with Turkey works and delivers a very significant drop in numbers of arrivals; something we are still waiting to see.

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<sup>263</sup> *Remarks by President Donald Tusk after his meeting in Prague with Prime Minister Bohuslav Sobotka*, European Council 16 February 2016, <https://www.consilium.europa.eu/en/press/press-releases/2016/02/16/tusk-meeting-sobotka-prague/>.

We must urgently address the humanitarian situation of migrants in Greece and along the Western Balkans route.>><sup>264</sup>

On 18 February 2016, after very intense 26 hours of uninterrupted discussions during the European Council summit, the negotiations had reached a “standstill”. All the delegations have returned to their rooms to recharge. Cameron’s Director of Communications, Craig Oliver, has received a message about German delegation, coming to them in less than 1 minute, as they were settled in the offices next door to each other. It was a spontaneous decision of German Chancellor, Angela Merkel to visit David Cameron. Both leaders in this informal situation just sat in front of each other and spoke about possible solutions. David Cameron has made it clear to Angela Merkel that he did not have any more space to maneuver and unless EU was would accept the settlement he was asking for, he would meet a lot of criticism in his country, which would be a serious problem in the forthcoming referendum. And after few laughs over some funny translations, Angela Merkel with was ready to support the agreement, but Cameron still had to convince some of the Eastern-European countries. This is where the President of the European Council, Donald Tusk, spoke to the Czech Prime Minister Bohuslav Sobotka. Some of the parts, like the “emergency brake mechanism”, was unacceptable to him, especially in his role of the President of the Visegrad Group. representing four major Eastern-European countries.<sup>265</sup> Donald Tusk told him it was his choice, but he should be fully aware that without all of the parts in this agreement, British Prime Minister would not have any chance in succeeding with his campaign to keep Britain in the EU in the referendum. There was no more time to make anymore changes, and the Czech Republic delegation did not want to be responsible for losing such an important Member State, so finally they have accepted the proposal to help Cameron’s cause and provide him with an agreement that he would be able to announce as his negotiating victory to the British people.<sup>266</sup>

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<sup>264</sup> *Remarks by President Donald Tusk after his meeting in Bucharest with President Klaus Iohannis of Romania*, European Council 15 February 2016, <https://www.consilium.europa.eu/en/press/press-releases/2016/02/15/tusk-meeting-iohannis-bucharest/>.

<sup>265</sup> *The Visegrad Group (V4)*, European Council 5 July 2016, <https://www.consilium.europa.eu/en/documents-publications/library/library-blog/posts/the-visegrad-group-v4/>.

<sup>266</sup> *The Negotiating Session Between Britain and the EU*, Smithsonian Channel 16 April 2019, <https://www.youtube.com/watch?v=EDG1GOqSVpl>.

All of the 28 EU leaders have accepted the proposal that strengthened United Kingdom's special status in the European Union. It was a legally binding and irreversible decision that satisfied all of David Cameron's concerns and allowed him to recommend that the UK remain in the EU, without compromising any of the EU's fundamental values.<sup>267</sup>

Donald Tusk, President of the European Council has used the words of Winston Churchill from his speech in Zurich (1946) and declared the deal was an <<act of faith in the European family>><sup>268</sup> and that he believed with this settlement EU has done everything it could to convince United Kingdom to remain a Member of the European Union, which was in their mutual interest <<but the final decision is in the hands of the British people>>.<sup>269</sup>

The final deal was constructed from four separate documents. The principal and main document was the Decision of the Heads of State or Government, concerning a new settlement for the United Kingdom, which had binding form of international law and cannot be unilaterally altered. The other documents were a statement with the draft of Council Decision regarding the banking union and Eurozone in form of future EU law, and declarations on the UK decisions, including a UK's decision concerning the new laws on free movement, which would require amendments to the existing EU regulations and directives. The whole deal was conditioned by the results of the referendum and would only come to force if United Kingdom would vote to remain a member of the European Union. The deal had its effect across all EU Member States, but it specified the "special" relationship of the United Kingdom with the EU, following many of their "opt-outs", like no obligation of adopting the common currency, participate in Schengen, Freedom Security and Justice area, many criminal laws, and the Charter Protocol 30 (VEX).<sup>270</sup>

President Donald Tusk in his keynote speech at the European People's Party Saint Géry Dialogue on 4 April 2016, has quoted the words of Margaret Thatcher: "at a time of uncertainty in world affairs, Europe gives us a far better chance of peace and security" in reference to the idea of

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<sup>267</sup> *European Council, 18-19 February 2016*, <https://www.consilium.europa.eu/en/meetings/european-council/2016/02/18-19/>.

<sup>268</sup> *Speech of Sir Winston Churchill*, Zurich, 19th September 1946 - [https://archive.ph/20130218054245/http://assembly.coe.int/Main.asp?link=/AboutUs/zurich\\_e.htm#selection-653.1-661.27](https://archive.ph/20130218054245/http://assembly.coe.int/Main.asp?link=/AboutUs/zurich_e.htm#selection-653.1-661.27).

<sup>269</sup> *Remarks by President Donald Tusk after the European Council meeting on 19 February 2016*, <https://www.consilium.europa.eu/en/press/press-releases/2016/02/19/tusk-final-remarks-european-council/>.

<sup>270</sup> *A NEW SETTLEMENT FOR THE UNITED KINGDOM WITHIN THE EUROPEAN UNION*, c. 69, Annex I.

Brexit, which he perceived as unpredictable and dangerous, especially in the time of growing populism in Europe, <<which offers nothing new but a return to disastrous politics of division, nationalism and autocratic rule. As we all know, those policies will not only fail to bring about economic recovery, but be disastrous for peace, stability and human rights of our citizens.>><sup>271</sup>

### 3.5 Brexit Referendum Campaign

Now that the deal has been accomplished between the United Kingdom and the European Union, it was up to the Prime Minister David Cameron to support the “remain campaign” in the referendum, but the situation in the UK was not favorable<sup>272</sup>, most of the British press has described his deal as a “joke” and called it a “great delusion”.<sup>273</sup> According to the “Leave” campaign, Cameron has failed to obtain a mechanism for stopping the inflow of the EU migrants into the United Kingdom. Vote “Leave” has focused on the issue of immigration relating to the racism of many sections of the British electorate, including sections of the working class. Much of the funding for the “Leave” campaign came from the eccentric millionaires like Aaron Banks, who has donated over a million pound to the UKIP party in 2014<sup>274</sup>, and raised over £9 million for the “Leave.EU” campaign, which was accused of avoiding the spending rules.<sup>275</sup>

The majority of British business has supported the campaign “Britain Stronger in Europe” to remain in the EU despite the criticisms they had about Europe. The Confederation of British Industry was actively campaigning for Remain even before the renegotiation result were finished.

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<sup>271</sup> *Keynote speech by President Donald Tusk at the EPP Saint G ry Dialogue*, European Council 4 April 2016, <https://www.consilium.europa.eu/en/press/press-releases/2016/04/04/tusk-speech-epp-saint-gery/>.

<sup>272</sup> *Cameron to make statement in Parliament tomorrow*, The Hindu 21 February 2016, <https://www.thehindu.com/todays-paper/tp-international/cameron-to-make-statement-in-parliament-tomorrow/article8262733.ece>.

<sup>273</sup> A. Spence, *Cameron’s EU deal blasted by British press*, Politico 3 February 2016, <https://www.politico.eu/article/camerons-eu-deal-blasted-by-british-press/>.

<sup>274</sup> *Ex-Tory donor Arron Banks gives £1m to UKIP*, BBC News 1 October 2014, <https://www.bbc.com/news/uk-politics-29438653>.

<sup>275</sup> O. Wright, *EU referendum: Leave.EU group accused of avoiding strict rules on campaign spending*, Independent 15 April 2016, <https://www.independent.co.uk/news/uk/politics/eu-referendum-leave-eu-group-accused-of-avoiding-strict-rules-on-campaign-spending-a6984941.html>.

Many international banks made donations to the pro-membership campaign, including Barclays, HSBC, Goldman Sachs and even the Bank of England has joined in October 2015 the campaign against Brexit and to preserve the core of the existing economic relationship between Britain and the EU by remaining in the single market.

Considering how the issue of stopping the immigration from the EU into Britain was important to Cameron during the renegotiations, it left the Government in an impossible situation to tackle its own previous narrative, resulting in inability to convince the Leave campaigners with the significance of the concessions they have reached from the EU. Reassurances of David Cameron that Turkey would not be able to join the EU until year 3000, did not calm the fear of new waves of incoming migrants ready to “invade” the UK, that he previously generated, and the Leave campaign has exploited that argument to their advantage. Another argument to vote against EU membership were the payments to the EU budget, that according to the popular misleading slogans would be better used to finance British National Health System, which enjoyed high support by the public. Some have also argued on the perception of deceit from the previous referendum, that the EU was not the same as it was back in 1975, and so the vote that confirmed the membership of the Common Market was no longer valid, however the economic alternatives to the EU membership proposed by the “leave campaign” were based on the same assumptions made in 1975, which were strengthening the relations with the Commonwealth countries or establishing new bilateral free trade agreements across the world. The problem with those alternatives was lack of evidence they would be superior to the EU membership, the same way they were considered inferior back in 1975.<sup>276</sup>

The main political support behind both referendum campaigns in 2016 was contrary to the situation before the referendum in 1975. During the first referendum the Conservative Party, as opposition, was united in support of remain campaign, while in 2016, as the party in Government, they were divided, the same way the Labour Party was split in 1975. Scottish National Party was campaigning to leave the Community in 1975, while in 2016 they became passionate supporters of the EU. Similar change of mind has occurred in the other nationalist parties. The only party that

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<sup>276</sup> N. Campos, F. Coricelli, *Why did Britain join the EU? A new insight from economic history*, 3 February 2015

kept its views were Liberal Democrats, who since the beginning were the biggest supporters of the European integration.<sup>277</sup>

### 3.6 Results of the 2016 referendum

On 23 June 2016 the second national referendum about British membership in the EU, as promised by the Prime Minister David Cameron, was held across the United Kingdom. The result took the whole world by surprise, with only 16,141,241(48.11%) of the voters who gave the support to remaining and 17,410,742 (51.89%) votes to leave the European Union, with the turnout of about 72.21% of the electorate eligible to vote.<sup>278</sup> Immediately after the referendum results were published, the financial markets went crazy. The value of the pound has fallen by about 10% in only 2 hours. The shares of Britain's biggest banks lost almost 20% in value and the London stock exchange index FTSE MIB dropped by more than 12%, so much that it was considered to suspend the stock market as an emergency measure comparable to a method used in case of a possible outbreak of a war.<sup>279</sup>

But even that most of the British has pronounced their preference in changing the “*status quo*” on the national level, which in the history of referendums was not very common, the result was very different in particular areas of the United Kingdom. Unlike in the 1975, the result was not as clear as it seemed and some of very important regions of the UK distinctly voted to remain in the EU. While England and Wales were the main areas of the leave vote, the Greater London, Scotland and Northern Ireland were strongly pro-European. This division on the referendum subject was not taken into account and it threatened the very unity of the UK, with the demands for the separation of those countries, including the requests for the City of London to become independent, for the only reason to remain and continue profit from the benefits of the EU

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<sup>277</sup> V. Bogdanor, *True stories of the 1975 EEC Referendum*, The Open University, 8 April 2016.

<sup>278</sup> The Electoral Commission, *Results and turnout at the EU referendum*, 16 July 2019, <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/elections-and-referendums/past-elections-and-referendums/eu-referendum/results-and-turnout-eu-referendum>; *EU Referendum Results*, BBC News, [https://www.bbc.co.uk/news/politics/eu\\_referendum/results](https://www.bbc.co.uk/news/politics/eu_referendum/results).

