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Governing a Discontinuing EU Membership

An explorative study on the EU's strategy and practise for
organising the Brexit process

by

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Public Governance
across Borders

A thesis

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Abstract

This thesis explores how the Brexit process is being governed by the European Union. Embedded in the Governance of Discontinuation research it investigates the EU's strategy and practise for organising the negotiation and policy process and its flexible adaption to specific key moments. The interpretive approach employed for this research uses a chronological method to reconstruct the Brexit negotiation timeline and the contingency policy process. It applies the Multiple-Streams heuristic from Kingdon (2009) for an in-depth understanding of four characteristic situations of the Brexit process. The qualitative data for the analysis is collected from official EU documents and legal acts and press releases based on theoretical sampling.

The research finds a twofold EU's strategy of framing and structuring the Brexit process while simultaneously leaving the scope for implementing flexible practices in situations where this is required. The Brexit process is further marked by policy problems and different types of uncertainty. The double strategy of certainty and uncertainty is determined as influential for governing the Brexit process.

Keywords: EU, Brexit, governing discontinuation, policy process, Multiple-Streams, uncertainty as a strategy

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List of Abbreviations

BATNA	Best Alternative To a Negotiated Agreement
BREXIT	Short for British-Exit/ the UK's withdrawal from the EU
COM	European Commission
EU Council	European Council
DUP	Democratic Unionist Party
EBA	European Banking Authority
EC	European Community
ECJ	European Court of Justice
EEC	European Economic Community
EMA	European Medicine Agency
EP	European Parliament
EU	European Union
FTA	Free Trade Agreement
OCT	Oversea Country and Territory
TEU	Treaty of the European Union
TFEU	Treaty of Functioning of the European Union
UK	United Kingdom
WTO	World Trade Organisation

“Against the backdrop of global turmoil
in an interconnected world,
Europe is today
more necessary than ever.
The future of Europe
is more important
than Brexit.”

*Michel Barnier, Speech at the Centre for European Reform on ‘The Future of the EU’;
Brussels, 20 November 2017 (European Commission, 2017a)*

1. Introduction

On the 26th June 2016, the citizens of the United Kingdom (UK) decided to leave the European Union (EU). At that time, nobody had forecasted the result of the Brexit referendum, what it would imply for the EU, neither how the way out of the Union could look like and how it could be organised. On the 29th of March 2017 the British Government evoked Article 50 TEU (Treaty of the European Union), articulating the intention to leave the European Union. According to Art. 50 TEU, the termination of the EU membership of one country needs to be organised by an agreement which sets out arrangements for the withdrawal and provides a basis for the future relationship (EUR-Lex, 2019a). Therefore, the process of organising the discontinuing EU membership of the UK is designed as a policy process. Colebatch (2009) describes this as a “process [which] involves not simply the pursuit of shared goals but also the more difficult task of constructing a basis for collective action among participants with quite diverse views on the nature of the task” (p.4). The Brexit process, however, does not only include different policies which have to be designed but a political negotiation stream which demands for strategic positioning.

Now, two years later, many hours were spent during this negotiation, Brexit summits were held, and a negotiated withdrawal agreement is up for approval. However, a lot remains unclear: the Agreement was rejected three times by the House of Commons and the Brexit date, which was originally set to be the 29th March 2019, has first been postponed until the 12th of April, followed by a longer extension until 31st October 2019 including the option of an earlier opt-out. In May, the UK participated in the EU elections, where the new Brexit-Party won the most votes.

During the last two years, the process of organising Brexit has been disturbed by changes, daily developments, choices and actions taken by at least one of the negotiating parties. Besides negotiating the withdrawal agreement, the European Commission as well as the European Council were actively structuring the Brexit process and adopting other policy measures to be able to organise a possible No-Deal Brexit or to support national and local governments or private firms preparing for Brexit.

Besides Greenland, which left the EU in 1985 and got an OCT (Overseas Country and Territory) status, no member state has ever left the European Union. Since, Greenland is still part of the Danish Kingdom and has exclusively made a fishery agreement with the EU (Rebhan, 2016), current research on Brexit is dealing with a rather new phenomenon which is not comparable.

Current state of research

Since 2016 a considerable amount of academic literature has been published providing political and sociological explanations for the results of the Brexit referendum. Scholars like Becker, Fetzer, and Novy (2017); Gamble (2018) or Hobolt (2016), found that socio-economic characteristics of the British society matter as well as socio-geographical divides. Moreover, Hagemann (2018); Johnston, Manley, Pattie, and Jones (2018); Petrović (2018) have discussed the influence of Eurosceptic parties and political implications of the Brexit referendum for the future of the EU-27. However, only little has been researched in the area of organising and managing the Brexit process at EU level.

Different public administration strategies were introduced by Rainey (2014). His theoretical concepts however mainly focus on internal strategic management in public organisations and not on negotiations between organisations. Elsig (2007) instead is analysing the autonomic strategic power and agenda-setting of the European Commission based on the principal-agent framework. Brexit however appears to be a new phenomenon which cannot be exclusively analysed with organisational and managerial theories. Because of its unique process of discontinuing a EU membership, it is embedded in the rather new field of discontinuing governance research. Apart from Eppler (2018) who introduced flexible integration as a potential reason for disintegration, European Integration theory has not provided an explanation for this slow but steady process of discontinuation.

With their theoretical approach Adam, Bauer, Knill, and Studinger (2007) contribute to the understanding of policy and organisational termination (Bauer, 2009). Turnheim and Geels (2012) developed an approach for understanding destabilisation and termination as an observable process, while Stegmaier, Kuhlmann, and Visser (2014) added a focus on discontinuation governance and applied a trajectory of discontinuation. So far, the termination perspectives have mainly been used to understand declining socio-technical systems (Stegmaier et al., 2014; Turnheim & Geels, 2012).

Using these ideas for understanding the UK's discontinuing EU membership displays the multiple applicability of this research field and aims to enrich the approach by adding exemplary research from a different policy area. Moreover, it refers to the *Governance of Discontinuation* process (Stegmaier et al., 2014) which is the main analysis of this study. The EU has to deal with different problems and uncertainties during the organisation of the policy process, because Brexit is a new phenomenon. Colebatch mentions the policy process' nature of being "characterized by conflict, resistance, uncertainty and ambiguity ", (2009, preface).

Furthermore, the *Governance of Problems* approach introduced by Hisschemöller and Hoppe (1995), defines different types of problem-policy strategies which occur during such processes. More, Spann introduces the term *organisation*, defined as a sequence of determining actions, which aims to get better understanding of a processual layer (Pfadenhauer, 2008), while Sabel and Zeitlin (2010) are providing a tool with their concept of *Experimentalist Governance* for understanding European policy-making.

This study on the EU's organisation of the Brexit process makes references to all research areas introduced above. First, Brexit as a new phenomenon must be understood the light of the UK's historical relations with the EU. Second, the discontinuing membership has to be examined based on the theoretical approaches of discontinuation theories. Third, combining a public administration research on the EU with conceptions of problems and uncertainties offers a new pattern for understanding the European strategy and practise for organising comprehensive (discontinuation) process. It, therefore, aims to fill the research gap.

Social and scientific relevance

Since Brexit affects various areas of the lives of European citizens and already has great impact on the EU's economy, the research on how the EU organises Brexit is highly relevant. This Bachelor thesis contributes to the relatively young field of research on discontinuing governance. Furthermore, it looks at a new phenomenon of a negotiation and policy-making process at EU level. By combining these two aspects it aims to provide a closer and better comprehension of the EU's practice of organising policy processes. Moreover, this research adds new findings and a typology on how uncertainty can be understood in policy processes of the 21st century.

The practise for dealing with Brexit is furthermore generally seen as a crucial for the future unity, capacity and stability of the EU. Chief-negotiator Michel Barnier stated the priority to secure the EU's future and its position and influence in the world (European Commission, 2017a). It is not possible to predict its future evolution. The way of organising the Brexit process however clearly has an impact. Its social relevance results from the possibility that other member states may wish to leave the EU in the future This analysis might offer a better understanding of the EU's practice of organising similar processes of discontinuation in the future.

Research question

Based on the research objective, the following research question guiding this Bachelor thesis is proposed:

How is the Brexit process being organised by the European Union?

This research question appears relatively broad at first sight. It however includes a European public administrative and political research perspective on identifying a EU's strategy and practice for governing Brexit. Thereby the main focus will lie on the European Commission because it has the EU's Brexit negotiation mandate. Since the European Council is in charge of defining the guidelines and evaluating the process at different stages with regard to its content and progress, it is considered another central actor. Of course, the British Government and parliament have their own strategies and practices for the Brexit negotiation process which could be a highly interesting subject to study as well. It is anticipated that due to the scope of the Bachelor thesis, the British perspective will not be investigated with regard to their strategic approach for organising Brexit but how the EU reacts to its actions. In order to systematically analyse the general research question, the following sub-questions are formulated:

- 1) How does the historical relationship between the UK and the EU lead to the deliberate discontinuation of the British EU membership?*
- 2) How has the Brexit process evolved in the last two years and what are characteristic key situations for the process?*
- 3) What is the EU's practice for organising Brexit in the context of different (un)certainities? (governing discontinuation)*

Thereby the first sub-question aims to depict the path of discontinuation leading to the Brexit referendum decision. It provides a thematic outline for the actual analysis and is introduced in *chapter 2*. The second and the third sub-questions are the main part of the research. They ask for a strategy and practise of organising different stages and key situations of the Brexit process. The Brexit process is thereby understood as a combination of a policy process, as introduced by Colebatch (2009) and a political negotiation and bargaining process. Organising this process is therefore a particular aspect of the overall *governing discontinuation*. It also includes a critical reflection and careful conceptualisation of the term uncertainty and its value within the Brexit organisation process making it a new, exceptional phenomenon.

In order to analyse how the Brexit process is being organised by the EU, this thesis is structured as the following: First, it depicts the historical relations between the UK and the EU and summarises how this historical relationship has led to the result of the Brexit referendum. Then, different theoretical concepts describing administrative strategies and practices as well as different understandings of the term uncertainty from academic literature are introduced. These concepts are used as a starting point for the explorative approach and justify the heuristic which is then presented for understanding the EU's organisation of Brexit looking at Multiple-Streams. The theoretical background is followed by a section detailly explaining the explorative design, methodology and case selection. Moreover, the actual analysis reconstructs the timeline of the Brexit process and compares it to how it was initially planned. The analysis also depicts the strategic and practical implementation of the EU's contingency measures and analyses different key moments and situations which have been typical for the Brexit process. Based on these examinations, I construct different types of (un)certainities to investigate their role for the EU's organisation practice. Finally, these interpretative steps are combined to produce a significant statement on the EU's overall strategy and practise for organising Brexit.

2. Understanding Brexit

The United Kingdom historically always had a special position within Europe and in relation to the European Union. Its influential time as a colonial power, its continental conflicts with its main European strategic and political opponent, the French Republic, as well as its perception of being a victor of two world wars, has shaped the British central value of sovereignty (European Council, 2017b; Nugent, 2019). In order to analyse the ongoing Brexit debate, negotiations and preparation, it is therefore useful to understand ‘*how the historical relationship between the United Kingdom and the EU lead to the deliberate discontinuation of the British EU membership*’. In the light of the first descriptive sub-question, this chapter shortly summarises the evolution of the UK-EU relation, presents the decision to discontinue this relation in the context of termination and discontinuation research and introduces the concept of governing discontinuation processes which frames the later research.

After the end of the second world war the United Kingdom was a key promoter of the ‘United States of Europe’. In his famous Zürich speech, Winston Churchill stated that “Great Britain [...] must be the friends and sponsors of the new Europe and must champion its right to live and shine” (Churchill, 1945). The UK therefore did not have the political intention to join the ‘new Europe’. Because the British had nationalised their coal and steel production, there also were no economic advantages of joining the European Coal and Steel Community a few years later. Moreover, the further integration of the EC, for example in the areas of agriculture, fishery, budget, were unacceptable policies for the then acting UK government (European Council, 2017b). Besides these political and policy developments on the EEC (European Economic Community) site, the UK’s “perception of itself as a victor in the Second World War” (European Council, 2017b, its historically close ties with the United States, as well as its weigh of ‘imperial’ history hoping to become a sovereign hegemon again, were the UK’s obstacles to join the community over two decades (European Council, 2017b). In the 1960s, the rising economic power of the Single Market finally became the main argument for joining the EEC. This intention, however, was then been vetoed two times by the French President Chales de Gaulle. In 1973, after de Gaulle had resigned, the UK finally joined the Community. Only two years later UK’s membersip was put to a referendum. It was confirmed by a two-thirds majority but the ciriticsm of the proceeding EC (European Community) integration did not dissapear. Especially the budgetary policy was criticised, not at least by former Prime Minister Margaret Thatcher in 1979. The subliminal sceptisim against Europes integration

process can be reasoned by the British feeling that their special position and influence within Europe declined (Clavel, 2016).

The Treaty of Maastricht aimed to solve the divergent position of the EC members on that issue by introducing the ‘opt-out’ in 1992. It aimed to support further integration while simultaneously ensuring the members sovereignty to decide to opt-out of certain policy areas (Council of the EC, 1992). No other country has used this opt-out option as much as the UK. It has opted-out of the Schengen Agreement, the EMU, the Charter of Fundamental Rights as well as from the Area of Freedom, Security and Justice (the latter with the option to opt into individual initiatives) (EUR-Lex, 2019b). Their primary opt-out from the Social Charter of the Treaty of Maastricht was undone by the next labour government in 1997. This flexible integration secured the UK a high degree of sovereignty. It designed its ‘Europe à la carte’ which has been referred to several time in literature (Briggs, 2015; Holzinger & Schimmelfennig, 2012). Annegret Eppler (2018) hypothesizes that ‘flexible integration fosters disintegration’. Her argument is that besides an imbalance of power, solidarity and responsibility “an integrative ‘pulling-effect’ may occur before the actual implementation of the flexible integration – the interest of a state in this situation is namely to secure its blocking power and other possibilities of influence” (Eppler, 2018, p.116).

It is however one-sided to interpret the historical relation and the insisting sovereignty as the only cause for the Brexit vote in June 2016. The aforementioned scholars Becker et al. (2017), Gamble (2018) and Hobolt (2016) found other factors, like the socio-economic characteristics, regional and demographic divides and the attitude towards migrants of the British electorate, that led to the referendum’s outcome. The global economic and financial crisis of 2008 and adoption of the Treaty of Lisbon in 2011 caused the division of the British society in in the better- and the worse-off and in the supporter of globalisation and free trade and their opponents. Concluding the first sub-question, recent studies have shown that it was a combination of all these factors (Becker et al., 2017; Eppler, 2018; Gamble, 2018; Hobolt, 2016). The ‘nostalgia for the past’ as Michel Barnier stated (Matlak, 2019), the process of flexible integration, which, from the UK’s perspective, happened too fast, and the impact of the global economic and financial crisis which have led to the tipping point of this trajectory of discontinuation.

A trajectory of discontinuation

Recent developments in the evolving field of termination and discontinuation research aim to understand not only how policies and institutions are terminated but what has actually led to

the process of discontinuation (Adam et al., 2007; Stegmaier et al., 2014). In 2017, Stegmaier introduced the trajectory of discontinuation (*Figure 1*).

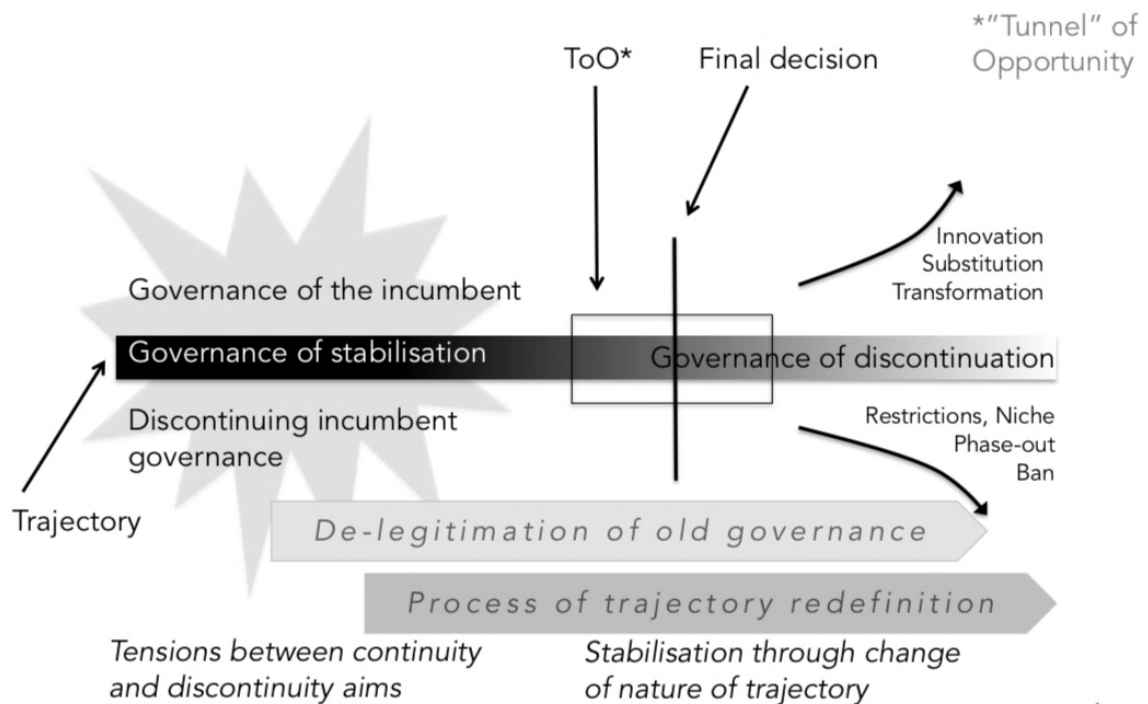


Figure 1: Discontinuation governance as a trajectory (Stegmaier, 2017, p.4).

This model is designed for more technical policy discontinuation based on the example of the incandescent light bulb, DDT, nuclear energy production, and inter combustion engines. It however contains important elements which can describe occurring phenomena leading to the Brexit decision.

Since the referendum in 1975, EU critics continued to call for another EU membership referendum. The request were ignored by the political leaders (*governance of the incumbent*). *Tensions* between the continuity and intensification of the UK's EU membership and the aim to discontinue the integration process occurred in the British society for almost four decades until the *de-legitimation* of EU governance reached the Conservative party. In order to hold the divided party together and win the 2015's general elections, former Prime Minister, David Cameron, used *tunnel of opportunity*, holding another referendum on EU membership as a strategy in order to be confirmed in office by the British electorate. He seemed confident that the outcome would be a 'remain' (European Council, 2017b). In 2016 it turned out that he had been wrong. The Brexit referendum which took place on the 23rd June 2016 was the *final decision* to discontinue the British EU membership. Instead of reuniting the Conservative party and the British society on the European question, the result of the referendum has led to a more

divided nation than ever (Nugent, 2019). The referendum's decision to discontinue the British EU membership caused a *process of trajectory (re)definition*. This implies the Brexit being designed as a process of discontinuation. Art. 50 TEU regulates the negotiation process of a withdrawal agreement and a framework on the future relation. Preparing and negotiating Brexit are therefore elements of the *governing discontinuation* (Stegmaier, 2017).

Governing discontinuation

This overview on the evolution of the UK-EU relation, and its applicability on the concepts of discontinuation research examined how Brexit has come about. It sets the frame for studying of the EU's strategy and practise for organising the UK's discontinuing EU membership. This research takes a European perspective on the governing of Brexit. Thus, organisation is understood as a partial aspect of governing. It includes the negotiation process and bilateral as well as unilateral policy preparations.

3. Theoretical framework

As introduced in the previous chapter, this study is embedded in the field of Discontinuation Governance research. Its aim is, however, to investigate how the EU is organising the UK's discontinuing membership. The main research question therefore asks for the strategy and practise the EU has. As introduced above, the scientific understanding of the Brexit process cannot be allocated to only one specific area of research. Besides the discontinuation aspect, it makes references to strategic and management theories of public administration, European integration and the concept of Governance of Problems, change and uncertainty. Therefore, this chapter introduces different theoretical conceptions for political and public administration organisation and the practice of dealing with policy problems. It shows their individual limitation with regard to the subject under study and evince how a combination of all these concepts helps to legitimise the utilisation of a heuristic approach.

3.1 Structural-Functionalist approaches to the Brexit process

The research question '*How is the Brexit process being organised by the European Union?*' could be captured from the perspective of two structural-functionalistic theories.

