



The Scottish Parliament  
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SPICe Briefing

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# Issue 16: 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 "intensified" phase of negotiations taking place over November.



24 November 2020  
SB 20-76

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# Executive Summary

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

This briefing:

- Outlines the new set of principles agreed on 21 October for handling an "intensified" phase of negotiations. These principles include negotiating on the basis of legal texts.
- Describes the intensified negotiations which took place with a view to making progress ahead of the European Council on 19 November. No breakthrough was made in advance of the meeting with key divergences remaining on level playing field issues, governance and fisheries.
- Reports on the Scottish Government's response to the negotiations at this stage, and the Culture, Tourism, Europe and External Affairs Committee's scrutiny.
- Summarises the processes and timescales for UK and EU ratification of any future relationship agreement.
- Provides a brief assessment of the state of the negotiations in relation to level playing field, governance and fisheries.
- Describes recent updates on implementation of the Withdrawal Agreement, including on the UK Internal Market Bill and practicalities the Ireland/Northern Ireland Protocol.
- Looks ahead to the type of agreement that may be made between negotiators in the short time available before the end of the transition period.

At present, the negotiating teams have [reportedly found common ground on 95% of the legal text](#) which could comprise a deal. However, the EU and UK remain in disagreement on level playing field issues, governance and fisheries. Additionally, some of the text within the 95% is linked to gaining agreement on the level playing field (e.g. text in relation to energy, haulage, aviation and rules of origin).

Time available for agreement and ratification of any deal is also in extremely short supply, with the end of the transition period in just over five weeks (23:00 GMT, 31 December 2020). While many deadlines for a deal to be done have been made (and missed), none were previously defined in law. The UK and the EU could even conclude an agreement on trade and their broader future relationship after the end of the transition period. However, the effect of not reaching an agreement that can be implemented (at least in some form) before the end of the transition period would be significant disruptions in trade, security cooperation and political relations from 1 January 2021.

Any deal that may be agreed in the coming days or weeks is likely to be "thinner" than envisaged by the EU in its negotiating mandate. Any deal will also be thinner than the "partnership" envisaged by the UK Government led by Prime Minister Theresa May until July 2019. The current UK Government's negotiating red lines, for example, the desire to gain the flexibility to significantly diverge from the existing rules and standards of the EU's Single Market and for the Court of Justice of the European Union (CJEU) to have no role to play in any joint dispute mechanism, have led the negotiations to a "harder" form of

Brexit.

# Negotiations

## Basis for the latest talks

After the European Council meeting on 15-16 October there was a break in the EU-UK talks. However negotiations resumed again following a statement by [Michel Barnier to the European Parliament](#) and a [set of principles for handling an intensified phase of talks](#) was agreed on 21 October. This break in the talks was [charted in Issue 15](#).

The [jointly agreed set of principles](#) for the current phase of talks includes 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.

## Weeks one & two

Following the resumption of negotiations, two weeks of talks between the negotiating teams were held in London and then Brussels with a view to making progress ahead of the [European Council meeting scheduled for 19 November 2020](#).

On Wednesday 4 November, the UK and EU chief negotiators both tweeted comments indicating that little progress had been made on the key issues of divergence.

[Michel Barnier said](#):

“ Despite EU efforts to find solutions, very serious divergences remain in Level Playing Field, Governance & Fisheries. These are essential conditions for any economic partnership. [The EU] is prepared for all scenarios.”

[David Frost responded](#) highlighting UK sovereignty:

“ We've just finished two weeks of intensive talks with the EU. Progress made, but I agree with @MichelBarnier that wide divergences remain on some core issues. We continue to work to find solutions that fully respect UK sovereignty.”

On Saturday 7 November, the Prime Minister and European Commission President Ursula von der Leyen held a political-level “stock take” on the progress in the negotiations. This did not progress the key issues. Both sides agreed that [“progress had been made”](#) but that

“[large differences remain especially on level playing field and fisheries](#)”; and that they would “remain in personal contact about the negotiations”.

