

February 2017

Parliamentarians in Brexit talks Bulls in a china shop?

By Agata Gostyńska-Jakubowska



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- ★ Parliamentarians in Westminster and in the European Parliament will have to ratify the final withdrawal agreement between the EU-27 and the UK. MEPs have in the past used their veto in international negotiations when the European Commission and the member-states have not involved them properly in the negotiation process.
- ★ European leaders have agreed to brief the European Parliament before and after Council meetings at which ministers will discuss the negotiating mandate of the EU-27. The Parliament's representative, Guy Verhofstadt, will also participate in the preparatory meetings of the European Council. But member-states have refused to allow him to join the EU's negotiating team. Verhofstadt has threatened that MEPs could vote down the final withdrawal agreement if EU leaders do not change their minds.
- ★ If the European Parliament vetoed the exit deal, the UK would leave the EU without an agreement on migrants' rights, customs arrangements or budget liabilities. This is as risky for the EU as it is for the UK.
- ★ Threatening to vote down the final withdrawal deal just to make a point about inter-institutional co-operation could undermine the European Parliament's public standing. EU citizens expect MEPs to focus on addressing their problems rather than on playing power games.
- ★ The British government has promised that Westminster would exercise the same level of scrutiny in the exit talks as the European Parliament. But it may argue that it cannot reveal its negotiating position to parliamentarians, lest it undermines its bargaining hand. However, there are ways to reconcile the confidentiality of negotiations with parliamentary scrutiny, and the British government should not keep Westminster in the dark about the progress of the exit talks.
- ★ The government should offer briefings to MPs and peers on so-called Privy Council terms, whereby participants promise not to reveal the information they obtain. It should also make reading rooms available for parliamentarians to view (but not copy) documents setting out the British negotiating position.
- ★ For its part, the British parliament should make an effort to understand its European counterparts. Parliamentarians should reach out to colleagues in the European Parliament and in other national parliaments to find out what red lines their governments will have in the exit talks.
- ★ The UK is leaving the EU but it is not leaving Europe. Effective parliamentary scrutiny of the Brexit talks could set a precedent for better parliamentary oversight of post-Brexit British policy towards the EU.

Brexiteers argue that the EU and its institutions pose a threat to Britain's parliamentary democracy. They deride the Council of Ministers and the European Parliament, which jointly approve EU legislation, as remote and undemocratic. Eurosceptics complain that the principle of the supremacy of EU law has rendered the British Parliament's role in law making irrelevant, and claim that the UK can only be sovereign again if it leaves the EU. They made these points to great effect in the EU referendum campaign.

Once Britain had voted to leave the EU on June 23rd 2016, it became clear that the Conservative government intended to restore parliamentary sovereignty, but not just yet. Prime Minister Theresa May indicated that she intended to trigger Article 50 of the Treaty on European Union (TEU), which provides a legal path for exit from the EU, without seeking parliamentary approval first. She has also been reluctant to commit to providing Westminster with detailed information about her plans before and after the negotiations have started, arguing that this would weaken her negotiating hand.

Meanwhile, the European Commission intends to keep the European Parliament regularly informed throughout the Brexit negotiations.¹ MEPs can vote down the withdrawal treaty and any future trade agreement between the UK and the EU-27. The European Parliament has in the past used its veto power in international negotiations when it thought it was not properly

involved in the talks. EU officials are right to worry that the European Parliament could veto the withdrawal agreement – especially if the European Commission presents it as a *fait accompli*, and does not give the Parliament enough influence over the deal.

This policy brief will look at how Westminster and the European Parliament are gearing up for Brexit. Will the British Parliament get powers of scrutiny in the withdrawal negotiations similar to those of the European Parliament? Will the European Parliament go so far as to veto the withdrawal agreement? The paper will explore what tactics the European Parliament might deploy and what objectives it will have in the Brexit talks. It will also consider the role of British MEPs in the divorce talks, and make recommendations on how parliamentarians in Westminster and in the European Parliament should navigate the Brexit talks.

Westminster's scrutiny of Brexit: Power to Parliament, but not just yet

Prime Minister Theresa May said at the Conservative Party conference in October 2016 that "it is not up to the House of Commons to invoke Article 50, and it is not up to the House of Lords. It is up to the government to trigger Article 50, and the government alone".² As a consolation prize, May promised that in 2017 the government would introduce a Great Repeal Bill. This would scrap the 1972 European Communities Act, which gives EU law primacy over national law. At the same time, the Great Repeal Act would incorporate existing EU law into British law. This would offer greater certainty to British businesses, foreign investors and others as the UK leaves the EU. Once Westminster adopts the Great Repeal Act the government and Parliament will be able to review the transposed EU rules, and amend or repeal them if they see fit.

