



The Scottish Parliament
Pàrlamaid na h-Alba

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

SPICe Briefing

Pàipear-ullachaidh SPICe

Issue 12: EU-UK Future Relationship Negotiations

Iain Thom

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 reports on Round 7 and prospects for the future talks, alongside updates on Brexit-related legislation at the Scottish Parliament.



26 August 2020
SB 20-53

Contents

Executive Summary	3
Negotiations	4
What happened in Round 7	5
Negotiating texts	7
Future dates and deadlines	8
How might compromise happen?	9
Withdrawal Agreement implementation	9
Brexit legislation at the Scottish Parliament	11
Continuity Bill: scrutiny so far	11
Legislative consent for UK Bills	11
CTEEA Committee: inquiry evidence published	13
Institute for Government report: Trade and regulation after Brexit	14

Executive Summary

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

This briefing:

- Outlines areas of disagreement and recent changes to the UK and EU positions in advance of the latest formal negotiating round.
- Reports on what happened in Round 7, including changes to the EU's negotiating texts.
- Explores how compromise might happen to reach agreement.
- Provides an update on scrutiny of the UK Withdrawal from the European Union (Continuity) (Scotland) Bill.
- Summarises the current Brexit-related legislative consent memorandums lodged with the Scottish Parliament.

Negotiations

At the previous round of negotiations in July, UK and EU negotiators noted signs of progress on governance issues and the role of the Court of Justice of the European Union.

Writing for UK in a Changing Europe, [Professor Hussein Kassim summarises the progress made](#):

“ As well as coordination between social security systems, the UK has softened its position on the EU’s demand that the areas listed in the Political Declaration should be governed within a single framework, as opposed to multiple sectoral agreements, while the EU has reportedly found a way of meeting the UK’s demands on the role of the European Court of Justice in dispute settlement.”

However, the positions of the UK and the EU on level playing field issues and fisheries remain stumbling blocks.

Professor Kassim writes:

“ There appear to be two [issues] that most risk blocking an agreement.”

“ The first issue is fisheries. As an independent coastal state after Brexit, the UK wants control over its waters, and to negotiate annually over EU access – presumably as a precursor to reducing EU access.”

“ The EU initially insisted that European fishers retain their existing rights to fish and called for a long-term agreement on quotas. There are reports that Barnier now accepts the need to move from this ‘maximalist’ position – but still wants more certainty and stability for EU fishing communities.”

“ The second is the level-playing field. As David Frost has repeatedly underlined, as a sovereign nation the UK insists on the right to set its own standards and regulation. It refuses to accept EU rules or to be bound by the European Court of Justice.”

“ London contends that in its draft trade agreement it is asking for nothing more than the EU grants under its other trade agreements, notably with Canada. The EU, however, does not believe the UK’s sovereignty to be at issue. It counters that trade agreements need to reflect geography and levels of trade.”

“ The UK is a neighbouring state and trade heavily with the EU. It claims that the UK is asking for far greater access than granted by an EU agreement to any other trade partner.”

“ Moreover, since the UK is asking for such far-reaching access to the single market, the EU needs to be sure that there is a mechanism in place to ensure that European businesses are protected against future regulatory change that would give UK businesses an uncompetitive advantage.”

“ This could come from lower labour market or environmental standards, or from public subsidies. For this reason, the EU is asking the UK to publish the rules that will govern state aid in the future.”

The seventh round of negotiations was timetabled to address these difficult issues (alongside other topics), however [little progress was reported by either side](#).

What happened in Round 7

Across 18 - 21 August 2020, UK and EU negotiators met in Brussels for the latest formal round of negotiations. [The agenda indicated](#) the longest sessions were dedicated to the difficult issues of level playing field and fisheries, plus law enforcement & judicial cooperation. All three of these policy areas have significant devolved elements.

Following the end of Round 7, the UK's chief negotiator, [David Frost said there has been little progress](#), blaming the EU for not accepting the principles underlying the UK approach across all areas of the negotiation:

“ As I said last week, agreement is still possible, and it is still our goal, but it is clear that it will not be easy to achieve. Substantive work continues to be necessary across a range of different areas of potential UK-EU future cooperation if we are to deliver it.”