<sup>279</sup> *Pound plunges after Leave vote*, BBC News 24 June 2016, <https://www.bbc.com/news/business-36611512>.

membership in case of a “no deal Brexit”. The referendum results obtained in Scotland, where a large majority of 62%, had declared a willingness to remain in the EU and in Northern Ireland, where 55.78% voted to stay, were particularly interesting since the distribution of votes has completely reverted. Those countries with the lowest support for the EU in 1975, have now become its strongest supporters in the UK. Emerged divisions were not only territorial but also demographical between the younger voters mostly voting to remain against the majority of elderly who chose to exit the EU, and social with the similar conflicting positions depending on the level of education, with the rising tendency to vote on remaining by people of higher education.<sup>280</sup>

In opposition to the confidence in the political leaders from the 1975, in 2016 there was a common mistrust towards “*the elites*”. In many cases the vote “No” was not so much directed against the membership of the European Union itself, as a vote of no-confidence in the political establishment and their administration in general, so much that the top five most frequently “*googled*” questions after the referendum in the United Kingdom were: what is Brexit, what is the Single Market and what is the EU. This fact proved that there was an insufficient level of factual information provided to the public before the referendum, which in the time of digital targeting and social media supremacy, has been overshadowed by the large amount of fake-news and misinformation.<sup>281</sup>

This outcome of the referendum was devastating defeat for David Cameron, who never expected nor wanted to exit the EU, not to mention splitting the UK. After he had secured his renegotiated status with European partners, he campaigned “with all his heart and soul” for continued membership in the reformed Europe, which is why he did not feel to be the right person to deliver the Brexit and he announced only few hours after the results became public, that he will resign from his position as the Prime Minister by October 2016 in concomitance with the Conservative Party Conference.<sup>282</sup> Cameron and his Government had faced strong criticism regarding their strategy to call for the referendum as an instrument to force the EU in granting the

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<sup>280</sup> *YouGov Survey Results*,

[https://d25d2506sfb94s.cloudfront.net/cumulus\\_uploads/document/oxmidrr5wh/EUFinalCall\\_Reweighted.pdf](https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/oxmidrr5wh/EUFinalCall_Reweighted.pdf).

<sup>281</sup> A. Selyukh, *After Brexit Vote, Britain Asks Google: “What Is The EU?”*, NPR 24 June 2016,

<https://www.npr.org/sections/alltechconsidered/2016/06/24/480949383/britains-google-searches-for-what-is-the-eu-spike-after-brexit-vote?t=1649946819970>.

<sup>282</sup> *Resignation of The Right Honourable David Cameron MP as Prime Minister*, 13 July 2016,

<https://www.royal.uk/resignation-right-honourable-david-cameron-mp-prime-minister>.

UK additional tailor-made exceptions to the membership terms, but after the referendum result the main subject of criticism was the lack of any contingency plan to actually deal with these specific consequences. It was described by Matthew Norman from The Independent as an <<act of indescribably selfish recklessness.>> attributing to Cameron the role of the <<Prime Minister who killed his country.>><sup>283</sup>

The absence of contingency planning within Whitehall in 2016, except some preparations within the Treasury to safeguard financial stability, was a choice made by David Cameron's Government. Since there was no contingency planning for the orderly withdrawal of the UK from the EU, there was a lot of discussions about possible ways of delivering the Brexit. One of them was a possibility of a "no deal Brexit", which would be most disruptive and economically damaging to both sides. It was also most feared solution by the business and for the very survival of the United Kingdom itself, as dissatisfaction with the result has reopened the discussion about Scottish independence, which was recently resolved by another referendum just two years before. Since one of the main reasons for Scottish to remain a part of the United Kingdom was the fact that their independence would automatically mean exiting the EU, as was confirmed by the EU authorities, it was understandably ironic that in result of the Brexit referendum, in which Scotland as a country has strongly supported the remain option, now they were forced to leave the EU anyway. And so, as this particular issue has already been decided regardless of the Scottish approval, the Scottish National Party, with their claim stronger than ever, has yet again raised their voices, to achieve independence from the United Kingdom.<sup>284</sup>

Another region seriously impacted by the Brexit vote, was Northern Ireland, which was a constant topic during the debates regarding the possibilities of the UK's withdrawal from the EU. Northern Ireland was "*unique*" in its position. Together with Gibraltar, they were the parts of the United Kingdom that shared a land border with the European Union countries. In both cases the possibility of implementing border controls would impact their habitants and territories in very negative manner. Gibraltar, as an overseas territory of the United Kingdom was not included in

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<sup>283</sup> M. Norman, *David Cameron will go down in history as the Prime Minister who killed his country*, Independent 24 June 2016, <https://www.independent.co.uk/voices/david-cameron-resigns-resignation-next-prime-minister-brexit-eu-referendum-result-a7100076.html>.

<sup>284</sup> J. Curtice, *How Brexit shapes people's views on Scottish independence*, BBC News 26 January 2021, <https://www.bbc.com/news/uk-scotland-scotland-politics-55803103>.

any previous referendums and is not represented by anyone in the British Parliament, which is why for the purposes of the 2016 Brexit referendum it was considered as a single voting area, under South West England, however separately it was the most pro-European territory participating in the referendum, with 96% of votes casted in support of remaining a member of the EU. Nevertheless, their particular situation, even that in the same way the as the Scottish, Gibraltar was being dragged out of the EU against their will, it was not as problematic to make necessary arrangements as in case of the Northern Ireland. The possibility of the Irish border was a potential security and civil peace issue, that if implemented, could bring back the historic violence, which so far has been put to sleep by the Belfast Good Friday Agreement (GFA) in 1998. The Irish land border presented a major logistical problem, due to the particular topography of the territory, where on a main road in less than 50km of journey, drivers are bound to cross the border at least five times each way, with a total of 208 crossings traversing the 310-mile frontier, which is more than throughout entire EU.<sup>285</sup>

Another difficulty which could be found along the border was the case of a small lake “Lough Ross”, where there were no existing documents marking the exact line where the border should be crossing through the lake, and the line that could be found designed on the maps was a suggestion dependent on the source and in the past this unregulated situation has provided a small area of no-one’s land, potentially easy to be taken an advantage of by the smugglers.<sup>286</sup>

But most importantly, the turbulent history of the Northern Ireland was the key problem in the application of the Brexit solutions. The conflict between the Irish Catholics, fighting to reunite the island of Ireland and liberate Northern Ireland from the British occupation, and the British Protestants, loyal to the crown and protecting the union links with the rest of the United Kingdom, which was called “*the Troubles*”, was equivalent to a civil war, that lasted for about 30 years, until the Belfast “Good Friday Agreement” in 1998. In order to provide peace in the area, this international multilateral Treaty, has arranged to remove the physical border and check points between the Northern Ireland and the Republic of Ireland. Although the physical frontier has

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<sup>285</sup> *Revealed: Number of border crossings between Northern Ireland and Republic*, Belfast Telegraph 27 April 2018, <https://www.belfasttelegraph.co.uk/news/northern-ireland/revealed-number-of-border-crossings-between-northern-ireland-and-republic-36850570.html>; B. Hutton, *Ireland has 208 border crossings, officials from North and South agree*, The Irish Times 26 April 2018, <https://www.irishtimes.com/news/ireland/irish-news/ireland-has-208-border-crossings-officials-from-north-and-south-agree-1.3474246>.

<sup>286</sup> Information obtained during the guided visit to the border organised by the Queen’s University in Belfast.

disappeared, deeply rooted divisions in society have remained, marked by flags, murals that identified the binary affiliation of the neighborhoods, and so-called “*peace walls*” that physically divided those communities to prevent the aggressions. Even at the cemetery in Belfast, the graves of Catholics and Protestants remain separated with an underground boundary.<sup>287</sup>

The balance between these groups was still very fragile and the Brexit results have awakened the extreme opinions, threatening to resume the conflict, if their part of the benefits deriving from the GFA would not be maintained. For all of those reasons, Northern Ireland needed a set of particular arrangements, different to the rest of the United Kingdom and specific to the territory of Northern Ireland, that was initially called “the Backstop”<sup>288</sup> under the Government of Theresa May, and later it became known as the “Northern Ireland Protocol”.<sup>289</sup>

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<sup>287</sup> B. Archer, *Multi-million pound project to make Belfast City Cemetery top tourist attraction by 2020*, The Irish News 4 December 2018, <https://www.irishnews.com/news/northernirelandnews/2018/12/04/news/multi-million-pound-project-to-make-belfast-city-cemetery-top-tourist-attraction-by-2020-1499758/>.

<sup>288</sup> *Irish backstop*, Institute for Government 24 February 2020, <https://www.instituteforgovernment.org.uk/explainers/irish-backstop>.

<sup>289</sup> *Protocol on Ireland and Northern Ireland*, European Commission 31 January 2020, [https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement/protocol-ireland-and-northern-ireland\\_en](https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement/protocol-ireland-and-northern-ireland_en).

## CHAPTER IV

### Brexit procedures - First agreement between Prime Minister Theresa May with the EU

On 13 July 2016 David Cameron was replaced earlier than expected by his Home Secretary Theresa May, as new Prime Minister, following the withdrawal of her last competitor to this position, the Minister of State for Energy Andrea Leadsom, who became Secretary of State for Environment, Food and Rural Affairs in Theresa May's Government. Her mandate as the Prime Minister was mainly focused on delivering on the results of the referendum, that Cameron did not feel to do. To "make the success" of Brexit, Theresa May, who herself cautiously campaigned to remain in the EU, has filled her Cabinet with figures who have led the winning leave campaign. The most surprising appointment was giving the position of the Secretary of State for Foreign and Commonwealth Affairs to the infamous ex-journalist and recently substituted Mayor of London, Boris Johnson. In her Cabinet appeared a new position of the Secretary of State for Exiting the European Union that was filled with David Davis, who would lead the UKs in the first round of negotiations.<sup>290</sup>

Theresa May's Government in its approach to formalize the divorce with the EU had to face different possible solutions of achieving it. When the British people were asked to decide on the UK's membership in Europe, they were not provided with the actual solutions of how it would happen, since the Government under Cameron's instructions never prepared any plan for this possibility. One of the possible solutions, supported by most of those who voted to remain in the EU, would be to abandon political promises regarding the referendum and not to go ahead with implementing its results, as ultimately it was up to the British Parliament to decide whether to proceed with the withdrawal. However, that would mean denying their democratic decision to the other half of the country and admitting in front of the whole world the incompetence of the British politics, which could not happen. So, it seemed the only possible way would be to move forward with the decision that has been made, only this was even more divisive, as among the Brexiteers, who voted to leave the EU, there were different opinions on what they expected from the

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<sup>290</sup> *Secretary of State for Exiting the European Union*, GOV.UK, <https://www.gov.uk/government/ministers/secretary-of-state-for-exiting-the-european-union>.

Government. The complexity of the relationship with the EU has provided endless possibilities, however they all could be in some way restricted to three main groups.<sup>291</sup>

The most extreme solution, which would break all existing relations with the EU, was so called “No deal Brexit”. The supporters of this option wished to “liberate” the United Kingdom from all the agreements they had with the bloc and to “start everything over from the scratch”. That decision would come at the price of serious disruption of essential services, not to mention the negative impact on the economy. It was also called exiting on the WTO (World Trade Organization) rules, which are basic trading regulations around the world if no other agreements are in place. That would mean for British citizens paying additional £13.75 billion a year in tariffs and customs duties, effectively raising the prices for the products coming to the UK from the EU countries.<sup>292</sup> It would also make the British exporters less competitive across the European markets, due to the equivalent price increase in the other direction. It was also unclear what would happen with the British obligations to the European Budget. Avoiding those obligations could have very negative consequences in terms of possible economic repercussions and would be very undiplomatic and could ruin British reputation in the international relations across the world. On the other hand, breaking all the relations with the EU did not have any sense if the United Kingdom would have to continue contributing large amounts of money to the EU for several years. Together with the negative impact on the economy this solution would have been too much to pay for the privilege of regaining full national sovereignty. Eliminating by default, and by the Parliamentary vote<sup>293</sup>, two of the most extreme Brexit options, Theresa May was left with finding a solution in between, that would need to be negotiated and approved by the EU. The choice was, how much of the arrangements would be kept making the Brexit “softer” and which bond would have to be broken making it “harder”.

