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The UK-EU future relationship: the March 2020 EU draft treaty and negotiations update

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Summary

Following the UK's withdrawal from the EU on 31 January 2020, negotiations on the future UK-EU relationship began on 2 March 2020. The UK and EU negotiating positions were outlined in published documents at the end of February. These are analysed in the Commons Library briefing papers 8834, [The UK-EU future relationship negotiations: process and issues](#) and 8920 [The UK-EU future relationship negotiations: summary of positions](#)).

The negotiations

The [initial terms of reference](#) for the negotiations published at the end of February envisaged five rounds of negotiations up to the middle of May 2020, with further rounds to be mutually agreed. The high-level UK-EU meeting envisaged for June 2020 would be an opportunity to take stock of progress "with the aim of agreeing actions to move forward in negotiations".

Draft texts tabled

The European Commission published a [draft treaty text](#) on 18 March covering all aspects of the EU's envisaged future relationship with the UK (see below). The UK also tabled texts covering some of its proposed suite of agreements, including a free trade agreement. These were not made public and the Government asked the European Commission not to share these texts with the Member States.

Talks put on hold

Lockdowns across Europe in the wake of the coronavirus outbreak meant that the originally planned second and third round of negotiations did not take place. On 15 April, the two lead negotiators, David Frost (UK) and Michel Barnier (EU) met by videoconference and [announced a new schedule of negotiations](#). This would involve three new rounds to take place by videoconference in the weeks commencing 20 April, 11 May and 1 June.

Second round of negotiations

Following the second round of negotiations, Mr Barnier said that the UK had "[refused to engage seriously on a number of fundamental issues](#)". He referred to a lack of progress on four issues where the positions of the two sides continued to differ: i) level playing field; ii) governance; iii) police and judicial co-operation; and iv) fisheries.

A UK Government statement referred to promising convergence in some trade and related issues. But it said that there would be no progress on level playing field and governance provisions until the EU dropped its insistence on imposing conditions on the UK which are not found in the EU's other trade agreements and "[do not take account of the fact that we have left the EU as an independent state](#)".

In evidence to the House of Lords' EU Committee on 5 May, the Chancellor of the Duchy of Lancaster Michael Gove said that the Government would be [willing to drop](#) the objective of a "zero tariff, zero quota" free trade agreement and accept some tariffs if this meant not signing up to the level playing field arrangements the EU wanted.

Third round of negotiations

Ahead of the third round of negotiations in early May, David Frost said that the UK had now [tabled a full set of agreements](#), including a complete draft free trade agreement and a fisheries framework agreement. In his statement following the third round, Mr Frost said

that the main obstacle was the EU's "novel and unbalanced proposals" on the level playing field. He said these were not based on precedent. Similarly, he said the EU's demands on fisheries were "manifestly unbalanced" and [did not respect the UK's future status as an independent coastal state](#).

In his statement following the third round, Mr Barnier rejected the UK suggestion that there could be some tariffs, similarly to those found in the EU-Canada agreement, without there being level playing field provisions. He also said this would require [a much more lengthy negotiation](#) of each tariff line, requiring an extension to the post-Brexit transition period. He said that the negotiations on different topics were linked with agreement in one area requiring agreement in others. He said that some of the UK's requests went beyond what could be found in the EU's other free trade agreements.

Publication of UK texts and letter to Michel Barnier

The UK Government published the [ten draft treaty texts](#) it has tabled in the negotiations on 19 May. The Government also published a letter from David Frost to Michel Barnier sent on the same day. Mr Frost said that the UK treaty texts were based on precedent from existing EU agreements with third countries. He contrasted these with examples of where the EU was not willing to replicate commitments found in these other agreements and was making additional demands.

In his response, Mr Barnier said he did not think such an exchange of letters was "necessarily the best way to discuss on substantial points". He said the EU would "[not accept cherry picking](#)" from past agreements" and that its principal reference point was the [Political Declaration \(PD\)](#) agreed with the UK Government in October 2019.

Timeline and transition period

The loss of negotiating rounds, the switch to negotiating by videoconference and the diversion of resources and political attention towards addressing the coronavirus outbreak has increased concerns about the viability of the timeline for concluding an agreement. However, in his evidence to the House of Commons Future Relationship Committee on 27 April Michael Gove suggested that the coronavirus crisis "[should concentrate the minds](#) of EU negotiators".

The [Scottish](#) and [Welsh](#) Governments, the [Scottish National Party and Liberal Democrats](#) and several [other organisations](#) have called for an extension to the post-Brexit transition period in order to give more time to negotiate an agreement. The transition period ends on 31 December 2020, but the Withdrawal Agreement (WA) provides for an extension of the transition period for up to two years if agreed by the end of June 2020. The Government has [legislated to prohibit itself](#) from seeking an extension and continues to reiterate that it [will not do so](#).

EU draft treaty text

The EU draft treaty text, published on 18 March, operationalises the positions set out in the EU's negotiating directives in several areas and provides more details. Some parts of the text, such as Title VI of Part two on services and investment, closely follow the text of the EU-Japan and other EU free trade agreements (FTAs). Detail in some parts is limited.

Part one (common provisions) of the draft treaty states that all areas of the partnership should be within a unified governance structure. It refers to certain essential elements of the relationship, including the rule of law and human rights, the fight against climate change and countering weapons of mass destruction.

