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What Brexit Means for Europe: EU Institutions and Actors after the British Referendum

Editors

Edoardo Bressanelli and Nicola Chelotti

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Editorial

Assessing What Brexit Means for Europe: Implications for EU Institutions and Actors

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Abstract

With the signing of the EU–UK trade and cooperation agreement in December 2020, the configurations of Brexit have started to become clearer. The first consequences of the UK’s decision to leave the EU have become visible, both in the UK and in the EU. This thematic issue focuses on a relatively under-researched aspect of Brexit—what the UK withdrawal has meant and means for the EU. Using new empirical data and covering most (if not all) of the post-2016 referendum period, it provides a first overall assessment of the impact of Brexit on the main EU institutions, institutional rules and actors. The articles in the issue reveal that EU institutions and actors changed patterns of behaviour and norms well before the formal exit of the UK in January 2020. They have adopted ‘counter-measures’ to cope with the challenges of the UK withdrawal—be it new organizational practices in the Parliament, different network dynamics in the Council of the EU or the strengthening of the Franco-German partnership. In this sense, the Union has—so far—shown significant resilience in the wake of Brexit.

Keywords

Brexit; Council of the EU; Court of Justice; European Parliament; institutional change; interest groups; negotiations; Norway; United Kingdom

Issue

This editorial is part of the issue “What Brexit Means for Europe: EU Institutions and Actors after the British Referendum,” edited by Edoardo Bressanelli (Sant’Anna School of Advanced Studies, Italy) and Nicola Chelotti (Loughborough University London, UK).

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1. Introduction

With the deal between the European Union (EU) and the United Kingdom (UK) sealed on Christmas eve 2020, four and a half years after the British referendum, Brexit was completed. We finally know ‘what Brexit means’ and, although the implementation of the agreement will take time, the separation has been effective and neat, with the UK leaving the single market, and with an end to both freedom of movement and the jurisdiction of the Court of Justice of the EU (CJEU) over British laws.

The conclusion of the Brexit negotiations and the end of the transition period also provide the opportu-

nity to assess what impact Brexit has had on the EU institutions and actors so far. As Tim Oliver once put it (2016), there has been relatively little focus on what ‘Brexit means for the EU.’ Research on Brexit abounds and has, instead, largely focused on issues such as its causes (e.g., Hobolt, 2016), its impact on British politics (e.g., Ford & Goodwin, 2017) and the EU–UK negotiations (e.g., Martill & Staiger, 2020).

Oliver’s assessment remains largely true today, even if it can certainly be better qualified. Scholars have started to reflect on the future of EU integration without the UK using macro-theoretical approaches such as ‘disintegration’ or ‘differentiated integration’ (e.g.,

Schimmelfennig, 2018). In addition, several studies have focused on specific EU policy areas or discrete policies. Most notably, a thematic issue of *Politics and Governance* has endeavoured to assess ‘EU policies after Brexit’ (De Ville & Siles-Brügge, 2019). Other book-length treatments of the impact of Brexit have normally included a section on Britain and another on the EU—with the latter focusing on both macro-models and sectoral policies (e.g., Diamond, Nedergaard, & Rosamond, 2018).

This thematic issue aims to fill this gap in the literature on Brexit by asking what has changed for EU institutions and actors after the 2016 British referendum. It considers institutions broadly, including both ‘institutional rules’ and what may otherwise be called ‘organisations.’ It provides the first extensive treatment of the topic focusing on the main EU institutions (i.e., the European Council, the Council of the EU, the European Parliament, the CJEU), key institutional rules (i.e., agenda-setting, the ordinary legislative procedure) and relevant actors (i.e., interest groups). In so doing, the contributors to this thematic issue address not only specific questions about Brexit, but also on EU integration more generally.

Our vantage point hugely benefits from the fact that the Brexit period is finally concluded and Brexit is, as a consequence, less of a ‘moving target’ than it used to be when some early analyses of the EU institutional set-up were made (cf. Jensen & Snaith, 2018, p. 255; see also Jacobs, 2018; Patel & Reh, 2016). A first overall assessment, based on new empirical data and covering most (if not all) of the post-referendum period can, therefore, be attempted. To be sure, this remains, in many respects, still preliminary, and a more all-round impact assessment would require additional data, time, and research.

Finally, the thematic issue evaluates the real impact of Brexit rather than simply taking the UK out of the ‘decision-making equation’ (for a similar approach, see also De Ville & Siles-Brügge, 2019). This allows most contributors to be less speculative in their conclusions and, the sophistication of counterfactuals notwithstanding (Huhe, Naurin, & Thomson, 2020), to ground the Brexit impact on observable behaviour rather than past history and theoretical simulations.

2. Before Brexit: Anticipatory Adaptation and Informal Change

The thematic issue endeavours to observe change in norms and patterns of behaviour already as a result of the outcome of the British referendum of 23 June 2016, rather than just as a consequence of the formal withdrawal of the UK on 31 January 2020. The referendum set in motion a number of informal changes, which predated the formal exit of the UK from the EU three and a half years later.

The long preparation to Brexit has allowed the EU institutions to prepare the UK withdrawal and anticipate some of its likely consequences. As the EU did in not too dissimilar circumstances in the past—for

instance, preparing to its ‘mega’ enlargement to Central and Eastern Europe (cf. Best, Christiansen, & Settembri, 2008)—the Union and its institutions proved capable of foreseeing changes in their environment. ‘Anticipatory adaptation’ could be observed, for instance, in revising the order of the country taking up the rotating Presidency of the Council of the EU, which should have been assigned to the UK in the second half of 2017.

Contributions in the thematic issue highlight several instances when, following the 2016 referendum, EU institutions started to adopt ‘counter-measures’ to deal with the challenges of the UK withdrawal. The drivers of institutional adaptation are different—and would certainly deserve further theoretical exploration—but EU institutions and actors may seek to protect themselves from the ‘malign’ influence of a soon-to-be third country; they may fear the organizational consequences of withdrawal and seek minimizing potential disruptions; they may be guided by the willingness to ‘punish’ disintegration and prevent further exits. Whatever the reason, the EU has been able to prepare for the departure of a large member state, making the impact of its actual departure less onerous.

Johansson (2021)—by analysing networks in the Council of the EU—finds that the UK was less central in 2018 (after) compared to 2015 (before the referendum). Even if the UK only stopped attending the Council meetings in September 2019, behavioural dynamics and coalition patterns in the Council had already changed when the UK was still an active member state, much to the detriment of the UK itself. Focusing on the European Parliament, Bressanelli, Chelotti, and Lehmann (2021) track a declining influence of the UK delegation since 2017, although British Members (MEPs) remained in Parliament until January 2020. As they argue, large cross-party alliances are often formed in the European Parliament when the institution is ‘under attack’ or when its members seek to expand its powers: Such a grand coalition was, during the Brexit negotiations, meant to limit the role of the British MEPs.

Simoncini and Martinico (2021) present an interesting—if legally very contentious—case. This is the decision to dismiss the British Advocate General Eleanor Sharpston from her job, notwithstanding the fact that, according to a legal interpretation, this decision would violate EU law and put at risk the independence of the CJEU. The member states decided to terminate her mandate early—in theory, she should have served in the role until October 2021—and such a decision was implemented by the CJEU. In so doing, they treated the Advocate General as if she effectively represented the UK and dismissed her because “Brexit ought to mean Brexit” (Pech, 2020).

Finally, Coen and Katsaitis (2021) show that the UK business groups played a rather minor role in the meetings with the EU Chief Negotiator Michel Barnier, who actively engaged with stakeholders. As the prospect of UK membership in the single market waned and because

of their diminished role in pan-European organisations, they targeted mainly the British government. Conversely, Barnier himself directed his attention to British public interest groups, which served to maintain the EU's legitimacy vis-à-vis a portion of the UK's public as well as EU nationals in the UK.

3. After the UK Withdrawal: Leadership and Decision-Making

If the British referendum already set in pace Brexit-related changes, the UK formal withdrawal from the EU in early 2020 unleashed new, or reinforced pre-existing institutional dynamics. As Krotz and Schramm (2021) argue, Franco-German leadership became stronger with Brexit. This was due not only to the rules for qualified majority in the Council—with the new weights for the double majority, of states and population, favouring the medium and large member states—but mainly to the necessity of Franco-German leadership to overcome the existential crises of the EU, Brexit included.

A specific instance of the 'new' Franco-German leadership is provided in the field of financial services. Van Kerckhoven (2021) shows that France and Germany are seeking to shape a different agenda—in essence, a more stringent rule-based approach towards the financial industry—and gain a more prominent role in this sector post-Brexit. One of the earliest direct impacts of Brexit—i.e., the relocation of the EU agencies based in London to 'the continent'—rewarded Paris as the new site of the European Banking Authority, signposting the French assertiveness and willingness to create an EU-27 financial hub.

While rules and agenda-setting powers in financial services are arguably set to change, Copeland (2021) emphasises continuity over change in the field of social policy. Despite the extension of the ordinary legislative procedure, the decision-making mode in the field remains intergovernmental, with (some) member states pulling the brake to more radical developments. Even if the UK was not supportive of supranational developments, it was certainly not the only member state to share this attitude, making intergovernmentalism very likely to 'survive' post-Brexit.

4. The Resilience of the Union

Brexit was part of an impressive string of crises hitting the EU since 2010. As with other crises, the prospects for Europe were dire: Brexit was widely regarded as a threat to integration and a trigger for disintegration, with a domino effect boosting Eurosceptic parties and fuelling the demands for other 'exits.' This scenario has not materialized; if Brexit (and other crises) have demonstrated anything, this is the strong resilience of the Union.

Looking beyond the EU and its institutions, Brexit also acted—so far at least—as a deterrent rather than as a stimulus for change for non-member countries with

close relationships to the EU. Fossum and Vigrestad (2021) look at Norway, a member of the European Economic Area. If the Norwegian option was soon ruled out as a model for the future EU–UK relationship, was Brexit instead a source of inspiration for Norwegians? Their analysis reveals that Norway re-assessed the costs and benefits of its relationship with the EU in the light of Brexit, but both parties and public opinion maintained their preference for the status quo, with the former keen to depoliticize the issue of European Economic Area membership.

The capacity of the Union to 'absorb' environmental shocks and adapt to challenging conditions should be duly acknowledged. As this thematic issue has shown, while it is still possible to argue that the impact of Brexit on the EU institutions and actors "should not be overstated" (Puetter, 2017, p. 249), this is so not just because the EU 'muddles through' from crisis to crisis, but also because its institutions and actors can be proactive, seeking to prevent major disruptions in their operations.

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Conflict of Interests

The authors declare no conflict of interests

References

- Best, E., Christiansen, T., & Settembri, P. (2008). *The institutions of the enlarged European Union: Continuity and change*. Cheltenham: Edward Elgar Publishing.
- Bressanelli, E., Chelotti, N., & Lehmann, W. (2021). Managing disintegration: How the European Parliament responded and adapted to Brexit. *Politics and Governance*, 9(1), 16–26.
- Coen, D., & Katsaitis, A. (2021). Lobbying Brexit negotiations: Who lobbies Michel Barnier? *Politics and Governance*, 9(1), 37–47.
- Copeland, P. (2021). The ordinary legislative procedure in a post-Brexit EU: The case of social Europe. *Politics and Governance*, 9(1), 69–78.
- De Ville, F., & Siles-Brügge, G. (2019). The impact of Brexit on EU policies. *Politics and Governance*, 7(3), 1–6.
- Diamond, P., Nedergaard, P., & Rosamond, B. (2018). *The Routledge handbook of the politics of Brexit*. London: Routledge.
- Ford, R., & Goodwin, M. (2017). Britain after Brexit: A nation divided. *Journal of Democracy*, 28(1), 17–30.
- Fossum, J. E., & Vigrestad, J. (2021). Is the grass greener on the other side? Norwegians' assessments of Brexit. *Politics and Governance*, 9(1), 79–89.
- Hobolt, S. (2016). The Brexit vote: A divided nation, a

- divided continent. *Journal of European Public Policy*, 23(9), 1259–1277.
- Huhe, N., Naurin, D., & Thomson, R. (2020). Don't cry for me Britannia: The resilience of the European Union to Brexit. *European Union Politics*, 21(1), 152–172.
- Jacobs, F. B. (2018). *The EU after Brexit: Institutional and policy implications*. Cham: Palgrave Pivot.
- Jensen, M. D., & Snaith, H. (2018). Brexit and the European Union: Hanging in the balance? In P. Diamond, P. Nedergaard, & B. Rosamond (Eds.), *Routledge handbook of the politics of Brexit* (pp. 254–265). London: Routledge.
- Johansson, M. (2021). Explaining cooperation in the Council of the EU before and after the Brexit referendum. *Politics and Governance*, 9(1), 5–15.
- Krotz, U., & Schramm, L. (2021). An old couple in a new setting: Franco-German leadership in the post-Brexit EU. *Politics and Governance*, 9(1), 48–58.
- Martill, B., & Staiger, U. (2020). Negotiating Brexit: The cultural sources of British hard bargaining. *Journal of Common Market Studies*. Advance online publication. <https://doi.org/10.1111/jcms.13059>
- Oliver, T. (2016). *What impact would a Brexit have on the EU?* (Dahrendorf Analysis 2/2016). London: LSE IDEAS.
- Patel, O., & Reh, C. (2016). *Brexit: The consequences for the EU's political system* (UCL Constitution Unit Briefing Paper). London: UCL Constitution Unit.
- Pech, L. (2020). The Schrödinger's advocate general. *Verfassungsblog*. Retrieved from <https://verfassungsblog.de/the-schroedingers-advocate-general>
- Puetter, U. (2017). Brexit and the European Union's institutional balance: How member states and EU institutions adapt to decision-making. In F. Fabbrini (Ed.), *The law & politics of Brexit* (pp. 247–265). Oxford: Oxford University Press.
- Schimmelfennig, F. (2018). Brexit: Differentiated disintegration in the European Union. *Journal of European Public Policy*, 25(8), 1154–1173.
- Simoncini, M., & Martinico, G. (2021). A knot not to be cut? The legacy of Brexit over the CJEU. *Politics and Governance*, 9(1), 27–36.
- Van Kerckhoven, S. (2021). Post-Brexit leadership in European finance. *Politics and Governance*, 9(1), 59–68.

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Article

Explaining Cooperation in the Council of the EU Before and After the Brexit Referendum

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Abstract

This article focuses on the impact of the UK’s decision to leave the EU on cooperation within the Council of the EU. It does so by studying how cooperation between member states has changed from the period before the Brexit referendum to the period after. In the emerging literature on Brexit, it has been highlighted that member states that have been close partners to the UK will have to (and have started to) adjust their cooperation behaviour and form new alliances. While the structure of cooperation in the Council is often understood to be stable over time, suggesting that cooperation is mainly driven by structurally determined preferences that don’t easily change, a major event such as Brexit may force remaining member states to restructure their cooperation behaviour. Accordingly, it is expected and tested whether less structurally determined preferences have grown in importance for shaping patterns of cooperation in the immediate period following the Brexit referendum. Using survey data based on interviews with member state negotiators to the Council, asking about their network ties, compiled both in the period before and after Brexit referendum of 2016, it is shown that structurally determined preferences are important in both periods and that more volatile ideologically-based preferences on the EU integration dimension and GAL-TAN dimension have become important following the referendum. The article is informative both for those interested in the effects of Brexit on EU institutions, as well as those more generally interested in causes of cooperation patterns in the Council.

Keywords

Brexit; cooperation; Council of the EU; European Union; network analysis

Issue

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1. Introduction

The Council of the EU is a core institution and the historical powerhouse of the EU legislature. It is the institution of the EU member state governments, who participate in Council meetings to negotiate joint decisions and legislation. The UK decided through a referendum in 2016 to leave the EU and started the process of secession in 2017. The UK has always been a central player in the EU as one of its three big member states and had a central position also in Council cooperation and negotiation networks (e.g., Johansson, Naurin, & Lindahl, 2019; Naurin & Lindahl, 2008). Leaving the EU, and the

Council, is expected to leave remaining member states with a need to adjust to this new cooperative landscape (Huhe, Naurin, & Thomson, 2020). This is particularly true to those that have traditionally had close relations with the UK, a fact that many of them are also aware of (Johansson et al., 2019). Cooperation and negotiations are dynamic and build on exchange, and if some member states make adjustments by seeking new partners, this is likely to have general effects on the patterns and logic of cooperation in the Council.

The question addressed in this article is: If and how has cooperation in the Council changed from the period before the Brexit referendum to the period after?

Following this, it seeks to determine whether some explanations have grown or diminished in importance in the period following the Brexit referendum. Cooperation is here understood as relational, and an active and deliberative choice. The article explores this question using survey data whose respondents include representatives of the 28 EU member states to a number of Council preparatory bodies. The survey data hence builds on self-reported cooperation. Two surveys are utilized, one from 2015, i.e., the year before the Brexit referendum, and one from 2018, i.e., the year after the process of negotiating the withdrawal had begun. To explore if and how cooperation changes, the explanatory power of interest-based factors of both a structural nature and of a more volatile ideological nature are tested. The network analyses performed show that structural preferences are important both before and after the Brexit referendum, but that ideological proximity of governments on the EU integration and GAL-TAN (Green–Alternative–Libertarian and Traditional–Authoritarian–Nationalist) dimensions becomes important only after the Brexit vote. Left–right positioning of governments is not important on any side of the Brexit referendum. These findings are not only of relevance for understanding the impact of Brexit but more generally for understanding cooperation in the Council. It offers a deeper understanding of the structure of cooperation within the Council, and what the commonly found geographical patterns of member state cooperation may be based on.

The article starts with a review of what we already know about the effects of Brexit on the Council, and about cooperation patterns in the Council generally. Following this, expectations are derived about what factors are likely to grow in importance when member states adjust their cooperation behaviour in response to the UK's withdrawal. A presentation of the structure of the data and statistical modelling follows and the empirical results are presented. The article ends with a concluding discussion on the implications of the findings.

2. Cooperation Behaviour in the Council

The Brexit referendum and withdrawal negotiations are very recent events, and their effect on cooperation and overall functioning of the EU and its institutions has only been explored to a limited extent. Huhe, Naurin, and Thomson (2017, 2020) tested the impact of the UK leaving the EU for both the network relations of remaining member states, but also for the content of policy output. They did so by subtracting the UK from historical data on cooperation and positions taken in legislative negotiations in the Council, showing to what extent policy output would have been different had the UK not taken part in the negotiations, as well as the degree to which the standing of the historically strong allies to the UK are affected when losing this strong partner. Their findings on cooperation patterns corroborate what negotiators themselves report regarding their need to adjust

their choices of cooperation partners in the Council, with the close allies of the UK being particularly affected (Johansson et al., 2019).

Following this, the question is how cooperation changes and, in particular, in what direction the member states adjust. That is, are cooperative relations following the same patterns and explanations as before, or do other factors become more prominent in this adjustment process? Also here, Huhe et al. (2020) offer some answers. They show that new ties are formed by those member states who lose standing in the network as a consequence of Brexit, based on the positional proximity to other member states. The positional proximity is determined based on a number of negotiated pieces of legislation in the Council. In short, member states that need to adjust cooperation post-Brexit form new ties with other member states that they have historically held similar policy positions to. Using a similar method, the same authors have, more generally, shown that cooperative ties in the Council network are affected by policy position proximity (Huhe et al., 2018). While informative, these findings beg the more general question of whether there are underlying explanations both for position taking and network formation, and in particular, if and how this has changed after the Brexit referendum. Below, this will be further explored for the network relations of member states.

How cooperation is structured within EU institutions is central to understanding how political decisions are reached. Determining patterns of cooperation among the EU member states within the Council has accordingly been imperative in the study of its operation. There is one major finding that is replicated in most of these studies, regardless of the empirical data used: the importance of member states' geographical proximity. This has historically meant that a north–south pattern was observed (Elgström, Bjurulf, Johansson, & Sannerstedt, 2001; Kaeding & Selck, 2005), which was later complemented with an eastern group of member states (Mattila, 2009; Naurin & Lindahl, 2008; Thomson, 2009). While providing an overall structure to cooperation, geography is less enlightening when searching for causal explanations.

The literature on cooperation in the Council has suggested several explanatory factors for the ties between EU member states of both a culturally-based and interest-based nature (Elgström et al., 2001; Kaeding & Selck, 2005). Some point to geography as a cultural explanation, but it is here rather believed to mask other variation (cf. Beyers & Dierickx, 1998). The analysis will therefore be limited to the interest-based explanations for cooperation, which are more clearly defined. Among these are the positional proximity of member states, as discussed above. Such actor alignment has sometimes in itself been used to indicate cooperation (Kaeding & Selck, 2005; Thomson, 2009), and studies of voting patterns can also be understood as falling in this category with an empirical focus on position taking (e.g., Hagemann,

2008; Hagemann & Hoyland, 2008; Hosli, Mattila, & Uriot, 2011; Mattila, 2008). The results of these studies are diverse. Some suggest that geographical patterns indicate different attitudes to regulation and harmonization on the one hand and financial transfers on the other (Kaeding & Selck, 2005; Thomson, 2009). Others point to the importance of ideological factors and in particular the left–right dimension (Hagemann, 2008; Hagemann & Hoyland, 2008). While both are plausible explanations for cooperation, they are only tested on actor alignment, which at best make them indirect indications of more active cooperation.

The literature reviewed has hence shown that cooperation, or actor alignment, is stable over time when it comes to geographical patterns, and has been affected only to a limited extent by enlargement rounds (only adding a geographical cluster). There are indications about the relevance of more deeply rooted structural preferences in member states in studies on actor alignment, which fit well with the findings on historical policy position proximity as an important explanation for cooperative ties. The more volatile political preferences that come from ideological factors, varying with government composition, are critical contenders for explaining cooperation. The empirical evidence for the relevance of ideology that exists to date is inconclusive and has been found only on position taking data based on voting. But if these are crucial factors also when studying data on actual cooperative ties, and whether their importance has changed since the Brexit referendum, will be discussed and analysed below.

3. Expected Changes in Cooperation Behavior after the Brexit Referendum

It is well-established that cooperation in the Council is stable over time and largely follows geographical patterns. This geographical structure has persisted even when membership has significantly changed, such as after the eastern enlargement. A null hypothesis founded on this observation should hence be that the same explanations for cooperation will be valid both before and after the Brexit vote, and would also give prominence for structurally determined preferences that are resistant to change in both periods:

H0: The UK's decision to leave the EU will not change cooperation in the Council, and the effects of explanatory variables will be stable across the periods before and after the referendum.

The main hypothesis to be tested against the null hypothesis is consequently that patterns of cooperation between member states in the Council change after the Brexit referendum. In order to test this, it is necessary to establish what factors that structure and explain the cooperative relations between member states both before and after the Brexit vote. In gen-

eral, when searching for explanations for the strength of relational ties—which cooperation is an example of—it is natural to look for ways of measuring similarities and differences between included actors. In theories of social networks among individuals, explanations based on such homophily mechanisms are regularly reported to be strong predictors of network relations (e.g., Grund & Densley, 2012). There are strong preference-based motifs for choosing relations based on similarity, not least in a decision-making setting such as the Council. This characteristic of network relations hence also serves as a baseline assumption here.

Knowing that cooperation patterns in the Council have historically been stable, it is expected that similarities between member states that are more structurally determined should be important. Thomson (2009), as well as Kaeding and Selck (2005), has shown that member states that take similar positions in the EU Council belong to different geographical clusters, and based on this observation inferred that this might be caused by shared attitudes to regulation and financial transfers. They base this on a general understanding of the member states belonging to the different geographical clusters. I attempt here to take this suggestion one step further, by arguing that member states have different, historically rooted, preferences on the degree of state intervention in the economy that are not rapidly changing. These preferences are here also believed to be crucial determinants for the type of regulatory systems that member states want in the EU, and should therefore also be important for their cooperative ties in the EU, and the Council specifically. The argument is based on an understanding of policy conflict that emanates from the literature on Varieties of Capitalism (VoC; e.g., Hall & Soskice, 2001). In short, this literature separates state systems on a spectrum from Coordinated or Social Market Economies to Liberal Market Economies, capturing different degrees of state intervention in the economy through indications such as taxation, social expenditure, and overall regulation. VoC has previously been shown to be an important determinant for the structure of member state conflict in the EU, both in treaty amending processes (Fioretos, 2001) and in the EU Court of Justice (Larsson & Naurin, 2019). Its impact on how the Council operates has not been tested.

It has been argued that the UK's decision to leave the EU forces the remaining member states, particularly those who had previously had strong ties to the UK, to seek new partners in the Council (Huhe et al., 2020; Johansson et al., 2019). As the relevant relations along the VoC dimension are believed to already have been established before the Brexit vote, any new relations should be expected to be found along other dimensions. That is, instead of moving further away on the VoC dimension when seeking new partners, as these will inevitably be decreasingly similar and previously deemed less relevant, it is expected that the member states will look elsewhere for these new relations. Also here, a

reasonable expectation is that the member states will follow the homophily logic outlined above and that new cooperative relations will be established between member states that have similar preferences. The main contending preference-based dimension is ideology, which is here expected to become increasingly important when member states adjust to the new cooperative space in the Council after the UK's decision to leave. While previous research has found some, yet limited, evidence of the importance of ideology for position-taking in the Council (Hagemann, 2008; Hagemann & Hoyland, 2008), it might hence be that the adjustment process triggered by the Brexit vote forces the member states to seek new relations on this dimension, at least in the short-term. In short, structural preferences—here conceptualized through VoC—are expected to be important in the period both before and after the Brexit referendum, but ideologically-based explanations will grow in importance in the period after the referendum:

H1: The UK's decision to leave the EU will change cooperation in the Council, and in particular the explanatory strength of ideology will grow in the period after the referendum.

Which the relevant ideological dimensions are, and when, for policy positioning in the EU is disputed. The left–right dimension is a baseline dimension for mapping party–political conflict (Hagemann & Hoyland, 2008), but it has been complemented with an EU integration dimension, also when analysing the Council (Mattila, 2004). In addition, when studying voters and political parties, it is increasingly common to also include some culturally oriented dimension, such as GAL-TAN (Hooghe, Marks, & Wilson, 2002). The left–right dimension captures political actors' socio-economic attitudes, the EU integration dimension captures political actors' general view on furthering European integration, whereas the GAL-TAN dimension captures political actors' general attitudes on more culturally-oriented issues and values, separated in a divide between libertarianism and traditionalism. The three dimensions are not completely distinct but often shown to be correlated, either in a linear or curve-linear form (e.g., Costello, Thomassen, & Rosema, 2012; Hooghe et al., 2002). All three dimensions will be included in the empirical analyses below to evaluate H1.

4. Data and Statistical Modelling

The data used to test the hypotheses comes from *The Negotiations in the Council of the European Union Dataset* (Naurin, Johansson, & Lindahl, 2020). The dataset builds on an interview survey with member state representatives to a number of Council preparatory bodies, which was conducted triennially from 2003 to 2018. The survey questions posed have varied somewhat in the different rounds, but one central question was posed in all which asked about the respondent's cooperation part-

ners in the Council. This question forms the basis for the dependent variable, as discussed below, and straightforwardly asks: Which member states do you most often cooperate with in order to develop a common position?

To explore whether the Brexit referendum has had an impact on cooperation in the Council, the two latest rounds of the survey conducted in 2015 and 2018 were used. This allows comparison of cooperation patterns and associated explanations in the period before the Brexit referendum in 2016 to the period after. The 2015 round was conducted from October to December, so was concluded around six months before the referendum, and the 2018 round was conducted between April and July, when negotiations on the exit terms had been going on for around a year (the actual negotiations started only after the UK's general election in June 2017). When the 2018 round was conducted, the remaining member states can be expected to have started to view Brexit as a reality, and if Brexit changes cooperation in the Council, it should be possible to observe it by this point in time. It is important to note that there is, as yet, no survey conducted after Brexit and that British representatives were included in the 2018 survey round. More long-term effects will therefore need to be the subject of future studies.

It is worth emphasizing that it is not possible to establish any causal effect of the Brexit vote on cooperation using this data, but only to observe if there are any changes in cooperation between the period before the referendum and the period after. But, if any changes in cooperation were observed, it would be natural to attribute these to significant events during the period between the two points of measurement. There are of course other events during the period of study (2015–2018) that might affect cooperation too, for instance, the unfolding of the migration crisis in 2015, which began during the first of the two survey rounds under study. Both the migration crisis, with its political repercussions, and the Brexit vote can, in turn, be seen as part of the growing politicization of the EU. Some have argued that this politicization can lead to a democratization of the EU, building up the polity and making political conflict increasingly party-based (cf. de Wilde, 2011; de Wilde & Lord, 2016; Zürn, 2016). While it is not obvious that this leads to increased ideological conflict in the EU, it is sometimes indicated that it could be a logical consequence (e.g., Börzel & Risse, 2009; de Wilde, 2011; Hooghe & Marks, 2009). Any shift towards more ideologically-driven cooperation in the Council might hence have been already underway in 2015. However, even if the migration crisis and general politicization trends might be moving the EU member states in a more ideological direction, the subtraction of a member state can be expected to act as a trigger forcing other member states to actually start searching for new cooperation partners. Existing studies on how the Council is affected by the Brexit vote have also shown that remaining member states are adjusting their cooperative relations (Huhe et al., 2020; Johansson et al., 2019).

In each survey round, all member state representatives to eleven selected preparatory bodies were asked to participate. The targeted preparatory bodies were selected to give a broad coverage of policy areas and levels of seniority in the Council. The preparatory bodies covered in 2015 were: Coreper I, Coreper II, Political and Security Committee, Special Committee of Agriculture, Economic Policy Committee, Politico-Military Group, Working Party on Tax Questions, and Coordinating Committee in the area of policy and judicial cooperation in criminal matters, Working Party on Agricultural Questions, Working Party on Competitiveness and Growth, and the Working Party on the Environment. The same bodies were covered in 2018, with the exception of the Working party on Agricultural Questions, which was replaced with the Working Party on Horizontal Agricultural Questions. The sample hence covers both senior groups of general scope such as Coreper I and II, and more technical working parties in areas such as environment and taxes. Both the 2015 and 2018 survey round targeted 308 member state representatives (28 member states × 11 preparatory bodies), of which 225 and 251 respondents participated in an interview with response rates of 73% and 81%, respectively (although they varied somewhat between preparatory bodies and member states).

The dependent variable for the analyses is based on the question of cooperation partners. The respondents were asked to mention at least three member states, but there is variation in how many they did, in fact, mention. Based on the order that other member states were mentioned, scores are assigned to the receiving member state, starting with 10 points for a first mention, 9 points for a second mention, and so forth. To give each respondent the same weight in the data, their scores were then standardized to a share of scores, ranging from 0 to 1, meaning that if one respondent only mentions

one other member state and hence gives it 10 points, that member state will receive a score of one, whereas a 10 point score from a respondent that mentioned two member states will only be worth 0.53 (and the 9 will be worth 0.47). These scores were then aggregated for each member state so that the value of each outgoing tie in the resulting member state network is the share of scores that respondents from that sending member state gave to each of the receiving member states. Based on these data on the strength of ties in each dyadic relation, a network of the member states can be mapped and analysed. The analyses of the networks in this article are done using the *nwcommands* package in Stata (Grund, 2015). The networks from 2015 and 2018 are mapped in Figure 1, where the size of the nodes is based on the sum of aggregated cooperation scores received, which hence indicates the member states' strength in the network. The aggregated cooperation scores (the sum of incoming scores from other member states) are also displayed in Table 1, ranked by the 2018 values. It should be noted that not all member states have ties to each other, and that some ties are not reciprocal but unidirectional. In the 2015 network, there are 87 reciprocated ties and 141 unidirectional ties, and in 2018 there are 123 reciprocated ties and 140 unidirectional ties. However, even when ties are reciprocated in the network, they can still be unbalanced in value, meaning that the reciprocity here is not based on equality. Given that the respondents often mention only a few cooperation partners, there will inevitably be a bias towards the most important relations, and it is hence worth to note that it is the strength of the network ties that is measured and that less important (yet existing) ties may go undetected with this method.

The independent variables measure, on the one hand, the different types of VoC of member states, and on the other hand, the ideological positions of

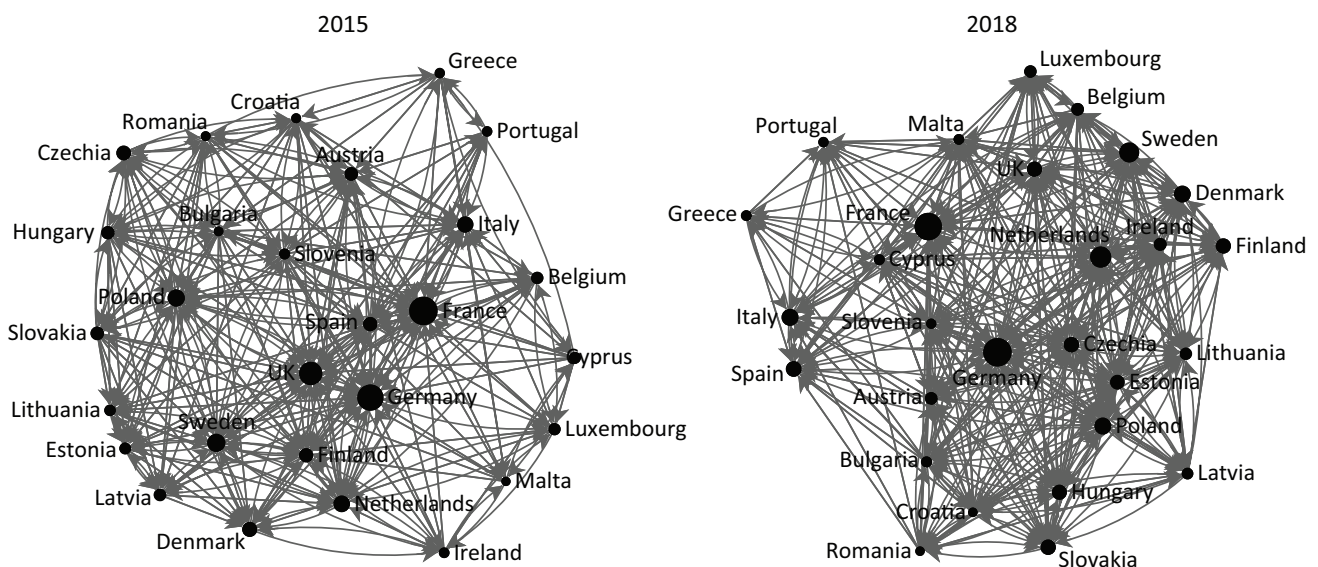


Figure 1. Network of member state relations in the Council 2015 and 2018.

Table 1. Member states' aggregated cooperation scores in 2015 and 2018.

Member state	Cooperation score 2015	Cooperation score 2018
Germany	2.88	3.00
France	3.23	2.86
The Netherlands	1.37	1.93
Sweden	1.61	1.76
Italy	1.32	1.33
Poland	1.48	1.32
Denmark	1.13	1.32
Spain	1.01	1.15
Czechia	1.07	1.10
Slovakia	0.89	1.10
Finland	1.00	1.07
UK	2.40	1.07
Hungary	0.86	1.05
Estonia	0.62	0.97
Ireland	0.45	0.73
Belgium	0.70	0.72
Austria	0.90	0.70
Luxembourg	0.69	0.66
Lithuania	0.58	0.65
Latvia	0.71	0.55
Bulgaria	0.29	0.46
Cyprus	0.65	0.45
Greece	0.39	0.44
Malta	0.23	0.42
Portugal	0.41	0.37
Slovenia	0.49	0.35
Croatia	0.33	0.25
Romania	0.32	0.24

the member state governments. Starting with VoC, it is here measured using three components to capture critical variation in how member states have historically chosen to regulate their economies, as highlighted by Höpner and Schäfer (2012). These are: (1) social protection expenditure as a share of GDP, which covers expenditures on disability, sickness/healthcare, old age, survivors, family/children, unemployment, housing and social exclusion not covered elsewhere (Eurostat, 2020a); (2) total taxation as a share of GDP, which covers receipts of taxes and social contributions (Eurostat, 2020b); (3) collective bargaining coverage, which measures employees covered by valid collective (wage) bargaining agreements as a proportion of all wage and salary earners in employment with the right to bargaining, expressed as a percentage, adjusted for the possibility that some sectors or occupations are excluded from the right to bargain (Visser, 2019). For each component, the data was gathered for 2015 and 2018. Data on collective bargaining coverage were however not available for 2018, so have then been imputed from the nearest available year. It is also missing for some member states in 2015 and so was then imputed based on the means of the nearest available year before and after. Based on these data, a principal component analysis of these

three variables (eigenvalue 2.67 and 2.63 respectively) was used to obtain a unidimensional VoC-measure using the predicted values of the first component. Member states with low values are identified as Liberal Market Economies whereas member states with high values are identified as Social Market Economies.

To measure the member state governments' positions on the three outlined ideological dimensions, weighted averages of the positions of cabinet parties at the time of the survey were used. The weights of the parties in the cabinet were obtained from their seat share in parliament. Information on cabinet composition and parliamentary seats was gathered from the ParlGov database (Döring & Manow, 2019). In cases where several governments were in place during the period of the survey, the government with the longest time in office during the survey period was chosen. To measure the ideological positions of the cabinet parties, the datasets from the Chapel Hill Expert Survey of 2014 (Polk et al., 2017) and 2019 (Bakker et al., 2020) were used. The data from 2019 is missing some parties that were in government in 2018. Data for these parties was then obtained from the 2014 round instead. For a couple of parties, there were no available data in any of the Chapel Hill Expert Survey rounds, so they were omitted from the

analysis. These parties are however small in size, and their omission is therefore not expected to affect the results. As outlined above, three dimensions of ideological positioning are used to test whether ideology affects cooperation in the Council in the periods before and after the Brexit referendum. These are the left–right dimension, the EU integration dimension, and the GAL-TAN dimension. The political parties’ positions on the economic left–right are chosen here, as this is more distinct than the general left–right positioning when testing for other ideological indicators as well. The empirical analyses were however run on the general left–right positioning as well, without altering the results. The variable measuring parties’ economic left–right position ranges from 0 (extreme left) to 10 (extreme right), the variable measuring parties’ EU position ranges from 1 (strongly opposed) to 7 (strongly in favour), and the variable measuring the GAL-TAN position ranges from 0 (libertarian/postmaterialist) to 10 (traditional/authoritarian).

When testing explanatory variables in network analysis, it is the dyadic relation between any two nodes in the network that is analysed. In the networks analysed here, each node represents a member state. In a network with 28 nodes (member states), these dyadic relations amount to 378, with twice the number of directional ties (756). Since the ties in the network analysed here can be both unidirectional and unbalanced, it is the 756 directional ties that are of interest. For the analysis, this means that the network is transformed to a dependent variable with these 756 directional ties as observations, each measuring the strength of an outgoing tie in the network (e.g., the strength of the tie from Sweden to Denmark). The same logic underlies the construction of the independent variables. When, as in this case, the independent variables do not have a network character, but only hold a value for each member state, the variables are, in a first step, used to create what can be understood as an artificial network based on the absolute distance between any two of the member states’ values on the independent variable (e.g., the distance on VoC between Sweden and Denmark). This artificial network contains the same number of directional ties as the cooperation network, but unlike the cooperation network, each relation is completely balanced. Meaning that while the value of the outgoing cooperation tie from Sweden to Denmark can differ from the value of the outgoing cooperation tie from Denmark to Sweden (they are unbalanced), the distance between the same two member states on VoC will be identical and hence balanced. This setup, however, makes it possible to test whether the strength of a cooperation tie from one member state to another is affected by the corresponding difference in value on the independent variable for the two member states. The artificial networks created from the independent variables are hence regressed on the actual cooperation network. To test the significance of the correlation between independent variables and the cooperation network, a p-value is given

using a Quadratic Assignment Procedure. What this procedure does is that it creates a series of networks that randomly redistribute the nodes of the existing network (permutations) to test whether the observed correlation between the independent variable and the network is significantly different from the correlations generated by the randomized network. These permutations are hence used to test whether a correlation exists by chance or not (cf. Grund & Densley, 2012).

5. Results

Before evaluating which, if any, of the independent variables explain cooperation patterns before and after the Brexit referendum, it is worth noting the similarities and differences of the networks plotted in Figure 1. One directly visible change, also shown in Table 1, is the (expected) decreasing position of the UK in the network. While still on the upper half of the ranking of member states when it comes to their total network capital, it has a strikingly more limited strength in the network in 2018 compared to 2015. Also, following the expectation about the stability of cooperation patterns in the Council, there is a strong correlation between the two networks (0.77). Despite there being a large similarity, there is no complete overlap, suggesting that there is important variation between the two survey rounds which is worth exploring. The strength of the correlation between the networks of 2015 and 2018 is in parity with the correlation between the networks in 2012 and 2015. This proves the stability of the networks but is a bit surprising in light of the expectation that Brexit will be a major event affecting cooperation in the Council (Huhe et al., 2020; Johansson et al., 2019), and is an indication that the Brexit vote has not had an exceptionally large effect—yet. The point here is, however, not to evaluate changes taking place between 2012 and 2015, and what might explain them, but instead to note that there do seem to have been changes in the network over the studied period. How cooperation changed between the period before the Brexit referendum and after is evaluated here using the outlined independent variables.

The results from the network analyses based on OLS estimation are displayed in Table 2. What is evaluated in each model is the relation between the strength of a network tie between two member states, and their distance on each of the independent variables. For each of the independent variables, which measure the distance between two member states on that variable, a negative effect is expected on the strength of the network tie. That is, as the distance between two member states increases, the strength of the cooperation tie is expected to decrease, and vice versa. The ideological variables are tested in separate models since they are internally correlated.

The regression results show a significant effect of VoC that is robust and substantial in all models. Based on the beta coefficients of models 1 and 2 using the 2015 data,

Table 2. Regression results.

	2015			2018		
	Model 1 B (p-value)	Model 2 B (p-value)	Model 3 B (p-value)	Model 4 B (p-value)	Model 5 B (p-value)	Model 6 B (p-value)
VoC	-0.008*** (0.000)	-0.008*** (0.004)	-0.009*** (0.000)	-0.010*** (0.000)	-0.010*** (0.000)	-0.010*** (0.000)
Economic left–right	-0.002 (0.340)			-0.003 (0.218)		
European integration		0.000 (0.910)			-0.006* (0.044)	
GAL-TAN			-0.002 (0.376)			-0.006** (0.004)
Intercept	0.058	0.052	0.058	0.060	0.064	0.068
Dyads	378	378	378	378	378	378

Notes: Dependent variable: strength of cooperation tie. * = $p < 0.05$, ** = $p < 0.01$, *** = $p < 0.001$.

the predicted cooperation tie between the most distant member states on VoC in 2015 (Ireland and France) decreases by 0.042, which corresponds to 8% of the value of the strongest tie between two member states in the network. The predicted cooperation tie based on the 2018 data decreases by 0.055, corresponding to 13% of the value of the strongest tie between two member states in the network. The effect of VoC is hence stable, and if anything, it is becoming more important following the Brexit referendum. The importance of VoC also explains why there is stability in cooperation patterns in the Council, in line with what previous research has only indirectly suggested (cf. Kaeding & Selck, 2005; Thomson, 2009). It also offers some clues as to why geography structures cooperation, as VoC in part follows geographical patterns, with member states on the Liberal Market Economies side of the spectrum being more prevalent in eastern Europe and Social Market Economies in western Europe.

There is no effect of the ideological variables in the 2015 data, but in 2018 a significant effect emerges on both the EU integration dimension and the GAL-TAN dimension. That both these variables become significant simultaneously is not entirely surprising as they too are correlated. Governments that are more closely positioned on the EU integration and GAL-TAN dimension in 2018 hence also have stronger network ties. For the EU integration dimension, UK and Portugal are the most distant member states, and the beta coefficient of model 5 predicts a decrease in the value of their network tie by 0.031, corresponding to 7% of the value of the strongest tie between two member states in the network. The equivalent figure on the GAL-TAN dimension (where Malta and Hungary are at the extremes) is 0.043, which is 10% of the value of the strongest tie between two member states in the network.

The results offer an indication that cooperation indeed might be changing in the period after the Brexit

referendum, and that ideologically driven cooperation becomes more important. The data does not allow any conclusive inferences to be made on whether it is indeed the result of the Brexit referendum or other concurrent events that actually explain the changing dynamic of Council cooperation. But the Brexit referendum is the key event taking place in-between the points of measurement, and we know from previous studies that member states are adjusting cooperation to this new political landscape. In addition, the patterns found follow the logic outlined above, that Brexit forces member states to adjust their cooperation, and in this process they might start to approach member states based on other similarities than the ones that have previously structured cooperation.

