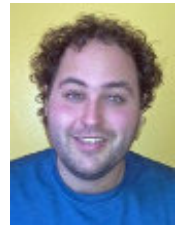


Why it matters if the European Commission ends up leading the Brexit negotiations

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The question of which EU institution will lead the UK's exit negotiations has important implications for how the talks will unfold, writes [Anthony Salamone](#). He argues that, while the negotiations will have both 'internal' and 'external' dimensions, delegating the detail to the Commission seems the direction of travel at present, which could make Brexit more challenging for the UK government.



The EU is no stranger to inter-institutional repetition. As was made famous in the referendum debate, it has many presidents (for instance, leading the European Commission, European Council, European Parliament, European Central Bank and the Eurogroup). So it has also been in the EU's preparation for the Brexit talks. Over the summer, Michel Barnier (Commission), Didier Seeuws (Council) and Guy Verhofstadt (Parliament) were all appointed as the EU's Brexit negotiators.

The question arises then of who will actually lead the negotiations for the EU. In the initial period following the referendum, it seemed possible that the Council might in fact take a more active role. Historically, the main actor would be the Commission. Consequently, this would mark a major shift in institutional balance (and confirm the revived intergovernmental nature of the EU today).

However, some Member States have indicated in recent weeks that the Commission will indeed take the lead in the negotiations. In the media, as well, Michel Barnier has been elevated as the EU's principal Brexit negotiator. In the politics of the EU, the institutional situation matters. If the European Commission does in fact end up leading Brexit, that will have implications for the negotiations. It's worth reflecting on why things are moving in this direction and what it means for the outcome.

Direction of travel

The Commission usually negotiates most of the EU's external agreements, based on a mandate from the Council. In the main sections of the treaties on international agreements (Articles 207 and 218 TFEU), the Commission is only partly named in writing as the negotiator, but the precedent has developed over the EU's history. The minimalist Article 50 TEU does not specify who should conduct withdrawal negotiations ('the Union shall negotiate and conclude an agreement'), though it does make a reference back to Article 218 TFEU.

There are clear advantages for the European Union in having the Commission lead the Brexit talks. It has a great deal of experience in negotiating deals, including complex substantive matters – many of these are certain to come up in the UK's withdrawal. The sensible suggestion of taking Brexit as a '[reverse enlargement](#)' – structuring the talks based on the chapters of an accession treaty – would demonstrably point to the Commission, which conducts such negotiations. The Commission also has the resources, in terms of the number of personnel required, by comparison with the smaller Council secretariat, at least.

More broadly, the EU27 likely won't want the 'Council' (the European Council, the Council of the EU and the informal gatherings at 27) to be taken over by Brexit at every meeting for the next few years. Many other important issues are at hand and there are sound reasons to continue the normal work of the EU while Brexit is being negotiated. Delegating the detailed negotiations to the Commission would regulate how Brexit is dealt with in the Council/EU27, limiting the discussions to reports from the Commission and exchanges on key points of the negotiating mandate.

Implications for Brexit

Provided this direction of travel continues (the EU27 could change their minds or intervene more directly at some point), it compartmentalises the Brexit negotiations and minimises the (already substantial) impact on day-to-day EU business. It also brings together the EU27 behind the Commission, and serves to keep up the united front they [have tried to maintain](#) – such as the mantras on the indivisibility of the Single Market and on ‘no negotiations without notification’. If the UK was hoping to capitalise on relationships with individual EU members in the negotiations (which was already a tenuous proposition), that will be even more difficult.

As an organisation, the European Commission is quite fond of integration. Unless specifically obliged to do so, it is probably the last entity that would ever agree to picking apart the Single Market (either separating the four freedoms or negotiating differentiation for individual sectors), as the UK government seemingly wishes to do at present. Perhaps more than any other actor, it knows the details of the Single Market and all of the EU’s policies and programmes. It is extraordinarily unlikely that it will not be aware of all the facts and all the briefs going into the talks. The UK won’t be able to get by on fudging substantive points. The Commission’s collective knowledge, expertise and resources afford it an advantage in the negotiations.

The Council will still have an important role, of course, particularly on the major issues decided at the key summit meetings. The European Parliament will also have influence, with its approval needed on the withdrawal agreement. In that sense, the Brexit negotiations will be a hybrid of ‘internal’ and ‘external’ negotiations. We will see both the UK-EU negotiation process (external/third country mode) and landmark moments at the European Council, at which the UK will be present until its departure (internal/intra-EU mode). As a negotiation configuration, this will be a novel experience for the EU.

In shaping Brexit, the Council will take many of the big decisions for the EU. However, the Commission could be negotiating the details. And in the EU, the details matter. The European Commission is the ‘guardian of the treaties’, a role which it has always taken seriously. It will undoubtedly continue to do so throughout the Brexit negotiations and afterwards in future UK-EU relations.

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Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.

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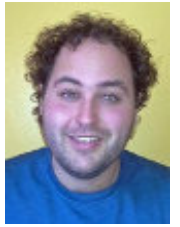


Michel Barnier, Credit: DG EMPL (CC-BY-SA-2.0)

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