CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE

AGENDA

12th Meeting, 2020 (Session 5)

Tuesday 26 May 2020

The Committee will meet at 10.00 am in a virtual meeting and will be broadcast on www.scottishparliament.tv.

1. **Negotiation of the future relationship between the European Union and the UK Government:** The Committee will take evidence from—

   David McAllister MEP, Chair, UK Coordination Group in the European Parliament.

2. **Consideration of evidence (in private):** The Committee will consider the evidence heard earlier in the meeting.

Stephen Herbert
Clerk to the Culture, Tourism, Europe and External Affairs Committee
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The Scottish Parliament
Edinburgh
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The papers for this meeting are as follows—

**Agenda item 1**

Note by the Clerk

PRIVATE PAPER
Culture, Tourism, Europe and External Affairs Committee

12th Meeting, 2020 (Session 5) Tuesday 26 May

Negotiation of the future relationship between the European Union and the UK Government

Note by the Clerk

Introduction

1. As a consequence of the Covid-19 pandemic, the Committee has reorganised its scrutiny of the future relationship negotiations between the EU and UK Government. Details of the Committee’s scrutiny of the negotiations can be accessed at:

www.parliament.scot/parliamentarybusiness/CurrentCommittees/114740.aspx

Evidence session

2. The Committee will take evidence in a virtual meeting from:

- David McAllister MEP, Chair, UK Coordination Group in the European Parliament

Supporting Information

3. The Committee has requested written evidence from witnesses who were previously, prior to the Covid-19 pandemic, scheduled to give oral evidence to the Committee. Written responses received to date are attached in Annexe A and listed below for ease of reference:

- Professor Christopher Gray, Royal Holloway, University of London
- Fabian Zuleeg and Jannike Wachowiak, European Policy Centre

4. The UK Government’s lead negotiator, David Frost, wrote to Michel Barnier, on Tuesday 19 May, following the publication of draft legal texts by the UK Government. The letter provided an overview of the UK Government’s perspective of the current position in the negotiations. This letter is provided in Annexe B. Michel Barnier responded in writing to Mr Frost’s letter on 20 May. This letter can also be accessed in Annexe B.

5. A SPICe paper providing context to the evidence session is provided in Annexe C.

Stephen Herbert
CLERK
Culture, Tourism, Europe and External Affairs Committee
21 May 2020
Written Submission from Professor Christopher Grey, Royal Holloway, London

Preamble

I am Professor of Organization Studies in the School of Business and Management at Royal Holloway, University of London, having previously held Professorships in the same subject at Warwick Business School, University of Warwick and the Judge Business School, University of Cambridge, where I was also a Fellow of Wolfson College. I have also been a Visiting Professor at Université Paris-Dauphine, France and at Copenhagen Business School, Denmark. I am a Fellow of the Academy of Social Sciences. I have researched the interface of business and politics for over 30 years and for the last four years have analysed Brexit, especially in relation to its trade and business implications.

I am delighted to give evidence to the Committee and sorry that circumstances preclude me from doing so in person. You have asked me to address a series of questions/issues, which are shown below in italics followed by my responses.

Extending the transition period

- Views on whether the UK government should request an extension to the transition period;
- Your reasons why an extension to transition is or is not required;
- If you believe an extension to transition is required, how long such an extension should be for (one or two years).

RESPONSE: My view is that an extension to the transition period (TP) is vital, although it need not necessarily take the form of the UK request. The Withdrawal Agreement (WA) would allow it to be agreed by the Joint Committee without publicly having been initiated by either side. This is an important and often overlooked point, which might be significant in terms of UK domestic politics.

Before coming to my reasons why an extension is needed, I will very briefly review the main arguments made by government ministers and others against such an extension.

<table>
<thead>
<tr>
<th>Reason not to extend</th>
<th>Assessment</th>
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<tr>
<td>It would be tantamount to thwarting Brexit/the Referendum result.</td>
<td>This is plainly false. Brexit has happened and the referendum result has been upheld. The issue now is how to deliver it in the most orderly and beneficial manner possible.</td>
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<td>The current date for the end of the TP is ‘enshrined’ in British law.</td>
<td>Parliament can amend the legislation.</td>
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<td>It would mean following EU state aid rules which would hinder dealing with economic effects of CV-19</td>
<td>It is unclear what, concretely, the UK would want to do that state aid rules preclude. In any case, the EU has shown its willingness to relax state aid rules for CV-19</td>
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<td>It would mean paying to support EU CV-19 recovery and/or the Euro.</td>
<td>Under the WA, the UK contribution in extension would be a matter of negotiation. The EU show no expectation of seeking CV-19 funds from UK. The UK already has no obligations to support the Euro.</td>
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<td>It would mean paying money to the EU which would be better spent on the NHS.</td>
<td>The cost of ending the TP with no deal or a minimal deal would be much greater than these contributions.</td>
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<td>It would mean obeying EU laws which would hamper tackling the CV-19 crisis.</td>
<td>It has never been specified which EU laws would have this effect. Health policy is not, mainly, an EU competence.</td>
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<td>It would prolong business uncertainty.</td>
<td>Businesses are not in general against extension, and logistics and haulage bodies have already called for it. Business certainty in these particular circumstances would not necessarily be good for the UK economy, jobs and taxes if the certainty was of a less propitious trading environment. Instead, it would be likely to lead to relocations and/or diverted investment.</td>
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<td>The EU always blinks at the last moment, as it did over the revised WA, so no extension is needed</td>
<td>This may apply to intra-EU summits, but there’s no evidence of it in 3rd country negotiations. The revised WA was possible as it moved back to the previously accepted Irish Sea border plan. It is a very risky strategy, as by the time the last moment arrives (December) it will be too late for an extension. One immediate consequence of taking such a risk would be the likely adverse impact on the value of sterling.</td>
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It is also worth mentioning that the EU would not necessarily welcome an extension, mainly because it would mean overlapping the transition period with the 5-year budget cycle and also because it would mean Brexit rumbling on when the EU has other priorities. However, my understanding is that the overwhelming consensus of opinion is that the EU would agree to extension if the UK were amenable.

**WHY EXTENSION IS REQUIRED**

An extension is required, firstly, because the TP was already very short to complete trade negotiations. Most trade experts thought it impossibly short. A persistent misnomer is that a trade deal with the EU would be quicker than a normal deal because – unlike a normal trade negotiation - tariffs and quotas are already set at zero and regulations are already converged. This is a misnomer precisely because it isn’t a normal trade negotiation in that its aim is to worsen terms of trade and to create conditions for divergence rather than convergence.

The implications of this are two-fold. One is that in a normal trade negotiation a major factor that slows them down is discussions with domestic businesses/ business groups seeking to be excluded from the agreement (e.g. for fear of losing existing tariff protections). In the Brexit case such discussions still need to occur but, more likely, with businesses/ business groups lobbying for inclusion in the agreement so as to protect existing EU market access. The second implication is that a major negotiating task is to agree the extent to which future regulatory alignment is to be secured (the current EU aim) or avoided (the current UK aim). Current regulatory alignment is irrelevant to this task.

Other trade experts thought the original time period might be just about possible, especially to achieve only a minimal or ‘bare bones’ deal. The latter means, probably, one in which most but not all tariffs and quotas were removed. However, even this would not be straightforward and would not (as some think) mean the EU dropping the Level Playing Field (LPF) Conditions which the UK objects to. Moreover some argue that a more minimal deal could actually take longer, since it would require line-by-line negotiation of which tariffs were to be set to zero and which not.