It is striking that it is the EU integration and GAL-TAN dimensions that grow in importance in the period after the referendum, and it stands in contrast to the previous findings on ideological cleavages in the Council, which have predominantly pointed to the importance of the left–right dimension (Hagemann, 2008; Hagemann & Hoyland, 2008). There is a general understanding that European politics have been getting increasingly identity-based over the last decades (e.g., Hooghe & Marks, 2009, 2018), and it might be that this has now also entered into the traditionally less ideology-infused Council. At the same time, it is worth highlighting that the size of the effect of VoC also increased following the Brexit referendum, indicating that member state representatives are nourishing pre-existing cooperative ties as well.

6. Conclusion

This article has explored changes in member states' cooperative relations in the Council of the EU comparing the period before the Brexit referendum in 2016 with the period after. This contributes both to the discussion about the effect of Brexit on the EU and its institutions,

and more generally to the literature on what shapes cooperative relations between member states in the Council. Cooperative relations in the Council have historically been stable at the aggregate level, and the UK has held a central position in Council networks over time and has ranked high when measuring member states' network capital (Johansson et al., 2019). This position has significantly weakened in the period following the Brexit referendum, indicating not only a decrease in the UK's standing but also that other member states have started to adjust to the post-Brexit cooperative environment in the Council. The question of how the member states have adjusted has been in the focus of this article.

The results clearly show that there is a stable relationship between member states' proximity on the VoC scale and the strength of their cooperative ties. Member states that have historically established similar types of regulatory systems domestically are hence likely to also find common ground in the Council, resulting in a closer cooperative relation. It is plausible that this will continue to be an important determinant for cooperation in the long term, beyond the immediate Brexit years. It hence provides further evidence of the importance of this dimension for member state preferences and policy conflicts in the EU (Fioretos, 2001; Larsson & Naurin, 2019). In line with the outlined expectation, the Brexit referendum also seems to affect the structure of cooperation, indicated by the emerging importance of the member state governments' ideological proximity in the period after the Brexit referendum. The EU member states have hence realigned on new dimensions after the UK's withdrawal became a reality, as evident by the significant effects of both the EU integration positions and the GAL-TAN positions of governments. Also, in this respect, the findings offer new insight into the structure of cooperation in the Council. While some previous studies have pointed to the importance of left–right divisions for position taking (Hagemann, 2008; Hagemann & Hoyland, 2008), this research clearly points to the revival of the EU integration dimension (Mattila, 2004) and the introduction of the GAL-TAN dimension in the Council.

The results presented here should not be taken as conclusive evidence that the Brexit referendum is the cause of the growing importance of these ideological dimensions, but it has been demonstrated that these are coincidental trends. The Brexit vote, for instance, happened as the migration crisis and its political consequences unfolded, both of these events can be interpreted as an expression of growing politicization of the EU. The Brexit vote has, however, here been suggested to be a trigger for member states to adjust and seek new cooperative relations in the Council. This is also in line with the findings about the emerging effect of the ideological dimensions. At the same time, the stable, and even growing effect of VoC for cooperation suggests that politicization has not been the only driver of political conflict in this period. Member state relations in the Council remain stable and continue to follow these structural

preferences. This is an important complement to the image of an increasingly politicized and changing cooperative space within the EU. Some have suggested that politicization may result in polycleavage, cutting across issues and member states (Zeitlin, Nicoli, & Laffan, 2019). In light of this, the results shown here might be a sign of an emerging, more complex, conflict space within the EU. Whether it is a persisting trend or only a temporary effect will, however, need to be further explored.

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Conflict of Interests

The author declares no conflict of interests.

References

- Bakker, R., Hooghe, L., Jolly, S., Marks, G., Polk, J., Rovny, J., . . . Vachudova, M. A. (2020). *2019 Chapel Hill expert survey: Version 2019.1* [Data set]. Chapel Hill: University of North Carolina. Retrieved from <https://www.chesdata.eu>
- Beyers, J., & Dierickx, G. (1998). The working groups of the Council of the European Union: Supranational or intergovernmental negotiations? *Journal of Common Market Studies*, 36(3), 289–317.
- Börzel, T. A., & Risse, T. (2009). Revisiting the nature of the beast: Politicization, European identity, and post-functionalism: A comment on Hooghe and Marks. *British Journal of Political Science*, 39(1), 217–220.
- Costello, R., Thomassen, J., & Rosema, M. (2012). European Parliament elections and political representation: Policy congruence between voters and parties. *West European Politics*, 35(6), 1226–1248.
- de Wilde, P. (2011). No polity for old politics? A framework for analyzing the politicization of European integration. *Journal of European Integration*, 33(5), 559–575.
- de Wilde, P., & Lord, C. (2016). Assessing actually-existing trajectories of EU politicisation. *West European Politics*, 39(1), 145–163.
- Döring, H., & Manow, P. (2019). *Parliaments and governments database (ParlGov): Information on parties, elections and cabinets in modern democracies: Development version* [Data set]. Retrieved from <http://www.parlgov.org>
- Elgström, O., Bjurulf, B., Johansson, J., & Sannerstedt, A. (2001). Coalitions in European Union negotiations. *Scandinavian Political Studies*, 24(2), 111–128.
- Eurostat. (2020a). *Total social protection expenditure*

- as share of GDP [*spr_exp_sum*] (indication). Luxembourg: Eurostat.
- Eurostat. (2020b). *Total taxation as share of GDP [gov_10a_taxag]* (indication). Luxembourg: Eurostat.
- Fioretos, O. (2001). The domestic sources of multilateral preferences: Varieties of capitalism in the European community. In P. A. Hall & D. Soskice (Eds.), *Varieties of capitalism* (pp. 213–244). Oxford: Oxford University Press.
- Grund, T. U. (2015). *nwcommands: Network Analysis in Stata* [Computer software]. Retrieved from <http://nwcommands.org>
- Grund, T. U., & Densley, J. A. (2012). Ethnic heterogeneity in the activity and structure of a Black street gang. *European Journal of Criminology*, 9(4), 388–406.
- Hagemann, S. (2008). Voting, statements and coalition-building in the Council from 1999 to 2006. In D. Naurin & H. Wallace (Eds.), *Unveiling the Council of the European Union: Games governments play in Brussels* (pp. 36–63). London: Palgrave Macmillan.
- Hagemann, S., & Hoyland, B. (2008). Parties in the Council? *Journal of European Public Policy*, 15(8), 1205–1221.
- Hall, P. A., & Soskice, D. W. (Eds.). (2001). *Varieties of capitalism: The institutional foundations of comparative advantage*. Oxford: Oxford University Press.
- Hooghe, L., & Marks, G. (2009). A postfunctionalist theory of European integration: From permissive consensus to constraining dissensus. *British Journal of Political Science*, 39, 1–23.
- Hooghe, L., & Marks, G. (2018). Cleavage theory meets Europe's crises: Lipset, Rokkan, and the transnational cleavage. *Journal of European Public Policy*, 25(1), 109–135.
- Hooghe, L., Marks, G., & Wilson, C. J. (2002). Does left/right structure party positions on European integration? *Comparative Political Studies*, 35(8), 965–989.
- Höpner, M., & Schäfer, A. (2012). Embeddedness and regional integration: Waiting for Polanyi in a Hayekian setting. *International Organization*, 66(3), 429–455.
- Hosli, M. O., Mattila, M., & Uriot, M. (2011). Voting in the Council of the European Union after the 2004 enlargement: A comparison of old and new member states. *JCMS: Journal of Common Market Studies*, 49(6), 1249–1270.
- Huhe, N., Naurin, D., & Thomson, R. (2017). *With or without you? Policy impact and networks in the Council of the EU after Brexit: Vol. 2017:8epa*. Stockholm: SIEPS.
- Huhe, N., Naurin, D., & Thomson, R. (2018). The evolution of political networks: Evidence from the Council of the European Union. *European Union Politics*, 19(1), 25–51.
- Huhe, N., Naurin, D., & Thomson, R. (2020). Don't cry for me Britannia: The resilience of the European Union to Brexit. *European Union Politics*, 21(1), 152–172.
- Johansson, M., Naurin, D., & Lindahl, R. (2019). *Samarbete och inflytande i EU:s ministerråd* [Cooperation and influence in the EU Council of ministers] (Vol 2019:6epa). Stockholm: SIEPS.
- Kaeding, M., & Selck, T. J. (2005). Mapping out political Europe: Coalition patterns in EU decision-making. *International Political Science Review*, 26(3), 271–290.
- Larsson, O., & Naurin, D. (2019). Split vision: Multidimensionality in the European Union's legal policy space. *International Studies Quarterly*, 63(3), 492–506.
- Mattila, M. (2004). Contested decisions: Empirical analysis of voting in the European Union Council of Ministers. *European Journal of Political Research*, 43(1), 29–50.
- Mattila, M. (2008). Voting and coalitions in the Council after enlargement. In D. Naurin & H. Wallace (Eds.), *Unveiling the Council of the European Union: Games governments play in Brussels* (pp. 23–35). London: Palgrave Macmillan.
- Mattila, M. (2009). Roll call analysis of voting in the European Union Council of Ministers after the 2004 enlargement. *European Journal of Political Research*, 48(6), 840–857.
- Naurin, D., Johansson, M., & Lindahl, R. (2020). *The negotiations in the Council of the European Union dataset* [Data set]. <https://doi.org/10.5878/cfsv-k581>
- Naurin, D., & Lindahl, R. (2008). East-north-south: Coalition-building in the Council before and after enlargement. In D. Naurin & H. Wallace (Eds.), *Unveiling the Council of the European Union: Games governments play in Brussels* (pp. 64–78). London: Palgrave Macmillan.
- Polk, J., Rovny, J., Bakker, R., Edwards, E., Hooghe, L., Jolly, S., . . . Zilovic, M. (2017). Explaining the salience of anti-elitism and reducing political corruption for political parties in Europe with the 2014 Chapel Hill expert survey data. *Research & Politics*, 4(1), 1–9.
- Thomson, R. (2009). Actor alignments in the European Union before and after enlargement. *European Journal of Political Research*, 48(6), 756–781.
- Visser, J. (2019). *ICTWSS Database: Version 6.0* [Data set]. Amsterdam: Amsterdam Institute for Advanced Labour Studies (AIAS). Retrieved at <https://www.ictwss.org/downloads>
- Zeitlin, J., Nicoli, F., & Laffan, B. (2019). Introduction: The European Union beyond the polycrisis? Integration and politicization in an age of shifting cleavages. *Journal of European Public Policy*, 26(7), 963–976.
- Zürn, M. (2016). Opening up Europe: Next steps in politicisation research. *West European Politics*, 39(1), 164–182.

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Article

Managing Disintegration: How the European Parliament Responded and Adapted to Brexit

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Abstract

Brexit makes both a direct and an indirect impact on the European Parliament (EP). The most direct consequence is the withdrawal of the 73-member strong UK contingent and the changing size of the political groups. Yet, the impact of Brexit is also felt in more oblique ways. Focussing on the role and influence of the EP in the EU–UK negotiations, and of the British delegation in the EP, this article shows that the process, and not just the outcome of Brexit, has significant organisational implications for the EP and its political groups. Moreover, it also showcases the importance of informal rules and norms of behaviour, which were affected by Brexit well ahead of any formal change to the UK status as a Member State. The EP and its leadership ensured the active involvement of the EP in the negotiating process—albeit in different ways for the withdrawal agreement and the future relationship—and sought to minimise the costs of Brexit, reducing the clout of British members particularly in the allocation of legislative reports.

Keywords

Brexit; European Parliament; European Union; MEPs; negotiations; trade

Issue

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1. Introduction

Brexit makes both a direct and an indirect impact on the European Parliament (EP), which can be observed with respect to its organisation, policy positions and political equilibria. The most direct consequence is the withdrawal of the 73-member strong UK contingent, which was scheduled to take place on Brexit day, originally foreseen on 29 March 2019 and finally occurring at the end of January 2020. The newly vacant seats required a deep reflection by the EP on their redistribution. Furthermore, the exiting of the British MEPs affected the political groups and their relative size differently. Brexit also had

consequences for the British administrators and parliamentary assistants, possibly jeopardizing their jobs.

The impact of Brexit was also felt in a more oblique way. Since the referendum outcome, and especially after the notification of withdrawal by the then British Prime Minister Theresa May in March 2017, the UK MEPs were in a ‘limbo’ situation. Formally, they still enjoyed their full rights (including, of course, voting rights). Yet, as outgoing members, they were somewhat ‘diminished’ members, finding themselves in the uneasy situation of fixed-term lawmakers representing a departing Member State; many of them were watched with some suspicion by their fellow MEPs.

The objective of this article is to provide a more fine-grained empirical assessment of the impact of Brexit on the EP and, in turn, of how the EP sought to manage the British withdrawal. It goes beyond descriptive or normative evaluations of formal changes, such as the redistribution of the UK seats post-Brexit (see, e.g., Besselink, Swider, & Michel, 2019; Kalcik & Wolff, 2017). It places its analytical focus on more informal, but by no means less important, changes such as the organisational adaptation undertaken by the EP to contribute to the Brexit negotiations, and on the role of the UK delegation, from the referendum up to Brexit day.

The literature has already provided some assessments, particularly on the formal powers and actual role played by the EP in the first phase of the EU–UK Brexit negotiations (Bressanelli, Chelotti, & Lehmann, 2019; Brusenbauch Meislova, 2019; Closa, 2020; Stoll, 2017) and on the early institutional changes undertaken by the EP (i.e., Jacobs, 2018; Shackleton, 2016). Yet, such studies were written before Brexit effectively happened, dealing therefore mostly with theoretical scenarios and hypotheses. Some provide evidence about the period immediately after the Brexit referendum, identifying early changes in behaviour or attitudes by the key players inside the EP. Furthermore, extant research presents very specific assessments on particular impacts of Brexit, often embedding them into broader analyses of the EU institutional set-up post Brexit.

This article seeks to fill a gap in the existing scholarship, providing an empirical assessment of what has effectively occurred in the EP during the process, and after the implementation, of Brexit. It shows that the EP has not missed the change to strengthen its institutional role and preserve its policy-making capacity as Brexit unfolded. By managing disintegration, it has made a further step in its long quest for institutional empowerment (i.e., Héritier, Meissner, Moury, & Schoeller, 2019; Rittberger, 2005). At the same time, its influence in the negotiations is more difficult to trace, bringing further evidence to the argument that institutional clout should not be equated with policy impact (Bressanelli & Chelotti, 2019).

In the first part of the article, we aim to evaluate the role played by the EP in the Brexit negotiations—both with regard to the UK’s withdrawal from the EU and (more extensively) to the future EU–UK relationship. This is based on the analysis of official documents and original interviews with EU officials and policy advisors of the political groups of the EP. Interviews took place either in person or—after the outbreak of the Covid-19 pandemic—remotely. The list of interviewees is provided in the Supplementary File, with only basic information provided on their role and seniority not to breach the confidentiality agreement. It is important to underline that all interviewees played an active part in the Brexit process. The second part of the article explores the role played by the British MEPs in the EP during the Brexit period (June 2016–January 2020). This section relies on

data such as the official information on MEPs’ careers—retrieved from the website of the EP—and EU legislation (Reh, Bressanelli, & Koop, 2020).

2. The EP and the Negotiations of the Withdrawal Agreement

The Brexit negotiations opened on 29 March 2017, when the UK government notified the European Council of its intention to leave the EU—although they formally started only in June 2017. The process ended on 31 January 2020 with the UK’s departure from the EU, following the ratification of the withdrawal agreement, including the non-binding Political Declaration by the UK parliament and the EP. A revised version was negotiated by Boris Johnson and endorsed in October 2019.

Article 50 of the Treaty on European Union outlines the procedures for an EU Member State to exit the EU (Treaty on European Union, 2020). The EP is mentioned only once: Its role is limited to giving consent to the withdrawal agreement between the EU and the departing state. The Committee on Constitutional Affairs was responsible for preparing the EP’s consent to the withdrawal agreement, in view of the obvious constitutional implications of a Member State leaving the EU. Previous research (Bressanelli et al., 2019; see also Brusenbauch Meislova, 2019; Closa, 2020), has covered the EP’s participation in the Brexit process until November 2018, when the first version of the withdrawal agreement was agreed. This research has reached several conclusions.

First, the EP used the scant provisions of Article 50 to increase its institutional powers. Through its power of consent, the EP managed to be kept closely informed at each negotiation round and to participate in key decisions throughout the Brexit process (Interview #1). The EP became a ‘quasi-negotiator,’ albeit not directly invited to the deal-making table.

Second, internally the EP’s Brexit activities were overseen at the highest political level—the Conference of Presidents—which established the Brexit Steering Group (BSG), chaired by Guy Verhofstadt. Considering the need to avoid a public scattering of positions, preparation of the resolutions leading to the final consent decision came under the strict control of the BSG. Most contacts with Chief Negotiator Michel Barnier and the Commission Task Force were also managed by this group (Interview #2). Five political groups (EPP, S&D, RENEW, Greens-EFA, and GUE/NGL) participated in the BSG: They put aside minor divergences to present a united front in the negotiations. The two pro-Brexit groups—EFDD, where British MEPs had considerable influence, and ENF—were instead not admitted to the BSG. At the same time, EP standing committees were side-lined to a large extent, and their inputs onto the EP’s position was rather marginal. This also had the effect that the EP’s Brexit resolutions were quite succinct and focussed—directed at signalling the EP’s positions and redlines to the EU and UK negotiators.

Third, the restricted and senior composition of the BSG has allowed the EP to engage in the political strategizing of the negotiations. The BSG worked very closely and constructively with the EU Council and particularly with the Commission's Task Force. Significantly, the EP and the Commission developed a well-oiled mechanism of sending out mutually useful and reinforcing political signals, usually arriving at a strong coherence of tactics and strategy. Commission officials were 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 Barnier (Interview #4).

Fourth, the EP, EU Council and Commission had very similar preferences and, as a consequence, it is often difficult to detect the EP's specific influence in the negotiations. More specifically, the EP chose to concentrate on citizens' rights, with the other two priority issues (the financial settlement and the Irish border) remaining less salient. According to observers of the negotiations (e.g., Usherwood, 2018), the Council, the UK government and even the Commission attributed less importance to the quite existential problems arising for many British and EU individuals as a consequence of Brexit. The EP insisted instead quite strongly on issues such as applications for permanent residency, work permits or travel regulations. In fact, in this field, the EP managed to directly change some provisions of the withdrawal agreement, for instance with regard to the guarantees of citizens' rights during the transition period and to the rights of future spouses of EU/UK citizens (Interview #3). Throughout the negotiations, the EP also supported and gave a voice to activist groups and European Citizens' Initiatives trying to reverse Brexit or to maintain EU citizenship for British citizens after the withdrawal.

Since November 2018, the Brexit process had stalled—given the repeated failures of May's government to push the withdrawal agreement through the UK parliament. It got revitalised when Johnson became prime minister: His government aimed and managed to change the nature of the Irish backstop and a few aspects of the Political Declaration. This revised version was the one eventually voted at Westminster and in the EP. Over this later period, the EP passed two additional resolutions—with the total of the EP's Brexit resolutions during the withdrawal agreement negotiations amounting to six.

On 18 September 2019, the EP adopted a resolution confirming its support for the current withdrawal agreement. MEPs stated that they would be ready to revert to a Northern Ireland-only backstop, but they would reject a deal without a backstop. In terms of the future relationship, they reiterated the points made in the March 2018 resolution. The EP called again for an association agreement with the UK, and it vigorously recalled that high level of access to EU market would need to come

with strong level playing field provisions—absent which the EP will fail to ratify the future trade agreement. The September 2019 resolution also confirmed that the EP's "first priority" in the withdrawal agreement negotiations was safeguarding the rights of EU citizens in the UK and British citizens in the EU. It is far from surprising then that the last EP resolution on these matters before Brexit day was specifically on "implementing and monitoring the provisions on citizens' rights in the withdrawal agreement" (15 January 2020).

Finally, on 29 January 2020 the EP plenary approved the withdrawal agreement with a large majority—621 votes in favour, 49 against and 13 abstentions. Most speakers in the debate pointed out that Brexit was not the end of the UK–EU cooperation, although the negotiations on the future UK–EU relationship appeared full of obstacles. In the withdrawal agreement negotiations, the EP had a lesser role than the Commission and the Council. And yet, it displayed a remarkable organisational adaptability and a strong capacity to apply the extant legal framework to be involved in the negotiations. The next section will evaluate the role played by the EP in the negotiations of the future UK–EU relationship.

3. The EP and the Negotiations of the Future Relationship

The negotiations over the future relationship formally started on 2 March 2020. In this article, we cover the negotiations until the completion of the ninth round (29 September–2 October 2020). We first trace the organizational response of the EP to its participation in the negotiations, and then evaluate the nature of the EP's involvement as well as its substantive positions.

3.1. Organisational Adaptation

At the end of the withdrawal agreement negotiations, some key parliamentary actors were quite dissatisfied with the BSG model (Interview #5, Interview #6). To them, the BSG's and the Conference of Presidents' strong control appeared overweening and dominated by the "holy alliance" of mainstream political groups (Interview #7). The complete absence of the EP's formal preparation of plenary votes through committees was noted and regretted. Several actors felt excluded from the Brexit process. Consequently, the Conference of Presidents announced in December 2019 that it would "reconsider the role and the structure of the Steering Group at a subsequent meeting" (European Parliament, 2019). In early 2020, even before the UK's final departure on 31 January, the Conference of Presidents and the Conference of Committee Chairs were approached by both the BSG president and committee chairs, the latter in particular asking to change the practice adopted for the negotiation in favour of a proper implication of the expertise of all committees (European Parliament, 2020a).

In their January and February 2020 meetings, the Conference of Presidents and the Conference of Committee Chairs reacted to these requests. They concluded that a “balanced approach between maintaining a permanent structure and enabling committees to fulfil their role” was needed, while at the same time the Conference of Presidents retained “the overall responsibility and political oversight” (European Parliament 2020b). As a result, the UK Coordination Group replaced the BSG as of 1 February 2020. When accepting his appointment to chair the UK Coordination Group, David McAllister assured group presidents and committee chairs alike that “the prerogatives of the parliamentary committees would be fully respected [and] that the UK Coordination Group had a coordination and monitoring role, without prejudice to the aegis of the Conference of Presidents” (European Parliament, 2020b).

To find a balance between the priorities of political groups (basically, to develop a coherent strategy and to defend the EP’s institutional ‘prerogatives’) and those of standing committees (mainly, to represent sectoral objectives and to provide technical expertise) is a delicate endeavour. In the words of one interviewee, the challenge was to find a “workable alchemy” (Interview #7). Firstly, the UK Coordination Group incorporates MEPs from all groups, including the two Eurosceptic groups whose predecessors had previously been kept outside the BSG. Secondly, the lead committees responsible for preparing the EP’s strategy and final consent changed, from the Committee on Constitutional Affairs to the Committee on Foreign Affairs and the Committee on International Trade.

3.2. *The Participation of the EP in the Negotiations*

Although the exact nature of the agreement on future EU–UK relations is still unclear at the time of writing, most officials and observers expect that it would be a mixed agreement, requiring the consent not only of the House of Commons and the EP but also of national parliaments. The legal basis that was used to open the negotiations with the UK was article 217 TFEU which, among other things, states that the EP “shall be immediately and fully informed at all stages of the procedure” (Treaty on the Functioning of the European Union, 2020). These legal norms, together with the inter-institutional agreements and informal practices that have further specified these provisions (cf. Delreux & Burns, 2019; Van Den Putte, De Ville, & Orbie, 2015), assure that the EP is significantly involved in trade negotiations. However, in the case of the relationship with the UK, the participation of the EP in the discussions is greater than that of any other trade negotiation. The establishment of the UK Coordination Group is an indicator of that. The Task Force is also willing to talk to the EP much more often: “With Japan, you would not get monthly, or even sometimes weekly, meetings with the relevant Commissioner” (Interview #8). The exchange of views with the EP is thus

much more continuous, detailed and involves a higher number of people.

However, unlike the withdrawal agreement negotiations, the EP remained quite peripheral in the construction of the EU position. The more open nature of the UK Coordination Group and the greater involvement of committees removed the space for confidential discussion with the EP which had existed with the BSG. Since February the nature of the EP–Commission discussions has become more top-down—with the Task Force coming to inform the EP, repeating parts of what Michel Barnier had said already in the press conference and answering questions. The strategizing element got lost, and the EP–Commission relationship has been less strong. As a result, despite a more favourable legal framework, the EP has so far had a diminished role in the negotiations, compared to the withdrawal agreement. As one EP official summarised, “the EP is still very involved in discussions at all sorts of different levels, but less able to influence negotiations” (Interview #8). One indicator for this is the EP’s unsuccessful demand for a period of reflection and debate in order to examine the complicated texts that would come out of the negotiations when they are concluded. The Conference of Presidents has underlined several times that, following the rejection of any extension of the transition period by the UK, the final texts must be delivered at the latest on 31 October 2020 to enable the EP to give or withhold its consent in an orderly manner (see, e.g., European Parliament, 2020c). At the time of writing (mid-November), negotiations were still ongoing.

3.3. *The EP’s Positions and EU Cohesion*

The EP adopted two resolutions in the period between February and September 2020. From a substantive point of view, they reiterate points that the EP had previously made (cf. the EP resolution of 14 March 2018 on the framework of the future EU–UK relationship). The goal is to reach an ambitious and broad economic partnership with the UK—which will require the UK to remain aligned to old and new EU rules in fields such as environment, competition or labour standards. The rationale behind is that strong economic links need to go together with a level playing field, not to give the UK unfair advantages.

These two resolutions are quite different. The first resolution was more succinct and strategic than the latter one—though still more voluminous than the average withdrawal agreement resolution. This is explained by the different procedures used by the EP. The procedure to prepare the first resolution still somewhat resembled that of the withdrawal agreement resolutions (Interview #6). The newly constituted UK Coordination Group made use of the BSG’s practice to collect committee input informally and take responsibility for submitting the draft resolution before the plenary vote, as the EP had a very tight deadline for establishing its position before the adoption of the negotiating mandate by the Council (Interview #5).

For the June resolution, the Rule 114 procedure was applied—which, *inter alia*, guarantees the proper involvement of responsible committees in the preparation of plenary votes. The rapporteurs of the two lead committees, the Committee on Foreign Affairs and the Committee on International Trade, steered the collection of committee opinions in a fairly traditional manner (Interview #7). Although cut back considerably during the preparatory stage, the adopted text still runs to some 170 paragraphs over more than 30 pages. It contains several redundancies and repetitions, and it is surprisingly reticent in mentioning only twice the legal necessity for the EP to give its consent to the final deal (Interview #5 and Interview #6). The resolution also suffers from a problem encountered in several committees: MEPs seemed to have some difficulty to accept that, one way or another, relations with the UK are bound to change post-Brexit. Their wish to keep as much of the status quo as possible made the work of the UK Coordination Group more difficult, as the EP’s and Commission’s overarching normative principle is that a third country could and should not have the same advantages and obligations as a Member State (Interview #7).

These resolutions broadly represent the points of view of the five political groups that were already represented in the BSG (EPP, S&D, RENEW, Greens-EFA, and GUE/NGL). As they had worked closely in the withdrawal agreement negotiations, they developed a rather coherent approach towards the new negotiations. They do have different priorities and emphasise different negotiating issues. For instance, if they all agree on the necessity to preserve a level playing field, they put different

emphases on various themes (e.g., GUE/NGL deemphasising state aid control and focussing more strongly on environment and workers’ rights). Yet, on the key issues, they tend to coalesce around what the Commission presents (Interview #8).

The EP’s position is broadly in line with those of the Commission and the EU Council. There is still remarkable unity among the EU institutions and Member States (Interview #6). It is difficult to identify relevant issues where the three institutions diverge. But it is also difficult to identify the key priorities of the EP with regard to the negotiations on the future EU–UK relationship—whereas on the withdrawal agreement it was clearly possible to do so (i.e., citizens’ rights). This is in part due to the fact that the last two resolutions are very broad and cover the whole range of the Commission’s mandate: “So what is exactly the breaking point? Is it state aid? Is it environment? Is it fisheries? The EP itself has not picked up one or two points on which to profile itself” (Interview #8). This also limits its capacity to leave a significant mark on the negotiations. On the whole, the EP continues to put its weight behind the Commission, such as in a statement of the UK Coordination Group, co-signed by the Chairs of six political groups (this also includes the European Conservatives and Reformists), on the impact of the UK Internal Market Bill on the implementation of the withdrawal agreement, expressing deep concern over the lack of progress in the negotiations and over the intended breach of international law through the Bill (European Parliament, 2020c).

To sum up, Table 1 shows the main similarities and differences of the EP’s role in the two Brexit negotiations.

Table 1. Comparing the EP’s role in the negotiations.

	Withdrawal Agreement	Future Relationship
Formal rules	Power of consent	Power of consent, full information
Institutional empowerment	Right of being informed and of participation	More involvement and more information compared to a ‘normal’ trade negotiation
Organizational adaptation	High level political guiding (BSG) Limited role of committees	Wider participation (UK Coordination Group) Much greater role of committees
Intra-EP divergences	Significant unity	Significant unity
Differences between EP and other EU institutions	Strong unity (very similar preferences)	Strong unity (very similar preferences)
Participation in the negotiations	Quite active + political strategizing	Less intense participation
Overall EP’s influence	Relevant on key issues	More limited and potentially linked to the implementation of the withdrawal agreement
EP’s focus in the negotiations	Selective attention (i.e., citizens’ rights)	Covering a higher number of less well-defined priorities
Resolutions	Relatively short, quite targeted	Quite lengthy, less focussed

4. The Impact of the Brexit Process on the UK Delegation in the EP

As the previous section has shown, the impact of Brexit should not be expected only with the actual exit of the UK from the EU, but it could already be observed during the process of withdrawal. There are organisational, attitudinal and behavioural changes that were undertaken by the relevant actors in preparation of Brexit day. A very telling case is that of the European Electoral Act. Its reform was attempted by the EP seven months before the British referendum, but the success of ‘Leave’ radically changed the legal and political context. In view of the uncertainty if, when, and how the UK would withdraw from the EU, and the time necessary for transposing changes to the Electoral Act into national legislation, it became clear that a rapid and pragmatic interim solution would need to be found. Concerning the composition of the EP, the adopted proposal provided for a reduction of the total number of members from 751 to 705. The difference of 27 seats between the number of former UK seats (73) and the reduction of the total (46) was used to correct the non-respect of the principle of degressive proportionality that still existed with several Member States in the previous distribution of seats.

Such an impact of Brexit, and the capacity of the EP to adapt pragmatically to the changing environment in which it operates, can also be seen when analysing the role of the British delegation in the EP between the referendum and the definitive withdrawal. Before Brexit, the British delegation was generally considered rather influential. For instance, Francis Jacobs writes that “the role of British MEPs has been very great and many of the most influential MEPs have been British” (2018, p. 87). Simon Hix and Giacomo Benedetto (2016) found that the UK members are selected as lawmakers more often than the MEPs of any other Member State, except Germany. This section assesses whether these assessments still hold true while Brexit day was looming on the EP. In other words, has the influence of the UK delegation declined already during the Brexit process (2016–2019), before the actual withdrawal took place? To what extent has the EP—i.e., its leadership—minimised the disruption of Brexit by limiting the institutional clout and policy influence of the British MEPs?

In order to systematically address this question, this section mainly compares three periods. The first part of the 2014–2019 EP, until the referendum on 23 June 2016, should not be affected by Brexit. While Prime Minister David Cameron had promised a referendum on membership in January 2013, which became almost inevitable as the 2015 elections returned a single-party majority to the Tories, the general expectation—at least up to early 2016—was that ‘Remain’ would win. Therefore, a ‘business-as-usual’ scenario should effectively describe the activities of the British delegation elected in 2014.

In the latter part of the 2014–2019 legislature, instead, following the referendum, it can be hypothe-

sised that British MEPs may have started to feel the cost of their forthcoming departure. Their parliamentary colleagues could become more hesitant to attribute positions of responsibility to the British members, who were expected to quit Brussels soon and therefore likely to leave their job before the end of term (cf. Shackleton, 2016, p. 821; see also Rankin, 2019). In addition, allocating senior roles and important legislative dossiers to the British MEPs could be symbolically untenable, as the UK had contested the integration process in an unprecedented way and its MEPs could not be ‘rewarded’ for that, whatever their preferences on the EU.

Finally, the third period is the short time in which the 73 member-strong delegation elected in May 2019 represented the UK in Brussels, until Brexit finally happened on 31 January 2020. With a very fixed-term mandate, the newly elected MEPs should hardly be attributed any role of responsibility in the ninth EP (2019–2024).

Empirically, the Brexit impact on the UK delegation is observed by mapping changes on the power positions obtained by its MEPs over time. Specifically, two types of power positions will be looked at. First, the nationality of the holders of top offices (or “mega-seats”; see Benedetto, 2015) such as the Presidency, the 14 Vice-Presidencies and the five Quaestors, and the Chairmanships and Vice-chairmanships of the 22 (sub)committees, will be identified. Each legislature is split in two parts, as there is a new election at mid-term of the members of the Bureau, of the Chairs and Vice-chairs of the committees. We only focus on positions which are attributed via inter-group competition, rather than on positions (e.g., the political group chairs and committee coordinators) which are allocated within the groups. While it is possible to include the latter in our computation, the index gets over-inflated, as it is easier to obtain positions like group chair or committee coordinator by having a large and dominant national party delegation in a small political group.

Figure 1 maps the ‘mega-seats’ obtained by the UK delegation at the beginning of a new legislature and at mid-term, starting in 2004 (e.g., EP6-I and EP6-II). It displays both the simple number of offices (with every position counting equally), and a more elaborated ‘weighted’ index, which reflects the fact that (say) the EP Presidency is more important than the position of Quaestor, or that being the Chair of the Internal Market Committee is widely regarded as more influential than being the Chair of the Culture Committee. The weighting follows the methodology implemented by VoteWatch Europe (2017a).

As Figure 1 shows, there has been a downward trend in the number of (weighted) office positions obtained by the UK since EP6. In the second half of the 2004–2009 EP, the UK could count on a total of 13 positions, including two EP Vice-Presidents. It is worth stressing that, back then, the Conservative Party was still a member of the largest political group, the EPP, albeit with a special autonomy (hence the group label: EPP-ED). In EP7-I,

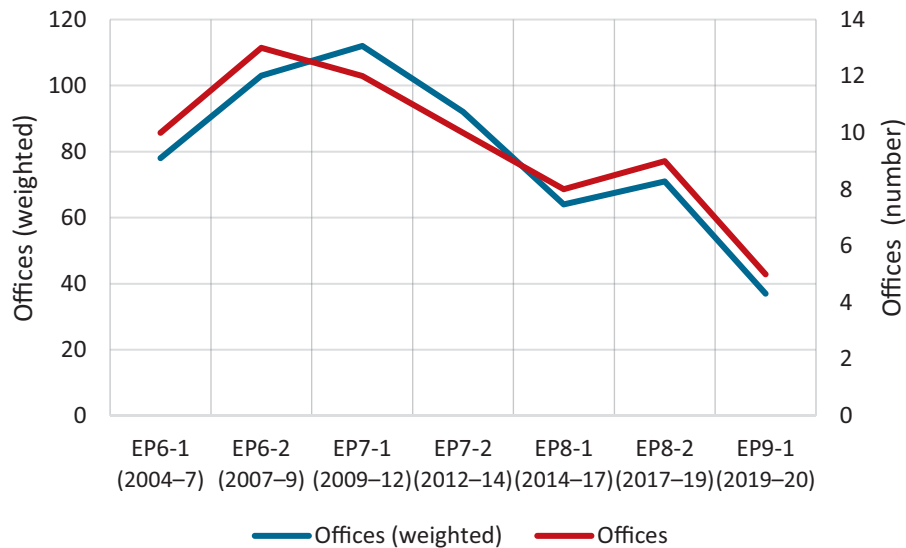


Figure 1. The UK delegation and leadership offices in the EP.

despite the exit of the Tories from the EPP and the formation of a new political group, the ECR, the UK numbers remain good.

The number of offices allocated to the British delegation decreases at the start of EP8, but the UK could still count on three committee Chairs (Civil Liberties, Justice and Home Affairs, Development and Internal Market). The mid-term reshuffle, taking place six-months after the Brexit referendum, did not affect them (cf. Figure 1), but the British general elections, which took place in June 2017, did so.

As Brexit was looming—in March 2017 May’s government formally notified the EU of its intention to withdraw—the June 2017 election represented an opportunity for some British MEP to make their comeback to the national arena. Most prominently, the conservative Chair of the Internal Market committee, Vicky Ford, stood down to contest the domestic elections, and was not replaced in her previous post by a British MEP. Several other senior MEP resigned to take positions at the national level, contributing to an overall loss of influence of the British delegation (cf. *VoteWatch Europe, 2017b*). For instance, Afzal Khan, Vice-Chair of the Subcommittee on Security and Defence, was elected and became part of the shadow cabinet in London.

The most dramatic fall in the number of British positions was observed, unsurprisingly, in July 2019, at the beginning of EP9. The British delegation was only allocated five top jobs: two committee chairs (both to Liberal-Democrat MEPs) and three committee vice-chairs (two to Labour MEPs, one to the Liberal-Democrats). No British member was represented in the EP Bureau. Clearly, the other members were hesitant to assign to any British MEP an institutional role in the EP, with the exception of one political group—RENEW (formerly ALDE)—which selected two members from its second largest party (the Liberal-Democrats) to chair a committee.

In addition to the political willingness to exclude the British members and minimise the costs of eventually replacing them, the composition of the British delegation elected in 2019 did not help the British members. Not only positions such as committee chairs and vice-chairs are allocated using the D’Hondt system, which favours the largest groups but, as Figure 2 shows, a very large number of newly elected members ended up among the Non-Attached (NA). The Brexit Party—which elected 29 members (almost 40% of the UK total)—chose not to affiliate with any political group and was, therefore, de facto excluded from the allocation of posts.

While the largest political group, the EPP, continued not to include any British representative, the Labour delegation within the S&D group was cut by a half. Only four Tory MEPs survived the catastrophic election, considerably reducing their clout inside the ECR group. On the other hand, the Liberal-Democrats could celebrate the election results, with 17 seats won and a prominent role to play within the RENEW group. Overall, with such a reduced contingent at the ‘core’ of the EP party system, the British delegation would have suffered significant losses in terms of offices even in ‘normal’ times, which were of course magnified by the shadow of Brexit.

We made a similar mapping exercise for the allocation of parliamentary reports. The political groups bid on the reports in the committees, with the most important ones—those decided through the ordinary legislative procedure—‘costing’ more points. Unfortunately, the very short-lived permanence of the British delegation in EP9 (which left the EP after about seven months), does not allow meaningful comparisons with the former periods. However, the process of Brexit could be expected to bring down the number of ordinary legislative procedure reports assigned to the British members already in EP8. In addition to the reasons previously presented, it seems unlikely that the other MEPs would allow an outgoing member to shape a policy which would

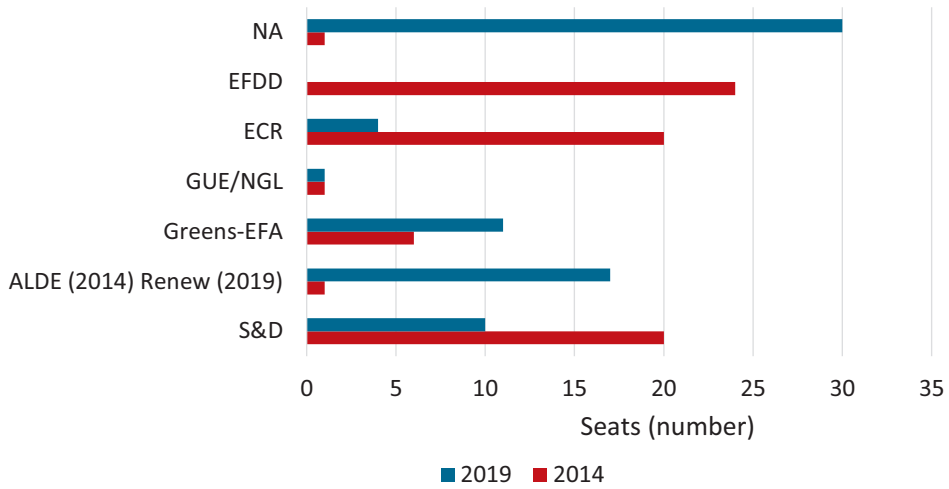


Figure 2. The UK delegation in the political groups: 2019 vs 2014.

no longer apply to the UK, but only to the remaining 27 countries.

Following Hix and Benedetto (2016), we compare the share of MEPs in a legislature (e.g., percentage of UK MEPs/total MEPs) to the share of ordinary legislative procedure reports allocated to the MEPs of a country in a given legislature (e.g., percentage of UK codecision reports/total codecision reports). If the distribution of reports is proportional to the size of the national delegation, the observations in Figure 3 should lie on the 45 degree-line. Observations which fall above the line represent countries which, in a given legislature, have obtained more ordinary legislative procedure reports than their sheer number of MEPs would let one expect.

Confirming the findings of previous scholarship, we observe that the UK delegation used to do better than most other delegations, with the clear exception of

Germany. At the same time, however, the MEPs elected in 2014 seem to have significantly underperformed when compared to their predecessors. While in EP5 (the only other legislature where the UK MEPs underperformed, albeit in a less visible way than in EP8), EP6 and EP7 the share of reports assigned to the UK members is always higher than 10% of the total of ordinary legislative procedure reports, it drops to just 4.6% in EP8. This is an interesting element, which is worth investigating in more depth, by disaggregating the period before and after the referendum in the 2014–2019 legislature.

To ‘isolate’ a potential Brexit effect, Figure 4 splits each legislature (i.e., EP5, EP6 and EP7) in two equal terms of two-and-a-half years, while it takes the Brexit referendum as the cut-off point for EP8. When observing the sheer number of codecision reports attributed to UK members (the vertical bars in Figure 4), a notable

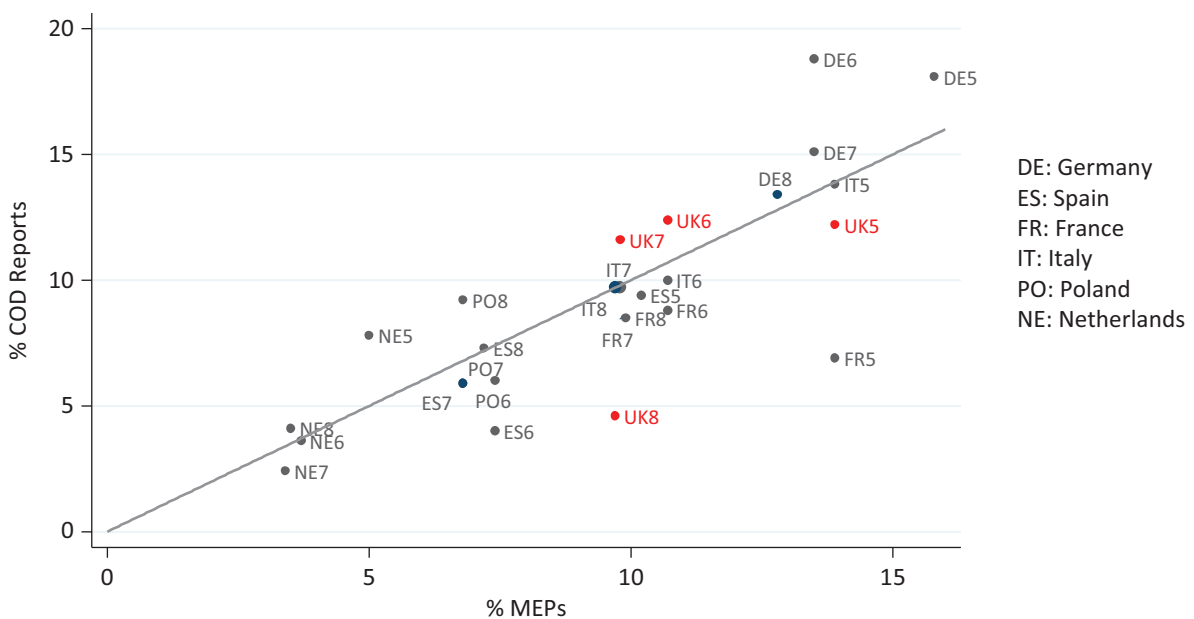


Figure 3. The allocation of codecision reports in the EP (1999–2019). Source: data on COD reports from Reh et al., 2020.

