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Brexit Negotiations 2.0 at their Wits End?

The New Partnership Fails not least because of the National Interests of some EU Members ¹

The members of the European Union (EU) currently have a déjà vu experience. At the end of 2020, there is a threat of a "no-deal Brexit", just like a year before. After the withdrawal agreement of 12.11.2019, it is now about a new economic and security partnership with the United Kingdom (UK) following the EU and EURATOM treaties. While London is proposing various treaties, the European Commission wants to cover all policies with a single trade agreement. The common standards should be based on EU norms and be subject to the jurisdiction of the European Court of Justice. In addition, details of the withdrawal agreement still need to be discussed in parallel with the partnership agreement, particularly for Northern Ireland and Gibraltar. Since representatives of both sides take part in the relevant specialised committees, Ireland and Spain are given a privileged position. If their work comes to a standstill, there will be no new agreement with the UK, both levels of negotiation are so closely interlinked. Finally, the future use of nuclear energy is controversial. Could it be a coincidence that the Frenchman Michel Barnier, as EU chief negotiator, rejects the British cooperation offer for this at a time when Paris is claiming leadership as a nuclear power? While some EU members are engaged in interest politics, Germany is supposed to solve these problems for "Europe" under its current EU Council presidency. But an "honest broker" is more than a mediator and financier. Contract concepts are in demand from which all sides can benefit and save face. Last but not least, the UK remains part of the European family of states and one of the most important EU trading partners despite leaving the EU.

On 23.7.2020, EU chief negotiator Michel Barnier informed about the status of the negotiations, which had stalled weeks ago. In his opinion, "this week again, the UK did not show a willingness to break the deadlock". (europa.eu, 23.7.2020). However, this narrative has been presented to the European public since the beginning of the talks in February 2020. The British negotiating lines were considered unacceptable from the outset. (spiegel.de, 27.2.2020). They are even said to have a "strategic focus on confrontation" (Ondarza, 2020: 3). This picture is coming to the fore, making the UK already responsible for a possible failure of the negotiations (spiegel.de, 5.6.2020, zeit.de, 23.7.2020).

The parallels to the first round of negotiations are so striking that the suspicion arises that the

EU could risk the second round failing to create political pressure. Because two years ago, Prime Minister Theresa May had submitted her Checkers plan with compromise offers (Future Relations, 17.7.2018, Riedel 2019-5: 8). Even before the EU took note of them, the Commission published "Contingency planning" for an unregulated Brexit (europa.eu, 19.7.2018). It was not until five weeks later that the UK responded with its own emergency plans (gov.uk, 23.8.2018). It was the EU itself, that threatened a no-deal scenario for the first time, thereby discouraging Theresa May from her proposal. In this second round, too, there are a range of motives on the part of the EU and some EU members to avoid compromise and a solution. A Today, however, a political science analysis of national interests has become more

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difficult, because this time the negotiations are conducted "confidentially", i.e. behind the scenes. This is particularly true for questions concerning the use of nuclear energy.

EU chief negotiator Michel Barnier sets the course with his two-stage model

With her Chequers Plan, Prime Minister Theresa May had proposed that the withdrawal agreement be worked out together with the partnership agreement which is being disputed today. ([Future Relations, 17.7.2018](#)). This was rejected by the EU chief negotiator Michael Barnier, who preferred a two-stage approach. First, he wanted to negotiate on the exit modalities and only then agree on concrete commitments for a new trade agreement. Therefore, the "framework for future relations" (Article 50, [EU-Treaty](#)) remained vague and non-binding for the time being.

The warnings of the British government that a two-step approach would cause problems especially for Northern Ireland confirmed the further development. The EU negotiating side wanted to outsource controversial issues like these and settle them only in the transition phase. During this period, Northern Ireland should remain within the EU Single Market and the EU Customs Union. However, this "backstop rule" could have been extended indefinitely, leaving the UK in danger of losing its autonomous region. In addition, Scotland demanded its own backstop rule in the course of the negotiations. Staying in the EU internal market and the EU customs union would have brought it closer to the hoped-for state independence ([Riedel 2019-7: 4](#)).

Following the threat of a no-deal Brexit, Theresa May agreed to this line of negotiation and signed an exit treaty, which failed several times in the British parliament. A legal advice commissioned by the Government itself confirmed the suspicion that Northern Ireland could be separated from the UK, first economically and then politically, during the second round of negotiations ([Legal advice, 5.12.2018](#)). In addition, framework conditions for a new partnership agreement would have been established, which could have delayed or even prevented the Brexit. EU leaders do not counter these concerns with confidence-building measures, such as a declaration of guarantee for the sovereignty and territorial integrity of the UK ([Riedel 2019-5: 1](#)). This confirmed the suspicions of her critics that May had carelessly risked the sovereign rights of her country.

Boris Johnson took advantage from May's loss of reputation. He had resigned as British Foreign Secretary under her government in July 2018 to-

gether with Brexit Minister David Davis. The Chequers Plan already went too far for both, because it accepted EU rules on consumer and environmental protection and aimed at common standards for trade goods within the framework of a new economic partnership. These topics have become central issues in the current negotiations. If Michael Barnier had agreed to Ma-y's Chequers Plan two years ago, he might already have had a trade agreement with the UK today. Now, however, there is a threat of unregulated Brexit again at the end of the year. That is when the transitional period ends, and the UK finally leaves the EU internal market and the EU customs union. In this context, Johnson can refer to the political declaration which he agreed upon with Barnier at the end of 2019. In this framework for the second stage of the Brexit negotiations, only general reference is made to "high standards of free and fair trade and workers' rights, consumer and environmental protection" ([Brexit-Treaty 2019-II 178](#)). But before the new round of talks began, Michael Barnier presented divergent guidelines for the negotiations. According to this, the common standards should have "EU standards as a reference point, in the areas of State aid, competition, state-owned enterprises, social and employment standards, environmental standards, climate change, relevant tax matters and other regulatory measures and practices in these areas" ([Directives 25.2.2020: 26](#), see Figure 1 und 2).