“ We have had useful discussions this week but there has been little progress. The EU is still insisting not only that we must accept continuity with EU state aid and fisheries policy, but also that this must be agreed before any further substantive work can be done in any other area of the negotiation, including on legal texts. This makes it unnecessarily difficult to make progress. There are other significant areas which remain to be resolved and, even where there is a broad understanding between negotiators, there is a lot of detail to work through. Time is short for both sides.”

“ We have been clear from the outset about the principles underlying the UK approach. We are seeking a relationship which ensures we regain sovereign control of our own laws, borders, and waters, and centred upon a trading relationship based on an FTA like those the EU has concluded with a range of other international partners, together with practical arrangements for cooperation in areas such as aviation, scientific programmes, and law enforcement. When the EU accepts this reality in all areas of the negotiation, it will be much easier to make progress.”

“ We will continue to work hard to reach an agreement. Chief Negotiators and their teams have agreed to remain in close contact over the next two weeks before the next Round in London in the week of 7 September.”

On the EU's side, chief negotiator [Michel Barnier indicated the EU's contrary view](#) that the EU has shown flexibility but UK side has not made "a reciprocal effort to understand European priorities".ⁱ

“ ...those who hoped or expected an acceleration of the negotiations this week will be disappointed. And frankly, for my part, I am disappointed and concerned. Also a little surprised, since Prime Minister Boris Johnson told us in June that he wanted to speed up our work during the summer.”

ⁱ Please note that many of the statements from Michel Barnier in this section were given in French and are translated here by Google's translation service.

“ However, this week again - just like during the July round - the British negotiators showed no desire to progress on the subjects fundamental for the European Union. And this, in spite of the flexibility which we have shown on our side, these last months, to take into account and to work on the three British red lines expressed by Boris Johnson: on the role of the European Court of Justice; on the legislative autonomy of the United Kingdom; and on fishing. ”

“ We have still not seen, on the British side, a reciprocal effort to understand European priorities.”

On the level playing field negotiations, Michel Barnier commented in particular on road transport issues as a concrete example:

“ British negotiators do not want certain standards to apply to British road hauliers when they travel within the territory of the European Union. And it was repeated to us again this week. In particular on working time or the installation of modern tachographs in trucks to control driving and rest times. And this, while asking for a level of access to the single market comparable to that of the Member States - which themselves accept these constraints!”

“ ...why should we give access to our roads to road carriers who refuse to apply rules that are essential to good working conditions and the safety of all?”

Barnier concluded:

“ ...The need for a Level Playing Field is not going to go away. Even if the UK continues to insist on a low-quality agreement on goods and services only. It is a non-negotiable pre-condition to grant access to our market of 450 million citizens, given the United Kingdom's geographic proximity and the intensity of our economic exchanges.”

“ ...We hear the British government concerns about maintaining its sovereignty and its regulatory autonomy. And we respect that. But no international agreement was ever reached without the parties agreeing to common rules.”

Summarising progress on the other topics under discussion, Barnier commented that:

“ Apart from the question of a Level Playing Field, there are still many other areas where progress is needed. For example:”

- Fisheries, where we have made no progress whatsoever on the issues that matter.”
- Governance, where we are still far from agreeing on the essential issue of dispute settlement.”
- Law enforcement, where we still struggle to agree on the necessary guarantees to protect citizens' fundamental rights and personal data.”
- Mobility and social security coordination, where our positions also remain far apart.”

“Nonetheless, to be fully objective, I should add that, in some of the ten tables that convened this week, we were able to make progress on technical issues. For example, on energy cooperation, participation in Union programs, and anti-money laundering, among others.”

“This will be useful when it comes to consolidating, together, a final text - provided we are able to agree on fundamentals first. However, too often this week, it felt as if we were going backwards more than forwards.”

In summary Michel Barnier's assessment was that:

“Today, at this stage, an agreement between the United Kingdom and the European Union seems unlikely.”

