

Parliaments in the European Union as the masters of membership in the club and its precise terms: The case of Brexit¹

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For the first time in European integration, a Member State will leave the EU. Such a withdrawal under Article 50 TEU (‘leaving the club’) is an institutional process related to EU membership alongside accession (‘entering the club’). This paper examines how the European Parliament and national parliaments can scrutinise withdrawal. Various initiatives and activities that have already been undertaken with respect to the evolving case of Brexit give a first glimpse of how the national parliaments and the European Parliament are important watchdogs or even veto players of ‘leaving the club’. They also reveal important asymmetries in parliamentary involvement. But instead of merely referring to Brexit, it is necessary to distinguish the withdrawal agreement under Article 50 TEU, an agreement about the ‘future relationship’ between the United Kingdom and the EU as well as minor changes to the EU Treaties that will be required by Brexit.

1 Introduction

The United Kingdom’s decision to leave is a difficult test for the EU. A legal provision (Article 50 TEU) exists for the withdrawal of a Member State, but it only provides a skeleton for the unfolding Brexit negotiations. The respective roles of the EU institutions are defined in Article 50 TEU in a general way, but the concrete procedures to deal with Brexit have only been taking shape slowly. Parliaments are likely to play a role in the Brexit process, too. The ‘new parliamentarism’ (Schmidt, 2016, pp. 18-23) has focused on the European Parliament in the EU in general (see e.g. Héritier, 2017; Héritier, Moury, Schoeller, Meissner, & Mota, 2015; Hix and Høyland, 2013). This paper argues that national parliaments and – as the case of Wallonia in the EU-Canada Comprehensive Economic and Trade Agreement (CETA) has shown (Beesley, 2016) – regional parliaments must also be taken into account when it comes to Brexit.

Accession and withdrawal are the two main processes related to EU membership. Even though they are central to European integration, the roles that national parliaments and the European Parliament play – especially in the latter of these two processes – have not been systematically researched until now. This paper develops a common framework for these two ‘membership-related’ processes and asks to what extent Europe’s parliaments (national parliaments and the European Parliament) are the ‘masters’ of membership in the club and its precise terms: To what extent are ‘membership-related’ processes in the EU subject to parliamentary scrutiny? Subsequently, different roles of parliamentary involvement (watchdog, veto player, negotiating party) are developed and the unfolding Brexit negotiations are examined as a case study.

2 ‘Membership-related’ processes and parliamentary involvement

Even if Commission President Jean-Claude Juncker rejects the metaphor of ‘the EU as a club’ and reportedly said to Theresa May over dinner in Downing Street in April 2017 that the EU was ‘not a golf club’ which members could leave at any time (Barker, 2017; Gutschker, 2017), the notion of describing Brexit as ‘the UK leaving the club’ has been widely used in the Brexit debate. The rules that are governing accession to the EU

¹ Paper prepared for the Thirteenth Workshop of Parliamentary Scholars and Parliamentarians, Wroxton College, Oxfordshire, 29-30 July 2017.

and withdrawal from the EU affect the ‘member statehood’ of a country in the EU as a union of Member States (Bickerton, 2012). ‘Member statehood’ distinguishes an EU Member State from a traditional nation-state: When the UK will have left the EU, it will ‘revert back to being a traditional nation-state’ (Bickerton, 2017, p. 48).

National parliaments have contributed to the process of European integration since its beginning. Even with the scope of its policies limited to coal and steel, one of its main institutions was a Parliamentary Assembly composed of national parliamentarians (Rittberger, 2005). Since 1979 this parliament has been composed of directly elected members. Now called European Parliament, it has been able to gradually extend its powers (Hix and Høyland, 2013). National parliaments have had to ratify all changes to the EU Treaties and to adapt their working methods in order to be able to scrutinise EU affairs (Norton, 1996; Raunio, 2014). Accession and withdrawal govern the status change of a country between ‘in’ or ‘out’. Article 49 TEU and Article 50 TEU contain the provisions for these membership-related processes through which a European state can become or cease to be a member of the EU, but accession and withdrawal ‘cannot be regarded [...] as the obverse and the reverse of the same coin’ (Tatham, 2012, p. 128). The involvement of parliaments, in which this paper is interested in, relates to the question about their level of participation in fundamental ‘membership-related’ issues of the EU. These membership-related processes are sometimes subject to specific rules (and parliamentary procedures)², but they often merely fall under the provisions for general EU affairs.

