

Dossier [number]: The United Kingdom's exit from the European Union

No. 1 Brexit Report

REPORT BY THE RAPPORTEURS ON BREXIT

Adopted on 21 March 2017

On 23 June 2016, a referendum on EU membership was held in the United Kingdom. A majority of the population of the United Kingdom voted in favour of the United Kingdom's exit from the European Union (abbreviated as 'Brexit').

In response to this outcome, the standing committee on European Affairs decided to conduct a study into the implications of Brexit for the Netherlands and for Dutch citizens and businesses. On 13 October 2016, this committee appointed the undersigned as co-rapporteurs on Brexit and mandated them to conduct the study.

The outcomes of the study can be found in the enclosed report. This report contains a number of recommendations that are addressed to both the Dutch government and to the Senate and the House of Representatives.

The rapporteurs,

Maij
Omtzigt

Annex: Brexit Report entitled ‘The Netherlands and Brexit’

Introduction

On 25 March 1957, the treaty establishing the European Economic Community was signed in Rome by six countries. In subsequent years the EEC, later the EU, was expanded to become a partnership of 28 member states.

Last year, for the first time in the history of the EU, a member state took the reverse step. In a referendum, the citizens of the United Kingdom voted to leave the EU, a process known as ‘Brexit’. The British House of Commons and House of Lords authorised the British government to give notification of the country’s departure on the grounds of Article 50 of the Treaty on European Union. It is expected that the British government will send a letter of notification to the European Union on Wednesday 29 March, after which exit negotiations between the United Kingdom and the 27 other EU member states (the EU27) will begin.

Brexit will have implications not only for the United Kingdom, but also for the EU27, the Netherlands and the EU. Even more importantly, Brexit also puts the rights acquired by Dutch citizens and the trade interests of Dutch companies at stake. Exactly what these implications will be for the Netherlands is not entirely clear at present. They will depend, to a great extent, on the outcome of the negotiations between the EU27 and the United Kingdom. It is important that Dutch interests in the negotiation process are promoted effectively, to minimise the impact of Brexit on the Netherlands and on Dutch citizens and businesses.

For this reason, last year the House of Representative’s standing committee on European Affairs appointed two Members of Parliament as rapporteurs on Brexit. Marit Maij (PvdA) and Pieter Omtzigt (CDA) were tasked with conducting a study into Brexit and, furthermore, with:

- identifying the Dutch interests that will be affected by Brexit;
- monitoring and overseeing the preparations for the exit negotiations;
- gaining insight into potential future relations between the United Kingdom and the European Union after Brexit.

The rapporteurs undertook various activities for this study. They held a round-table discussion at which Dutch citizens, businesses and academics gave their views on Brexit and shared their concerns. The rapporteurs also conducted a series of working visits abroad, including to the United Kingdom, and spoke with Members of Parliament, ministers and experts. Finally, in Brussels they talked to representatives of the European institutions. A more detailed description of the activities can be found in the ‘List of sources’ section.

This report is the outcome of the rapporteurs’ study. It contains five recommendations, which are intended to ensure that the Netherlands emerges from Brexit in the strongest possible position. The recommendations are addressed to the Dutch government and to the Senate and the House of Representatives with respect to the exit negotiations. This report may likewise be useful to the EU27 when formulating the European negotiating position. Finally, this report may help in the process of connecting and joining forces with other national parliaments in the EU27. After all, the impact of Brexit will be felt not only in the Netherlands, but throughout the European Union.

Recommendation 1: Guarantee the existing rights of Dutch citizens in the United Kingdom

Dutch citizens who reside, work, study and live in the United Kingdom are concerned about their personal situation after Brexit. In accordance with the right to the free movement of persons – a right that is grounded in EU treaties and directives – they were able to base themselves in the United Kingdom. Here they are doing studies, are working in the private sector or have built up their own businesses or careers as entrepreneurs. In addition, some Dutch citizens have a British

partner or family living in the UK. According to an estimate by Statistics Netherlands (CBS),¹ around 73,000 Dutch citizens are living in the UK. How will Brexit affect their lives? Will they be able to keep their jobs, for example, and continue to live in the UK?

