



# CLOSING THE RANKS: THE EU'S APPROACH TO THE BREXIT NEGOTIATIONS

## BRIEF

### INTRODUCTION

The United Kingdom's vote to leave the European Union came as a surprise to many, not only to citizens around Europe, but also to the governments and to the European institutions. The result of the referendum, if acted upon, will lead an unprecedented retreat from the EU. This is a political and constitutional novelty that causes concern on both sides of the Channel. No member state has ever left the Union and the Brexit scenario was never seriously anticipated in EU treaties. This is reflected by the fact that even the process for conducting these negotiations is not fully covered by European law.

A lot has been written about the UK's approach towards the negotiations. With strongly diverging views on the exact meaning of Brexit, a lack of political leadership and a constitutional dispute about the role of the British parliament, it is safe to say that the UK's position is one of uncertainty. The Brexit negotiations will take the UK to unknown territory and we can expect a fierce political debate surrounding the roles of the main actors for months to come.

However, the UK certainly does not stand alone here. On the European side there are similar uncertainties. The exact content and order of the negotiations is not fixed

yet and the demarcation of institutional competences is far from being clear. In this policy paper we will discuss the negotiation process from an EU perspective and analyse the division of roles between and within the EU institutions. What are the competences for each of the main EU institutions? How will they approach this role? And how will the institutions interact with each other?

### TWO NEGOTIATIONS

The exit clause on which the negotiations will be based was drafted on a kitchen table<sup>1</sup> and very few people imagined that it would ever be used. Article 50 of the Treaty on European Union (TEU) is the only formal structure for the negotiations but offers no more than a broad framework for the negotiations. More detailed guidance will largely depend on legal interpretation and political bargaining, and will only be issued after the UK activates article 50 and begins exit proceedings.

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<sup>1</sup> "Article 50: The Brexit Divorce Paper", Financial Times, July 20, 2016. Available at [www.ft.com/content/2f64f006-4dbd-11e6-88c5-db83e98a590a](http://www.ft.com/content/2f64f006-4dbd-11e6-88c5-db83e98a590a)

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The activation of Article 50 would require not a just one deal, but probably two or more. From the EU's side, the most important negotiations would be:

1. The UK's withdrawal from the EU
2. The EU's future relationship with the UK.

While these deals will be negotiated under different rules, with different actors and possibly at different speeds, the legal bridges between the two set out in Article 50 mean the negotiations will be interlinked (although the exact order and task division remain undecided).

The divorce proceedings will be guided by Article 50. This agreement could incorporate anything the negotiators want to put in, but it will most likely set out transition provisions on issues such as budgetary arrangements, pension payments of British EU servants, and membership rights of EU agencies.

For the negotiations on the future relationship the legal arrangements are more ambiguous. Although Article 50 states that the arrangements for a Member State's withdrawal should "take account of the framework for its future relationship with the Union", it does not mention how this should be done. The negotiations on the future relations with the UK will be dominated by trade talks, but undoubtedly will also cover other policy areas. This creates a complicated mix of competences without formal procedures.

With this in mind, it is important that we have a clear picture of the current state-of-play and carefully consider where the balance of competence should lie.

## EUROPEAN COUNCIL

The European Council's main role is to define the general political direction and the priorities of the EU. Although it has no formal legislative power, it has an influential strategic role and provides a final escalation level for discord among member states at the ministerial level.

For the negotiations on the exit conditions, the formal role of the European Council is limited to the beginning of the negotiation process. Once the UK decides to trigger Article 50, the European Council will be notified first. It will then set out the guidelines for the withdrawal agreement, without the UK's participation, through unanimous agreement. These guidelines will provide general directions and key conditions for the Union negotiator, the European Commission. They will also define the role of the other institutions, the time path and sequence of the negotiation process.

The European Council was quick to move after the results of the UK referendum came in. On 25 June 2016, two days after the vote, the European Council's General Secretariat appointed Belgian diplomat Didier Seeuws as its lead negotiator. Seeuws, a longtime aide to former EU president Herman Van Rompuy and a former spokesperson for Guy Verhofstadt, will lead the

Task Force on the UK, which will support the work in the European Council and the Council of the European Union. The Taskforce will mainly work on preparing the negotiations and planning the scenario. It will also be the European Council's main point of contact for other EU institutions.

Seeuws will report directly<sup>2</sup> to Secretary-General Jeppe Tranholm-Mikkelsen, who is expected to be closely involved in the negotiations. Other key players will include Piotr Serafin, who is the chief of staff of European Council President Donald Tusk, Deputy Secretary-General Jim Cloos and Council Legal Director Hubert Legal. Tusk himself is expected to have a discreet role and will mainly focus on aligning the Member States' interest on the EU's future relationship with the UK.

