

# 2020 Brexit Supplement to European Union Politics



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SIXTH EDITION

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# Introduction

In the introduction of *European Union Politics*, we explored how the crucial factor driving the evolution of the European Union has been the challenges and crises that it and its member states have had to face over the past six decades (see Chapter 1). Examples of recent crises confronted by the EU include the 2008 global financial crash, the subsequent Eurozone debt crisis in 2019 (see Chapter 26), and the European migrant crisis from 2015 (see Chapter 22). In 2016 the Brexit referendum became a sign of more challenges and change to come for EU. Although the uncertainty surrounding Brexit has somewhat abated with the formal exiting of the United Kingdom from the European Union in January of 2020, the future relationship between the UK and the EU was still unresolved at the time of writing in late Spring of 2020. In May 2020, the 'transition period' allocated for Brexit was overshadowed by a new crisis, posing perhaps the greatest challenge yet to the EU: the Covid-19 pandemic. Member states took divergent paths to manage the public health crisis, and EU institutions initially struggled to respond.

This Supplement will first outline the major developments in the Brexit progress since November 2018, drawing on the conclusions of European Council meetings. The second part of the Supplement will continue the story of the Brexit negotiations covered in Chapter 27. The third part of the Supplement will

note the initial impact of the Covid-19 pandemic on the EU and its member states, and how the EU and its member states had responded in the first few months of the pandemic, including its impact on negotiation of the future EU–UK. As noted in *European Union Politics* 'even if crises have (re-) invigorated European integration in the past, this does not mean that they will continue to do so in the future' (see Chapter 1). At this point in time, it remains to be seen what the impact of the Covid-19 pandemic will be on the future of the EU, and with it, the UK's new relationship.

## Brexit since November 2018

Former Prime Minister Theresa May invoked Article 50 in March 2017. Article 50 took the form of a letter to the European Union, triggering the countdown to the UK leaving the European Union. What was later dubbed 'Brexit Day' was initially scheduled in the letter for midnight Brussels time on the 30th March 2019. Throughout the negotiations leading up to the triggering of Article 50, the EU adhered to its negotiating principles (published March 2017, see Box 27.3). The principles included confirmation that the EU should act with one voice, and that the negotiations with the UK should be in phases. Sufficient progress on Phase 1 issues (citizens' rights, the UK/EU border with

Ireland, and the UK's financial settlement) needed to be achieved before Phase 2 negotiations could begin, when detailed legally binding terms were to be agreed.

The second of the Phase 1 issues, the complex case of the Irish border (see Box 27.4 p.415), hampered the progress of the British government to get parliamentary agreement for the proposed Brexit Withdrawal Agreement (WA). The WA aimed to avoid a 'hard border' between Northern Ireland and the Republic of Ireland, in the event that no alternative arrangements had been negotiated by the end of the Brexit transition period. A hard border in practice means one with physical crossing points. A crossing of this kind had not been considered by the UK and Ireland since before the seminal Good Friday Agreement, which came into force in 1999 to end a period of unrest between the two nations. The WA drafted in November of 2018 envisaged a so-called 'Irish backstop', a single customs territory between the UK and the EU, which placed Northern Ireland in a closer customs arrangement with the EU, with access to the European single market. The 'special status' of Northern Ireland within both the UK and the EU was a fraught subject, and remained unresolved until renegotiation by Theresa May's replacement, Prime Minister Boris Johnson, in the summer of 2019. Despite the revised WA which was passed by Parliament, The 'Irish Question' remains a disputed subject.

## Autumn 2018—January 31st 2020

The phase of Brexit from November 2018 to the UK General Election in December 2019 was characterized on the UK side by parliamentary deadlock, resignations from government, party splits, the establishment of new parties, and no confidence votes in the leader of the governing party. This period also saw a change of Prime Minister, three requests for extensions to Brexit Day, attempts by Parliament to wrestle control of the Brexit negotiations from the Executive, and the unlawful prorogation of Parliament by a new Prime Minister. Beyond Westminster, some aspects of everyday government were interrupted; businesses faced continuing uncertainty over the future relationship between the UK and the EU, and the Scottish Parliament voted to reverse Brexit. Millions of citizens signed petitions, and took to the streets in pro- and anti-Brexit protests. Despite this, the British economy continued to grow.

