

## Briefing on EU-UK negotiations (June 2020)

The [fourth round of negotiations](#) took place in the week of June 1. Alongside the main issues at stake in the negotiations there were also technical discussions between the teams on trade in investment and services, law enforcement co-operation, energy, social security, and participation in Union programmes. In his press conference following the completion of the fourth round, Michel Barnier reported no substantial progress on fisheries, the level playing field, governance, and police and judicial co-operation. He said the process "[could not go on like this](#)" and urged both sides to stick to the commitments made in the redrafted [Political Declaration](#) on the Future Relationship from October 2019. The UK Chief Negotiator David Frost said [progress had been limited](#) but the tone of discussion had been constructive. He called for an intensification of negotiations in the coming weeks and months to reach a "balanced agreement" to provide certainty to business and others about trading terms to apply at the end of the transition period in December.

The EU published a [draft negotiating text for the proposed agreement](#) plus an [agreement on foreign and security co-operation](#) should the UK wish to seek such an agreement. The UK has submitted its own draft legal text and on fisheries and several other proposed co-operation areas to the UK Taskforce at the European Commission. This [text](#) plus [annexes](#) have also been published by the UK Government.

The Joint Committee [met on 12 June](#) and the Chancellor of the Duchy of Lancaster Michael Gove ruled out an extension to the transition period.

This message was re-emphasised at the [UK-EU High Level meeting](#) on 15 June between the UK PM, and the Presidents of the European Commission, European Parliament, and the European Council after which new momentum was sought throughout the summer negotiating period to reach a deal by the autumn, with agreement on the underlying principles sought as soon as possible.

### Timings

The fifth negotiating round will take place in person from the end of June until the end of July in four successive weeks. Smaller group working is also seen as a potential modality to resolve disputes.

The sixth round will take place in mid-August, ahead of a tough autumn period in which any agreement must be reduced to legal text by the end of October to ensure any deal is in place by the end of the transition period on 31 December 2020.

The following scenarios appear plausible:

- Talks continue but reach crisis point by October with end of transition period looming. Thin deal reached with zero-tariffs, zero-quotas but few other areas of co-operation resolved, and high non-tariff barriers in place for GB-EU trade.
- Talks continue and points of disagreement are resolved with a zero-tariffs, zero-quotas agreement emerging, along with some trade facilitations and areas of additional co-operation between the EU and UK.
- Talks continue but with no end to the impasse in sight, a fix is found to continue negotiating time. UK stays de facto in customs union and single market for a short additional period.
- Talks collapse in October. Both sides trade on their tariff schedules, WTO and other international agreements where possible, or no agreements where not.

The first two scenarios all require easements to be place by the end to the transition period on 31 December 2020 to phase-in implementation. The question is whether this can be done unilaterally by both sides, or whether an adjustment period can be created by the agreement to phase in the agreement's terms. The BRC has called for a comprehensive adjustment period to be in place while businesses implement at pace the terms of any new trade agreement.

#### What are the major points of disagreement between the two sides?

Level playing field – Since 2017, the EU has been concerned that Brexit presented a challenge to the European model on areas such as environmental, labour or other social regulation. If the UK chose to negotiate a low or no alignment agreement (which is what has happened) then it could undercut on regulation in order to secure an economic advantage in terms of production. To avoid this, the EU developed the idea of a modern level playing field on matters such as state aid, competition policy, and potentially also environmental, labour, climate change and social regulation. In the revised Political Declaration on the future relationship in October, references were made to having such a level playing field as the prerequisite of a zero-tariff, zero-quotas deal for both sides. In the PM's speech in Greenwich in early February, this approach was rejected. This has formed the basis of the UK's negotiating position since then. The EU counters by arguing due to the economic proximity and ties between the EU and the UK, any deal would require a modern level playing field set of requirements.

UK Cabinet Ministers have floated the possibility of a deal with tariffs instead of a zero-for-zero deal on tariffs and quotas through eliminating the LPF provisions in their entirety. The EU Chief Negotiator Michel Barnier countered by saying that such a deal was not part of his negotiating mandate as set by the member states, and even if it were, it would take years to agree tariffs on a product line by product line basis involving the economic interests of 27 member states.

Human rights protection – UK negotiators have sought access to several EU databases in terms of beneficial cooperation on judicial and police matters. EU negotiators have emphasised that in terms of police and judicial cooperation in relation to crime, database access must be underpinned by EU law and CJEU jurisdiction, which the UK's red lines otherwise rule out.

