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Issue 15: 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 briefing charts the short break in talks following the European Council of 15-16 October.



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Executive Summary

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

This briefing:

- Charts the attempts to progress the negotiation in advance of the European Council on 15-16 October.
- Summarises the conclusions of the European Council as they relate to the future relationship negotiations.
- Reports on the UK government's reaction and the subsequent pause in talks.
- Outlines what was said by the EU's chief negotiator Michel Barnier to the European Parliament, and the subsequent resumption of talks.
- Summarises the jointly agreed basis for the next phase of talks.
- Reports on the latest meeting of the Withdrawal Agreement's Joint Committee.

After two weeks of political impasse, the EU-UK talks now have a basis to resume at a negotiator level. There are signs that an agreement may be possible - the need for compromise has been recognised and the negotiating teams can now begin to agree the actual text of a deal in the less contentious areas. But the three well-known issues of the level playing field, governance and fisheries remain problematic. Compromises will have to be found to resolve these issues soon for any deal that is agreed to be ratified in line with the UK and EU's standard procedures. If a deal is agreed, it is likely to be a simple free trade agreement. This would still result in a [significant change compared to the UK's current arrangements with the EU](#).

Negotiations ahead of the European Council

The final round in the agreed schedule of EU-UK future relationship negotiations (Round 9) ended on 2 October with [significant divergences remaining in three policy areas and no deal yet agreed](#). However, there remained political agreement between the UK and EU for talks to continue ahead of the European Council meeting on 15-16 October.

This political agreement was expressed in a [joint statement from Prime Minister Boris Johnson and European Commission President Ursula von der Leyen on 3 October](#) which stated that:

“ They agreed on the importance of finding an agreement, if at all possible, as a strong basis for a strategic EU-UK relationship in future. They endorsed the assessment of both Chief Negotiators that progress had been made in recent weeks but that significant gaps remained, notably but not only in the areas of fisheries, the level playing field, and governance. **They instructed their Chief Negotiators to work intensively in order to try to bridge those gaps. They agreed to speak on a regular basis on this issue.** ”

emphasis added

In line with this position, further informal talks did take place at a negotiator level ahead of the European Council meeting.

The Prime Minister and President of the European Council, Charles Michel held a [call on 7 October to "take stock of negotiations"](#). The UK government's press release reiterated its desire for a deal, but stated that it was also prepared to end the transition period without one. It highlighted fisheries as the key area of divergence, stating that the "Chief Negotiators should continue to work intensively in the coming days to try to bridge the gaps".

However when the Prime Minister, European Commission President and President of the European Council had a further conference call one day in advance of the European Council (14 October), no breakthrough had been made. The [UK Government's read out of the call](#) stated that:

“ The leaders discussed the latest state of play of the negotiations on our future relationship with the EU, ahead of the October European Council.”

“ The Prime Minister noted the desirability of a deal, but expressed his disappointment that more progress had not been made over the past two weeks.”

“ The Prime Minister said that he looked forward to hearing the outcome of the European Council and would reflect before setting out the UK's next steps in the light of his statement of 7 September.”

The "statement of 7 September" refers to the Prime Minister's setting of a deadline of 15 October as a the point by which agreement must be reached. On the 7 September [the Prime Minister said](#):

“ The EU have been very clear about the timetable. I am too. There needs to be an agreement with our European friends by the time of the European Council on 15 October if it’s going to be in force by the end of the year. So there is no sense in thinking about timelines that go beyond that point. **If we can’t agree by then, then I do not see that there will be a free trade agreement between us, and we should both accept that and move on. ”**

emphasis added

European Council, 15-16 October

On 15-16 October 2020, the [European Council met to discuss COVID-19, relations with the UK, climate change and foreign affairs](#). The EU-UK future relationship discussions took place on Thursday 15 October.

