

STATEMENT TO THE CONSTITUTIONAL AFFAIRS COMMITTEE OF THE EUROPEAN PARLIAMENT,
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Brexit: What Next?

I am asked to give my assessment of the current state of play with regard to the United Kingdom's withdrawal from the European Union. This I do in four parts:-

- (1) The process of invoking Article 50, its possible revocation, and its conclusion by the UK.
- (2) The conduct of the Article 50 negotiations and the content of the withdrawal agreement.
- (3) The framework for future relations between the UK and EU.
- (4) The EU after Brexit.

I will focus on the aspects of the secession process that are of direct and immediate concern to the European Union of 27 in general and to the European Parliament in particular.¹

Part One: Triggering Article 50

1.1 As is well known, **Prime Minister May announced her intention to invoke Article 50 TEU by the end of March**. We might expect this to happen after the EU 27 summit in Malta on 3 February but before the 60th anniversary commemoration of the Treaty of Rome on 25 March.

1.2 However, on 3 November the English High Court delivered its judgment on whether, as a matter of UK constitutional law, the Government is entitled to give notice to the European Council of the country's decision to leave the European Union without reference to Parliament at Westminster.² **The Court found against the Government and declared that Article 50 should only be invoked after a decision of Parliament**. The litigation concerned the extent of the rights that could be exercised by the executive under royal prerogative, and turned on the manner in which the UK joined the European Community in the first place. The Court judged that the key instrument had been the European Communities Act 1972 which gave effect in UK law to the EC accession treaty. It was that Act which created the rights and obligations of the UK as a member state of the EC: without the domesticating Act, the UK would be in breach of its terms of EC membership. Therefore a decision of the Government to notify its intention to terminate those rights must first be validated by Parliament.

1.3 The Government immediately announced its intention to appeal the decision of the High Court in the UK Supreme Court. A hearing will take place on 5-8 December in a sitting of the full Supreme Court – in itself an unprecedented event, and an indication of the gravity of the constitutional business at hand. One may expect that at least three issues are likely to emerge at appeal that were not dealt with either in full or at all by the High Court. These are:

¹ For more on Brexit, see my series of articles 'On Governing Europe' at andrewduff.blogactive.eu. I have also written more extensively on the process in *After Brexit: A New Association Agreement Between Britain and Europe*, <http://www.policy-network.net/publications/6141/After-Brexit>.

² <https://www.judiciary.gov.uk/judgments/r-miller-v-secretary-of-state-for-exiting-the-european-union/>

- whether or not Article 50 once invoked can ever be revoked;
- whether the Brexit referendum of 23 June was advisory or mandatory;
- whether Parliament's decision should be by way of a Bill or whether an affirmatory resolution will suffice.

1.4 The first of these questions matters because the case against the Government rests on the supposedly irrevocable nature of the decision to trigger the Article 50 withdrawal process. In terms of UK law, the secession agreement will have the status of an international treaty which Parliament will have the opportunity to vote against.³ However, if the negotiations fail to reach an agreement, the UK will simply fall out of the EU after two years, unless that period is extended by unanimity (Article 50(3)). In that case the rights accrued as a result of EU membership would simply be extinguished without a parliamentary vote either in the UK or the EU ("The Treaties shall cease to apply to the State in question ...").

1.5 At the High Court, the Government (for political reasons) was content to agree with the complainants that Article 50 is irrevocable - which conjunction allowed the High Court not to examine the question as a point of EU law. Nevertheless, the Supreme Court is very unlikely to neglect the issue of revocability. That being the case, **the Supreme Court will be bound by the provisions of Article 267 TFEU to refer the matter to the European Court of Justice (CJEU)** for a preliminary ruling. Such a reference is not optional but requisite: not to seek a ruling from the CJEU would expose the British Government to endless, and doubtless costly litigation from parties who find themselves adversely affected by UK secession from the EU. That the deployment of Article 50 has no precedent adds weight to the need to bring the issue before the Luxembourg court.

1.6 **A reference to the European Court of Justice is bound to cause a delay to the invocation of Article 50.** Even if the CJEU were to work with great dispatch, a delay of some months would seem to be unavoidable.