Most common ideology behind “Soft Brexit” was to formally exit the structures of the European Union, while remaining in the single market and European customs union to avoid the problem of the border on the island of Ireland and continue free trade with the EU. This solution

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<sup>291</sup> J. Kirby, *Theresa May and the EU have a Brexit deal. What's next?*, Vox 26 November 2018, <https://www.vox.com/2018/11/21/18102759/brexit-deal-theresa-may-parliament-second-referendum>.

<sup>292</sup> M. Ward, *Statistics on UK-EU trade*, Number CBP 7851, House of Commons Library 3 December 2021, <https://researchbriefings.files.parliament.uk/documents/CBP-7851/CBP-7851.pdf>.

<sup>293</sup> *Brexit: MPs vote to reject no-deal Brexit*, BBC News 14 March 2019, <https://www.bbc.com/news/uk-politics-47562995>.

was comparable to the agreement that Norway had with the EU, which meant full access but under condition of respecting EU laws and regulations without the privilege of the vote in their creation, which also included the budgetary participation.

“Hard Brexit” on the other hand was perceived as exiting all forms of collaboration with the EU, including the customs union, with the difference to a “No deal Brexit” in not doing so unilaterally, but in an agreement with the other EU, maintaining free trade and budgetary obligations. The problem with that solution was that the EU could not keep free trade with the country that would not agree to maintain the same standards on production, employment and in other areas, which could let them to unfairly undercut the competition from the other Member States. This solution would also impose a threat to the European Single Market, as all of the countries in the world could uncontrollably exploit the UK as an unregulated gate of free access to the European Market, which is why the EU would never allow for this kind of agreement. It was clear that leaving the customs would result in necessity of border checks, and since it was a very delicate issue for Ireland, it was an undesirable solution for whole Europe. At the same time EU most naturally did not want to let the United Kingdom to leave “victorious”, as it could set a precedent for the other countries with growing populism of Eurosceptic views. Essentially the EU did not want for the UK to withdraw at all, and they had all the leverage to negotiate the terms they needed to safeguard their fundamental principles. Theresa May has approached her negotiations of the withdrawal agreement by explaining the true meaning of the referendum result, with her slogan: “Brexit means Brexit”. In this way she did not anticipated what kind of agreement she would be looking for, but to define Brexit, as whatever agreement she would be able to achieve from the negotiations.

On 27 July 2016, European Commission has appointed its former Commissioner for Internal Market and Services, Michel Barnier to represent the EU as a Chief Negotiator in discussions regarding Brexit terms with the UKs negotiating team under David Davis. After a first round of talks Barnier has expressed the concerns about his counterpart’s commitment to the negotiations, since Davis was not directly involved during the discussions, he only appeared at the beginning and at the end of each session.<sup>294</sup> Jean-Claude Juncker, the European Commission

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<sup>294</sup> A. Sparrow, *MPs debate EU withdrawal bill as Barnier says UK's Brexit plans for Ireland unacceptable - Politics live*, The Guardian 7 September 2017, <https://web.archive.org/web/20171207044603/https://www.theguardian.com/politics/blog/live/2017/sep/07/eu->

President at that time, has advised his Chief Negotiator that technical discussions should be held only with a representative whom held a political mandate to do so and who would have the power to accept or deny possible requests. Davis's reluctant behavior towards the negotiations has made it even more difficult than it could be, if done with appropriate respect.<sup>295</sup>

On 2 October 2016 Theresa May has announced at the Conservative Party conference that she would trigger Article 50 of the EU Lisbon Treaty, which contained the mechanism for the eventuality of a Member State to leave the European Union. It was the first time in history that any country has officially considered exiting the bloc. Theresa May wished to set the process in motion by the end of March 2017 so the United Kingdom could be again “fully independent, sovereign country”. However, due to the lack of experience with this mechanism, it was forgotten that triggering the withdrawal process would require approval from the Parliament, which had to be ruled by the UK's High Court on 3 November and later confirmed by the Supreme Court. It was perceived by the tabloids in the UK as an attempt to stop or delay Brexit from happening, which led to accusations against the judges as the “enemies of the people”.<sup>296</sup>

On 7 December 2016, British Parliament has approved by 448 votes to 75 a not legally binding motion supporting the Government's timetable to trigger Article 50 and formally initiate the process of leaving the EU on condition, that the Prime Minister would reveal her plan for Brexit. Theresa May in her Lancaster House speech on 17 January 2017 has confirmed intentions of her Government to leave the European single market. She also suggested that “No deal” with the EU would be better than “a bad deal for Britain”, which would imply her attempt to leverage UK's negotiating position with a threat of extreme measure, that was well known to be most damaging and undesired by both sides. It was clearly false populist statement, a non-member of the Union, that does not live up to the same obligations all members, cannot have the same rights and enjoy the same benefits the members, so none of the Brexit solutions could be better than a

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withdrawal-bill-debate-repeal-bill-david-davis-michel-barnier-mps-being-debate-on-eu-withdrawal-bill-as-peers-claim-its-flawed-politics-live?page=with:block-59b11cc6e4b0fed267af1d6d.

<sup>295</sup> J. Stone, *Jean-Claude Juncker accuses David Davis of “jeopardising” Brexit talks*, Independent 7 September 2017, <https://www.independent.co.uk/news/uk/politics/brexit-negotiations-talks-jean-claude-juncker-david-davis-jeopardise-uk-eu-latest-a7934166.html>.

<sup>296</sup> C. Phipps, *British newspapers react to judges' Brexit ruling: “Enemies of the people”*, The Guardian 4 November 2016, <https://www.theguardian.com/politics/2016/nov/04/enemies-of-the-people-british-newspapers-react-judges-brexit-ruling>.

full membership, the same way it was clear from economic point of view that any deal would be better than a no deal disruption.<sup>297</sup>

However, constantly giving impression of the possibility to abandon further negotiations and set for a “No deal” solution, if their requests would not be satisfied, was the only strategy providing some leverage in the negotiations for the United Kingdom. Knowing the potential consequences gravely worst for Britain than for the EU, European Commission has duly called the British on their bluff, and just let the time run out.

On 1 February 2017 House of Commons has approved the second reading of the European Union (Notification of Withdrawal) Act 2017 by 498 votes to 114<sup>298</sup>, which received royal assent by 16 March 2017. This allowed Theresa May to unconditionally invoke Article 50 with a formal letter to the President of European Council, Donald Tusk<sup>299</sup>, delivered on 29 March 2017 by Tim Barrow, the Permanent Representative of the United Kingdom to the European Union. The time of delivery of the letter has set the formal date for Brexit on 29 March 2019, as the Treaty foreseen only two years of time for such situation, but it could be extended by mutual agreement.<sup>300</sup>

In response to the letter, Donald Tusk has proposed the European draft of negotiating guidelines on Brexit to the remaining 27 EU leaders on 31 March<sup>301</sup> to prepare for the upcoming negotiations. He has highlighted four main elements and fundamental principles, which in essence would focus on the damage control.

Firstly, it was absolutely necessary for the EU to settle the status and situation of the EU citizens in the UK after the withdrawal with reciprocal, enforceable and non-discriminatory guarantees.

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<sup>297</sup> P. Taylor, *Any Brexit deal is better than no deal*, Politico 15 October 2020, <https://www.politico.eu/article/any-brexit-deal-is-better-than-no-deal-fisheries-trade/>.

<sup>298</sup> Hansard, HC Deb, 1 February 2017, cc. 1136-1140, [https://hansard.parliament.uk/commons/2017-02-01/debates/5B0251FC-94E6-4216-8830-4F85E0EC2250/EuropeanUnion\(NotificationOfWithdrawal\)Bill](https://hansard.parliament.uk/commons/2017-02-01/debates/5B0251FC-94E6-4216-8830-4F85E0EC2250/EuropeanUnion(NotificationOfWithdrawal)Bill).

<sup>299</sup> *Prime Minister's letter to Donald Tusk triggering Article 50*, GOV.UK 29 March 2017, <https://www.gov.uk/government/publications/prime-ministers-letter-to-donald-tusk-triggering-article-50>.

<sup>300</sup> *EU Treaty, Art. 50, Withdrawal clause*, EUR-Lex, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:withdrawal\\_clause](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:withdrawal_clause).

<sup>301</sup> *Remarks by President Donald Tusk on the next steps following the UK notification*, European Council 31 March 2017, <https://www.consilium.europa.eu/en/press/press-releases/2017/03/31/tusk-remarks-meeting-muscat-malta/>.

Secondly, it was necessary to prevent a legal vacuum for European companies, as after Brexit the EU laws would no longer apply to the UK.

Thirdly, EU would need to make sure that the UK honours all financial commitments and liabilities it has taken as a Member State.

And finally, it was essential for the EU to support the peace process in Northern Ireland and so they required to find flexible and creative solutions, aiming to avoid hard border between Northern Ireland and the Republic of Ireland.

These four fundamental issues were together a part of the first phase of our negotiations for the EU, and they would not move to any further discussions on the withdrawal, unless sufficient progress would be achieved in those areas. Subsequently, the second step in the negotiations would be discussing the framework of the future relationship.<sup>302</sup>

EU would allow the UK to shift gradually out of the bloc, as long as the British would continue respecting the European rules on free migration and submit to supervision by the European Court of Justice.

<<Any transitional arrangements would have to be clearly defined, limited in time, and subject to effective enforcement mechanisms. (...) Any free trade agreement should be balanced, ambitious and wide-ranging. It cannot, however, amount to participation in the Single Market or parts thereof, as this would undermine its integrity and proper functioning. It must ensure a level playing field in terms of competition and state aid, and must encompass safeguards against unfair competitive advantages through, inter alia, fiscal, social and environmental dumping. (...) A single financial settlement should ensure that the European Union and the United Kingdom both respect the obligations undertaken before the date of withdrawal. The settlement should cover all legal and budgetary commitments as well as liabilities, including contingent liabilities. (...) In view of the unique circumstances on the island of Ireland, flexible and imaginative solutions would be

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<sup>302</sup> *Remarks by President Donald Tusk on the next steps following the UK notification*, European Council 31 March 2017, <https://www.consilium.europa.eu/en/press/press-releases/2017/03/31/tusk-remarks-meeting-muscat-malta/>.

required, including the aim of avoiding a hard border, while respecting the integrity of the Union legal order.>><sup>303</sup>

To strengthen her support in the House of Commons, on 18 April 2017 Theresa May has unexpectedly called for a general election in June, but her plan has backfired and as a result she has lost Conservative majority and was forced into a coalition with the Northern Irish Democratic Unionist Party (DUP) for a very narrow majority of only 2 seats in the House of Commons.

In order to provide for legislative continuity and end the jurisdiction of the European Court of Justice in the UK, Theresa May has introduced to the House of Commons on 13 July 2017 The European Union (Withdrawal) Bill, which would repeal of the European Communities Act from 1972, which allowed in principle the acceptance of European regulations. The Bill also known as "*Great Repeal Bill*" has passed through the Parliament on 20 June 2018 and received royal assent on 26 June 2018. It essentially imported and convert all of the European regulations and provisions into UK law, with effect of ending the authority of the European law from the date of British withdrawal on 29 March 2019, so those regulations could subsequently be amended, repealed or potentially improved in the future on a case-by-case basis by the British Parliament, however the worries were that it would allow the UK to erode workers' rights, environmental standards and other protections governed by the EU. According to Theresa May it was mostly about respecting people's decision and delivering on the promises to return trust in their politicians.

