The EU’s Response to Brexit
United and Effective

Brigid Laffan · Stefan Telle
Palgrave Studies in European Union Politics

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Brigid dedicates her contribution to this joint effort to golden haired Aida.

Stefan dedicates his contribution to Daniela.
Foreword

Brexit is and continues to be a historic tragedy for all who believe in the political, economic and social benefits of European integration. The unprecedented departure of a Member State from the EU is at the same time a watershed moment in European history which has deeply transformed primarily the United Kingdom, but also the European Union, now often called EU27. How far this transformation can and will eventually go is still subject to some debate, also in the light of more recent crises and challenges which the EU is facing. With this very well-researched book, Brigid Laffan and Stefan Telle make a highly valuable and very persuasive contribution to this debate and show that in response to Brexit, the EU re-invented itself in many respects.

Far from being just a recount of the technicalities of the Brexit negotiations, Brigid Laffan and Stefan Telle seek to place the techniques, tactics and procedures of these negotiations into the broader context of EU political strategy and framing. They make very clear that Brexit was not just another negotiation for the EU and not only about economics, but rather “a constitutional and even existential moment where the EU’s heart and soul are at stake”, as European Commission President Jean-Claude Juncker often said. Today, it may be almost forgotten, but in the wake of the Brexit referendum on 23 June 2016, the danger of internal divisions or even of an unravelling of the EU was very real. It took experienced political leaders with clarity of vision, political experience and a
lot of courage to keep the Union not only together, but to strengthen its
unity and its attractiveness for the future.

I recall one particularly relevant meeting for the EU’s strategy on
Brexit in mid-July 2016 that confirms the overall assessment of Brigid
Laffan and Stefan Telle. This meeting took place not in Europe, but on
the other side of the planet, during the Asia-Europe summit in Ulaan-
baatar, Mongolia in summer 2016. It is one of the huge advantages of
the very active role played by the EU in the modern rules-based interna-
tional system that its political leaders are meeting not only every six to
eight weeks at formal or informal meetings of the European Council, but
in addition at many international summits with our transatlantic allies,
our partners in Latin America, in Africa and in Asia. The Asia-Europe
meeting in Ulaanbaatar from 15–16 July 2016 was one where next to
the political leaders of 20 Asian countries, practically all EU Heads of
State or Government, the Presidents of the European Commission and of
the European Council, the EU’s High Representative and many foreign
ministers were present. It was thus also a first occasion for informal meet-
ings among EU leaders at the margins of the summit to discuss, beyond
the immediate responses already given to the Brexit referendum on 24
and 29 June 2016, the EU’s medium-to-long-term strategy. It was in a
strongly air-conditioned hotel room in Ulaanbaatar, over many bottles of
coca cola, that European Council President Donald Tusk, German Chan-
cellar Angela Merkel, Dutch Prime Minister Mark Rutte (his country held
the rotating presidency of the Council in the first half of 2016), Slovak
Prime Minister Robert Fico (his country held the rotating presidency of
the Council in the second half of 2016) and European Commission Presi-
dent Jean-Claude Juncker (my boss at the time) brainstormed about what
the EU should do next as regards Brexit. At that moment, it was already
clear that it would take quite some time until the UK would formally
notify its request under Article 50 of the Treaty on European Union to
leave the EU (in the end, this would only happen in March 2017). It was
clear politically that the EU could not just wait and leave the initiative to
the UK government on what do with Brexit. After years of negotiations
with Britain on opt-outs, special solutions, carve-outs and even a New
Settlement for the UK agreed by all EU leaders in February 2016, the
EU could no longer just respond to British requests as in the past, but
now had to get itself into the driving seat of events.
After some discussion, consensus emerged on one important point: Brexit must not become the dominant narrative of the EU for the coming years. “Brexit is a negative story, and now with the referendum result, we need to put this behind us.” “The EU is much more than Brexit.” “Brexit must not pollute the important work we, as EU, will have to do in the years to come on trade, climate change, digitalization, migration, security etc.”. These were some of the sentences that I heard first from leaders in Ulaanbaatar, and that later should be repeated time and again. The result of the Ulaanbaatar meeting were two important taskings for the President of the European Commission: First of all, Juncker was asked to develop over the summer, with his closest advisers and in consultation with all capitals, a plan for a forward-looking, positive reform agenda for the EU that he should announce in this State of the Union speech, scheduled to be delivered before the European Parliament on 14 September 2016. Two days after the speech, the Slovak Presidency would convene the leaders of the EU27 for their first informal summit without the UK in Bratislava, the capital of Slovakia, where they should endorse Juncker’s positive agenda, thereby demonstrating the unity of the EU27 behind a common agenda for the future. Secondly, Juncker was asked to create clearly separate structures in the Commission to insulate the preparation and conduct of the Brexit negotiations from the Commission’s work on the EU’s positive agenda. Capitals would do the same in the offices of the Presidents and Prime Ministers of the Member States. This would help ensuring that the work of EU leaders could concentrate chiefly on delivering the positive agenda that would be decisive for the future attractiveness of the Union. All leaders would keep of course a close eye on the Brexit developments but would not allow this subject to distract them from, pollute or dominate their common positive EU agenda.

