

**Culture, Tourism, Europe and External Affairs Committee****Inquiry - Article 50: Preparedness**

**Written submission from Anthony Salamone, Research Fellow and Strategic Advisor,  
Scottish Centre on European Relations**

**The Brexit Countdown: Withdrawal Negotiations, Deal or No Deal and the Future EU-UK Relationship**

1. This written evidence considers the state of the Brexit negotiations on withdrawal and transition, the implications of a no-deal Brexit and the prospects for the future EU-UK relationship. The Brexit process is entering its final countdown, with less than six months until the UK ostensibly leaves the EU. At the same time, the political environment within the UK on this subject remains highly volatile, bringing great uncertainty to an already challenging set of circumstances – which will manifestly impact on Scotland's future relationship with the EU.
2. The sections of this evidence address the state of Brexit in the following areas: the present Brexit negotiations (principally on withdrawal and transition); the future relationship between the EU and the UK; the implications of a no-deal Brexit; official guidance and preparations for a no-deal outcome; and the current outlook for the Brexit process. Each section concludes with a highlighted summary point. The circumstances surrounding Brexit are ever-evolving – this evidence reflects the state of affairs as of 12 October 2018.

**Section 1: Brexit Negotiations at Present**

3. The process of the UK's withdrawal from the European Union has now entered its final stages. This timetable is dictated by the provisions of [Article 50 TEU](#). With the UK Government having activated the exit procedure on 29 March 2017, the UK will leave the EU on 29 March 2019 – whether or not the Withdrawal Agreement is successfully concluded – absent any extension or revocation of the notification. The Agreement will likely need to be completed by the end of this calendar year, in order to provide sufficient time for it to be approved by the EU and the UK (chiefly through votes in the European Parliament and the UK Parliament).
4. The foremost priority for the EU27 is to secure the Withdrawal Agreement, which includes provision for the UK's 'standstill' transition after Brexit – currently set for 21 months and ending on 31 December 2020. Following the informal EU leaders' summit in Salzburg, European Council President Donald Tusk reiterated on 20 September 2018 the EU27's view that time is running out, [remarking](#) that 'the moment of truth for the Brexit negotiations will be the October European Council.' He confirmed then that the mooted extraordinary European Council on Brexit in November will only take place if the EU27 judge that sufficient process has been made in October to warrant it.
5. EU Chief Negotiator Michel Barnier [stated](#) on 10 October 2018 in a speech in Brussels that 80-85% of the Withdrawal Agreement has been provisionally completed. As noted by the Union negotiator, and the [EU27 governments](#) at the General Affairs Council (Article 50) meeting on 18 September 2018, the principal outstanding issues are

Northern Ireland and the border with Ireland, the governance of the Withdrawal Agreement (in particular, the role of the CJEU) and geographical indications for products. Solutions must be found on these areas in order for the Agreement to be completed and for the UK to leave the EU on the basis of a negotiated exit.

6. The EU27 have remained committed to incorporating a legally-binding and operational 'backstop' for Ireland and Northern Ireland as part of the UK's withdrawal. Danuta Hübner MEP, Chair of the European Parliament's Constitutional Affairs Committee and member of its Brexit Steering Group, set out – in a [commentary](#) for the Scottish Centre on European Relations, published on 25 September 2018 – that 'the EU's current backstop proposal contains the minimum level of controls necessary to protect the integrity of the single market and some precise procedures related to customs, fiscal and regulatory control. Some of these procedures have been used for years between Spain and the Canary Islands (which are outside the EU customs territory), and have nothing to do with the potential emergence of a new border in the Irish Sea.'
7. The remaining aspect of the withdrawal negotiations is the political declaration on future relations, which will set out joint aspirations for the post-transition EU-UK relationship. This declaration will be a statement of intent and, while referenced in the Withdrawal Agreement, it will have no legal force and will not be binding. The question has recently been raised of extending Article 50 to enable greater detail to be reached on the future relationship now and therefore to avoid a so-called 'blind Brexit'. However, while the EU27 might be willing to extend the negotiations in certain circumstances (particularly if a general election or second EU referendum were to take place), [obstacles would stand](#) in the way and the EU27 would be unlikely to do so merely to prevent a vague political declaration.
8. **Summary Point 1 – With time running short until the UK's scheduled exit from the EU, the major outstanding issues on the Withdrawal Agreement – Northern Ireland predominant among them – must be resolved in the coming weeks in order for the UK to leave the EU in a negotiated manner. The EU27 are unlikely to support extending the Article 50 process unless a significant shift takes place in UK politics.**

