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Leading from the back – The European Council's role in the Brexit negotiations

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1 The European Council and EU-UK relations¹



The United Kingdom's (UK) relationship with the European Community (EC) and subsequently the European Union (EU) has been complicated from the outset. At the beginning of the European integration process in the 1950s, the UK – still seeing herself as a world power and believing there was no need to join some form of regional project – chose to stay apart. Lord Carrington, foreign secretary under Margaret Thatcher, characterized the British position at that time as: "We wished the club well but it wasn't for us."² Yet even after it had joined the EC in 1973, the country was often seen as an "awkward partner".³ Differences between the United Kingdom and the other EU members related to many policy fields but were particularly pronounced with regard to the concept of European integration with the UK having strong reservations about building a federal Europe and pooling sovereignty with other states.⁴

Since its foundation in 1974, the European Council has repeatedly taken decisions on issues of particular interest to the United Kingdom and has therefore been an important actor in shaping the UK-EU relationship. Most

importantly, the Heads of State and Government have agreed to grant the country several opt-outs from key EU policies such as from Economic and Monetary Union (EMU) and the Social Chapter during the Maastricht Treaty negotiations in the early 1990s as well as later from the Schengen area.⁵ When Prime Minister David Cameron demanded treaty changes after he had promised his voters a referendum on the country's EU membership in 2013 following a renegotiation of the UK's relationship with the European Union, Britain's relationship with the Union was again on the European Council's agenda. In February 2016 it agreed provisions which were intended to help the British Prime Minister in the referendum campaign but did not include any treaty changes to key elements of the Union.⁶

After the referendum of 23 June 2016, in which a small but decisive majority of the British electorate voted to leave the European Union, the European Commission was selected as the EU's sole negotiator in the subsequent negotiations with the United Kingdom about its withdrawal and the future relationship. However, the European Council again played a very important role in these negotiations: beginning immediately after the referendum, it took the lead in shaping the new relationship with the United Kingdom by organising and structuring the Brexit process and, in line with its treaty obligations, by setting the "general political directions and priorities thereof"⁷ for the European Union on its aims for the new



relationship with the soon-to-be ex-Member State.⁸

2 The European Council's key Brexit decisions

Until the United Kingdom formally left the EU in January 2020, the European Council spent much time discussing Brexit. After the British withdrawal, the frequency of its discussions on

the relationship with the former member declined. Even while Britain was still a Member State, the discussions about the withdrawal process and the EU's negotiation position, beginning in late June 2016, were restricted to the remaining 27 Heads of State and Government without the participation of the British Prime Minister.

Table 1: The Brexit timeline: Key events and European Council decisions⁹

23.6.2016	Referendum in the United Kingdom (UK): 51,9 % of British electorate vote for withdrawal from the European Union (EU)
28./29.6.2016	European Council discusses the consequences of the referendum outcome
15.12.2016	European Council determines the process of negotiations with the UK
29.3.2017	UK government notifies the European Council of its intention to withdraw from the EU according to Art. 50 TEU
29.4.2017	European Council adopts guidelines for the withdrawal negotiations
19.6.2017	Start of the withdrawal negotiations
22.6.2017	European Council discusses the latest development in the Brexit process
20.10.2017	European Council welcomes progress in the negotiations but calls for more progress regarding citizen rights, the Irish border and the financial settlement
15.12.2017	European Council agrees that sufficient progress has been made in the 1st phase of negotiations for the 2nd phase to begin
23.2.2018	European Council president informs the 27 Heads of State and Government of the draft guidelines for the negotiations of the future relationship he will present at the following European Council meeting in March 2018
23.3.2018	European Council adopts guidelines for the negotiations of the future relationship between EU and UK
29.6.2018	European Council welcomes progress on the draft agreement but calls for more progress on key aspects yet unsolved, such as the question of the Irish border
19./20.9.2018	European Council confirms that there can be no withdrawal agreement without a solution for Ireland, agrees a Political Declaration about the future relationship should accompany the withdrawal treaty
17.10.2018	European Council discusses the current state of the negotiations and agrees to meet again once Michel Barnier announces decisive progress in the negotiations
14.11.2018	EU and UK (under the leadership of PM Theresa May) agree on a withdrawal agreement and a Political Declaration on the future relationship
25.11.2018	European Council endorses withdrawal agreement and approves Political Declaration
10.12.2018	UK government postpones parliamentary vote to ratify treaty, originally planned for 11.12.2018
13.12.2018	European Council reaffirms its endorsement of withdrawal agreement and Political Declaration, confirms that backstop solution with regard to the Irish border is only an "insurance policy" and if applied would only be used "temporarily"
15.1.2019	UK government loses first vote on withdrawal agreement in parliament
12.3.2019	UK government loses second vote on withdrawal agreement in parliament
22.3.2019	European Council agrees first extension of the Art. 50 period
29.3.2019	UK government loses third vote on withdrawal agreement in parliament
10.4.2019	European Council agrees second extension of the Art. 50 period
20./21.6.2019	European Council discusses current state of the Brexit negotiations