In the event, the unforeseen disruption caused by CV-19 has reduced and probably destroyed even the small possibility of doing any meaningful trade deal by December (let alone ratifying it). Several rounds of planned negotiation have already been missed, key personnel on both sides have been ill, and videoconferencing is a poor substitute for face-to-face meetings for matters of this complexity. It must also be borne in mind that, as was also the case with the Article 50 negotiations, chunks of time are unavailable or semi-available for logistical and political reasons (summer holidays, the UK Party Conference season etc). So even in the most propitious of circumstances there is very little negotiating time left. These are not the most propitious of circumstances, and given the demands of CV-19 neither the UK nor the EU have the necessary governmental bandwidth to meet the original negotiating timetable.
TRADE NEGOTIATIONS ARE NOT THE MOST IMPORTANT REASON FOR EXTENSION

However, in my judgment, the trade negotiations timetable is not the only, and actually not even the most important, issue here. More significant is that of business preparedness, whether or not there is a Free Trade Agreement (FTA). The adaptations to supply chains and to customs formalities needed will be formidable and on customs, in particular, there is a very serious shortage of expertise both as regards business compliance and HMRC enforcement/ port facilities. This would have been so in any case, but businesses have been, and will continue for some time to be, fully preoccupied with the severe disruptions caused by CV-19. The situation will be especially acute for SMEs which lack the resources of larger firms.

As someone whose academic specialism is the study of organizations, I am bound to say to the Committee that in my professional judgment it would be an act of irresponsibility to inflict the additional burdens of ending the TP - with or without an FTA – on businesses (and other organizations) which are already undergoing the most challenging circumstances encountered since the Second World War.

Additional to this, although somewhat related, is the issue of regulatory preparedness. The stated approach of the UK government is to exit all forms of EU regulation by the end of the TP, and to replace these with domestic regulatory bodies. The governmental and business effort needed to do this will be massive and complex in both legislative and operational terms. Whilst in some areas (e.g. nuclear safeguarding) this work is well-advanced and should not present any problem, to the best of my knowledge this is not true in most areas, and industries such as chemicals (replacing REACH) or aviation (replacing EASA) will be especially vulnerable as they are significantly dependent upon EU licensing/ regulatory systems. Again, this will be especially true for sectors hard-hit by CV-19, with aviation being a prime example of the overlap between those and the sectors most vulnerable as regards regulatory preparedness.

It should also be borne in mind that trade, business and regulation are not the only relevant matters here. Though this is not an area where I have specific expertise, agreements in relation to e.g. security, policing and judicial cooperation are also needed by the end of the TP.

LENGTH OF EXTENSION

Here the crucial point is that under the terms of the WA there can only be a single extension. It is not the same situation as with extending the Article 50 negotiating period. Even if CV-19 is ‘over and done with’ by the end of the current TP, a one year extension might well not be sufficient but, in fact, we do not know – and are not likely to know by the end of June 2020, when the decision on extension has to be made – how long CV-19 will continue to impact. I have no expertise in that area, but media reports about the possibility of developing and distributing a vaccine suggest that the impact could last well into 2022, if not longer. Prudence would therefore suggest seeking the maximum extension of 2 years. If it turns out not to be needed then it need not be used, but it seems likely that even this maximum period may not be enough – still, it is the most available and should be sought as a precaution.
The only merit in a shorter extension would (arguably) be a purely political one rather than an operational, commercial or technical one.

**Leaving transition with a deal**

- **Whether you believe a deal will be agreed between the UK government and the EU by the end of 2020;**
- **Given the EU negotiating mandate and the UK government’s negotiating priorities as set out in The UK’s Approach to Negotiations, what an agreement might look like;**
- **Which sectors and policy areas you believe need to be covered by any deal.**
- **Any areas that you believe won’t be or don’t need to be covered by a deal.**

RESPONSE: This partly depends on what is meant by “a deal”. It is clear that the EU and the UK government now have fundamentally different versions of what, in schematic terms, this looks like. For the EU, the clear preference is, indeed, for “a deal” – that is, a single and definitive agreement wrapped inside an overall governance framework for monitoring and enforcement (akin to an ‘Association Agreement’). The UK government’s position since the publication of the February 2020 negotiating approach document seems to envisage a ‘series of deals’ on a range of issues, based upon precedents from a variety of third country arrangements that the EU has entered into (e.g. with New Zealand as regards veterinary inspections, Japan as regards financial services regulation etc). Some of these might be done even if there were no single, over-arching deal. This approach seems to derive partly from an earlier (pre-WA) idea of ‘managed no deal’, whereby if no WA was reached there would nevertheless be a series of side deals.

These approaches are fundamentally irreconcilable and so, as things stand, it is difficult to envisage a deal (or deals) being made on this basis. The EU position as regards ‘managed no deal’ was, and I think would continue to be, that it would put in place a series of temporary *ad hoc* mitigations (e.g. on air travel) which would reduce the damage caused to the EU and which might, to an extent, but only coincidentally, reduce damage to the UK.

Otherwise, one or other of the sides is going to have change stance on the overall shape of the agreement. If it is the UK, then the question of sectors and policy areas to be covered largely disappears as what would be in prospect would be an over-arching deal covering all or most of these (as per earlier comments, though, it is very hard to see that this could be achieved by the end of 2020). If the EU changes stance, and accepts a series of mini-deals then, as a minimum, it and the UK would require a satisfactory deal on fisheries. Since this is perhaps the most contentious area for both sides (for reasons of political symbolism more than economics) it is also the hardest to envisage agreement on. The other priority area for both parties would be security (where the UK has substantial capabilities).

**SOVEREIGN EQUALS AND THIRD COUNTRY PRECEDENTS**

There is a serious problem with the UK’s negotiating approach as set out in the February 2020 ‘approaches’ document and subsequently reiterated in his ‘Brussels speech’ by David Frost, the UK’s chief negotiator, and others. This approach entails that any and
every agreement that the EU has with third countries is, or should be, available to the
UK since their existence creates a ‘precedent’ for such availability. However, there are
no ‘rules’ about this nor is the quasi-legal concept of precedent meaningful here. In fact,
all FTAs are different to some degree. What is negotiated always depends on context
(e.g. Economic or geographical specificities). It is sometimes suggested that ‘the Barnier
Staircase’, showing a Canadian flag as an achievable outcome implies the availability
of a Canada-model deal (see below) but the diagram also shows the South Korean flag.
The implication is that an FTA is available but not that there is a single model for this.

The fact that the UK is a ‘sovereign equal’ of the EU, as emphasised in recent
government statements, is true, but also irrelevant. In international relations generally,
and trade negotiations particularly, abstract political theory does not matter much.
Realpolitik does. The issue is not one of ‘precedents’ but whether a deal can, in any
particular circumstances, be done. In this regard, taken literally, the UK insistence on
inalienable (and therefore non-negotiable) rights of national sovereignty effectively sets
up the negotiations to fail. Incidentally, the same would be true if the UK were to take
that approach in non-EU trade negotiations (e.g. with the US) and would even be true in
relation to trading ‘on WTO terms’ (see below) as this, too, entails a diminution of
theoretical sovereignty.

It should also be questioned whether the UK rejection of an Association Agreement (AA)
type arrangement is well-founded. The objection appears to be that this is something for
countries aspiring to become EU members, rather than a country which has left. Yet
whilst this has been so, there is no reason why an AA could not serve the UK well.
Clearly there is no template for a departing member (the Greenland case is so limited it
can hardly serve) but adapting the AA approach (sometimes called the ‘Ukraine model’)
would provide a single, unified re-definition of UK-EU relations. The danger for the UK –
apart from that of there being no deal at all – of a more piecemeal approach is that there
will be years of endless negotiations about this or that aspect of the relationship. An AA
could provide a means of ‘putting Brexit behind us’. The only objection would be the
purely doctrinaire one that in the Ukraine model the ECJ has a backdoor role, but to
object to that on grounds of ‘sovereignty’ if the alternative is ‘subjection’ to WTO terms
would seem highly perverse.

