



The European Parliament and Brexit

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Abstract

This paper looks at the role of the European Parliament (EP) in three phases of Brexit: the attempt by the David Cameron Government to renegotiate the UK's membership of the European Union prior to the 2016 referendum, the Withdrawal Agreement (WA) and the Trade and Cooperation Agreement (TCA). The paper argues that the EP was both a strategic actor and a normative player. As a strategic actor the EP used its veto powers to align closely with the Commission in exchange for influence over the EU's negotiating position and in an attempt to reinforce the EU's overall bargaining power. As a normative player the EP attempted to shape standards that would need to be observed in any Brexit. That was important on questions of citizens' rights, Northern Ireland and the governance of the TCA. However, Brexit also had implications for the EP as well as the other way round. Important questions were raised by the re-allocation of the UK's seats in the EP, whilst the negotiation of the WA and TCA has lessons for how the EP operates as a 'working parliament', often sharing in the work of the Commission and European Council more than opposing them.

Keywords

Brexit - EU - European Parliament - Trade and Cooperation Agreement - Withdrawal Agreement

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Introduction¹

The Lisbon Treaty made Brexit possible. Article 50 created, for the first time, a mechanism for a member state to withdraw from the European Union (EU). But other, less well-known, aspects of the Lisbon Treaty also shaped Brexit. Amongst them are the Treaty arrangements for negotiating international agreements (Article 218) and for special legislative procedures (Article 289 (2)). Together with Article 50, those other provisions meant that the consent of the European Parliament (EP) was needed for any withdrawal agreement (WA). If the United Kingdom (UK) was to leave with an agreement and not crash out with a ‘no-deal Brexit’ that would partly depend on the EP. The approval of the EP was also needed for the Trade and Cooperation Agreement (TCA) settled at the end of 2020. That agreement, for now, sets the framework for relations between ‘Brexit UK’ and the EU. And so it is likely to go on: the EP’s approval will also be needed for further treaties with the Union.

Yet, formally speaking, the EP only had veto powers and not agenda-setting powers, over those treaties defining of Brexit. The consent procedure only gave the EP the power to accept or reject the WA or the TCA. The EP had no power to amend either of the two agreements. Still, awareness that the EP can veto can be incentive enough to amend and adjust agreements during their negotiation to positions taken in the EP. The EP can, therefore, be an informal agenda-setter and an informal source of amendments even where it has neither of those powers formally. As Bressanelli et al. (2021) have nicely put it, the EP has been a ‘quasi-negotiator’ in the WA and TCA.

For sure, the EP felt the need at one point to remind the European Council of its power to veto if it was not sufficiently included in discussions throughout the negotiation of the WA. Yet, it was probably always in the interest of the Commission and European Council to include the EP. As well as minimising the risk of laboriously negotiated agreements falling at the last hurdle to a parliamentary veto, the participation of the EP in international agreements is likely, as we will see, to shift outcomes closer to the preferences of the Commission and European Council and away from preferences of third parties. Indeed, one suspects the consent procedure was designed with such an effect in mind and not just to give some democratic legitimation.

Much depended on the structure of preferences: were the preferences of the EP closer to the Commission and European Council than the UK? Almost certainly, yes, on essentially all questions raised by Brexit. Much also depended on the credibility of the threat: would the EP really carry through on a threat to veto agreements on a matter as important as Brexit? Maybe also, yes, on such issues so deeply affected by Brexit as Northern Ireland and Citizens Rights. Both involved difficult questions of obligation and right. Those included obligations that the EU – as much as the UK – had accumulated through the UK’s membership of the EU. They included rights that had been accorded to all EU citizens and to all UK citizens through their EU citizenship. They also included rights that had been accorded to communities and citizens of

¹ Forthcoming chapter in “Handbook on the European Union and Brexit”, co-edited by John Erik Fossum and Christopher Lord, Edward Elgar.

Northern Ireland with at least the implicit guarantee of the EU. The strategic and the normative – bargaining and legitimation – interacted in interesting ways in the EP's role in Brexit. I will come back to that.

The role of the European Parliament was also affected by the other parliaments with powers over agreements defining of Brexit. Between June 2016 and the UK election in December 2019, the UK Parliament was a far larger obstacle to any WA than the EP. Especially in the 2017-2019 House of Commons there was no clear majority for any form of Brexit. The WA negotiated by the Theresa May Government was famously rejected three times by majorities of 232, 149 and 58 votes respectively. Much changed with the election in December 2019 of a new UK Government with an overall parliamentary majority of more than 80. The role of parliament in the UK political system reverted to one of 'heckling a steamroller' (Weir and Beetham 1999: 405). A renegotiated withdrawal agreement passed the House of Commons with a majority of 330 to 231 on 10 January 2020. Only three days were then needed to complete the remaining stages in the House of Commons. Barely a year later the UK Government published the bill enacting the TCA (29 December), before the legislation passed through all its stages the next day (30 December), all in the interval between Christmas and New Year's Day 2020.