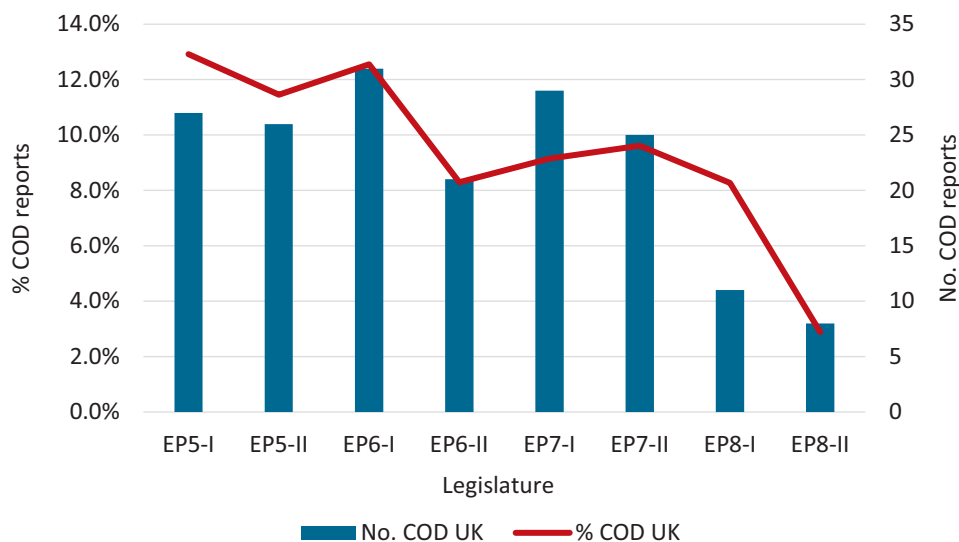


Figure 4. The allocation of codecision reports to the UK delegation (1999–2018). Source: data on COD reports from Reh et al., 2020.

drop seems to have hit the UK delegation in EP8. Yet, this is the period when the Commission led by Jean-Claude Juncker promised to “do less more efficiently”: In this context, an overall reduction of legislative output may not be surprising.

What is more revealing is, rather, the trend displayed by the red line, showing the share of codecision reports allocated to the British MEPs. Before the referendum (i.e., EP8-I), the British members had been selected as rapporteurs for about 8.3% of reports. This is not a particularly high value, but it had already been registered in the series (for EP6-II). After the referendum, and until the end of 2018, UK MEPs obtained only 2.9% of the reports. This is by far the smallest value, indicating a clear change vis-à-vis the previous observations.

All in all, our analysis shows that Brexit, before it effectively took place in January 2020, had brought some significant changes to the British delegation. The referendum results reduced the British MEPs’ clout, at least in terms of office positions in EP9, and legislative (codecision) reports. The process of Brexit has, therefore, affected the distribution of power inside the EP, limiting the institutional and policy-making role of the UK representatives even before Brexit day.

5. Conclusions

There are several impacts of Brexit on the EP. The most obvious—and studied—consequence is in terms of seats, as the 73 seats allocated to the UK became available after its withdrawal from the EU. Of course, Brexit also impacted on the relative size, and power, of the political groups, which were differently affected by the departure of the British delegation. Yet, there are other and more indirect changes triggered by Brexit. This article has focussed on two main issues: The role and influence of the EP in the negotiations with the UK, and of the British delegation

in the EP. This has allowed us to show that the process, and not just the outcome of Brexit, may have significant implications for EU institutions and actors.

Comparing the negotiations of the withdrawal agreement and the future EU–UK relationship, the EP chose a more inclusive set-up for its participation in the latter, giving a much greater role to committees. At the same time, this organisational model also created significant obstacles for the EP to influence the negotiations. The cooperation with the Commission became less political and strategic. While, in the case of the withdrawal agreement, the EP had managed to contribute to the negotiations and actively pushed for key negotiating issues (i.e., EU citizens’ rights), it pursued a more reactive and cautious approach in 2020, notwithstanding a more favourable institutional context (i.e., its stronger legal involvement in a trade agreement, which was taken as a template for negotiating the future relationship). A greater, arguably not too clearly defined, number of negotiating priorities further strengthened this dynamic.

Moving to the British delegation, the status of the British MEPs was not formally affected by the referendum or the triggering of Article 50. Yet, the referendum results were all but inconsequential for the UK members. Our analysis highlights the importance of informal rules and norms of behaviour. Well before Brexit occurred, the influence of the British MEPs started to wane. A norm of—to borrow Julian Priestley’s words (2008)—“institutional patriotism,” possibly led the other MEPs to side-line, to a large extent, the departing British MEPs from legislative work. It is all but unusual for MEPs to coalesce together and suspend or disapply norms to pursue their preferred course of action (e.g., the cordon sanitaire applied against the Eurosceptic groups; cf. Ripoll Servent, 2019). In this case, the broadly proportional system of allocation of legislative reports (in EP-8) and chairmanships (in EP-9) was disappplied

to the disadvantage of UK members. The exclusion of two Eurosceptic groups from the BSG was also a rather improvised—and informal—instrument of parliamentary self-organisation. Incidentally, the existence of informal norms to protect the institutional role and policy turf of the EP, shared by a ‘core’ of its members, further confirm that the EP has reached a stage of greater institutional ‘maturity’ (Bressanelli & Chelotti 2019; Héritier et al., 2019; for an early and sceptical perspective on norms in the EP, cf. Bowler & Farrell, 1999).

To conclude, on the one hand, Brexit has made a significant impact on the EP; on the other hand, the EP has contributed to shaping the process of Brexit. Yet, the pursuit of the latter goal has revealed tensions between a more political and centralised, and a more technical and inclusive, internal decision-making mode. This is likely not to be limited to the case of Brexit only. For instance, the development of the ordinary legislative procedure has laid bare the uneasy co-existence of the more centralised and secluded law-making in trilogues with the more public and inclusive committee and plenary meetings (cf. Greenwood & Roederer-Rynning, 2019). Exploring this tension further, beyond the case of Brexit, could cast new light on changing power relationships within the EP.

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Conflict of Interests

The authors declare no conflict of interests.

Supplementary Material

Supplementary material for this article is available online in the format provided by the authors (unedited).

References

- Benedetto, G. (2015). *The proportionality of office distribution in the European Parliament, 1994–2012: Who gets the mega-seats?* Paper presented at the 45th UACES Conference, Bilbao, Spain.
- Besselink, L. F. M., Swider, K., & Michel, B. (2019). *The impact of the UK's withdrawal on the institutional set-up and political dynamics within the EU (PE 621.914)*. Brussels: European Parliament.
- Bowler, S., & Farrell, D. M. (1999). Parties and party discipline within the European Parliament: A norms-based approach. In S. Bowler, D. M. Farrell, & R. Katz (Eds.), *Party discipline and parliamentary government* (pp. 208–226). Columbus, OH: The Ohio State University Press.
- Bressanelli, E., & Chelotti, N. (2019). Power without Influence? Explaining the impact of the European Parliament post-Lisbon. *Journal of European Integration*, 41(3), 265–276.
- Bressanelli, E., Chelotti, N., & Lehmann, W. (2019). Negotiating Brexit: The European Parliament between participation and influence. *Journal of European Integration*, 41(3), 347–363.
- Brusenbauch Meislova, M. (2019). The European Parliament in the Brexit process: Leading Role, supporting role or just a small cameo? In T. Christiansen & D. Fromage (Eds.), *Brexit and democracy: The role of parliaments in the UK and the European Union* (pp. 235–261). London: Palgrave Macmillan.
- Closa, C. (2020). Inter-institutional cooperation and inter-group unity in the shadow of veto: The construction of the EP's institutional role in the Brexit negotiations. *Journal of European Public Policy*, 27(4), 630–648.
- Delreux, T., & Burns, C. (2019). Parliamentarizing a politicized policy: Understanding the involvement of the European Parliament in UN climate negotiations. *Politics and Governance*, 7(3), 339–349.
- European Parliament (2019). Conference of Presidents, minutes of 19 December. Brussels: European Parliament.
- European Parliament (2020a). Conference of Committee Chairs, minutes of 11 February. Brussels: European Parliament.
- European Parliament (2020b). Conference of Presidents, minutes of 16 January. Brussels: European Parliament.
- European Parliament (2020c). Conference of Presidents, minutes of 16 September. Brussels: European Parliament.
- Greenwood, J., & Roederer-Rynning, C. (2019). In the shadow of public opinion: The European Parliament, civil society organisations, and the politicisation of trilogues. *Politics and Governance*, 7(3), 316–326.
- Héritier, A., Meissner, K. L., Moury, C., & Schoeller, M. G. (2019). *European Parliament ascendant: Parliamentary strategies of self-empowerment in the EU*. London: Palgrave Macmillan.
- Hix, S., & Benedetto, G. (2016, February 5). UK influence series: Do British MEPs win key positions of power in the European Parliament? *EUROPP: European Politics and Policy*. Retrieved from <https://blogs.lse.ac.uk/europpblog/2016/02/05/uk-influence-series-do-british-meps-win-key-positions-of-power-in-the-european-parliament>
- Jacobs, F. B. (2018). *The EU after Brexit: Institutional and policy implications*. London: Palgrave Pivot.
- Kalcik, R., & Wolff, G. B. (2017). *Is Brexit an opportunity to reform the European Parliament?* (Policy Contribution No. 2). Brussels: Bruegel.
- Priestley, J. (2008). *Six battles that shaped Europe's Parliament*. London: John Harper.
- Rankin, J. (2019, August 21). I intend to serve five

- years': British MEPs take senior posts despite Brexit. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2019/aug/21/i-intend-to-serve-five-years-british-meps-take-senior-posts-despite-brexite>
- Reh, C., Bressanelli, E., & Koop, C. (2020). Responsive withdrawal? The politics of EU agenda setting. *Journal of European Public Policy*, 27(3), 419–438.
- Ripoll Servent, A. (2019). The European Parliament after the 2019 elections: Testing the boundaries of the 'cordon sanitaire.' *Journal of Contemporary European Research*, 15(4), 331–342.
- Rittberger, B. (2005). *Building Europe's Parliament: Democratic representation beyond the nation-state*. Oxford: Oxford University Press.
- Shackleton, M. (2016). Britain in Brussels after the Referendum: Insider or outsider? *Journal of Contemporary European Research*, 12(4), 816–823.
- Stoll, P. T. (2017). *The role and powers of the European Parliament in the Brexit process (PE 602.054)*. Brussels: European Parliament.
- Treaty on European Union, Consolidated Version, 2020.
- Treaty on the Functioning of the European Union, Consolidated Version, 2020.
- Usherwood, S. (2018, November 15). Three messages from the Withdrawal Agreement. *Politics at Surrey*. Retrieved from <https://politicsatsurrey.ideasonline.eu/2018/11/15/three-messages-from-the-withdrawal-agreement>
- Van Den Putte, L., De Ville, F., & Orbie, J. (2015). The European Parliament as an international actor in trade: From power to impact. In S. Stavridis & D. Irrera (Eds.), *The European Parliament and its international relations* (pp. 52–69). London: Routledge.
- VoteWatch Europe. (2017a, February 7). Who are the winners and losers of the European Parliament's reshuffle? *VoteWatch Europe*. Retrieved from <https://www.votewatch.eu/blog/who-are-the-winners-and-losers-of-the-european-parliaments-reshuffle>
- VoteWatch Europe. (2017b, September 11). Who holds the power in the European Parliament? Assessing the influence of individual MEPs. *VoteWatch Europe*. Retrieved from <https://www.votewatch.eu/blog/updated-who-holds-the-power-in-the-european-parliament-assessing-the-influence-of-individual-meps>

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Article

A Knot Not to Be Cut? The Legacy of Brexit over the CJEU

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Abstract

What was the role of the Court of Justice of the European Union (CJEU) in the Brexit saga? And what will the impact of Brexit be over the future structure and activity of the CJEU? This article deals with this twofold question and explores three different issues. Firstly, we will offer a reflection on the questions and the risks raised by the Wightman case, where the CJEU ruled on the unilateral revocation of the UK notification of its intention to withdraw from the European Union under Art. 50 Treaty of the EU. Secondly, we will analyse the impact of Brexit on the composition of the CJEU and, particularly, the risks for the independence of the Court raised by the advanced termination of the mandate of the British Advocate General. Thirdly, we will provide some insights on the scope of the jurisdiction of the CJEU in the post-Brexit Union, emphasising how the Withdrawal Agreement maintained its jurisdiction during and even beyond the transition period. This article reflects the events that took place up to 6 October 2020.

Keywords

Advocate General; Brexit; Court of Justice of the European Union; EU law; interpretation; post-Brexit EU

Issue

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1. Introduction

In *Bulmer (HP) Ltd v. J Bollinger SA* (1974) Lord Denning, one of the most influential lawyers in the history of the United Kingdom (UK), described the impact of Community law over the British legal system by using the image of the “incoming tide” which “flows into the estuaries and up the rivers. It cannot be held back.” The irony in this is that Brexit can be defined as an effort to push the tide of EU law back to recover the original meaning of British sovereignty, understood as parliamentary supremacy (Dicey, 1885) in a context characterised by a partly written constitution. This is a legal system characterised by a “process of gradually converting an uncodified constitution into a codified one” (Bogdanor, Khaitan, & Vogenauer, 2010), so that fundamental aspects of the British constitution are not governed by statutes or written norms (Bogdanor, 2019). From the EU perspec-

tive, the Brexit saga was a shocking turning point, the moment of rupture with its traditional “awkward partner” (George, 1990). In this saga, the Court of Justice of the European Union (CJEU) played a relevant role and contributed to disclosing the tensions between the respect for national sovereignty and the independence of supranational institutions.

The purpose of this article is twofold: to investigate the role of the CJEU during the Brexit process and the possible impact of the British withdrawal of the European Union (EU) membership on the composition and jurisdiction of the Court. The centrality of the CJEU as acknowledged by the wording of the Withdrawal Agreement (hereafter WA; Council of the European Union, 2019; see also Council of the European Union, 2020) derived from the existence of a legal ‘knot,’ that is, the web of norms created by years of membership of the UK within the EU. As evidence of this, consid-

er that EU law has over the years contributed to creating new rights that have partly been retained by the domestic norms governing the repeal of EU law in the UK (see UK Parliament, 2018). Another example of the complex context triggered by the Europeanisation of the British system is the first Miller case, firstly heard before the High Court (*R [Miller] v. Secretary of State for Exiting the European Union*, 2016) and then before the UK Supreme Court (*R [Miller] v. Secretary of State for Exiting the European Union*, 2017), which emphasised the importance of the EU integration for the genesis of a new category of rights. In addition, a series of recent cases concerning the validity of the Council Decision (EU) 2020/135 (Council of the European Union, 2020) as regards the breach of EU citizenship rights also shows how difficult it is to cut legal ties without breaking fundamental rights that became part of the British constitution (see *JU and Others v. Council*, pending; *Price v. Council*, pending; *Shindler and Others v. Council*, pending). All this means that the EU membership has created a constitutional legacy in the UK that will not be cancelled: it is a legal knot that cannot easily be cut.

Alongside the several economic and political issues that needed to be settled, the legal ties connecting the Member States in the EU legal order and governing such economic and political relationships indeed emerged as a critical knot in the Brexit process. By triggering the withdrawal process, the UK has not only mobilised political actors and their negotiations, but it has also shaken the existing legal interdependences, which remained relevant for all the time that the UK continued to be a Member State and will still affect to some extent the post-Brexit Union. The CJEU as the guardian of the Treaties has thus become a key player to unleash conflicts in the withdrawal process.

This article focuses on the role of the CJEU in Brexit, with the aim of disclosing the main legacies of Brexit from the perspective of this key institution. The analysis is thus divided into three parts, each highlighting the main issues of the two research questions recalled above. The first part (Sections 2 and 3) examines how the CJEU contributed to interpreting Art. 50 of the Treaty of the EU (TEU), which guided the Brexit process. The analysis is thus centred on the Wightman case, which set a milestone in the governance of the withdrawal process. The subsequent parts focus on how Brexit will likely influence the role of the CJEU in the post-Brexit Union. They are thus devoted to the analysis of the independence of the Court (Section 4) and the scope of its jurisdiction (Section 5) in the post-Brexit Union. The final remarks highlight the importance of Brexit for the future case law of the CJEU.

2. Brexit and National Sovereignty in the EU Legal Order

During the Brexit process, the CJEU was called to interpret Art. 50 TEU under preliminary ruling proceedings

in the case *Andy Wightman and Others v. Secretary of State for Exiting the European Union* (2018). The preliminary ruling has worked as a powerful bridge connecting national judges and the CJEU. According to Art. 267 TFEU governing the procedure, national judges may or shall raise preliminary questions to the CJEU concerning either the validity or the interpretation of EU law if these questions are necessary to solve a national case. In the Wightman case, the Scottish Inner Court of Session asked the CJEU to clarify whether the British decision of withdrawal could be revoked unilaterally. The national court raised the question because Art. 50 TEU did not expressly regulate the right to revocation of the notification to withdraw. In its capacity of exclusive interpreter of the Treaties, the CJEU had to rule on whether such revocation was admissible, and if so, whether it could be unilateral or should be subject to specific conditions.

When deciding on a number of crucial aspects governing the departure of a Member State from the EU, the CJEU contributed not only to clarifying the viable options concerning Brexit, but also offering several insights on the nature of the EU legal order itself (Martinico & Simoncini, 2020). It particularly emphasised the precedence of national sovereignty in the decision to withdraw the membership and reverse such a decision, over any other considerations of supranational autonomy and the legitimate expectations of the remaining Member States.

Both Advocate General (AG) Campos Sánchez-Bordona and the Grand Chamber of the Court recognised that Art. 50 TEU neither prohibits expressly nor authorises explicitly any form of revocation of the withdrawal notification, but they identified behind the legal minimalism of Art. 50 TEU the existence of a sovereign right of the Member State to reverse the withdrawal process. When filling the lacuna in the black letter of the law, their respective interpretations however differed in the conceptualisation of such right and the conditions for its exercise.

AG Campos Sánchez-Bordona relied on international law and held Art. 50 TEU as “lex specialis, in respect of the general rules of international law on withdrawal from treaties, but not a self-contained provision which exhaustively governs each and every detail of the withdrawal process” (Campos Sánchez-Bordona, 2018, para. 85). The CJEU, instead, refused to treat the withdrawal and its reversal as an international law issue related to the participation of States in a Treaty and reaffirmed the difference between the EU legal order and “ordinary international treaties” (*Andy Wightman and Others v. Secretary of State for Exiting the European Union*, 2018, para. 44), considering its findings “only corroborated by the provisions of the Vienna Convention on the Law of the Treaties” (Campos Sánchez-Bordona, 2018, para. 70). The Court started its reasoning from the idea that the EU is an autonomous legal order with its own institutions and independent sources of law. It thus justified its interpretation on the grounds of the “structured network of principles, rules and mutually interdependent legal rela-

tions binding the EU and its Member States reciprocally as well as binding its Member States to each other” (Campos Sánchez-Bordona, 2018, para. 45).

The Court stressed the autonomy of EU law and marked the distinctiveness of EU law and dualism in the application of international law. The EU legal order shall be protected against the external interference of international law, including in the foundational moment of withdrawal. Wightman reiterated the consistency of the case law since the *Van Gend and Loos* case (*NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration*, 1963), which “expressly cut the umbilical cord with classic international law” (Schütze, 2015, p. 79). The autonomy of EU law thus brings about the assessment of the relevant question in light of the Treaties. The Court emphasised this approach both in the *Kadi* case when assessing the validity of restrictions imposed on suspected terrorists (*Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*, 2008; see also Avbelj, Fontanelli, & Martinico, 2014; Simoncini, 2009) and in the Opinion 2/13 on the EU accession to the European Convention of Human Rights (Court of Justice of the European Union, 2014; see also Eeckhout, 2015)—both referred to in Wightman.

The CJEU reconnected the right of withdrawal to the right of the State “to retain its status as a Member State of the European Union, a status which is not suspended or altered by that notification” (*Andy Wightman and Others v. Secretary of State for Exiting the European Union*, 2018, para. 59). The Court focused on the Member States’ commitment to the common values of integration and the goals of the EU project and emphasised that no Member State can be forced to leave against its own will (*Andy Wightman and Others v. Secretary of State for Exiting the European Union*, 2018, para. 66). As Frantziou and Eeckhout (2017, pp. 699–700, 702–703) underlined, such interdependence means that a complex system of rights is at stake in the withdrawal process and this requires a specific constitutional reading of Art. 50 TEU.

This characterisation of the sovereign right of the Member State to commit to and withdraw from the EU legal system persuaded the Court not to impose any condition on the exercise of this right. To avoid the risk of undue interferences with the right, the Court only required the revocation to be “unequivocal and unconditional, that is to say that purpose of that revocation is to confirm the EU membership of the Member State concerned under the terms that are unchanged as regards its status as a Member State, and that revocation brings the withdrawal procedure to an end” (*Andy Wightman and Others v. Secretary of State for Exiting the European Union*, 2018, para. 74).

The CJEU thus ruled against the Council and the Commission, which asked for the revocation to be subject to mutual consent through the unanimous approval

of the European Council. The Court also deviated from the Opinion of the AG, who considered that the unilateral exercise of the right should be reasonably tempered to prevent procedural abuses. In the AG’s interpretation, revocation should be exercised by ensuring mutual trust between the departing State and the EU and required reasonable justifications to ensure that collateral legal tactics do not drain negotiations and do not turn a right into a privilege.

The absence of procedural requirements, however, weakens the capability of the CJEU to control the authenticity of the reversal decision. When rejecting any conditions of mutuality, in fact, the Court implicitly required all the other Member States to trust the declaration of the State to reverse its withdrawal intentions unequivocally and unconditionally. The CJEU relied on the good faith of the decision of the departing State to genuinely reverse the withdrawal, and thus bound the remaining Member States to that decision. This means that the principle of mutual trust still applies in the relations between both un-departing Member States and the other Member States, because they are all committed to the same values. As the CJEU suggested—among others—in Opinion 2/13, mutual trust is a pillar of EU law, which operates as a presumption in the relations among Member States and as cases in asylum law show, can only be challenged under very specific circumstances (see Canor, 2013).

3. Systemic Risks of the Wightman Ruling

In Wightman, for the first time, the CJEU offered an interpretation of Art. 50 TEU, by reading this provision in combination with other norms of the Treaties and in light of some historical decisions. On the one hand, the Court recalled cases like *Les Verts*, *Kadi* and Opinion 2/13 to confirm the *sui generis* (and constitutional) nature of the EU (*Andy Wightman and Others v. Secretary of State for Exiting the European Union*, 2018, para. 44). On the other hand, the CJEU read Art. 50 TEU from the perspective of the values that characterise the supranational integration process (Sarmiento, 2018).

As regards the context of Article 50 TEU, reference must be made to the 13th recital in the preamble to the TEU, the first recital in the preamble to the TFEU and Article 1 TEU, which indicate that those treaties have as their purpose the creation of an ever closer union among the peoples of Europe, and to the second recital in the preamble to the TFEU, from which it follows that the EU aims to eliminate the barriers which divide Europe (European Union, 2016a, 2016b). It is also appropriate to underline the importance of:

The values of liberty and democracy, referred to in the second and fourth recitals of the preamble to the TEU, which are among the common values referred to in Article 2 of that Treaty and in the preamble to the Charter of Fundamental Rights of the EU, and

which thus form part of the very foundations of the EU legal order (see to that effect, *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*, 2008, paras. 303–304). (*Andy Wightman and Others v. Secretary of State for Exiting the European Union*, 2018, para 62)

However, the reading proposed by the CJEU presents some risks. The language of the sovereign rights can expose the EU and the remaining States to abuses in the unilateral revocation of Art. 50 TEU. For instance, States could use the threat of exit to renegotiate better (from their point of view) conditions. To avoid this scenario, we think that “a sustainable reading of Art. 50 TEU” (Martinico & Simoncini, 2020) is necessary to escape any instrumental (ab)uses of this norm. The frequent mention made by the CJEU of the concept of sovereignty is a ground of criticism in this respect, as it risks exposing Art. 50 TEU to perilous unilateral readings. The word “sovereign” was repeated six times in the English version of the *Wightman*, becoming its keyword. Such an emphasis on this concept remains unbalanced in so far as the CJEU did not refer to the principle of sincere cooperation. It seems to us that the Luxembourg Court excessively focused on an approach aimed at guaranteeing the sovereign choice at the costs of the plurilateral design of Art. 50 TEU. This creates a systemic risk, which may trigger serious instability in the withdrawal process. This risk is only mitigated by the fact that Art. 50 TEU cannot be read as if it were detached from the broader constellation of values preserved by the EU Treaties.

4. The Independence of the CJEU in the Post-Brexit Union

In accordance with Art. 50 (3) TEU, the Treaties cease to apply to the withdrawing Member State from the date of entry into force of the WA (European Union, 2016a). As stated in the Declaration of 29 January 2020 by the conference of the representatives of the Governments of the Member States (Conference of the Representatives of the Governments of the Member States, 2020, 29 January), the ongoing mandates of members of EU institutions, bodies, offices and agencies nominated, appointed or elected in relation to the UK’s membership of the Union end on the date of withdrawal.

This affected the same composition of the CJEU. The British judges and the British AG, Eleanor Sharpston, were called to leave their mandates. If the departure of British judges stems from the black letter of Art. 19 (2) TEU, for the AG there is no specific legal basis that imposes such a choice. As under Art. 19 (2) TEU, in fact, both the General Court and the CJEU are composed of judges from each Member State, British judges had to terminate their mandate in advance.

It was the Declaration of 29 January 2020 that applied the same destiny to the AG permanently nomi-

nated by the UK, but not legally constrained by nationality clauses. On the one hand, under Declaration 38 annexed to the Lisbon Treaty, the system of appointment of the AG provided that bigger Member States—that is, Germany, France, Italy, Spain, the UK and Poland—should permanently appoint six AGs, while the others—currently five—will rotate among the smaller States (European Union, 2016c). On the other hand, art. 8 of Protocol No 3 on the Statute of the CJEU extends to the Advocates-General the guarantees on the judges’ immovability (European Union, 2016d). According to art. 5 replacement, death, resignation are the only reasons for dismissal normal, while under art. 6 deprivation of office may occur “only if, in the unanimous opinion of the Judges and Advocates General of the Court of Justice, he no longer fulfils the requisite conditions or meets the obligations arising from his office” (European Union, 2016d). No nationality requirement for the exercise of the AG’s functions is envisaged.

There is no apparent legal basis for dismantling the guarantees that frame the functions of the British AG. Unlike for judges, no Treaty provision subordinates the functions of the Advocates General as members of the Court of Justice to nationality clauses; in addition, the Statute of the Court, which has the same force of the Treaties as primary law, does not provide any exclusion clause linked to national representation. This persuaded British AG Sharpston to act for the annulment of the decisions concerning her removal in two actions that were kept confidential. She asked for the annulment of the Declaration of 29 January 2020, insofar as it integrated her post in the rotation system among the Member States. She also challenged the letter of 31 January 2020 that the President of the CJEU, Koen Lenaerts, addressed to the President of the Council of the EU and of the Conference of the Representatives of the Governments of the Member States, Andrej Plenković, which confirmed the vacancy, while allowing her to keep the position until her own replacement.

More recently, Sharpston also acted for the annulment of Decision 2020/1251/EU (Representatives of the governments of the Member States, 2020) which appointed a new AG and she also asked for interim relief. Two orders of the Vice-President of the CJEU (*Council of the European Union v. Eleanor Sharpston*, 2020) set aside the previous order of the Judge of the General Court (see *Eleanor Sharpston v. Council of the European Union and Representatives of the Governments of the Member States*, 2020), granting as an interim measure the suspension of the Decision of the Representatives of the Governments of the Member State regarding the appointment of a new AG. In the first order, the Vice-President of the CJEU particularly found that the General Court had erred in law when granting interim measures, because the Decision 2020/1251/EU was an act of the Member States acting in the Conference of the Representatives of the Governments “collectively exercising the competences of the Member States” and not

of the Council, so that their act could not be subject to judicial review by the EU courts (Representatives of the governments of the Member States, 2020, para. 26). When adjudicating the substance of the case, the General Court thus relied on this interpretation of the Vice-President of the CJEU and consequently dismissed the action for annulment on the grounds that there was no act adopted by an EU institution at stake that could be subject to the judicial review of the Court (see *Eleanor Sharpston v. Council of the European Union and Representatives of the Governments of the Member States*, 2020).

This intense litigation clearly shows the existing concerns about the risk for the lack of independence of the EU judicial branch and transparency since the AG Sharpston was dismissed and replaced after a series of decisions, which allegedly breached the relevant norms governing the procedure (Kochenov & Butler, 2020a, 2020b, 2020c). The case discloses the tension between the political opportunity of keeping an AG appointed by the UK and the legal guarantees concerning the independence of such a role. The case is peculiar because the need to cut the political ties with the exiting Member State directly clashes with the principle of independence of courts that frames the rule of law in the EU and its Member States. The tensions between the principle of national sovereignty and the independence of EU institutions were brought within the organisation of the Court, showing the legal difficulties to cut the existing interdependences between national sovereignty and supranational autonomy. In other words, the case shows the latent conflict between the principle of intergovernmentalism, which relates to the principle of national sovereignty in the composition of EU institutions and the principle of independence of the judiciary, which lies at the roots of the rule of law and preserves the supranational function of the Court and its Advocates General.

For courts, independence has a specific legal meaning. Although the CJEU has strongly contributed to the implementation of the European project, its contribution was grounded on the judicial neutrality to the interests of the parties in the trial. Even more so, this applies to an organ like the AG, which performs serving functions aimed at the uniform interpretation and application of EU law by a Court composed of national judges. The independence of other institutions and, particularly, of the Commission, instead, is a means to pursue political goals. It is not neutrality to the interests at stake, but the discretionary capability to choose among the interests at stake and define how to best pursue supranational interests in a wider accountability framework.

Legal scholarship has effectively pointed out that the Declaration of 29 January 2020 has a clear political value, but it cannot reverse legal provisions of the Statute of the Court regulating AGs' appointment and removal, which have the force of primary law of the Treaties (Halberstam, 2020; Kochenov, 2020; Pech, 2020). Unlike protocols, declarations attached to the Treaties

are non-binding statements. Declaration 38 thus cannot affect Art. 19 (2) TEU, according to which AGs "shall be appointed by common accord of the governments of the Member States for six years" and can be reappointed (European Union, 2016a). In addition, Halberstam (2020) considers that the recitals to the Brexit WA emphasising the end of the mandates of all members of institutions have no binding force and that the inclusion of AGs among the cohort of sacked officials does not necessarily flow from Art. 101 WA, which refers to continuing privileges and immunities of the members of institutions. He also questions whether the continuity of AG Sharpston's office until the appointment of the new AG might be an implicit admission of the legitimacy of her service. As Pech effectively held, "there cannot be an application à la carte of the CJEU Statute: Either AG Sharpston is covered by it or she isn't. She cannot be the Court's Schrödinger's AG," trapped in the sort of paradoxical situation proposed by the Nobel Prize physicist in his thought experiment of the cat both alive and dead at the same time (Pech, 2020).

To protect the independence of the Court and the rule of law, AG Sharpston should leave her position only at the expiration of her six-year mandate. Otherwise, there would be a breach of primary EU law "triggered by a political declaration combined with one of her nationalities," the British one (Kochenov, 2020). In Kochenov's words, the breach would create the conditions for "humiliating our own Court through undermining both its independence and its attempts to take the Rule of Law seriously in the current difficult circumstances" (Kochenov, 2020). Only the Court—according to its own Statute—should "exclusively decide on the legal effects of Brexit (if any) on the mandate of AG Sharpston. It is not for political actors to decide this matter, in particular via an entity which is not even mentioned once in either the TEU or the TFEU" (Pech, 2020).

The rule of law should thus confer precedence on the independent status of the Court, preserving its usual functioning despite the occurrence of an exceptional situation as Brexit is. Political changes shall not compromise the correct functioning of independent institutions, showing that the legal knot would not be cut where the law of the Treaties prevails over political will. The first findings on the AG Sharpston's case show that so far, the CJEU and the General Court have not entered the merit of this issue. Yet, it remains to be seen if and how the CJEU will reconcile its own independence with the dismissal of the AG in its next expected rulings.

5. The Jurisdiction of the CJEU in the Post-Brexit Union

On 1 October 2020 the Commission decided to trigger the procedure to bring the UK before the CJEU for violation of the WA. In particular, according to the Commission some parts of the British Internal Market Bill breaches the obligation of good faith enshrined in Art. 5 of the WA and it also conflicts with the Protocol

on Ireland and Northern Ireland. It has been argued that the:

Internal Market Bill thus sets the scene for a perfect constitutional storm: a confrontation with the EU, a stand-off with the courts, a fundamental attack on the rule of law, and a diminution of the UK's commitment to the rules-based international order. (Elliott, 2020)

In particular, clauses 44, 45 and 47 are the main sources of such a conflict. In a nutshell, they provide ministers with the “power to disapply or modify export declarations and other exit procedures,” including “any exit procedure that is applicable by virtue of the Northern Ireland Protocol” (HM Government, 2020, clause 44). They also give ministers the power to disapply or modify the “effect of Article 10 of the Northern Ireland Protocol (State aid)” (HM Government, 2020, clause 45). Finally, clause 47 states that “regulations under section 44(1) or 45(1) are not to be regarded as unlawful on the grounds of any incompatibility or inconsistency with relevant international or domestic law” (HM Government, 2020). Clause 47, in particular, openly clashes with the principle of direct effect and with other norms of international law, as recognised by Northern Ireland Secretary Brandon Lewis, who spoke of a violation of international law “in a specific and limited way” at the House of Commons on 8 September 2020. On this basis the Commission activated the procedure. This episode is very telling of the central role that the CJEU can still play, especially in the transition period. This is confirmed by many provisions, among others, by Art. 131 of the WA, a clause functioning “as the juridical means to ensure the transition period maintains a ‘simulacrum’ of the supranational constitutional order in relation to the UK immediately following withdrawal” (Garner, 2020). This provision reads that:

During the transition period, the institutions, bodies, offices and agencies of the Union shall have the powers conferred upon them by Union law in relation to the UK and to natural and legal persons residing or established in the UK. In particular, the Court of Justice of the European Union shall have jurisdiction as provided for in the Treaties.

The first paragraph shall also apply during the transition period as regards the interpretation and application of this Agreement. (Council of the European Union, 2019, C 384 I/63)

Not by coincidence, this provision, among others, has created concerns and criticism among Brexiters, as it seems to confirm “the ‘after-life’ of Article 258 TFEU before the end of the transition period” (Garner, 2020). Art. 258 TFEU is about the so-called infringement procedure, i.e., the mechanism according to which the Commission may bring a State which does not comply with EU before the Luxembourg Court. This procedure

is characterised by a pre-judicial phase in which the Commission asks (by means of a formal notice) the State to present its views regarding an alleged breach of EU law. In light of the information brought by the State the Commission may decide to send a formal request to comply with EU law and, eventually, to bring the case to the CJEU. Stepping back to the breach of the WA, in accordance with the terms of the agreement, the CJEU is to continue to have jurisdiction in any proceedings brought by or against the UK before the end of the transition period, which is set as 31 December 2020. It is also to continue to have jurisdiction to give preliminary rulings on requests from British courts and tribunals made before the end of the transition period. The WA also makes a distinction between pending cases (Art. 86) and new cases before the CJEU (Art. 87). Art. 87 WA is particularly intriguing as it reads:

1. If the European Commission considers that the UK has failed to fulfil an obligation under the Treaties or under Part Four of this Agreement before the end of the transition period, the European Commission may, within 4 years after the end of the transition period, bring the matter before the Court of Justice of the European Union in accordance with the requirements laid down in Article 258 TFEU or the second subparagraph of Article 108(2) TFEU, as the case may be. The Court of Justice of the European Union shall have jurisdiction over such cases.
2. If the UK does not comply with a decision referred to in Article 95(1) of this Agreement, or fails to give legal effect in the UK's legal order to a decision, as referred to in that provision, that was addressed to a natural or legal person residing or established in the UK, the European Commission may, within 4 years from the date of the decision concerned, bring the matter to the Court of Justice of the European Union in accordance with the requirements laid down in Article 258 TFEU or the second subparagraph of Article 108(2) TFEU, as the case may be. The Court of Justice of the European Union shall have jurisdiction over such cases.
3. In deciding to bring matters under this Article, the European Commission shall apply the same principles in respect of the UK as in respect of any Member State. (Council of the European Union, 2019, C 384 I/45)

This was one of the most contested provisions by the UK, since it extends the jurisdiction of the Court even after the end of the transition period. For the sake of clarity, Art. 89 WA confirms the binding nature of these kinds of judgements “in their entirety on and in the UK” (Council of the European Union, 2019, C 384 I/45). Another contested provision of the WA is Art. 158, according to which the CJEU has jurisdiction to give preliminary rulings on requests concerning cases “commenced at first instance

within 8 years from the end of the transition period before a court or tribunal in the UK,” where “a question is raised concerning the interpretation of Part Two of this Agreement, and where that court or tribunal considers that a decision on that question is necessary to enable it to give judgment in that case” (Council of the European Union, 2019, C 384 I/45-46).

A similar scheme is applied to cases concerning Art. 18 (Issuance of residence documents) and 19 (Issuance of residence documents during the transition period) of the Agreement. Finally, another confirmation of the persistence of the relevance of the case law of the Luxembourg Court can be found in Art. 174, which reads:

Where a dispute submitted to arbitration in accordance with this Title raises a question of interpretation of a concept of Union law, a question of interpretation of a provision of Union law referred to in this Agreement or a question of whether the United Kingdom has complied with its obligations under Article 89(2), the arbitration panel shall not decide on any such question. In such case, it shall request the Court of Justice of the European Union to give a ruling on the question. The Court of Justice of the European Union shall have jurisdiction to give such a ruling which shall be binding on the arbitration panel. The arbitration panel shall make the request referred to in the first subparagraph after having heard the parties. (Council of the European Union, 2019, C 384 I/86-87)

There are then other provisions that seem to confirm the persistent relevance of the CJEU’s case law. Even at national level Art. 26 of the EU (WA) Act 2020 about “retained EU law and relevant separation agreement law” confirms the significance of the case law of the CJEU (UK Parliament, 2020). If, on the one hand, it is clear that judges are no longer bound by the case law of the CJEU on the interpretation of retained EU law, on the other hand, this does not exclude that they may take it into account. This was also explicitly suggested by Art. 6 of the EU Withdrawal Act of 2018, which reads that “a court or tribunal may have regard to anything done on or after exit day by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal” (UK Parliament, 2018).

This is understandable after all, since retained EU law has been shaped by the interpretation of the Luxembourg Court over the years. Moreover, one should not forget that the UK is a common law system based on the *stare decisis* principle, which inevitably tend to be conservative. This could represent another reason why the activity of the CJEU could be relevant even in the future, within the British borders.

6. Final Remarks

Brexit was a landmark event in the characterisation of the relationship between the EU and its Member States.

The “incoming tide” described by Lord Denning (1974) showed all its force in the moment of maximum friction; that is, the withdrawal of EU membership. However, even after Brexit, the inextricable knot that the membership created will not vanish magically in one blow. As this article demonstrated, Brexit set a milestone for EU law and the CJEU has been one of its main interpreters. In a nutshell, the CJEU has shed some light on the structure of the EU and the relationship between the EU and its Member States, confirming its key role in the interpretation of the Treaties and in the preservation of the smooth functioning of the EU legal order. From this standpoint, the legacy of Brexit is destined to last beyond the individual case of the UK and to affect the future of the EU legal order.

The main legacy is the Wightman case, where the Grand Chamber of the CJEU interpreted Art. 50 TEU. This was the first time that the CJEU engaged with the interpretation of this provision and aimed to clarify the functioning of the withdrawal process. Wightman disclosed the tensions between national sovereignty and EU membership and opened some potential issues in the exercise of national right to revocation of the withdrawal decision. As this article pointed out, the CJEU affirmed the existence of an unconditional right to repent and reverse the withdrawal process, which might bring about some systemic issues in the functioning of the negotiations for the withdrawal. Even though this was not the case for Brexit, the absence of any guarantees for the remaining Member States in the unilateral revocation of the withdrawal decision creates a precarious equilibrium in the application of Art. 50 TEU.

In addition, Brexit re-shaped to some extent the independence and the jurisdiction of the CJEU. As analysed, the tensions between the national composition of EU institutions and their supranational character reflected upon the composition of the EU judiciary and, controversially, upon the mandate of its Advocates General before the CJEU. The pending actions brought by British AG Sharpston are going to clarify how independent the EU judiciary is. The settlement of this case will provide further insights that will impact on general understanding of the role of the judiciary. As a second legacy, Brexit has thus forced the EU and the CJEU to reflect on the independence of its supranational institutions and the prevalence of the rule of law over political agreements.

The UK accession to the European Communities in 1972 had an impact over the style of the CJEU’s decisions and on its legal reasoning (Pierdominici, 2020, p. 317) and on this basis more recently it has been argued that changes in the composition of the CJEU shall impact on the use of precedents in the case law of the CJEU (Fjelstul, 2018). Although possible, it is also true that the CJEU does not consider itself as bound to the *stare decisis* principle (Jacob, 2014). It is also likely that Brexit might produce some changes in the legal reasoning and style of decisions of the CJEU as had happened after the UK accession (Nicola, 2017), but this can only be tested in the long run.

The third legacy of Brexit concerns the jurisdiction of the CJEU. As seen, if Brexit was supposed to cut the UK's relationship with the CJEU, the WA maintained its jurisdiction, which in practice extended beyond the transition period. The CJEU will maintain a crucial role and even at national level judges could take its case law into account as provided by the EU (Withdrawal) Act 2018. All this means that the legal knot cannot be definitely cut. It needs to be reassembled in the post-Brexit scenario, so that existing legal ties can be framed in the changed UK-EU relationships.

