Part III
EU Policies –
Perspectives of Cooperation with the UK

The Future of Monetary and Financial Policy after Brexit

Jean-Victor Louis

Abstract

This chapter starts with recording the essential features of the Brexit negotiations up to recent developments, and stresses in particular the importance for the subject treated in this chapter of the so-called non-binding 'Political declaration setting out the framework for the future relationship between the EU and the UK'. The first section of the chapter relates to the more straightforward institutional consequences of the Brexit in monetary and financial affairs, the UK loosing in particular the possibility to interfere from within the Union in the preparation of legislation on economic and financial affairs. The second section bears on the remaining participation of the UK to international fora from which it keeps the ambition of influencing the drafting of norms and the adoption of policy orientations by the EU. Section 3 describes the economic and social consequences for the UK of leaving the EU, especially for the finance industry. This is an important challenge for the City of London and other financial places in the UK. Section four analyses the impact of Brexit on the continental financial markets. The respective standpoints on this matter from UK and EU authorities are analysed. The section evokes in particular the question of the localisation and surveillance of Central Counterparties (CCP).

The chapter closes by some considerations about the attitude of Britain towards European integration. It expresses the hope of a cooperation between the UK and an EU remaining faithful to its objective to build 'an ever closer Union'.

I. Introduction

This report will sketch, from a legal standpoint the presumed effects of Brexit on Monetary Policy as well as on financial regulation and supervision. Competences of the EU legislator and of the ECB are at stake. The relationship between monetary stability and the smooth functioning of financial markets (both banks and non-banks) and the specific role played by the ECB and National Central Banks in supervision are well-known.

The Delors report of 1989 described a complete single market as a basic element of EMU.[1] This relation is evident if we contemplate the role of an effective free movement of capitals for the smooth transmission of monetary policy.

But before entering into our subject we think necessary to recall some essential features of the context of Brexit negotiations up to the present no-deal and the new delay which was conceded at her request to the British Prime Minister, after the triple rejection by the House of Commons (on 15 January, 12 March and 29 March 2019) of the draft Agreement on the withdrawal of the United Kingdom from the European Union.

The latest date for the ratification of the Agreement was on 29 March 2019, two years after the notification of the UK decision to withdraw from the EU. A first request for extension was introduced by the UK Government on 20 March 2019 until 30 June. With the agreement of the UK, the European Council decided to extend the period until 22 May in the event the House of Commons approved the Withdrawal Agreement by 29 March 2019. 'If that were not the case, the European Council agreed to an extension until 12 April 2019.' A new prolongation was asked for until 30 June 2019, which was denied. On 10 April, the European Council agreed to a further extension which 'should last as long as necessary and, in any event, no longer than 31 October 2019'. So, the withdrawal should take place 'on the first day of the month following the completion of the ratification procedures or on 1 November 2019, whichever is the earliest.' The conceded extensions were indeed conditional to the prior ratification of the Withdrawal Agreement.

At the moment of revising this text, it was far from certain that the UK will, at the end, ratify the Withdrawal Agreement. It seems useful to recall some important points of the negotiations, without entering in a description of the successive, negative and sometimes incoherent votes of the House of Commons.

Six days after the vote of the UK to leave the EU and Euratom, the Heads of State and Government at 27, as well as the Presidents of the European Council and the European Commission, adopted on 29 June 2016 a 'Statement' including a number of principles which would guide the attitude that will be adopted by the EU in the negotiation. The first points

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1 Committee for the Study of Economic and Monetary Union, Report on economic and monetary union in the European Community, 1989: '*Economic and Monetary Union* in Europe would imply complete freedom of movement for persons, goods, services and capital, as well as irrevocably fixed exchange rates between national currencies and, finally, a single currency.' p 13.

raised were on the procedure to be followed under Article 50 TEU which is applicable if a Member State decides to leave the Union. Other elements refer to the substance of the future agreement, which would have to be built 'on a balance of rights and obligations'. And the statement recalls one of the crucial points for the EU that 'Access to the Single Market requires acceptance of all four freedoms.' It so opposed the intention expressed by the UK Government to seriously limit the persons' freedom of movement. It was at this early stage an advertisement that the EU would not accept a 'cherry-picking' among the very bases of the Single Market.

After the UK notification under Article 50 TEU, on 29 March 2017, the European Council adopted on a draft prepared by the Commission, the first guidelines[2] for the negotiations that it was from then possible to open. Considering the 'significant uncertainties' created for people and business by the UK's decision to leave the Union, the European Council proposed a 'phased approach giving priority to an orderly withdrawal. National authorities, businesses and other stakeholders should take all necessary steps to prepare for the consequences of the United Kingdom's withdrawal.'

For the EU, the first phase of the negotiations which was thereafter familiarly called 'the conditions of the divorce' would aim to 'provide as much clarity and legal certainty as possible to citizens, businesses, stakeholders and international partners on the immediate effects of the UK's withdrawal from the Union' and 'settle the disentanglement of the UK from the Union and from all the rights and obligations the UK derives from commitments undertaken as Member State'.

It would only be in a second phase, when the UK has become a third country, that an 'agreement on a future relationship between the Union and the UK as such could be 'finalised and concluded'. This phasing which prevented the UK to start negotiations with third States, for example on future trade relations, was a surprise for the British negotiators. Nevertheless, the future relations could be in some measure considered as Article 50 TEU requires to take into account the framework for the future relationship with the Union of the exiting Member State. That inevitably would determine the kind of relations that the UK would be able to develop in the future, on trade and tariffs for example, with the outside World. The Union declares itself ready to identify 'an overall understanding on the framework for the future relationship…during a second phase of the negotiations under Article 50 TEU.' The Union stands also ready 'to engage in preliminary and preparatory discussions to this end …if the European

2 Council of the European Union, 22 May 2017, XT 210116/17, Add 1 Rev 2.

Council decides that sufficient progress has been made in the first phase towards reaching a satisfactory agreement on the arrangements for an orderly withdrawal'.

The UK directives of negotiation made evident the two different conceptions of the object of the negotiations which were conceived by the British negotiators essentially as the building of a new partnership.[3] Michel Barnier, a former Commission member and French minister, head of the EU delegation, received the mandate from the European Council to negotiate in a first period, with his counterpart, Brexit secretary David Davis, about three politically sensitive questions: the respective rights of the citizens of both the EU and the UK, the conditions of the so-called 'divorce' in budgetary figures and the regime for Ireland. If the two first points were not easy to solve, the last one still remains today a serious point of contention.