Summer – Autumn 2019	New negotiations between EU and UK (under the leadership of PM Boris Johnson) about the Northern Ireland protocol of the withdrawal agreement
17.10.2019	EU and UK agree on a revised withdrawal agreement and a revised Political Declaration; European Council approves both
29.10.2019	European Council agrees third extension of the Art. 50 period
13.12.2019	European Council starts preparation process for future relationship negotiations and calls for “timely ratification and effective implementation” of the withdrawal agreement
30.01.2020	Ratification of withdrawal agreement is complete
1.2.2020	UK withdraws from the EU, transition period begins
25.2.2020	Council of the European Union adopts negotiating mandate for future relationship
2.3.2020	Start of the negotiations of an agreement on EU-UK relations
15.6.2020	PM Boris Johnson, European Commission President Ursula von der Leyen, European Council President Charles Michel and European Parliament President David Sassoli meet for EU-UK high-level conference to take stock of the negotiations
19.6.2020	Von der Leyen and Michel inform the European Council about the high-level conference with PM Boris Johnson
17.-21.7.2020	During the MFF negotiations the European Council agrees on a “Brexit Adjustment Reserve” for Member States and sectors most affected by Brexit
1./2.10.2020	European Council is informed about the state of negotiations
15./16.10.2020	European Council sees progress in the negotiations not sufficient enough for an agreement
10./11.12.2020	European Council is informed about the state of negotiations, no mention is made of this in the European Council conclusions of the meeting
24.12.2020	EU and UK agree on Trade and Cooperation Agreement (TCA)
1.1.2021	End of transition period, TCA is provisionally applied

2.1 Assessing the implications of the Brexit vote for the integration process

The European Council met immediately after the British vote to leave the EU on 28-29 June 2016 to discuss the implications of the referendum outcome for the European Union. It was followed by another meeting of the 27 Heads of State and Government in September 2016 in Bratislava. From that point on, the European Council framed its decisions on Brexit in a narrative which focused on the European Union’s achievements as well as the differences between members and non-members. It continued to do so throughout the entire Brexit process.¹⁰

When discussing the impact of the outcome of the referendum vote on the integration process, the 27 Heads of State and

Government of the remaining Member States in June 2016 confirmed their intention to “remain united and work in the framework of the EU to deal with the challenges of the 21st century and find solutions in the interest of our nations and peoples.”¹¹ In the Bratislava Declaration of September 2016, the European Council stated that for the remaining members the EU was “indispensable”.¹² The 27 Heads of State and Government focused on the achievements of the Union and confirmed their decision to proceed with the integration process. They stated in June 2016: “The European Union is a historic achievement of peace, prosperity and security on the European continent and remains our common framework.”¹³ In Bratislava, they struck a similar note by saying that “the EU secured peace, democracy and enabled our countries



to prosper [...]. We are determined to make a success of the EU with 27 Member States, building on this joint history.”¹⁴

Despite backing continued integration, the European Council also acknowledged that not everything was well and that there was a need for improvement: “Europeans expect us to do better when it comes to providing security, jobs and growth, as well as hope for a better future. We need to deliver on this, in a way that unites us”.¹⁵ To achieve this, the 27 Heads of State and Government in June 2016 announced a period of “political reflection to give an impulse to further reforms, in line with our Strategic Agenda, and to the development of the EU with 27 Member States.”¹⁶ They assigned themselves an important task for the subsequent integration process which was “to offer to our citizens in the upcoming months a vision of an attractive EU they can trust and support.”¹⁷

With these declarations as well as those of Rome in 2017, Sibiu in 2019 and the new strategic agenda 2019-2024 in 2019¹⁸, the 27 Heads of State and Government made it clear that to them Brexit was of a limited significance for the future integration process.¹⁹

2.2 Determining the Brexit process

The Treaty on the European Union (TEU) grants the European Council a specific role in the withdrawal process of a Member State:

“2. A Member State which decides to withdraw shall notify the European Council of its

intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union...

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.”²⁰

The European Council’s meeting on 28-29 June 2016 was the first one the Member State leaders conducted as 27 without the British Prime Minister. David Cameron was only there at the start of the summit to inform about the referendum outcome but did not attend the discussion. At this summit, the Heads of State and Government took charge of the subsequent Brexit process by setting key aspects of the Union’s reaction and by confirming the European Council’s pivotal role in the upcoming negotiations. In their statement on the meeting, the 27 noted regarding the United Kingdom’s membership status that “EU law continues to apply to and within the UK, both when it comes to rights and



obligations.”²¹ They demanded that the British withdrawal from the EU would be conducted based on Article 50 TEU in an “orderly fashion”.²² Moreover, they announced that there would be no informal negotiations with the United Kingdom outside of the framework provided by Article 50 TEU: The country should begin the withdrawal process soon by sending its notification as there could “be no negotiations of any kind before this notification has taken place”.²³ In its statement, the European Council also referred to other EU institutions, saying that the European Commission and the European Parliament would both “play their full role in accordance with the Treaties.”²⁴