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Conflict of Interests

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References

- Andy Wightman and Others v. Secretary of State for Exiting the European Union, C-621/18, ECLI:EU:C:2018:999 (2018).
- Avbelj, M., Fontanelli, F., & Martinico, G. (Eds.). (2014). *Kadi on trial: A multifaceted analysis of the Kadi judgment*. London: Routledge.
- Bogdanor, V. (2019). *Beyond Brexit: Towards a British constitution*. London: I.B. Tauris.
- Bogdanor, V., Khaitan, T., & Vogenauer, S. (2010). Should Britain have a written constitution? *The Political Quarterly*, 78(4), 499–517.
- Bulmer (HP) Ltd v. J Bollinger SA, EWCA Civ 14, (1974).
- Campos Sánchez-Bordona, M. (2018). *Opinion of Advocate General Campos Sánchez-Bordona* (Case C-621/18, ECLI:EU:C:2018:978). Luxembourg: Court of Justice of the European Union.
- Canor, I. (2013). My brother's keeper? Horizontal solange: An ever closer distrust among the peoples of Europe. *Common Market Law Review*, 50(2), 383–421.
- Conference of the Representatives of the Governments of the Member States. (2020, 29 January). *Declaration by the conference of the representatives of the Governments of the Member States on the consequences of the withdrawal of the United Kingdom from the European Union for the Advocates-General of the Court of Justice of the European Union*. Brussels: Council of the European Union. Retrieved from <https://data.consilium.europa.eu/doc/document/XT-21018-2020-INIT/en/pdf>
- Council of the European Union v. Eleanor Sharpston, C-423/20 P(R) and C-424/20 P(R), ECLI:EU:C:2020:700 (2020).
- Council of the European Union. (2019). Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. *Official Journal of the European Union*, 62(C384). Retrieved from [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12019W/TXT\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12019W/TXT(02)&from=EN)
- Council of the European Union. (2020). Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. *Official Journal of the European Union*, 63(L29). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020D0135&from=EN>
- Court of Justice of the European Union. (2014). *Opinion 2/13 pursuant to Article 218(11) TFEU on the draft agreement providing for the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms* (ECLI:EU:C:2014:2454). Luxembourg: Court of Justice of the European Union.
- Dicey, A. V. (1885). *Introduction to the study of the law of the constitution*. Oxford: Oxford All Souls College.
- Eeckhout, P. (2015). Opinion 2/13 on EU accession to the ECHR and judicial dialogue: Autonomy or autarky. *Fordham International Law Journal*, 38(4), 955–992.
- Eleanor Sharpston v. Council of the European Union and Representatives of the Governments of the Member States, T-550/20 R ECLI:EU:T:2020:416 (2020).
- Elliott, M. (2020). The internal market bill: A perfect constitutional storm. *Public Law for Everyone*. Retrieved from <https://publiclawforeveryone.com/2020/09/09/the-internal-market-bill-a-perfect-constitutional-storm>
- European Union. (2016a). Consolidated version of the Treaty on European Union. *Official Journal of the European Union*, 59(C202), 13–45. https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF
- European Union. (2016b). Consolidated version of the Treaty on the Functioning of the European Union. *Official Journal of the European Union*, 59(C202), 47–199. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:202:FULL&from=EN>
- European Union. (2016c). 38. Declaration on Article 252 of the Treaty on the Functioning of the European Union regarding the number of Advocates-General in the Court of Justice. *Official Journal of the European Union*, 59(C202), 350. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:202:FULL&from=EN>
- European Union. (2016d). Protocol (No 3) on the statute

- of the Court of Justice of the European Union. *Official Journal of the European Union*, 59(C202), 210–229. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:202:FULL&from=EN>
- Fjelstul, J. C. (2018). *Life after Brexit: The impact of common law judges at the court of justice of the European Union*. Retrieved from https://static1.squarespace.com/static/56788b207086d7cddecdf48/t/5cbfae60eb3931525b1ac3f2/1556065889627/Fjelstul_common_law.pdf
- Frantziou, E., & Eeckhout, P. (2017). Brexit and Article 50 TEU: A constitutionalist reading. *Common Market Law Review*, 54(3), 695–734.
- Garner, O. (2020). True (bad) faith 2020? Part one: The commission infringement action against the United Kingdom for breach of the Withdrawal Agreement. *European Law Blog*. Retrieved from <https://europeanlawblog.eu/2020/10/08/true-bad-faith-2020-part-one-the-commission-infringement-action-against-the-united-kingdom-for-breach-of-the-withdrawal-agreement>
- George, S. (1990). *An awkward partner: Britain in the European community*. Oxford: Oxford University Press.
- Halberstam, D. (2020). Could there be a Rule of Law problem at the EU Court of Justice? The puzzling plan to let U.K. Advocate General Sharpston go after Brexit. *Verfassungsblog*. Retrieved from <https://verfassungsblog.de/could-there-be-a-rule-of-law-problem-at-the-eu-court-of-justice>
- HM Government. (2020). *United Kingdom internal market bill* (HL Bill 135). London: HM Government. Retrieved from <https://publications.parliament.uk/pa/bills/lbill/58-01/135/5801135.pdf>
- Jacob, M. (2014). *Precedents and case-based reasoning in the European Court of Justice*. Cambridge: Cambridge University Press.
- JU and Others v. Council, T-252/20, (pending). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62020TN0252>
- Kochenov, D. (2020). Humiliating the court? Irremovability and judicial self-governance at the ECJ today. *Verfassungsblog*. Retrieved from <https://verfassungsblog.de/humiliating-the-court>
- Kochenov, D., & Butler, G. (2020a). It's urgent: The illegal appointment of a new Advocate General and what can be done to uphold the Rule of Law in the EU. *Verfassungsblog*. Retrieved from <https://verfassungsblog.de/its-urgent>
- Kochenov, D., & Butler, G. (2020b). It's urgent II: The EU General Court temporarily suspends the attempted appointment of a new Advocate General. *Verfassungsblog*. Retrieved from <https://verfassungsblog.de/its-urgent-ii>
- Kochenov, D., & Butler, G. (2020c). It's urgent III: AG Sharpston dismissed in a radical move—The Court of Justice proclaims its own lack of independence. *Verfassungsblog*. Retrieved from <https://verfassungsblog.de/its-urgent-iii>
- Martinico, G., & Simoncini, M. (2020). Wightman and the perils of Britain's withdrawal. *German Law Journal*, 21(5), 799–814.
- Nicola, F. (2017). Luxembourg judicial style with or without the UK. *Fordham International Law Journal*, 40(5), 1505–1534.
- NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration, 26–62, ECLI:EU:C:1963:1 (1963).
- Pech, L. (2020). The Schrödinger's Advocate General. *Verfassungsblog*. Retrieved from <https://verfassungsblog.de/the-schroedingers-advocate-general>
- Pierdominici, L. (2020). *The mimetic evolution of the Court of Justice of the EU: A comparative law perspective*. London: Palgrave Macmillan.
- Price v. Council, T-231/20 (pending).
- R (Miller) v. Secretary of State for Exiting the European Union, EWHC 2768 (2016).
- R (Miller) v. Secretary of State for Exiting the European Union, UKSC 5 (2017).
- Representatives of the Governments of the Member States. (2020). Decision (EU) 2020/1251 of the Representatives of the Governments of the Member States of 2 September 2020 appointing three Judges and an Advocate-General to the Court of Justice. *Official Journal of the European Union*, 63(L292), 1–2. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2020:292:FULL&from=EN>
- Sarmiento, D. (2018). Brexit and EU citizenship after Wightman. *Despite our Differences*. Retrieved from <https://despiteourdifferencesblog.wordpress.com/2018/12/12/brexit-and-eu-citizenship-after-wightman>
- Schütze, R. (2015). *European Union Law*. Cambridge: Cambridge University Press.
- Shindler and Others v. Council, T-198/20 (pending).
- Simoncini, M. (2009). Risk regulation approach to EU policy against terrorism in the light of the ECJ/CFI jurisprudence. *German Law Journal*, 10(11), 1526–1549.
- UK Parliament. (2018). *European Union (Withdrawal) Act 2018*. London: UK Parliament. Retrieved from <https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>
- UK Parliament. (2020). *European Union (Withdrawal Agreement) Act 2020*. London: UK Parliament. Retrieved from <https://www.legislation.gov.uk/ukpga/2020/1/contents/enacted>
- Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities, C-402/05 P and C-415/05 P ECLI:EU:C:2008:461 (2008).

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Article

Lobbying Brexit Negotiations: Who Lobbies Michel Barnier?

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Abstract

Interest groups have a vital role in international negotiations and carry the potential to influence their outcome. This article contributes to discussions surrounding Brexit and institutional change in the EU, focusing on Article 50 negotiations and stakeholder engagement. Drawing from theories on deliberative democracy and institutional legitimacy, we argue that different groups are given access to the Chief Negotiator depending on the resources they can contribute. Assessing our expectations, we inspect the entire interest group population that held meetings with Michel Barnier and his team from 2016 onwards. On the aggregate, we observe a pluralist approach. A closer inspection reveals a tightly knit circle of insiders that hold unparalleled access. To the extent that these meetings offer a glance into the future of EU lobbying, European trade and professional associations are likely to observe growing cohesion and significance. Conversely, UK private interests will see their presence and influence diluted as their relevance grows smaller in Brussels. Following the trends we observe, think tanks and socioeconomic interests are likely to experience a continuous surge in their involvement in stakeholder activities.

Keywords

Article 50; Brexit; European Union; interest groups; lobbying; pluralism

Issue

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1. Introduction

Negotiations between the EU and the UK about the latter’s withdrawal from the block, resemble a high-politics international affair (see Leruth, Gänzle, & Trondal, 2019; Rosamond, 2016; Schimmelfennig, 2018). Interest groups have a vital role in international negotiations and carry the potential to influence Brexit’s outcome. They act as a legitimizing force, a source of information and public opinion, and as a pressure mechanism on both parties (see Hurd, 1999; Walker, 1991). However, there has been limited analysis of interest group representation in Brexit negotiations. Existing work focuses on economic actors in specific sectors such as finance (Bulmer

& Quaglia, 2018; James & Quaglia, 2018; Lavery, 2017); but misses systematically analysing stakeholder activity in formal procedures at the EU level (Burns, Gravey, Jordan, & Zito, 2019).

Somewhat surprisingly, even less attention is placed on the interaction between the EU’s Chief Negotiator (CN) and interest groups, despite the former’s commitment to stakeholder outreach (European Commission, 2016). By doing so, the literature ignores one of the most central and impactful players in Brexit negotiations; it treats a formal space where the CN and interest groups meet as a black-box and leaves questions about Article 50 negotiations and the future of stakeholder engagement in the EU unanswered.

In this article, we assess the meetings between interest groups and the EU's CN, as an understudied area of Brexit. Whereas numerous groups are interested in meeting with the CN, only a select few are able to. This generates three interconnected questions: Which groups meet with the EU's CN? Why do some groups meet more often than others? Does this carry implications for stakeholder mobilization after the UK's departure?

We answer these questions arguing that the EU's CN and the Task Force he leads have a complex role. They must convince the other side to move as close as possible to their position, while at the same time coordinate with numerous actors who operate across levels of government (Eising, 2004; Marks, Hooghe, & Blank, 1996). The task is highly political in the sense that both negotiators emphasize normative ethical and ideological positions to justify and motivate actions, effectively framing the process as a zero-sum game (see Barley & Kunda, 1992; Patzer, Voegtlin, & Scherer, 2018).

Through these formal meetings the CN employs interest groups to explore, legitimate, and disseminate his position. Significantly, these meetings have three capacity building functions impacting which actors are invited. First, they serve a bridge-building role, offering a closed setting where central interests can exchange opinions and reach compromise (Dryzek & List, 2003; Eriksen, 2018; Goodin, 2008), favouring economic interests. Second, these meetings act as a depolarizing chamber allowing third party perspectives to enter the negotiating space and provide value consensus (see Estlund, 2009; Landemore, 2012; Naurin, 2007), favouring epistemic interests. Third, they are used to maximize the CN's democratic credentials through groups representing public constituencies (March & Olsen, 1984; Wood, 2015), favouring civil society organizations.

We highlight that despite the pluralist image of diverse participants, a smaller elite inner circle is likely to hold disproportionate access (Coen, Lehmann, & Katsaitis, 2020). We assess our argument drawing on the CN's online database that includes all meetings held with organized interests (2016–2020). We map the entire population and examine which specific organizations met with Michel Barnier and his team. The results provide a nuanced perspective into interest groups involvement in the negotiations. Trade and professional associations, companies, think tanks, and NGOs are present in meetings. However, the distribution changes when we consider how often specific groups held meetings with the CN's team: EU level think tanks and associations, along with UK NGOs hold notable presence.

This article contributes to discussions specifically about interest group involvement in Brexit negotiations, and the broader literature on stakeholder engagement in EU consultation procedures. Empirically, the article conducts a unique analysis mapping the organizations meeting with Michel Barnier's team. It provides a unique dataset with 159 participants, representing 113 interest groups. Complementing discussions on formal EU consul-

tations, we find that some groups are overrepresented (see, for example, Coen & Katsaitis, 2019a; Dür & Matteo, 2016; Fraussen, Albareda, & Braun, 2020; Rasmussen & Gross, 2015).

In doing so, we provide data that permits further research on Brexit, consultations, and stakeholder activity; relevant to researchers and policymakers. Overall, we address a key issue in Brexit research namely who are the key organized interests involved during the negotiations, and what implications does this carry. The pluralist nature that permeates EU intermediation is present and is likely to be maintained. However, peak level associations will be further strengthened, and UK economic interests will see a smaller presence. The article proceeds with a theoretical section that provides our central argument and expectations, followed by a section on the research design, which is preceded by the analysis and finally a discussion on the implications.

2. Meeting Michel Barnier: A Theoretical Appraisal

Michel Barnier, the CN, leads the Task Force that:

Coordinates all the Commission's work on all strategic, operational, legal and financial issues related to the UK's withdrawal from the European Union, in full respect of European Council guidelines. This includes the negotiations on the future relationship with the UK, the implementation of the Withdrawal Agreement, as well as the Commission's 'no-deal' preparedness work. (European Commission, 2016)

We assert that the EU's CN and his team aim to manage their central responsibilities in a legitimate and successful way. The motivation behind this aim can be linked to the CN's individual mandate as a member of the Commission (see Egeberg & Trondal, 2018), as well as a rational-institutional interest to maintain and expand his authority (Dunleavy, 2014; Scharpf, 1999). Because the negotiations are framed as a zero-sum (redistributive) game, the CN must convince the UK side to move closer to the EU's position. Failure to do so potentially carries irreversible ramifications for EU integration (see Leruth et al., 2019), and in turn can have adverse implications for the CN and the Commission's authority. That is to say, a negative outcome for the EU and/or a dishonest negotiating strategy would make the Commission appear less legitimate, reducing its relevance. A central implication behind this assertion is that the CN does not consider illegitimate negotiating methods, such as discrediting campaigns or renegeing signed agreements, as an option.

To achieve his aim, the CN employs different tools from the negotiation toolbox, this includes interest group engagement (see Hurd, 1999; Walker, 1991). As noted earlier, interest groups are only but a tool within a broad toolbox that carries different options. Stakeholder engagement allows the negotiator to estab-

lish a more dominant position vis-à-vis his counterpart, primarily the UK's negotiating team, in a few ways.

By appearing as a well-accepted representative of central and/or relevant interests the CN holds greater political authority, i.e., she/he has comparatively greater relevance as a representative, translating into great legitimacy to speak for interests over specific issues (Zurn, Binder, & Ecker-Ehrhardt, 2012). In a setting where issues are transnational, and constituencies do not necessarily belong explicitly to the UK's or the EU's political sphere but cut across them, the negotiator's broad acceptance (political authority) is a valuable currency. Put simply, greater relevance to constituencies acts as an informal vote, which allows one negotiating team to exert greater pressure on to the other.

Through co-ordination a negotiator can steer interest groups to apply pressure on her/his counterpart. This indirect pressure can be informal for example through unofficial meetings, and/or formal for example through open statements or members' campaigning. In doing so, the CN essentially attempts to support advocacy coalitions that exert pressure on the UK team. The broader and/or more relevant the coalition the greater the pressure and the ability to coerce the counterpart closer to the CN's position (Cairney, 2015; Sabatier, 1998).

Stakeholder engagement formalizes a type of information-exchange. Whereas interest groups and the CN may engage informally or indirectly and exchange information on issues related to Article 50, this does not necessitate that all information is available through these channels. The meeting's formality not only contributes to legitimizing factors mentioned above, but also in itself provides knowledge that improves the CN's and his team's understanding (see Russo & Tencati, 2009).

Interest groups come in different shapes and sizes. Even under the strictest definition, which in the EU context would be an accredited lobbyist (see Coen & Katsaitis, 2019b, for a discussion), the groups mobilized in Brussels number in the thousands. To become a legitimate representative across a plethora of interests that hold different positions across issues, operating across levels and national boundaries is a daunting task. Facing limited resources, the CN and his team can meet only a few. We underscore two key points that form a central frame around the article's thesis.

First, deliberative procedures, such as meetings between the CN and stakeholders, hold transformative, depolarizing, and coordinative properties (see Dryzek, 1990; Eriksen, 2018) that aid the CN demonstrate his relevance as well as select with which groups to meet. We highlight that these meetings are formal, noted on public record. Second, different types of interest groups bring different qualities to the discussion linked to factors such as their organizational incentives, their principals, and the constituencies they represent (Streeck & Schmitter, 1991; Zurn et al., 2012). Below we expand on this logic, outlining our expectations regarding which types of groups the CN meets and why.

To begin with, deliberative procedures have a collaborative and coordinative character that allows actors to exchange opinions and reach agreement. By holding meetings with peak socioeconomic interests, such as professional and trade associations, business associations, and trade unions, the CN can establish a common position that includes central interests' perspectives vis-à-vis Brexit. Simultaneously, in doing so the CN is inclusive of and open to the most populous group mobilized in Brussels broadly categorized as private or economic interests. These groups face strong mobilization endogenously as their members scramble in anticipation of Brexit to gain valuable information and attempt to influence its outcome.

Nevertheless, Brexit's high-stakes political character invokes the use of normative ethical and moral arguments to justify the negotiators' motivation and actions (Ditto, Pizarro, & Tannenbaum, 2009; Rosati, 1996). This can cause problems in reaching common points of agreement both endogenously as well as exogenously (Martill & Staiger, 2020). Normative positions can be open ended and opposing, leading to polarization and sincere difficulty in obtaining common value positions (see Estlund, 2009). In a polarized environment, deliberative procedures can lead to group think and policy blind-spots and/or policy gridlock (Sunstein & Hastie, 2015; Whyte, 1998).

Research organizations such as think tanks and universities provide epistemic justification establishing the scientific method as a common ground for different ethical standpoints, de-polarizing deliberation (Dunlop & Radaelli, 2013; Holst & Molander, 2019). Furthermore, due to their research capacity, they are likelier to have taken normative counter arguments into consideration, their relevance and reputation is linked directly with their ability to contemplate contrasting perspectives. This allows the CN to form alliances with broader interest group networks, and set-up conceptual-technical safe spots within which to negotiate with the UK team. Thus, we expect to see research organizations invited to meetings with the CN.

Stakeholder engagement is also used to broaden citizen participation in policymaking (March & Olsen, 1984). The objective is dual. By involving organized interests representing social/public interests such as civil society and NGOs, policymakers respond to an innate critique of EU policymaking procedures being elite and exclusionary (see Schmidt, 2020). Civil society involvement allows policymakers to bolster their democratic credentials (Katsaitis, 2015). In the same way, public participation in deliberative events linked to policymaking tends to manage expectations and improve outcomes' public appreciation (Lee & Romano, 2013; Wood, 2015). We note that while these socioeconomic interests represent numerous organizations, large scale transnational companies will receive similar attention, i.e., European champions. Because the CN represents the EU, EU level associations are likelier to be invited than national associations.

In addition, by inviting interest groups from national constituencies the CN attempts to maintain his legitimacy vis-à-vis member states' public opinion. This factor is a concern for the Commission and becomes especially relevant when considering the potential impact of the UK's departure on the Commission's future authority. Thus, some national interests remain relevant either due to economy-size related factors (Hall & Soskice, 2003; Thelen, 2012), as well as issue specific factors (Bulmer & Quaglia, 2018). Therefore, trade and professional associations, companies, and business associations from central EU economies are likelier to be present, such as from Germany, France, and the UK (Eising, 2004). Moreover, to reduce the UK negotiator's political authority, the CN may welcome UK based civil society groups. Signalling to the UK team that the EU's CN also represents part of the UK's public interest, i.e., the UK team does not represent a cohesive public constituency. Focusing on constituency specific factors some social interests might observe greater participation due to issue salience for example, civil society groups from Northern Ireland.

The above dimensions frame our expectations regarding the groups' diversity, which is to say what types of groups are likely to be present in meetings with the CN and why. We also consider that specific groups tend to participate in such meetings more often than others. From a large interest group population, the CN will invite a core group of interests more often than others (Binderkrantz, 2005; Broscheid & Coen, 2003). By doing so, the CN legitimizes these associations through their participation, verifying their role as representatives of their members. By galvanizing support for these interests as trusted go-to groups, these organizations act as a mediating point between the CN and the broader population.

In summation, the CN and his team face a complex task. He must represent the EU in a high-politics game and convince the UK to move closer to his position. In an international negotiation such as Brexit, there are different options in the CN's toolkit. Stakeholder engagement is one of the central tools in the kit. The CN will meet with different organizations to legitimate his position as a representative of states and organized interests. These meetings serve three different ideal-type purposes. First, they allow the CN to establish common areas of agreement and support from socioeconomic interests. Second, it allows the CN to depolarize the discussion and

ensure a common value system through research organizations participation. Third, it provides the CN with democratic credentials through civil society's mobilization (see Box 1).

We underscore that this article does not take deliberative procedures as panacea or as the single most important tool that the CN holds at his disposal, as he attempts to achieve his objectives. We recognize that deliberative procedures face their own valid limitations (Lee, 2011; Lee & Romano, 2013), we also recognize that the negotiations hold a central institutional and intergovernmental component (Smeets & Beach, 2020). Nevertheless, interest groups represent an important EU policymaking cog. By examining the interaction between interest groups and the CN we can understand which actors are insiders, the particular forum's purpose, and estimate what implications it carries for the future of stakeholder mobilization.

3. Research Design

To explore these expectations, we require information on which interest groups the CN has held meetings with. This information is published online on the European Commission's webpage dedicated to the negotiations on Article 50 between the EU and the UK (European Commission, 2016). However, this information is available in the form of a non-downloadable table that includes: the date of the meeting, the location of the meeting, the entities met, the meeting's subject(s). To the best of our knowledge, this is the first study to assess which interest groups met with Michel Barnier's team; to ensure the study's validity and reliability we chose to collect the data manually. We collected the entire dataset with published meetings from 14 October 2016 to 29 May 2020.

We note two clarifying points. First, the entities met are not categorized, i.e., they are not classified. For example, the CN met with representatives from Airbus, however Airbus is not classified as a specific type of organization on the list. Second, whereas meetings can have different subjects, the subject noted largely falls in one of two categories that depend on the stage of the negotiations: (i) "Meeting with the Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU," or

Box 1. Expectations of interest groups participating in meetings with the CN.

E1: To improve his negotiating position as a representative of vital European interests the CN will invite EU level socioeconomic groups.

E2: To form a depolarized negotiating space that allows the CN and counterparts to establish common value positions based on which to form agreement, the CN will invite epistemic organizations.

E3: To manage expectations and improve public support, the CN will invite UK public interests to meetings, such as civil society groups.

(ii) “Meeting with the Task Force for Relations with the United Kingdom.” The meetings on the database start on 14 October 2016 and run up to date. The former meeting-subject runs from October 2016 until December 2019, and the latter from January 2020 onward.

We opted to maintain and assess the groups that met with the CN following December 2019 along with the population beforehand. Whereas the EU–UK relationship has moved to a different stage the long-term negotiations that are following do not change the CN’s aims and motivations. We placed each interest group under one of nine categories based on their self-registration on the EU’s Joint Transparency Register, we highlight that the CN and his team will meet only with groups registered on the Joint Transparency Register. In the exceptional case where an interest group was not registered, we used their self-description on their website to place them in one of the categories: (i) business association (Association des Banques et Banquiers, Luxembourg; Bundesverband der Deutschen Industrie); (ii) company (e.g., Airbus, Crédit Agricole); (iii) consultancy (e.g., Albright Stonebridge Group); (iv) NGO (e.g., International Rescue Committee); (v) public mixed entity (e.g., Conference of Peripheral Maritime Regions, Londonderry Port & Harbour Commissioners); (vi) religious (e.g., Commission of the Episcopates of the European Union); (vii) research organization (e.g., Centre for European Policy Studies, Centre for European Reform, North West Regional College); (viii) trade and professional association (e.g., European farmers, European Fisheries Alliance); (ix) trade union (e.g., European Trade Union Confederation, Sveriges Akademikers Centralorganisation).

We also categorized groups in one of three categories based on their level of operation i.e., which level of interests they primarily represent. Interest groups can be representing: (i) EU level interests (e.g., Bureau Européen des Unions de Consommateurs); (ii) national level interests (e.g., Association des Banques et Banquiers, Luxembourg); (iii) multinational interests (e.g., ABB).

In our analysis meeting frequency is a central variable. Since the population of meetings and interests is rather small, we focused on employing descriptive analyses. We conduct a two-level analysis. First, we note how often a type of group has met with the CN, the objective is to understand which types of groups are popular. Therefore, we evaluate the popularity of an interest group category by examining the population size relative to the meetings held. Secondly, we are interested in assessing the specific groups that form an elite circle of insiders. Considering the limited number of meetings, we proceeded by assessing which groups met with the CN a minimum of two times or more. The analysis is framed by our conceptual model and complimented by articles in this thematic issue. Having said that, we appreciate the methodology’s limitations and welcome further work that enriches it. For example, approaches that seek to clarify actors’ motivations and causal mechanisms through interviews or additional secondary-data.

4. Analysis

We begin our analysis with a breakdown of the interest group population that held meetings with the CN and note some initial observations (Table 1). The CN held meetings with a diverse crowd of interest groups. Most of these groups belong to the private sphere: trade and professional associations, business associations, and companies represent the majority of the population and the meetings held.

In line with our expectation, this activity follows a demand-supply argument. The CN is responding to the large business interest community that has mobilized due to Brexit, its support is needed to maintain and expand his legitimacy as a negotiator. On the one hand, these groups wish to gather information about the negotiations’ progress, influence the CN, and concede guarantees that their business will be affected as little as possible. On the other hand, the CN holds meetings with economic interests to coordinate his response,

Table 1. Meetings per type of interest group, and distribution of interest group type across the population.

Type	Number of Meetings	Percentage of Meetings %	Number of Organizations	Percentage of Population %
Research Organization	29	18	20	18
Trade & Professional Association	29	18	17	15
Company	28	18	23	20
Business Association	24	15	18	16
NGO	20	13	13	12
Trade Union	18	11	11	10
Professional Consultancy	6	4	6	5
Public Mixed Entity	4	3	4	4
Religious	1	1	1	1
Total	159	100	113	100

ensuring from his perspective that a central constituency is supportive.

Research organizations hold a visible position among groups that met with the CN. This result is in line with a growing body of work that recognizes research organizations rising prominence in Brussels, specifically think tanks (Kelstrup, 2016; Monange, 2008; Sherrington, 2000). The analysis points to a discrepancy between the overall mobilized lobbying population in Brussels and think tanks access to elite political actors and procedures (Coen & Katsaitis, 2019a). Research organizations serve a critical role as third party actors that can provide expertise, which acts as a depolarizing device that makes coordination between the CN and business interests easier. This is not to say that meetings with research organizations necessarily influence the CN directly. Research organizations, such as think tanks, provide a common and acceptable technical basis upon which the CN and his counterparts can negotiate, minimizing polarized rhetoric's adverse effects (see Missiroli & Ioannides, 2012).

In contrast, on the aggregate, public interest groups (e.g., NGOs) and socioeconomic interests (e.g., trade unions), represent a smaller proportion of the population. From a bird's eye view, it appears that grassroots movements are neither core legitimizing forces nor is their role as pressure mechanisms central to the CN. With this observation, we wish to highlight the variation within categories (see Table 1), and the role of insiders. We discuss this issue in greater detail in the paragraphs that follow.

Moving from the type of groups meeting with the CN we also assess the level of interests they represent (see Figure 1). The CN has held meetings with a considerable number of organizations representing primarily national interests (35%). However, EU level interests remain the majority (45%), multinational interests represent a smaller proportion (20%). We highlight that most groups representing EU groups and multinational level interests have a dedicated government affairs office in Brussels

(see Figure 2). The remaining groups have an office primarily in Europe and specifically in the UK, France, or Germany. That is to say, the CN focuses on meeting with interest groups across levels rather than explicitly EU level groups, underscoring that his strategic concern and relevance also runs through national capitals.

As mentioned earlier, the aggregate analysis tends to support the understanding of Brexit as a trade negotiation that automatically gives economic interests a seat at the head of the table. However, a closer inspection (see Table 1), suggests that some specific groups meet with the CN more often than others. To better explore which groups meet more often with the CN, we raise the minimum number of meetings held per group to two. In other words, we focus on a smaller circle that has greater access to the CN. The image changes substantively (see Figure 3), please note that research organizations are reclassified as 'think tank' because all research organizations at this stage are think tanks. Out of a total 113 different interest groups, there is a limited 25 that have met with the CN more than once (mean number of meetings, 2.84). Indicatively, these 25 groups cover approximately 45% of all meetings. While the role of trade and professional associations becomes more evident, the analysis underscores think tanks involvement. Whereas the CN is responding to economic interests by holding multiple meetings with them, some groups offer more in terms of their ability to coordinate, depolarize, and publicly legitimize the CN.

Following from this, we were interested in unveiling the elite circle of insiders that met with the CN often. Along these lines, we added a stronger filter on the population focusing on groups that held a number of meetings above the mean of 2.84, i.e., groups that met with the CN three times or more. We assess these elite interest groups qualitatively (see Figure 4); three points become apparent.

First, EU level as well as national level interest groups maintain an important role for the CN's negotiating strategy. Legitimation and strategic use of interest groups as

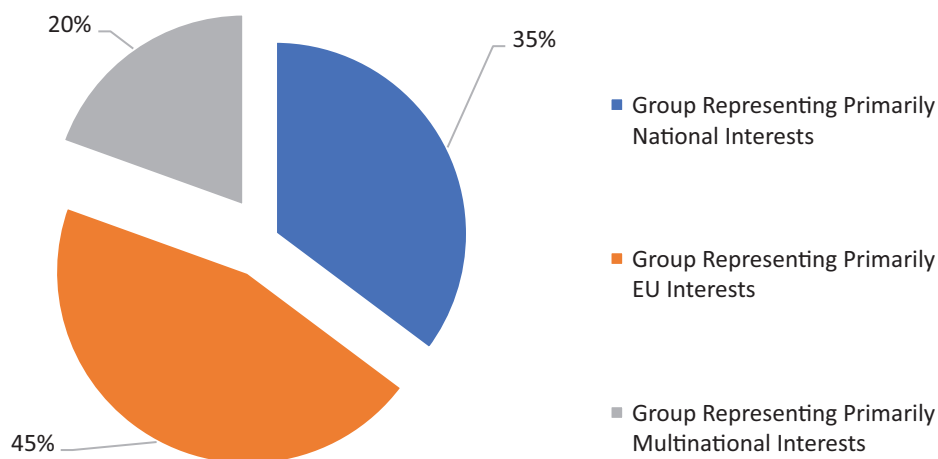


Figure 1. Interest groups representing national, EU, or multinational interests.

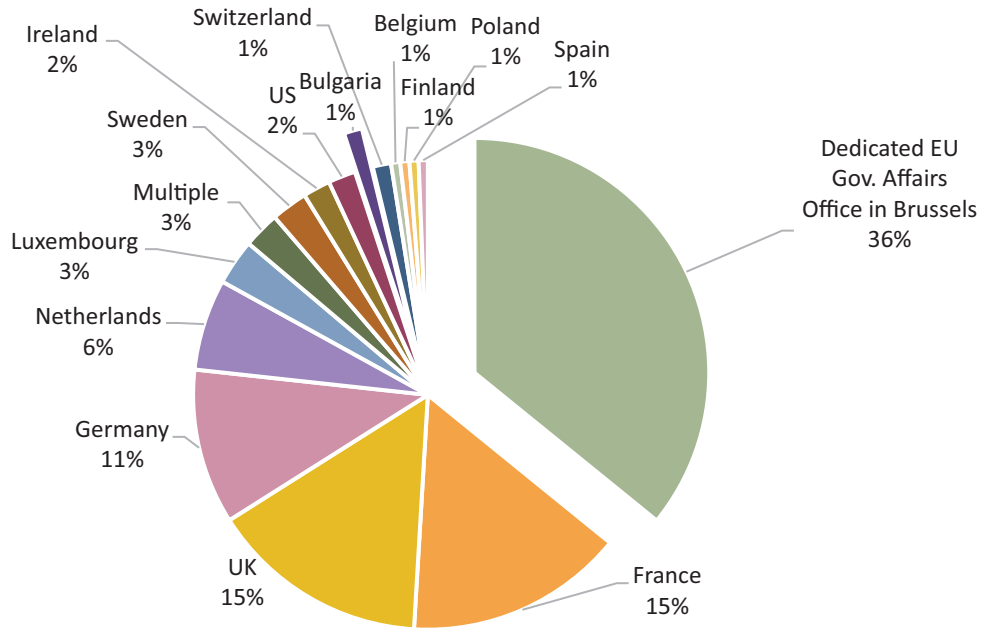


Figure 2. Interest groups government affairs’ office stated location.

a pressure mechanism cuts across levels. Nevertheless, the image is intricate. UK companies and private interests more broadly have limited presence in this elite circle; however, UK trade unions and UK NGOs are welcome. This supports our expectation that UK public interests act as a tool through which the CN can pressure the UK team. In addition, it suggests that UK economic interests have opted for a different route of communication and coordination with the CN: the European level association. Overall, trade unions have an elevated role, providing further support to the argument that interest groups serve as a social coercion mechanism. Simultaneously, while think tanks participate in meetings, at the elite level they represent exclusively EU level organizations, the

same applies to trade and professional associations (see COPA, COGECA, EUFA in Figure 4).

The insiders’ list reflects central policy issues the negotiations focused on. Indicatively, farming and fisheries with distinct (re)distributive and political concerns as well as mobility and employment issues, require the CN coordinates extensively with relevant interest groups. Similarly, transnational business actors represented through the European Round Table for Industry (and BusinessEurope) are highly visible. Airbus, the EU company-project that sees airplane parts constructed across different European countries, including the UK, before being assembled in specific locations, has naturally been concerned about Brexit’s impact on its future.

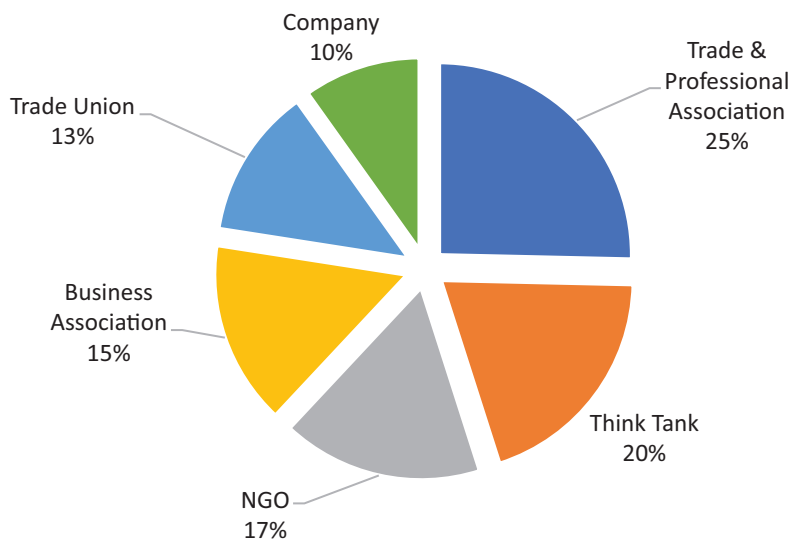


Figure 3. Percentage meetings per type of interest groups, two meetings minimum.

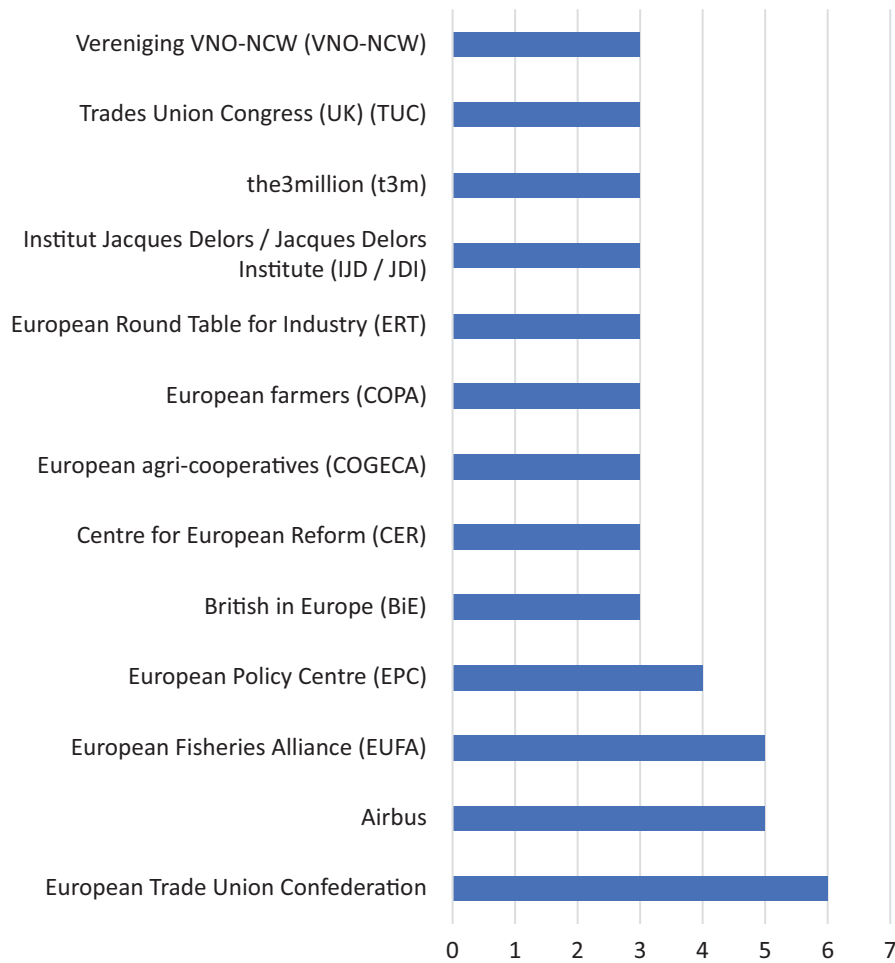


Figure 4. Number of meetings per organization, 3 meetings minimum.

Leading to necessary meetings to coordinate (or avoid) a multi-billion divorce. That is to say, we observe the nature of the policy field and issue salience as additional variables influencing whom the CN meets more often. This falls in line with a growing body of work highlighting the Commission’s reaction to public opinion, and what can be more broadly termed as ‘politicization’ (De Wilde & Rauh, 2019). These results offer valuable information about Michel Barnier’s stakeholder engagement and its purpose. Moreover, they offer a glance into EU interest intermediation after the UK’s departure, which we discuss in the final section below.

5. Discussion and Conclusions

In support of stakeholder engagement, the EU’s CN and his T50 team meet with interest groups. This article’s aim was to assess which groups meet with the CN, why do some groups meet with the CN more often than others, and to estimate a future trajectory of stakeholder mobilization in the EU after the UK’s departure. With this in mind, we argued that the CN has an incentive to meet different types of groups, each organizational type offers a resource that can improve the CN’s negotiat-

ing position. Nevertheless, it is likely that the CN and his team will show greater preference towards some organizations over others. Following a formulation of expectations, we examined the entire interest group population that met with the CN from October 2016 until May 2020.

The analyses largely support our expectations. Employing these meetings to legitimize his position in a high-politics game, the CN meets with central socio-economic actors that can act as a coercion mechanism, and research organizations that can provide a common technical basis that depolarizes the debate, allowing the negotiations to move forward. Significantly, the results confirm that not all groups are created equal. Highlighting the meetings exclusivity, the last four years 113 groups met with the CN. This contrasts the large interest group populations mobilized and examined by the literature, whether they are in Brussels, registered on the Joint Transparency Register and have an accreditation. To the best of our knowledge, these meetings are some of the most elite (formal) deliberative procedures in Brussels at the moment. The specific groups meeting the most with the CN belong to the elite of the elite.

Considering the type of interest intermediation, the current picture resembles the EU’s format with a twist.

We observe a pluralist approach with a diverse constellation of interest group types. Looking at all the interest groups active in the consultation, we continue to see a form of EU elite pluralism where trade and professional associations and companies take up a significant portion of the meetings (Coen, 1997). These groups are de facto a larger part of the interest group population, they have a greater direct incentive to mobilize, and the resources to do so. Moreover, due to networks established over time, their access to such elite stakeholder events is likelier. Surprisingly, research organizations and think tanks also hold a prominent role, as these organizations have a growing importance within Brussels' policy circuit: We call for further research assessing their role in EU policymaking. At the same time, it indicates a distinct need for epistemic expertise that goes beyond traditional socioeconomic players and grassroots organizations.

Unsurprisingly, EU level interests receive primary attention however, national interests are also present. Indicating that the CN must engage with groups across levels to legitimize his role, and to create a multi-level coalition to improve the EU's negotiating position. Nevertheless, when we observe the insiders' circle research organizations, trade and professional associations are distinctly from the EU level, while trade unions, NGOs, and business associations represent a mix. On the surface this distribution suggests that little has changed and is likely to change in EU—considering interest group interactions vis-à-vis Brexit. Nonetheless, when we drill down to the specific groups meeting with the CN the most, some characteristics become clearer. First, UK companies are absent from the insiders' list in contrast to their overall presence in Brussels, and different to the position UK NGOs and trade unions hold.

Considering these results Brexit is likely to have two divergent effects on interest mobilization in Brussels. Because the EU aims to protect its (economic) interests, UK business will continue to lose access to EU policymakers. Since UK business interests need to maintain a good relationship primarily with the UK government, they may be less likely to formally request meetings with the CN. In this difficult position, British companies' best option is to be represented in Brussels via EU level associations. Naturally, this will dilute their ability to influence outcomes as outsiders even within these organizations.

Conversely, as the UK public will have no access to political procedures in Brussels the EU will open-up its space towards UK public interests. This serves to maintain the EU's legitimacy vis-à-vis a portion of the UK's public as well as EU based nationals in the UK; these groups can be utilized as a direct social pressure mechanism in the future. At the same time, it helps manage the constituency's expectations through meetings that provide information and resources to nurture the relationship in a post-Brexit environment. Put differently, it will be harder to numb pro-EU mobilization in the UK as access to political resources will still be available through a different, yet smaller, route.

Somewhat ironically, the UK's departure, with its pluralist interest intermediation, might trigger greater plurality in stakeholder engagement in Brussels in terms of public interest participation. Simultaneously, it is likely push EU level interests closer together, socioeconomic interests have greater incentive to solidify their role as forums and public representatives. Specific policy areas might see greater mobilization by domestic interests following the UK's departure. Nonetheless, the dynamic we see here reflects broader patterns. Issues such as fisheries or agriculture will see greater interaction between the EU and EU level associations that can help coordinate and ensure a common front against UK counterparts. Simultaneously, larger EU economies and their associations will gain greater relative importance. This places specific national coalitions closer to the EU sphere and in turn makes their voices stronger within peak level associations. The implication being that some perspectives will become highlighted, how this translates into policy impact remains to be seen.

We point out that this research area is a fast-moving target that will unfold and develop over time, as additional negotiations are needed to agree on the specifics within policy fields. We call for further work assessing the mobilization of UK interest groups, their strategies, and their involvement in EU procedures following Brexit. The analysis underscores interest groups' role as social pressure and legitimizing mechanisms in political procedures. Future work that engages more closely with the mechanics of interest group impact on policy can offer valuable empirical and conceptual material, contributing further to EU interest intermediation's nuanced assessment.

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Conflict of Interests

The authors declare no conflict of interests.