This latest question is surely one of the most delicate to settle in order to avoid any risk to compromise the ever fragile implementation of the so called Good Friday agreement between the two parts of the island.[4] The most rational solution would be to consider the unification of the island. This idea appears however to be unacceptable for the UK and its realisation could endanger the peace in the Northern part of the island. Furthermore, the Irish Prime Minister has repeatedly affirmed that to build a hard frontier between the North and the South of the island would be vetoed by Ireland, a position of which the other EU members have taken note. The Brexiters were opposed to the possibility under the Protocol on Ireland, for the EU to require the temporary recourse to a so-called backstop.

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3 See www.gov.uk/government/publications/the/united/kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper 2 February 2017. See also the Lancaster speech of the Prime Minister of 17 January 2017, 'The government's negotiating objectives for exiting the EU: Prime Minister speech', in an updated version of 3 February 2017, https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech on the theme: 'we are leaving the European Union but we are not leaving Europe', and the Florence speech of Mrs. May of 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.de

4 Ireland is opposed to the building of a rigid frontier with Norther Ireland (which now is a very theoretical one) and the UK refuses to consider the option of the building of a frontier at the border of the island, which would mean a physical separation with the rest of the UK, i.e. a loss of sovereignty on the island. This question has received a very enigmatic solution in the 8th December joint report mentioned in n 7.

This would result in 'keeping the UK in a customs union which would torpedo their dream of a 'global Britain' able to strike trade deals around the World, and set its own regulatory path, free from Europe.'[5] The acting government of the Northern Republic, and Mrs May, UK Prime Minister who led a minority government supported by the Belfast Government could not accept either the division of the United Kingdom through the creation of customs barriers in the Ocean. Some opponents to the backstop would be satisfied by a 'ready exit mechanism, or time-limit'. It was the object of the so-called Strasbourg agreement, signed by the Union and the United Kingdom, on 11 March 2019.[6] It was said and repeated in this agreement that the backstop was à provisional solution but it remained to be decided what would be the definitive regime.

After various rounds of negotiations, a joint report was adopted on 8 December 2017 on progress during phase 1 of difficult negotiations under Article 50 TEU "on the United Kingdom's orderly withdrawal from the European Union".[7] On this basis and on a report from the Commission on the state of the negotiations[8], the European Council which met on 15 December 2017,[9] without the UK Prime Minister, decided that 'it is sufficient to move to the second phase related to transition and the framework for the future relationship'. So it called

5 See *The Guardian*, 13 December 2018.

6 Instrument relating to the Agreement on the withdrawal of the United Kingdom of Great-Britain and Northern Ireland from the European Union and the European Atomic Energy Community, published on the TF50 website on 11 March 2019. On the legal force of this agreement, see among others, Michel Dougan, Brexit: legal analysis of May's Strasbourg deal, https://news.liverpool.ac.uk/2019/03/12. See also HM Government, UK Government Commitments to Northern Ireland and its integral place in the UK, 9 January 2019, referring to and complementing the Protocol on Ireland and Northern Ireland guaranteeing that 'there will not be a hard border between Northern Ireland and Ireland or a splitting of the UK customs territory.' All these efforts by the British Government were not sufficient in order to rally opponents who supported the rejection of the deal by the acting Northern Irish Government.

7 TF50 (2017) 19 – Commission to EU 27, 8 December 2017. We will not comment on the content of this report which has been analysed by a good specialist of European Affairs, Jacob Funk Kirkegaard, in a short paper under the title: 'Britain Opts for 'Brexit in Name Only'', (2017) Peterson Institute for International Economics (PIIE), Washington, December 11, referring specifically to the Irish border sketched solution which many consider as ambiguous. We will see later on that the December 2017 'Guidelines' of the European Council are very clear on the fact that the UK will not be bound anymore with the rules on the single market.

8 COM (2017) 784 final.

9 EUCO XT 2011/17.

> 'on the Union negotiator and the United Kingdom to complete the work on all withdrawal issues, including those not yet addressed in the first phase, in conformity with the European guidelines of 29 April 2017, to consolidate the results obtained, and to start drafting the relevant parts of the Withdrawal Agreement. It underlines that negotiations in the second phase can only progress as all commitments undertaken during the first phase are respected in full and translated faithfully into legal terms as quickly as possible'.

Time was indeed pressing. In principle, and if no prolongation of the negotiations were agreed within two years after the Brexit decision,[10] the UK would have had to leave the EU without an agreement with the EU on the conditions of exit. Such a solution would have been damaging for both the UK and the EU. For trade relations, it would have meant that the regime between the two parts would be determined by the WTO rules and (lengthy) discussions in this framework should take place of the UK with all the membership of the Geneva institution.

The risk of a *cliff-edge*, i.e. no agreement between the two partners and a rough breakdown so often mentioned in the UK would have materialised. In order to avoid, temporarily, a situation of vacuum, also if negotiations were in the end successful, the UK had repeatedly asked for a transitory period allowing UK the necessary time for organising the new regime in the relationship of the UK, as a third country and the EU at 27. In its report on Brexit and financial services, the House of Lords EU Committee recommends, 'both for the business environment and for financial stability, a considered and orderly transition to any new relationship.'[11] The UK Prime Minister 'has made a clear commitment to avoid a disruptive cliff-edge and associated risks to UK and EU financial stability and business cer-

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10 The notification of the demand to exit the EU under article 50 TEU was made on 29 March 2017. If a prolongation of the deadline is not decided by a unanimous vote of the European Council, under Art 50, para 3, the treaties will cease to be applicable to the UK on 29 March 2019.

11 9th Report of session 2016-2017, 15 December 2016, Conclusions, n°4, p 39. See also in favour of transitional arrangements in proportion of the time required between agreement on any new rules and their required implementation by market participants within a financial services regulation context, the letter of the Chief Executive of the Financial Conduct Authority (FCA) to the Chairman of the Treasury Committee of the House of Commons, of 13 January 2017: "…transitional arrangements should facilitate, rather than hinder, the eventual establishment of the future framework."

tainty.'[12] Although this appeared as a reasonable request, the organisation of such transition raised a number of questions. One of the difficulties consisted in the judicial control during the transition between the application of common EU rules and the new regime as agreed during the negotiations. The refusal of continued jurisdiction of the Court of justice appeared as one of the problems of the transition.
In its guidelines adopted on 15 December 2017,

> 'the European Council noted the proposal put forward by the UK for a transition period of around two years, and agreed to negotiate a transition covering the whole of the EU acquis, while the UK, as a third country, will no longer participate in or nominate or elect members of the EU institutions, nor participate in the decision making of the Union bodies, offices and agencies.'

