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SPICe Briefing

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# Issue 14: 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 summarises the state of the negotiations going into the final formal round, what happened in Round 9 and political agreement for negotiations to continue.



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# Executive Summary

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

This briefing:

- summarises the state of the negotiations going into the final formal round.
- reports on the Scottish Government and others' evidence on the state of the negotiations to the House of Commons' Committee on the Future Relationship with the European Union.
- discusses the impact of the UK Internal Market Bill on the negotiations and reports on the status of infringement proceedings launched by the EU.
- signposts to the Scottish Parliament's consideration of the UK Internal Market Bill and debate over its effect on devolution.
- reports on areas on agreement and remaining disagreement between the EU and UK following the final formal round of the negotiations (Round 9).
- reports on comments made at the Special European Council and the political agreement for negotiations to continue.

# State of the EU-UK negotiations following Round 8

Round 8 of the negotiations concluded on 10 September with significant disagreements remaining. [Issue 13 of this briefing series](#) reports on the immediate outcome of the round.

With only one further round of talks scheduled (Round 9), SPICe assessed the [state of the negotiations in a blog on 17 September](#). The blog pointed out that more talks can be arranged, but that the political context was "becoming fraught". The reasons cited for this were:

- The Prime Minister's [deadline of 15 October for walking away](#) from the negotiations.
- The publication of the UK Internal Market Bill which proposes powers for UK Ministers that could be used to disapply parts of the Withdrawal Agreement and therefore "[break international law in a very specific and limited way](#)".
- The European Commission's [end of September deadline](#) for the UK to step back from its proposals in the UK Internal Market Bill, under threat of legal action.

In addition, on 11 September the [European Parliament's UK Coordination Group and the leaders of six of the seven the political groups of the European Parliament](#) issued a [joint statement](#) saying:

“ Should the UK authorities breach – or threaten to breach – the Withdrawal Agreement, through the United Kingdom Internal Market Bill in its current form or in any other way, the European Parliament will, under no circumstances, ratify any agreement between the EU and the UK.”

The blog asked what effect these developments had on the state of the future relationship negotiations:

Both sides are probably still assessing their options. The next formal negotiating round begins just ahead of the EU's "end of the month" deadline for the UK government to withdraw its internal market proposals which are at odds with the Ireland/Northern Ireland Protocol. Presumably the EU and UK will let the current (limited) schedule of talks between the negotiators play out before taking final decisions on what to do next. If this is what happens, then there will be less than a fortnight between the end of the timetabled formal talks and the Prime Minister's 15 October "move on" deadline.

Michel Barnier's statement that the end of October was the "strict deadline" implied that the mid-October European Council would not be the final date for a deal, at least from the EU's side. But the Prime Minister's deadline explicitly refers to that date as the key decision point.

If there is ultimately no agreement on the EU-UK future relationship signed and implemented before the end of the transition period, then it is worth remembering that the problem does not go away. If the UK wishes to have any formal cooperation or trading arrangements, the EU demands are likely to be the same or similar and the same sticking points bedevilling the current negotiations are likely to arise again.

In the UK Government's [written statement to the UK Parliament on 14 September providing an update on the negotiations during Round 8](#), it stated:

" We remain committed to working hard to reach agreement by the middle of October, as the Prime Minister set out in his statement of 7 September. Negotiators have agreed to meet again, as planned in line with the terms of reference, in Brussels this week to continue discussions. "

## Scottish Government's view

On 15 September, the Cabinet Secretary for Constitution, Europe and External Affairs, Mike Russell, [appeared before the House of Commons' Committee on the Future Relationship with the European Union](#).

When asked for his level of confidence that a future relationship agreement will be reached by the end of this year, the Cabinet Secretary replied:

" On a scale of one to 10, where one is the lowest confidence, about minus five at the moment."

On the key consequences of a deal being reached that does not meet Scottish Government priorities, the Cabinet Secretary said:

" I am afraid that would take me most of the day. We have not been consulted on any of the detail or any of the issues. We believe that the only acceptable alternative to not being in the EU, and we want to be in the EU, would have been a single market and customs union solution. I think a deal is still very unlikely and being made a lot more unlikely by the events of this last week and what is now in this [UK Internal Market] Bill. Anything that comes out will either be what I called earlier a low deal or a no deal. Those are the only options that in actual fact are being gone for, because the level of ambition from the UK in its negotiations is so low."