Economy and Trade

Part two of the draft treaty covers economy and trade. Title III elaborates provisions on level playing field (LPF) and sustainability. The EU is seeking legally binding commitments to uphold high standards over time in areas of state aid, competition, taxation, labour standards, environmental protection, climate change, and sustainability. The partnership would involve continued application of EU rules (dynamic alignment) on state aid. In the remaining areas, the parties would agree not to regress below the standards applicable at the end of the transition period (non-regression). In addition, the governing body would be able to modify the commitments to reflect evolving standards in most areas of LPF. Commitments would be subject to strong enforcement mechanisms domestically. The Agreement dispute settlement mechanisms, with possible modifications, would apply to all areas, with the exception of competition and taxation.

Title IV covers rules establishing a free trade area for trade in goods. The text proposes to exempt mutual trade from customs duties (zero tariffs) and product import quotas. There are details on customs cooperation and procedures. In some areas such as product-specific rules of origin, and simplified customs procedures, details are limited. The text is not proposing mutual recognition of product conformity assessment or recognition of equivalence of sanitary and phytosanitary standards.

Fisheries is covered in Title V and accompanying annexes. Overall, the text presents a position that would result in a continuation of fisheries management in the UK along the principles of the Common Fisheries Policy (CFP). Existing current quota shares would be upheld. Failure to comply with provisions would allow the other party to impose tariffs.

With regard to trade in services (Title VI) the EU is proposing terms of market access generally on a par with its recent FTAs. EU priorities include digital trade, temporary business travel for natural persons and steps towards mutual recognition of professional qualifications where this is in the EU's interest. Audio-visual services are excluded altogether. Market access for financial services will be based on unilateral equivalence decisions with regard to specific activities and types of financial services. In the treaty text, the EU proposes standard third country treatment. There is no mention of regulatory cooperation on financial regulation.

Provisions on energy (and raw materials) are included in Title XIII, covering areas such as support for renewable and energy efficiency technologies, and measures to maintain competitive markets. Some areas of energy policy would stay aligned. Title XIV on civil nuclear co-operation leaves open the possibility of the UK's participation in EU nuclear research programmes.

Security Partnership

Part three of the draft treaty on law enforcement and judicial co-operation is consistent with the position set out in the EU's negotiating mandate, providing some further detail about processes. It would provide for access to mechanisms for exchange of fingerprints and DNA; exchange of passenger records; exchange of operational information and intelligence; cooperation with Europol and Eurojust; surrender (extradition); mutual legal assistance; exchange of criminal records; and coordination of anti-money laundering and counter-terrorist financing measures. It also sets out the data protection and human rights requirements that would underpin the agreement and provides for the suspension of it in the event that these are not met. This involves a requirement for UK continued adherence to the European Convention on Human Rights and for it to continue to give effect to the Convention in domestic law.

The EU has also proposed a text on foreign policy, security and defence (Part three, Title II) whilst acknowledging that the UK does not wish to engage in negotiations on these matters.

Participation in EU programmes and financial provisions

Part four of the draft text covers UK participation in EU programmes and sound financial management. It covers financial conditions for UK participation in EU programmes, which would involve a combined sum of a participation fee and an operational contribution. EU bodies would have the right to carry out reviews and audits of persons and entities in the UK receiving EU funds. The programmes in which the UK participates would be indicated in a currently blank protocol.

Governance and Final Provisions

Part five of the draft treaty sets out the proposed governance structure for the relationship and general dispute settlement. It proposes for consultations in the Partnership Council as a first stage, with the possibility for referral to arbitration as a second stage.

The 'final provisions' in Part six provide that if the Withdrawal Agreement (WA) is breached by either party, retaliation to such a breach can take place by suspending aspects of this new treaty.

The final provisions also cover territorial scope: the treaty will not apply to Gibraltar, the Channel Islands, the Isle of Man, or the Sovereign Base Areas in Cyprus.

1. The negotiations so far

1.1 Negotiations begin

Following the UK's withdrawal from the EU on 31 January 2020, negotiations on the future UK-EU relationship began on 2 March 2020.

The UK and EU outlined their negotiating positions the week before negotiations were launched. The EU adopted its [negotiating directives](#) for the negotiations on the 25 February and the UK Government published a [command paper](#) setting out its approach on 27 February.

The UK and the EU published [initial terms of reference](#) for the negotiations on 28 February. These set out a timetable of five negotiating rounds. Each round was expected to last three or four days and take place every two to three weeks. A timetable for the first five rounds up to the middle of May 2020 was published, with further rounds to be mutually agreed.

At the high-level UK-EU meeting envisaged for June 2020 by the [Political Declaration \(PD\)](#) setting out the framework for the future EU-UK relationship, the UK and EU would take stock of progress "with the aim of agreeing actions to move forward in negotiations".

Each negotiating round begins and ends with a plenary session at chief or deputy-chief negotiator level. In between the plenaries, talks on specific issues take place simultaneously in eleven different negotiating groups. The rounds are supposed to alternate between London and Brussels. The UK team is led by David Frost and involves [over 100 officials](#).

The [first round of negotiations](#) took place from 2 to 5 March in Brussels. Statements from both the [UK](#) and [EU](#) described the talks as "constructive" with agreement in some areas. However, there were differences in some key areas, notably governance; the "level playing field"; fisheries; and judicial and police co-operation in criminal matters.

Differences in these areas had already been clearly signposted in the EU and UK negotiating positions published the previous week and in other statements by the two parties (see Commons Library briefing papers 8834, [The UK-EU future relationship negotiations: process and issues](#) and 8920 [The UK-EU future relationship negotiations: summary of positions](#)).

A report from *Politico* indicated that there were signs of possible convergence on civil nuclear power, UK participation in EU programmes, trade in goods and services, transport and energy.¹

On 9 March, the Chancellor of the Duchy of Lancaster Michael Gove made a written statement to the House of Commons on the first round of negotiations. It said the talks had identified "a degree of common understanding of the ground that future talks could cover" and

¹ *Politico*, [5 takeaways from the first round of Brexit talks](#), 5 March 2020.