Withdrawal from the EU is a complex process. Triggering Article 50 TEU (the notification of the intention to withdraw) is the constitutive feature of withdrawal, not the agreement eventually reached after the negotiations. The agreement must be presented to the European Parliament for its consent (Article 50 (2) TEU) and the Council subsequently votes on the basis of a super-qualified majority³ without the representative of the withdrawing Member State taking part in the vote (Article 50 (4) TEU). The withdrawal agreement must be ratified by the withdrawing Member State, though not by the other Member States, as it is a bilateral international agreement between the EU and the withdrawing Member State. It is important to note that only the EU’s guidelines for the negotiations (on the basis of which the European Commission prepares the negotiation mandate) must be agreed by consensus in the European Council. The subsequent steps do little to create hurdles for an exit; decisions that can be taken by qualified majority and the two-year sunset clause of Article 50 (3) TEU are meant to facilitate the exit (Hillion, 2016, p. 6; Kreilinger, Becker, & Wolfstädter, 2017, pp. 9-10; Poptcheva, 2016, pp. 3-4).

The European Parliament, unlike individual Member States, has the right to veto the withdrawal agreement. The MEPs of the withdrawing Member State continue to participate fully in the European Parliament until the day their country leaves. The wording of Article 50 (4) TEU merely points out that the withdrawing Member State is to be excluded from decision-making in the European Council and the Council on the subject of its withdrawal (Poptcheva, 2016, pp. 3-4). How exactly the European Parliament is kept informed about the negotiations (and whether it is represented in the negotiation team) are issues that are to be clarified in case of an activation of Article 50 TEU (Hillion, 2014, p. 142; see also Stoll, 2017, pp. 15-16; Tatham, 2012, p. 150). Should the agreement collapse at some point during the negotiations, a ‘sunset clause’ specifies that the EU Treaties will cease to apply in the Member State concerned two years after the withdrawal declaration. However, pursuant to Article 50 (3) TEU, this deadline can be extended by a unanimous decision of the European Council acting in mutual agreement with the Member State concerned.

The influence of national parliaments on the negotiations pursuant to Article 50 TEU is limited. This fact makes the consent of the European Parliament even more important. However, discussions about Brexit in the European Council (and Council) are obviously subject to scrutiny procedures which exist in most national parliaments, e.g. to monitor the Head of State or Government before or after meetings of the European Council (Kreilinger, et al., 2017, p. 9; see also Wessels et al., 2012).

² An overview by the European Parliament’s Directorate for Relations with National Parliaments, for instance, finds that Poland is the only Member State in which specific rules for initiating a *withdrawal* from the EU exist. See Atzori (2017).

³ 72% of the Member States concerned (20/27) representing at least 65% of the population of the EU27.

3 What kind of involvement? Watchdog, veto player, negotiating party?

The parliaments of the EU are involved into these two membership-related processes in different ways. These roles can be constructed as ideal types of parliamentary involvement which can then be applied to parliaments in the EU's multi-level system – at the EU level (European Parliament), at the national level (national parliaments) and also at the regional level (regional parliaments in some Member States).

Firstly, parliaments can be *watchdogs*. When, for instance, national parliaments lack the powers to issue mandates, to amend, delay or veto bills, documents, reports or (international) agreements, they cannot actually shape policy beforehand, but as a 'watchdog' they still exercise control by trying to hold the government accountable (Rozenberg and Heffler, 2015, p. 32). This mainly happens ex-post and can also be an effective way of parliamentary scrutiny: The existence of an accountability mechanism is expected to have an effect on the executive actors who will have to defend in the national parliament the position taken at the EU level (Crum and Curtin, 2015, p. 72). National parliaments that are *watchdogs* do not have mandating powers; their main objective with this type of scrutiny is politics rather than policy, allowing to criticise the government and to increase visibility and publicity (de Wilde and Raunio, 2015, p. 676; Wessels, et al., 2012, p. 42). In EU affairs there are fewer possibilities for actually sanctioning the national government ex-post than in domestic affairs, because once a final decision has been taken at the European level, such a decision is more difficult to reverse (Auel, 2007, p. 502). The European Parliament generally acts as a *watchdog* over the European Commission, but accountability relationship with any executive actors at the EU level exists for regional parliaments.