The European Council specifies (point 4) that in order to ensure a level playing field in the single market, 'changes in the acquis adopted by institutions, bodies, offices and agencies 'will have to apply both in the UK and the EU' and 'all existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures will also apply, including the competence of the Court of Justice of the EU'.

It is in the same guidelines (point 6) that the European Council envisaged 'identifying an overall understanding of the framework for the future relationship' which 'should be elaborated in a political declaration accompanying and referring to in the Withdrawal Agreement.' A full paragraph of the Guidelines was devoted to the consequences of the UK's intention to no longer participate in the Customs Union and the Single Market after the transition period. The European Council announced that it will

> 'calibrate its approach as regard to trade and economic cooperation in light of this position so as to ensure a balance of rights and obligations, preserve a level playing field, avoid upsetting relations with other third countries, and to respect …in particular the need to preserve the integrity and proper functioning of the Single Market.'

A 'Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom', was officially adopted by the European Council and the United Kingdom on 25 November 2018 in parallel with the Withdrawal Agreement. This non-

12 See Government response to the House of Lords European Union Committee Report, of 15 December 2016, (2017) 'Brexit: financial services' 21 March, p 2.

binding instrument should serve as a basis for hypothetical further negotiations on the basis of Article 50(2) TEU.

The declaration mentions in its introduction the determination of the Union and the United Kingdom

> 'to work together to safeguard the rules-based international order, the rule of law and promotion of democracy, and high standards of free and fair trade and workers' rights, consumer and environment protection, and cooperation against internal and external threats to their values and interests.' (Point 2).

Without the list of subjects covered by the Declaration being exhaustive (other areas of cooperation are possible), it mentions the establishment of the parameters of an ambitious, broad, deep and flexible partnership across trade and economic cooperation, law enforcement and criminal justice, foreign policy, security and defence and wider areas of collaboration. Reference is made on the shared values of the Union and the UK and on their shared heritage… (Point 3). In point 4, is mentioned the need for the relationship to be 'based on balance of rights and obligations taking into account the principles of each Party'. That means for the EU, to ensure the autonomy of decision making and the consistency with Union's principles, 'in particular with respect of the integrity of the single market and the indivisibility of the four freedoms'. For the UK, it means 'to ensure its sovereignty and the protection of its internal market, while respecting the result of the 2016 referendum including the development of its independent trade policy and the ending of free movement of people between the Union and the UK'.

Point 5 mentions, on the basis of the large period of membership of the UK to the Union, a 'unique context' that will inevitably needs to be taken into account. This means that the future relationship 'should be approached with high ambition'.

We cannot analyse here the 147 points of the Political Declaration. We should only limit the developments to what concerns the *Services* and more specially, the *Financial services* in Part II, Economic Partnership, I. Objectives and Principles, III. Services and Investment, and IV. Financial Services.

Section I, on *Objectives and Principles*, point 16 – valid for the whole *economic partnership* – starts with an obvious but important observation: the recognition by the Parties of the 'particularly important trading and investment relationship, reflecting more than 45 years of economic integration', 'the size of their two economies and their geographic proximity'. All that 'has led to complex and integrated supply chains'.

Points 17 and 18 develop the principles enounced in the introduction. The objective of the parties is to develop 'an ambitious, wide-ranging and balanced economic partnership'. This partnership 'will be comprehensive, encompassing a free trade area as well as wider sectoral cooperation where it is in the mutual interest of both Parties'. This is particularly important in financial services where the authorities are well used to such bilateral and multilateral cooperation. Provisions ensuring a level playing field for open and fair competition are also mentioned as well as the objective of facilitating trade and investment 'between the Parties to the extent possible' within the limits already mentioned in point 4 of the Introduction (quoted above) to which is added the recognition of 'the development of an independent trade policy by the United Kingdom beyond this economic partnership.' Point 18 is related to the 'autonomy and the ability' of the Parties to 'regulate economy activity' pursuing objectives deemed appropriate of which a non-exhaustive list is produced. Sustainable development is mentioned as 'an overarching objective' of the economic partnership. The text also mentions 'appropriate general exceptions' with, as an example, security. Point 19 recalls the determination of the Parties to replace the backstop solution on Northern Ireland by a subsequent agreement.

Section III. *Services and Investment* under A. Objectives and principles refers first (in Point 29) to the intention of the parties ('should') of concluding 'ambitious, comprehensive and balanced arrangements on trade and services and investment in services and non-services sectors, respecting each Party's right to regulate.' Furthermore, 'the Parties should aim to deliver a level of liberalisation in trade and services well beyond the Parties' WTO commitments and building on recent EU Free Trade Agreements (FTAs), an evident allusion to CETA concluded with Canada.

Point 30, referring to Article V of the GATT, requests to the Parties to aim (should) at 'substantial sectoral coverage, covering all modes of supply and providing for the absence of substantially all discrimination in the covered sectors, with exceptions and limitations as appropriate.' A non-exhaustive list of sectors follows with among them: financial services.[13]

Under B. Market access and non-discrimination, are included provisions related to market access, national treatment in order to facilitate non-discrimination 'including with regard to establishment' (Point 31), 'tempora-

13 This doesn't exclude any kind of services. Cp with the content of a declaration made one year before by Michel Barnier to *The Guardian* (and other newspapers): 'UK cannot have a special deal for the City', 18 December 2017: 'There is no place [for financial services]. There is no single trade agreement that is open to financial services.'

ry entry and stay of natural persons for business purposes in defined areas (Point 32). Under C, Regulatory aspects, point 33, 'while preserving regulatory autonomy', arrangements should include 'horizontal provisions such as on licensing procedures, and specific regulatory procedures in the sectors of mutual interest such as telecommunication services, financial services, delivery services, and international maritime transport services' as well as 'provisions on the development and adoption of domestic regulation that reflect good regulatory practices.' Point 35 adds in this text that Parties should establish a framework for voluntary regulatory cooperation in areas of mutual interest, including exchange of information and sharing of best practice. Point 36 encourages the development of arrangements on those professional qualifications which are necessary to the pursuit of regulated professions, where in the Parties' mutual interest.