During the first week of these talks the Joint Ministerial Committee (EU Negotiations) met on 29 October. This was attended from the Scottish Government by Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell and Minister for Europe and International Development, Jenny Gilruth. The [brief communique from the meeting](#) indicated that the video conference meeting covered:

“ the current status of negotiations with the EU, the implementation of the Northern Ireland Protocol, an update on transition readiness, and progress on the UK Internal Market Bill.”

## Weeks three & four

At the start of the third week of intensified talks on Monday 9 November, Michel Barnier outlined “3 keys to unlock a deal”. These can be seen as a high-level summary of the EU’s red lines on the core issues of governance, level playing field and fisheries at this stage of the negotiations. [Barnier tweeted](#):

“

- Key No 1: Respect of EU autonomy and UK sovereignty, w/ effective governance and enforcement mechanisms between international partners;”
- Key No 2: Robust guarantees of free and fair trade & competition based on shared high standards, evolving coherently over time;”
- Key No 3: Stable and reciprocal access to markets and fishing opportunities in the interest of both parties.”

At the start of the fourth week of intensified talks on Sunday 15 November, [RTE’s Europe Editor Tony Connelly provided an update](#) on the state of the negotiations ahead of them resuming in Brussels:

“

- 1/ The main obstacles remain fisheries, the level playing field and governance. The big sticking point has shifted to the so-called evolution or "ratchet" clauses in the non-regression provisions, ie that both sides evolve their standards in tandem over time..."
- 2/ In particular the UK is resisting the ability for either side to retaliate if they depart from the level playing field. The fact that the "baseline" remains the standards both sides operate on Jan 1 - ie, EU-level standards, also remains an issue for London."
- 3/ Elsewhere, jointly drafted text on the non-contentious areas has been largely provisionally agreed, although with a lot of [square brackets] - denoting the fact that nothing is agreed till everything is agreed"
- 4/ On state aid, the landing zone remains Michel Barnier's tool box of four elements: high level principles, an independent UK enforcement authority, a dispute settlement mechanism, and autonomous (ie swift) retaliatory measures while arbitration is ongoing"
- 5/ It's understood quite a few drafts have changed hands on this area, but no breakthrough yet. On fisheries, I'm told that both sides remain "miles apart"."
- 6/ On the link btwn fish & the UK enjoying access to the EU energy market, the EU message has been (roughly): you want to deny EU fleets access to British waters, yet we are offering you lucrative access to the EU energy market which is worth more than the fish in your waters"
- 7/ Few diplomats believe Cummings' departure from Number 10 will make that much difference - maybe a little on the state aid issue."
- 8/ There had been hopes last weekend that if there was progress this week then Michel Barnier would brief EU ambassadors today [Sun 15th] to outline the state of play, but by mid-week that "went out the window"."
- 9/ There is some talk of such a meeting happening on Wednesday this week - but nothing confirmed. Likewise there is talk of another Barnier briefing next Sunday. Either way, member states are wanting to know what is going on and what they will have to sign up to."
- 10/ That is why time is getting very tight and that is making everyone nervous. The treaty is so far running to some 600 pages, including annexes (compared to the EU's original draft of 430 pages). That's a lot of dense legal text for capitals to process, and for MEPs to digest"
- 11/ MEPs need to run the treaty through at least three committees before they vote in plenary session on December 16. They will not be happy if the time to run these processes gets more and more compressed."
- 12/ The other question is whether the treaty will be "EU only" or "mixed". For the uninitiated, EU only means it deals with competences which are exclusively EU, and that means that once the European Council and the European Parliament approve it, it's all ratified"

- 13/ If it's "mixed" it touches upon both national and EU competences. Then it has to be ratified by every national parliament (and some regional ones as well). Aviation is not an exclusive EU competence, and some member states have big interests there.”
- 14/ Ultimately it will be a political decision taken by member states (via the General Affairs Council) if and when a deal is done. If it's mixed it could take up to two years for the treaty to be ratified.”
- 15/ Parts of the treaty could be applied provisionally on Jan 1, but only the exclusive EU competence parts. Provisional application is not "innocent". One can imagine the link between "provisional" and the UK Internal Market Bill, for example”
- 16/ EU leaders are meeting by video link on Thurs, but any suggestion that this is a deadline is dismissed out of hand. EU leaders do not negotiate over video link, although they may get a briefing from Barnier/Ursula von der Leyen on the state of play”
- 17/ If there is good progress this week and there are only a few outstanding sticking points, then a further Boris Johnson/Von der Leyen phone call could be in the works.”
- 18/ But time really will be running out by the end of next week. Diplomats say early the following week is really the last cut off. A 600 page treaty has to be legally scrubbed and translated into 23 official languages.”