The Supreme Court, however, disagreed with May on whose decision it should be to trigger Article 50. By a majority of 8 to 3, the Court ruled on January 24th that the 1972 Act had given UK citizens certain rights which they would lose when Britain left the EU; and under long standing constitutional precedent, only Parliament could

decide to take away rights that had been conferred by legislation. The Court therefore ruled that only Parliament could authorise the government to trigger Article 50.³ But it does not mean that Parliament will now block Brexit. It is unlikely that a majority of MPs and peers will go against the vote of the British people. On December 7th 2016, MPs voted by a majority of 373 to respect the wishes expressed in the referendum, and called on the government to invoke Article 50 by March 31st 2017.⁴ They are unlikely to change their minds now.

What the ruling does not say, however, is what form parliamentary scrutiny of the Brexit negotiations should take. The Constitutional Reform and Governance Act of 2010 commits the government to lay international treaties (including EU external agreements that require national ratification) before both houses 21 days before the intended date of ratification. If neither house has objections the government can go ahead with ratification. But the Act of 2010 provides no *ex-ante* scrutiny of the government's negotiating positions nor does it require Parliament to debate or to vote on the treaty.⁵

1: European Council, 'Statement from the informal meeting of the heads of state or government of 27 member-states as well as the presidents of the European Council and European Commission', December 15th 2016.

2: Theresa May, 'Speech to Conservative conference in Birmingham', October 2nd 2016.

3: Supreme Court Judgment, Hilary Term [2017] UKSC 5 On appeals from: [2016] EWHC 2768 (Admin) and [2016] NIQB 85, January 24th 2017.

4: House of Commons, 'Motion for a debate as amended by the government', December 7th 2016, [full text here](#).

5: Arabella Lang, 'Parliament's role in ratifying treaties', House of Commons Library, January 20th 2017.

The way in which Westminster currently oversees EU affairs is not a good basis for establishing effective parliamentary scrutiny of Brexit. Before the referendum, MPs spent little time on EU business because they thought that their constituents had no interest in it.⁶ But Brexit has brought change to Westminster. Withdrawing from the EU is not comparable to any other negotiation Britain has conducted. Even its pre-1973 accession negotiations with the European Economic Community look like a piece of cake in comparison with the exit talks. Brexit will have far-reaching implications for the British economy, for business, for British expatriates and for EU citizens who have lived and worked in the UK; parliamentarians should know what the government is up to when it is negotiating in Brussels.

The House of Commons has therefore formed two select committees to shadow the work of the new departments for exiting the EU and for international trade. Hilary Benn, a Labour MP, chairs the committee on exiting the EU, and Angus MacNeil, an MP from the Scottish National Party, chairs the international trade committee. The European scrutiny committee, chaired by Conservative MP Sir William Cash, which is responsible for oversight of the government's position on all draft EU legislation, will continue to sift EU documents as long as Britain remains a member of the EU.

Unlike the Commons, the House of Lords has used existing structures designed for the scrutiny of EU affairs in its Brexit-related work. Peers have argued that one cannot easily separate scrutiny of EU affairs from the withdrawal process, because any new EU legislation could have an impact on the future relationship between the EU and post-Brexit Britain.⁷ The EU committee and its six sub-committees (which deal with specific areas of EU policy) have conducted numerous inquiries into the implications

of Brexit for different areas of policy, including for Irish-British relations.

MPs will want to discuss Britain's negotiating objectives not only in committees but also on the floor of the house. In the House of Commons, the opposition has 17 days per session allocated to debate topics of its own choosing. On October 12th and December 7th Labour put forward motions that urged the government to reveal and debate its Brexit strategy before it triggered Article 50.

Parliamentarians want the government to engage Westminster not only in developing its Brexit strategy, but also in the negotiations and in ratification of the withdrawal treaty. The committee on exiting the EU urged Theresa May to publish a white paper that would set out the government's plans for Brexit.⁸ MPs have also argued that the ratification procedure set out in the Constitutional Reform and Governance Act from 2010 is not a "satisfactory way of dealing with such an important (withdrawal) treaty".

“Parliamentarians should know what the government is up to when it is negotiating in Brussels.”

Under pressure from parliamentarians, May reluctantly agreed that the government would publish a white paper on its plans and that Parliament would vote on the final withdrawal treaty. David Davis, Secretary of State for exiting the EU, has also argued that negotiations themselves would not be “a black box out of which a treaty drops at the end”.⁹ He pledged that Westminster would exercise the same level of scrutiny in the exit talks as the European Parliament is likely to do. But what scrutiny powers will the European Parliament have?

The European Parliament and Brexit: Veto player?

Article 50 requires the European Parliament to approve the final withdrawal agreement between the EU-27 and the UK. The Parliament will also have to give its consent to any free trade agreement (FTA) Britain agrees with the EU-27 post-Brexit. The British government thinks that it can negotiate the withdrawal agreement and a treaty on its future relations with the EU simultaneously. But in its resolution of June 28th 2016 the European Parliament argued that the EU-27 and the UK should not agree on any new relationship before concluding the withdrawal treaty. This is because the EU cannot conclude an international agreement with one of its member-states.

