

# BREXIT'S IMPACT 203 ON THE EU INSTITUTIONS

IMMEDIATE IMPLICATIONS AND POSSIBILITIES  
FOR REFORM

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# BREXIT'S IMPACT ON THE EU INSTITUTIONS

## IMMEDIATE IMPLICATIONS AND POSSIBILITIES FOR REFORM



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- The direct implications of Brexit for the EU's political system will be less significant than the indirect consequences, opening up possibilities for reform.
- The treaty rules on a qualified majority in the Council might need to be reconsidered due to Brexit, which will also lead to a major reshuffle of the EU's critical political groups in the European parliament after the 2019 EP elections.
- The political pressure to consolidate the EMU in terms of strengthening its governance and its own fiscal capacity may grow as a part of the general reform process following on from Brexit.
- If the treaties are reopened, principled amendments to the CFSP's institutions and decision-making as well as further steps within the common security and defence policy are very likely to occur.
- Any internal reform project shouldn't compromise the unity and coherence of the EU any further, however, as it is currently highly exposed to both internal and external pressures.

## Introduction

The UK's decision to leave the EU affects the Union's political system in various ways. The direct implications of Brexit concern the institutional set-up, which will be affected due to the withdrawal of one of the largest member states. This begs the question of how the rules on the institutional framework will adjust to the changing situation. Will immediate corrective measures be needed or can the current institutional rules and division of power cope with the change? There is no great willingness under the current political circumstances to launch an ordinary treaty-change process (TEU, Art. 49) but, on the other hand, some of the measures required might demand changes at this level.

The UK's withdrawal from the EU will also have more indirect implications inasmuch as the UK's opposition to institutional changes supported by a broad majority of the remaining member states will no longer be an issue. There are several important details in the Union's institutional set-up which would look different without the firm influence of the UK. The question now emerges as to whether pressure will rise to make changes to any of them. It didn't go unnoticed that immediately after the negative outcome of the referendum was announced, France and Germany issued their joint agenda comprising many reform proposals that the UK had previously been sensitive towards.

In this briefing paper the implications, direct and indirect, of Brexit for the EU's political system will be analysed. As the duration and key turns of the negotiations are not yet known, this analysis is informed by the assumption that the negotiations on the British withdrawal from the EU will be concluded before the next EP elections in 2019. A situation in which UK citizens would be able to vote on their goals and priorities for the next electoral term of the EU, while negotiating on the terms of withdrawal, seems paradoxical.

### The direct implications for the EU's political system

The EU's political system is based on the provisions on the role and composition of the EU institutions, which are largely set out in the Treaty on European Union (Title III). As the institutional rules have been formulated to accommodate an enlargement of the

EU, in most cases their level of generality allows the opposite development: many of the institutional provisions can thus accommodate the withdrawal of the UK without any need to change them.

The section on the European Parliament puts a ceiling on the overall number of seats in the EP (750) as well as per single member state (96). The resignation of the MEPs elected in the UK (73) doesn't affect the rules on the EP but does, instead, have a major impact on the formation of majorities within the Parliament. The EP takes decisions on the basis of simple and absolute majorities with the latter rule – based on a majority of all EP members instead of those taking part in the vote – being applied to the most important decisions. Decisions related to the ordinary legislative procedure or budgetary matters are examples of this. The number of votes needed for an absolute majority will now decrease from 376 votes to 340. In the current composition of the EP the UK withdrawal will mostly affect the European Conservative and Reformist Group and the Europe of Freedom and Direct Democracy Group, which will both experience a major reduction. In the longer term, the change will also strengthen the political left in the EP, as ever since the 1999 EP elections two-thirds of the British seats have gone to the centre-right party groups.

The European Council is entitled to decide on the composition of the EP, on the initiative of the EP and with its consent. A decision on how to divide the seats after Brexit will need to take place before the next EP elections in 2019. As the treaties (TEU, Art. 14) set the limits on the number of seats a single member state can have, there is not much that can be done to the current division without a treaty change.<sup>1</sup> After the 2019 EP elections, the political groups representing EU-critical parties will undergo a major reorganization due to the withdrawal of the British conservatives and representatives of UKIP.