On 15 November, David Frost [provided a UK negotiating team perspective, tweeting:](#)

“ ... I and our British team have been in talks almost every day since 22 October. We are working to get a deal, but the only one that's possible is one that is compatible with our sovereignty and takes back control of our laws, our trade, and our waters. That has been our consistent position from the start and I will not be changing it. There has been some progress in a positive direction in recent days. We also now largely have common draft treaty texts, though significant elements are of course not yet agreed. We will work to build on these and get an overall agreement if we can. But we may not succeed. Either way, as the Prime Minister [@BorisJohnson](#) made clear on 16 October, people and businesses must prepare for the change that is coming on 31 December, most of which happens whether there is a deal or not.”

In these tweets, Frost confirms that “common draft treaty texts” now exist for large parts of a deal, notwithstanding the significant divergences that exist in some areas. This is a significant change from three weeks prior to this point in time, when negotiations were not based on shared legal texts. However, [RTE's Tony Connolly quotes a source pointing out that:](#)

“ Although a lot of joint legal text is "nearly there" there remains a fundamental and philosophical divide on the level playing field/governance and fisheries issues. "What's keeping us stuck is fundamentals rather than technical work at this stage," says one source”



# Scottish Parliament and Scottish Government reactions

Over the last three weeks, the Parliament's Culture, Tourism, Europe and External Affairs Committee has taken evidence on the future relationship negotiations. Initially the Committee heard from stakeholders including:

- On [5 November](#) - Scottish Engineering, the Road Haulage Industry, the Association of the British Pharmaceutical Industry and BASF Ltd.
- On [12 November](#) – National Farmers Union Scotland, Scotland Food and Drink, the Scottish Fishermen's Federation, the Scottish Seafood Association, the Institute of Directors and Universities Scotland.

During both these meetings, the evidence from stakeholder emphasized the continuing uncertainty with the transition period quickly coming to an end. Witnesses were clear it was difficult to prepare for the end of transition when it still was not clear what would be replacing it. Witnesses also highlighted individual challenges for their own sectors which it was still hoped the future relationship negotiations might to some extent address.

Following the Committee's evidence sessions on 5 and 12 November 2020, [the Convener wrote to the UK Government Chancellor of the Duchy of Lancaster on 13 November 2020](#). In the letter, the Committee called for a period of around six months to be included as part of any UK-EU deal to allow business to prepare:

“ There are now fifty days left until the end of the transition period. In recognition of the limited time left, the Committee has taken evidence from a wide range of organisations representing sectors of the Scottish economy. These organisations have been unanimous in expressing alarm at the consequences of the current uncertainty that exists with regard to the UK's trading relationship with the European Union on 1 January 2021...”

“ ...Given the limited time that is left to negotiate the future relationship with the European Union and for businesses to prepare for the outcome of the negotiations, the Committee has heard calls from a range of sectors for a 'grace period' of six months to be built into any agreement with the European Union, to allow for businesses to transition to this new relationship.”

The Conservative members of the Committee, Dean Lockhart MSP and Oliver Mundell MSP were not signatories to the letter.

On 19 November 2020, the Committee [took evidence from the Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell](#). In his opening statement, the Cabinet Secretary told the Committee that even if the UK and EU were able to reach a deal, it was likely to be a very thin deal:

“ I was last at this committee before the summer, so I should start by reflecting on the fact that we still do not have the details of or, indeed, any certainty of, a deal on the UK withdrawal. The end of the transition is very near, and it is extraordinary that the outcome of the negotiations is still unknown. However, whatever the outcome is and whatever takes place, it will not be a good-news deal for Scotland. We have to be under no illusion: we are faced with considerable and imminent damage that will disrupt Scotland’s economy and society. That will be the theme of what I will say today. We will have an immeasurably poorer substitute for what we have now, in transition, and for what we had with membership of the EU.”