## Section 2: Future EU-UK Relationship

9. The future relationship between the EU and the UK is an important, but nevertheless secondary, part of the withdrawal procedure. The essential objective is to secure the terms of exit – and also the requested transition. Whatever limited headway that has been reached on future relations will be reflected in the political declaration. Indications are that the drafting of this declaration has only recently begun. Consequently, full negotiations on the post-transition EU-UK relationship will not take place until after the UK has left the EU, and the eventual shape of that relationship may not become clear until months or years after exit in March 2019.
10. While it might have been possible to have made substantive progress on future relations earlier in the process, the UK Government's [approach to the negotiations](#) prevented that outcome – in two main ways. First, the UK Government decided to debate prime withdrawal issues – such as the UK's residual financial obligations to the EU and the rights of EU citizens in the UK after Brexit – before largely accepting the EU27's opening

negotiating positions. Those decisions, and ultimate concessions, resulted in the expenditure of time. Second, the UK Government did not publish its first proposals on overall future relations with the EU, the [Future Relationship White Paper](#) (the 'Chequers plan'), until over 15 months after the Prime Minister activated Article 50. Up to that point, the UK did not have a plan to discuss and it was therefore impossible for the EU27 to evaluate it and to respond to it.

11. The Chequers plan proposes a new, bespoke and complex partnership with the EU which incorporates many aspects of EU membership, but in circuitous ways, and omits a number of primary obligations of membership. The White Paper envisages wide-ranging continued UK participation in EU policies, programmes, agencies and bodies – and it enumerates a comprehensive listing of areas in which the UK Government wants to maintain cooperation with the EU, encompassing the large majority of fields covered by the *acquis communautaire*. However, within the UK, the plan is under political siege from many sides and does not appear to have widespread support. For the EU27, the plan contradicts [their main priorities](#) – in particular, maintaining the integrity of the Internal Market and Customs Union – and is therefore also unacceptable to them.
12. In contrast, Michel Barnier has set out the EU27's offer of what he has termed an '[ambitious partnership](#)' – based on the UK's current red lines and the EU's principles. He has spoken of a relationship constituted on four pillars: trade (based on a Free Trade Agreement), cooperation in specific areas, internal security, and foreign policy/external security. On trade in particular, this course would lead the UK to a Canada-style Free Trade Agreement, which would bring significant economic damage to Scotland and the UK. The EU27 are acutely aware of this fact, but must operate on the basis of the UK Government's stated positions. Despite the frenetic political debate of recent days, this reality remains the current post-Brexit, post-transition outlook.
13. After the UK's departure from the EU, the transition period will become the new backdrop for the future relationship negotiations. The transition is currently scheduled to expire at the end of December 2020, and any EU-UK agreements on future relations would require to be negotiated, ratified and implemented before that point. That timetable will be extremely challenging – and, from the EU's perspective, it will limit the scope for completely bespoke arrangements. Extension of the transition period could be possible, but that option would need to be included in the Withdrawal Agreement – indications are that it now will be incorporated. Nevertheless, the aggregate transition would have to remain time-limited (potentially no more than three or four years), otherwise it would likely exceed the legal limitations of Article 50.
14. **Summary Point 2 – The UK's future relationship with the EU will be substantively negotiated after the UK has left the EU – based upon, but not bound by, the joint political declaration on future relations. While the EU27 remain open to a close partnership in line with the EU's principles, the scope of that future relationship is limited by the UK Government's current red lines, which still point in the direction of a damaging Canada-style Free Trade Agreement.**

### Section 3: Implications of No-Deal Brexit

15. The prospect of a 'no-deal' Brexit, in which the UK leaves the EU at the end of March 2019 without a negotiated basis, has become a realistic possibility – although reaching

an agreement still remains possible, if not probable. Two main scenarios could lead to a no-deal Brexit. First, the UK Government and the EU27 prove unable to finalise the Withdrawal Agreement – the outstanding issues cannot be addressed in a manner satisfactory to both sides. Second, the UK and the EU27 are able to conclude the Agreement, but it is not approved by one or both sides – while the European Parliament has the option to reject the deal, most attention has focused on the chances of the fractious House of Commons voting it down.