CONFUSIONS OVER THE ‘CANADA MODEL’

On the other hand, it is also necessary to question the UK’s preferred option of a
‘Canada-style’ FTA. I will leave aside issues of services trade and of Non-Tariff Barriers
(which are discussed below). Instead, I want to make the point that, until very recently,
such an FTA was described by government ministers as a ‘best in class’ deal, with zero
tariffs and quotas, but is now being described (for example by the Chancellor of the
Duchy of Lancaster in his recent appearance before the House of Lords EU Committee)
as a kind of compromise deal entailing some tariffs, but, for that reason, avoiding EU
LPF demands.

There appears to be considerable confusion here. The EU-Canada deal (CETA) is not
a completely zero tariffs deal and so in that sense making it the (revised) aim of UK
negotiations does not represent any compromise with what was previously described as
a ‘best in class’ deal. Moreover, CETA does have some LPF conditions, so ‘downgrading’ the UK aim to CETA does not obviate the need for these.
In any case, the LPF conditions the EU seeks from the UK for a Canada-style deal are greater than those required from Canada because of the geographical proximity and historical inter-connectedness of the UK and the EU (in this sense, not only do precedents not matter, they do not even exist). Thus it is important to understand that if the Canada model has been re-badged to imply that it is a low, or compromise, ask from the UK which makes the EU demand for LPF redundant then that is mistaken as, in fact, it is neither of those things.

Leaving transition with no free trade agreement in place

- The likelihood of leaving transition without a trade agreement in place;
- What would be likely to happen in terms of the negotiations and to UK-EU relations after the end of the transition period if there is no free trade agreement in place;
- The UK’s preparedness for leaving the transition period at the end of 2020 without a free trade agreement in place.

RESPONSE: The answer to this is clearly bound up with the previous set of questions. However, more specifically on trade, it is difficult to see how the current UK and EU positions on LPF conditions can be reconciled. So, again, if neither side changes position then no FTA will be made. The statements and reports following the third, most recent, round of negotiations which concluded on 15th May 2020 suggest that the two sides are, if anything, diverging rather than converging. There are a huge number of uncertainties, so prediction is difficult, but my current judgment is that it is more likely than not that the UK will leave without a trade agreement in the sense of a fully-fledged FTA.

PREPAREDNESS: WHAT IS AT STAKE?

If no FTA is made, this would mean the imposition of tariffs and quotas on goods trade in both directions between the UK and the EU. However it is crucial to realise that, with or without an FTA, the core issue of Non-Tariff Barriers (NTBs) to goods trade and especially to services trade will be highly problematic for UK businesses. There has sometimes been a failure in political debate to understand that the European Single Market is not a Free Trade Area and nor can its provisions be replicated by an FTA. That is because the Single Market does not just remove tariffs but also (aspirationally) NTBs on both goods and services trade.

Crucially, this means having a common framework for setting and enforcing regulations which by definition entails trans-national governance. This is ruled out by the UK government’s view of sovereignty and ‘sovereign equals’. The economic price to be paid for that is profound, especially for services trade, which is crucial to the UK economy and in which the UK has a surplus with the EU.

In some discussions, this argument has been flipped round to claim that, in that case, there is not very much difference between having an FTA or not (i.e. because, at all events, it would do little more than remove some or all goods tariffs and quotas). On this argument, having no trade deal does not matter very much. However it should not be forgotten that even this relatively minimal difference is, for firms engaged in international
goods trade and their customers (who will ultimately bear the cost of tariffs), a highly significant one. So the damage to UK services trade that is inevitable in all scenarios would be added to by additional damage to goods trade.

It is also sometimes said that the only firms affected by goods tariffs and quotas on UK-EU trade are those which actually engage in such trade themselves. However, it should be remembered that there is also a knock-on effect to businesses which, whilst they may not themselves be engaged in international trade, or trade with the EU, are nevertheless upstream or downstream in the supply chains of such firms. The ripple effects of tariffs on these businesses are considerable.

PREPAREDNESS: WTO TERMS

In the event of there being no trade deal, the oft-quoted idea of trading on ‘WTO terms’ is not a satisfactory solution. These, the most basic or entry-level terms of trade, would, by definition, introduce (in some cases substantial) new costs to business to an even greater degree than those already entailed by moving from single market membership to an FTA.

It is a misnomer that ‘WTO terms’ – alone – are the basis for most of the UK’s non-EU trade, and so would be perfectly adequate for trade with the EU. In fact, this is mostly undertaken either under the aegis of EU FTAs – some but not all of which have been/ will be ‘rolled over’, and then not necessarily on such advantageous terms - or via agreements such as those the EU has with the US and China, which, whilst not amounting to an FTA, are nevertheless augmentations of basic WTO terms. In other words, even to trade with EU on the same terms as the UK currently trades with the rest of the world would still require a deal, or deals, of some sort between the UK and the EU.

Even leaving all this aside, the idea that trading with the EU on basic WTO terms is desirable is contradicted by the government’s own desire to undertake FTAs with non-EU countries. If basic WTO terms were adequate for trade with those countries, then there would be no need to seek such FTAs. If basic WTO terms are not deemed adequate for trade with those countries it is contradictory to think that they would be adequate for (the much higher volume of) trade with the EU.

Finally, it should be noted that the WTO itself, as a stable source of international trade rules, is somewhat under threat, and arguably in crisis, for various reasons, most notably the hostility of the current US Administration. And, it need hardly be said, the WTO does not provide a framework for any of the non-trade matters that need to be agreed between the UK and the EU.

PREPAREDNESS: HUMAN RESOURCES/ IMMIGRATION

Apart from having to deal with tariff and non-tariff issues, many UK businesses and other organizations are highly unprepared to exit the TP at the end of 2020, whether or not an FTA is in place, as regards human resources. Staff shortages in agriculture and food processing, as well as in public services including the NHS, are already apparent as a result of the vote for Brexit (i.e. for both economic reasons in terms of the value of sterling
and for cultural reasons in terms of feeling unwelcome). There is no good evidence that domestic labour can make up this shortfall.

Moreover, many UK services businesses operating within the EU rely upon freedom of movement to do so. This is also the case for ‘Mode 5’ services (i.e. services embedded in goods e.g. maintenance contracts), and in this sense the good-services distinction is somewhat (and arguably increasingly) redundant.

Government immigration policy might be able to address these problems, but it is important to note that any such policy will inevitably be far less flexible than that of freedom of movement.

Whilst I have said that these issues will exist with or without a trade deal, they would be likely to be worse without since it is probable that a deal would include some measures to ease restrictions on, for example, UK firms deploying personnel within the EU.

PREPAREDNESS: TIMING ISSUES

A final point to make on UK preparedness to leave without a trade deal in place is this. It has been said by some government ministers that businesses have had since June 2016 to prepare for Brexit. This is deeply misleading for several reasons. The Vote Leave campaign actually promised that future terms would be negotiated prior to beginning the legal exit process. This of course was legally impossible and did not happen. Even so, businesses (and the public) were repeatedly told that a deal would be made, and indeed would be easy to make.