3.1.1 Organisational Institutionalism

Scott combines Neo-institutionalism with an organisational perspective to explain how exterior relationships between states, institutions and organisations influence inner organisational processes, practices and strategies (Scott, 2014). Institutional environments are highly complex and multi-layered. Scott describes a process-oriented perspective for understanding organisations' actions which describes macro- and micro-dynamics at different levels of the analysis. "Much of the value in an institutional approach resides in its recognition of the interplay of structures and processes across levels." (Scott, 2014, p.210). He introduces different types of strategic approaches from which *Compromise*, besides *Acquiescence*, *Avoidance* and *Defiance*, is the most significant in regard to the Brexit process. He defines the *Compromise*-strategy as the incorporation of different responses "that include balancing, placating, and negotiating institutional demands" (Scott, 2014, p.211).

This theoretical approach, however, can only outline the setting in which the Brexit organisation at EU-level takes place. When analysing the EU's organisation of the Brexit process it would be premature assumption to speak about the EU actually following a strategy. Emphasising this difference Stewart, for example, defines organisational strategy as "what the organisation does to meet the needs and expectations of its stakeholders, what it does to underpin its future in a

world in which competitive pressures are never far away.” (J. Stewart, 2004, p.20). A strategy is thereby actively determined beforehand and is structured as planning, preparation and implementation and can hardly be changed or adjusted at later stage. A practice however evolves out of concrete actions an institution or organisation take. It is therefore interesting to separately investigate this.

3.1.2 Organisation as successive multidimensional actions

An approach for better understanding these practices is provided by Spann. Already in the 1920s he developed a sociological conceptualisation of actions. He defines *organisation* as a sequence of different, dynamic actions determining each other and creating a multi-layered picture (Pfadenhauer, 2008). Instead of understanding *organisation* as a process of planning, preparation and implementation Spann’s concept aims to look at the different effects and connecting points between actions disclosing meta-actions and small steps. Spann’s theoretical concept provides a lens which helps to understand the structure of policy processes and can be used as a simple model for the analysis of the EU’s practise for *organising* Brexit. This approach has been mentioned in the Brexit context by Eidenmüller who states that “earlier approaches to negotiation management focused on the problem and the people layers of negotiations, and neglected the process layer” (2017, p.5). He calls the importance of being adaptive to issues at the latter. The approach of understanding determining actions at the process level, however, cannot produce a detailed explanation of why specific elements structure the actual policy process. Moreover, it does not make a direct reference to the complexity of new problems the Brexit process incorporates and which the EU has to deal with.

3.2 Governance of Problems and uncertainty

Besides these two theoretical lenses which offer a perspective for understanding negotiation and policy-making processes it is also important to also investigate processes regarding concrete governance actions, policy problems and uncertainties. Therefore, this section integrates the Governance of Problems approach by Hisschemöller and Hoppe (1995) with the previous understanding of the term uncertainty in academic literature.

3.2.1 Governance of Problems

Hisschemöller and Hoppe (1995) construct four different types of policy problems based on the contrasting dimensions ‘certainty about relevant knowledge’ and ‘consensus of relevant norms and values’. Thereby, problems are generally defined as the gap between the existing state and the desired, which is ought to be (Hoppe, 2010). Introducing this concept, they state that “different types of policy strategies, which can be observed in actual policy processes, are linked to different types of policy problems”, (Hisschemöller & Hoppe, 1995, p.56).

From no-certainty of knowledge and no-consensus of norms towards the contrary they define *unstructured problems*, *moderately structures problems (means; goals)* and the *structured problems*. The authors evaluate policy problems as a political and social construct which implies that “problem structure is always a matter of choice [...] and those actors how have the power to decide [...] have the power to choose the problems they like to solve” (Hisschemöller & Hoppe, 1995, p.45). Moreover, they identify three different strategies: *rule*, *negotiation* and *accommodation* for dealing with these problems.

Seeing Brexit as a specific policy problem, the second type of strategy comes to the fore. The general negotiation-strategy in the Brexit case has a clear legal basis in Art. 50 TEU and is therefore not a matter of choice. Besides that, the research aims to not look at the legal process initiated by the implementation of Art. 50 TEU but at the actual practices at different levels. Therefore, the Governance of Problem approach by Hisschemöller and Hoppe as an addition to Spann’s organisation perspective is useful to better understand the complexities of the Brexit process.

3.2.2 Uncertainty in policy processes

Hisschemöller and Hoppe (1995) define policy problems based on no-certainty of knowledge and values. This clearly refers to the impact uncertainty has on policy problems. The term uncertainty has been defined differently in literature. Depending on their theoretical and practical application these conceptualisations vary widely. Van Asselt (2000) puts uncertainty in a scientific perspective by characterising different factors which are systematically assessed in an integrated uncertainty management and risk analysis. Thereby, *variability* is connected to a *lack of knowledge* which ranges from *inexactness* over a *lack of observation*, *immeasurability*, *conflicting evidences*, *reducible ignorance*, *indeterminacy*, to *irreducible ignorance* and creates a gradation of sources and degrees of uncertainty (Van Asselt, 2000, pp. 86-87). She therefore expands the idea of Hisschemöller and Hoppe (1995) of uncertainty as a source of policy and processual problems.

Besides this, her conception differs from Hisschemöller and Hoppe (1995), who indicate uncertainty to be a deliberate human construct. Van Asselt (2000) introduces uncertainty as a *complexity of issues* occurring in pluralistic and participatory contexts which incorporate multiple dimensions, actors and risks. Furthermore, she also discusses uncertainty in *decision-making processes*. Her model describes different arrows which lead from *inherent uncertainty*, based on goal, political, yield, model, monitoring and action uncertainty to the decision which is being made under these circumstances (p.90). Uncertainty is therefore defined as the design and change of a policy process (Van Asselt, 2000).

Jasanoff and Wynne (1998) introduce the term uncertainty referring to knowledge and overview in a similar context. They describe an “increased concern with the dynamics of problem framing and consensus building in the face of widespread uncertainty” (Jasanoff & Wynne, 1998, p.5). Uncertainty is thereby not seen as a new phenomenon impacting decision-making processes and the formulation of strategic choices. Moreover, lack of knowledge and overview can be understood from an economical viewpoint. Based on this, occurring uncertainty evokes decision-making under bounded-rationality (Alaszewski, 2012; Beckert, 1996).

Another perspective for understanding uncertainty is identified by Funtowicz and Ravetz (1990). In their view, uncertainty can be proactively used to manipulate the context of policy-making. This politicisation of uncertainty evolves from “public attitudes, controlling the flows of information and misinformation and setting the agenda in terms for debate on major issues” (Funtowicz & Ravetz, 1990, p.15). Uncertainty is therefore understood as a deliberate strategic choice. These different conceptual perspectives on uncertainty aim to make the term uncertainty observable in different administrative and political processes. However, its operationalisation remains abstract, because different sources, types and dimensions are not directly applicable on every policy process.

The concept of uncertainty appears to be a recurring element of the Brexit process. When the European Council formulated its negotiation guidelines in April 2017 the European Heads of State and Government already acknowledged the occurrence of uncertainty (European Council, 2017a). Since then, uncertainties have somehow reoccurred during the policy process and might have impacted it perennially. So far, it is not clear what form of uncertainty happened when and how they might influence the EU’s practice of organising the Brexit process. Regarding to the third sub-question it is interesting to analyse the influence and deliberate use of uncertainty in a EU’s strategic analysis.

It is therefore reasonable to exploratively reconstruct the Brexit case by investigating its unique types, sources and effects of uncertainty. Therefore, this study constructs a typology of different

forms of uncertainties based on the empirical findings. This section serves as a starting point for the later abductive conceptualisation.

3.3 A heuristic approximation for understanding the multidimensional Brexit process

To be able to scientifically understand the EU's practise for organising Brexit this paragraph shortly introduces the function of heuristics in explorative research and introduces the *Multiple-Streams* model by Kingdon (2009) which is then applied on the research subject. Complementary, *Experimentalist Governance* is introduced adding a tentative perspective on multidimensional processes.

A heuristic approximation offers the researcher a scheme for understanding new phenomena based on non-arbitrary rules which structure the analysis. It is justified by empirical observations and basic theoretical approaches. Based on the 'limited capacity of human information and problem solving' a heuristic decreases the number of elements being considered in order to reduce complexity (Powalla, 2009). Therefore, it does not guarantee the optimum explanation of a problem but can fulfil the aspiration of the researcher.

3.3.1 Multiple Streams

In order to find an applicable heuristic for the analysis three general assumptions can be derived from the theoretical concepts. First, the policy process is not linear but a sequence of determining actions on a multi-layered scale. Second, it is marked by the participation of different actors at different stages of the process and third, it is influenced by policy problems for example occurring situations of uncertainty.

This legitimises the choice to utilise the general Multiple-Streams heuristic introduced by John W. Kingdon (2009) which includes a problem, politics and policy stream. At certain moments a window of opportunity occurs which according to Kingdon "opens because of change in the policy stream [...] or because a new problem [which] captures the attention" (2009, p.168). Thus, this approach follows Spann's concept of dynamic multidimensional actions and integrates the models of policy problems and uncertainty occurring at the problem layer.

Therefore, the Multiple-Streams heuristic is applicable for the Brexit process. In his contribution to the Oxford University's 'Brexit Negotiation Series' Horst Eidenmüller (2017) implicitly mentions the Multiple-Streams layer as an option for capturing the Brexit process. The heuristic has been used by many scholars in different disciplines mainly from ontological and epistemological standpoints (Ritter & Lancaster, 2018). It has been applied for the analysis of different policy processes at national international and global level, for democracies and

developing countries. Many scholars developed the approach even further or adjusted elements to make it applicable on their studies. That shows the robust nature of the heuristic which makes it a adaptable and flexible tool for policy process analysis (Ritter & Lancaster, 2018, p.238). The policies analysed with that lens range from transport and health policy area (Kingdon's originally intention) to environment, water, education, security and housing, taxation or trade policy topics (Ritter & Lancaster, 2018). Nikolaos Zaharadis (2008) transfers this approach to EU polices showing that "policy outputs are neither exclusively rational nor solely a function of institutional design; rather they depend heavily on a complex interaction between problems, solutions, and politics during fleeting open windows of opportunity." (Zahariadis, 2008, p.514). These developments are based on agenda-setting mechanisms and entrepreneurial politics and EU strategies. Furthermore, current Discontinuation Governance research has adjusted the 'Multiple-Streams'-approach by adding a meta-governance stream explaining landscape developments, historical and socio-economic and technical streams (Stegmaier, 2017). I use Kingdon's 'Multiple-Streams' heuristic as a basis for my research. Besides the original three streams which are applied on the Brexit process, I define a fourth stream (Figure 2).

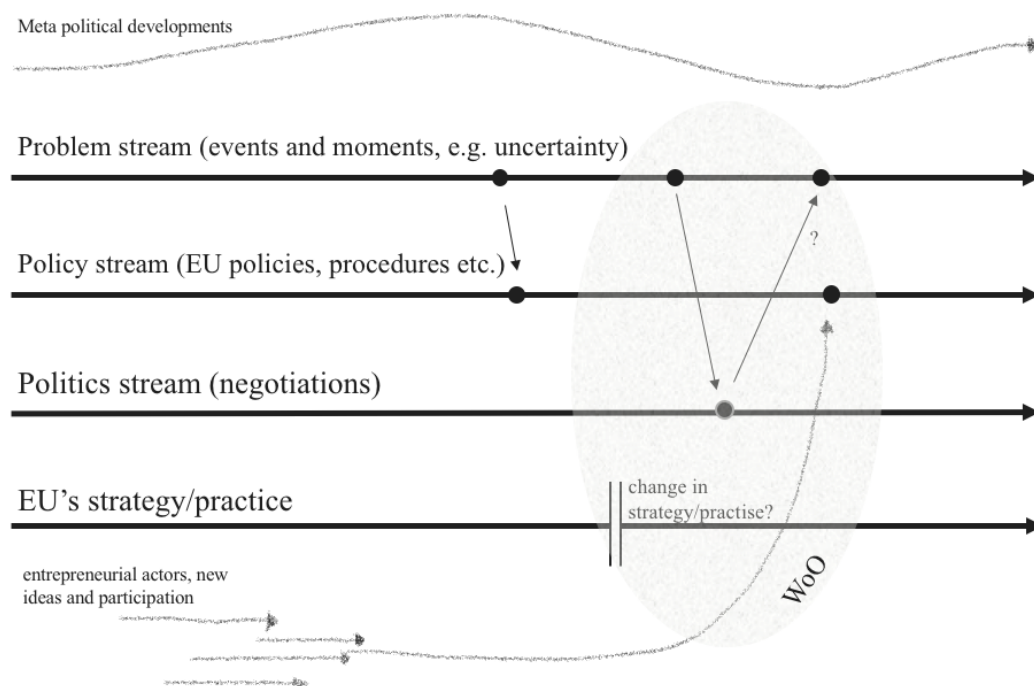


Figure 2: heuristic for understanding the Brexit process (based on Kingdon, 2003; Zahariadis, 2008).

The *Problem Stream* depicts situations and moments defining and changing the process, the *Policy Stream* outlines what EU policies and procedures are available, the *Politics stream* captures political efforts made during the Brexit negotiations and the overall *Strategy Stream*

describes the aggregated EU's strategy and practise. The analysis focuses on the window of opportunity (grey area) which opens due to changes on the policy or problem stream which caught attention (Kingdon, 2009). Thereby I investigate when, how and why these changes are happening and what they imply for the EU adopting policies. The dots mark particular moments and situations which are characterising the policy process. With reference to Spann's concept of determining actions they influence other actions or events at these multi-layered streams (Pfadenhauer, 2008). The strategy and practice stream aim to depict the overall practice the EU has for organising Brexit. The analysis aims to identify a EU's practise which might change in regard to the window of opportunity.

This approach acknowledges the potential relevance of other aspects influencing the European practice of organising Brexit. These could be for example the general degree of Euroscepticism across the European Union which could be interpreted as a meta-political stream, or niche developments by local governments and private actors which might use policy windows for interaction. These were introduced by Hoppe (2010) who integrates a more detailed perspective on different actor constellations and their participation at different stages of policy-making processes as well as in a multi-level perspective by Geels (2002). Because of the highly complex and multidimensional context, in which the Brexit process is located it must be stated, that such a phenomenon can never be grasped in all its facets. Therefore, the actors are only referred to the extent possible within the framework of this thesis, in the context of the EU's political interactions.

3.3.2 Experimentalist Governance

Another tool for understanding European policy-making processes is the *Experimentalist Governance* approach introduced by Sabel and Zeitlin (2010). Besides Kingdon's model of contingent processual dynamics this theoretical approach adds with the term's 'crisis' and 'uncertainty' a more tentative perspective to the heuristic approximation. It asks a how the EU, including its multifaced power distribution "in which no single actor has the capacity to impose its own preferred solution without taking into account the view of others", is creating policies (Sabel & Zeitlin, 2010, p.9). They state that the principal-agent model is no longer working in the context of new European policy-making. Instead they introduce peer-review methods and dynamic accountability for uncertain situations (p.11). Experimentalist governance in the European context works as a mechanism for "unblocking impasses in framework rule making and revision by rendering the current situation untenable while suggesting – or causing the parties to suggest – plausible and superior alternatives" (p.13). This mechanism is based on the

general observation of increasing globalised strategic uncertainty in the environment of policy-making (p.25). An example of an experimentalist approach at EU level is the Water Framework Directive Common Implementation Strategy (CIS) which offers a flexible approach and a scope of policy learning during the implementation process (Von Homeyer, 2010). When looking at the Brexit policy process besides the Art. 50 TEU negotiations this concept helps to better understand the multidimensional structures of the EU's policy-making practice.

In addition to the Multiple-Streams approach introduced above it adds an important viewpoint on policy-making strategies in the context of a constantly changing, globalised environment marked by different processual uncertainties, difficulties and problems. It's value for this research is its focus on concrete practices for adapting to changes, policy problems and uncertainty. Combined, these approaches offer a starting point for an analytical understanding of the Brexit process.

3.3.3 Summary

So far, these approaches have mainly been used to describe innovative, more technical policy-making rather than discontinuing policies and institutions via policy-making. It is therefore difficult to apply them deductively on the Brexit case. However, they must be taken into account when analysing the EU's Brexit organisation.

Highlighting their important aspects, they constitute a theoretical basis for the exploratory analysis: *First*, as indicated by Spann as well as Hisschemöller and Hoppe, actions and events are not designed as a linear process but determine each other successively based on the actual choice of action which is taken. These different actions of a policy process happen simultaneously in a multi-layered interaction of different streams which show certain intersections. *Second*, different actors are participating at different stages of the policy process, due to their power and ability (Hoppe 2010; Sabel & Zeitlin, 2010). And *third*, the policy process is influenced by occurring uncertainties, difficulties and policy problems which can be defined to get a better image of the ongoing practices (Hoppe 2010; Sabel & Zeitlin, 2010, Van Asselt, 2000). Based on this theoretical basis the Kingdon's (2009) Multiple-Streams heuristic approach fits to the multi-layered, multi-facet picture described. This heuristic offers a perspective for the explorative analysis.

4. An explorative design and methodology

This chapter outlines the design and method of my explorative research. It introduces the data used for the interpretative analysis as well as their sources and selection process. Furthermore, this paragraph aims to carefully relate this case specific approach to earlier research methods.

4.1 General research design

The aim of this research is to investigate the EU's practise for organising the Brexit process. According to that the study is designed as an explorative, hermeneutic research. Since no member state (besides Greenland in 1985) has left the European Union before, European administration and strategic theories provide only a limited understanding of Brexit. Thus, the Brexit case creates a precedent and its analysis need to be designed exploratively to be able to investigate the process more closely. According to Stebbins (2001) explorative research needs to be flexible towards adapting additional aspects of a new phenomenon at a later stage of research (Stebbins, 2001). This principle of openness requires a careful usage of data, case selection and methodology in order to design a valid research.

When looking at the Brexit timeline and important situations and moments of this negotiation and policy process, the question arises how one can investigate the European Commission's and Council's organisation of the Brexit process, whether a particular strategy can be observed and whether it changes due to specific developments and changes during the policy process. This explorative policy process analysis is based on abductive reasoning (Reichertz, 2007). According to Kurt (2004) hermeneutic research is a technique of interpretative understanding of empirical phenomena. Thus, my analysis is an interpretation of data selected on specific situations and moments of the negotiation and policy process in a chorological Brexit context. It is important to base the interpretation of empirical phenomena on monitored and structured mechanisms. Moreover, Söffner and Hitzler (1994) state that hermeneutic research cannot be conducted with theoretical positioning but based on a continuing critical attitude to the research process constantly reflecting matter of facts and own judgements (Söffner & Hitzler, 1994).

First general observations on the process show that there are many different actors present at different levels of the multidimensional procedure and at different stages of the process. In order to limit the analysis to a doable amount of work, I renounce a multi-level actor-analysis. Instead the analysis focuses on the EU-Commission, including chief-negotiator Michel Barnier and his Task Force Art. 50, since they have the member states' negotiation mandate (European Commission, 2017b), the European Council, mainly represented in the figure of the council's president Donald Tusk, the ECJ (European Court of Justice), the British Government (alias

Theresa May and the British negotiation team and the DUP (Democratic Unionist Party)) and the British House of Commons. These are the main actors participating in the negotiation and policy process. It is however important to mention that there are other actors impacting the process. The European Parliament, especially its *Brexit-Steering Group* is closely involved and regularly informed by the EU Commission and Council and must finally adopt the negotiated withdrawal agreement, but in the actual preceding process it has negligible influence (Council of the European Union, 2019). Other actors are, for example, national and third states, NGOs, private firms and corporations which primarily adopt their own contingency measures on the basis of the EU Commission's assistance. These actors however have no legal bargaining power and it is therefore legitimate to focus on the five main participating parties introduced above.

4.2 Methodology

As noted by Flick (2014) qualitative research selects data according to its relevance, typicity and applicability. Thereby, the case selection happens on a continuous basis until the value of information is sufficient. Consequentially, the method for analysing the data evolves parallel to the data it aims provide analytical means for. Therefore, the method has been adjusted three times during the research process. Doing so, I ensured a constant process of self-critical reflection of my interpretation, based on the empirical data. This proceeding supported the reconstruction of the Brexit timeline adequately and critically questioned repeating patterns (Söffner & Hitzler, 1994).

4.2.1 Chronological approach

The actual method used for the analysis of the EU's practise for organising the Brexit process is based on two methodological approaches. Firstly, a *chronological, processual approach* was used to reconstruct the initial Brexit negotiation schedule of the European Commission and Council. This mainly derived from Art. 50 TEU and the guidelines the European Council itself set in April 2017. In a next step, this timetable was compared to a reconstruction of the practical negotiation and policy process, how it has actually evolved from April 2017 till May 2019. Moreover, I rebuilt and constructed the EU's 'No-Deal'-preparation timeline and relate it to the chronology of the Brexit negotiation process. The hermeneutic interpretation of these relations builds the basis for my analysis. However, it opened a scope for a more in-depth and detailed analysis of individual situations uncovering the EU's strategy and practice in certain situations. To be able to identify these, the term *strategy* introduced by J. Stewart (2004), is characterised by as process of first planning, preparing and then implementing. In contrast, an organising

practise, according to Spann is based on concrete multidimensional actions an institution or organisation take determined by the current process and situation (Pfadenhauer, 2008).