The UK is not "uncompromising", for rejecting EU standards and the ECJ

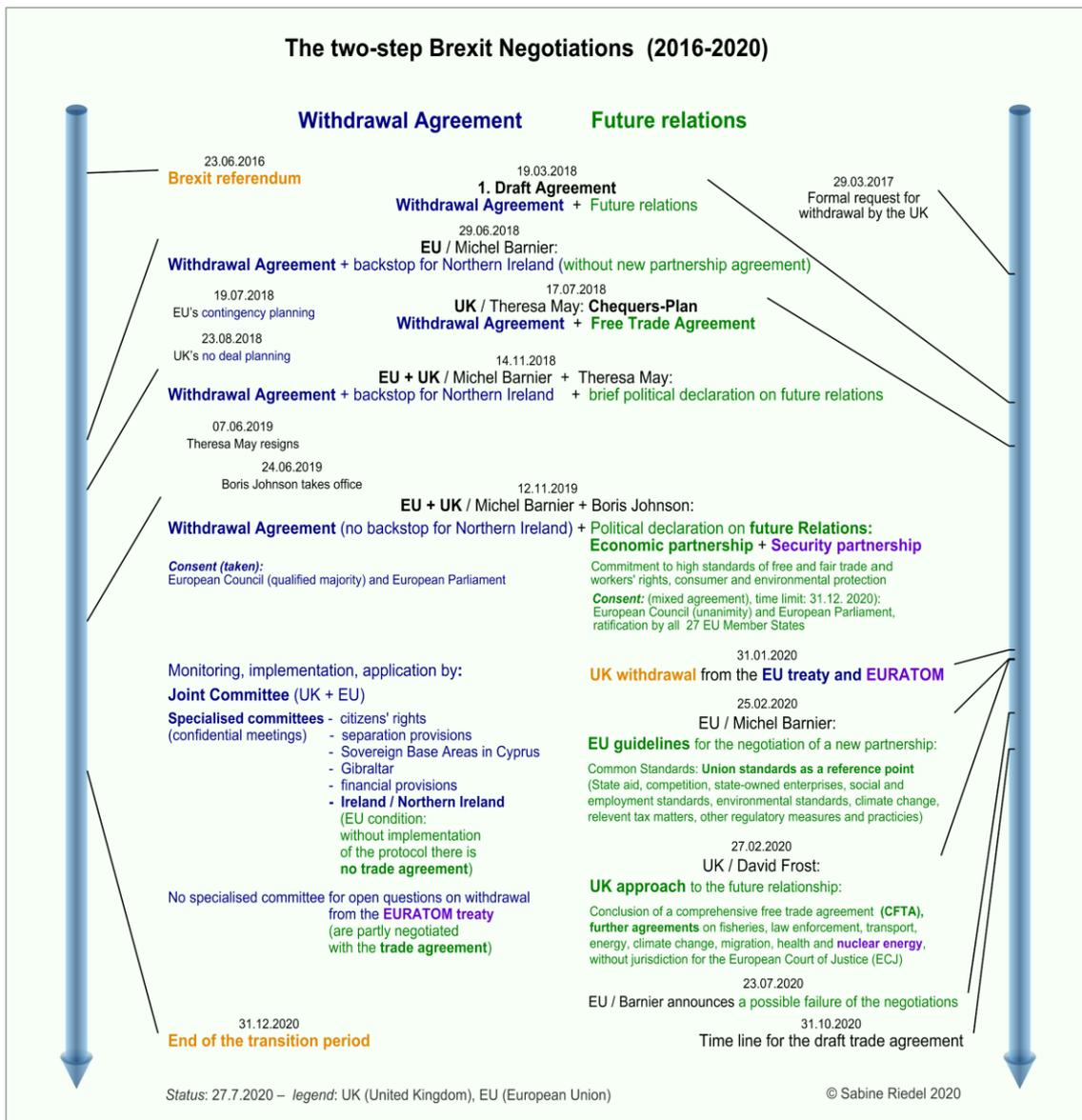
These conditions are unacceptable simply because by recognising EU standards, the UK would be taking on obligations equivalent to EU membership without enjoying the benefits of a Member State. The reason given for this demand is the reasonable concern of a new undercutting competition in Europe. Theresa May was already faced with accusations that she wanted to use tax dumping as a new "post-brexit business model" ([euraciv.de, 28.9.2018](#)). However, the recent decision of the European Court of Justice (ECJ) shows that even the EU-27 is far from high standards, for example in "relevant tax matters". Accordingly, Ireland has the right to exempt the international corporation Apple from a tax debt of 13 billion euros ([nzz.ch, 15.7.2020](#), [bbc, 15.7.2020](#)). But Cyprus, Malta, the Netherlands, Belgium and Luxembourg are "low tax countries" or tax havens too ([wienerzeitung.at, 24.1.2020](#)). These examples alone show that Michel Barnier demands standards from the UK that do not even exist in the EU.

