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Issue 7: EU-UK Future Relationship Negotiations

Iain Thom, Iain McIver

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 seventh briefing describes the limited progress made in Round 3 and UK plans to implement the Ireland/Northern Ireland protocol.



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Executive Summary

This is the seventh in a series of SPICe briefings covering the negotiations on the future relationship between the EU and the UK.

This briefing covers:

- the limited progress made in the third round of negotiations
- an exchange of letters between the UK and EU's chief negotiators
- the UK's legal text tabled during the negotiations and reaction from the Scottish Government
- the new UK tariff schedule
- UK plans to implement the Ireland/Northern Ireland protocol

The next issue will analyse the legal texts tabled during negotiation in further detail.

Negotiations

What happened in Round 3

The third round of negotiations took place during the week of 11-15 May. The negotiations were conducted by video-conference due to COVID-19. A summary of the 'state of play' going into Round 3 is [available in Issue 6](#).

Following the conclusion of the round, the UK and European Commission both issued statements:

- [Remarks by Michel Barnier](#)
- [David Frost's statement](#)

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 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.

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:

“ 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 where 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](#) 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."

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. "

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. "

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.

Exchange of letters between Frost and Barnier

On 19 May, five days after the conclusion of Round 3, the UK government [made public the legal texts it has tabled as part of the negotiations](#) and its chief negotiator, David Frost, published a letter addressed to his counterpart in the negotiations, Michael Barnier.

[Frost's letter](#) describes the EU's approach as seeking "additional, unbalanced, and unprecedented provisions in a range of areas" and that:

“ 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. ”

[Michael Barnier's reply](#) responds to some of the arguments. On the UK's approach of basing a deal on previous agreements, Barnier argues:

“ 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... 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. ”

Barnier also states:

“ 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.”

The tone of these letters represents a low in relations between the key figures in the negotiations.

Writing for Europe in a Changing Europe, Jill Rutter [discusses this letter](#) and concludes that:

“ The danger is that the Frost rhetoric, which looks like preparing the way for a UK walkout, makes any political move later in the year [to conclude a deal] even harder to pull off. ”

Key dates in June

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 EU-UK summit

planned for later in the month to review progress. A European Council meeting of the EU Member State's political leaders is also [scheduled for 18-19 June](#).

If little progress in the negotiation is made during the first week of June, the question of whether either side should seek an extension to the transition period is once again likely to be raised. With the deadline for any request falling at the end of June, little time will exist for agreeing such an extension. However, the UK government has consistently stated it will not look to extend the transition period and would also reject any EU request for an extension.

Another possible outcome is that either the UK or the EU may end the talks at some point over the next few months if they believe a deal is not possible. When pressed on this issue by the [House of Commons Committee on the Future Relationship with the EU](#), Michael Gove refused to be drawn into a discussion about whether the UK might leave the talks if a deal didn't look likely to be achieved.

Whatever outcome the UK government wishes to pursue, it is clear that the clock is ticking on the time available to reach an agreement and avoid an effective no-deal exit (from the transition period) at the end of the year. As a result, June is likely to be a key month in the negotiations.

UK legal texts published

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
- 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 states:

“ 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 EU has, two month earlier, published a legal text based on its negotiating mandate. This text is [analysed in Issue 3](#).

SPICe will provide further analysis of the negotiation's legal texts in the next edition of this Future Relationship Negotiations briefing series.

Scottish Government reaction

Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell [responded to the publication of the UK's legal texts in a press release](#). He confirmed that the Scottish Government had not had sight of the UK legal texts before publication and reiterated the Scottish Government's call for the UK government to request an extension to the transition period.

“ Despite making many requests to see these texts, the Scottish Government only received these legal texts a few hours before publication so we have not yet had the opportunity to analyse in any detail what is proposed.”

“ But it is clear the UK Government’s plans for only a basic trade deal or what increasingly seems to be their preferred option of no deal will be a devastating blow for Scotland’s economy already hit hard by coronavirus.”

“ Yet again the UK Government has chosen to treat Scotland’s interests and views with contempt and they have failed to involve any of the devolved governments in any meaningful way.”

“ Last week’s negotiating round again failed to progress the most difficult issues. This makes it more urgent than ever that the UK Government asks for a two year extension to the current transition period to avoid the the disaster of No Deal in just over seven months’ time.”

Tariff schedule for import on WTO terms

On 19 May, the UK government [published a new tariff schedule](#) that it intends to operate at the end of the transition period for those countries with which the UK does not have a free trade agreement.

This schedule replaces the UK's use of the EU Common External Tariff at the end of the transition period.

The [Financial Times reports](#) that the UK government are:

“aiming for an initial 60 per cent of imports into the UK to be tariff-free under the new rules — compared with 47 per cent at present — and that the figure should rise as more trade deals are struck.”