“expected, significant differences” in other areas. It said that the UK expected to table a number of legal texts, including a draft free trade agreement, before the next round of talks.²

The European Commission published a [draft treaty text](#) on 18 March covering all aspects of the EU’s envisaged future relationship with the UK. An [earlier version](#) of this draft was circulated on 12 March. The EU draft treaty text is discussed in more detail below in section 2.

It was reported at the end of March that the UK Government had tabled four separate treaty texts, covering trade, transport, aviation and nuclear co-operation. These were not made public and the Government asked the European Commission not to share these texts with the Member States, and [only provide analyses of](#) these texts. This reportedly reflected a UK preference for tabling texts in areas where it believes more rapid progress can be made in the negotiations.

The UK has prepared texts covering other more controversial areas, but believes it would not be useful to table them early in the negotiations.³ On 19 March, *The Guardian* reported a Government spokesman as saying that the UK was sharing texts “in confidence as a negotiating document, as part of the ongoing negotiating process” and would “keep under review which documents it is appropriate to publish during the course of negotiations and whether it is useful to make them available more widely”.⁴

1.2 Negotiations put on hold

With several EU countries already in lockdown due to the coronavirus outbreak, the second round of negotiations scheduled for 18-20 March did not take place. The EU’s chief negotiator, Michel Barnier, announced that week that he had [tested positive](#) for the virus. The UK’s chief negotiator David Frost also [self-isolated](#) after showing symptoms of the virus. The third round of talks scheduled for 6-8 April also did not take place.

Contacts however continued between the two parties. The European Commission said on 18 March that the EU and UK negotiators were “[exploring alternative ways to continue discussions](#), including if possible the use of video conferences”.

In the meantime, the first meeting of the UK-EU Joint Committee established to oversee the implementation the UK-EU Withdrawal Agreement (WA) took place [by teleconference](#) on 30 March.

1.3 Talks resume

On 7 April, David Frost [tweeted](#) “to reassure everyone that UK-EU contacts have been continuing in these difficult times”. He said the two sides had “remained in touch throughout” and that “both sides have

² [Negotiations on the UK’s future relationship with the EU: update: Written statement - HCWS153](#), 9 March 2020

³ See this [twitter thread](#) by Nick Gutteridge posted on 28 March 2020.

⁴ *The Guardian*, [Pressure to delay Brexit talks as coronavirus crisis grows](#), 19 March 2020.

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exchanged legal texts, and last week we had a series of conference calls to explore & clarify technicalities". He said the UK would share further legal texts with the EU and that he and Mr Barnier would speak the following week to reach agreement on a timetable for discussions in April and May.

Box 1: Can videoconference negotiations work?

There have been reports of concerns within the EU about the feasibility of continuing negotiations by videoconference, with logistical and security factors cited. The *Independent* reported on 7 April that discussions between the two sides had been limited to "technical" contact with no real negotiation taking place. It reported that the UK view was that talks via videoconference were possible "but the EU side is more sceptical, arguing that officials would still have to gather together on one side and risk infection".⁵

A *Politico* article on 15 April discussed some of the concerns raised within the EU about conducting the future relationship negotiations by videoconference:

The first Brexit round in Brussels involved over 200 people. Negotiations were divided into 11 separate meetings based on topics, where negotiators discussed a wide range of issues simultaneously.

"Both sides are working on the best possible solution given the circumstances," said one EU diplomat. "But you can't reach the same dynamic as in a physical round. No one is that creative."

The article also referred to the difficulties the EU would have in co-ordinating positions among the 27 Member States without face to face meetings between Michel Barnier and government representatives. A leaked letter from the German ambassador to the EU to his government referred to difficulty in understanding each other's sensitivities when not in the same room.⁶ He also cited concerns about a lack of secure videoconferencing facilities in the EU institutions.⁷

Some of the challenges posed by undertaking negotiations by videoconference have also been set out by former trade negotiator Dmitry Grozoubinski⁸. These include the practical challenges of hosting videoconference meetings with several large groups of negotiating teams simultaneously, and the difficulties of building trust and personal rapport between negotiators when held in this way. When negotiations are held face-to-face, progress can be made in "breakout" chats outside of the main meetings. The process also requires constant input and verification from officials outside of the negotiating room, and for political leaders to make the final decision on unresolved issues. But this will be more difficult where people are working remotely and distracted by the coronavirus crisis, Grozoubinski suggests.

On 26 April, *The Observer* reported the words of an EU source, who said:

You can get so far but what you can't do is go away into small groups of six or eight people in a dark room and hammer out the final, vital details. That is not possible in a virtual meeting.⁹

The two chief negotiators met by videoconference on 15 April, following which the UK and EU issued a joint statement announcing that negotiations would resume by videoconference the following week.

According to the statement, the meeting was constructive with the two sides taking stock of the of the technical work that had taken place

⁵ *Independent*, [Brexit talks stalled as UK and EU yet to agree videoconferencing timetable](#), 7 April 2020

⁶ *Politico*, [Will the coronavirus kill the Brexit negotiations?](#), 15 April 2020.

⁷ *The Guardian*, [Brexit: UK plan to agree trade deal by December is fantasy, says EU](#), 8 April 2020.

⁸ Dmitry Grozoubinski [Twitter thread](#), 17 March 2020

⁹ *The Observer*, [UK will need to extend Brexit transition, Merkel ally warns Britain](#), 26 April 2020

since the first negotiating round on the basis of the legal texts exchanged by both sides. It said that this work had been useful “to identify all major areas of divergence and convergence” and the two sides agreed on the need to organise further negotiating rounds “in order to make real, tangible progress in the negotiations by June”.