Two days after the publication of the EU guidelines, London presented its "negotiating approach". According to this, the UK does not want just one cooperation agreement, as the EU would like it to cover all policy areas. Instead, it first suggests the conclusion of a free trade agreement (CEFTA), comparable to the EU-Canada trade agreement, based on the principles of the World Trade Organisation (WTO) (VK's Approach, 27.2.2020: 5). In addition, London wants to conclude further agreements relating to particular po-

licies, such as fisheries, law enforcement, transport, energy, climate change, migration, health and nuclear energy. Common standards should be formulated, but these are not under the jurisdiction of the European Court of Justice (ECJ, see Figure 1). Statements that the UK is currently boycotting the negotiations or going into confrontation are therefore without substance.

Whoever is currently refusing to compromise is the EU negotiating side. It reserves the right to impose its own standards on neighbouring coun-

Figure 1



Source: Own compilation: Communication from the Commission, europa.eu, 19.7.2018; see Riedel 2019-7: 4, European Council, Brexit Timeline, europa.eu, 23.7.2020, European Council, Directives for the negotiation of a new partnership, [Directives 25.2.2020](http://ec.europa.eu), The Future Relationship with the EU. The UK's Approach to Negotiations, [VK's Approach, 27.2.2020](http://ec.europa.eu), Press statement by Michel Barnier, ec.europa.eu, 23.7.2020.

Figure 2:

EU Directives for the Negotiation

15. Level Playing Field and Sustainability

Given the Union and the United Kingdom's geographic proximity and economic interdependence, the envisaged partnership must ensure open and fair competition, encompassing robust commitments to ensure a level playing field. [...]

To that end, the envisaged agreement should uphold common high standards, and corresponding high standards over time with Union standards as a reference point, in the areas of State aid, competition, state-owned enterprises, social and employment standards, environmental standards, climate change, relevant tax matters and other regulatory measures and practices in these areas. In so doing, the agreement should rely on appropriate and relevant Union and international standards. It should include for each of those areas adequate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement, including appropriate remedies. The Union should also have the possibility to apply autonomous, including interim, measures to react quickly to disruptions of the equal conditions of competition in relevant areas, with Union standards as a reference point.

Source: Directives 25.2.2020: 26, Council of the European Union, Directives for the Negotiation of a New Partnership with the United Kingdom of Great Britain and Northern Ireland [Blue highlighting: S.R.].

Michel Barnier

in Interview with Christoph Heinemann

Barnier: [...] Our most important demand relates to the "level playing field", rules for fair play in business and trade. We cannot accept that, alongside us, the United Kingdom deregulates its market in order to practise dumping against us. Because at stake – and I explained that again and again in Germany to the chambers of commerce, the BDA and BDI, with whom I have a very constructive dialogue – there are hundreds of thousands of jobs at stake in our 27 countries in the European Union. [...]

We continue to set the conditions for access to our own market. A third country, the United Kingdom, will not dictate the conditions of access to our market for British goods, services, data or for workers and businesses. We remain sovereign. That is my mandate. We ourselves set the conditions of access to our market in all areas.

Source: Barnier, 29.5.2020, EU-Chefunterhändler Michel Barnier: „Briten verstehen nicht, dass der Brexit mit Folgen verbunden ist“, in: Deutschlandfunk [Translation and blue highlighting: S.R.].

tries, such as the UK, and to force access to its fishing grounds, i.e. its territorial waters, while defending the sovereignty of its single market ([zeit.de, 3.2.2020](#), see Figure 2). A weak and economically troubled state will hardly be able to defend itself against this in the long term. The UK has a negative trade balance, that is a surplus of imports of which more than 50 per cent come from the EU, largely from Germany ([derstandard.de, 15.2.2019](#)). If no new trade agreement is concluded, customs duties and fees will be due from the beginning of 2021. In the current transition phase, they are not yet charged because the UK is still participating in the EU single market and the EU customs union.

In addition to this economic scenario, there is also the threat of trouble at the political level. In parallel to the negotiations on new partnership agreements with the UK, a Joint Committee and other specialised committees are dealing with the "monitoring, implementation and application" of the protocols of the withdrawal treaty (Article 164 [Brexit-Treaty 2019-I](#), see Figure 1). These are staffed by representatives of the UK and some EU Member States, for example from Ireland, Spain and Cyprus. If these discussions stall, there will be no new trade agreement. This interlocking of the two negotiating levels means that a few states have a direct influence on the further course of negotiations. These include France, with Michel Barnier as chief EU negotiator, and Slovakia with Maroš Šefčovič ([munzinger.de](#)), who has been nominated to chair the Joint Committee ([ec.europa.eu, 26.2.2020](#)). Their work is not only confidential, their decisions are also binding. Article 166 (2) states: "They shall have the same legal effect as this Agreement" ([Brexit-Treaty 2019-I](#)).

Disempowering National Parliaments as Democratic Control Bodies

Apart from these few exceptions, the EU Commission has relieved the EU Member States of the competences to which they are entitled under the EU Treaty, namely in the single market, industrial, economic, energy, environmental and transport policy ([EU-Treaty AEUV, Art. 4-6](#)). For all these issues will be touched upon in the implementation of the protocols of the withdrawal treaty. The motives of the British request for withdrawal could not be more clearly revealed. Because of the concentration of decision-making powers in the Joint Committee, the national governments and parliaments of the EU Member States have little influence in the event of a trade conflict with the UK. The marginalization of elec-

ted and thus democratically legitimated institutions affects the British negotiating side equally. Boris Johnson and his negotiator David Frost are no longer dependent on the British parliament for questions of protocol implementation.