Conclusions

The [European Council's conclusions agreed at its October meeting](#) maintained the same negotiating mandate for the EU's chief negotiator and called on the UK to:

“ make the necessary moves to make an agreement possible. ”

These conclusions were echoed in the [remarks made by the European Council President Charles Michel](#) following the meeting. Michel said:

“ On Brexit, we are united and determined to reach an agreement. But not at any cost. Any agreement on our future relationship would have to be based on our mandate, in particular when it comes to the level playing field, fisheries and governance.”

The full Council conclusions as they relate to the EU-UK future relationship are copied below:

EU-UK RELATIONS

- The European Council recalls that the transition period will end on 31 December 2020 and notes with concern that progress on the key issues of interest to the Union is still not sufficient for an agreement to be reached.
- The European Council reaffirms the Union's determination to have as close as possible a partnership with the United Kingdom on the basis of the negotiating directives of 25 February 2020, while respecting the previously agreed European Council guidelines, as well as statements and declarations, notably those of 25 November 2018, in particular as regards the level playing field, governance and fisheries.
- Against this background, the European Council invites the Union's chief negotiator to continue negotiations in the coming weeks, and calls on the UK to make the necessary moves to make an agreement possible.
- As regards the Internal Market Bill tabled by the UK government, the European Council recalls that the Withdrawal Agreement and its Protocols must be fully and timely implemented.
- The European Council calls upon Member States, Union institutions and all stakeholders to step up their work on preparedness and readiness at all levels and for all outcomes, including that of no agreement, and invites the Commission, in particular, to give timely consideration to unilateral and time-limited contingency measures that are in the EU's interest.
- The European Council will remain seized of the matter.

EU chief negotiator's statement

The EU's chief negotiator, Michel Barnier also made a [statement at the conclusion of the Council meeting on Thursday 15 October](#). Barnier's assessment was that the EU was "almost in a position to draw up and flesh out this agreement" (i.e. negotiate on the basis of a legal text) but that progress was needed on the familiar areas of divergence - level playing field, governance and fisheries. He said:

“ There has been genuine, good progress on a number of topics, as I explained at the European Council, and on which we see the prospect of agreement. We are almost in a position to draw up and flesh out this agreement.”

“ There are a number of topics over which there remain not only question marks, but also points of difference. And there are three topics on which the gap is too wide at present.”

“ In order for me to say now, at this moment, that there is a prospect of a deal, we need to change the outlook to head towards a deal, and for that we need progress. Progress on the question of the 'level playing field', on the question of governance, and also on the question of fisheries. There is therefore a lot of work, a lot of work for us to focus on.”

In what has been interpreted as a response to [criticism from the UK](#), Barnier also referred to holding "intensive negotiations":

“ From tomorrow, I will be in discussions with my counterpart David Frost. As of Monday, we will be in London for the week – and if necessary the weekend as well – and the following week in Brussels. This is in any case what I have proposed to the British team, that we hold intensive negotiations in the little time that we have left in order to reach the agreement we hope for by the end of October. Not at any price, but the agreement that we hope for and of course that Europe's leaders hope for as well.”

PM's response to the European Council

The European Council meeting on Thursday 15 October concluded with an invitation for talks to continue; however this was coupled with a call on the UK to "make the necessary moves to make an agreement possible".

The [Prime Minister responded on Friday 16 October, stating in a video message](#):

“ given that [the EU] have refused to negotiate seriously for much of the last few months, and given that this summit appears explicitly to rule out a Canada-style deal, I have concluded that we should get ready for January 1 with arrangements that are more like Australia’s based on simple principles of global free trade.”

“ ...whatever reason it is clear from the summit that after 45 years of membership they are not willing – unless there is some fundamental change of approach – to offer this country the same terms as Canada. And so with high hearts and complete confidence we will prepare to embrace the alternative.”

Although the Prime Minister’s spokesperson is reported to have gone further - by stating that the ["trade talks are over. The EU have effectively ended them by saying they do not want to change their negotiating position"](#) - in his statement, the Prime Minister stopped short of explicitly stating that there will be no more talks.