Dates for three negotiating rounds, in the weeks commencing 20 April, 11 May and 1 June were agreed. As had previously been envisaged, the high level meeting planned for June would take stock of the progress made.

The two chief negotiators also welcomed the first meeting of the Joint Committee on 30 March, and agreed that “the proper and timely implementation of the Withdrawal Agreement was a key priority for both sides”.¹⁰

1.4 The second round of negotiations

The [agenda](#) for the rescheduled second round of negotiations was published on 17 April. This would involve an opening plenary session on 20 April, and a closing plenary and chief negotiators’ political meeting on 24 April. The various negotiating sub-groups would meet on 21-23 April, with some of the original eleven groups originally identified combining on particular days.¹¹

Statements issued by the UK and EU at the end of the second round showed there were still major differences between them.

Statement by Michel Barnier following second negotiating round

In a press statement on 24 April, Michel Barnier welcomed the resumption of negotiations and thanked both the UK and EU teams and David Frost in particular for “his professionalism, frankness and determination”. However, he said the use of videoconferencing had limitations:

we held some forty video conferences this week, and I have to say, objectively, that it is not the same thing in terms of the quality of discussions and negotiations.

Mr Barnier said that experts on both sides had increased their technical discussions in recent weeks to improve understanding of each others’ positions but that now was time “to move beyond clarifications and put more political dynamism into proposals aimed at building compromises”.

Mr Barnier said that while the negotiations so far had enabled the two sides to identify areas where their positions were close but regretted that the UK “refused to engage seriously on a number of fundamental issues”. He said these were issues “that we did not pull out of our hat:

¹⁰ [Joint statement by UK and EU negotiators following the videoconference on 15 April 2020](#)

¹¹ The governance and civil nuclear groups combined on the afternoon of 21 April, the governance and trade groups combined on the morning of 22 April, and the level playing field and energy groups combined on the afternoon of 23 April.

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they can be found quite precisely in the Political Declaration that we agreed with Boris Johnson". He said that the PD "must be implemented seriously, precisely and objectively" but he regretted "that this is not yet the case". He said that parallel progress was needed on all issues and that:

[t]he UK cannot refuse to extend the transition and, at the same time, slow down discussions on important areas.

As with his statement following the first round of talks, Mr Barnier referred to four areas where progress was not being made:

- 1) **The level playing field.** Mr Barnier said that the UK "failed to engage substantially" on this issue and that it had "argued that our positions are too far apart to reach an agreement". He said the UK had also "denounced the basic premise that economic interconnectedness and geographic proximity require robust guarantees". Yet, he said "this is what we agreed with Boris Johnson in our joint Political Declaration. This is what the UK Parliament approved after the December elections". Mr Barnier reminded his audience that the EU mandate stated that "there will be no ambitious trade deal without an ambitious level playing field on open and fair competition".
- 2) **Governance.** Mr Barnier said that the UK insistence on a number of separate agreements, each with their separate governance arrangements would lead "to duplication, inefficiencies and a lack of transparency in the application and enforcement of the partnership, which is in nobody's interest".
He also said that the UK was refusing three important elements of the single governance framework that the EU was proposing. These were: i) the need to refer to "common values, such as democracy, rule of law and human rights, counter-terrorism or the fight against climate change as an essential principle" as the basis for EU-UK co-operation. Mr Barnier said these were "standard in all our international agreements"; ii) the agreement would need to foresee continued UK adherence to the European Convention on Human Rights (ECHR) "which should be given effect in domestic law". This is particularly important for the EU in the field of law enforcement and internal security; and iii) the UK needed to recognise the role of the Court of Justice of the EU (CJEU) when concepts of EU law are referred to "especially for the exchange of personal data".
- 3) **Police and judicial co-operation.** He said that the negotiations faced problems because the UK "refuses to provide firm guarantees – rather than vague principles – on fundamental rights and individual freedoms" and that it "insists on lowering current standards and deviating from agreed mechanisms of data protection". He said this would create serious limitations for the future security partnership.
- 4) **Fisheries.** He said that the UK had not put forward a legal text on fisheries and there had been no tangible progress "despite

the Political Declaration stating that we should make our best endeavours to reach an agreement by July". Mr Barnier said it should be "crystal clear" that the EU would "not agree to any future economic partnership that does not include a balanced, sustainable and long-term solution on fisheries".

Mr Barnier said that the draft treaty text published by the EU on 18 March was not a "take it or leave it" but the EU had proven that it was possible to put together a complete treaty covering all areas of the proposed future partnership within a limited timeframe "if there is the will to do so".

He referred to the UK proposed treaty texts covering some areas but said he regretted that he could not share these "even with the Member States and the European Parliament" as the UK had requested these remain confidential.

Mr Barnier noted that there were two rounds of negotiations left prior to the envisaged high-level meeting to take stock of progress in June and these had to be used to make "real, tangible progress".

He said the June meeting would also be an opportunity to take stock on UK progress in implementing the WA, and said it was urgent that the necessary measures were put in place to implement this and that the UK demonstrated clear evidence of such measures. He said he had reminded David Frost that the "faithful and effective implementation of the Withdrawal Agreement is absolutely central to our ongoing negotiations". He stressed that the new partnership "can only be built on trust" and that "this requires that already agreed commitments are applied correctly".