Another issue was more controversially discussed during the meeting in Mongolia. Some argued that discretely, another attempt should still be made to convince Britain to remain in the EU. Others were strictly against, as the New Settlement of February 2016 had already been more than the EU should have reasonably given to the UK, and this with zero effect for lack of political leadership in the UK. It was President Juncker who solved this disagreement with a humorist comparison: “Let me tell you something from my personal experience”, he said. “When a girl leaves you, there are two ways to get her back. You can go down on your knees. Or you can look into another direction and show that you can very well live without her. In my experience, the second way
has always worked better.” With some laughter, it was agreed that the clear focus should for now be on the positive EU agenda to be developed by the Commission President, while of course one should check from time to time whether the British authorities were really determined to go through with Brexit and all the harm that it would do to Britain’s reputation and economy. Notably Presidents Tusk and Juncker underlined the EU’s historic responsibility in this respect. The referendum result had of course to be respected. But the result had been very close, with 52 to 48 per cent. If Britain wanted to leave the EU, nobody could or should stop them. But if this course of action should ever be questioned within the UK, the EU should not ignore this. “We will not kick them out if they should ever consider reversing their unfortunate decision during the process”, this was the clear common understanding at the Ulaanbaatar meeting.

It is remarkable that all the key points agreed in Mongolia remained an integral part of the EU’s political strategy on and framing of Brexit until the eventual conclusion of the Withdrawal Agreement in December 2020, prepared by the Commission’s dedicated and very hard-working Article 50 Task Force. With a lot of efforts, the EU27 delivered during this time strongly on the positive agenda outlined in President Juncker’s well-prepared State of the Union speech (in which Brexit deliberately was not mentioned once)\(^1\) that became later known as the Bratislava agenda. The successful conclusion of a very important trade agreement with Japan, the ratification of the Paris Agreement on climate change, a project to deliver free wireless internet to local authorities across Europe, the historic launch of the Permanent Structured Cooperation in defense matters, the transformation of the agency Frontex into a more powerful European Border and Coast Guard with a staff of up to 10,000 in European uniforms, the creation of a European Solidarity Corps for young volunteers—all this was done to make the EU more attractive to its citizens. And it was done in very good and often remarkably swift agreement between the European Commission, the European Parliament and all 27 Member States.

The unity of the EU27 and of the EU institutions during the Brexit negotiations is often praised. It was however far from self-evident, but the result of a lot of hard work and discipline. The impressive unity did not mean that there were not from time to time different opinions or diverging interests on the EU side. There were indeed moments when an important leader questioned whether the “Irish question” really needed to be solved in phase one of the negotiations. There were moments when not all saw that a satisfactory solution of the “Gibraltar question” was of crucial importance not only to Spain, but to the EU27. During such moments, it was certainly very helpful that President Juncker, as ultimate political leader of the Brexit negotiations, regularly intervened and found sound solutions, on the basis of his vast experience in European politics, his unique political network and the premise that always had shaped his political approach, and which he used to formulate as follows: “There are no big and small countries in the EU, no more or less important capitals. This is the strength of the EU, that all have a say, that all are heard, and all are equally respected, whether they call from Malta or from Berlin. This is particularly the case when it comes to Brexit. They always argue with themselves and tear each other apart in London. We should always come to respectful agreement amongst ourselves in Brussels as we are stronger together.”