As far as the rapporteurs are concerned, Brexit does not change anything in terms of the personal situation of Dutch citizens (and other EU citizens) already living in the UK at the time of notification. Their existing rights must also continue to be safeguarded after the UK leaves the European Union. Naturally, this also applies vice versa to British citizens presently living in the Netherlands. No single EU citizen currently living in another EU country should see his or her personal situation affected by Brexit. After all, the free movement of people is one of the four European freedoms. Guaranteeing the existing rights of Dutch citizens and other EU citizens in the UK must be given top priority, preferably before the Brexit negotiations start. It is only fair and just for them to receive this assurance as soon as possible. This will prevent people from being held hostage to economic or other interests.

The rapporteurs hope and expect that it will be possible to provide this assurance soon after the exit negotiations begin. After all, in the white paper on Brexit published in early February 2017, the British government already stated that it intended to work towards this outcome. The British government acknowledges the contribution that EU citizens have made and continue to make to the British economy and society. It is also in the interests of the United Kingdom for its citizens to be able to continue to exercise their rights in the EU27, such as having access to health care.

The rapporteurs have identified legal grounds on which the rights of this group continue to be safeguarded after Brexit. The treaty on the European Economic Area and the treaty between the European Union and Switzerland on the free movement of people provide that in the case of withdrawal from the treaty, the rights shall be guaranteed of people who have already exercised these rights. A similar provision should also be included in the EU exit treaty and the new treaty with the UK.

The rapporteurs do not state their opinion on the free movement of people after Brexit, but they do request that attention be paid to a special category, namely that of students and researchers. The process of academic collaboration and exchange through the Erasmus programme and research programmes forming part of the Horizon 2020 framework has proved extremely useful and valuable; the rapporteurs believe that students and academics should be able to continue to exchange knowledge and conduct joint research also after Brexit.

Recommendation 2: Protect the close trading relations with the United Kingdom

It is expected that Brexit will have a negative impact on trade and employment in the EU27. The impact will be considerable, especially for the open Dutch economy.

Trading relations between the EU27 and the UK are close and extensive: each is an important export destination for the other, with the EU27 exporting more to the UK than vice versa. The United Kingdom is the Netherlands' most important trading partner after Germany. In 2015, the Netherlands earned more than 20 billion euros from exports to the UK, or 3% of its GDP. In the same year, the value of the Netherlands' exports to the UK amounted to as much as 9% of the country's total goods exports. Within the EU27, this share was only higher for Ireland (14%).²

The Netherlands thus not only benefits from free trade with the UK in an absolute sense, but it is also, when expressed as a percentage of the total export of goods, more dependent on this free trade in a relative sense than other EU member states, with the exception of Ireland. Any restriction on free trade with the United Kingdom will inevitably come at the expense of Dutch exports, prosperity and employment. The Netherlands therefore has much to lose from a Brexit in which all ties with the European internal market are severed.

¹ <https://www.cbs.nl/nl-nl/nieuws/2016/42/meer-emigranten-naar-verenigd-koninkrijk>

² <https://www.cbs.nl/nl-nl/nieuws/2016/24/export-naar-verenigd-koninkrijk-goed-voor-3-procent-bbp>

It will be necessary to look at the consequences for each individual trade sector. The rapporteurs are asking for special attention to be paid to the Dutch fishing industry, which will lose access to a large number of fishing grounds off the coast of Scotland unless further measures are taken.

The rapporteurs are arguing in favour of protecting close and free trading relations between the EU27 and the United Kingdom through some form of connection with the European single market. The rapporteurs are aware that various scenarios are conceivable in this regard, based on existing arrangements with third countries (the European Economic Area, the European Free Trade Association, a customs union, bilateral free trade agreements), or on the basis of a unique, customised free trade agreement between the EU27 and the UK.

The rapporteurs do not consider it expedient to state a preference for one of these scenarios at the present time. They have taken note of the starting points for the negotiations on both sides. Among other things, the EU27 believes that the new agreement with the UK should not turn out to be more advantageous than EU membership and it considers the four freedoms of the single market to be indivisible. The UK, among other things, aims for an ambitious and extensive free trade agreement and a new customs agreement, but not a customs union.

The EU concludes a large number of trade agreements. There is no reason whatsoever why it should allow the UK to ‘cherry pick’ and combine the best of both worlds outside the EU. However, there is also no reason why the EU should deny the United Kingdom the trade benefits offered to countries such as Ukraine or Turkey.