The situation is different with the conclusion of a new partnership agreement. Here the European Council still has the ball in its court, even after it has mandated the Commission and Article 207 of the EU Treaty even requires unanimity in the Council for its entry into force if the trade treaty concerns issues relating to trade in services, commercial aspects of intellectual property or foreign direct investment (TFEU, see Figure 3). This means that the hurdle is currently much higher than for the withdrawal agreement. Article 50 was used here, which specifically regulates the procedures for leaving the EU and, as a quorum, only requires a qualified majority in the Council.

But the hurdle could be even higher if the new partnership agreement with the UK is not classified as a trade agreement (see Article 207, TFEU, Figure 3) but as an international agreement (Article 218). Then it would be a "mixed" agreement, which would not only require unanimity in the European Council and the consent of the European Parliament. It would also have to be ratified by all 27 EU member states. This seems to be the main motive for the Commission to reject the UK's proposals for various bilateral agreements.

A current example of this is the CETA agreement between the EU and Canada mentioned by the UK. It is no coincidence that Michel Barnier rejects the comparison with CETA ([spiegel.de](https://www.spiegel.de), 21.5.2020). Because the Commission failed in its attempt to declare it as "an agreement in the sole competence of the EU" and to withdraw it from the Member States' obligation to consent ([faz.net](https://www.faz.net), 10.6.2016, [Holterhus 2016](https://www.holterhus.com)). The national parliaments were finally able to assert their rights of co-determination. Nevertheless, the Commission provisionally put the CETA agreement into force on 21.9.2017 ([bmw.de](https://www.bmw.de)), although the ratification process has not yet been completed.

UK's national sovereignty in the Corona crisis all the more important

Since Boris Johnson was able to achieve a renegotiation of the Withdrawal Agreement, he won the early House of Commons elections of 12.12.2019 with the best result for the Tories in 60 years ([BBC](https://www.bbc.com), 20.6.2020). The 43.6 percent secured him a comfortable majority of 40 MPs. The polarisation since his appointment as prime minister on 23.7.2019 (see [spiegel.de](https://www.spiegel.de), 25.7.2019) had apparently done him more good than harm.

Figure 3:

„Mixed“ Agreements under Articles 207 and 218, of the EU-Treaty/TFEU

Common EU Trade Policy– Article 207

1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, [...].

3. Where agreements with one or more third countries or international organisations need to be negotiated and concluded, Article 218 shall apply, subject to the special provisions of this Article.

The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules. [...]

(4) For the negotiation and conclusion of the agreements referred to in paragraph 3, **the Council shall act by a qualified majority.**

For the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, **the Council shall act unanimously** where such agreements include provisions for which unanimity is required for the adoption of internal rules. [...]

International Agreements – Article 218

1. Without prejudice to the specific provisions laid down in Article 207, agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure.

2. The Council shall authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them. [...]

8. **The Council shall act by a qualified majority** throughout the procedure.

However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article 212 with the States which are candidates for accession. The Council shall also act unanimously for the agreement on accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms; **the decision concluding this agreement shall enter into force after it has been approved by the Member States in accordance with their respective constitutional requirements.** [...]

10. The European Parliament shall be immediately and fully informed at all stages of the procedure.

Source: TFEU, [Blue Highlighting: S.R.]

This also applies to his Churchill biography, which the press interprets predominantly as a staged self-portrayal (zeit.de, dpa, 12.12.2019).

As a further factor, the Corona crisis has so far rather strengthened Johnson's political position, even if the reporting gives a different impression. They warned of a "corona disaster" in the UK from mid-March onwards, only since they themselves classified the corona virus as dangerous (SZ, 19.3.2020). In fact, the British government had already started a broad information campaign on Corona on 30.1.2020, i.e. at the same time as UK left the EU. In doing so, the four Chief Medical Officers (CMO) of the country responded to relevant WHO statements and classified the virus as a "moderate" threat (NHS, 3.2.2020).

Already on 3.3.2020, the British government announced a [Coronavirus Action Plan](#) in which it warned the population of a pandemic and informed them about all planned measures. On 12.3.2020, Secretary of State for Health and Social Care Matt Hancock changed his risk assessment to "high" and reacted one week earlier than the German Health Minister Jens Spahn, for example ([Pressekonferenz](#), 17.3.2020). What the UK has ahead of many EU members is an emergency legislation that sets out clearly defined and time-limited rules for the whole country ([Riedel 2020-6: 15f.](#)). It is based on the [Coronavirus Act](#), which Boris Johnson presented to parliament on 19.3.2020, but only for consultation and without a vote ([Bill documents](#), 25.3.2020). It gives the government limited special powers for emergencies in the areas of health, social affairs, education, public security and border management.

While the MPs were still discussing the Coronavirus Law, the Prime Minister declared a state of emergency on 23.3.2020. The 874 Covid-19 infected and 74 reported dead (worldometers.info) were enough to impose exit restrictions and a country-wide shutdown (standard.co.uk). Four months later, the extent of the consequential economic damage is hardly foreseeable. All that is certain so far is that the British government had to increase its new debt this year from 55 to 322 billion British pounds in order to compensate for the loss of tax revenue and to finance the necessary state aid (nzz.ch, 23.7.2020).

Nevertheless, on 30.6.2020 Boris Johnson missed the deadline to apply to the EU for a one-year extension of the contract negotiations. At least three of the possible motives play an important role: On the one hand, the UK would have had to pay another year of membership fees to the EU, which amount to around 10 billion euros net (bertelsmann-stiftung.de 2015: 36). On the

other hand, the EU did not signal any willingness to compromise until then, for example to develop common standards independently of the ECJ ([Barnier](#), 29.5.2020, see Figure 2). Finally, the damage caused by unregulated Brexit due to the corona crisis will no longer be clearly quantifiable. Johnson is therefore counting on the regaining of full national sovereignty in order to find new trading partners.

