

The Barnier method: Lessons learned from the EU's institutional approach to the Brexit negotiations

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The UK's vote on 23 June 2016 to leave the EU sent shockwaves throughout the EU member states. After an uncoordinated initial response from various member states – the EU's six founding members held, among others, an exclusive meeting on 25 June 2016 and consequentially upset some of the remaining EU countries –, the EU and its institutions rapidly developed a comprehensive negotiating strategy vis-à-vis the departing UK. The EU27 also remained united throughout the Brexit negotiations, putting to bed any speculations that the UK would be able to divide the 27.

This chapter will explain how the EU's institutional approach contributed to the EU27's unity, from the referendum to the UK's formal exit (i.e. June 2016 to January 2020). It will then explore the prospects of maintaining this unity throughout the second phase of the negotiations, which started in March 2020 and focuses on the future UK-EU relationship. While not least due to the COVID-19 pandemic, the political environment is becoming more challenging for the EU27, maintaining similar institutional structures to those used in the first phase of the talks as well as experienced personnel will help the EU and its member states speak with one voice.

Finally, the EU should draw on some lessons from the Brexit talks and apply them in its relations with other third countries. Although the UK will remain a special partner

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due to its geographic proximity and close economic as well as cultural links, the Union faces similar challenges of speaking with one voice vis-à-vis other major third countries. It would do well to apply the institutional lessons learned from Brexit: adopt a clear political mandate from the European Council, appoint a single negotiator, maintain close coordination with the member states, and ensure a high degree of transparency when dealing with other global international actors. Cacophony and squabbles among the member states over how the EU should handle international relationships with other global powers hamper the EU's effectiveness abroad.

The Barnier method: The key to success in the divorce talks

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When the UK voted to leave the EU, both parties entered uncharted territory. No member state had left the EU before, and although Article 50 of the Treaty on the European Union offered a broad legal framework, the exact conduct of the negotiations remained an open question. However, since the divorce talks were of utmost political and economic importance for the remaining member states, the EU soon realised that it needed to set the structure for the negotiations and commit to it throughout the withdrawal process.

The Brexit vote made the bloc particularly uneasy about the prospects of rising Euroscepticism across the EU. After all, the French and Dutch Eurosceptics welcomed the UK's vote with a proverbial bottle of champagne and promised to follow suit. Public opinion polls conducted in the 27 member states showed no immediate increase in the desire to leave the EU in the aftermath of the British referendum.¹ Nevertheless, EU leaders and institutions came up with a strategy which would protect the Single Market, maintain the integrity of the EU and help prevent a 'Brexit domino effect'.

In a statement on 29 June 2016, EU leaders decided to send a clear message that rather than dismantle the Union, the UK's departure would make the bloc stronger and more unified. To this end, the leaders quickly developed their 'no negotiation without notification' policy: the EU would only conduct negotiations with the UK once the latter triggered the Article 50 exit clause. Furthermore, no EU member state would

engage in bilateral negotiations with the UK government. This prevented the risk of the UK buying off some member states via bilateral talks.

The EU27 also sought to ensure that negotiations would only take place within the Article 50 framework without any kind of pre-negotiation, which put the UK under two years' pressure to negotiate a withdrawal agreement or face a no-deal Brexit. This combination of time pressure and a potential worst-case outcome for the UK amplified the EU's already strong negotiation position.

Throughout the Article 50 negotiations, the EU developed a specific institutional approach – the 'Barnier method' – named after Michel Barnier, the EU's lead negotiator. Firstly, the member states accepted that while the General Affairs Council (GAC) should be responsible for authorising the start of the talks and adopting the EU's negotiating mandate, the European Commission should lead the negotiations.

Indeed, Article 50 does not explicitly state which institution should conduct the talks, and some member states initially wanted the Council to lead. However, after some short squabbles, the 27 member states agreed that the Commission, which represents general interests of the EU, is best placed to maintain EU's internal coherence and, as such, run the talks. For this purpose, the Commission set up the Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU, and appointed former Commissioner and French Foreign Minister Michel Barnier as its negotiator.

Secondly, Barnier and his team conducted broad and equal coordination with the member states and all relevant EU actors. Despite initial concerns of some EU capitals that Barnier would side with the biggest member states, the Frenchman proved a skilful negotiator and quickly gained the trust of all 27 member states, including the newer and smaller ones. Throughout the Article 50 negotiations, Barnier visited each member state at least twice, showing that he did not intend to side-line any EU capital – both those affected directly (e.g. Ireland) and less directly (e.g. the Baltics).