So it is unreasonable to expect them to have prepared for leaving without deal. Whilst some will have made some preparations at the time of the earlier no-deal (i.e. no WA) scenario, these were limited by the lack of information about what was entailed and reviving them during the ongoing CV-19 crisis will be extremely difficult. Again, as noted above, this is especially so for SMEs, who were also the businesses least well prepared for the previous no-deal scenario.

FUTURE UK-EU RELATIONS

I have skipped over the question of what UK-EU relations would be like if the TP ends with no FTA as this is outside of my area of expertise. However, common sense would suggest that such a scenario would be one of antagonism and, in particular, one might expect the already fractious issues about the implementation of the Northern Ireland Protocol of the WA to intensify. The political and security implications of this could be very considerable.

I would assume that some form of negotiation over trade would continue. However, I should stress that even a short period in which the UK was trading with the EU on basic WTO terms and also without workable substitutes for EU regulatory bodies would have a major and deleterious effect on many businesses and, in turn, on the tax base and employment.

The macro-economic forecasts which project the impact of ‘no deal’ on GDP confirm this, but their abstract quality perhaps makes it easy to forget that what underlies them
is the concrete practical effect on individual businesses, whether small and large, and whether or not they directly engage in trade with the EU. If this unfolds on top of the very substantial damage and disruption of CV-19 then I would anticipate that the business consequences – and their knock-on social effects – would be extremely harsh.

I would be more than happy to elaborate on my responses should that be of value to the Committee.

Professor Christopher Grey BA (Econ), PhD, FacSS Royal Holloway, University of London

May 18th 2020
EXTENDING THE TRANSITION PERIOD

- Views on whether the UK government should request an extension to the transition period;
- Your reasons why an extension to transition is or is not required.
- If you believe an extension to transition is required, how long such an extension should be for (one or two years).

There is an overwhelming case for requesting an extension to the transition period. The Covid19 pandemic is already having a major impact on the negotiations between the EU and the UK. In the short-term the pandemic affects the practical execution of the talks as well as decision makers’ bandwidth to focus on the negotiations. Overall, the impact of the pandemic increases the risk of not reaching a trade deal before 31st December 2020, that is, unless an extension to the transition period is agreed before 1st July 2020. The UK’s outright refusal to discuss an extension seems therefore reckless. No matter what one’s hopes are for the future relationship, an outright refusal to contemplate an extension in face of a far-reaching and unprecedented economic crisis is irresponsible.¹

On a practical level the pandemic has disrupted the talks by making it impossible to meet face-to-face. Travel restrictions and Covid19 cases in both negotiating teams have delayed an already compressed timetable. It appears that the UK has been more strongly affected in terms of its staff capacities as several UK civil servants had to be redeployed to work on the government’s Covid19 response. Even though the negotiations have now resumed via videoconferencing, virtual meetings cannot fully replace the personal rapport and trust-building that comes with in-person meetings.

On a political level there will not be any bandwidth to focus on the Brexit negotiations while the pandemic’s economic, social and political fallout requires full attention. Therefore, Brexit is necessarily given less priority by governments in the UK and the EU. The lack of political capacity and guidance makes it extremely difficult to move beyond technical negotiations and into a state where political compromise and deal-making become possible.

¹ See also Zuleeg, Fabian (2020), “The need for a longer transition”, Brussels: European Policy Centre.
On an economic level, the global economic downturn strengthens the case for an extension to the transition period. With view to the UK economy, the Bank of England has forecast the worst economic recession in 300 years. An extension would avoid adding a second economic shock, no matter what scale, at the end of the year. The economic impact on the UK of such a shock could even be aggravated if firms choose not to restart their operations after the lockdown has ended due to the prevailing uncertainty about market access to the EU. It would create greater legal and planning security for governments, businesses, and citizens to extend transition.

The transition period can only be extended once either until 31 December 2021 or until 31 December 2022. Anything shorter would defy the purpose of an extension, that is, among other things, to create legal and planning certainty for businesses and citizens. Since the economic, social and political effects of the Covid-19 crisis are expected to have long-term consequences a longer extension of two years would be preferable. Given that Article 132 only allows a one-off extension, an extension of two years would also avoid the possibility of another cliff edge after one year.

It is important to note that there is a process to agreeing to an extension and that the request should therefore not come at the last minute on 30th June. The Joint Committee can only formally adopt the decision to extend once the terms and conditions, including the length of the transition and the UK’s financial contribution, have been decided. The EU and UK representatives in the Joint Committee must factor in some time for the internal discussions among the EU27 and within the UK. The UK will additionally have to repeal its domestic ban before being able to agree to an extension.

The EU has been clear that the UK must ask for an extension. If the UK’s outright refusal does not change, the UK will leave the EU’s single market with or without a deal on 31st December 2020. At the moment it seems unlikely that Boris Johnson will ask for an extension as provided for in the provisions of the Withdrawal Agreement. The British government seems to be strongly influenced by the belief that the current Covid-19 crisis has weakened the EU and its unity and that the EU member states will start making concessions once the UK threatens to walk away from the negotiations later this year. This form of brinkmanship underestimates the EU’s willingness to protect the integrity of the single market, i.e. the cornerstone of its economic and political project. Even though the EU would prefer to conclude a deal, it is a misconception that it is ready to pay any price to prevent no deal.

There is a chance that the British government might ask for an extension after the deadline under the provisions of the Withdrawal Agreement has passed. It is important to note that all available options for an extension after 1st July are legally and politically tricky. Legally, it would likely require the conclusion of a mixed treaty and therefore a unanimous decision in the Council, the agreement of the European Parliament, and depending on the laws of each members state the parliamentary approval not only of national, but also of regional parliaments. Politically, it will be more difficult to come to an agreement. The UK would have to expect the same terms and conditions, i.e. agreeing a financial contribution and a length of up to 1 or 2 years. An agreement of fisheries as well as the implementation of the Withdrawal Agreement would also remain prerequisites for any future negotiations.
Additionally, vested interests might come into play. Under the impression of the severe Covid19 crisis some member states might makes additional demands. The potential political and legal pitfalls make it uncertain if a late extension request could still be accommodated, again increasing the chance of a no deal default.

LEAVING TRANSITION WITH A DEAL

- Whether you believe a deal will be agreed between the UK government and the EU by the end of 2020;
- Given the EU negotiating mandate and the UK government’s negotiating priorities as set out in the UK’s approach to negotiations, what an agreement might look like;
- Which sectors and policy areas you believe need to be covered by any deal;
- Any areas that you believe won’t be or don’t need to be covered by a deal.

It seems less and less likely that a deal between the UK government and the EU can be agreed by the end of 2020. This assessment is based on the lack of time and bandwidth due to the impact of Covid19 (as outlined above), the lack of progress and British engagement with the EU’s key issues as well as the fundamentally different ways in which the EU and the UK have been approaching the negotiations.

The EU has approached the negotiations on the basis of the revised Political Declaration agreed with the UK government on 17 October 2019. The UK’s approach seems to be to refer to other EU free trade agreements (FTAs) as blueprints rather than referencing the Political Declaration. Given the unique EU-UK relationship in terms of proximity, size of the UK economy, and economic interdependence, the EU does not see these as realistic templates. These are thus not on offer (and have never been on offer).

In addition, the EU approaches the negotiations as one package and aims at achieving progress in all areas in parallel, including an overarching governance structure. The UK on the other side pursues a more selective approach and would like to negotiate separate agreements covering different sectors. Due to its difficult experience with the highly complex EU-Swiss agreement, the EU does not offer multiple bilateral agreements to third countries. In the case of Switzerland the EU even negotiated a new institutional framework agreement in 2018 (still to be ratified) which would introduce a more comprehensive framework and a role for the European Court of Justice. It is therefore clear that any future deal between the EU and the UK will have to be a comprehensive agreement with a single governance framework, including a role for the European Court of Justice and the UK’s continued adherence to the European Convention on Human Rights.