## Parliamentary Deadlock

Any sense of progress on agreeing the Withdrawal Agreement in November 2018 was soon to dissipate as Brexit Secretary Dominic Raab, and a number of other Cabinet ministers, resigned from government, citing their inability to support the WA. A new Brexit Secretary (Stephen Barclay) was appointed, and the House of Commons was promised a 'meaningful vote'. The vote aimed to secure explicit Parliamentary approval for any 'deal' done under the European Union Withdrawal Act 2018, on the 11th December 2018. The Prime Minister faced opposition from so-called 'Brexiters' within the Conservative Party, which included members of the European Research Group (ERG), along with the Democratic Ulster Unionist Party (DUP). The government postponed the ratification vote until January 2019.

Opposition to the WA within the Conservative Party and the DUP centred on the Irish backstop. Before bringing the meaningful vote back to the House of Commons, Theresa May promised to get legally binding reassurances from the EU that the Irish backstop would be temporary. Although opposition was mounting against Prime Minister May, on the 12th December 2018, her leadership was reasserted, as she survived a vote of no confidence by a margin of 200–117.

On the eve of the rearranged meaningful vote in January 2019, the (now former) President of the European Commission, Jean-Claude Juncker, and the President of the European Council, Donald Tusk, wrote a joint letter to the Prime Minister confirming that the Irish backstop was 'intended to only apply temporarily', and that they would work towards a final agreement. However, they made clear that the WA was not open for renegotiation. The majority of opposition party MPs, along with the DUP and members of the ERG, remained dissatisfied. The government lost the 'meaningful vote' by 432–202 votes, the largest defeat in history of a sitting UK government. A few days later, on the 16th January 2019, Jeremy Corbyn, who was at the time the leader of the Labour Party, called another vote of no confidence in the government. Theresa May survived the second vote by 325–306. Many Conservative MPs who had voted against the Brexit plan a few days earlier voted in support of May's continued leadership.

There followed weeks of manoeuvring in Parliament as the Prime Minister tried to persuade MPs from

all parties, including her own, to support the WA. Various government ministers were sent to Brussels in an effort to persuade the European Council to reopen negotiations. The government brought the WA back to the House of Commons for a second meaningful vote on 12th March 2019, only 17 days before the UK was due to leave the EU. Jean-Claude Juncker explained in a new letter to the Prime Minister that the UK's withdrawal from the Union had to be completed before the May 2019 elections to the European Parliament (EP) or, as a continuing member state, it would be legally required to hold the elections. MPs, including members of the ERG and the DUP, again rejected the WA (391 to 242 votes).

Although the second meaningful vote was lost by a smaller margin (149) than the first (230), this was still a significant defeat for the government. The government proposed a third meaningful vote for a few days later. However, the former House of Commons Speaker John Bercow, citing a Parliamentary convention from 1604, ruled that a third meaningful vote was not possible unless the proposal was 'substantially different' from the previous version.

On the 14th March 2019, unable to get the WA and PD (Political Declaration: the short document which along with the WA, outlined the future relationship between the UK and EU) approved by Parliament, the government offered its own MPs a 'free' vote to extend 'Brexit Day', which was scheduled for just two weeks later on the 29th March. 413 MPs, including most Labour MPs, voted for the extension. Of the 202 Conservative and DUP MPs who voted against the government, eight were Cabinet ministers. Unusually, none were required to resign under Cabinet collective responsibilities protocols, or were sacked by the Prime Minister. During this period there were attempts by backbench MPs (including Conservatives) to pressure the government through a series of indicative votes in Parliament, with the aim of finding an agreed approach to the nature of Brexit which a majority of MPs could support. Some votes, such as continued membership of the EU Customs Union, were only narrowly defeated. However, backbench MPs had for the time being missed their best opportunity to seize the Brexit negotiation agenda from the government. A Special European Council Meeting on Brexit on 21st March 2019 agreed to the first flexible extension (or 'flexextension'). This meant that the Brexit Day could be moved two weeks forward to the 12th

April 2019, if the UK Parliament voted in favour of the WA. Alternatively, Brexit could be delayed until 22nd May 2019, but no longer, unless the UK agreed to hold elections to the European Parliament.