Scotland's regional interests: EU member as independent state

The Scottish Regional Government takes a different position on the restoration of UK national sovereignty. In an open "Letter to Europe" on the day of the UK's withdrawal, Prime Minister Nicola Sturgeon wrote: "Scotland very much hopes to resume our membership of the European Union in the future, as an equal member." (gov.scot, 31.1.2020) First, Sturgeon now sees the UK, together with Scotland, as outside "Europe". In doing so, she evaluates, secondly, the UK's demand to regain its sovereignty as "anti-European", while thirdly she considers the independence of a Scottish nation-state to be legitimate.

The legitimacy of Scotland's secession from the UK will therefore remain a central issue. Nicola Sturgeon herself speaks of an "overwhelming majority" (op. cit.) of Scots against EU withdrawal and apparently refers to the 62 percent who voted against in the Brexit referendum (bbc.com, 24.6.2016). But a no to leave the EU is not the same as a yes to secession from the UK. After all, in the Scottish referendum for independence on 18.9.2014, 55.3 percent voted against ([Riedel 2016: 2](#)). Although a recent opinion poll of 1026 Scots mentions 54 percent supporters (heraldscotland.com, 5.7.2020). But this is not an "overwhelming majority", but an indication of how the Scottish "national question" is dividing the population.

Sturgeon has used the Corona crisis in the media to advance its political project. Although the British government warned of the danger of a pandemic earlier than all EU member states, she accused Johnson of having reacted "too late and too weakly to the pandemic" ([FAZ](#), 23.5.2020). However, the Coronavirus Act [Coronavirus Act](#) (25.3.2020) gave Edinburgh its autonomous decision-making powers within the framework of regional self-government, so that it launched its own [Coronavirus \(Scotland\) Act](#) (31.3.2020). It was free in its decision to extend the lockdown for its region.

Sturgeon, however, has recently overstepped the mark when, during the period of easing the

corona restrictions, she did not rule out the possibility of quarantining arrivals from the rest of the UK ([bbc, 1.7.2020](#)). As Scotland's tourism is 70 per cent dependent on domestic visitors, this could have a negative impact on the regional government. The Scottish Cabinet Secretary for Finance, Kate Forbes, has announced that further redundancies are already imminent and that the region "might not recover to the pre-crisis level until the start of 2023". ([bbc, 11.6.2020](#)). Therefore, Edinburgh claims from London a new loan of 80 billion pounds ([thetimes, 1.7.2020](#)).

Due to the growing dependence on financial aid from the central government, the regional government is running out of time in view of the desired independence. Proposals are thus coming from the ranks of the Scottish National Party (SNP) to ask the EU for support. It should urge Boris Johnson to agree to a second referendum ([thetimes, 1.7.2020](#)). With the controversial issue of fishing rights, which largely affects Scotland's coasts, Brussels is indeed exerting pressure. Otherwise, the next regional elections in May 2021 will be used as a mandate for a referendum. Another option would be to withdraw from all UK institutions ([thetimes, 2.7.2020](#)).

The National interests of Ireland: Special relations with Northern Ireland

The Irish Sinn Féin (SF) already has experience of boycotting UK institutions. For years now they have been giving up their seats in Westminster - most recently they won seven mandates ([bbc, 13.11.2020](#)). They also withdrew from the Northern Ireland Regional Parliament for two years in order to push through a special EU status in the course of the Brexit. Unlike the SNP, they do not want to turn their autonomous region into an independent state, but rather to unite it with the Republic of Ireland. That is why SF, as "the leading nationalist party" ([sinnfein.org](#)), has a transnational orientation, i.e. it is also represented in the Irish parliament.

Since the Brexit referendum, Irish nationalism has steadily gained influence, leading to a deterioration of British-Irish relations. So far, the project of unifying the island of Ireland required the approval by a referendum in the Republic of Ireland and in the British province of Northern Ireland ([Good Friday Agreement 1998](#)). Due to the Brexit a change of state borders suddenly came within reach. The Irish government had insisted on the disputed backstop rule, according to which Northern Ireland would have remained in the EU single market and the EU customs union after leaving the EU, for a transitional period or even forever.

Because the Scottish regional government recently also called for such a backstop, a majority of the British parliament rejected Theresa May's draft treaty with this rule. It was Boris Johnson who was able to overturn this rule by renegotiating the "Protocol on Ireland/Northern Ireland". He received the promise from the EU to recognise the „territorial integrity of the United Kingdom" (Article 1.2, [Brexit-Treaty 2019-I: 93](#)): „Northern Ireland is part of the customs territory of the United Kingdom." (Article 4) and "Having regard to Northern Ireland's integral place in the United Kingdom's internal market." (Article 6.2).

Nevertheless, Northern Ireland remains an issue in the second round of Brexit negotiations. Because there is a need for regulation to avoid customs controls between Northern Ireland and Ireland, i.e. between the future customs border between the UK and the EU. This was given to a specialised committee ([Article 165](#)), in which representatives from Northern Ireland and Ireland prepared proposals for the Joint Committee with decision-making powers. As a result, the Republic of Ireland is now officially seated at the negotiating table in the second round of the Brexit Talks.