The EU has also said the UK must provide an on-going domestic commitment to its legislation on the protection of human rights (currently the Human Rights Act). The UK team believes this is an incursion into its sovereignty although it may have made softer noises on this during the fourth negotiating round.

The EU is also concerned about the implementation of the agreed rules on the protection of (EU) citizens' rights in the UK. It issued a weighty [guidance document](#) on this recently. Citizens rights protection is a matter for the Joint Committee.

Governance of the agreement – the EU envisages a single form of governance and dispute resolution processes for the overall agreement encompassing the defence and security cooperation agreements, fisheries, as well as the provisions on trade in goods and services. Actions in one area by either side could have consequences in others or in the performance of the entire agreement. This could include sanctions and fines.

The UK differs markedly, seeking subject specific dispute resolution mechanisms without fines and being keen wherever possible to base these on arbitration and limited any binding references to the CJEU.

Fisheries – the UK is prepared to accept arrangements similar to those of Norway, Iceland and the Faroe Islands with the EU on fisheries management, while respecting its position as an independent coastal state with an exclusive economic zone (EEZ) in waters 200m from its land borders. It is pushing the concept of zonal attachment in terms of fish which should belong to the UK. By contrast, the EU is seeking a stable multi-annual agreement on common quotas and fishing rights in part based on recent and other historical practices. It may be prepared to move to species specific quotas. Nevertheless, a major disagreement in principle remains.

There are also disagreements on other areas – on conformity assessment, the EU are refusing a UK offer on mutual recognition of conformity assessment on goods. That means UK labs could not do tests on goods to EU standards which would be accepted in the EU. This would be a major problem as manufacturers would require having conformity assessment done in EU labs at additional expense. Furthermore, if this were the final position in any agreement, or if no agreement were reached at all, the UK would then be confronted with the choice of rejecting goods with CE marking or admitting products with CE marking, having its own UKCA marking and goods with

either marks circulating in the UK (specifically GB) market. Potentially companies may then have to consider having both marks on the goods if they seek to trade them in NI or the EU.

The EU has also so far expressed a lack of interest in a veterinary agreement with the UK on the New Zealand-EU model. Such an agreement would have the effect of potentially reducing physical sanitary and phytosanitary checks on products of animal origin in terms of official controls on food from GB to the EU and vice versa down from 10% to around 1-4%.

The EU has also so far rejected a UK request for a Chile-style [agreement on recognition of organic foods](#).

The UK side is not pursuing a safety and security agreement with the EU. This means that exit and entry summary declarations will be required as part of customs formalities on goods entering and exiting the EU's customs territory from a third country (the UK in the form of GB). These will also be required on NI-GB and GB-NI goods flows. The UK explains its position in terms of alignment to the EU's Union Customs Code (UCC) being unacceptable for the UK in the form of GB, and the CJEU jurisdiction underpinning this. The UCC will of course be given effect to in NI in terms of the Protocol.

On some of these issues, these refusals could well be an EU negotiating tactic to focus UK minds on the wider issues (eg. fisheries, LPF, governance) upon which there is still no agreement. On a veterinary agreement, this position may also be related to implementation of the Protocol on Ireland/Northern Ireland. Progress there may yield more results on a veterinary agreement.

On rules of origin, the UK is seeking diagonal cumulation with the EU and its current FTA partners. This would provide flexibility in terms of complying with preferential rules of origin over qualifying content. The EU's position is that this is not possible without renegotiation of all its existing FTAs, and is instead offering diagonal cumulation of UK material through the [PEM Convention](#). The effect of this might be to onboard some supply chains within the Single Market.

#### Business readiness for expiry of transition period

We should also expect the UK Government to begin to issue preparedness notices beginning in the new month or so ahead of the expiry of the transition period on 31 December. The EU has already begun to launch a [series of these notices](#) for EU-based companies and others in terms of the end of the transition period.

That means business will have to prepare fully in those areas such as chemicals, product authorisations, customs and VAT where we know there will be considerable changes whatever is negotiated or whether any future relationship agreement is reached at all. Other areas will be more dependent on if or what anything can be agreed in the negotiations, eg. on tariffs, rules of origin, conformity assessment and markings.

The BRC is continuing to make the case with the UK Government and in the media for a zero-tariffs, zero-quotas deal; for strong arrangements to deal with our sectoral interests in cosmetics, food, customs, VAT, chemicals, clothing and pharmaceuticals; for effective and pragmatic implementation of the Protocol on Ireland/Northern Ireland; and for an adjustment period to make the new arrangements work for businesses and consumers.