On 15 December 2016, the European Council further fleshed out the withdrawal process: After Britain’s withdrawal notification it would set the guidelines for the negotiations. Then the Council of the European Union would agree to start the negotiations on the basis of a recommendation by the European Commission. The 27 Heads of State and Government welcomed the appointment of Michel Barnier as the EU’s chief negotiator and called on the Council to confirm the European Commission as the EU’s sole negotiator. They also showed that they intended to focus themselves on the Brexit issue by announcing that they would regularly assess the state of the negotiations and that representatives of the President of the European Council would join all negotiation meetings.²⁵ Additionally, the European Council explained how the

European Parliament would be involved: it invited the President of the Parliament to attend its own summits and called on the chief negotiator “to keep the European Parliament closely and regularly informed throughout the negotiation.”²⁶

After the UK government had formally notified the European Council in March 2017 of its intention to leave the European Union, the European Council on 29 April 2017 adopted its guidelines for the withdrawal negotiations and announced that there would be two phases of negotiations. In the first phase, issues related to the withdrawal of the country from the EU would be negotiated. The negotiation on the future relationship would begin in a second phase. However, it could only be finalized once the United Kingdom was a third country. Again, taking the lead, the European Council announced that it would decide when the move to the second phase would be done.²⁷ In addition, the European Council identified three key issues to be negotiated during the first phase: a) the rights of EU citizens in the United Kingdom and British citizens in the EU 27, b) a financial settlement and c) the Irish border question. In order to secure the peace process on the island of Ireland, a way needed to be found to keep the border between Northern Ireland and the Republic open.²⁸

On 19-20 September 2018, the European Council in Salzburg further structured the negotiation process on the future relations by deciding that an outline of the future relationship of the EU and the United Kingdom



would be set out in a non-binding Political Declaration to be agreed with the soon-to-be ex-member.²⁹

2.3 Negotiating the United Kingdom's withdrawal from the Union

The negotiations between the United Kingdom and the European Union about the former's withdrawal from the Union were difficult. The Irish border question was the most complicated and dominant issue of these negotiations. For the EU, solving this problem was so important because a solution was essential for its Member State Ireland which shared a border with the UK and would be the country among the 27 most severely affected by the economic impact of Brexit, because of its close trading links with the United Kingdom.³⁰ Despite the difficulties, in December 2017, the European Council confirmed that progress of the first phase was adequate to move to the second phase. Additionally, it agreed to negotiate a stand-still transition period as part of the withdrawal agreement after the British exit from the European Union, in which the country would remain subject to EU rules, yet without being part of the decision-making of the Union.³¹ Further negotiations followed, and in November 2018, the EU and the UK reached an agreement on a withdrawal treaty as well as on a Political Declaration on the future relationship. The European Council endorsed both at a meeting on 25 November 2018.³² The

treaty included a safeguarding provision in order to keep the Irish land border open, known as the “backstop”. It would come into effect, if no other solution to maintain an open border would be agreed by the time the UK left the EU. For the United Kingdom, this would mean remaining in a temporary Customs Union with the European Union and Northern Ireland staying aligned with EU single market rules.³³ The treaty ratification in the United Kingdom was difficult. Especially the “backstop” was controversial across the UK's political spectrum but particularly among hard-line Brexiteers in the Tory Party and the Northern Irish Democratic Unionist Party, which supported Theresa May's minority government. Due to these difficulties, the UK government on 10 December 2018 decided to postpone the vote on the treaty which had been scheduled for the following day.³⁴ The European Council in turn on 13 December 2018 reaffirmed its endorsement of the treaty and the Political Declaration and rejected any renegotiation. In addition, it stated that the Northern Ireland backstop was just an “insurance policy” and would only be used “temporarily” should it ever be necessary.³⁵ Over the course of 2019 the treaty ratification in the UK parliament failed three times, the May government unsuccessfully tried to lobby the European Union to change the “backstop” and two extensions of the Article 50 negotiation period had to be agreed by the European Council.³⁶ While it was the British government that asked to extend the Article 50 process, it was the



European Council that unilaterally decided on the length of each extension period and therefore further kept the lead in determining the Brexit process. In March 2019, the British government asked for an extension to 30 June 2019,³⁷ but the European Council on 21 March 2019 only granted an extension until 22 May 2019 – a day before the European elections – if the United Kingdom Parliament ratified the treaty in the last week of March. If it failed to do so, the extension would end on 12 April 2019.³⁸ After the British government's second unsuccessful attempt to achieve ratification of the withdrawal agreement in the UK parliament, it asked in early April for another extension of the Article 50 period until 30 June 2019.³⁹ Once more the European Council chose another date which it found more suitable and decided to extend the Article 50 period until 31 October 2019.⁴⁰