Hence, the EP was, arguably, the only source of parliamentary veto or even scrutiny of the WA in its final form and throughout the negotiation of the TCA. The latter was somewhat surprising. It had been widely expected that two parliaments – the EP and the UK Parliament – would have vetoes and influence over the WA. Yet, it had also been assumed that those two parliaments would then have to share influence and veto powers over any subsequent trade agreement. In January 2017, Sir Ivan Rogers had famously resigned as the UK's Permanent Representative when his advice that Brexit could take ten years undermined his relationship with Downing Street. Rogers' calculation was simple: the UK needed a trade agreement. But trade agreements are mixed agreements. They involve the powers of member states and therefore require the agreement of national parliaments and even some sub-national ones. The EU's trade agreement with Canada (CETA), for example, had taken more than five years to negotiate in the shadow of multiple parliamentary vetoes. A trade agreement with the UK could be expected to be more complex and contentious than the CETA: allow two years to negotiate a withdrawal agreement, five to seven years to negotiate a trade agreement and then one had to add in a bit of time before invoking Article 50. It seemed a fair bet that the negotiation and ratification of Brexit would cover the best part of ten years. That would, amongst other uncertainties, have involved three different European Parliaments – the 2014-2019, 2019-2024, 2024-2029 European Parliaments – in the negotiation of Brexit.

That parliamentary marathon was, however, avoided by the decision of the Commission to not propose the TCA as a Trade Agreement under Article 207, but rather to propose it as an association agreement under Article 217 (Van Der Loo and Chamon 2021) and to classify it accordingly as a 'European-only agreement'. The Commission's decision avoided huge economic disruption. But it was contentious. Perhaps the TCA is, more accurately, both an association agreement and a trade

agreement. In its latter role it treads on national competence and ought, therefore, to have been agreed by all national parliaments.

Yet, even if the EP was the only likely source of a parliamentary veto over the final version of the WA and throughout the TCA, it was still constrained by the huge difficulties of concluding either of the two agreements. Both turned into games of chicken that could only be concluded at the last moment before breakdowns damaging to both sides. Time for parliamentary ratification was, therefore, squeezed. Despite promises to leave the EP three months to scrutinise, deliberate and decide, its public debate of the withdrawal agreement was largely limited to a discussion in the Constitutional Affairs Committee on 23 January 2020 and a plenary debate on 29 January. Time for ratification of the TCA disappeared altogether. The TCA came into force as a provisional agreement pending EP ratification. The lack of time put the EP in the difficult position of only being able to use its veto if it was prepared to overturn an agreement that was already beginning to be implemented on the ground.

The chapter proceeds as follows. Section 1 considers the EP's role in the attempt by the UK to renegotiate its EU membership prior to the Brexit referendum in 2016. Section 2 discusses the internal organisation and politics of the EP's response to the WA and TCA. Section 3 analyses the EP's role as a strategic actor eager to contribute to the EU's overall bargaining power in shaping Brexit. Section 4 discusses the EP's role as a normative player with a responsibility for helping to shape a justified form of Brexit. Section 5 considers some implications of Brexit for the EP: for its composition and for an understanding of what kind of a parliament the EP is and can be when dealing with a complex problem in the EU's political order (Section 5).

The EP and the UK 're-negotiation'

Brexit has been a part of the politics and work of two European Parliaments: the 2014-2019 and the 2019-2024 ones. Whilst, though, David Cameron committed the British Conservative Party to an 'in-out' referendum on the UK continued membership of the EU in January 2013, it was by no means certain at the start of the 2014-2019 European Parliament that it would have to deal with a UK withdrawal. Brexit only grew in importance during the 2014-2019 Parliament.

Between European elections in June 2014 and the UK elections in May 2015 a British referendum seemed unlikely. Opinion polls suggested the UK Conservatives would not be re-elected with an overall majority. Except in the improbable event of the United Kingdom Independence Party (UKIP) securing enough seats for a minority Conservative Government to depend on its support, it seemed unlikely there would be a majority for a referendum. Between May 2015 and June 2016, the unexpected re-election of the Conservatives with an overall majority made an in-out referendum all but certain. Yet, many assumed, the UK would vote to remain an EU member. That period created two challenges for the EP: one for its British members and one for the EP as a whole.

The 73 Members of the European Parliament (MEPs) from the UK – around ten per cent of the 751 MEPs – began to fight the referendum from May 2015 onwards. Most aligned predictably: the Labour, Liberal and Green MEPs all seem to have campaigned to remain, as did the Scottish Nationalist and Plaid Cymru MEPs. All 22 UKIP MEPs obviously campaigned to leave. They were not part of the official leave campaign, however, which calculated that the leave vote would be maximised by distancing itself from UKIP, whilst leaving the latter, none the less, to mobilise its own voters in its own way. Only the Conservative MEPs split: 13 seemed to have voted to remain² and seven for leave.

For the wider EP, the main challenge before June 2016 was how to respond to the demand by the David Cameron Government to ‘renegotiate’ the UK’s membership. Here David Cameron was attempting to follow a clear historical script. The UK had renegotiated its membership before. It had also voted to remain in a referendum before. Those were both amongst the first things the UK did as a member. The first change of Government after UK accession in 1973 brought in a Labour Government (1974-1979) committed to do exactly what David Cameron was now proposing: namely, renegotiate the terms of UK membership and then put the result to a referendum with a recommendation from the government. The earlier ‘renegotiation’ was widely assumed to have played some role in turning public opinion around from net opposition to a clear endorsement of the UK’s continued membership of the European Communities, by a two-thirds majority in the referendum of 1975. Yet there was a difficulty repeating that ‘choreography’ in 2016. Unlike the 1975 renegotiation, the 2016 renegotiation would also require the support of the EP.