This is the first time that a member-state has ever considered leaving the EU and, like Westminster, the European Parliament is entering uncharted waters when it comes to parliamentary scrutiny of the exit negotiations. But, unlike Westminster, the European Parliament has developed robust procedures for *ex-ante* scrutiny of the EU's international negotiations, and MEPs might want to apply this practice to the exit talks with the UK.

MEPs do not formally participate in developing the EU's negotiating mandate for international trade talks or in

6: Agata Gostyńska-Jakubowska, 'A ten-point plan to strengthen Westminster's oversight of EU policy', CER policy brief, May 2015.

7: House of Lords, European Union Committee, 'Brexit: parliamentary scrutiny', 4th Report of Session 2016–17, October 20th 2016.

8: House of Commons, The Exiting the EU Committee, 'The process for exiting the European Union and the government's negotiating objectives', First report of session 2016–2017, January 14th 2017.

9: House of Lords, European Union Committee, 'Brexit: parliamentary scrutiny', 4th Report of Session 2016–17, October 20th 2016.

the negotiations themselves. The European Parliament can only approve or vote down the final text; it cannot amend it. Despite the Parliament's formal role, however, MEPs have secured a measure of influence at the outset of negotiations by threatening not to ratify any agreements that the European Commission negotiates. In February 2010, just months after the Lisbon treaty gave MEPs the right to approve most international agreements, the European Parliament blocked the US-EU agreement on the processing and transfer of financial data for the purposes of terrorist finance tracking (also known as the SWIFT agreement, because it gave the US authorities access to information from the SWIFT interbank communication system, based in Belgium). The Lisbon treaty indicated that the European Parliament should be "immediately and fully informed at all stages of the procedure" but MEPs argued that they were not given enough time to scrutinise the text properly. They received the text for their approval months after it had been signed, and a week before its provisional application.¹⁰

There is little doubt that the European Parliament wanted to increase its leverage in international negotiations by showing that MEPs were ready to use their new powers if the Commission and member-states presented them with *faits accomplis*. Jerzy Buzek, who was president of the European Parliament at that time, said: "Throughout the process, I have stated very strongly that to avoid mishaps in the future, the Council and Commission must treat the European Parliament as an equal player at all stages of negotiations, keeping it fully informed and taking its views seriously into account".¹¹

The European Commission seems to understand that it needs to have the European Parliament on its side if it is to avoid the Parliament obstructing international negotiations. In November 2010 it concluded a framework agreement on inter-institutional relations with the European Parliament that enhanced the Parliament's role in international talks. The Commission promised to share with the European Parliament the draft negotiating directives that it submits to the Council (on the basis of which the member-states adopt the negotiating mandate). The Commission also said it would share all other relevant documents, including "amendments to adopted negotiating directives, draft negotiating texts, agreed articles, the agreed date for initialling the agreement and the text of the agreement to be initialled".¹² The Commission is supposed to send

these documents in time for the European Parliament to offer feedback, and to take MEPs' suggestions on board throughout negotiations.

But international negotiations are harder to conduct if the EU's opening position is made public, and the Commission has been reluctant to circulate sensitive documents to all 751 MEPs for fear of leaks. The framework agreement provides that the president, the chairs of committees that oversee negotiations, the leaders of political groups in the Parliament and the head of the delegation to the country concerned, can request such documents. MEPs who want to access top secret documents need to go through security clearance, or their national authorities need to certify that they are authorised to receive such information in their own countries.¹³

“MEPs have secured influence at the outset of international negotiations by threatening not to ratify any agreements.”

But this selectivity in who can and cannot access negotiating documents has upset some MEPs and civil society organisations. They argued that international trade negotiations should not take place over citizens' heads. In 2013, EU institutions were under fire for the lack of transparency in the EU's negotiations with the US on the Transatlantic Trade and Investment Partnership (TTIP). So the new European Commission decided to make its negotiating positions public. And in December 2015 the European Commission and the US reached an agreement to give MEPs and members of national (and regional) parliaments access to TTIP consolidated texts (which combine the EU and American positions).¹⁴ MEPs and MPs can view these confidential documents in a secure reading room, but cannot remove or photocopy them.

The 2010 framework agreement on inter-institutional relations has boosted *ex-ante* parliamentary scrutiny of EU mandates for international negotiations and has made it easier for the European Parliament to influence the negotiations themselves. More knowledge about the potential scope of agreements has made it easier for MEPs to exert pressure on negotiating partners.¹⁵ But the member-states have felt uneasy about the role of an increasingly assertive European Parliament. They think that the 2010 framework agreement has given the

10: The European Parliament Legal Service, 'Legal opinion about conclusion of European Union/United States Agreement on Financial Messaging Data to Prevent and Combat Terrorism and Terrorist Financing', December 2nd 2010, [see text here](#).