Writing for The UK in a Changing Europe, [Professor Anand Menon said](#):

“ Nothing that has been said over the last twenty-four hours means a deal is impossible. Boris Johnson has not ended the negotiations, and Michel Barnier has been instructed to continue negotiations in the coming weeks... The issues remain those that have frustrated the two sides for months: the EU’s desire to ensure the UK does not undercut its standards; the fear in Brussels that UK subsidies might give British companies an unfair advantage if allowed tariff free access in to the EU market; and, of course, fish.”

“ What is clear is that a deal is not a matter of one side blinking first. Both will have to make concessions. The precise nature of such concessions will be a matter for the negotiators but it is clearly not beyond the wit of man to come up with solutions that ensure appropriate standards in the UK and prevent excessive subsidies without the need for London to be explicitly bound by EU law and under the authority of the EU’s court. As for fish, given that we export most of what we catch and import most of what we eat, you’d think common sense would suggest a way through.”

On the Friday 16 October, the EU and UK chief negotiators held a videoconference as planned and ["agreed to talk again on Monday \[19 October\] to discuss the structure of these talks"](#).

House of Commons statement

On Monday 19 October in a [statement to the House of Commons](#), the Chancellor of the Duchy of Lancaster, Michael Gove summarised the UK government's view of the situation:

“ On the negotiations, our door is not closed. It remains ajar, and I very much hope that the EU will fundamentally change its position, but, come what may, on 31 December, we will take back control.”

Gove outlined the UK government's criticism that the EU had not been willing to intensify the talks and that the EU was not willing to enter discussions on legal texts until the UK had indicated compromises in key areas of the negotiations:

“ [W]e had hoped to conclude a Canada-style free trade agreement before the transition period ends on 31 December this year but, as things stand, that will not now happen. We remain absolutely committed to securing a Canada-style FTA, but there does need to be a fundamental change in approach from the EU if the process is to get back on track. I have come to the House at the first available opportunity to explain why and how we have reached this point.”

“ We have been clear since the summer that we saw 15 October—last Thursday—as the target date for reaching an agreement with the EU. The Prime Minister and the Commission President Ursula von der Leyen agreed on 3 October that our negotiating team should work intensively to bridge the remaining gaps between us, and we made clear that we were willing to talk every day. But I have to report to the House that this intensification was not forthcoming. The EU was willing to conduct negotiations only on fewer than half the days available and would not engage on all of the outstanding issues. Moreover, the EU refused to discuss legal texts in any area, as it has done since the summer. Indeed, it is almost incredible to our negotiators that we have reached this point in the negotiations without any common legal texts of any kind.”

“ On 15 October, the EU Heads of State and Government gathered for the European Council. The conclusions of that Council reaffirmed the EU's original negotiating mandate. They dropped a reference to intensive talks that had been in the draft and they declared that all—all—future moves in the negotiation had to be made by the UK. Although some attempts were made to soften that message by some EU leaders, the European Council reaffirmed those conclusions as authoritative on Friday. That unfortunate sequence of events has, in effect, ended the trade negotiations because it leaves no basis on which we can actually find agreement. There is no point in negotiations proceeding as long as the EU sticks with that position. Such talks would be meaningless and would take us no nearer to finding a workable solution.”

“ That is the situation we now face, and that is why the Prime Minister had to make it clear on 16 October that the EU had refused to negotiate seriously for much of the past month or so. The EU had now, at the European Council, explicitly ruled out a free trade agreement with us, like the one that it has with Canada, and therefore this country should get ready for 1 January 2021 with arrangements that are more like Australia's, based on simple principles of global free trade.”