On 22 September 2017, during her speech in Florence<sup>304</sup> about the future UK-EU relationship, Theresa May has confirmed the UK would honour its budget commitments and has proposed a two-year transition period after the withdrawal. In November 2017 David Davis has faced the reality of the difficulties in the negotiations with the EU insinuating they were "putting politics above prosperity". He suggested that countries like Germany and France were harming their own economies, by blocking trade negotiations. He believed that the EU should agree to a

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<sup>303</sup> *European Council (Art. 50) guidelines for Brexit negotiations, European Council (Art. 50) guidelines following the United Kingdom's notification under Article 50 TEU*, European Council 29 April 2017, <https://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexite-guidelines/>.

<sup>304</sup> "PM's Florence speech: a new era of cooperation and partnership between the UK and the EU", Florence, Italy, GOV.uk, 22 September 2017 <https://www.gov.uk/government/speeches/pms-florence-speech-a-new-era-of-cooperation-and-partnership-between-the-uk-and-the-eu>

more comprehensive free trade deal with the UK than the EU has ever agreed before to any other country.<sup>305</sup>

His approach has started to irritate his own colleagues, especially after he provided to the Exiting the European Union Select Committee his reports regarding potential consequences of Brexit on main economic sectors, which were severely edited, therefore denying the access to full information<sup>306</sup>, which later when confronted by committee chairman Hilary Benn, Davis claimed the Government had not produced any impact assessments regarding economic implications for the UK after leaving the EU. Davis said there was no need for those assessments, as all economic models have been proven wrong in the past.<sup>307</sup>

David was suspended from his role of Chief Negotiator for Exiting the European Union in December 2017, and replaced with Prime Minister's Europe Adviser, Olly Robbins.

Subsequently after Theresa May's visit to Brussels, the negotiations have resumed with a major breakthrough on 8 December with a joint report, which has confirmed sufficient progress on four key issues and would be moving forward to the second phase about the future relationship between the UK and the EU in the upcoming new year. From stating that "No deal" would be better than a bad deal, Theresa May has changed her approach in the negotiations towards the compromise with the EU, as there have been substantial concessions made in major policy areas like free movement, budget contributions, the role of the European Court of Justice, trade and fishing rights, which has been noticed during her speech at Mansion House in London on 2 March 2018.<sup>308</sup>

On 19 March a "Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy

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<sup>305</sup> C. Cooper, *David Davis to EU: "Don't put politics before prosperity"*, Politico 16 November 2017, <https://www.politico.eu/article/david-davis-trade-brexit-to-eu-dont-put-politics-before-prosperity/>.

<sup>306</sup> A. Asthana, *David Davis at risk of contempt over Brexit reports, says Speaker*, The Guardian 28 November 2017, <https://web.archive.org/web/20171128164909/https://www.theguardian.com/politics/2017/nov/28/david-davis-risk-contempt-parliament-brexit-reports-speaker>.

<sup>307</sup> *Impact assessments of Brexit on the UK "don't exist"*, BBC News 6 December 2017, <https://www.bbc.com/news/uk-politics-42249854>.

<sup>308</sup> *Prime Minister Theresa May's speech on our future economic partnership with the European Union*, GOV.UK 2 March 2018, <https://www.gov.uk/government/speeches/pm-speech-on-our-future-economic-partnership-with-the-european-union>.

Community”<sup>309</sup> has been published with colour-coded text corresponding to the arguments that have either been agreed at negotiators' level and would only be subject to technical legal revisions in the coming weeks, which was most of the document and was coloured in green. In few pages of the document there was yellow-coded text where negotiators agreed on the policy objective but drafting changes or clarifications were still required. The rest of the document left in white, which was about 30 out of 120 pages, corresponded to text of the agreement proposed by the Union on which there were ongoing discussions. There was no agreement yet on the correct operational approach to the Northern Ireland's situation, but the negotiators agreed to urgently engage in the process of examination of all relevant matters.<sup>310</sup>

<<With respect to the DRAFT PROTOCOL ON IRELAND/NORTHERN IRELAND, the negotiators agree that a legally operative version of the “backstop” solution for the border between Northern Ireland and Ireland, in line with paragraph 49 of the Joint Report, should be agreed as part of the legal text of the Withdrawal Agreement, to apply unless and until another solution is found. The negotiators have reached agreement on some elements of the draft Protocol. They further agree that the full set of issues related to avoiding a hard border covered in the draft reflect those that need to be addressed in any solution.>>

On 6 July 2018 Theresa May has revealed to her Cabinet long awaited plan of the second phase of the negotiations for “the future relationship between the United Kingdom and the European Union”<sup>311</sup>, also called after the Prime Minister's country residence “Chequers plan”. It was built on her previously outlined policy of “managed divergence” from EU rules, but it described much “softer type of Brexit” than previously suggested, including a “common rulebook for all goods” to continued harmonisation with the EU. The plan also offered concessions regarding the role of the European Court of Justice in the UK-EU arbitration and it suggested facilitated customs arrangement in order to avoid a hard border in Northern Ireland, that would

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<sup>309</sup> *Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691366/20180319\\_DRAFT\\_WITHDRAWAL\\_AGREEMENT.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691366/20180319_DRAFT_WITHDRAWAL_AGREEMENT.pdf).

<sup>310</sup> *Ibidem*.

<sup>311</sup> *THE FUTURE RELATIONSHIP BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION*, HM Government Cm 9593, GOV.UK July 2018, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/786626/The\\_Future\\_Relationship\\_between\\_the\\_United\\_Kingdom\\_and\\_the\\_European\\_Union\\_120319.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/786626/The_Future_Relationship_between_the_United_Kingdom_and_the_European_Union_120319.pdf).

allow the UK to collect customs tariffs for the EU, which was later dismissed by Michel Barnier as illegal.<sup>312</sup>

This declaration of “soft” approach was badly received, especially by those advocating for hardest solution possible. The Brexiters desired to terminate the EU's freedom of movement into the UK and they believed that leaving the Customs Union and the Single Market would be the best way to realize that objective, but most of all, they wanted to end the jurisdiction of the European Court of Justice over the United Kingdom. Domestic dissatisfaction with the Prime minister’s plan has started the “domino effect” of resignations, initiated by the Brexit Secretary and suspended ex Chief Brexit Negotiator David Davis, who in protest against the “Chequers plan” has resigned on 8 July. His resignation was followed the next day by the Secretary of State for Foreign and Commonwealth Affairs Boris Johnson and by the end of the year 16 more ministers have resigned in relation to the Brexit developments. During the summit in Salzburg on 21 September 2018, Theresa May and her “Chequers plan” have met with a strong criticism from the European leaders, who described it as “cherry-picking” from the EU rules. According to the European Council President, Donald Tusk, it would risk “undermining the Single Market”. Furthermore, the EU leaders believed it would be much better for the Northern Ireland to remain in the European Customs Union. Theresa May reacted to those suggestions that neither she nor any British Prime Minister would ever agree to creating a customs border in the Irish Sea dividing the Northern Ireland and the Great Britain. She was later proven wrong on that statement by her successor.<sup>313</sup>

#### **4.1 Withdrawal agreement**

After two years in the office on 14 November 2018 Theresa May has managed to successfully negotiate a formal Withdrawal Agreement with the EU<sup>314</sup>, which was approved by all

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<sup>312</sup> A. Tidey, *Brexit: What went wrong with Theresa May's Chequers plan?*, Euronews 24 September 2018, <https://www.euronews.com/2018/09/24/brexit-what-went-wrong-with-theresa-may-s-chequers-plan>.

<sup>313</sup> L. O'Carroll, *The "Irish Sea border": what does it mean for GB business?*, The Guardian 16 October 2019, <https://www.theguardian.com/politics/2019/oct/16/the-irish-sea-border-what-does-it-mean-for-businesses-brexit>.

<sup>314</sup> *PM's statement on Brexit: 14 November 2018*, GOV.UK, <https://www.gov.uk/government/speeches/pms-statement-on-brexit-14-november-2018>.

EU Member States and signed at a summit in Brussels on 25 November. The withdrawal agreement included:

- Britain's financial settlement with the EU to meet agreed commitments,
- post-Brexit rights of EU citizens in the UK and British citizens in EU Member States,
- a "backstop" mechanism to prevent a "hard border" on the island of Ireland,
- agreement provided for a transition period, in which British Government could implement the necessary changes to become independent outside the EU,
- and a seven-page long, non-binding political declaration describing the mutual ambitions for future trading relationship, which would yet have to be negotiated.<sup>315</sup>

In order to achieve this agreement, Theresa May has adapted her Brexit plan to keep the entire United Kingdom inside the European Customs Union, which would resolve the controversial Irish Sea border, as a consequence of the Northern Ireland's "backstop". The EU insisted on the "backstop" to be the part of the withdrawal agreement, to avoid any border between the Republic of Ireland and Northern Ireland, which would have to be implemented unless the Free Trade Agreement would be signed by both sides before the end of the transition period on 31 December 2020, which was highly unlikely at that time.<sup>316</sup>

The agreement to come into force would have to be approved by the British Parliament. The first vote in the House of Commons on the agreement was scheduled for the 11 December, however it had to be postponed due to the lack of support for the Prime Minister, who instead has faced a vote of no confidence as a leader of the Conservative Party. She has managed to convince 200 of her colleagues out of 317, to maintain the stability of the Parliament and the UK, by voting in her favour in those decisive moments of the Brexit negotiations, with a promise to resign from her position before the next general election. A series of compromises necessary to ensure the stability of the process made by Theresa May did not satisfy as easily the members of the British

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<sup>315</sup> *Special meeting of the European Council (Art. 50), 25 November 2018*, [consilium.europa.eu/en/meetings/european-council/2018/11/25/](https://consilium.europa.eu/en/meetings/european-council/2018/11/25/).

<sup>316</sup> *Brexit: No withdrawal agreement without a "backstop" for the Northern Ireland/Ireland border*, European Parliament News 27 July 2018, <https://www.europarl.europa.eu/news/en/press-room/20180727IPR08701/brexit-no-withdrawal-agreement-without-a-backstop-for-the-irish-border>.

Parliament. As a result, May's deal has been rejected by the opposition on three occasions in the House of Commons.<sup>317</sup>

On 15 January 2019 May's Government loses the first "meaningful vote" in parliament on her Brexit deal, by 432 votes to 202<sup>318</sup>, which became the worst parliamentary defeat any Government has ever suffered in the UK's history. Theresa May under the pressure of the Parliament had to go back to Brussels on 30 January in pursuit of an "alternative arrangement" to the Irish backstop, however she has returned empty-handed as the EU leaders remained coherent with their position and unmoved by May's difficulties in her own Parliament. They rejected any possibility of changes to the agreement that has already been made, after many hours of difficult negotiations, and they replied announced this was the final and only agreement they would allow. Following this rejection and the statement by the UK's General Attorney, that the backstop could not be unilaterally removed from the agreement, May's Government suffers a second meaningful vote defeat over the Agreement on 12 March 2019, this time only 242 MP's were in favor of the deal and 391 have opposed it.<sup>319</sup>

With the time running out before the date of formal exit established for the 29 March and the firm position of the EU leaders, Theresa May has scheduled another meaningful vote for her agreement with the EU in the House of Commons on 19 March, but it has been postponed by the House Speaker John Bercow<sup>320</sup>, who on the basis of the long-lasting British law has declared that the same motion, and in this case the request to accept the Withdrawal Agreement, could not be introduced anymore for a vote, unless it would present with some substantial changes. At the same

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<sup>317</sup> M. Thimont Jack, *Parliament's 'meaningful vote' on Brexit*, Institute for Government 18 February 2020, <https://www.instituteforgovernment.org.uk/explainers/parliament-meaningful-vote-brexit>.