11 President Buzek News, newsletter on the activities of the president of the European Parliament, July 2010, [see text here](#).

12: Framework Agreement on relations between the European Parliament and the European Commission as of November 20th 2010, Official Journal of the European Union, L304/47.

13: Andreas Maurer, 'Comparative study on access to documents (and confidentiality rules) in international trade negotiations', European Parliament, 2015, p.34.

14: Laura Puccio, 'EU-US negotiations on TTIP. A survey of current issues', European Parliamentary Research Service in-depth analysis, July 2016.

15: For an exhaustive analysis of the European Parliament's role in EU's external relations see: Adrienne Héritier, Catherine Moury, Magnus G. Schoeller, Katharina L. Meissner, Isabel Mota, 'The European Parliament as a driving force of the constitutionalisation', European Parliament, October 2015.

European Parliament more influence over international negotiations than was granted by the EU treaties.¹⁶ The Council of Ministers is not party to the framework agreement, yet it strengthens the European Parliament at the expense of member-states. For example, the provision that commits the European Commission to share its draft negotiating directives for the Council with the European Parliament makes it easier for the Parliament to exert pressure on the member-states.

But while the European Parliament has the power to veto the withdrawal agreement, that does not mean MEPs will use it. One cannot compare the withdrawal

talks with the UK with any other international negotiations the EU has conducted since the Lisbon treaty entered into force. Brexit will have implications for EU citizens in the UK and British citizens in the EU. If the European Parliament vetoed the withdrawal agreement, the situation would not simply revert to the *status quo ante*: the UK would leave the EU without an agreement on migrants' rights, customs arrangements or Britain's EU budget liabilities. The risk of serious trade disruptions should make MEPs reluctant to veto the withdrawal treaty just to make a point about the level of inter-institutional co-operation, or about minor points of substance in the text.

The European Parliament's preparations for Brexit: A play in three acts

Guy Verhofstadt will be the Parliament's co-ordinator for the Brexit talks. Verhofstadt, who is chair of the Alliance of Liberals and Democrats for Europe (ALDE), has argued that it is "better to have [Parliament] inside the tent pissing out than outside the tent pissing in" during the negotiations.¹⁷ Martin Schulz, the then president of the European Parliament, demanded on December 16th 2016 that the European Parliament participate alongside the European Commission in all negotiations with the UK; in preparatory meetings with EU-27 sherpas (top national officials who will deal with Brexit); and in European Council meetings devoted to Brexit. Schulz and Verhofstadt threatened that if the EU-27 did not involve the European Parliament in Brexit negotiations from "day one", MEPs could open their own bilateral negotiations with the British government or even vote down the final deal. Opening up extra parallel negotiating channels would weaken the EU's negotiating hand, and MEPs hoped that this threats would make member-states give Parliament a greater say in the Brexit talks.

The European Parliament could indeed be of use to the Commission as it tries to negotiate the best deal for the EU-27. Some MEPs might be keen to go after the British government, to take revenge for decades of EU-bashing and for holding the referendum in the first place. If the British government balks at any of the Commission's terms for the divorce, the Commission can always threaten that resistance will make it more likely that the Parliament will refuse to ratify the deal.

But EU leaders do not want to give the European Commission a free hand in the withdrawal talks, nor set a precedent which would further boost the European Parliament's standing vis-à-vis member-states. So they decided on December 16th that the EU negotiating

team would include a representative of the rotating presidency of the Council of Ministers; and Donald Tusk, the president of the European Council, will also have his representative in all negotiating sessions.¹⁸ EU leaders worry that if they give Parliament an inch it will take a mile. So far, they have resisted Parliament's calls for a seat at the negotiating table and in the European Council.¹⁹ They agreed, however, to brief the European Parliament before and after meetings of the General Affairs Council which will discuss and adopt the negotiating mandate of the EU-27. Verhofstadt will also participate in the preparatory meetings of the European Council.

"EU leaders worry that if they give the European Parliament an inch it will take a mile."

But the European Parliament refuses to be discouraged. MEPs have started their own Brexit work to help them increase their leverage when the negotiations start, and have divided it into three phases. In the first phase, which will last until Theresa May triggers Article 50, the European Parliament will assess how Brexit will affect its current and future legislative work. All committees will analyse the impact of Britain's departure from the EU on European legislation and on various policies. MEPs will also consider the implications of Brexit for individual programmes, funds and agencies.

In the second phase, after Theresa May has formally launched the divorce talks but before the European Council adopts guidelines for negotiations, the European Parliament plans to influence the member-states' opening position by adopting a resolution that sets

16: Council of the European Union, 'Opinion of the Legal Service concerning draft framework agreement between the European Parliament and the Commission', September 17th 2010.

17: Guy Verhofstadt referred to Lyndon B Johnson's famous quote about FBI Director J. Edgar Hoover.

