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## Asserting the leadership in Brexit negotiations

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## Asserting the leadership in Brexit negotiations

The United Kingdom's exit from the European Union (further referred to as 'Brexit'), based on a decision taken by the British people in referendum on 23 June 2016 and formally triggered on 29 March 2017 (*Brexit, the UK letter...*, 2017), sent the whole EU into uncharted waters. It is the first case ever of separation of one Member State from the Union.

As it quickly turned out, Brexit preparations and negotiations proved to be an excellent opportunity for all three main European Union (EU) institutions to engage into the new phase of power struggle. This was made easier, or even induced by the lack of established procedures and somewhat vague language of the Treaty, which left the political space open for different interpretations and, hence, institutional manoeuvring. Evidence at hand leads to a conclusion that during the analysed part of the Brexit process – the preparatory period between June 2016 and June 2017 – all three institutions, but especially the European Parliament, attempted to strengthen their position by the way of verbal *faits accomplis*: declarations of will or intent, publicly stated terms and conditions, thinly veiled threats of a veto, all intentionally mediated.

The fact that the European Parliament was the most proactive among the three institutions in emphasising its presumed leading role in the process should not come as surprise. In fact, over the last four decades, the political clout of the European Parliament has been constantly rising. In 1958, when the EP was created, its purpose was limited to an advisory role. Subsequent European treaties transformed it into fully fledged legislative body, on par with the Council. Although the process was long – it took the EU several decades to develop a system of bicameral legislative – it is firmly established now. Some scholars observe that European Parliament's legislative competences translate not only into the co-decision and veto power, but also into the ability to set the agenda (Häge, 2011).

The European Parliament has been actively advocating its own empowerment since its early years. All along the way, it has been emphasising its unique democratic legitimacy, the fact that it is the only European institution whose members are elected in direct, pan-European vote. This continuous reassertion of EP's own role should be analysed within the framework of historical-institutionalist thinking. Scholars pursuing research informed by this theory argue that decisions and strategies taken in the past, based on a mix of sense of appropriateness and expected consequences, set the path-dependence and, in consequence, push actors to follow the same lines (Pollack, 2007). It seems to be exactly the case of the European Parliament: it is locked-in the seemingly never-ending quest for its own political power. Members of the European Parliament perceive this constant struggle to empower the Parliament as their institutional imperative (Mühlböck, Rittberger, 2015), for they consider themselves to be only

genuine, direct representation of the sovereign – the people of Europe. The approach taken by members of the Parliament supports the view that the institutional identities are self-reinforcing: the more MEPs feel the need to represent citizens' interests vis-à-vis interests of governments, the more pugnacious the EP becomes. While pursuing its quest for more power, the European Parliament managed in the past to exploit the vagueness of treaty provisions and to impose its own interpretation of rules.

The letter of the EU treaty appears to give the European Parliament a rather limited role in the EU-exit negotiations. As a matter of fact, the European Parliament role in the process is mentioned only once, in Article 50.2:

“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. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament” (Carmona, Cirlig, Sgueo, 2017).

The same should be said about the European Commission. As a matter of the fact, it is not even mentioned in the Article 50 of TEU. Commission's role in the process is only indirectly evoked there – by the referral to Article 218(3) of the Treaty on the Functioning of the European Union. It states that the European Commission recommends to the Council to open negotiations with the withdrawing state. The further role of the Commission is not entirely clear: article 50 of the Treaty does not clearly define which institution should lead the exit negotiations, the article 218(3) of TFEU leaves the question open too (Poptcheva, 2017). This particular ambiguity allowed the first act of the internal struggle between institutions. Few days after the British referendum, media reported a dispute between the European Commission and the Council over who would negotiate the terms of Brexit (Heath, Eder, 2016). The argument focused on the legal issue whether the United Kingdom should be considered third state or member state. If the former was the case, then the European Commission should be entitled to lead the talks, as it always do in negotiations with third parties. If the latter interpretation of UK's status prevailed, then the Council would be the most appropriate to manage the negotiations (Heath, Eder, 2016). Apparently, the Council didn't wait for the dispute to be officially resolved and it nominated Belgian diplomat Didier Seeuws as the chief of Council's special taskforce, responsible for Brexit procedures. M. Seeuws quick nomination prompted some Member States diplomats to assume that the Council would be “in the driving seat” (Heath, Eder, 2016). Such declarations turned out to be premature, as the European Parliament resolutely stepped into the debate.