He said the clock was "ticking" with eight months to go to advance on the three workstreams of implementing the WA, negotiating the future partnership and preparing for "the negative economic consequences that the end of the transition period will entail".¹²

UK Government statement

A statement from a UK Government spokesperson published on 24 April said that it had been "a full and constructive negotiating round" but that "limited progress" had been made in bridging the gaps between the UK and EU". The spokesperson continued:

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.

¹² European Commission, [Press statement by Michel Barnier following the second round of future relationship negotiations with the United Kingdom](#), 24 April 2020.

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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.¹³

A Downing Street spokesperson said on 27 April that the EU would [need to change its position](#) for the negotiations to succeed. He said:

We are ready to keep talking but that does not make us any more likely to agree the EU's proposals in areas where they are not taking into account the UK's status as an independent state. All we are seeking is an agreement based on precedent which respects the sovereignty of both sides.

Clearly there will need to be political movement on the EU side to move negotiations forward, particularly on fisheries and level playing field issues, in order to help find a balanced solution which reflects the political realities on both sides.

1.5 Michael Gove evidence to Committee on the Future Relationship with the EU

The Chancellor of the Duchy of Lancaster, Michael Gove, gave evidence to the House of Common Committee on the Future Relationship with the EU on 27 April.

Asked whether the Government's timetable for getting a deal was realistic, Mr Gove suggested this should not be difficult given that the Government was putting forward proposals "based on existing precedents". He said:

We are not asking for anything bespoke, new or tailor-made. We are asking simply for a series of off-the-peg arrangements, which replicate what the EU has with other countries. Agreement on the EU side to that would be consistent with precedent and should be relatively rapid to secure. It requires on both sides a commitment to make those precedents work, of course, but there is no reason why they should not work in this case.

However, he said there were certain things that the EU was asking for that "do not properly respect the nature of the decision that the UK has made". He said the EU was asking the UK to adhere to level playing field conditions "which other independent countries do not need to adhere to in order to have free trade agreements". He said the UK was

¹³ No 10 media blog, [Statement on Round Two of UK-EU negotiations](#), 24 April 2020.

emphasising in the negotiations that “whatever the EU might legitimately have thought in the past, the situation has changed and it is appropriate for their negotiating stance to reflect that”.

On fisheries, Mr Gove suggested there was a contradiction in the EU position. The EU was saying the UK could not have the same rights outside the EU as inside the EU, which the UK accepted, Mr Gove said. But it said that the EU did not appear to accept its own logic when it came to fisheries, but wanting to continue to have more or less the same access. The UK position was access to its waters should be negotiated in the same way as other countries, such as Norway and Iceland, Mr Gove said.

Other differences highlighted were on criminal justice and governance. On criminal justice, Mr Gove said:

the EU is asking of us adherence to a particular method of monitoring our adherence to the European Convention on Human Rights that it asks of no other country and does not even ask of its own member states.

Mr Gove stressed that it was not the UK intention to leave the Convention and the UK commitment to human rights was “absolute”. But the challenge in the negotiations came from the EU’s request “that our adherence to the ECHR be through a particular set of processes and instruments”.

In seeking a single overarching treaty, Mr Gove said the EU position “suggests that it regards the UK not as a fully sovereign, independent state but as a state that is in an association-agreement-style relationship with the EU”. He said that association agreements “tend to be used for countries that are on the path to EU membership” giving the example of the EU-Ukraine association agreement.¹⁴

Despite these differences, Mr Gove said he thought the odds of a deal “were definitely better than 2:1.”

He said the UK intended to make public its proposed texts together in “a matter of weeks” and that the Government first “wanted to make sure that the Commission had time and space to look at our proposals”. Of the intended UK treaty texts, the one on fisheries was the only one not yet tabled¹⁵.

1.6 Reports from the negotiations

Since the start of negotiations, media reports have highlighted some of the particular difficulties and differences that have emerged in the talks.

The Guardian reported on 26 March that EU sources had described the UK texts and the EU treaty draft as “galaxies apart”, and expressed

¹⁴ The EU also has association agreements with several non-accession countries. See Commons Library Briefing 8645, [UK-EU relations after Brexit: an Association Agreement?](#)

¹⁵ Committee on the Future Relationship with the European Union, [Oral evidence: Progress of the negotiations on the UK’s Future Relationship with the EU](#), HC 203, 27 April 2020.

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disappointment that the UK texts were narrow in scope.¹⁶ The EU draft was on the other hand described as a “fully fledged proposal in line with the political declaration”.

On 14 April, the *Financial Times* reported on the lack of progress in the negotiations on fisheries.¹⁷ It cited EU diplomats as saying contact with the UK during the hiatus between the first and second round of negotiations had served to underline how far apart the sides were on the fisheries issue. One EU official told the *Financial Times* that: “If there is no progress on this, then there will be no progress in other areas”.

The article also reported that further UK treaty texts had been submitted to the negotiations on 10 April, meaning that there were now six in total covering energy policy, criminal justice, trade, air transport, air safety and civil nuclear safety. It said the UK proposals were understood to include a protocol requesting the EU provide mutual recognition of British manufacturing practices for medicines and that this was something that the Commission had advised Member States not to accept.

On 23 April, *The Guardian* reported on a leaked assessment of the UK’s position on law enforcement co-operation drawn up for the German Government.¹⁸ The German assessment suggested that the UK wanted to “approximate the position of a Member State as closely as possible” and that its demands were not possible according to the EU position. This included a UK desire for continued co-operation as close as possible to that of a Member State with respect to Europol, including access to Europol’s databases, as well as access to the Schengen Information System (SIS II) and an extended regime for sharing Passenger Name Records (PNR) data.

