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Issue 5: 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 fifth briefing covers the second round of negotiations. It also outlines comment on an extension to the transition period, the role of the European Parliament and implementation of the Ireland/ Northern Ireland Protocol.



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Executive Summary

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

This briefing:

- Provides details on the second round of negotiations held during the week of 20 April 2020.
- Provides details on the growing discussion about whether the transition period should be extended.
- Looks at the role of the European Parliament in the negotiations.
- Reports on the implementation of the Ireland/Northern Ireland Protocol.

Negotiations during the COVID-19 pandemic

As referenced in [Issue 4 of the update](#), the COVID-19 pandemic has seriously disrupted the future relationship negotiations. A first round of talks took place at the beginning of March but two subsequent rounds were postponed as the parties explored how to conduct negotiations remotely.

The second round of negotiations subsequently took place last week. Two further rounds of negotiations have been scheduled for:

- w/c 11 May
- w/c 1 June

With the deadline for any decision to extend to the transition period on 1 July 2020, managing only four full rounds between now and the end of June appears to make achieving significant progress in the negotiations challenging. However, before the impact of COVID-19 hit, [only 5 rounds of negotiations over 18 days had been scheduled](#) up to the middle of May. Therefore, it is possible only one round of negotiations might be lost and the newly scheduled rounds are due to last five days each meaning negotiations will be held over 19 days up to the end of the first week of June.

Round 2 of the negotiations

The second round of negotiations took place during the week of 20 April. The [agenda for the negotiations](#) showed that discussions included focus on the following areas:

- trade in goods
- trade in services
- level playing field provisions
- fisheries
- transport
- law enforcement and judicial cooperation

Following the conclusion of the round, both the UK government and the European Commission published statements providing updates from their perspectives. Both sides presented downbeat assessments on the status of the negotiations with divisions on level field provisions and fisheries highlighted by both the UK and the EU.

The [UK government statement](#) said:

“This was a full and constructive negotiating round, conducted remotely by video conference, and with a full range of discussions across all the issues, on the basis of the extensive legal texts provided by both sides in recent weeks.”

“ However, limited progress was made in bridging the gaps between us and the EU. ”

“ Our assessment is that there was some promising convergence in the core areas of a Free Trade Agreement, for example on goods and services trade, and related issues such as energy, transport, and civil nuclear cooperation. ”

“ We regret however that the detail of the EU’s offer on goods trade falls well short of recent precedent in FTAs it has agreed with other sovereign countries.”

“ This considerably reduces the practical value of the zero tariff zero quota aspiration we both share.”

“ There are also significant differences of principle in other areas. For example we will not make progress on the so called "level playing field" and the governance provisions until the EU drops its insistence on imposing conditions on the UK which are not found in the EU’s other trade agreements and which do not take account of the fact that we have left the EU as an independent state.”

“ On fisheries, the EU's mandate appears to require us to accept a continuance of the current quotas agreed under the Common Fisheries Policy. We will only be able to make progress here on the basis of the reality that the UK will have the right to control access to its waters at the end of this year.”

“ We now need to move forward in a constructive fashion. The UK remains committed to a deal with a Free Trade Agreement at its core. We look forward to negotiating constructively in the next Round beginning on 11 May and to finding a balanced overall solution which reflects the political realities on both sides.”

The [statement made by Michel Barnier](#) summarising the Task Force view set out a similarly downbeat perspective. He said:

“ We have just 8 months ahead of us to advance on three workstreams:”

1. Ensuring the proper implementation of the Withdrawal Agreement;”
2. Preparing ourselves to the negative economic consequences that the end of the transition period will entail;”
3. Negotiating a future partnership between the European Union and the United Kingdom with a view to limiting those negative consequences...”

“ ...However, my duty today, as negotiator, is to tell you the truth: that goal – of achieving parallel progress on all areas – was only very partially achieved this week.”

“ While, it is true, this round did enable us to identify areas where our positions are close – at least on the technical level.”

