

COMMENT

## The Brexit Countdown to Autumn 2018

Anthony Salamone | 26 February 2018



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The halfway point in the two-year Article 50 negotiating period is fast approaching. The scarce amount of time remaining should worry Theresa May and her cabinet. The EU has made clear from the beginning that the withdrawal agreement needs to be completed by autumn 2018 – say the October European Council (18-19 Oct) – in order to allow time for proofing and ratification. That leaves just under eight months to reach a finalised withdrawal agreement, including a Brexit transition. If it proved necessary, the EU27 would probably be willing to extend the negotiations up to the December European Council (13-14 Dec), but not beyond that.

As Danuta Hübner MEP, chair of the European Parliament’s influential Constitutional Affairs committee, [recently set out](#), the view from the EU27 is that the UK has underestimated these time limitations. The Brexit negotiations are not akin to a Westminster or Whitehall compromise where everything can be thrown together at the last minute or voted through parliament overnight. As she notes, the European Commission’s process of consulting with the 27 member states and the European Parliament at each stage of the negotiations takes time. Accordingly, not only is time lost upfront for approval and ratification, but the effective negotiating timeframe is further reduced by the necessary EU internal discussions.

The UK government’s lack of detail on its negotiating positions (or lack of a negotiating position) early on now has its consequences. David Davis of course [originally suggested](#) that, along with the withdrawal agreement, the entire future relationship could also be sorted within the Article 50 period. Theresa May made a [comparable statement](#) in her Lancaster House speech. That was never realistic – however, it could have been possible to make some substantive headway on the future relationship within the two years.

The UK’s obfuscations and delays have rendered that prospect more remote. Following the EU’s order of priority, the focus has been on the withdrawal agreement – the exit issues and the

transition period. Any progress on future relations in the time remaining will be formulated as a political declaration of principles, which will be attached to the withdrawal agreement. Negotiations on the future relationship will have to continue during the transition period.

In the absence of any unforeseen circumstances then, the withdrawal agreement should be completed by autumn 2018, incorporating the aspects of the Phase 1 deal on financial obligations and citizens' rights. To reiterate, this treaty will only address the UK's withdrawal from the European Union, not future arrangements. The standstill transition, which the EU wants to end after December 2020, will form part of the withdrawal text.

Outstanding withdrawal issues remain, particularly the role of the Court of Justice of the EU and the shape of continuing free movement of people during the transition. The EU27 have insisted that the Court must be involved and that free movement must remain unchanged during the transition. The UK government has of course sought to limit, or eliminate, the role of the ECJ and wanted to institute more limited rights to settled status for newly arrived EU citizens into the UK during the transition. Past form in the Brexit negotiations suggests that the UK government will eventually accept the EU's positions.

The third pillar of the Phase 1 deal relates to Northern Ireland. The UK made a commitment to avoid a hard border on the island of Ireland – through the future UK-EU relationship overall, 'specific' agreed arrangements or, failing that, a backstop of EU alignment – and the EU27 will hold it to that commitment. The EU is willing to consider specific arrangements for Northern Ireland, given its circumstances and history, which it would not accept for the whole UK. The UK government, however, is conflicted on the principle of differentiation for Northern Ireland – due to its rejection by the DUP, which sustains the government through a confidence and supply agreement, and indeed parts of the Conservative parliamentary party. The result is a situation which is less a failure of EU-UK negotiations and more a consequence of UK internal divisions.

Moreover, the transition will not quell Brexit uncertainty – it will simply prolong it while the debate continues. The political declaration on the future relationship should be indicative of the direction in which the UK and EU are heading. However, the unpredictable nature of UK politics implies that the UK government's positions could shift with little notice and potentially widely depart from that direction. Incidentally, this volatility has contributed to an erosion of EU confidence in the UK to keep its word over the long term.

Despite all of the political machinations which we have witnessed in past months, the UK government's substantive position on post-transition relations remains elusive. All the while, events are progressing rapidly – in particular, the EU's draft of the withdrawal treaty should be published soon. Jeremy Corbyn's Brexit speech today provided little new detail on Labour's position, while Theresa May's speech on Friday is yet another opportunity to set out a meaningful and realistic approach.

At some point soon, the Prime Minister's rhetoric of securing a 'special, bespoke' trade deal will crash into the reality of the EU's offer – that is, with all of the UK's red lines, a Canada-style free trade agreement (without extras). The perpetual deferral of the truth on the consequences of hard Brexit, or any Brexit, will come to an end. All the while, the opportunity to change course is closing – time is running out.