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SPICe Briefing

Pàipear-ullachaidh SPICe

Issue 4: EU-UK future relationship negotiations

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Following the UK's departure from the EU, the negotiations to determine the future relationship began on 2 March 2020. Over the course of the negotiations, SPICe will publish briefings outlining the key events, speeches and documents published. This fourth briefing covers how COVID-19 has led to a disruption in the negotiations, the plans for resuming the negotiations through meetings held by videoconference and the latest discussions between the UK and EU chief negotiators.



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Executive Summary

This is the fourth in a series of SPICe briefings that will be published regularly during the negotiations on the future relationship between the EU and the UK.

This briefing:

- reports how COVID-19 has led to a disruption in the negotiations, and the plans for resuming the negotiations through meetings held by videoconference.
- reports on the latest discussions between the UK and EU chief negotiators.
- reports on the first meeting of the Joint Committee, held by videoconference on 30 March 2020.
- reports on a disagreement between the UK and the EU on whether the European Commission should have an office in Belfast.
- reports on the possibility or otherwise of an extension to the transition period.

Negotiations during the COVID-19 pandemic

The COVID-19 pandemic has seriously disrupted the future relationship negotiations. A first round of talks took place at the beginning of March but two subsequent rounds were postponed as the parties explored how to conduct negotiations remotely.

Both sides have confirmed that contact has been maintained and some discussions have continued. The Europe Commission [published a draft legal agreement based on its negotiating mandate](#) and the UK have [shared legal texts](#). The UK's texts [reportedly cover trade, air safety, air transport, civil nuclear, energy and law enforcement](#).

The European Commission's text is publicly available (see our analysis in [Issue 3](#)); the UK's texts are not public and UK negotiators have requested that the Commission not share these with Member States.

Frost-Barnier call

David Frost, the UK's Chief Negotiator, and Michel Barnier, the European Commission's Chief Negotiator met by videoconference on 15 April 2020. According to the jointly published [readout of the meeting](#), the UK and EU took stock of the technical work that has taken place since the first negotiating round on the basis of the legal texts exchanged by both sides. The readout added that:

“ While this work has been useful to identify all major areas of divergence and convergence, the two sides agreed on the need to organise further negotiating rounds in order to make real, tangible progress in the negotiations by June.”

Future rounds of negotiations

During the videoconference between David Frost and Michel Barnier, three further rounds of negotiations were agreed in the run up to the high level conference due to take place ahead of the June European Council (18-19 June). At the high level conference both sides have agreed to take stock on the progress of the negotiations. Future rounds of negotiations, lasting one week each, will take place on the following dates:

- w/c 20 April
- w/c 11 May
- w/c 1 June

All three rounds will take place by videoconference.

With the deadline for any decision to extend to the transition period ([discussed in this SPICe blog](#)) on 1 July 2020, scheduling only three more full rounds between now and the end of June appears to make achieving significant progress in the negotiations challenging. As RTE's Europe Editor has [pointed out](#), ahead of the disruption caused by

COVID-19, both sides had hoped to hold 8 or 9 full negotiating rounds before the June date, but now there will be barely half that (one round took place before the pandemic disruption took hold).

The limited number of negotiating rounds now possible before the end of June may begin to affect the negotiations in terms of the depth and detail of any future relationship agreement. In effect, if a deal is to be reached before the end of the transition period the clock is very much ticking and the ability of both sides to cover the whole range of areas outlined in the negotiating mandates is likely to prove impossible.

Devolved interests in the UK legal texts

The UK has have [shared legal texts](#) with the European Commission as part of the future relationship negotiations. The UK's texts [reportedly cover trade, air safety, air transport, civil nuclear, energy and law enforcement](#). This suggests that the UK government is still to produce legal texts for a number of policy areas including fisheries, social security coordination and participation in Union programmes.

Scottish devolved competencies intersect with a significant portion of the issues under negotiation in the future relationship, most notably in agriculture, fisheries, law enforcement, aspects of social security and more generally in economic development. It is not clear whether the devolved administrations were consulted during the production of the UK's texts.

The UK's devolved administrations have long called for greater influence over the UK's negotiating position. For example on 10 March the Scottish, Welsh and Northern Irish administrations [issued a joint statement](#) calling for a "meaningful, comprehensive and transparent process for the Devolved Governments to influence the UK's negotiating position".

Withdrawal Agreement: Joint Committee

The outcome of the future relationship negotiations will also be dependent on successful implementation of the Withdrawal Agreement, including the Protocol on Ireland/Northern Ireland.