References

- Barley, S. R., & Kunda, G. (1992). Design and devotion: Surges of rational and normative ideologies of control in managerial discourse. *Administrative Science Quarterly*, 37, 363–399.
- Binderkrantz, A. (2005). Interest group strategies: Navigating between privileged access and strategies of pressure. *Political Studies*, 53(4), 694–715.
- Broscheid, A., & Coen, D. (2003). Insider and outsider lobbying of the European Commission: An informational model of forum politics. *European Union Politics*,

- 4(2), 165–189.
- Bulmer, S., & Quaglia, L. (2018). The politics and economics of Brexit. *Journal of European Public Policy*, 25(8), 1089–1098.
- Burns, C., Gravey, V., Jordan, A., & Zito, A. (2019). De-Europeanising or disengaging? EU environmental policy and Brexit. *Environmental Politics*, 28(2), 271–292.
- Cairney, P. (2015). Paul A. Sabatier, “An advocacy coalition framework of policy change and the role of policy-oriented learning therein.” In E. Page, S. Balla, & M. Lodge (Eds.), *The Oxford handbook of classics in public policy and administration* (pp. 484–497). Oxford: Oxford University Press.
- Coen, D. (1997). The evolution of the large firm as a political actor in the European Union. *Journal of European Public Policy*, 4(1), 91–108.
- Coen, D., & Katsaitis, A. (2019a). Between cheap talk and epistocracy: The logic of interest group access in the European Parliament’s committee hearings. *Public Administration*, 97(4), 754–769.
- Coen, D., & Katsaitis, A. (2019b). Legislative efficiency and political inclusiveness: The effect of procedures on interest group mobilization in the European Parliament. *The Journal of Legislative Studies*, 25(2), 278–294.
- Coen, D., Lehmann, W., & Katsaitis, A. (2020). Deliberative layering: Explaining diverse interest mobilization across the European Parliament’s policy cycle. *Journal of Public Affairs*. <https://doi.org/10.1002/pa.2139>
- De Wilde, P., & Rauh, C. (2019). Going full circle: The need for procedural perspectives on EU responsiveness. *Journal of European Public Policy*, 26(11), 1737–1748.
- Ditto, P. H., Pizarro, D. A., & Tannenbaum, D. (2009). Motivated moral reasoning. *Psychology of Learning and Motivation*, 50, 307–338.
- Dryzek, J. S. (1990). *Discursive democracy: Politics, policy, and political science*. Cambridge University Press.
- Dryzek, J. S., & List, C. (2003). Social choice theory and deliberative democracy: A reconciliation. *British Journal of Political Science*, 33(1), 1–28.
- Dunleavy, P. (2014). *Democracy, bureaucracy and public choice: Economic approaches in political science*. London: Routledge.
- Dunlop, C. A., & Radaelli, C. M. (2013). Systematising policy learning: From monolith to dimensions. *Political Studies*, 61(3), 599–619.
- Dür, M., & Matteo, G. (2016). *Insiders versus outsiders: Interest group politics in multilevel Europe*. Oxford: Oxford University Press.
- Egeberg, M., & Trondal, J. (2018). *An organizational approach to public governance: Understanding and design*. Oxford: Oxford University Press.
- Eising, R. (2004). Multilevel governance and business interests in the European Union. *Governance*, 17, 211–245.
- Eriksen, E. (2018). Getting to agreement: Mechanisms of deliberative decision-making. *International Theory*, 10(3), 374–408.
- Estlund, D. (2009). Epistemic proceduralism and democratic authority. In R. Tinnevelt & R. Geenens (Eds.), *Does truth matter?* (pp. 15–27). Dordrecht: Springer.
- European Commission. (2016). *Stakeholder outreach concerning Article 50 Negotiations with the United Kingdom*. Brussels: European Commission. Retrieved from https://ec.europa.eu/info/news/stakeholder-outreach-concerning-article-50-negotiations-united-kingdom-2017-mar-13_en
- Fraussen, B., Albareda, A., & Braun, C. (2020). Conceptualizing consultation approaches: Identifying combinations of consultation tools and analyzing their implications for stakeholder diversity. *Policy Sciences*, 53, 1–21.
- Goodin, R. E. (2008). *Innovating democracy: Democratic theory and practice after the deliberative turn*. Oxford: Oxford University Press.
- Hall, P. A., & Soskice, D. (2003). Varieties of capitalism and institutional complementarities. In R. Franzese, P. Mooslechner, & M. Schürz (Eds.), *Institutional conflicts and complementarities* (pp. 43–76). Boston, MA: Springer.
- Holst, C., & Molander, A. (2019). Epistemic democracy and the role of experts. *Contemporary Political Theory*, 18, 541–561.
- Hurd, I. (1999). Legitimacy and authority in international politics. *International Organization*, 53(2), 379–408.
- James, S., & Quaglia, L. (2018). The Brexit negotiations and financial services: A two-level game analysis. *The Political Quarterly*, 89(4), 560–567.
- Katsaitis, A. (2015). EU democratic deficit(s) and legitimacy: System versus sub-system level. In K. Demetriou (Ed.), *The European Union in crisis* (pp. 181–198). Cham: Springer.
- Kelstrup, J. D. (2016). *The politics of think tanks in Europe*. London: Routledge.
- Landemore, H. (2012). *The mechanisms of collective intelligence in politics*. Unpublished manuscript.
- Lavery, S. (2017). ‘Defend and extend’: British business strategy, EU employment policy and the emerging politics of Brexit. *The British Journal of Politics and International Relations*, 19(4), 696–714.
- Lee, C. W. (2011). Five assumptions academics make about public deliberation, and why they deserve rethinking. *Journal of Public Deliberation*, 7(1). <http://doi.org/10.16997/jdd.118>
- Lee, C. W., & Romano, Z. (2013). Democracy’s new discipline: Public deliberation as organizational strategy. *Organization Studies*, 34(5/6), 733–753.
- Leruth, B., Gänzle, S., & Trondal, J. (2019). Exploring differentiated disintegration in a post-Brexit European Union. *JCMS: Journal of Common Market Studies*, 57(5), 1013–1030.
- March, J., & Olsen, J. (1984). The new institutionalism: Organizational factors in political life. *The American*

- Political Science Review*, 78(3), 734–749.
- Marks, G., Hooghe, L., & Blank, K. (1996). European integration from the 1980s: State-centric v. multi-level governance. *JCMS: Journal of Common Market Studies*, 34(3), 341–378.
- Martill, B., & Staiger, U. (2020). Negotiating Brexit: The cultural sources of British hard bargaining. *JCMS: Journal of Common Market Studies*. <https://doi.org/10.1111/jcms.13059>
- Missiroli, A., & Ioannides, I. (2012). *European think tanks and the EU* (Berlaymont Paper Issue No. 2). Pittsburgh, PA: University of Pittsburgh.
- Monange, B. F. (2008). Social science expertise and policymaking: Comparing US, French, and EU think tanks: Similar model different paths. *PS, Political Science & Politics*, 41(4), 909.
- Naurin, D. (2007). *Deliberation behind closed doors: Transparency and lobbying in the European Union*. Colchester: ECPR Press.
- Patzer, M., Voegtlin, C., & Scherer, A. G. (2018). The normative justification of integrative stakeholder engagement: A Habermasian view on responsible leadership. *Business Ethics Quarterly*, 28(3), 325–354.
- Rasmussen, A., & Gross, V. (2015). Biased access? Exploring selection to advisory committees. *European Political Science Review*, 7(3), 343.
- Rosamond, B. (2016). Brexit and the problem of European disintegration. *Journal of Contemporary European Research*, 12(4), 864–871.
- Rosati, C. (1996). Internalism and the good for a person. *Ethics*, 106(2), 297–326.
- Russo, A., & Tencati, A. (2009). Formal vs. informal CSR strategies: Evidence from Italian micro, small, medium-sized, and large firms. *Journal of Business Ethics*, 85(2), 339–353.
- Sabatier, P. (1998). The advocacy coalition framework: Revisions and relevance for Europe. *Journal of European Public Policy*, 5(1), 98–130.
- Scharpf, F. W. (1999). *Governing in Europe: Effective and democratic?* Oxford: Oxford University Press.
- Schimmelfennig, F. (2018). Brexit: Differentiated disintegration in the European Union. *Journal of European Public Policy*, 25(8), 1154–1173.
- Schmidt, V. A. (2020). *Europe's crisis of legitimacy: Governing by rules and ruling by numbers in the eurozone*. Oxford: Oxford University Press.
- Sherrington, P. (2000). Shaping the policy agenda: Think tank activity in the European Union. *Global Society*, 14(2), 173–189.
- Smeets, S., & Beach, D. (2020). Intergovernmentalism and its implications: New institutional leadership in major EU reforms. *Journal of European Public Policy*, 27(8), 1137–1156.
- Streeck, W., & Schmitter, P. C. (1991). From national corporatism to transnational pluralism: Organized interests in the single European market. *Politics & Society*, 19(2), 133–164.
- Sunstein, C. R., & Hastie, R. (2015). *Wiser: Getting beyond groupthink to make groups smarter*. Boston, MA: Harvard Business Review Press.
- Thelen, K. (2012). Varieties of capitalism: Trajectories of liberalization and the new politics of social solidarity. *Annual Review of Political Science*, 15, 137–159.
- Walker, J. L. (1991). *Mobilizing interest groups in America: Patrons, professions, and social movements*. Ann Arbor, MI: University of Michigan Press.
- Whyte, G. (1998). Recasting Janis's groupthink model: The key role of collective efficacy in decision fiascoes. *Organizational Behavior and Human Decision Processes*, 73(2/3), 185–209.
- Wood, M. (2015). Beyond accountability: Political legitimacy and delegated water governance in Australia. *Public Administration*, 93(4), 1012–1030.
- Zurn, M., Binder, M., & Ecker-Ehrhardt, M. (2012). International authority and its politicization. *International Theory*, 4(1), 69–106. <https://doi.org/10.1017/S1752971912000012>

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Article

An Old Couple in a New Setting: Franco-German Leadership in the Post-Brexit EU

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Abstract

What are the implications of Brexit for the nature, role, and potential of Franco-German leadership in the EU? Brexit, we contend, is both an expression and a further cause of two broader underlying developments in the contemporary EU: First, a stronger and more prominent German part and position, and second, disintegrative tendencies in several EU policy fields and the EU polity as a whole. This, in turn, has major implications for Franco-German bilateralism and for Franco-German leadership in the EU. In light of a stronger Germany, a relatively weaker France, and significant centrifugal forces, the two largest EU member states must not only realign their bilateral relationship but must also act as a stabilizer in and for the EU. We show that during the EU's recent crises, not least during the Brexit negotiations and the recovery from the Covid-19 pandemic, France and Germany did exercise joint leadership. We also show, however, that major discrepancies persist between the two countries in particular policy fields and with regard to longer-term European objectives. Brexit, with its numerous calamities and implications, thus once again moves Franco-German leadership—and its shortcomings—to center stage in Europe. When it comes to leadership in the EU, there remains no viable alternative to the Franco-German duo. Yet, in order to provide constructive leadership and successfully shape the EU, the two countries must bridge substantial differences and be ready to carry disproportionately high burdens.

Keywords

bilateralism; Brexit; Covid-19; EU; France; Germany; leadership

Issue

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1. Introduction

In the early hours of 9 December 2011, British Prime Minister David Cameron famously vetoed a revision of the Treaty of Lisbon, the contractual basis of the EU. France’s President Nicolas Sarkozy and Germany’s Chancellor Angela Merkel had suggested a new EU-wide treaty to tighten national budgetary discipline in an attempt to salvage the common currency and put an end to the Eurozone crisis. They had not been willing to give in to Cameron’s demands for British exemptions and concessions to its financial services sector.

Cameron’s veto pleased many policymakers from his Conservative Party and the British Eurosceptic press. Going further, he asserted that if British interests were not served, its membership in the EU was no longer a given (Traynor, Watt, & Gow, 2011). Little more than a year later, Cameron would hold out the prospect of a British referendum on EU membership, which eventually triggered Brexit. Meanwhile, France and Germany had convinced 25 of the then 27 EU member states to sign a ‘fiscal compact’ on closer economic and fiscal integration on an intergovernmental basis, bypassing British opposition and leaving the UK further outside the EU’s core.

This episode is one of the last and most prominent examples of Franco-German leadership in the pre-Brexit EU. Since then, the EU has come under pressure in many ways—most notably with the UK: for the first time, a country has withdrawn from EU membership. In this article, we contend that Brexit is both an expression and a further cause of two broader underlying developments in the contemporary EU: First, Germany in recent years has moved to center stage. It plays an ever stronger and more prominent part in EU politics, making German consent indispensable for any agreement at the EU level. And second, disintegrative tendencies in several EU policy fields and the EU polity have put the form and substance of European integration into question. We further argue that this, in turn, has major implications for Franco-German bilateralism and Franco-German leadership in the EU. In light of a stronger Germany, a relatively weaker France, and significant centrifugal forces, the two largest EU member states must not only realign their bilateral relationship but must also act as a stabilizer in and for the EU.

In this article, we take on two tasks. First, we show that in moments of existential crisis in recent years, France and Germany did exercise joint leadership. When the EU as a polity and the future of European integration were at concrete risk, the two countries stuck together, managed to reconcile their national preferences and interests, and led the way toward a common European response to the pressing challenge. We illustrate this by examining France and Germany's role during the Brexit negotiations and the Covid-19 pandemic. Second, however, we also show that major discrepancies persist between the two countries in particular policy fields and with regard to longer-term European objectives. When one partner is more negatively affected by specific developments or policies than the other, and when a joint role and response to a challenge appear less urgent, Franco-German leadership is less likely to materialize and to have a significant impact on EU politics. The Eurozone reform discussions, EU defense policy, and EU asylum and migration policy exemplify this.

We scrutinize the role, relevance, and implications of European political leadership both with regard to different policy fields and challenges, and within the Franco-German duo itself. Our cases represent important instances of European integration and EU politics in recent years. Comparing various crises and challenges, this article holds that explaining important variation in integration outcomes requires consideration of different degrees of Franco-German leadership. The different outcomes show us when, why, and how Franco-German leadership is likely to emerge and engender impact in post-Brexit EU politics. We ground our analysis in primary sources including official member state and EU documents, newspaper reports, and the wider academic literature on political leadership, Franco-German bilateralism, and EU crisis politics. Importantly, absent a more determined Franco-German leadership and, in particu-

lar, a more courageous German part, the EU risks yet more muddling through or stalling. We conclude by arguing that when it comes to leadership in the EU, there remains no viable alternative to the Franco-German duo. This alone, however, will not be enough given the various challenges and uncertainties the EU is facing.

2. Franco-German Leadership in the EU

Political leadership is an often invoked but also controversial and contested concept, not least in the context of European integration. European integration—that is, the process after the Second World War of European nation states working together ever more closely in political and economic affairs and increasingly pooling their sovereignty at the European level—was in essence an “anti-hegemonic construction” that sought to diffuse and share power between the different actors and put an end to the disastrous balance-of-power politics in Europe (Schild, 2010, p. 1370). At the same time, however, leadership is often necessary to give guidance, overcome collective action problems, and provide stability to a political system—particularly during moments of uncertainty or accelerated change. Leadership can also help, in ‘normal’ (non-crisis) times, to sound out common ground for reforms and progress on particular political issues.

Due to its anti-hegemonic character, permanent political leadership in the EU by a single member state would meet major resistance and hence is unlikely. In the history of European integration, France and Germany have therefore jointly assumed the leadership role on numerous occasions. The original purpose of European integration was also a response to the decades-long antagonism, struggle for supremacy, and war between these two countries (Krotz, 2014). As founding members of today's EU, French and German political elites feel a special responsibility to preserve and foster the peaceful political and economic unification of Europe. They can thereby draw on a unique set of political, administrative, and public ties. Indeed, today's Franco-German “embedded bilateralism” is the most institutionalized form of member state cooperation within a regional political organization (Krotz & Schild, 2013).

Moreover, France and Germany are the two biggest countries in the EU which often have available the necessary political, material, institutional, and idealist resources to provide leadership. A recent survey amongst politicians and experts has confirmed that Germany and France (in this order) are the most contacted and most influential EU countries (Busse et al., 2020). Generally, leadership is possible when there is demand for it amongst political actors, and when a single actor or small group of actors is able and willing to supply it. Leadership demand might result from increased status quo costs for member states, while leadership supply depends on the leader's expected costs and benefits of leading. Leadership in and of the EU tends to be successful and to have a real impact when the leader(s)

manage to reconcile their own preferences and interests with those of their followers and to enable the achievement of common objectives (Schoeller, 2019, pp. 28–40).

Franco-German bilateralism and its impact on EU politics comprises three main types of leadership: the promotion of further European integration; closer cooperation and forms of differentiated integration; and crisis management and the overcoming of decision-making deadlocks. France and Germany may exercise such leadership in three main ways: (1) setting the political agenda, either by submitting their own proposals or by removing competing proposals from the agenda; (2) building consensus and brokering compromises between themselves and then between different camps of member states; (3) and wielding coalitions of like-minded member states, especially in situations in which large majorities are necessary for an agreement. They then can overrule opposition and sideline reluctant members, as was the case with David Cameron in the run-up to the fiscal compact (Krotz & Schild, 2013, pp. 20–22).

In recent years, Franco-German leadership in the EU has become at once more challenging and more essential (Krotz & Maher, 2016). On the one hand, after various enlargement rounds, we see a larger and more heterogeneous EU in terms of political culture, economic interests, and national policy preferences. More importantly for Franco-German leadership, Germany has occupied a more prominent and at times dominant position. Especially during the global financial and subsequent Eurozone crises, but also during the Covid-19 pandemic, Germany's superior economic and fiscal position revealed a growing asymmetry within the Franco-German duo. Germany, it seems, has become the "indispensable nation" for any agreement on the EU level (Sikorski, 2011). France, by contrast, has struggled for years with slow or no economic growth as well as political and social divisions and protests that have challenged its entire political system. What is more, the anti-EU National Rally (formerly Front National)—the largest political force in France in the 2019 European parliamentary elections—promotes more nationalist positions and makes negotiating successes at the EU level all the more important for the French president (Bulmer & Paterson, 2019, p. 13).

On the other hand, various centrifugal forces and disintegrative tendencies have rattled selected policy fields and even the entire EU polity. Brexit, of course, is the single most obvious embodiment of this development. That a country has for the first time opted to withdraw from EU membership led some scholars to speak of a "European disintegration" (Webber, 2019, pp. 19–30; see also Schramm, 2020). In the immediate aftermath of the referendum, some scholars speculated that Brexit could create and further increase the incentives for other member states to follow the British example and withdraw from the EU membership. In any event, Brexit has once again moved Franco-German leadership into focus, since it increases the visibility and relative impor-

tance of the two remaining large member states (Krotz & Schild, 2018).

But the EU has seen other disintegrative tendencies as well. During the Eurozone crisis from 2010 to 2015, the common currency came under severe pressure, revealing the shortcomings in its institutional design and pushing some member states to the edge of exit. In the migration crisis of 2015 and 2016, the ongoing clash amongst member states over a quota system and the more equal distribution of refugees led not only to the undermining of common EU decisions but also to the reintroduction of border controls within the Schengen free-traveling area. And the 'Covid-19 summit' of July 2020 revealed different and opposing coalitions of Northern, Southern and Eastern member states, which were in severe dispute over the size, allocation, and governance structure of a European economic recovery fund.

After the election of the pro-European Emmanuel Macron as President of France in May 2017, there were high expectations that France, together with Germany, could lead the way to a much-needed reform and impetus for the EU. In a speech at the Sorbonne University in September 2017, Macron called, among other things, for a separate budget to make the Eurozone more robust and for more integration in defense and security to transform the EU into a true political player on the global stage (French Presidency, 2017). Despite some occasional rhetorical expressions of support and the public and symbolic cultivation of the Franco-German relationship (Krotz, 2002), the new German government, which took office in March 2018, never really engaged with the Macron proposals. This, however, contrasts the prominent role that France and Germany played in the management of both the Brexit and the Covid-19 crises. In both cases, the two countries assumed joint leadership, seeking to keep the EU member states together and showing ways to deal with the pressing challenges.

In order to explain this variation and document the distinctive role of France and Germany, we put forward a framework that deviates from and extends beyond many of the main theories of European integration (see also Krotz & Schild, 2013, pp. 11–16). These existing theories often focus primarily on general trends and outcomes in integration but tend to say little about the precise forms and mechanisms of European decision-making and crisis management at particular moments in time. In contrast to both neo-functionalism (Haas, 1958) and multi-level governance approaches (Marks, Hooghe, & Blank, 1996), we attribute a more prominent part to two large EU member states. This focus also helps us to better account for enabling or constraining factors for European cooperation and integration, which might stem both from the respective domestic environments in these two countries and from their bilateral relationship.

Concentrating on two key states, our theorizing obviously connects to intergovernmentalism, which holds true both for its classic formulation and Stanley Hoffmann's (1966) emphasis on the differences between

national structures and cultures, and for Andrew Moravcsik's (1998) liberal mode and the process of domestic preference formation. At the same time, we go beyond these intergovernmentalisms in that we stress political agency and strategizing and Franco-German influence (or the lack thereof), both in concrete moments (of crisis) and in the evolution of specific EU policy fields. Lastly, we deviate from accounts of German hegemony in the EU (Bulmer & Paterson, 2019) in that we also look at policy fields in which German influence is less pronounced and at instances in which Germany was able to shape EU politics only in partnership with France.

3. Brexit

After his announcement of an in/out referendum on British EU membership in January 2013 and his electoral success in the UK parliamentary elections in June 2015, Prime Minister Cameron reinforced his demands for a new settlement and a renewed British position within the EU. In the run-up to the Brexit referendum, Cameron from summer 2015 onwards conducted negotiations with the EU's other heads of state or government. He in particular asked for a formal exemption of the UK from the goal, anchored in the preamble to the EU Treaties, to strive for an 'ever closer Union' and for the right to restrict the free movement of people within the EU in order to reduce the number of EU migrants coming to the UK.

The declared objective of the other member states was to avert 'Brexit' and to compel the UK to stay in the EU. According to some observers, Cameron hoped that German Chancellor Merkel in particular would manage to broker generous provisions on behalf of the EU, given her prominent position amongst the European leaders and the supposedly very major interest of German politics and industry in keeping the UK within the EU at any cost (Webber, 2019, pp. 177–206). However, for the other member states, there were limits on how far they were willing to accommodate. As Merkel stressed in October 2015, for her the free movement of people in the EU was non-negotiable. Similarly, France's then-President François Hollande ruled out a timely change to the EU Treaties to meet Cameron's demands, not least since opening the Treaties could have triggered a French referendum with an uncertain outcome (Traynor, 2015).

In their European Council Conclusions of 18 and 19 February 2016, the heads of state or government stressed the UK's special status in the EU and promised legal changes in the case of a Remain vote. Most notably, they exempted the UK from 'ever closer Union.' In contrast, however, the heads did not alter the principle of the free movement of people. The UK would be given the right to restrict benefits for new migrants for four years, but it would not have the right to suspend intra-EU migration. In addition, the Conclusions did not entail a concrete date or formal provisions for a Treaty change to implement the agreed upon changes (European Council, 2016a).

After the June 2016 referendum and during the exit negotiations with the UK, the other EU member states were keen to keep and foster the unity of the EU-27 and to minimize the incentives for further withdrawals. Less than three months after the Brexit referendum, in their Bratislava Declaration of 16 September 2016, the heads of state or government stressed that despite the UK's decision to leave, "the EU remains indispensable for the rest of us"; they were "determined to make a success of the EU with 27 Member States" (European Council, 2016b). At that meeting, they also endorsed the 'Bratislava Roadmap,' a work program for the coming months to tackle pressing challenges such as migration, external security, and economic development (European Council, 2016b).

Starting on 1 October 2016, the EU-27 entrusted the formal conduct of the exit negotiations to the European Commission and the European Council and their newly created Brexit task forces (Laffan, 2019). On various occasions, France and Germany acknowledged the importance of a future close relationship between the EU and the UK, particularly in security, defense, and intelligence policies. At the same time, however, they stressed the integrity of the European single market with its four freedoms (of people, labor, goods, and capital) and excluded any special provisions for the UK. Speaking to the German Bundestag on 28 June 2016, five days after the Brexit referendum, Chancellor Merkel excluded "cherry-picking" when it came to access to the single market and argued that as a future third country the UK must not enjoy the same rights and privileges as it did as an EU member. Moreover, Merkel ruled out separate, bilateral negotiations between a single member state and the UK government ("Merkel zum Brexit," 2016).

France and Germany were determined to prevent Brexit from becoming a success story, to highlight the benefits of EU membership, and to avoid further European rupture and disintegration. The new French President Macron took a particularly tough stance on the UK. In October 2019, he initially objected to a second Brexit extension and urged the EU-27 to move on to final British withdrawal (Rankin & Boffey, 2019). Overall, the negotiations with the UK both before and after the Brexit referendum have shown that Germany and France, as the UK's first and third largest trading partners, preferred a smaller but still highly integrated EU to a larger EU that could include the UK but would then be less integrated. The stance of France and Germany and their commitment to a highly integrated EU were crucial to the unity of the EU-27 and to preventing other member states seeking to follow the British example of withdrawing from EU membership.

4. Covid-19

Beginning in early March 2020, Covid-19 spread rapidly across EU member states, forcing governments to impose tough constraints on individual outdoor and

economic activities, as well as severe travel restrictions even within the putative open-border Schengen area. The Covid-19 lockdown led to an unprecedented decline in member states' economic output, increased unemployment, rising expenditures for public health, and rising government debt levels. As it became clear, member states were differently prepared to cope with the costs or to initiate economic recovery. While Northern EU countries including Germany generally had rather sound public finances and thus considerable fiscal leeway to provide national stimulus programs, Southern EU countries such as Italy and Spain, but also France, had significantly fewer available resources.

At the European Council meeting on 26 March 2020, the EU's heads of state or government articulated the "unprecedented challenge" of the Covid-19 pandemic and called for Eurozone finance ministers to present proposals for a decisive common economic and fiscal response (European Council, 2020a). However, there were major discrepancies between member states about the adequate financing and allocation of a European fiscal support package. On one side, France joined a group of eight other EU countries calling for the introduction of 'Covid-19 bonds' (the joint issuance and liability of government debt) and support in the form of non-repayable grants (Dombey, Chazan, & Brunsten, 2020). On the other side, Germany, together with other Northern EU countries like Austria and the Netherlands, rejected Covid-19 bonds and insisted on the allocation of credits from the European Stability Mechanism, the Eurozone's permanent bailout fund, to the hardest-hit countries. On 23 April 2020, the European Council endorsed an initial European fiscal support package worth €540 billion, consisting largely of credits from the European Stability Mechanism. At the same time, the heads of state or government indicated that they deemed this first support package alone insufficient and called upon the European Commission to present a timely proposal for a European recovery fund (Council of the EU, 2020).

Surprisingly for many, Macron and Merkel on 18 May 2020 presented a joint proposal for a temporary recovery fund to be linked with the EU's next multi-annual budget. According to the Franco-German plan, the Commission, on behalf of and backed by the member states, would raise €500 billion on the financial markets, which would then be distributed to the worst-affected EU regions via grants (Bundeskanzlerin, 2020). Politicians and analysts called the Franco-German plan a potential turning point in the history of the EU, since it would for the first time allow the Commission to borrow money on such a scale. Some observers went as far as to argue that the Franco-German initiative marked a big step toward a European fiscal union and the EU's "Hamiltonian moment," in reference to Alexander Hamilton, the first treasurer of the US who summarized the regions' debt levels and issued new debt on behalf of the federal government (Kaletsky, 2020).

The move towards common EU debt indeed marked a remarkable deviation from the traditional German stance, as did the proposal to distribute fiscal support entirely in the form of grants rather than credits. So far, Germany had opposed greater fiscal burden-sharing at the EU level and the transfer of fiscal resources to Europe's poorer and most crisis-ridden regions. At the same time, the plan also deviated from the former French position in that the recovery fund would not be financed through a new and timely unlimited EU instrument, such as Covid-19 bonds. Instead, this would be a one-time tool tied to the EU's regular budget, with all the associated oversight in terms of spending priorities and economic reform efforts. Both France and Germany thus had moved away from their former Southern and Northern camps of supposedly like-minded countries and shifted into the role of mediators, forging a bilateral plan which could then serve as the blueprint for a broader European compromise.

On 27 May, in the wake of the Franco-German initiative, the Commission presented its much-anticipated proposal for a second European fiscal support package, which essentially consisted of two elements: first, a European recovery instrument called 'Next Generation EU' and worth €750 billion, to be financed by Commission borrowing and composed of almost two-thirds in grants and the rest in loans and guarantees; and second, a renewed proposal for the EU's next multi-annual budget totaling €1,1 trillion, to be agreed upon by member states by the end of 2020, with increased EU-spending on Covid-19-related issues (European Commission, 2020). The Commission thus largely adopted the size and financing rationale of the Franco-German plan, while it added another €250 billion in the form of credits.

When presenting the plan to the press on 18 May, President Macron, not without pride, stated that "an agreement between Germany and France is not an agreement of the 27 [EU member states], but there can be no agreement among the 27 if there is not already a Franco-German agreement" (Fleming, Mallet, & Chazan, 2020). The heads of state or government endorsed the European recovery fund, together with the EU's next multi-annual budget, at the four-day European Council summit in July (European Council, 2020b). In the run-up to that summit, Merkel and Macron both in bilateral gatherings and in several separate meetings with other national leaders explored common ground and options for compromises. According to two close observers, throughout the summit itself, Merkel and Macron were careful to follow a common line, insisting on an agreement among the 27 member states (Gutschker & Wiegel, 2020).

5. Between Short-Term Crisis Management and Longer-Term European Objectives

In view of existential threats to the EU and the future of European integration—such as Brexit and the Covid-19

crisis—France and Germany thus have repeatedly exercised decisive European leadership. Keen to maintain and further strengthen the unity of the EU-27, both countries set aside narrowly conceived national and economic self-interests during the Brexit negotiations. During the Covid-19 crisis, France and Germany paved the way for a common and comprehensive European fiscal support package. Initially, the two countries had represented different camps, with France aligning with mostly Southern EU countries to call for the introduction of Covid-19 bonds while Germany sided with other Northern countries and insisted on the allocation of credits only. In their joint proposal for an EU recovery fund, however, each deviated from its original stance. The Franco-German initiative formed the blueprint and necessary political backing for the following Commission proposal and, eventually, the agreement of the 27 member states on the EU's response to the Covid-19 crisis. In terms of leadership, it is an example of both agenda-setting and consensus-building in order to overcome impasse amongst member states, prevent the Covid-19 crisis from further escalating, and start Europe's economic recovery.

At the same time, and apart from acute EU crisis management, France and Germany have also refrained repeatedly from assuming—or even failed to exercise—political leadership. With regard to longer-term EU reforms and objectives, we see some deep and fundamental discrepancies between France and Germany, and among EU member states at large: Beyond the immediate reforms in the course and aftermath of the Eurozone crisis, the future performance and resilience of Europe's monetary union remain uncertain. Shifts in global security, and in transatlantic relations in particular, call for a reorientation in European security and defense policy. Moreover, the ongoing disputes about the reception and relocation of refugees and the safeguarding of the EU's external borders threaten the functioning of the European asylum system and, as a consequence, the Schengen free-travelling area. In the following, we explore each of these discrepancies in some more detail.

In his programmatic Sorbonne speech on the future of Europe in September 2017, Macron called for a “sovereign, united and democratic Europe.” Specifically, he promoted more efforts and investments in the autonomous defense of Europe and the creation of “a common strategic culture,” “a common intervention force,” and “a common defense budget.” He further demanded a “common budget” for the Eurozone in order to finance joint projects, cushion economic shocks, and reduce economic imbalances within the Eurozone (French Presidency, 2017). In that speech, delivered just two days after the 2017 parliamentary elections in Germany, Macron offered Chancellor Merkel and the future German government “a new partnership” and a privileged Franco-German role in the implementation of these projects. And when awarded the prestigious Charlemagne Prize for European unity in the German city of Aachen in May 2018, Macron further elaborated on

his long-term goals for the EU. Repeating his calls for a Eurozone budget, Macron explicitly called on Germany to get over its “fetish” for budget surpluses and work with him on forging deeper European economic integration (“Macron's EU,” 2018).

The German government, however, reacted remarkably passively to Macron's advances. It was only in March 2019 that Annegret Kramp-Karrenbauer, Merkel's successor as party leader of the Christian Democratic Union, presented her suggestions for the future of the EU, which were largely interpreted as a response to Macron. Regarding monetary union, Kramp-Karrenbauer did not mention the possibility of further integration but instead called for more “subsidiarity” and member state “responsibility” (Mühlherr, Schiltz, & Schuster, 2019). Further, she caused opposition and open outrage in Paris by suggesting that France, if it seeks a more effective EU, should give up its permanent seat in the United Nations' Security Council in favor of a European seat and should sacrifice the part-time base of the European Parliament in Strasbourg (“A conservative German response,” 2019).

This belated and half-hearted response reinforced the image of a Germany that is quite satisfied with the status quo in Europe, especially when it comes to economic and fiscal policies. Indeed, a survey conducted at the same time that Macron received the Charlemagne prize showed that half of German voters thought his proposals for economic and financial integration went “too far” (“Emmanuel Macron receives Charlemagne Prize,” 2018). Only a few weeks later, more than 150 German economists signed an open letter denouncing Macron's proposals and calling for national economic reforms instead of disincentives and a European transfer union (Plickert & Mussler, 2019). Not surprisingly, thus, the German government—despite having formally approved France's call for a Eurozone budget in their Meseberg declaration of June 2018—showed little enthusiasm to seriously push the project forward, and it put up little resistance when several smaller Northern EU countries substantively watered down the Eurozone budget in the following months (Schoeller, 2020). Together, these episodes illustrate that the German government shies away from a profound reform and further development of the Eurozone, fearing the joint liability for banks and government debt, permanent fiscal transfers from Europe's North to its South, and a backlash from its electoral base.

Regarding European defense, Chancellor Merkel had already stated in May 2017 that the times in which Europe “could fully rely on others” were over, asserting that “we Europeans must really take our fate into our own hands” (“Kanzlerin trotz Trump,” 2017). She primarily referred to the US' questioning of multilateral fora and alliances such as NATO under President Donald Trump, but also to Brexit (“Kanzlerin trotz Trump,” 2017). On 11 December 2017, 25 EU member states agreed to intensify their defense cooperation within the framework of the Permanent Structured Cooperation. Due to the

legally binding commitments of the member states, the Permanent Structured Cooperation is the most advanced form of defense cooperation in the EU. Together with the European Defense Fund, established in June 2017 in an effort to coordinate national investment in defense research, the Permanent Structured Cooperation was also a response to Brexit and the UK's withdrawal from the EU defense framework.

Germany's supposedly more confident and vigorous approach towards European security and defense should meet France's ambitions and stances in this policy field. Indeed, the European Intervention Initiative, which Macron had also mentioned in his Sorbonne speech, was officially formed in June 2018. In establishing military cooperation between at first eight EU member states and the UK outside the existing structures of NATO, it could represent a significant step towards European 'strategic autonomy.' Yet, the precise details, competences, and resources of such novel alliances and initiatives—and hence the future of European security and the prospect of a proper European defense policy—remain largely unclear. Despite its otherwise broad ambitions, the Franco-German Treaty of Aachen from January 2019 in security and defense does not go beyond bilateral consultations between the two countries, stopping short of pooling resources and joint decision-making procedures (Seidendorf, 2019, pp. 198–200). It still holds that security and defense remain the last bastions of national sovereignty, including for these two countries. Also, while France has long promoted greater European defense autonomy, Germany has traditionally insisted on a key role for NATO and a close partnership with the US (Krotz & Sperling, 2011). To date, the security and defense domains have thus seen only sporadic and often half-hearted Franco-German leadership.

The EU's asylum and migration policy is a third area with rather limited Franco-German leadership over the past years. In 2015 and 2016, the EU faced an unprecedented number of incoming refugees and migrants. The severe disputes over their reception and relocation brought the Common European Asylum System to the brink of collapse, while the partial reintroduction of national border controls to contain the migratory flows threatened the principle of free travel inside the Schengen area. Germany, which received the most asylum applications, sought to establish a refugee quota at the EU level. Although France also advocated a more equal distribution, President Hollande and his government were much more reluctant to institute a permanent and legally binding quota system. When Germany, together with the European Commission, in March 2016 negotiated and concluded a political deal with Turkey to lower the migratory flows to Europe, France hardly played a role. Since then, either bilaterally or in a small group of member states, France and Germany have repeatedly advocated a new European asylum policy and more intra-European burden-sharing. In September 2019, for example, the interior ministers of both coun-

tries, together with those from Italy and Malta, agreed on the internal relocation of rescued refugees from the Mediterranean Sea ("EU ministers in Malta," 2019).

Overall, however, France and Germany have so far not succeeded in putting the EU's asylum and migration policy and the Common European Asylum System on a more sustainable, reliable, and crisis-proof footing. This is also because the two countries themselves often do not agree on the next steps, as became apparent with the mandatory quota system. In other instances, France and Germany announced possible measures but then did not pursue them credibly and in the longer term: Both the German Interior Minister Thomas de Maizière (in September 2015) and President Macron (in April 2019) raised the option of excluding member states that overtly oppose the relocation of asylum-seekers and other contributions to a common EU asylum policy from the Schengen area. Yet, so far, the two countries have backed away from proceeding in sub-groups of like-minded member states and from engaging in forms of differentiated integration.

Beyond these specific policy fields and challenges, France and Germany are aware of their special bilateral relationship and their historical responsibility for the European integration project. This they have repeatedly expressed, not least in the context of Brexit. In the Meseberg declaration of 19 June 2018, both countries expressed their determination to "further strengthen their cooperation within the European Union" and at the same time "to ensure the unity of the member states and the performance of the Union" (Bundesregierung, 2018). And in the Treaty of Aachen on 22 January 2019, an extension of the Franco-German 'Elysée' friendship treaty from 1963, both agreed to take their bilateral cooperation to a new level, for example by further aligning their economic, social, and tax systems and by creating new instruments for cross-border cooperation (France Diplomacy, 2019).

As the previous sections have shown, however, we thus often see a gap between Franco-German leadership in moments of acute threat to the EU, on the one hand, and their role with regard to longer-term objectives and more fundamental reforms in the EU—as well as the commitments and symbolic gestures of the two countries—on the other hand. Regarding the current political leaders and elites in the two countries, we also see differences in personal traits, ways of policy-making, and visions for the future of the EU. President Macron on various occasions called for prompt and large-scale changes and reforms of particular EU policies and the entire EU. These advances, however, led to reservations and sometimes open opposition in German government circles, which see them as premature or even dangerous, and selective in that they seek to strengthen France's position and role in Europe. Conversely, the often pragmatic but also hesitant political style of Chancellor Merkel and other leading German politicians, not least when it comes to greater German commitment

in European financial and security affairs, has led to frustration in Paris (Drozdiak, 2020, pp. 89–110).

6. Conclusions

The UK's decision to leave the EU has once again moved the Franco-German duo to center-stage in Europe. As the two largest and most influential EU member states, France and Germany's joint role and leadership continue to be crucial for the future of Europe, its integration, and the politics of its union. This is even more the case at a time when the EU is facing numerous crises, challenges and disintegrative tendencies, and a growing asymmetry in the Franco-German relationship due to a more dominant and at times complacent German stance, particularly in economic terms. Despite initial difficulties based on partly different preferences and interests, France and Germany, at moments of existential threat for the EU and the European integration process of the past decade, have exercised joint leadership. A Franco-German agreement might not be sufficient for consent at the EU level, but it is a necessary condition for effective crisis management and the overcoming of decision-making deadlocks amongst EU member states. Absent Franco-German leadership, the European project meanders between the poles of uninspired or reluctant German preponderance on the one hand, and yet more muddling through or stalling, on the other.

In the run-up to and the aftermath of the Brexit referendum, France and Germany were keen to preserve the integrity of the European single market, to maintain the unity of the remaining EU countries, and to prevent further member state withdrawals. Their leaders took a hard and unified line against the UK, signaling that as a third country the UK would not enjoy the same benefits as it did as a member state. In the course of the Covid-19 crisis, they set the political agenda and paved the way for a comprehensive European fiscal support package, building a compromise among all member states to tackle the economic damage caused by Covid-19 and to start recovery. In this regard, France and Germany lived up to their special role and historical vocation for European integration, which the political leaders of the two countries so often stress.

By contrast, with regard to reforms and further developments in some specific EU policy fields and longer-term EU objectives, Franco-German leadership was often less visible, sometimes only marginally successful, and at other times even entirely absent. Regarding the Eurozone, Germany has shown little enthusiasm and appetite for major new steps. Discussions and negotiations on the completion of banking union, for example, are stalling, not least due to German reluctance. The large Eurozone budget, called for by Macron to make the Eurozone more stable and crisis-proof, was decisively watered down with the (hidden) consent of Berlin. With regard to EU security and defense, Germany, despite a change in rhetoric, still is rather reluctant

when it comes to increasing defense spending and taking part in military interventions. Finally, an overhaul of the EU's asylum and migration system and greater burden-sharing among member states in terms of the reception and relocation of asylum-seekers is clearly in Germany's interests and high up on the country's political agenda. In light of half-hearted French support, however, Germany alone has little backing or power to deeply and lastingly reform EU asylum policy. For these longer-term EU undertakings and objectives, thus, France and Germany so far have been either unwilling or unable to exercise joint leadership.

In sum, France and Germany are more likely to supply political leadership in moments of existential crisis and threat when they manage to reconcile their own preferences and interests. In these instances, there also is a higher demand for leadership amongst other member states so that Franco-German influence becomes more legitimate and more likely to be successful, and to have a substantial impact on EU politics. Things are rather different when it comes to more fundamental and longer-term questions regarding particular EU policy fields and the future of European integration. Here, profound differences remain between the two countries' priorities and conceptions of the form, substance, and direction of the EU. In addition, the rhetoric and political style often diverge considerably in the two countries, and between the French President and the German Chancellor in particular, making a common policy stance and initiatives and hence a credible offer of Franco-German leadership difficult.

Are there options that could plausibly replace or supplement Franco-German leadership in the EU in the foreseeable future? Indeed, other subgroups of member states have sometimes joined forces to pursue certain policy objectives. The Visegrád group of four Central and Eastern EU countries fiercely opposed an EU refugee quota system. In EU budget negotiations, these countries are keen to maintain large financial transfers through the EU's structural and cohesion funds. In the aftermath of the Eurozone crisis, the 'New Hanseatic League,' a group of economically liberal and trade-oriented member states, called for a larger role for EU institutions in scrutinizing national budgets and enforcing fiscal discipline. And during the Covid-19 crisis, a subgroup of the Hanse—the 'frugals': Austria, Denmark, Sweden, and the Netherlands, at times with Finland's open or tacit support—have demanded a more limited fiscal support package and pushed for a higher ratio of credits to grants.

These coalitions, however, are more concerned with blocking or moderating (oftentimes far-reaching) proposals at the EU level than with providing credible leadership options. When it comes to creative, constructive, and bridge-building solutions to pressing problems and measures ultimately acceptable to all—or at least to a vast majority of EU member states—there is still no credible alternative to the Franco-German duo. In order to pro-

vide leadership beyond moments of acute threat to the EU, however, France and Germany must find even more common ground, re-energize their bilateral relationship, and pursue a joint role in EU politics. This may well include cooperating in large subgroups of like-minded member states and moving the EU towards more flexible integration schemes. The EU's recent proposal for a 'New Pact on Asylum and Migration' might be a test case for such an endeavor.