And in order to progress the talks, the EU negotiating team's view is that:

“We should start working on consolidating legal texts. We are ready to do it. We had already proposed a complete text in March. The British have also proposed British texts on certain subjects. But such consolidation will only be possible if it is done together - the British and us, and not each on its own - and on all subjects in parallel.”

“We are not here, since as I speak to you, the only prospect open by the British would be that of a trade agreement, zero tariffs, zero quotas, without any credible Level Playing Field framework and without a balanced agreement on fisheries.”

“It is naturally a no-go. It blocks everything.”

Negotiating texts

Going into Round 7, the EU published three updated sections to its draft agreement on:

- [Cultural objects](#) - this update replaces placeholder text in the original text.
- [Road transport](#) - this update addresses road haulage rules on driving times, breaks and rest periods, working time, and use of tachographs by drivers. This is an [area of continuing disagreement](#) in the negotiations.
- [Law enforcement and judicial cooperation](#) - this updates replaces the whole of Part Three, Title 1 and adds seven new annexes.

The UK also reportedly tabled a new legal text as part of the negotiations. For example a [Bloomberg report on 20 August said](#):

“The U.K. document, which has not been made public, is known as a “consolidated” text because it is the first version of the final treaty that incorporates wording the two sides agree on, as well as highlighting the areas where differences remain. Because it enables the two sets of negotiators to narrow down the list of disagreements, it is typically seen as a significant step forward.”

“ The move is also designed to force the hand of the EU, which has been reluctant to take such a step because of its demand for “parallelism.” Rather than agreeing on the least contentious topics first and moving on, the bloc insists on discussing all subjects at once -- something U.K. officials say has paralyzed the process.”

Future dates and deadlines

The next formal round of negotiations is scheduled for the week of 7 September.

While the chief negotiators indicated that their teams would remain in close contact ahead of that date, no "specialised sessions" where teams meet outwith the formal talks were mentioned.

The rest of the dates agreed under the negotiation's [Terms of Reference](#) are:

- (As necessary) - Meetings of the Chief Negotiators / their teams / specialised sessions: weeks of 24 and 31 August (London and Brussels)
- Round 8: week of 7 September to 11 September (London)
- (As necessary) - Meetings of the Chief Negotiators / their teams / specialised sessions: weeks of 14 and 21 September (Brussels and London)
- Round 9: week of 28 September to 2 October (Brussels)

The EU has insisted that October is the deadline for any agreement however past experience of the Withdrawal Agreement negotiations suggest this is likely to be flexible. Writing for UK in a Changing Europe, Professor Hussein Kassim provides a useful [view on the process and timetable required for EU ratification of any deal](#):

“ For an agreement to happen in time to be ratified by the two sides, there would have to be a breakthrough in September, so that a deal is ready ideally in advance of the European Council on 15 and 16 October.”

“ Although the ratification procedure is relatively straightforward on the UK side, involving only Westminster, on the EU side even an agreement that is narrow in scope would need to be supported by a qualified majority in the Council (55% of member states, representing at least 65% of the total EU population) and a majority vote in the European Parliament.”

“ The European Parliament holds its final plenary of the year on 14 December and any text would have to have been scrutinised by its specialist committees.”

“ If the deal is more wide reaching – in other words, if it extends beyond trade, competition policy or fisheries, where the EU has exclusive competence – it will require a unanimous vote in the Council, a majority vote in the European Parliament, and ultimately approval by national and sub-national parliaments across the EU.”

How might compromise happen?

Writing for UK in a Changing Europe, Professor Hussein Kassim [outlined his view on where compromises in the UK and EU positions could happen](#) to facilitate agreement:

“ On fish, there is scope for a compromise, but the UK would probably have to concede some sort of longer-term guarantees of access for European fleets and the EU to accept that in the longer-term it will lose quota to the UK.”

“ The eight EU member states with a strong interest in fishing, which includes France, would have to be persuaded not to vote against in the interests of not obstructing the whole agreement.”

“ On the level playing field, there would have to be movement on the UK side. The UK needs at the very least to publish its future state aid policy. However, as press speculation in recent days has shown, it is not clear that the UK has a clear vision of its post-Brexit policy.”