1.7 Having said that, it is my belief and that of others that, **contrary to the claims made in the English High Court, Article 50 is indeed revocable.**⁴ Article 50(2) involves a notification of an intention to withdraw from the Union. Intentions can change, especially after a general election and the installation of a new government. This fact is understood very well by the European Council, an institution which in any case is bound to respect the spirit of sincere cooperation among member states (Article 4(3) TEU), as well as working towards the general direction of European unity and away from disunity (Article 3 TEU). The European Council, acting by consensus to accept the revocation of notification to withdraw (doubtless coupled with profuse apologies), would need to be satisfied that the new decision was undertaken according to the UK's own constitutional requirements (Article 50(1)). Yet it would seem perfectly normal for Article 50 to be silent on the matter of its own revocability: under the EU's common law system, that which is not prohibited is frequently deemed to be permitted. In case of any doubt in particular circumstances, there could be

³ Under the terms of the Constitutional Reform and Governance Act 2010.

⁴ See for example, Jean-Claude Piris, *Article 50 is not for ever and the UK could change its mind*, Financial Times, 1 September 2016. See also European Parliament Briefing, *Article 50: Withdrawal of a Member State from the EU*. The Constitutional Committee of the House of Lords is correct to surmise that Article 50 could not be revoked 'unilaterally': naturally the European Council would need to agree to stop the two-year clock and drop the secession process; *The invoking of Article 50*, HL Paper 44, 13 September 2016. It is also worth recalling that member states change their mind about EU matters on a regular basis: see, for example, how the Czech Republic withdrew its request to join Protocol No 30 on the Charter of Fundamental Rights. Nobody else objected.

recourse to the CJEU to ensure the compatibility of the revocation decision with the treaties (Article 218(11) TFEU).

1.8 The second of the likely issues to be raised at appeal stage – that of the binding nature of the 2016 referendum – is a domestic British matter and need not detain us here in substance, other than taking note of the additional risk of further delay.

1.9 The third probable question for the Supreme Court, however, is germane to the EU process. If the decision to trigger Article 50 were to be made subject to primary legislation, both the House of Commons and the House of Lords could and would table amendments on both procedural and substantive matters. **This could delay the triggering of Article 50 by many months** – even over one year if the Lords (where the Conservative government does not have a majority) were to become obdurate. Moreover, an Act which mandated the Government in detail to negotiate for this or that kind of future relationship with the EU 27 – in the parlance, either ‘soft’ or ‘hard’ Brexit - could complicate those negotiations further by demanding the impossible of the EU (for instance, full access to the single market without freedom of movement). That is why the Government, in the event that the Supreme Court upholds the judgment of the High Court, is likely to prefer a short parliamentary debate followed by a simple affirmatory resolution as opposed to full-scale legislation. (Indeed, in view of the enhanced legitimacy that would then lie behind the invocation of Article 50, one may wonder why the Government did not choose this option in the first place.)

1.10 **The problem for both Government and Parliament equally, however, is that no consensus exists in Britain about what kind of future relationship the country should seek to have with Europe.** Differences of opinion prevail both within and between the Remain and Leave camps. Scotland and Northern Ireland, which voted Remain, disagree with the London Government about how to proceed. Indeed, it is precisely because of the disorientation of the political parties at Westminster that the referendum was called in the first place. The referendum was bitterly divisive in political terms; it has destabilised the constitution and weakened Parliament. Beyond the mantra of “Brexit means Brexit”, the referendum result has not induced coherence. Several MPs may be discomfited at having to return to take a decision about the future of Britain and Europe that they thought they had shuffled off on to the shoulders of the hapless electorate.

1.11 The fact is that **while a majority of MPs and peers believe leaving the EU is not in the national interest they will not vote against Brexit.**⁵ A dare-devil minority of MPs, including the Liberal Democrats, wants to hold a second referendum on the outcome of the negotiations; another small minority wants a general election. Both of these scenarios, in my view, would only serve to deepen rather than resolve the political and constitutional crisis. Ultimately, not to give effect to the referendum decision to leave the EU would be seen by many (on both sides of the EU argument) to be equivalent to a coup d’état against the people.

1.12 To conclude this section, therefore, three things. First, in spite of the legal complications, **nobody should be in any doubt that, in the end, the Westminster Parliament will vote to trigger Article 50 if the Government’s appeal to the Supreme Court fails.** Second, as long as Theresa May can corral her cabinet behind her Brexit strategy and does not lose control of her party, **Parliament will not vote against the eventual Article 50 withdrawal agreement.** Third, **a general election before the scheduled date of May 2020 is highly unlikely:** the Labour opposition is in no mood or

⁵ MPs will be mindful of the fact that 421 of the 574 English and Welsh constituencies voted to leave the EU. Peers will have cause to remember that they have no democratic mandate whatsoever.

condition to vote for an early dissolution of Parliament.⁶ The Scottish Nationalists are not reckless. So, as the lady so lucidly puts it, “Brexit means Brexit”.