<sup>318</sup> C. Cooper, *Historic defeat for Theresa May on Brexit vote*, Politico 15 January 2019, <https://www.politico.eu/article/brexit-deal-rejected-by-432-votes-to-202-2/>; Hansard, HC Deb 15 January 2019, Vol. 652, cc. 1122-1125, [https://hansard.parliament.uk/commons/2019-01-15/debates/2504FA7B-45BE-423D-8971-E451EF0594A9/EuropeanUnion\(Withdrawal\)Act](https://hansard.parliament.uk/commons/2019-01-15/debates/2504FA7B-45BE-423D-8971-E451EF0594A9/EuropeanUnion(Withdrawal)Act).

<sup>319</sup> *Brexit: MPs reject Theresa May's deal for a second time*, BBC News 13 March 2019, <https://www.bbc.com/news/uk-politics-47547887>; Hansard, HC Deb 12 March 2019, Vol. 656, cc. 291-295, [https://hansard.parliament.uk/commons/2019-03-12/debates/5F35A04D-1C6E-4D7D-87B6-C06EE8AEE3F5/EuropeanUnion\(Withdrawal\)Act](https://hansard.parliament.uk/commons/2019-03-12/debates/5F35A04D-1C6E-4D7D-87B6-C06EE8AEE3F5/EuropeanUnion(Withdrawal)Act).

<sup>320</sup> *Third Brexit vote must be different - Speaker*, BBC News 18 March 2019, <https://www.bbc.com/news/uk-politics-47614074>.

time Michel Barnier, EU's chief Brexit negotiator, have asked EU member states to "finalise all preparations for a no-deal scenario".<sup>321</sup>

In this situation, MPs have voted to avoid exiting without a deal under any circumstances and forced Theresa May to request an extension to the Brexit date and delay UK's departure until 30 June, but on condition that there would be a deal agreed by the Parliament. The Prime Minister was not happy with the "political games" of her own Parliament, and neither were the EU leaders, who have made two counterproposals of the Brexit deadline, which would be 12 April if the British Parliament would not accept their deal, or until 22 May, on condition that the agreed deal would be passed in the House of Commons. This date was selected in the forthcoming European Parliamentary elections scheduled to begin the day after.<sup>322</sup>

On 23 March nearly one million of pro-European demonstrators have marched across London to demand a second referendum on the UK's membership or revoking Article 50 and cancelling Brexit, which in a petition to the Parliament has been signed by almost 5 million people at that time. Meanwhile, the risk of leaving without a deal was "increasingly likely" according to the European Commission as they completed their preparations for such an outcome. On 25 March the British Parliament has passed an amendment to the Brexit motion, that enabled it to seize control of the House of Commons agenda and allowed for consideration of alternative solutions to the May's Brexit deal. During the first round of "indicative votes" on 27 March, they have failed to agree on any different Brexit solution.<sup>323</sup>

On 29 March 2019, the previously expected date of Brexit, a third vote took place in the House of Commons on the Government's EU withdrawal Agreement negotiated by Theresa May, only this time to provide "substantial changes" requested by the Speaker, it underwent some cosmetic rearrangements and was presented without the seven pages of the non-binding political declaration on the future trading relationship included previously. Prime Minister also added that she would step down if the Parliament would approve her deal. Yet again, the deal suffered a defeat

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<sup>321</sup> E. Beswick, "Finalise all preparations for a no-deal scenario," says EU's Barnier, Euronews 19 March 2019, <https://www.euronews.com/2019/03/19/barnier-tells-eu-to-finalise-all-preparations-for-a-no-deal-scenario>.

<sup>322</sup> *European Council (Art. 50)*, 21 March 2019, <https://www.consilium.europa.eu/en/meetings/european-council/2019/03/21/art50/>.

<sup>323</sup> Hansard, HC Deb 27 March 2019, Vol. 657. cc. 458, [https://hansard.parliament.uk/commons/2019-03-27/debates/23130CF5-9C4C-4C35-835C-0AC5F6B74F89/EUWithdrawalAndFutureRelationship\(Votes\)](https://hansard.parliament.uk/commons/2019-03-27/debates/23130CF5-9C4C-4C35-835C-0AC5F6B74F89/EUWithdrawalAndFutureRelationship(Votes)).

by a margin of 58 votes (344 to 286).<sup>324</sup> In this decisive moments of the process, British Parliament has failed to agree on any solution of the Brexit implementation, including possibility of the second referendum that received the support of more than 6 million citizens, and was not able to provide any acceptable alternative proposals during the second round of indicative votes. In the beginning of April 2019, Theresa May, in an attempt to achieve some positive results, has announced she would be willing to collaborate with the leader of the Labour Party and the opposition, Jeremy Corbyn, which made her even less popular among the Brexiteers. The first meeting of the two leaders on 3 April has been described by Corbyn as "useful but inconclusive".<sup>325</sup> Instead of providing practical solutions, this strategy has led to further ministerial resignations and under the public pressure Labour Party has declared themselves in favour of repeating the referendum, which would either cancel the Brexit struggles or confirm that it was what the citizens actually voted for in the first place.

To prevent the negative consequences of the Parliaments hesitancy and inability to decide on the favourable Brexit agreement, which could lead to exiting the EU without any deal, the House of Commons by one vote has supported a Bill of Labour's Yvette Cooper to force the Prime Minister to seek a further delay of the Brexit deadline, and so Theresa May once again requested the extension until 30 June, consciously it would mean participating in the European elections.

Considering that not securing the deal would be also damaging to the interest of the European Union, and to Ireland in particular, after a suggestion made by the President of European Council, Donald Tusk, the United Kingdom has been given a flexible extension of the Brexit deadline until 31 October, maintaining full rights and obligations of the membership, but it could end earlier in case the UK would accept the agreement before that date.<sup>326</sup>

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<sup>324</sup> Hansard, HC Deb 29 March 2019, Vol. 657. cc. 771-775, <https://hansard.parliament.uk/commons/2019-03-29/debates/1EB3876B-BE27-4EBB-9FB5-EEAC71BA8BCE/UnitedKingdomSWithdrawalFromTheEuropeanUnion>

<sup>325</sup> *Jeremy Corbyn says Theresa May meeting was "useful" but "inconclusive"*, SkyNews 3 April 2019, <https://news.sky.com/video/corbyn-there-was-no-deal-offered-11683399>.

<sup>326</sup> *Special European Council (Art.50), 10 April 2019*, <https://www.consilium.europa.eu/en/meetings/european-council/2019/04/10/>.

## 4.2 European Elections and success of Nigel Farage's "Brexit Party"

As a result of the failure to agree on the conditions for leaving the EU, Brexit was gradually postponed with the hope of finding a different strategy and the United Kingdom had to participate for the last time in the European elections. In the meantime, during the discussions about the significance and appropriate terms for Brexit, a new populist party has been created by the ex-leader of the UKIP, Nigel Farage. He took advantage of the hesitance of the mainstream political parties and arose with the sole political policy and purpose of delivering as hard Brexit as possible, including possibility of exiting without any agreements with the EU.

The European election results were deeply influenced by voters' position of the British withdrawal from the EU, with the effect of extensive victory to Nigel Farage's Brexit Party<sup>327</sup>, which gained a little over 30% of the British votes, and strong support to pro-European parties (Liberal Democrats 20% and Greens 12%), while the Conservatives Party were annihilated and reduced their vote share to less than 9%. Labour Party has lost a lot of support as well, due to their vague and evasive position towards Brexit. The falling support and the lack of alternative solutions have led Theresa May to step down as a Prime Minister and was replaced on 23 July by Alexander Boris de Pfeffel Johnson, her previous ex-Secretary of State for Foreign and Commonwealth Affairs, who has led the "leave vote" campaign to victory during the Brexit referendum.<sup>328</sup>

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<sup>327</sup> 2019 European election results, <https://www.europarl.europa.eu/election-results-2019/en/united-kingdom/>; P. Pangalos, *Nigel Farage's Brexit Party biggest winner in UK's Euro election vote*, Euronews 22 October 2019, <https://www.euronews.com/2019/05/27/nigel-farage-s-brexit-party-biggest-winner-in-uk-s-euro-election-vote>.

<sup>328</sup> *Boris Johnson Wins Contest to Become New U.K. Prime Minister*, Time 23 July 2019, <https://time.com/5632412/boris-johnson-prime-minister-uk/>; S. Lyall, S. Castle, *Boris Johnson Becomes U.K. Prime Minister, Replacing Theresa May*, The New York Times 24 July 2019, <https://www.nytimes.com/2019/07/24/world/europe/britain-johnson-may-prime-minister.html>; *Boris Johnson replaces Theresa May as the UK's new prime minister*, BBC News 25 July 2019, <https://www.bbc.com/news/in-pictures-49098630>.

## CHAPTER V

### Boris Johnson's Government

Johnson's premiership has taken Brexit negotiations into much harder direction, raising the likelihood that the UK will leave the EU without a withdrawal deal in the autumn. A strongly pro-Brexit Cabinet has been chosen in an unprecedented shake-up of the British Government, and preparations for a no-deal scenario have been announced. Boris was determined to win back the support lost by the Conservatives during the Government of Theresa May by delivering on the referendum result and he declared there will not be any more extensions to the Brexit deadline.

<<The people who bet against Britain are going to lose their shirts because we're going to restore trust in our democracy. And we are going to fulfil the repeated promises of Parliament to the people and come out of the EU on October 31, no ifs or buts.>><sup>329</sup>

In August Boris Johnson issued a formal request to the EU in order to eliminate the unpopular Irish backstop from the withdrawal agreement, which was one of the reasons of his resignation from the May's Government. Considering that the issue of the Irish border was a crucial element of the European position in the negotiations, it was hardly a surprise that the EU has rejected that demand. Once again British Prime Minister has reached to the strategy of threatening with the possibility of the "no deal Brexit" by advising the Queen to prorogue the Parliament and suspend it for five weeks, so the opposition could not "disturb" with Johnson's strategy, however there was also a strong disapproval towards his strategy within his own Party. Twenty-one Conservative MPs were expelled from the party after voting in protest against the Government, nevertheless the Parliament has managed to pass the "Benn Bill", which became law on 9 September, that prohibited the United Kingdom from leaving the European Union without Parliament's consent. On 24 September the British Supreme Court ruled unanimously that the Johnson's suspension of Parliament was unlawful, and the House of Commons formally reopened for business.<sup>330</sup>

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<sup>329</sup> *Boris Johnson's first speech as Prime Minister: 24 July 2019*, GOV.UK, <https://www.gov.uk/government/speeches/boris-johnsons-first-speech-as-prime-minister-24-july-2019>.

<sup>330</sup> O. Bowcott, B. Quinn, S. Carrell, *Johnson's suspension of parliament unlawful, supreme court rules*, The Guardian 24 September 2019, <https://www.theguardian.com/law/2019/sep/24/boris-johnsons-suspension-of-parliament-unlawful-supreme-court-rules-prorogue>.