A further difficulty was that the European Council decided in February 2016 that the EU would not even start implementing the renegotiation unless the UK voted to remain in the referendum. Hence, if David Cameron was to convince the British public throughout the four months of a referendum campaign that the renegotiation had substance, he would need to be able to claim some kind of a commitment from the European Parliament to vote for future legislation that had not yet even been drafted. David Cameron met with the Conference of Presidents of each party group in the EP (European Parliament 2016: 22). The BBC then reported that a ‘Downing Street Source’ had indicated that ‘[...] the three largest groups [the European Peoples Party, the Socialist and Democrats and the Liberals with a combined membership of two-thirds of the EP] had “made clear their support” for the UK’s EU deal’ and told David Cameron that ‘they would take any “necessary legislation” through the [European] Parliament quickly’ (BBC 2016).

That, however, may have been disingenuous. A promise to pass legislation quickly through the EP did not imply a commitment to pass it without amendment. Nor, as the President of the EP, Martin Schulz, told David Cameron could such a ‘guarantee’ be given (Shipman 2017: 135). Parliaments cannot commit themselves to future

² This calculation is based on an article in the Guardian from 8 March 2016 which reported 11 out of 20 had declared from remain with four still undeclared. Two of the four (Jacqueline Price and Geoffrey Van Orden) seem to have voted remain.

legislation without even seeing a draft of that legislation. Piris has argued that David Cameron's renegotiation agreement risked circumventing all the following: (1) any decision by national parliaments and/or electorates that would have to ratify Treaty change; (2) the Commission's exclusive right to initiate ordinary legislation; and (3) the EP's scrutiny, amendment and veto powers (Piris 2015). That, in turn, created an interesting puzzle. Had the UK voted to remain it would have been after a renegotiation that was, in turn, the basis of the UK Government's recommendation to vote to remain. But the EP was not under any obligation to adopt the legislation in the exact form agreed by the UK and the European Council (Peers 2016).

Another curiosity was that David Cameron's claim to have reached an understanding with the three largest groups in the EP did not include the UK Conservatives own group, the European Conservative and Reform Group (ERC). The Conservatives largest partner in the ERC was the governing Law and Justice Party from Poland that, at the level of the European Council, had most opposed David Cameron's proposals for an emergency brake to free movement and for limits to the remission to other EU countries of social security benefits earned in the UK.

The Withdrawal Agreement and the TCA: Internal Politics and Organisation of the EP

From 24 June 2016 to the UK's formal withdrawal on 31 January 2020, ten per cent of the EP consisted of representatives from a member state that had voted to withdraw from the EU. That presented an obvious challenge: the EP wanted to maximise its participation in the negotiation of the WA. Yet some of its members were elected in the country on the other side of the negotiating table. How should the EP combine its roles as a representative institution and a quasi-negotiator? The EP could conceivably have taken the view that all representatives are equal and even representatives from the UK should have had an equal right to participate in the discussion and formulation of the EP's position. But that would have been at an obvious cost to the EP's role as a quasi-negotiator and therefore at a cost to the representation of MEPs and their voters from continuing member states in an inter-institutional formulation of the EU's overall negotiating position. The European Council and Commission were unlikely to share information – and especially not information about their bottom lines in bargaining – that anyone in the EP could pass on to the UK Government. Another challenge was that the EP needed to prevent Brexit overwhelming the rest of its regular duties. It needed to compartmentalise Brexit.

The main party groups in the EP responded to both challenges with a certain ruthlessness. The EP is normally doubly fastidious: (1) first, in representing all party groups in all decisions and discussions in exact proportion to their overall strength in the EP; (2) second, in constructing reports and resolutions through careful negotiation between all affected committees. In complete contrast, five party groups used their majority to appoint a Brexit steering Group (BSG) which excluded three other groups, namely the ERC, the European Freedom and Democracy Group (EFD), and the Europe of Nations and Freedom Group (ENF). The ERC was excluded because it included the

British Conservatives, the EFD because it included UKIP and the ENF because it too was a far-right and a pro-Brexit group.

Table 1: The Brexit Steering Group within the European Parliament

ORIGINAL GROUP FORMED ON 6 APRIL 2017

GUY VERHOFSTADT, CHAIR	Renew Europe Group, Flemish Liberal Party, Ex-Prime Minister of Belgium
DANUTA HÜBNER	European Peoples Party, Civic Platform (Poland), Former European Commissioner
PHILIPPE LAMBERTS	Co-President of the Group of the Greens/European Free Alliance, Écologistes (Belgium)
ELMAR BROK	The European Peoples Party, Christian Democrat EU (Germany)
ROBERTO GUALTIERI	Group of Socialists and Democrats, Partito Democratico (Italy), Chair of the Economic and Monetary Committee of the EP
GABRIELE ZIMMER	Chair of the Confederal Group of the United European Left, Die Linke (Germany)

REPLACEMENTS FOR ORIGINAL MEMBERS AFTER 2019

PEDRO SILVA PEREIRA	Group of Socialists and Democrats, Partido Socialista (Portugal), Former Government Minister, Vice President of EP
MARTIN SCHIRDEWAN	The Left Group of the European Parliament, Die Linke (Germany) The European Peoples Party, Forza Italia (Italy),
ANTONIA TAJANI	President of the European Parliament, Former European Commissoner

Meanwhile, EP committees provided inputs to reports and resolutions, but discussions with the Commission and European Council of what the EP was prepared to support in formulating the EU’s overall negotiating position were restricted to the BSG (Bressanelli et al. 2021: 17). This allowed for secrecy, but at a cost to inclusiveness (ibid) and, conceivably, to expertise from more reflective scrutiny within and between the EP’s committees. Once, then, the British left and there was less need for secrecy, the EP reverted to normal practices for influencing and evaluating the TCA. The BSG was replaced by a ‘UK Coordination group’ on which all party groups were represented. The EP’s position on the TCA was built bottom up from the committees (ibid: 19). The EP’s substantive positions on the WA and TCA were set out in resolutions passed between 2017 and 2020. Votes on those resolutions, as well as on the WA and TCA themselves, are shown in Table 2 and 3.

