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SPICe Briefing

Pàipear-ullachaidh SPICe

Issue 18: 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 has published briefings outlining the key events, speeches and documents published. This briefing charts the final days of negotiations resulting in agreement in principle on the EU-UK Trade and Cooperation Agreement on Christmas Eve, 24 December 2020.



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Executive Summary

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

This briefing:

- Charts the final days of negotiations on the EU-UK future relationship, ahead of agreement being reached on 24 December 2020.
- Signposts to early explanations of what the Agreement contains.
- Describes the Scottish Government's initial reaction to the Agreement.
- Reports on the imminent recall of the UK Parliament and the Scottish Parliament to consider the Agreement and its implementation in UK domestic law through primary legislation.

Agreement in principle has been reached on an EU-UK Trade and Cooperation Agreement, with both the EU and UK Government now racing to apply the Agreement before the end of the transition period. The time available for parliamentary scrutiny is extremely short. Draft primary legislation in the form of the European Union (Future Relationship) Bill was published on 29 December with the objective of implementing the Agreement in UK law.

The UK Parliament will consider this legislation over one day on 30 December 2020. Because the Bill legislates in devolved areas, the UK Government has requested legislative consent from the Scottish Parliament. To consider this, the Scottish Parliament is also to be recalled on 30 December 2020.

The transition period will end at 11pm on 31 December 2020.

Negotiations in week of 14 December 2020

Negotiations continue

[Issue 17](#) charted the EU-UK future relationship negotiations as they entered December. At that point in time, while both the UK and EU remained in active negotiations, the Prime Minister had described not reaching an agreement as a ["strong possibility"](#) and the [European Commission President had reportedly told the European Council no deal was the more likely scenario](#).

Despite long-running divergences on policy, previous political-level interventions kept the negotiations going into December. After a meeting of the Prime Minister and European Commission President on 9 December, another decision-point on whether to continue the talks was set for Sunday 13 December 2020. On the 13 December, the Prime Minister and European Commission President spoke on the phone and, again, the decision was to keep talking and "go the extra mile". Their [joint statement said](#):

“ We had a useful phone call this morning. We discussed the major unresolved topics. Our negotiating teams have been working day and night over recent days. And despite the exhaustion after almost a year of negotiations, despite the fact that deadlines have been missed over and over we think it is responsible at this point to go the extra mile. We have accordingly mandated our negotiators to continue the talks and to see whether an agreement can even at this late stage be reached.”

Negotiations continued in Brussels over the following days.

Michel Gove evidence to the Scottish Parliament

On 15 December 2020, the Scottish Parliament's Culture, Tourism, Europe and External Affairs Committee held an [evidence session with the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, Michel Gove](#). In advance of the meeting the Committee received [correspondence from the Cabinet Office](#).

On the negotiations, [Michael Gove said](#):

“ It is difficult to provide a real-time optic from the negotiations... However, as you rightly say, there are still three areas of significant difference: the level playing field, governance—the means by which either side might take appropriate autonomous measures if the other side is seen to be departing from equivalence or level playing field arrangements—and the issue of fisheries, with which the committee is very familiar. I personally remain hopeful that we will secure an agreement, but, as the Prime Minister and, indeed, EU leaders have pointed out, we need to be ready for every eventuality.”

Further questioning included border procedures, business readiness, the Ireland/Northern Ireland Protocol and the Scottish Government's expenditure on no-deal readiness.

European Commission: "narrow" path to a deal

At the European Parliament plenary on 16 December 2020, the European Commission President, Ursula von der Leyen, [described progress in the EU-UK negotiations, saying there was now a narrow path to a deal](#):

“ And as things stand, I cannot tell you whether there will be a deal or not, but I can tell you that there is a path to an agreement now. The path may be very narrow but it is there and it is therefore our responsibility to continue trying. The good news is that we have found a way forward on most issues, but this is now a case of us being so close and yet so far away from each other. Because two issues still remain outstanding, you know them: the level playing field and fisheries.”