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Conflict of Interests

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References

- A conservative German response to Macron's EU vision. (2019, March 11). *Financial Times*. Retrieved from <https://www.ft.com/content/2ad3d532-43f8-11e9-b168-96a37d002cd3>
- Bulmer, S., & Paterson, W. E. (2019). *Germany and the European Union: Europe's reluctant hegemon?* London: Macmillan.
- Bundeskanzlerin. (2020, May 18). *A French-German initiative for the European recovery from the Coronavirus crisis* [Press release]. Retrieved from <https://www.bundesregierung.de/breg-en/news/dt-franz-initiative-1753890>
- Bundesregierung. (2018, June 19). *Meseberg declaration: Renewing Europe's promises of security and prosperity* [Press release]. Retrieved from <https://archiv.bundesregierung.de/archiv-de/meta/startseite/meseberg-declaration-1140806>
- Busse, C., Franke, U., Loss, R., Puglierin, J., Riedel, M., & Zerka, P. (2020). EU coalition explorer. *European Council on Foreign Relations*. Retrieved from <https://www.ecfr.eu/eucoalitionexplorer>
- Council of the EU. (2020, April 23). *Conclusions of the President of the European Council following the video conference of the members of the European Council* [Press release]. Retrieved from <https://www.consilium.europa.eu/en/press/press-releases/2020/04/23/conclusions-by-president-charles-michel-following-the-video-conference-with-members-of-the-european-council-on-23-april-2020>
- Dombey, D., Chazan, G., & Brunsten, J. (2020, March 25). Nine eurozone countries issue call for 'coronabonds.' *Financial Times*. Retrieved from <https://www.ft.com/content/258308f6-6e94-11ea-89df-41bea055720b>
- Drozdiak, W. (2020). *The last president of Europe: Emmanuel Macron's race to revive France and save the world*. New York, NY: Public Affairs.
- Emmanuel Macron receives Charlemagne Prize for European unity in Aachen. (2018, May 10). *Deutsche Welle*. Retrieved from <https://www.dw.com/en/emmanuel-macron-receives-charlemagne-prize-for-european-unity-in-aachen/a-43727296>
- EU ministers in Malta to thrash out new migrant system. (2019, September 23). *Euractiv*. Retrieved from <https://www.euractiv.com/section/justice-home-affairs/news/eu-ministers-in-malta-to-thrash-out-new-migrant-system>
- European Commission. (2020, May 27). *Europe's moment: Repair and prepare for the next generation* [Press release]. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/ip_20_940
- European Council. (2016a). *European Council meeting (18 and 19 February 2016): Conclusions*. Brussels: European Council. Retrieved from <https://www.consilium.europa.eu/media/21787/0216-euco-conclusions.pdf>
- European Council. (2016b). Bratislava declaration and roadmap. *European Council*. Retrieved from <https://www.consilium.europa.eu/en/policies/eu-future-reflection/bratislava-declaration-and-roadmap>
- European Council. (2020a). *Joint statement of the members of the European Council*. Brussels: European Council. Retrieved from <https://www.consilium.europa.eu/media/43076/26-vc-euco-statement-en.pdf>
- European Council. (2020b). *Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020): Conclusions*. Brussels: European Council. Retrieved from <https://www.consilium.europa.eu/media/45109/210720-euco-final-conclusions-en.pdf>
- Fleming, S., Mallet, V., & Chazan, G. (2020, May 18). Germany and France unite in call for €500bn Europe recovery fund. *Financial Times*. Retrieved from <https://www.ft.com/content/c23ebc5e-cbf3-4ad8-85aa-032b574d0562>
- France Diplomacy. (2019). Franco-German treaty of Aachen. *France Diplomacy*. Retrieved from <https://www.diplomatie.gouv.fr/en/country-files/germany/france-and-germany/franco-german-treaty-of-aachen>
- French Presidency. (2017). *Discours d'Emmanuel Macron pour une Europe souveraine, unie, démocratique* [Emmanuel Macron's speech for a sovereign, united, democratic Europe]. Paris: Élysée Palace. Retrieved from <https://www.elysee.fr/front/pdf/elysee-module-795-fr.pdf>
- Gutschker, T., & Wiegel, M. (2020, July 22). EU-Gipfel: Wie Merkel und Macron Rutte und Orbán in die Schranken wiesen [EU summit: How Merkel and Macron put Rutte and Orbán in their place]. *Frankfurter Allgemeine Zeitung*. Retrieved from [Politics and Governance, 2021, Volume 9, Issue 1, Pages 48–58](https://www.faz.net/aktuell/politik/ausland/wie-merkel-</p>
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- und-macron-viktor-orban-austricksten-16872301.html
- Haas, E. B. (1958). *The uniting of Europe: Political, social and economic factors, 1950–57*. London: Stevens & Sons.
- Hoffmann, S. (1966). Obstinate or obsolete? The fate of the nation-state and the case of Western Europe. *Daedalus*, 95(3), 862–915.
- Kaletsky, A. (2020, May 21). Europe’s Hamiltonian Moment. *Project Syndicate*. Retrieved from <https://www.project-syndicate.org/commentary/french-german-european-recovery-plan-proposal-by-anatole-kaletsky-2020-05?barrier=accesspaylog>
- Kanzlerin trotz Trump: “Wir müssen unser Schicksal wirklich in die eigene Hand nehmen” [Chancellor defies Trump: “We really have to take our fate into our own hands”]. (2017, May 28). *Frankfurter Allgemeine Zeitung*. Retrieved from <https://www.faz.net/aktuell/politik/angela-merkel-zweifelt-an-zuverlaessigkeit-von-donald-trump-15036287.html>
- Krotz, U. (2002). *Social content of the international sphere: Symbols and meaning in Franco-German relations* (Working Paper No. 02.2). Cambridge, MA: Minda de Gunzburg Center for European Studies.
- Krotz, U. (2014). Three eras and possible futures: A long-term view on the Franco-German relationship a century after the First World War. *International Affairs*, 90(2), 337–350.
- Krotz, U., & Maher, R. (2016). Europe’s crises and the EU’s ‘big three.’ *West European Politics*, 39(5), 1053–1072.
- Krotz, U., & Schild, J. (2013). *Shaping Europe: France, Germany, and embedded bilateralism from the Elysée treaty to twenty-first century politics*. Oxford: Oxford University Press.
- Krotz, U., & Schild, J. (2018). Back to the future? Franco-German bilateralism in Europe’s post-Brexit union. *Journal of European Public Policy*, 25(8), 1174–1193.
- Krotz, U., & Sperling, J. (2011). The European security order between American hegemony and French independence. *European Security*, 20(3), 305–335.
- Laffan, B. (2019). How the EU27 came to be. *Journal of Common Market Studies*, 57, 13–27.
- Macron’s EU: Most Germans support reforms...to a point. (2018, May 9). *Deutsche Welle*. Retrieved from <https://www.dw.com/en/macrons-eu-most-germans-support-reforms-to-a-point/a-43726305>
- Marks, G., Hooghe, L., & Blank, K. (1996). European Integration from the 1980s: State-centric v. Multi-level governance. *Journal of Common Market Studies*, 34(3), 341–378.
- Merkel zum Brexit: Keine Vorverhandlungen, keine Rosinenpickerei [Merkel on Brexit: No preliminary negotiations, no cherry-picking]. (2016, June 28). *Der Spiegel*. Retrieved from <https://www.spiegel.de/politik/deutschland/regierungserklaerung-von-angela-merkel-keine-vorverhandlungen-keine-rosinenpickerei-beim-brexit-a-1100148.html>
- Moravcsik, A. (1998). *The choice for Europe: Social purpose and state power from Messina to Maastricht*. Ithaca, NY: Cornell University Press.
- Mühlherr, S., Schiltz, C., & Schuster, J. (2019, March 9). Kramp-Karrenbauer gibt die deutsche Antwort auf Macron [Kramp-Karrenbauer gives the German answer to Macron]. *Die Welt*. Retrieved from <https://www.welt.de/politik/deutschland/article190046303/Europa-richtig-machen-Kramp-Karrenbauers-deutsche-Antwort-auf-Macron.html>
- Plickert, P., & Mussler, W. (2019, May 21). Ökonomen warnen vor Euro-Haftungsunion [Economists warn against euro liability union]. *Frankfurter Allgemeine Zeitung*. Retrieved from <https://www.faz.net/aktuell/wirtschaft/konjunktur/oekonomen-warnen-vor-euro-haftungsunion-15600643.html>
- Rankin, J., & Boffey, D. (2019, October 18). Macron against Brexit extension as Merkel keeps option open. *The Guardian*. Retrieved from <https://www.theguardian.com/politics/2019/oct/18/brexit-extension-unavoidable-if-mps-reject-deal-says-merkel>
- Schild, J. (2010). Mission impossible: The potential for Franco-German leadership in the enlarged EU. *Journal of Common Market Studies*, 48(5), 1367–1390.
- Schoeller, M. G. (2019). *Leadership in the Eurozone: The role of Germany and EU institutions*. London: Palgrave Macmillan.
- Schoeller, M. G. (2020). Preventing the eurozone budget: Issue replacement and small state influence in EMU. *Journal of European Public Policy*. <https://doi.org/10.1080/13501763.2020.1795226>
- Schramm, L. (2020). Exit from joint-decision problems? Integration and disintegration in the EU’s recent poly-crisis. *European Review of International Studies*, 7(1), 2–27.
- Seidendorf, S. (2019). Frankreich, Deutschland und die europäische Integration im Aachener Vertrag [France, Germany and European integration in the Aachen Treaty]. *Integration*, 42(3), 187–204.
- Sikorski, R. (2011, November 28). I fear Germany’s power less than her inactivity. *Financial Times*. Retrieved from <https://www.ft.com/content/b753cb42-19b3-11e1-ba5d-00144feabdc0>
- Traynor, I. (2015, October 18). So what does Europe really think about the Brexit debate? *The Guardian*. Retrieved from <https://www.theguardian.com/global/2015/oct/18/brexit-what-european-leaders-think-merkel-hollande>
- Traynor, I., Watt, N., & Gow, D. (2011, December 9). David Cameron blocks EU treaty with veto, casting Britain adrift in Europe. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2011/dec/09/david-cameron-blocks-eu-treaty>
- Webber, D. (2019). *European disintegration? The politics of crisis in the European Union*. London: Macmillan.

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Article

Post-Brexit Leadership in European Finance

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Abstract

Brexit has far-reaching consequences for Europe and the European single market for financial transactions. In particular in this field, the UK has had a strong influence in drafting European policies and legislation as the City of London has acted as the financial hub in Europe for several decades. As a result, the UK has spearheaded the call for more market friendly legislation with the support of some other EU member states. This went against the wishes of several other EU member states, where a stronger rule-based approach to financial markets was strongly preferred, in particular after the financial crisis clearly demonstrated weaknesses in the macroeconomic oversight of European financial markets. With the UK leaving, the call for more stringent legislation will gain momentum as the political leadership among the remaining 27 EU member states will shift and might be looking to curtail the long-standing dominant position of the UK in the field of financial industries. In this light, several leaders of EU27 member states have already voiced their support for their nations' financial hub to become the next City of London. This would lead to a substantial change in leadership in European finance post-Brexit. This contribution assesses the impact of Brexit on the changes in political leadership on the governance of European financial markets, as they might ultimately be reflected in the institutional outcomes and policies.

Keywords

Brexit; European Union; finance; Frankfurt; Paris; political culture; political leadership

Issue

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1. Introduction

On 23 June 2016, the citizens of the UK decided through a referendum vote to leave the EU. The UK government formally informed the EU of its decision to leave the Union on 29 March 2017. After the two years withdrawal period, the UK was thus expected to leave the EU by 29 March 2019. As no agreement could be found by that date, the UK requested, and was granted, an extension until 31 January 2020 after which the UK officially left the UK, with a transition period lasting until the end of 2020.

After joining the European Communities in 1973, the UK and the EU have moved together for almost 50 years, which helps to explain the many issues and the long time frame of the withdrawal process. As one of the largest members of the EU, the UK always had a strong impact

on European decision-making. In certain areas, its role has been even bigger due to the nature of the UK's industry and interests.

One such area is the financial sector. Globally, the UK is the largest exporter of financial services, and approximately one third of that exports goes to the EU. Over the years, the UK, and in particular the City of London, has grown into the main hub for financial services in Europe. Through its well-developed infrastructure and its historical growth, the City of London has ensured that it clears and manages the majority of Euro-denominated financial transactions.

The City of London is not just the European financial hub; but also serves as the nexus between international finance and the EU. The City's role as a broker between international and European companies has

grown historically. By the start of the 20th century, many American stock exchanges frequently used clearing houses. At that time, London was the only European stock exchange working with a clearing house, giving it a significant first mover advantage. The result is that over time the City of London came to substantially outsize other European financial hubs in terms of foreign-registered monetary financial institutions, making it the main international finance hub in the EU. It is also the place where most EU area and third country institutions (mostly headquarter in the US and Switzerland) have set up a large presence, as foreign financial firms currently benefit from the fact that the UK license gives them access to a European passport (see Schoenmaker, 2017). European financial integration thus greatly benefited the open and competitive UK financial sector.

Since Brexit, discussions on the location of financial services and the future of financial supervision have heated up and attracted significant attention from policymakers and media outlets. At the current time, it is yet unclear what the exact impact of Brexit would be on the location and oversight of the financial industry. Never before has one of the world's largest economic areas been decoupled from its financial capital. Few and less outspoken historical examples include Vienna, that after WWI ceased to be the financial capital of the defeated and dismantled Austro-Hungarian empire, and Montreal, which was replaced as Canada's financial capital by Toronto as a result of Quebec's separatism.

Part IV of the political declaration setting out the framework for the future relationship between the EU and the UK refers to financial services, but gives little indication on what the future relationship may look like in this field. It states that "the Parties are committed to preserving financial stability, market integrity, investor and consumer protection and fair competition, while respecting the Parties' regulatory and decision-making autonomy, and their ability to take equivalence decisions in their own interest" (European Commission, 2019b, p. 5). It notes the parties have equivalence frameworks in place to recognise each other's regulatory and supervisory regimes and agree to close a structured cooperation on regulatory and supervisory matters. Beyond this, the withdrawal agreement and political declaration give little guidance on what the UK's relationship will be in these fields post-Brexit.

However, it is clear that as the UK will be leaving the EU, it will no longer be able to have a direct influence on the direction in which the governance of European financial market develops. This has serious repercussions for the political leadership in European finance, currently heavily influenced by the UK. The next section provides a review of the literature on Brexit on European finance. After establishing that a focus on post-Brexit leadership with regards to the governance of the EU single market of financial services has been lacking, Section 3 then discusses the application of political leadership in EU studies. Section 4 then describes how political leadership in

European finance will shift from the UK to France or Germany, and how this change will impact the governance of the EU financial markets. Section 5 concludes.

2. The Impact of Brexit on European Finance

The impact of Brexit on the UK has attracted a significant amount of attention, from scholars and news outlets. Most of the scholarly contributions have focused on either explaining the referendum outcome (e.g., Curtice, 2017; Goodwin & Heath, 2016), or on assessing the impact of the withdrawal on the UK (e.g., Begg & Mushövel, 2016; Bloom et al., 2019). More recently, attention has also been devoted to the impact of Brexit on EU policies (e.g., the thematic issue on the impact of Brexit on EU policies; De Ville & Siles-Brügge, 2019).

The literature focusing on the impact of Brexit on financial governance and the financial industry is a bit more limited, and has focused broadly on 1) the economic impact of Brexit, 2) the governance of the EU financial single market, and 3) the role of the City of London as international financial center. An initial investigation of the economic impact of Brexit on the UK's financial market has made clear that the UK is at risk of losing significant income and jobs as a result of their withdrawal (Batsaikhan, Kalcik, & Schoenmaker, 2017). The financial industry represents some 7% of GDP and generates major exports for the UK. The export of financial services is estimated to be affected most strongly among all exports of services (Rehman & Della Posta, 2018). In light of its importance, the financial industry in London has historically received significant protection from the UK government, but as freedom of movement issues have dominated commercial interests in the build-up and aftermath of the referendum (Thompson, 2017). The impact on the EU27 is expected to be much smaller, and might be even positive (Van Kerckhoven & Odermatt, 2020), but could result in additional costs for companies both in the UK as well as in the EU (UK Government's Actuary Department, 2017). However, it is clear that the overall impact strongly depends on the eventual outcome of the ongoing negotiations (Armour, 2017).

Brexit would also impact the governance of the European financial markets. The exact impact is currently difficult to assess as the withdrawal negotiations are still taking place. National central banks within the EU have different legal rules, risking competition on regulatory and supervisory practices between member states (European Securities and Markets Authority, 2017). After Brexit, the greatest uncertainty relates to the EU's evolving supervisory/institutional arrangements which will be drafted without UK involvement (Moloney, 2018), whereby the European Supervisory Agencies could play a larger role (Moloney, 2016). In light of this uncertainty, one could expect the financial industry to collaborate intensively across member states. However, Howarth and Quaglia (2018) have argued that, rather than witnessing cross-national alliances of financial industry

members advocating broad access for the UK to the EU single market in financial services, the main financial centers in the EU27 and their national authorities have been competing to lure financial business away from the UK. However, such a competition between member states favoring a relocation of the UK-based financial services to the EU27 poses certain challenges with regards to the governance of European financial markets (Lavery, McDaniel, & Schmid, 2019).

A relocation would greatly impact the role of the City of London as one of the major international financial centers. From the 19th century onwards, London became one of the global centres for lending and investment. Due to the leading role taken up by London as well as the US in dealing with, as well as in developing, financial products, English contract law became widely adopted for international finance, whereby the legal services were often provided in London (Wood, 2008). London was always an international rather than a domestic financial centre, far more than New York, Frankfurt, Paris or Tokyo. In a similar vein, the City of London grew to become the European financial centre, in particular in wholesale financial services, slowly overtaking other European financial centres, such as Frankfurt, Paris and Amsterdam. This has spurred the development of a whole industry dealing with financial services in the UK.

Another factor that has spurred the development of London as the premier European financial centre relates to clearing houses. By the start of the 20th century, many US stock exchanges frequently used clearing houses. At that time, London was the only European stock exchange working with a clearing house, giving it a significant first mover advantage. The role of clearing houses was further expanded in the wake of the 2008 financial crisis. At the 2009 G20 meeting in Pittsburgh, the leaders of the G20 decided that all standardized derivatives contracts should be traded on exchanges and cleared by clearinghouses (Wouters, Van Kerckhoven, & Odermatt, 2013). Because of this G20 decision, London was able to further strengthen its position as the prime international financial hub in the EU due to its leading role in interest rate over-the-counter derivatives (75% of all transactions denominated in euro; Batsaikhan et al., 2017). Moreover, the G20 decision resulted in the need to novate a wide variety of over-the-counter derivatives, ensuring that clearing is essentially and increasingly so, the backbone of modern financial markets. Post-Brexit, it is anticipated that the UK would lose some of its power in the clearing houses business (Van Kerckhoven & Odermatt, 2020).

An issue that so far has failed to attract scholarly attention is that Brexit also leads to a shift in leadership in the European single financial market. With the UK potentially at the sideline of EU financial decision-making, some other member states will receive a larger leading role in the governance of the EU single market in financial services. Leadership post-Brexit has been investigated in light of other issue fields (Tömmel & Verdun,

2017), such as climate change (Dupont & Moore, 2019) and in relation to the role of certain countries (Krotz & Schild, 2018), but an in-depth investigation in what the impact of Brexit entails for leadership in European finance has been lacking. This is all the more surprising since compared to other issue fields, the impact of Brexit on leadership is arguably more substantial in the field of European finance.

3. Ideational and Coercive Political Leadership and the EU

Brexit will impose a tremendous shift in the European political landscape dealing with finance and the financial industry. This article aims to add to this literature by focusing on how Brexit changes the political leadership within the EU's financial governance. Leadership can be approached as an input dimension in the political decision-making, that through the decision-making process, influences the outcomes, as witnessed in policies and decision-making. As currently, Brexit has not lead to a change in the EU decision-making processes, and assessing outcomes is premature, focusing on the changing leadership as an input dimension into the political process allows us to shed a light on how the EU's approach towards finance might change, and will influence institutional outcomes in the future.

Political leadership has been the subject of studies, both theoretical and empirical, for several decades (starting with the seminal work of Burns, 1978). However, within this growing body of scholarly work, consensus on a definition is still missing. Moreover, a variety of approaches have been employed to the study of political leadership. Consequently, there is a wide variety and a deep richness in its study, but the concept itself remains ill-defined (Elgie, 2001). During the last decade, increasing scholarly attention has been devoted to 'political leadership in the EU.' This literature focuses often on individuals or individual institutions, for example, Cini (2008) and Tömmel (2013, 2020) have investigated the European Commission presidents from a leadership perspective. In a similar vein, the presidents of the Council and the European Council have been studied extensively (Bunse, 2009; Dinan, 2013; Tallberg, 2006) as well as the EU High Representatives (Koops & Tercovich, 2020). In a similar vein, research has studied the leadership of institutions, such as the European Central Bank (Verdun, 2017) or the European Parliament (Shackleton, 2017).

The particular set-up of the Union means that leadership should be perceived differently than in nation states. The fragmented character of European polity, and the dense web of institutions and network structures, warrant a specific focus. In this light, the role of member states is not to be underestimated. Indeed, individual member states steer the agenda and decision-making of the EU.

An in-depth overview of how Brexit can lead to a shift in European leadership in the financial sector and

its oversight is so far missing. This article adds to the literature by looking into the two dimensions of leadership: Ideational leadership and coercive leadership and studies how they impact the governance of EU single market for financial services after Brexit. In essence, this lens allows to answer the questions: 1) Who would lead political decisions related to financial governance?; and 2) what would be the impact of the changing leadership on the content of financial policies?

Coercive leadership provides an angle to answer the first of these questions. It relates to the instances in which one party gathers leverage over the other party. This could for example be the fact that one member state has access to resources that are useful to the other party who might lack access to these resources. In this case, interest-based hard bargaining can take place between member states (Milward, 1992), whereby the outcome is often influenced by the resources and pressure exercised by the different member states (Keohane & Nye, 1989). In such a setting, the bargaining among resourceful member states interacts with endogenous factors such as potential coalitions available. Public statements and media are often used in order to support the bargaining strategies. In all issue fields, as in finance, coercive leadership requires clout in the specific issue field. In terms of size and overall influence, it has often argued that proposals without the support of powerful member states such as France, Germany and the UK stand little chance in passing, whereas proposals that are supported by them are in general accepted (Bulmer & Paterson, 2013; Schild, 2010). Agreement between the powerful member states often leads to swift action, whereas disagreement often results in delayed decision-making. Of course, with the UK leaving the EU, several of the findings of previous literature might no longer hold. An initial investigation proposes that after Brexit three scenarios are likely in terms of the countries taking the lead in the EU, of which the most probable is a strong Franco–German relationship (Krotz & Schild, 2018). The UK, as the other major powerhouse, has often been perceived as an awkward partner to the European integration project (George, 1998). Notwithstanding this general statement, it is clear that this does not hold for all issue fields (Daddow & Oliver, 2016). However, as argued below, the UK has often found itself at disagreement with several other EU member states when it comes to regulating financial markets. Complementarily, member states yield more weight in issue fields where they have larger resources. In European finance, having a strong financial industry would provide a member state with a larger influence at the negotiation table.

To answer the question on what the impact on the policies of the changed leadership could be, we turn to ideational leadership. Ideational leadership can be defined as the capacity of actors to influence other actors' normative and cognitive beliefs through the use of ideational elements (Carstensen & Schmidt, 2018). Exercising leadership then happens through persuasion

or occurs through the imposition of ideas. Policy proposals are then framed in relations to underlying ideas, that could be deeply rooted in societies. Within European decision-making, individual member states' heads of state or government play an important role, both directly in the European Council, as indirectly as representatives of their national constituency. These leaders are elected in their national environment, and often act in order to represent their national interests, which have often been shaped historically. These leaders' actions are thus influenced by their national culture which is impacted by current and historical predispositions on how companies should be regulated and deep-rooted beliefs on the structure of economies.

The extent to which individual member states apply ideational and coercive leadership depends on the specific importance of the issue for their national economies. When Heads of government or state care strongly about a specific issue field, they will exercise more leadership in order to attain an outcome that is close to their national interests.

Several scholars have tended to focus on the 'static effects' of Brexit, by looking at what the EU and its policies would look like if the UK was simply taken out of the "EU 'equation'" (Jacobs, 2018; Jensen & Snaith, 2018, p. 255). The focus on leadership in European finance taken in this article allows for a 'dynamic' investigation. As Brexit involves actors that continuously adjust their preferences and/or strategies, such an approach shows greater promise (De Ville & Siles-Brügge, 2019), and gives the ability to assess potential future developments. In order to assess the impact of Brexit on the governance of EU finance, this article builds upon scholarly work, and related publications, such as report and public statements.

4. Shifting Leadership in European Finance

The decision of the UK to leave the EU has triggered a wide variety of questions related to the future of the City of London as financial hub, and the future evolution of the EU single market in financial services. The extent to which the remaining EU members and the UK will continue to cooperate crucially depends on the outcome of the ongoing negotiations and the final agreement. However, notwithstanding the content of the final agreement, the UK no longer has a seat around the table and will find its influence in EU decision-making substantially reduced. As a result, the decision of the UK to leave the EU thus allows for a significant shift in the political leadership of the EU.

This shift can be expected to be considerable in the field of European finance, as the UK has had a strong impact on the development of policies and legislations dealing with European finance. From the perspective of coercive leadership, the UK has pre-Brexit benefitted from its status as one of the powerful member states, due to its size and power in decision-making as well as

due to its authoritative role as being the home to the premier European financial centre. As most European financial transactions took place in the City of London, it became the nexus between European and international finance, and has allowed the UK to have a strong influence on the development of the European financial market. After Brexit, London would no longer be the financial capital of a major economic area. This calls into question the future of the City of London as a global financial centre. Historically speaking, the single time that a financial centre was able to grow into one of the global financial hubs, was the rebirth of, striking enough, London in the 1960s as the financial capital of a medium economic power. Only after joining the EU London became the financial capital of a major economic area and satisfied the above requirement as a leading global centre (Cassis, 2018).

As the UK and the City of London do not want to lose their status as an international financial centre, and are reluctant to give up the ability to exercise leadership, a fight between the UK and other EU member states (as well as the European institutions) as emerged with regards to the potential move of the UK's financial sector to the EU27. Faced with a potential relocation of its industry, London is actively trying to sell its 'assets': The concentration of expertise in London, the UK's comparatively light-touch regulatory framework, the usage of English common law and the country's well-established financial infrastructure (Bank of England, 2015). After the publication of the white paper, in which the UK government stated not to seek single market access after Brexit (UK Government, 2017), the UK-based financial industry has recognized that it was unlikely to be able to preserve its EU passport and has started to advocate the usage of equivalence recognitions, assuring as much access as possible to the single market. The UK-based financial industry pointed out that equivalence agreements would provide significant benefits to EU customers, and that fragmentation would increase costs and risk.

As the UK has lost its voice in EU decision-making and faces the prospect of a potential move of (part of) its financial services industry, its ability to lead with regards to financial policies leadership is waning. This allows some of the EU27 member states to step in and fill the void, potentially providing these member states with more leadership in the governance of the European financial market. Internally, EU member states are divided on the question who would be best placed to provide this leadership and potentially serve as a new host to the UK's relocating financial industry. Clearly, in order to be able to exercise leadership, potential candidates to host a EU27 financial hub need to be powerful member states. The prospect of establishing a financial hub within the EU27, has spurred potential host countries to take a hard line with regards to the negotiations. For example, France and Germany (without opposition of other EU member states) have taken a strong stand on removing third country access for the UK financial indus-

try, thereby supporting a relocation of the UK-based financial industry (Ringe, 2018).

Ever since Brexit, both these countries have also actively pursued an attraction strategy and have been promoting their national financial capitals as the next premier location for European finance in order to increase their potential leading role in the near future. Some other EU27 member states with second-tier financial centres and significant financial sectors also have the potential to gain from Brexit are Ireland (Dublin), Belgium (Brussels), the Netherlands (Amsterdam) and Luxembourg, but lack the cloud of Frankfurt and Paris, both politically and in terms of the strength of their respective financial industries.

Paris has struggled to survive as a major financial centre over the last century, due to its slow liberalization. However, the creation of Euronext, through the merger of the stock exchanges of Paris, Amsterdam, Brussels and Lisbon, ensures that Paris is now home to a major European stock exchange. In the aftermath of the Brexit vote, several initiatives have emerged to bring Paris back into the spotlight, whereby investors' associations, brokers, banks, and Euronext and Euroclear have joined French politicians in the battle (Quennouëlle-Corre, 2018). The relocation of the European Banking Authority to Paris, with competition from Brussels, Dublin, Frankfurt, Luxembourg, Prague, Vienna and Warsaw, has proven to be the first success story. At the same time, Germany has made relocating to Frankfurt more attractive. For example, the German Eurex has come up with a profit-sharing scheme on interest swaps and has announced to extend this to foreign exchange derivatives. German politicians have also regularly voiced their support for the creation of an EU27 financial hub in Frankfurt.

The push from both France and Germany for creating a financial hub in the Eurozone is not new and has been on the back of the minds of European leaders and institutions for a while. In January 2009, then French Minister Christine Lagarde (and now President of the European Central Bank) stated that euro-denominated transactions needed to be cleared in the euro area ("France wants ECB," 2009) instead of in the City of London, as the UK is not an eurozone member. In 2011, the European Central Bank followed suit and specified that large-scale clearing houses dealing with euro-denominated trades should be fully incorporated in the euro area, where the full operational and managerial control should be located (European Central Bank, 2011). The European Court of Justice eventually stated that the European Central Bank did not have the legal powers to require such a move as the European Central Bank lacks explicit regulatory competence with regards to the clearing of securities, which could only be obtained via an amendment of the Treaty on the Functioning of the European Union (General Court of the European Union, 2015). However, the issue has since been reopened. The European Securities and Markets Authority (2017)

has issued a guidance stating that competition in regulatory and supervisory practices should be avoided, followed by the European Central Bank stating its concerns with out-of-eurozone supervision and its fear that Brexit might lead to the creation of shell companies within the Eurozone (European Central Bank, 2020). The position of the major European institutions clearly indicates that a decision to grant passporting rights to UK-based financial services would not be deemed favourable. If the UK loses its EU passport, third country financial services currently located in the UK, would need to relocate their operations and would have to set up European subsidiaries. As the City of London currently serves as a global financial centre, most of these third country operations are based in the UK. For example, the top five US investment banks locate about 90% of their European operations in London. In November 2016, the EU proposed new rules on intermediate parent undertaking, which would allow for more scrutiny by the European Central Bank, which could affect the UK as it might force UK and third country banks to have a capitalized subsidiarity in the EU. This was adopted in a slightly adapted version in 2019 (European Commission, 2019a). Adding to this, the European Central Bank in September 2020, increased the pressure on banks affected by Brexit as it is not convinced that enough people, assets, and resources had been transferred from London to the Eurozone to ensure a smooth functioning financial system post-Brexit (Arnold, 2020). As the supervisor of 25 new or restructured banking operations that because of Brexit have grown substantially, the European Central Bank wants to ensure that the Eurozone entities are structurally profitable and do not rely on excessive back to back bookings of the parent company. The European Central Bank has further emphasized that European financial products and consumers should be managed and controlled in the EU. As such, the equivalence discussions have bogged down in recriminations, and the fight over moving about €1,2 trillion of assets (four times the size of the total of EU27 financial assets in 2017), is yet again in a higher gear.

With both France and Germany looking to attract the UK-based financial industry, their potential to become leading hubs in European finance is rising. However, it is clear that this would also mean that the international influence of the City of London would diminish, rendering London a regional (like Singapore) rather than a global financial hub (such as New York). This would mean that the EU27's leadership in international finance would shrink. In the medium run, as a leading economic area, the EU would need to host one of the world's leading financial centres, one that can compete with the likes of New York, Shanghai, Hong Kong, Singapore or Tokyo, in the same way as London does today, unlike Paris or Frankfurt. Such a centre likely will have a stronger 'domestic' or European orientation, whereby London might still perform some of the international functions. The jury is out currently on whether

Paris and/or Frankfurt might become such a new international financial centre. Until that time, the fragmentation of the European financial services industry over several locations, will lead to higher costs and risks as no single location might achieve the necessary economics of scale. So, banks and consumers might end up with more expensive operations as fragmentation and overlapping EU27/London operations significantly increase costs. This will in hamper the prospect of EU influence in international finance (Wouters & Van Kerckhoven, 2019).

Having established that France and/or Germany are most likely to lead future development in European financial governance, the question arises to what extent this would affect European financial policies. The UK has traditionally always had a large influence on financial governance as the promoter of a market-friendly environment for the financial industry and as the biggest non-eurozone country. Ideationally, the UK has always been a proponent of a more market-friendly approach towards the regulation of (financial) markets. Joined by several other EU member states, such as Ireland, the Netherlands, Luxembourg and the Scandinavian member states, the UK became a proponent of the market-making coalition, who generally favoured more market-friendly regulations (Howarth & Quaglia, 2017). Over the last decades, the UK has often fought strongly to ensure that EU financial regulation did not penalize their financial industry, and in doing so, represented the interests of several other EU27 member states. Examples include the UK (joined by the US) opposing to additional regulation of hedge funds (Fioretos, 2010), and defending fiercely market-friendly solutions to the Eurozone crisis, both at the EU level as well as globally (Wouters & Van Kerckhoven, 2017). As a result, convergence between member states in financial regulation, and deeper financial integration has been more limited. Post-Brexit, this coalition will lose its strongest member. As a result, the 'New Hanseatic League' has emerged as a member state coalition composed of fiscally conservative and pro-liberalization member states, such as the Netherlands, Ireland, and the Nordic and Baltic states; with the aim to counterbalance the strengthened (and less economically liberal) Franco-German axis (Khan, 2018).

The market-friendly approach promoted by the UK often stood in stark contrast with the preference of other EU member states for a stronger rules-based approach. This market-shaping coalition includes member states such as Germany, France, Belgium, Italy, and the other Mediterranean countries. Germany in particular has been seeking to establish a rule-based culture in the EU financial market and discourages flexibility out of fear that allowing suppleness might undermine the entire system (Ringe, 2018).

After the financial crisis, the market-making coalition, led by the UK, was already losing momentum. After Brexit, it is to be expected that the market-shaping approach will come to dominate, as the leadership provided by Germany and France will grow. However, that

does not necessarily mean that Germany and France will find themselves aligned in terms of ideational leadership, when it comes to the content of a stronger rule-based approach due to their historically different perspectives on European integration. Whereas Germany historically focused on economic harmonization and fiscal discipline, France can be seen as less strict and more in favour of governmental intervention. Both perspectives are also supported by a number of other EU27 member states. As an example, the German government has often been rather sceptical of redistributions, and bailout plans. It ‘tacitly’ approved the strong opposition of the ‘New Hanseatic League’ to larger bailout plans. In contrast, France is often more positively inclined towards redistributive measures. However, when Germany and France agree, they have been able to broker deals (or put the brakes on those deals they did not like) as a tandem (Degner & Leuffen, 2020). Therefore, Brexit contributes to opening a reform window in eurozone governance. On the one hand, it creates an opportunity for a revival of Franco–German bilateralism, as both are committed to eurozone governance reforms, particularly in France after the election of Emmanuel Macron (Krotz & Schild, 2018). On the other hand, the combined effects of Brexit and the French election have put pressure on Germany to accept more financial redistribution and risk-sharing (Coalition Treaty, 2018).

However, an ideational shift towards a more market-shaping approach could isolate the UK, which could provide additional challenges. A City of London that does not need to abide to more stringent EU rules could become an important competitor to the European financial centre(s) that might emerge. Freed from EU regulatory requirements, the UK financial regulator might, in the short run, pursue more deregulation attempting to attract EU business to the City, weakening the European (and global) financial system in return. The residual power of the City could then also place pressure on EU27 financial centres to compete on market-friendly terms. Even with a waning influence, the City will continue to exercise some influence, and will deploy its assets strategically in order to retain some power in EU and international finance. However, its direct leadership will be limited, and its ability to pursue this leadership through the international sphere might also be limited.

Additionally, as the most powerful non-eurozone country, the UK always defended the interests of the euro-outs as financial integration continued (Chang, 2017). With Brexit, the largest and strongest non-Eurozone economy in the EU is leaving. As a result, Brexit will shift the balance between the euro-ins and euro-outs. The latter now fear a second-class status, as they will have a much harder time resisting the attempts of the euro-ins of deepening the institutional, legal and political integration of financial markets. Brexit as such could thus lead to a clear multispeed Europe whereby the lines separating the Euro-ins and the Euro-outs deepen.

5. Conclusions

This article investigates the impact of Brexit on political leadership in the field of European finance. As a powerful member state and as the location of the premier financial hub in the EU, the UK has been able to significantly influence and provide leadership in European financial governance. Moreover, the UK, joined by some other EU member states, has been able to impose a market-making culture promoting lesser and more lax regulations than what some other member states, such as Germany and France would have preferred. As the largest non-eurozone EU member state, it has further been successful as a promoter of the interests of the euro-outs. As such, the UK was able to exercise significant ideational leadership.

Brexit changes all these dynamics. Post-Brexit, the UK will no longer have a direct influence on EU decision-making. Moreover, several EU member states and institutions have been advocating for the creation of a EU27 financial hub, which would relocate a significant part of the current UK-based financial services. Both these developments will lead to a substantial decline in the potential for UK political leadership.

France and Germany have already voiced their support for their respective national financial centres to replace London as the European financial hub. As both these countries are already among the most powerful member states in European finance, hosting the new EU27 financial hub would allow them to exercise even more political leadership. If France and/or Germany replace the UK as the leading European financial hub, it can be expected that this would also lead to a different type of ideational leadership. Both France and Germany would be in favour of more stringent regulation, particularly after the recent financial crises. A stronger rules-based approach towards the financial industry will replace the UK-backed more market-friendly approach. At the same time, this would leave some other market-friendly member states isolated. They might be joined in their discontent with the changing leadership, due to Brexit, by non-eurozone countries, who might not be able to voice their concerns loudly anymore.

The residual power of the City could also place pressure on EU27 financial centres to compete on market-friendly terms. Even with a waning influence, the City will continue to exercise some influence, and will deploy its assets strategically in order to retain some power in EU and international finance. However, its direct leadership will be limited, and its ability to pursue this leadership through the international sphere might also be limited.

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Conflict of Interests

The author declares no conflict of interests.

References

- Armour, J. (2017). Brexit and financial services. *Oxford Review of Economic Policy*, 33(1), 54–69.
- Arnold, M. (2020, September 9). European Central Bank supervisors turn the screw on banks' Brexit plans. *Financial Times*. Retrieved from <https://www.ft.com/content/9b599f23-50bb-423f-87ed-06a1f9d29542>
- Bank of England. (2015). *Mapping the UK financial system*. London: Bank of England Quarterly Bulletin.
- Batsaikhan, U., Kalcik, R., & Schoenmaker, D. (2017). *Brexit and the European financial system: Mapping markets, players and jobs* (Breugel Policy Contribution No. 2017/4). Brussels: Breugel.
- Begg, I., & Mushövel, F. (2016). *The economic impact of Brexit: Jobs, growth and public finances*. London: LSE. Retrieved from <http://eprints.lse.ac.uk/67008/1/Hearing-11--The-impact-of-Brexit-on-jobs-and-economic-growth-sumary.pdf>
- Bloom, N., Bunn, P., Chen, S., Mizen, P., Smietanka, P., & Thwaites, G. (2019). *The impact of Brexit on UK firms* (Working Paper No. 26218). Cambridge, MA: National Bureau of Economic Research.
- Bulmer, S., & Paterson, W. E. (2013). Germany as the EU's reluctant hegemon? Of economic strength and political constraints. *Journal of European Public Policy*, 20(10), 1387–1405.
- Bunse, S. (2009). *Small states and EU governance: Leadership through the Council Presidency*. London: Palgrave Macmillan.
- Burns, J. (1978). *Leadership*. New York, NY: Harper and Row.
- Carstensen, M. B., & Schmidt, V. A. (2018). Power and changing modes of governance in the euro crisis. *Governance*, 31(4), 609–624.
- Cassis, Y. (2018). Introduction: A global overview from a historical perspective. In Y. Cassis & D. Wojcik (Eds.), *International financial centres after the global financial crisis and Brexit* (pp. 1–16). Oxford: Oxford University Press.
- Chang, M. (2017). *Brexit and EMU: From EMU outsider to instigator* (Working Paper No. 4/2017). Pisa: Scuola Superiore Sant'Anna.
- Cini, M. (2008). Political leadership in the European Commission: The Santer and Prodi Commissions: 1995–2005. In J. Hayward (Ed.), *Leaderless Europe* (pp. 113–131). Oxford: Oxford University Press.
- Coalition Treaty. (2018). *Ein neuer Aufbruch für Europa, Eine neue Dynamik für Deutschland, Ein neuer Zusammenhalt für unser Land* [A new departure for Europe, a new dynamic for Germany, a new cohesion for our country]. Berlin: Federal Government. Retrieved from <https://www.bundesregierung.de/resource/blob/656734/847984/5b8bc23590d4cb2892b31c987ad672b7/2018-03-14-koalitionsvertrag-data.pdf>
- Curtice, J. (2017). Why leave won the UK's EU referendum. *Journal of Common Market Studies*, 55(1), 19–37.
- Daddow, O., & Oliver, T. (2016). A not so awkward partner: The UK has been a champion of many causes in the EU. London: LSE. Retrieved from http://eprints.lse.ac.uk/66177/8/blogs.lse.ac.uk_A_not_so_awkward_partner_the_UK_has_been_a_champion_of_many_causes_in_the_EU.pdf
- De Ville, F., & Siles-Brügge, G. (2019). The impact of Brexit on EU policies [Special issue]. *Politics and Governance*, 7(3), 1–92.
- Degner, H., & Leuffen, D. (2020). Brake and broker: Franco-German leadership for Saving EMU. *Journal of European Public Policy*. <https://doi.org/10.1080/13501763.2020.1751678>
- Dinan, D. (2013). The post-Lisbon European Council Presidency: An interim assessment. *West European politics*, 36(6), 1256–1273.
- Dupont, C., & Moore, B. (2019). Brexit and the Eu in global climate governance. *Politics and Governance*, 7(3), 51–61.
- Elgie, R. (2001). Leadership: Political. In N. J. Smelser & P. B. Baltes (Eds.), *International encyclopedia of the social and behavioral sciences* (pp. 8578–8580). Amsterdam: Elsevier.
- European Central Bank. (2011). *Eurosystem oversight policy framework*. Frankfurt: European Central Bank.
- European Central Bank. (2020). Relocating to the Euro area. *European Central Bank*. Retrieved from <https://www.bankingsupervision.europa.eu/banking/relocating/html/index.en.html>
- European Commission. (2019a). *Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures*. Brussels: European Commission.
- European Commission. (2019b). *Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom*. Brussels: European Commission.
- European Securities and Markets Authority. (2017). *Principles on the supervisory approach on relocations from the UK*. Paris: European Securities and Markets Authority. Retrieved from https://www.esma.europa.eu/sites/default/files/library/esma71-99-469_esma_issues_principles_on_supervisory_approach_to_relocations_from_the_uk.pdf
- Fioretos, O. (2010). Capitalist diversity and the international regulation of hedge funds. *Review of International Political Economy*, 17(3), 696–723.
- France wants ECB to lead derivatives clearing push.

- (2009, January 19). *Reuters*. Retrieved from <https://uk.reuters.com/article/eu-creditderivatives-idUKLJ16478720090119>
- General Court of the European Union. (2015). *Judgment in Case T-496/11 United Kingdom vs. European Central Bank*. Luxembourg: General Court of the European Union. Retrieved from <http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-03/cp150029en.pdf>
- George, S. (1998). *An awkward partner: Britain in the European Community* (3rd ed.). Oxford: Oxford University Press.
- Goodwin, M. J., & Heath, O. (2016). The 2016 referendum, Brexit and the left behind: An aggregate-level analysis of the result. *The Political Quarterly*, 89(3), 323–332.
- Howarth, D., & Quaglia, L. (2017). Brexit and the single European financial market. *Journal of Common Market Studies*, 55(1), 149–164.
- Howarth, D., & Quaglia, L. (2018). Brexit and the battle for financial services. *Journal of European Public Policy*, 25(8), 1118–1136.
- Jacobs, F. B. (2018). *The EU after Brexit: Institutional and policy implications*. London: Palgrave Macmillan.
- Jensen, M., & Snaith, H. (2018). Brexit and the European Union: Hanging in the balance? In P. Diamond, P. Nedergaard, & B. Rosamond (Eds.), *The Routledge handbook of the politics of Brexit* (pp. 254–265). London: Routledge.
- Keohane, R. O., & Nye, J. (1989). *Power and interdependence*. Boston, MA: Little, Brown and Company.
- Khan, M. (2018, July 19). EU's New Hanseatic League picks its next battle. *Financial Times*. Retrieved from <https://www.ft.com/content/aedbe32a-8af7-11e8-bf9e-8771d5404543>
- Koops, J. A., & Tercovich, G. (2020). Shaping the European External Action Service and its post-Lisbon crisis management structures: An assessment of the EU High Representatives' political leadership. *European Security*, 29(3), 275–300.
- Krotz, U., & Schild, J. (2018). Back to the future? Franco-German bilateralism in Europe's post-Brexit Union. *Journal of European Public Policy*, 25(8), 1174–1193.
- Lavery, S., McDaniel, S., & Schmid, D. (2019). Finance fragmented? Frankfurt and Paris as European financial centres after Brexit. *Journal of European Public Policy*, 26(10), 1502–1520.
- Milward, A. (1992). *The European rescue of the nation-state*. London: Routledge.
- Moloney, N. (2016). International financial governance, the EU, and Brexit: The 'agencification' of EU financial governance and the implications. *European Business Organization Law Review*, 17, 451–480.
- Moloney, N. (2018). Brexit and financial services: (Yet) another re-ordering of institutional governance for the EU financial system? *Common Market Law Review*, 55(3), 175–201.
- Quennouëlle-Corre, L. (2018). Paris: The possibility of revival as an international financial centre. In Y. Casis & D. Wojcik (Eds.), *International financial centres after the global financial crisis and Brexit* (pp. 61–83). Oxford: Oxford University Press.
- Rehman, S. R., & Della Posta, P. (2018). The impact of Brexit on EU27 on trade, investments and financial services. *Global Economy Journal*, 18(1), 1–17.
- Ringe, W.-G. (2018). The irrelevance of Brexit for the European financial market. *European Business Organization Law Review*, 19(1), 1–34.
- Schild, J. (2010). Mission impossible? The potential for Franco-German leadership in the Enlarged EU. *Journal of Common Market Studies*, 48(5), 1367–1390.
- Schoenmaker, D. (2017). The UK financial sector and EU integration after Brexit: The issue of passporting. In N. F. Campos & F. Coricelli (Eds.), *The economics of UK-EU relations: From the Treaty of Rome to the vote for Brexit* (pp. 119–138). London: Palgrave Macmillan.
- Shackleton, M. (2017). Transforming representative democracy in the EU? The role of the European Parliament. *Journal of European Integration*, 39(2), 191–205.
- Tallberg, J. (2006). *Leadership and negotiation in the European Union*. Cambridge: Cambridge University Press.
- Thompson, H. (2017). How the City of London lost at Brexit: A historical perspective. *Economics and Society*, 46(2), 211–228.
- Tömmel, I. (2013). The presidents of the European Commission: Transactional or transforming leaders. *Journal of Common Market Studies*, 51(4), 789–805.
- Tömmel, I. (2020). Political leadership in times of crisis: The Commission presidency of Jean-Claude Juncker. *West European Politics*, 43(5), 1141–1162.
- Tömmel, I., & Verdun, A. (2017). Political leadership in the European Union: An introduction. *Journal of European Integration*, 39(2), 103–112.
- UK Government. (2017, February 2). The United Kingdom's exit from, and new partnership with, the European Union. *UK Government*. Retrieved from <https://www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper>
- UK Government's Actuary Department. (2017). *Investment news: Monthly bulletin from the insurance and investment team*. London: UK Government's Actuary Department. Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/629670/Jun_2017_update.pdf
- Van Kerckhoven, S., & Odermatt, J. (2020). Euro clearing after Brexit: Shifting locations and oversight. *Journal of Financial Regulation and Compliance*. <https://doi.org/10.1108/JFRC-02-2020-0021>
- Verdun, A. (2017). Political leadership of the European Central Bank. *Journal of European Integration*, 39(2), 207–221.

