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BREXIT UPDATE

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Written by **Iain McIver** and **Iain Thom**
SPICe Research, The Scottish Parliament

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CONTEXT

At the European Council meeting on 10 April, the UK requested a second extension to the Article 50 period. This resulted in a flexible extension to 31 October 2019.

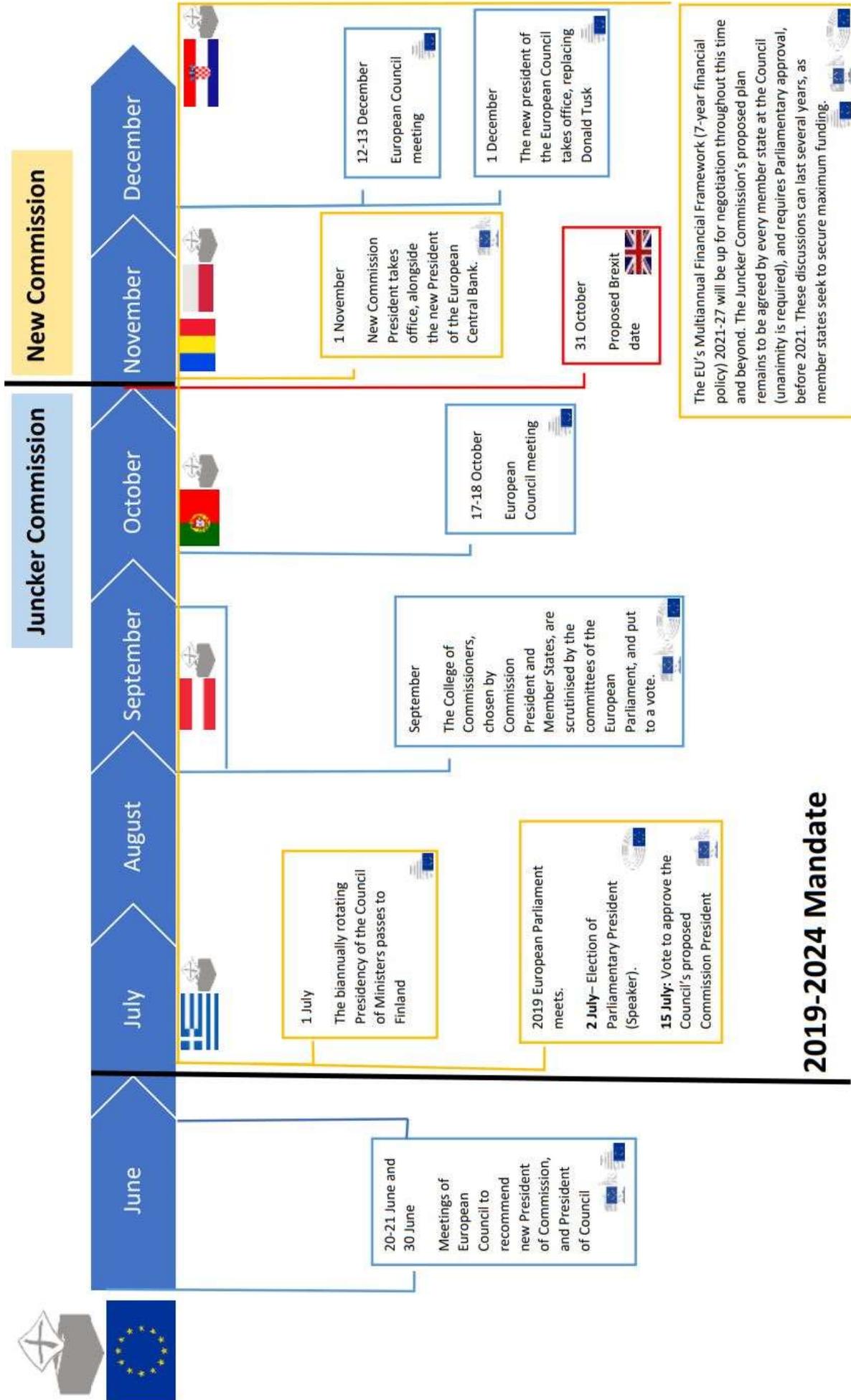
On 24 May, the Prime Minister Theresa May indicated she intended to resign as Leader of the Conservative Party on 7 June. This triggered a leadership election which is ongoing.