As a consequence of her failure to achieve the ratification of the withdrawal agreement, Theresa May resigned as Prime Minister in May 2019. Her former foreign secretary Boris Johnson won the Conservative Party (Tories) leadership competition and became Britain's new Prime Minister in late July 2019. Johnson, who already during the Tory leadership campaign had stated that Britain should leave the EU on 31 October 2019 with or without a deal, first campaigned for the scrapping of the "backstop".⁴¹ Upon realising that the EU would not agree to this, he went on to campaign for a renegotiation of the provisions on the Irish border and in October 2019 signed up to a

revised Northern Irish protocol as part of the withdrawal agreement. To keep the Irish border open, Johnson had agreed to a special solution for Northern Ireland which meant that it would continue to follow EU customs regulations and single market rules on goods. The consequence would be a customs and regulatory border between Northern Ireland and Great Britain in the Irish Sea, its depths depending on how far Great Britain would diverge from EU regulations after leaving the EU single market and customs union. This arrangement resembled the EU's 2018 proposal of a special solution for Northern Ireland, something which then Prime Minister Theresa May had rejected as unacceptable.⁴² On 17 October 2019, the European Council endorsed the revised withdrawal agreement and approved the Political Declaration, which had also been revised.⁴³ Soon after that it decided on the third British request to extend Article 50. The new Prime Minister tried to distance himself from the extension request which he opposed. But he was legally bound by the British parliament's decision to request it with the European Council.⁴⁴ The European Council by then did not even set up a summit to decide on the matter but agreed an extension until 31 January 2020 through written procedure.⁴⁵ On 13 December 2019, a day after the Conservatives won a decisive majority in the UK general election, the European Council started preparations for the negotiation process on the future relationship: It called on the European Commission to send



a draft negotiating mandate to the Council and for the Council to adopt it as soon as Britain would have left the EU. On the withdrawal agreement it called for its “timely ratification and effective implementation.”⁴⁶

2.4 Setting the terms for the new relationship

On 29 April 2017 and 23 March 2018, the European Council adopted its guidelines for the negotiations with the United Kingdom. Both addressed the future relationship with the soon-to-be ex-member.⁴⁷ In its guidelines from April 2017, the European Council confirmed its aim to establish a close relationship with the United Kingdom and to cooperate in the areas of trade, the fight against crime and terrorism as well as foreign, security and defence policy.⁴⁸ In its guidelines, the European Council differentiated clearly between Member States and non-Members: “a relationship between the Union and a non Member State cannot offer the same benefits as Union membership”.⁴⁹ In addition, it noted that any future treaty with the UK needed to “be based on a balance of rights and obligations, and ensure a level playing field.”⁵⁰ This was not new, as the 27 Heads of State and Government had already stated in June 2016 at their first meeting after the referendum that a future treaty with the United Kingdom would need “to be based on a balance of rights and obligations.”⁵¹

On future trade with the United Kingdom the European Council announced its willingness to

conduct negotiations about a free trade agreement. However, such an agreement could not “amount to participation in the Single Market or parts thereof, as this would undermine its integrity and proper functioning.”⁵² In March 2018, it reiterated “that the four freedoms are indivisible and that there can be no “cherry picking” through participation in the Single Market based on a sector-by-sector approach, which would undermine the integrity and proper functioning of the Single Market.”⁵³ Again this was something the 27 Heads of State and Government had already stated at their first meeting to discuss Britain’s exit from the European Union: “Access to the Single Market requires acceptance of all four freedoms.”⁵⁴

Additionally, the 27 Heads of State and Government referred in their 2017 guidelines to the Court of Justice of the European Union’s autonomous role as well as to the autonomous decision making by the union. They furthermore rejected separate agreements on individual issues with the United Kingdom as well as bilateral negotiations with the country.⁵⁵

In its guidelines of 23 March 2018, the European Council specified how a future free trade agreement could look like. It offered zero tariffs and zero quotas on goods as long as the agreement would include adequate rules of origin. There should also be provisions on trade in services. The scope here, however, would be more limited, taking into account that the United Kingdom would be a third country. On



fisheries the European Council proposed retaining current levels of access to waters and fishing quotas.⁵⁶ In addition, the European Council argued for cooperation in the areas of law enforcement as well as in combating criminal matters. Here again the 27 noted that it needed to be considered that Britain would be a third country and also not a member of the Schengen area. The European Council also reiterated its aim to secure “strong EU-UK cooperation in the fields of foreign, security and defence policy.”⁵⁷

When Theresa May in 2018 presented her Chequers Plan for the future relationship between the United Kingdom and the EU, which envisioned an EU-UK free trade area on goods and a common rule book of the EU and the UK,⁵⁸ the European Council at its meeting in Salzburg in September 2018 made it clear that this was not an option. After the summit Donald Tusk, the President of the European Council, explained that while there “are positive elements in the Chequers proposal, the suggested framework for economic cooperation will not work. Not least because it risks undermining the Single Market.”⁵⁹