4.2.2 Situative approach

For this purpose, a *situative approach* was used for analysing key moments and -events which are characteristic for the Brexit process. Thereby, the Multiple Streams heuristic by Kingdon (2009) enabled me to look at different streams of the Brexit policy process simultaneously, identify the characteristic situations and events and a ‘windows of opportunities’ which open because of changes on the so-called ‘problem- or policy-stream’. By reconstructing these key situations, a more in-depth picture of the EU’s practise for dealing with these problems could be observed. These two methodological approaches are closely connected to the second sub-question ‘*how has the Brexit process evolved in the last two years and what are characteristic key situations for the process?*’. Moreover, the combination of both methodological approaches provided the opportunity to make a substantiated assertion of the EU’s overall strategy and whether it has changed during the Brexit policy process.

Both approaches were carried out by the means of the ATLAS.ti software programme. The data was collected, systematically organised, coded, and interlinked (network-function) in order to reconstruct the two Brexit timelines and different key situations. The programme assisted in the observation of special features and repeating patterns and makes the research process more transparent. During the analysis different forms of uncertainty and their relation to the (deliberate) creation of certainty during the Brexit process were observed. These phenomena are particularly interesting. Due to the explorative, qualitative research design, it is therefore legitimate to complete the analysis with a type construction of these different observed forms of (un)certainty. The justification of the chosen methodological approaches is given on the subject matter and therefore evolves during the analysis.

The used method can be described a process-analysis integrating a multidimensional, trans-sequential, situative analysis. It further contains elements of a policy-analysis, analysing EU policy documents, a historical timeline approach, constructing the Brexit negotiation timeline, and linguistic analysis. It generally makes reference to transition patterns introduced in a multi-level perspective as well as to a limited actor-analysis. The latter two indicated in *Figure 2* and *Figure 4* are important for the general understanding but were not reflected during the analysis.

4.2.3 Constructing a typology of (un)certainty

There are different understandings of the nature and definition of term of uncertainty in literature (cf. 3.2). They depend on the context in which uncertainty appears. In order to ascertain the difficult term my bachelor thesis aims to provide a general typology for different forms of (un)certainty occurring during the overall Brexit process. Moreover, previous findings of the twofold analysis outlined above show that (un)certainty is used strategically. Its scientific allocation therefore contributes to the general research aim. The chosen term ‘(un)certainty’ adopts the idea of an interplay between uncertainty and certainty which is also found in the empirical data. According to Kluge typologies in “qualitative studies [...] are constructed in order to comprehend, understand and explain complex social realities as far as possible” (Kluge, 2000, p.1). She introduces ‘empirical grounded type construction’ which should make the research process more transparent. According to that the process of creating a typology, four stages are defined: 1) Developing relevant dimensions for the analysis, 2) grouping of empirical cases, 3) analysing their relations and constructing types and 4) defining these types. Moreover, there is a constant feedback-loop between the first three stages (Kluge, 2000).

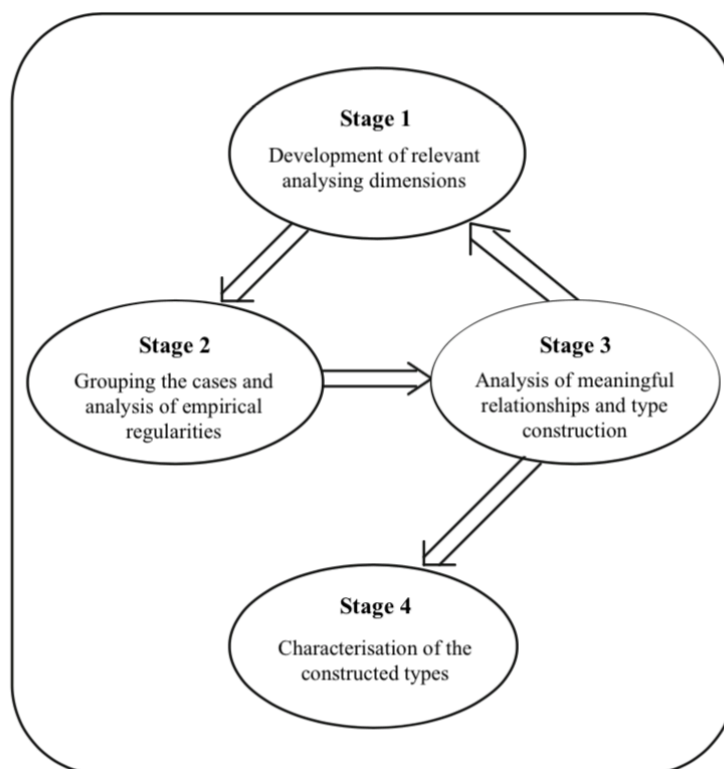


Figure 3: Empirical grounded type construction (Kluge, 2000, p.4).

The type construction in section 5.4 is based on this method. At a first stage I was looking at different moments and dimensions in which (un)certainty appeared during the Brexit process.

They were then coded with the ATLAS.ti software programme by creating meaningful relations between these different groups and then grouping in different categories. Based on those types, I looked at the data once again and found other dimensions which were added to the process of type construction. In order to define the dimensions on which (un)certainty occurs, already existing concepts from the literature were used. These concepts show the sources of (un)certainty, which could be found in the data. They are a central element for defining the constructed types and disclose a sequential character of the occurring uncertainties.

This mixed method of empirical grounded research combined with existing theoretical conceptions provides a presentation of not only individual types but the interlinkage between them and the interplay of certainty and uncertainty. The type construction and its interpretation evolve out of the observations made during the twofold analysis introduced above. Combined, these qualitative methods assist to make not only an assertion of the EU's overall strategy and practice, but construct and define the uncertain conditions of the Brexit process. Therefore, it is directly linked to the third sub-question asking for *the EU's practice for organising the Brexit process in the context of different (un)certainties*.

4.3 Case selection mechanism and data sources

The aim of the method presented is to generate a qualitative information value which does not depict the process comprehensively but highlights key situations which in their analysis show typical characteristics of the general process. According to Seawright and Gerring (2008) this case selection mechanism is able to exemplify the subject of investigation and discover potential cross-case relationships. The selection therefore aims to be representative for the subject-matter. Thus, the qualitative selection is not based on randomization, one has to acknowledge a potential selection bias. In order to overcome this, the case selection for the timeline approach as well as for the situative reconstruction of key moments happens on a continuous basis. Kelle and Kluge (2010) summarise this mechanism as 'theoretical sampling'. Regarding the first step of the analysis (reconstructing and comparing the initial planned negotiation process and the practical timeline) the EU Commission's timeline including their press statements and communications has been a basis. This timeline does not include every situation of the last two and a half years of Brexit negotiation and policy process but outlines the most important moments from a EU's perspective. Since my study aims to investigate a EU's practise for organising Brexit, I align with their case selection. Moreover, important data from the UK's side (UK Gov. Communications, Votes in House of Commons) and the ECJ ruling, when they had an impact on the EU's timeline or are necessary to understand the

evolving process, were added. The data for this section was retrieved from the EU Commission website, legal documents and communications from the ECJ and European Council, the UK Government and Parliament as well as from national and European media. The initial Brexit negotiation plan was retrieved from the legal requirements of Art. 50 TEU and the Council's guideline paper adopted in April 2017.

First, these documents were systematically sorted, coded, related and analysed in the ATLAS.ti. Doing so, was able to find some repeating patterns and codes. These findings were then conveyed and contrasted in the first table attached to this thesis (Attachment 1). The data was operationalised by using the 'grounded theory method', analysing patterns, striking and unique themes (Reichert, 2007). These interpretations constituted the basis for the analysis and generated the necessity for further, more in-depth research (see 5.1).

Then the EU's No-Deal preparation timeline in relation to the Brexit negotiation process were reconstructed. The data, was likewise analysed, interpreted and tabularly transferred into the attachment. It was retrieved from the EU Commission's press releases, legal documents and the online newspaper *Euronews*. In order to anticipate this reconstruction to the scope of the Bachelor thesis, this research did not analyse the content of the EU's No-Deal preparation in detail. It rather focused on a comprehensive investigation on what in general, how and most importantly when the measures were adopted in relation to the developments of the main negotiation and policy process.

As introduced above, the situative methodological approach reconstructs and interprets different, multidimensional key situations of the Brexit process. Based on the previous interpretations and thereof arising open questions, I chose four different key situations and moments for a more in-depth analysis. Thus, the focus has been to understand the evolving window of opportunity in situations of problems, change or (un)certainty. Based on the flexibility, an explorative hermeneutic research should have (Stebbins, 2001), an additional fifth, more theoretical element which impacts the Brexit process was integrated. This case has an important information value and cannot be excluded. It is however not explicable by the multiple stream's heuristic and therefore has a special position in the analysis.

The data for the analysis of these key situations was retrieved from the EU Commission's website and press releases, communications of European Council and the UK Government (including speeches and statements), EU legal documents (e.g. the draft withdrawal agreement), and the journalistic formats *Euractive*, *Politico.eu*, *The Guardian* and *ARTE* as well as, regarding the special case of the Single Undertaking principle, from theoretical background-papers. The precise sources of the documents containing the used data are transparently made

available in the separate data bibliography. The list includes six newspaper articles, three policy papers, seven public press releases and web information, three legal acts including the draft withdrawal agreement, as well as two background papers.

The typology construction is based on the coding and interpretation made during the previous analysis. As introduced above, it makes references to the already existing concepts of uncertainty in literature. It uses the same data processed during the empirical analysis, as well as in the concepts introduced in section 3.2. The topicality of the process and the ongoing Brexit negotiations and debates, lead to a complicated overall setting in which the research takes place. To encounter this problem, I did not include data published before the 23rd June 2016 and after May 2019.

5. The EU organising discontinuation

As introduced in the previous chapter the empirical data analysis is divided into three successive sections. The interpretation of the first section thereby provides a direction for the further research process. The first section starts with the reconstruction of the Brexit timeline. It compares the initial schedule the EU made for the Brexit negotiations as well as the practical process, as it has evolved during the past two years. This is followed by a reconstruction of the EU's No-Deal preparation timeline which is allocated to the simultaneous proceeding of the negotiation process. Based on the interpretation and discussion of these two processes, I continued by using a multidimensional stream analysis of specific key situations which are characteristic to the Brexit process and came to fore during the timeline reconstruction. Moreover, the separate interpretations of these three data analytical stages state the importance of constructing a typology of the different forms of (un)certainty observed during the analysis. Lastly, this chapter aggregates my findings to get an overall picture on the EU's strategy and practise for organising Brexit. The interpretation and discussion of the empirical data happened concurrently.

5.1 The Brexit timeline – planning vs. practise

When the British Government triggered Art. 50 TEU on the 29th March 2017 the EU Commission and Council had already evaluated the situation, scheduled a potential negotiation process and outlined the Union's overall goal. In June 2016 European Council President, Donald Tusk, stated the EU's priority which is the protection of the EU's principles and values (e.g. freedom of goods, persons, service and capital). Moreover, he committed to the principle of 'united in diversity' as he referred to the EU's framework under which Brexit must be organised (European Commission, 2019a). Based on Art. 50 TEU the European Council adopted a guideline paper which outlines the EU's red lines for the negotiation as well as the main schedule of the Brexit negotiation procedure. Art. 50 TEU regulates the withdrawal arrangement of a country which must be negotiated by the leaving country and the EU Commission and concluded by a qualified majority in the Council and a majority in the European Parliament. Besides the withdrawal agreement, the negotiating parties need to agree on a framework for a future relationship. More, these arrangements must be agreed to in a period of two years beginning with the official notification of the withdrawal intension. However, this period can be extended by a consensual decision in the Council (EUR-Lex, 2019a). Due to these legal provisions, the guideline paper constituted a phased approach which is represented in *Figure 4*.

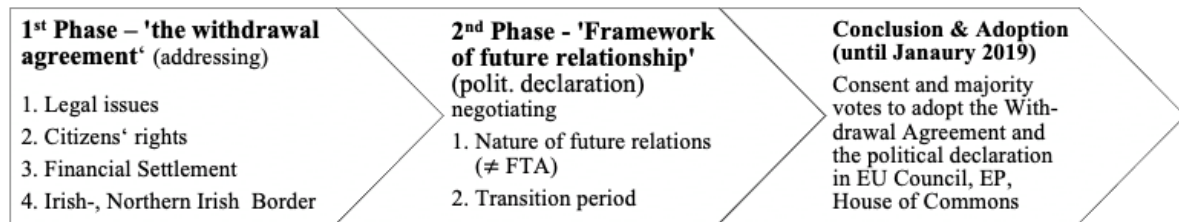


Figure 4: The Brexit Schedule: A phased approach (Appendix 1).

As regulated in Art 218 (3) TFEU (Treaty of Functioning of the European Union), the Council guidelines include a Commission's negotiation mandate (European Council, 2017a). The EU Commission assigned the French bureaucrat and former foreign minister, Michel Barnier, to become the institutions' chief-negotiator and to constitute the so-called *Task-Force Art 50* including more than 50 Commission's experts. The European Parliament's Brexit Steering Group is regularly informed but has only limited influence regarding the negotiation process (De Haleux & Thomas, 2019). The Council instead provides guidance and co-decides the transition from the first into the second phase as well as the guidelines and the conclusion of the negotiation process (Figure 5). Even though my study does not question the actor constellation, the practise of this actor constellation needs to be further researched in order to identify other key-players, even within the European Council for instance.

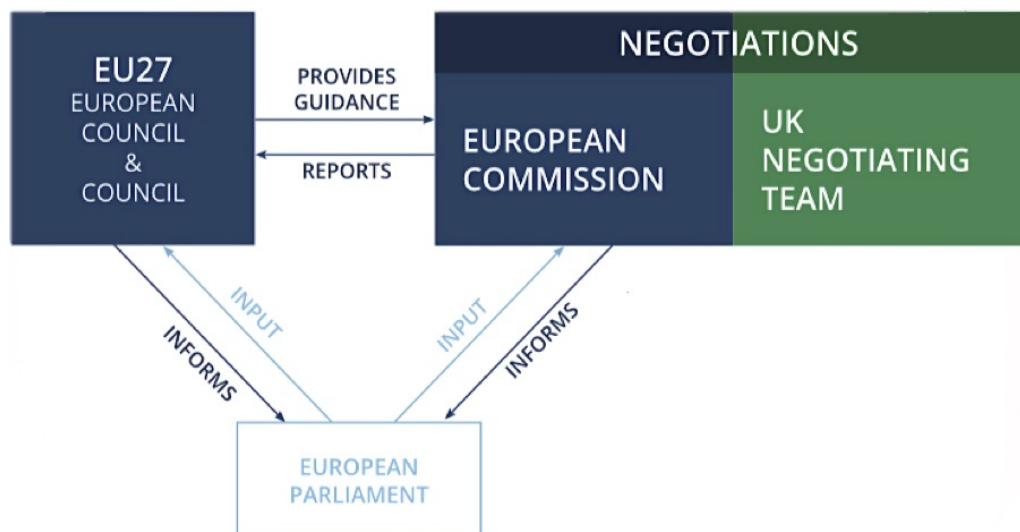


Figure 5: Simple actor constellation (cf. European Council, 2017c; Appendix 4).

By adopting the guidelines, the EU Council and Commission set a framework and defined a scope for the Brexit negotiation process. It was to secure the four freedoms, the rights for UK

citizens living in the EU and EU citizens living in the UK and prevent a hard border¹ between Ireland and Northern Ireland (referred to as Irish border). Moreover, it was to ensure a UK's commitment to the current EU's financial framework and outline a close future relationship between the two parties. Interestingly, the paper explicitly mentions the 'uncertainty and potential disruption' Brexit could have for both parties (European Council, 2017a). By setting the negotiation framework and defining certain values and goals the EU aims to create structural and strategic stability. The *moderately structured problem* regarding legal means and goal certainty can be found here. Moreover, the phased approach contains a certain flexibility because no fixed transition date between the phases has been set. This should ensure certain *accommodation* to the practical process (Hisschemöller & Hoppe, 1995).

Furthermore, the guidelines include the principle that "nothing is agreed until everything is agreed" (the principle of Single Undertaking; European Council, 2017a, p.3). The implication of that principle is discussed in section 5.3. In contrast to the scheduled, two phased approach constructed by the EU in April 2017, the question arises '*how the practical Brexit process has evolved*' over the last two years.

The Brexit negotiations in practise

The first phase of negotiations on legal issues, citizens' rights, the financial settlement and the Irish border question officially started in June 2017 and continued until November 2017. During this period British domestic politics influenced the fact that their negotiators could not commit to the so called 'divorce bill', the financial settlement, to which they had already officially committed by agreeing to the EU's 2019 budget (European Commission, 2019a). Based on an only general examination of British politics it remains unclear whether the missing commitment is a deliberate choice to create uncertainty or an act of curiosity. It however shows a created situation of structural and processual uncertainty, since it remained unclear whether the first phase could be concluded in 2017.

Besides aiming to convince the UK to commit, the European Commission already prepared the transition into phase two and regulated the relocation of the EMA (European Medicine Agency) and EBA (European Banking Authority). Furthermore, their negotiators stated the importance to focus on solving the 'unique' Irish border question and prevent a hard border in order to secure the peace process of the Good Friday Agreement (European Commission, 2019a). By

¹ reference to the border between Ireland and Northern Ireland. The Good Friday Agreement includes a paragraph ensuring an open border without persons and customs controls. After Brexit, the border will be an external frontier of the EU, which according to current law needs border controls.

using this linguistic term, the EU not only acknowledges its importance but focusses on the fourth theme under discussion in phase one. Thus, it puts political pressure on the UK's team to commit to the other three subjects in order to continue the negotiations. The timing of relocating the EU's agencies discloses the EU's aim to create structural certainty (also part of No-Deal preparations, cf. 5.2). On the 15th of December, the EU Council stated that the first phase had made sufficient progress to continue with the second. The parallel preparations for the second phase might have put pressure on the UK's team to make commitments especially regarding citizens' rights and the financial settlement.

After the Council prepared a new negotiation directive for the EU Commission and repetitively committed its unity, the Commission's Task Force published a first draft withdrawal agreement in February 2018. This included the already negotiated subjects and other important themes which remained to be negotiated, such as the transition period. The strategic reason behind that was to always be a step ahead and (aiming) to set new impulses to actively and productively conduct the negotiations, as Michel Barnier stated in an interview (De Haleux & Thomas, 2019). The negotiation party drafting the agreement always has a superior bargaining position because it creates the legal basis which is discussed during the upcoming negotiations. More, this framework-setting can be interpreted as a strategic choice to create certainty (in a processual, and legal sense).

Until June 2018 the EU's negotiators were waiting for a response from the UK Government regarding their ideas for a transition period and a future relation. In March the Council adopted guidelines for the negotiations of a framework on the future relations. Thus, they again aimed to put political pressure on the UK to adapt to the process. In May the Commission's chief negotiator was still waiting for a response and publicly announced a processual deadlock (European Commission, 2019a). On the 6th of June the British Government published its Chequers Plan² outlining their idea of a future relation with the EU. The content, which was referred to as 'cherry picking' by the EU Commission and Council, turned out to be not compatible with the EU's most central four freedoms and the unity of the single market (Appendix 1). Besides this, the foreign minister Boris Johnson and Brexit minister David Davis dissatisfiedly left the cabinet of Prime Minister May (UK Government, 2018). As a consequence, May declared the Brexit negotiations a Prime Minister's issue. Thus, she reacted to the current structural uncertainty in British politics. Simultaneously, the Irish border question

² UK Government's paper outlining their ideas for the future relationship with the EU; Named after the place of conclusion, the Chequers Court which is the UK Prime Minister's country house.

again emerged in the context of the EU's Backstop³ idea which should prevent a hard border on the Irish island.

To overcome the deadlocked process, EU Council President, Donald Tusk, called an informal Council meeting in Salzburg in September 2018 to reconfirm the EU's unity, and outline how the negotiation process could still be concluded by the end of the year. Besides this, the strategic reason behind the informal character was to get an informal agreement from the British Government to the Backstop solution and the further procedure (Appendix 1).

