

Britain continues to make a mess of Brexit, but the EU has mishandled it too



*Britain continues to make a mess of Brexit, but the EU's record also needs to be put under the spotlight. In this post, **Tim Oliver (EU/LSE)** looks at what the EU has been accused of getting wrong in how it has handled the practical challenges of Brexit.*

Brexit can easily be seen as a long list of mistakes on the part of the United Kingdom. Indeed, as many have repeatedly pointed out, and [previous posts](#) have also pointed to, the UK has so far had an inglorious Brexit. But the 26th of June 2016 was not the EU's finest hour. Not only did the EU witness – and that for the first time – a vote by the citizens of a member state to leave the Union, it also found itself facing the prospect of losing one of its largest and most important member states. Since the vote, however, the EU has successfully managed to find a degree of unity and manage the workload better than a UK side that has appeared overwhelmed. While complaints and criticisms of the EU's approach have been piling up on the British side, which is hardly an unexpected development, complaints and criticism from elsewhere in the EU have been more muted. That does not mean there have not been complaints or lessons to learn.

Facing the practical challenges of Brexit

As the previous two posts covered, the EU can be accused of three sets of mistakes. First, [misguiding Britain in ways that helped cause Brexit](#). Second, [misinterpreting Brexit](#), whether by dismissing it as a British anomaly or thinking it can only be a positive development for the EU. Many of the criticisms are subjective, with some contradicting others. This blog series provides an overview of them more than a coherent case against the EU. In this post, we turn to those criticisms of how the EU has faced the practical challenges of Brexit.



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The problematic article 50

First, the EU's withdrawal clause – article 50 – is flawed, reflecting in large part the unclear history of its drafting during the 2001-03 Convention on the Future of Europe. According to one history, it was drafted by a British diplomat, and the Convention's Secretary-General, Lord Kerr, with a possible British withdrawal in mind. Another history tells of it being drafted to help with the forthcoming 2004 EU enlargement, which would see the arrival of a number of small Central and Eastern European states who might be overwhelmed by membership and therefore need a way out. Another tells of it being included as a deterrent rather than something designed to facilitate an actual withdrawal.

Whatever its history, it was clear before the UK triggered it on 29 March 2017 that the article had problems. Since it was triggered the negotiations have been dogged by the article's lack of clarity when it comes to the sequencing of negotiations, how article 50 could be suspended or reversed, the role of British MEPs in any European Parliament votes on Brexit, and the adequacy of the two-year timeframe.

Too legalistic in the negotiating process

That the EU has stuck with article 50 reflects a second set of criticisms, which is that the EU has been too legalistic over a process that is inherently political, and in some respects is about the high politics of the security and geopolitics of Europe. The EU's negotiators would point out in defence that the Union is by its nature overly legalistic because it is the best way to ensure the smooth functioning of a Union of so many different states. But refusing to negotiate in advance about the process of the negotiations and making clear that negotiations would not proceed until the UK triggered article 50 left the UK with few options but to push ahead with a process that would make the two-year timeframe an ally of the EU. That might seem to have strengthened the EU's hand.

It has if anything put pressure on a series of negotiations that even a united and clear-minded UK government would have found difficult to manage. Negotiating procedure and process before negotiating substance would have saved time in the two-year period and provided more transparency and clearer expectations for all involved. This would also have allowed the EU and UK to better come to terms with the realities of trying to negotiate several deals rather than one. As the Brexit negotiations have shown, the deals to leave the EU and set up a new relationship cannot be undertaken entirely in isolation from one another.

Failing to fully consider what Brexit signals about the state of the Union

If one of the intended purposes of article 50 was to deter a member state from attempting to withdraw, then in the face of the failure of this, some in the EU have done little to try to entice the UK to rethink its decision. Nor have they reflected on what the outcome of the vote means for wider European integration. This third set of criticisms revolves around how the EU's response to Brexit has been to attempt to push forward with European integration in defence and security, two highly sensitive areas across the EU. This bolstered arguments by British Eurosceptics that the UK made the right choice because it would now avoid an 'EU Army'.