In March 2020, the formal negotiations on the future relationship began. As of 1 February 2020, the United Kingdom was no longer a Member State and the Council of the European Union had on 25 February 2020 adopted the European Commission proposal for a negotiating mandate, which was based on the European Council’s guidelines.⁶⁰

Once more the negotiations between the European Union and the United Kingdom were difficult, but in December 2020 – shortly before the end of the transition phase which the United Kingdom had not wanted to extend⁶¹ – they agreed on the EU-UK Trade and Cooperation Agreement. As offered in 2018 by the European Council, it was a free trade agreement with zero tariffs and quotas, but rules of origin for goods. These provisions were supplemented by level playing field rules which go beyond provisions the EU has included in other trade agreements it has negotiated.⁶² The treaty also includes provisions for trade in services, but they do not go far.⁶³ Thus, without accepting its four freedoms, participation in the single market is no longer possible for the former member. The two parties have also agreed to cooperate on police and judicial issues which – as the European Council already foreshadowed in its guidelines – shows Britain’s third country status outside the Schengen area.⁶⁴ Additionally, the treaty does not include longer-term decisions on the equivalence of financial services and data protection, as these are taken unilaterally, and the EU had not yet done so by the end of 2020.⁶⁵

There are, however, also areas in which the European Council has not achieved what it set out in its guidelines. On fisheries, for example, the European Council’s maximalist position as stated in its guidelines was not acceptable to the United Kingdom. But the agreement on it – reached late in the negotiations – turned out to



be closer to the EU's starting position than that of the United Kingdom.⁶⁶ There is, moreover, no role for the Court of Justice of the European Union in the treaty's governance and dispute settlement structure as it is the case in the withdrawal agreement.⁶⁷ In addition, the treaty does not address any questions of foreign, security and defence policy as the UK had rejected any treaty-based cooperation with the EU on this.⁶⁸

3 Inside the European Council

One of the unexpected developments in the Brexit process was the unity the 27 Heads of State and Government maintained throughout the negotiations up until December 2020. This is particularly surprising considering how often Member States take different views on key questions of European integration. On Brexit, the Heads of State and Government maintained their common position and did not negotiate bilaterally with the United Kingdom (as they had stated in their guidelines) or open a negotiation channel parallel to the official one by the European Commission. This was also the case with the larger Member States. For instance, when the new Prime Minister Boris Johnson in summer 2019 visited Berlin and Paris and demanded the scrapping of the “backstop”, neither Angela Merkel nor Emmanuel Macron negotiated with him unilaterally but maintained the EU position on the issue.⁶⁹ The solidarity the Member States showed with each other on Brexit was striking.

They displayed it with Ireland and only the Irish Taoiseach Leo Varadkar unilaterally negotiated with Boris Johnson in the autumn of 2019 about the Irish border question, which allowed the finalization of a withdrawal agreement with Johnson.⁷⁰ This solidarity continued in 2020 when the Heads of State and Government – as part of the new Multiannual Financial Framework – agreed a “Brexit Adjustment Reserve” of 5 billion Euro to help countries and sectors in the EU most affected by Brexit and through this made it clear that no country would be expected to compensate losses due to Britain's exit from the EU completely on their own.⁷¹

After the agreement of the withdrawal treaty a more fragile European unity was expected, because the 27 would to different degrees be affected by new arrangements, for instance, on trade or fisheries, as part of the future relationship settlement. But once more, they remained united. However, in contrast to the negotiations on the UK's withdrawal, the European Council did no longer focus intensively on the negotiations of the future relationship. There were a number of reasons for this. For one, there were more urgent issues. Firstly, there was the impact of the COVID-19 pandemic on public health and the economy. Also, agreements of the Multiannual Financial Framework for 2021-27 as well as on the establishment of the Next Generation EU Recovery Fund were urgently needed. These were difficult issues whose final adoption was only achieved in December 2020 as Hungary



and Poland had initially blocked an agreement due to the new rule of law mechanism.⁷² However, it also appears to be the case that the 27 Heads of State and Government did not see any necessity over the course of 2020 to adapt their guidelines for the future EU-UK relationship, which they had set early in the negotiation process and which they had not even revised when Boris Johnson succeeded Theresa May as Prime Minister and it became clear that he would pursue a different form of Brexit than his predecessor had done. Despite spending less time discussing the relationship with the United Kingdom internally, the Heads of State and Government took measures to keep their discussions confidential, when they did: At the meeting on 15-16 October 2020 the members of the European Council were not allowed to have mobile phones or other devices with them in the room, while the issue was debated.⁷³