Part Two: Negotiating Article 50

2.1 The rest of the European Union, therefore, would be **wise to work on the assumption that the UK will find its way to triggering Article 50 in the first half of 2017**. The exact timing will become clearer when we know the drift of the Government’s appeal to the Supreme Court, and whether a reference to the European Court of Justice is to be made.

2.2 It is necessary to recall once again – because the point is often missed, especially in the media - that **Article 50 merely concerns the withdrawal of a member state from its EU rights and obligations. Article 50 is not the vehicle for establishing a new form of relationship between the ex-member state and its erstwhile partners**. Although the agreement will be drawn up “taking account of the framework for [the UK’s] future relationship with the Union”, its main purpose is to set out the UK’s withdrawal arrangements (Article 50(2)). The agreement is intended to be fairly technical and straightforward, manageable, indeed, within the allotted two year timetable. **The guidelines provided by the European Council and the mandate given to the Commission to begin negotiations will need to establish these parameters clearly**.

2.3 The Article 50 negotiations that will be led by Michel Barnier on behalf of the Commission will focus on the following issues:-

- Disengagement of the UK from the EU budget;
- Catering for the acquired rights of EU citizens;
- Dealing with border issues;
- Relocating the EU agencies;
- Disentangling the UK from EU international treaties;
- Establishing any necessary transitional arrangements.

2.4 **The financial arrangements are the most complicated**, but their settlement will be greatly eased if it is agreed that the UK will remain a full participant in the current multi-annual financial framework (MFF) until its expiry in 2020. Even so it will take years for the final accounts to be settled between London and Brussels. Ideally, the Article 50 agreement needs to include a mechanism for winding-down the British participation in the EU budget. This will include continuing UK contributions to paying the pensions of British personnel working in the EU institutions.⁷

2.5 An eventual agreement on future British involvement in certain specific EU spending programmes or agencies will have to wait for the final settlement, but temporary arrangements need to be made to minimise disruption to long-running R&D projects. The UK’s participation in the European Development Fund and its commitments to other EU schemes, such as Galileo, outside the general budget of the EU will also be in contention. An important decision needs to be taken concerning British participation in the European Investment Bank. It would be in the mutual interest of the UK and EU 27 for the future of the EIB to be assured by way of a re-financing arrangement.

⁶ Both Houses of Parliament act by simple majority in all cases with the exception of a vote for dissolution which requires two-thirds of all MPs (Fixed-term Parliaments Act 2011).

⁷ I declare a financial interest.

2.6 As part of the budgetary authority, **the European Parliament will play a key part in all these financial negotiations** with the UK, as well as in preparing to adjust the size and profile of the EU budget once the British contribution and its rebate have gone.

2.7 Protecting the rights acquired by dint of EU citizenship will feature prominently in the Article 50 talks. There are well over 3 million mostly economically active EU citizens living in the UK and over 2 million mostly non-active British nationals living in EU 27. Reciprocal arrangements for work permits, social welfare and civic rights need to be pinned down. As with the budget, the European Parliament will be involved in amending the relevant EU laws to give protection to the legacy of EU citizenship.

2.8 For both technical and political reasons, the question of border management is most fraught at the Ulster land border between the UK and Ireland. But the Channel ports will also have issues to address, as will Gibraltar.

2.9 The European Banking Authority and the European Medicines Agency will have to relocate from London to other destinations in EU 27 whose identity can only be chosen by unanimity in the Council (Article 341 TFEU). Good luck with that.

2.10 Disentangling the EU's international agreements could get very complicated, especially with respect to those, like COP21, which have been signed both by the EU and by the UK. Quotas and financing arrangements will have to be re-jigged, often with the consent of many third parties.

2.11 In many of these cases **temporary instruments will be needed to smooth the transition**. For example, the UK will surely be involved in litigation at the CJEU or in a European arrest warrant procedure that run on past the vesting date of the Article 50 agreement. The EU will need to ensure that such *passerelles* are time-limited, perhaps by a 'sunset clause', in order that they do not become a permanent fix. The objective is Brexit. **Whatever the future relationship between the UK and EU, it will be under terms and conditions that must fall short of full membership**. Britain's rights and obligations under EU membership will dwindle until they cease unless specifically re-negotiated as part of a future package deal. There will be many legacy issues after 45 years of full membership, some surprising. Extricating the UK from all its EU commitments will come at a price that needs to be paid in full. In so far as the EU has an after-life within the UK, the jurisdiction of the European Court of Justice will continue to run. **The British state and its people are likely to discover that their rights will disappear faster than their obligations**.

