

**CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE**

**INQUIRY ON THE NEGOTIATION OF THE FUTURE RELATIONSHIP BETWEEN  
THE EUROPEAN UNION AND THE UK GOVERNMENT**

**SUBMISSION FROM ANTHONY SALAMONE: EUROPEAN MERCHANTS**

**EU-UK Future Relationship Negotiations: Dire Straits**

1. This written evidence considers the current negotiations between the EU and the UK on a future partnership. The following sections examine (1) the state of the negotiations; (2) the negotiation realities; (3) the shape of the future relationship; (4) Scotland and the negotiations; and (5) the transition period and outlook. This evidence reflects the state of affairs as of May 2020.

**Section 1: State of the Negotiations**

2. The UK is now a third country to the European Union. Having withdrawn from the Union, the UK has detached itself from the EU's values, interests and priorities. During the ongoing transition period, the UK operates largely as if it were still functionally part of the EU, except that it has no political representation in the EU institutions. This privileged status is unique and highly beneficial to the UK, not least considering that it would otherwise have no formal relationship with the EU. The transition symbolises the flexibility which the EU has shown to the UK, despite the significant disruption and inconvenience which Brexit has caused the former. In present circumstances, the chances of securing an adequate EU-UK future relationship in time are remarkably low.
3. The primary objective of the current negotiations is to define the new terms of relations between the EU and the UK. In theory, this relationship will enter into force at the point of expiration of the transition. To happen in practice, the new relationship must be negotiated in its entirety; it must then be approved and ratified; and it must then be enacted as required. In a reasoned context, the priorities would be to agree a comprehensive, durable and evolutive partnership. While the time-limited nature of the transition creates a deadline, similar to the Article 50 TEU agreement deadline, these negotiations are markedly different from the process of withdrawal from the EU. The focus is now on defining the entire shape of EU-UK relations, rather than the modalities of the UK's departure or its residual obligations. In that regard, ascribing potential failure of these negotiations as a 'no-deal Brexit' is a misnomer. The UK has already left the EU, with a deal. The present imperative is to establish a continual, long-term EU-UK relationship before the transition ends. Decisions made now will affect bilateral relations for years to come.
4. The enormity of constructing this new relationship should not be underestimated. After 46 years of membership of the Union, the UK is seeking to establish a new arrangement in the space of several months. Regrettably, the current state of the negotiations can only be described as dire. The third round recently finished with but minimal achievements. To have any reasonable chance of concluding a new

relationship that is operative by 31 December 2020, each negotiating round would have to register substantial, if not remarkable, progress. The principal obstacle is the UK Government's continued attempts to secure preferential rights from the EU without the corresponding obligations. At the end of the third round, EU Chief Negotiator Michel Barnier [stated](#) his clear assessment that 'there is still a real lack of understanding in the United Kingdom about the objective, and sometimes mechanical, consequences of the British choice to leave the Single Market and the Customs Union. To make progress in this negotiation – if it is still the United Kingdom's intention to strike a deal with the EU – the United Kingdom will have to be more realistic; it will have to overcome this incomprehension and, no doubt, it will have to change strategy.'

## Section 2: Negotiation Realities

5. The EU has built its approach to the EU-UK future relationship on its own principles and in response to the stated positions of the UK – in particular, its intention not to participate in the EU Single Market or Customs Union. While the EU would have been receptive to a closer relationship, the UK discounted it. The EU's principles, such as the integrity of the Single Market, the indivisibility of the four freedoms and the autonomy of the EU's own decision-making, are logical and reasonable. The Union has been consistent in announcing them since the result of the UK's 2016 EU referendum. The UK is a completely different kind of partner than countries with which the EU has recently concluded trade agreements, such as Canada or South Korea. It is much closer geographically and much more integrated economically. Given these close links, the EU understandably desires to ensure that its relations with the UK are based on acceptable shared standards. The EU is perfectly entitled to pursue its own interests, and it is under no obligation to be charitable to the UK.
6. The UK has highly unrealistic expectations of what it can achieve from the current negotiations with the EU. Even at this late stage, the UK Government seemingly does not appreciate the structural weakness of its negotiating position. Simply put, the EU and the UK are not equals. According to Eurostat [figures](#), for 2018 in purchasing power standards the EU27's GDP was €13.74 trillion and the UK's GDP was €2.16 trillion. On that basis, the EU economy is over six times larger (635%) than the UK economy. The UK remains highly dependent on the EU for trade in goods and services. According to ONS [figures](#), for 2019 43% of UK exports went to the EU and 51% of UK imports came from the EU. It is evident that the EU holds a vastly superior negotiating position. Instead of recognising the UK's very difficult circumstances and attempting to craft a suitable strategy, the UK Government has persisted in its exceptionalist approach. In his recent insulting and unconstructive [letter](#), UK Chief Negotiator David Frost expressed annoyance that 'the EU has also not proposed anything on services which reflects the specific nature of our relationship' – a statement representative of this disconnect from reality. The UK is no longer a powerful member of the Union, but a modestly significant third country.

