

# Breakup therapy

Brexit has roared back onto the political agenda: Can Merkel lead Europe and the United Kingdom to an amicable divorce?

BY DEREK SCALLY

Anyone who grows up with conflict, as I did looking in on 1980s Northern Ireland from Dublin, learns not to trust calm.

The push for peace in Northern Ireland ahead of the 1998 Belfast Agreement was marred, and almost derailed, by the ghosts of 3,500 dead over the previous 30 years – and fears over unpredictable hardliners.

So, too, on Brexit: the common will for success in the transition process is overshadowed by decades of traumatic EU-UK misunderstandings and the real prospect of failure stemming from the determined Brexiteers' transformation of British domestic politics. Their successful push for the UK to back an EU departure in 2016 opened a whole collection of Pandora's Boxes, raising a series of political and economic questions that, four years on, remain largely unanswered.

Above all, the vote delivered a body blow to two decades of cautious peace in Northern Ireland which, like Scotland, voted to stay in the EU, but had their wish trumped by the weighted will of English and Welsh leave voters. Maintaining peace post-Brexit hinges on securing economic certainty.

The anti-climax of the UK's technical and legal departure from the EU on January 31 started another clock ticking: an 11-month transition period during which, barring another extension, the never-ending story of Brexit will reach its latest – and apparently final – climax.

But the world has changed since the Brexit process began: global attention, and political capacity, has been swallowed up by efforts to address the COVID-19 pandemic – and to battle its worst health and economic effects.

Tackling the pandemic fallout and securing a new seven-year EU budget are the two priorities for Germany as it assumes the rotating presidency of the Council of the European Union.

Just as Berlin took over the EU reins for six months on July 1, how-



Deal breaker: On the heels of the stalled talks between London and Brussels in June, the EU and the UK ruled out an extension of the transition period beyond 2020.

ever, Brexit roared back onto the political agenda. Several sets of talks in recent weeks – high-level political and technical negotiations – have yielded, as usual, underwhelming and almost non-existent progress. With the transition period trickling away and attention elsewhere, the specter of a disorderly Brexit is fast approaching.

No trade deal and no extension of the transition period – as the UK insists – mean that the UK's third-country relationship with the EU is downgraded to minimum WTO trade arrangements.

Hardline Brexiteers insist this will be an adequate foundation for a new, “global Britain,” with an eye toward new opportunities in a re-ordered post-pandemic global economy.

Pessimists predict a no-deal Brexit will bring economic chaos, above all in the UK, with a particular blow dealt to the closely integrated “all-Ireland economy.”

There are four major building sites in Brexit talks at present: the so-called level playing field, fisheries, police and judicial questions, and governance.

On governance, the UK remains allergic to anything that would bind itself in perpetuity to EU regulations and the European Court of

Justice; this is seen as an affront to their newly won independence. But Brussels is anxious to avoid the UK undercutting EU standards and regulations.

The UK rejects the concept of far-reaching, binding “level playing field” commitments, though its negotiators say they will agree to maintain current employment, environmental and consumer standards.

Instead, Prime Minister Boris Johnson's government insists that being free of the EU gives it a free hand to subsidize indigenous industry if it wishes, and this must be reflected in any agreement. In other words, it is clinging to the ability to decide policy for itself without being told off for doing so by Brussels or the CJEU.

A key obstacle to a compromise is that London has yet to spell out its own state aid regime, leaving the EU unable to evaluate how a system of parallel state aid regimes would work.

A refusal by London to recognize the Luxembourg court's jurisdiction and oversight could spill over into other areas of cooperation. It would call into question UK police and security service access to crime and prosecution databases: finger-

prints, license plates and criminal records. That, in turn, could end EU access to UK intelligence resources.

In anticipation of such stand-offs in transition talks, the EU insisted that arrangements for Northern Ireland would not be a negotiating chip in trade talks. They pushed for London to agree to a special protocol to that effect in its EU withdrawal package.

The Northern Ireland protocol aims to avoid the introduction of a hard border on the island of Ireland, but not everyone in Dublin is confident London will honor its commitment.

The COVID-19 pandemic has not helped matters either. For weeks, talks that would otherwise have taken place in person were shifted online, which severely limited the possibility of informal asides between rounds.