At the end of September, during the Conservative Party Conference, Johnson initiated his rebranding with a new catchy slogan: “Get Brexit done”. His Government presented in Brussels with their counterproposals of the withdrawal agreement, in attempt to remove the unwanted “backstop”, and once again gets rejected by the EU. The new strategy in appearing actively interested in resolving the matter and just “get Brexit done”, while blaming the EU for the lack of results an unwillingness to compromise, has managed to regain some public support for the Prime Minister in the UK. The negotiations between the UK and the EU have intensified and on 17 October a new Brexit deal, was announced. The new deal, regardless of how the Prime Minister was describing it to the public, has replaced the backstop with the Northern Ireland Protocol, which stated that Northern Ireland would remain controlled by the EU regulations on goods, which in practice has shifted the necessity of the border customs checks from the land border to creating separation between Northern Ireland and the rest of Great Britain across the Irish Sea. This deal, however, yet again was not approved by the British Parliament, as there was not enough time to establish necessary laws for applying the conditions of this agreement. This decision has formally forced Boris Johnson to request another delay for Brexit against his previous declarations that he would rather be “dead in the ditch” than ask for further extension. The EU has formally agreed for additional flexible extension of the Brexit deadline until 31 January 2020. The legislation on the new agreement has been suspended and the House of Commons has approved an early general election in December, while Ursula von der Leyen has replaced Jean-Claude Juncker as the new President of the European Commission and Charles Michel became the President of the European Council after Donald Tusk.<sup>331</sup>

On 12 December 2019, British Prime Minister, Boris Johnson in the general election has secured 365 seats in the Parliament<sup>332</sup>, by promising to “get Brexit done” with his “oven ready” deal.<sup>333</sup> The political rhetoric behind the catchy slogans, claimed that after four and a half years of

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<sup>331</sup> J. Stone, *Ursula von der Leyen elected as next EU Commission president replacing Jean-Claude Juncker*, Independent 16 July 2019, <https://www.independent.co.uk/news/world/europe/ursula-von-der-leyen-elected-eu-commission-president-new-views-germany-brexit-army-a9007466.html>; *Charles Michel takes over from Donald Tusk as President of the European Council*, 29 November 2019, <https://www.consilium.europa.eu/en/european-council/former-euco-presidents/summary-of-donald-tusk-presidency/news/20191129-handover-pec/>.

<sup>332</sup> *General Election 2019: full results and analysis*, Number CBP 8749, House of Commons Library 28 January 2020, <https://researchbriefings.files.parliament.uk/documents/CBP-8749/CBP-8749.pdf>.

<sup>333</sup> *2019 Conservative Party Manifesto*, <https://www.conservatives.com/our-plan/conservative-party-manifesto-2019>.

uncertainty, debating pros and cons of the Brexit itself, the public has lost its interest in this endless process. And rightly many got tired of continuously changing deadlines, policies and preparations for different potential conditions to the post Brexit reality, especially in the event of possible no-deal disruption, but perhaps that was the plan to annoy everybody, so that whatever got finally agreed, wouldn't meet much opposition.

Even though Conservatives gained 48 more seats than they had before, it didn't reflect quite the same in the overall support for Brexit, as they claimed. In terms of popular vote only 43,6% of the electors has supported the Conservative Party, which is far less than those who voted to leave the EU in the first place, and even 2 million votes less than were actually against any form of Brexit at all. But within the British voting system that was more than enough to win an 80-seat majority for its government, and by association claim the support for their Brexit plans.

Unfortunately, those plans for a fast and easy solution were never revealed in detail, which makes wonder if they ever existed. After general election it took another year of very difficult and turbulent negotiations between the UK representatives and their EU counterparts, led by Michel Barnier for the EU and David Frost for the UK, to secure the final trade deal, which presumably was supposed to be "oven ready". Facing accusations of lying again to the public, the rhetoric shifted to explain that it has been misunderstood and the "oven ready deal" Boris Johnson was referring to in his campaign was really the withdrawal agreement to leave the EU, which was already half passed through Parliament at the time of elections, and not the Trade Deal between the UK and the EU, that still had to be negotiated. And just a week before the ultimate deadline of the transition period, on 24<sup>th</sup> December 2020, This New Trade and Cooperation Agreement has been reached two people in charge, British Prime Minister - Boris Johnson and President of the European Commission – Ursula von der Leyen, at a negotiation level.<sup>334</sup>

With this last-moment announcement, the United Kingdom has "took back control" of its borders and sovereignty but didn't leave much time to examine and ratify the agreement before its

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<sup>334</sup> *EU-UK Trade and Cooperation Agreement: protecting European interests, ensuring fair competition, and continued cooperation in areas of mutual interest*, European Commission 24 December 2020, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2531](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2531); *TRADE AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, OF THE OTHER PART*, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/948119/EU-UK\\_Trade\\_and\\_Cooperation\\_Agreement\\_24.12.2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf).

actual implementation. Nevertheless, the Agreement would formally allow orderly exit of the Great Britain and Northern Ireland from the European Customs Union and the Single Market. While it might seem politically convenient for the leader to arrive at the last moment to save the day, and the whole country, from what would be the worst-case scenario, and even though it broke the negotiating protocol to bypass their negotiating teams, it was more important for both sides to achieve the agreement, rather than maintain the etiquette that would lead to unwanted outcome.

From the beginning of the Brexit negotiations, the majority of British Parliament, on different occasions, has rejected their support for the “no-deal” solution, as it was clearly most disruptive and most damaging to both economies, as well as potentially dangerous to some communities. With this in mind and looking at the negotiations from the side as an independent observer, it was difficult to comprehend, why the negotiating teams could not accord sooner any compromise for the greater good and stability.

However, in retrospect, it was probably planned from the beginning to run down the clock. Bluffing readiness to leave the negotiating table without the agreement, to add more pressure to the other side of the negotiations, and to agree to inevitable compromise only at the very end. This way, there was no more time to renegotiate or postpone the deadline, and the Deal was presented in Parliament, as the only solution available. The Bill received overwhelming Parliamentary support on the 30<sup>th</sup> of December 2020, with 521 MPs voting in favor and only 73 against it.<sup>335</sup>

With that kind of short notice, it is likely that most of the MPs didn't have sufficient time to familiarize with every part of this over 1250 pages long document<sup>336</sup>, before they ratified the Agreement. The Minister of Fisheries, Victoria Prentis admitted that she didn't even read the Bill before she voted for it. Even most of the opposition voted for this deal, but only because in the word of the Labour leader Keir Starmer: <<a thin deal is better than no deal>><sup>337</sup>. This presumes that at this stage, literally any deal would be accepted just to avoid not having any partnership with the EU. This brings up often repeated problem in the democracy as we often end up voting for the

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<sup>335</sup> Hansard, HC Deb 30 December 2020, Vol. 686, cc. 589-593, [https://hansard.parliament.uk/commons/2020-12-30/debates/9E132CEF-83CA-40BA-B8B4-A7127A968B68/EuropeanUnion\(FutureRelationship\)Bill](https://hansard.parliament.uk/commons/2020-12-30/debates/9E132CEF-83CA-40BA-B8B4-A7127A968B68/EuropeanUnion(FutureRelationship)Bill).

<sup>336</sup> *TRADE AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, OF THE OTHER PART.*

<sup>337</sup> *Starmer on Brexit treaty: "A thin deal is better than no deal"*, BBC News 30 December 2020, <https://www.bbc.com/news/av/uk-55485966>.

lesser evil and hardly ever for the greater good. It also directly contradicts some of the previous statements of the most radical Brexiters like Nigel Farage, who has made his slogan from the words of Theresa May, that “no-deal is better than a bad deal”<sup>338</sup>, but in this case even Farage agreed that in this particular situation, he would vote “in principal” for this agreement, without even reading it.<sup>339</sup>

## 5.1 Britain’s final trade agreement with the EU

The EU waited four months before voting on The Agreement, which should mean they took necessary time to evaluate it and on 28 April 2021 the European Parliament confirmed with 660 votes out of a total of 697 ratification of The Treaty<sup>340</sup>. Such a big support for the TCA was not a blind vote of confidence in the British Government's intention to implement the agreements in good faith, but rather a guarantee against further attempts of making unilateral deviations from what has been mutually agreed, and to provide some legal certainty.

After its final ratification by the European Parliament the Trade and Cooperation Agreement came officially into force on 1st May 2021. In the meantime, it was applied provisionally from the 1<sup>st</sup> of January 2021. The UK-EU Trade and Cooperation Agreement (TCA) brings some important, far-reaching, and unavoidable changes to the relationship between the two parties. Brexit comes with a high price for Great Britain, as they let their Government to strip them of their benefits of a member state, in particular the freedom of movement for goods, services, capital, and most of all people. Leaving the European Customs Union and the Single Market, created two distinct economic areas with different legal regulations. In this sense it is not a free trade at all, it is just unlimited in quantities and it is not taxed to prevent paying the price by the

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<sup>338</sup> A. Rao, *Brexit: “No deal is better than a bad deal” says Theresa May - video*, The Guardian 21 September 2018, Source: Reuters, <https://www.theguardian.com/politics/video/2018/sep/21/brexit-no-deal-is-better-than-a-bad-deal-says-theresa-may-video>.

<sup>339</sup> M. Vincent, *“The war is over”: Nigel Farage says he would vote for Brexit deal “in principle” if he was an MP as UK signs historic trade agreement with the EU*, Mail Online 24 December 2020, <https://www.dailymail.co.uk/news/article-9086073/The-war-Brexit-Party-leader-Nigel-Farage-declares-victory-Boris-Johnson-seals-deal.html>.

<sup>340</sup> *Parliament formally approves EU-UK trade and cooperation agreement*, European Parliament News 28 April 2021, <https://www.europarl.europa.eu/news/en/press-room/20210423IPR02772/parliament-formally-approves-eu-uk-trade-and-cooperation-agreement>.

customers. The TCA is clear that there will have to be checks on everything and everyone crossing the border between UK and EU. That means more paperwork to fill every time and much longer time for delivery.

TCA itself was structured into few macro areas of mutual interest, which are:

- Free, fair, and sustainable trade
- Connectivity, sustainability, and shared opportunities
- Citizens security
- Horizontal EU-UK governance framework for a lasting cooperation

It provides for zero tariffs and zero quotas on all goods that comply with the appropriate rules of origin, which means the conditions apply only to the products provided with appropriate documentation of provenience and destination. That is necessary to protect the internal market from the unfair competition of products that don't respect safety standards. Both the UK and the EU immediately announced the trade deal, but from very different perspectives. They have focused on the parts of the deal that were considered beneficial for their side and emphasized achieving their objectives or electoral promises, which confirms it was always about the optics.<sup>341</sup>

### **5.1.1 The EU position: President of the European Commission Ursula von der Leyen**

The European Union published a clear check list of differences this Deal has in respect of the full EU membership in the key areas of interest: trade in services, air transport, road transport, energy and EU programmes, that before Brexit have been covered by common policies and cooperation. Among all of those sections, only one particularly stand-out in green color as the only argument actually agreed to be continued as it was before, which was a continuation of "free" trade between both parties. But without the customs union, there would have to be established custom

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<sup>341</sup> Prime Minister's statement on EU negotiations: 24 December 2020, GOV.UK, <https://www.gov.uk/government/speeches/prime-ministers-statement-on-eu-negotiations-24-december-2020>; *EU-UK RELATIONS: Big changes compared to benefits of EU membership - Checklist*, European Commission 24 December 2020, [https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement\\_en](https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en).

controls on the goods traded, with the country of origin as one of the most important aspects that would have to be controlled from now on. That is necessary to prevent the third-party goods coming through the UK to the common market and undercutting European producers with lower prices achieved by lower quality standards.

What strikes the eye at the first impact is not what is included in this Trade Deal but the emphasis on what privileges are being lost, which is understandable to preserve the Union and make sure no other member state follows the British example. But it is also important to report those losses as this is an unprecedented event in history of trade deal negotiations from the complete level of integration and regulation alignment, to keeping only few areas of mutual cooperation.

TCA provides for zero tariffs and zero quotas on all goods that comply with the appropriate rules of origin, which means the conditions apply only to the products provided with appropriate documentation of provenience and destination. That is necessary to protect the internal market from the unfair competition in form of third countries potentially using Great Britain as an entrance to the European Market without applying same rules and high standards.