### Section 3: Shape of the Future Relationship

7. In order to avoid ruptures in various domains, the future EU-UK partnership must cover the full spectrum of existing relations. It is not simply a matter of securing a trade agreement, but accords in all other fields ranging from data, medicines and aviation to energy, defence and security. The European Commission [has stated](#) its intention to structure the relationship through a comprehensive agreement, under the legal basis of Article 217 TFEU (which is used for association agreements). However, the eventual design of the new EU-UK relationship will depend upon the negotiations and whatever is ultimately agreed. The EU intends to build this relationship based on the UK's particular context, not arrangements with other third countries. In his [return letter](#), Michel Barnier noted that 'there is no automatic entitlement to any benefits that the EU may have offered or granted in other contexts and circumstances to other, often very different, partners. Every agreement that the EU has concluded is unique, with its own balance of rights and obligations, tailored to the partner and era in which it is concluded. There is no model, no uniform precedent to follow in EU trade policy.'
8. In order to engage effectively, the UK must appreciate the modalities associated with the current negotiations. This is not a European Council summit at which the UK is a member and a deal is reached at 3am. This is an international negotiation between one of the great economic powers (the EU) and a neighbouring state (the UK). EU external negotiations are complex and time-intensive. The Commission acts as Union negotiator, but the Member States remain engaged through the EU Council and the European Parliament is consulted regularly. An international agreement intended to endure for years, if not decades – such as the EU-UK partnership – cannot be thrown together at the last minute. Moreover, time is required not only for the negotiations, but for all other necessary steps. If the final agreement involves competences of both the Union and the Member States, it will be a mixed agreement and require ratification by all Member States. The process of national ratifications of an EU agreement takes years. Such an agreement could be provisionally applied upon signature, but some residual uncertainty would remain until all ratifications were completed.

### Section 4: Scotland and the Negotiations

9. The UK's withdrawal from the EU will continue to have a profound impact on Scotland and its political system, economy and society. The people of Scotland never agreed to leave the EU, in the 2016 EU referendum or at any subsequent election. The UK Government decided to pursue a relatively closed approach during the process of withdrawal, in which the Scottish Government was not substantially involved to the extent which would have been both feasible and warranted. Moreover, the UK Government took little account of the Scottish Parliament during the withdrawal process, considering that it did not take any action in response to the Parliament's multiple pro-European motions and that it proceeded with the EU Withdrawal Act 2018 despite the Parliament's refusal of legislative consent. Given that neither the Scottish Parliament nor the cohort of Scottish MPs in the House of Commons ever agreed to Brexit, the UK's approach

to EU withdrawal or the UK's objectives for the EU-UK future relationship, the UK Government's actions lack democratic legitimacy with respect to Scotland. These circumstances raise serious issues of democracy, trust and accountability which have been left completely unresolved.

10. Considering the significant implications for the areas of competence of Scotland's political institutions, the Scottish Government should be meaningfully involved in the EU-UK relationship negotiations – principally, in the UK's internal negotiation preparations. Such an approach is consistent with practice established in other multilevel states. However, no evidence suggests that the UK Government has included the Scottish Government more in the future relationship negotiations than the withdrawal negotiations. It remains unclear how the UK Government intends to construct a functional EU-UK relationship without such involvement of the Scottish Government, given that Scotland's political institutions will have responsibility for implementing many of the resulting rights and obligations in practice. Depending on its shape, the EU-UK partnership could likely evolve over time and this process may create new or different conditions for Scotland. The Scottish Government should take into account the short, medium and long-term implications of any prospective EU-UK relationship.

#### **Section 5: Transition Period and Outlook**

11. At present, given the lack of progress in the first three negotiating rounds and the very limited time available, it is increasingly improbable that a full EU-UK future relationship could be agreed and operational by the end of the original transition period. If a new partnership does not take effect at the point of expiration of the transition, the EU and the UK will have no bilateral mechanisms for managing their relations. In such a scenario, the EU may seek some basic cooperation with the UK in certain areas, but that prospect is unclear. Regardless of the outcome of the current negotiations, the EU will continue to attach great importance to the UK fulfilling its obligations under the Withdrawal Agreement. Failure of the negotiations would have a significantly detrimental impact on EU-UK relations, not least as the UK would once again be responsible for causing disruption for the Union, without any semblance of benefit to any party involved. Moreover, the UK urgently needs a comprehensive and close partnership with the Union. It would be disingenuous to suggest that the UK's national interests do not depend on a positive EU-UK future relationship. Despite the regrettably real prospect of negotiation failure, due to the UK's approach, the UK Government hardly appears sufficiently prepared for a default outcome on 1 January 2021.
12. The transition period is time-limited under the Withdrawal Agreement. It must be remembered that the current transition was supposed to last for 21 months, instead of its actual 11 months. The extensions of the Article 50 period delayed the UK's departure from 29 March 2019 to 31 January 2020 and reduced the time envisaged to negotiate the future relationship. The difficulty of matters has been compounded by the UK's Government delay in making substantive proposals and the disruption to the negotiations caused by the coronavirus pandemic. A default outcome of no EU-UK partnership would be highly damaging to Scotland and the UK. To prevent

that eventuality, and in view of the state of the negotiations, the transition period should be extended for the maximum available of two years – moving its expiration to 31 December 2022. It would be purely ideological to reject extending the transition period without considering all the costs and consequences. Indeed, given the high costs of a default outcome, the UK Government’s baseline approach should be to pursue a full extension automatically, unless an EU-UK partnership is concluded. Considering that not extending the transition could in all likelihood result in a default outcome, the consent of the Scottish Parliament should be required to pursue such a course. While a full extension could make an EU-UK partnership more likely, it would still require the UK to adopt an approach grounded in reality.

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