Barnier also established excellent working relations with the Council's Ad Hoc Working Party on Article 50, composed of Brexit delegates from every member state; and with Members of the European Parliament (MEPs), who would have to approve the final withdrawal agreement. In the past, MEPs employed their veto powers when they were dissatisfied with how the Commission and Council conducted international talks.² Barnier

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decided, therefore, to keep the Parliament on his side to reduce the risk of MEPs derailing the negotiations. In fact, MEPs proved particularly useful to Barnier throughout the talks. Whenever the British asked the EU to relax its negotiating terms, the ‘bad cop’ Parliament would threaten to veto the final deal, especially emphasising citizen’s rights, the open border in Northern Ireland and the UK’s ongoing financial commitments.

Thirdly, the heads of state and government took political control of the negotiation process. Brexit has been on the agenda of 18 European Council meetings between June 2016 and January 2020, several of which were entirely dedicated to the EU’s strategy vis-à-vis the UK. National leaders thus took ownership of the negotiating mandate and determined the crucial decisions, for instance, on whether and with which conditions to extend the Article 50 deadline. Crucially, however, the heads of state and governments refrained from any direct negotiations with the UK’s Prime Minister, asking Theresa May and later Boris Johnson to leave the room whenever Brexit was discussed. This served to reinforce the EU’s united front on Brexit.

Fourthly, the EU27 used sequencing and conditionality to put additional pressure

on the UK. Article 50 combined with the threat of a ‘no deal exit’ already places the departing country under heavy pressure. Additionally, the EU27 decided to focus on the exit issues (i.e. citizens’ rights, the UK’s budgetary commitments, the border in Northern Ireland) first and were only willing to start talks on the future relationship once the European Council judged ‘sufficient progress’ to have been achieved. Crucially, this conditionality led the UK to accept the EU’s major demands.

Finally, the European Commission also decided to be transparent about its negotiating objectives and red lines. Indeed, there were moments in the talks when Barnier opted for greater (though temporary) secrecy on the Northern Ireland’s question. However, the EU was consistent overall, with a strategy to keep the public informed about the progress of the talks.³ The EU’s transparency policy aimed to serve a twofold purpose. On the one hand, it intended to increase EU leverage by keeping the less transparent British government on the defensive. On the other, full transparency of the talks and regular exchanges between Barnier, member states, MEPs and national MPs made it much more difficult for the UK to hold any bilateral talks.

Lessons learned for Brexit phase II

With the UK’s formal exit from the EU on 1 February 2020, Brexit negotiations entered the second phase. The UK must continue to apply EU law until 31 December 2020, although it will no longer be represented in the EU institutions. The EU and UK aim to agree on the future relationship during this short transition period.

The negotiations on future relations between the EU and UK are shaping up to be even more complex and politically challenging

than the Article 50 negotiations. For one, they must cover more policy fields (i.e. trade, fisheries, financial services, internal security and much more), creating, at least in theory, more room for differences of interest among the EU member states. Contentious issues of the first phase of the negotiations – particularly the implementation of the controversial Protocol on Ireland/Northern Ireland – are putting an additional strain on the negotiations.

The new British government under Prime Minister Johnson now has an absolute parliamentary majority and seems more willing to confront the EU or to try to sow disunity among the EU27 than the May government. For instance, although the Johnson government accepted in the Political Declaration the commitment to find an agreement on fisheries by June 2020, it has since adopted a very confrontational approach to fisheries, knowing that it is the top priority for only a handful of EU member states.

To tackle said challenges, the EU decided to maintain similar institutional structures to those used in the first phase of the talks, as they worked in its favour, and (mostly) kept experienced personnel in place. Michel Barnier remains the EU's sole negotiator, with a special role within the European Commission and is supported by the renamed Task Force for Relations with the United Kingdom (UKTF). The Council of the EU adopted the EU's negotiation directives at the end of February, and the negotiations commenced in March 2020. The talks will once again be closely coordinated with the member states via a dedicated UK Working Party in the Council and the GAC. Maintaining well-experienced personnel – such as Barnier or Didier Seeuws, who also led the works of the Council's Art. 50 Working Party and successfully hammered compromises among the 27 during the divorce talks – will help the EU to remain united.

The European Council is to set the political guidelines and regularly coordinate at the highest political level, particularly assessing and signing a possible agreement in the autumn or, if the UK changes course, extending the transition period. The European Parliament has also reconvened its Brexit Steering Group, now renamed the EU-UK Coordination Group, and will be kept in the loop closely by the Commission. MEPs have a veto right on the final agreement, as they did in the first phase. At the outset of the future relationship negotiations, the UKTF also conducted a series of seminars with the member states to create a common understanding of the issues at stake for the EU.