Michael Gove then outlined the UK Government's position on how talks could continue. This in essence was a rejection of the European Council's conclusion that the UK must compromise in order to progress to an agreement:

“ Now, if the EU wants to change that situation—and I devoutly hope it will—it needs to make a fundamental change in its approach and make clear it has done so. It has to be serious about talking intensively on all issues and trying to reach a conclusion, and I hope it will. But it also needs to accept that it is dealing with an independent and sovereign country now. We have tried to be clear from the start that we would not be able to reach an agreement inconsistent with that status. I do not think that we could be accused of keeping that a secret. Yet the proposals that the EU has discussed with us in recent weeks, which it presents as compromises, are simply not consistent with our new sovereign status—certainly not yet.”

“ While I do not doubt that many on the EU side are well intentioned, we cannot accept the negotiators’ proposals that would require us to provide full, permanent access to our fishing waters, with quotas substantially unchanged to those that were imposed by EU membership. We cannot operate a state aid system which is essentially the same as the EU’s, with great discretion given to the EU to retaliate against us if it thought that we were deviating from it. More broadly, we cannot accept an arrangement that means that we stay in step with laws that have been proposed and adopted by the EU across areas of critical national importance.”

“ In a nutshell, we have been asking for no more than what has been offered in trade agreements to other global trading countries, such as Canada—terms that, of course, the EU said last year it had no difficulty offering to us. We are not even asking for special favours reflecting our 45 years as a member state—during which we paid in every day more than we took out—quite the reverse. But even if this new arrangement is impossible for the EU, I must inform the House that we will be leaving on 31 December on Australian-style terms and trading on the basis of WTO rules.”

Resumption of the negotiations

Talks paused, but calls continue

At the same time as [Michael Gove's statement to the House of Commons \(Monday 19 October\)](#), the EU and UK chief negotiators held another call. Following this meeting, Michael Barnier appeared to confirm that the EU was now willing to hold negotiations on the basis of legal texts. [Barnier tweeted](#):

“ I just spoke to @DavidGHFrost. As stated by President @vonderleyen on Friday, I confirmed that the EU remains available to intensify talks in London this week, on all subjects, and based on legal texts. We now wait for the UK's reaction.”

UK's negotiator [David Frost reacted to this emphasising the UK's position that the EU must change its negotiating mandate](#):

“ Constructive discussion with @MichelBarnier today. Noted his proposal to intensify work, as we have been asking. But the EU still needs to make a fundamental change in approach to the talks and make clear it has done so. We will stay in close touch.”

A further call was held between the Chief Negotiators on Tuesday 20 October. [Michael Barnier tweeted](#) that "we should be making the most out of the little time left. Our door remains open."

At this point, while channels of communication were clearly open, the EU's negotiating team were not in London for talks on the detail of an agreement.

Barnier statement at the European Parliament

On the morning of Wednesday 21 October, the EU's chief negotiator Michel Barnier provided a statement to the European Parliament on the conclusions of the October European Council and the EU-UK negotiations.

[Michel Barnier's statement](#) addressed some of the UK's concerns. In particular Barnier reflected the UK government's emphasis on sovereignty, describing this as a "legitimate concern of Boris Johnson's government". Notably, he also made reference to compromise on both sides, saying:

“ We will seek the compromises that are needed from both sides to reach an agreement up to the last possible day. Our door will always remain open. And as we stressed after the European Council, we are prepared to intensify discussions on all the issues and to do this on the basis of legal texts.”

However, the full statement also makes reference to things that the EU will not change:

“ Something else that will not change is the framework we have set on behalf of the European Union for our ambitious partnership with the United Kingdom... respecting our decision-making autonomy, the integrity of our internal market and the preservation of our long-term economic and political interests.”

The [BBC's Europe Editor Katya Adler](#) commented that:

“ Most significantly perhaps, Mr Barnier openly acknowledged to the European Parliament that compromises would have to be made by the EU as well, if a deal could still be reached with the UK. Downing Street was furious last week when EU leaders concluded in writing at their summit that the UK would have to take the necessary steps to reach a deal. In truth, it's an open secret that the EU has to compromise, as the UK was surely aware. Germany's Angela Merkel has said as much. And Michel Barnier has pushed EU leaders for ages to give in on their fishing demands. In Brussels, everyone knows, that is where they will have to concede most of all.”