The existing general rules on the European Council or Council can accommodate an EU of 27 members.

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<sup>1</sup> A simplified revision procedure can be used when amending part three of the Treaty on the Functioning of the EU (TFEU) and also certain institutional provisions outside it. The key rules on EU institutions can, however, only be amended in an ordinary revision procedure including an intergovernmental conference and possibly a broad-based Convention.



The rules on a qualified majority in the Council (to be applied also in the European Council in those cases when a qualified majority is used; TEU, Art. 16(4)) form the only exception as they are essentially based on the current parameters concerning the number of member states and size of the EU population. The current rules – which according to the existing treaty provisions will become the unexceptional rules for a qualified majority from April 2017 – require a combination of 55% of member states and 65% of the population behind a majority. In an EU minus one of the largest member states, one might need to reconsider whether the balance between the two criteria will be upheld.

When it comes to the rules on the Commission, a British withdrawal won't affect the main set-up, which was crucially amended by a unanimous decision of the European Council in 2013. On the basis of the negative outcome of the Irish referendum on the Lisbon Treaty the EC then decided, instead of reducing the size of the Commission in accordance with this treaty, to maintain the system whereby the number of seats in the Commission corresponds to the number of member states in the EU.

The election of the Commission President is one issue that Brexit might affect more indirectly as this procedure reached a transition stage in the context of the last EP elections in 2014. The UK has been one – albeit not the only – key protector of the member states' role in the nomination of the Commission President.<sup>2</sup> Demands to strengthen EU-level parliamentarism gradually led to the major compromise represented by the Lisbon Treaty, according to which the EP shall elect the Commission President on the basis of a proposal from the European Council. When making its proposal, the European Council shall take the EP elections into account. In the 2014 EP elections, the political groups of the EP wanted to stress the parliamentary dimension of this procedure further by nominating their 'lead candidates' for this position. Without the UK's firm opposition, the vitality of this practice may now be strengthened and the related question on the direct election of the Commission President may be raised

again. The latter proposal, which has been characterized as a long-term goal by the German Christian Democrat Party among others, could be legitimized as a means of strengthening the Union's democratic legitimacy, which will be one of the key items for reform after Brexit.

### The indirect implications for institutional issues

The UK's long-term political profile within the EU's policies has been two-fold.<sup>3</sup> On the one hand, being a key proponent of market liberalism in the EU, the UK has been proactive both when it comes to the development of the single market and the EU's external trade relations. The UK's critical view of state subsidies has also been targeted at the Common Agricultural Policy, which the UK has tried to steer towards a system based on the market price principle. The same applies to the approach taken towards the EU's energy policy.

But on the other hand, deepening forms of political integration have always posed a major hurdle for the UK. The EU's common foreign and security policy, EU citizenship including EU-level rights and liberties as well as key supranational elements in the EU's decision-making are examples of issue areas where the UK has had major difficulties in joining the consensus. Far-reaching compromises have had to be made in order to accommodate the UK vis-à-vis major decisions taken over these issues. Justice and home affairs, including the Schengen area and the currency union, are examples of policy areas with extensive British opt-outs.

Whilst Brexit might not – albeit for very different reasons – increase pressure against the main rules on the EU citizenship issue – along with the Charter of Fundamental Rights – or the Schengen system, the situation looks somewhat different when it comes to the CFSP and EMU. The UK has generally been highly critical of the idea of providing and regulating citizens' rights and liberties at the EU level which, in the context of the Lisbon Treaty, was manifested as firm opposition against the incorporation of the

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2 See e.g. Cameron, David: Presidency of the European Commission, 13.6.2014, <https://www.gov.uk/government/news/presidency-of-the-european-commission-article-by-david-cameron>, last accessed 20.10.2016..