“ But I regret that the United Kingdom refused to engage seriously on a number of fundamental issues – issues that we did not pull out of our hat: they can be found quite precisely in the Political Declaration that we agreed with Boris Johnson. This document must be implemented seriously, precisely and objectively. I regret to say that this is not yet the case.”

Michel Barnier highlighted four areas in which he said progress was disappointing:

- Level playing field issues
- The overall governance of the future partnership
- Future police and judicial cooperation in criminal matters
- Fisheries

Michel Barnier also made reference to the EU's requirement for the UK government to ensure the proper implementation of the Withdrawal Agreement including for the necessary border provisions between Great Britain and Northern Ireland. On this he said:

“Indeed, with just 8 months to go before the end of the transition period, it is urgent to take the necessary measures for the correct implementation of the Withdrawal Agreement...”

“... We need clear evidence that the UK is advancing with the introduction of the agreed customs procedures for goods entering Northern Ireland from Great Britain.”

“We need clear evidence that the UK will be able to carry out all necessary sanitary and phytosanitary controls, as well as other regulatory checks on goods entering Northern Ireland from outside the EU as of January 2021, in 8 months' time.”

“Indeed, I reminded David Frost again during this round that the faithful and effective implementation of the Withdrawal Agreement is absolutely central to our ongoing negotiations.”

At the conclusion of the negotiating round, the UK government's chief negotiator David Frost wrote a [series of tweets](#) in which he set out further information on the UK government's perspective on the state of the negotiations. In particular he set out that the UK wished to achieve an Free Trade Agreement with the EU which is similar to the EU's other FTAs and therefore should not include commitments on level playing field provisions. He wrote:

“We support high standards. But there is no need for novel and unprecedented "level playing field" rules, for example tying us to EU laws, or a role for the EU Court. What the EU proposes is unlike anything agreed in other such FTAs and we will not agree to it here.”

On fisheries, David Frost tweeted that the UK government was ready to agree a deal based on annual negotiations and outwith the Common Fisheries Policy:

“Finally, we are ready to work to agree a fisheries agreement which reflects our rights under international law to control our own waters, & provides for annual negotiations over access based on scientific principles. We won't agree to continuing the Common Fisheries Policy.”

Extension of transition

In the last two weeks, a number of experts and newspaper editorials have called for the UK government to request an extension of the transition period as a result of the COVID-19 pandemic.

As discussed in a [recent SPICe blog](#), any request for an extension to the transition period must be made (by either the UK or the EU) by the end of June 2020. The bandwidth taken up in dealing with COVID-19 appears to leave little scope for making significant progress in the negotiations. In addition, the economic damage that will be done by the global pandemic will leave business unprepared to then address the changes brought about by the end of transition. As a result, any extension might be about trying to delay the economic effect of the end of the transition period as UK businesses will be struggling following the global pandemic.

However, the UK government has consistently said it will not request an extension to the transition period. This was reaffirmed most recently by the UK government's Chief Negotiator, David Frost in a [series of tweets](#). He also set out the UK government's [reasoning](#):

“ Extending would simply prolong negotiations, create even more uncertainty, leave us liable to pay more to the EU in future, and keep us bound by evolving EU laws at a time when we need to control our own affairs. In short, it is not in the UK's interest to extend. ”

As a result, the UK will leave the transition period on 31 December 2020.

The [Irish Times published an editorial](#) on 20 April 2020 in which it expressed regret at the UK government's decision not to seek an extension and suggested that if a deal was to be reached before the end of the transition period it would require goodwill on both sides. The editorial went on to reference the implementation of the Withdrawal Agreement stating:

“ A call last week between British Cabinet Office minister Michael Gove and European Commission vice-president, Maroš Šefcovic, saw the latter again broach the UK's lack of preparedness for checks on the Irish Sea to preserve a borderless island. An EU statement afterwards reiterated the “urgent need” for a timetable for such work. If the UK expects EU good faith in the future relationship talks it must demonstrate the same in implementing commitments it made. ”

On 20 April, the Sunday Times in the UK, [published an editorial](#) calling for an extension to the transition period as a result of the COVID-19 pandemic.