In his statement, Michel Barnier also described the EU's view of policy areas where progress has been made and its position on the three areas of significant divergence:

“ As I said to Parliament's Coordination Group, led by David McAllister, and to the Conference of Committee Chairs, in the last few weeks we have made progress with Britain in a number of areas:”

- on police and judicial cooperation – I know how closely Parliament follows this – we have made progress on the question of the European Convention on Human Rights, on data protection, Europol, Eurojust and extradition. In these areas we can clearly see the outline of an agreement.”
- Transport, where the UK has committed to a specific level playing field, particular on road transport – this is important for us,”
- as is the UK's participation in flagship EU programmes such as ‘Horizon Europe’ or ‘Erasmus +’.”
- And thematic cooperation on matters of common interest such as public health, which is such an urgent issue at the moment, and, recently, on cybersecurity.”

“ In other areas, although there is still disagreement, we are beginning to see possible solutions emerge: in particular as regards trade in goods and services, energy, and coordination of social security.”

“ Lastly, there remain three more complex issues on which it is imperative that we make progress, as was pointed out at the European Council. These are the level playing field, fisheries and governance.”

“ 1. The **level playing field** – those economic and commercial ‘fair play’ rules that must be at the heart of our partnership. The British often refer in their speeches to the Canadian model. We are uniquely close to the United Kingdom geographically and have been building an economic interconnection with the British for 47 years. So this situation is not comparable with any other. Moreover, it is the first time in our 60-year history that we have negotiated a trade treaty with a third country that: is on a ‘zero tariffs, zero quotas’ basis; has no precedent, whether with Canada or with Japan; and is being negotiated in a context of regulatory divergence, not convergence.”

“ The need for a genuine level playing field remains a fundamental requirement of the Union, as stated at the European Council. In recent days we have observed with interest that the British are prepared to work on fundamental principles for a specific State aid control system in a future agreement, which would go beyond the system provided for in existing free trade agreements, and also on non-regression standards, with genuine guarantees of national implementation, and a dispute settlement mechanism. But these intentions have yet to be reflected in the negotiation. It is also necessary for each party to adopt unilateral measures in response to risks of distortion of competition.”

“ 2. Likewise, **governance** of our future agreement is one of the keys to our joint success. This means that the structure of our agreement must be comprehensive. It also means we need a binding dispute settlement mechanism, with an effective sanctions system – this mechanism can be used by both parties. Maroš Šefčovič has just pointed out the risk posed by the Internal Market Bill to the Withdrawal Agreement. This is why we must be more vigilant.”

“ 3. Finally, we come to **fisheries**, the last major sticking point. There will be no economic agreement without a sustainable, fair and equitable solution for fishermen on both sides. We will insist on this up to the last moment to ensure lasting prospects for our European fishermen. This requires reciprocal and stable access to waters, and a fair distribution of quotas.”

Agreement reached for talks to resume

Quickly following Michel Barnier's statement to the European Parliament on Wednesday 21 October, the UK government [issued a statement stating they were ready to resume negotiations](#).

The UK government stated:

“ Lord Frost discussed the implications of [Michel Barnier's statement to the European Parliament] and the state of play with Mr Barnier earlier today. On the basis of that conversation we are ready to welcome the EU team to London to resume negotiations later this week. We have jointly agreed a set of principles for handling this intensified phase of talks.”

The [jointly agreed set of principles](#) include agreement that:

1. The talks intensify - i.e. take place daily and across all subjects concurrently.
2. The talks be on the basis of each side's legal texts where there is a "common approach".
3. Discussions on difficult areas such as level playing field, governance, fisheries, energy and goods/services provisions will not be on the basis of legal texts as yet.
4. The Chief Negotiators and / or Deputy Chief Negotiators should meet every day.
5. Nothing is agreed in these negotiations until a final overall agreement is reached.