It is convenient to highlight that no tariffs on trade goods is more beneficial to the EU which has a positive trade balance with the UK in goods, exporting more to the Great Britain than importing from it. In the contrary, in case of the financial services, there is a big advantage in favor of Great Britain, and for that reason, British Government didn't want it to be regulated in any way by the European legislation and were left out of this Agreement.<sup>342</sup>

President of the European Commission, Ursula von der Leyen, gave a speech, expressing her satisfaction and relief about managing to secure this Agreement that from her perspective it was “worth fighting for” and now, finally Europe will be able to “look into the future and move on”. But as we know the Brexit drama is far from being really over. She assured that with the Deal there will be protection for the high quality and standards in the trade. Respect for EU regulations and tools to maintain fair competition. It will also safeguard the areas of mutual interest like battling against climate change. Then she mentioned the topic that became the symbolic thorn, holding up the whole agreement until a week before the end of the transition period. The Fisheries.

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<sup>342</sup> A. Stojanovic, G. Wright, *UK–EU future relationship: financial services*, Institute for Government 16 August 2021, <https://www.instituteforgovernment.org.uk/explainers/future-relationship-financial-services>.

She was glad to announce, that with this Deal, they have secured five and a half years of predictability for the European fishing communities, to continue fishing in the British waters.

John Bruton, the former Prime Minister of the Republic of Ireland, commented on the Agreement that in his believe United Kingdom would pay for taking back control over the island of Britain, at the price of losing it in the Northern Ireland<sup>343</sup>. He was obviously referring to the customs border that would separate from now on the Northern Ireland from the rest of the UK and potentially lead to the reunification of Ireland, as this distinction was raising concerns about the internal unity if Great Britain, that could lead in future to the independence of the Northern Ireland and potentially Scotland as well, from London.<sup>344</sup>

### **5.1.2 The UK position: Prime Minister Boris Johnson**

Boris Johnson was much more enthusiastic about the benefits he provided for his country with this as he called it “Jumbo, Canada-style Trade Deal”, which is known as Comprehensive Economic and Trade Agreement (CETA), negotiated recently between the EU and Canada. According to his speech it was the biggest trade deal his Government has completed since officially leaving the EU on 31<sup>st</sup> January 2020, worth 660 billion pounds a year (30-33% of British GDP 2019-2020)<sup>345</sup>. It seemed like a declaration of gaining this huge benefit to the British economy. In reality, that is a value of maintained trade already existing and only secured from the possibility of “no deal Brexit”, which would happen if this agreement wasn’t reached.

He claimed the Deal will protect jobs and allow goods to be sold without tariffs and quotas, and even more business relations than before, as instead of the non-tariff barriers, he visioned the opportunity to trade on the same terms with the whole world. Free trade means there will be no tariffs or limitations on the quantity of the trade, but it doesn’t mean there are no other non-tariff barriers at all. Unfortunately for the British exporters, leaving the customs union, means more

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<sup>343</sup> *John Bruton: UK ministers need to read the NI protocol they signed*, The Irish Times 7 July 2021, <https://www.irishtimes.com/opinion/john-bruton-uk-ministers-need-to-read-the-ni-protocol-they-signed-1.4613290>.

<sup>344</sup> *Brexit: The Future of Northern Ireland and Scotland*, Council on Foreign Relations 15 October 2021, <https://www.cfr.org/event/brexit-future-northern-ireland-and-scotland>.

<sup>345</sup> *Prime Minister's statement on EU negotiations: 24 December 2020*, GOV.UK.

paperwork and longer delivery time, as there will have to be some checks made. We all know the time is money, so the delays in transportation, because of the necessary controls, the time to fill the exporting declarations, plus the cost of the software and paper itself, which will at least double, it all will slowly weight on the final profit margins or the final price of the products.

That simply reduces the competitiveness of the company and it's more likely it will reduce the amount of the British export, rather than give it a possibility to grow, but for now it is hard to measure because of the Covid-19 pandemic, that together with Brexit effects, has reduces UK's business investments by 30% and dropped British GDP last year by almost 10% with the loss of 214 billion pounds between 2019 and 2020.<sup>346</sup>

And as far as protecting jobs, taking into consideration only the impact of the Deal, it has created potential jobs for the customs officers and workforce to manage necessary paperwork, but other than that it simply protects the jobs that would have been otherwise lost if there were no deal achieved at all. Afterwards in his speech, Boris Johnson emphasized regaining the control over British law and the end of the European Court of Justice jurisdiction with this deal, which would allow setting their own standards and freely innovate in biosciences, artificial intelligence, and financial services. Those last are very important, since London is one of the biggest financial centers in the world and it provided those services to the rest of the European Union, which now very likely will differ from the regulations followed so far. In fact, as reported by the London Economic portal, the well-known financial services sector has suffered a major employment crisis, as many London traders are forced to relocate to the European cities like Frankfurt, Paris, Dublin or Milan or face pay cuts and even lose their jobs.<sup>347</sup>

In the past, banks used London as a hub to “passport” their financial services into the continent. But now they have moved or are planning to move to the EU more than 900 billion pounds in assets, which is about 10% of the entire UK's banking system.<sup>348</sup>

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<sup>346</sup> D. Clark, *Gross domestic product of the United Kingdom from 1948 to 2021*, Statista 31 Mar 2022, <https://www.statista.com/statistics/281744/gdp-of-the-united-kingdom/>; N. Davies, *Brexit, two years on – so far, so bad*, Investment Monitor 31 January 2022, <https://www.investmentmonitor.ai/analysis/two-years-brexit-uk-eu>.

<sup>347</sup> S. Butcher, *Bank by bank, here's where the London jobs are post-Brexit*, eFinancial Careers 16 April 2021, <https://www.efinancialcareers.com/news/finance/brexit-banks-moving-out-of-london>.

<sup>348</sup> S. Butcher, *Bank by bank, here's where the London jobs are post-Brexit*, eFinancial Careers 16 April 2021.

Companies like JP Morgan, The Goldman Sachs, Nomura, Morgan Stanley, and Deutsche Bank among many others experienced difficulties and decided to move some of their employees and assets to the EU in order to keep their access to the European market after Brexit. British tabloids blame eurocrats for this situation, but Brexit has always been a British Governments choice from the beginning, and there shouldn't be anyone else to blame for its consequences.

Finally, delivering on his campaign promises, Boris Johnson declared that after reasonable in his view period of 5,5 years, in which UK will slowly increase its share is the fishing quotas, Great Britain for the first time since joining the common market will be again an independent coastal state with full control of its waters. And that was the key point of his speech because the main issue ultimately holding back any progress in the last year of negotiating the Trade Deal, were always the fisheries. Michel Barnier referred to this issue in the European Parliament saying: “nothing is agreed, until everything is agreed”<sup>349</sup> only a week before the Deal, confirming it was the most difficult part of the negotiations to settle. This relatively small industry became symbolic in the Brexit process, as one little area of interest that was blocking entire Agreement. It was never an economic issue, but a political question of sovereignty and optics to appear as the winning side in the negotiations.<sup>350</sup>

### 5.1.3 The fisheries

The “Sustainable fisheries for future generations” report, published in July 2018<sup>351</sup>, found that all European vessels were fishing in average 760k tonnes of fish per year in period between 2012 and 2016, while at the same time British vessels only got about 90k tonnes of fish from the European waters. This imbalance naturally seemed unfair and regaining control of the British fish became a principal.

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<sup>349</sup> European Commission recommends to the European Council (Article 50) to find that decisive progress has been made in Brexit negotiations, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_6424](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_6424).

<sup>350</sup> *Fisheries should not block a Brexit deal*, Financial Times 1 December 2020, <https://www.ft.com/content/952b33d2-269d-4ba1-811c-80687c97205d>.

<sup>351</sup> *Sustainable fisheries for future generations*, Cm 9660, Department for Environment Food & Rural Affairs July 2018, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/722074/fisheries-wp-consult-document.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722074/fisheries-wp-consult-document.pdf).

In addition to that, Great Britain had the right to 50% of the fishing quotas inside their coastal waters, also known as the “exclusive economic zone”, which can spread up to 200 nautical miles off the coast. UK managed to catch 260k tonnes of fish a year in their waters, which looks strange at the first sight, how is it possible that European vessels, having only 33% of the access, were catching triple. But it is up to the British Government to distribute those rights to fishing quotas among all the fisherman, and their Government sold a quarter of all of their quotas to a single Dutch company “Interfish”.<sup>352</sup> In total the value of all fish caught by the British fisherman in their own and in the European waters was worth 437 million pounds, which was only 0.02% of the British GDP in 2019.<sup>353</sup> That’s why blocking the whole Trade Deal worth over 1000 time more, over this subject, was clearly a political issue of sovereignty and principal to have control of their waters, and as a coastal state, control of its borders, rather than a question of economic benefit.

As for the agreed changes, the UK and the EU compromised on gradually reducing the access to the British waters for European fishermen by 25% over five and half years, diminishing by 15% in the first year, and then dropping by 2,5% every next year. This was the period of predictability that Ursula von der Leyen was referring to, after which both sides will have to meet again every year to decide the future quotas share in perpetuity. And even though the Deal doesn’t prevent the possibility of complete denial of access from the sovereign Britain, it provides the tools of safeguarding the fair competition, which in case of that event could mean raising the tariffs on the British fish exported to EU. Considering the half of the British catches is sold to EU countries, this would mean a big problem to the UK.

The other reason for that is the presence of the specific fish species, of which British consumers are mostly interested in Cod and Haddock species, used in the famous “fish and chips” dish. The small amount of those two fish in local waters requires importation of those species to UK from outside EU. At the same time, those more plentiful fish like mackerel, herring or shellfish are much more appreciated in the French cuisine, which makes them perfect exporting product. The myth of the European competition as a cause of collapse of the British fishing industry is being denied in the moment when in theory, UK’s fisherman could catch more fish, but are asked by

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<sup>352</sup> M. McClenaghan, C. Boros, *Big Fish quota barons squeeze out small scale fishermen*, Unearthed 14 May 2016, <https://unearthed.greenpeace.org/2016/05/15/investigation-big-fish-quota-barons-squeeze-out-small-scale-fishermen/>.

<sup>353</sup> D. Clark, *Gross domestic product of the United Kingdom from 1948 to 2021*, Statista 31 Mar 2022.

their own sellers to catch less, as they are not able to sell them in time before they go bad, due to the delivery delays caused by new paperwork, necessary certificates and checks. That is probably why Boris Johnson promised an investment of 100 million pounds to modernize the whole fish-processing industry, increase its selling capacity and make it more competitive.<sup>354</sup>

But the British fishing industry is not the only victim of the new arrangements. Few days after the final ratification of the Treaty by Brussels, French fishermen have strengthened their protests against British restrictions placed on them. The final agreement on the fisheries was supposed to maintain stability and predictability for the fishing communities. Unfortunately, in reality, French fishermen are struggling to obtain new licenses required by the UK to fish in their territorial waters.<sup>355</sup>

Apparently, it takes very long due to the administrative bureaucracy and the requirements to obtain fishing permits for EU vessels are very complex and restrictive. In addition to that a new set of rules was added separately for the authorizations to fish in the island of Jersey specific area. The new conditions were made public only 2 hours before they were enforced. That infuriated hundreds of French fishermen, who in protest blocked the main port of St. Helier with about 60 boats. French Government accused the new conditions to be punitive, discriminatory, and in breach of the EU-UK Trade and Cooperation Agreement and Brussels agreed, that the rules imposed by the Jersey authorities were not legitimate.<sup>356</sup>

In protection of its crown territory and in solidarity with the authorities of Jersey, London has sent 2 navy ships to “monitor the situation”, as well as Paris with its 2 military ships. The tension reached its culmination when the French Minister for Maritime Affairs, threatened to cut off the island's electricity, that is supplied from France, since the island is located only 14 miles from the coast of Normandy, which was commented by one British tabloid to be worst gesture than what Nazis did during the Second World War. Timing coincidence with the elections both in France and Great Britain was probably the main reason of such exaggerated tones and gestures. Fortunately, the situation calmed down between the two neighbors and all of the French vessels

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<sup>354</sup> Prime Minister's statement on EU negotiations: 24 December 2020.

