



BREXIT
SPECIAL 3

Brexit and the European Institutions

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A number of questions regarding the institutional relationship between the UK and the EU, as well as institutional relations within the EU, require attention as the negotiations under Article 50 TEU take place. This short overview focuses on the institutional dimensions of Brexit from the perspective of European Union law. It will first consider the institutional dimension of the Brexit negotiations, and subsequently ponder the implications that the United Kingdom's withdrawal is likely to have on various European institutions.

EU Institutions and the Negotiation of Brexit

Article 50(2) TEU provides that the Member State wishing to withdraw from the Union is to notify the European Council of its intention. The European Council – which consists of the heads of state of the EU-27 – then establishes its own guidelines governing the Article 50 process. On the basis of these guidelines it is then for ‘the Union’ to negotiate withdrawal – a task that will fall on the Commission. The Council finally concludes an agreement on behalf of the EU on the basis of a qualified majority, and must secure the European Parliament’s approval for doing so. At first sight this procedure seems clear-cut: various institutions are involved at various stages of the withdrawal process. Some uncertainty nonetheless remains especially as it has become apparent that the various EU institutions are eager to play an active role in the Brexit negotiations, presumably both in respect of the conditions under which the UK is to leave the EU but also, and maybe even more so regarding the definition of the UK’s post-Brexit relations towards the Union.

In anticipation of these negotiations, the European Commission has [appointed its own Brexit negotiator](#), former

Vice-President of the Commission Michel Barnier. Yet the European Parliament similarly [appointed its own ‘representative’](#), Belgian liberal Guy Verhofstadt, to ‘shape the EP’s negotiating position’. The latter move is much more surprising since Article 50(2) TEU indicates a largely passive ex-post role for the European Parliament in the negotiating process than what this appointment suggests. This early move indicates that the European Parliament will seek to harness its position as the only democratically-elected EU institution to have a determinative say in these negotiations and it is yet to be seen whether the Commission is willing to accept the European Parliament as a co-negotiator. The European Parliament’s incentives for doing so are that this would give the European Parliament power over the Brexit process, and, additionally, would allow it to profile itself as a key EU institution, hoping to increase interests in its activities among European citizens.

It should also be noted that while the European Council establishes the broad guidelines of these negotiations, it is also the only institution to decide on a possible extension of the two-year negotiating period that is foreseen by Article 50 TEU. Article 50(3) TEU indeed provides that the European Council can, in agreement with the Member

State concerned, unanimously extend the negotiation two-year period. This requirement of a unanimous vote diverges from the European Council’s habitual voting rules of consensus under Article 15(4) TEU. Some have wondered about European Council voting dynamics in this respect, noting that the President of the European Commission, Jean-Claude Juncker, sits in the European Council in accordance with Article 15(2) TEU. Yet Article 235(1) TFEU tells us that neither the President of the European Council nor the President of the European Commission participate in voting, meaning that the Commission won’t be able to use its vote on a possible extension of the negotiating period as part of its strategy as the Union’s main negotiator of the Brexit deal. The above indicates that while some of the rules governing institutions’ involvement in the Brexit negotiations are well defined others are not, and it will be particularly interesting to watch the European Parliament’s role in this context over the coming two years. A second uncertainty relating to the institutional dimension of Brexit is that of the influence the UK’s exit will come to have on various EU institutions.

Reshaping the EU Institutions After Brexit

Some of Brexit’s implications for institutional structures in the EU are obvious. The British judges and its Advocate General in the Court of Justice of the European Union will need to leave their posts as will the current British Commissioner. Many institutional implications of Brexit are, however, much less clear-cut, for instance the question as to whether, and if so which, another Member State will get the seat of the British Advocate General after 2019. The United Kingdom is currently one of the few Member States that has a [permanent Advocate General](#)

(along with Germany, France, Italy, Spain and Poland). Other Member States get Advocate Generals on a basis of a rotation system. While it appears that Treaty amendment would be necessary to update the current list of permanent Advocate Generals some of the bigger Member States that do not at present have a permanent Advocate General can be expected to push for a replacement of the UK's current privilege, whether now or on the occasion of the next Treaty revision.

Alongside the Commission, the European Council and the Council will be without British representation after Brexit, although that evolution has already started with the emergence of **'EU 27' meetings**. These evolutions will doubtlessly take place given that only Member States sit in such meetings, which the UK will most likely cease to be in the not so distant future. Open questions regarding institutional dynamics nonetheless abound. What, for instance, about power dynamics in the Council and European Council after the UK has left? Will large Member States such as Germany become more powerful as the counterweight of the UK is gone and will new blocs and voting patterns emerge? Some indeed predict that voting patterns in the Council will change given that without the UK qualified majority, arrangements in the Council will give the **'French-led protectionist bloc'** a blocking minority over former UK allies including Sweden, Germany and the Netherlands.

We must also consider the implications of Brexit for British citizens currently working for the various EU institutions, for instance the Commission. Most British citizens should be able to continue working for the institution (simply because they have **permanent** employment contracts) but it seems unlikely that high-ranking officials will

be able to remain in office. It seems politically impossible that post-Brexit there be British nationals in high-level positions, for instance heading directorates general. Even if most civil servants are legally entitled to stay on one may question whether they want to do so especially since prospects of career advancement to higher positions for the around **1,000** British citizens working for the Commission will diminish. Of course, depending on the post-Brexit agreement between the EU and the UK, these individuals might then have to secure work permits to work and live in Brussels, unlike the EU citizens that work for the institution. It is thus not surprising that reports of these individuals seeking to acquire **Belgian citizenship** have emerged. The situation is similar for the almost **300** British nationals working for the European Parliament's administration on permanent contracts.

For the European Parliament a significant uncertainty relates to Brexit's impact on MEPs and voting patterns. While MEPs are expected to sit until the end of their mandate, which will more or less coincide with the end of Brexit negotiations in 2019, things will get tricky if the two-year negotiating period will be extended. In that scenario the question that will emerge is whether next European Elections, scheduled for 2019, will also be held in the United Kingdom. Be that as it may, once Brexit enters into force, voting dynamics in the European Parliament will change as Brexit is expected to strengthen the left in the European Parliament given that British MEPs are traditionally part of the right-leaning political blocs. Brexit will finally also lead to other significant institutional ramifications for instance with respect to the EU agencies that are based in the UK. The European Medicines Agency and the European Banking Authority are currently located

in London and will have to relocate. **Other Member States** have indeed already started lobbying for the agencies to be re-established on their territory.

Thinking about Brexit from any perspective reveals the lack of predictability that is inherent to both the process itself and also its ramifications. This is no different for an examination of the processes' institutional dimension. While some of the difficulties can be predicted, EU law itself provides relatively little insight into the institutional nature of the negotiation process and the post-Brexit EU as these are largely shaped by political dynamics.

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