In the autumn of 2020, differences between the 27 with regard to the negotiations came into view. Particularly France, for instance, took a tough stance on the fisheries negotiations, saying that it would not agree to a deal with the United Kingdom at the cost of its own fishing sector. The Netherlands, Denmark and Belgium were also concerned.⁷⁴ Yet, as before, no Member State broke unity. And also, after the first of several high-level discussions in December 2020 between Ursula von der Leyen and Boris Johnson, the British Prime Minister again attempted to circumvent the Commission by calling for direct

negotiations with Angela Merkel and Emmanuel Macron. Both declined.⁷⁵

4 The lasting effects of the European Council's Brexit decisions

On the EU side the European Council proved to be the key actor shaping the Brexit process as well as the future EU-UK relationship. Through its provisions, framed in a narrative which focused on the achievements of the Union and the differences between members and non-members, the European Council not only determined the block's relationship with the United Kingdom but also an exit doctrine. Key elements of this new exit doctrine are that firstly, a non-member cannot be better off than a Member State and that having rights means also fulfilling obligations. Secondly, any form of opt-ins of non-members into selected EU policy areas or partial membership are not possible. Thirdly, securing the integrity of the single market has the highest priority: participation in it is only possible if all of its four freedoms are accepted and sectoral participation is not. Fourthly, the solidarity among Member States is a key principle. Lastly, decisions on the negotiation process as well as the relationship with the soon-to-be ex-Member State are reserved for the political leaders of the Member States.⁷⁶ Thus, the European Council used the political scope provided by the UK precedent and fleshed out the EU withdrawal process, which until then had only been outlined in a few sentences in Article 50 TEU.



Moreover, it defined the EU's priorities in its approach to parting members.

The European Council determined its provisions for the Brexit process and its position on the future relationship with the United Kingdom very early and maintained it throughout the negotiations. In April 2017 and March 2018, they were set against the backdrop of a British government attempting to find a way to combine leaving the EU single market and customs union while maintaining as much access to the single market as possible. As was seen with Theresa May's Chequers Plan of 2018, the European Council made it clear that a relationship to the EU akin to a partial membership was not an option. When Boris Johnson took over the premiership there was no necessity for the European Council to adapt its negotiation position in light of the new government's decision that the country's sovereignty was more important than its economy. Moreover, the Johnson government's focus on a harder Brexit than its predecessor had envisioned, made it easier for the EU to agree a future relationship settlement along its own red lines. What the outcome has also shown is that the United Kingdom's longstanding mode of getting a special deal in European integration illustrated by its opt-outs from key policies during membership has not been replicated in any way with opt-ins into policy areas the country remained interested in after leaving the European Union.

At the same time, by taking the position that the integrity of the single market had to be protected and that there should be no cherry-picking, the European Council also early on made it clear that there were limits to the closeness of the relationship it called for with the United Kingdom.

How the relationship between the EU and UK develops, depends on whether there is sufficient political will to find more areas in which to cooperate in the future. For now, it appears that there is not much interest on either side to further this. In late 2020/early 2021 the European Council has not made any statements on the future EU-UK relationship that go beyond the provisions of the Trade and Cooperation Agreement. Even though Boris Johnson and the President of the European Council Charles Michel agreed after a phone conversation on 28 December 2020 that they would look to intensify cooperation in fighting climate change and the international reaction to combat pandemics. In addition, they agreed to speak on foreign policy and to selectively cooperate in this area.⁷⁷ However, unlike it has done with the new US President Joe Biden⁷⁸ the European Council, for instance, has not invited Boris Johnson to attend one of its summits in the near future. The negotiations over the four and a half years since the British referendum have shown that the relationship between the United Kingdom and the Europe Union has been subject to growing mistrust. Particularly the Johnson government's often confrontational approach to the negotiations



and the threat in September 2020 of passing domestic legislation in breach of the withdrawal agreement it had only ratified a few months earlier added to the impression on the part of the EU that this was not a government to be trusted.⁷⁹ Additionally, the United Kingdom's refusal to grant the EU Ambassador in London full diplomatic rights has not been helpful to smooth relations with the Union.⁸⁰ At the same time the European Commission's near application of Article 16 of the Northern Ireland Protocol in January 2021 as part of its export authorisation regulation on vaccines, has been severely criticized in the United Kingdom.⁸¹

The relationship between the European Union and the United Kingdom has not yet reached its final state, not least because the agreement the two sides have concluded in late 2020 includes a number of review clauses.⁸² Therefore, the Union's approach to its old and new neighbour, the United Kingdom, will remain on the agenda of the European Council.

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¹ Essential parts of this policy brief are based on Birgit Bujard/Wolfgang Wessels: Der Brexit-Prozess und die Austrittsdoktrin: Die Führungsrolle des Europäischen Rats, in: Zeitschrift für Außen- und Sicherheitspolitik, Volume 14, Issue 1, 2021, forthcoming.

² Peter A. Carrington: Reflect on Things Past. The memoirs of Lord Carrington, London: Collins, 1988, p. 312.

³ Stephen George: An Awkward Partner. Britain in the European Community, Oxford: Oxford University Press, 1998, p. 1.

⁴ For more on the different understanding of European integration by the UK and by continental European states, see Richard Rose: The Prime Minister in a Shrinking World, Cambridge: Polity Press, 2001, p. 213.