EUROPEAN UNION: NEW PARLIAMENT & COMMISSION

MEPs elected in [European parliamentary elections on 23-26 May](#) are due to take their seats on 2 July. Following the announcements of MEP’s political groupings, the thinktank Open Europe [published an article estimating the effect of the UK’s departure on the political make-up](#) of the new European Parliament.

As well as a new parliament, the term of European Commission President Jean-Claude Juncker will end on 31 October 2019. A new President and College of Commissioners will take office. The process for appointment is discussed in the SPICe blog: [2019 European Elections: results and next steps](#). The European Council met on 20 June and adopted a [strategic agenda for 2019-2024](#) but discussions on nominations for the EU’s top jobs will continue at another meeting on 30 June.

A timeline summarising key dates in the process of forming the new Commission is below.



EUROPEAN COUNCIL MEETING – 20-21 JUNE

Following the European Council meeting on 20 June, EU27 leaders met to discuss the European Union and Euro area's economic situation. Brexit was also on the agenda.

Following the meeting European Council President Donald Tusk [made the following statement](#) on Brexit:

- “ At the end of our meeting, the EU27 briefly came back to the issue of Brexit. We have agreed on the following, united approach of the EU27:
- we look forward to working together with the next UK Prime Minister;
 - we want to avoid a disorderly Brexit and establish a future relationship that is as close as possible with the UK;
 - we are open for talks when it comes to the Declaration on the future UK-EU relations if the position of the United Kingdom were to evolve, but the Withdrawal Agreement is not open for renegotiation; and
 - we have been informed on the state of play of planning for a no-deal scenario.

However, a statement on Brexit did not feature in the [published conclusions](#) which focussed on the EU's Economic and Monetary Union.

NORTHERN IRELAND BACKSTOP

North-South cooperation “mapping exercise”

During autumn 2017, the UK and EU undertook a joint exercise to understand the extent of cross border cooperation on the island of Ireland. Information on this mapping exercise was published by:

- The [European Commission on 21 June](#). This report comprises a summary of the discussions held and an agreed list of North-South cooperation areas.
- The House of Commons' Exiting the European Union Committee on 20 June, which [published UK Government documents](#).

RTE's Tony Connolly [reported](#) on the contents of the European Commission's report on 20 June. He wrote:

- “ The report describes a number of other "cross-cutting issues", which would be undermined by Brexit. These include "data protection, including personal data ... public procurement; state aid rules; health and safety and employment frameworks; access to EU funding; the provision of and access to services; divergence in legislative and regulatory regimes; divergence in scientific opinion

informing policy and legislation; and the mutual recognition of professional qualifications".

The report states that the mapping exercise did not deal with customs and regulatory issues explicitly. "However," the report continues, "it was consistently recognised that virtually all areas of north-south cooperation are predicated on the avoidance of a hard border, including related customs or regulatory checks and controls.

UK Government alternative arrangements groups

On 20 June, the first meeting of a Technical Alternative Arrangements Advisory Group took place. This is a UK Government-convened group to explore so-called "alternative arrangements" to the Northern Ireland backstop. Its remit is set out in a [written statement issued on 7 March](#).

The UK Government's press release stated:

- 🗨️ The Technical Alternative Arrangements Advisory Group is the first of three domestic advisory groups that the Government announced earlier this year. The second will be comprised of business and trade unions, and the third made up of parliamentarians.

These groups will help inform the UK's negotiations with the EU on developing alternative arrangements to the Northern Ireland backstop, set out in the Withdrawal Agreement, with the aim of replacing it by December 2020 so that it is never needed.

It is worth noting that the similarly-named *Alternative Arrangements Commission* is not the same as the groups convened by the UK Government. The Alternative Arrangements Commission is [organised by Prospect UK](#). On 24 June they [published an "interim report"](#) on alternative arrangements stating that they believe their proposals

- 🗨️ could be rolled out within three years, with some measures being introduced much sooner, subject to political agreement.