Secondly, parliaments can be *veto players*. Jean Blondel (1970) used the term 'viscosity' for the powers of a legislature to delay or reject proposals in the policy process. Institutions with such powers have more recently been called veto players (Tsebelis, 2002). Such powers can be an effective bargaining tool in international negotiations, including in membership-related processes in the EU, because governments whose parliaments have veto powers can expect to obtain concessions from their partners. International negotiations resemble a two-level game (Putnam, 1988), whose results, according to the 'Paradox of Weakness' (Schelling, 1960), are likely to favour domestically weak(er) governments. Severe conflict between a legislature and its executive is, however, unlikely in fused power systems of almost all EU Member States where the executive can control policy-making as long as it controls the majority in parliament; the most significant power of legislatures of separated powers systems (like the European Parliament) is the negative threat of *veto* (Kreppel, 2011, pp. 169-173).

Thirdly, parliaments can be *negotiating parties*. Beyond the two-level game and being a veto player, they can actually sit at the negotiating table. When it comes to changes to the EU Treaties with a European Convention following Article 48 (2)-(5) TEU, both national parliaments and the European Parliament would be directly involved via the members that they would appoint to participate in the deliberations of that body.

4 National parliaments, the European Parliament and Brexit

When the UK government notified the European Council on 29 March 2017 about its intention to withdraw from the EU, the 'Brexit negotiations' were (finally) triggered. They formally started on 19 June 2017. In order to examine the legal and institutional context for national parliaments and the European Parliament in a precise manner, three negotiating tracks must be distinguished (Kreilinger, et al., 2017; see also Stoll, 2017, pp. 10-12), even though they will be *politically* linked. Despite not being the prevailing legal view, the outcome might also be only *one* single agreement that regulates withdrawal and future relationship (Eeckhout and Frantziou, 2017, pp. 716-717).

National parliaments are 'by no means in the dark about Brexit negotiations' (Jancic, 2017) and the European Parliament is directly involved, but they have different roles in the three negotiating tracks. Parliaments have had the opportunity to express their preferences about how they would like to be involved into the Brexit process and have already undertaken activities in late 2016 and early 2017.

4.1 The withdrawal on the basis of Article 50 TEU

The withdrawal agreement itself shall cover issues such as citizens' rights, the financial settlement and the Irish border, but Article 50 (2) TEU also requires 'taking account of the framework' for a future relationship with the Union in the arrangements for withdrawal. According to the Guidelines adopted by the European Council on 29 April 2017,

'an overall understanding on the framework for the future relationship should be identified during a second phase of the negotiations under Article 50 TEU [...] in preliminary and preparatory discussions to this end [...], as soon as the European Council decides that sufficient progress has been made in the first phase towards reaching a satisfactory agreement on the arrangements for an orderly withdrawal.' (European Council, 2017, p. 4)

This two-step process is not foreseen in Article 50 TEU. It creates an additional hurdle in the negotiations on the UK's withdrawal from the EU as the decision on sufficient progress will have to be taken by consensus among the 27 Heads of State or Government. This changes the institutional balance and establishes *de facto* a veto possibility, which might affect the negotiations. The European Parliament agrees that 'should substantial progress be made towards a withdrawal agreement then talks could start on possible transitional arrangements on the basis of the intended framework for the United Kingdom's future relationship with the European Union' (European Parliament, 2017b, p. 5). Guy Verhofstadt said during a meeting of the European Parliament's Constitutional affairs committee that the European Parliament would put forward its own assessment as to whether 'sufficient progress' had been made.⁴

In principle, individual Member States or their national parliaments will not have a veto right over the withdrawal agreement. However, it cannot be ruled out that the withdrawal agreement reaches beyond 'EU-only' competences (i.e. that it becomes a 'mixed agreement') or might pre-determine the future relationship with the UK to an extent that would possibly require national ratification, e.g. in Germany, according to a report in POLITICO that cited a study of the Research Service of the German Bundestag which raises this possibility (Delcker, 2017). National parliaments are, in any case, able and expected to follow and scrutinise the negotiations under Article 50 TEU as watchdogs (see also Hoerner, 2017; Kreiling, 2016).