⁵ Wolfgang Wessels: The European Council, London: Palgrave, 2016, Chapter 4.

⁶ European Council: Conclusions, 19 February 2016, EUCO 1/16.

⁷ Article 15(1) TEU.

⁸ Bujard/Wessels: Austrittsdoktrin, 2021.

⁹ Source: Own compilation based on European Council conclusions and European Commission: EUUK-Timeline. https://ec.europa.eu/commission/presscorner/detail/de/ip_20_2531. Accessed: 1 February 2021.

¹⁰ Bujard/Wessels: Austrittsdoktrin, 2021.

¹¹ European Council: Statement, 29 June 2016, p. 2.

¹² European Council: The Bratislava Declaration, 16 September 2016, p. 1.

¹³ European Council: Statement, 29 June 2016, p. 2;

¹⁴ European Council: Bratislava, 16 September 2016, p. 1.

¹⁵ European Council: Statement, 29 June 2016, p. 2.

¹⁶ European Council: Statement, 29 June 2016, p. 2.

¹⁷ European Council: Bratislava, 16 September 2016, p. 2.

¹⁸ European Council: The Rome Declaration, 25 March 2017; The Sibiu Declaration, 9 May 2019; A new strategic agenda 2019-2024, 20 June 2019.

¹⁹ Bujard/Wessels: Austrittsdoktrin, 2021.

²⁰ Article 50(2-4) TEU.

²¹ European Council: Statement, 29 June 2016, p. 1.

²² European Council: Statement, 29 June 2016, p. 1.

²³ European Council: Statement, 29 June 2016, p. 1.

²⁴ European Council: Statement, 29 June 2016, p. 1.



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- ²⁵ European Council: Informal meeting of the Heads of State or Government of 27 Member States, as well as the Presidents of the European Council and the European Commission, 15 December 2016, p. 2.
- ²⁶ European Council: Informal meeting, 15 December 2016, p. 3.
- ²⁷ European Council: Guidelines, 29 April 2017, EUCO XT 20004/17, p. 4.
- ²⁸ European Council: Guidelines, 29 April 2017, p. 5-6.
- ²⁹ European Council: Remarks by President Donald Tusk after the Salzburg informal summit, 20 September 2018.
- ³⁰ European Parliament: An Assessment of the Economic Impact of Brexit on the EU 27, 2017, p. 32.
- ³¹ European Council: Guidelines, 15 December 2017, EUCO XT 20011/17, p. 1-2.
- ³² European Council: Conclusions, 25 November 2018, EUCO XT 20015/18, p. 2.
- ³³ Institute of Government: Irish Backstop, in:
<https://www.instituteforgovernment.org.uk/explainers/irish-backstop>, 24 February 2020,
accessed: 19 February 2021.
- ³⁴ Birgit Bujard: Vereinigtes Königreich. In: Werner Weidenfeld/Wolfgang Wessels (eds.): Jahrbuch der Europäischen Integration 2019, Baden-Baden: Nomos Verlagsgesellschaft, 2019, pp. 551-558, p. 553.
- ³⁵ European Council: Conclusions, 13 December 2018, EUCO XT 20022/18, p. 2.
- ³⁶ Bujard: Vereinigtes Königreich, 2019, pp. 553-556.
- ³⁷ Theresa May: Prime Minister's letter to President Tusk, 20 March 2019.
- ³⁸ European Council: Conclusions, 21 March 2019, EUCO XT 20004/19.
- ³⁹ Theresa May: Prime Minister's letter to President Tusk, 5 April 2019.
- ⁴⁰ European Council: Conclusions, 10 April 2019, EUCO XT 20015/19.
- ⁴¹ Bujard: Vereinigtes Königreich, 2019, pp. 557-558.
- ⁴² Birgit Bujard: Die Europäische Union und das Vereinigte Königreich. In: Werner Weidenfeld, Wolfgang Wessels (eds.): Jahrbuch der Europäischen Integration 2020, Baden-Baden: Nomos Verlagsgesellschaft, 2020, pp. 429-436, p. 430.
- ⁴³ European Council: Conclusions, 17 October 2019, EUCO XT 20018/19, p. 1.
- ⁴⁴ Daniel Boffey: Brexit: Johnson sends unsigned letter asking for delay, and second arguing against it, in: The Guardian, 20 October 2019.
- ⁴⁵ European Council: European Council Decision taken in agreement with the United Kingdom extending the period under Article 50(3) TEU, 28 October 2019, EUCO XT 20024/2/19 REV 2.
- ⁴⁶ European Council: Conclusions, 13 December 2019, EUCO XT 20027/19, p. 1.
- ⁴⁷ European Council: Guidelines, 29 April 2017, EUCO XT 20004/17; Guidelines, 23 March 2018, EUCO XT 20001/18.
- ⁴⁸ European Council: Guidelines, 29 April 2017, p. 8.