FIRST MINISTER IN BRUSSELS

On 11 June, the First Minister met with the European Commission's chief negotiator on Brexit, Michel Barnier and the President of the European Commission, Jean-Claude Juncker.

The First Minister also gave a [speech](#) hosted by the European Policy Centre think-tank on the topic "Brexit and beyond: where next for Scottish-EU relations". The First Minister told her Brussels audience:

- 🗨️ "Scotland voted to remain in the EU in 2016, that vote was overwhelming.

The Scottish Government deeply regrets – that’s probably an understatement - the UK’s vote to leave. We think the best option – for the UK, and certainly the best option for Scotland – is to remain in the European Union.

Despite that we recognised the outcome of the UK-wide vote, and argued for a long time for possible compromise solutions.

🗣️ In March and April, there was a process of indicative votes in the House of Commons in London. MPs were asked to vote on possible Brexit outcomes and of course nothing got a majority. But the idea then was to assess which options were most likely to command a majority in the UK political arena.

The party I lead, the SNP, as you might expect, voted to revoke Article 50, we also voted to hold a second referendum on EU membership – that reflected our strong preference to remain in the EU. But we also voted for the proposal that - should remaining not prove possible – that the UK should stay in the single market and the customs union.

And that reflected a proposal we made some two years ago. Indeed – although it is not my preferred outcome – that is in many ways the logical compromise solution, given the narrowness of the leave majority across the whole of the UK.

It’s also a compromise that at least has some basis in reality. Michel Barnier, when he spoke here in April, made it clear that the EU could accept a customs union, or a relationship similar to the Norway model – as long, of course, as the UK abandons its self-defeating red lines that make these outcomes impossible.

But I have to say that - even in the couple of months since these indicative votes happened in the House of Commons - the chances of that compromise have all but disappeared. And so increasingly, the likeliest way of avoiding a hard Brexit, or a no-deal Brexit, is for the UK to avoid Brexit altogether.

Now I’m not standing here before you today naively or under any illusions about the difficulty of achieving that outcome. But as somebody who wants to see that outcome and wants to see the UK and Scotland remaining in the EU, nor am I prepared at this stage to give up on that prospect.

Of course that could be achieved - avoiding Brexit – by revoking the article 50 notification – and we have had the judgement, helped along by my colleague Alyn Smith here, of the European Court of Justice which has said that it’s possible for the UK to unilaterally revoke Article 50 as long as it is a definite decision and not simply a play for time.

And that’s an option my party, the Government will support, particularly if that is the only alternative to crashing out in October or any time with no deal. But perhaps the likelier route to avoiding Brexit – particularly if we can persuade the Labour opposition in the House of Commons to endorse this unequivocally – is a second referendum.

That said there is no guarantee that there would be a majority in the UK as a whole for remaining in the EU in a second referendum. And of course there

would only be time for that to happen if the EU can be persuaded to agree a further extension to the Article 50 process.

However, it would offer the opportunity for those of us who want to see the UK stay in the EU to make and to win that argument.

- ” Because there’s not very much clear in the UK right now but I think one thing that is clear is that very few people voted for the current position of chaos. And of course the specific details of what Brexit involves weren’t really known in 2016, they are much better known and much better understood now.

So in these circumstances, checking whether people across the UK still want to go ahead with Brexit is the obvious – to my mind - democratic course of action. So that is what my Government will argue for and we will work with others to try to bring that about.

THE FUTURE RELATIONSHIP IN A NO-DEAL BREXIT

A recent SPICe blogpost, examining how negotiations on a future UK-EU relationship may be affected by a no deal Brexit, is reproduced below.

Negotiating the future UK-EU relationship after a no-deal Brexit

As discussed in a [previous blog post](#), the next Prime Minister will have the same limited options that Theresa May has had for addressing Brexit. One of these options would be to seek to ensure that the UK leaves the EU on the current exit day of 31 October 2019, irrespective of whether a Withdrawal Agreement has been ratified.