However, the consent on a final version of the withdrawal agreement could not be reached in October and the final Council meeting in November had to be delayed. The problem was the acceptance of Backstop solution not only by the British Conservative party, but by its coalition partner, the DUP. The situation was marked by a high degree of processual uncertainty, as well as outcome uncertainty. If there would not have been consent reached on the withdrawal agreement until the end of the year 2018, the potential risk of a non-orderly Brexit would have risen. Therefore, EU chief-negotiator Barnier decided to meet with DUP representatives privately to discuss the Backstop. He guaranteed the preliminary status of the Backstop solution and conceded potential short-time border controls (De Haleux & Thomas, 2019). This political choice aimed to make an agreement reachable in November and to recreate processual certainty. It shows that the EU's flexible approach for organising the Brexit process cannot only be understood from a public administrative but also a political perspective. However, Barnier made concessions for the first time, which go beyond the negotiating guidelines and show a new character of the negotiation process. Thus, two possible outcomes, risking a No-Deal Brexit (and thus political and economic 'disruptions') or small concessions to keep an agreement achievable, were assessed rationally. This can be theoretically captured by Scott's (2014) *Compromise-strategy* or Sabel and Zeitlin's (2010) establishment of superior, alternative pathways.

In December the 'withdrawal agreement' as well as the political declaration were signed off by the European Council and were forwarded to the House of Commons (European Commission, 2019a). However, shortly before it should have been voted on in the British parliament, the ECJ concluded in an important ruling that the UK "is free to revoke unilaterally the notification of its intention to withdraw from the EU" (ECJ, 2018, p.1). This ruling had likewise been awaited by the British parliament and the EU and caused processual uncertainty. The Brexit vote in the

³ Legal provision in the withdrawal agreement, connected to a two years transition period in which the UK would practically stay in the EU's single market and has to adopt its legal provisions but without having voting rights. It should prevent a hard Irish border. (Council of the European Union, 2019; European Commission, 2019a)

House of Commons was delayed until January 2019 because Prime Minister May expected a 'significant defeat' (Dickson & Bayer, 2018). At this processual stage the phased negotiation process as scheduled in the Council's guideline paper were concluded. Whether the agreement could be adapted within the 100 days left until the Brexit date, remained not predictable.

Between December 2018 and March 2019 Prime Minister May survived two votes of no confidence. The negotiated withdrawal agreement was defeated two times in the House of Commons (Eder, 2019). The EU could not do much more than reconcile its unity, its central values and conclude a political memorandum explaining the preliminary character of the Backstop clause. Moreover, chief-negotiator Barnier and Council President Tusk repetitively declared the agreed withdrawal agreement as not open for negotiations again (European Commission, 2019a; Stewart 2019, Appendix 1). During this uncertain period of the Brexit process the No-Deal scenario became increasingly realistic. The EU communicated its intention to intensify this scenario's preparation (cf. 5.2).

On the 20th March the British Government submitted a Brexit extension request until the end of June (European Commission, 2019a). After a short evaluation of possible outcomes, the EU Council agreed to extend the period until the 22nd May providing that the withdrawal agreement is adopted by the House of Commons until the 12th April. Otherwise the latter would have become the new Brexit date. By this decision the Council aimed to prevent a No-Deal Brexit while simultaneously keeping its bargaining authority and not endangering the important upcoming EU elections. Only three weeks later, the withdrawal agreement was defeated for the third time. The Council agreed on a new idea of a flexible extension period until the end of October with the option of an earlier opt-out if the withdrawal agreement would be accepted (Appendix 1). Event tough, the European Council decision was characterised by incomprehension, the flexible extension period again showed the EU's adaptive practise for organising the Brexit process.

Comparing the planned Brexit negotiation process and its practical development, one can note that the phased approach has been concluded in due time. During the two phases different situations marked by uncertainty occurred and the organisation practise, which had been previously scheduled, were adjusted and changed several times (cf. Spann's concept of organisation). This pattern on framework-setting and leaving the scope for flexible adjustment cannot only be found in the EU's administrative procedure, but the Commissions political negotiation strategy. Both perspectives seem to interact frequently and therefore cannot clearly be differentiated in this analysis. Another reoccurring pattern can be found in the parallel preparation of the second phase, the drafting of the withdrawal agreement and the preparation

of the future framework (European Commission, 2019a). The strategic approach behind that is twofold. First, as Barnier mentioned, the EU wants to keep its bargaining power and second these strategic actions should pressure the UK to commit and thus overcome a standstill of negotiations (De Haleux & Thomas, 2019). Moreover, the informal Salzburg Summit, the private DUP talks and the two Brexit extensions show a new, adaptive approach the EU uses to react to situational and policy problems. The conclusion of the agreement and thus of the process could, however, not be proceeded as outlined in *Figure 4*. Instead the ‘third’ phase, which is not named as such, still continues, leaving the end of the Brexit process open.

Since the Brexit procedure is a process of organising discontinuation it is marked by new challenges and ‘unique’ subjects as the Irish border question, a limited period of two years as formalised in Art. 50 TEU, the unclear interpretation of the latter and the entirety of treaties and legal provisions the UK wants to leave and which exit must be prepared comprehensively. These political and policy innovations influence the occurrence of different forms of (un)certainities (e.g. structural, processual, legal, strategical) which is a striking result emerging from this analysis. The impact of (un)certainty is therefore continuously investigated.

To get a better picture of the twofold EU strategy and practise for organising Brexit the first part of the analysis has shown that there are several moments in which a practise has been established in order to organise these situations. Thereby, four key situations come to the fore, which seem characteristic for the Brexit process and therefore need further investigation. First the ECJ ruling which interestingly shows that uncertainty can also follow on originally created certainty, second the Irish border question as a reoccurring ‘unique’ pattern of the Brexit process, third the Salzburg Summit, which informal character is interesting in the light of understanding organisation as successive multidimensional actions and fourth the defeats of the withdrawal agreement and the Brexit extension because it is effecting the current situation significantly. Moreover, the Principle of Single undertaking seems to strategically impact the negotiation process. In order to understand the underlying mechanism of the latter, it is prevelant to have a closer investigation of it. Besides the negotiations, the EU’s unilateral contingency-policy stream is in important aspect of the overall organisation of the process. It is therefore necessary to continue the analysis by a more detailed look at the EU’s No-Deal preparation in the context of the multidimensional Brexit process.

5.2 Preparing a No-Deal scenario

Besides negotiating the withdrawal agreement, the European Commission simultaneously began to prepare for different alternative outcomes including the No Brexit and, most importantly a No-Deal scenario. In that case the UK would leave the EU without a negotiated withdrawal agreement and would become a third country from one day to the next. The Commission adopted guidelines and a schedule for its No-Deal preparation including the creation of legislative acts, preparedness seminars and fact sheets and support for citizens, national agencies, private firms and local bureaucracies (European Commission, 2019d). In November 2017, shortly after the stagnating transition between phase one and two, the Commission put the first two legal acts in place, concerning the relocation of the EMA and EBA (European Commission, 2019c).

The official start of the No-Deal preparation was communicated in December 2017 (European Commission, 2019b). At that time the Brexit negotiations entered the second phase. The first phase was marked by difficulties of reaching a consent on citizens' rights, the financial settlement and the Irish border question (European Commission, 2019a). Thus, the question arises whether the official start is connected to previous structural and processual uncertainties of the negotiation process. A clear causality, however, cannot be found in the data.

During the second negotiation phase in 2018, the European Commission published six legal acts regulating visas, tariff-quotas and the energy transition in a No-Deal case. Besides this, the Commission mainly assisted its member states and the private and civil sector, provided fact sheets and held preparation seminars to specific topics (European Commission, 2019c, Appendix 2). On the 13th November, President Tusk stated that there has not been enough progress on the Backstop question yet, in order to finalise the agreement. On the same day the European Commission published its 'Contingency Plan' which contained a schedule for putting all No-Deal measures in place before the 29th March (European Commission, 2018a). The plan explicitly mentions the 'urgency, potential disruption and uncertainty' and therefore states that all legislative and delegated acts need to be initiated before January 2019 in order to ensure the Council's and Parliament's orderly legislative procedure and control function. The Commission's 'Contingency Plan' can be interpreted as a theoretical intensification of the No-Deal preparations. It is a reaction to the structural and processual uncertainties the ongoing disagreement on the Backstop induced.

On the 12th December 2018 the Commission published its 'Implementing Contingency Plan' containing concrete actions in order to implement the legislative and delegated acts. "Given the continued uncertainty surrounding the ratification process on the side of the United Kingdom,

and in line with the Conclusions of the European Council (Article 50) on 13 December, the Commission is proceeding urgently with the implementation of its Contingency Action Plan” (European Commission 2018b, p.2; Appendix 2). Here, the text refers to the uncertainty created by the ECJ ruling and the delayed vote on the Brexit agreement in the British House of Commons. It repetitively mentions the term ‘urgency’ which is practically expressed by 12 initiated legislative acts published the same day. This implementation plan can therefore be seen as the practical intensification of the No-Deal preparation.

In January the European Commission finalised 14 other legal and delegated acts and intensified the support of its member states by sending experts (Eder, 2019; European Commission 2019c). Because the Commission called the European Parliament and the Council of the EU to “adopt the proposals as a matter of urgency” (European Commission 2018b, p.2), it stayed uncertain until the end, whether all measures would be in place before the end of March.

Two days before the original Brexit date, the European Commission published a press release informing that the EU’s No-Deal Brexit preparation had been finalised. It included 90 preparedness notices, three official communications and 19 legislative acts in a comprehensive list of areas⁴ which would be most affected by a No-Deal Brexit (European Commission 2018b). Moreover, the EU called its member states, the private and civil sector and local bureaucracies and agencies to review their contingency measures because the ‘scenario is becoming increasingly likely’ especially due to the withdrawal agreement’s defeat in the House of Commons (Euronews, 2019).

Based on this analysis, I can conclude that the EU always knew about the risk of a No-deal Brexit and started to prepare for that outcome parallel to the withdrawal negotiations. Moreover, four different stages of the No-Deal preparation procedure can be identified: First, the *Planning* of No-Deal preparation in July 2017, second, the *Preparation* of legal initiatives and acts starting in November 2017, third, the *Provision of Information and Assistance* to citizens, private firms, and local, regional and national bureaucratic institutions and agencies (including technical seminars, etc.) for preparing for the negative effects the No-Deal might have on their policy areas (since December 2017) and fourth, the *Intensification* of the EU’s preparation in November 2018 by publishing and implementing the ‘Contingency Plan’ (Appendix 2).

The finding is here that the latter has actually been a moment in which the EU has intensified its preparations not only because it says so, but the Commission practically initiated and concluded most legal acts between December 2018 and March 2019. This emphasises the urgency, with which the European Parliament and the Council of the EU had to conclude their

⁴ The list of areas can be found in Appendix 2.

legislative procedures. The process of putting all measures in place continued until the 25th of March, only two day before Brexit were originally scheduled. This indicates a potential change in the EU's strategy for organising Brexit. Until November 2017, the focus was on negotiating the best possible withdrawal agreement. Realising that the agreement might not be concluded the Commission focused on legislative contingency measures for a No-Deal scenario. The Commission might have too narrowly followed its first strategy, hoping an extensive No-Deal preparation would be dispensable. However, this interpretation must be reviewed cautiously because the late initiation of legal acts might also be reasoned with their extensive preparation. This conclusion would therefore need a detailed content-analysis of the legal acts, which cannot be done in the scope of this thesis.

Another finding is that the intensification of the No-Deal preparations operates as a political leverage improving the EU's BATNA (Best Alternative To a Negotiated Agreement) (Eidenmüller, 2017). Furthermore, the implementation period from December 2018 until March 2019 has been scheduled relatively short and has therefore caused processual and outcome uncertainty because it remained unclear whether all measures would have timely been in place. Moreover, their actual efficiency still remains unclear because the No-Deal scenario has not occurred, yet.

5.3 A situative analysis of the Brexit process

Based on the previous two sections in which the Brexit negotiations and No-Deal preparation processes were analysed, this section elaborates key situations which are characteristic for the Brexit process. In order to do this more in-depth analysis I use the heuristic introduced in section 3.3. During the first analytical stage, the following four situations were identified, which have shaped the negotiation and policy process in particular and to which the chronological approach could not provide a sufficient method to understand its underlying mechanisms and interacting streams: 1) the ECJ ruling, 2) the Irish border question, 3) the Salzburg Summit and 4) the defeats of the withdrawal agreement in the House of Commons. Besides this, the principle of Single Undertaking needs further clarification regarding its practical implications of (un)certainly. These are not the only situations possible for a further investigation. This first part of the analysis has however shown its relevance and significance for understanding the EU's organisation of the Brexit process.

5.3.1 The ECJ ruling

On the 10th December 2018 the European Court of Justice ruled that a member state which initiated its withdrawal from the European Union would be able to take back the notification of its intention unilaterally (European Court of Justice, 2018). The argument is that the notification is also being made unilaterally and must therefore be revocable without the EU Councils and EP's (European Parliament's) approval. Following this argument, the ECJ created legal certainty regarding the interpretation of Art. 50 TEU. This ruling (thereby) gives the UK the possibility to revoke Brexit within a short period of time. This new political option on the other hand reduces the EU's bargaining power and therefore provides the UK a new political leverage for the negotiations, even though the British Government announced that it would not make use of it (Institute for Government, 2018). For this reason, the ruling from the EU's perspective creates outcome uncertainty, which then causes processual uncertainty.

Two aspects of the ruling are interesting in particular. First, the ECJ judged against the EU Commission's and Council's position which is highly unusual and second, the ruling was announced at a highly politicised moment. The withdrawal agreement had been signed off by the Council and Prime Minister May was desperately trying to find a majority for the deal in the House of Commons. The ruling may have empowered the members of parliament to vote more easily against the agreement, because the UK had been equipped to alternatively and spontaneously revoke Brexit. Therefore, some politicians have accused the ECJ of acting politically aiming to influence the vote (Institute for Government, 2018; Appendix 3).

Whether the ruling was deliberately political or not, it has either way influenced Prime Minister May's decision to not risk a significant defeat and delay the Brexit vote in the House of Commons (Dickson & Bayer, 2018). This political decision caused processual uncertainty. As analysed in section 5.2 the EU Commission had practically intensified its No-Deal preparation by the 'Implementing Contingency Plan' published on the 12th December (European Commission 2018b). It can therefore be assumed that the ruling of the ECJ which created (legal) certainty as well as (processual) uncertainty opened a policy window for the EU requiring 'urgent' contingency measures. The ECJ ruling therefore indirectly impacted the EU's strategic priority at that stage, which was no longer a compromise and negotiation of an unanimously agreed agreement but a unilateral BATNA preparation. The fact that the conclusion of the negotiated agreement was no longer in control of the EU itself, might have also led to the practical intensification of contingency measures.

One conclusion of the No-Deal preparation analysis and the situative approach to this specific moment is, that the EU reacted to processual and outcome uncertainty by intensifying its

contingency preparations. It is however important to note that the ECJ ruling, and in consequence May's decision to delay the Brexit vote, were not the only possible causes for the EU's intensified preparation of contingency measures. Moreover, other situations show different ways of dealing with problems and uncertainty.

5.3.2 The Irish border question

In 1998 the Good Friday Agreement was adopted and implemented as one of the most important requirements for ending the Northern Ireland Conflict. Nowadays, the European Single Market strengthens trade, economy and personal ties across the Irish border. Thus, it ensures peace in the region. Negotiating the UK's withdrawal from the EU "flexible and imaginative solutions will be required, including [...for] avoiding a hard border, while respecting the integrity of the Union legal order" (European Council, 2017a, p.6). Originally the Irish border question was scheduled for the first phase of negotiations. It however has also been discussed several times during the second phase because of the introduced Backstop clause aiming to prevent a hard border on the Irish island.

In November 2018 the withdrawal agreement was about to be concluded. Regarding the Irish border question, the draft included the continuation of the Common Travel Area, support for a better cooperation and the protection of the Good Friday Agreement in all its dimensions as well as the preliminary Backstop solution to prevent a hard, external border (European Commission, 2019a). In October and November 2017, the UK Government was not able to support the current draft agreement because the DUP had concerns regarding the Backstop clause. The concluding Council meeting, scheduled for mid-November, was postponed and it was uncertain whether the agreement could be concluded before the end of the year. The EU could not waive the Backstop because it secured its central values. The British Government could not accept it, because the DUP feared its consequences. This deadlock was risking the whole agreement and opened a scope for new EU politics.

EU Commission's chief-negotiator Michel Barnier decided to informally meet a DUP delegation in Brussels. During that meeting he again emphasised the preliminary status of the Backstop and made a small compromise regarding the possibility of short-time border controls (De Haleux & Thomas, 2019). This meeting shows two special characteristics. First, a meeting with representatives apart from the UK's negotiation team is not regulated in Art. 50, nor in the Council guidelines. Second, small concessions are made informally which apparently seize the EU's red line.

After that meeting Barnier and Tusk met bilaterally to discuss the implications of the meeting. They scheduled a EU Summit for the 25th November to sign off on the agreement, as long as ‘nothing extraordinary happens’ (Council of the European Union, 2018). On the policy level the EU Commission concurrently prepared the signature of the political declaration and the withdrawal agreement including the Backstop clause which had not been changed practically (European Commission, 2019a; Council of the European Union, 2019). This situation shows that the EU Commission has developed a new practice of dealing with political deadlocks.

According to the concept of *Organisational Institutionalism* this moment shows the phenomena of *placating* (Scott, 2014). It can concurrently be described by Sabel and Zeitlin (2010) as a practise of ‘unblocking impasses’ by ‘plausible alternatives’. These measures make compromises and informal concessions possible but at the same time secure the EU’s central values and principles. By preparing the signature process before the negotiations are concluded the EU Commission again demonstrates its superior position in the Brexit process. This shows a political practice of dealing with processual uncertainty. Similar patterns can be found in the problem of the British commitment towards the financial settlement and the guarantee of the EU’s citizen’s rights in the UK. An analysis of these moments would not produce any significant new findings at that stage of research. Thus, the analysis continues with an investigation of the underlying structures of the Salzburg summit.

5.3.3 Salzburg Summit

The Salzburg Council meeting which was scheduled at short notice by Council President Tusk in September 2018 shows a similar informal nature. It was a political reaction to the missing consent on the EU-UK future relationship, the transition period and the Backstop clause. The UK Government had published their Chequers Plan in July which was evaluated as incompatible with the EU’s central values and principles (European Commission, 2019a; UK Government, 2018). Once again, the negotiations were deadlocked which created a situation of processual uncertainty. Legitimised by the EU treaties, Tusk decided to call an informal Council meeting in Salzburg to discuss how the negotiations could proceed and be concluded by the end of the year (European Commission, 2019a). The informal character of the meeting opened the scope to receive an informal agreement on the Backstop clause. During private discussions, different perspectives, current problems and possible solutions could be elaborated without making a commitment or pass over coalition partners. Moreover, this situation was characterised by the principle of Single Undertaking (which is analysed at the end of this section).

The informal design of a Council meeting is not a new phenomenon on EU level. Its strategic utilisation to revolve a negotiation process and deal with problem-based uncertainty of a discontinuing EU membership is, however, rather new. Hisschemöller and Hoppe (1995) acknowledged the focus on policy problems. This case seems, from a EU perspective, to be a moderated structured problem (goal is clear). This finding indicates a different aim of the informal Salzburg Summit compared to other measures the EU Council and Commission used to deliberately create certainty in the Brexit process. Bringing the situation into the chronological perspective I assess this strategy (in that specific moment) as not being successful. The Backstop has further been subject of disagreement and caused the agreement's defeats in the British parliament. It is therefore highly relevant to have a more in-depth analysis of the latter.

5.3.4 The Defeats of the withdrawal agreement

The withdrawal agreement has been defeated three times in the House of Commons. The European Union reacted differently in these situations, regarding the stage of the policy process and the degree of uncertainty the vote has oppressed (Appendix 3).

On the 15th of January 2019, the delayed Brexit vote, which was originally planned for December took place in the British parliament. The agreement was defeated by 432 No-votes (Appendix 3). It caused only a small degree of structural uncertainty, because the British Government, political experts and journalists had forecasted this outcome. Moreover, the scheduled Brexit date (29th March) was still been two months away from then. When looking at the politics stream, one can observe an inner-partisan conflict in the Conservative party. To calm things down Prime Minister May asked the EU to compromise especially on the Backstop clause. The EU's position was however already clear: The deal which had been agreed upon was not opened for further negotiations (European Commission, 2019a). The occurring situation of uncertainty, however required a policy solution to make the agreement acceptable for the next parliamentary vote. On the 11th March the 'Strasbourg agreement', a political memorandum, was signed guaranteeing the preliminary character of the Backstop clause. Simultaneously, the EU Commission continued its No-Deal preparation and put in place 14 legal acts. By not opening the agreed deal but instead drafting of a political statement and thus reacting to the British's concern shows the EU's steadfastness. It did not risk its principles and values but was concurrently flexible to use new measures of policy-making aiming to overcome procedural hurdles (Appendix 3).