In terms of essential areas which need to be covered by any deal, the pandemic strengthens the EU’s case for protecting the integrity of the single market and for having strong level playing field provisions in place to allow for an even economic
recovery. It is therefore very unlikely that the pandemic leads to a loosening of the EU’s negotiating mandate. The EU will not agree to a trade deal without ambitious level playing field provisions, including on state aid. Another prerequisite for any deal will be an agreement on fisheries.

Additionally, the proper and timely implementation of the Protocol on Ireland and Northern Ireland remains a big challenge and under any scenario a precondition for a deal on the future relationship. However, the Withdrawal Agreement and therefore the Irish Protocol will have to be implemented regardless of a deal. Even in the event of a no deal the UK needs to make sure to implement the Protocol, otherwise it risks major disruptions to trade across the Irish Sea, potentially a hard border on the island of Ireland, major reputational damage with potentially negative implications for the conclusion of future trade deals, and possible legal ramifications if the UK breaks an internationally binding treaty.

With view to progress on the most contentious issues, it is important to note that there is a landing zone for a deal provided that the UK decides to seriously engage with all parts of the negotiation. It is not possible to reach an overall compromise if the UK pursues a selective approach and only engages on areas of self-interest. If the UK does not change its approach it becomes very difficult to reach a deal in the remaining time. In addition to the existing content-related differences in various areas, the UK’s aggressive rhetoric on sovereignty and divergence undermines trust and risks creating serious doubts about the UK’s commitment to reaching a deal or even to adhering to legally binding agreements, such as the Withdrawal Agreement.

LEAVING TRANSITION WITH NO FREE TRADE AGREEMENT IN PLACE

- The likelihood of leaving transition without a trade agreement in place;
- What would be likely to happen in terms of the negotiations and to UK-EU relations after the end of the transition period if there is no free trade agreement in place;
- The UK’s preparedness for leaving the transition period at the end of 2020 without a free trade agreement in place.

Unless an extension is agreed or the UK government changes its negotiating strategy, it is increasingly likely that the UK will leave the transition period at the end of 2020 without a free trade agreement in place.

In terms of the UK’s preparedness, leaving the transition period without a future deal could not come at a worse time. Businesses and citizens are fully occupied with the economic crisis at hand. In light of Covid19 they do not have the capacity to prepare for the looming changes that could result from a no deal Brexit; such as further disruptions to supply chains. This is especially challenging for sectors that are currently heavily affected by Covid19 and that are also vital for keeping supply chains intact post-Brexit, e.g. the logistics sector.
Hence, the Freight Transport Association, the British International Freight Association and the Road Haulage Association have all called for an extension to avoid adding additional pressure on supply chains.

It appears that the UK has not been updating its preparations for leaving the transition period without a deal. Michael Gove informed the House of Commons’ Committee on the Future Relationship with the European Union in a hearing on 27th April 2020 that Operation Yellowhammer, the government's contingency planning for a no deal, has been stood down. Gove reiterated that there are no plans to revive Operation Yellowhammer as the government expects to conclude a deal. Again, this form of brinksmanship underestimates the EU’s preparedness to protect the integrity of the single market. Running down the clock without preparing for the worst case scenario leaves the UK without any leverage and will no help in securing a deal.

If the UK and the EU fail to reach an agreement by the end of 2020 it is likely that there will be attempts to conclude some sectoral deals to mitigate at least some of the impact of crashing out without a trade deal. This form of a managed no deal is no viable alternative to a trade deal and will create immense uncertainty for businesses and have severe economic consequences.
Correspondence from David Frost to Michel Barnier of 19 May 2020

Dear Michel

UK DRAFT LEGAL TEXTS

As I indicated during the last negotiating Round on 15 May, the Government has decided to make public the various draft legal texts we have sent you in recent weeks.

The texts are available at


and you may of course now share them, and this letter, direct with Member States.

We are making the texts public as a constructive contribution to the negotiations, and in particular as a response to your suggestions in the last two Rounds that it would help you explain our proposals in more detail to Member States. We are very clear that we are not seeking to negotiate directly with Member States and that it is for you, as the EU’s negotiator, to manage any differences of perspective that may emerge. I hope that today’s publication will facilitate that work and clear up any misunderstandings about the purpose and effect of what we have put to you.

I would like to make three specific points that may help in that process.

First, we have tried to be clear consistently that we are looking for a suite of agreements with a Free Trade Agreement at the core. We do not seek to remain part of the Single Market or Customs Union, as we do not believe this is in the UK’s interest.

Accordingly, as you know, our legal texts draw on precedent where relevant precedent exists (and we have made pragmatic proposals where it does not, for example on road transport or energy cooperation). So, for example, our draft FTA approximates very closely those the EU has agreed with Canada or Japan. Our draft fisheries agreement is very close to the EU / Norway Agreement. Our aviation proposals are similar to those the EU has agreed with other third countries. Our draft civil nuclear agreement is very close to similar cooperation agreements that Euratom (and indeed the UK) has concluded with other third countries. And so on.

Given this reality, we find it perplexing that the EU, instead of seeking to settle rapidly a high-quality set of agreements with a close economic partner, is instead insisting on additional, unbalanced, and unprecedented provisions in a range of areas, as a precondition for agreement between us.

Second, we find it surprising that the EU not only insists on additional provisions, but is also not willing even to replicate provisions in previous FTAs. For example, your proposals to us contain no provision for mutual recognition of conformity assessment (which the EU agreed with or proposed to Canada, Australia, New Zealand and the
US); no sector-specific provisions for key industries with particular technical barriers such as motor vehicles, medicinal products, organics and chemicals (agreed with or proposed to one or more of Canada, South Korea, Chile and the US, among others); and no equivalence mechanism for SPS measures (agreed with or proposed to Canada, Japan, New Zealand, Australia, Mexico and Mercosur).

In services, the EU is resisting the inclusion of provisions on regulatory cooperation for financial services, though it agreed them in the EU-Japan EPA. The EU’s offer on lengths of stay for short-term business visitors (Mode 4) is less generous than CETA, and does not include the non-discrimination commitment found in EU-Mexico. The EU has also not proposed anything on services which reflects the specific nature of our relationship: indeed your team has told us that the EU’s market access offer on services might be less than that tabled with Australia and New Zealand.

Overall, we find it hard to see what makes the UK, uniquely among your trading partners, so unworthy of being offered the kind of well-precedented arrangements commonplace in modern FTAs.

Third, on the “level playing field”. We agreed in good faith a set of commitments in the Political Declaration in this area. Although it continues to be suggested that we are not willing to deliver on these commitments, as you know, our text sets out a comprehensive set of proposals designed specifically (as the Political Declaration puts it) to “prevent distortions of trade and unfair competitive advantages”. Our proposals are closely modelled on similar arrangements already agreed by the EU with similar countries, notably in the Canada FTA. Commissioner Hogan described the Canada provisions in March as “solid and anchored in a vast network of underlying international conventions and agreements”, and no doubt this is why the EU has found it possible to come very close to zero-tariff, zero-quota access in this and other agreements (some eliminating tariffs on over 99% of tariff lines) without finding it necessary to go beyond such standard “level playing field” provisions.