Twice during the Brexit negotiations, the issue of a possible stop to or reversal of Brexit came to the table of the European Commission President. The first time was during the G7 meeting in Canada on 8/9 June 2018, when US President Donald Trump shocked world leaders gathered in La Malbaie with his attacks on the rules-based international system, his cancellation of the prepared G7 statement and his open friendliness to Russia and President Putin. When Trump departed early from the G7 meeting, the remaining leaders, still shaken by the events and the harsh tone used by the US President, sat together on the terrasse of the conference hotel. UK Prime Minister Theresa May and European Commission President Jean-Claude Juncker looked each other in the eyes and, without many words, understood that notably in the current geopolitical context, Brexit seemed like a truly foolish idea. They knew: While Russia poisoned the Skripal family on UK territory in Salisbury with the Novichok nerve agent and while the US President openly called into question the global peace and security order, the EU and the UK would be well advised to
stand together, and not separately. As a result, I was tasked by President Juncker to explore, in a working lunch later this month in Brussels with David Lidington, then Deputy to Prime Minister May, whether we could not postpone Brexit for five years and in the meantime work on a new “European Security Council” that included the UK and reinforced the European response to the increasing threat from Russia. From today’s perspective even more than at the time, it was certainly worth trying. Regrettably, Prime Minister May’s government was already too much weakened at home at the time to be able to change course.

The second time that the issue of a reversal of Brexit came to the table of the Commission President was at the end of December 2018. In spite of many compromises and openings on the EU’s side, Prime Minister May had been unable to win over a majority in the House of Commons to get the Withdrawal Agreement, negotiated with the EU, ratified. On Christmas eve, Prime Minister May called President Juncker—with whom she was on very good, mutually respectful terms—and asked him to help her to get an extension of the Article 50 deadline, which at the time ended on 29 March 2019. I was tasked by President Juncker to discretely meet Prime Minister May’s sherpa Olly Robbins, with whom I had developed a trusted relationship, and we sat together in Brussels on the second day of January 2019. Together, we prepared what was necessary to ensure an extension of the Brexit deadline, which later was agreed by the UK and the EU27. In the documents we prepared, we left the length of the extension open, and both argued in our own camps for a long deadline to help Prime Minister May to get the Withdrawal Agreement ratified. Until that moment, no serious talks on this had been held between Prime Minister May and Her Majesty’s opposition. It was clear to us that while in the British constitutional system such talks were highly unusual, they were now very necessary on the Withdrawal Agreement in view of the strong position of the hardline Brexiteers in the Prime Minister’s own party. To give time for this, Olly Robbins and I discussed an extension until at least the end of 2019 or even beyond. In contrast to others, President Juncker was very open to this idea. “If Britain is unable to leave, we will certainly

2 David Lidington himself referred to this working lunch towards the UK media, see (in the usual sensational style of the UK tabloids): https://www.mirror.co.uk/news/politics/top-eu-chief-made-uk-18333990.
not kick them out by being bureaucratic. If they cannot leave, we will be generous and extend the deadline, if needed for five years. History is watching us”, he said repeatedly, while always keeping the geopolitical context (Putin and Trump) in mind. On 21 March 2019, the European Council agreed an extension, but only until 22 May 2019. Thereafter, the European Council had to prolong the extension twice, in the end until 31 January 2020, the date by which the Withdrawal Agreement could finally be ratified. However, this now took place under a quite different, less constructive Prime Minister who had insisted on a revised Irish Protocol that certainly was less helpful to calming the situation in Northern Ireland than the one initially negotiated between Prime Minister May and the Commission. History will be the judge if a longer extension, as envisaged by President Juncker, could have avoided this result.