This blog examines how negotiation of the UK’s future relationship with the EU might be affected if the UK Government decided to pursue a no-deal Brexit on 31 October.

No implementation period

In the event that the UK leaves the EU without concluding a Withdrawal Agreement, the first casualty would be the [implementation or transition period](#). An implementation period would ensure continuity of arrangements after the UK’s withdrawal and allow time for the negotiations on the future UK-EU relationship to progress. However, provision for the implementation period forms part of the current Withdrawal Agreement, if the UK leaves in a no-deal scenario, the Withdrawal Agreement would fall and consequently the implementation period included as part of the Agreement would also fall.

The absence of such an implementation period would mean that the UK would immediately be treated as a third country once it left the EU. This was confirmed by Stefaan de Rynck, a member of Michel Barnier’s Article 50 negotiating team in a [tweet on 21 June](#). He wrote:

“UK goods become “non-Union goods” on day 1 of a no deal #Brexit. UK would be 3rd country without any customs or preferential trade agreement.”

Conditions for negotiating the future relationship

As Stefaan De Rynck has indicated, if the UK leaves the EU in a no-deal scenario it will immediately become a third country from an EU perspective leading to the UK trading with the EU on WTO terms. This would mean tariffs would be applied to UK goods entering the EU’s single market and all goods would be checked to ensure they complied with EU standards.

The [European Commission President has suggested](#) that if the UK leaves without finalising a withdrawal agreement, the EU will place conditions on the start of any negotiations about the future EU-UK relationship. These conditions will focus on the three issues which the EU identified as priorities for ensuring the UK’s orderly withdrawal:

- citizens’ rights
- financial settlement
- the Irish border.

On 3 April 2019, [Jean-Claude Juncker told the European Parliament:](#)

“No-deal” does not mean no commitments. And these three issues will not go away. They will be a strict condition to rebuild trust and to start talking on the way forward.”

If the EU sticks to this position, it would mean a future UK Government seeking to start negotiations on a future trade agreement with the EU would first need to sign up to conditions which are the same or very similar to those in the current Withdrawal Agreement.

If the UK leaves the EU without a Withdrawal Agreement, it is likely that both sides will look to begin negotiations to address the fall-out of a no-deal fairly quickly. As the UK will no longer be an EU member state, the legal basis set out in Article 50 will have fallen away, and so the EU will need to use another legal basis to agree a new relationship. In addition, the opportunity to negotiate any sort of new implementation period will be more challenging. [Professor Tobias Lock has discussed](#) whether the UK and the EU might seek to negotiate a new version of the Withdrawal Agreement after a no-deal Brexit and the implications of any such decision.

Agreeing and ratifying the future relationship

Assuming the outstanding issues from the Withdrawal Agreement can be resolved, negotiations would then move on to the future UK-EU relationship. The EU’s legal infrastructure will guide the process and present challenges in terms of how an agreement is reached and ratified.

[Article 218 of the Treaty on the Functioning of the EU \(TFEU\)](#) sets out the procedure for the EU’s negotiation of international agreements with third countries ([the Institute for Government has produced a useful explainer](#)) and it is

highlighted in the [Political Declaration](#) as the process by which the future relationship negotiations should be conducted. In terms of getting agreement on the future relationship two factors are worth considering:

- how the final deal is agreed at EU level
- whether member state ratification is required.

Article 218(8) states that any agreement will be achieved by a qualified majority vote of the Council. This means that 72% of the 27-member states (representing at least 65% of the total population of the 27-member states) need to vote in favour of the agreement.

However, Article 218(8) adds that the Council must act unanimously when the “agreement covers a field for which unanimity is required for the adoption of a Union act, as well as for association agreements”. In addition, Article 207(4) provides that negotiations under Article 218 where they include the fields of trade in services, the commercial aspects of intellectual property and foreign direct investment should also require unanimous agreement in the Council.

Given the [Political Declaration on the Future Relationship suggests that the overall institutional framework needed to govern the future relationship could take the form of an Association Agreement](#), it is likely that the future UK-EU relationship will require to be agreed unanimously by the Council. The requirement for unanimity presents the possibility that any one Member State Government could seek to block an agreement until it feels its own national interests are provided for in the final text.