16. Article 50 provides no clarity on what should take place in either eventuality – other than the UK’s automatic exit two years after notification and the option to extend the negotiating period by unanimity. In truth, this situation would not be a legal matter, but a political matter requiring a political solution, if both sides had the will to find one. Otherwise, a no-deal Brexit will result in EU laws and policies simply ceasing to apply to the UK as of Brexit day. The transition period would not exist, and government, business, people and society would have to adapt to new circumstances in short order. That outcome would be damaging and disruptive for the UK and the EU27 – but much more so for the UK.
17. Governments in the UK would be faced with a crisis management scenario. Ordinary life would be disrupted by the acute uncertainties around regulations, laws and policies with an EU dimension. It would be difficult for government to provide detailed clarity simultaneously for all of the potential questions which might arise. With the UK having been a member of the EU and its predecessors for over 45 years, the sheer scale of practical and legal issues requiring to be addressed in such circumstances would be very challenging to manage. A negotiated Brexit would already be a complex operation – a default Brexit would be substantially more so.
18. The advent of a no-deal Brexit would negatively impact upon the UK’s international credibility. It would demonstrate that the UK was not in a position to meet its EU withdrawal obligations, including on residual financial commitments and citizens’ rights, and therefore potentially cast doubt on the UK’s other international obligations. The need to focus on responding to the consequences of no deal would also distract the UK Government from pursuing a more active foreign policy. Since Brexit generally will necessitate significant investment in diplomacy to attempt to return the UK to a comparable pre-Brexit position, distractions from that work will only worsen the UK’s global standing. Particularly in terms of future trade agreements, many countries could potentially prefer to wait for clarity on the post-Brexit EU-UK relationship before concluding agreements with the UK.
19. In the event of a no deal Brexit, it is important to be clear on the probable response from the European Union. Under a default Brexit, the UK would automatically become a third country to the EU with no mitigating provisions in place. The absence of a negotiated exit – and in particular provisions for citizens, financial obligations and Northern Ireland – would severely strain relations between the EU and the UK. While the EU would undoubtedly implement temporary measures to protect EU citizens and the EU’s interests, the EU would likely not negotiate a comprehensive future relationship with the UK until the original withdrawal issues were resolved. The EU27 have been consistent in articulating the view that questions related to the UK’s departure from the Union must be adequately addressed before a future partnership can be developed.

20. **Summary Point 3 – No-deal Brexit would introduce acute uncertainties around the status of regulations, laws and policies in the UK with an EU dimension, presenting a substantial challenge to government to address simultaneously the multitude of pressing issues which would arise. The UK’s relations with the EU would become severely strained, and the EU would likely insist on resolving the original withdrawal issues before negotiating a long-term future relationship.**

#### Section 4: No-Deal Guidance and Preparations

21. A no-deal Brexit scenario would result in countless political, economic and technical implications for Scotland and the UK. Given the great depth of the UK’s current relationship with the other EU Member States and the extensive volume of EU law, it would be extremely difficult to enumerate all of the specific matters which would require timeous resolution. That reality, combined with the limited amount of time until the UK’s scheduled exit and the existing pressures on governments in the UK, places a firm limit on the possible extent of preparations for no deal and the degree to which all of the relevant information can be known in advance.
22. The UK Government began publishing [technical notices](#) in preparation for a no-deal outcome at the end of August 2018. These notices cover various aspects of the UK’s current relationship with the EU and some of the implications of no deal for people, businesses and organisations. However, the notices are mostly short summaries of the present position within the EU, combined with brief outlines of what individuals and entities would need to consider – they are certainly not detailed action plans for government or the public in the event of a no-deal Brexit. While presumably UK government departments will have additional (confidential) contingency plans, the sum of the UK Government’s published documentation does not constitute a comprehensive rubric for the public to study or rely upon.
23. The European Commission started publishing [preparedness notices](#) in March 2018, about six months earlier than the UK Government. These notices are also concise, but they are specific on the individual EU laws and policies which would be involved in the case of no deal. The EU has developed a two-track approach to Brexit, establishing ‘preparedness measures’ in response to the UK’s eventual withdrawal (whether or not a deal is reached), while also undertaking ‘contingency planning’ for the possibility of no deal. Importantly, as the Commission made clear in its [Preparedness Communication](#), published on 19 July 2018, ‘contingency measures cannot achieve the same results as an orderly withdrawal negotiated through a withdrawal agreement, nor would they be able to recreate the current situation where the United Kingdom is a Member State.’
24. Brexit in any form will have implications for the European Union, and it is logical and understandable that the European Commission’s primary focus in terms of Brexit preparations is to support the EU27 and their publics. For instance, the European Commission has [already screened](#) the entirety of the *acquis communautaire* to determine what changes the EU will need to make to ensure that its own legal order functions properly after Brexit. The Commission’s preparations have sought to clarify the position of EU law in a no-deal scenario, both for those in the EU27 and the UK. However, the onus of preparing and informing the UK public on Brexit clearly falls on the UK Government, since changes to the UK’s political and legal structures are a matter

for the UK, and indeed as it is the United Kingdom which elected to withdraw from the European Union.