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3 See e.g. Hix, Simon; Hagemann, Sara & Frantescu, Doru: Would Brexit Matter? The UK's voting record in the Council and the European Parliament. LSE Report Online, April 2016, <http://eprints.lse.ac.uk/66261/>, last accessed 20.10.2016.

Charter of Fundamental Rights into the treaties. The UK thus prevented this move, which enjoyed wide support among the other member states, as it was perceived as a justified clarification of the prevailing legal state of affairs in this respect. As the EU Court has in several cases also confirmed this interpretation of the Charter as being an equal part of the treaties, there is hardly any pressure to change the place of the Charter as this would require a comprehensive reorganization of the treaties. As the Schengen rules are fully incorporated into the treaties, with British opt-outs, the British withdrawal as such won't exert pressure against them.

The immediate reactions to Brexit from the other large member states have focused in particular on the deepening of the CFSP, especially the common security and defence policy, as well as speeding up the EMU reforms.

### **Towards a more communitarian CFSP?**

The UK's sceptical attitude towards the EU's common foreign and security policy – and its supranational elements in particular – has been a key bone of contention ever since this cooperation was established. A number of compromises have been required to reconcile the UK's views with those of a large majority of member states that have been willing to deepen cooperation in this field.

There are several special solutions in the Lisbon Treaty which came into being mostly as an outcome of British unwillingness to accept the general streamlining of the institutional set-up in the Union's external relations, supported by a vast majority of other member states. The need for political coherence and efficiency as well as better democratic control seemed to support the subordination of the whole range of the Union's external relations – economic as well as political – to a single institutional machinery.<sup>4</sup> For its part, the UK wanted to protect the particularity of the CFSP by retaining its stronger intergovernmental set-up and, to a large extent, unanimous decision-making. This led to a compromise solution whereby the CFSP – irrespective of the abolishment of the so-called pillar

structure and establishment of a single legal personality – is still separated from the rest of external relations, firstly when it comes to the categories of Union competence as formulated in the TFEU (Title I), and secondly with regard to the roles played by the Commission, the EU's Court of Justice and the European Parliament. To stress the particular role of the CFSP further, the UK demanded that a special safeguard clause should be attached to the treaties (TFEU, Declaration 14).

One of the most long-standing disputes in this respect involves the possibility of extending majority decisions to the CFSP, which the UK has blocked thus far. The Lisbon Treaty (TEU, Art. 24) hence confirms unanimous decision-making as the main rule for the CFSP with, however, a possibility to deviate from it when implementing a decision taken unanimously by the European Council. Due to British concerns, the EU Court of Justice was granted only a very limited competence within the CFSP. Apart from its general right to monitor compliance with the treaties, the ECJ's competence is limited to reviewing the legality of decisions providing restrictive measures against natural or legal persons (TFEU, Art. 275).

The establishment of the position of a High Representative of the Union for Foreign Affairs and Security Policy again made it possible to keep the CFSP at a sufficient distance from the Commission's general prerogative, as the new position had to be equally firmly linked to the Council. This solution is furthermore reflected in the structures and functioning of the External Action Service, which the High Representative leads. The complicated nomenclature regarding the position of the High Representative belonged to those details which had to be changed due to British unwillingness to use state-centric terminology. The position was still referred to as the Union Minister for Foreign Affairs in the Constitutional Treaty.

With all the established practices that exist in support of the compromise revolving around the abolishment of the separate pillars, but maintaining the particularity of the CFSP, getting rid of this arrangement might not appear to be an urgent issue even if pressure might emerge – at least in the European Parliament – towards a true unification of the Union's external relations. But it can be equally anticipated that when the next treaty change takes

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4 The European Convention: Mandate of Working Group VII on External Action. CONV 252/02.

place, at least a transfer to majority decisions and possibly an extension of the ECJ's competence in the CFSP will be on the agenda.