The EU is now asking the UK to commit to much more than that. Your text contains novel and unbalanced proposals which would bind this country to EU law or standards, and would prescribe the institutions which we would need to establish to deliver on these provisions. To take a particularly egregious example, your text would require the UK simply to accept EU state aid rules; would enable the EU, and only the EU, to put tariffs on trade with the UK if we breached those rules; and would require us to accept an enforcement mechanism which gives a specific role to the European Court of Justice. You must see that this is simply not a provision any democratic country could sign, since it would mean that the British people could not decide our own rules to support our own industries in our own Parliament. Similar issues manifest themselves across labour, environment, climate change and taxation. We have been clear that the UK will have high standards and, in many cases, higher standards than those in the EU. However, we cannot accept any alignment with EU rules, the appearance of EU law concepts, or commitments around internal monitoring and enforcement that are inappropriate for an FTA.

The EU has used various arguments to justify its proposals:

- You claim that we are being offered a future relationship of unprecedented
depth. As I have set out, this is not obvious on the basis of the evidence we have so far. We have nevertheless suggested that, if it is the mutual commitment to zero tariffs that makes these provisions necessary in your eyes, then we would be willing to discuss a relationship that was based on less than that, as in other FTAs. You have said that you are not willing to have such discussions.

- You claim that it is the level of economic integration between the UK and the EU which justifies such provisions. In fact, as a share of our economy, the UK is already less integrated in trade terms with the EU than Switzerland, Norway, or Ukraine. Alternatively, you justify it in terms of trade flows: yet the EU did not insist that the US made any "level playing field" commitments in the TTIP negotiations beyond those typical to an FTA, although US and UK trade flows with the EU are roughly similar.

- You claim that the provisions are required on grounds of “proximity”. This is a novel argument in trade agreements and is hard to justify from precedents elsewhere. The US and Canada, for example, trade together through a trade agreement without provisions of the kind the EU would like to see. This proximity argument amounts to saying that a country in Europe cannot expect to determine its own rules, simply on the grounds of geography, and that it must bend to EU norms. That is not an argument that can hope to be accepted in the 21st century.

I could set out similar concerns about the EU’s approach in other areas:

- on fisheries, where the EU’s position that access to our waters after the end of this year should be the same as now is clearly not realistic;

- on governance arrangements, where you propose a structure that is not replicated in other EU agreements with third countries except those which aspire to join the EU;

- on law enforcement, where you describe EU proposals as providing for an unprecedentedly close relationship, but in fact they do not go beyond agreements you have made with other third countries, many of whom have far less data to offer the EU and are less closely involved in the mutual fight against crime. We do not agree that the simple fact of putting a set of standard measures into a single agreement can itself justify the exceptional and intrusive safeguards you are seeking in this area.

Overall, at this moment in negotiations, what is on offer is not a fair free trade relationship between close economic partners, but a relatively low-quality trade agreement coming with unprecedented EU oversight of our laws and institutions.

It does not have to be like this. I remain convinced that it would be very straightforward for us to agree a modern and high-quality FTA and other separate agreements, like those you have agreed with other close partners around the world, and that we could do so quickly. I do hope that in the weeks to come the EU will think again about its
proposals in a way that will enable us to then find a rapid and constructive alternative way forward.

I am copying this letter to Jeppe Tranholm-Mikkelsen, Secretary General of the Council, and David McAllister at the European Parliament.

With best wishes

DAVID FROST
Sherpa and EU Adviser
Correspondence from Michel Barnier to David Frost of 20 May 2020

Dear David,

Thank you for your letter of 19 May 2020 regarding the publication of various UK draft legal texts that day.

We welcome this publication. In line with our transparency policy, the Commission had already made public, on 18 March 2020, a draft legal agreement for an ambitious, modern, and comprehensive future EU-UK partnership, covering all areas of the negotiations as outlined in the Political Declaration agreed with Prime Minister Johnson seven months ago.

I share your commitment to helping the process move forward together. I do not think, however, that an exchange of letters regarding the substance of the negotiations is necessarily the best way to discuss on substantial points. It cannot be a substitute for serious engagement and detailed negotiations and, in particular, I would not like the tone that you have taken to impact the mutual trust and constructive attitude that is essential between us.

Let me make three points in order to clarify some of the points you made in your letter and which concern the overall context of our exchanges.

First, the EU agreed in October 2019 a Political Declaration with Prime Minister Johnson setting out the framework for our future relationship, with an agreed balance of what we had set out to achieve.

This is the only precedent that the EU is following. We have remained faithful to the Political Declaration in the legal text we have proposed to the UK, which shows how the objectives that we had jointly defined in October 2019 can be translated into a comprehensive agreement.

Our ambition is to achieve, as part of our comprehensive economic partnership, a free trade agreement, with no tariffs or quotas on any goods. Of course, our new trading relationship will never be as fluid as the current situation within the Single Market or the Customs Union. This reflects a sovereign and independent UK choice, which we respect and do not question. Such a choice comes with consequences.

The EU and the UK are equally sovereign and as such will set the conditions for access to their respective markets. Regardless of what your letter suggests, there is no automatic entitlement to any benefits that the EU may have offered or granted in other contexts and circumstances to other, often very different, partners.

Every agreement that the EU has concluded is unique, with its own balance of rights and obligations, tailored to the partner and era in which it is concluded. There is no model, no uniform precedent to follow in EU trade policy.

Neither is there a right to what you admit are unprecedented UK proposals in a number of areas. Just as we do not accept selective benefits in the Single Market without the corresponding obligations, we also do not accept cherry picking from our
past agreements. The EU is looking to the future, not to the past, in these negotiations.

**Second**, you mention specifically a few areas of divergence, and focus on the question of level playing field.

The UK cannot expect high-quality access to the EU Single Market if it is not prepared to accept guarantees to ensure that competition remains open and fair. The EU has been clear about this since 2017. This was unequivocally stated by the European Council guidelines of 23 March 2018 mandating “work towards a balanced, ambitious and wide-ranging free trade agreement (FTA) insofar as there are sufficient guarantees for a level playing field”. Given our geographic proximity and economic interdependence, there must be robust level playing field safeguards to avoid distortions of trade and unfair competitive advantages, to the benefit of consumers and companies on both sides. Modern high-quality trade and economic agreements go beyond the traditional goal of simply eliminating tariffs and need to protect – or even raise – social and environmental standards, in the general interest of citizens and consumers.

This means upholding the common high standards applicable in the EU and in the United Kingdom at the end of the transition period in the areas of state aid, competition, social and employment standards, environment, climate change, and relevant tax matters. It also requires appropriate mechanisms for the effective implementation of these standards domestically, as well as for enforcement and dispute settlement. This does not mean that the UK would be bound by EU law after the end of the transition period in these areas; the UK will remain entirely free to set its own higher standards. But we need to give ourselves concrete, mutual and reciprocal guarantees for this to happen.

In this regard, whereas I believe detailed discussions on substance are for the negotiating table, I would like to respond once again to your proposal to reduce the ambition of our future economic partnership by letting go of our shared commitment for a “zero tariff, zero quota” agreement (which you describe as a “low-quality trade agreement”). As I mentioned to you last week, apart from the fact that we do not have necessary time for a negotiation on each tariff line, the EU has always made clear that any future trade agreement between us will have to include strong level playing field guarantees, irrespective of whether it covers 98% or 100% of tariff lines.

**Third**, and with regard to law enforcement and judicial cooperation, the EU has never previously offered such a close and broad security partnership with any third country outside the Schengen area. Some UK demands in this area go well beyond the well-precedented approach it declares to be taking. In particular, UK seeks continued access to EU or Schengen databases. Such access is linked to the obligations that Member States have to comply with and would go beyond what some of them have today.