Already directly after the UK referendum the European Parliament demanded to be fully involved at all stages of the procedure regarding the withdrawal agreement and any future relationship (European Parliament, 2016). It wanted to extend its robust procedures for the ex-ante scrutiny of international agreements to the withdrawal negotiations. In addition to being a *veto player* over the withdrawal agreement with the UK (Article 50 (2) TEU), the European Parliament claimed a seat at the table and direct influence on the negotiations, but national governments did not agree to this demand (European Council, 2016). It appointed Guy Verhofstadt as the coordinator of its activities and representative towards the other institutions in the process. He regularly reports to and gets input from the European Parliament's Conference of Presidents. Representatives of the European Parliament will be invited to preparatory meetings for European Council meetings and Michel Barnier is 'invited to keep the European Parliament closely and regularly informed throughout the negotiation' (European Council, 2016, p. 3). In addition to that, the Council Presidency informs and exchanges with the European Parliament before and after each meeting of the General Affairs Council. Information practices are likely to follow those established in the context of trade agreements and other international agreements on the basis of Articles 207 and 218 TFEU (Stoll, 2017, pp. 14-16). It is reasonable to assume that Guy Verhofstadt will be able to speak with the Council and the Commission 'knowing that he will be listened to, given the EP's ultimate power to approve or reject the deal' (Corbett, 2016). In addition to that, following normal procedures, the President of the European Parliament is invited to be heard at the beginning of European Council meetings (European Council, 2016, p. 3). As input to the negotiation guidelines by the European Council, the European Parliament adopted a resolution on 5 April 2017 which reiterates that 'full involvement of the European Parliament is a necessary precondition for it to give its consent' (European Parliament, 2017b, p. 5). The resolution puts down general principles for the negotiations, reserves the right to adopt further resolutions and '[e]xpects the European Council to take this

⁴ Statement by Guy Verhofstadt at the meeting of the European Parliament's Constitutional affairs committee on 3 May 2017.

into account when adopting its guidelines defining the framework for negotiations’ (European Parliament, 2017b, p. 8). The Constitutional affairs committee of the European Parliament will be the responsible body for the consent procedure on the outcome of the negotiations (COSAC, 2017, p. 19).

Several national parliaments, in reaction to the preparation of negotiations between the EU-27 and the UK, have set up special bodies to accompany the process. Examples include e.g. fact-finding enquiries in the French National Assembly (Assemblée nationale, 2017), the French Senate and the Italian Camera dei deputati, or special Brexit committees and sub-committees in the Danish Folketing and the Spanish Cortes Generales. Other national parliaments appointed special Brexit rapporteurs (e.g. Portugal and the Netherlands).⁵

In particular, the draft negotiating directives adopted on 29 April 2017 (European Council, 2017) and the draft negotiating mandate adopted by the General Affairs Council on 22 May 2017 (Council of the European Union, 2017) provided national parliaments with opportunities to articulate their positions. On 27 April 2017, for instance, the German Bundestag adopted a decision⁶, tabled by the governing parties CDU/CSU and SPD. The news agency Bloomberg referred to it as ‘Germany Tightens Screws on U.K. in Bundestag Brexit Demands’ (Delfs, Buerger, & Jennen, 2017). The decision includes, among other things, a direct reference to the planned two-stage negotiation process – ‘beginning with matters relating to Britain’s orderly withdrawal then moving on to talks about its future relationship with the EU’ (Deutscher Bundestag, 2017, p. 2).