On the Scottish Government's position on fisheries negotiations and the EU's position that "the UK should continue to follow the common fisheries policy rules in terms of quota allocation", he said:

“ It is important that the negotiations take place in the spirit of mutual trust. I would not help that by saying in either way that one side or the other was completely correct. The Scottish Government and I have said that we think it is possible to get a reasonable solution so that everybody feels they have benefited from it. The coastal state protection will be one that will allow that to happen. The mistake made on fishing was not to recognise that the most substantial interest in this was the Scottish Government's, as indeed it did, and that it was a devolved matter. The failure to engage the Scottish or Welsh Governments in any process of negotiation has been a major contribution to making this process more difficult than it should have been.”

## **Commons Committee evidence on the negotiation's "state of play"**

On 23 September, the House of Commons [Committee on the Future Relationship with the European Union](#) took evidence on the negotiations from:

- Professor Catherine Barnard, Professor of European Union and Labour Law at University of Cambridge
- Shanker Singham, Chief Executive Officer at Competere
- Georgina Wright, Senior Researcher at Institute for Government

This session covered the witnesses' take on the negotiations' key sticking points - such as state aid, governance and fisheries - as well as developments in the parties' negotiating stances on these issues. The witnesses had alternative views on the required timing for any agreement and discussed what effect the UK Government's UK Internal Market Bill proposals may have on the negotiations. The role of the European Parliament, negotiating strategies, implementing the Ireland/Northern Ireland Protocol and whether the EU and UK are acting in "good faith" were also covered in detail.

## **Talks ahead of Round 9**

Informal talks took place between the EU and UK chief negotiators across the weeks of the 14 and 21 September ahead of Round 9. However little information is available and no formal statements were made.

# Implementation of the Ireland/Northern Ireland protocol

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).

As covered in the [State of the EU-UK negotiations following Round 8](#), the EU has strongly objected to the UK Government's proposals in the UK Internal Market Bill which relate to the Withdrawal Agreement's Protocol on Ireland/Northern Ireland and linked this to the negotiations on the future relationship. The EU has called on the UK government to withdraw the proposals from the Bill by the end of September, under [threat of legal action](#).

## Third meeting of the Joint Committee

Following the [extraordinary meeting of the EU-UK Joint Committee on 10 September - called by the EU as a result of the UK Government's proposals in the UK Internal Market Bill](#) - a further Joint Committee meeting was held on 28 September. The [agenda covered](#) a stocktake of Specialised Committee meetings and implementation of the Withdrawal Agreement across all its areas (Citizens' rights, Protocol on Ireland/Northern Ireland, Protocol on Sovereign Base Areas in Cyprus, Protocol on Gibraltar, Financial provisions).

Following this meeting of the Joint Committee, the UK and EU made separate statements. Both indicated remaining disputes over citizen rights and the UK Internal Market Bill proposals.

The [UK Government's statement](#) read (emphasis added):

“ The UK reiterated the importance of commitment by both sides to upholding obligations under the Withdrawal Agreement and protecting the Belfast (Good Friday) Agreement in all respects... The UK reiterated that the measures set out in the United Kingdom Internal Market Bill are designed to create a ‘safety net’ to ensure the communities of Northern Ireland are protected. **The UK is clear that those measures would not be withdrawn.** ”

“ The UK remains committed to ongoing constructive engagement with the EU through further Joint Committee meetings and looks forward to making progress on all issues.”

The [EU's co-chair, Maroš Šefčovič, made a statement](#) where he indicated that the EU's main message was:

“ the much-needed acceleration of the implementation work to prepare for the 1<sup>st</sup> January 2021 and on the need to ensure a full, timely and effective implementation of the Withdrawal Agreement. Much work remains to be done before the transition period ends in fewer than a hundred days.”