What strikes in the formulation of the Political Declaration is the open-ended way in which its provisions are drafted. Perhaps this has been made possible by the non-binding feature of it. This remark could also apply to Section IV exclusively dedicated to *Financial Services*. Point 37 relates to the objectives of their financial policy: 'preserving financial stability, market integrity, investor and consumer protection and fair competition' with the traditional caveat: 'while respecting the Parties' regulatory and decision-making autonomy' with the addition of 'their ability to take equivalence decisions in their own interest'. Point 38 is entirely on equivalence. As we will see later on in the text, equivalence seems to sometimes appear as a second best to the establishment of a subsidiary in the positions defended by ECB supervision authorities. Point 39 includes an agreement on the need of 'close and structured cooperation on regulatory and supervisory matters which is in their mutual interest.' A cooperation grounded in the economic partnership and based 'on the principles of regulatory autonomy, transparency and stability.' The declaration also lists the fields where the cooperation should apply.

After this sketch of the content of the Political Declaration, that we hope will be useful in an indeterminate time in the future, let us come back to the presumed effects of Brexit in monetary and financial matters.

II. The more straightforward institutional consequences of the Brexit in monetary and financial matters

Protocol No 15 to the Lisbon Treaty on the so-called British opt out under which "the United Kingdom shall not be obliged or committed to adopt the euro without a separate decision to do so by its government and Parliament" would be abrogated. The UK could not anymore candidate for adopting the euro, after the Brexit, without having first applied for re-accession to the EU and after the end of the negotiations under Article 49 TEU.

The Bank of England's governor would not any more participate in the European System of Central Banks General Council,[14] an organ grouping all the governors of Central Banks in the EU and which has very limited competences under the ESCB statutes. The Bank of England would recuperate the modest part of its participation in the capital of the European Central Bank[15], to which it had to subscribe on the same basis as Central Banks of countries with a derogation, in order to participate to the functioning costs of the institution.

The EU rules in the field of banking and payment services would no longer apply to the United Kingdom.

The UK would cease to participate to the authorities constitutive of the ESFS (European System of Financial Supervision): EBA (European Banking Authority), ESMA (European Securities and Markets Authority), EIOPA (European Insurance and Occupational Pensions Authority) and the European Systemic Risk Board (ESRB) and of the Single Resolution Mechanism (SRM) and the Single Resolution Fund (SRF).

As a consequence, the UK would lose the benefit of the double majority arrangement that it obtained in the voting rules for important decisions in the EBA,[16] which provides that some of these decisions adopted with a simple majority should require the positive votes of a majority of representatives of competent authorities of countries having adopted the euro and of a majority of the representatives of such authorities of non-euro countries.

14 We recall that all the EU National Central Banks form, with the ECB, the European System of Central Banks. Only those having adopted the euro are members of the Eurosystem with the ECB, see art 282, para 1, TFEU and Art 1, Protocol No 4.

15 ESCB and ECB Statutes, Protocol n°4, art 47. See also Protocol No 15, art 8, c.

16 See Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EU) No1091/2010 establishing a European Supervisory Authority (European Banking Authority) as regard of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013, Article 1 (24) amending article 44 of Regulation No 1091/2010.

The UK will also lose the possibility, opened for all EU Member States "wishing to participate",[17] to enter into a 'close cooperation' with the Single Supervisory Mechanism (SSM), through a decision adopted by the ECB under article 7 of the Regulation (EU) No 1024/2013. A close cooperation which would also include the automatic participation to the Single Resolution Mechanism (SRM), and .to the intergovernmental agreement about financing the Single Resolution Fund.

The UK would also have to leave the European Investment Bank (EIB).[18]

In any regard, it would become a third country in these fields.

In a Notice to stakeholders of 8 February 2018, the Commission has produced a document listing the legal provisions, 'subject to any transitional arrangement that may be contained in a possible withdrawal agreement, as of the withdrawal date', that will not apply to the UK.[19] The Notice includes provisions related to authorisations, arrangements and exposures and contracts.

III. *The unchanged situation of both the UK, EU and national authorities in the international financial institutions and a future cooperation*

The Bank of England and other financial authorities participate at the international standards-setting bodies, like the Basle Committees (parts of the Bank for International Settlements – BIS structure), or the Financial Stability Board (FSB), an organism under the guidance of the G20, which will continue after Brexit to inspire national and EU legislative action, and so to act as an instrument of convergence. One should also allude in this respect to the International Organisation of Securities Commissions (IOSCO), a private institution which has an important coordinating role. We have mentioned that the Political Declaration provides for an obligation of cooperation of the UK and the EU Member States in the international financial 'institutions'. For the UK, the participation to these stan-

17 See at this regard, Christos V. Gortsos, The Single Supervisory Mechanism (SSM). Legal aspects of the first pillar of the European Banking Union (NomikiBibliothiki SA, Athens 2015), p 183 ff.

18 See article 308 TFEU and Protocol No. 5, art 3.

19 European Commission, Notice to stakeholders. Withdrawal of the United Kingdom and EU rules in the field of Banking and Payment Services, 8 February 2018, at https://ec.europa.eu/info/sites/info/files/180208-notice-withdrawal-uk-banking-services_en.pdf.

dards setting bodies offers an indirect possibility to influence EU legislation from the outside, and especially the Euro area Member States. The Report of the House of Lords of 15 December 2016, already quoted, mentions in its paragraph 59: 'The UK's influence on international standard-setting bodies, such as the Basel Committee and the Financial Stability Board, will be crucial to ensuring that changes in regulation are consistent internationally'. It added that '…it is in the UK's and EU's mutual interest that the UK should maintain direct influence within the EU, especially in areas where there are less well-developed international standards." And the report continues with a suggestion to the Government which 'should encourage direct regulatory cooperation between UK and EU authorities and, as part of its negotiation, should seek UK input to EU regulation-setting upstream'.[20] This suggestion is on the same line of thinking than the Political Declaration.

The answer given by the Government to this request of the House of Lords also deserves a full quotation:

> 'While we are leaving the EU, we will remain close partners with our neighbours in Europe and will continue taking a leadership role in international regulatory forums…The report is correct in noting the close relationship between UK and EU markets and regulators. The government is looking for a sensible discussion in negotiations about how the UK and EU financial markets can continue to serve one another, and what is needed to support that. This is very much in the interests of both parties.'

If an 'upstream' influence on EU legislation as wished by the House of Lords, appears as difficult to conceive, a cooperation in some fields could be explored. It could be the case, as we will see *infra*, in some limited although sensitive fields.