These are also all areas that by their nature require strong safeguards in terms of protection of fundamental rights. We need the UK to provide those guarantees, as agreed only seven months ago in the Political Declaration, such as adequate data protection standards.
In conclusion, I would like to state again that the success of our negotiation will only be possible if tangible and parallel progress is made across all areas of negotiations, including engagement on and commitments to a level playing field and appropriate governance mechanisms, as well as to balanced, sustainable and long-term arrangements on fisheries. The next round must bring this new dynamism in order to avoid a stalemate.

I remain convinced that with mutual respect and constructive engagement by the UK across the board, on all issues on the negotiating table, we can move forward in the limited available time.

Yours sincerely,

Michel Barnier
Negotiation of the future relationship between the EU and the UK Government: 
The European Parliament’s Role

Context

Whilst the future relationship negotiations are being conducted by the UK government and the European Commission, approval of any agreement must be given by member state governments in the Council and by the European Parliament. Article 218 of the Treaty on the Functioning of the EU (TFEU) sets out the procedure for the EU’s negotiation of international agreements with third countries. It ensures that the European Parliament must give consent to any agreement. This means it cannot propose amendments to a final deal but must agree or disagree to it.\(^1\)

The UK Coordination Group

The key group within the European Parliament tracking the future relationship negotiations is the UK Coordination Group (UKCG). This group was set up specifically for this task and its work is to liaise with the European Commission’s Task Force for Relations with the United Kingdom and to influence the negotiations through resolutions. The UKCG’s role for the future relationship negotiations in the European Parliament is similar to the Brexit Steering Group’s role in relation to the Withdrawal Agreement negotiations.\(^2\)

The UKCG is chaired by the German MEP, David McAllister in his role as Chair of the Foreign Affairs Committee (AFET). The other members of the UKCG are:

- Bernd Lange, MEP, the Chair of the Committee on International Trade (INTA)
- Antonio Tajani, MEP, the Chair of the Conference of Committee Chairs (CCC)
- Nathalie Loiseau, MEP, the Chair of the Subcommittee on Security and Defence (SEDE)
- Kati Piri, MEP, the Foreign Affairs Committee standing rapporteur for the UK
- Christophe Hansen, MEP, the International Trade Committee standing rapporteur for the UK
- a representative from each political group

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In an article in TheParliamentMagazine.eu, David McAllister described the role of the UKGC:

“As UKCG, we are in constant dialogue with the European Commission’s UK Task Force. We meet with Michel Barnier and his team regularly via videoconference to exchange views on recent developments such as the content of the EU draft legal agreement for the future EU-UK partnership or the draft text proposed by the UK.”

David McAllister also listed the three identified priorities for the UKCG—

1. the future relationship negotiations.
2. implementation of the Withdrawal Agreement, where he stated that the "European Parliament will continue to play a constitutional role in the scrutiny of the implementation of the Withdrawal Agreement”.
3. to prepare for the end of the transition period.

David McAllister also indicated that the European Parliament will adopt another resolution on the future relationship negotiations ahead of the High-Level Conference and European Council currently planned for June 2020.

Ahead of agreeing that resolution, the UK Coordination Group has been gathering views from European Parliament committees on a draft report to be jointly presented by the Parliament's Committees on Foreign Affairs (AFET) and International Trade (INTA)⁴. Underlying the importance and wide-ranging nature of the future relationship negotiations, 17 of the European Parliament’s committees participated in the process⁵. All the committees are due to finalise their opinions by 28 May. Ahead of that, the draft report will be presented to a joint meeting of the Committees on Foreign Affairs and International Trade. Following these developments, the UKCG will discuss the proposals at the start of June before consulting once again with interested committees.

On 15 June, the Foreign Affairs and International Trade committees will vote on the report before it is discussed and adopted in Plenary during the session on 17-18 June.

The European Parliament resolution on the negotiating mandate

The European Parliament previously adopted a resolution in February 2020 on the proposed negotiating mandate for the European Commission. This resolution described the European Parliament's "determination to establish a relationship as close as possible with the UK" and called for the establishment of a joint parliamentary body to "monitor the implementation of the future agreement"⁶.

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³ https://www.theparliamentmagazine.eu/articles/opinion/crucial-year-future-eu-uk-relations
⁵ The committees involved are the Committee on Development (DEVE), on Budgets (BUDG), on Budgetary Control (CONT), on Economic and Monetary Affairs (ECON), on Employment and Social Affairs (EMPL), on Environment, Public Health and Food Safety (ENVI), on Industry, Research and Energy (ITRE), on Internal Market and Consumer Protection (IMCO), on Transport and Tourism (TRAN), on Regional Development (REGI), on Agriculture and Rural Development (AGRI), on Fisheries (PECH), on Culture and Education (CULT), on Legal Affairs (JURI), on Civil Liberties, Justice and Home Affairs (LIBE), on Constitutional Affairs (AFCO) and on Petitions (PETI).
The resolution called for an agreement based on the three pillars of an economic partnership, a foreign affairs partnership and various sectoral agreements along with thematic cooperation in areas such as research and development.

Some of the key priorities for the negotiations identified in the resolution were—

- Whilst the EU should have as close a relationship as possible with the UK, the future relationship will have to be different from that enjoyed by the UK as a Member State of the EU and that the UK should not have the same rights and benefits as a Member State of the EU.
- That the single market – based on the four freedoms – and the customs union should be inviolable and continue to be based on the acceptance of all four freedoms including free movement of people.
- That the EU legal order and the role of the Court of Justice of the European Union (CJEU) should be fully protected.
- That the UK should be required to ensure continued adherence to democratic principles, human rights and fundamental freedoms.
- Any agreement should include a level playing field, ensuring equivalent standards in social, labour, environmental, competition and state aid policies, including through a robust and comprehensive framework on competition and state aid control.
- Any agreement should include continued regulatory alignment of the UK with the EU in the future; in order to facilitate trade.
- On fisheries, the resolution explicitly links access to waters with access to market for UK fisheries products. And states that “the negotiation with the UK on fisheries cannot be disconnected and must have a direct link with negotiations on the overall economic partnership, in particular on trade”.
- In financial services, access to markets should be based on equivalence where the EU and UK recognise the regulatory and supervisory regime and standards of each other.
- Any agreement should include reciprocal opportunities for access to public procurement markets beyond WTO Government Procurement Agreement (GPA) commitments.
- Any agreement should include strong and enforceable measures covering the recognition and protection of intellectual property rights, including geographical indications (GIs) and should establish a mechanism for the protection of future GIs, ensuring the same level of protection as that provided for current GIs by the Withdrawal Agreement.
- Any agreement should include commitments in relation to the precautionary principle, the principle that environmental damage should as a priority be rectified at source and the ‘polluter pays’ principle.
- Any agreement with the UK should not threaten EU agreements with third countries and international organisations, including the EEA Agreement.
- Any agreement should include a balance of rights and obligations, including, where appropriate, commensurate financial contributions to the EU budget.
- An agreement should facilitate UK participation in EU cross-border, cultural, development, education and research programmes such as Erasmus+ and Horizon.
Any agreement should include “the establishment of a coherent and solid governance system as an overarching framework, covering the joint continuous supervision/management of the Agreement and dispute settlement and enforcement mechanisms with respect to the interpretation and application of the Agreement’s provisions”.

Many of the priorities highlighted in the European Parliament resolution where subsequently incorporated into the negotiating directives adopted by the Council.