On the Protocol on Ireland/Northern Ireland, Šefčovič said:

“ the window of opportunity to put in place the operational measures needed for it to function is rapidly closing. I have therefore reiterated the urgent need for the UK to accelerate its work on all aspects of the Protocol and in particular with regard to sanitary and phytosanitary controls; customs-related IT systems; and the registration of Northern Irish traders for Value Added Tax purposes. We welcome that the UK is now engaging on some of the Joint Committee decisions that need to be adopted before the end of the year to fully implement the Protocol. But many difficult issues remain and the UK's positions are far apart from what the EU can accept.”

On the UK Internal Market Bill, he said:

“ I have repeated the EU's request to withdraw the contentious parts of the draft Internal Market Bill by the end of September. We maintain that the Bill, if adopted in its current form, would constitute an extremely serious violation of the Protocol, as an essential part of the Withdrawal Agreement, and of international law.”

“ The Withdrawal Agreement is to be implemented, not to be renegotiated – let alone unilaterally changed, disregarded or disappplied.”

“ It cannot be stressed enough that the Protocol is specifically designed to protect the Good Friday (Belfast) Agreement and the achievements of the peace process, including avoiding a hard border on the island of Ireland. It recognises Northern Ireland's unique circumstances, allowing growth and prosperity to continue.”

“ We are willing to work hard with the UK on these issues over the coming days and weeks. I have requested that the next meeting of the respective Specialised Committee takes place in early October at the latest. ”

He indicated that the next Joint Committee meeting would be "by mid-October" and "should take stock of the results achieved by the Specialised Committees".

[Politico reports](#) that when Maroš Šefčovič was asked whether the EU could walk away from the future relationship negotiations if the UK does not withdraw the contentious provisions of the Internal Market Bill, Šefčovič said:

“ It will never be the EU which would cause the end of the negotiation of the future partnership between the EU and the U.K. ”

## **EU begins formal infringement process against the UK**

Following the publication of the UK Internal Market Bill, the [EU called on the UK government to withdraw the Bill's proposals](#) which potentially override provisions of the Withdrawal Agreement's Protocol on Ireland/Northern Ireland. The EU set a deadline of the end of September under threat of legal action.

On 1 October, following the elapse of the EU's deadline, the [European Commission President Ursula von der Leyen announced that the EU had initiated the first step in](#)



[infringement proceedings against the UK](#). This is a letter of formal notice for breach of obligations under the Withdrawal Agreement.

“ As you know, we had invited our British friends to remove the problematic parts of their draft Internal Market Bill by the end of September.”

“ This draft Bill is – by its very nature – a breach of the obligation of good faith laid down in the Withdrawal Agreement (Article 5). Moreover, if adopted as is, it will be in full contradiction to the Protocol on Ireland / Northern Ireland.”

“ The deadline lapsed yesterday. The problematic provisions have not been removed. Therefore, this morning, the Commission has decided to send a letter of formal notice to the UK government. This is the first step in an infringement procedure. The letter invites the UK government to send its observations within a month.”

“ The Commission will continue to work hard towards a full and timely implementation of the Withdrawal Agreement. We stand by our commitments.”

In [its press release](#), the EU cite two grounds for these proceedings:

- a breach in Article 5 of the Withdrawal Agreement on acting in "good faith", and
- that the UK "*has launched a process, which – if the Bill is adopted – would impede the implementation of the Withdrawal Agreement*".

On next steps, the EU's press release also states:

“ The UK has until the end of this month to submit its observations to the letter of formal notice. After examining these observations, or if no observations have been submitted, the Commission may, if appropriate, decide to issue a Reasoned Opinion.”

## Scottish Parliament consideration of the UK Internal Market Bill

From a Scottish devolved perspective, the key provisions in the UK Internal Market Bill are *largely not* those which have attracted criticism from the EU. Rather, the debate over the Bill's effect on devolution has focused on the Bill's provisions to establish the principles of mutual recognition and non-discrimination in trade and their effect in Scotland. SPICe has [published a briefing setting out more detail on the key provisions in the Bill from a devolved perspective](#).

The Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell, has linked the Bill to the UK's ability to sign trade agreements. For example, at the [House of Commons' Committee on the Future Relationship with the European Union](#) on 15 September, the Cabinet Secretary said:

“ To a great extent, then, the Internal Market Bill is about inventing a problem so that you can impose a solution. The solution is not to the problem of trade within these islands; the solution is to try to enforce all the details of bad trade deals on the devolved Administrations.”