2.12 **The Article 50 talks will proceed better once the outline of Britain's future relationship with the EU is determined**. Indeed, some elements of the secession arrangements cannot properly be decided until it is known whether the UK, for example, wishes to remain a member of the EU customs union or not. It is important, nevertheless, that the Article 50 agreement does not get bogged down in designing the framework for Britain's future relationship. Indeed, **it would be better to leave the drafting of such appropriate paragraphs to the conclusions of a meeting of the European Council which the formal agreement could then, by reference, take into account**. The meeting of the European Council in December 2017, after the German elections, would be a suitable date to settle outstanding strategic questions.

2.13 Whatever happens, however, **the Article 50 agreement must avoid the risk of becoming a mixed agreement that would require ratification by all remaining 27 EU states according to their own constitutional requirements**. Although the UK will regard the secession agreement as an international treaty (albeit with hefty domestic legislative consequences), as far as the EU is

concerned the agreement will be a *lex specialis*, a decision which requires only a vote by super QMV in the Council after obtaining the consent of the European Parliament.⁸

2.14 The European Parliament needs to decide fairly swiftly what it wants to do with the 73 seats left vacant by the departing British MEPs (Article 14(2) TEU). One ingenious **proposal has been made to create a pan-European constituency for which 73 MEPs could be elected from trans-national lists**. Among other things, such a reform would serve to strengthen the democratic legitimacy of the *Spitzenkandidat* experiment at the 2019 elections and reinforce the role of the EU level political parties.

2.15 Parliament at Westminster, meanwhile, will be faced with **the Great Repeal Bill whose purpose will be to transpose into UK law the whole *acquis communautaire***. This vast corpus of EU law will be filleted later to decide what to keep, what to amend and what to trash. By any standards, a daunting task.

2.16 Two pieces of UK legislation should be repealed with dispatch. The **European Parliament Elections Act 2002** needs to disappear if British MEPs are not to be elected in May 2019 (which they are not). The **European Union Act 2011** imposes an automatic referendum in Britain every time the EU treaties are revised in a way that transfers powers from London to Brussels. The Act will become redundant once the UK leaves the EU, but it would be wise to jettison it early in any case so as to avoid unforeseen legal and political complications surrounding any transitional arrangements provided for in the Article 50 agreement.

2.17 **Finally, the European Communities Act 1972 will have to be repealed to liberate the UK from the ties that bind it to the EU.** The vesting date of that repeal could be made to coincide with the entry into force of the Article 50 agreement. Alternatively the 1972 Act could be amended in a way to absent the UK from the political institutions of the Union but to allow the UK courts to continue to recognise the jurisdiction of the European Court of Justice in respect of EU law until the end of the transitional period. This would amount to Brexit by phases. In the next section we examine the options for a new permanent arrangement between the UK and the EU 27. **There is a real risk of legal uncertainty (and political controversy) during a (possibly long) transitional period enshrined in an Article 50 withdrawal agreement. The sequencing of the winding down of full membership and the introduction of something else will be a delicate business.**

Part Three: The future relationship

3.1 To date, there has been much talk in the UK of what is not possible as a basis for its future relationship with the EU. The Norway model is dismissed because it is too much like full membership without political and institutional rights. The Swiss example is discounted as too messy. Staying like Turkey within the customs union but not within the single market is a lowly objective. Canada's free trade agreement is even less appealing. What is left is the model the EU recently adopted for the Ukraine, Georgia and Moldova: **an association agreement with institutions and intergovernmental political cooperation and, at its heart, a deep and comprehensive free trade area.**

3.2 This is not the place to develop the idea of an association agreement in detail, but I strongly recommend that the Ukrainian template is used as a framework for reflection.⁹ The precedent exists,

⁸ That is 20 out of 27 states in the Council (Article 238(3)(b) TFEU). The Parliament acts by simple majority.

⁹ See Michael Emerson, *Which model for Brexit?*, CEPS Special Report, October 2016.

which is helpful in shaping the debate. **An association agreement would allow for the best of the legacy of full EU membership to be conserved**, including continuing British participation in, for example, EU agencies such as Europol. It allows for tariff-free access for goods and for the preservation of the regulatory equivalence that the UK has achieved with the EU by virtue of its long-standing membership. It does not prevent the UK from adopting an autonomous trade policy. Nor does it presage the UK's future re-accession to the EU: association can be a settled status.¹⁰ **The transition from full membership to association agreement, via a transitional period laid down in the Article 50 agreement, is complex but feasible. Although a new UK-EU association agreement, being a 'mixed agreement', would require ratification in all member states, it could be introduced on a provisional basis in order to ease the problem of sequencing** to which we referred above (para. 2.17).