I recall these events as they help to underpin the main conclusion of the present analysis of Brigid Laffan and Stefan Telle: The EU certainly maintained its unity and achieved its objectives in the Brexit negotiations because of the technical expertise, hard work and excellence of the dedicated Commission’s Article 50 Task Force and the distinctive institutional ecology created to manage these negotiations together with the Council and the European Parliament. The EU however also succeeded because of a clear common understanding, created right after the Brexit referendum at the highest level of the EU27, on the EU’s political strategy and framing that was firmly maintained throughout the negotiations. A very good and close cooperation between the President of the European Commission and the President of the European Council, their Heads of Cabinet and their Secretaries-General was in my view instrumental in order to achieve this result. Even though they had their occasional disagreements, notably on migration policy, Presidents Juncker and Tusk always saw eye to eye on Brexit and, together with their closest teams, managed to act as one during this challenging period, notably when it came to the controversial issue of an extension of the Article 50 deadline.

I am very grateful to Brigid Laffan and Stefan Telle to document, with their impressive book and their sound analysis, the main lesson of the effective work of the EU on Brexit. On the big strategic issues in our world, the EU will be strong, united and successful if the key players work
together hand in hand, putting common purpose ahead of institutional rivalries and individual economic interests. If we do this, we have nothing to fear.

December 2022

Martin Selmayr
Head of Cabinet of the President of the European Commission 2014–2018, Secretary-General of the European Commission 2018/2019, (writing here in a personal capacity without necessarily reflecting the official views of the European Commission)
This volume began life in 2019 at the European University Institute (EUI), where Brigid was Director of the Robert Schuman Centre for Advanced Studies and Stefan was a Research Fellow on the H2020 project InDivEU on differentiated European integration. Brigid vividly remembers 24 June 2016, when together with Gary Marks and Liesbet Hooghe she held an impromptu seminar at the EUI before a packed audience on the outcome of the referendum. The idea for a book was a result of an invitation for Brigid to deliver the 2019 JCMS Annual Lecture at the EP on 4 April 2019 entitled “How the EU27 Came to Be.” Brigid realised that there was a compelling reason to both widen and deepen research on how the EU as a compound polity addressed the challenge of a large member state leaving the EU, the first in the history of European Integration. This dovetailed with the work of the InDivEU research project because the UK was morphing from an opt-out country in the EU to a third country. In 2020, Brigid and Stefan embarked on the research for this volume, which involved analysing myriad official documents and interviewing many of those involved in handling this shock to the EU system. Despite the outcome of the referendum, the EU was determined to protect itself against contagion and any undermining of

1 Laffan B, ‘How the EU 27 Came to Be,’ JCMS Annual Review, 57: S1, 13–27.
either the single market or the EU polity. The Brexit case reveals an EU that is robust and capable of mobilising its collective capacity and clout in defence of the model of integration and deep interdependence that it has nurtured for 60 years.

Florence, Italy

Brigid Laffan
Stefan Telle
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We would like to thank our interview partners, whose readiness to share their first-hand insights into how the EU responded to Brexit provided us with an indispensable resource to make this book. In addition, we would like to thank the administrative staff at the Robert Schuman Centre for Advanced Studies for their tireless support. In October 2020, Brigid presented an early version of the book at the Yves Mény Annual Lecture. We thank the audience for their helpful comments. Special thanks go to Bobby McDonagh, Georg Riekeles, Frank Schimmelfennig, Paul Gillespie, Declan Kelleher and Liesbet Hooghe, who kindly commented on the manuscript. Their inputs enabled us to improve our argument and to keep the text focused. We thank David Barnes for his quick and competent language editing and Sarah Bernstein who so effectively set up the Zoom interviews. The making of the book benefited greatly from the stimulating research conducted in the Horizon 2020 projects “Integrating Diversity in the European Union (InDivEU)” and “Differentiation: Clustering Excellence (DiCE)”. Stefan thanks the public library of Hengelo, which kept its doors open through the COVID-19 pandemic. Any and all remaining errors are ours.
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<td>Committee on Constitutional Affairs</td>
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<td>AFET</td>
<td>Committee on Foreign Affairs</td>
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<td>AP</td>
<td>Arbitration Panel</td>
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<td>BSG</td>
<td>Brexit Steering Group</td>
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<td>CET</td>
<td>Central European Time</td>
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<td>CETA</td>
<td>EU-Canada Comprehensive Economic and Trade Agreement</td>
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<td>CJEU</td>
<td>The Court of Justice of the European Union</td>
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<td>CoA</td>
<td>Court of Auditors</td>
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<td>CoP</td>
<td>Conference of Presidents</td>
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<td>COREPER</td>
<td>Committee of Permanent Representatives</td>
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<td>DEXU</td>
<td>Department for Exiting the European Union</td>
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<td>DG</td>
<td>Directorate General</td>
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<td>DUP</td>
<td>Democratic Unionist Party</td>
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<td>EC27</td>
<td>European Council, without the United Kingdom</td>
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<td>ECB</td>
<td>European Central Bank</td>
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<td>ECHR</td>
<td>European Convention of Human Rights</td>
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<td>EEA</td>
<td>European Economic Area</td>
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<td>European Political Community</td>
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<td>European Register of Road Transport Undertakings</td>
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<td>FCA</td>
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<td>FCDO</td>
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CHAPTER 1