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2 "General Secretariat Organisation Chart", European Council, October 2016; Available at: [http://www.consilium.europa.eu/en/general-secretariat/pdf/gsc-organisation-chart-en\\_pdf/](http://www.consilium.europa.eu/en/general-secretariat/pdf/gsc-organisation-chart-en_pdf/)

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## COUNCIL OF THE EUROPEAN UNION

The Council of the European Union, the institution which represents the governments of the EU's member states, will be at the centre of the Brexit negotiations. According to Article 50, the European Commission is tasked with passing on recommendations to open negotiations with the withdrawing state to the Council, which means that the Council decides when to open negotiations.

While the Council will not be leading negotiations, as this power has been handed to the Commission by the European Parliament, it is nonetheless tasked with coordinating the positions of the 27 remaining member states on the different parts of the final negotiated agreement. This will take place in the context of the 10 configurations of the Council.

Particular attention should be paid to the work of the Foreign Affairs Council and the Economic and Financial Affairs Council. Both will deal with aspects of the negotiation (both the "divorce proceedings" and the future relation between the two sides), namely trade and security. It is within this framework that we should also expect a role to be played by the High Representative of the Union for Foreign Affairs and Security Policy Federica Mogherini, who chairs the Foreign Affairs Council.

The Council will also decide, with the consent of the European Parliament, to conclude the negotiated exit agreement. This power comes from the concept of co-decision: according to the decision-making and legislative process of the European Union, both the Council and the European Parliament play an equal role in the passing of legislation. With regards to the Council, this must be done with a qualified majority, which means 72% of the members of the Council, comprising at least 65% of the population of the member states (with the exception of the withdrawing party).

The role of the rotating Presidency will be limited. If Article 50 is triggered by March 2017, the rotating

Presidency<sup>3</sup> will be held by Malta, Estonia, Bulgaria, Austria and Romania for the duration of the negotiation process. None of these countries is expected to play a prominent role and they are likely to leave the coordination of the negotiations to the European Council's General Secretariat.

## EUROPEAN COMMISSION

The European Commission is set to play a central role in the Brexit negotiations. Despite the fact that Article 50 of the Lisbon Treaty names the European Council as the main body charged with the negotiation of an agreement with exiting states on behalf of the Union, paragraph 2 of Article 50 also states that the process must be conducted in accordance with Article 218 (3) of the Maastricht Treaty. This states that the European Commission is ultimately responsible for negotiations related to the common foreign and security policy (CFSP). In addition to this, the European Parliament has voted in favour of having the Commission lead the negotiations.

As a sign of its central role in the negotiations, the Commission has nominated a Chief Negotiator, the French Michel Barnier. He will be aided by a team of commission experts, as well as by a group of Directors General linked to topics relevant to the negotiations. Barnier will be responsible for internally preparing the groundwork until the formal triggering of Article 50 by the British authorities. Once the article has been activated, the Commission's Chief Negotiator will be responsible for coordinating the Commission's work on all areas linked to the negotiations. He will also be joined by Sabine Weyand, who will serve as Deputy Chief Negotiator.

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<sup>3</sup> "Council rotating presidencies: decision on revised order", Press Release 475/16, Institutional Affairs, European Council, 26 July 2016; Available at [www.consilium.europa.eu/en/press/press-releases/2016/07/26-council-rotating-presidencies-revised-order/](http://www.consilium.europa.eu/en/press/press-releases/2016/07/26-council-rotating-presidencies-revised-order/)

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The profile of the two negotiators picked by the Commission to lead negotiations is telling of the approach that will be taken to the negotiations. Michel Barnier is known for his difficult relationship with the City of London: as European Commissioner for Internal Markets and Services in the second Barroso Commission (2010-14), he was largely accused of proposing tougher regulation on the financial sector and capping bonuses. Many saw this as an attempt to curb London's status as the EU's major financial hub.

The choice of Weyand, a German national whose career in the EU has been linked predominantly to trade policy, and who was this year nominated Deputy Director General of DG Trade, shows the importance of trade in the upcoming Brexit negotiations. Weyand, who has previously worked to the benefit of the United Kingdom's trade interests, is in a perfect position to drive a hard negotiation with British authorities.

The President of the European Commission Jean-Claude Juncker is also expected to play a central, though more indirect, role in Brexit negotiations. Michel Barnier answers directly to Juncker, and so it is expected that he will be in a position to influence negotiations. This is of particular importance to the EU dynamics of the Brexit negotiations: Juncker is not only keen to drive a hard negotiation in order to discourage other EU member states from following the same path as the UK, but the success of these negotiations from the EU's side can be considered tightly linked to his own political future. Juncker has come under much criticism in recent months: both the failed Dutch referendum on the EU-Ukraine Association Agreement and the Brexit referendum happened on his watch. After the Brexit referendum, there began to appear voices in the EU calling for his resignation. While those calls seem to have subsided, the pressure on Juncker remains, and this is likely to reflect upon the upcoming Brexit negotiations.