Table 2: European Parliament votes on the Withdrawal Agreement (WA)

DATE	VOTING ITEM	YES	NO	ABSTAIN
29 JAN 2020	Withdrawal Agreement (Complete Text)	621	49	13
14 JAN 2020	Resolution on Citizenship	610	29	68
18 SEPT 2019	Resolution on the State of Play of the UK’s Withdrawal	544	126	38
14 MAR 2018	Guidelines on future EU-UK Relations	544	110	51
13 DEC 2017	State of Play of Negotiations	556	62	68
3 OCT 2017	State of Play of Negotiations	557	92	29
5 APR 2017	Negotiations with the UK	516	133	50

Table 3: European Parliament Votes on the Trade and Cooperation Agreement (TCA)

DATE	VOTING ITEM	YES	NO	ABSTAIN
28 APR 2021	TCA (Complete Text)	660	5	32
28 APR 2021	TCA (EP Resolution)	578	51	68
18 JUNE 2020	TCA Recommendations for Partnership with UK	527	34	91
18 FEB 2020	TCA MANDATE FOR NEGOTIATIONS	543	39	69

Table 4: How UK Members of the European Parliament voted on the Withdrawal Agreement 29 January 2020

	YES	NO	ABSTAIN
ALL BRITISH MEPS	33	37	0
CONSERVATIVE	7	0	0
GREEN	0	7	0
LABOUR	0	10	0
LIBERAL	1	16	0
PLAID CYMRU	0	1	0
SCOTTISH NATIONALIST PARTY	0	3	0
BREXIT PARTY	24	0	0
DUP	0	1	0
SINN FEIN	1	0	0

Both agreements passed by overwhelming majorities. Only 12 MEPs from other member states than the UK voted against the WA on 29 January 2020. As shown in Table 4, the remaining 37 who opposed the agreement were all pro-remain MEPs from the UK determined to use one last opportunity to indicate their opposition to Brexit. Many votes on the resolutions prior to the WA and TCA were more contested. As is often the case in the EP, it was able to agree positions on Brexit that were acceptable to the centre right, the Social Democrats, the liberals in the Renew Europe Group, the Greens and even the far left. Most disagreements were limited to the far right and Eurosceptics.

The EP as Strategic Actor

Immediately after the 2016 referendum there appears to have been a brief struggle within the Commission-European Council-EP triangle over who should negotiate with the UK and what the EP's role should be. The European Council created its own task force. Since the UK would remain a member state right up to the moment of leaving, it was at least arguable that any WA would be a negotiation between member states, properly handled by the European Council. The Commission, however, disputed that analysis. In its view, Article 50 treated a withdrawing state as a third state that could not be involved in any way in the European Council discussions and decisions on the negotiations (Heath and Eder 2016). The EP sided with the Commission. However, the EP also had to fight for its own involvement. The European Council seemed at first to anticipate the EP would only be informed rather than consulted during the negotiation (Closa 2020: 637).

Several factors had to be considered in distributing negotiating roles between the Commission, the European Council and the EP:

(1) First, the Brexit negotiations were full of perils for the EU (Schuette 2021). A European Council-led negotiation would be more likely to supply the UK with information on disagreements between member states. That information might then be used to tempt some member states into supporting proposals that privileged particular sectors (such as finance) or into prioritising their own bilateral relations with the UK over a strong multilateral agreement that safeguarded all member states from the collateral of Brexit.

(2) Second and closely related to the previous point, the EU-27 wanted a negotiation that defended core principles: notably, the autonomy of EU institutions; the integrity of the internal market; and the indivisibility of the four freedoms of capital, labour, goods and services. The EU-27 would need to reach an agreed understanding of just what each of those principles would require of their new relationship with the UK. Each principle would then need to be coherently applied across two huge and complex agreements. All that would then need to be consistent with all other EU policies, laws and treaties, internal as well as external. Specifying core principles required the participation and control of member states. Ensuring coherence and feasibility required the expertise of the Commission.

(3) Third, the Brexit negotiations were a mixed-motive game ‘in which the goals of the players are partially coincident and partially in conflict’ (Gallo and McClintock 1965: 68). It may be the first rule of negotiations that the parties should understand what kind of a game – co-operative or competitive – they are playing. But that is not so easy where the negotiation is a bit of both. The EU and UK had many reasons for co-operating over Brexit. Among the most prominent ones was the need to avoid a breakdown in the peace process in Northern Ireland or disruption to supply chains. Yet questions such as fish or settling the UK’s outstanding financial liabilities to the EU were more conflictual. Still other questions – such as level playing fields in environmental and labour standards or in state aids, as well as the practicalities of avoiding a border on the Island of Ireland – resembled a game of prisoners’ dilemma. Both the UK and EU might be better off reaching an agreement. Either, though, might be still better off if there were a few gaps or opportunities for non-compliance, or if the agreement was one-sided in its constraints.