The continued participation of some Euro area Member States in international standards setting bodies in fields on which they have lost their competence in favour of the EU and the ECB is not compatible with EU law. One may suspect that the presence of the UK in these organs will en-

20 See in the same line of thinking, the third report of the International Regulatory Strategy Group (IRSG), an emanation of the City, a report produced in cooperation with Hogan Lovells, London, September 2017, which suggests 'the establishment of a joint committee called "Forum for Regulatory Co-operation" for the purpose of ensuring a strong relationship, promoting regulatory alignment and addressing questions of divergence', Section 6, Summary, p 61.

courage these countries to resist to a possible substitution of their national authorities by a European institution.

The same is true for the G20, especially for its financial branch (where Finance ministers meet) and the IMF. How to persuade countries like France or Germany to progressively renounce to some aspects of their representation in the IMF[21], if the UK remains a full member in all the organs of this institution? How, in the same context, to progress towards a European Monetary Fund that is the object of a proposal of the EU Commission[22] if the UK preserves, with some EU Countries, its individual seat in the Washington's organisations?

IV. The economic and social consequences for the UK

A 'hard Brexit' for the City of London and the other financial places in the UK – meaning the loss for banks located in the UK of the famous passport allowing for doing business in the EU – would (will) have important negative consequences for the UK as in all other sectors.[23] We should refer to some data in order to illustrate the present weight of the UK in the financial industry: from figures given by the British Government on 21 March 2017,[24] the sector employs approximately 1.1 million people and generates approximately £60-67 billion. In a recent article, *The Economist* mentions that 'The sector and its ecosystem of lawyers, consultants, lobbyists and the

21 See *infra*.

22 See the Proposal for a Council Regulation on the establishment of the European Monetary Fund, COM(2017) 827 final, 6 December 2017 (which implied a transformation in a EU body of the present Financial Stability Mechanism (FSM) which was based on an international treaty; this proposal was not accepted by a number of Member States which marked a preference for keeping the European Stability Mechanism as an intergovernmental organisation) and the earlier proposal for a Council Decision laying down measures in view of progressively laying down measures in view of progressively establishing a unified representation of the Euro area in the International Monetary Fund, COM(2015) 603 final, 21 October 2015, a proposal that seems also to have no chance to be adopted.

23 See Adam S. Posen, (2017) 'Drawbridge Economics: The Brexit Reality Check Is Coming', Peterson Institute for International Economics, Washington, November 13, p 8.

24 See Government response to the House of Lords European Union Committee Report, (2016) 'Brexit: financial services', 15 December, on file with the author. See also the figures mentioned by Governor Mark Carney, in his speech on (2014) 'The high road to a responsible, open financial system', Thomas Reuters, Canary Wharf, London, 7 April, p 4.

like employ 2.2 m people, not only in the wealthy centres of the Square Mile, Canary Wharf and Edinburgh but also in places like Cardiff and Bournemouth'.[25] The UK is a global leader in complex insurance, whole-sale/investment banking, market infrastructure, portfolio management – associated with asset management – and other areas of financial activities. Other data given by the British Government confirm the importance of the volume of activities involved: over 75 per cent of the EU 27 capital market business is conducted through the UK, and the financial industry in the UK manages £1.2 trillion of pension and other assets on behalf of EU clients. In December 2017, the IMF gave the following figures: 'the financial sector in the UK represents about 7 per cent of GDP but accounts for around 10 per cent of tax revenues and 14 per cent of exports'.[26] In the already quoted article, *The Economist*, referring to a paper written by economists of the Bank for International Settlements, mentions 'the City's centrality to EU financial operations. About half of all the €2.6trn of euro area bonds bought by the ECB's asset-purchase programme came from institutions outside the Eurozone. Banks in Britain were the main facilitators of bond sales.' Moreover, 'the City of London is the leading global player in trading and clearing of derivatives: more than US dollars 450trn of swaps and derivatives are processed through London. Meanwhile, London dominates the processing of euro-denominated interest rate swaps, with 75 per cent of the cleared in the UK. The Bank of England has estimated that about GBP 41trn of these contracts will be affected by Brexit.[27] The Conservative Manifesto for the June 2017 elections observed: 'Our global businesses and London's position as the global centre of finance make us more interconnected with the global economy than any comparable nation.' [28] This explains why the British Government 'believes that an agreement that secures deep market access, on a reciprocal basis, is in both the EU and the UK's interests.' If not, one can expect a transfer to the Continent of systemic international banks.[29]

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25 'City under siege. Brexit and political turmoil have broken London' spell as the 'capital of capital', *The Economist* June 29th –July 5th 2019, p 67-70 ad 68.

26 See IMF. Mission concluding statement. United Kingdom: Staff Concluding Statement of the 2017 Article IV Mission, December 20, 2017.

27 Anthony Morton, 'Clearing the Euro: temporary solution only on offer in a no-deal Brexit', March 2019, https://nortonrosefullbright.com/en-de/knowledge/publications/9e4b5910/

28 *The Conservative and Unionist Party Manifesto 2017*, https://www.conservatives.com/manifesto

29 See Marie-Claude Esposito, 'La City de Londres en attendant le Brexit', (2017) Michel Korinman (dir.), *BREXIT !*, L' esprit du temps, Paris, 77-83.

The transfer to the Continent of Global Systemic banks (which will have lost their European passport) and a great part (most?) of the activities of Central Counterparties (CCP) or compensation rooms could mean the loss of more than 100.000 jobs in favour of the EU and the US.[30]

There are predictable consequences for the employment market and the exchange rate of the Pound, which has already lost value in comparison with its more important competitors.

The diminution of fiscal revenue from financial institutions is also to be predicted.

The removal from London of the European Banking Authority (EBA) (and the European Medicines Agency (EMA) is both a symbolic and a material loss.[31]

V. The impact on the continental financial markets[32]

Is there a risk of disordered competition of financial places on the basis of attractive regulation for British institutions: a race to the bottom? National authorities involved in the admission of delocalised bank entities are up to resist but they are confronted with uncertainty, time constraint and new problems. The ECB and the national supervisory authorities it coordinates, as well as the banking industry, were already preparing for the hypothesis which appeared to be the more plausible considering the rhythm of the negotiations: the hard Brexit. Would this be the outcome, in spite of the negative vote of the Parliament of 14 March 2019, or could no appropriate solution be found in an agreement on the future relationship of the UK with

30 See *ibid*, p. 80, the declaration of the president of the London Stock Exchange, in September 2016. Paris mobilises at this regard for attracting banks leaving the UK. See also, Laure Baquero, (2019) 'Brexit: déclinaison financière, les grandes lignes', Eco. Conjoncture, March, economic-research.bnpparibas.com.