Introduction: Responding to Brexit

23 June 2016 was a momentous date in the history of European integration. On that day, the citizens of the United Kingdom (UK) voted on whether their country should leave the European Union (EU) or remain a member state. At the close of polling, 51.9% of those who had voted had opted to leave the Union. By a narrow margin, the first member state ever was to secede from the EU. The EU’s response to this challenge would have major implications for its immediate and longer-term future. Brexit was yet another crisis in a series of major crises that beset the EU from the mid-2000s onwards. In 2005, the European Constitutional Treaty was rejected by voters in France and the Netherlands, indicating growing popular scepticism about the idea of “ever closer Union.” The constitutional crisis was followed, in 2010, by a major crisis of the common currency which tested the limits of solidarity between creditor and debtor states in the EU. Just as the economic outlook was beginning to improve, an unprecedented wave of refugees from the EU’s south-eastern neighbourhood overwhelmed the Union’s existing asylum system in 2015, and the member states failed to agree on a reformed European burden-sharing mechanism. This succession of crises, or poly-crisis, fed a widespread sentiment that the EU was divided and ineffective in delivering fair and effective policies (Zeitlin et al. 2019).
The UK’s decision to leave the EU was initially seen as the straw that could break the camel’s back. Brexit was perceived as “a profound shock for the project of European integration” that “challenged consolidated understandings on the finalité of the European project” (Fabbrini 2017: 267). On the one hand, there was a fear that a fragmented and fragile EU would struggle to speak with one voice and effectively negotiate with a united and determined UK. On the other hand, there were concerns that Brexit might trigger a domino effect among the remaining member states and initiate a wider disintegrative dynamic. But this is not what happened. Brexit galvanised key EU actors into action. Driven by fear and determination, the emerging EU27 resolved to respond to Brexit in a way that minimised the negative impact of this unwanted political event. Instead of disunity, the EU institutions and the 27 remaining member states immediately closed ranks and pursued a united approach to Brexit. British hopes of gaining the upper hand by playing the member states and the EU institutions off against each other proved misguided. The emerging EU27 stood together, agreed on what mattered most and overwhelmingly got what it wanted in the Brexit negotiations. As such, the EU’s approach to Brexit was not only “remarkably consistent” (O’Rourke 2019: 216) but also remarkably effective. Central to that effectiveness was the willingness and ability of the EU to exercise collective power.

This book explores how the EU27 was able to muster a united and effective response to Brexit in a time of apparent fragmentation and alleged weakness. One explanation focuses on economic interests. In this view, the EU’s response was united because the member states had a shared interest in protecting the single market. And it was effective, because a “no deal” Brexit would have been much worse for the UK than for any individual member state or for the EU as a whole (Schimmelfennig 2018a; Schimmelfennig and Winzen 2020). This is a powerful and parsimonious explanation. However, it overlooks that the UK was itself an EU member state which had decided to leave the EU and the single market, acting against economic rationality. What resonated with British voters was the idea to take back control of British borders and laws from the European Union. And the UK was not unique in this regard. At the time of the Brexit referendum, Eurosceptic populist parties experienced unprecedented electoral successes in several member states (Kriesi 2014). We believe that an exclusive focus on the economic interests of the member states downplays the myriad challenges facing the
EU. It also downplays the role which the EU institutions—the European Council, the Council, the Commission and the Parliament—played in the Brexit process. For the survival of the polity, it was important to show that membership mattered, both in terms of material benefits and political solidarity. We, therefore, argue that the EU27’s response to Brexit was not just about the single market, important though it was. It was about preserving the EU as a polity and as the central framework for the management of deep interdependence in Europe. The EU has a plethora of arrangements with countries beyond its borders that tie the EU’s neighbours into the Brussels system, but Brexit required it to draw a clearer distinction between being a member state and a close neighbour.