18: European Council, 'Statement from the informal meeting of the heads of state or government of 27 member-states as well as the presidents of the European Council and European Commission', December 15th 2016, Brussels.

19: The president of the European Parliament delivers a speech to European leaders ahead of every European Council meeting but must leave afterwards.

out the Parliament's red lines. The findings from the first phase will inform that resolution. On January 17th 2017 ALDE also struck an agreement with the European People's Party (EPP), the largest political group in the Parliament. The EPP agreed to support Verhofstadt's demand to sit at the Brexit negotiating table as a pre-condition for MEPs' approval of the withdrawal deal. In return, Verhofstadt withdrew his candidacy to become the Parliament's president and supported Antonio Tajani, the EPP candidate, instead. The two political groups plan to include this demand in a resolution which, if it passes, will be the official Parliament position.

In the third phase, MEPs will focus on evaluating the text of the final withdrawal agreement. In consultation with other committees, MEPs on the constitutional affairs committee (AFCO) will decide whether the withdrawal agreement addresses MEPs' concerns set out in earlier resolutions, and will then recommend that the European Parliament approve or reject it.²⁰

Guy Verhofstadt will report back to the Parliament on the progress of his talks with the European Commission, the EU-27 and the UK. His appointment as the Parliament's Brexit co-ordinator is not accidental. Martin Schulz trusted Verhofstadt, a staunch EU federalist, to push for an active role for the European Parliament in the Brexit process. But Verhofstadt is not an extremist and he is

unlikely to encourage MEPs to block the final withdrawal deal for reasons of principle.²¹ Such a move would not go down well with European voters ahead of the next elections to the European Parliament, which will take place in May 2019.

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Verhofstadt's political views could paradoxically help the British government. As an EU federalist, he may find it easier to 'sell' a withdrawal deal to pro-European MEPs and to argue that it does not fundamentally damage the European project. In the last couple of weeks Verhofstadt has shown some 'ideological flexibility'.²² Ahead of the election of the new president of the Parliament, he tried to forge an alliance with Italy's populist Five Star Movement MEPs in a bid to advance his own candidacy. When his bid failed, he withdrew his name from the ballot and threw his weight behind the ultimate winner, Antonio Tajani. Verhofstadt could try reaching out to MEPs from the entire political spectrum, if he thinks there is insufficient support for the withdrawal treaty among mainstream political groups.

The European Parliament and the Brexit talks: Form and substance

The European Parliament has not been flexing its muscles only for reasons of principle. The Parliament also wants to have more influence over the content of the withdrawal agreement. The majority of MEPs in the European Parliament are (still) pro-integration. They want to maintain the free movement of EU workers as an essential element of EU citizenship. More practically, the Parliament would like the EU to have a larger budget. MEPs worry that the UK's departure from the EU could threaten these objectives. Between June 23rd and December 15th 2016, MEPs asked 70 Brexit-related parliamentary questions to the European Commission and to the Council of Ministers. The most frequently asked questions concerned either the implications of Brexit for the EU budget or the fate of EU citizens in the UK and UK citizens in the EU.²³

There are currently almost 3.3 million EU citizens in the UK and 1.2 million UK citizens elsewhere in the EU.²⁴

MEPs worry that Britain's departure from the EU will put the rights of EU citizens to education or to healthcare at risk. In January, Verhofstadt argued that obtaining safeguards for these citizens will be a priority for the European Parliament.²⁵ Some MEPs are keen to go even further. Charles Goerens, an ALDE MEP, suggested that Britons who feel European should be able to keep some of the rights arising from EU citizenship if they wanted. According to Goerens, such an 'associate citizenship' should include the right to vote in elections to the European Parliament and to move freely across the EU.²⁶ This could be a consolation prize to the 48 per cent who lost the UK referendum but do not want to lose the privileges of being an EU citizen. Verhofstadt has promised to put Goerens' idea of associate citizenship on the negotiating table.

Verhofstadt and MEPs from other pro-EU political groups in the European Parliament will also defend the

20: Annex VI of the Rules of Procedure of the European Parliament, 8th Parliamentary term, September 2016.

21: The European Parliament could however take revenge for member-states' decision of December 16th 2016, and block some of the legislative dossiers where the Council and the European Parliament co-legislate.

22: Duncan Robinson, 'Antonio Tajani elected president of the European Parliament', *Financial Times*, January 17th 2017.

23: Analysis of the written and oral questions by MEPs between June 23rd and December 15th 2016.

24: United Nations, 'Trends in International Migrant Stock', 2015, and UK Office for National Statistics, Labour Force Survey, population by country of birth, 2015.

25: Guy Verhofstadt, 'We are not out to punish Britain but you need to shed your illusions', *The Guardian*, January 18th 2017.