Some links to further expert comment on the issue of extension to the transition period is provided below:

- [UK in a Changing Europe - Covid-19 crisis strengthens case for extension](#) 23 April 2020
- [Prospect Magazine - Civil service grandees call for Brexit transition extension](#) 22 April 2020

- [Julian Jessop Independent Economist - The pro and cons of extending the Brexit transition](#) 22 April 2020
- [Centre for European Reform - Why the UK should extend the transition period](#) 20 April 2020
- [UK in a Changing Europe - The transition period needs to be extended](#) 20 April 2020
- [European Policy Centre - The need for a longer transition](#) 18 March 2020

A recent [SPICe Spotlight blog](#) summarised the key challenges for the UK government in its considerations over whether an extension to the transition period should be sought. In a [twitter thread](#), Georgina Wright of the Institute for Government set out the challenges for both the EU and the UK government if they wish to extend the transition period. She pointed out that the following matters would need to be agreed for an extension to become possible:

- Both sides would need to agree the terms of the extension for issues such as additional UK contributions to the EU budget . In addition, the Joint Committee would need to agree the terms and it is not due to meet again until June leaving time very tight.
- The European Commission can only agree to an extension in the Joint Committee **after** it has secured the approval of member states. Whilst it is probable the EU27 are likely to say yes to an extension - the European Commission must ensure it has the time for Joint Committee talks after internal EU27 talks have taken place.
- The internal legislative process facing the UK government to ensure a transition agreement is not unlawful.

Scottish Government call for extension

Ahead of the start of the second round of negotiations, the Scottish government called for the UK government to extend the transition period for two years as a result of the COVID-19 pandemic. In a [news release](#) announcing the call, the Cabinet Secretary for the Constitution, Michael Russell was quoted as saying:

“ Instead of its reckless decision to pursue a hard Brexit in the middle of this unprecedented crisis, the UK Government should today be asking the EU for the maximum two-year extension to the transition period.”

“ The benefits of co-ordinated European action have never been clearer.”

“ An extended transition will keep the UK as close as possible to the EU and provide an opportunity to re-think the future relationship.”

“ The UK Government is pressing ahead with negotiations without properly involving the Scottish Government, or taking account of our views.”

“ The Scottish economy cannot afford the double hit of COVID-19 and the growing likelihood of a ‘no deal’, or at best a hard Brexit deal, in less than nine months’ time.”

“ The voices of all four UK nations must be heard and I am therefore calling for an urgent meeting of the Joint Ministerial Committee (European Negotiations) which has the task of overseeing negotiations. Clearly if it does not meet, it cannot oversee.””

The Scottish government's request was immediately [rejected by the UK government](#).

Role of the European Parliament

The future relationship negotiations are currently being conducted between the UK government and European Commission. However, as with the Withdrawal Agreement and its negotiations, the European Parliament has a formal role to play in consenting to any international agreement likely to arise from these discussions.

The key group within the European Parliament tracking the future relationship negotiations is the UK Coordination Group (UKCG). This group was set up specifically for this task and its work is to [liaise with the European Commission's Task Force for Relations with the United Kingdom \(led by Michel Barnier\) to follow the Taskforce's work and to influence the negotiations through resolutions](#). The UKCG's role for the future relationship negotiations in the European Parliament is similar to the Brexit Steering Group's role in relation to the Withdrawal Agreement negotiations.