We think that an explanation of the EU’s united and effective response to Brexit should look beyond the economic interests of the member states. In this book, we will explore the role played by the EU institutions and actors in actively constructing unity and in shaping the negotiation process in the EU’s favour. We identify two central elements in this process: issue framing and co-creation of collective capacity. Immediately after the British referendum in June 2016, the EU institutions discursively framed Brexit as a shock to the Union as a whole requiring a united response (Chapter 2). Because of this framing, the asymmetric impact of Brexit on member state economies and on the distribution of political clout within the EU did not become contentious. The initial framing of Brexit guided the subsequent build-up and mobilisation of collective capacity. This involved the creation of a novel institutional ecology dedicated to the management of Brexit (Chapter 3) and intensive inter-institutional coordination in developing a joint negotiating strategy (Chapter 4). The mobilisation of collective capacity in turn reinforced unity and transformed it from an aspiration into a practice norm.

By the time negotiations with the UK opened in June 2017, the EU had developed three crucial procedural bargaining resources, which the UK lacked. First, the EU’s Brexit agenda enjoyed broad political support across the member states and EU institutions. Second, the EU had agreed on a set of clear and non-contradictory negotiating objectives. Third, the EU had achieved superior technical preparedness in terms of structuring the negotiation process and in formulating solutions to key Brexit challenges. These resources were key to realising the EU’s core objective of achieving an orderly withdrawal of the UK and in negotiating a new rules-based relationship with the UK as a third country (Chapters 5–8). Finally,
these bargaining resources served the EU in disputes over the implementation of the Brexit deal (Chapter 9). Whereas the UK repeatedly threatened to break international law by unilaterally disapplying parts of the Brexit deal, the EU developed practical solutions to concrete implementation problems. And while the future of the negotiated Brexit deal is uncertain, there are no indications that the EU’s united approach towards the UK is weakening.

**Brexit: The Straw That Breaks the Camel’s Back?**

On the day of the referendum, NBC news asked “Is ‘Brexit’ the Beginning of the End of the European Union?” (Frangoul 2016). Such concerns were widespread in academia, too. Ben Rosamond speculated that “Brexit is likely to unleash disintegrative dynamics, which could see the EU stagnate into a suboptimal institutional equilibrium” (Rosamond 2016: 864). Other authors argued in 2017 that it was too early to assess whether Brexit “will represent a further step towards disintegration,” but that it surely would “add a further level of uncertainty and disruption to an already embattled European Union” (Schnapper 2017: 97). Heikki Patomäki (2017: 176) warned that to avoid “the likely possibility of disintegration, the EU would have to overcome its internal politico-economic contradictions.” The general mood of uncertainty after the Brexit referendum was captured by Ivan Krastev. In his book *After Europe*, Krastev compared the EU’s political situation in 2017 to the collapse of the nineteenth-century European concert of power in the First World War:

The year 1917 was one that turned European history on its head. It started the great civil war in Europe that ended only in 1989. The year 2017 may end up being just as consequential. Pivotal elections in the Netherlands, France, Germany and most likely Italy may escalate the process of European disintegration. Greece may opt to leave the eurozone in 2017. Major terrorist attacks in a European capital, or armed conflict and a new wave of refugees on Europe’s periphery, could easily bring the union to the edge of collapse. Brexit and the election of Donald Trump have upended future predictions of Europe’s survival – and not in Europe’s favour. *If the disintegration of the EU was only recently considered unthinkable, after Brexit it seems (in the eyes of many) almost inevitable. Europe has been shattered by the rise of populist parties across the continent, just as the migration crisis has transformed the nature of liberal democratic regimes. (Krastev 2017: 107–108, italics added)*
In June 2016, it was by no means evident that a crisis-battered EU would muster a decisive response to the British vote to leave. Indeed, the UK appeared to have some significant advantages over the EU. The UK is a unitary (if devolved) state in which decision-making power is uniquely concentrated by the principles of “parliamentary sovereignty” and “cabinet government” (Weale 2018). Moreover, the British Conservative Party had just won an outright majority in the 2015 general election and was therefore in a strong position ahead of the Brexit negotiations. In contrast to the unitary nature of the UK, the EU is a compound polity in which decision-making power is heavily de-centralised and requires coordination of the interests of twenty-seven highly diverse member states. In the recent euro and migration crises, disunity had hampered effective crisis responses. Therefore, the spectre of a “constraining dissensus” (Hooghe and Marks 2009) on Brexit loomed large within the EU in 2016.

**The Puzzle: The EU’s United and Effective Response to Brexit**

Brexit did not trigger a domino effect in the EU. Indeed, in the wake of Russia’s War in Ukraine, the EU’s focus has shifted from countering disintegration to getting ready for a series of future enlargements. At the same time, the UK has experienced a period of severe political instability and economic dislocations since leaving the European Union. How did this happen? The Brexit negotiations revealed that it was not the EU27, but the UK, that struggled to clearly define and successfully defend its preferences. The EU27 responded with speed and resolve to protect the Union and insulate it from the aftershocks of the referendum (O’Rourke 2019: 206–237). In short, the EU’s response to Brexit was swift, united and ultimately effective. On the morning of the 24 June 2016, the day after the referendum, Donald Tusk, President of the European Council, declared in a press statement that the EU was “prepared for this negative scenario” (Tusk 2016). President Tusk was not faking the EU’s preparedness. Informed by the experience of renegotiating modalities of the UK’s membership in late 2015 and early 2016, Presidents Tusk and Juncker, their cabinets and key players in the Commission and the Council had prepared for a negative vote. There had been intensive work with the capitals on how the EU would respond in the event of a leave vote. Once the referendum outcome became clear, the EU swung into action. Less
than two hours after President Tusk’s intervention, the four presidents of the EU’s decision-making institutions\footnote{Donald Tusk (European Council), Jean-Claude Juncker (European Commission), Martin Schulz (European Parliament) and Mark Rutte (Rotating Presidency of the Council of the European Union).} released a joint statement which affirmed the EU as the central framework for Europe’s political future:

This is an unprecedented situation but we are united in our response. We will stand strong and uphold the EU’s core values of promoting peace and the well-being of its peoples. The Union of 27 Member States will continue. The Union is the framework of our common political future. We are bound together by history, geography and common interests and will develop our cooperation on this basis. Together we will address our common challenges to generate growth, increase prosperity and ensure a safe and secure environment for our citizens. The institutions will play their full role in this endeavour. (Four Presidents Joint Statement 2016)

This line was endorsed and expanded by the 27 heads of state or government at an informal European Council meeting of 29 June 2016 (European Council 2016a). At that meeting, the EU27 was born; and so was the status of the UK as a third state in the making. In the second half of 2016, the EU organised internally for the upcoming negotiations, creating a novel institutional ecology for handling Brexit and defining institutional responsibilities. On 1 October 2016, the Commission created a Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 of the Treaty on European Union, to be led by Frenchman and former Commissioner Michel Barnier (Commission 2016). On 15 December 2016, the European Council agreed on a host of important procedural arrangements, naming the European Commission as the Union negotiator and clarifying inter-institutional relations (European Council 2016b). When British Prime Minister Theresa May triggered Article 50 on 29 March 2017, the EU gave a display of unity by adopting its negotiating guidelines in record-setting time at the special European Council meeting of 29 April 2017 (European Council 2017). These guidelines specified the EU’s negotiation objectives as well as certain preferences regarding the organisation of the negotiations. At the press conference after the summit, President Tusk emphasised the “outstanding unity” of the EU27 in agreeing on the guidelines:
I want to underline the outstanding unity of all the 27 leaders on the guidelines for our negotiations with the UK. (...) We now have unanimous support from all the 27 member states and the EU institutions, giving us a strong political mandate for these negotiations. (Tusk 2017)