As veterans of the complex and, charged 1998 Good Friday peace talks remember, using breaks to take nuanced and unofficial soundings in the corridors is as crucial as any meeting-room talks for making possible the seemingly impossible.

The Brexit talks have, in the home stretch, gained in the

person of an experienced crisis broker.

German Chancellor Angela Merkel is coming to the end of her political career after 15 crisis-ravaged years in power, snatching success from the jaws of defeat in banking, currency and refugee crises.

Fate has presented a final – and perhaps the greatest – test of the “Merkel method.” Faced with a seemingly intractable problem, the trained physicist likes to break it down into a series of smaller challenges. With an eye for detail, she solves the individual components and then attempts to reassemble them into one, hopefully resolved whole.

She is not directly involved in Brexit talks, which are led by the European Commission. But if – as is likely – the talks come down to another late-night session in Brussels, the German chancellor is the person you want in the room.

The UK favors a series of pragmatic agreements, in particular on the many outstanding issues; the EU wants Brexit regulated by one, far-reaching treaty that anticipates future problems with resolution mechanisms, in order

to avoid an endless cycle of claims and counterclaims.

As the curtain rose on the Germany's EU Council presidency, Merkel warned that all EU members must prepare for the possibility that talks with Britain on their post-Brexit relationship could fail.

“I will keep pushing for a good solution, but the EU and Germany, too, must and should prepare for the case that an agreement is not reached,” said Merkel in an address to the Bundestag.

She is well aware that success – or failure – to agree on an orderly departure from the EU will color her legacy. But the consequences for the UK are even more grave, she warned in a newspaper interview, and the UK would “have to live with the consequences” of a no-deal outcome.

What for her was a logical statement of fact was seized on by hardline Brexiteers, citing her words as apparent proof of European ill will towards the United Kingdom.

As the fourth anniversary of the Brexit vote came and went, the Brexiteer narrative is already gearing up to frame any failure of talks – and a subsequent UK economic meltdown – as a final act of revenge by the bloc it left after 47 years. But not all UK voters are likely to swallow that narrative. In fact, on Brexit, a majority seems to be suffering buyer's remorse.

The European Social Survey (ESS), a pan-European poll carried out every two years, suggested that nearly 57 percent of UK voters would now vote to remain in the EU, up seven points since 2018, while the Leave camp has shrunk to 35 percent. Four years in, both sides admit “serious divergences” remain in EU-UK divorce talks, and senior officials will sacrifice their summer vacation to get a deal over the line. Things may still seem calm on Brexit, but the calm is not to be trusted.

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BY ERIC BONSE

Where do you stand on the subject of democracy and the rule of law? This was a popular question during the run-up to the European elections in May 2019, and none of the top candidates was able to avoid it. Politicians everywhere, including in Germany, were calling on the EU to rein in Viktor Orbán and Jaroslaw Kaczyński. Even French President Emmanuel Macron vigorously encouraged German Chancellor Angela Merkel to take up a position against the “anti-liberals” and “authoritarians” in Eastern Europe.

Today, one year later, Orbán and Kaczyński haven't budged an inch, especially after Polish President Andrzej Duda was narrowly reelected on July 12. Duda is a close political ally of Kaczyński.

The battle over democracy and the rule of law, which former European Commission President Jean-Claude Juncker once fought with notable verve, has clearly lost momentum under his successor, Ursula von der Leyen. The CDU politician let herself be nominated with votes from Orbán and Kaczyński and has been handling the Eastern Europeans with kid gloves ever since. The German presidency of the EU Council is unlikely to change that.

On the agenda for the coming six months, Hungary and Poland are not mentioned at all – in spite of the ongoing investigations into breaches of EU values and the rule of law by governments in Warsaw and Budapest. Germany's government has expressed its commitment to defending the shared values of the EU: “We will [...] work inten-

sively to strengthen fundamental values and particularly to promote a common, cooperative and constructive approach to dealing with the issue of the rule of law,” read the official statement.

However, this handling is by no means a priority of the German presidency of the EU Council. The announcement was but one of many, and was even issued *after* similar statements focusing on agriculture and consumer protection. In addition, the Berlin government avoids pillorying any country in particular. In fact, the new idea is to encourage not just Poland and Hungary, but all 27 EU states to engage in a “political rule-of-law dialogue on an equal footing,” as the government draft put it. In other words, all members will be encouraged to put themselves to the test.