However, after the first round of negotiations in early March, talks were temporarily suspended due to the COVID-19 outbreak in Europe. Despite negotiations continuing as of April via videoconferencing, their conduct remains severely constrained. For now, the UK government insists that it will neither ask for nor accept an extension request, and that negotiations should be concluded in 2020. The transition period can only be extended once, up to two years, and the decision must be taken by 1 July 2020 (Article 132 of the Withdrawal Agreement). The combination of heightened time pressure and a strong economic upheaval increases the

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pressure on both sides to make concessions and strike a deal. A failure to conclude the free trade agreement will only add up to the severe economic pain that EU economies are expected to suffer from because of the COVID-19 crisis. Thus, while the EU's institutional approach remains largely the same, the political environment has changed significantly compared to the first phase of the Brexit negotiations. It remains to be seen if the institutional structures are sufficient for the EU to maintain unity and achieve its negotiation objectives – a sustainable future relationship with the UK that protects the Single Market.

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In the next phase, therefore, the political coordination between the Commission and member states will be as important as the technical conduct of the negotiations. Between 2016 and 2019, the European Council only discussed Brexit in depth when it was asked to consider extending the Article 50 talks. It will face further difficult decisions throughout 2020: Which of its (and individual member states') priorities should the EU focus on in the shortened negotiations? Should the EU27 accept and/or attach conditions to an extension of transition if the UK changes course? Most importantly, what, if any, compromises should the EU enter into at crunch time to get to an agreement? At which point is a no-trade-deal Brexit preferable to further compromise? Answering these questions will be particularly challenging because the political attention of EU leaders will be focused on containing the further spread of COVID-19; combating its economic, social and political fallout; and coordinating recovery efforts.

Food for thought for relations with other third countries

The Brexit negotiations were and are unique – it will be impossible to replicate the style of the Brexit talks fully in the EU's other international negotiations. The framework of Article 50 allowed for sequencing with a strong element of conditionality, and much higher political and economic costs if parties failed to reach an agreement than one can imagine in any other international negotiation. Combined with the determination to protect its integrity, this framework enabled the EU to devise institutionally innovative structures.

Nonetheless, there are three key lessons from the Brexit talks the EU should draw from and attempt to apply in EU's external relations.

First, the Brexit negotiations demonstrated the value of having a clear political mandate agreed upon by the heads of state and government, facilitating the Commission's preservation of unity among the EU27 throughout the technical negotiations. The Barnier team's constant coordination with national governments – both via the usual EU institutional structures as well as by visiting each member state – contributed to this extraordinary level of support from the capitals for the joint EU position.

This approach should be replicated in talks with other third countries. So far, the member states have shown divergent views on how to deal with major global powers like China, with some EU capitals showing greater leniency than others and opting for bilateral channels of communication. If the EU institutions and member states devoted more time to narrowing these divergent stances and coordinating their approaches, they would stand greater chances of developing a successful EU policy towards major international partners.

Second, although the Brexit negotiations were highly complex and affected various EU policy areas, the EU institutions and member states managed to overcome a temptation to enter turf wars over who should be in charge of the talks. The close involvement of the European Parliament helped reinforce the Commission's position vis-à-vis the UK and ensured a smooth consent procedure in the former.

The EU should attempt achieving a similar degree of institutional coherence, especially during complex international negotiations that combine different policy areas. Although the Commission is the EU's sole negotiator in areas of exclusive competence (e.g. trade), member states have been reluctant at times to give it a clear mandate for negotiations with third countries. This was particularly the case if the trade talks included elements of so-called shared competences between the member states and the EU, such as the EU-Canada Comprehensive Economic and Trade Agreement, which faced resistance from many national parliaments.

Third, the EU turned transparency into a virtue by publicising the mandate, its red lines, negotiation objectives and the progress of the talks. This helped maintain public trust in the EU's capacity and willingness to represent its interests. The EU is becoming more transparent in its trade negotiations, as witnessed in the last couple of years (e.g. Transatlantic Trade

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and Investment Partnership). Nevertheless, applying the Brexit model of transparency to its fullest capacity could boost public confidence in the EU and debunk the misconception that the EU is an elite club that opts for backroom deals.

Implementing these three recommendations would not require any significant legal tweaks, such as treaty change, and yet would improve the EU's negotiating hand worldwide. The COVID-19 outbreak has

provoked questions about the fate of multilateralism and accelerated the return of great power politics, with a growing conflict between the US and China. The EU institutions, which have been cheerleaders of global cooperation, must now try harder to sell the benefits of free trade and international cooperation to some of its own members. If they use some of the tricks of the Brexit negotiations, they stand a chance of winning the argument.

¹ Hoffmann, Isabell and Catherine de Vries (2016), [“Brexit has raised support for the European Union”](#), Bertelsmann Stiftung.

² Gostyńska-Jakubowska, Agata (2017a), [“Parliamentarians in Brexit talks: Bulls in a china shop?”](#), Centre for European Reform.

³ Gostyńska-Jakubowska, Agata (2017b), [“Brexit maze: The role of EU institutions in the negotiations”](#), Centre for European Reform.