The government lost a third meaningful vote on the WA on 29th March 2020 by 344 to 277 votes. With Parliament still deadlocked, Theresa May chaired a seven-hour Cabinet meeting on the 2nd April 2019. The Prime Minister then announced to the nation that she would be asking the European Council for a further extension to Article 50, while proposing talks with the Labour Party to seek a way out of the Parliamentary deadlock. In response to this, Donald Tusk suggested a further extension to Article 50 for up to a year. However, some European Council members, such as President Emmanuel Macron of France, argued that such a long extension should not be assumed, and would only continue the uncertainty faced by business, citizens, and EU governments. At a special summit on the 10th April on Brexit, the European Council agreed an extension until 31st October 2019. This also allowed for the UK to leave at the end of any intervening calendar month, should the House of Commons pass the WA in that month.

In its summit conclusions, the European Council made clear 'that the extension cannot be allowed to undermine the regular functioning of the Union and its institutions', and stipulated that unless the UK had ratified the WA by the 22nd May, the country would need to participate in EP elections on 23rd May. Failure to participate in the elections would result in Brexit by default on 1st June 2019 (with without a divorce deal). The Council also stated that the UK 'must refrain from any measure which could jeopardize the attainment of the Union's objectives, in particular when participating in the decision making processes of the Union' (European Council, <https://data.consilium.europa.eu/doc/document/XT-20015-2019-INIT/en/pdf>). This was in response to calls by figures such as Boris Johnson (at the time a backbencher) to disrupt EU decision-making processes if the EU did not re-open negotiations on the WA. Boris Johnson was swiftly becoming a main contender to replace Theresa May as leader of the Conservative Party.

In the May 2019 local elections in England, the governing Conservative Party lost 1,300 council seats, while the main opposition party, Labour lost 80 seats. Pro-Remain parties such as the Liberal Democrats and the Greens significantly increased their number of councillors. Both Theresa May and Jeremy Corbyn interpreted the results as an instruction from the

electorate to urgently complete the cross-party talks that had begun a month earlier, and get a majority of MPs to support a WA.

## European Parliament Elections

Lacking parliamentary support for the WA, the UK government had to organize European Parliament elections at short notice as instructed by the EU council (see Table S.1). The UK elected a total of 79 Members of the European Parliament (MEPs) using a form of proportional representation. Turnout was 37%, an increase of 2% on the previous EP elections in 2014. However, this was significantly lower than the EU average of 51%. 47% of UK MEPs returned were women, slightly higher than the European average.

A wave of new appointments in the EU came into place after the EP elections. Ursula van der Leyen replaced Jean-Claude Juncker as President of the Commission while Charles Michel replaced Donald Tusk as President of the European Council. However, Michel Barnier, the EU's Chief Negotiator on Brexit, remained in post throughout Prime Minister Theresa May's Article 50 negotiations, and continues to lead the EU's negotiating team in the Brexit transition period.

Country-wide, 34% of UK voted for pro-Brexit parties (the Brexit Party and UKIP), while 40% voted for Remain parties (the Liberal Democrats, the Green

Party, SNP, newly formed Change UK, and Plaid Cymru). The biggest winner in the EP election was the Brexit Party. Established only six weeks prior to the election in April 2019 by the former leader of UKIP, Nigel Farage, the party did not publish a manifesto and had no policies other than to press for Brexit to be completed. Almost 31% of voters supported the new party, and it won 29 seats in the European Parliament.

The Remain-supporting Liberal Democrats built on their successes in the local elections earlier in the year by winning almost 20% of the vote and 16 seats. The Greens, another Remain-supporting party, won 11.78% of votes and seven seats. In Scotland, the remain-supporting Scottish National Party (SNP), increased its share of the vote by 8.8% and won three of the six seats in Scotland. The two main UK-wide parties, Labour and the Conservatives, saw a decline in their vote share on the previous election. The Labour Party won just under 14% of the vote (down by 11.3% on 2014), which translated into only ten seats (down ten seats). The ruling Conservative Party polled fifth, winning only 9% of the vote (down by 15%) and as a consequence, only four seats. In the wake of the poor EP election performance of the Conservative Party, Theresa May announced she would resign as Party leader and Prime Minister. This triggered an internal party leadership contest which was won by the early front-runner, Boris Johnson, who became Prime Minister on 24th July 2019.