3.3 As we know, no official contact will be made between the European and British authorities on the question of the future relationship before Article 50 is invoked. Whatever the legal nicety behind the official attitude of the Commission and Council, the lack of cross-Channel dialogue adds to the legal confusion over Brexit. The longer the uncertainty continues the larger the loss of investor confidence and political trust. **It might be useful, therefore, for the European Parliament to fill that gap by initiating direct exploratory talks with their counterparts at Westminster.**¹¹ As the British Parliament struggles to make sense of the referendum and its consequences, the European Parliament can offer fraternal solidarity to its fellow parliamentarians not only at Westminster but also in the UK's devolved parliaments in Edinburgh, Belfast and Cardiff.

3.4 The secession process differs from the normal negotiation machinery for international treaties only in so far as the European Council is brought in from the outset (Article 50(2-3)), that the Brits are kicked out, and that the final decision is by super QMV (Article 50(4)). Otherwise the classical provisions of Article 218 TFEU can be deemed to apply, including the necessity of fully consulting the European Parliament at all stages (Article 218(10)). **Parliament is surely right to have established its own negotiating machinery in order to maximise its influence.** In the last resort, as we have already noted, Parliament is empowered to seek a ruling from the CJEU about the compatibility with the EU treaties of any draft Article 50 agreement or subsequent British treaty (Article 218(11)): it should not be reticent about using that power.

3.5 **MEPs are therefore in a strong position to insist on full transparency**, exercising to the full their consultative rights secured on the basis of the Lisbon treaty under the Parliament's 2010 Interinstitutional Agreement with the Commission.¹² Because citizens' rights and budgetary matters are so critical to reaching an expeditious agreement under Article 50, Parliament – at that stage still including British MEPs – can play a key conciliating role between the UK and the EU 27. Parliament will also wish to secure the interests of the remaining EU against further disintegration.

3.6 Furthermore, Parliament – this time without British MEPs - will continue to be a necessary participant in the event that the UK and EU 27 move towards the negotiation of an association agreement under the legal basis of Article 217 TFEU, as I have suggested they do.

¹⁰ In this, an association agreement is somewhat similar to, though less alarming than the notion of a 'continental partnership'. See André Sapir, *Beyond hard, soft and no Brexit*, 21 October 2016, <http://bruegel.org/2016/10/beyond-hard-soft-and-no-brexite/>.

¹¹ The House of Commons has established a special Brexit committee under the chairmanship of Hilary Benn MP; the House of Lords EU committees are actively engaged in exploring options for the future.

¹² OJ, L 304, 20 November 2010.

Part Four: Europe after Brexit

4.1 **Once Brexit has happened the EU treaties will be opened up for revision.** All reference to the UK and its dependent territories as a member state will be expunged from Article 52 TEU and Article 355 TFEU. The Protocols and Declarations attached to the treaty that provide for the UK's numerous opt-outs and peculiarities will also go.

4.2 **But why stop there?** The European Union has been teetering on the brink of further treaty revision for several years. Brexit forces the pace. By the time Article 50 is at last triggered in 2017 it will be over fifteen years (and many crises) since the start of the constitutional Convention which ended up with the Treaty of Lisbon. As the European Parliament is increasingly aware, **the structure of governance of the Union is already in bad need of an overhaul.**

4.3 **Brexit also clears the mind about the future of Europe.** It had been assumed for decades that the enlargement of the membership of the Union should go hand in hand with a deepening of its political infrastructure. Many bouts of treaty amendment were undertaken with precisely such parallelism in mind. But ultimately **the gradualist approach has not worked.** Incremental steps to strengthen the powers of the European Parliament, for example, or to confer more competences on the Union, have not supplied the vastly enlarged EU membership with the kind of government it needs: tough, efficient, restrained and democratic. Too often, powers granted to the European Parliament have been counterbalanced by granting powers to the European Council, with the result that the Commission, lost in the middle, is increasingly enfeebled. Despite gestures in a federal direction, **the EU today remains in essence stubbornly confederal.** Many of the more federalist features of the treaties – such as the capacity to deepen military integration or to develop the role of the European Court of Justice into a supreme court – remain neglected and rather intimidating.