The German Bundestag’s decision also sets out conditions for future access to the single market once the UK leaves the EU, and imposes demands for the shape and duration of any transitional deal. It rules out any deal that would allow access to the single market for specific industries. Any form of partnership must balance rights and obligations and any future agreement must prevent unfair competition, in areas such as corporate taxes, employee rights, the environment standards and financial markets. It adds that the Bundestag will ‘exercise close parliamentary scrutiny of the negotiations’ and ‘reserves the right to deliver further opinions on this matter’ (Deutscher Bundestag, 2017, p. 2). One paragraph, devoted to ‘transitional solutions’, says that they should be a last resort for a limited, defined period of time and only be agreed if it became clear that negotiating deadlines would not be met and ‘as means to averting serious upheaval for instance in the financial markets’ (Deutscher Bundestag, 2017, p. 2). Such transitional arrangements would have to meet the same criteria as the final agreement on the future relationship. The United Kingdom must not be allowed to use such transitional arrangements to enter into ‘unfair’ competition and EU state-aid rules as well as competition controls must therefore continue to apply.

According to the 27th Bi-annual report of COSAC, there are (only) ten national parliaments and chambers (out of a total of 38 respondents) that issued a resolution or Brexit or intended to do so (COSAC, 2017, p. 19). But other replies to the questionnaire leave no doubt that they intend to fulfil a *watchdog* role.

4.2 Negotiations about the future relationship

The withdrawal agreement and a possible separate agreement on the future relationship are closely connected with regard to time, content, and political terms. As envisaged in Article 50 TEU, the withdrawal negotiations should therefore already take into account and discuss the ‘framework for its future relationship’. If the negotiators develop a common idea about the future relationship during the withdrawal negotiations, the forthcoming framework for this relationship could already be specified in this agreement (Kreiling, et al., 2017, pp. 11-12). The passages in question would then go beyond vague expressions, such as ‘close partner’, and name a specific option – possibly even a timetable (Duff, 2016, p. 8). Such elements in the withdrawal agreement would to some extent anticipate the results of the negotiations about the future relationship.

⁵ Own research and COSAC, 2017, p. 18.

⁶ Deutscher Bundestag: Entschließungsantrag der Fraktionen der CDU/CSU und SPD zu der Abgabe einer Regierungserklärung durch die Bundeskanzlerin zum Sondertreffen des Europäischen Rates zu 27 am 29. April 2017 in Brüssel, Drucksache 18/12135 vom 27.04.2017. See, in English: Deutscher Bundestag (2017).

The legal framework for the European Parliament's information rights in the case of EU negotiations on free trade agreements and other international accords with non-EU states can be found in the inter-institutional framework agreement of 2010. It puts the European Parliament on equal footing with the Council. The European Parliament receives amendments to the previously adopted negotiating mandate, drafts of the negotiating texts, and the final versions of negotiated provisions of the agreement. It is important to note that since the entry-into-force of the Lisbon Treaty in 2009, the European Parliament has not shied away from vetoing international agreements such as SWIFT or ACTA (Kreilinger, 2012; Meissner, 2016).

The procedural requirements for this agreement depend on the kind of future relationship that the UK and the EU want to create:

- A free trade agreement or another form of association between the UK and the EU-27 would need parliamentary consent. Opinion 2/15 of the Court of Justice of the EU on the EU-Singapore FTA prescribes that FTAs that do not fall within the exclusive competence of the EU cannot be concluded by the EU alone (Court of Justice of the European Union, 2017). Such a 'mixed agreement' would have to be ratified in every single member state on the basis of national constitutional provisions. Thus 'the power very much lies in the camp of the EU [...] and at least 28 veto players' (de Witte, 2017, p. 3).
- If the United Kingdom wishes to join the EEA and EFTA, the non-EU Member States, which are parties to this agreement, would have to be included. Another bilateral relationship between the EU and the United Kingdom would most likely also constitute a 'mixed agreement' and not only touch on areas that the EU is competent to regulate itself. Therefore, it would also require national ratification.

