

# The EU's negotiating strategy has worked so far, but it's playing a risky game



*In a report published recently, **Oliver Patel (UCL)** assesses the EU's institutional and strategic approach to the Brexit negotiations, and considers what the EU wants from the process. Here, he summarises the core points of the paper and outlines how the UK has been outflanked by the EU's negotiating tactics thus far.*

October's European Council summit represented 'more of the same' for the Brexit process. Although EU leaders were more cordial than in Salzburg, their fundamental position hasn't changed: there must be some form of backstop which ties Northern Ireland to the Customs Union and Internal Market for goods, and it can't be time-limited. Without this, there will be no withdrawal agreement. The ball is now in the UK's court, [they say](#).

The EU's strategic approach to the Brexit negotiations resembles its usual approach to international negotiations: rigidity and inflexibility in the knowledge that it is probably the stronger party. Trade negotiators from third countries [report that](#) EU negotiators take a 'relentless, dominant and uncompromising approach'. The Brexit negotiations have been no different.



Donald Tusk and Jean-Claude Juncker at a European Council meeting in June 2017. Photo: [European Council](#) via a [CC-BY-NC-ND 2.0 licence](#)

The [EU's bargaining power](#) was greater than the UK's from the outset. The relative size of the two economies, their varying levels of economic dependence upon one another, and the likely negative impact of 'no deal' on the UK all indicate this.

However, the EU has employed various strategies to further increase its bargaining power and exert significant control over the negotiations. In doing so, it has forced the UK to make multiple concessions, such as on the role of the ECJ and the £39bn financial settlement. The key strategies are as follows:

## Transparency

One such strategy is the use of transparency as a negotiating tool. The EU has stuck to its promise of maximum transparency, and has given an in-depth, 'running commentary' on the talks. This has enabled it to [shape the public narrative](#) around Brexit, preventing the UK government from hiding behind secrecy, and forcing it to publicly engage with its domestic adversaries.

The EU's transparent outlining of its position forces the UK to respond and react. It has succeeded in making public debate – as well as the actual negotiations – centre on EU demands. An example of this is the publication of proposals for the Irish border backstop in early 2018. That the EU published these proposals before the UK [gave the EU an advantage](#) in that it made the negotiations revolve around what was essentially their position.

## Strategic sequencing

Another strategy was the decision to take a phased approach to the negotiations. Accordingly, withdrawal issues, transitional arrangements and the future relationship were all discussed separately, and only after political agreement on each phase. The decision to phase the negotiations was not a legal necessity but a political calculation. The EU has been able, time and again, to pocket UK concessions, close the issue, and move onto the next stage, insisting that what has already been agreed must be respected.

The UK's initial preference was for all issues to be on the table in parallel, so that it could use its strength in certain areas, like security, to obtain concessions in other areas. This has not happened thus far. The UK spent the period between June and December 2017 trying to achieve 'sufficient progress', so that the negotiations could move on to the future relationship. The need to move the talks on pressured the UK to make concessions, such as on the Irish border backstop.

## Inflexible negotiators

A third way in which the EU has controlled the negotiations and increased its bargaining power is by ensuring that the UK only negotiates with Michel Barnier and that all talks go through a single, inflexible channel. As Barnier is only allowed to discuss matters for which he has a mandate from EU leaders, this has restricted, conveniently at times, his ability to compromise, frustrating UK officials. It would be in the UK's interests to negotiate with member states separately, exploiting divergent national interests. The UK has repeatedly tried, and failed, to make substantive breakthroughs by doing this. This culminated with EU leaders once again declaring their full support for Michel Barnier at the October European Council summit.

Maintaining a united front has been the EU's core strategy, as it underpins all the strategies outlined above. The unity of the EU27 has taken many by surprise. Not only have there been no meaningful differences between the positions of the member states, EU leaders and the EU institutions have all been singing from the same hymn sheet. After the EU adopts official positions, it is very difficult for the UK to extract concessions from Michel Barnier or garner flexibility from individual member states, all of whom point to unanimously agreed principles which must be respected.

## Hard bargain

The EU has driven a hard bargain, stuck to its principles and adopted an uncompromising approach. It has done so on the assumption that the UK will continue to compromise as it stares down the barrel of no deal. The EU has raised the stakes of this prospect by insisting that in the event of no deal, there would be no more discussion to try and strike mini deals in key areas, such as aviation and security.

It is possible that the EU's high stakes strategy could end in failure, i.e. a prisoner's dilemma scenario in which no deal happens even though neither side wants it. It is also possible that the EU could compromise on the backstop at the last minute. However, if the past eighteen months are anything to go by, it is perhaps more plausible that the compromises come from Theresa May. Although making such predictions is a foolish endeavour, it is safe to say that the EU has outflanked the UK in the Brexit talks thus far.

*This post represents the views of the author and not those of the Brexit blog, nor the LSE. It first appeared at the [UCL Brexit blog](#). Read the full report: [The EU and the Brexit Negotiations: Institutions, Strategies and Objectives](#).*

[Oliver Patel](#) is a Research Associate at the UCL European Institute.