The Commission President went on to confirm progress has been made on governance, state aid and the non-regression of certain standards, with other areas such as fisheries and how to manage the possibility of future divergence in standards outstanding issues:

“ Now, first on the level playing field. Our aim is simply to ensure fair competition on our own market, very simple. And this is why we need to establish robust mechanisms. The architecture we are working on rests on two pillars: state aid and standards. On state aid, we have made progress, based on common principles, guarantees of domestic enforcement, and the possibility to autonomously remedy the situation where needed. On standards, we have agreed a strong mechanism of non-regression – that is a big step forward – and this is to ensure that our common high labour, social and environmental standards will not be undercut. And of course, difficulties still remain on the question of how to really future-proof fair competition. But I am also glad to report that issues linked to governance, by now, are largely being resolved.”

“ On fisheries, the discussion is still very difficult. We do not question the UK's sovereignty over its own waters, but we ask for predictability and stability for our fishermen and fisherwomen. And in all honesty, it sometimes feels like we will not be able to resolve this question. But we must continue to try and find a solution. And this is the only responsible and right course of action.”

UK Government: negotiations in a "serious situation"

Following another day of negotiations, the Prime Minister and European Commission President held a further 'stocktake' phonecall on the evening 17 December 2020.

The [UK's Chief Negotiator emphasised the difficulties in the talks](#) and the [UK Government's readout from the call described the situation as "serious"](#):

The Prime Minister spoke to Commission President Ursula von der Leyen this evening about the state of play in the UK / EU negotiations. The Prime Minister underlined that the negotiations were now in a serious situation. Time was very short and it now looked very likely that agreement would not be reached unless the EU position changed substantially.

He said that we were making every effort to accommodate reasonable EU requests on the level playing field, but even though the gap had narrowed some fundamental areas remained difficult.

On fisheries he stressed that the UK could not accept a situation where it was the only sovereign country in the world not to be able to control access to its own waters for an extended period and to be faced with fisheries quotas which hugely disadvantaged its own industry. The EU's position in this area was simply not reasonable and if there was to be an agreement it needed to shift significantly.

The [European Commission's readout](#) concurred that fisheries remained "very challenging":

This evening I took stock with UK Prime Minister Boris Johnson of the on-going negotiations for a comprehensive Partnership Agreement between the European Union and the United Kingdom.

We welcomed substantial progress on many issues. However, big differences remain to be bridged, in particular on fisheries. Bridging them will be very challenging.

Negotiations will continue tomorrow.

Earlier on the 17 December, the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, [Michael Gove gave evidence to the House of Commons' Committee on the Future Relationship with the European Union](#). Michael Gove was questioned on the UK Government's view of state of the negotiations as they related to level playing field issues, state aid, fisheries, dispute resolution, data protection, security cooperation and Erasmus. The envisaged process for ratification was also covered. Michael Gove emphasised the UK Government's desire to agree a Free Trade Agreement with the EU but said:

“ at the moment, the most likely outcome is that we will leave on WTO terms...”

“ ...I think the view has been expressed by some that if there is no agreement by 31 December, we would go back to the negotiating table in a month, two months or three months' time. That would be it. We would have left on WTO terms. It is still the case, of course, that there would be contact between the UK and European nations and politicians, as one would expect, but what we would not be doing is attempting to negotiate a new deal—no.”

On the same day, Michael Gove also [provided evidence to the House of Lords Select Committee on the European Union](#).

European Parliament deadline

On 17 December 2020, following prompting by the [UK Coordination Group](#) of MEPs, the Conference of Presidents (which prepares the European Parliament's timetable and plenary sitting agendas and consists of the leaders of the parliament's political groups) issued a statement. This statement emphasised the Conference of Presidents' desire to avoid a no deal scenario and willingness to organise an extraordinary plenary session towards the end of December that would allow for ratification to be progressed, but [only if agreement had been reached by a deadline of Sunday 20 December](#).

On 18 December, the European Parliament held a debate on the Future Relations between the EU and the UK with [speeches from the Vice-President of the European Commission Maroš Šefčovič and Chief Negotiator Michel Barnier](#). Michel Barnier said:

“ We have very little time remaining, just a few hours, to work though these negotiations if we want this agreement to enter into force on 1 January.”