The Cabinet Secretary set out some of the likely new procedures likely to be required following the end of the transition period and also referred to what the Scottish Government is doing to mitigate the effects of the end of transition:

“ The evidence that the committee has taken in recent weeks could not have been clearer. Taking back UK control appears to involve taking on significant bureaucracy and chaos at our borders.”

“ Third-country status will mean that full sanitary and phytosanitary — SPS — procedures must apply in exporting to the EU. If anybody is in doubt about that, they should look at, for example, some of the information that shellfish companies in my constituency have been bringing to the table and demonstrating. Along with other demands, businesses face export health or phytosanitary certification, pre-notification of arrival, presentation at border control points, documentary and identification checks, and risk-based physical checks and sampling. There will be fees for certifier time and a fee for clearance and checks at border control posts. New UK Government guidance suggests that those costs and controls will be applicable to all SPS trade—the essential trade of food, animals and plants—including from Great Britain to Northern Ireland. Retailers are openly warning of empty shelves in Northern Irish supermarkets, and we are told that the border control post infrastructure in Northern Ireland will not be ready by 1 January.”

“ Against those requirements, ambiguities and confusions, we are doing everything that we can to mitigate the consequences of the UK Government’s actions or lack of actions. However, we will not be able to avert every negative outcome. The practical consequences of the lack of basic information bind all our hands as well as those of businesses as they prepare—as does the continuing essential focus on the pandemic. We are working closely with banks, through the banking and economy forum, to mitigate the economic impacts and to encourage cash-flow support to business. Our multi-agency prepareforbrexit.scot website, which is hosted by Scottish Enterprise, provides advice, access to sources of financial support and online self-assessment tools. Scottish Enterprise is now proactively targeting around 80 high-value traders to offer support. During November, an additional 500 companies assessed as being vulnerable to Brexit impacts will be contacted and offered support. That number will grow to 1,200 ahead of 31 December. However, much more needs to be done, and we are focused on doing the maximum that we can.”

The Cabinet Secretary suggested that the Scottish Government’s relationship with the UK Government continues to be poor when it comes to Brexit related matters, Whilst the UK Government has suggested that it had intensified its engagement with the Scottish Government, the Cabinet Secretary said whilst there may have been more meetings and interactions:

“ It does not relate to the quality of the interactions, and that is highly significant. I think that there have been around eight joint ministerial committee meetings this year, but I cannot say that any of them has got us to the position in which we feel that we have made an impact or that there has been an understanding of the point that has been made. I say “we” because I think that that feeling is held by us, the Welsh Government in particular, and very often parts of the Northern Ireland Administration as well—indeed, sometimes the whole of it.”

The evidence session with the Cabinet Secretary focused on a number of issues including preparedness for the end of transition and preparing for that at the same time as dealing with COVID-19; the implications for Scotland’s food and drink sector (in particular in relation to exports) of the end of the transition period along with discussion on the relationship between the UK and Scottish Governments.

Later on 19 November, the [Cabinet Secretary answered a portfolio question](#) on the Scottish Government’s recent discussions with the Cabinet Office in relation to the future relationship negotiations.

“ **The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell)**: The last meeting of the joint ministerial committee (European Union negotiations) took place on 29 October, at which the Chancellor of the Duchy of Lancaster and I were present. I also attended an EU exit operations—XO—committee preparedness meeting on 16 November, which was chaired by the Chancellor of the Duchy of Lancaster.”

“ **Linda Fabiani**: I am glad that there are meetings about preparedness because, with the end of the transition period looming, businesses in my constituency of East Kilbride and beyond that import and export both goods and expertise feel that they have been left in the dark with no time at all to prepare for the forthcoming end of the transition period. Can the cabinet secretary offer those businesses any comfort at all?”