26: Interview with Charles Goerens, 'Charles Goerens: associate citizenship for Brits is an offer not an obligation', *Euractiv*, December 1st 2016.

principle that the four freedoms of the single market are inseparable. Pro-EU MEPs worry that if member-states allow Britain to pick and choose, eurosceptic forces elsewhere in Europe will press their governments to follow the British example and ask for the same. But until now the EU-27 have been on the same page as the European Parliament; they have repeated that if the UK wants to maintain membership of the single market post-Brexit, it will have to accept free movement of EU workers, EU rules and the jurisdiction of the Court of Justice, and make contributions to the EU budget. Theresa May seems to have got the message. In her Lancaster House speech on January 17th she said that the UK would not be seeking membership in the single market, but that the UK would seek tariff-free trade with the EU.²⁷

But for Verhofstadt, even that would amount to cherry-picking. He wrote in the *Guardian* that “it is an illusion to suggest that the UK will be permitted to leave the EU but then be free to opt back into the best parts of the European project, for instance by asking for zero tariffs from the single market without accepting the obligations that come with it”.²⁸ Such a position would be extreme: many EU free trade agreements already provide for tariff-free trade in the majority of manufactured goods without demanding freedom of movement in return. But Verhofstadt’s comment indicates that the European Parliament, which will also have to approve any FTA between the UK and the EU-27, will be reluctant to offer the UK a sweet deal.

Pro-integration MEPs are also worried that Britain’s departure from the EU will have negative implications for the current EU seven-year budget. Article 50 provides that Britain has two years to conclude a withdrawal agreement with the EU-27. If Theresa May triggers Article 50 by the end of March 2017, as she has promised, Britain could cease to be a member-state in March 2019, before the current budget period finishes at the end of 2020. Britain’s departure part-way through a budget year might complicate the EU’s decisions in 2018 on commitments (the money that EU member-states promise to pay in) and payments (the money spent on different programmes) for 2019. This could jeopardise ongoing funds and programmes, like PEACE (which is designed to promote positive community relations in Northern Ireland).

One of the ways to get past this problem would be for Britain to leave the EU either at the end of 2019 or at the end of 2020.²⁹ Article 50 says that the EU treaties cease to apply to the departing state when its withdrawal treaty with the EU enters into force, or, if there is no agreement, two years from the date of its Article 50 notification, unless the EU-27 agree unanimously to extend the period. That should mean that Britain and the EU-27 would be free to agree on a later date for the UK’s departure from the EU than March 2019.

“Pro-integration MEPs are also worried that Britain’s departure from the EU will have negative implications for the current EU seven-year budget.”

But such a delay would upset political leaders in the European Parliament; they want to see Britain gone before the next European elections in Spring 2019; it would make no sense to elect British MEPs, to form political groups with them or to give them any assignments just to see them go in a couple of months. Theresa May would not want that either. She would look silly if her own colleagues were to run for the European Parliament in 2019 after she has promised to take Britain out the EU. Richard Corbett, a Labour MEP, has suggested that one could avoid this problem if the UK appointed British parliamentarians to serve as MEPs in the period between elections to the European Parliament and Britain’s formal withdrawal from the EU.³⁰ This happens when a new member-state joins the EU. For example, Romanian national parliamentarians served as MEPs for the period from the date of country’s accession to the EU (January 1st 2007) until its direct elections to the European Parliament (November 25th 2007). But rather than agreeing to postpone Britain’s formal departure until after the European elections, MEPs would probably prefer to put pressure on the UK and the EU-27 to find a budgetary fix to bridge the gap between Brexit and the end of 2020.

27: Theresa May, ‘Plan for Britain, including the 12 priorities that the UK government will use to negotiate Brexit’, Lancaster House, January 17th 2017.

28: Guy Verhofstadt, ‘We are not out to punish Britain but you need to shed your illusions’, *The Guardian*, January 18th 2017.

29: Richard Corbett, ‘What happens next: an outline of the likely Brexit negotiations process’, December 16th 2016, [see text here](#).

30: Richard Corbett, ‘What happens next: an outline of the likely Brexit negotiations process’, December 16th 2016, [see text here](#).

British MEPs: Spectators or actors?

Article 50 makes clear that the UK will not be in the room when the Council of Ministers discusses the EU-27 negotiating position, but it does not exclude British MEPs from the European Parliament's deliberations. Some MEPs are worried, however, that their British colleagues will try to obstruct the Parliament's work on Brexit. UKIP MEPs have never hidden the fact that they only sit in the European Parliament in order to undermine the European project. Nigel Farage, leader of the 'Europe for Freedom and Direct Democracy' group, and Syed Kamall, the pro-Brexit leader of the 'European Conservatives and Reformists' group, sit in the Conference of Presidents – a body that will expect updates from Verhofstadt about the progress of negotiations. MEPs worry that their British colleagues could leak information about the EU-27's negotiating strategy to the British government or to the public. Pro-EU MEPs have been particularly distrustful of Tory MEPs who voted to leave and are likely to remain loyal to their political leadership at home.