On the evening of 20 December, the Chair of the UK Coordination Group, David McAllister MEP tweeted:

“ We have just learned that there will be no agreement today. Therefore, the European Parliament will not be in a position to grant consent to an agreement this year.”

At this stage, [provisional application](#) became a more likely EU process for the application of any agreement ahead of 1 January 2021.

Negotiations in week of 21 December 2020

Negotiations continue into Christmas Eve

On 19 December 2020, RTE's Europe Editor, Tony Connelly reported on the previous week's EU-UK negotiations, including [detail on the level playing field issues and fisheries negotiations](#).

Negotiations continued into the week of the 21 December 2020 with the EU's Chief Negotiator Michel Barnier [tweeting](#):

“ In this crucial moment for the EU-UK negotiations, we continue to work hard with @DavidGHFrost and his team. The EU remains committed to a fair, reciprocal & balanced agreement. We respect the sovereignty of the UK. And we expect the same. Both the EU & UK must have the right to set their own laws & control their own waters. And we should both be able to act when our interests are at stake.”

Negotiations in the final days and hours focussed on fisheries.

However, as reported by Tony Connelly on 22 December, other issues continued to be finalised including [rules of origin for electric batteries; UK participation in Erasmus; a non-discrimination clause on short term visas; and "some issues around the level playing field and governance, areas the UK wants to change, or wants sunset clauses on. For example, London wants to limit the extent to which energy can be subject to the level playing field constraints."](#)

On 22 December, Michel Barnier briefed the Member State's ambassadors to the EU (formally the [Permanent Representatives Committee or Coreper](#)). Coreper would play a key role in the provisional application of any agreement.

In the evening of 23 December, the UK Government Cabinet [met to discuss an emerging agreement, although negotiations continued in Brussels](#).

After negotiations [continued though the night of the 23 December](#), an announcement was expected on 24 December.

Agreement is reached

In coordinated announcements at 3pm (UK time) on 24 December 2020, the UK and EU confirmed that agreement had been reached on the legal text of a EU-UK Trade and Cooperation Agreement:

- [The Prime Minister's statement](#).
- [European Commission statement and press conference](#).

The text of the Agreement and other associated documents is available on the [UK Government website](#) and [European Commission's website](#).

At the time of writing, this Agreement is still "in principle" because it has not been ratified or applied by the parties to the Agreement.

In his statement, the Prime Minister indicated that he hoped there would be a parliamentary vote on 30 December 2020 to implement the Agreement in the UK. Implementation of the Agreement will require primary legislation.

The European Commission's statement confirmed that it would seek to apply the Agreement on a provisional basis before the end of the year, and allow for European parliamentary consent in 2021. The Commission's statement set out the process:

- The negotiations could only be finalised at a very late stage before the expiry of the transition period. Such late timing should not jeopardise the European Parliament's right of democratic scrutiny, in accordance with the Treaties.
- In light of these exceptional circumstances, the Commission proposes to apply the Agreement on a provisional basis, for a limited period of time until 28 February 2021.

The Commission will swiftly propose Council decisions on the signature and provisional application, and on the conclusion of the Agreement.

The Council, acting by the unanimity of all 27 Member States, will then need to adopt a decision authorising the signature of the Agreement and its provisional application as of 1 January 2021. Once this process is concluded, the Trade and Cooperation Agreement between the EU and the UK can be formally signed.

The European Parliament will then be asked to give its consent to the Agreement.

As a last step on the EU side, the Council must adopt the decision on the conclusion of the Agreement.

On 28 December, a spokesperson for the German Presidency of the Council of the EU confirmed that [Member State's ambassadors to the EU unanimously approved the provisional application](#) of the EU-UK Trade and Cooperation Agreement as of 1 January 2021. This decision was [formally adopted by the Council of the European Union on 29 December 2020](#).

What does the Agreement cover?

The new EU-UK Trade and Cooperation Agreement consists of three pillars:

- A free trade agreement.
- Law enforcement and judicial cooperation in criminal matters.
- Governance arrangements, including dispute settlement.