The Withdrawal Agreement established a joint UK-EU committee to be responsible for the implementation and application of the Agreement. This Joint Committee is co-chaired by Michael Gove (for the UK) and Maroš Šefčovič (for the EU) and [further details on its role and powers are available in Issue 3](#).

First meeting readouts

The first meeting of the Joint Committee was held by teleconference on 30 March 2020. Separate readouts were published by the UK Government and the European Commission.

The UK's readout confirmed that ministers from the Northern Ireland Executive were in attendance.

UK Government readout

The meeting was co-chaired by the UK Chancellor of the Duchy of Lancaster, Rt Hon Michael Gove MP, and EU Commission Vice President Maroš Šefčovič and attended by a small delegation including Member State representatives and ministers from the Northern Ireland Executive.

The UK and EU updated the Joint Committee on progress to implement the Withdrawal Agreement. The UK reiterated our commitment to protecting the Belfast/Good Friday Agreement in all respects, and to upholding our obligations under the Northern Ireland Protocol. The UK emphasised our commitment to EU citizens in the UK and ensuring that UK nationals in the EU have their rights protected consistent with the Withdrawal Agreement.

The UK and EU also agreed to start the work of the six Specialised Committees on citizens' rights; other separation provisions; Protocol on Ireland/Northern Ireland; Protocol relating to the Sovereign Base Areas in Cyprus; Protocol on Gibraltar; and financial provisions.

The UK and EU co-chairs both welcomed the collaborative and constructive conversation, despite circumstances preventing a meeting in person.

The European Commission's readout emphasised implementation of the Protocol on Ireland/Northern Ireland, referring in particular to "an urgent need" to proceed with developing customs procedures and regulatory checks for goods crossing the appropriate borders.

European Commission readout

Today, the European Union and the United Kingdom held their first Joint Committee meeting... The discussion took place in a constructive and productive atmosphere.

The proper and timely implementation of the Withdrawal Agreement is a key priority for the EU. This concerns in particular safeguarding the rights of around 4.5 million EU citizens and UK nationals, and maintaining peace and stability on the island of Ireland in the context of the Good Friday Agreement, while ensuring the integrity of the Single Market. A new partnership can only be built on the faithful and effective implementation of the Withdrawal Agreement.

The detailed legal obligations of both parties are clearly set out in the Withdrawal Agreement, which entered into force on 1 February 2020. Both sides now have to implement this agreement with rigour and discipline.

Vice-President Šefčovič welcomed the UK's commitment to continue to ensure that EU citizens can register as lawful residents in the UK, so that they can enjoy their rights granted by the Withdrawal Agreement. He confirmed that the Commission will support Member States in making sure that UK nationals in the EU will be in a position to exercise their rights under the Withdrawal Agreement, and will continue to monitor that this is done correctly.

The parties agreed on the importance for the UK to set out its plans over the coming months with regard to the implementation of the Protocol on Ireland/Northern Ireland. The Commission committed to working with the UK to implement the Protocol. There is an urgent need to present a detailed timetable and proceed with the necessary measures, such as preparing for the introduction of customs procedures for goods entering Northern Ireland from Great Britain, and ensuring that all necessary sanitary and phytosanitary controls as well as other regulatory checks can be carried out in respect of goods entering Northern Ireland from outside the EU.

Both parties agreed that clear, reliable answers are key to allowing businesses to prepare for change, to address the challenges, and to seize the opportunities, of the Protocol. Providing such answers to businesses cannot wait.

The parties have decided to launch the work of the six Specialised Committees on the key areas for the implementation of the Withdrawal Agreement. They have agreed that, in particular, the Specialised Committee on the Protocol on Ireland/Northern Ireland should engage without delay in discussing and preparing the decisions the Joint Committee has to adopt in relation to the Protocol before the end of the transition period.

Both sides will now work closely to prepare the next meeting of the Joint Committee, currently foreseen for June.

Frost-Barnier call

During the videoconference call between David Frost and Michel Barnier on 15 April 2020, there was a discussion about implementation of the Withdrawal Agreement. According to the [joint readout](#) from the meeting:

“ They welcomed the fact that a first meeting of the Joint Committee had taken place between Michael Gove and Maroš Šefčovič on 30 March and they looked forward to its next meeting. They agreed that the proper and timely implementation of the Withdrawal Agreement was a key priority for both sides and noted that the Specialised Committees provided for by the Agreement, including on the Protocol on Ireland / Northern Ireland and on citizens’ rights, would meet soon.”

European Commission's request for an office in Belfast

Full implementation of the Withdrawal Agreement is high on the European Commission's agenda in relation to Brexit. As highlighted by the readouts from the first meeting of the Joint Committee, the European Commission states there is "an urgent need" to proceed with developing customs procedures and regulatory checks for goods crossing the appropriate Northern Irish borders.