“ **Michael Russell**: I would like to be able to offer them the comfort that many of them voted for, which was not to have Brexit but, alas, that is not where we are. The Scottish Government is doing everything that it can to mitigate the effects but, as I have said regularly, we cannot do everything. This morning, I outlined to the Culture, Tourism, Europe and External Affairs Committee a range of actions that the Scottish Government is taking, and I am happy to write to the member to set those out. For example, the multi-agency prepare for Brexit website, which is hosted by Scottish Enterprise, provides advice, access to sources of financial support and online assessment. Scottish Enterprise is now proactively targeting high-value traders to offer support, and we are introducing a customs academy that will provide additional support to companies that export. All those things are happening, and there is a great deal of work in the Scottish Government that is focused on the concurrent winter pressures. There is the continuing pressure of Covid, the pressure of Brexit—the transition period should have been longer, but the UK Tories rejected that—and of course the inevitable normal winter pressures. None of us should be in any doubt that we face a very serious situation, and we should all be encouraging companies to seek information. We know from talking to companies that, because they have been focused heavily on the pandemic, there are huge problems ahead.”

# European Council, 19 November 2020

The [European Council meeting on 19 November 2020](#) had previously been cited as another deadline in the EU-UK negotiations. However, no breakthrough had been made in the EU-UK negotiations in advance and the meeting did not formally address the negotiations.

On Friday 20 November, the European Commission's negotiating team provided a briefing to Member States. This is not publicly available, but elements of the briefing have been reported by media sources. For example, European Commission President Ursula von der Leyen [reported progress on State Aid issues](#):

“ After difficult weeks with very, very slow progress, now we've seen in the last days better progress, more movement on important files... Within the frame of the level playing field, progress for example has been made with state aid, but there are still quite some metres to the finish line so there's a lot of work to do.”

On the same day as the European Council meeting, a member of the EU's negotiating team tested positive for COVID-19. As a result, face-to-face negotiations between the Chief Negotiators were suspended.

# Ratification timescales

As time ticks down towards the end of the transition period, the biggest time constraint on the negotiations now is the need for ratification of any agreement:

For the UK, ratification may be taken forward in one of two ways. Under the [Constitutional Reform and Governance Act 2010](#), after a treaty has been laid, both Houses are given time to scrutinise its contents and, potentially, to object to ratification (by passing a resolution). This period begins on the first sitting day after the treaty has been laid, and ends after the 21st sitting day. A day only counts as a sitting day if both the Commons and Lords are sitting. [A recent House of Commons blog](#) on this issue examined when the treaty would need to be laid to be ratified before the end of the transition period and also set out the options for expedited ratification:

“ If the Government laid a UK-EU treaty on Wednesday 18 November 2020, and Parliament sat on every Monday to Thursday up to and including Christmas Eve, that treaty could be ratified from Christmas Day. It could therefore come into force at the end of transition.”

“ If a deal were to be reached later, however, further sitting days would be needed. These could be on Fridays, Saturdays or Sundays and/or between Christmas Day and New Year’s Eve.”

“ Sometimes governments want a treaty to come into force more quickly than CRAG would normally allow. CRAG allows them in “exceptional” cases to dispense with the section 20 requirements. However, this exception cannot be used if either House has already resolved against the ratification of that treaty laid under CRAG.”

“ If the UK and EU only reached agreement on a treaty in late November or early December (for example) the waiting period could make it harder for the UK to ratify a treaty before 2021. Section 22 is one way the Government might get around that problem, but it would leave Parliament less time to scrutinise the treaty text, and could prevent a vote on the treaty itself from taking place.”

A further option for the UK Government would be to disapply the CRAG as part of primary legislation to ratify the Future Relationship Agreement by using primary legislation.

From the EU perspective, the time needed to ratify any deal will also depend on the nature of the deal. If it is an EU competence only deal (focussing on removal of tariffs and quotas for example), then it will require a positive vote of the European Parliament and the approval of the Council of the EU. If any future deal includes elements of member state competence, then it will also require approval from all 27-member state parliaments and possibly regional parliaments too. If the deal is a mixture of EU and member state competence it is likely to take longer to ratify. In this situation, there is the possibility of an agreement being provisionally applied ahead of formal ratification.