There are different opinions on the first meeting of the Specialised Committee on Ireland/Northern Ireland on 30.4.2020. While the EU made a short [statement \(30.4.2020\)](#), the House of Commons published a [protocol \(1.6.2020\)](#). Some MEPs are relying on respected think tanks to argue that the UK's final withdrawal from the EU's customs union and single market at the end of 2020 "creates a customs and regulatory border in the Irish Sea" ([Sargeant 2020: 6](#)). Northern Ireland, while remaining part of the UK customs territory, will need to adapt to EU customs and regulatory requirements in the light of the 1998 Peace Agreement ([europa.eu, 30.4.2020](#), [zeit.de, 17.10.2020](#), [Rudloff, Schmiege 2020](#)).

In its "Approach to the Northern Ireland Protocol", the UK Government refers to Article 4 of the Protocol, which confirms Northern Ireland's place in the UK customs territory and internal market ([gov.uk, 27.5.2020](#), see Figure 4). The adaptation to EU standards concerns only a limited number of goods for import and export with the EU. Moreover, the Protocol does not indeed contain any provisions on the introduction of border controls in the Irish Sea between Great Britain and Northern Ireland, i.e. within British territory.

Finally, the UK negotiating side says that the new administrative regulations for trade in goods between the UK and the EU should be as unburdensome as possible, and here it quotes Michel Barnier "as easy as possible, and not too burden-

Figure 4:

The UK's approach to the Northern Ireland Protocol (update 27.5.2020)

Scope of the Protocol [...]

Protecting Northern Ireland's place in the UK customs territory

14. Prior to the consent votes in the Northern Ireland Assembly, which will determine the way forward in the longer term, the Government's priority is to ensure that we deliver the Protocol in a way which protects Northern Ireland's place in the UK customs territory. [Article 4 of the Protocol is clear that Northern Ireland is fully part of the UK's customs territory.](#) [...]

16. [The solution for Northern Ireland in the Protocol was designed as a practical way forward to prevent a hard border on the island of Ireland. It is unique in two respects.](#) It is unique in two respects. It enables tariffs to be collected on goods at risk of entering the EU's Single Market at ports of entry, rather than at the land border that is the legal boundary between the UK and EU's customs territories. [It also respects the preexisting status, accepted by all parties, of the island of Ireland as a Single Epidemiological Unit for food and animal health purposes, and provides for wider regulatory alignment on industrial goods on the basis of democratic consent. What the Protocol does not do is create - nor does it include any provision for creating - any kind of international border in the Irish Sea between Great Britain and Northern Ireland.](#) That means its provisions must entail the minimum possible bureaucratic consequences for business and traders, particularly those carrying out their affairs entirely within the UK customs territory. That is all the more true given that the Protocol alignment provisions might only be temporary: [implementation must be consistent with the reality that Northern Ireland may choose in as little as four years' time to disapply these provisions.](#) [...]

17. The Government is clear that the UK must function as a single customs territory in practice as we operationalise the Protocol. That means the following: [...]

- No import customs declarations as goods enter the rest of the UK from Northern Ireland
- No entry summary ('safety and security') declaration as goods enter therest of the UK from Northern Ireland
- No tariffs applied to Northern Ireland goods entering the rest of the UK in any circumstances
- No customs checks
- No new regulatory checks
- No additional approvals required for placing goods on the market in the rest of the UK
- No requirement to submit export or exit summary declarations for goods leaving Northern Ireland for the rest of the UK.

Source: [gov.uk, 27.5.2020](#) [Highlighting blue: S.R.]

some, in particular for smaller businesses" ([ibid. Foreword](#)). In the end, the EU Commission turns out to be the negotiating side that is calling for "hard" border controls between the UK and the EU. Now the Commission is uncompromisingly demanding that its high EU standards be respected for fear of new competition.

The differences of opinion on the implementation of the withdrawal treaty are also influenced by the changed political situation in Ireland after the parliamentary elections of 8.2.2020. For the Irish nationalist SF became the strongest party with 24.1 percent. Only after long negotiations was a governing coalition formed by the two centre-right parties Fianna Fáil (FF) and Fine Gael (FG) and the Irish Greens ([bbc, 27.6.2020](#)). Their government programme is a counter-project to SF's demand for a political unification of the island of Ireland ([time.com, 7.2.2020](#)). It only speaks of a "Shared Future" ([static.rasset.ie, June 2020](#)). Since signing the Brexit treaty without a backstop, the FG Chairman and Deputy Prime Minister Leo Varadkar does not consider this goal to be feasible at present ([irishnews.com, 27.12.2019](#)).

Spain's national interests: Historical Claims on Gibraltar

The recent domestic political developments in Ireland, which have put a stop to nationalism, give reason to hope that by the end of the year the negotiations will not fail, at least not on the Northern Ireland issue. However, the future trade agreement is dependent on the efficient work of other specialised committees, where sensitive security policy issues are involved. These include the two specialised committees on the British Sovereign Base Areas in Cyprus and on Gibraltar as a British overseas territory (Article 165 [Brexit-Treaty 2019-I](#)). They did not start work until late May/early June 2020 ([ec.europe.eu, 27.5.2020](#)).

There had already been tensions over Gibraltar in the first round of negotiations. The draft Withdrawal Agreement ([Brexit-Treaty 2018](#)) was controversial not only in the UK. The then Spanish Foreign Minister Josep Borrell also threatened a blockade if Gibraltar does not receive a special EU status. He demanded that this controversial issue should be separated from the Brexit Treaty and negotiated bilaterally between Spain and the UK ([spiegel.de, 19.11.2018](#)). He increased the pressure by welcoming Scotland's return to the EU after Brexit if it reached state independence by common accord with Britain ([spainenglish.com, 20.11.2018](#)). However, even as the current High Representative of the Union for Foreign Affairs and Security Policy, Borrell cannot decide

this question. All member states have a say in enlargement issues (Article 218 TFEU, Figure 3). In the end, Spain was not able to enforce its request, but it is now represented in the Specialised Committee on Gibraltar, which discusses the rights of the Gibraltar residents and police and customs cooperation (exteriores.gob.es, 27.5.2020).