The case of CETA shows how national parliaments and even some regional parliaments are *veto players* when it comes to the future relationship. After its decision to treat CETA as a 'mixed agreement', the Commission may take a similar view on a free trade agreement between the EU and the UK. EU chief negotiator Michel Barnier stressed in his address to Members of national parliaments from all EU Member States in May 2017 that

'[w]hatever legal form which will frame this new partnership in all its dimensions, it will in any case be a so-called "mixed" agreement, which each of your Parliaments will have to ratify, in accordance with your constitutional rules. With the European Parliament, you will have the last word.' (European Commission, 2017)

Thus contrary to the case of the withdrawal agreement, not only Westminster and the European Parliament will have veto power over an agreement about the future relationship between the UK and the EU-27, but other parliaments – national or even regional – matter, too, when it comes to the future relationship (Kreilinger, 2016). EU chief negotiator Michel Barnier sees a necessity for national parliaments to follow the negotiations closely: 'It is necessary that your parliaments follow closely the entire negotiating process, far beyond your legal responsibility in the final ratification' (European Commission, 2017).

While the *veto player* role of national parliaments is not entirely clear yet, members of national parliaments voting on mixed agreements 'should enjoy the same high level of access to information as MEPs' (European Parliament, 2017a). It is mainly the task of national governments to ensure that national parliaments receive adequate and timely information for their *watchdog* role during the negotiations.⁷ The European Parliament has strong powers as a *watchdog* and a *veto player*, but – like national parliaments – it is not a *negotiating party*.

4.3 Necessary changes to the EU Treaties

Changes in the EU Treaties might be unavoidable in order to complete the Brexit process (Kreilinger, et al., 2017, pp. 15-16; Novak and Tell Cremandes, 2017, pp. 40-44; Stoll, 2017, p. 12). According to the prevailing interpretation of the EU Treaties even small formal amendments require (ordinary) treaty revision as specified in Article 48 (2)-(5) TEU, since the withdrawal agreement of Article 50 TEU or an international agreement cannot introduce a change in primary law (Craig, 2010, p. 401). Three kinds of formal adjustments will have

⁷ National parliaments also see national governments as their primary source of information in the withdrawal negotiations. See COSAC, 2017, p. 19.

to be made, and will require the unanimous approval of the 27 Member States (see Fabbrini, 2016). The resolution of the European Parliament of 5 April 2017 also points out that a ‘review and adjustment of Union law may be necessary to take account of the United Kingdom’s withdrawal’ (European Parliament, 2017b, p. 6). If nothing else, the territorial scope of the Treaties defined in Article 52 TEU and all references to the United Kingdom as a Member State in the EU Treaties will have to be changed in the wake of the UK’s withdrawal (Poptcheva, 2016, p. 4). Furthermore, EU institutions and Member States will have to adopt new rules and regulations governing the distribution of seats in the European Parliament. Moreover, the forthcoming withdrawal will impact the current and forthcoming Multiannual Financial Framework.

For the changes to the EU Treaties, both the European Parliament and national parliaments will be *negotiating parties*, since such changes require an ordinary treaty revision (Article 48 (2)-(5) TEU) during which MEPs and MPs are directly involved following the Convention method. Any changes to the EU Treaties subsequently need the consent of the European Parliament and have to be ratified according to national constitutional provisions (national parliaments as *veto players*), possibly involving regional parliaments and referendums in EU Member States. Parliaments at all levels will act as *watchdogs*.

4.4 Discussion and Summary

The preliminary analysis of Brexit-related parliamentary preferences and activities in this paper suggests that these are rooted in specific political and constitutional contexts. They are, however, a potential threat to the EU’s cohesion: a deficit in parliamentary participation in one country could lead to a lack of ownership over such membership-related decisions.

Future research should continue to distinguish the different negotiation tracks when analysing the role of national parliaments and the European Parliament. ‘While national parliaments can be seen as *watchdogs* related to the (technical) withdrawal agreement, they are genuine *veto players* when it comes to the “soft” versions of Brexit’ (Kreilinger, 2016). The key question regarding the *veto player* role is whether an agreement is a ‘mixed agreement’ or a ‘EU-only’ agreement. The opinion on the EU-Singapore FTA (Court of Justice of the European Union, 2017) does not give a clear-cut response as diverging assessments show (Burchard and Marks, 2017). A second Wallonia – reference to the Belgian region that nearly derailed CETA in October 2016 – cannot be excluded. Parliaments at all levels can be *watchdogs* over the different negotiation tracks, but the European Parliament and national parliaments will be *negotiating parties* for treaty change under the Convention method (see Table 1, below).