31 The European Council has adopted on May 24, 2017 a document presented by President Tusk and President Juncker, on the criteria for relocating agencies established in the UK, EMA and EBA for a decision to be taken by the Council, in October 2017, after an assessment by the Commission, see "EU sets out criteria for relocating UK agencies" by Eszter Zalan, *EU Observer*, 24 May 2017. The deadline for a decision was postponed. On 20 November 2017, the decisions were finally taken by drawing lots after votes were tied: Amsterdam got the EMA (against Milan) and Paris, the EBA (against Dublin).

32 See in this respect: (2017) André Sapir, Dirk Schoenmaker and Nicolas Véron, 'Making the Best of Brexit for the EU-27 Financial System', Peterson Institute for International Economics, *Policy Brief*, Washington, February,17-8.

the EU, a number of problems remain: It was generally admitted that only a small number of countries are really attractive to British banks and this feeling was confirmed. The criterion is said to be the quality of the local supervisory authorities and the infrastructure as well as the effectiveness of the resolution process. Many questions are new. For example, how much local management could be integrated in the global management chain? Which interference should be allowed from the group in the management of subsidiaries in the Euro area?[33] Would the localisation of EBA in Paris be positive for the French capital? This was believed by the Government but what has been the real benefit?

The ECB appears decided to 'stick to [their] standards'[34]. As a matter of fact, there is no place for a smooth Brexit either, especially as far as supervision of significant banks is concerned; it means that there can be no doubt about who is in charge. The ECB, as a supervisor, will have many different interviews with banks intending to establish themselves in the EU area, getting the business plans for several years to come. How banks want to structure their activities, how they want to grow, what kind of booking they want to do, what kind of risk management. There are already experienced methods, like the Supervisory Review and Evaluation Process (SREP), and there is a new instrument: the 'Targeted Review of Internal Models' (TRIM) which can be used in order to control the internal model adopted by the banks. Mrs Lautenschläger has a definitive view on this question: 'The ECB has a great quality, which distinguishes it from national authorities: it is neutral in its judgment; it does not fight for one location in lieu of another.'

What is firmly stated is that there will be no 'grandfathering' of British models. We quote again Sabine Lautenschläger, vice chair of the Single Supervisory Board, on this specific point:

> 'We are aware that banks would like us to simply grandfather existing model approvals that were given by the British supervisor. We will not do that. It is not feasible from a legal point of view, and it would not be the most prudent thing to do. Internal models need to be approved by the relevant supervisor, also to meet the obligation of equal treatment: therefore, banks that relocate to the euro area would have to seek a new permission from us'.[35]

33 Questions raised at a Bruegel think-tank meeting in Brussels, 2 June 2017.
34 S. Lautenschläger, vice president of the Single Supervisory Board, 4 May 2017.
35 Speech of May 4, 2017, p 2.

The message of S. Lautenschläger, speaking in Dublin recently, was the same:

> 'From the start, we identified areas of concern for individual banks – particularly those that plan to relocate from the United Kingdom to the EU. We made it clear that we would not accept "empty shells". And we made it clear that we would not accept comprehensive back-branching practices, where banks would provide services to EU clients from branches in the United Kingdom'.[36]

This standpoint doesn't exactly seem to concord with the one expressed two years ago by Mark Carney, the Governor of the Bank of England[37] who proclaimed in 2017:

> 'Brexit will be a litmus test of the future of international cooperation. The UK and the rest of the EU have exactly the same rules and the most highly developed frameworks of supervisory cooperation. Their capital and banking markets are already highly integrated. They have the potential to create the template for trade in financial services'.[38]

This extraordinarily open statement – but which could seem near to the perspectives opened in 2018 by the 'Political Declaration' – contrasts with views expressed by the Governor in a recent past on the specificities of the UK financial system, and the need to preserve them, considering in particular the importance of its financial sector in a widely open economy. Hence the accent put by the Bank of England and its Governor on specific rules, especially on the control of variable compensation (bank bonuses) for banks senior employees in order to fight misconduct with international

36 'A supervisory perspective on 2019 and beyond', 17 January 17 2019, p 1. The whole speech should be quoted where the speaker marks her clear preference for subsidiaries in lieu of branches, because it gives to the European banking supervision 'a whole picture'. But she observes that 'it is not us supervisors who make the rules.

37 We do not pretend by this quotation and the followings to give a complete picture of the position of Governor Carney and the BoE before and after the referendum of June 2016. For a description, see Sylviane de Saint-Seine, 'La Banque d'Angleterre face au Brexit: une campagne houleuse', in Michel Korinman, *Brexit !*, (Bègles, L'esprit du Temps, 2017) Collection Outre-Terre, 68-76. It is, indeed, well-known that some positions adopted by the Governor were criticised by the Brexiters, the Governor being accused to be 'defeatist' on the effects of Brexit for British economy.

38 Mark Carney, 'What a Difference a Decade made', Remarks at the Institute of Finance' s Washington Policy Summit, 20 April 2017, p10.

repercussions (LIBOR, EURIBOR …)[39] and on ensuring really fit and proper managers.

We must add that the coincidence of rules at a given moment (underscored by Mr Carney[40]), doesn't include any guarantee for the future, after the materialisation of Brexit. The Governor nevertheless observes that the EU and UK are…ideally positioned to create an effective system of deference to each other's comparable regulatory outcomes, supported by commitments to common minimum standards and open supervisory cooperation' (ibid) and he adds that 'Such an outcome would be entirely consistent with the UK Government's stated aim of a new *comprehensive*, *bold and ambitious free trade*[41] relationship with the EU that embraces goods, services and network industries.' He nevertheless recognised that financial services are only part of the negotiation and 'Given our responsibilities to promote financial stability, the Bank – like its counterparts on the continent – must plan for all eventualities.'

What precedes demonstrates that in the reaction of the Euro area supervisors we are far from kind of automatic mechanisms of recognition as the principle of equivalence, traditionally applied with banks of third countries. One has to take into account that both the application of a (two years) transitory period provided in the Leaving agreement and the negotiation under the terms of the Political Declaration depends on the entry into force of the agreement itself. Hence, the initiatives of the European Commission, the advertisements of the European and supervisory authorities as well as of professional associations addressed to national authorities, stakeholders and private parties. The Commission published a Contingency Action Plan on 13 November 2018.[42] In the 'Questions and Answers' document quoted in note 39, the Commission mentions that 'after exam-

39 The Bank of England observes that limitation by EU law of variable compensation (banker bonus) in relation with fixed salaries results in an uncontrollable inflation of the fixed salaries, on which the authorities have no power.