The resolution also identified concerns about the implementation of the Withdrawal Agreement and in particular the Protocol on Ireland and Northern Ireland. The resolution stated that the European Parliament—

“Expresses its concern at the UK Prime Minister’s interpretation of the provisions of the Protocol on Ireland/Northern Ireland of the Withdrawal Agreement concerning border controls in the Irish Sea; considers that trust is an essential element of any negotiation, is of the opinion that the UK Prime Minister must immediately clarify in a satisfactory manner the UK’s intended approach to the implementation of the Protocol on Ireland/Northern Ireland;”

Update on the status of the EU-UK future relationship negotiations

The third round of negotiations took place during the week of 11-15 May. As with the previous two rounds, progress appears to have been limited with both the EU and the UK presenting a downbeat assessment on the status of the negotiations. Sticking points continue to revolve around the EU’s insistence on the UK government signing up to level playing field commitments and on the nature of the future fisheries relationship. Governance of any future relationship also continues to be a point of disagreement. SPICe has published a blog reviewing the third round of talks and looking ahead to June which looks likely to be a significant month for the negotiations.

For the EU, the Chief Negotiator Michel Barnier suggested that whilst there had been some modest progress in areas such as trade in goods, transport or the UK’s participation in future programmes of the Union along with “the beginnings of a dialogue on fisheries”, significant difficulties remain in areas such as level playing field and agreeing a single governance framework for managing the future relationship.

On the negotiations surrounding a level playing field, Michel Barnier said—

“Despite its claims, the United Kingdom did not engage in a real discussion on the question of the level playing field – those economic and commercial “fair play” rules that we agreed to, with Boris Johnson, in the Political Declaration.”

Michel Barnier also expressed EU disappointment in what he said was a lack of ambition from the UK—

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“the UK’s lack of ambition in a number of areas that may not be central to the negotiation, but which are nonetheless important and symbolic. I’m thinking, for instance of the fight against money laundering. I’m also talking about its lack of ambition on the respective roles of the European Parliament, the British Parliament and civil society in the implementation of our future relationship.”

Barnier also suggested the UK government’s refusal to commit to guarantees protecting fundamental rights and individual freedoms resulting from the European Convention on Human Rights were presenting an impediment to agreement on police and judicial cooperation in criminal matters. Whilst disappointed in the lack of progress, Michel Barnier expressed a determination to keep working to find a deal and set out what he called three important points on getting a deal.

1. First, the EU’s ambition is still to achieve a free trade agreement, with no tariffs or quotas on any goods. This would be a first in the history of EU FTAs.
2. Trade policy has evolved and is no longer just about removing tariff walls. Other issues now also matter such as environmental and sustainability commitments. Level playing field factors are also a consideration with Barnier stating that “Economic and commercial fair play is not for sale!”
3. The EU continues to want a very broad partnership that goes well beyond trade in goods and services and includes other sectors such as fisheries, and security cooperation.

Barnier suggested that whilst the UK wishes a Canada style deal, it is actually asking for a lot more than Canada gets from its deal with the EU. He cited examples such as short-term free movement for UK service providers, electricity interconnection, a system of mutual recognition of professional qualifications and a partnership on decisions about equivalences in financial services.

Finally, Barnier spoke about the importance of implementation of the Withdrawal Agreement with a particular focus on ensuring the rights of EU citizens in the UK and UK citizens in the EU. He also called for progress on implementing the Ireland and Northern Ireland Protocol.

From the UK perspective, the Chief Negotiator David Frost published a short statement on his twitter account summarising the negotiations. David Frost wrote that the third round of negotiations had produced “very little progress towards agreement on the most significant outstanding issues between us”.

Frost suggested that whilst there was still time to agree a comprehensive free trade agreement along with other sectoral agreements, it would not be possible if the EU continues to insist on “including a set of novel and unbalanced proposals on the so-called ‘level playing field’ which would bind this country to EU law or standards or determine our domestic legal regimes, in a way that is unprecedented in Free Trade Agreements and not envisaged in the Political Declaration.”

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11 https://twitter.com/DavidGHFrost/status/1261270186277187584?s=20
12 https://twitter.com/DavidGHFrost/status/1261270186277187584?s=20
David Frost also suggested agreement on a fisheries solution would be difficult whilst the EU continues to “insist on fisheries arrangements and access to UK fishing waters in a way that is incompatible with our status as an independent coastal state”\textsuperscript{13}.

David Frost said the UK government couldn’t understand why the EU continues to “insist on an ideological approach which makes it more difficult to reach a mutually beneficial agreement”\textsuperscript{14}.

Finally, David Frost committed to making all the UK’s draft negotiating texts public this week. He also said the UK government will continue to work to find an agreement for as long as talks are constructive and whilst it believes a deal is possible.

Following the conclusion of the third round of negotiations, David McAllister MEP tweeted his reaction. He indicated he was concerned about the lack of progress just a month before June’s High-Level Conference. He added that—

“We need to see progress on all areas of the negotiations in parallel, including level-playing field, fisheries, internal security and governance. Selective progress on a limited set of issues is less sufficient.”\textsuperscript{15}

Specifically on fisheries, he added that—

“The European Parliament insists on a mutually beneficial, comprehensive and sustainable framework that provides stability for jobs and investment.”\textsuperscript{16}

Finally, he added that proper implementation of the Withdrawal Agreement is essential for trust and goodwill in the negotiations.

**Looking ahead**

**UK negotiating texts**

Subsequently, on 19 May, the UK government published a series of legal texts setting out its proposals for the future relationship. The legal texts and annexes provide the legal form of the proposals made in the UK government document The Future Relationship with the EU which was published in February 2020. The areas covered by the legal texts are—

- A draft comprehensive free trade agreement and annexes
- A draft fisheries framework agreement
- A draft air transport agreement
- A draft civil aviation safety agreement and annexes
- A draft energy agreement
- A draft social security coordination agreement
- A draft civil nuclear agreement

\textsuperscript{13} https://twitter.com/DavidGHFrost/status/1261270186277187584?s=20
\textsuperscript{14} https://twitter.com/DavidGHFrost/status/1261270186277187584?s=20
\textsuperscript{15} https://twitter.com/davidmcallister/status/1261283619580108801?s=20
\textsuperscript{16} https://twitter.com/davidmcallister/status/1261283619580108801?s=20
- A draft agreement on law enforcement and judicial cooperation in criminal matters
- A draft agreement on the transfer of unaccompanied asylum-seeking children
- A draft agreement on the readmission of people residing without authorisation

According to the UK government’s draft comprehensive free trade agreement:

“the proposal has taken account of relevant international precedents, including the EU’s own agreements with other major economies in developing these texts, and remains open to considering other appropriate international precedents including from the EU’s FTAs with countries such as Japan or South Korea, or indeed the positions the EU has proposed for agreements with countries such as Australia, New Zealand or the US.”

On fisheries, the UK government:

“The UK proposal reflects the fact that, at the end of 2020, the UK will be an independent coastal State and will no longer be bound by the Common Fisheries Policy, and that the current arrangements on quota-sharing will end. In line with the UK’s commitment to best available science, future fishing opportunities should be based on the principle of zonal attachment. The UK proposal is based on relevant international precedents, including the EU’s separate fisheries agreements with other coastal states. Through this agreement, and the annual negotiations it provides for, the UK would fulfil its obligations under UNCLOS to cooperate with the EU on the sustainable management of shared stocks.”

The fourth round of negotiations are due to take place during the week of 1 June. Both sides will hope to see progress on negotiations ahead of a high-level summit scheduled for later in the month to review the progress of the negotiations.

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