It is worth noticing that the European Parliament was very vocal on the issue of Brexit from the day one. On 24 June 2016, only hours after British referendum results were announced, the European Parliament's President Martin Schulz stood out of the crowd of cautious comments, made by other EU figures, and bluntly called for speeding up the UK's exit. Choosing an overtly provocative tone, he stated that “a whole

continent is taken hostage because of an internal fight in the Tory party” (Rankin, Henley, Oltermann, Smith, 2017). On 28 June 2016 the European Parliament adopted a formal resolution, presenting its position on how the Brexit proceedings should develop. Parliament resolution echoed President’s Schulz comments and called for the activation of the Brexit procedure as soon as possible. Furthermore, it reminded all involved parties that “the consent of the European Parliament is required under the Treaties”. As a consequence, the European Parliament openly demanded that it was “fully involved at all stages of the various procedures concerning the withdrawal agreement and any future relationship” despite the fact no Treaty provisions guaranteed such involvement. At the same time, the European Parliament clearly sided with the European Commission, inviting the Council to appoint the Commission as the formal negotiator (*European Parliament resolution of 28 June 2016*).

The European Parliament backing for the European Commission did not stop the Parliament from nominating its own Brexit chief supervisor. On 8 September 2016 Guy Verhofstadt, former Prime Minister of Belgium and leader of the liberal ALDE political group, known for his federalist approach, was chosen to chair the EP’s Brexit Steering Group. The European Parliament representatives declared to the media that Guy Verhofstadt would actively take part in negotiations with Britain. “He’ll be in the room with the [European] Council and [European] Commission” one of the officials told the BBC (*Brexit talks role for Belgian*, 2016). From the very beginning of his mission, Verhofstadt spare no occasion to publicly emphasise the role of European Parliament in the Brexit proceedings. In an interview with the Financial Times, an established opinion-making newspaper, Verhofstadt claimed that the institution he represented wielded more power in Brexit negotiations “than individual member states” (Barker, 2016). Again, none of abovementioned claims have explicit justification in the existing body of law. As already said, the treaties (Article 50 of TEU and Article 218(3) of TFEU) do not provide any role for the European Parliament in Brexit negotiations. One might argue, though, treaties do not prohibit such role neither. Hence, the European Parliament’s approach can be interpreted as an attempt to create procedural *fait accompli*. One should also note that the European Parliament’s negotiator was chosen before the European Commission formally nominated Michel Barnier, former vice president of the Commission and member of the French government, as the Brexit chief negotiator (Palmeri, Briçon, 2016).

In April 2017 the European Parliament took what appears to be the most decisive<sup>1</sup> step in its quest for the political power in the context of Brexit negotiations. In its second resolution on Brexit negotiations, the European Parliament identified the ‘*red lines*’, in other words: basic requisite parameters of the Brexit agreement (*European Parliament resolution of 5 April 2017*). Among them: equal treatment for EU citizens living in the UK and British citizens living in the EU; indivisibility of the four freedoms of the Single Market – free movement of goods, capital, services, and people – and UK’s recognition of financial obligations it has towards the EU27, running beyond the date of UK’s exit from the EU. The resolution implied that without meeting these parameters, the European Parliament would veto the agreement. Resolution’s text re-

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<sup>1</sup> By the time of writing of this article – July 2017.

stated the entirety of European Parliament reasoning: in particular, it emphasised the fact that the European Parliament represents EU citizens directly and must protect their interests first. The Resolution of 5 April 2017 also announced that the EP would adopt further resolutions related to specific elements of negotiations.

The European Parliament's pressure on Member States and institution (the European Commission and the Council) seemed to bring the expected results. On 29 April 2017 the European Council adopted its official guidelines for Brexit negotiations. Careful examination of this document leads to the conclusion that European Parliament's red lines were fully reflected. The Council agreed that citizens' interest was paramount and it agreed that safeguarding their status and rights derived from EU law, at the date of withdrawal from the EU, would be the first priority. It also agreed that any financial settlement must ensure that the United Kingdom respects the financial obligations stemming from UK membership in the EU (*Guidelines following the United Kingdom notification...*, 2017).

In following months, the EP deployed more tools to apply political pressure. Shortly after formal Brexit negotiations begun, on 19 June 2017, when negotiating teams, led by Michel Barnier and David Davis, representing the European Commission and British government respectively met for the first time (Roberts, Boffey, Rankin, 2017), the European Parliament made yet another attempt to gain influence over the course of negotiations – in which it formally takes no part – by publicly criticizing the initial British proposals in the area of citizens' rights. This time the EP presented its position in open letter, published in mass media: it called the UK government's proposal on citizens' rights as '*a squib*' that would eventually lead to create second-class citizenship (Teffer, 2017). In the letter, the EP referred again to its red lines drawn in April 2017 – it warned that UK's initial proposal is in breach of them. The possibility of veto was mentioned again.