On 30 April, *The Telegraph* reported a UK source “close to the negotiations” as saying that the EU’s position on fisheries would need to change, otherwise the negotiations would be terminated in June.¹⁹ The source reportedly said:

There are some fundamentals that we're not going to change, nor going to move on. Because they are not so much negotiating positions as they're sort of what an independent state does...

An independent state has independent control over coastal waters ... what we are wanting now is an EU understanding that we are not going to subordinate our laws to them in any areas.

The Telegraph reported that Downing Street had called on EU national leaders to intervene to break the deadlock in the talks but that this was not expected to happen before the high-level meeting in June. The source said:

¹⁶ *The Guardian*, [UK-EU talks on post-Brexit relations 'in deep freeze'](#), 26 March 2020.

¹⁷ *Financial Times*, [Fishing rights threaten to stall Brexit talks](#), 14 April 2020.

¹⁸ *The Guardian*, [UK making 'impossible demands' over Europol database in EU talks](#), 23 April 2020.

¹⁹ *The Telegraph*, [Brexit trade talks face collapse unless EU abandon demands for continued access to UK fishing waters](#), 30 April 2020.

We do need to prepare for the end of the transition period, focus on that as well. If we don't look like we are going to get a deal that will become the primary focus of effort.

On 5 May, Ireland's Foreign Minister Simon Coveney told Irish broadcaster RTÉ that the "necessary progress" was not there in the negotiations, and that:

Unless there is significant progress in those negotiating rounds then I think we are going to reach yet another crisis point in the Brexit negotiations, which from the Irish point of view is very, very serious.²⁰

He added that the UK "seems to want to simply pick the areas where they want to deal early and solely focus on those" but that the EU had "made it very clear that that is not an approach that they can work with".

The BBC's Europe editor Katya Adler reported the same day that Michel Barnier was accusing the UK of "selective engagement in trade talks" by "avoiding issues it doesn't like" such as fishing quotas and competition regulations.²¹ The EU was warning the UK about leaving things until the last minute in the Autumn in the hope that the time pressure will force EU to make deeper compromises on the trade deal. However, the view from Brussels was that if there was a second wave of coronavirus infection in the Autumn "then a trade deal with the UK will hardly be an EU priority".

On 6 May, the *Financial Times* reported that the EU desire to include commitment to the Paris climate change agreement among the essential elements of the future partnership was a source of disagreement with the UK in the negotiations.²² The EU has indicated that it wants such a commitment in all its future trade deals. A Government spokesperson said the UK was "absolutely committed to tackling climate change" but that it was opposed to embedding legally binding pledges into any deal with the EU (see section 2.1).

On 7 May, the European Commissioner for Trade Phil Hogan also raised concerns about the slow progress of talks despite "the urgency and enormity of the negotiating challenge".²³ In an interview with RTE he said:

There is no real sign that our British friends are approaching the negotiations with a plan to succeed. I hope I am wrong, but I don't think so.

He added:

I think that the United Kingdom politicians and government have certainly decided that COVID is going to be blamed for all the fallout from Brexit and my perception of it is they don't want to drag the negotiations out into 2021 because they can effectively blame COVID for everything.

²⁰ RTE, [Coveney fearful of another crisis point in Brexit talks](#), 5 May 2020

²¹ [Twitter thread](#) by Katya Adler, 5 May 2020.

²² *Financial Times*, [Brussels and Britain clash over climate conditions in trade deal](#), 6 May 2020.

²³ Reuters, [No sign Britain wants EU trade talks to succeed: EU trade chief](#), 7 May 2020.

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A spokesman for the Prime Minister rejected this description of the Government position and said the UK was looking forward to negotiating constructively in the next round. He added:

We are ready to keep talking with the EU, but that will not make us any more likely to agree to the EU's proposals in certain areas which are unprecedented and do not take account of the fact that we have left the EU as an independent state.

On 10 May, the *Financial Times* reported that the EU would push the UK to engage in detailed talks on access to UK fishing waters and other EU priorities in the third round of negotiations beginning the next day.²⁴ It reported the view of the EU that the UK was seeking to make rapid headway on securing a trade agreement, retaining access to the EU's aviation market and advancing other core UK concerns, including energy, while leaving fisheries and other issues "in the slow lane". However, an EU official had said that progress would be needed "in parallel on all areas, otherwise the talks will slow down." The report cited a UK spokesperson, who said that the Government did "not recognise the suggestion that we have not engaged with the EU in any area" and that the UK would "continue to negotiate constructively to find a balanced solution which reflects the political realities on both sides".

1.7 Michael Gove evidence to House of Lords EU Committee

Michael Gove gave evidence to the House of Lords EU Committee on 5 May 2020, covering similar ground to his evidence session to the Commons Future Relationship with the EU Committee on 27 April. However, he suggested a possible way forward in relation to the EU's demands on the level playing field would be an agreement similar to EU-Canada arrangement where some tariffs are retained:

We seek—we have been explicit about it—a zero tariff, zero quota arrangement. If the EU said, "Do you know what, we don't think we can give you that unless you sign up to all our level playing field arrangements", and we said, "Okay, we are not signing up to those LPF arrangements, but we'll have non-regression clauses and agreements so you can be sure about our standards", and if we end up like CETA, with tariffs on a small number of goods, we will regret that and think it a missed opportunity—but, if that is the price that we have to pay, there we go.

Mr Gove said the EU's approach on level playing field was akin to its treatment of EU accession countries, where it "would naturally want to see a path towards convergence of standards". He contrasted this with the EU's approach to the USA in previous trade negotiations, where such demands were not made "even though the volume of trade between the EU and US is broadly equivalent to the volume of trade between the UK and EU". On state aid, he said that the UK did not intend to have an approach "that anyone would recognise as anything other than pro free trade and pro free market" but "could not accept

²⁴ *Financial Times*, [Brussels turns up the heat on Brexit talks](#), 10 May 2020.