As touched on in [another post](#) in this series, those who criticise the EU for this approach think the EU has failed to fully consider what Brexit signals about the state of the Union. For them, too many in Brussels remain deaf to the concerns and 'constraining dissensus' shown by many EU citizens. A similar criticism can also be found in complaints that when the EU has taken a hard-line approach to negotiations it has undermined relations with even pro-European Britons who may end up feeling that their country, for all its own mistakes over Brexit, is being bullied by the bigger partner in the negotiations.

That said, as noted in the [first post](#) in this series, the EU has also been criticised for being too lenient on the UK. From this perspective, the EU has failed to take a sufficiently blunt and direct approach in the negotiations, which has allowed British negotiators – and British politicians more broadly – to avoid the inevitable trade-offs the UK faces.

A logjam for the EU

Fourth, the legalistic process combined with a failure to reflect on popular feelings about the EU is turning Brexit into part of a potentially crippling political logjam for the EU. British decision makers are often accused of failing to think through the EU's side to the negotiations, not least the minefield that will be the ratification process for any UK-EU deals. The EU has so far succeeded in limiting division amongst members by having the European Commission do the heavy lifting on Brexit, with instructions given by the European Council. Approval of a new relationship, however, rests not only with the European Council but with the European Parliament and national parliaments.

Doubts still exist as to how many deals – agreements or treaties – will need to be reached between the UK and the EU. So far, focus has been on the withdrawal agreement. Beyond this lie deals over the new relationship in trade, security and, potentially, a host of smaller areas. That could all become caught up in a political and institutional logjam in the EU after the 2019 European Parliament elections when the Union might find itself facing arguments over the *Spitzenkandidaten* process, the future of the Euro, and the Brexit hole in the EU's budget. The UK might have struggled to face the trade-offs of Brexit, but that does not mean the EU has yet to adequately face the trade-offs on its side as it comes to terms with Brexit as part of a changing EU.

EU's negotiating flaws and communication strategy

Fifth, the political manoeuvrings of some individuals on the EU negotiating side have raised occasional concerns. Despite his considerable experience, had Michel Barnier's position been filled by a former head of government then it could, in the eyes of some, have more fully conveyed the significance of the Brexit negotiations for the EU. The process by which Martin Selmayr was appointed the EU's top civil servant, raised doubts about over how the EU operates.

The leaking of documents on the Brexit negotiations, especially those covering a dinner between Theresa May and Jean-Claude Juncker, cast a negative light on the way some in Brussels operate and viewed the Brexit negotiations. The way the EU has communicated over Brexit – whether by talk of EU defence cooperation or talking about exact numbers when it came to the UK's budget contribution – have also left a lot to be desired. If anyone in Brussels held out any real hopes of the UK reversing its decision or moving to a second referendum, then the EU's communication strategy can sometimes have been taken as a sign they wanted to prevent that.

Brexit not a single, unified case for EU's incompetence

Of course, the EU's internal politics and manoeuvrings can look tame compared to the shenanigans of the UK's cabinet where senior ministers of the Crown have, ego's ablaze, leaked information and challenged Theresa May's leadership. It's a reminder, again, that the above criticisms and those set out in the previous two posts cannot be seen in isolation. They are not a single, unified case for EU incompetence when it comes to Brexit. Furthermore, the series could be balanced by one looking at what the EU has got right about Brexit.

As this series began [by pointing out](#), the way the EU has handled Brexit has been seen as a success story for a union that has so often struggled to face crises and problems. It's also possible to write about those aspects of Brexit that the UK has got right. Together they would serve as a reminder that Brexit has never been and never will be a topic where everything can be divided into right and wrong or black and white. As so often in politics, much of Brexit is fifty shades of grey.

This article also appeared on the [Clingendael blog](#) and it gives the views of the author, and not the position of LSE Brexit, nor of the London School of Economics.

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