**Table S.1** 2019 UK European Parliament Election Results

	Percentage of vote (2014 result)	No. of seats won (in 2014)
Brexit Party	30.79 (0)	29 (0)
Liberal Democrats	19.78 (6.69)	16 (1)
Labour Party	13.74 (24.74)	10 (20)
Green Party	11.78 (7.67)	7 (3)
Conservative Party	8.86 (23.31)	4 (19)
Scottish Nationalist Party	3.51 (2.4)	3 (2)
Change UK	3.31	0
United Kingdom Independence Party	3.22 (26.77)	0 (24)

Source: (European Parliament <https://www.europarl.europa.eu/election-results-2019/en/united-kingdom/>)



## A New Prime Minister

At his first speech to the House of Commons as Prime Minister, Johnson committed to leave the EU with or without a deal by 31st October 2019. He considered renegotiating Theresa May's WA. In August 2019, Johnson met with a number of European leaders including the Irish Taoiseach Leo Varadkar, Donald Tusk, French President Emmanuel Macron, and German Chancellor Angela Merkel. The Irish backstop was a common feature in all discussions. At the beginning of September, the British government signalled that UK officials would stop attending most EU meetings, including those of the Council of Ministers, so that they could focus on the future relationship with the EU and other partners around the world. Johnson also refused to nominate a new UK European Commissioner (a type of national UK minister to the EU), for which an infringement procedure was initiated by the Commission.

When Parliament returned from its recess in early September, Johnson encountered a number of set-backs in his efforts to get Brexit done. First, Labour MP Hilary Benn tabled the European Union (Withdrawal) (6) Bill, otherwise known as The Benn Act. The Bill set into law that by the 19th October 2019, the new PM had to either a) get MPs to pass a withdrawal agreement, b) get MPs to pass a motion agreeing to a no-deal Brexit, or c) write to the EU requesting a further extension to Article 50 beyond 31st October 2019. The bill was passed, including votes from 21 Conservative Party MPs. The Prime Minister removed rebels who voted for the bill from the Conservative Party.

The Prime Minister then arranged for the UK's Head of State, Queen Elizabeth, to exercise her powers to prorogue Parliament—in effect suspending the sittings of Parliament. This prompted separate legal challenges in the Scottish and English courts, with different outcomes, and the issue was taken to the UK Supreme Court. The Supreme Court ruled on the 24th September 2019 that 'the decision to advise Her Majesty to prorogue Parliament was unlawful because it had the effect of frustrating or preventing the ability of Parliament to carry out its constitutional functions without reasonable justification' (Supreme Court, <https://www.supremecourt.uk/cases/docs/uksc-2019-0192-judgment.pdf>). In addition to this, a majority of MPs rejected a motion from the Prime Minister requesting a short adjournment of

Parliament to allow the Conservative Party conference to take place.

At the start of October 2019, Johnson wrote to the President of the European Commission setting out a new proposal for the Irish border (available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/836029/PM\\_letter\\_to\\_Juncker.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/836029/PM_letter_to_Juncker.pdf)). The proposal contained two seemingly incompatible elements: first, 'the creation of an all-island regulatory zone'. The PM wrote 'this zone would eliminate all regulatory checks for trade in goods between Northern Ireland and Ireland by ensuring that goods regulations in Northern Ireland are the same as those in the rest of the EU'. A second element stated that 'Northern Ireland will be fully part of the UK customs territory, not the EU Customs Union'. Johnson concluded that the proposal would 'provide for continued regulatory alignment across the whole of Ireland after the end of the transition period' and 'provide for a meaningful Brexit in which UK trade policy is fully under UK control'. The border between Northern Ireland and Ireland would remain 'open'.

