

# Why EU negotiations could fail

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According to the Futurus think tank, the UK-EU negotiations will fail.

"It is worth restating that the EU negotiating position is contrary to Article 50 of the Treaty. It is also contrary to Mrs. May's wishes as expressed in the Article 50 notification letter.

And it certainly creates problems that there need not have existed.

One must ask what possible motivation there could be for the UK to agree the principles of a financial settlement without even the beginnings of discussion on a future relationship.

In these circumstances it would be impossible for the government to get a financial settlement in principle without any figures through Parliament and to get the approval of the electorate. It would be equally difficult to get a settlement with substantive payments approved. Also, the question arises as to how any financial settlement is to be paid – in euros. You can only get euros by profitable trade but the EU does not want to discuss future trading relationships yet, so it is left in the air how the EU expects the UK to generate extra trade so as to pay a financial settlement.

David Davis should never have accepted the sequencing because, as Barnier has suggested, the matter is "explosive".

After all, Barnier is facing a big hole in EU finances and has to come up with big figures. Otherwise he would not be prioritising the finances.

Some have suggested that almost any proposed financial settlement should be accepted so that negotiations can move forward to the 'framework' for the future relationship. But how would this look if there is no

satisfactory 'framework' agreed after this concession?

To look at the principles in negotiating international obligations we must go back to history and the locus classicus is Gladstone's speech about the State's obligations and guarantees of August 10th 1870 (in relation to Belgium in the Franco-Prussian war), also referred to by Sir Edward Grey in his historic speech to parliament before war was declared on August 3rd 1914 and by Asquith the day before war was declared in 1914. Gladstone's essential statement of principle was as follows,

*'I am not able to subscribe to what plainly amounts to an assertion, that the simple fact of the existence of a guarantee is binding on every party to it, irrespectively altogether of the particular position in which it may find itself at the time when the occasion for acting on the guarantee arises.'*

Following the logic of the commonsense principles laid down by Gladstone, in the last few years the German government breached the Stability and Growth Pact and the European Central Bank breached the Maastricht Treaty and bailed out indebted countries. In each case, they considered the interests of the German people and the defence of the euro justified such breaches despite their treaty obligations.

So, in the view of Gladstone, Grey and Asquith, as well as the German government and the ECB, international obligations and guarantees are not binding irrespectively but depend on the position at the time action is required.

One should also note that the UK Supreme Court has also rejected the notion that a legal obligation (in British

law) is binding irrespectively, for example, in a case concerning party political funding (Electoral Commission v United Kingdom Independence Party, 2010).

To agree a financial settlement alongside negotiations over a future 'deep' relationship would be difficult enough. For the EU to think that the UK would agree a financial settlement without any guarantee of such a future relationship framework is not only contrary to the EU Treaty but purblind.

David Davis should never have accepted this sequencing.

There will inevitably be a confrontation over the financial settlement and possibly other issues and, therefore, a breakdown in negotiations.....

....It needs to be plainly put to the EU that, if there is no trade agreement, and in good time, the UK will have to take steps to ensure its financial stability. That means reducing EU trade to a fair balance to what can be financed by British trade with the EU in the post-Brexit scenario.

As Mervyn King, former Governor of the Bank of England, has stated, the British government needs to have some clarity about what would happen if negotiations fail.

*'If you are going to have any successful negotiation, you have got to have a fallback position which the other side understands and believes is credible. So we need to be able to say if we can't reach an agreement we will nevertheless leave and we can make it work.' ...*

Source - Extract of Futurus Briefing "The Negotiations Will Fail" August 2017.

## Fishing quotas farce

Following a report from the Danish national auditors regarding their fisherman, the Danish police have been asked to investigate the public administration of EU fishing rules after

the auditors found examples of fishermen who, in reports to the ministry, pretended to own vessels and quotas. This practice may have led to Danish fishing quotas being in reality

concentrated on just a few owners. Danish Fisheries minister Esben Lunde Larsen and two leading ministerial officials have already been removed from office.