The Bill alters the legislative competence of the Parliament and the executive competence of the Scottish Ministers. Legislative consent has therefore been sought from the Scottish Parliament. The Scottish Government [published its position on consent in its Legislative Consent Memorandum](#) on 28 September:

This Bill... is not necessary; nor does it reflect Scottish interests and concerns. Instead, it undermines both the devolution settlement and agreed processes that are already established to agree common frameworks and ways of working across the UK following EU exit. Contrary to its stated intention, it risks more uncertainty and confusion for business and consumers, and encourages harmful deregulation without democratic accountability or proper Parliamentary scrutiny. In addition, the Bill explicitly gives UK Ministers wide new powers in currently devolved areas of economic support and allows for breaches of international law. **The Scottish Government cannot therefore recommend support for this Bill.**

The Scottish Government's LCM is discussed further by SPICe in a Spotlight blog: [The UK Internal Market Bill – The Devolved Administrations Responses](#).

## Round 9: what happened?

The ninth round of formal talks took place in Brussels over 29 September to 2 October 2020. The [agenda indicated parallel sessions covering a wide range of areas remained under discussion](#).

Media sources reported that the UK government [tabled new legal texts during this round in five policy areas](#):

- fisheries
- level playing field
- law enforcement and judicial cooperation
- civil nuclear cooperation
- social security coordination.

## Statements by the UK and EU's Chief Negotiators

Following the end of Round 9, both the UK and EU's chief negotiators issued written statements on 2 October.

The UK's chief negotiator, David Frost, [provided a summary of areas of agreement and disagreement from the UK's perspective](#):

“ In many areas of our talks, although differences remain, the outlines of an agreement are visible. This is true of most of the core areas of a trade and economic agreement – notably trade in goods and services, transport, energy, social security, and participation in EU programmes. This has however been true for some time.”

“ I am also encouraged that progress has been possible on a law enforcement agreement and that there has been convergence on the structure of the overall partnership.”

David Frost focussed his comments on two areas of serious disagreement - state aid and fisheries:

“ In other areas familiar differences remain. On the level playing field, including subsidy policy, we continue to seek an agreement that ensures our ability to set our own laws in the UK without constraints that go beyond those appropriate to a free trade agreement. There has been some limited progress here but the EU need to move further before an understanding can be reached. On fisheries the gap between us is unfortunately very large and, without further realism and flexibility from the EU, risks being impossible to bridge. These issues are fundamental to our future status as an independent country.”

He concluded his comments by citing concerns over the time available:

“ I am concerned that there is very little time now to resolve these issues ahead of the European Council on 15 October. For our part, we continue to be fully committed to working hard to find solutions, if they are there to be found.”

The EU's chief negotiator, [Michel Barnier's statement](#) also summarised the well-known areas of agreement and disagreement. Barnier also provided an indication of topics with "*positive new developments*" or "*a lack of progress*" (some of which relate to devolved responsibilities).

“ Across the 11 negotiating tables, with discussions held in a constructive and respectful atmosphere, we noted:”

- *points of convergence*, most of which had already been recorded in previous rounds, in particular on some aspects of trade in goods, services and investment, civil nuclear cooperation, and participation in Union programmes;”
- *positive new developments* on some topics such as aviation safety, social security coordination, and the respect of fundamental rights and individual freedoms, which are a pre-condition for our future police and judicial cooperation in criminal matters;”
- *a lack of progress* on some important topics like the protection of personal data, climate change commitments or carbon pricing;”
- *as well as persistent serious divergences* on matters of major importance for the European Union.”

The second half of Barnier's statement provided further detail, from the EU's perspective, on the three areas of serious divergence - level playing field, governance and fisheries.