<sup>355</sup> J. Henley, *Salty language: why are UK and France fighting over fishing licences?*, The Guardian 2 November 2021, <https://www.theguardian.com/business/2021/nov/01/why-are-uk-and-france-fighting-over-fishing-licences>.

<sup>356</sup> J. Brunson, S. Payne, V. Mallet, *Brussels says UK breached trade deal in Jersey fish dispute*, Financial Times 6 May 2021, <https://www.ft.com/content/43297316-6fb1-4caf-abf6-47216f46ec6c>.

has left the area, to leave space for the dialogue in good faith or if that doesn't resolve the dispute, for the possible court arbitration.

#### **5.1.4 Northern Ireland Protocol**

Importantly, at the same time of TCA provisional implementation, from the 1<sup>st</sup> January 2021, as the transition period has ended, in the Northern Ireland, that was a key subject of the Brexit discussions, The Northern Ireland Protocol has been applied.<sup>357</sup> According to the Protocol, the territory of Northern Ireland will remain under the EU regulations and will continue as before to be a part of the Single Market, to avoid any hard boarder between Northern Ireland and the Republic of Ireland, while the rest of the Great Britain will need to fill customs declarations and pass some physical check for the goods destined for the EU. This substantially created a customs border in the Irish Sea, between The Northern Ireland and the rest of the United Kingdom.

To avoid major disruptions at the roads and in ports, most of the vital and problematic goods have been granted a grace periods, that essentially gave their suppliers the extension of the transition period. It would also allow them to make all the necessary arrangements to prepare and comply with the new regulations. Still, in the first two months, British exports to the European Union countries dropped down by 47%.<sup>358</sup>

Then, as the grace periods started to expire, products like chilled meats, milk, eggs, and fish would have to pass the sanitary and phytosanitary checks. Some British suppliers just stopped sending their products to the Northern Ireland because of the time-consuming paperwork required, which led to reduced availability of products and less choice for the final consumers, even with medicines. EU didn't help in this situation, when in fear of Covid-19 vaccines being exported from the EU to the UK, they tried to trigger Article 16 of the Northern Ireland Protocol, which was created in case of serious economic, social or environmental emergencies, and would allow EU a possibility of implementing unilaterally an appropriate safeguard measures, like for example, creation of the hard border. Luckily, EU did not go through with that threat to the Northern Irish

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<sup>357</sup> *Protocol on Ireland and Northern Ireland*, European Commission 31 January 2020.

<sup>358</sup> *UK food and drink exports to the EU almost halve in first quarter*, BBC News 18 June 2021, <https://www.bbc.com/news/business-57518910>.

delicate situation and admitted it was a mistake to consider it at that time. Nevertheless, all these difficulties have increased already existing tensions in the Northern Ireland. In act of disapproval to the broken promises made by Boris Johnson of unfettered access to the rest of the United Kingdom, the Unionist radical groups have made threats to the customs officers and force them not do execute the checks in the port areas, where they were supposed to be happening. The problem is that this Agreement is now under much pressure in direct effect of Brexit referendum results. Brexit deal negotiated by Boris Johnson imposes an English decision over a very specific territory of Northern Ireland, that in 56% majority did not want any form of Brexit to happen in the first place and voted to remain in the EU.<sup>359</sup>

To avoid further disturbances at the Northern Irish ports, Chancellor of the Duchy of Lancaster Michael Gove asked the EU to extend all of the grace periods until 2023, but the EU did not agree to that extension, as they held British Government responsible for not preparing adequately to implement agreed measures and controls. The main argument was this extension would only postpone the problem and not resolve anything.

Then the Secretary of State for Northern Ireland, Brandon Lewis, announced he will extend all of the grace periods anyway until 01/10/2021, which was not well received by the EU officials, that have warned it would be the second time UK tries to unilaterally change the terms of agreement and break international law, as it would happen in the end of 2020 with the Internal Market Bill, that British Government proposed to avoid doing checks in the Irish Sea, but it has been rejected by the House of Lords as this was contradictory to the agreed withdrawal arrangements with the EU and I this sense would break the international law. That kind of attempt doesn't give much confidence in good faith of ever delivering on the agreed terms and undermines the trust, as it leaves potential concerns about the intentions of any other proposals made to the NI Protocol. This could only lead to legal case against UK, that has already received a letter of formal notice from the EU Commission<sup>360</sup>, that if not addressed sufficiently, could end up in financial penalties set by the European Court of Justice or in the worst-case scenario, impose the tariffs on

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<sup>359</sup> *Results and turnout at the EU referendum*, The Electoral Commission 16 July 2019, <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/elections-and-referendums/past-elections-and-referendums/eu-referendum/results-and-turnout-eu-referendum>.

<sup>360</sup> *Withdrawal Agreement: Commission sends letter of formal notice to the United Kingdom for breach of its obligations under the Protocol on Ireland and Northern Ireland*, European Commission 15 March 2021, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_1132](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1132).

the UK trade goods. In the same period of time some important arrests have been made by the local authorities among the organized drug dealing groups in the unionists' parts of the Northern Ireland. Unionists also disapproved of the imposed anti-Covid security measures, that were not respected last year by their political opposition on an occasion of a funeral of a high-rank ex IRA member. All of that, with the threat of being divided from the rest of the UK by the controls at the Irish Sea, angered the unionist population and as a result a bus was hijacked, emptied and put on fire with several petrol bombs in the west Belfast area on the same Good Friday Holiday that represented the fragile peace on the island since 1998. During that Easter weekend small groups of radicals from the loyalist's neighborhoods attacked police in few encounters, injuring in total 32 police officers with petrol bombs and bricks.<sup>361</sup>

Few months later, in the beginning of June 2021, UK's Chief Negotiator for Exiting the European Union, David Frost, admitted in his interview with the Financial Times that British Government has underestimated the impact of the Northern Ireland Protocol on the local communities. According to Frost it was agreed only to replace the previous solution negotiated by Theresa May Government, commonly known as the "Backstop", which would indefinitely keep the whole Britain in the European Customs Union and Single Market until the final arrangements would have been made. That proposal was very unpopular among the Conservatives and was the main issue that led to lack of support for Mrs. May proposal. Even now Frost in reference to it used a negative adjective "disastrous", in distinction from his own agreement, that is just not possible to implement. But for this impossibility he blamed EU's legal framework that didn't allow much margin for creative interpretation of the Protocol. The difficult situation with the Irish border that the British Government is now confronting was not a secret from the beginning of the Brexit negotiations, which makes it hard to believe that only now they have realized and recognized it is a very real, dangerous and impossible problem to resolve. Until it came to the actual disturbances at the streets of Belfast, the Government was dismissing any concerns about the Irish border as "Project Fear", the same way some world leaders initially were dismissing the threat of the Covid-19, but then got corrected by the reality. Lord Frost also warned that the time was running out to resolve this issue, which from the European point of view should be already resolved with the

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<sup>361</sup> R. Black, *Police attacked in further loyalist disturbances in Northern Ireland*, Belfast Telegraph 4 April 2021, <https://www.belfasttelegraph.co.uk/news/northern-ireland/police-attacked-in-further-loyalist-disturbances-in-northern-ireland-40274996.html>.

correct implementation of the Protocol that was mutually agreed. European officials unlike Boris Johnson never pretended this solution wouldn't create controls in the Irish Sea, so the time to resolve that problem is not running out but has already past a long time ago. Frost admitted there is no infrastructure or personnel to perform necessary amount of checks at the end of the all grace periods. And most of all there is no determination from the British Government to impose them. Instead of providing the physical infrastructure, UK's Chief Negotiator is considering the use of courts and politics to avoid those obligations.<sup>362</sup>

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<sup>362</sup> *David Frost: the EU must revisit the Northern Ireland protocol*, Financial Times 6 June 2021, <https://www.ft.com/content/eb35a108-6186-42a4-b401-5e1df0e2c64a>.

## CONCLUSION

To conclude, the study enlightens how the idea of European integration, from its origins as the “United States of Europe”, to the European Union until 2021, has shifted in its objectives and fundamental principles, together with the changes in our society. Those changes, however, did not follow the same direction and for some European Member States, like the United Kingdom, have reached a point of no return and separation.

Through the analysis of the founts, it has been established that without the European Political Union, the national interest of the singular members will always overcome those of the Union and the attempts of spreading the improvements to benefit the whole Community will always mean compromising with the positions of the other countries, which could result in irrelevance of the requested changes. This lack of unity for the better of the Community will last as long as the EU leaders respond exclusively to their national Parliaments and use contrasts with rest of Europe in the political campaigns to gain national votes.

The position towards Europe in protection of the British national interest has been used very frequently among British Prime Ministers as an argument to obtain their Parliamentary support, but at the same time it caused Edward Heath, Margaret Thatcher, David Cameron, Theresa May to resign and divided the Labour Party under Harold Wilson, regardless the referendum success.

In the history of referenda there is a tendency to vote for maintaining the status quo, which meant that there would have to be a strong support to authorize significant changes with a national vote. According to Professor Vernon Bogdanor from King's College London, European membership could be classified as a low salience issue, which means the opinion regarding this argument can change very rapidly from one extreme to another, and if related to different issue of higher salience, like for example the question of immigration or other subjects that are likely to reach the headlines of the newspapers, we could never be fully sure if by providing a binary solution to a problem presented in the referendum, that people would be voting on the requested issue rather than on the matter linked to it.

Voters can be easily influenced by their political affiliations and recommendations of their leaders, who as during the Brexit referendum campaign could mislead their supporters to vote one

way on false assumptions, especially in the era of social media, where people are suggested and tend to follow only the one side of the argument that they already have proven to agree with.

The problem is most of the arguments do not have a binary answer, as also proven by Brexit example, since not even the British Parliament in series of indicative votes could agree by a simple majority on what arrangements should have been made to deliver on the “will of the people”. The poll studies argue that binary solutions are not sufficient to provide trustworthy results, as there is always at least third possibility of those who are not sure of either answer, which leaves the poll susceptible to manipulation.

Therefore, according to the results of this study, it is not recommended to use the referenda, which have a great democratic value, to validate political decisions of historic importance, like we have seen in the example of the United Kingdom. It would leave too much of the decision-making process to risk of jeopardizing the political and economic stability of entire country, like we have seen in case of Brexit, which answers a longstanding question posed by Roy Jenkins after the first referendum on the British membership in the Community in 1975, who asked “what would happen, when on the issue of European membership, the public would no longer prepared to take the advice of those they are used to following?”

The post-Brexit Free Trade Deal reached between the United Kingdom and the European Union was supposed to bring predictability and certainty for the businesses and communities on both sides. As we all know uncertainty in business is a risk, and a risk has a cost that should be avoided, especially in the time of a global pandemic, which happened at the same time. Every unnecessary threat of imposing the tariffs or other restrictions from one moment to another for a variety of reasons does not provide very stable grounds to operate for the foreseeable future. And even though the Trade and Cooperation Agreement has been put in place and ratified by both sides, it seems like neither of them really trust the other party or don't intend to fully implement and respect its conditions.

This clarifies why the Brexit process is often referred to as a divorce, as since the implementation of the Agreement, we could only see a series of political, economic, and legal actions between the UK and the EU, against each other, which most likely, at some point, will have to be resolved in court.

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