5 Conclusion

After discussing the ‘entering the club’ and ‘leaving the club’ and referring to the EU’s parliaments as ‘masters of membership’, this paper has shown that national parliaments and the European Parliament have started to dedicate time and resources to the unfolding Brexit negotiations. The withdrawal of the UK is a big quasi-constitutional or at least a fundamental ‘membership-related’ moment that is being scrutinised by national parliaments and the European Parliament.

The European Parliament is wary against Member States and many national parliaments have started to actively use their (domestic) scrutiny possibilities. It is important to note that the organisation of parliamentary scrutiny over Brexit is still an ongoing process:

‘The European Parliament needs to organise itself in a way that its contribution to the Brexit negotiations is efficient and, where necessary, discreet. It will be aware that its privileged access to the Article 50 exercise is regarded jealously by some national parliaments, especially in Berlin and The Hague but also, ironically, at Westminster.’ (Duff, 2017, p. 4)

But a great risk for parliaments’ veto power (whose precise scope will depend on the legal instruments chosen) are the timeline and the sunset clause of 30 March 2019 – two years after the triggering of Article 50

TEU: They will hesitate to use their veto power and reject the agreement (Eeckhout and Frantziou, 2017, pp. 729-731) even if there might be good reasons to employ it, when the alternative is ‘no deal’ with a disorderly Brexit and the absence of any transitional arrangements. There are also signs of asymmetries between national parliaments, which are a major concern as they could threaten the unity of the EU-27. It is necessary for national parliaments to be proactive in cases like Brexit when their traditional ex-post scrutinising role is not sufficient (see also Wessels, et al., 2012): EU legislation with specific Brexit-related arrangements will come late, possibly only after the negotiations have been completed.

A possible way to address asymmetries and to create a level playing field (of information) among parliaments would be to strengthen interparliamentary cooperation between the European affairs committees of national parliaments and the Constitutional affairs committee of the European Parliament, for instance by creating a ‘working group’ on Brexit in COSAC (Kreilinger, 2016), where Members of the EU-27 national parliaments and the European Parliament would regularly meet in order to exchange information on the Brexit negotiations. In a draft opinion, the European Parliament’s International Trade committee also ‘[e]ncourages the use of interparliamentary working groups on trade, in particular in relation to the field of consumer protection and the environment’ (European Parliament, 2017a, p. 3). The 57th Bi-annual plenary meeting of COSAC in May 2017 at which EU chief negotiator Michel Barnier gave a speech and answered questions from MPs is an encouraging sign in that direction.

Table 1: What roles for the EU’s parliaments the Brexit negotiations?

Negotiation track		ROLE		
		WATCHDOG	VETO PLAYER	NEGOTIATING PARTY
Parliament				
Withdrawal agreement	EP	✓	✓	no
	National Parliaments	✓	(no) *	no
	Regional Parliaments	?	(no) *	no
Agreement about future relationship**	EP	✓	✓	no
	National Parliaments	✓	(✓) *	no
	Regional Parliaments	?	(some) *	no
Treaty change***	EP	✓	✓	✓ (Convention)
	National Parliaments	✓	✓	✓ (Convention)
	Regional Parliaments	?	(some)	no

* If considered a ‘mixed agreement’ (*unlikely*, but not excluded, for the withdrawal agreement; *likely* for an agreement about the future relationship), the agreement would require ratification in Member States according to their own constitutional requirements.

** The national ratification of a ‘mixed agreement’ involves regional parliaments (Belgium); referendums are possible over international agreements (The Netherlands).

*** In some EU Member States, the national ratification involves regional parliaments (Belgium); referendums might be required (Denmark, Ireland) or possible to ratify Treaty change.

Source: Own elaboration.

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