Two days after the Strasbourg agreement the Brexit Deal was defeated for the second time in the British parliament. This situation created a much higher degree of processual uncertainty, because the Brexit date was only two weeks ahead and the EU has already used its scope of making concessions. Moreover, there was a high risk and outcome uncertainty, because the No-Deal scenario was becoming increasingly realistic (Euronews, 2019). The House of Commons took over control of British politics and initiated sample polls in order to find a majority for alternative Brexit scenarios. After this had been unsuccessful, the British Government requested an extension of the Brexit period until the end of June (European Commission, 2019a). The EU Council had to react politically to these uncertain developments and decided to offer the British Government an extension until the 22nd May conditioning the adaption of the negotiated withdrawal agreement (Appendix 3).

The finding is here, that the EU's reaction was not an active practice but rather a rational choice for the less bad. The EU decided to not risk a No-Deal Brexit and endanger its economy but create stability even when risking its credibility. By setting a new exit date which was not the British suggestion, they aimed to secure their bargaining power and protect the EU elections. Furthermore, they put pressure on the House of Commons to adopt the deal, because otherwise the UK would have had to leave the EU on the 12th April. Similar patterns can be found in the EU's reaction after the withdrawal agreement's conclusion again failed in the House at the end of March. A 'last-minute' Council decided on a flexible solution, extending the Brexit process until the 31st October leaving the possibility for an earlier opt-out whenever the agreement is ratified. However, the UK's participation in the EU elections was required (European Commission, 2019a). The strategic reason behind this flexible extension was that the uncertainty of the Brexit date might have created more processual certainty. The choice to use flexible practices is therefore deliberately, whilst the actual implementation of such practice follows the situation's reality (cf. Spann; Sabel & Zeitlin, 2010; Appendix 3).

5.3.5 Principle of Single Undertaking

The principle of Single Undertaking has been a key guideline for the Brexit negotiation process. This principle cannot be seen as a specific moment as such, but it is worth to have a closer look at it and integrate it into the analysis. It contains an interesting practice of deliberately creating uncertainty and certainty at the same time.

The principle of Single Undertaking was originally used for the WTO's international trade negotiations but has also been used as an approach in the EU's bilateral and multilateral trade negotiations. Negotiations therefore "proceed simultaneously, not sequentially, and all

Members must accept all the results [in the end]” (Wolfe, 2009, p.1). The principle is also mentioned in the Council’s guideline paper adopted in April 2017. It states that: “In accordance with the principle that nothing is agreed until everything is agreed, individual items cannot be settled separately” (European Council, 2017a, p.3). Moreover, it should ensure the EU’s unity during the negotiations process, because bilateral agreements between the UK and EU member states would not be effective. It was repetitively reconfirmed during the Brexit process (Appendix 3). However, the choice of the Single Undertaking as an underlying mechanism also deliberately creates structural and processual uncertainty. The agreement on the four subjects, citizen’s rights, legal and financial settlement, and the Irish border question of the first phase stayed legally ineffective. In the second phase, which should have mainly dealt with the future EU-UK relations, the Irish border question was back to negotiations. In this case, the principle of Single Undertaking has had two different impacts. First, it created a degree of certainty during the conclusion of the first phase. Both negotiation parties knew that they could reflect their agreement, decision and commitment during the second phase in a broader context which captures all streams and possible outcomes. This made the reappearing Irish border question, which could not be entirely agreed on before, possible (Wolfe, 2009; Eidenmüller, 2017). On the other hand, this implies that both parties kept their bargaining power. More, the flexible approach provided them with certainty to reflect and then to adjust their strategy. Therefore, they agreed more easily to detailed subjects during the political process and could proceed the negotiations without already being aware of its contextual impact⁵ (Appendix 1).

5.4 (Un)certainty of Brexit

During the research process diverse forms of uncertainties appearing in different situations of Brexit could be observed. The situative analysis even showed me contradictory phenomena of certainty which also characterise the Brexit process. Besides other possible foci, the EU’s apparent unity, application of EU legislation or institutional relationship as outlined in *Figure 5*, I have chosen to characterise the observed forms of (un)certainty). This focus not only evolved out of the previous analysis which left a blind-spot on the term’s conceptualisation. It is taken for the purpose of investigating the general underlying structure of the Brexit process and defining the strategic use of (un)certainty as an element of the EU’s strategy of organising Brexit. Moreover, the term uncertainty is explicitly occurring in different the theoretical

⁵ In order to substantiate this interpretation further research on the British strategy and practise for organising the Brexit process would be necessary.

concepts introduced in chapter 3 in reference to policy and processual problems and change. In order to better understand such phenomena, the following typology offers a first approximation.

It could have been expected that the EU administratively and politically reacts to uncertain circumstances by implementing measures aiming to create certainty. “The main purpose of the negotiations will be to ensure the United Kingdom's orderly withdrawal so as to reduce uncertainty and, to the extent possible, minimise disruption [...]” (European Council, 2017a, p.4). Thus, the EU designed the phased approach, the No-Deal preparation and extended the Brexit period (cf. 5.1-5.3).

Surprisingly, ‘natural’ phenomena of certainty could be observed. They can be found in the legal framework of Art 50. TEU or the ECJ ruling. In this case, it means that certainty can be an accompanying circumstance which is not a reactive, neither a proactive strategic choice. That is Hisschemöller and Hoppes (1995) assumption of no-certainty as a ‘a matter of choice’ is eligible and Van Asselt’s (2000) *contextual complexity* is more accurate.

At many stages the EU however aimed to proactively create certainty. This can be found in their schedule of the Brexit negotiation process, the drafting of the withdrawal agreement or the implementation of the contingency plan. Interestingly, a closer inspection shows that not only that certainty was a deliberate choice, but uncertainty as a strategy was used by different actors. Using the principle of Single Undertaking as an underlying mechanism for the Brexit negotiations for example impacts processual uncertainty. Preliminary agreements might not withstand the contextual developments as shown by the reoccurring Irish border question. This observation shows that an active choice of creating uncertainty is connected to other forms of uncertainty. Moreover, closer investigations of the ECJ ruling and the Single Undertaking mechanism have shown that specific situations were simultaneously marked by certainty as well as uncertainty (cf. 5.3). The creation of legal certainty by the ECJ ruling has for example led to structural uncertainty, as well as outcome uncertainty, because the further process was unclear due to Prime Minister May’s decision to delay the Brexit vote in the House of Commons (cf. 5.3). The Single Undertaking mechanism created processual uncertainty since already discussed subjects can reoccur during the further process, but concurrently a certain level of bargaining power and thus structural certainty (cf. 5.3).

As depicted above it is difficult to observe the (un)certain character in different situations, because different forms of (un)certainty occur simultaneously and are connected to each other. Nevertheless, it has been possible to differentiate the below listed types of (un)certainty and to construct these types based on mixed method. Combining grounded type construction with the

general conceptual ideas introduced in section 3.2 this two-dimensional typology is presented (*Figure 6*).

(Lack of) knowledge (van Asselt, Jasanoff & Wynne)	Strategic choice (Funktowicz & Ravetz, Hirschmüller & Hoppe)	
	no	proactive/ reactive
situative complexity/ alternative options	structural/processual (un)certainly	
systemic	legal (un)certainly	
values/ principles		goal (un)certainly
costs & benefits (of alternatives)	outcome (un)certainly	
impact & effect		

Figure 6: Types of (un)certainities occurring during the Brexit process.

In the literature the ‘lack of knowledge’ is described as a reason for uncertainty (Van Asselt, 2000) as well as (un)certainty as a deliberate strategic choice (Funtowicz & Ravetz, 1990; Hisschemöller & Hoppe, 1995). The idea of comprehensive knowledge as a condition for certainty, on the other hand, was introduced by Dewey (1929). Thus, conceptional idea of certainty in this typology is the existence of sufficient knowledge on characteristic values (e.g. situative complexity, systemic, values/ principles). *Figure 6* depicts four types of (un)certainities occurring in the Brexit process. Each type can also occur as certainty, if the knowledge is sufficient or if certainty is a deliberate choice. In the following these different types are characterised:

1) Structural/ processual (un)certainty

This type of *uncertainty* characterises complex situations in which the actors’ knowledge on alternative pathways, the schedule and next processual steps is insufficient. It can occur as a deliberate choice to create uncertainty (political will, and dissent on structure), as well as the common incomprehensive picture of future developments. Instead, *structural and processual certainty* occurs if knowledge of the

future process and its underlying structure is sufficient. It is mostly a strategic choice to schedule a process in order to (re)create certainty.

During the Brexit negotiations deadlocks, like on the subject of the Irish border, repetitively caused processual uncertainty (cf. 5.3). The EU, on the other hand, aimed to create structural and processual certainty by adopting its negotiation Guidelines and drafting the withdrawal agreement for the further negotiation process (cf. 5.1). Furthermore, structural (un)certainty also refers to stakeholder uncertainty for example the changing British negotiating team.

2) *Legal (un)certainty*

The conception of *legal uncertainty* refers to theoretical as well as practical gaps of legislation, in other words, general systemic ignorance (*lack of knowledge*) on the effect of laws. Moreover, it occurs when law has yet not been practical implemented or interpreted. Legal certainty instead, describes applied law anticipating desirable effects. Legal (un)certainty can be both, a cause of strategic choice (to leave interpretative scope), as well as ‘natural’ phenomena of (not yet) implemented regulations.

The withdrawal clause, Art. 50 TEU, has not been used before. That’s why its practical implementation creates uncertainty, especially with regard to its possible revocation which has not been explicitly regulated in the treaties. Thus, through the ECJ’s ruling on the ‘unilateral revocation’ the court created *legal certainty* (cf. 5.3).

3) *Goal (un)certainty*

The deliberate act of defining one’s political goal is an institutional choice (*goal certainty*). It results from knowledge on common values and principles and cost and benefits of alternative goals. Balancing rationality and moral questions actors define their goals. *Goal uncertainty* is characterised by a missing definition of one actor’s goal of the policy process. The lack of knowledge costs and benefits as well as dissensus on political values and principles within an acting institution can cause goal uncertainty.

The Brexit process is a multidimensional subject which makes it difficult to weigh costs and benefits. The EU, however, created *goal certainty* because it set clear values and principles and formulated the least destructive outcome as its goal. Whereas the UK, which discusses the options of hard Brexit, tariff union and No-Brexit, does not seem to have clearly formulated its political goal, yet (cf. 3.3.1; H. Stewart, 2019).

4) *Outcome (un)certainty*

This type is defined as the lack of knowledge on both cost and benefits and impact and effect of policy outcomes. Ideally, different alternative scenarios need to be reflected comprehensively and their impacts and effects need to be calculated rationally to understand their aspiration or potential disruption (certain outcome). In the context of new processual phenomena, like the Brexit process, it is however impossible to predict the outcome scenario and its potential effects. This creates outcome uncertainty.

The EU aimed to prepare itself for every possible outcome of the Brexit process, especially for the No-Deal scenario. It is nevertheless impossible to foresee the disruption of a hard Brexit and whether the EU's contingency measures would prevent a financial and economic breakdown. Thus, the outcome is uncertain.

Besides these different, two-dimensional forms of (un)certainty, the situative analysis has shown that different types of (un)certainty do not occur separately (cf. 5.3). Depending on the situation, they are linked and consecutively determine each other. Interestingly, some key moments show the parallel and linked appearance of certainty and uncertainty. The table in *Figure 6* is not able to visualise the relation of (un)certainities which are linked together in key situations. Thus, I exemplarily constructed *Figure 7*, which illustrates the relation of different types of (un)certainities resulting from the ECJ ruling (cf. 5.3).

Through the ECJ's ruling on Art. 50 TEU the court created legal certainty. This decision created a new alternative option for the for the Members of the British Parliament which is a characteristic of outcome uncertainty. Fearing a significant defeat, Prime Minister May delayed the Brexit vote and thereby deliberately created processual uncertainty, which resulted in the EU's notice on rising outcome uncertainty with regard to a No-Deal scenario (Dickson & Bayer, 2018; European Commission, 2018b).

Interpreting this the links between these types of (un)certainty in key situations from Spann's organisation perspective one can furthermore observe a similar pattern (Pfadenhauer, 2008). It is not predetermined which types of (un)certainty are usually linked to each other. Their combination and connection rather depend on situative developments and multidimensional interactions of the Brexit process.

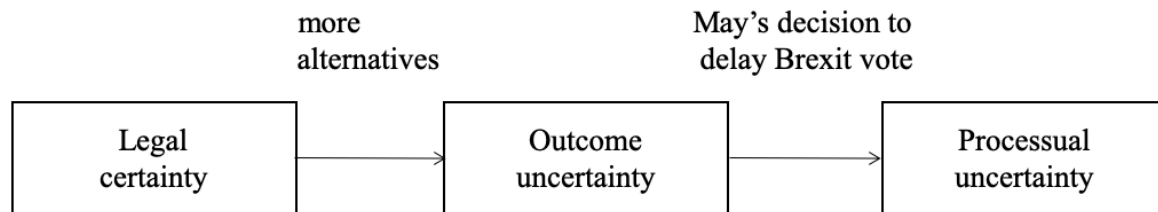


Figure 7: Successive, linked types of (un)certainties; example of the ECJ ruling.

The combination of the dimensional presentation in *Figure 6* and the linkage of different types of (un)certainty in *Figure 7* comprehensively describe the structure of the Brexit process and create a first generalisation of the overall case. The different types are exclusively constructed based on their appearance during the Brexit process. Thus, the typology does not demand external validity. It might however make a valuable contribution to the theoretical conceptualisation of the term uncertainty in relation to policy processes in the 21st century.

5.5 Overview and discussion of key-findings

In sum, this explorative research has disclosed interesting characters of the Brexit process which make it a unique negotiation and policy process at EU level. First, the UK's withdrawal from the EU is a discontinuing membership which needs to be organised according to Art. 50 TEU in an exact two-years' time period. In contrast to other EU trade negotiations it needs the comprehensive organisation of the simultaneous exit of all EU treaties without the direct transition into a FTA (Free Trade Agreement).

Moreover, it contains 'unique' problems, such as the Irish border question, which demand unique solutions (European Commission, 2019a). Surprisingly, the EU has furthermore shown a high degree of unity during the negotiation process. The European Commission, which conducted the negotiations made sure that the member states aligned with the EU's position and were not aiming to make bilateral deals with the UK on their important policy areas. It has been a central value of the EU's negotiation team to ensure this unity to be able to organise the complexity Brexit has brought along (European Council, 2017a).

The reconstruction of the scheduled Brexit negotiation process and the practical developments in section 5.1 have shown a temporal compliance to the planned phased approach. A closer investigation however has shown several policy problems, processual deadlocks and uncertainties which required a EU practise for dealing with. Moreover, the agreement could not be concluded as planned because it was defeated by the British parliament. These uncertain

processual developments caused two extensions of the Brexit period, the last currently scheduled until the 31st of October 2019. Concurrently to the Brexit negotiations and the (failing) conclusion of the agreement, the EU has organised its No-Deal Brexit preparation in four stages: 1) *Planning* in July 2017, 2) *Preparation* of legal acts (starting in November 2017), 3) Provision of *Information and Assistance* and 4) *Intensification* in November 2018. The latter was communicated mentioning the linguistic term ‘urgency’ repetitively (cf. 5.2). These findings contribute to answer the second sub-question ‘*how the Brexit process has evolved in the last two years*’.

Moreover, the question asks for *characteristic key situations* of the process. Due to the chronological reconstruction of the Brexit process four key situations could be identified, as well as a general underlying principle which implications were analysed in section 5.3. First, an in-depth analysis of the ECJ ruling has shown that legal certainty can imply processual uncertainty. The EU’s strategic reaction to the latter has been an intensification of its No-Deal contingency preparation. Thereby, the Union aimed to improve its BATNA as well as using it as a political leverage.

Second, the Irish border question has shown a repeating pattern of processual standstill and uncertainty, which EU chief-negotiator Barnier aimed to overcome by new flexible practises. For example, including the DUP in the negotiation in order to build trust through informal concessions without violating the EU’s negotiation guidelines. Third, the informal Salzburg Summit showed a similar degree of flexibility which was meant to overcome a processual deadlock during the negotiation on the future relations. This practise has however did not successfully created more processual certainty. Fourth, the three defeats of the withdrawal agreement again show the EU’s flexible practise of reacting to processual and outcome uncertainty. Close observations of these situations however show that the EU’s decision to extend the Brexit period has been made based on a consideration of both economic disruption and credibility. This resulted in a loss of bargaining power and superiority. Furthermore, different types of certainties and uncertainties occurring during the negotiation process and in key situations were observed. A closer consideration of the underlying principle of Single Undertaking discovered the concurrent appearance of certainty and uncertainty in one strategic element (cf. 5.3). More, I was able to construct a typology of (un)certainties occurring during the Brexit process (cf. Figure 6).

Based on the chronological reconstruction and the multidimensional analysis of key situations, and the typology construction, the third sub-question ‘*what is the EU’s practice for organising the Brexit process in the context of different (un)certainties?*’ can be answered. Besides a

general strategy for framing the process, which was developed in 2017, flexible practises for organising Brexit evolved during the process. The strategic approach left a scope for flexible using measures in specific situations for example the informality of meetings. This scope is part of the deliberate strategy, the actual evolving practice is a consequence of previous developments as well as its impact assessments. The type of (un)certainty has not been the main factor influencing the flexible measure's choice, because different types of (un)certainty occurred simultaneously (cf. 5.3, 5.4). Thus, the contextual, multidimensional embeddedness of a key moment opened a scope (policy window) for the EU to (re)act flexible and adapt to policy problems.

Dealing with (un)certainty

To understand how the EU Commission and Council dealt with (un)certainty it is therefore necessary to analyse these individual situations separately. First, in reaction to the ECJ ruling, the Commission practically intensified its No-Deal preparation (cf. Implementing Contingency Plan). Second, the mechanism of Single Undertaking was the Council's strategic choice which created processual uncertainty but concurrently aimed to support unity and trust and thus a degree of certainty during the negotiation process. Third, the Irish border question created processual uncertainty, which the EU aimed to counter through scheduling informal meetings and making small concessions while keeping its values and principles high. Fourth, the EU reacts by extending the Brexit period to the previous processual and outcome uncertainty. The second extension however included that no fixed Brexit date was scheduled. It therefore contains elements of structural certainty as well as uncertainty. These moments are only examples for the EU's flexible and adaptive practise. They however outline that the EU not only aimed to create certainty (European Council, 2017a, p.4) but uses the interplay of (un)certainty for own purposes.

Added value to literature

These results can partially be related to the theoretical concepts introduced in chapter 3. The EU's flexible practise evolved from different actions and their implications to the further Brexit process. This can be captured by Spann's concept of *organisation as multidimensional actions* (Pfadenhauer, 2008). It can be observed as a repeating pattern during the chronological reconstruction and in-depth analysis of the four key situations. The informal Salzburg Summit for example shows that this flexible approach is utilised to react to the occurring policy problem of the Irish border. Spann's concept, however, only outlines the general appearance of

consecutive actions. Moreover, this concept can be also seen interpreting the connection between different types of (un)certainty in key situations (cf. 5.4).

The informal character of the Salzburg and DUP meeting focused on problem solving and can be captured by Scott's (2014) *Compromise* and by Hisschemöller and Hoppe's (1995) *accommodation* strategy. Moreover, Sabel and Zeitlin (2010) introduced their concept of *Experimental Governance* at EU level. Important aspects are its multifaced power distribution and the suggestion and usage of "plausible and superior alternatives" (p.13) to overcome deadlocks. Even with the high degree of unity the EU's negotiators incorporated, they were not able to conclude the withdrawal agreement without the consultation of the DUP. The character of this informal meeting itself, as 'superior alternative' to solve the problem, as well as the power of the DUP, a small, regional party opposing the EU, shows the practical appearance of experimentalist governance to certain extent during the Brexit process.

Thus, the conceptual ideas introduced in chapter 3 can help to understand certain aspects of the Brexit process. My research contributes to these by providing examples for the possible practical interpretative power of these concepts while simultaneously showing the individual conceptual limitations. It should therefore stimulate further development of these concepts especially their explanatory power regarding public strategies or organising practices of discontinuation and the impact of uncertainty for public policy processes in the 21st century.

6. Conclusion

The present research aimed to exploratively investigate how the Brexit process is being organised by the European Union. The phenomena of discontinuing a EU relationship deliberately is rather new and contains various complex elements, such as citizen's rights, financial, economic and legal regulations and the unique problem of the Irish border. Therefore, it has been rather difficult to locate the question for an administrative and political strategy to one specific theoretical approach. Thus, I have chosen a qualitative, explorative, interpretative approach and designed a twofold method. First, a chronological approach was used to reconstruct the Brexit negotiation process and examined important situations as well as its variation from the original scheduled process. Using the same method, the EU's contingency preparation for the No-Deal Brexit scenario were reconstructed and its intersections with the negotiation process were analysed. Spann's concept of *organisation* contributed to the understanding of the process as successive actions (Pfadenhauer, 2008). Second, a situative approach to construct multidimensional streams of identified key situations were used and the EU's practise for organising these could be investigated. Thereby, Kingdon's (2009) Multiple-Streams heuristic of was applicable to the analysis of the multidimensional strands of actions.