“ On other standards Michael Gove has suggested that the UK can agree to non-regression, as long as it is not linked to EU law.”

“ These shifts are possible, but they will need to be sold by the UK government to its supporters and by the EU negotiator to the member states as a price worth paying for tariff and quota free access and some other reductions in trade friction.”

However Katya Adler, BBC Europe Editor [discusses the likelihood of a deal in a Twitter thread on 19 August](#) and cautions that the:

“ Politics of compromise shouldn't be underestimated. The trade deal with EU is very public. While all trade deals involve some relinquishing of 'control' and making some compromises, we won't know till very last minute, I suspect, how much the PM or EU will be willing to bend.”

Withdrawal Agreement implementation

Along with the trade and cooperation issues under negotiation, implementation of the Withdrawal Agreement by the end of the transition period is an important aspect of the EU-UK future relationship.

In his remarks at the end of Round 7 on 21 August, Michel Barnier said that the EU:

“ continue to be particularly vigilant on the proper implementation of the Withdrawal Agreement by December 31 this year.”

The most difficult and politically sensitive issue remains implementation of the Ireland / Northern Ireland Protocol. On this topic Barnier said:

“ Regarding the Ireland / Northern Ireland Protocol... we are waiting for the UK to do what is necessary to ensure the precise and rigorous implementation of the legal obligations contained in this Protocol for both parties.”

On 7 August, the UK government published further details on implementation. A [UK government press release](#) described the new announcements as:

- A new free-to-use Trader Support Service backed by funding of up to £200 million will complete digital processes on behalf of businesses importing goods into Northern Ireland.
- £155m to fund the development of new technology to ensure the new processes can be fully digital and streamlined.
- £300 million confirmed funding for the PEACE Plus programme will help to support peace, prosperity and reconciliation projects on the island of Ireland.

On the topic of citizens' rights, the [second meeting of the Specialised Committee on Citizens' Rights](#) took place on 6 August.

Brexit legislation at the Scottish Parliament

Continuity Bill: scrutiny so far

On 18 June 2020, the Scottish Government introduced the *UK Withdrawal from the European Union (Continuity) (Scotland) Bill* to the Scottish Parliament.

SPICe briefings analysing the Bill and its surrounding issues are available on [Part 1 \(keeping pace\)](#) and [Part 2 \(environmental principles and governance\)](#).

The Bill is being scrutinised at Stage 1 by both the [Finance and Constitution Committee \(as lead committee\)](#) and the [Environment, Climate Change and Land Reform Committee \(focusing on the environmental policy aspects\)](#). Written submissions in response to the committees' calls for views will be available via the links.

Finance and Constitution Committee meetings so far:

- [19 August 2020](#) - session with Scottish Government officials
- 26 August 2020 - session with law academics and practitioners.

Environment, Climate Change and Land Reform Committee meetings so far:

- [11 August 2020](#) - session with Scottish Government officials
- [18 August 2020](#) - session with academics, Scottish Environment LINK and Law Society of Scotland.
- 25 August 2020 - session with SEPA, NatureScot, Scottish Land and Estates and Dr Annalisa Savaresi.

Legislative consent for UK Bills

Legislative consent is currently being sought from the Scottish Parliament for various Brexit-related legislation. Recent activity is summarised below.

- [Trade Bill](#) - a Legislative Consent Memorandum (LCM) for the Trade Bill was lodged by the Scottish Government on 18 August 2020. The Scottish Government position as outlined in the LCM is that some concerns remain over the Bill's powers but that these *"need to be weighed against the prospect of finding Scotland unable to maintain, at least to some degree, continuity in its trading relationships and access to procurement markets following the end of the implementation period"*. As a result, the LCM recommends consent.
- [Medicines and Medical Devices Bill](#) - a Legislative Consent Memorandum (LCM) for the Medicines and Medical Devices Bill was lodged by the Scottish Government on 18 August 2020. The Bill as introduced did not trigger the LCM process but amendments on 'information systems' have changed the situation. The LCM indicates that

discussions between the Scottish and UK government's are on-going and therefore consent is not recommended at this stage.