Although initially doubting the feasibility of Johnson's proposal, the Irish Taoiseach Leo Varadkar agreed to meet the PM to discuss the matter. Subsequently, the two ministers issued a statement saying they could 'see a way forward', a view endorsed by a Special European Council Meeting on Brexit in Brussels on 17th October 2019.

On a rare Saturday sitting of Parliament in October 2019, the Prime Minister presented his new Brexit deal to the House of Commons. Ultimately, it was defeated. Johnson was forced to write to Donald Tusk to ask for a third Brexit extension in line with the European Union (Withdrawal) (No. 2) Act 2019. Unwilling to immediately accept the extension, the European Council delegated to the Committee of Permanent Representatives the decision whether or not to grant the extension of Brexit Day to 31st January 2020.

## December 2019 General Election

On the 30th October, Parliament set the date for a general election on 12th December 2019 (see Table S.2). The opposition Labour Party had long called for an election to finally resolve the Brexit uncertainty. Despite the poor EP result for the Conservatives earlier that year, the party maintained its lead in opinion

polls. In spite of all the setbacks in the first five months of his term as PM, Johnson achieved a significant victory on Election Day. Voter turnout was a high 67.3%. The Conservative Party increased its share of the vote on the 2017 general election by 1.2%, winning an additional 47 seats. Crucially, the Conservative Party was no longer reliant on a coalition with the DUP to pass legislation. The Labour Party achieved its worst general election result since the 1930s, losing 51 seats. Its leader Jeremy Corbyn announced his intention to step down, and was replaced by Keir Starmer in April 2020. The Brexit Party, which had won the highest percentage of votes and number of seats in the EP election six months earlier, won no seats in the general election.

With a large majority, Johnson reintroduced his Withdrawal Bill, which was approved in January 2020. The European Parliament ratified the UK Withdrawal Agreement on 29 January 2020, finally paving the way for the UK to leave the EU on 31st January 2020 ('Brexit Day'). On the contentious issue of the border with Ireland, the new WA guaranteed frictionless trade between Northern Ireland and the Republic of Ireland (and by extension the EU). However, in May 2020, it emerged via former British Cabinet minister Michael Gove that there would indeed be 'Brexit checks' on animals and goods entering Northern Ireland from the rest of the UK from January 2021 (Government Statement, <https://www.gov.uk/government/speeches/chancellor-of-the-duchy-of-lancaster-statement-20-may-2020>). The checks would

ensure that the UK and Ireland were compliant with World Trade Organization (WTO) animal health codes on 'disease-free' status. Gove asserted that trade and tariffs (taxed on exports) between the two countries would not change. This was significant news that broke during the transition period, which will be discussed next.

## The Transition Period

The transition period commenced the day after the UK left the EU at the end of January 2020. The period was designed as an opportunity for three new phases of Brexit to occur. First, the UK and the EU could finalize the three aspects of 'phase one' set out in the Withdrawal Agreement: citizens' rights, the shared border with Ireland, and the UK's future financial settlement. Second, agreements on the future relationship between the UK and the EU could be negotiated. Third, the UK could commence negotiations on future trading arrangements with third parties. During the transition period the UK would continue to be bound by the same obligations and any new ones introduced by the EU, but would lose all voting rights and decision-making power within the EU institutions. The two sides agreed that if the UK wanted to extend the transition period beyond the end of 2020—to a maximum of the end of 2022—it would need to confirm this by the end of June 2020. Following the

**Table S.2** 2019 UK General Election Results compared to 2017 General Election results

	Seats (change on 2017)	Percentage of vote (change on 2017)
Conservative Party	365 (+47)	43.6 (+1.2)
Labour Party	201 (-51)	32.2 (-7.8)
SNP	48 (+13)	3.9 (+3.8)
Liberal Democrats	11 (-1)	11.5 (+4.2)
Democratic Ulster Unionist Party	8 (-2)	0.76 (-5.4)
Brexit Party	0	N/A
Green Party	1 (0)	2.7 (+1.1)
Others	15 (+2)	

Source: (House of Commons Library <https://commonslibrary.parliament.uk/research-briefings/cbp-8749/>)

December general election, the Johnson government repeatedly stated that the transition period would end on 31st December 2020. Furthermore, Parliament passed legislation to prevent any change to the date.