The Institute for Government has produced short "explainers" on both the UK and EU approaches to ratification:

- [UK ratification](#)
- [EU ratification](#)

# State of play

At present, the negotiating teams have [reportedly found common ground on 95% of the legal text](#) which could comprise a deal. However, the EU and UK are reportedly “[still miles apart](#)” on level playing field issues, governance and fisheries. Additionally, some of the text within the 95% is linked to gaining agreement on the level playing field (e.g. Text in relation to energy, haulage, aviation and rules of origin). Time available for agreement and ratification of any deal is also in extremely short supply, with the end of the transition period in just over five weeks (23:00 GMT, 31 December 2020).

The three issues of level playing field, governance and fisheries were known to be difficult at the start of the future relationship negotiations, and they remain so. There are some linkages between all of these areas, but in particular between the level playing field and governance. An assessment of the state of the negotiations, based on media reports due to the lack of official sources, in these three areas is outlined below.

## Level playing field

This term refers to a set of common rules/standards designed to prevent businesses in one country undercutting their rivals in other countries.

Earlier in the negotiations, the [most serious divergence between the UK and EU positions in this area was on State Aid](#), with the EU’s position demanding the UK’s dynamic alignment to EU state aid regime. However, both sides are reportedly “[inching closer to an understanding](#)” in this area, potentially along the lines of the EU chief negotiator’s later proposals for a “[toolbox](#)” of measures including agreement on high level principles, an independent UK competition authority, and a dispute settlement mechanism with quick (cross-)retaliatory measures.

Agreement on non-regression from a set of workers’ rights and environmental protections was previously thought to be easier to achieve. The disagreement at present appear to focus on the nature of any [ratchet clauses](#) and governance of the level playing field, and in particular the ability to take swift retaliatory action in the event of any divergences

## Governance

At the start of the negotiations, the UK argued for a set of unlinked agreements, while the EU’s position was that it sought one agreement with a single governance system. The current negotiations are on the basis of a single agreement, albeit for a deal that is “thinner” than originally envisaged.

The dispute settlement mechanism has been contentious throughout the negotiations, and in particular for the UK, the jurisdiction of the Court of Justice of the European Union (CJEU). In the most recent talks, cross-retaliation measures are [cited as a specific area where agreement has not been reached](#).

Governance and role of the CJEU also have key bearings on the potential for police and judicial cooperation. This devolved issue is [discussed by Camino Mortera-Martinez in a recent article for the Centre for European Reform](#).

Specifically on fisheries governance, the UK reportedly wants this topic to be [outside the general dispute settlement mechanism](#).

## Fisheries

On fisheries the UK and EU earlier negotiating positions set out opposing aims. The UK sought an agreement based on the EU's relationship with other coastal states with annual negotiations on access to waters and fishing opportunities. It also sought to abandon the principle of sharing fishing opportunities on the basis of historical catches. The EU sought to maintain existing access to the UK's waters and quota shares.

This issue remains live. However, [RTE's Tony Connelly writes that](#):

“ There is a strong belief that if both sides can overcome those fundamental differences on the level playing field, fisheries will be resolved as a last minute, trade-off, with the issue being kicked up to the highest level, meaning Boris Johnson, Ursula von der Leyen, Angela Merkel, Emmanuel Macron getting down to the hard-bargaining.”

# 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.

## Internal Market Bill

The UK Internal Market Bill, published on 9 September 2020, has been controversial. The Bill proposed powers for UK Ministers that could be used to disapply parts of the Withdrawal Agreement and thereby "[break international law in a very specific and limited way](#)".

The EU has strongly objected to these powers and linked their status to the negotiations on the future relationship. The EU called on the UK government to withdraw the proposals from the Bill by the end of September, under threat of legal action. The European Commission then began a formal infringement process against the UK on 1 October 2020. [According to the European Commission:](#)

“ On 1 October 2020, the European Commission sent a letter of formal notice to the UK for breaching its obligations under the Withdrawal Agreement. The UK had until the end of the month to submit its observations to that letter. To date [5 November], the EU has received no reply from the UK. The Commission is therefore considering next steps, including issuing a Reasoned Opinion.”