EU supervision of our state aid regime". Mr Gove said that that the UK wanted to see non-regression clauses or arrangements similar to those in other EU free trade agreements such as CETA.

On internal security, Mr Gove said an agreement was possible but would depend on the approach of the EU. He said that for example "it would be within the EU's gift to give us access to the Schengen Information System" but its insistence that the UK submit to CJEU jurisdiction was "a red line for us in negotiations". He said it would be in the EU's interest to move from this position "because we contribute in general terms more to the pool of information that helps keep EU citizens altogether secure than vice versa".

On equivalence assessments for financial services, Mr Gove said this should be a straightforward process and saw no reason why the EU could not conclude that assessment and deem us equivalent by the end of June.²⁵ The UK has proposed a structured process for the withdrawal of equivalence decisions, with appropriate consultation. Mr Gove said the UK "would like it to be the case that the EU would not promiscuously and whimsically withdraw equivalence, given that the UK has some of the highest, if not the highest, standards of financial services regulation". He said the EU had been "relatively constructive" on this issue.²⁶

1.8 Third round of negotiations

The [agenda for the third round](#) of negotiations was published by the UK and EU on 8 May. Talks would take place from 11 to 15 May and follow a similar format to the previous round. An opening plenary took place on the afternoon of 11 May and closing plenary on the morning of 15 May. The various negotiating sub-groups would meet in between the two sub-groups, with some combining for certain sessions.²⁷

On 9 May, David Frost [said on Twitter](#) that the UK had now shared with the EU a full set of draft agreements. He listed ten agreements, including a complete draft free trade agreement and a fisheries framework agreement (see section 1.9).

A Downing Street spokesperson said on 14 May, that David Frost had [given the cabinet an update](#) on the negotiations and that:

David reiterated that we weren't asking for anything special, bespoke or unique from the European Union. We're looking for a free trade agreement based on precedent similar to those the EU has already got with other countries like Canada. He said, however, that the EU has asked far more from the UK than they have from other sovereign countries with whom they have reached free trade agreements. For instance, they have asked for

²⁵ [The Political Declaration on the framework for the future relationship](#) envisaged that assessment of equivalence by both parties be completed by the end of June (paragraph 36).

²⁶ House of Lords Select Committee on the EU, [Uncorrected oral evidence](#), 5 May 2020.

²⁷ Governance and law enforcement and judicial co-operation combined on the afternoon of 12 May; level playing field and energy combined on the morning of 13 May.

the same access to our waters as they did when we were still in the EU, for the UK to stay bound to their laws and rules
Cabinet agreed that we won't agree to demands to give up our rights as an independent state, especially when the EU has shown through their agreements with other countries like Canada that these controls are not necessary.

David Frost statement at end of third round

Following the conclusion of the third round of negotiations on 15 May, the Prime Minister's Office published this statement by David Frost:

We have just completed our third negotiating round with the EU, once again by videoconference. I would like to thank Michel Barnier and the negotiating teams on both sides for their determination in making the talks work in these difficult circumstances.

I regret however that we made very little progress towards agreement on the most significant outstanding issues between us.

It is very clear that a standard Comprehensive Free Trade Agreement, with other key agreements on issues like law enforcement, civil nuclear, and aviation alongside, all in line with the Political Declaration, could be agreed without major difficulties in the time available. Both sides have tabled full legal texts, there are plenty of precedents, and there is clearly a good understanding between negotiators.

The major obstacle to this is the EU's insistence on including a set of novel and unbalanced proposals on the so-called "level playing field" which would bind this country to EU law or standards, or determine our domestic legal regimes, in a way that is unprecedented in Free Trade Agreements and not envisaged in the Political Declaration. As soon as the EU recognises that we will not conclude an agreement on that basis, we will be able to make progress.

Although we have had useful discussions on fisheries on the basis of our draft legal text, the EU continues to insist on fisheries arrangements and access to UK fishing waters in a way that is incompatible with our future status as an independent coastal state. We are fully committed to agreeing fishing provisions in line with the Political Declaration, but we cannot agree arrangements that are manifestly unbalanced and against the interests of the UK fishing industry.

It is hard to understand why the EU insists on an ideological approach which makes it more difficult to reach a mutually beneficial agreement.

We very much need a change in EU approach for the next Round beginning on 1 June. In order to facilitate those discussions, we intend to make public all the UK draft legal texts during next week so that the EU's Member States and interested observers can see our approach in detail.

The UK will continue to work hard to find an agreement, for as long as there is a constructive process in being, and continues to believe that this is possible.²⁸

²⁸ No 10 media blog, [David Frost's statement at the end of round 3 negotiations with the EU](#), 15 May 2020.

Michel Barnier statement at end of third round

In his statement, Michel Barnier said that the discussions in the third round had enabled the two sides to clarify a number of issues in areas including trade in goods, transport and the UK's participation in EU programmes. He also said that the two sides were "at last, able to initiate the beginnings of a dialogue on fisheries, even if our positions remain very far apart".

But he said that "with the exception of some modest overtures" there was no progress on the more difficult topics, notably on level playing field and governance.

He also said the EU was disappointed by the UK's "lack of ambition" in other less central, but "nonetheless important and symbolic" areas of the negotiation. This included the fight against money laundering and the UK refusal to include consultation mechanisms for the European Parliament, UK Parliament and civil society in implementing the future partnership.