It was not sure, by the time of writing of this paper, how would the interinstitutional dynamics related to the Brexit develop further. Yet the actions taken in the preliminary phase of Brexit proceedings seemed to fit into the constructivist model of interactions between political agents. Institutions, especially the European Parliament, tried to produce or, rather, induce expected results through verbal communication (Wendt, 2008). In the constructivist model, the final outcome of a given process results from the debate, in which the parties try to convince each other. And it's beyond doubt that such debate has been successfully initiated – all EU institutions took an active part in it. The constructivist model assumes that the expected goals can be achieved by a properly formulated communication (Czaputowicz, 2007), that political and social facts can be created through different 'acts of speech' (Pouliot, 2004). Again, that was the action the European Parliament attempted to perform. The carefully crafted rhetoric of the EP – consistent use of the threat of veto and repetition of the legitimacy argument – plausibly fit into the aforementioned model.

By the time of writing of this article it was too early to conclude whether this attempt was fully successful. The goal that the European Parliament tried to achieve through purposeful communication was to reinforce its position within the institutional framework of the European Union. Evidence available in July 2017 allowed to assume working hypothesis that indeed, the European Parliament was able to articulate mes-

sages that raised attention and at least partially influenced the course of events. The negotiating guidelines adopted by the European Council met the EP's expectations, as formulated in its prior resolution. However, further studies of Brexit proceedings and their outcomes are necessary in order to confirm or falsify this hypothesis.

Further research is needed to assess to what extent the constructivist approach of the European Parliament would shape the outcome of the ensuing stages of the Brexit process. In particular, further studies should focus on the wording of Parliament's verbal communication: would the threat of a veto remain the central argument? The future role of the Parliament's supervising body led by ALDE's leader Guy Verhofstadt should also be assessed.

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### Summary

The Brexit negotiations, by far one of the most challenging issues the European Union faced in 2017, proved to be yet another opportunity for EU institutions – the European Parliament, the European Commission and the Council – to engage in sort of a power game. Although all three institutions actively took part in it, the European Parliament's involvement was the most visible and vocal. As it going to be demonstrated, the EP tried to use the Treaty's Article 50 proceedings to reassert its position within the EU's institutional framework. It attempted to achieve this goal through purposeful communication, hence fitting the constructivist model of political and institutional agents' interaction. The European Parliament's activity may also be analysed in the context of historical institutionalism, explaining Parliament's specific behaviour: its continuous quest for more power.

As the Brexit negotiations have not yet concluded by the time of writing, the author calls for further research on the topic of intra-institutional dynamics. Evidence gathered so far strongly suggest that the United Kingdom's exit from the European Union might permanently influence the relations of power between the major EU institutions.

**Key words:** European Parliament, Communication, Institutionalism, Brexit

### Rywalizacja o przywództwo w negocjacjach Brexitu

#### Streszczenie

Negocjacje tzw. Brexitu, czyli wyjścia Wielkiej Brytanii z Unii Europejskiej były nie tylko jednym z największych wyzwań stojących przed Unią Europejską w 2017 roku. Dla unijnych instytucji – Rady, Komisji Europejskiej i Parlamentu Europejskiego – okazały się też być kolejną odsłoną gry o pozycję w porządku instytucjonalnym Unii Europejskiej. Wszystkie trzy instytucje aktywnie w tej grze uczestniczyły, jednak to zaangażowanie Parlamentu Europejskiego było najbardziej zauważalne. Niniejszy artykuł analizuje starania PE by wykorzystać uruchomienie procedury z art. 50 Traktatu Unii Europejskiej do wzmocnienia swojej pozycji politycznej, poprzez celowo sformułowaną komunikację. Autor chce wykazać, że działa-

nia Parlamentu wpisały się tym samym w model konstruktywistyczny. Aktywność Parlamentu Europejskiego jest poddana analizie także w świetle teorii instytucjonalizmu historycznego, pozwalającej wyjaśnić motywy specyficznego zachowania PE: regularnie powtarzanych prób zwiększenia władzy.

Jako że w chwili pisania niniejszego artykułu proces negocjacji „Brexitu” nie był jeszcze zakończony, autor sugeruje konieczność przeprowadzenia dalszych badań dynamiki międzyinstytucjonalnej. Zebrane do tej pory dowody zdecydowanie sugerują, że proces wychodzenia Wielkiej Brytanii z Unii Europejskiej może trwale wpłynąć na relację sił między głównymi instytucjami UE.

**Słowa kluczowe:** Parlament Europejski, komunikacja, instytucje, Brexit