The Agreement is [described by SPICe in a 'long read' blog post published on 28 December 2020](#).

The UK Government and European Commission have published interpretations of the Agreement:

- UK Government - [Summary Explainer](#)
- European Commission - [Q&A](#); [Brochure](#); [Overview of consequences and benefits](#)

Other sources describing the content of the Agreement are:

- [The Institute for Government's explainer](#)
- [Commentary from UK in a Changing Europe](#)
- [House of Commons Library](#)

Scottish Government reaction

On 25 December, the Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell, was [quoted saying](#):

“ A no deal outcome has thankfully been avoided but in the midst of a pandemic and economic recession Scotland is now being forced to cope with a hard Brexit in less than one week’s time. Leaving the European Single Market and Customs Union would be damaging at any time but in the middle of the current crisis it is unforgivable and completely unnecessary.”

“ We are doing everything we can to mitigate against the consequences of the UK Government’s actions. Measures are being taken to protect trade and critical supply chains, to reduce the risks of disruption of goods and people crossing borders and to provide Scottish businesses with the vital advice and information they need to continue operating effectively after 31 December.”

The [Scottish Government's press release stated](#) "the UK’s deal will still have a profoundly negative impact on Scotland" and listed the following:

- Scottish Government modelling estimates that a deal of the type that appears to have been agreed could cut Scotland's GDP by around 6.1% (£9 billion in 2016 cash terms) by 2030 compared to EU membership
- all goods sectors will face the impact the higher costs of trading with the EU as a result of the additional customs and borders procedures and paperwork. For key service sectors, access to EU markets will be reduced compared to EU membership
- extra costs could make Scottish businesses uncompetitive in some markets: manufacturing, food and drink, agriculture and forestry are particularly at risk
- lamb and beef exports will be hard hit by the extra costs of exporting to the EU
- businesses trying to access UK and EU markets will face additional bureaucracy and costs. For example the seafood sector will require new certificates and changes to business practices to continue to export to the EU
- justice and security cooperation will be seriously impacted, with Police Scotland and the Crown Office having to use slower and less effective tools in the fight against crime
- reduced EU migration will also have a significant negative impact on the economy, population and wider society and culture. It will increase shortages in key areas like health and social care
- Scotland and its students will no longer be able to participate in Erasmus, along with a number of other EU programmes which the UK decided to exclude from the deal. On the key science programme Horizon Europe, while it is included in the deal, the UK government have not made clear the details, including the level of access which will be available.
- Scottish fishing industry will see only a fraction of the additional quota promised and the compensation arrangements agreed if the UK Government restricts access to UK waters, means that this is control of UK waters in name only

On the loss of Erasmus, the Minister for Further Education, Higher Education and Science, Richard Lochhead [issued a statement](#) expressing "profound disappointment" and stating "After years of discussions and meetings, the UK Government has made these decisions irrespective of the views of the Devolved Administrations". On Twitter, the [First Minister described the decision](#) as "cultural vandalism". The UK Government has committed to [funding a replacement scheme](#).

On 29 December, the Scottish Government published an [analysis of the Agreement's impact on the Scottish fisheries sector](#). This stated:

“ Scotland's valuable staple fish stocks include Cod, Haddock, Whiting and Saithe. Far from having substantial increased opportunities in the future, the Scottish industry will have access to fewer of these fish than under the existing Common Fisheries Policy arrangements – even at the end of the five and half year phase-in period, according to the analysis.”

“ These are the white fish stocks that a significant part of Scotland’s family-owned fishing fleet is dependent upon for their livelihoods and the shares even in five and a half years’ time, will still be less than their equivalents now. This also has a potential knock on effect for harbours, fish markets and processors – fewer fish caught means fewer being landed and sold on for processing in facilities all around Scotland.”

“ Cod and Saithe landings will be hit particularly hard. Pelagic landings (such as mackerel and herring) and some other stocks will see a modest gain.”

UK Parliament and Scottish Parliament recalled

Ratification of the EU-UK Trade and Cooperation Agreement from the UK side requires parliamentary approval and primary legislation to implement it in UK domestic law. The UK Parliament is being recalled on 30 December 2020 to consider primary legislation with this effect.