40 'The High Road to a responsible, Open Financial System', 7 April 2017, p 9.

41 The words are borrowed to the letter of Mrs May to the President of the European Council, Donald Tusk, 29 March 2017.

42 See, for example, European Commission, Notice to stakeholders. Withdrawal of the United Kingdom and EU rules in the field of Banking and Payment Services, Brussels, 8 February 2018; European Commission, Preparing for the withdrawal of the United Kingdom from the EU on 30 March 2019: Implementing the Commission's Contingency Action Plan, 19 December 2018, Com(2018) 890 final https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A52018DC0890; European Commission, MEMO, Questions and Answers: the consequences of the United Kingdom leaving the European Union without a ratified Withdraw-

ining the risks linked to a no deal scenario in the financial sector, and taking into account the views of the European Central Bank and the European Supervisors Authorities, the Commission has concluded that only a limited number of contingency measures are necessary to safeguard financial stability in the EU27.' The two temporary and conditional measures are necessary 'because preparedness actions from market operators alone are clearly insufficient to address these risks by the withdrawal date'. They concern the regulatory framework applicable to central counterparties and to central securities depositories. In these two cases, the UK regulation would temporarily be judged equivalent to the EU regulation in these fields.

The ECB will not accept 'empty shells' companies. 'Any bank that operates in the euro area must be a "bank". And any "real" bank has adequate risk management, sufficient local staff and operational independence.'[43] The ECB will be cautious of regulatory and supervisory arbitrage. Some banks requiring entrance in the EU would be significant; in that case, they will be subject to direct supervision by the ECB. If they are not, they will be supervised by national authorities 'under the common European supervisory approach by the ECB'. The third-country branches of banking groups (and investment firms) may pose a problem for their integration in the Euro area because there are different rules applying to branches in third countries. That 'will run counter to the idea of a level playing field in the euro area'. What Ms. Lautenschläger holds for a fragmented approach could be treated in the present revision of the Capital Requirement Regulation (CRR) and Directive (CRD) (*ibid*.). So there could be a possibility to get 'a holistic view of all the activities within a banking group'.

Anyway, as said by Mrs. Nouy, chair of the Supervisory Board of the ECB:

> 'What is sure for us is that the UK will always be important. We will always have very important and intense relationships with our colleagues on the other side of the Channel.'[44]

The correct reaction would consist in more integration in lieu of fragmentation of the Euro area banking industry. There is now a revision in

al Agreement (no deal Brexit). 19 December 2018, https://ec.europa.eu/info/sites/info/files/contingency_qanda_on_pdf.

43 S. Lautenschläger, 'Some supervisory expectations for banks relocating in the euro area', speech, Frankfurt, 4 May 2017, p 16.

44 D. Nouy, Introductory statement to the press conference on the ECB Annual Report on supervisory activities 2016, 27 March 2017, p 1.

progress of the legislation that has made possible the transfer of competences from the Member States Authorities to the ECB and the SRM. Progressing is an answer to Brexit: the strengthening of the regulatory and supervisory powers of ESMA and EIOPA is necessary along the model of the European Supervisory Board of the ECB. The relocation of Central Counterparties (CCP), which was stopped by the General Court for the reason of the absence of a legal basis in the EU primary law,[45] was also a possibility if article 22 of the Statutes of the ESCB and the ECB would have been revised, but other ways are open. It is precisely this sector which was mentioned by Governor Carney as an example for cooperation in the framework of a renewed cooperation. In a speech of 20 June 2017 the Governor of the Bank of England specifically mentioned the case of CCP's, centralised compensation organs in the field of derivatives, as a specific example of such a process[46] but his remarks could have a broader meaning. They could apply to any critical cross-border infrastructures for financial markets. So LCH in London which works in eighteen currencies for the undertakings in 55 jurisdictions, handling more than 90 per cent of compensated swaps of interest rate and 98 per cent of compensated swaps in euro.

From another speech, we will extract a sentence which sums up the thinking of Governor Carney: 'The combination of robust international standards and greater trust as a consequence of transparent implementation and intensive supervisory cooperation can create a system of equivalence and mutual deference'.[47]

In this context, the question of the localisation and surveillance of CCP's is particularly striking. The Commission has proposed in 2017 to strengthen the rules applicable to the supervision of these mechanisms in the perspective of the departure of the EU from the more important European financial centre. Two regulations have been adopted at this regard. The first one, called EMIR Review1, is Regulation (EU) 2019/834 of the European Parliament and the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade depositories and the re-

45 See *infra*, p xx: GC 4 March 2015, T-496/13, *United Kingdom v ECB*, ECLI:T:2015:133.
46 'A Fine Balance' speech at the Mansion House, London, 20 June 2017, p 11.
47 'What a Difference a Decade Makes' Remarks at the Institute of Finance's Washington Policy Summit, The Reagan Centre, Washington DC, 20 April 2017, p 8.

quirements for trade repositories.[48] The other regulation, EMIR Review2, is more specifically relied to the Brexit. The proposal COM(2017) 331 has been agreed by both the EP and the Council but it will be at the agenda of the European Parliament after the Summer 2019 due to the need for the Plenary to adopt a corrigendum. It will amend Regulation (EU) No 1095/10 establishing a European Supervisory Authority (ESMA) and Regulation (EU) No 648/12 as regards the process and authorities involved for the authorisation of the procedures and authorities involved for the authorization of CCPs and requirements for the recognition of third-country CCPs.

At the same time the European Central Bank had adopted a draft for a decision of the European Parliament and the Council, taken under the simplified revision procedure foreseen in Article 129, par. 3 TFEU for the modification of article 22 for the ESCB and ECB Statutes. This proposal aimed at adding a competence for the ECB to set up rules on compensation systems in the field of financial instruments.

It is well-known that the General Court, in a case opposing the UK to the ECB (Case T-496/11 4 March 2015 ECLI.EU.T.215.113) denied that article 22 of the Statutes of the ESCB and the ECB which allows it to regulate clearing and payments systems in euro could extend to the regulation of all clearing systems, including those related to transactions in securities. Using for the first time the procedure, provided by articles 129, par.3 TFEU and 40 of the statutes of the ESCB and ECB which allows to the ECB to propose by an unanimous recommendation the revision of some articles of its statutes, which could then be adopted by the ordinary legislative procedure, the ECB made a recommendation for a decision amending article 22 of the statutes.[49] In its opinion of 3 October 2017, on this recommendation, the Commission which positively welcomes the initiative of the ECB complementing its proposal on clearing systems for financial instruments denominated in euro, suggests amendments in order to, on the one hand, refer to the 'objectives of the ECB' and to the carrying of its tasks and on the other hand, to the imperative of the future ECB regulations to be 'consistent with acts adopted by the European Parliament and the Council and with measures adopted under such acts'.[50]On 20 March 2019 the ECB withdrew its recommendation amending Article 22 of the

48 OJ L141, 28 May 2019, p 42-63.
49 See the ECB recommendation (ECB/2017/18), OJ C212, 1-7.2017, p 14.
50 OJ C340, 11.10.2017, p 1; see European Parliament. Legislative train schedule. Updated rules on Central Counterparty (CCP) Supervision/EMIR Review 2, 20 June 2019.