Even the linking of EU financial aid to the promotion of democracy and the rule of law – something Berlin has been requesting for ages – is suddenly no longer very important. Germany is indeed still supporting the corresponding proposal issued by the European Commission, but Merkel is clearly reluctant to campaign for the proposal on a grand scale. A quick passage of the new EU budget has the utmost priority, and no one wants to jeopardize this much-needed agreement by digging into the pockets of Hungary or Poland.

Even the theme of asylum law reform and fair burden-sharing among member states as part of offi-

cial refugee policy no longer enjoys priority status. Back in 2015, when Hungary and Poland dug in their heels and refused to accept asylum seekers, Merkel continued to fight bravely for a “European solution.” Five years later, Merkel is eager to pass the hot potato on to someone else, which means it's now the European Commission's turn to have a go at the subject.

The chancellor has indeed burned her fingers a few too many times in Eastern Europe, and she is unwilling to risk a reemergence of the issue during Germany's half-year as EU Council president. But Merkel

## Back in 2015, when Hungary and Poland refused asylum seekers, Merkel fought bravely for a European solution

is not the only one doing her best to avoid trouble; the acting CDU chairwoman Annegret Kramp-Karrenbauer is also pursuing a policy of appeasement. In the dispute over Fidesz in Hungary, she spoke out against excluding the party from the conservative European People's Party (EPP). In other words, Orbán's supporters in European Parliament are allowed to stay.

This decision has weakened the liberal and only moderately conservative Eastern Europeans in the EPP. Even EPP President Donald

Tusk was not able to prevail against the directive from Berlin. The former EU Council president from Poland had called for Fidesz to be expelled, but without support from the CDU, nothing can move forward in the EPP.

But it's not just the conservatives who are having a hard time with Eastern Europe; the Social Democrats are also struggling over which path to take. For example, for some time, Social Democratic colleagues in Brussels and Berlin resisted taking action against corruption in Romania, which has a Social Democratic government. Only after weeks of

of democracy and the erasure of the rule of law on the continent. This fact was on display in particularly vivid color in the cases brought against Poland and Hungary, accusing them of breaching EU values and the rule of law; both cases have been completely ineffective at achieving anything close to the desired result.

In theory, the so-called Article-7 investigations could lead to the withdrawal of a country's voting rights on the EU Council – a move referred to as “the nuclear option.” It means that the member state would lose the ability to participate in decision-making in the most important EU body. In practice, however, it is highly unlikely that this could ever happen, seeing as such far-reaching decisions must receive unanimous consent, and Poland and Hungary clearly have each other's back in the matter.

For this reason, the Article-7 procedure has never moved beyond a non-binding hearing. And even this delicate diplomatic exercise proved to be counterproductive. The procedure looked like “an instrument used by the West to blackmail the East,” admitted State Minister for Europe Michael Roth (SPD) after an unproductive meeting. Although “this is by no means the case,” he noted, it nevertheless showed very clearly the limits of Article 7.

Even the new instrument devised by Roth and the Belgian EU Justice Commissioner Didier Reynders harbors no promise for resounding success: the “Fundamental Values

Check-up” is designed to complement existing mechanisms and build bridges between East and West. All 27 EU countries will be asked to take the test – not just Poland, Hungary and Romania, but Germany as well.

However, until then, all 27 heads of state and government will be invited to join Merkel at the negotiating table to discuss the new EU budget and post-pandemic economic reconstruction. Only after that – at least according to the finely chiseled dramaturgy that is Germany's current presidency of the EU Council – will the discussion turn to fundamental values, democracy and the rule of law.

This begs the general question as to whether an attempt is being made to garner support for the controversial reconstruction plan in return for silence regarding the violations of the rule of law in Hungary and Poland. Franziska Brantner, European affairs spokesperson for the Greens in the Bundestag, warns against such an approach: “I fear that any financial sanctions against countries that breach the rule of law will ultimately turn out to be less severe than the European Commission had originally planned.”

One could also express the dilemma in more drastic terms: first comes food, then comes morality. In the era of COVID-19, this famous Bertolt Brecht dictum applies now more than ever. And this means that Eastern European states can count on leniency in the coming months.

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## Reconstruction first, then morality

Hungary and Poland can expect leniency in their dispute with the EU over values and the rule of law