Framework-setting and flexible adaption

The findings of my study contribute to answering the general research question '*How the Brexit process is being organised by the European Union*'. It can be concluded that the Brexit process, including political bargaining, administrative processes, contingency preparation and cooperation and coordination, has been organised by the EU in a twofold approach:

- 1) *Strategic-Planned Approach*: Based on Art. 50 TEU, the EU Commission's and Council's negotiation guidelines and the plan for preparing contingency measures, the EU strategically set the frame for the Brexit process, including the two phased approach. The intention is, besides archiving the formulated goal, securing the EU's central values and prevent financial and economic disruption and therefore ensuring superior bargaining power. This strategy can for example be found when the EU was drafting the text of the withdrawal agreement, prepared the framework on the future relations as well as their conclusion and signature. The No-Deal preparation was planned in four stages: 1) Planning, 2) preparation of legal acts, 3) provision of information and assistance and 4) intensification.

- 2) *Flexible Practice*: While the latter has been a unilateral procedure, the negotiation process has not followed the EU's original schedule. This study has shown that the EU has established a flexible practise, for organising the Brexit process. Thus, while framing the Brexit process the EU deliberate choose to leave a scope for flexible practices. The actual practices however developed in particular situations. These practices have for example been informal meetings and agreements, intensification of contingency preparation, political and policy leverages, as well as the extension of the Brexit period. By adapting to political and policy problems and uncertainty the EU has shown its flexibility aiming to overcome procedural deadlocks and reach an agreement, preferably on the EU's preference.

This twofold strategic approach is not new for EU policy making. The context of using it for a process of discontinuation however shows the practise of using of known policy measures as well as creating new ones (cf. 2nd Brexit extension) in order to overcome policy problems and processual hurdles. With my choice to look more extensively at certain key situations of the Brexit process I was able to detect exemplary practises. The EU for example used informal meetings to overcome procedural hurdles. For example, the Commission involved the DUP to be able to reach an agreement. During the meeting Barnier made small concessions which were needed to create trust and reach a consensus on the Backstop clause. Moreover, the No-Deal preparations were used as a political leverage aiming to put pressure on the UK to commit to the schedule. A flexible practice was also established by extending the Brexit period in March and April 2019. The extension agreed on in April is a new political practise of setting a flexible deadline. A close observation of these situations however shows that the EU's decision to extent the Brexit period has been made based on a consideration between economic disruption and credibility. This showed why it was reasonable to further elaborate the impact and form (un)certainties have in the Brexit process and its strategical implications.

The role of (un)certainty for policy processes

The European Council acknowledged uncertainty to be a key phenomenon during the negotiation and preparation process and an undesirable outcome of the actual Brexit (European Council, 2017a). The difficulties of characterising this term theoretically and dealing with it practically make it an interesting subject for further investigation. The analysis has shown that different uncertainties have occurred at different stages during the negotiation and policy

processes. Their different characteristics have different implications on the interrelated streams and processual change. Moreover, the following conclusions can be drawn.

- 1) *Uncertainty, Innovation and Complexity*: Uncertainty seems to mainly occur in the context of new political phenomena and policy innovation which are characterised by unclear legal requirements or appear to include comprehensive and complex policy fields. This earlier assumption of Jasanoff & Wynne (1998) and Van Asselt (2000) could be also found in my qualitative analysis. However, it is suggested to further substantiate this hypothesis by more in-depth research on this terminology.
- 2) *(Un)certainty as a strategy*: The common view on administrative policy making has been the organisation's desire to strive for certainty. The EU has clearly stated this aims as its priority (European Council, 2017a). Whilst, this has been mostly the case in the EU's twofold approach, this research has shown, that uncertainty has also been used as a strategic measure, for example by referring to principle of Single Undertaking or the second Brexit extension leaving an unclear exit date (cf. 5.3). More a general examination of British politics has shown the tendency of creating uncertainty. It remains unclear whether missing commitment and agreement have been a deliberate choice to create uncertainty or an act of curiosity. This hypothesis is therefore a subject for further research on the British strategy for organising the Brexit process.

Besides this, four general types of (un)certainty were constructed during the analysis: 1) *structural/ procedural*, 2) *legal*, 3) *goal* and 4) *outcome (un)certainty*. These types do not occur separately but can sequentially determine each other. Their development from a strategic choice is furthermore an important addition to the general understanding of the EU's strategy for organising Brexit. The typology has been build using a *mixed method of empirical grounded type construction* enriched by earlier conceptions (Funtowicz & Ravetz, 1990; Hisschemöller & Hoppe, 1995; Jasanoff & Wynne, 1998; Van Asselt, 2000). It only reaches a degree of generalisation for this specific case. It would however be interesting to reflect on this first conceptualisation while analysing other to (discontinuing) policy processes of the 21st century.

Brexit in the context of Discontinuation Governance research

Brexit is an interesting subject for scientific research in the area of social, political, administrative or even economic science. In the context of discontinuing governance research, its added value is to show the diverse applicability and flexibility of this young research field. Besides generally considering Brexit as a trajectory of discontinuation this study has shown how the discontinuation process of a EU membership is being organised. Understanding the organisation of the Brexit process as a particular aspect of governing discontinuation, the EU's strategy of framing the policy and negotiation processes and its practise of adapting to processual developments gives us an understanding of how the EU administratively as well as politically governs processes of discontinuation.

This study therefore provides a first perspective on governing discontinuation at EU-level. By evaluating a comprehensive case of discontinuation containing several technical as well as non-technical policy areas, it adds new insights to the Discontinuation Governance project. Moreover, it aims to initiate further Discontinuation Governance and policy termination research at EU-level in the light of the EU's (dis)-integration process.

Limitations and further research

Reflecting my qualitative data selection as well as the general explorative design, this study has only presented a one-sided strategy and practice for organising the Brexit process. Even though the data selection happened on a continuous basis based on its significance and the EU's previous selection, it is still possible that the interpretation is not extensive enough. To get a complete picture on the EU's practise, a more content-based analysis of the contingency measures as well as the draft withdrawal agreement would be necessary. Moreover, my thesis only outlines the British perspective which would need a separate investigation on their potential strategy behind organising the Brexit process and their handling of uncertainty. For the latter has been four different types were constructed. This typology is, however, limited to the Brexit case. Thus, this research only provides a limited predictive value. The twofold strategic approach as well as the impact of uncertainty on negotiation and policy processes are two key findings which need to be cautiously reviewed when analysing other EU policy-making processes as well as for the analysis of discontinuing governance phenomena.

The explorative research on the EU's strategy and practice for organising the Brexit process also raises new questions. Its narrow perspective has been necessary to be able to conclude this thesis but leaves scope for further research. Besides the above-mentioned British strategy and a more detailed content-analysis, there are different directions further research could take. It

would be interesting to add a multi-level perspective and actor analysis to identify national and private parties' influence on the EU's strategy. More, the investigation of the term (un)certainty has drawn two general hypotheses, which need further critical, empirical investigation.

Outlook

Brexit has so far not only impacted the EU and its member states' politics, administration and economy but has a clear effect on individual citizens' lives. The past two years were marked by a process of negotiation and bargaining, with the deliberate aim to create certainty through contingency measures and strategic use of uncertainty as a political leverage. European politicians and bureaucrats were working hard to get the current Brexit deal, which is repetitively declared as not again negotiable (Matlak, 2019). As long as the agreement is not concluded it is unclear whether the EU's strategy and practise for organising the Brexit process is effectively pursuing its goals to secure the EU's central values and create stability. So far, the agreement could not be concluded, mainly because of obscurities and fundamental disputes in the UK. It is now up to the British Parliament and Government to jointly return to work on the UK's and EU's future defining their goal and further strategy. However, internal disputes, disorder and political power conflicts hamper an orderly Brexit process, endanger the new exit date end October and risk economic disruption and UK's as well as the EU's stability. Concurrently, the EU has shown its will to appear united and work productively to ensure its common vision and fundamental principles. According to the initial quote of Barnier, this also shows an important strength for the EU's future. It remains to be seen whether its Brexit strategy in the end might reunite its member states and cause the EU to emerge from the crisis stronger and more united than before.

Bibliography

- Adam, C., Bauer, M. W., Knill, C., & Studinger, P. (2007). The Termination of Public Organizations: Theoretical Perspectives to Revitalize a Promising Research Area. *Public Organisation Review*, 7, 221-236. doi:10.1007/s11115-007-0033-4
- Alaszewski, A. (2012). Uncertainty in Policy Making: Values and Evidence in Complex Decisions. *Health, Risk and Society*, 14(1), 104-105. doi:10.1080/13698575.2011.648423
- Bauer, M. W. (2009). The Policy Termination Approach: Critique and Conceptual Perspectives. In (Vol. 1).
- Becker, S., Fetzer, T., & Novy, D. (2017). Who voted for Brexit? A comprehensive district-level analysis. *Economic Policy*, 32(92), 601-650. Retrieved from <https://doi.org/10.1093/epolic/eix012>.
- Beckert, J. (1996). Was ist soziologisch an der Wirtschaftssoziologie? Ungewissheit und die Einbettung wirtschaftlichen Handelns. *Zeitschrift für Soziologie*, 25(2), 125-146. Retrieved from <https://www.degruyter.com/downloadpdf/j/zfsoz.1996.25.issue-2/zfsoz-1996-0203/zfsoz-1996-0203.pdf>.
- Briggs, M. (2015, 12th May). Europe 'à la carte': The whats and whys behind UK opt-outs, online article. *Euractive*. Retrieved from <https://www.euractiv.com/section/uk-europe/linksdossier/europe-a-la-carte-the-whats-and-whys-behind-uk-opt-outs/>
- Chruchill, W. (1945). Speech of Zürich. Retrieved from <http://www.churchill-society-london.org.uk/astonish.html>
- Clavel, J. (2016). UK's ambiguous relationship with the EU. Retrieved from <http://www.open-diplomacy.eu/blog/uk-s-ambiguous-relationship-with-the-eu>
- Council of the EC. (1992). Treaty of Maastricht on the European Union [Press release]. Retrieved from https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_on_european_union_en.pdf
- Dewey, J. (1929). *The Quest for Certainty*. New York: Minton, Balch and Company.
- Eppler, A. (2018). Brexit - The political science perspective: Leaving the EU because or despite its opt-outs? In H. Hofmeister (Ed.), *The End of the Ever Closer Union*. Baden-Baden: Nomos.
- EUR-Lex. (2019a). Brexit - UK's withdrawal from the EU. Retrieved from <https://eur-lex.europa.eu/content/news/Brexit-UK-withdrawal-from-the-eu.html>
- EUR-Lex. (2019b). Opting-Out. Retrieved from https://eur-lex.europa.eu/summary/glossary/opting_out.html
- European Commission. (2017a). Speech by Michel Barnier at the Centre for European Reform on 'The Future of the EU'. Retrieved from http://europa.eu/rapid/press-release_SPEECH-17-4765_en.htm
- European Commission. (2017b). Terms of Reference for the Article 50 TEU negotiations. Retrieved from https://ec.europa.eu/commission/brexit-negotiations/negotiation-mandate-and-transparency_en#background
- European Council. (2017a). Guidelines following the United Kingdoms notification under Article 50 TEU [Press release]. Retrieved from

- <https://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexit-guidelines/>
- European Council. (2017b). The historical evolution of EU-UK relations. Retrieved from <https://www.consilium.europa.eu/sv/documents-publications/library/library-blog/posts/the-historical-evolution-of-eu-uk-relations/>
- Flick, U. (2014). *Sozialforschung: Methoden und Anwendungen*. Hamburg: Rowohl Taschenbuch Verlag.
- Funtowicz, S. O., & Ravetz, J. R. (1990). Uncertainty and Quality in Science for Policy. In W. Leinfellner & G. Eberlein (Eds.), *Philosophy and Methodology of the Social Science* (Vol. 15, pp. 7-16). Dordrecht: Kluwer Academic Publishers.
- Gamble, A. (2018). Taking back control: the political implications of Brexit. *Journal of European Public Policy*, 25(8), 1215-1232. doi:10.1080/13501763.2018.1467952
- Geels, F. W. (2002). Technological transitions as evolutionary reconfiguration processes: A multilevel perspective and a case study. *Research Policy*, 31, 1257–1274.
- Hagemann, S. (2018). The Brexit Context. *Parliamentary Affairs*, 71(1), 155-170. Retrieved from <https://doi.org/10.1093/pa/gsx054>.
- Hisschemöller, M., & Hoppe, R. (1995). Coping with intractable controversies: The case for problem structuring in policy design and analysis. *Knowledge, Technology & Policy*, 8(4), 40-60. Retrieved from <https://link.springer.com/article/10.1007/BF02832229>.
- Hobolt, S. B. (2016). The Brexit vote: a divided nation, a divided continent. *Journal of European Public Policy*, 23(9), 1259-1277. doi:10.1080/13501763.2016.1225785
- Holzinger, K., & Schimmelfennig, F. (2012). Differentiated Integration in the European Union - Many Concepts, Sparse Theory, Few Data. *Journal of European Public Policy*, 19(2), 295-305. doi:10.1080/13501763.2012.641747
- Hoppe, R. (2010). *The Governance of Problems: Puzzling, Powering, Participation*. Bristol: The Policy Press.
- Jasanoff, S., & Wynne, B. (1998). Science and decisionmaking. In S. Rayner & E. L. Malone (Eds.), *Human choice and climate change* (Vol. 1). London: Battelle Press.
- Johnston, R., Manley, D., Pattie, C., & Jones, K. (2018). Geographies of Brexit and its aftermath: voting in England at the 2016 referendum and the 2017 general election. *Space and Polity*, 22(2). doi:10.1080/13562576.2018.1486349
- Kelle, U., & Kluge, S. (2010). *Vom Einzelfall zum Typus: Fallvergleich und Fallkontrastierung in der qualitativen Sozialforschung* (2nd ed.). Wiesbaden: VS Verlag für Sozialwissenschaften.
- Kingdon, J. W. (2009). *Agendas, Alternatives and Public Policies* (2nd ed.): Addison-Wesley Educational Publishers Inc.
- Kluge, S. (2000). Empirically Grounded Construction of Types and Typologies in Qualitative Social Research. *Forum: Qualitative Social Research*, 1(1). Retrieved from <http://www.qualitative-research.net/fqs/>.
- Kurt, R. (2004). *Hermeneutik: Eine sozialwissenschaftliche Heranführung*. Konstanz: UVK Verlagsgesellschaft.
- Matlak, M. (2019, 29th May). Nostalgia Serves No Purpose: An Interview with Michel Barnier, online article. Retrieved from <https://www.nybooks.com/daily/2019/05/29/nostalgia-serves-no-purpose-an-interview-with-michel-barnier/>

- Nugent, C. (2019, 11th April). It's Complicated: From the Roman Empire to Brexit, Britain Has Always Struggled to Define Its Relationship With Europe, online article. *TIME*. Retrieved from <http://time.com/5563689/britain-europe-relationship-history/>
- Petrović, N. (2018). Divided national memories and EU crises: how Eurosceptic parties mobilize historical narratives. *The European Journal of Social Science Research*. doi:10.1080/13511610.2018.1523710
- Pfadenhauer, M. (2008). *Organisieren: Eine Fallstudie zum Erhandeln von Events* (1st ed.). Wiesbaden: VS Verlag für Sozialwissenschaften.
- Powalla, C. (2009). *Heuristiken im Rahmen der strategischen Analyse – Ein Vergleich der Prognosekraft von VRIO-Framework und Rekognitionsheuristik*. (akademischer Grad eines Doktors der Wirtschaftswissenschaft), Freie Universität Berlin, Berlin. Retrieved from <https://d-nb.info/1024105180/34>
- Rebhan, C. (2016). *North Atlantic Euroscepticism: The rejection of EU membership in the Faroe Islands and Greenland*. Torshavn: Frooskapur - Faroe University Press.
- Reichert, J. (2007). Abduction: The Logic of Discovery of Grounded Theory. In A. Bryant & K. Charmaz (Eds.), *Handbook on Grounded Theory*. London: SAGE Publications Ltd.
- Ritter, A., & Lancaster, K. (2018). Multiple Streams. In H. K. Colebatch & R. Hoppe (Eds.), *Handbook on Policy, Process and Governing* (pp. 232-250). Cheltenham: Edward Elgar Publishing Limited.
- Sabel, C. F., & Zeitlin, J. (2010). *Experimentalist Governance in the European Union: Towards a New Architecture*. Oxford: Oxford University Press.
- Scott, W. R. (2014). *Institutions and Organisations: Ideas, Interests, and Identities* (14th ed.). London: SAGE Publications Ltd.
- Seawright, J., & Gerring, J. (2008). Case Selection Techniques in Case Study Research: A Menu of Qualitative and Quantitative Options. *Political Research Quarterly*, 61(2). doi:10.1177/1065912907313077
- Söffner, H.-G., & Hitzler, R. (1994). Hermeneutik als Haltung und Handlung: Über methodisch kontrolliertes Vorgehen. In N. Schröer (Ed.), *Interpretative Sozialforschung: Auf dem Weg zu einer hermeneutischen Wissenssoziologie*. Opladen: Westdeutscher Verlag.
- Stebbins, R. A. (2001). *Exploratory Research in the Social Sciences*. doi:10.4135/9781412984249
- Stegmaier, P. (2017). *The Reflexive Creation of Exiting: the Governance of Discontinuation*. Paper presented at the Summer School 'Perspectives on Innovation Society', Berlin. Presentation retrieved from <https://research.utwente.nl/en/activities/the-reflexive-creation-of-exiting-on-the-governance-of-discontinuation>
- Stegmaier, P., Kuhlmann, S., & Visser, V. R. (2014). The discontinuation of socio-technical systems as a governance problem. In S. Borrás & J. Edler (Eds.), *Governance of Socio-Technical Systems: Explaining Change* (pp. 111-131). Cheltenham: Edward Elgar Publishing Limited.
- Stewart, J. (2004). The meaning of strategy in the public sector. *Australian Journal of Public Administration*, 63(4), 16-21. Retrieved from <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1467-8500.2004.00409.x>

- Turnheim, B., & Geels, F. W. (2012). Regime destabilisation as the flipside of energy transitions: Lessons from the history of the British coal industry (1913–1997). *Energy Policy*, 50, 35-49. Retrieved from <http://dx.doi.org/10.1016/j.enpol.2012.04.060>.
- Van Asselt, M. B. A. (2000). *Perspectives on Uncertainty and Risk: The PRIMA Approach to Decision Support*. Dordrecht: Kluwer Academic Publishers.
- Von Homeyer, I. (2010). Emerging Experimentalism in EU environmental governance. In C. F. Sabel & J. Zeitlin (Eds.), *Experimentalist Governance in the European Union: Towards a New Architecture* (pp. 121–150). Oxford: University Press Oxford.
- Zahariadis, N. (2008). Ambiguity and choice in European public policy. *Journal of European Public Policy*, 15(4), 514-530. doi:10.1080/13501760801996717

Data Bibliography

- Council of the European Union. (2018). Remarks by President Donald Tusk after his meeting with Brexit EU Chief negotiator Michel Barnier [Press release]. Retrieved from <https://www.consilium.europa.eu/de/press/press-releases/2018/11/15/remarks-by-president-donald-tusk-after-his-meeting-with-brexit-eu-chief-negotiator-michel-barnier/>
- Council of the European Union. (2019). Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. Retrieved from https://ec.europa.eu/commission/publications/agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community_en
- De Haleux, A., & Thomas, S. (Writers). (2019). The Clock is ticking - Das Brexit Drama [Documentation]. In ARTE (Producer).
- Dickson, A., & Bayer, L. (2018, 10th December). Theresa May delays Brexit vote over risk of 'significant' defeat, online article. *Politico.eu*. Retrieved from <https://www.politico.eu/article/theresa-may-delays-brexit-vote-over-risk-of-significant-defeat-2/>
- Eder, F. (2019, 17. Janaury). Brussels Playbook. *Politico.eu*. Retrieved from <https://www.politico.eu/newsletter/brussels-playbook/politico-brussels-playbook-presented-by-european-newspapers-and-press-publishers-commissions-grand-no-deal-brexit-tour-old-friend-new-foe-salvini-starts-fashion-trend/>
- Eidenmüller, H. (2017). Brexit Negotiations Series: 'How To Negotiate A Successful Brexit'. Retrieved from <https://www.law.ox.ac.uk/business-law-blog/blog/2017/05/brexit-negotiations-series-how-negotiate-successful-brexit>
- Euronews. (2019, 25th March). Prepare for no deal Brexit because it is 'increasingly likely', EU says, online article. *Euronews*. Retrieved from <https://www.euronews.com/2019/03/25/prepare-for-no-deal-brexit-because-it-is-increasingly-likely-eu-says>
- European Commission. (2018a). Communication: Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan.

- Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018DC0880>
- European Commission. (2018b). Communication: Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: Implementing the Commission's Contingency Action Plan. Retrieved from https://ec.europa.eu/info/publications/communication-19-december-2018-preparing-withdrawal-united-kingdom-european-union-30-march-2019-implementing-commissions-contingency-action-plan_en
- European Commission. (2018c). Council Working Party (Article 50) preparedness seminars. Retrieved from https://ec.europa.eu/info/council-working-party-article-50-preparedness-seminars_en
- European Commission. (2019a). Brexit - Introduction, Timeline. Retrieved from <https://www.consilium.europa.eu/en/policies/eu-uk-after-referendum/>
- European Commission. (2019b). Brexit preparedness: EU completes preparations for possible "no-deal" scenario on 12 April [Press release]. Retrieved from http://europa.eu/rapid/press-release_IP-19-1813_en.htm
- European Commission. (2019c). Legislative initiatives and other legal acts. Retrieved from https://ec.europa.eu/info/brexit/brexit-preparedness/legislative-initiatives-and-other-legal-acts_en
- European Commission. (2019d). Other preparedness activities. Retrieved from https://ec.europa.eu/info/brexit/brexit-preparedness/other-preparedness-activities_en
- European Council. (2017c). Special European Council (Art 50) [Press release]. Retrieved from <https://www.consilium.europa.eu/media/23544/170429-euco-art50-background-brief-clean-info.pdf>
- European Court of Justice. (2018). Press Release No 191/18 Retrieved from <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-12/cp180191en.pdf>
- Institute for Government. (2018). ECJ ruling on Article 50. Retrieved from <https://www.instituteforgovernment.org.uk/printpdf/7533>
- McTague, T., & Dallison, P. (2019, 24th May). Theresa May steps down in emotional Downing Street speech, online article. *Politico.eu*.
- Stewart, H. (2019, 12th March). MPs ignore May's pleas and defeat her Brexit deal by 149 votes, online article. *The Guardian*. Retrieved from <https://www.theguardian.com/politics/2019/mar/12/mps-ignore-mays-pleas-and-defeat-her-brexit-deal-by-149-votes>
- UK Government. (2018). Statement from HM Government [Press release]. Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/723460/CHEQUERS_STATEMENT_-_FINAL.PDF
- Wolfe, R. (2009). The WTO Single Undertaking As Negotiation Technique and Constitutive Metaphor. *Journal of International Economic Law*, 12(4), 835-858. doi:10.1093/jiel/jgp038

Appendix 1: The Brexit process

This table was used as an intermediate tool for the analysis. The data previously proceeded in ATLAS.ti were chronological sorted, related and interpretation. The interpretation is based on the codes made with the programme and on the comparison of the Planned Approach and the Practical Timetable process.

The table includes the explorative implications this first research step has for the preceding analysis.

General Brexit Timeline (Code Level 1)	Observation/ Patterns (Interpretation, Code Level 2)
<p><i>2016-06-29 Council</i></p> <p>„We are determined to remain united and work in the framework of the EU to deal with the challenges of the 21st century and find solutions in the interest of our nations and peoples” (European Commission, 2019a)</p>	<ul style="list-style-type: none"> • Goal: Staying united, protect the EU’s values and aim to create as less damage as possible (certain, value-based) (see. During the process -> from goal to problem-based approximation and practise)
<p><i>2016-10-13 European Council, President Tusk</i></p> <p>"The only real alternative to a 'hard Brexit' is 'no Brexit'. Even if today hardly anyone believes in such a possibility" (European Commission, 2019a)</p> <ul style="list-style-type: none"> • during the withdrawal negotiations will be to protect the interests of the EU and the interests of each of the 27 countries. • Single market only when including the EU's four freedoms 	<ul style="list-style-type: none"> • First time options of Hard Brexit and No-Brexit were mentioned as EU side
<p><i>2017-04-29 Council Guidelines</i></p> <ul style="list-style-type: none"> • Planning of Brexit Negotiations (in accordance with Art 50 TEU and Art. 218 TFEU) • Negotiation Mandate for EU COM • Saving the EU’s Single Market and four Freedoms • Legal certainty first for EU citizens, then for EU economy • Goal: withdrawal agreement including legal- and financial settlement, transition period, Irish border solution and outline future relations (European Council, 2017a) 	<ul style="list-style-type: none"> • Linguistic style: Council explicitly mentions <u>uncertainty and potential disruption</u> (European Council, 2017a) • -> unclear risk and outcome • Core principles are introduced -> framing negotiations -> artificial certainty? • Mechanism of Single undertaking as strategic uncertainty? • Goal and Negotiation-framework setting creates stability in a structural and strategic sense • Flexibility regarding the phased approach

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Phased Approach (Plan) The Council started a Phased Approach including the following steps (European Council, 2017a)	Practical Timetable (Reconstruction of Brexit timeline from a 2019's perspective) (European Commission, 2019a)	
<p><i>1st Phase:</i> <i>negotiating the withdrawal agreement (flexible end)</i></p> <ul style="list-style-type: none"> • Legal issues • citizens' rights • financial settlement • Irish border 	<p><i>June-November 2017 Meetings of Negotiation Teams (inkl. EU COM Task Force Barnier)</i></p> <ul style="list-style-type: none"> • Progress in citizens' rights, however missing commitment from UK side • problems with financial settlement – no agreement, no progress • Unity of single market under attack in the UK public • Commitment of all parties that Irish border needs unique solution • parallel: EU starts to internally prepare 2nd phase • relocation of EU agencies (EMA, EBA) was organised (EU unilateral) 	<ul style="list-style-type: none"> • realising that process goes on slowly • political dimension in UK politics (are not willing to pay for the exit, however they know that the treaty will make them to -> artificial delay of commitment to financial settlement -> strategic uncertainty? Is this phenomenon causing structural/progress uncertainty? • Irish border problem described as <u>unique</u> (linguistic style) • EU creates structural certainty
	<p><i>2017-12-15 European Council</i></p> <ul style="list-style-type: none"> • Heads of State and Government conclude that sufficient progress has been made on the concerning issues • (including a preliminary agreement on the Irish Border issue) • Negotiations move on to 2nd phase • reconfirmation to the principle of single undertaking 	<ul style="list-style-type: none"> • EU (EU COM + Tusk) planned to conclude the 1st phase in 2017, but only after the process stated • aiming to create processual certainty • The parallel preparations for the 2nd phase may have put pressure on the UK's team to make commitments especially on the issues of citizens' rights, financial settlement • single undertaking -> legal, strategic uncertainty

(continued Appendix 1)

<p><i>2nd Phase</i> <i>agreement outlining a future relationship (end 2018)</i></p> <ul style="list-style-type: none"> • future relationship • transition period 	<p><i>2018-01-29 European Council</i></p> <ul style="list-style-type: none"> • setting new negotiation directive (content did not change much compared to the guideline-paper published in April 2017) • renewing EU COM mandate • finding EU-27 position on transition period (max. 2 years) 	<ul style="list-style-type: none"> • practically renewing principles of negotiation -> strategy of neg. framing, creating certainty (at least for own positioning) same counts for EU COM mandate • EU shows unity
<p>Setting up draft withdrawal agreement (at certain point during 2nd phase)</p>	<p><i>2018-02-28 Draft withdrawal agreement</i> <i>EU COM Task Force</i> published its draft agreement containing</p> <ul style="list-style-type: none"> • introductory provisions • citizens' rights • other separation issues such as goods placed on the market before the withdrawal date • transitional arrangements • financial provisions • institutional provisions 	<ul style="list-style-type: none"> • strategic positioning • <i>EU COM</i> acts as the Rapporteur, the draft could have also been published by the UK, they instead only published the chequers plan (6th July) • EU COM strategy: be ahead and pre-active <i>“Im Verhandlungsprozess haben wir immer versucht einen Schritt voraus zu sein, um Impulse zu geben und die Verhandlungen proaktiv zu führen“</i>, Michel Barnier (De Haleux & Thomas, 2019) • Basis for negotiations made • strategic certainty?, frame-setting
	<p><i>2018-03-18</i> <i>Negotiation Teams (inkl. EU COM Task Force Barnier)</i> Partial agreement on draft withdrawal agreement</p> <ul style="list-style-type: none"> • citizens' rights • financial settlement • transition period • separation issues <p>Irish Border Problem is referred by adding the so-called Backstop (not agreed yet)</p>	<ul style="list-style-type: none"> • Problems und uncertainty occur for the first time while discussing the Backstop in relation to the transition period

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<p><i>2018-03-23 European Council</i> Adopts guidelines for post-Brexit negotiations on the future EU-UK relations</p>	<ul style="list-style-type: none"> • Similar pattern like preparing 2nd phase before concluding the first – putting pressure on negotiations -> strategy to make the negotiations and the process more certain (does not work that time)
<p><i>2018-05-14 Statement Barnier (COM)</i> States that the neg. process needs to work more concentrated, EU needs to continue preparing for every possible scenario</p>	<ul style="list-style-type: none"> • process is stocking • reference to No-Deal preparation (is there an intensifying action observable) • structural/processual uncertainty
<p><i>June-September 2018</i> important issues are still <u>unsolved</u>:</p> <ul style="list-style-type: none"> • Irish Border (Backstop) -> transition period • political declaration on future • Barnier (EU COM Task Force) regularly presents its current stand of (No-Deal preparation) 	<ul style="list-style-type: none"> • originally the Irish Border question has been part of the 1st phase -> due to its complexity it was again discussed in the 2nd phase • uncertainty regarding the Brexit process and most importantly concerning the outcome (of a potential Backstop or not)
<p><i>2018-07-06 UK Gov.</i> Publishes Chequers Plan (on EU-UK future relation) including:</p> <ul style="list-style-type: none"> • free trade area for goods • common rule book for trade • no free movement <p>excludes:</p> <ul style="list-style-type: none"> • free movement • UK payments to EU <p><i>EU COM and Council</i> state that ‘cherry picking’ is not an option Johnson and Davis leave the UK Gov. -> New British Brexit Neg.</p> <p>(UK Government, 2018)</p>	<ul style="list-style-type: none"> • British Gov. needed a long time to publish their idea of a future relation • This idea is not compatible with the EU’s principles (4 freedoms and single market) • New British Neg. opens the Irish Border question again • EU COM and Council are reconsidering the next steps • No-Deal preparation? <p>EU strategy: organising the Salzburg Council to get some informal agreement in the stocking process (Elements of Experim. Gov.?)</p>

(continued Appendix 1)

<p><i>2018-09 Salzburg inform. Council</i> Spontaneous meeting with the goal to overcome the current hurdles (informal consent including UK)</p> <ul style="list-style-type: none"> • there will be no withdrawal agreement without a solid, operational and legally binding Irish backstop • joint political declaration that provides as much clarity as possible on the future relations • the timetable for further negotiations (Council end of Nov. to have the concluded withdrawal agreement) 	<ul style="list-style-type: none"> • Council meeting has been rather spontaneous • Strategy: get informal commitment of UK representatives • reconfirmation on EU's important unity (of single market and Schengen -> Backstop) • Meeting should outline an end of negotiation to have enough time to get the withdrawal agreement through the parliaments in Dec. till Feb.
<p><i>2018-11-13 European Council President Tusk</i></p> <ul style="list-style-type: none"> • Not enough progress on <i>Backstop</i> • As long as there is no commitment, the Deal cannot be concluded by the end of the month • Barnier meets with DUP Members (De Haleux & Thomas, 2019) 	<ul style="list-style-type: none"> • EU-27 put pressure on UK to commit to the Backstop and transition period • Aiming to create structural/processual certainty (situation is the opposite -> planned Council meeting might have to be delayed) • Barnier makes concessions, (a bit beyond the negotiating guidelines) new character: evaluating all possible outcomes
<p><i>2018-11-15 Statement Barnier (COM)</i></p> <ul style="list-style-type: none"> • States there has been decisive progress in the Brexit negotiations 	<ul style="list-style-type: none"> • not totally clear what happened in the two days between (not transparent neg.) • new term: decisive progress -> providing a degree of certainty in process (not outcome) •
<p><i>2018-11-25 Council</i> agrees on withdrawal agreement (including UK, however difficult to get a commitment in UK Gov. before)</p>	<ul style="list-style-type: none"> • structural/processual certainty • commitment • Difficulties of UK commitment -> first sign of problems with accepting the Agreement in the House of Commons

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<p><i>political declaration</i> on future relation is prepared after an agreement on the withdrawal agreement</p>	<p><i>November-December 2018 EU COM Task Force Barnier</i></p> <ul style="list-style-type: none"> • EU COM makes draft political declaration • Neg. and disc. on political declaration • Council approves political declaration 	<ul style="list-style-type: none"> • structural certainty • reached agreement
<p><i>until 2019-01</i> reaching consent in</p> <ul style="list-style-type: none"> • Council • UK Gov. • European Parliament • UK House of Commons • UK House of Lords 	<p><i>2018-12-10 ECJ Ruling on Art 50. TEU</i> The UK can revoke Art. 50 unilaterally (European Court of Justice, 2018)</p> <p><i>2018-12-10/12 House of Commons (UK)</i></p> <ul style="list-style-type: none"> • The <i>Prime minister</i> (May) delays Brexit vote until January, because it might be defeated significantly • The Conservative Party initiates a inner-partisan vote of no confidence against their <i>Prime minister</i>, which she survived on Dec. 12th (Dickson & Bayer, 2018) 	<ul style="list-style-type: none"> • uncertainty in structure/ process • has Mays decision also something to-do with the ECJ ruling? -> ECJ creates legal certainty but at the same time creates a bubble of processual uncertainty by making more options available. These options might have changed the position of some British MPs
	<p><i>2019-01-15/16 House of Commons</i></p> <ul style="list-style-type: none"> • The negotiated withdrawal agreement is defeated by (202 yes's – 432 no's) • The <i>Opposition</i> initiates a vote of no Confidence against their Prime minister • The vote was defeated the next day • The <i>Prime minister</i> asks the EU to make some adjustment to the withdrawal agreement (European Commission, 2019a) 	<ul style="list-style-type: none"> • certainty regarding the Figure of May • structural/ processual uncertainty • EU (EU COM and Council) could not do much about the processes in UK • Continuing No-Deal preparations? / intensifying it?

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<p>2019-03-11 'Strasbourg agreement'</p> <p>EU COM (<i>Barnier</i>) and UK Gov. (<i>May</i>) agree on</p> <ul style="list-style-type: none"> • an instrument relating to the withdrawal agreement (providing clarifications and legal guarantees on the nature of the backstop) • a joint statement (supplementing the political declaration that sets out the framework for the future relationship) <p>(European Commission, 2019a)</p>	<ul style="list-style-type: none"> • it is an addition to the agreement but does not influence the neg. withdrawal agreement legally • EU makes small concessions (but do not touches the agreement) • Strategy to make it pass the House of Commons • In situation of uncertainty EU seems to react more flexible in order to initiate some progress in the stocked process (similar pattern like the Salzburg summit) -> important: That does not cross their principles
<p>2019-03-12 House of Commons</p> <ul style="list-style-type: none"> • The negotiated withdrawal agreement is defeated by (242 yes's – 391 no's) <p>(H. Stewart, 2019)</p>	
<p>2019-03-19 European Council</p> <ul style="list-style-type: none"> • reconfirmed their commitment to the withdrawal agreement as the best possible way to ensure an orderly Brexit. In the light of the uncertainty in the UK, they also stressed the need to be prepared for all possible outcomes. <p>(European Commission, 2019a)</p>	<ul style="list-style-type: none"> • explicitly mentioned <u>uncertain</u> situation
<p>2019-03-20 UK Gov. (<i>May</i>) sends Brexit extension request until a 30th of June</p> <ul style="list-style-type: none"> • Tusk responses: maybe shorter extension will be possible 	<ul style="list-style-type: none"> • Council does not want to have an extension over EU Elections' period • legal possible? UK would have to participate
<p>2019-03-22 European Council</p> <p>Decides to extent the Brexit process period under the following conditions:</p> <ul style="list-style-type: none"> • until 22 May 2019 (If agreement is approved) • until 12 April 2019 if not (Chance of No-Deal) 	<ul style="list-style-type: none"> • EU offers a flexible solution which gives UK some scope of action without giving them what they initially wanted

(continued Appendix 1)

	<ul style="list-style-type: none"> goal: Ensuring EU elections, pressure on House of Commons to accept the agreement (Strategic uncertainty of no deal?) strategy: keeping superior neg. power as well as unity (similar pattern than defining process by creating the first draft agreement?)
<p><i>2019-03-29 House of Commons</i></p> <ul style="list-style-type: none"> The negotiated withdrawal agreement is defeated by (286 yes's – 344 no's) 	<ul style="list-style-type: none"> Uncertainty at EU side Tusk plans 'Emergency Summit' for the 10th of April -> flexible processual strategy (is needed?)
<p><i>2019-04-05 UK Gov.</i></p> <ul style="list-style-type: none"> <i>House of Commons</i> could not present alternative options (votes on alternatives where all defeated) UK Gov. requests further Brexit extension, again for the 30th of June 	
<p><i>2019-04-10 European Council</i></p> <p>Heads of State and Government decide to give a second, more flexible Exit date with the following conditions:</p> <ul style="list-style-type: none"> until 22 May 2019 (If UK decides not to participate at EU elections) until 31st of October, UK and leave EU at every time if the withdrawal agreement is accepted at the 1st of the following month 	<ul style="list-style-type: none"> EU shows strategic flexibility degree of certainty (1st of the following month) same goals as by the first extension Unity: the decision was hard, e.g. French President neg. power
<p><i>2019-05-07 UK Gov.</i></p> <p>Officially decides to participate in the EU Elections and begins trans-partisan talks to find a Brexit-solution</p>	

(continued Appendix 1)

	<p>2019-05-21 UK Gov. (May) announces two votes to be schedules in June in the House of Commons</p> <ul style="list-style-type: none"> • fourth vote on the Brexit withdrawal agreement • parliamentary vote on carrying out a second referendum <p>2019-05-24 UK Gov. (May)</p> <ul style="list-style-type: none"> • Prime minister May announces to step down as a Conservative party-leader by June 7th and as Prime minister as soon as another will be elected • “I have done my best to do that,” she said. “I have done everything I can to convince MPs to back that deal. Sadly, I have not been able to do so.” She later added: “It is and will always remain a matter of deep regret to me that I have not been able to deliver Brexit” (McTague & Dallison, 2019) 	<ul style="list-style-type: none"> • Question: is there a strategy May follows? • uncertainty as a strategic choice Forcing Commitment? <p>➔ Question to be investigated in further research</p>
<p>until 2019-03 Signature of the withdrawal agreement and the political declaration by all parties</p>	<p><i>The practical timeline did not reach the planned process until here (consent, agreement and signature)</i></p>	<p>Currently: Situation marked by uncertainty</p> <p>The Following options are still possible:</p> <ul style="list-style-type: none"> • Consent and signature of the withdrawal agreement • No-Deal Brexit in October • Another extension • UK revokes Art. 50 TEU (based on 2nd Peoples vote?) etc... <p>(Matlak, 2019)</p>
<p>2019-03-29 The UK leaves the EU and Euratom and enters in transition period</p>		

(continued Appendix 1)

Interpretation of the Timetable (in contextual perspective (Level 3)):

- The EU (EU COM and European Council) were setting the framework before the process and decided on how the process would work (scope of action)
 - They set up the time table, the draft agreement and the principles which could not be neglected (4 freedoms, single market) -> pre-active actions, neg. authority
 - The actual process has been changes/adjusted, especially the dates during the process, based on the previous developments (*see Spann*);
 - Does this organisation pattern not only count for the administrative body, but the politics of negotiations? – Yes: see private DUP-Meeting, or Brexit extension
 - Plan vs. Practical Process -> from goal to problem-based approximation and practise
 - 1) The parallel preparations for the 2nd negotiation phase may have put pressure on the UK's team to make commitments especially on the issues of citizens' rights, financial settlement. That pattern is observable as well in the following:
 - 2) creating Draft withdrawal agreement,
 - 3) first Brexit extension -> pressure on House of Commons to accept the agreement (Strategic uncertainty of No-Deal?)
-
- The EU created a practice of dealing with situations where the process were stocking:
 - 1) The parallel preparations for the 2nd phase may have put pressure on the UK's team to make commitments,
 - 2) Informal Salzburg summit, informal commitment,
 - 3) When the deal failed the first time in the House of commons the EU made small concessions (but do not touches the agreement) -> reacts more flexible in order to initiate some progress in the stocked process (important: that does not cross their principles)

-> Goal of actions seems clear:

Work is Problem based: informal Salzburg Summit cannot bring a solution but as a progress on Problem structuring small *reference Hisschemöller and Hoppe* (moderately structured problem (by knowledge certainty but no consensus on values and norms)
-
- There a different type of uncertainties found (strategic, structural/processual, legal, outcome) as well as counter phenomena of certainty – are they also found on different levels?
-
- What is new at this process of organising discontinuation:
 - Includes unique subjects (Irish Border),
 - has a limited, short time-period (compared to trade agreements),
 - Exit of all treaties, market etc. without a direct regulation on the future relations (only investigation on ideas and options)

(continued Appendix 1)

How to proceed with the analysis:

- 1) The timetable shows the interesting neg. principle of single undertaking which creates uncertainty -> have a detailed analysis of that
- 2) The moment the ECJ ruled the revocation of Art. 50 created different uncertainties and might have led to May delaying the vote -> analysing that moment as a characteristic one
- 3) Moreover, it can be interesting to have a closer look at the strategy behind initiating the informal Salzburg summit (in the light of the Irish Border issue etc.)
- 4) There have been two periods where the EU could not do much to engage in the neg. process: 1) March-September 2018 until the UK defined their idea of a future relationship and 2) December 2018 - March 2019 when the UK could not agree on the withdrawal agreement (mainly because of inner-partisan conflicts) – this periods where marked by a high level of processual and outcome uncertainty (see above) EU COM and European Council repeated the urgency of No-Deal preparation Therefore, it gets important to have a look at the No-Deal preparation process and when it began, when it ended and whether there has be a time of intensified preparations (besieged the neg. stream this is another, parallel, more EU policy-based stream)
- 5) In the light of doing this analysis the different types of uncertainties which were found in the timetable will be reconsidered and adjusted

Appendix 2: No-Deal preparations

This table was used as an intermediate tool for the analysis. The data previously proceeded in ATLAS.ti were chronological sorted, related and interpretation. The interpretation is based on the codes made with the programme and on the comparison of the No-Deal Preparations and the Negotiation Timetable process.