But it would be unfair to label all British MEPs as stalking horses for Theresa May. Some MEPs would like to help their colleagues in the European Parliament understand Britain's negotiating position, or to try to dissuade the UK from taking steps which could alienate the Parliament. London's Labour MEPs have met Guy Verhofstadt to discuss the implications of Brexit for their city, which voted heavily to remain. Scotland and Northern Ireland

were also in favour of remaining in the EU, so at least some MEPs from those regions are likely to work with MEPs from elsewhere in the EU to get the best deal they can for their own constituents. Indeed, the leaders of the political groups in the European Parliament do seem to recognise that moderate British MEPs could be of use once the exit talks with the UK have started. They resisted calls from some MEPs (like Marc Tarabella, a Belgian member of the Socialists and Democrats) to use the mid-term review of top posts in the European Parliament in January 2017 as an opportunity to remove British MEPs from positions of influence. As a result, members of the internal market and consumer protection committee (IMCO) and of the civil liberties, justice and home affairs committee (LIBE) re-elected Vicky Ford (Conservative) and Claude Moraes (Labour) respectively as their chairs. The two committees will have an important part to play in developing the Parliament's position on Britain's access to the single market, and on plugging the UK into justice and home affairs co-operation post-Brexit; British chairs could serve as a bridge between London and Brussels and help one side understand the priorities and concerns of the other.

“It would be unfair to label all British MEPs as stalking horses for Theresa May.”

Conclusions and recommendations

David Davis has promised that Westminster would have the same power to scrutinise the Brexit negotiations as the European Parliament. To achieve that aim, the British government will have to update parliamentarians regularly on its negotiating objectives, and share sensitive documents with them. The government would also have to be ready to take Parliament's recommendations on board. It would be a welcome departure from current practice, whereby the government does not discuss its negotiating objectives with Parliament ahead of the European Council meetings, and does not give parliamentary committees the European Commission's draft negotiating directives or any other negotiating documents not for public distribution.³¹ In its report on parliamentary scrutiny of Brexit, the Lords EU committee argued that it would be “unacceptable for the European Parliament to have greater rights of scrutiny over the negotiations on Brexit than Westminster.”³²

Unfortunately, British governments have not always delivered on their promises of openness, and have ignored sensible recommendations from parliamentary committees. Former prime minister David Cameron did nothing with the useful suggestion from the House of Lords EU Committee that he should propose so called ‘green cards’, allowing national parliaments to propose EU rules, rather than being limited to obstructing Commission proposals. Liam Fox, international trade secretary in May's government, promised the European scrutiny committee in October 2016 that the government would hold a debate about the EU-Canada Comprehensive Economic and Trade Agreement (CETA) on the floor of the House of Commons in November 2016; but that debate has yet to take place.³³ It would therefore be no surprise if the government argues that it cannot reveal its negotiating position to parliamentarians in advance, for fear that this would undermine its leverage with the EU-27.

31: Vaughne Miller, 'EU external agreements: EU and UK procedures', House of Commons Library, March 28th 2016.

32: House of Lords, European Union Committee, 'Brexit: Parliamentary scrutiny', 4th Report of Session 2016-17, October 20th 2016.

33: Dominic Webb, 'CETA: the EU-Canada free trade agreement', House of Commons Library, December 22nd 2016.

The government should not keep parliamentarians in the dark, however. MPs and peers might disagree about the prime minister's negotiating objectives, but they all want the divorce to do as little harm as possible to the British people. MPs might be willing to accept briefings from the government on so-called Privy Council terms, whereby participants promise not to reveal the content of the discussion. The European scrutiny committee has complained in the past that briefings behind closed doors undermine Commons transparency, but the committee on exiting the EU should be "more willing to accept that restrictions on what can be released publicly may be the price of getting the government to be more frank".³⁴

Theresa May might be reluctant to offer briefings on Privy Council terms to all members of the committee on exiting the EU, however. She will not want to share detailed information with anti-Brexit Labour and SNP MPs or with Liberal Democrats – who might try to obstruct her plans. On the other hand, in her New Year message May said that in the negotiations with the EU she would represent not only the interests of people who voted to leave but also of those who voted to remain in the EU. She will not sound credible if she only shares information about her Brexit strategy with those members of the committee who support her.

MPs who are not members of EU-related committees should also have the chance to familiarise themselves with Britain's negotiating position. Member-states, including the UK, opened reading rooms where national parliamentarians can view the consolidated texts setting out both the EU and American positions in the TTIP negotiations. The Department for Exiting the EU could make such a reading room available to MPs and peers in relation to the Brexit negotiations; parliamentarians would be able to review documents but not take them away or copy them.