“ We recall once again that any agreement on an economic partnership with the United Kingdom requires:

1. *Solid, long-term guarantees of open and fair competition*. Our new economic partnership must be underpinned by clear rules. These rules must be operational and credible. That requires effective enforcement mechanisms, in particular on *State aid*, and a commitment towards *non-regression from social, fiscal, environmental and climate standards*. This is possible while fully respecting the regulatory autonomy and sovereignty of both parties.”
2. *An efficient governance framework*, based on a comprehensive agreement, with *robust enforcement and dispute settlement mechanisms, as well as effective remedies*. This is naturally even more important following the UK government's introduction of the « *Internal Market Bill*», which breaches its obligations under the Withdrawal Agreement and the Protocol on Ireland / Northern Ireland.”
3. *A stable, sustainable and long-term agreement on fisheries*, enabling the United Kingdom to further develop its fishing opportunities, while ensuring the sustainable use of resources and protecting the activities of European fishermen and women.”

To reach an agreement, these divergences must necessarily be overcome over the next weeks.”

## Special European Council, 1-2 October

On 1 and 2 October, the EU Member States' political leaders met for a [Special European Council to discuss foreign affairs and the EU's economic base](#). The end of the ninth EU-UK negotiating round happened concurrently with this meeting.

While EU-UK negotiations were not on the core agenda for the European Council, the President of the European Commission and the Taoiseach, Micheál Martin, did provide an update to Member States. In his [press statement, Charles Michel, President of the European Council said](#):

“ And finally, just one word about Brexit, just an information point. We had the opportunity to have an update by Ursula (von der Leyen) and also an analysis by the Irish Prime Minister. But we didn't open the debate today because you know, we will have the occasion in October, during our next meeting, to have a more substantial exchange of views. And we will take into consideration the possible developments between today and the next European Council. We trust the Commission. We trust Michel Barnier. We have a clear European position. We are united. We are very calm. We have expressed very clearly the last weeks what we think about the current situation. And we will have the occasion in October to tackle this important topic.”

The Taoiseach's analysis was not publicly available. But following the meeting he was [reported by RTE](#) describing the situation as challenging, highlighting the level playing field:

“ This will be a challenging negotiation. The level playing field is still an area of considerable concern. There would have to be a level playing field in terms of access to the single market.”

“ It's still an issue where progress will have to be made. I think there is a sense while there's a mood to engage, no-one is underestimating the task that lies ahead in trying to deal with these very difficult issues.”

The next European Council is [scheduled for 15-16 October 2020](#). The current agenda for this meeting states that:

The European Council will take stock of the implementation of the withdrawal agreement and review the state of the negotiations on the future EU-UK partnership. Leaders will discuss preparatory work for all scenarios after 1 January 2021.

# Johnson-von der Leyen call: talks to continue

Round 9 was the last scheduled round of formal talks in the negotiations on the EU-UK's future relationship. Following the conclusion of this round, it was announced that Prime Minister Boris Johnson and European Commission President Ursula von der Leyen would meet by video conference on Saturday 3 October. The [last time Johnson and von der Leyen discussed the negotiations was the 15 June 2020](#).

Following the conference call on 3 October a [joint statement was issued](#). This statement indicated agreement that negotiations between the chief negotiators should continue. It also indicated that the Prime Minister and European Commission President would now "speak on a regular basis".

“ The President of the European Commission, Ursula von der Leyen, and the UK Prime Minister, Boris Johnson, spoke today about the state of play in the negotiations on the future relationship between the UK and the EU.”

“ 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.”

# End of transition period preparations

Marking 100 days before the UK leaves the Single Market and the Customs Union, on 23 September the Chancellor of the Duchy of Lancaster, Michael Gove,

- gave a [speech in the House of Commons](#) on the need for businesses trading with the EU to prepare for new customs procedures, and
- published the UK Government's [reasonable worst case scenario \(RWCS\) planning assumptions](#) for potential disruption to freight travelling between Great Britain and the EU at the end of the transition period.

To inform its inquiry on the EU-UK future relationship negotiations, the Scottish Parliament's Culture, Tourism, Europe and External Affairs Committee commissioned and recently published a [report on the border procedures and checks that are carried out on goods imported into the European Union](#). The research considers the customs checks that are required both at the border and away from the border and at a range of physical settings including land borders, ports and airports. The research considers these checks in relation to a range of trading relationships that the EU has with a variety of third countries including Norway, Iceland, Switzerland, Turkey, Ukraine, Canada, Japan and Australia and the Faroe Islands.

The Committee held an [evidence session with the report's primary author Dr Anna Jerzewska on 17 September](#).



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