- [Agriculture Bill](#) - a supplementary LCM for the Agriculture Bill was lodged by the Scottish Government on 18 August 2020. The original LCM was published in May 2020 when the Scottish Government's position was to seek further discussions with the UK government. Following amendments to the Bill, the supplementary LCM recommends consent to the two provisions on organics and animal identification and traceability, in addition to the provisions on food security, fertilisers and the red meat levy, which were consented to in the original LCM. However, as disagreements remain, the Scottish Government conclude that whilst it *"can accept the main purpose of the Agriculture Bill, as replacement legislative underpinning is required in a number of the areas covered by the Bill, it does not support all detailed aspects of the Bill's provisions and does not accept that the approach taken to this Bill is entirely consistent with devolved responsibilities."* The Rural Economy and Connectivity Committee will take evidence from Fergus Ewing, Cabinet Secretary for Rural Economy and Tourism on 26 August.
- [Fisheries Bill](#) - a LCM for the Fisheries Bill was lodged on 15 June 2020. This LCM recommends consent. On 19 August, the Rural Economy and Connectivity Committee [took evidence](#) from Fergus Ewing, Cabinet Secretary for Rural Economy and Tourism on this LCM.

LCMs are also lodged for the [Environment Bill](#), the [Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill](#) and [Private International Law \(Implementation of Agreements\) Bill](#). The Environment, Climate Change and Land Reform Committee's report on the Environment Bill LCM was [discussed in Issue 11](#).

CTEEA Committee: inquiry evidence published

[Written submissions to the Scottish Parliament's Culture, Tourism, Europe and External Affairs Committee inquiry on the negotiations have been published](#). This evidence includes contributions from Scottish stakeholders, academics and others:

- Professor Christopher Grey
- European Policy Centre
- UK in a Changing Europe
- Dr Holger Hestermeyer
- Professor Sarah Hall
- Professor James Harrison
- Anthony Salamone: European Merchants
- David Henig
- Professor David Phinnemore
- Scottish Financial Enterprise
- Clyde Fishermen's Association
- Professor Michael Heath, Dr Robin Cook and Professor Paul Fernandes
- Scottish Seafood Association
- UK-EU (Animal Welfare) Taskforce
- Scottish Creel Fishermen's Federation
- Scottish Fishermen's Federation
- Scottish Salmon Producers Organisation
- Marine Conservation Society
- Professor Tony Mackay
- Sustainable Inshore Fisheries Trust

Previous oral evidence sessions and Committee correspondence are also available on the [same webpage](#).

The Committee inquiry is ongoing.

Institute for Government report: Trade and regulation after Brexit

An Institute for Government (IfG) [report \(10 August\)](#) and [blog \(11 August\)](#) explores what pressures the UK will come under in trade negotiations and what it should do about them. As part of this, the IfG argue that greater inclusion of the UK Parliament and devolved administrations in UK trade policy would strengthen its position:

“ As the IfG pointed out nearly four years ago, a strong role for Parliament on trade policy actually helps negotiators, allowing them to tell their counterparts, “Personally I’d love to give you that, but you know it’ll never wash back home.” The devolved administrations, moreover, will be responsible for implementing many parts of new trade deals. Side-lining them from negotiations risks the UK being unable to fulfil the commitments it has made – or damaging the Union by imposing new rules from above. ”

And:

“ The government needs to bring the devolved administrations along with it – coercing them into complying with its regulatory decisions risks damaging the Union. While signing trade agreements is reserved to the UK government at Westminster, the devolved administrations have the powers to implement them. They could choose not to. The UK government could circumvent them, but a more co-operative model – such as that employed by the Canadian federal government and its provinces – would give the UK a stronger trade policy and place less strain on the Union.”

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Iain McIver on telephone number 85294 or Iain.McIver@scottish.parliament.uk.

Members of the public or external organisations may comment on this briefing by emailing us at SPICe@parliament.scot. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at sp.info@parliament.scot. Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