## Finessing the WA

Discussions to finalize aspects of the WA began in early March 2020. The Joint Committee established to oversee the way the UK and the EU implement, apply, and interpret the WA is separate from the negotiations on the future relationship. The first meeting of the Joint Committee occurred on 30 March 2020 via videoconference, due to the social distancing required during the coronavirus pandemic. Following its first meeting, the European Commission encouraged the UK to set out its plans for finalizing arrangements for the border arrangements with Ireland, but at the time of writing, in May 2020, agreements of this nature were still forthcoming.

## Negotiation of the future relationship agreements

Michel Barnier set out a timetable for negotiating future relationship agreements in February 2020. It was envisaged that negotiations would need to be completed by the time of the European Council meeting in October 2020, which would then allow sufficient time for both sides to ratify the agreements by the end of December 2020. On the 3rd February 2020 the UK government published a Written Statement on its approach to the negotiations (UK Parliament, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-02-03/HCWS86/>). On competition policy, subsidies, environment and climate and employment policies, the statement described that the UK would 'not agree to measures in these areas which go beyond those typically included in a comprehensive free trade agreement'.

The first round of negotiations commenced in early March, but as the Covid-19 pandemic spread across the continent, the second round of negotiations were delayed until the 20th April 2020. Failure to agree an extension by this date or to ratify the future relationship by the end of 2020 would mean that the

UK and EU would by default apply WTO rules to all trade from 1st January 2021.

## The Covid-19 Pandemic

The EU's European Centre for Disease Prevention and Control alerted the European Economic Area members to a novel type of coronavirus, identified in Wuhan, China, in early January 2020. The World Health Organization (WHO) placed Europe at the epicentre of the Covid-19 pandemic in March 2020. Because public health is not an EU competence, member states adopted different approaches to countering the pandemic.

The first European country to be significantly impacted was Italy, and the government's response was to quickly impose a lockdown to severely limit its citizens' freedom of movement. Spain, France, and other member states followed suit, as did the UK. The Swedish government did not impose a lockdown on its citizens, although they encouraged home working and issued advice to avoid public places, such as restaurants. Whilst also locking down its citizens, Hungary's government passed a law allowing the Prime Minister, Viktor Orbán, to rule by decree indefinitely.

The volume of testing of citizens to see if they had contracted the coronavirus varied across member states, with Germany recognized as one of the most effective in the EU. Lifting lockdown restrictions was a decision for national and regional governments, with many countries proposing different timetables. Restrictions on the cross-border movement of people within the Schengen Area were introduced by many member states.

At the EU level, the European Commission quickly relaxed state aid rules to allow national governments to significantly increase relief expenditure to support businesses. As the UK was still subject to EU state aid rules during the transition period, the government had to seek agreement from the Commission for a number of initiatives to support the economy. Although it was not involved in central decision-making, the UK during the initial stages of the pandemic in the Spring of 2020 was subject to most EU rules, and was able to access EU funds and procedures. Thus, the UK took part in the Europe-wide procurement of personal protection equipment (PPE) and medical ventilators. In May 2020, the UK was included in a European Commission

scheme to distribute 10 million face masks per week for six weeks to member states.

At the time of writing, the impact of Covid-19 on the economic future of EU countries was uncertain. What was clear, however, was that all economies were anticipating economic downturns in 2020.

## Conclusion

In Chapter 27 of *European Union Politics*, we set out four scenarios for the future of the EU in the light of the crises it had recently endured: disintegration, piecemeal adjustment, functional federalism, and a federation of nation states. Italian and French leaders

in April 2020 indicated that the Covid-19 pandemic required a joint effort to address some of the issues not resolved at the time of the Eurozone crisis. Prime Minister Conte of Italy stated that the pandemic was an existential threat to the EU, while President Macron of France said: 'that the European project had no future if member states failed to respond to the exceptional shock.' Macron was, in effect, identifying the potential for a disintegration scenario, if significant steps towards a federation of nation states were not taken at this critical juncture. Brexit negotiations between the UK and the EU slowed as a result of the more urgent pandemic crisis, and thus the future of the UK as an independent state after the transition period was still uncertain.

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