The rapporteurs recommend that the negotiations also focus on the conclusion of a new (trade) agreement. The failure to conclude such an agreement would mean that the EU27 and the UK would automatically revert to non-preferential World Trade Organisation (WTO) rules. In the rapporteurs’ view, this would be extremely undesirable, because the new, high trade tariffs that would then apply would undoubtedly cause damage to the Dutch economy and employment.

The rapporteurs also recommend that a realistic time schedule be arranged for the new trade agreement and that it is ensured that there is no reversion to WTO rules in the meantime. The mere threat of reverting to WTO rules could be enough to severely damage trade.

The rapporteurs identified three points of attention that they feel should be included in the coming negotiations with respect to trade, the economy and employment. In the first place, they call for the rights of employees to be protected; the new agreement with the UK must not lead to the erosion of the position of employees or any form of social dumping.

Secondly, they call for an investigation into the effects of Brexit on existing or forthcoming treaties (mixed agreements) between the EU and third countries. It cannot be ruled out that these treaties may have to be changed.³

Finally, the rapporteurs point to the close (trade) relations between Ireland and the UK and the unique position of Northern Ireland. The exit agreement and the new treaty with the UK will also have to take this into account, and must guarantee stability in the region. The rapporteurs believe that the fundamental principles of the Good Friday Agreement should be maintained. New consultations will have to be held on the question of what it would mean for all citizens of Northern Ireland to be entitled to having both a British and an Irish passport.

Recommendation 3: Ensure that the House of Representatives remains closely involved in the negotiations

Article 50 of the Treaty on the European Union provides that a member state can decide to leave the EU. The procedure following the invocation of this article by the United Kingdom (the formal announcement or notification of the decision to leave) is as follows.

³ The rapporteurs have asked Mr. Barnier whether the mixed agreements will have to be ratified once more by all of the countries. They are still awaiting the written response that was promised.

After notification has been given, negotiations commence between the EU27 and the UK. During a two-year period these parties negotiate an exit agreement that takes into account the framework of future relations between the UK and the EU. The exit agreement sets out the conditions for the UK's exit from the EU.

On behalf of the EU27, the European Council, which comprises the heads of state or government leaders, will establish the guidelines for the negotiations. This will be done by consensus, obviously without the United Kingdom. These guidelines will be developed into a negotiation mandate for the European Commission, to be adopted by the Council of the European Union on the basis of a weighted qualified majority. The European Commission will then conduct negotiations on behalf of the EU27. Finally, the exit agreement will be concluded by the Council of the European Union on behalf of the EU, on the basis of qualified majority voting and after the European Parliament has given its approval.

The two-year period can be extended if unanimous agreement is reached by the UK and the EU27 member states. It is also possible for agreements to be made on a transition period between the conclusion of the exit agreement and the commencement of a new agreement on future relations. The new agreement on the future relations with the UK will have to be ratified by all of the EU's member states. In the Netherlands, the House of Representatives and the Senate will successively have to approve this agreement on the new relations with the UK. Such an agreement could also be put to a referendum under the Advisory Referendum Act.

It should be noted that if, after two years, no exit agreement has been agreed and no consensus has been reached regarding an extension of the negotiation period, the UK will leave the EU abruptly and unconditionally.⁴

Unlike the European Parliament, national parliaments do not have any formal competence in the process of concluding the exit agreement. Nevertheless, it is important for them to be properly informed about and closely involved in the negotiation process. This is relevant, because the Dutch States General will eventually have to approve a new agreement on future relations between the EU and the UK.

With regard to the House of Representatives, the standing committee on European Affairs has therefore made the following information-related agreements with the Minister for Foreign Affairs:

1. The House of Representatives should be systematically informed by the government about and closely involved in the course of the negotiations, the decision moments in the negotiation process and the Dutch contribution in this regard. For this purpose, negotiation documents should be made available for confidential inspection. Closed political and technical briefings should also be held, of which a confidential report will be drawn up.
2. The Dutch draft contribution to the EU27's negotiation guidelines should be shared beforehand with the House of Representatives on a confidential basis and discussed in private.
3. The Dutch contribution to meetings of the (European) Council should be discussed and prepared with the House of Representatives in the customary way, in consultations and plenary debates.

The rapporteurs recommend strict compliance with these information-related agreements, allowing the House of Representatives to follow and monitor the negotiation process and the Dutch contribution effectively. Should other member states or the European Parliament decide to disclose information to the public, the provisions on confidentiality could be revised.