Statute of the European System of Central Banks and the European Central Bank because it considered that the changes introduced by the legislator during the trilogue would have drastically limited the powers of the ECB on this matter, have seriously distorted its proposal and interfered 'with some fundamental principles of the Treaty, with the institutional balance and with the independent exercise by the ECB of its monetary policy competence', as mentioned in the Press communiqué of 20 March 2019, including a letter from which we draw the quotation from President Draghi to Mr Tajani, President of the European Parliament.[51]

The second regulation (EMIR review 2) includes a modification of the regulation on markets infrastructures (EMIR) as well as procedures and authorities related to the authorisation of CCP's of third countries.[52] It aims to equip the Capital Markets Union with a more effective and coherent system of surveillance of the CCP's in the interest of pursuing the integration of capital markets, financial stability and a level playing field. Third countries CCP's would be classified as not important (tier 1) and systematically important ones or susceptible to become so (tier 2) which could compromise the financial stability of the Union. The first ones would be submitted for their recognition to the same rules as the organisms active within the Union, the others would be submitted to supplementary measures. An executive specific section of ESMA would be in charge of establishing whether or not rules applicable in third countries to the CCP's under tier 2 are comparable to the rules imposed to CCP's established under EU legislation. If ESMA, with the agreement of the central bank issuing the related currency, recommends to the Commission to not recognise a tier 2 mechanism, the Commission could adopt an execution act requiring the organism in question to be established within the EU and authorizing it to exercise there its functions.

In a Communication prior to its regulation proposal[53] the Commission affirms its remaining engagement in favour of the integration of financial

51 See https://www.ecb.europa.eu/press/pr/date/2019/html/ecb.pr190320~df3e12da5a.en.html. A letter was also addressed to the Bulgarian Presidency.

52 Proposal of the Commission, 13 June 2017, COM (2017) 331 final.

53 Communication from the Commission to the European Parliament, the Council and the European Central Bank, Responding to the challenges for critical financial market infrastructures and further developing the Capital Markets Union, COM(2017) 225 final, May 4 2017. See also Proposal for a regulation of the European Parliament and of the Council, amending Regulation (EU) No 648/2012 as regards the clearing obligation…, 4 May 2017 COM (2017) 208 final. This proposal was approved on plenary by the European Parliament, on 18 April 2019.

markets, of its international obligations and the possibility of [recognising] the equivalence for the CCP's, and states that it is conscious of the necessity to avoid an undue fragmentation of the global system. It nevertheless insists that specific arrangements based on objective criteria are necessary for ensuring that, where CCP's play a systemic key role for financial markets and have a direct impact on the responsibilities, including financial stability and monetary policy of institutions and authorities of the EU and its Member States, that they are submitted to safeguards provided by the legal framework of the EU. And the Commission concluded with these words: 'This includes, where necessary, enhanced supervision and/or location requirements.' We may see in these considerations a kind of answer to the speeches of the Bank of England Governor: cooperation among authorities is needed but responsibilities in future will be separated. A common interest to be preserved.

The remaining links between the UK and the Continent in financial matters will be important. Let us briefly quote as examples:

1. The participation to international organisations: IMF, BIS and Basel committees, FSB, G7, G20, with a more central role for EU institutions. As already mentioned, the continued presence of the UK in these organisms could make the substitution of the EU to its Member States and institutions not easier. We particularly refer to 'the progressively establishing unified representation of the euro area in the IMF', as included in a proposal of the Commission for a Council decision in line with the so-called Five Presidents report of June 2015 on Completing Europe's Economic and Monetary Union.[54] This proposal opts for a 'gradual approach' involving "intermediate transitional steps for representation in the International Monetary and Financial Committee (IMFC) and the IMF Executive Board. This cautious approach derives from the fact that if the ECOFIN Council has agreed in the past (2006) on the necessity of a representation of the EU in the IMF, it considered this move as a longer-term goal, the move to a single euro area as does, it should be noticed, the Commission in the Explanatory Memorandum of its proposal: 'the external representation of the euro area will also depend on the future status of the euro area in the IMF that member countries of the IMF would be willing to grant.'[55]

54 COM (2015) 603 final, 21 October 2015.

55 The European Central Bank, on 6 April 2016, has issued an opinion on this proposal, CON/2016/22, OJ C216, 16 June 2016, which includes some reservations.

2. Swap agreements and other kinds of bilateral agreements, more or less formal, between respective central banks, will be ready to be activated in consideration of the remaining role of the City in financing continental banks and the general practice among global currencies in time of crises.

VI. Some short conclusive remarks

The continuity in British official attitude since the beginning of European integration is remarkable: from the initial refusal of the UK Government to participate to the building of the Communities and its intend to dilute the young EEC in a free trade area, the five so-called economic tests of Gordon Brown to be met for the adoption of the euro by the UK, the addition of opt-outs from crucial realisations of the Union, to the David Cameron's Bloomberg speech of 23 January 2013, the short-lived Arrangement of 18 and 19 February 2016 concluded within the Council between Cameron and his counterparts, but which didn't prevent the negative result of the referendum in June 2016, the extraordinary favourable referendum of 1975 and the more than 40 years of membership of the EU both appear as almost incredible exceptions in the history of the relations between the UK and the Continent after the second World War during which we ought so much to its resistance.

Perhaps an opportunity exists to manage a reasonable cooperation on common vital interests between the two entities should Brexit really happen: a UK having become a third country and the EU progressing towards a sui generis federal construction.

While outlining the objectives of the negotiation in her Lancaster speech of January 2017,[56] she mentioned first 'Certainty and clarity', commenting that this 'first objective is crucial'. This remains true now.

The Brexit is bad for the British financial sector as it is in general a disaster for Britain. It should encourage us, anyway, despite of all odds to reform the process of continental integration and cultivate a sound relation with our difficult neighbour.

56 See the reference in note 3.