In the UK Parliament, the Internal Market Bill completed its passage through the House of Commons across the month of September and passed to the House of Lords. During Lords' Committee Stage (five days between 26 October and 9 November), Part 5 on the Ireland/Northern Ireland Protocol was removed.

The [Institute for Government](#) states that:

“ The government has said that it will reinsert the clauses in the bill when it returns to the House of Commons. However, if the UK reaches agreement with the EU on the issues to which the powers relate, it could decide to remove these specific clauses from a revised version of part five.”

On 15 November, the Irish Government's Minister for Foreign Affairs and Minister for Defence, [Simon Coveney](#) commented:

“ If the British government is determined to continue with their Internal Market Bill and to reintroduce parts of that Bill which were removed by the House of Lords this week, then I think this [trade deal] won't be ratified by the EU. Because there's no way that the EU will agree to ratify a new agreement if the British government is breaking the existing agreement that's not even 12 months old, and breaking international law by doing that.”



## Fourth meeting of the Specialised Committee on Ireland and Northern Ireland Protocol

On 5 November, the fourth meeting of the Specialised Committee on Ireland and Northern Ireland Protocol took place by video conference. Following this meeting, both the UK and European Commission published statements:

- [UK Government](#)
- [European Commission](#)

Both statements reported progress on some Protocol implementation issues, as well as "significant outstanding issues" such as how to classify which goods are at risk of entering the EU single market.

[According to the UK's National Audit Office \(6 November\):](#)

“ there is a very high risk [the Protocol] may not be implemented in time.”

The reasons cited for this are: the scale of the changes required; the limited time available; the dependence on ongoing negotiations; and the complexity of the arrangements.

More generally, on the UK Government's preparations for the changes that will affect all its borders from 1 January 2021, the National Audit Office concluded that:

“ although government departments have made progress in recent months implementing the changes required to systems, infrastructure and resources to manage the border at the end of the post-EU Exit transition period, it is still likely that widespread disruption will occur from 1 January 2021.”

# What next?

Despite the suspension of face-to-face negotiations again due to COVID-19, [talks are continuing remotely this week](#).

One further European Council meeting is currently scheduled for 10-11 December although further meetings can be arranged. The European Parliament is currently sitting in Plenary across 23-26 November, with the last sitting before the end of the transition period on 14-17 December. The transition period ends at 23:00 GMT 31 December 2020.

While many deadlines for a future relationship deal to be done have been made (and missed), none were previously defined in law. The UK and the EU could even conclude an agreement on trade and their broader future relationship after the end of the transition period. However, the effect of not reaching an agreement that can be implemented (at least in some form) before the end of the transition period would be significant disruptions in trade, security cooperation and political relations from 1 January 2021.

Any deal that may be agreed in the coming days or weeks is likely to be "thinner" than envisaged by the EU in its negotiating mandate, which was closely based on the (non-binding) Political Declaration signed by both sides at the same time as the Withdrawal Agreement was made. Any deal will also be thinner than the "partnership" envisaged by the UK Government led by Prime Minister Theresa May until July 2019. The current UK Government's negotiating red lines, for example, the desire to gain the flexibility to significantly diverge from the existing rules and standards of the EU's Single Market and for the Court of Justice of the European Union (CJEU) to have no role to play in any joint dispute mechanism, have led the negotiations to a "harder" form of Brexit.

On 19 October, the [Fraser of Allander Institute](#) wrote:

“ whilst some form of deal might be reached, hope of a comprehensive and constructive future partnership seems less likely (although any deal is likely to be spun as a major success). If a deal is struck, it seems likely to be largely silent on key areas of our economy such as services (which make up over 75% of our economy).”

More recently, on 22 November, the [Director of the Institute for Fiscal Studies, Paul Johnson](#) said to the BBC:

“ even the best deal that we’re likely to get at the moment would have counted as one of the hardest imaginable Brexit deal four years ago when we started to look at this.”

“ So that sort of deal will result in the economy at best growing less quickly than it otherwise would have done and the best estimates I’ve seen of the impact of no deal is that it may well take a percent or two off the size of the economy next year.... but it is worth saying as with everything else, and particularly in the context of Coronavirus, there is just enormous uncertainty about what the impact’s going to be.”

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