Yet, Brexit was also a negotiation unlike any other. General concepts from negotiating and game theory cannot capture all that was at stake in the WA and TCA. As De Vries (2017) has argued, Brexit creates a unique counterfactual to European integration. Arguments for or against European integration have long been limited by the difficulty of knowing exactly what things would be like without the EU. In contrast, Brexit creates a kind a real-world experiment in just how well a one-time member can manage outside the EU. In so far as Brexit is understood in that way, it may not even matter that the experiment is imperfect or limited in its generalisability from what is involved in the UK leaving, to what would be involved in any other member doing so. Even if it had no wish to ‘punish’ the UK, the EU had an interest in highlighting, rather than concealing, the costs of withdrawal (Barnier 2021). Things were the other way round for those in the UK Government whose reputations were heavily invested in demonstrating that the decision of the 2016 referendum was the right one. A struggle

over the meaning and interpretation of Brexit would be as much a part of the negotiation of the WA and TCA as any co-operation or conflict of interests.

In sum the EU needed to find some way of distributing negotiating roles between the Commission, European Council and EP that could:

- (1) Keep member states at 'arms-length'. To obtain the full benefits of operating as a block negotiator and to avoid any fragmentation in their position, member states would need to avoid direct contact with the UK in the negotiations.
- (2) Make full use of the expertise of the Commission in ensuring the compatibility of the WA and TCA with the EU's negotiating principles and with all other EU policies, laws and treaties.
- (3) Involve the EP sufficiently for it to improve agreements through informed scrutiny and for its veto powers to work to the EU's advantage.
- (4) Ensure, none the less, the participation and control of member states.

The EU responded by adapting to the case of Brexit with practices it commonly follows in international negotiation (European Council 2016). The Commission was designated as the EU's negotiator. The Commission, in turn, assembled a 'task-force' led by Michel Barnier, himself a former European Commissioner and Foreign Minister of France. Yet, the Commission was required to negotiate to a mandate agreed by the member states. The Committee of the Permanent Representatives (*Coreper*) of member states convened as often as needed – and often at short notice – to discuss with the Commission how it should respond to developments in the negotiations. Representatives of the President of the European Council participated in all negotiation sessions alongside the Commission (*ibid*). Hence, member states exercised oversight and control throughout. But they did not come into direct contact with the UK during the negotiations themselves.

As for the EP, it was, on Brexit matters, included in the preparation of European Councils. The President of the EP was 'invited to be heard' at the start of the European Council meetings. Above all, the European Council allowed the Commission discretion in involving the EP: 'The [EU] negotiator will be invited to keep the [EP] closely and regularly informed throughout the negotiation' (*ibid*: 3). The EP was heavily involved because Barnier wanted it that way.

Two interview-based studies, namely by Bressanelli et al. (2021) and Closa (2020), concur that Barnier's team and the EP co-operated closely to their mutual advantage. As Bressanelli et al. (2021: 18) put it, the 'EP and the Commission developed a well-oiled mechanism of sending out mutually reinforcing political signals, usually arriving at a strong coherence of tactics and strategy'. That even extended to:

Commission officials [...] often coordinating with the EP political groups on what and how the latter should report to the press. There were moments in the withdrawal agreement negotiations where the BSG decided to tactically

intervene publicly in support of a certain position, after consulting with [Michel] Barnier.

(ibid:18)

Or as Closa (2020: 631) puts it, the EP '[...] repeatedly signal[ed] its willingness to transform the vote into a veto of both the contents of the agreement and the scope of its own procedural role in the negotiations'. Since the preferences of the EP and Commission were largely aligned and since both institutions could benefit from strengthening the EU's bargaining power relative to the UK, it made sense for the EP to include Commission priorities in its own resolutions. Positions taken by the Commission could be reinforced by the implicit threat of a parliamentary veto; in return, the EP could expect the Commission to listen to its own concerns. The Commission could borrow the EP's veto powers. The EP could access the Commission's informal agenda-setting powers as one of the few players in the game with some ability to supply everyone else's need for workable solutions in limited time. The following are three examples of how EP resolutions signalled Commission priorities:

(1) The EP backed the Commission on sequencing the withdrawal and future agreements. The UK wanted to link the two negotiations so that the future agreement would, in part, be negotiated at the same time as the WA. That, the UK hoped, would help it use leverage on security co-operation to obtain a better deal on market access and on matters covered by the WA. The EP simply adopted the Commission's view that it would be contrary to EU law for the UK to begin negotiations with third countries on trade agreements before it had completed its withdrawal from the EU (European Parliament 2017a).

(2) The EP warned against attempts to conclude bilateral agreements in areas of EU competence. Again, the EP claimed that would be contrary to EU law. An interesting implication was that the EP's veto powers did not just have the likely effect of shifting outcomes closer to the EU's preferences. They also worked as a commitment technology for member states: the EP could credibly threaten to veto deals that deviated from core principles or which seemed to be based on special understandings between UK and particular members. The EP could shore up the EU's ability to negotiate as a block and reduce the risks of any member 'defecting' from agreed positions.