It is true that there are currently no indications of tensions in this specialised committee. But this could change at any time: Before a first meeting, in the Straits of Gibraltar, Spanish military manoeuvres took place in British territorial waters. With this action Spain demonstrated its claim to ownership of this rock at the southern tip of the Iberian Peninsula with about 35,000 inhabitants. Since the Peace of Utrecht (1713) it has been part of the British Kingdom and today enjoys extensive rights of self-government. For this reason, the inhabitants of Gibraltar already voted against joining Spain in two referenda (1967 and 2002). They prefer to preserve their own advantages in the technical committee of the Brexit negotiations (chronicle.gi, 8.6.2020).

If the recent military operation were an isolated incident, it could be considered a symbolic policy. However, English-speaking media are reporting that there have been more than 4,000 border violations on the territory of Gibraltar in the last ten years (forbes.com, 27.4.2020). Even US Navy submarines would be threatened by Spanish ships, so that tensions among NATO partners are gradually building up there. This could lead to an increased military presence of the UK and the US. Independently of the work of the Specialised Committee on Gibraltar, this issue is likely to become a security risk for the EU. It cannot be ruled out that the acting EU High Representative for Foreign Affairs and Security Policy, Josep Borrell, will use Community interests to pursue his national agenda on Gibraltar.

France's national interests and the UK's withdrawal from EURATOM

The UK's withdrawal affects not only its EU membership but also that of the European Atomic Energy Community (EAEC) on the legal basis of the EURATOM Treaty on the "peaceful development of atomic energy" (Preamble, EURATOM). This means that cooperation is also being abandoned in important security-related areas: After all, cooperation in the field of nuclear research not only touches questions about the supply and storage of fissile material, but also on its access, property rights and control.

One day after his appointment as British Prime Minister (24.6.2019) Boris Johnson phoned the

Scottish Prime Minister Nicola Sturgeon to announce his visit. But his attention was directed to the naval base Faslane near Glasgow (de.reuters.com, 29.7.2019). There the UK has its only nuclear weapons base with four submarines and 120 nuclear warheads. It was not until 2015 that the British parliament decided by 472 votes to 117 to modernize the base, maintaining the nuclear deterrent (reuters.com, 18.7.2016: 3).

Scotland's demand for independence is therefore of great relevance to UK security policy: With Scotland, it would lose its status as a nuclear power (deutschlandfunk.de, 17.4.2014). France could become the single nuclear leader in Western Europe. A few days after the Brexit, French President Emmanuel Macron in fact announced France's claim to military leadership in "Europe" (welt.de, 7.2.2020). He would not allow it "Turning back into a field of confrontation for non-European nuclear powers" (elysee.fr, 7.2.2020, see Figure 5).

One can only guess what the new French military strategy understands by "Europe": It hardly mentions the EU by name and does not even give Russia the status of a European military power. This leaves Central, Southern and Western Europe - excluding the UK. Macron's new security concept is therefore not limited to the territory of France or the EU member states. They and their Common Defence and Security Policy (CSDP) are assigned only the third of four pillars, after "arms control and networks of alliances, partnerships and diplomatic relations" ([op. cit.: 8](#)). The fourth and last pillar of the French military strategy is the surprising and clear message to the EU members, namely the request for a "true French sovereignty". (see Figure 5).

What does this mean for the second round of Brexit negotiations? Beyond the question of nuclear leadership, there are controversial issues concerning the peaceful use of nuclear power that affect French interests. However, unlike Gibraltar or Northern Ireland, no specialised committee was set up for this. Questions about nuclear energy that are still open in the Withdrawal Agreement are apparently dealt with at the highest level in the Joint Committee, whose work remains confidential. This means that the stakeholders do not have a say on nuclear power as in the case of Northern Ireland or Gibraltar. The Scots, for example, have suffered the consequences of this technology for decades. The Dounreay plutonium factory in the north of Scotland is considered one of the "dirtiest nuclear sites in the world" because in the 1990s nuclear waste from other European countries like Germany was reprocessed there

Figure 5:

The New French Defence and Deterrence strategy

Speech of the President of the Republic [Emmanuel Macron] on the Defence and Deterrence Strategy, Paris, 7.2.2020

[... p. 3:] Following the impasse of negotiations on conventional arms, [the end in 2019 of the Intermediate-Range Nuclear Forces Treaty](#) was the symbol of this disintegration.

Europeans must collectively realize today that without a legal framework, they could quickly find themselves at risk of another conventional and even nuclear arms race on their soil. [They cannot standby. Turning back into a field of confrontation for non-European nuclear powers would not be acceptable. I won't accept it.](#)

[... p. 4:] Ladies and gentlemen,

All our action needs to focus on the sole ambition of peace, through strong and effective multilateralism based on law.

[I see four pillars for this strategy – promotion of an efficient multilateralism, development of strategic partnerships, search for European autonomy, and national sovereignty](#) – make up a whole, these four elements give our defence strategy its overall coherence and deep meaning.

[... p. 6:] And [France, a nuclear power under the Non-Proliferation Treaty and a Permanent Member of the United Nations Security Council](#), will shoulder its responsibilities, particularly when it comes to nuclear disarmament, as it always did.