### **Institutional openings in the Common Security and Defence Policy**

The most concrete plans concerning a post-Brexit development have thus far been presented within the EU's Common Security and Defence Policy. The UK has generally been reluctant with regard to any development within the CSDP that could be seen as a duplication of structures already existing within NATO. When negotiating the Lisbon Treaty, the UK finally gave ground on its long-standing opposition to the incorporation of the WEU's mutual defence clause into the EU treaties. After various stages, the clause finally took the form of TEU Art 42.7, thereby obligating all EU members to defend each other in case of armed aggression.<sup>5</sup>

During the past few years, the UK has blocked the establishment of a headquarters for CSDP operations and shown waning interest towards the EU-led operations. It has also been critical of any increase in the European Defence Agency's (EDA) budget, thus affecting the agency's functional capacities.

The ideas for reform put forward by France and Germany immediately after the EU referendum, and further elaborated for the ministerial meetings of the autumn season,<sup>6</sup> include proposals for both old and new measures to be taken for the construction of a new 'European Security Compact'. Among them are the establishment of a permanent military and civilian planning and conduct capability for the EU, as well as a European Defence Semester as an

instrument for the coordination of defence budgets and capability development.

It is proposed that permanent structured cooperation be used as a possible framework for the implementation of a wide range of proposals dealing with the establishment of new capabilities (e.g. a European Medical Command or European transport capacities), or strengthening existing ones (EUROCORPS, i.e. a France-based multinational military corps of around 1000 soldiers). The pursued revitalization of the CSDP also implies a more central role for this policy field on the EU's agenda. This would be supported by the new Commission-driven process for the construction of the European Defence Technological and Industrial Base and stronger linkages created between internal and external security.

The planned reforms have to be seen as small, pragmatic steps rather than as a more principled change of any type. Without the recent geopolitical turn in European security politics and the consequent strengthening of NATO's role, a more ambitious reaction could have taken place within the CSDP. But on the other hand, with one of its largest military powers leaving the EU, the loss of capabilities and credibility this implies can only be compensated through the intensified coordination and development of joint capabilities by the remaining members.

### **A True Economic and Monetary Union?**

One of the major questions concerning the implications of Brexit for the EU's political system and institutions deals with the ways it affects the EMU. As a member with a permanent opt-out from the currency union, the UK's interest has been to protect the common institutional system, and particularly the single market, from the negative consequences of a deepening currency union. The UK hasn't been against deeper commitments and rules within the Eurogroup as long as they cannot be seen as weakening the position of the member states outside the common currency.

Brexit might influence the currency union, firstly by affecting its enlargement perspective. Even if the economic and financial crisis has clearly decreased interest towards adoption of the common currency in many East and Central European countries, it is only Denmark and the UK that have a permanent

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5 In the Constitutional Treaty, this obligation was still open for accession to those member states willing to accept this commitment (Constitution for Europe, Art. I-40 and III-214).

6 A Strong Europe in a world of uncertainties. Joint contribution by the French Foreign Minister Jean-Marc Ayrault and Federal Foreign Minister Frank-Walter Steinmeier, 28.6. 2016, <http://www.diplomatie.gouv.fr/en/french-foreign-policy/european-union/events/article/a-strong-europe-in-a-world-of-uncertainties-28-06-16>, last accessed 20.10.2016. Revitalising CSDP towards a comprehensive, realistic and credible Defence in the EU, 12.9.2016.

opt-out in this regard. A British withdrawal might affect the dynamism of EMU enlargement, particularly if it were followed by such a deepening of the EMU structures that would benefit from a unification of memberships between the EU and the EMU. This situation would be furthermore affected by a successful Danish decision to get rid of its opt-out followed by accession to the currency union. Currently, the domestic political conditions are not favourable for a euro accession in the Visegrad countries currently outside the currency union (the Czech Republic, Poland, Hungary) for instance, and an alternative development might imply a further strengthening of the institutional division between the Eurozone countries and the member states outside it.