(3) The EP warned it would 'not consent to' any agreement that allowed '[...] a state withdrawing from the [European] Union' to enjoy similar benefits to those of an EU member state (European Parliament 2017a: 4). For good measure, the EP added that '[...] a third country must not have the same rights and benefits as a Member State of the European Union, or a member of the European Free Trade Association (EFTA) or EEA' (European Parliament 2018). The EP especially objected to any 'cherry picking' that would give privileged access to UK based financial institutions (European Parliament 2017a) or allow access to the single market without '[...] acceptance of the four freedoms, the jurisdiction of the Court of Justice of the European Union, general

budgetary contributions and adherence to the European Union's common commercial policy' (ibid: 4).

On both the WA and TCA, the EP also insisted on voting last after the UK Parliament (European Parliament 2019: 7). That conserved its veto powers until the end. However, in the case of the TCA, the EP, as seen, was forced to choose between ratifying between 24 and 31 December 2020 or ratifying only after the TCA came into force as a provisional agreement. Both seemed to indicate constraints on the EP's veto powers: the EP could be forced into a position in which it would either have no time to scrutinise or it would be faced by a *fait accompli*. Yet even then the threat of a parliamentary veto was not without all credibility. In March 2021, the EP postponed setting a date to ratifying the TCA as more than a provisional agreement after the UK delayed implementation of its commitment under the WA to introduce checks between the rest of the UK and Northern Ireland on agricultural and food products.

The EP as Normative Actor

As well as being a strategic player in Brexit, the EP had a normative role in shaping what would be a justified form of Brexit. Parliaments have a special importance in specifying the obligations, values and rights that policy, laws or treaties need to respect. Only parliaments can ensure that: (1) representatives elected on a basis of one person, one vote can (2) demand justifications for laws or treaties during the process of law or treaty-making themselves within (3) a public forum where all views can be tested in relation to one another (Mill 1972 [1861]). All that can, in turn, be backed up (4) by parliamentary powers of scrutiny and control over the subsequent administration of laws and treaties (see Habermas (1992: 171) for a discussion on the 'parliamentary principle'). The following examples on citizens' rights, Northern Ireland and governance illustrate how the EP scrutinised obligations, rights and standards involved in the WA and TCA.

Citizens' Rights

It was widely accepted that the EP should have a special role in ensuring a form of Brexit that respected citizens' rights. At least four million citizens of the EU27 were resident or employed in the UK and at least one million UK citizens lived or worked in the EU27. Finding a form of Brexit compatible with those rights was the responsibility of the EU as well as the UK. EU27 citizens in the UK and UK citizens in the EU had made 'life choices' to live, work, retire or have families in another member state using rights and a citizenship status created by the EU. All that required the EP to consider the normative questions involved in individuals losing rights covered by EU citizenship: what was it about EU citizenship that would need to be protected in any withdrawal process? The EP indicated it would not give its consent to any WA incompatible with the Charter of fundamental rights of the EU (European Parliament 2017a).

The EP also set an ambitious goal of no ‘reduction in rights’ (European Parliament 2018). However, some reduction of rights was hard to avoid, given the nature of EU citizenship and the nature of Brexit. For example, the EP called on the EU27 to do everything it could for ‘British citizens’ who have ‘expressed strong opposition to losing the rights they currently enjoy’. Yet, in the same breath, the EP acknowledged that solutions would need to be ‘within the treaties’ and observe ‘[...] principles of reciprocity, equity, symmetry and non-discrimination’ (European Parliament 2017b & European Parliament 2020). The Treaties limited EU citizenship to citizenship of member states. Loss of membership, therefore, meant loss of citizenship. Nor was there much hope of some new status on a basis of reciprocity. The UK Government was busy framing Brexit as a recovery of British identity. It had limited interest in exploring with the very grouping it was leaving some special status for those ‘citizens of nowhere’ who sought forms of citizenship not linked to states. Hence, the principle of no reduction of rights was narrowly defined as ensuring those who were exercising their rights of residency or employment in another member state on 23 June 2016 should be able to do that after Brexit. Protection from loss of rights became an administrative exercise in registering those with a ‘right to rights’ they had used continuously since before the Brexit referendum. Here, the EP was sharply critical of the UK’s settlement scheme. The EP pressed – with limited success – for the UK to allow EU citizens to just ‘declare’ their eligibility to settle without needing to document it and for the UK authorities to have the burden of proof in cases of doubt (European Parliament 2020).

Northern Ireland

The EP also noted ‘[...] there are 1,8 million citizens born in Northern Ireland who, by virtue of the Good Friday Agreement, are entitled to Irish citizenship and are thereby entitled to EU citizenship and to EU citizenship rights where they reside’. (European Parliament 2019: 3). Likewise, the EU was an implicit guarantor of the GFA and, therefore, of the peace process. All that, as O’Leary has put it ‘presupposed a European roof’ (2018: 229). When, in 2019, the Johnson Government insisted on renegotiating the WA to remove the ‘all-UK backstop’ aimed at keeping the UK in a customs union if that was necessary to avoid a border between Ireland and Northern Ireland, the EP indicated that it would support a ‘Northern Ireland only backstop’ but it would veto a WA ‘without any backstop’ (European Parliament 2019). The EP had also indicated that it would veto any future treaties with the UK until the latter honoured its commitments and responsibilities on citizens’ rights, the financial settlement and the GFA in all its parts (ibid).