## EUROPEAN PARLIAMENT

Out of all the EU institutions, the role of the Parliament is, in legal terms, the least clearly pronounced. Although it has to sign off, by simple majority, on both the exit proceedings and the any future trade deal, its involvement throughout the negotiations will remain uncertain until the European Council issues its guidelines. Nonetheless, the possibility that the Parliament can block the deal(s) gives it significant power over the negotiation process and the content of the agreement.

The exact role of the Parliament in the negotiation process will not be determined by legal guidance, but by a political discussion. Much will depend on the political leverage of the Parliament's negotiation delegation. Guy Verhofstadt, the leader of the liberal ALDE Group, was appointed as the Parliament's point man for the Brexit negotiations and is expected to play a vocal role.

Verhofstadt, a former Belgian prime minister, was unanimously elected by the EP's Conference of Presidents (CoP) in a rare display of cross-party unity. As the Parliament's counterpart to Michel Barnier and Didier Seeuws, Verhofstadt will report directly to the CoP, which is the highest decision-making body within the Parliament. Verhofstadt will also report to the Conference of Committee Chairs with the chairs of the Parliament's specialised standing committees. Once the UK authorities trigger article 50 and the European Council has adopted the negotiation guidelines, Verhofstadt and his team will work closely with the Committees to gather input for the EP's negotiation position.

The Parliament's political leadership has made a conscious effort to keep the parliamentary ranks closed. At an early stage, the standing committee chairs were asked to refrain themselves from communicating with their thematic counterparts in other EU institutions. Plans to invite Commission and Council representatives for parliamentary sessions were dropped and the standing committees are now understood to keep a low profile in the negotiation process. As a

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result of this, discussions on Brexit will mainly take place between and within the political groups, and not in the standing committees.

It will be difficult for officials from the other institutions, and let alone the British delegation, to get insights into the Parliament's work without passing Verhofstadt first. The Parliament's lead negotiator has carved out a central role as chief internal communicator and first point of contact to external stakeholders. This limits the possibility to employ divide-and-rule techniques and increases the necessity for formal channels of interaction.

## A LIBERAL APPROACH

The Brexit negotiations will represent an unprecedented chapter in the history of the European Union. The institutional dynamics on both sides of the Channel, along with the panoply of national, institutional and sectoral interests make the whole situation extremely complicated.

It is important, however, that amid all of this the rights and values that we hold dear in liberal democracies are safeguarded by the parties taking part in the negotiations. We must ensure that the four freedoms, (namely the free movement of people, goods, capital and services), which represent the most fundamental pillars of the EU, are non-negotiable.

We must also ensure that the individual rights and freedoms of all European citizens, including the British, are safeguarded. In this respect, we have to keep in mind that European citizenship is enshrined in the treaties and that UK citizens still qualify as citizens of the EU for the duration of the negotiations. We must make sure that they still have a voice as long as they are citizens of the Union.

The European institutions that are involved in the negotiations each cater to different interests. The Council represents the Member States, the Parliament the European citizens, and the Commission stands for the

EU as a whole. From a liberal point of view, the interests of European individuals should be at the forefront of the negotiations. For that reason it is crucial that the European Parliament gets a strong role in the negotiation process.

Furthermore, giving the Parliament a say throughout the process will ensure a smooth passage of the agreement further down the line. It is important that the Parliament can scrutinise and steer the negotiations along the way and that their input is taken on board. Giving the Parliament co-ownership of the agreement increases the likelihood that the Parliament can approve the deal and guarantees a stronger democratic endorsement

Strong parliamentary involvement would also be a powerful rebuke to the by-now familiar accusations of the EU's democratic deficit (remember "Take Back Control"). With a government on the other side of the table that is doing all it can to keep out its own

parliament, it would be difficult to think of a better way to show the benefits of European citizenship, for the British and for Europeans alike.

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## RECOMMENDATIONS

In a bid to maximise the benefits of the negotiations for European citizens, national governments and for the EU as a whole, we propose the following recommendations:

- That the European Council issues negotiation guidelines that serve the interests of European citizens and Europe as a whole, and not just those of the Member States.
- That the Parliament's role is defined by the recognition of its political input and the citizens that it represents, rather than by its mere power to block an agreement.
- That the European Parliament, as the highest democratic body of the European Union, be involved in all steps of the negotiation process. This is to be achieved by: setting up a special committee to formalise inter-institutional contacts between the Brexit negotiators from the Council taskforce, the Commission and the Parliament; and by making the European Parliament's lead negotiator part of the Union's negotiating team.

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