A second and more short-term implication concerns revitalizing the project to deepen the EMU, which has been on and off the Union's agenda due to its changing foci. Along with the construction of the Banking Union – and the emergence of the acute immigration crisis – the aspirations to implement the plans presented in the Five Presidents' Report (2015) or the earlier more comprehensive roadmaps have gradually waned.<sup>7</sup> They might, however, be revived as a part of the reform package to assert the strength and vitality of the EU's future. It is in this atmosphere that France and Germany, in the bilateral statement made by their foreign ministers immediately after the EU referendum, stressed their joint view on how to proceed with a deepening of the EMU. Their ideas – many of which have been supported by other European leaders as well – can be divided into those dealing with the political governance of the currency union, and those related to its fiscal capacity and burden-sharing, including macroeconomic stabilization.

The British withdrawal from the EU might facilitate a strengthening of the political governance of the Eurozone, as in the new situation all the large member states would by and large have a common view on this need. France and Germany recently reiterated their support for a full-time president of the

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7 These plans included proposals concerning a further strengthening of economic policy coordination, the creation of a fiscal capacity for the Eurozone, and consolidation of the EMU's political governance and its mechanisms of democratic accountability.

Eurogroup who would be accountable to a Eurozone subcommittee established in the European Parliament. A similar idea, including more institutionalized cooperation with a body representing national parliaments, was already included in the Five Presidents' Report and is likely to materialize now as an enhanced means of democratic scrutiny of the currency union. If this joint parliamentary body is meant to provide more systematic scrutiny of the common economic and fiscal policy, its mandate and possibilities to affect decisions taken should be confirmed in the treaties. This is no mean feat given the differences that exist between the member states when it comes to the roles of the national parliaments within their political systems, as well as their possibilities to act outside the national parliamentary framework.

The large member states don't have an equally unitary position on the form and function of a fiscal capacity to be established for the currency union. Irrespective of an obvious activation of debate on the topic taking place after Brexit, a consensus has not yet emerged on the form and more detailed function of such a capacity. While France and Germany have for quite some time promoted the establishment of a dedicated Eurozone budget, it remains to be seen whether such principled change with obvious ramifications for the unity of the institutional framework could see the light of day in the new circumstances. The macroeconomic stabilization promoted by many South European member states in particular forms a controversial project for Germany which has, however, consented to considering it as a possibility for the longer term. A concrete proposal which could materialize when the UK is no longer exerting its veto against the treaties is the transfer of the European Stability Mechanism (ESM) into the treaty framework as a European Monetary Fund.

## Conclusions

Due to the historic withdrawal of one of the large member states, the remaining 27 EU members face various challenges with respect to the institutional framework of their joint integration project. First, they have to ask themselves in what direction they are willing to develop the political governance of the EU once one of the main obstacles to a deepening of this set-up no longer exists. With the traditional dividing lines between federalists – or those in

favour of the community method – and intergovernmentalists dating back to the very initial stages of integration, member states now have to reconsider their position and identity in an entirely new political set-up without the UK. Second, as the EU is currently highly vulnerable to internal fragmentation as well as to external challenges, any small or large-scale reform project should be carefully planned so that it doesn't jeopardize the current unity and coherence of the Union any further.

One of the key questions once again concerns the method of amending the EU structures after Brexit. The direct institutional implications do not call for an immediate treaty change. There are certainly less politically demanding mechanisms that can be used to adjust those few treaty provisions that seem to require updating when a large member state leaves. It would be a different matter, however, should the more indirect implications – which would open up possibilities to change critical parts of the institutional structures within the CFSP or EMU – necessitate such a process. Whilst the most serious demands to revise the treaties seem to concern the latter, a reform agenda for the CFSP could easily be justified if the treaties were reopened. Apart from the political challenges of such a treaty change, with public opinion on integration becoming ever more polarized, the timing of the process is another critical issue. Once negotiations on the British withdrawal have started – possibly coinciding with another process defining the terms of the British position outside the EU – there will be hardly any room on the Union's agenda for an internal reform process on the scale of a treaty change. But on the other hand, the sooner such an internal reform process can be linked with Brexit and the need to avoid a consequent weakening of the EU, the greater its chances of succeeding.

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