Parliament might be able to convince the British government to be more open about the Brexit talks, but it is unlikely to get similar access to the EU's negotiating position. The British government will not be involved in the discussions of the EU-27 and, unless there are leaks, it will probably have no access to the documents they agree. The best hope for British parliamentarians is to see what they can find out about Brussels' objectives from their colleagues in the European Parliament. Peers from the Lords EU committee attended the European Parliament's January plenary session in Strasbourg and held meetings with, among others, MEPs from the Constitutional Affairs and Foreign Affairs Committees (committees which will ultimately have to evaluate the final text of the withdrawal treaty and any agreement on the future relationship between the UK and the

EU-27). MPs from the committee on exiting the EU and from the committee on international trade should copy the Lords, and liaise with their counterparts in the European Parliament.

MPs should also be more open to consulting their British colleagues in the European Parliament. MPs, peers and British MEPs meet twice a year in Brussels. All three chambers take turns in holding the meetings and preparing the agenda for them. It has not always been easy for parliamentary officials to pick topics for discussion that would be of equal interest to all participants. But a tripartite meeting in November 2016, devoted to Britain's withdrawal from the EU, led to a constructive discussion among all participants.³⁵ Parliamentarians should meet in this cross-party format more frequently, to exchange information about the progress of negotiations. They should also exploit their party links in Brussels. Some Labour MPs are travelling to Brussels to learn about the negotiating process and EU institutions' red lines in the talks. This will help them to hold the government to account during the negotiations. Conservatives should follow suit. They should understand that the centre of gravity of the Brexit talks is in Brussels and not in London.

“The European Parliament should avoid turf wars with other EU institutions over the Brexit negotiations.”

At the same time, Westminster should remember that parliamentarians in other member-states will be involved in the Brexit process, formally and informally. Article 50 stipulates that the European Parliament and the departing member-state should ratify the withdrawal agreement. But if the agreement covers policy areas in which the EU shares competences with member-states (for example transport or the environment) then it could also require national ratification. Article 50 is silent on this point. And even if no national ratification is needed, the national parliaments of the EU-27 will want to have a proper debate before their governments sign off on the final agreement in the Council of Ministers.

In addition, all 27 national parliaments (and some regional ones) will have to ratify any agreement on the future relationship between the EU and the UK that touches areas of shared competences. British parliamentarians should make contact with the MPs who lead other national parliaments' work on Brexit and learn more about how they plan to hold their executives to account. The French National Assembly, for example, has established a special committee on Brexit; and the

34: Agata Gostyńska-Jakubowska, 'What does the Supreme Court's ruling mean for British parliamentary sovereignty?', CER insight, January 25th 2017.

35: Interview with one participant of that meeting.

Dutch Tweede Kamer (lower house) has appointed two Brexit rapporteurs to liaise with the Dutch government, EU officials and MPs from other member-states and report back to the Kamer. A Westminster charm offensive in European capitals could have practical benefits in increasing mutual understanding. The UK might be leaving the EU but is not leaving Europe, and it should seek friendly relations in its neighbourhood.

Exit talks with the UK could also be an opportunity for the European Parliament to improve its popular standing. In 2016, 45 per cent of EU citizens said that they did not trust the European Parliament.³⁶ But some of them could change their mind if they see that MEPs are pushing for transparency in the exit negotiations and defending citizens' rights post-Brexit. MEPs should urge the European Commission to create a website where it could explain the objectives of the Brexit negotiations and say what it is doing to protect citizens' interests. Such a website could also be useful to the British people. Brexiters, including some in government, have been misinforming the public about Brexit. The Commission could have an opportunity to set the record straight.

But the Parliament cannot credibly call for greater transparency in the withdrawal talks if its own procedures are less than open. Guy Verhofstadt might be tempted to bypass British colleagues and hold briefings about the progress of the exit talks or about the Parliament's negotiating objectives behind closed doors with the leaders of major pro-EU groups. This would be understandable. After all, the British government is not exactly in a hurry to brief the EU on its own negotiating objectives. But Verhofstadt should resist that temptation,

and instead focus on showing that the European Parliament is a democratic body that wants to get the best result for all EU citizens.

For this reason, the European Parliament should also avoid turf wars with other EU institutions over the Brexit negotiations. By threatening to veto a withdrawal agreement, the Parliament might get more leverage over the member-states but it could also damage its reputation in the eyes of ordinary people. EU citizens expect EU institutions to focus on addressing real problems rather than wasting time on institutional squabbles.

Brexiters have long vilified MEPs as fat cats who conspire against British interests. Even pro-EU British MPs have done little to debunk this myth. The divorce could be an opportunity for MPs and MEPs to show that elected representatives can make constructive contributions in EU affairs, even in an area as complicated as Brexit. The temptation to make a show of breaking some china will be strong; but both the EU and the UK will benefit if national and European parliamentarians keep cool heads and focus on a smooth transition from the EU-28 to the EU-27.

This policy brief is part of a research programme supported by a grant from the Open Society Foundations.

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February 2017

³⁶: Public opinion in the European Union, Standard Eurobarometer, no 86, Autumn 2016.