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- ⁴⁹ European Council: Guidelines, 29 April 2017, p. 8.
- ⁵⁰ European Council: Guidelines, 29 April 2017, p. 3.
- ⁵¹ European Council: Statement, 29 June 2016, p. 2.
- ⁵² European Council: Guidelines, 29 April 2017, p. 8.
- ⁵³ European Council: Guidelines, 23 March 2018, p. 3.
- ⁵⁴ European Council: Statement, 29 June 2016, p. 2.
- ⁵⁵ European Council: Conclusions, 29 April 2017, p. 3.
- ⁵⁶ European Council: Conclusions, 23 March 2018, p. 4.
- ⁵⁷ European Council: Conclusions, 23 March 2018, p. 6.
- ⁵⁸ Bujard: Vereinigtes Königreich, 2019, p. 551.
- ⁵⁹ European Council: Remarks by President Donald Tusk after the Salzburg informal summit, 20 September 2018.
- ⁶⁰ Council of the European Union: Annex to Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement, 5870/20. ADD 1 REV 3, 25 February 2020.
- ⁶¹ Jim Brunsden/Sebastian Payne: UK formally rejects Brexit transition extension, in: Financial Times, 12 June 2020.
- ⁶² Billy Melo Araujo: Brexit trade problems: what's gone wrong and can it be fixed? In: The Conversation, <https://theconversation.com/brexit-trade-problems-whats-gone-wrong-and-can-it-be-fixed-153270>, 14 January 2021, accessed: 19 February 2021.
- ⁶³ Sam Lowe: The EU-UK trade and co-operation agreement: A platform on which to build?, CER Insight, 12 January 2021, p. 1.
- ⁶⁴ Institute for Government: UK-EU future relationship: the deal. Law and Justice. <https://www.instituteforgovernment.org.uk/publication/future-relationship-trade-deal/law-justice>, accessed: 19 February 2021.
- ⁶⁵ Bryan Bille/Noé Morin: The TCA is the start of the UK-EU future relationship. <https://ukandeu.ac.uk/the-tca-is-the-start-of-the-uk-eu-future-relationship>, 12 January 2021, accessed: 19 February 2021.
- ⁶⁶ Bryce Stewart: What does the trade deal mean for fisheries? <https://ukandeu.ac.uk/fisheries-trade-deal>, 27 December 2020, accessed: 19 February 2021.
- ⁶⁷ Stefano Fella/Daniel Ferguson/Dominic Webb/Ilze Jozepa/Elena Ares/Steven Kennedy: The UK-EU trade and cooperation agreement: summary and implementation. House of Commons Library Briefing Paper No. 09106, 30 December 2020, p. 15.
- ⁶⁸ Hussein Kassim: Relations with the EU, in: UK in a changing Europe (eds.), Brexit and Beyond, 2021, pp. 149-150, p. 149.
- ⁶⁹ Philipp Oltermann/Angelique Chrisafis: Merkel gives Johnson 30 days to find solution to avoid no-deal Brexit, in: The Guardian, 21 August 2019.



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- ⁷⁰ Sam Fleming/Jim Brunsden/George Parker: Can Johnson get Brexit done? In: Financial Times, 19 October 2019.
- ⁷¹ European Council: Conclusions, 21 July 2020, EUCO 10/20, p. 8.
- ⁷² Hans-Peter Siebenhaar: Die Lösung des EU-Haushaltsstreits ist eine Meisterleistung Merkels, in: Handelsblatt, 10 December 2020.
- ⁷³ Florian Eder: POLITICO Brussels Playbook: Signed, sealed, delivered – Brexit deadline dud – Plenary ping-pong. In: Politico, <https://politico.eu/newsletter/brussels-playbook/politico-brussels-playbook-signed-sealed-delivered-brexit-deadline-dud-plenary-ping-pong>, 16 October 2020, accessed: 19 February 2021.
- ⁷⁴ Jim Brunsden/Sam Fleming/Peter Foster/George Parker: Tough Macron stance leaves Brexit deal hanging in balance, in: Financial Times, 3 December 2020.
- ⁷⁵ Naomi O'Leary: Merkel and Macron refused approaches from Johnson and opted for united front, in: The Irish Times, 11 December 2020.
- ⁷⁶ Bujard/Wessels: Austrittsdoktrin, 2021.
- ⁷⁷ European Council: Read out of the phone call between President Charles Michel and UK Prime Minister Boris Johnson. Press Release, 28 December 2020.
- ⁷⁸ European Council: Speech by President Charles Michel at the European Parliament on the inauguration of the new President of the United States, 20 January 2021.
- ⁷⁹ Kassim: Relations, 2021, p. 150.
- ⁸⁰ James Landale: UK and EU in row over bloc's diplomatic status, in: BBC News, 21 January 2021.
- ⁸¹ Tony Connelly: Fear and loathing: Return of the Northern Ireland Protocol, in: RTE News, 6 February 2021.
- ⁸² Lowe: Platform, 2021, p. 2.