[According to Irish media reports](#), the European Commission has requested that the UK Government allow it to open a office in Belfast to assist with the implementation of the Withdrawal Agreement. This request has been previously refused by the UK Government but a second request has been made.

The Commission's request for an office is in relation to its role under [Article 12 of the Ireland/Northern Ireland protocol](#):

Protocol on Ireland/Northern Ireland: Article 12

2. Union representatives shall have the right to be present during any activities of the authorities of the United Kingdom related to the implementation and application of provisions of Union law made applicable by this Protocol, as well as activities related to the implementation and application of Article 5 [*which covers customs and movement of goods*], and the United Kingdom shall provide, upon request, all relevant information relating to such activities. The United Kingdom shall facilitate such presence of Union representatives and shall provide them with the information requested.

[...]

3. The practical working arrangements relating to the exercise of the rights of Union representatives referred to in paragraph 2 shall be determined by the Joint Committee, upon proposal from the Specialised Committee.

The European Commission previously had a representative office in Belfast but this [ceased activities as of 1 February 2020](#).

Extension decisions

The COVID-19 pandemic has raised the question of extending the transition period.

The Withdrawal Agreement gives the Joint Committee decision-making power until the 1 July 2020 to extend the transition period:

ARTICLE 132 - Extension of the transition period

1. Notwithstanding Article 126 [*which defines the end of the transition period as 31 December 2020*], the Joint Committee may, before 1 July 2020, adopt a single decision extending the transition period for up to 1 or 2 years.

However at the same time, the UK Government continues to rule out extending the transition period and [UK law continues to ban Ministers from agreeing to an extension in the Joint Committee](#).

On 16 April, David Frost [tweeted](#) that the UK government will not ask to extend the transition period and if the EU asks for an extension the UK government will say no. He [added that](#):

“ Extending would simply prolong negotiations, create even more uncertainty, leave us liable to pay more to the EU in future, and keep us bound by evolving EU laws at a time when we need to control our own affairs. In short, it is not in the UK's interest to extend.”

Any decision by the Joint Committee to extend the transition period must be accompanied by a set of binding decisions, including on length and the UK's contribute to the EU's budget during the extension. Article 132, paragraph 3 states:

3. A decision of the Joint Committee under paragraph 1 shall:

(a) establish the appropriate amount of the contribution of the United Kingdom to the Union budget for the period from 1 January 2021 to the end of the transition period, taking into account the status of the United Kingdom during that period, as well as the modalities of payment of that amount;

(b) specify the maximum level of exempted support, as well as the minimum percentage thereof that shall comply with the provisions of Annex 2 to the WTO Agreement on Agriculture, as referred to in point (c) of paragraph 2;

(c) lay down any other measure necessary for the implementation of paragraph 2;

(d) adapt the dates or periods referred to in Articles 51, 62, 63, 84, 96, 125, 141, 156, 157 and Annexes IV and V to reflect the extension of the transition period.

Therefore UK-EU negotiations on length and financial contribution, and a change in UK law, would be needed before any meeting of the Joint Committee could agree an extension.

Joe Owen, Programme Director for the Institute for Government, [wrote in a blog](#) published on 15 April 2020 that:

“ The questions for the UK government on transition extension is less about “if”, but more “when, and for how long.” Under the Withdrawal Agreement, both sides have a clear path for extending the transition. They can agree to extend once, for up to two years, and must make this decision by 1 July.”

“ But this will involve some negotiation. The scale of the UK’s continued financial contributions to the EU – the UK might hope for reduced contributions more on the scale of Norway, as an EEA member – and its ongoing participation in EU schemes such as Common Agricultural Policy will be a potential source of tension.”

“ Nobody yet knows how long much time will be needed to take account for days lost to coronavirus. If the decision to extend is a one-off, as the withdrawal agreement states, then its important to get the length right . Too short and a second (or third) wave of coronavirus cases would cause renewed disruption. Too long and the uncertainty is dragged out even longer.”

SPICe has published a [blog exploring options for the status of the future UK-EU relationship at the end of the transition period if there is no extension](#). The conclusion to the blog focusses on three possible outcomes:

“ The UK government has indicated it will not seek an extension to the transition period. If no request is made, the EU and UK are likely to face one of three scenarios at the end of 2020. Given the timescales and the ongoing COVID-19 pandemic, it is possible that the UK and EU will not reach a deal by the end of 2020. In these circumstances, a no-deal Brexit seems the most likely outcome. But if a deal is close both sides could look to see what was legally possible to in effect slightly extend the effects of the transition period whilst a new deal is ratified.”

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