Proceedings are [expected to begin at 9:30am in the House of Commons](#) and to complete on the same day.

European Union (Future Relationship) Bill: draft published

On 29 December 2020, the UK Government published a [draft European Union \(Future Relationship\) Bill](#) for consideration and a vote by the UK Parliament the following day.

This draft Bill covers three of the agreements announced by the EU and UK on the 24 December 2020 - the Trade and Cooperation Agreement, Agreement on Nuclear Cooperation and Agreement on Security Procedures for Exchanging and Protecting Classified Information. The [draft Explanatory Notes state](#):

“ The principal purpose of the Bill is to implement the Agreements. This is primarily done by way of detailed, specific provisions and amendments to existing legislation to meet the UK’s commitments under the Agreements. The Bill also includes a general provision requiring existing domestic law to be modified to give effect to the Agreements, but only so far as necessary to implement the Agreements. The Bill also provides a delegated power to be used to make further provision to give effect to the Agreements.”

The Bill legislates in areas of devolved legislative competence and provides powers to Scottish Ministers. For example the Explanatory Notes say:

“ The Bill contains a power enabling Ministers, the devolved authorities, and Ministers and the devolved authorities acting jointly, to make regulations necessary to implement the Agreements and matters relating to them.”

As a result, [legislative consent is being sought from the Scottish Parliament](#)

Legislative consent sought from the Scottish Parliament

The [draft European Union \(Future Relationship\) Bill](#) proposes to legislate in areas of devolved legislative competence and provide powers to Scottish Ministers. As a result, the Bill triggers the legislative consent mechanism and the UK Government has sought legislative consent from the Scottish Parliament.

Annex A of the draft Bill describes the clauses which the UK Government seeks legislative consent for. A Legislative Consent Memorandum from the Scottish Government published on 29 December 2020 sets out [its position on the granting of legislative consent](#).

The Scottish Parliament is to be recalled at 1.30pm on Wednesday 30 December 2020 to consider the EU-UK Trade and Cooperation Agreement and related legislative consent. Ahead of this recall, at 10:00am, the Culture, Tourism, Europe and External Affairs Committee will [take evidence on a legislative consent memorandum from Michael Russell, Cabinet Secretary for the Constitution, Europe and External Affairs](#).

Scottish Government position on legislative consent

On the evening of 29 December 2020, the Scottish Government published its [Legislative Consent Memorandum \(LCM\) on the European Union \(Future Relationship\) Bill \(FRB\)](#). This sets out the Scottish Government's position on legislative consent to the Bill. The LCM concludes:

The Scottish Government recognises that the UK has now left the EU, despite the wishes of the people, Parliament, and Government of Scotland. The Scottish Government believes that agreement with the EU on a future relationship that safeguards the interests of the UK and Scotland is now essential. The FRA is not that agreement and the relationship it envisages will be damaging to Scotland's interests in the short, medium, and long term. The Scottish Government does not therefore support the UK Government's agreement, and cannot invite the Scottish Parliament to give its consent to the Bill that implements it.

The Scottish Government also deprecates the time for parliamentary scrutiny in both devolved legislatures and the UK Parliament, and believes that the approach to implementation in the Bill means that the full implications and impact of the agreement cannot be known with the clarity required for such an important piece of legislation.

Despite the UK's withdrawal from the EU, it remains important that the Scottish Government continues to represent the views of the people of Scotland on this crucial issue, and continues to respect their clearly and repeatedly expressed wish to remain within the EU. The Scottish Government will also argue constructively for the UK to have a more beneficial relationship short of full membership with the EU, as well as preparing for Scotland to resume full membership of the EU as an independent country.

The Scottish Government does not anticipate that the position expressed by the Scottish Parliament will receive any meaningful recognition or respect from the UK Government. Nonetheless, the Scottish Government firmly recommends that the Scottish Parliament not give its consent to the European Union (Future Relationship) Bill.

A SPICe blog post providing [further analysis of the LCM was published on 29 December](#).

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