25. The successful conclusion and approval of the Withdrawal Agreement would obviate the cliff edge in March 2019. However, the time-limited transition raises the prospect of the UK exiting the transition period without the future EU-UK relationship in place (or with only parts of it in place). While it is impossible to presently envisage the state of the future relationship negotiations, for instance by autumn 2020, it could be the case that the precipice of the cliff edge returns in December 2020, in different circumstances but potentially with largely the same negative consequences.
26. **Summary Point 4 – The UK Government’s no-deal Brexit guidance to date has been largely general in nature and does not provide detailed advice or information for individuals and entities. While the European Commission has made available preparation guidance on Brexit overall and no-deal in particular in respect of EU law, the prime responsibility for preparing and informing the UK public on Brexit rests with the UK Government.**

### Section 5: Outlook for the Brexit Process

27. The Brexit countdown continues and time is running short to conclude the Withdrawal Agreement. The next European Council summit on 17-18 October would have been an opportunity to officially finalise the Agreement, but that prospect has now faded. An extraordinary summit in November, if EU leaders decide to hold it, would likely be in the middle of that month. Otherwise, the only remaining scheduled opportunity for the EU27 to agree the withdrawal deal would be the European Council meeting on 13-14 December. An emergency summit could be organised for January 2019 – beyond that point, securing a negotiated withdrawal could become insurmountable.
28. Provided that the Withdrawal Agreement is finalised and approved, the negotiations will then fully turn to the future EU-UK relationship. While the UK Government is currently committed to a hard Brexit of leaving the EU’s Internal Market and Customs Union, the UK would be able to change its position during the transition. Since the political declaration will not be binding, such a shift would be possible and the EU27 [have made clear](#) that they would recalibrate their offer if the UK shifts on its red lines. In negotiating a future relationship with the UK, the EU will want to ensure that it accords with its principles, including the integrity of the Internal Market, the indivisibility of the four freedoms and the autonomy of the EU’s own decision making.
29. The question of the Ireland-Northern Ireland border is the central remaining Withdrawal Agreement issue, but it is also connected to the future EU-UK relationship. If the Irish backstop ultimately involves the entire UK remaining in the EU Customs Union – as has recently been suggested – ostensibly until a more permanent solution is agreed, the UK would be largely unable to pursue an independent trade policy for as long as those arrangements endured. Further negotiations to reach the long-term solution to supersede the backstop could take a number of years, during which the time UK would be part of those EU structures but without any influence over them.
30. The ongoing debate within UK politics often obscures the fact, as the European Commission’s work has underlined, that people and organisations in the UK and the

EU27 will need to undertake preparations for Brexit under any circumstance, even if the Withdrawal Agreement comes into force. In the case of a no-deal Brexit, the measures which would require to be taken would be substantially more numerous and complex. Nevertheless, it is not clear that such preparations are being made to the extent which may ultimately prove necessary. A [recent survey](#) from the British Chambers of Commerce of 2500 companies across the UK, published on 28 September 2018, found that 62% of responding businesses had still undertaken no risk assessment at all of the impact of Brexit on their operations. That reality may well be an expression of confusion rather than apathy, but it does raise the point that – whether businesses and individuals are aware of it or not – Brexit will in different ways impact upon every person in Scotland.

31. Ever since the EU referendum in June 2016, the keyword has been ‘uncertainty’ – and, indeed, uncertainty has remained the central facet of Brexit. Unfortunately, all indications currently suggest that the uncertainty will continue for some time to come, only in different degrees. If the UK defaults out of the EU with no Withdrawal Agreement, confusion around the status of regulations, laws and policies with an EU dimension will reach seriously acute levels. If the UK does leave the EU with a Withdrawal Agreement and a transition, the future EU-UK relationship will remain to be negotiated and its shape may not become clear until months or years down the line. The advent of Brexit day will not in any sense bring an end to the Brexit debate, nor is it likely to yield much clarity on the UK’s future relationship with the EU.
32. **Summary Point 5 – Since the future EU-UK relationship will only take real shape once the UK has left the EU, the UK could opt for closer relations instead of the UK Government’s current course towards a Canada-style trade deal – once outside the EU, however, the opportunity to reverse Brexit will have gone. With the present political environment in the UK, uncertainty over Brexit looks set to continue for months, if not years, to come.**