6. The initial phase of the negotiations will take place in London from 22 October until 25 October.

The [BBC's Europe Editor Katya Adler](#) commented that:

“ So, all in all, you could be forgiven for thinking what we've witnessed over the past days was a bit of political theatre.”

“ Cover for the government - post chest-beating, for the benefit of a domestic audience - to return to the negotiating table, where they know the time has now come for difficult compromises.”

“ Cover too for EU leaders. They went out of their way at last week's summit to sound tough on Brexit. Privately, a number of EU figures now admit it was a misstep. But EU leaders play to the domestic gallery too. They wanted to show they were "standing up to the UK" - that leaving the EU doesn't pay and that EU interests would be defended. They accept they must compromise too now, if this trade and security deal with the UK has a chance of being agreed.”

Implementing the Withdrawal Agreement

The EU has stated throughout the EU-UK negotiations that it considers the full implementation of the Withdrawal Agreement, and in particular the Protocol on Ireland/Northern Ireland, as critical and linked to any agreement on the EU-UK future relationship. 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).

Fourth meeting of the Joint Committee

The fourth meeting of the Joint Committee took place on the morning of Monday 19 October in London. This meeting took place in the context of [the UK government's UK Internal Market Bill proposals and the EU's formal infringement process against the UK](#).

Michael Gove provided an update on the fourth meeting to the House of Commons where he emphasised the progress being made:

“ I would like to update the House on [the Joint Committee's] latest meeting, which took place earlier this morning. Coming only three weeks after the last meeting, I am pleased to report that in this forum the approach from the EU is very constructive. ”

“ There is a clear imperative on both sides to find solutions and we remain committed to working collaboratively with the EU through the Joint Committee process.”

“ At our last meeting in Brussels I agreed with my co-chair, Vice-President Šefčovič, that we would intensify discussions to implement the withdrawal agreement, primarily around citizens' rights and the Northern Ireland protocol. Our officials have since held numerous sessions and today in London I reiterated the UK's commitment to upholding all our obligations under both the withdrawal agreement and the Belfast agreement. ”

“ We agreed that we will publish a joint update on citizens' rights and I am pleased to confirm that almost 4 million EU citizens in the UK have now received status under our scheme. ”

“ We have also discussed our work to implement the Northern Ireland protocol. We are taking steps to implement new agrifood arrangements. We also acknowledge the EU's concerns about appropriate monitoring of implementation. We now have a better understanding of its requests and the reasoning behind them. We have confirmed that the specialised committee will work intensively to ensure that we can make progress in this area, and with respect to Gibraltar and the sovereign base issues.”

“ A lot remains to be resolved before the end of December, but we have made substantial progress on implementation. I look forward to further engagement with Vice-President Šefčovič in the weeks ahead. I want to put on record my personal appreciation for the constructive tone and the pragmatic spirit with which he and his team have approached our discussions.”

The [European Commission's report of the meeting, as regards the Protocol on Ireland and Northern Ireland](#), stated that:

“ Vice-President Šefčovič welcomed the clear political steer and commitment given today by Michael Gove, Chancellor of the Duchy of Lancaster and co-chair of the Joint Committee, so that the EU and the UK can reach mutually agreed solutions on all outstanding issues on the table, in particular with regard to the Protocol on Ireland and Northern Ireland.”

“ ...Vice-President Šefčovič also recalled his strong concerns regarding the lack of progress on the decisions that need to be taken by the Joint Committee, as set out in the Protocol. These decision cover in particular workable arrangements for an EU presence in Northern Ireland, criteria for goods to be considered ‘not at risk’ of moving into the Union and the exemption of agricultural subsidies from State aid rules, as well as a Decision correcting errors and omissions in Annex 2 of the Protocol.”

“ Both teams were given clear political direction in today's meeting to operate constructively and make real progress towards our mutually agreed solutions.”

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