4.4 **Nowhere is the sense of unfinished business more stark than with Economic and Monetary Union.** While a single monetary policy sustains a single currency, there is no common economic policy and no fiscal instruments to give the EU that redistributive capacity without which its pretensions to 'economic governance' are risible.¹³ Public counter-reaction to the false hopes and exaggerated claims that have littered the recent history of the Union was inevitable, especially at a time of financial instability and economic austerity.

4.5 **The British referendum of 23 June 2016 was only the most dramatic – and fatal – blow to the European project as we know it.** We are condemned to succeed no longer. In fact, we are quite likely to fail altogether, falling further apart, if the right lessons are not drawn from the Brexit disaster.

4.6 **The British, of course, were always out-riders.** Their real divergence from the mainstream began at Maastricht in 1991 and accelerated and widened in every subsequent treaty revision: Amsterdam, Nice, the constitutional treaty and Lisbon. British opt-outs were piled upon British opt-outs, but the UK still exercised a regressive influence on the process of European integration, diluting the quality of common policy here, blunting the force of legislation there, refusing to exercise solidarity when it was needed, and generally acting like a drag anchor on the rest of the

¹³ We know how to do it. See the Four Presidents' Report, *Towards a Genuine Economic and Monetary Union*, 2012 and the Five Presidents' Report, *Completing Europe's Economic and Monetary Union*, 2015. And also *The Protocol of Frankfurt: a new treaty for the eurozone*, European Policy Centre, 2016.

Union. British politicians were not the only offenders against the orthodoxy of the Monnet method – and plenty of others stood behind them – but they were the worst. No prime minister has ever spoken with such contempt about the European Parliament as David Cameron. No other member of the European Council has risked his (or her) country’s membership of the Union on populist grounds to appease nationalist opinion back home. And nobody else has sought to exact from his partners such concessions as were contained in the package shamefully agreed by the European Council in February 2016.

4.7 The Cameron deal, which I described at the time as ‘soft Brexit’, was killed off by the referendum’s choice of hard Brexit.¹⁴ But it is worth recalling how, if the vote had gone the other way, we would now be toiling away to implement the terms that Cameron extracted from his colleagues. The European Parliament would be being asked to legislate to undermine the four principles of freedom of movement in a vain ruse to limit the mobility of EU citizens. National parliaments would be given more opportunity to chuck the spanner in the works of the EU’s legislative processes. The division between the ‘ins’ of the eurozone and the ‘outs’ would be accentuated. And, worst of all, the historic mission of ‘ever closer union of the peoples of Europe’ would be destroyed utterly. **Cameron’s ‘new settlement’ for the UK was the ultimate opt-out.** Its effect would have been deleterious not just on the UK but on the rest of Europe too, including on those countries in the Western Balkans which, despite the odds, still aspire one day to join the Union.

4.8 It is arguable that **the February deal would have made the UK’s continued full membership of the Union unsustainable in the long run.** But now Cameron has gone in disgrace, taking his deal with him. And suddenly Britain is going to leave too, which is immensely sad, especially for those British who care about these things. But **Brexit presents a chance for a fresh start for those who stay behind.** Things that were impossible to do when the British were members will now become possible. Many of these things are not easy or uncontroversial because - like fiscal union, proper own resources for the EU budget, common defence and transnational parliamentary lists – they require **the change of gear from confederal to federal government that the UK would never have let happen.**

4.9 The initial reaction from the European Council and Commission to Brexit is helpless. If all we are left with is ‘the spirit of Bratislava’ we are indeed sunk. Doing smaller things somehow better at the European level is no answer to the EU’s present difficulties and offers little hope for the future. **Relying on national political forces to come to the rescue of the Union will be in vain because that defies the federal logic which lies behind ‘ever closer union’.** If government at the EU core remains so weak, diffuse and opaque as it is today, it will not be strong enough to cope with the UK as an associate member on the periphery, let alone with other and more hostile external challenges now hurtling our way from Russia and Turkey.

4.10 Next spring, in addition to Theresa May’s letter to Donald Tusk, we are promised **a White Paper from the Commission on economic governance.** Brexit requires the scope of this exercise to be broader than originally intended and for its political quality to be enhanced. The White Paper needs to tell us in no uncertain terms that **the future of Europe will not be secure without big constitutional developments of a federal type.** Best to get on with it.

¹⁴ *Britain’s special status in Europe: A comprehensive assessment of the UK-EU deal and its consequences*, Policy Network, March 2016. http://www.policy-network.net/publications_detail.aspx?ID=5067