Recommendation 4: Assess the implications of Brexit for the EU's long-term budget

⁴ There is no agreement on whether or how the United Kingdom could retract the notification.

The long-term budget of the European Union, also known as the Multiannual Financial Framework (MFF), is agreed every seven years. The MFF contains an overview of expected revenues and maximum spending limits, spread across the various policy areas. To a great extent, the EU is dependent on the payments by member states, calculated on the basis of each state's gross national income. The EU's annual budget needs to fit within the multiannual financial framework. At present, the MFF 2014-2020 is in force.

Since 1985, the United Kingdom has been receiving an annual rebate on its contribution to the EU, because it has contributed considerably more than it has received since its entry into the EU. In relative terms, the Netherlands is already the largest net contributor to the EU. Under the present MFF, the Netherlands receives an annual sum of around 1 billion euros.⁵ One important implication of Brexit for the EU's budget is that the UK, once it leaves, will obviously no longer be making any payments to the EU. This means that the net payments made by the Netherlands may increase further.

The current MFF takes account of these financial obligations, which have already been assumed, also on behalf of the United Kingdom. There would be three options for financing the budget deficit should the UK leave the EU before the end of the MFF: either the United Kingdom will pay the sum nevertheless, or it will be transferred to the EU27, or the EU will introduce cost savings. The extent of the total extra costs for the Netherlands and the EU27 will depend on the outcome of the exit negotiations. In addition to the obligations that have already been contracted, the EU has also entered into many implicit commitments. These include non-capital funded pension obligations, for example, and guarantees issued. In the case of a financial settlement, these will have to be distributed fairly.

The rapporteurs are concerned about the short-term financial implications of Brexit for the Netherlands and the EU. They insist that the financial commitments already made by the United Kingdom under the current MFF should be complied with and that they should not be transferred to the member states of the EU27. The exit agreement must contain clear provisions on this.

In addition, with the departure of the United Kingdom as a net contributor, the rapporteurs also anticipate that there will be consequences for the next Multiannual Financial Framework (2021-2027). They recommend that the financial consequences for the Netherlands and the EU in this coming period be investigated and identified in good time. Even before the end of this calendar year, the European Commission will present a proposal for a new MFF, including a proposal for its own funds. In the discussions that follow, the Netherlands will not only have to keep a sharp eye on its own policy priorities, including reform of the EU budget. More than in the past, the size of the EU's budget, the allocation key for income and expenses and the (net) national contribution will also be important factors in the discussions within the EU about the new post-Brexit MFF.

The rapporteurs recommend that the government commission a legal analysis of the zero-position at the upcoming MFF negotiations, including the possibilities for reducing the burden on net contributors.

The rapporteurs also recommend that the European Union be called upon to provide an overview of the obligations and guarantees that have been contracted on behalf of the member states and the implicit risks to which the member states are exposed. This includes obligations made via the ECB and the Eurozone.

Recommendation 5: Exit from the Euratom treaty should be kept separate from Brexit negotiations

In its white paper of February 2017, the British government states that the UK intends to withdraw from Euratom as well as from the EU. Euratom is an organisation that comprises the EU's member

⁵ <https://www.cbs.nl/nl-nl/nieuws/2016/50/nederland-deze-eeuw-grootste-nettobetaler-van-de-eu>

states, with the aim of promoting the peaceful utilisation of nuclear energy. Euratom distributes European funding for nuclear research, formulates regulations to ensure the safety of research, and monitors compliance with these regulations. To a great extent, the UK is dependent upon nuclear energy for its power supply. Britain is also home to a leading research centre for nuclear fusion that is largely funded by Euratom. The nuclear facilities in the EU27 often work in partnership with those in the United Kingdom.

The British government wants to leave Euratom on the grounds that the organisation is run by European institutions (the Council, the Parliament and the Commission). From a legal perspective, however, Euratom is separate from the EU, with Euratom membership being regulated by a separate treaty. The connection between the EU and Euratom was established in the UK's national law, as can be deduced from the British government's white paper. As a result, the British government feels that the Article 50 procedure applies not only to the EU treaty, but also to the Euratom treaty.