On 22 May 2017, the Council of the European Union, in Article 50 format, adopted negotiating directives, authorised the opening of negotiations with the UK and formally nominated the Commission as the EU negotiator (Council of the European Union 2017). When the negotiations began on 19 June 2017, the EU was united and ready to negotiate. Across the channel, Theresa May had lost her parliamentary majority in an ill-fated electoral gamble on 8 June 2017. The election result cast doubt on May’s Brexit course and significantly increased the risk that a potential agreement with the EU would not find a majority in the House of Commons. Over the course of the negotiations, EU unity was actively maintained and never seriously questioned, not even in critical moments when a “no deal” outcome was looming.

The second proposition of this book is that the EU’s response to Brexit was effective. Our benchmark for effectiveness is the distance between the initially stated negotiation objectives of a party and the negotiation outcomes. An effective outcome furthermore involves few unanticipated costs in obtaining the negotiation objectives. Uncertainty and compromise are important elements in negotiations, especially if negotiations follow a “pie-increasing” or integrative logic. As the book will argue, however, the Brexit negotiations followed a distributive logic whereby neither side was particularly willing or able to compromise on key demands. Hence, by stressing the importance of initially stated objectives and the absence of unanticipated additional costs, our definition seeks to ensure that negotiation failures cannot be rationalised or obfuscated.

According to this measure, the EU’s response to Brexit was effective because the EU largely achieved its initially stated objectives without crossing its red lines and without incurring significant unanticipated costs. The UK, by contrast, only partially achieved its objectives, dropped some key demands and incurred significant unanticipated costs (see Table 1.1 for a summary). The genesis of the negotiations objectives of both parties will be discussed in more detail in Chapter 2. Here, a brief overview is enough to illustrate our point. The EU’s core objectives were formulated early on and remained the same throughout the negotiations. First, the EU sought an “orderly Brexit” which would minimise the negative
economic and political costs of the UK’s withdrawal for EU citizens, member states and the Union as a whole. Regarding future relations with the UK, the EU sought a “close relationship,” but one that protected the integrity of the single market and respected EU decision-making autonomy. Crucially, the EU sought a “balance of rights and obligations” in a negotiated deal and stressed that a “non-member of the Union, that does not live up to the same obligations as a member, cannot have the same rights and enjoy the same benefits as a member” (European Council 2017). The UK’s core objectives evolved over the course of the negotiations. Under Prime Minister Theresa May, the UK wanted to regain sovereign control over UK laws (no CJEU) and borders (no free movement) by leaving the EU single market and customs area. At the same time, May’s government also wanted a close trade deal with the EU to minimise the economic costs of Brexit (HM Government 2017). Under her successor, PM Boris Johnson, the balance between trade and sovereignty objectives shifted decidedly towards the latter. In the end, the Johnson administration accepted a high economic price tag for regaining formal control over UK laws and borders. Put more cynically, that was the price Johnson was willing to pay to “get Brexit done.”

The Brexit negotiations began in June 2017, with the EU insisting that talks about potential future relations would only begin once “sufficient progress” on a series of withdrawal issues had been made. The UK strongly opposed but grudgingly accepted this negotiation structure. After a preliminary agreement on key withdrawal issues had been reached in December 2017, the negotiations repeatedly came to the brink of collapse before a Withdrawal Agreement (WA) was eventually reached in October 2019. The WA secured the EU’s preference for an “orderly withdrawal” on the main substantive issues of citizens’ rights, a financial settlement and the Irish border. To get that deal, UK Prime Minister Boris Johnson agreed to regulatory controls between Northern Ireland and Great Britain, which Theresa May had categorically excluded. A further agreement on the future EU-UK relationship was reached in December 2020, just days before the UK would have automatically crashed out of the EU’s economic orbit at the end of the agreed transition period. From an EU perspective, the agreement protected the integrity of the single market with innovative level playing field provisions and robust dispute resolution mechanisms. The UK obtained a “thin” trade deal, which included quota- and tariff-free access for UK goods to the single market but was weak on services, which constitute the core of the UK’s economy.