EU No-Deal Preparations (Code level 1)	Negotiation timetable context <small>(European Commission, 2019a)</small>	Observations/ Interpretation (Code level 2)
<p><i>2016-10-13 Tusk Statement (President European Council)</i></p> <p>"The only real alternative to a 'hard Brexit' is 'no Brexit'. Even if today hardly anyone believes in such a possibility" (European Commission, 2019a)</p>	Before the withdrawal intension was notified	<ul style="list-style-type: none"> First time option of No-Deal Brexit (included in Hard Brexit) is mentioned on EU level
<p><i>July 2017</i></p> <ul style="list-style-type: none"> EU COM schedules preparation work <p>Guidelines for No-Deal preparation. Plan includes the following measures:</p> <ul style="list-style-type: none"> Legislative proposals -> package Preparedness seminars and guidance papers for citizens, private firms, and local, regional and national bureaucratic institutions and agencies Communications Regular information and updates on the process of preparation (European Commission, 2019d) 	Simultaneous to the beginning of the Brexit negotiation process	
<p><i>November 2017</i></p> <p>EU COM puts the first legal acts in place:</p> <ul style="list-style-type: none"> Relocation of the European Banking Authority Relocation of the European Medicines Agency <p>(European Commission, 2019c)</p>	Before: neg. process too slow (not enough progress)	<ul style="list-style-type: none"> These were the first legal measures, but they are also necessary in the light of an orderly Brexit

(continued Appendix 2)

<p><i>December 2017</i></p> <ul style="list-style-type: none"> • Official start of the EU's No-Deal preparation • EU COM will regularly inform and update on the process of preparation <p>(European Commission, 2019b)</p>	<p>(Before: neg. process too slow (not enough progress))</p> <p>In Dec 2017 sufficient progress to move to 2nd phase</p>	<ul style="list-style-type: none"> • Why did the preparation only start in December? – there have been some considerations before! • EU might have needed time to make sure what the outcome of a No-Deal would be and how to react? • <u>Is there an influence of the neg. being slow at that time and the official start of the No-Deal preparations?</u> • <u>Might they have even be used as a measure to put pressure on the UK to move forward?</u>
<p><i>January-November 2018</i></p> <p>In that year EU COM initiated</p> <ul style="list-style-type: none"> • six legal acts regarding different subjects (tariff-quotas, visa, energy etc.) • Provides Fact-Sheets and information for citizens, firms and local, regional and national bureaucratic institutions and agencies (basic and detailed) to support their preparation • Schedules, prepares and hold 9 preparedness seminars <p>(European Commission, 2018c)</p>	<p>2nd phase, uncertain decisions, progress and stocked moments</p>	<ul style="list-style-type: none"> • only 6 legislative acts so far are only a little compared to all legislative acts which are in place by the end of March 2019 • Hope that they are not needed?
<p><i>2018-11-13 Contingency Plan</i></p> <p>EU COM publishes a contingency plan for intensifying the No-Deal preparations:</p> <ul style="list-style-type: none"> • Contingency Plan contains a detailed time-plan for putting all measures in place before 29th March 2019 <p>EU COM proposes</p> <ul style="list-style-type: none"> • “legislative measures and adopt all delegated acts before 31 December 2018 (In the case of legislative acts, the European Parliament and the European Council to have the time needed to complete the ordinary legislative procedure before the 	<p>2nd phase, uncertain decisions, progress and stocked moments</p>	<ul style="list-style-type: none"> • Linguistic style: talking about <u>contingency; urgency, disruption and uncertainty</u> are mentioned in the COM's communication • <i>Speaking explicitly of intensifying the No-Deal preparations, but did they really do or is this just a measure to pressure UK?</i> • structural/processual and outcome uncertainty? • EU COM reacts by publishing the Contingency Plan and thereby intensifying the No-Deal Preparations

(continued Appendix 2)

<ul style="list-style-type: none"> • Parliament in March 2019, and to exercise its control functions for delegated acts)” • “Submit all necessary draft implementing acts for a vote in the competent committees by 15 February 2019 at the latest.” <p>(European Commission, 2018a)</p>		<p>Intensifying NO-Deal preparations (in theory)</p>
<p><i>2018-12-19 Implementing Contingency Plan</i> EU COM publishes a contingency plan for intensifying the No-Deal preparations: “<u>Given the continued uncertainty surrounding the ratification process</u> on the side of the United Kingdom, and in line with the Conclusions of the European Council (Article 50) on 13 December, the Commission is proceeding urgently with the implementation of its Contingency Action Plan” “The Commission calls on the European Parliament and, on the European Council, to adopt the proposals as a matter of urgency” “The Commission also calls on Member States to refrain from entering into bilateral agreements, arrangements and discussions with the United Kingdom” (European Commission, 2018b, p.2)</p> <ul style="list-style-type: none"> • More, the EU COM initiates 12 legal acts and delegated acts at that day 	<p>ECJ ruling on revoking Art 50 TEU</p> <p>UK Prime minister (May) postpones vote in House of Commons until January</p>	<ul style="list-style-type: none"> • Linguistic style: <u>urgency, disruption and uncertainty</u> are mentioned in the COM’s communication • The practical timetable of the Brexit neg. creates an uncertain situation • structural/processual and outcome uncertainty? • EU COM reacts by publishing an Implementation strategy of the Contingency Plan and thereby intensifying the No-Deal Preparations • Ensuring united position of EU • Not only stating the aim to do so, but by initiating legal acts also practically working and implementing the Contingency Plan <p>Intensifying NO-Deal Preparations (practically)?</p> <ul style="list-style-type: none"> • Yes, because they explicitly say so, one can observe the issued legal acts, mentioning <u>urgency</u>, it actually takes until the end of March
<p><i>January 2019</i></p> <ul style="list-style-type: none"> • EU COM initiates 14 legal acts and delegated acts which are in line with the Contingency Plan • Continuing support for Member States (EU COM sends expert teams to national institutions to support their preparations) 	<p>The withdrawal agreement is defeated in the House of Commons (UK)</p>	<ul style="list-style-type: none"> • structural/processual and outcome uncertainty? • No new intensification, following their plan to implement the contingency measures • Not clear whether all measures will be in place

(continued Appendix 2)

<p>Eder, 2019; European Commission, 2019c)</p>	<ul style="list-style-type: none"> • before the 29th of March (not much time left to get them through European Council and EP)
<p><i>2019-03-25 EU COM</i> EU declares No-Deal preparation for being in place including 90 preparedness Notices, 3 Communications, 19 legislative acts (excl. delegated acts) in the following areas:</p> <ul style="list-style-type: none"> • PEACE programme • The EU Budget • Fishing rights and compensation • Financial services • Air connectivity and safety • Road and Rail connectivity • Ship inspections • Re-alignment of the North Sea – Mediterranean Core Network Corridor • Climate policy • Erasmus • Social security entitlements • Visa and • State Aid <p>EU COM and European Council state that the No-Deal Scenario becomes increasingly realistic EU continues to support private firms, and local, regional and national bureaucratic institutions and agencies (Euronews, 2019; European Commission, 2019b)</p>	<p>The withdrawal agreement is defeated in the House of Commons (UK) two times The Brexit Date has been delayed until at least 12th of April</p> <ul style="list-style-type: none"> • No-Deal Package is completed • EU COM creates legal certainty covering all areas • However: still outcome uncertainty: would the security measures do as they should in a No-Deal situation (Practical Test?)

(continued Appendix 2)

Interpretation No-Deal Preparation Process:

- The EU always knew about the risk of a No-deal Brexit and started to prepare for that ‘worst outcome’ parallel to the withdrawal agreement negotiation procedure
- More it supported national governments and private firms with their Brexit No-Deal preparation by Factsheets, Workshops and experts coming to help (Eder, 2019)

There can be four different stages of No-Deal preparation be identified:

- 1) Planning of No-Deal preparation (July 2017)
 - 2) Preparation of legal initiatives and acts (November 2017)
 - 3) Information about No-Deal and assistance to prepare to citizens, private firms, and local, regional and national bureaucratic institutions and agencies (including technical seminars, etc.) (December 2017)
 - 4) Contingency Plan and Implementation Plan – Intensifying Preparation (November 2018)
- There has been a moment at which the preparations were intensified (theoretically and practically) This could be interpreted as a strategic reaction of the EU towards the “given continued uncertainty surrounding the ratification process on the side of the United Kingdom”
 - because they explicitly say so, one can observe the issued legal acts, mentioning urgency, it actually takes until the end of March

This has happened during the 2) Period December 2018 - March 2019 when the UK could not agree on the withdrawal agreement; during the first however;

1) March-September 2018 until the UK defined their idea of a future relationship and; there was no ‘more extensive’ No-Deal preparation communicated

- That interpretation would imply that the EU’s preparation was only preliminary before and that the actors hoped that it would not be necessary (Maybe that interpretation is too narrow, it could also be more or less ne normal procedure, more is published at the end of a legislative initiative and policy processes, since the papers have to be designed first)

Or it could also be used as a measure to put pressure on the UK especially regarding the contingency communication (Improving BATNA); (Eidenmüller, 2017)

- Uncertainty: That strategy might have caused the uncertainty whether all measures are in place by March 29th (yet they are)
- However, it remains unclear whether they would be effective in the No-Deal case (which has not happened yet)

Appendix 3: Situative analysis

Key situation 1: ECJ ruling

This table was used as an intermediate tool for the analysis. The data previously proceeded in ATLAS.ti were chronological sorted, related and interpretation.

<p>ECJ ruling 2018-12-10 (<i>situative, problem stream</i>) (European Court of Justice, 2018)</p> <ul style="list-style-type: none"> • creates legal certainty • but structural/processual uncertainty, + one option (revoking Art. 50 last minute) • ECJ decides not to align with the EU COM and European Council position • Gives the UK Gov. And Parliament de facto more power
<p><i>May delays Brexit Vote (politics)</i> (Dickson & Bayer, 2018)</p> <ul style="list-style-type: none"> • no majority for the withdrawal agreement prognosed • delay instead of losing • that creates an inner-partisan vote of no confidence -> which is defeated
<p>EU COM practically intensifies No-Deal preparation (publish 2018-12-19 (policy))</p> <ul style="list-style-type: none"> • publishes new legal initiatives, delegated acts etc. • But: The intention to intensify was se before: <p>(European Commission, 2018b)</p> <ul style="list-style-type: none"> • Is it therefore part of the <i>EU Strategy</i> to put pressure on the UK to accept the withdrawal agreement or • Is it a change in EU strategy -> stronger focus on No-Deal preparation

Key situation 2: Irish Border

This table was used as an intermediate tool for the analysis. The data previously proceeded in ATLAS.ti were chronological sorted, related and interpretation.

<p><i>Barnier meets with DUP Members (November) - (politics)</i> (De Haleux & Thomas, 2019)</p> <ul style="list-style-type: none"> • discussing Backstop and Barnier makes small concessions regarding preliminarily border controls • agreement seems reachable UK Gov. needs to support it
<p><i>Prime minister May must convince her cabinet 2018-11-14</i></p> <ul style="list-style-type: none"> • She does so but it was really difficult to keep the UK Gov. together on this subject
<p><i>Bilateral meeting Tusk and Barnier 2018-11-15 EU</i> (Council of the European Union, 2018)</p>

(continued Appendix 3)

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- During that private meeting the two EU politicians agreed on a strategy for the next few days:
 - agreement is by all the member states, shared and comments (Tusk hopes there are only a few) will be changed
 - preparation of mandate for the Commission to finalise the Joint Political Declaration, which is then be evaluated in 48h by the member States
 - Schedule European Council to finalise and formalise The Brexit agreement for the 25th November 'until nothing extraordinary happens', President Tusk (Council of the European Union, 2018)
- ➔ EU politics is already entering the next steps
-

EU COM prepares signature and political declaration (publish 2018-11-19 (policy))
(European Commission, 2019a)

- The policy (withdrawal agreement and backstop) is not really touched
 - As a next step EU COM prepares political declaration and signature of withdrawal agreement
-

- Is it therefore part of the *EU Strategy* to put pressure on the UK to accept the withdrawal agreement and the Backstop solution;
 - there were small concessions being made in direction to the DUP regarding the Backstop and potential small and preliminary border controls
 - withdrawal agreement includes a protocol on Ireland/ Northern Ireland (Backstop shall be replaced asap) (Council of the European Union, 2019, p.296)
 - EU strategy of being always a step ahead (already preparing new things), but something different, had to make concessions towards DUP in order to precede somehow ->flexibility
-

Key situation 3: the Salzburg Summit

This table was used as an intermediate tool for the analysis. The data previously proceeded in ATLAS.ti were chronological sorted, related and interpretation.

Missing consent on Irish Border and future relation August/September 2018 (situative, problem)

(UK Government, 2018)

- Not the Chequers Plan neither the UK Gov. itself provide a solution or a realistic idea (in the view of the EU COM and Council) for the Irish border problem (missing commitment to the Backstop idea) and the outline for the future relation
 - Negotiations are stocked
-

Tusk -> informal Salzburg Summit September (EU politics)

(European Commission, 2019a)

- In Cooperation with EU COM Council President Tusk summons a Council Meeting in Salzburg, which is informal

(continued Appendix 3)

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- Exchange of perspectives, presentation of current preparation
 - Aim: getting an informal agreement to the Backstop-Solution from the UK Gov.
-
- EU law and practice opens a legitimate basis (WoO) for Tusk to summon the informal Council Meetings (policy)
 -
-
- The current stocking negotiations but the time pressure of concluding them by November 2018 make the informal design of the Council meeting possible
 - *EU Strategy* to get an informal commitment to at least be able to continue the negotiation process
 - Informal agreements are not a new phenomenon of EU politics
 - It is in the light of the Single Undertaking principle
 - It is however a new phenomenon to strategically use this in order to revolve a neg. process (of a discontinuing relationship)
 - See Experim. Governance -> using measures we already know for new things? - option to overcome problems (like the stocking progress)
-

Key situation 4: withdrawal agreement is defeated1st, 2nd and 3rd time in House of Commons

This table was used as an intermediate tool for the analysis. The data previously proceeded in ATLAS.ti were chronological sorted, related and interpretation.

1st

2019-01-15 withdrawal agreement is defeated (situative, problem stream)

- The negotiated withdrawal agreement is defeated by (202 yes's – 432 no's)
 - Problem: No Agreement, Danger of No-Deal Brexit if there is no consent
 - Structural/processual uncertainty
-

(De Haleux & Thomas, 2019)

British politics: Labour (Opposition) vs. Conservatives and DUP; mostly inner-partisan power conflicts leading to a vote-of no confidence 2019-01-16

- May asks EU for discussing parts of agreement again

EU politics: Making clear that it is not a possibility to open up the withdrawal agreement again

- *2019-03-11 'Strasbourg agreement'*; However, they sign a political memorandum guaranteeing that the Backstop solution will be only preliminary (which has already been stated in the withdrawal agreement as well)
-

(European Commission, 2019a)

- Drafting and signing a political memorandum (*neg. stream policy*)
 - EU COM initiates 14 legal acts and delegated acts which are in line with the Contingency Plan in the second half of January
 - Continuing support for Member States (EU COM sends expert teams to national institutions to support their preparations)
-

(continued Appendix 3)

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- EU finds a way of not opening the withdrawal agreement but however reacting to the concerns of the House of Commons by making the political memorandum
 - Parallel they continue to work on their no deal preparations and publicly state the urgency of that matter (every company has to implement contingency measures as well)
 - Is it a change in EU strategy -> stronger focus on No-Deal preparation, or is this just a normal legislative process?
 - WoO for British House of Commons to challenge EU, WoO for EU to strategically foster its principles but showing some flexibility and mat a step towards the British without losing their neg. power

2nd

2019-03-13 withdrawal agreement is defeated (situative, problem stream)

(H. Stewart, 2019)

- The negotiated withdrawal agreement is defeated by (242 yes's – 391 no's)
- Problem: No Agreement, Danger of No-Deal Brexit if there is no consent
- House of Commons is not able to find a majority for other options (No Brexit, tariff union, 2nd referendum)
- Structural/processual uncertainty

-
- *British politics:* House of Commons overtakes power on how to proceed
 - No agreement on direction -> 2019-03-20 UK Gov. requests Brexit extension Period (until a 30th of June)

EU politics: Again, making clear that it is not a possibility to open up the withdrawal agreement again

- *European Council* Decides to extent the Brexit process period under the following conditions: 1) until 22 May 2019 (If agreement is approved), 2) until 12 April 2019 if not
- ***This is however not a chosen action of flexibility but rather forced by the given circumstances and uncertain outcome a no deal Brexit would have***
- States in direction of its Member states and private sector that the chance of No-Deal in on an all-time high and that contingency measures must be in place until 12th April then.

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- EU COM and European Council and Parliament finalise their implementation of contingency policies (2019-03-25)

(continued Appendix 3)

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- EU Strategy: They had to extend the Period, even when that shows a loss of domination in the Brexit process, however the negative consequences would have been to high – WoO, degree of certainty
 - However, they keep their own values high by aiming to safeguard the EU elections
 - Deadline of 12th April pressures House of Commons to commit to the negotiated withdrawal agreement
 - No direct concessions for UK

3rd*2019-03-29 withdrawal agreement is defeated (situative, problem stream)*

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- The negotiated withdrawal agreement is defeated by (286 yes's – 344 no's)
 - Problem: No Agreement, Danger of No-Deal, Chaotic-Brexit on the 12th of April

2019-03-20 UK Gov. requests Brexit extension Period (again until a 30th of June)

EU politics: Making again clear that the withdrawal agreement in its current form cannot be touched

- Importance to find new solutions in consultation with Opposition (Labour), Tusk meets Corbyn

Last-Minute Council 2019-04-10 flexible extension

- Heads of State and Government decide to give a second, more flexible Exit date with the following conditions: 1) until 22 May 2019 (If UK decides not to participate at EU elections) 2) until 31st of October, UK and leave EU at every time if the withdrawal agreement is accepted at the 1st of the following month

(European Commission, 2019a)

-
- EU COM regularly publishes communications on the current process
 - Continuing support for Member States, private sector and citizens

-
- *EU Strategy:* They had to extend the Period, even when that shows a loss of domination in the Brexit process, however the negative consequences would have been to high -> EU slightly begins to lose its credibility (decision between credibility and economic disruption)
 - finding consent has been problematic (especially the French President had to be convinced -> unity in danger?)
 - However, even more flexible approach until 31st of October, Brexit is more UK's own choice now (however certainty, that it would only be at the 1st of the next month)
 - WoO for new strategy/practise: can there be more stability by leaving a concrete exit date uncertain?

Appendix 4: Special European Council (Art 50)

Planned Brexit process and procedure (European Council, 2017c).