[... p. 10:] If France is to live up to its ambition and its history, it must remain sovereign and determine itself, without being subject to them, the transfers of sovereignty to which it consents, just as it determines the binding cooperation projects it undertakes. [And this is the fourth pillar of the strategy I want for our country: a true French sovereignty.](#)

This desire for national sovereignty is absolutely not incompatible with our desire to develop European capabilities. It is even an essential prerequisite. [Cooperation is best achieved when one can sovereignly decide to cooperate.](#)

Defence, a foundation of all political communities, is at the heart of our sovereignty. [...]

Source: [elysee.fr, 7.2.2020](#)
[Highlighting in blue: S.R.]

([umweltfairaendern.de](#)). So German companies should also take responsibility for this.

Of the two nuclear power plants (NPPs) still active, Torness 1 and 2 are owned by the French company EDF Energy, a daughter of the state-owned Électricité de France. The ownership rights to the nuclear material are still to be clari-

fied ([taz.de, 31.12.2018](#)). According to Article 80 of the Withdrawal Agreement, the UK has “sole responsibility [...] for the safety of radioactive waste management”. In return, “ownership and rights to use and consumption of special fissile materials” are transferred to the UK (Articles 80 and 83, [Brexit Treaty I](#)). This issue also concerns the future partnership between the EU and the UK. Hardly anything can be heard about this on the EU side. Its negotiating directives merely state that it is prepared to cooperate closely ([Directives 25.2.2020: 23](#)). The UK, on the other hand, has already made a concrete offer of cooperation. The British chief negotiator David Frost was disappointed that he has not received an answer: “Given this reality, we find it perplexing that the EU, instead of seeking to settle rapidly a high-quality set of agreements with a close economic partner, is instead insisting on additional, unbalanced, and unprecedented provisions in a range of areas, as a precondition for agreement between us.” ([gov.uk, 19.5.2020: 2](#)).

„Europe’s recovery“ refers not only to the EU, but to the Council of Europe

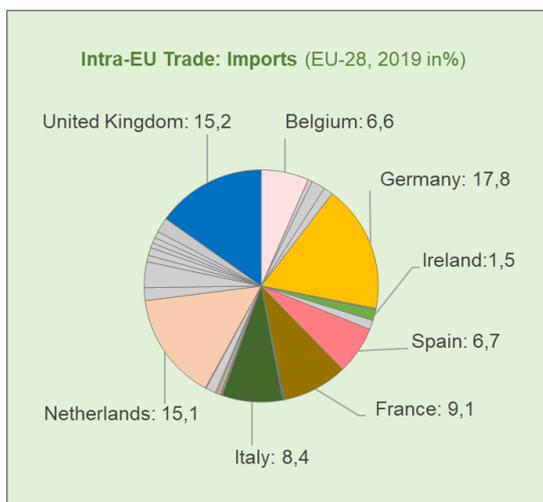
In this situation, the current EU Presidency is proving to be a burden for Germany. Its guiding principle is “Together for Europe’s recovery” ([eu2020.de](#)). But “Europe” is understood to mean the entire continent, which includes not only the 27 EU members. The political framework which keeps “Europe” together is the Council of Europe, which includes 47 states ([coe.int, 27.7.2020](#)). With its European Convention on Human Rights (1950) as the founding document, it is still the driving force behind European integration today. It obliges all members to the values of democracy and the rule of law. The UK will remain its founding member even after the Brexit.

A differentiated approach to the concept of Europe is therefore a basic prerequisite for a “rules-based international order anchored in partnership” ([eu2020.de: 21](#)). It would be an important task of the German EU Presidency to help the EU in this learning process. Brussels should take note that there is a “Europe” outside the EU and accept that not each of these European states aspire to EU membership. The uncompromising way with which EU chief negotiator Michel Barnier demands EU standards from the UK and rejects treaty offers is more reminiscent of past colonial power claims than of a policy of balancing interests.

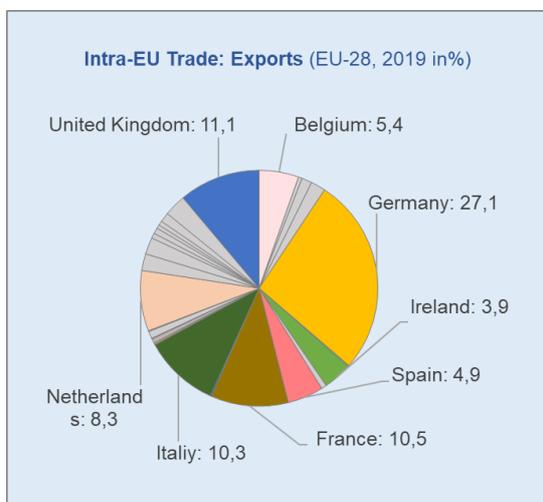
If the German government wants to place itself in the “service of a united, responsible and powerful European external action policy” ([op. cit.](#)), it

should use all its strength to prevent the second round of Brexit negotiations from failing. After all, the German and the British economy are closely intertwined. This can be seen in bilateral relations: Germany is the UK's main EU trading partner, accounting for 9.9 per cent of British exports and 12.3 per cent of British imports ([gtai.de, Mai 2020](#)). Otherwise, the interconnection in intra-EU trade (2019) is evident: Germany accounts for 17.1 percent of all EU imports, followed by the UK with 15.2 percent. In contrast, the highest share of EU exports was 27.1 per cent for Germany, followed by the UK with 11.1 per cent, France with 10.5 per cent and Italy with 10.3 per cent ([eurostat.ec, 26.7.2020](#), see Figure 6).

Figure 6:



Source: Own compilation: [Eurostat, 26.7.2020](#)



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