This is not an opinion shared by the rapporteurs. Collaboration in the area of nuclear energy is not regulated by the EU treaty, and they see no legal need to extend the sphere of action of the Article 50 procedure to include the Euratom treaty. They point to the possibility of the UK leaving the EU automatically two years after notification, if no exit agreement or extension of the negotiation period has been agreed. If the two treaties are connected, in this case the UK will also leave Euratom abruptly. Given the potential security risks, the rapporteurs see this as a highly undesirable situation.

The rapporteurs recommend that the Euratom treaty be kept outside the sphere of action of the Article 50 procedure. Any potential withdrawal from the Euratom treaty should be kept separate from EU exit negotiations. If the UK wishes to leave Euratom, a separate procedure should be agreed for this purpose, so that such negotiations can be conducted with due care, rather than under time pressure.

List of sources

For this study, the rapporteurs made various working visits, held discussions and consulted documents. An overview of the key sources can be found below. The rapporteurs are nonetheless fully responsible for the content of this report.

Parliamentary activities

- Official technical briefing by the Brexit Taskforce (20 December 2016)
- Discussion with visiting delegation from the Lithuanian parliament (31 January 2017)
- Round-table discussion with employers' organisations, employees' organisations, academics and Dutch citizens living in the United Kingdom (1 February 2017)
- Discussion with the Minister for Foreign Affairs, Mr Bert Koenders, concerning the provision of information about the Brexit negotiations (9 February 2017)
- Discussion with the EU's chief negotiator, Mr Michiel Barnier (21 February 2017)

Working visits (in relation to the committee or as rapporteurs)

- Brussels, 28 November 2016: discussions with Mr Guy Verhofstadt, rapporteur on Brexit and the future of the EU, European Parliament; Mr Michel Barnier, the EU's chief negotiator, European Commission; Mr Ben Smulders, head of cabinet to First Vice-President Timmermans, European Commission; Mr Pieter de Gooijer, Permanent Representative of the Netherlands to the European Union

- Paris, 9-10 January 2017: discussions with Mr Jean Bizet, chairman of the committee on European Affairs, Sénat; Mrs Daniëlle Auroi, chair of the committee on European Affairs, Assemblée Nationale; Mr Philippe Leglise-Costa, secretary-general on European Affairs; Mr Ed Kronenburg, Dutch ambassador to France
- London, 6 February 2017: discussions with Mr David Jones, junior minister for Brexit; Mr Hilary Benn, chair of the Brexit committee, House of Commons; Lord Boswell of Aynho, chair of the committee on European Affairs, House of Lords; Mr Mark Boleat, chair of the City of London Corporation; Mr Simon Smits, Dutch ambassador to the United Kingdom
- Cardiff, Belfast and Edinburgh, 7-8 February 2017: discussions with Mr David Rees, chair of the committee on External Affairs, Welsh Assembly; Mr Robin Newton, chair of the Northern Ireland Assembly; Mrs Joan McAlpine, chair of the committee on External Relations, Scottish parliament; Mr Alasdair Allan, minister for International Relations and Europe, Scottish government
- Dublin, 8 February 2017: discussions with Mr Charles Flanagan, Minister for Foreign Affairs; members of the Irish parliament; experts from various think tanks

Foreign documents

- Theresa May (Prime Minister of the United Kingdom), 'The United Kingdom's exit from and new partnership with the European Union' (white paper published on 2 February 2017)
- Carwyn Jones (First Minister of Wales), 'Securing Wales' future: Transition from the European Union to a new relationship with Europe' (published in 2017)
- House of Lords, 'Brexit: UK-Irish relations' (report published on 12 December 2016)
- Nicola Sturgeon (First Minister of Scotland), 'Scotland's Place in Europe' (published in 2016)

Cabinet documents

- 23 987, no. 158 dated 27 July 2016: the Cabinet's response to the result of the referendum on EU membership held in the United Kingdom on 23 June 2016
- 21 501-20, no. 1129 dated 1 July 2016: report of the European Council meeting of 28-29 June 2016
- 21 501-20, no. 1150 dated 23 September 2016: report on the informal meeting of the European Council of 16 September 2016 in Bratislava
- 21 501-20, no. 1176 dated 16 December 2016: report of the European Council meeting of 15 December 2016
- 34 648, no. 1 dated 23 December 2016: memorandum on the State of the European Union 2017
- 29 477 (34 648), no. 410 dated 16 January 2017: letter announcing the Netherlands' intention to put forward its candidacy as the new host country for the European Medicines Agency (EMA), currently based in London.