The UKCG is chaired by the German MEP, David McAllister in his role as Chair of the Foreign Affairs Committee (AFET). In an [article in TheParliamentMagazine.eu](#), McAllister lists the other members of UKCG as:

- the Chair of the Committee on International Trade (INTA)
- the Chair of the Conference of Committee Chairs (CCC)
- the Chair of the Subcommittee on Security and Defence (SEDE)
- the AFET and INTA rapporteurs
- a representative from each political group

The UKCG's recent activities are described by McAllister:

“ Any international agreement between the EU and a third country requires the consent of the European Parliament. In order to guarantee this consent, we as Parliament have to be involved in the process of negotiations by being regularly and fully informed. Due to the complexity, the valued expertise of our specialised committees is particularly relevant, too.”

“ As UKCG, we are in constant dialogue with the European Commission’s UK Task Force. We meet with Michel Barnier and his team regularly via videoconference to exchange views on recent developments such as the content of the EU draft legal agreement for the future EU-UK partnership or the draft text proposed by the UK.”

McAllister lists three priorities for the UKCG:

1. the future relationship negotiations.
2. implementation of the Withdrawal Agreement, where he states that the "European Parliament will continue to play a constitutional role in the scrutiny of the implementation of the Withdrawal Agreement". The UKCG have met with Maroš Šefčovič who is the EU's co-chair of the [Joint Committee](#) responsible for implementation of the Withdrawal Agreement.
3. to prepare for the end of the transition period.

These three priorities match closely with [those identified by Michel Barnier following the first round of future relationship negotiations](#).

Finally in his article, McAllister says that the European Parliament will adopt another resolution on the future relations ahead of the High Level Conference and European Council currently planned for June 2020. These two meetings are intended to serve as an evaluation point for how negotiations have progressed and are scheduled ahead of the deadline for any extension to the transition period. However the COVID-19 pandemic and its disruption of the negotiations to date has increased uncertainty surrounding these events.

The European Parliament previously [adopted a resolution in February on the proposed negotiating mandate for the European Commission](#). This resolution described the European Parliament's "determination to establish a relationship as close as possible with the UK" and called for the establishment of a joint parliamentary body to "monitor the implementation of the future agreement".

Alongside requiring the consent of the European Parliament, a final agreement will also require consent from the Council of Ministers and is likely to require consent from individual Member States before EU ratification. The UK aims to conclude a trade agreement similar to that the EU agreed with Canada. Under EU procedures, this Canadian agreement (called CETA) required the consent of individual Member States because it was [a Mixed Agreement - i.e. went beyond the exclusive competencies of the EU](#).

Implementation of the Withdrawal Agreement

As referenced [above in the discussion on the outcome of the second round of negotiations](#), Michel Barnier raised concerns about the UK government's preparations for the end of the transition period. Barnier raised concerns about UK government preparations for the introduction of the agreed customs procedures for goods entering Northern Ireland from Great Britain.

Dr Katy Hayward from Queen's University Belfast wrote a [twitter thread](#) examining the Irish sea border and the Northern Ireland Protocol which forms part of the Withdrawal Agreement. In the thread, Dr Hayward points out that the Protocol in effect means barriers to trade within UK internal market and that the UK-EU trade border actually falls within the UK. In addition, Dr Hayward suggests that the UK government's level of commitment to the provisions set out in the Protocol will also have an effect in terms of the two sides managing to agreeing a future relationship. In addition, she adds, if the UK government is serious about honouring its commitments in the Protocol it needs to begin arrangements to implement it. [Finally Dr Hayward ponders](#) what would happen if the UK government does not seek to implement the Protocol:

“ What if they don't bother? ”

“ Apart from blowing any credibility as a trustworthy trading partner (& remember news travels worldwide these days), the UK would basically make a #NoDeal much more likely. Does it matter? Well, yes, if you care about UK internal market.”

“ Foot-dragging, denial & obfuscation only increases the chances of NI being the price paid for the UK's glassy-eyed denial about what #Brexit means. ”

Given the reaction of Michel Barnier following the second negotiating round and this twitter thread from Dr Hayward, it is worth noting that this week sees the first meeting of the Joint Council's Specialised Committee on the implementation of the Northern Ireland Protocol.

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