Wood, P. R. (2008). *Maps of world financial law*. London: Sweet and Maxwell.

Wouters, J., & Van Kerckhoven, S. (2017). Preserving consensus. In J. Kirton (Ed.), *G7 Italy, the Taormina Summit* (pp. 120–121). Toronto: Munk School of Global Affairs and Public Policy.

Wouters, J., & Van Kerckhoven, S. (2019). The role of the EU in the G7 in the era of Brexit and Trump. In

C. Oldani & J. Wouters (Eds.), *The G7, anti-globalism and the governance of globalization* (pp. 68–89). London: Routledge.

Wouters, J., Van Kerckhoven, S., & Odermatt, J. (2013). The EU at the G20 and the G20's impact on the EU. In B. Van Vooren, S. Blockmans, & J. Wouters (Eds.), *The EU's role in global governance: The legal dimension* (pp. pp. 259–272). Oxford: Oxford University Press.

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Article

The Ordinary Legislative Procedure in a Post-Brexit EU: The Case of Social Europe

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Abstract

This article assesses the political and power dynamics of the Ordinary Legislative Procedure (OLP) in social Europe and the likely impact of the UK's departure in the field for future integration. It provides a detailed analysis of the OLP in social Europe during two recent periods of integration in the field—the first Barroso Commission (2004–2009) and the Juncker Commission (2014–2019). It finds the dynamics of the OLP have shifted from intergovernmental deadlock during the Barroso Commission to the characteristics of a new intergovernmental core state power during the Juncker Commission, even though the policy area is not a core state power *per se*. Despite the use of qualified majority voting policy agreements can only be achieved when there is near unanimity support in the Council, the Commission remains a neutral broker, and the Parliament shifts its position to that of the Council. As a result, continued opposition to integration in social Europe by Northern and Eastern Members means the removal of UK political agency will have only a marginal impact on the slow and piecemeal approach to integration in the field.

Keywords

Community Method; intergovernmentalism; ordinary legislative procedure; post-Brexit; social Europe

Issue

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1. Introduction

The ordinary legislative procedure (OLP), or the Community Method as it is more commonly referred to, covers approximately 72% of all subject areas for which the Treaty of the Functioning of the European Union provides for legislative procedures. While knowledge of EU decision-making is less widespread compared to that found within the Member States, as a bicameral law-making procedure, the OLP is a familiar or ‘normal’ form of decision-making for many citizens of the EU (Roederer-Rynning, 2019). The OLP—referred to as the Co-decision Procedure prior to the 2009 Lisbon Treaty changes—gives the European Commission the right to initiate legislation with the Council of the European Union (herein the Council) and the European

Parliament acting as co-legislators. Following the release of a proposal from the Commission, the Council and the Parliament are required to adopt a legislative proposal at either the first or second reading. The third reading involves the formation of a conciliation committee, whereby representatives from the Council and the Parliament attempt to agree a common text. If a proposal is rejected at any of the two stages, or if no agreement is reached during conciliation, the proposal is not adopted and the procedure ends. At any stage of the OLP the three institutions can enter into trilogues, which are institutionalised informal discussions between the institutions with the view of securing a commonly agreed legislative text (Greenwood & Roederer-Rynning, 2019). Trilogues have become increasingly common within the OLP to speed up the decision-making process, partly in

response to the politicisation of European integration. However, as negotiations occur behind closed doors, questions remain as to the democratic credentials of trilogues (Reh, 2014; Roederer-Rynning, 2019).

Theoretically, there is an intense debate regarding the extent to which both the Council and the Parliament are put on an equal footing within the OLP, with debate also extending to the powers of the Commission and its role as an agenda-setter and influencer of decisions (Rhinard, 2010). For example, while qualified majority voting (QMV) can be used in the Council for the OLP, Member States prefer to reach common positions by consensus and thus unanimity voting remains more common (Häge, 2013). Meanwhile, the situation is further complicated by EU's involvement in 'core state powers' such as foreign policy, migration policy and economic policy, which often do not use the OLP. Within core state powers decisions are controlled and steered by intergovernmentalism owing to their national sensitivity, with the Commission and the Parliament often marginalised. This has given rise to the new intergovernmentalism whereby the process of European integration has deepened, but paradoxically, decision-making remains in the hands of the Council (Bickerton, Hodson, & Puetter, 2015). More recent research suggests that when the OLP is used in core state powers, the Council remains firmly in control of final agreements (Bressanelli & Chelotti, 2016).

This article draws from the literature on 'new intergovernmentalism' and is focused on two questions: First, what are the political and power dynamics of the OLP within social Europe—referred to as the Social Community Method (SCM)? And second, what is the likely impact of the UK's departure on the future of the SCM? While there are several important studies focusing on certain aspects of the SCM, theorising and evidencing the broader integration dynamics remains scarce (Copeland, 2012; Crespy & Gajewska, 2010). Meanwhile, the departure of the UK from the SCM—often regarded as one of the EU's main opponents to integration in social Europe—has the potential to shift the integration dynamics. The broader evidence on the dynamics of the field suggests this could be the case. During the first Barroso Commission (2004–2009), when UK political agency was at its highest, agreements via the SCM slowed (Graziano & Hartlapp, 2019). Meanwhile, during the Juncker Commission (2014–2019) when UK agency was in decline, the SCM had a renaissance (Clauwaert, 2018). In response to these two questions, this article argues that the SCM has shifted from intergovernmental deadlock during the first Barroso Commission (2004–2009) to featuring the characteristics of a core state power of the new intergovernmentalism during the Juncker Commission (2014–2019), even though the SCM is not a core state power *per se*. This shift is attributed to the EU's attempt to improve its negative image in the wake of the Eurozone crisis rather than a decline in UK political agency. Meanwhile, given the preference for

near-unanimity voting in the Council, the removal of UK political agency is unlikely to shift the SCM beyond the slow and piecemeal form of decision-making of the new intergovernmentalism.

The article conducts an in-depth analysis of the SCM during two phases of European integration for social Europe—the first Barroso Commission (2004–2009) and the Juncker Commission (2014–2019). It tracks the usage of the SCM where Treaty provisions specify QMV in the Council. The analysis pays attention to the dynamics between the three main institutions (Council, Parliament and Commission), as well as procedural processes, and the broader process of European integration. The analysis is based on the primary documentation produced by the EU institutions, as well as articles in the specialised press and is complemented by 15 interviews that were conducted between 2006–2020. The interviewees were drawn from the EU institutions and had first-hand experience during the negotiations. The remainder of this article proceeds as follows. The second section explores the relationship between new intergovernmentalism, social Europe, and the potential impact of the departure of UK agency. The third and fourth sections analyse the political and power dynamics of the SCM during the first Barroso Commission and the Juncker Commission. The final section concludes with some reflections on the future of the SCM in the absence of the UK.

2. The Social Community Method as New Intergovernmentalism

Theorising decision-making within the EU is complex. Debates over the extent to which the Member States within the Council remain in the driving seat, or have to share power with the Commission and the Parliament, have dominated broader theoretical discussions. The Maastricht Treaty (1992) is said to have formalised two different decision-making systems. The first is the Single European Market which is governed by the OLP. The OLP gives the Commission the right to initiate legislation and as both the Council and the Parliament are required to reach an agreement for legislation to be passed, it places the two institutions on an equal footing. Within the Council agreement is secured by a QMV—when 55% of the votes allocated to the Member States are in favour representing at least 65% of the population. By contrast, within the Parliament an agreement is secured by a simple majority vote. The usage of the OLP suggests a supranational decision-making arena, i.e., the pooling of sovereignty in which Member States lose their veto and decision-making is shared with other EU actors. The second decision-making system is the EU's expansion into new sensitive policy areas where integration entails high sovereignty costs for the Member States, such as foreign policy, migration and financial cooperation, and is largely directed by intergovernmental institutions. As Schimmelfenning notes (2015, p. 6), the policies that best suit the latter integration dynamics are 'core

state powers,' that is, integration entails high sovereignty and identity costs for the Member States (Genschel & Jachtenfuchs, 2013).

Theoretically, this dual system of decision-making has given rise to the 'new intergovernmentalism.' New intergovernmentalism has its origins in liberal intergovernmentalism, which, at its most fundamental level, assumes that during Treaty changes and conditions of unanimity voting, the Member States remain in the driving seat and bargain hard to reach an agreement (Moravcsik, 1998). The logic of liberal intergovernmentalism is extended to the new intergovernmentalism whereby deeper integration into core state powers has not resulted in more supranationalism. However, as noted by Bressanelli and Chelotti (2016, p. 513), the analytical distinction between the intergovernmental method and the OLP conceals that complex interactions between the two may exist in different policy fields. Research conducted by the authors demonstrates how new intergovernmentalism extends to the OLP. In the wake of the Eurozone crisis, the EU introduced various reforms to EU economic governance, including two legislative packages—the Six-pack and the Two-pack—which were negotiated via the OLP. The negotiations, however, gave a strong role to the European Council as an agenda-setter, and in the legislative negotiations, the Parliament played a more limited role and correlated with the positions of the Council. While Treaty provisions enable the use of QMV in the Council, in economic governance there is a preference for agreement via unanimity.

The EU's competence in employment and social policy is predominantly a spillover of integration within the Single European Market (Leibfried, 2010). The EU has been responsible for the harmonisation of Member State policies in several key areas to ensure the Single European Market does not lead to a lowering of labour standards or the distortion of competition. Articles 46–48 enable the OLP to be used for the coordination of social security systems to promote the free movement of workers. Article 153 enables the OLP (with QMV) to be used to agree minimum standards in health and safety, working conditions, the information and consultation of workers, and equality between men and women with regard to labour market opportunities and treatment at work. Article 153 also enables EU directives to be agreed in other areas—social security and social protection of workers, the protection of workers where their employment contract is terminated, employee influence within enterprises (co-determination), and the employment conditions of third-country nationals—but decisions require the Council to act unanimously with the Parliament being consulted. Nevertheless, given the diversity of EU welfare states, reaching agreements on minimum standards is difficult. The overall result has been a slowing of agreements over the last two decades and explains the EU's turn to legally non-binding governance tools, such as the Open Method of Coordination (ter Haar & Copeland,

2010; Zeitlin, Pochet, & Magnussen, 2005). This leads to the first research question: What are the political and power dynamics of the SCM?

A second consideration is the impact of the UK's departure on the SCM. The UK has long been a staunch opponent of EU directives in the field. In 1989 it declined to sign the Community Charter of Fundamental Social Rights of Workers, which aimed to create a level playing field in social policy (Copeland, 2014). At the signing of the Maastricht Treaty changes, the UK also declined to sign the Community Charter. The Charter contains 30 principles to guide EU social policy and the 11 Member States were allowed to integrate in social policy without the UK, but political division hindered substantive progress. Meanwhile, UK opposition to the 1993 Working Time Directive (WTD) resulted in the inclusion of the famous opt-out. The Directive limits the number of hours an individual can work to 48 per week (calculated as an average over a reference period of four months) and also specifies other provisions including minimum rest periods and the entitlement to four weeks paid annual leave per year. The opt-out enables Member States not to apply the maximum 48-hour limit and the UK was the only Member State to make full use of it. Further opposition from the UK promoted it to challenge the legal basis of the WTD in the European Court of Justice (ECJ). The UK claimed that working time was not a health and safety matter, but this view was not shared by the ECJ who ruled against the UK in its 1996 judgement (Blair & Leopold, 2001). Meanwhile, 2010's Conservative Party Manifesto pledged to return certain powers from the EU including those concerning employment legislation (Conservative Party, 2010). The departure of the UK from SCM suggests a potential easing of the difficulties posed by reaching agreements in the Council, resulting in the second research question: What is the likely impact of the UK's departure on the future SCM?

3. The Social Community Method during the First Barroso Commission (2004–2009)

During the first Barroso Commission, the SCM procedure featured entrenched political division both within the Council and the Parliament, as well as between the two institutions. Within the Council, Member States were divided between those who favoured a more expansive and market-correcting role for the social Europe and those who preferred a minimal market-making role (Höpner & Schäfer, 2010). Within the Parliament MEPs, especially those from the main centre-left (Socialists and Democrats—S&D) and centre-right (European People's Party—EPP) groupings predominantly voted along national lines during policy negotiations. Meanwhile, both Barroso Commissions took a consistent political position and sided with liberal-leaning Member States, such as the UK and the 2004 Central and Eastern European States, during policy negotiations (Copeland, 2012). The overall result was

one of intergovernmental deadlock in the decision-making process with the Council remaining in the driving seat. The negotiations surrounding the revision of the Working Time Directive (WTD) and the Temporary Agency Workers Directive (TAWD) serve as example.

The original WTD contained two review clauses which required the opt-out and the calculation of the reference period to be reviewed prior to 2003. Furthermore, prior to the review, two rulings by the ECJ clarified a legal uncertainty within the Directive regarding on-call time (*Landeshauptstadt Kiel v. Norbert Jaeger*, 2003; *Sindicato de Médicos de Asistencia Pública v. Conselleria de Sanidad y Consumo de la Generalidad Valenciana*, 2000). The rulings clarified that all on-call time spent within the workplace, regardless of whether it was spent active or inactive, was to be regarded as working time. Most EU healthcare systems across the EU—including ardent supporters of the WTD, France and Spain—had interpreted the Directive with only active on-call time regarded as working time. Both the Commission and the Council were anxious to get the matter resolved, not least because they disagreed with the ECJ's rulings (interviews A, C, D). The Commission tabled a revision of the Directive in September 2004, which maintained the use of the opt-out, extended the reference period from four to 12 months, and proposed active on-call time should be regarded as working time (European Commission, 2004).

Within the Council, most delegations were in favour of the Commission's proposal for on-call time, but political division centred on the opt-out and the reference period (interviews A, D, E). Belgium, Greece, France, Portugal, Spain and Sweden formed a broad coalition opposed to the Commission's proposal on the opt-out. The UK, along with some of the 2004 new Member States, such as Poland, Slovakia and Malta, were in favour of the Commission's proposal, while the remaining Member States abstained from declaring their position during the early stages of the negotiations (Council of the European Union, 2004). The political agency of France and Spain on the one hand, and the UK (and eventually Germany) on the other, was to prove crucial in the entrenching of divisions, the resultant political stalemate, and the inability of the EU to agree on a revised directive (interviews D, E). Crucially, for France and Spain, Alejandro Cercas, a Spanish MEP from the S&D was appointed as the rapporteur in the Parliament and was sympathetic to their position (interview F). The UK, concerned France and Spain would gain the upper hand during the negotiations, went on the offensive and secured the backing of Germany. The agreement reached between Berlin and London was that Germany would support the UK on the WTD in return for British support on the Takeover Directive (Financial Times, 2004). This agreement inadvertently brought other Northern Member States into the group of countries supporting the Commission's proposal and the overall result was one of political deadlock (interview D).

With little progress in the Council, attention shifted to the European Parliament, where the rapporteur was able to secure a 58% majority (381/653) in the plenary vote which rejected the Commission's proposal—it voted to maintain the opt-out and for a calculation of on-call working time, regardless of whether it was spent active or inactive, to be fully included in the calculation of working time (Keter, 2009). Voting within the Parliament was more likely to be driven by intergovernmental decisions, rather than MEPs acting as in accordance with their political groupings. The strongest support in the Parliament for removing the opt-out and thereby supporting the rapporteur came from France with 97% of its MEPs voting in favour, followed by Greece (90%), and Portugal (89%). MEPs who voted against the proposals and wished to maintain the opt-out predominantly came from Poland (75%), Ireland (73%), the Czech Republic (67%), Latvia (60%), Slovenia (57%) and the UK (56%; calculated from roll call vote—see European Parliament, 2020).

Following Parliament's rejection of the Commission's proposal, the Commission intervened and claimed the Parliamentary amendments “did not constitute an improvement to the directive” and would “make it more difficult to obtain an agreement or a sufficient majority in the Council” (European Commission, 2005, p. 3). The Commission more or less reverted back to its original proposal and appeared to be siding with the UK and its liberal allies. This further polarised political division, as the Commission lost its reputation for being a broker during negotiations (interview B). Within the Council, the negotiations passed through various Council Presidencies, including that of the UK in the latter half of 2005, followed by Austria and Finland. Deadlock in the European Council was finally resolved during the 2008 Slovenian Presidency. In 2007 the Portuguese Presidency linked the revision of the WTD to the proposed TAWD. The latter had been stuck in co-decision since 2004 and it was hoped a simultaneous negotiation of the two directives would allow Member States “to find a balance between the two directives that would be acceptable from a political point of view” (Council of the European Union, 2007, p. 8). The negotiations would produce something for both coalitions and enabled no one side to lose face, particularly France and the UK (interviews D, F). The UK signalled it was willing to compromise on the TAWD while France, with the recently elected President, Nicolas Sarkozy, was also willing to compromise on the WTD. In June 2008 the European Council agreed on a compromise—the revised WTD would maintain the opt-out and contain a definition of on-call time that split active and inactive work for the purposes of calculating the maximum working week. On TAWD, it was agreed employees were to be given equal treatment as of day one with respect to pay, maternity leave and annual leave (European Commission, 2008, September 6).

The compromise within the Council was met with bitter disappointment within the Parliament (interview H).

Meanwhile, MEPs were also acutely aware that the 2009 elections were looming and, under the Barroso Commission, there were few policy outputs for social Europe (interviews G, H). Under the steering of the rapporteur, Alejandro Cercas, the Parliament took the decision to split the two directives (Europolitics, 2008). For the TAWD, the Committee of Employment and Social Affairs (EMPL) adopted, by near unanimity, the Council's amendments, which had been agreed at second reading, but initially opposed by the Parliament. With respect to the WTD, the Committee reverted to the Parliament's 2004 position and secured a 54% majority (421/785) in favour of its proposal. As in the first round of plenary voting, MEP voting patterns crossed party lines, and with the exception of France, demonstrated a strong correlation with their government positions in the Council, albeit there were some minor shifts. The strongest support came from Spain with 100% of MEPS in favour of maintaining the opt-out, followed by Portugal (96%), Hungary (91%), Italy (74%) and France (72%). 100% of MEPs from Latvia and Malta voted against the removal of the opt-out, followed by the UK (73%), Slovenia (71%), Slovakia (70%) and Czech Republic (68%; calculated from roll call vote—see European Parliament, 2020). Following two failed attempts of negotiation between the Council and the Parliament, the WTD moved to conciliation, but the third and final round of negotiations between the Parliament and the Council could not reach an agreement.

During the first Barroso Commission the SCM featured intergovernmental deadlock with entrenched positions in the Council and the Parliament, as well as division between the two institutions. Towards the end of the Commission, deadlock between the two institutions could only be overcome by opportunism in the Parliament. While the political agency of the UK, supported by the Commission, undoubtedly contributed to the dynamics, the preference for near unanimity decision-making in the Council, rather than QMV, limits the agency of one Member State. Opposition to certain agreements in the SCM is a position taken not just by the UK, but is one also shared by Northern and Eastern Member States. Meanwhile, further contextualising the limits of UK agency in the SCM was its willingness to support a compromise on the TAWD to secure agreement on the WTD. In this regard, while the UK has been an important obstacle to certain developments within the SCM, it has not been alone and has also been willing to compromise.

4. The Social Community Method during the Juncker Commission (2014–2019)

Developments within the SCM from 2014 onwards need to be understood in the context of the shifting sands of the previous decade. The siding of the Barroso Commission (and the second Barroso Commission) with the neo-liberal-leaning faction of Member States and the

deterioration of relations between the Council and the Parliament resulted in a slowing of Directives in social Europe. Meanwhile, the 2009 Parliamentary elections returned the largest share of representation from populist far-left and far-right parties, only for their share of the vote to be superseded by the 2014 elections. Both the EPP and the S&D were concerned that the rise of populism, and its impact on their share of the vote, were being bolstered by the limited progress in social Europe and the fallout from the Eurozone crisis (interviews M, N). On the latter, the pursuit of EU-driven austerity—associated with cuts to government spending and a liberalisation of employment protection—undermines employment and welfare regimes (Blyth, 2013).

Upon appointment of the Juncker Commission, there was thus a broad, albeit loosely defined, commitment to a renewed momentum in social Europe, including in the European Council. To obtain support in the Parliament from both the EPP and the S&D for his nomination, Juncker made specific commitments to be more proactive on social Europe (Stupp, 2017). The politics of Juncker vis-à-vis Barroso is also important from the perspective of the social Europe. While both are drawn from the EPP, Barroso is from the liberal-conservative tradition that supports a minimal and market-making welfare state, while Juncker is drawn from the Christian Democrats which is more centre-left on employment and social policy matters. This helped to smooth relations between both the EPP and the S&D in the Parliament. Juncker also benefited from being a Brussels insider, having been President of the Eurogroup (2005–2013), as well as being one of the key drivers behind the launching of the European Employment Strategy (1997) during his time as the Luxembourg Minister for Work and Employment. Meanwhile, throughout the Juncker Commission a preoccupation with the UK's referendum on EU membership reduced the political agency of one of the main players opposed to EU legislation in social Europe. However, the renewed momentum within the SCM was achieved by a shift within the political and power dynamics of the SCM from intergovernmental deadlock to that of the new intergovernmentalism, thereby demonstrating the Council remains firmly in control of the process of integration and will remain so post-Brexit.

The Commission's legislative agenda launched in April 2017, although some policy issues had been in the pipeline during the previous year, such as the Revision of the Posting of Workers (Clauwaert, 2018, pp. 87–89). The broad legislative strategy included four initiatives: the revision of the Written Statement Directive (91/533/EC); a proposed new directive on Work-Life Balance for Parents and Carers; an interpretative guidance on the Working Time Directive (2003/88/EC); and a consultation on improving access to social protection for all workers, including the self-employed (European Commission, 2017a). These were followed by two further initiatives in March 2018,

including a Regulation establishing a European Labour Authority and a Council Recommendation on access to social protection for all workers, including the self-employed (European Commission, 2018, March 13). By the end of its term in office, the Juncker Commission had secured agreements via the SCM for two main pieces of legislation—the Transparent and Predictable Working Conditions Directive (TPWCD) and the Work-Life Balance Directive (WLBD). However, these two agreements could only be secured on matters for which there was near unanimity agreement within the Council; the Commission remained a neutral broker, and the Parliament was required to shift its position towards that of the Council. The Council therefore remains in the driving seat of European integration in the context of new intergovernmentalism.

In a departure to the Barroso Commission, the Juncker Commission attempted to gain broader legitimacy for its legislative agenda. This came in the form of the European Pillar Social Rights (EPSR)—launched at the 17 November 2017 Social Summit for Fair Jobs and Growth in Gothenburg. The EPSR sets out 20 common principles/rights, categorised into three chapters with a total of 51 sub-sections covering: equal opportunities and access to the labour market; fair working conditions; and social protection and inclusion (European Commission, 2017b). The launching of the EPSR also included documents setting out how it would be actioned, including the Commission’s legislative initiatives launched in 2017 and later in 2018. In essence, the EPSR is a repackaging of existing social rights within the EU Treaties with the addition of new groups or policy issues—such as a right of the self-employed to social protection, and a set of rights in regard to services, e.g., long-term care and housing. The latter additions are legally non-binding, as the EU has limited or no legal competence in the areas included within its expansive approach. Within the European Council, a group of Northern and Eastern Member States were opposed to an extension of social rights—this included the ‘Frugal Four’ (Austria, Denmark, the Netherlands and Sweden), as well as Germany, Hungary, Poland and the UK (interviews I, K, O). Despite preparing for the UK’s withdrawal of the EU, the then UK Prime Minister, Theresa May, also signed up to the ERSR owing it maintaining the current status quo (interviews I, J). In this regard, the EPSR should be viewed as a rhetorical device aimed at establishing a policy framework for future action and gaining a very public commitment from the key players within the SCM for policy agreements. With EU leaders and the Parliament all signed up to the EPSR in a very public display of commitment, the stage was set for concrete policy outcomes.

Agreements moved quickly on the TPWCD and the WLBD. On the former, the original Written Statement Directive was agreed in 1992 and gives employees the right to be notified in writing the essential aspects of their employment relationship within two months

of employment commencing. The ‘written statement’ includes information such as pay, job description, the duration of contract, paid leave and notice period. Meanwhile, the latter is a revision of the Maternity Leave Directive (1992), which had been stuck in the SCM since the Barroso Commission launched a revised directive in 2008. In 2015 the Juncker Commission withdrew the proposed 2008 revision and announced it would replace the original Directive, as well as the 2010 Parental Leave Directive concluded by the social partners. In essence, the Directives were updates to two existing pieces of legislation where there was broad agreement they were out of step with current labour market conditions (interviews I, K).

For the TPWCD, the Commission’s proposal included new minimum rights, such as: the right to greater predictability of work for those working mostly with a variable schedule; for those working unpredictable hours, the right to request permanent employment (after six months); and the right to mandatory training without a deduction from salary. Meanwhile, workers were to be informed of their employment rights from the first day of employment and workers were defined in accordance with ECJ case law. The latter brought forms of employment often excluded from EU legislation, such as domestic workers, marginal part-time workers, and extending it to new forms of employment, such as on-demand workers, voucher-based workers and platform workers (European Commission, 2017c). The Council agreed a general approach on the proposal on 21 June 2018 and included a number of amendments, such as: exempting workers in public service (e.g., armed forces, police, etc.); increasing the number of hours needed for the directive to apply from eight per month to five hours per week; providing essential information for the written statement during the first week of employment and the remainder within the first month; and removing the ECJ definition of worker (Council of the European Union, 2018). Within Parliament, the file was referred to the EMPL, where Enrique Calvet Chambon (ALDE, Spain) was appointed as rapporteur. EMPL adopted its report on 18 October 2018 and, contra to the Council: supported the inclusion of the ECJs definition of a worker; called for adaption, rather than exemption of the Directive for workers in public service; preferred the ‘written statement’ was to be provided within one week of employment commencing; and introduced several safeguards to prevent abuse arising from on-demand contracts. This adoption was not without some political infighting, as conservatives within the EPP and the European Conservatives and Reform Group, arguing the Parliament’s amendments would create less flexible working conditions, unsuccessfully attempted to block the report (Socialists and Democrats, 2018).

The Commission’s proposed WLBD included several new or higher minimum standards for parental, paternity and carer’s leave, such as: the new right for fathers/second parents to 10 days leave around the birth

of a child; four months parental leave for children up to the age of 12 years compared to the current non-binding age of eight—the latter being an individual right for parents without the ability to transfer leave between parents; 5 days carer's leave; and the right to request flexible working to all parents up to the age of 12. All family-related leave arrangements were to be compensated to the level of at least sick pay. The proposed measures were intended to increase possibilities for men to take up parental and caring responsibilities, but the Council of Ministers was unhappy with the generosity of the proposals (European Commission, 2017d). At the June 2018 Council meeting there was no particular patterning to Member State positions and there was a broad consensus to reach an agreement (interview K). Delegations agreed on the right to request flexible working, but this was reduced to children under the age of eight. It was agreed that remuneration for paternity leave and 1.5 months of parental leave would be determined in accordance with national practices, rather than EU harmonisation. Finally, two months of parental leave could be transferred between parents, creating a situation whereby eight months of parental leave could be shared between parents. Whilst Poland, Hungary and the Baltic States would have preferred the existing status quo of one month of transferring parental leave, the various changes introduced proved sufficient for a compromise (Bulletin Quotidien Europe, 2018).

The European Parliament, particularly within the S&D, claimed the Council had severely weakened the Commission's proposal. Meanwhile, the EPP rapporteur, David Casa, was also in favour of more extensive provisions than those given by the Council. His report, adopted in July 2018 by a majority in EMPL, focused on remuneration for paternity, parental and carer's leave, with workers to receive payment equivalent to 75% of their gross wage during their leave. On the issue of parental leave, all working parents were entitled to request flexible working arrangements up until the age of 10; and on the transferring of parental leave, the Parliament maintained the Commission's initial proposal of it being a non-transferable right (European Parliament, 2018). As with the proposed TPWCD, the Parliament and the Council were some distance from each other. With the 2019 Parliamentary elections pending, it was the Parliament that compromised to reach agreement (interview M). To speed up the decision-making process both rapporteurs secured agreement in Parliament (via plenary votes) to enter into trilogues—for the WLBD this was secured in September 2018 and for the TPWCD it was secured in November 2018. Over the last decade the usage of trilogues has increased, as the bypassing of the various formal stages of the OLP speeds up agreement between the Council and the Parliament, but this is at the expense of openness and transparency, as negotiations occur behind closed doors (Curtin & Leino, 2017). The political dynamics of both trilogues is something of a black box. However, in contrast to the Barroso

Commissions, the Juncker Commission refused to position itself on either side of the debate—it stressed the importance of both the Council and the Parliament needing to reach agreement and this potentially helped to smooth relations between the two sides (interview K).

Comparing the final agreements to the original positions of the Council and the Parliament reveals it was the Parliament who compromised the most and shifted to the Council's position. On WLBD the final agreement was reached in January 2019. The agreement gave 10 days paternity leave, paid at the rate of sick pay. On parental leave, remuneration was to be determined at national level, with two months non-transferable between parents. Carers were entitled to five days leave, but this was to be unpaid, while flexible working for employees could be requested for children up to the age of eight. In essence, the final agreement was near identical to the June 2018 common position agreed in Council, albeit with some minor modifications. The final agreement was adopted by Parliament during the April 2019 plenary with 77% of MEPs in favour (470 for, 126 against, 18 abstentions; European Parliament, 2019a). For the TPWCD, the final agreed version of the directive removed any definitions relating to 'worker,' 'employer' and 'employment relationship.' The written statement can be provided in two stages, with essential information provided within seven days of employment commencing and supplementary information given within one month. Finally, the directive is to apply to individuals working a minimum of 12 hours per month and excludes certain categories of public sector employees. In Parliament, again the April plenary vote was similar to that of the WLBD—74% of MEPs in favour (466 for, 125 against, 37 abstentions; European Parliament, 2019b).

Under the Juncker Commission, the intergovernmental deadlock of the SCM evolved to the new intergovernmentalism. That is, agreements were secured when there was near unanimity support in the Council and the Parliament shifted its position to that of the Council. In this regard, decision-making in the SCM corresponds to the features of a core state power of the new intergovernmentalism, even though it is not a core state power per se. The changing dynamics of the decision-making process stem from a shift within the Commission and the Parliament in the wake of the negative reputational consequences of the Eurozone crisis for the EU. In particular, to secure agreement via the SCM the Parliament dropped its long-held position of pushing for more generous provisions within the proposed directives. Meanwhile, during the Juncker Commission, UK political agency was also in decline, but the revival of the SCM stemmed from the broader political context and the focusing of minds in the EU institutions. Given the preference for near unanimity agreement in the Council for the SCM, future agreements without the UK will continue within the framework of the new intergovernmental decision-making and as a result, difficult to achieve. Northern and Eastern Members remain opposed to

integration in the field, as demonstrated during the Juncker Commission. While the Juncker Commission was able to move forward on directives where there was a broad consensus in the Council, other controversial areas avoided being introduced into the SCM. In the field of extending social protection to all workers, the Commission launched a public consultation, but opposition from Northern and Eastern Members resulted in the Commission deciding against the proposing of a directive. The Commission opted for a legally non-binding Recommendation whereby the Commission and the Council monitor—via the European Semester—the access to social protection (interviews K, O).

5. Conclusion

This article has focussed on two research questions: What are the political and power dynamics of the SCM? And what is the likely impact of the UK's departure on the future of the SCM? Analysing the political and power dynamics of the SCM reveals the shift from intergovernmental deadlock during the first Barroso Commission to the features of a new intergovernmental core state power during the Juncker Commission, even though the field is not a core state power *per se*. The deadlock of the Barroso Commission can be accounted for by the inability of the Parliament to agree with the Council. The very political position taken by the Barroso Commission—its siding with more liberal forces in the Council—further polarised division between the Parliament on the one hand and the Council on the other. The renewed moment in the field during the Juncker Commission stemmed from the shifting positions of the Parliament to the position of the Council. Concerned by the rise of populism in the 2014 general elections, the Parliament was less willing to exercise its authority to secure agreement. This was further helped by the Commission behaving as a neutral broker and its launching of the EPSR, which acted as a rhetorical device to galvanise agreement.

Given the political and power dynamics of the SCM, the removal of UK agency is unlikely to shift the field beyond its current new intergovernmental constraints. When UK political agency was at its highest during the first Barroso Commission, the political stalemate of that period can be accounted for by several factors, of which the UK agency is one. During the Juncker Commission, the renewed momentum in the SCM corresponded with a decline in UK agency, but agreements were secured by the Parliament shifting its position during the negotiations to that of the Council. It is also telling where legislative agreements were secured, and not secured, during the Juncker Commission. Both the TPWCD and WLBD represent an extension of rights to EU workers, but in the grand scheme of EU employment regimes they remain a somewhat marginal development—the UK, for example, has more extensive employment provision in many of the areas covered by the two Directives. More substantive reform, such as extending social protection to

new forms of employment, were quickly blocked by the Council. Northern and Eastern Member States are particularly opposed to further integration in the field and their opposition will remain post-Brexit. If social Europe is to deepen over the coming decades, it will require a fundamental rethink within the Council and need to move beyond the framework of new intergovernmentalism.

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Conflict of Interests

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References

- Bickerton, C. J., Hodson, D., & Puetter, U. (2015). The new intergovernmentalism: European integration in the post-Maastricht era. *Journal of Common Market Studies*, 53(4), 703–722.
- Blair, A., & Leopold, J. (2001). An awkward partner? Britain's implementation of the working time directive. *Time and Society*, 10(1), 63–76.
- Blyth, M. (2013). *Austerity: The history of a dangerous idea*. Oxford: Oxford University Press.
- Bressanelli, E., & Chelotti, N. (2016). The shadow of the European Council: Understanding legislation on economic governance. *Journal of European Integration*, 38(5), 511–524.
- Bulletin Quotidien Europe. (2018). Council of the EU preparing its position on three highly political legislative texts. *Agence Europe*. Retrieved from <https://agenceurope.eu/fr/accueil.html>
- Clauwaert, S. (2018). A new legislative agenda for the EU: Putting meat on the bones after all? In B. Vanhercke, D. Ghailani, & S. Sabato (Eds.), *Social policy in the European Union: State of play 2018* (pp. 73–96). Brussels: ETUI.
- Conservative Party. (2010). *Invitation to join the Government of Britain*. London: Conservative Party.
- Copeland, P. (2012). EU enlargement, the clash of capitalism and the European social model. *Comparative European Politics*, 10(4), 476–504.
- Copeland, P. (2014). *EU enlargement, the clash of capitalism and the European social dimension*. Manchester: Manchester University Press.
- Council of the European Union. (2004). *Meeting document, Permanent Representation Committee, 2075th meeting on 1 and 3 December 2004* (DS 817/1/04 [soc]). Unpublished document.
- Council of the European Union. (2007, December 6). *2837th Council meeting: Employment, social policy, health and consumer affairs* [Press release]. Retrieved from https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/lsa/97445.pdf

- Council of the European Union. (2018). *Proposal for a directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union* (2017/0355). Brussels: European Commission.
- Crespy, A., & Gajewska, K. (2010). New parliament, new cleavages after the Eastern enlargement? The conflict over the services directive as an opposition between the liberals and regulators. *Journal of Common Market Studies*, 48(5), 1185–1208.
- Curtin, D., & Leino, P. (2017). In search of transparency for EU law making: Trilogues on the cusp of dawn. *Common Market Law Review*, 54(6), 1673–1712.
- European Commission. (2004). *Proposal for a directive of the European Parliament and of the council amending directive 2003/88/EC concerning certain aspects of the organisation of working time* (COM (2004) 607 Final). Brussels: European Commission.
- European Commission. (2005). *Amended proposal for a directive of the European Parliament and of the Council amending directive 2003/88/EC concerning certain aspects of the organisation of working time* (COM (2005) 0246 Final). Brussels: European Commission.
- European Commission. (2008, September 6). *Commission strongly welcomes today's political agreement on working time and working conditions for temporary agency workers* [Press release]. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/IP_08_912
- European Commission. (2017a). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Establishing a European pillar of social rights* (SWD(2017) 201 final). Brussels: European Commission.
- European Commission. (2017b). *Establishing a European pillar of social rights* (COM (2017) 250 Final). Brussels: European Commission.
- European Commission. (2017c). *Proposal for a directive of the European Parliament and of the Council on transparent and predictable working conditions in the EU* (COM (2017) 0797 Final). Brussels: European Commission.
- European Commission. (2017d). *Proposal for a directive of the European Parliament and of the Council on work-life balance for carers and repealing Council directive 2010/18/EU* (COM (2017) 0253 Final). Brussels: European Commission.
- European Commission. (2018, March 13) *Commission adopts proposals for a European Labour Authority and for access to social protection* [Press release]. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/IP_18_1624
- European Parliament. (2018). *Report on the proposal for a directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council directive (2010/18/EU, A8-0270/2018)*. Brussels: European Parliament.
- European Parliament. (2019a). *Position of the European Parliament adopted at first reading on 4 April 2019 with the view of the adoption of directive (EU) 2019/...of the European Parliament and the Council on work-life balance for parents and carers repealing Council directive 2010/18/EU* (EP-PE_TC1-COD (2017)0085). Brussels: European Parliament.
- European Parliament. (2019b). *European Parliament legislative resolution of 16 April 2019 on the proposal for a directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union* (COM(2017)0797-C8-0006/2018-2017/0355 (COD)). Brussels: European Parliament.
- European Parliament. (2020). Organisation of working time 2004/0209 (COD). *European Parliament Legislative Observatory*. Retrieved from [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2004%2f0209\(COD\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2004%2f0209(COD))
- Europolitics. (2008, December 8). Working time directive: EP committee says no to Council. *Europolitics*. Retrieved from <https://www.europolitics.com>
- Financial Times. (2004, March 29). UK gains German support over working hours. *Financial Times*. Retrieved from <https://www.ft.com>
- Genschel, P., & Jachtenfuchs, M. (2013). *Beyond the regulatory polity? The European integration of core state powers*. Oxford: Oxford University Press.
- Graziano, P., & Hartlapp, M. (2019). The end of social Europe? Understanding EU social policy change. *Journal of European Public Policy*, 26(10), 1484–1501.
- Greenwood, J., & Roederer-Rynning, C. (2019). Taming trilogues: The EU's law-making process in a comparative perspective. In O. Costa (Ed.), *The European Parliament in times of EU crisis: Dynamics and transformation* (pp. 121–141). Basingstoke: Palgrave Macmillan.
- Häge, F. (2013). Coalition building and consensus in the Council of the European Union. *British Journal of Political Science*, 43(3), 481–504.
- Höpner, M., & Schäfer, A. (2010). A new phase of European integration: Organised capitalisms in post-Richardian Europe. *West European Politics*, 33(2), 344–368.
- Keter, V. (2009). *Working time directive: Opt-out from 48 hour limit on working week* (SN/BT/2073). London: House of Commons Library.
- Landeshauptstadt Kiel v. Norbert Jaeger, 2003:209 (2003)
- Leibfried, S. (2010). Social policy: Left to the markets and the judges. In H. Wallace, W. Wallace, & M. Pollack (Eds.), *Policy-making in the European Union* (pp. 253–282). Oxford: Oxford University Press.
- Moravcsik, A. (1998). *The choice for Europe: Social purpose and state power from Messina to Maastricht*. Ithaca, NY: Cornell University Press.

- Reh, C. (2014). Is informal politics undemocratic? Trilogues, early agreements and the selection model of representation. *Journal of European Public Policy*, 21(6), 822–841.
- Rhinard, M. (2010). *Framing Europe: The policy shaping strategies of the European Commission*. Dordrecht: Republic of Letters Publishing.
- Roederer-Rynning, C. (2019). Passage to bicameralism: Lisbon's ordinary legislative procedure at ten. *Comparative European Politics*, 17(6), 957–973.
- Schimmelfenning, F. (2015). What's the news in 'new intergovernmentalism?' A critique of Bickerton, Hodson and Puetter. *Journal of Common Market Studies*, 53(4), 723–730.
- Sindicato de Médicos de Asistencia Pública v. Conselleria de Sanidad y Consumo de la Generalidad Valenciana, 2000:528 (2000)
- Socialists and Democrats. (2018, November 15). *S&Ds defend EU workers' right in the face of challenge from conservatives in the European Parliament* [Press release]. Retrieved from <http://pr.euractiv.com/pr/sds-defend-eu-workers-right-face-challenge-conservatives-european-parliament-177273>
- Stupp, C. (2017, November 17). Juncker is 'sincerely in favour of social Europe'. *EurActiv*. Retrieved from <https://www.euractiv.com/section/economy-jobs/interview/juncker-is-sincerely-in-favour-of-social-europe-mep-rodrigues>
- ter Haar, B. P., & Copeland, P. (2010). What are the future prospects for the European social model? An analysis of EU equal opportunities and employment policy. *European Law Journal*, 16(3), 273–291.
- Zeitlin, J., Pochet, P., & Magnussen, L. (2005). *The open method of coordination in action*. Brussels: P.I.E.-Peter Lang.

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Article

Is the Grass Greener on the Other Side? Norwegians' Assessments of Brexit

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Abstract

To what extent has Brexit affected Norwegians' perceptions of their current relationship with the EU? What are the considerations that central political and societal actors bring up to explain their stances? What are the broader lessons for the EU's relations with non-members? We argue that Norway's EU affiliation is so close that we can draw on Catherine De Vries' benchmark theory to assess whether Brexit affects Norwegians' assessments of Norway's relationship with the EU. We focus on the Norwegian government's stance. Further, we consider opinion polls to understand the strength of domestic support for the EEA Agreement, and whether that support has changed as a consequence of Brexit. We thereafter look for political entrepreneurs or political change agents, in political parties, in interest groups, and among civil society activists. We find that Brexit has not served as a benchmark. It has not set in motion efforts to change Norway's EU affiliation. Opponents diverge on alternatives, although share concerns about what they see as the EU's neoliberal orientation. The analysis shows that we cannot assess Brexit as a benchmark without paying attention to the sheer size and magnitude of the EU–Norway power asymmetry.

Keywords

benchmark theory; Brexit; EEA Agreement; European Union; Norway

Issue

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1. Introduction

The EU has developed a comprehensive system of affiliations with neighboring states. The system of EU affiliations has bearings on the process and outcome of Brexit, given that it represents templates for how the UK and the EU may organize their relations post-Brexit. Conversely, these affiliations can be affected by the UK's exit from the EU. That is what we consider here with explicit reference to Norway. This article addresses the following questions: To what extent has Brexit affected Norwegians' perceptions of their current relationship with the EU? What are the considerations that central political and societal actors bring up to explain their

stances? What are the broader lessons for the EU's relations with non-members? We examine the views of a wide range of Norwegian actors in order to establish whether they have Brexit-related rationales for altering Norway's relationship with the EU. The assessment of whether the UK's decision to leave the EU has affected Norwegians' views of their current EU affiliation will provide us with important insights into the robustness of the EU's present arrangements with non-members, what is often referred to as the pattern of EU external differentiation (“externalization of the *acquis communautaire*”; Leuffen, Rittberger, & Schimmelfennig, 2013, p. 17).

There are several reasons for paying special attention to Norway. For one, Norway's EU affiliation, through

the European Economic Area Agreement (EEA) and a host of other agreements, places Norway among the EU's most closely affiliated non-members. Norway is one among few affiliated non-members that qualifies for EU membership (Eriksen & Fossum, 2015). That is important for comparability with the UK, which through its well over four decades of EU membership is thoroughly Europeanized. Further, the EU's aim was initially to establish an agreement with the UK that was as similar to Norway's EEA affiliation as possible, not the least because the EEA Agreement has formed the template for the EU's relations with its most closely associated non-members (Gstöhl & Phinnemore, 2019).