Parliamentary scrutiny

Urgent question on Round 3

On 19 May, Michael Gove answered an urgent question in the House of Commons on the third round of negotiations. In this statement, Gove summarised the state of the negotiations and described the EU's approach as ideological:

“ Negotiators from the UK and the EU held full and constructive discussions last week via video conference. The talks covered trading goods and services, fisheries, law enforcement and criminal justice, and other issues, with both sides discussing full legal texts. The discussion underlined that a standard comprehensive free trade agreement, alongside other key agreements on issues such as law enforcement, civil nuclear and aviation, all in line with the political declaration, could be agreed without major difficulties in the time available. There remain, however, some areas where we have significant difference of principle, notably on fisheries, governance arrangements and the so-called level playing field. The EU, essentially, wants us to obey the rules of its club, even though we are no longer members, and it wants the same access to our fishing grounds as it currently enjoys while restricting our access to its markets.”

“ It remains difficult to reach a mutually beneficial agreement while the EU maintains such an ideological approach, but we believe that agreement is possible if flexibility is shown. The agreements that we seek are, of course, built on the precedents of the agreements that the EU has reached with other sovereign nations. To help facilitate discussions in the fourth round and beyond, the Government have today published the full draft legal text that we have already shared with the Commission and which, together with the EU's draft agreement, have formed the basis of all discussions.”

“ ...The Government remain committed to a deal with a free trade agreement at its core and we look forward to the fourth round of negotiations beginning on 1 June, but success depends on the EU recognising that the UK is a sovereign equal.”

On the same day the [UK government published a written statement to the House of Commons](#).

Michael Gove and David Frost to give evidence

On 27 May, the House of Commons Committee on the Future Relationship with the European Union is [scheduled](#) to take evidence on the negotiations from:

- Michael Gove MP, Chancellor of the Duchy of Lancaster
- David Frost Prime Minister's Europe Adviser and Chief Negotiator of Task Force Europe

Withdrawal Agreement

UK plan to implement the Ireland/Northern Ireland protocol

The EU views successful implementation of the Withdrawal Agreement as a precondition to an ambitious deal on the future UK-EU relationship. Implementing the Withdrawal Agreement's Protocol on Ireland/Northern Ireland is likely to be the most challenging and contentious part of any successful implementation. The Joint Committee's specialised committee on this task [met for the first time on 30 April](#).

On 19 May, the UK government [published a policy paper outlining in more detail the UK's approach to the Northern Ireland Protocol](#).

The paper describes the scope of the Protocol:

“ The Protocol covers a range of areas: human rights, the Common Travel Area, customs and trade, regulation of manufactured goods, the Single Electricity Market, some limited state aid provisions, and VAT and excise. This paper sets out the Government's thinking in all of these areas. But the core of the Protocol is the provisions on customs and trade. It is these areas which are covered in most detail in what follows.”

This paper describes some of the joint arrangements designed to assist with implementing the Protocol:

“ Following the entry into force of the Withdrawal Agreement, the structures provided for by that Agreement have begun their work. The first meeting of the Withdrawal Agreement Joint Committee was held remotely on 30 March to launch the work of the Committee and the Specialised Committees, including the Ireland/Northern Ireland Specialised Committee. The Ireland/Northern Ireland Specialised Committee held its inaugural meeting on 30 April. Further to this, we will establish the Joint Consultative Working Group which will act as an important forum for the exchange of information and mutual consultation. The UK Government will also set up a business engagement forum, which will meet regularly to allow Northern Ireland's businesses to put forward proposals and provide feedback on how to maximise the free flow of trade. The Northern Ireland Executive will also be invited to the forum. ”

The paper then provides more detail on UK Government policy under the following topics:

- Protecting Northern Ireland's place in the UK customs territory
 - Unfettered access for Northern Ireland's businesses to the rest of the UK
 - No tariffs on internal UK trade
 - No new customs infrastructure in Northern Ireland
 - Northern Ireland benefits from UK trade deals
- Wider issues

- Regulation of goods
- Subsidies
- VAT and excise
- Northern Ireland benefits from UK trade deals
- Rights of individuals
- Single Electricity Market
- East-West and North-South cooperation
- Further negotiating tasks for the Withdrawal Agreement Joint Committee
 - Agricultural subsidies
 - Fisheries
 - Supervision
- Funding and support
- Maximising Northern Ireland's use of new regulatory freedoms

Under the section on customs, the paper indicated that the UK government does not envisage new infrastructure being required in Scottish ports facing Northern Ireland:

“ We therefore see no need to construct any new bespoke customs infrastructure in Northern Ireland (or in Great Britain ports facing Northern Ireland) in order to meet our obligations under the Protocol. ”

However, the paper notes that the situation is different for argi-food movements where it indicates that new infrastructure will be needed on the Northern Ireland side.

Writing for the Institute for Government ahead of the paper's publication, Jess Sargeant [identified some key questions](#) for the UK government to answer on its implementation of the Protocol. She then provided an [initial assessment of how the UK's paper addressed the key questions she identified in a Twitter thread](#).

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