From an EU perspective, if the final agreement on the future UK-EU relationship relates only to exclusive EU competences, then it will only require EU level ratification (in the Council following the consent of the European Parliament). However, it is likely that the comprehensiveness of a future UK-EU agreement would include member state competences meaning it will be a mixed agreement and needs member state ratification. Both the EU-Canada trade agreement and EU-Ukraine Association Agreement were deemed to be mixed agreements.

Recent history (for example Wallonia’s initial refusal to ratify the EU-Canada trade agreement) has shown that where the EU’s agreements need individual member state (and where necessary sub-state) ratification this can be problematic and can delay the entry into force of any such agreement.

The challenges that would follow a no-deal Brexit serve to show that if the UK Government chooses to leave the EU on 31 October with no-deal, it doesn’t bring an end to the Brexit process. Negotiations from that point would take place with the UK as a third country and not benefitting from the continuity provided for by the implementation period negotiated as part of the Withdrawal Agreement.

REPORT ON UK & SCOTTISH GOVERNMENT RELATIONS

On 7 June, the Scottish Affairs Committee published a report with recommendations following its inquiry on [The relationship between the UK and Scottish Governments](#).

This report included recommendations to review the role of the Scotland Office, rebuilt trust between governments, reform of the Joint Ministerial Council and devolution impact assessments.

The report's summary stated:

- Despite the significant changes in the relationship, and the new challenges presented by Brexit, the governmental machinery that supports intergovernmental co-operation has remained substantially unchanged since 1998. We recommend that the Joint Ministerial Committee (JMC), the main body for intergovernmental discussion and agreement, be reformed to ensure it is a forum in which all four of the UK's governments can participate equally, supported by an independent secretariat, and with recourse to a robust dispute resolution procedure which includes input from third parties. We also recommend that a reformed JMC be used to agree, and resolve disagreements about UK-wide common frameworks, which will replace EU-wide rules in areas like agriculture and environmental policy.

Strong intergovernmental relations also require strong relations between officials. However, we believe in some areas Whitehall's skills and knowledge of devolved institutions could be improved, particularly in departments which do not have a history of regular joint working. We recommend that the UK Government increases Whitehall's devolution capacity by improving training, guidance and opportunities for secondments. We also call for new devolution impact assessments to be introduced to ensure that the impact of UK Government policy decisions on Scotland are properly considered during policy-making.

Finally, we recommend that the UK Government reviews the role of the Scotland Office as it is unclear to us how much value it adds to the day-to-day relationship between the UK and Scottish Governments. As part of this review we believe the UK Government should explore options including replacing the territorial offices of state with a single department responsible for managing constitutional affairs and intergovernmental relations.

The UK Government has not yet formally responded to the Committee's report.

SPICe PUBLICATIONS – NEW

SPICe briefings and blogs published since the last Brexit Update.

Briefings:

- [Competition policy – the UK framework and the impact of Brexit](#)
- [Competition policy – Brexit and the exercise of devolved powers](#)
- [Brexit and veterinary workforce pressures - A perfect storm?](#)

Blogs:

- [Brexit – the more things change, the more they stay the same](#)
- [Negotiating the future UK-EU relationship after a no-deal Brexit](#)

House of Commons Library, Insight blog:

- [Can the Withdrawal Agreement be renegotiated and can Parliament prevent ‘no deal’?](#)

Iain Thom and Iain McIver
SPICe Research

About this publication

This regular paper produced by SPICe sets out developments in the UK’s negotiations to leave the European Union, the process for which formally begun following the Prime Minister’s triggering of Article 50 on 29 March 2017.

The updates provide information on the UK Government’s approach to leaving the EU including the domestic legislation necessary to ensure a smooth transition in terms of the UK statute book, along with details of the positions of the Scottish Government and the other Devolved Administrations. The updates also provide information on developments within the EU with regard to the UK’s departure. Finally, the updates will provide information on the key issues likely to be at play during the negotiations and in developing the UK’s future relationship with the European Union.

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