The UK, on its part, has rejected the type of single market participation and membership in the EU's Customs Union that the EEA Agreement implies. After long and protracted negotiations, the EU–UK Trade and Cooperation Agreement was signed on December 24, 2020. Nevertheless, transitory elements, implementation reviews and openings for further multilateral and bilateral cooperation leave quite a bit of fluidity. It is therefore questionable whether what we know at present provides us with sufficiently stable markers to tell us what form of privileged partnership the UK will end up with.

What we at present can investigate is whether the example of Brexit has affected members' and affiliated countries' assessments of their present EU relationship. For sovereigntists across Europe, Brexit and the mantra of 'taking back control' offers the prospect of escaping from the shackles of the EU. At the same time, the UK's complicated process of exiting from the EU shows how profoundly EU member states have been incorporated in the EU-led European political and economic order, not only vertically but also horizontally through tight bonds and interdependencies between states and societies across Europe.

In the following, we start by spelling out the analytical framework. It draws on Catherine De Vries' (2017, 2018) benchmark theory. Her application of this theory to Brexit posits that people compare the costs and benefits of their current EU affiliation with alternative statuses (of non-membership). In applying the benchmark theory to Norway, we must identify the actors that refer to Brexit as a template for Norway's future EU affiliation and the aspects—issues and concerns—they base their evaluations on. The next section outlines the distinctive features of Norway's EU affiliation in order to clarify the nature of the status quo, which is necessary for understanding what Norwegians assess Brexit against. The subsequent section considers the actors' stances. We start with the Norwegian government, thereafter consider opinion polls to understand the strength of domestic support for the EEA Agreement, and whether the level of support has changed as a consequence of Brexit. After that, we look for political entrepreneurs or political change agents in political parties, interest groups, and among civil society activists, notably the sig-

nificant No to the EU organization. In the final concluding section, we discern broader lessons from this case study for the EU's relations with affiliated non-members.

2. Brexit and Benchmark Theory

There was quite a bit of concern after the Brexit vote in 2016 that the UK's example would encourage other member states to exit the EU. That has not materialized in the EU's member states. Instead of fragmentation, the EU's response to Brexit thus far has been, to cite Brigid Laffan (2020), "rapid, united and effective." In this article, our concern is whether we see similar patterns of preserving the status quo in closely affiliated non-member states. If we look at the case of Switzerland, we see that the EU has been concerned with preventing Brexit from having spillover effects. Swiss voters in a recent referendum appear to have recognized this by rejecting a proposal that would have torn up Switzerland's free movement agreement with the EU (Jones, 2020).

Do we see similar patterns in Norwegians' evaluations of their EU affiliation? In order to address this, and to draw broader lessons for the EU's relations with affiliated non-members, we need to identify not only change agents, but also the factors that key veto players (such as governments) hold up as decisive for their stances. That means that we need a theoretical framework that says something about actors' reasoning when confronted with what some see as a threat to stability and others see as an opportunity for change or transformation. The benchmark theory offers precisely such a theory.

According to the benchmark theory:

People's attitudes towards Europe are ultimately rooted in a comparison, namely a comparison between the benefits of the current status quo of membership with those associated with an alternative state of one's country being outside the EU. The decision of the British to leave the EU provides people with valuable information about the possible economic and political costs and benefits associated with the alternative state. (De Vries, 2017, pp. 40–41)

The benchmark theory builds on the notion that citizens' levels of EU support depend on their perception of national political and economic performance. Brexit provides an opportunity to extend that to a comparison across national contexts. Prior to Brexit, such comparisons had to be based on counterfactuals—and all the uncertainty associated with using such as benchmarks—given the lack of real-life examples of states exiting the EU.

When the UK exited from the EU and became the first ex-member state (Lord, 2015), it replaced the counterfactual with a real-life example. The tangled Brexit process exhibits the dilemmas, choices and conflicts involved in exiting from the EU in today's interdepen-

dent world. The benchmark theory posits that actors calculate utility (costs and benefits) as well as relate to risk and uncertainty. We posit that the more uncertainty there is about the UK's future EU affiliation, the more difficult it is for actors to calculate utility. Uncertainty brings up power relations and patterns of asymmetrical interdependence.

In applying the benchmark theory to closely affiliated non-members such as Norway, we need to keep in mind that “the transaction costs associated with leaving are different from those of not joining” (De Vries, 2017, p. 41). We recognize this and therefore adopt the reverse approach: We consider whether the UK's departure from the EU has served as a benchmark for how Norwegians assess their EU affiliation. We argue that this comparison is valid, given that we clarify an important issue about sovereignty with bearing on comparability. Brexit is about restoring UK sovereignty, whereas Norway through the EEA Agreement and its other agreements with the EU has not formally rescinded sovereignty to the EU. This difference can affect application of the benchmark theory to Norway. One issue is whether formal retention of sovereignty is matched by real-life or lived experience; the other is whether the issue of sovereignty affects Norwegians' perceptions of their own country's performance.

On the former, Norway's EU affiliation is so close and committing that there is a gap between formal sovereignty and actual autonomy. Our starting assumption builds on that: The more closely affiliated the non-member is to the EU—the fewer differences there are between the lived reality of the EU member and the non-member—the more relevant for Norway are De Vries' findings from applying the benchmark theory to EU member states.

On the latter, the discrepancy between formal sovereignty and actual autonomy sets Norway apart from EU member states and has bearings on how Norwegians assess their EU affiliation. On the one hand, the gap between formal sovereignty and actual autonomy can trigger pleas for action to align reality with formal status. On the other hand, key political actors who are concerned with retaining Norway's close EU affiliation attach great importance to keeping the controversial sovereignty issue off the political agenda. For Norway, both the question of sovereignty and EU membership can serve as a ‘benchmark trigger.’ There are actors that are interested in pursuing alternatives to the present EU affiliation, regardless of Brexit.

De Vries presents three sets of findings that we discuss in relation to Norway. First is that Brexit brings up uncertainties surrounding the UK's role and status post-Brexit, which prompt EU members to favor the status quo. As we explicate below, we expect a similar effect in Norway due to the high level of asymmetrical political and economic interdependence and the close ties that bind Norway to the EU. Non-membership forms of affiliation are precarious, especially under conditions of

rapid contextual changes. We thus expect support for the status quo to be especially strong with regard to the Norwegian government. Norway's EU affiliation adds to that. It is a political compromise that has been deliberately depoliticized. We expect the government to be particularly concerned about the need for minimizing risks and disruptions.

De Vries' second finding is that Brexit appears to increase public support for EU membership. Translated to Norway our second assumption is that Brexit will favor the status quo, by increasing support for the EEA Agreement as the main and most visible plank of Norway's EU affiliation.

A third effect that De Vries presents is the rise of Eurosceptic populist political entrepreneurs that do not share the government's assessment of the risks associated with altering the status quo, and therefore seek to change it. Our third assumption is that we expect a similar development in Norway given that Norwegian EU membership remains a contested issue.

What then are the cost-benefit and risk assessments that Norwegians apply? As noted above, the more uncertainty there is surrounding the UK's future EU relationship, the less reliable the utility calculations, and the more actors' assessments will focus on reducing uncertainty. Norway's EU affiliation is a precarious attempt at reconciling sovereignty retention with access to the EU's single market and EU programs. Thus, we expect the actors to be well-aware of the political and economic costs and risks of changing the status quo and for this to figure as a central theme in their assessments. Governments share with business communities an onus on stable and predictable rules and terms of operation, not only in the economic but in the political realm.

Risk and uncertainty are bound up with power and hegemony. Closely affiliated non-members are aware of the asymmetrical nature of their EU affiliation, which suggests that they may be concerned with the possible fall-outs of perhaps even fairly unsubstantial changes. EU members have access to decision-making forums where they can renegotiate the terms of their affiliation through opt-outs and derogations, etc. For non-members, there is no similar access, and as we noted above with reference to Switzerland, non-members are concerned that efforts to change aspects of an affiliation may put the affiliation at risk. There is for instance a ‘guillotine clause’ in the Schengen agreement so that deviations or non-compliance entail that the entire agreement unravels. Norway has also for instance never actually used the EEA Agreement's right of reservation (Article 102) that allows a party to opt-out of a piece of legislation without blocking the entire legislation. The implication is that power and the significant asymmetry in Norway–EU relations matter to Norwegian actors' assessments of the balance of risk versus utility of a given mode of affiliation.

For many Norwegians, factors affecting their views of the EU and what they look for in relation to Brexit

are issues related to the welfare state, immigration, economic regulations and social regulations, and gender equality. These are long-lasting concerns that have affected people's views of the EU (as was readily apparent in the 1994 EU referendum). They straddle the line between specific policies and the broader outlines of a model of social economy that is environmentally sustainable. The EU has underlined the need to sustain its understanding of social market economy and environmental sustainability (European Commission, 2017). Whether Norwegians align with the EU's stance or not, we expect Norwegians to be concerned as to where the UK post-Brexit locates itself on the issues of market intervention, social justice and environmental sustainability. Norwegians clearly follow the Brexit process with great interest (Haugevik, 2017), even if they may not consider it a case to emulate.

3. Outlining the Status Quo: Overview of Norway's Current EU Affiliation

Before analyzing how the various types of actors in Norway see Brexit as a possible spur to reconsider Norway's EU affiliation, we need to look more closely at this affiliation and especially the thorny issue of sovereignty. We start by presenting in broad outlines the nature of this affiliation, and thereafter look more closely at the politics surrounding it.

Norway signed the EEA Agreement with the EU before the 1994 EU membership referendum. Today, Norway's EU affiliation consists in more than 70 agreements, ranging from the internal market, Schengen association agreements, agreements on asylum and police cooperation (Dublin I, II and III), agreements on foreign and security policy (Norway participates in the EU's battle groups), and agreements on internal security and justice cooperation. Through these agreements, Norway has incorporated roughly three-quarters of EU legislation compared to those EU member states that have incorporated everything (Official Norwegian Reports, 2012). In effect, Norway's approach has been to seek as close an EU association as is possible for a non-member. Assessed in terms of per capita, Norway's contribution is less than two-thirds of the UK's (£140 per person in Norway and £220 per person in the UK).

Institutionally speaking, the EEA Agreement is based on a two-pillar structure with bridging arrangements between EFTA and the EU, a court, and a surveillance body, the European Surveillance Authority (see EFTA, 2017). The two-pillar structure was understood as the only possible solution that would retain an intergovernmental agreement without supranational characteristics (Børde, 1997, p. 111). The EEA-EFTA states were not willing to rescind sovereignty to a set of international institutions.

Nevertheless, in actual practice these states are profoundly affected by the EU. Within the EEA-EFTA states, the EU's legislation—in contrast to the situation in the

member states—is not formally anchored in the legal precepts of supremacy and direct effect. The reality is, however, not as different as the formal structure would suggest (Egeberg & Trondal, 1999; Eriksen & Fossum, 2015). As Gänzle and Henökl (2017) note, the relationship is close to 'quasi membership.'

In the member states, EU law trumps national law in those issue-areas where the EU has been conferred competence, whereas in Norway, the European Surveillance Authority ensures that legal incorporation is in accordance with EU law, and the EFTA Court in practice ensures the incorporation of EU law. This relationship is clearly one-way; Norwegian citizens are pure recipients of decisions made outside of Norway. There is no form of reciprocity or 'export' of Norwegian decisions to the EU.

This dense and dynamic model of affiliation has important bearings on Norway's ability to retain its socioeconomic model, which has historically speaking been marked by economic governance, including state support; organized working life; and public welfare services. The EU has especially in the last decade moved in a neoliberal direction, which has been embedded in the manner in which it promotes the four freedoms: persons, capital, goods and services. Norway is a heavily Europeanized country, and is therefore feeling the full effects of these developments. It should however be added that Norway has compensatory arrangements and a strong fiscal buffer; thus has domestic leverage to protect the most vulnerable groups and persons from market and other contingencies (Fossum & Graver, 2018).

Norway's EU affiliation is touted as a compromise. It must be viewed in light of the fact that Norway has applied for EU membership four times. The two first, in 1962 and 1967 were aborted due to de Gaulle's veto against the UK's application. The two latter, submitted in 1970 and 1992, saw small majorities of the population rejecting EU membership in popular referenda (in 1972, 53.5% against and 46.5% for, and in 1994 52.2% against, and 47.8% for).

What is important to underline is that the political dimension of Norway's EU affiliation is marked by a paradox: The question of EU membership remains a very contentious issue, and yet, Norway's close and dynamic EU affiliation has sparked very little political controversy (Official Norwegian Reports, 2012). The main reason is that Norwegian governing coalitions and the party system have successfully de-coupled the controversy surrounding the EU membership issue from the ongoing process of EU adaptation.

The political mobilizations and the very high referendum participation rates (79.2% in 1972 and as high as 89% in 1994; Statistics Norway, 1995) show how divisive the issue of Norwegian EU membership has been. This question has figured as one of, if not, the, most politically divisive issues in Norway, at least since the Second World War. The EU membership issue reawakened or gave added impetus to old and entrenched cleavages, such as center against periphery, region against region,

rural against urban areas, and deep divisions within and between political parties. The main difference between 1972 and 1994 was that defense of the welfare state, the public sector and gender equality became more important reasons for rejecting EU membership.

To avoid destructive political battles, political actors have for a long time taken measures to de-politicize the contentious EU membership issue; hence keeping the contentious issue of sovereignty off the political agenda. Norwegian parties operate with a set of gag rules to keep the issue of EU membership off the political agenda (Fossum, 2019). Norway's proportional electoral system makes it very difficult for a single party to gain a majority; hence parties enter into coalitions. Every coalition constellation since 1994 has consisted of parties that variously support EU membership and oppose it. All of these coalition agreements are based on the notion that a political party that seeks to alter the status quo—actively seeking EU membership or revoking the EEA Agreement—will violate the coalition agreement. No governing party has therefore actively worked to alter the status quo.

By removing the most contentious issue of constitutional and political sovereignty from the political agenda, this arrangement makes rapid and dynamic EU adaptation possible. That explains the paradox listed above. The effect is for conflict and disagreement to shift away from the contentious normative questions about constitutional and political sovereignty and onto single issues, which can be treated as isolated incidents.

A governing party that tries to undo the status quo thus faces significant political risks, in that the coalition may unravel. It is difficult to understand these political constellations and forms of self-bind without taking into account the significant asymmetry in power relations between the EU and Norway.

In the following, we consider what aspects of Norway's EU relationship Brexit may set in motion, and do so across a wide range of different actors. Our main approach is to look for explicit references to Brexit; we do not include change proposals or pleas for change that do not make this connection explicitly. Brexit can trigger action to reinforce Norway's existing EU affiliation, either through a closer engagement with the EU or through initiating an EU membership process.

If we look at the different positions that have been proposed in the debate on Norway's EU affiliation over time, we find the following options: 1) Abolish the EEA Agreement and negotiate a free trade agreement with the EU; 2) renegotiate the EEA Agreement; 3) renegotiate Schengen (with or without changes to the EEA); 4) apply for EU membership. Brexit could trigger initiatives along all of these.

4. The Positions of the Norwegian Actors

The previous section showed how closely affiliated Norway is with the EU. At the same time, there is no

doubt that Brexit is consequential given that the UK is Norway's largest single-state trade partner in goods (Norwegian Government, 2016). Hence, the arrangement that the UK settles with the EU will have direct effects on Norway, since the goods trade is regulated by the EEA Agreement. In the following, we will outline the various actors' positions.

4.1. The Norwegian Government's Position

The Norwegian government has, in line with the first expectation we derived from the benchmark theory, consistently defended the status quo by stressing the importance of retaining the EEA Agreement. Foreign Minister Ine M. Eriksen, at a meeting in the Parliament's European Affairs Committee on February 7, 2018, noted that many people appear to think that Norway's relationship to the EU will change with Brexit; she rejected this assessment arguing that: "It does not. Our relationship to the EU is there through the EEA Agreement and other agreements, but it is our relationship to Great Britain where we will form other agreements and build other frameworks" (Søreide, 2018a, authors' translation). The government stressed its preference for a 'tidy' and predictable Brexit process and outcome, not a messy process and a no deal outcome. The government is thus not only concerned with retaining the status quo in relation to the EU but wants stable relations with the UK.

The onus on retaining status quo also implies a prioritization of relations. The Foreign Minister noted on October 20, 2018 that:

A position that we share with the EU is that we are very concerned about the integrity of the internal market, namely that it should not be possible to divide up the four freedoms and as such destroy the internal market...we are concerned about having a very close relationship to the British and a close trading relationship also after Brexit. But we must at the same time be clear that for Norwegian interests it is readily apparent that preservation of the internal market which provides us with common rules of conduct, market access, common standards etc. is immensely important for Norway given that 80% of our exports go to the EU. That includes the opportunity to bring in labor when we need it. (Søreide, 2018b, authors' translation)

The government that has been in power since 2013 is now a minority coalition government. It is composed of two parties in favor of EU membership, and one party that is against EU membership but in favor of retaining the EEA Agreement. The opposition is also divided but mainly over the EEA issue. The largest party Arbeiderpartiet (Labor) no longer has EU membership as a stated party aim but supports the EEA Agreement. The same do de Grønne (the Greens), whereas Senterpartiet (the Center Party), Fremskrittspartiet (the Progress

Party), Sosialist Venstreparti (the Socialist Left Party) and Rødt (Red) all want to renegotiate Norway’s EU affiliation in the direction of a less comprehensive arrangement. We will after the next section on public support check the constellation of party positions and whether these have changed in order to get a better sense of the robustness of government support for its status quo line, as well as the arguments and justifications that change-seeking parties present.

4.2. Changes in Public Support for the EEA Agreement after the UK Referendum?

As noted above, a key concern of the benchmark theory was to establish whether the uncertainties associated with Brexit led to increased EU support. Figures 1 and 2 show the results of opinion polls on the Norwegian population’s views on EU and EEA membership over time. The graphs merge these polls. In those years where several polls have been conducted, we have listed the average of these. For the EEA barometer there are no measures for 2013–2015.

Figure 1 is on support for EEA membership, in other words the status quo, and shows that this has seen a steady rise from 46% in 2012 to 62% in 2020. Opposition to the EEA has fallen from 34% in 2012 to 25% in 2020, exposing a widening gap between supporters and opponents of the EEA. If we look at the curves, we see a significant increase in support for the EEA Agreement between 2012 and 2016, but how much of that can be directly attributed to Brexit is not clear, since we lack figures for 2013–2015. Nevertheless, the change between 2012–2016 was reinforced through a steady increase in support for the EEA Agreement after 2016.

With regard to EU membership, we see in Figure 2 that opposition to EU membership was at 74.3% in 2012, but has declined to 62.7% in 2020, whereas support for EU membership has increased from 16.7% in 2012 to 28.3% in 2020.

We thus see that the pattern of support is consistent with the second assumption of the benchmark theory, namely that when translated to Norway Brexit will increase support for the status quo or the EEA Agreement. Since the pollsters did not include any questions about Brexit, we do not know how significant Brexit was in prompting these changes.

We can however approach the question of correlation indirectly by querying to what extent important opinion-makers such as political parties, political advocacy organizations and other politically relevant actors, such as employers’ and employees’ organizations advocated changes versus defended the status quo. The balance of status quo defenders and political change entrepreneurs will give us additional information on the factors and forces driving the patterns of public opinion that we observe.

4.3. Actors Debating or Initiating Changes to Norway’s EU Relationship

The strong and rising support for the EEA Agreement in public opinion polls may reflect a positive endorsement of the agreement, or it may reflect a lack of viable options. It has long been the mantra of governing parties that there is no alternative to the EEA Agreement if we want to have assured market access to our closest neighbors and trading partners. Opponents are therefore put under pressure to come up with viable alternatives, and

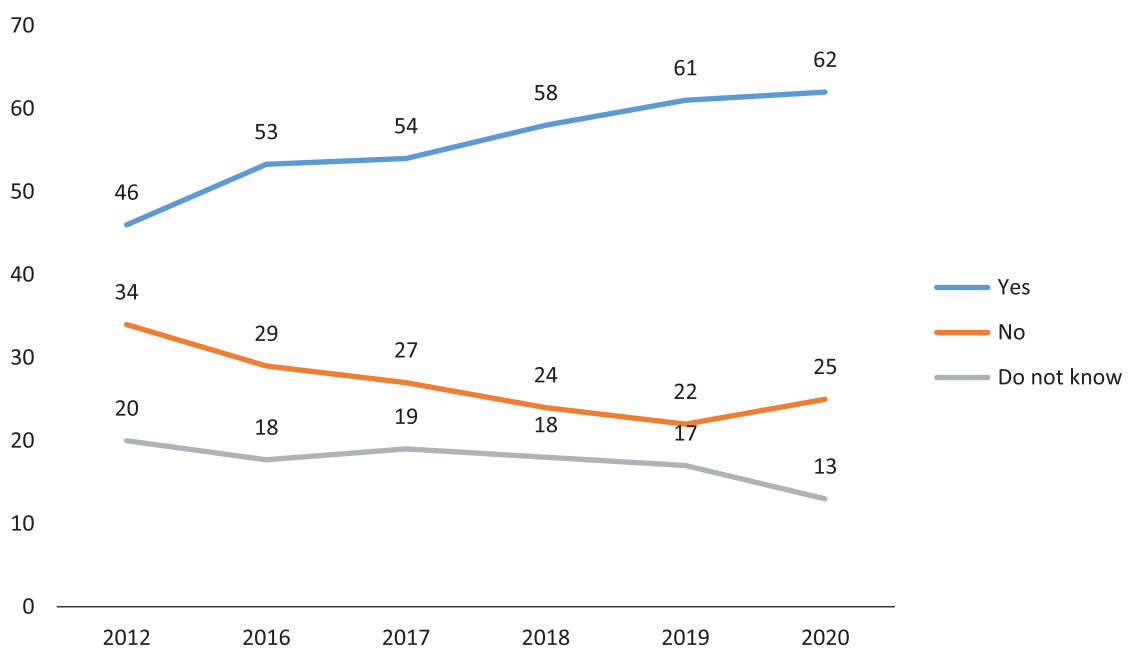


Figure 1. EEA barometer. Source: Sentio (2020).

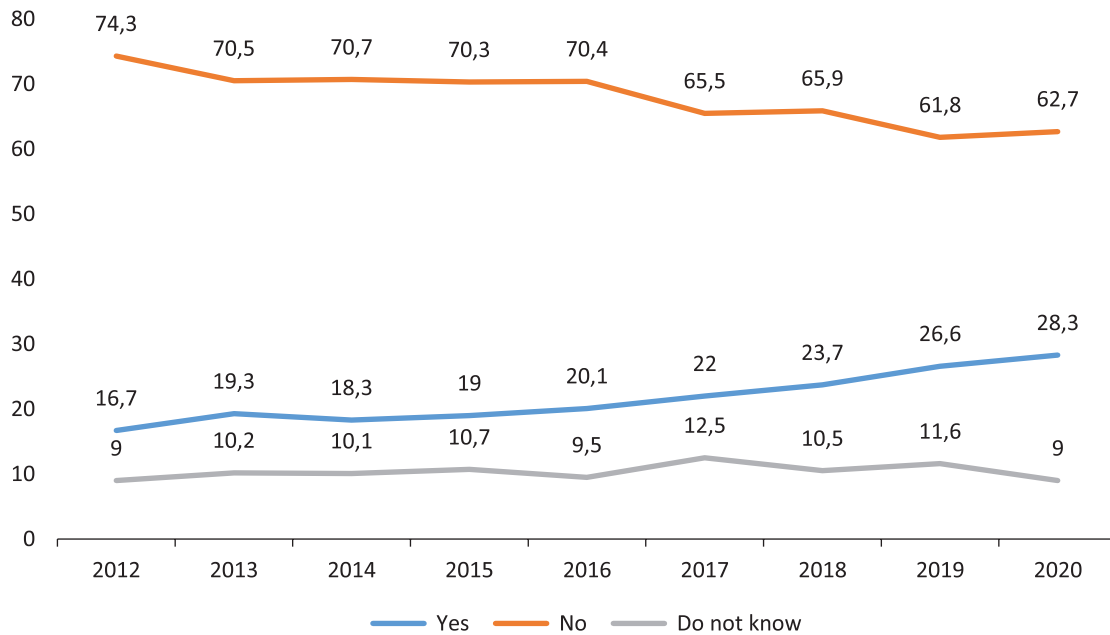


Figure 2. EU barometer. Source: Sentio (2020).

some actors, as we will show, refer to Brexit as the vehicle to open up the door to such alternatives.

4.3.1. Political Parties

With regard to political parties, we focus only on those instances where party programs or officials make explicit references to Brexit as the motivation for the change proposal. We have examined the party programs for all political parties from 2013 to the present. In addition, we have examined parliamentary plenary debates as well as debates in the Norwegian Parliament’s European Affairs Committee from the time of Brexit and up until today in search of information on how MPs think Brexit will affect Norway’s EU relationship.

The following party programs mention Brexit explicitly, Red, a party with Marxist-Leninist roots, which got 2.4% in the 2017 parliamentary election; the environmental party the Greens, which got 3.2% in the 2017 election; and the Center Party, formerly the farmers’ party which got 10.3% of the vote in the 2017 election. Red, in its party program for 2017–2021 notes that:

Red wants the power back to the people, not to delegations in Brussels and other power centers that negotiate agreements behind our back, against the popular will. The EU’s supranational structure and market liberalism are something the people of Europe do not want. Countless popular referenda in EU countries have shown that, now last when the British voted in favor of exiting the EU in June 2016. (Red, 2017, p. 78, authors’ translation)

Politically speaking, Red as Norway’s most left-wing party is far apart from the UK Tories that are driving

Brexit. The main thrust of Brexit is therefore the Brexit mantra of ‘taking back control,’ in other words an argument in favor of sovereignty. Beyond that there are no grounds for assuming that the deeply capitalism-critical party Red will want any of the other policies that the UK Tories propound.

The Greens, in the party program for 2017–2021, notes that:

Brexit shows that popular trust in the EU is at a historic low, a result of among other things increased economic differences, fear of consequences of increased immigration and democratic deficit. Together with our European sister parties the Greens will work to reform the EU-system and the EEA Agreement, with more transparency, more democracy, better protection of climate and environment and more participation as the goals. (Greens, 2017, p. 85, authors’ translation)

It is interesting that the Greens not only underline a European cooperation strategy to foster change rather than a national strategy, but also propagate changes that will strengthen the EU.

The Center Party notes in its party program for 2017–2021 that:

The British popular referendum on EU membership has created a completely new dynamics in Europe and will probably create a new opportunity space for alternatives to the EU’s goal of an ever closer union. Norway must actively exploit the opportunities that the new situation creates. If it becomes possible, Norway should actively cooperate with Great Britain to create an alternative connection

to the EU where both market access and national sovereignty are ensured. (Centre Party, 2017, p. 87, authors' translation)

All three parties are on the left-of-center in the Norwegian political landscape. Red is on the far left, Greens is closer to the center. The Center Party is a centrist party that in the last decade has been part of the Labor-led coalition. Red and the Center Party are the two most Eurosceptical parties in Norway, and have been so as long as the issue has existed. All three parties' stances to different degrees advocate changes to Norway's present EU affiliation but in quite different directions. The Center Party and Red see Brexit as opening space for altering Norway's formal EU affiliation, to regain Norwegian sovereignty. The Centre Party depicts Brexit as a great opportunity and actively seeks to politicize Norway's EU affiliation, and as such operates as a political entrepreneur in the sense of the benchmark theory. Finally, all three parties present Brexit as an occasion to question the socioeconomic model that Norway has been subjected to through its EU-affiliation, especially Red, which explicitly associates the EU with market liberalism.

The Socialist Left Party (what is now Sosialistisk Venstreparti and got 6% of the vote in the 2017 election) has historically speaking been Eurosceptic and wants to replace the EEA Agreement with a less committing trade and cooperation agreement with the EU. It wants more market regulation and democracy. Representatives from the Socialist Left Party presented a Private Members' Bill to Parliament in 2019 bent on initiating a public inquiry on alternatives to the EEA Agreement that would involve a less binding or committing relationship. Party leader Audun Lysbakken argued that the relationship between the EU and non-member countries is changing, and that "the truth is that we still do not know what type of agreement Great Britain and the EU will strike....It will, however, establish a new template for the relationship between the EU and non-member countries" (Lysbakken, 2019, authors' translation). The proposal was turned down by a majority of the parliamentary committee, which argued that it was lopsided and that the benefits of renegotiation were uncertain. Labor (Arbeiderpartiet, which got 27.4% in the 2017 election) has historically been pro-EU but has also been deeply divided internally (60–40 split in favor of EU membership). Labor underlines the need to retain the EEA Agreement but also expresses reservations about the negative effects on the labor market and workers' rights. The Christian Democrats, historically the party that has been most committed to the EEA Agreement, underlines the need to retain Norway's present EU affiliation. The Christian Democrats maintain that a bilateral trade agreement will not provide the same market access, and that Norway must support binding international and European cooperation to solve Europe's refugee challenge. The Conservative Party (Høyre) which

got 25% of the vote in the 2017 national election and is traditionally the most supportive of EU membership has toned down the support for EU membership and instead underlines the need to retain Norway's current EU affiliation.

Europe's Eurosceptic (or even Europhobe) right-wing populists have uniformly hailed Brexit as a great opportunity to undo the EU's influence. The Progress Party (which got 15.2% of the vote in the 2017 election) and is Norway's right-wing populist party does not mention Brexit explicitly in any of its party programs. In effect, if we look at the Progress Party's EU stance, it has historically been supportive of the EEA Agreement, and it is only in the last few years that it has come out explicitly against Norwegian EU membership. Its main concerns now are with Schengen and export of social benefits. Both issues are explicitly linked to immigration, but the Progress Party is mainly concerned with limiting non-Western immigration. This focus on minor changes to Norway's current EU affiliation is not universally shared. There are some maverick politicians in the party that cast Brexit as an opportunity for a major reshuffling of Norway's external relations: Tybring-Gjedde, who sits on the European Affairs Committee, has argued that Norway could come together with the UK, US, Iceland and Canada to form a trade alliance exceeding the EU in size (Tybring-Gjedde, 2019).

This brief overview has shown that the great majority of Norwegian political parties with a significant majority of the electorate behind them (figures similar to what the polls yielded), support the status quo with only minor changes. What puts Norway apart from much of Europe is that the right-wing populist party is far less Eurosceptic than its sister parties across Northern Europe.

4.3.2. Social Movements and Interest Groups

The single most important social movement focusing explicitly on Norway's EU affiliation is the No to the EU organization that at present has around 20,000 members nationwide. It plays a central role as a watchdog, and has shown a tremendous ability to mobilize political opposition to EU membership in the run-up to both EU referendums. In 1994, *Nei til EU* (No to the EU) had 138,426 members (Bjørklund, 2005, p. 82). In contrast, the yes side had at its most 35,000 members. No to the EU presented a report in 2017 on Brexit's importance for Norway and saw it as a major spur to changing the status quo, not by Norway copying the British agreement but by creating a new situation:

[Brexit] entails new opportunities for Norway that must be seized. The clear goal of the British is a new agreement with the EU that ensures that they regain control of their own laws. The British could *trigger calls* [the original Norwegian text uses 'be a wall-breaker'] for a new Norwegian solution based on the same principles....Norway ought also

to negotiate a new agreement with the EU which is without the unilateralism and supranationality of the EEA Agreement. This can take place through a bilateral agreement with the EU or through a regional EFTA–EU agreement where also Switzerland and Great Britain take part. (No to the EU, 2017, p. 48, authors’ translation, authors’ emphasis)

No to the EU’s main focus is sovereignty; there is no mention of the UK’s preferred socioeconomic model post-Brexit.

There are also employers’ and employees’ organizations, which have substantial agenda-setting powers in Norway on matters relating to the EU and EEA (Official Norwegian Reports, 2012, p. 276). The two most central organizations, representing labor and private enterprise respectively, are the Norwegian Confederation of Trade Unions and the Confederation of Norwegian Enterprise. They have historically been, and still are, supportive of the EEA Agreement; the privileged access to the internal market it provides and the association it has to economic stability and growth.

While both the Norwegian Confederation of Trade Unions and the Confederation of Norwegian Enterprise support the EEA Agreement, their views have at times differed strongly. For the Unions, the agreement is controversial for how it challenges the Norwegian socioeconomic model by prompting privatization, deregulation of the labor market and the influx of posted workers facilitated by the EEA and the Schengen Agreement. In 2018, the Confederation of Norwegian Enterprise and the Federation of Norwegian Industries brought an appeal to the European Surveillance Authority after a case against the Norwegian Tariff Committee related to the mandatory reimbursement of posted worker’s travel costs had been lost on the part of the employer’s organization in the Supreme Court. The fact that representatives of private enterprise brought a case already settled by Norway’s Supreme Court to a supranational body for it to be overruled in the disfavor of labor interests caused outrage among the unions. Hans-Christian Gabrielsen, head of the Norwegian Confederation of Trade Unions, accused the employer’s organization of “placing a bomb underneath the EEA” (Haugan, 2018). Cases like this have led to mounting criticism of the EEA Agreement among labor union fractions. It culminated in 2019 when a subsidiary organization of the Norwegian Confederation of Trade Unions, The United Federation of Trade Unions’ put forward a proposition at their General Assembly that would change its stance on the EEA Agreement from positive to negative. This could have had ramifications on the Norwegian Confederation of Trade Unions’ position as well, and in turn put political pressure on the EEA positive left leaning parties in parliament.

Given that the principal argument for Brexit in Great Britain was regaining national regulatory and judicial autonomy, Brexit could easily have functioned as a benchmark for labor unions who were displeased

with the prevalence of EU regulations and EU law in Norway. Interestingly, the opposite seems to be the case. At the above mentioned 2019 General Assembly, The Federation of Trade Unions (2019, p. 10) stated that: “The Brexit process in Great Britain demonstrates that it is hardly a realistic alternative to renegotiate the core tenets of the EEA Agreement.” This speaks to the fact that many of the political forces in Norway that are critical of the EEA and thus among those most likely to regard Brexit as a benchmark, do not actually see Brexit as a benchmark for future Norway–EU relations.

To sum up thus far, the employer’s and employee’s organizations have not altered their views on Norway’s relationship with the EU as a result of Brexit. Similar to pro-EEA political parties, the employer’s organizations continue to support the EEA Agreement because it assures continued economic stability. The employees’ organizations, on the other hand, have a much more ambivalent view of the EEA, and to an extent share the Brexit movement’s aim of restoring sovereignty.

5. Conclusion

This article assessed whether Brexit has spurred a reassessment of Norway’s EU relationship, and the implications for the EU’s relations with affiliated non-members. The analysis shows that the assumptions we derived from the benchmark theory were mostly confirmed. The government and the major political parties saw Brexit as a challenge to a depoliticized status quo that they sought to protect. That included rejecting proposals for studies to explore the effects of less binding alternative affiliations than the EEA Agreement. The preference for the status quo is aligned with public opinion. Some political entrepreneurs sought to change the status quo but did not agree on what they wanted to change: renegotiate the EEA Agreement; renegotiate Schengen; or sign a less comprehensive trade agreement. There was little appetite for a new EU membership debate. Some political entrepreneurs stressed sovereignty, but they generally diverged from the UK’s preferred socioeconomic model. Others expressed concern about the EU’s neoliberal turn and the problem of social dumping associated with labor mobility. But whereas this stance appears to dovetail with the Brexiteers’ onus on regulating immigration, it was not the immigration-critical, right-wing populist Progress Party that was most eager to change the status quo, but parties on the far left. The change-oriented Norwegian political entrepreneurs endorsed a socioeconomic model that was much further to the left than are the UK Conservatives (even those in favor of state aid). An important reason for the lack of explicit reference to the UK as a benchmark on the socioeconomic dimension is precisely this significant discrepancy in understandings of solidarity and economic justice.

With regard to the implications that we can discern for the EU’s relations with affiliated non-members, Brexit

thus far works more as a deterrent, than as an inducement for change. Whether this is mainly due to the tangled Brexit process or whether it is due to the fact that, at least for Norway, Brexit left little scope for linking sovereignty to the socioeconomic problems that actors associate with the present EU affiliation requires further investigation. Note that formerly EU-supportive social democrats largely share these socioeconomic concerns. In the Brexit negotiations, concerns with social justice and environmental standards figured strongly in the EU's demands to the UK, but this does not appear to increase Norwegians' support for EU membership.

Our analysis shows that we cannot assess Brexit as a benchmark without paying attention to the sheer size and magnitude of the EU–Norway power asymmetry. That affects the actors' assessments: risk and uncertainty figure prominently and bring up the question of whether the EU should be more accommodating in its relations with non-members. In that context, from the EU's perspective, the distinction between those that qualify for EU membership and those that do not probably matters. The EU has proven exceptionally inclusive with regard to non-members that qualify for EU membership (the EFTA states)—provided they abide by EU laws and regulations. But there are limits. If the EU is very accommodating to states that qualify for membership but refuse to seek it, the EU risks lowering the bar for exit or pleas to renegotiate the terms of membership from its member states. In that sense Brexit may expose the special arrangements that EFTA states have with the EU.

These considerations remind us that the EU as a non-state entity is particularly disposed to import centrifugal pressures from how it structures its affiliations with non-members.

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Conflict of Interests

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References

- Bjørklund, T. (2005). *Hundre år med folkeavstemninger: Norge og Norden 1905–2005* [Hundred years of popular referendums: Norway and the Nordics 1905–2005]. Oslo: Universitetsforlaget.
- Børde, K. (1997). The European Economic Area, Norway and the European Union. In P. C. Müller-Graff & E. Selvig (Eds.), *The European Economic Area: Norway's basic status in the legal construction of Europe* (pp. 97–129). Berlin: Berlin Verlag Arno Spitz.
- Centre Party. (2017). *Senterpartiets program 2017–2021* [The Centre Party's program 2017–2021]. *Centre Party*. Retrieved from <https://www.senterpartiet.no/Om%20SP/arkivert/valg-2017/senterpartiets-program-2017-2021>
- De Vries, C. E. (2017). Benchmarking Brexit: How the British decision to leave shapes EU public opinion. *Journal of Common Market Studies*, 55(S1), 38–53.
- De Vries, C. E. (2018). *Euroscepticism and the future of European Integration*. Oxford: Oxford University Press.
- EFTA. (2017). The basic features of the EEA Agreement. EFTA. Retrieved from www.efta.int/eea/eea-agreement/eea-basic-features#1
- Egeberg, M., & Trondal, J. (1999). Differentiated integration in Europe: The case of the EEA country. Norway. *Journal of Common Market Studies*, 37(1), 133–142.
- Eriksen, E. O., & Fossum, J. E. (Eds.). (2015). *The European Union's non-members: Independence under hegemony?* London: Routledge.
- European Commission. (2017). Speech by Michel Barnier at the Centre for European Reform on “The Future of the EU.” *European Commission*. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_17_4765
- Fossum, J. E. (2019). Norway and the European Union. *Oxford Research Encyclopedia*. Retrieved from <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1043>
- Fossum, J. E., & Graver, H. P. (2018). *Squaring the circle on Brexit: Could the Norway model work?* Bristol: Bristol University Press.
- Gänzle, S., & Henökl, T. (2017). From “awkward partner” to “awkward partnership”? Explaining Norway's paradoxical relations with the European Union. In M. Stegmann McCallion & A. Brianson. (Eds.), *Nordic states and European Integration: Awkward partners in the North?* (pp. 79–102). London: Palgrave MacMillan.
- Greens. (2017). Ta vare på fremtida: Arbeidsprogram 2017–2021 [Take care of the future: Work programme 2017–2021]. *Greens*. Retrieved from <https://d3n8a8pro7vhm.cloudfront.net/mdg/pages/309/attachments/original/1548161094/Arbeidsprogram-2018.pdf?1548161094>
- Gstöhl, S., & Phinnemore, D. (Eds.). (2019). *The proliferation of privileged partnerships between the European Union and its neighbours*. Abingdon: Routledge.
- Haugan, B. (2018, November 16). The LO-sjefen: NHO har plassert en bombe under EØS-avtalen [The LO leader: NHO has placed a bomb underneath the EEA Agreement]. *VG*. Retrieved from <https://www.vg.no/nyheter/innenriks/i/LORMO1/lo-sjefen-nho-har-plassert-en-bombe-under-eoes-avtalen>
- Haugevik, K. (2017). Hva betyr brexit for utenforlandet Norge? [What does Brexit mean for the outsider Norway?]. *Internasjonal Politikk*, 75(2), 152–166.
- Jones, S. (2020, September 27). Swiss voters reject nationalist proposal to curb immigration. *Financial*

- Times*. Retrieved from <https://www.ft.com/content/5a642ce6-1a76-460c-9857-b880b0fb7bc0>
- Laffan, B. (2020, September 30). *Yves Mény annual lecture* [Video file]. Retrieved from <https://www.youtube.com/watch?v=hhHXCiOsD0I&feature=youtu.be>
- Leuffen, D., Rittberger, B., & Schimmelfennig, F. (2013). *Differentiated integration: Explaining variation in the European Union*. London: Palgrave Macmillan.
- Lord, C. (2015). The United Kingdom, a once and future (?) non-member state. In E. O. Eriksen & J. E. Fossum (Eds.), *The European Union's non-members: Independence under hegemony?* (pp. 211–229). London: Routledge.
- Lysbakken, A. (2019, April 11). *Innstilling fra utenriks- og forsvarskomiteen om Representantforslag fra stortingsrepresentantene Audun Lysbakken, Solfrid Lerbrekk og Arne Nævra om å utrede alternativer til EØS-avtalen (Innst. 214 S (2018–2019), jf. Dokument 8:58 S (2018–2019))* [Recommendation from the Foreign Affairs and Defence Committee on proposals from the Parliament Representatives Audun Lysbakken, Solfrid Lerbrekk og Arne Nævra on inquiring into alternatives to the EEA Agreement (Inst.214 S (2018–2019). jf. Document 8:58 S (2018–2019))]. *Stortinget*. Retrieved from <https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Referater/Stortinget/2018-2019/refs-201819-04-11/?m=4>
- No to the EU. (2017). *EØS-meldingen: 25 År med EØS: Konsekvenser for Arbeidsliv og Samfunn* [The EEA report: 25 Years with the EEA: Consequences for the labor market and society]. Oslo: No to the EU. Retrieved from https://neitileu.no/aktuelt/eos-meldingen-25-ar-med-eos/E%C3%98S-meldingen-2017.pdf/_attachment/inline/aa9d8e39-024b-4e2b-ab8b-e682ac0b18e8:a1d681772d395591f4735a80792a9b901651ca54/E%C3%98S-meldingen-2017.pdf
- Norwegian Government. (2016). *Norges handelspolitiske forhold til Storbritannia etter brexit* [Norway's trade relations with Great Britain after Brexit]. Oslo: Norwegian Government. Retrieved from https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/europapolitikk/brexit_analyse.pdf
- Official Norwegian Reports. (2012). Utenfor og innefor: Norges avtaler med EU [Outside and Inside: Norway's Agreements with the European Union]. *Official Norwegian Reports*. Retrieved from www.regjeringen.no/no/dokumenter/nou-2012-2/id669368
- Red. (2017). Rødts arbeidsprogram: 2017–2021 [Red's work program: 2017–2021]. *Red*. Retrieved from <https://roedt.no/arbeidsprogram>
- Sentio. (2020). *EU and EEA Barometer Timeline* [Data set].
- Sørreide, I. M. E. (2018a). Møte i Europautvalget den 7. februar 2018 [Meeting in the European Affairs Committee 7 February 2018]. *Stortinget*. Retrieved from <https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Referater/Europautvalget/2017-2018/refe-201718-02-07/?all=true>
- Sørreide, I. M. E. (2018b). Møte i Europautvalget [Meeting in the European Affairs Committee]. *Stortinget*. Retrieved from <https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Referater/Europautvalget/2017-2018/refe-201718-09-20/?all=true>
- Statistics Norway. (1995). *The 1994 Referendum on Norwegian Membership of the EU*. Oslo: Statistics Norway. Retrieved from https://www.ssb.no/a/histstat/nos/nos_c235.pdf
- The Federation of Trade Unions. (2019). *Norges Tilknytning til EU/EØS* [Norway's affiliation with the EU/EEA]. Oslo: The Federation of Trade Unions. Retrieved from <https://www.fellesforbundet.no/globalassets/internasjonalt/eu-eos/uttalelse-om-eu-eos-fellesforbundets-landsmote-2019.pdf>
- Tybring-Gjedde, C. (2019). Møte i Europautvalget [Meeting in the European Affairs Committee]. *Stortinget*. Retrieved from <https://d3n8a8pro7vhmxc.cloudfront.net/mdg/pages/309/attachments/original/1548161094/Arbeidsprogram-2018.pdf?1548161094>

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