Governance

From early on, the EP supported a joint EU-UK body to regulate relations after Brexit. Yet the EP was wary. If non-members were not to have advantages unavailable to members, any dispute resolution mechanism would need to offer ‘equivalent guarantees of independence and impartiality’ to the EU’s own Court (European Parliament 2018). The EP also needed to safeguard its own institutional interests. Ensuring that any joint EU/UK body should ‘preserve the autonomy of EU decision-

making and its legal order' included a need to protect the 'legislative prerogatives of the EP' (ibid). The problem is that the EP mainly uses its law-making powers by amending legislation, not by blocking it. Would the EP *de facto* lose its powers of amendment if many future proposals for legislation turned out to be negotiated in an EU-UK body, whose agreements the EP would then be expected to adopt on a more or less 'take it or leave it' basis? The Partnership Council established under the TCA may also need watching, given that it has some self-amending powers to 'deepen commitments' and 'broaden' its own 'scope' (Van der Loo and Chamon 2021). The TCA establishes a joint parliamentary assembly of the EP and UK, though as with Brexit itself, the EP's influence will probably depend on how far it can establish a working relationship with the Commission on matters covered by the Partnership Council (ibid).

What does Brexit mean for the EP?

The EP was a player in Brexit. But Brexit also had implications for the EP. Most obviously it raised the question of what to do with the 73 seats in the EP left vacant by the UK's withdrawal. Some - including Emmanuel Macron - saw an opportunity to create a pool of seats that would be allocated in proportion to votes received across the entire EU. It was hoped that it would help move EP elections away from 'second-order' contests (Reif and Schmitt 1980) on domestic issues that do little to structure voter choice around questions relevant to the EU's own powers. Allocating seats at the EU level would help Europeanise EP elections by requiring parties to form European lists. Those heading up the lists could also be the lead candidates (*Spitzenkandidaten*) of each European party for the Presidency of the Commission. Would that have made the UK's withdrawal a catalyst in the development of the EU's own political order and democratic politics?

In the event, 27 of the UK seats were allocated to 14 other member states (European Council 2018). That moved the EP closer to the Treaty requirement that it should be elected on the principle of degressive proportionality whereby each member state receives a minimum of seats (currently six) and further seats are then added in proportion to population. Beyond that, the European Council decided not to decide. The remaining 46 of the UK seats were left empty and available either for allocation to new member states or for the creation of a pool of seats contested at the EU level.

Finally, its role in the WA and TCA can help us understand what kind of parliament the EP is. Weber (1918 cited in Lasman and Speirs 1994: 176-7) famously argued that parliaments should not just be public forums (Cf. Mill 1972 [1861]). They should also 'continuously share in the work of government'. Modern government is based on information. Modern parliaments need to 'share in the work of government' if they are to overcome asymmetries of information (Krehbiel 1991). The EP often shares in the work of the Commission and the European Council. But a focus on building inter-institutional compromise can lead to secluded forms of decision-making (Bressanelli et al. 2016: 91-92; Reh 2014). It can be at a cost to a continuous interaction with the represented in ways that promote public debate and public control (Lord 2018). For

certain, the EP worked with the Commission on Brexit. However, Barnier was probably far more publicly visible than the EP.

Conclusion

We will probably never know to what extent the EP influenced Brexit. The preferences of its main party groups were, in any case, largely aligned with those of the Commission and the European Council (Bressanelli et al. 2021: 17). The EP sought to coordinate, and not differentiate, itself from positions taken by other EU institutions. But we can observe the behaviours of the EP on Brexit if not their consequences. Strategically the EP sought to shore up the EU's position as a block actor and to reduce risks of cutting special deals. Normatively it sought to insist on a form of Brexit that respected citizens' rights, obligations to the peace process in Northern Ireland and governance standards in any bodies set up to coordinate or arbitrate future EU-UK relations.

References

- Barnier, M. (2021) *La Grande Illusion. Journal Secret du Brexit 2016-2020*, Paris: Gallimard.
- BBC News (16 February 2016) 'EU referendum: David Cameron deal 'gets backing of Euro MPs'', BBC UK Edition. Available at: <https://www.bbc.com/news/uk-politics-eu-referendum-35584189> [accessed 22 March 2021].
- Bressanelli, E., Koop, C. and Reh, C. (2016) 'The impact of informalisation: Early agreements and voting cohesion in the European Parliament', *European Union Politics*, 17(1): 91-113.
- Bressanelli, E., Chelotti, N. and Lehmann, W. (2021) 'Managing Disintegration: How the European Parliament Responded and Adapted to Brexit', *Politics and Governance*, 9(1): 16-26.
- Closa, C. (2020) 'Inter-institutional co-operation and intergroup unity in the shadow of the veto: the construction of the EP's institutional role in the Brexit negotiations', *Journal of European Public Policy*, 27(4): 630-648.
- De Vries, C. E. (2017) 'Benchmarking Brexit. How the British decision to leave shapes European public opinion', *Journal of Common Market Studies*, 55(3): 38-53.
- European Council (2016) 'Informal meeting of the Heads of State or Government of 27 Member States, as well as the Presidents of the European Council and the European Commission'. Available at: <https://www.consilium.europa.eu/media/24173/15-euco-statement.pdf> [accessed 6 May 2021].
- (2018) 'EUROPEAN COUNCIL DECISION establishing the composition of the European Parliament'. Available at: <https://data.consilium.europa.eu/doc/document/ST-7-2018-REV-1/en/pdf> [accessed 24 June 2021].
- European Parliament (2016) 'The UK's "new settlement" in the European Union. Renegotiation and Referendum'. Available at: <https://op.europa.eu/en/publication-detail/-/publication/1e8d4675-e4fa-11e5-8a50-01aa75ed71a1> [accessed 24 June 2021].
- (2017a) 'European Parliament resolution of 5 April 2017 on negotiations with the United Kingdom following its notification that it intends to withdraw from the European Union (2017/2593(RSP))'. Available at: http://www.epgencms.europarl.europa.eu/cmsdata/upload/b9a0c645-21c2-4117-b933-04689cf7cb46/European_Parliament_Resolution_5_April.pdf [accessed 15 March 2021].
- (2017b) 'European Parliament resolution of 13 December 2017 on the state of play of negotiations with the United Kingdom (2017/2964(RSP))'. Available at:

- http://www.epgencms.europarl.europa.eu/cmsdata/upload/e845eb9c-8326-44b6-b70e-461d5602d0a9/EP_RESOLUTION_13_December_2017_State_of_Play.pdf [accessed 24 May 2021].
- (2018) 'European Parliament resolution of 14 March 2018 on the framework of the future EU-UK relationship (2018/2573(RSP))'. Available at: https://www.europarl.europa.eu/doceo/document/TA-8-2018-0069_EN.html [accessed 4 May 2021].
- (2019) 'European Parliament resolution of 18 September 2019 on the state of play of the UK's withdrawal from the European Union (2019/2817(RSP))' Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2019-0016_EN.pdf [accessed 15 March 2021].
- (2020) 'European Parliament resolution of 15 January 2020 on implementing and monitoring the provisions on citizens' rights in the Withdrawal Agreement (2020/2505(RSP))', Available at: http://www.epgencms.europarl.europa.eu/cmsdata/upload/692e5800-e0b0-4e4c-a04c-2a86e140b1e9/TA-9-2020-0006_EN.pdf [accessed 24 May 2021].
- Gallo, P. S. and McClintock, C. G. (1965) 'Cooperative and Competitive Behaviour in Mixed-Motive Games', *Journal of Conflict Resolution*, 9(1): 68-78.
- Habermas, J. (1992) *Between Facts and Norms*, Cambridge: Polity.
- Heath, R. and Eder, F. (2016) 'Brussels Power Struggle over Brexit Negotiations. Commission and Council both want to be in charge of British Divorce Talks', *Politico*, 28 June 2016. Available at: <https://www.politico.eu/article/brussels-power-struggle-over-brexite-negotiations/> [accessed 24 June 2021].
- Krehbiel, K. (1991) *Information and Legislative Organisation*, Ann Arbor, MI: University of Michigan Press.
- Lord, C. (2018) 'The European Parliament: A Parliament Without a Public?', *Journal of Legislative Studies*, 24(1): 34-50.
- Mill, J. S. (1972 [1861]) *Utilitarianism, On Liberty and Considerations on Representative Government*, London: Dent.
- O'Leary, B. (2018) 'The Twilight of the United Kingdom and Tíocfaidh ár lá: Twenty Years after the Good Friday Agreement', *Ethnopolitics*, 17(3): 223-242.
- Peers, S. (2016) 'Explaining the EU deal: is it legally binding?' *Full Fact*, 17 February 2016. Available at: <https://web.archive.org/web/20160514173344/https://fullfact.org/europe/explaining-eu-deal-it-legally-binding/> [accessed 7 July 2021].

- Piris, J. (ed.) (2015) 'Constitutional Pathways: Which institutional and constitutional adjustments for the United Kingdom?', printed in *United Kingdom's Renegotiation of its Constitutional Relationship with the EU: Agenda, Priorities and Risks*, European Parliament. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2015/536489/IPO_L_STU\(2015\)536489_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2015/536489/IPO_L_STU(2015)536489_EN.pdf) [accessed 7 July 2021].
- Reh, C. (2014) 'Is informal politics undemocratic? Trilogues, early agreements and the selection model of representation', *Journal of European Public Policy*, 21(6): 822-41.
- Reif, K. and Schmitt, H. (1980) 'Nine Second-Order National Elections, A Conceptual Framework for the Analysis of European Election Results', *European Journal of Political Research*, 8(1): 3-44.
- Schuette, L. A. (2021) 'Forging Unity: European Commission Leadership in the Brexit Negotiations', *Journal of Common Market Studies*, 59(5): 1-18.
- Shipman, T. (2017) *All Out War. The Full Story of Brexit*, London: William Collins.
- Van Der Loo, G. and Chamon, M. (2021) 'The European Parliament Flexes its Muscles on the EU-UK Trade Deal', European Policy Centre, 5 March 2021. Available at: <https://epc.eu/en/Publications/The-European-Parliament-flexes-its-muscles-on-the-EUUK-trade-deal~3c43bc> [accessed 9 April 2021].
- Weber, M. (1994) 'Parliament and Government in Germany under a New Political Order', in P. Lasman and R. Speirs (eds) *Weber. Political Writings*, Cambridge: Cambridge University Press, pp. 130-271.
- Weir, S. and Beetham, D. (1999) *Political power and Democratic Control in Britain. The Democratic Audit of the United Kingdom*, London: Routledge.

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