On police and judicial cooperation in criminal matters, Mr Barnier said there was broad agreement on the objectives but that two fundamental obstacles needed to be resolved. These were:

- The UK refusal to commit to guarantees to uphold the European Convention on Human Rights
- The UK insistence "on lowering current standards and deviating from agreed mechanisms of data protection". Mr Barnier said that this was "to the point that it is even asking the Union to ignore its own law and the jurisprudence of the European Court of Justice on passenger data ('PNR rules')", which is of course impossible.

Mr Barnier said the EU remained determined to build an ambitious partnership with the UK and reiterated three points on which he said he had the support of the European Parliament, and the Presidents of the Parliament, the European Council and the European Commission:

- 1) The EU ambition was a free trade agreement with no tariffs or quotas on any goods. This would be the first such EU FTA. As this was with a "highly interconnected" neighbouring country, it would be "totally artificial to copy-paste a 'best-of' from our existing free trade agreements with Canada, South Korea or Japan".
- 2) EU trade policy is no longer simply about taking down tariff walls, but is also about serving sustainable development. It must be underpinned by fair competition conditions, namely when it comes to state aid, social standards, or taxation. The agreement with the UK needs to bring about positive change when it comes to protecting the environment and combatting climate change. But Mr Barnier said the UK was refusing to engage in detailed discussions on mutual and reciprocal guarantees, and to identify appropriate instruments.

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With regard to Michael Gove's suggestion that the UK might renounce the "zero tariffs, zero quotas" objective in order to avoid level playing field obligations, Mr Barnier said this was an undesirable and anachronistic approach and "would entail a detailed – and highly sensitive – negotiation of each tariff line" He said that such a negotiation would only be possible with extension of the transition period.

Mr Barnier said that even if the partnership were to eliminate 98% or 99% of tariffs, the EU would still demand the same strong level playing field guarantees. There would also still need to be specific level playing field conditions in certain sectors, for example a road transport agreement would require guarantees for drivers' working conditions.

3) The EU wanted a broad partnership going beyond trade, but joint solutions needed to be found on all topics in parallel. This meant that an agreement in one area would be linked to agreement in another. Mr Barnier gave the following examples:

- Why would we seek to give favourable market access conditions to certain British professionals when our European fishermen would be excluded from British waters and risk losing their livelihoods?
- Why would we help British enterprises to provide their services in the EU without any guarantees of economic fair play?
- And, beyond our economic partnership, why would be ambitious on questions of extradition or the exchange of personal data if we have no firm commitments from the UK on the protection of European citizens' fundamental rights?
- And lastly, how would we guarantee that our future partnership would be coherent on all of these important topics in the absence of a single institutional framework? We need this to enable the United Kingdom and the EU to jointly implement the full range of our commitments.

Mr Barnier said there was a paradox in that while the UK was saying it would be content with a "Canada-style" deal, in many areas it was demanding more than Canada. Mr Barnier gave the following examples where he said the UK was seeking to maintain the benefits of being a Member State without the obligations:

- To maintain for UK service providers almost complete freedom of movement for short-term stays;
- To obtain electricity interconnection mechanisms equivalent to the Single Market – "existing arrangements" as the UK says;
- To continue to assimilate British auditors to European ones for the purpose of controls on audit firms;
- To maintain a system for the recognition of professional qualifications that is as complete and broad as the one we have in the European Union;

- To be able to co-decide with the Union on decisions relating to the withdrawal of equivalences for financial services ...

Mr Barnier said the UK had chosen to become a third country and could not “pick and choose the most attractive elements of the Single Market”. He said there was “still a real lack of understanding” in the UK about the consequences of leaving the single market and customs union. The UK needed to be more realistic and “cannot have the best of both worlds”, he added.²⁹

Reports from the third round

Politico reported on 18 May that progress had been made in talks on trade in goods, although the two sides did not have meaningful discussions on the more difficult issues of rules of origin. On trade in services, agreement was still far away on data provisions, certain aspects of financial services, geographical indications and public procurement. There was also no agreement on mutual recognition of professional qualifications. There were also differences on air transport, and mobility and social security.

On UK participation in EU programmes, *Politico* reported that the UK was interested in participating for a “fair price” in programmes such as the Horizon Europe research programme and was asking detailed questions about its financing. However, the UK was complaining that the EU was coming up with new provisions and constraints that do not apply to other countries.

Politico reported the view of a senior UK negotiating official that Mr Barnier was doing a good job but that he was having to deliver a challenging inflexible EU mandate which did not “form the basis for an agreement between the UK as an independent third country and the EU.”

Politico also reported in differences over the framework for financial services that the UK is seeking. It cites a UK official who said the “underlying difficulty” was that the UK was seeking treaty provisions that would require consultations between both sides’ authorities, deadlines and warnings if equivalence decisions were going to be changed. However, the EU did not want this in the treaty.³⁰

The Times reported on 18 May that the EU was ready to back down from its hard line on fishing rights in the next month, once EU leaders got more involved in the negotiations. It said that Michel Barnier had conceded the EU’s position was a maximalist one based on demands from France, Spain, Belgium and the Netherlands. It cited a European diplomatic source who said the EU “should probably get more realistic about our fishing position” and that these were matters that needed to be decided at a higher level. Getting things decided at a higher level

²⁹ European Commission, [Remarks by Michel Barnier following Round 3 of negotiations for a new partnership between the European Union and the United Kingdom](#), 15 May 2020

³⁰ *Politico Pro* Brexit files newsletter, 18 May 2020 (subscription only)

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had however hitherto been difficult given the focus was on the coronavirus crisis. The *Times* also cited David Frost who said following the end of the third round of negotiations that Michel Barnier “must know that the mandate is unnegotiable in at least some important areas”.³¹

A *Guardian* report on 15 May cited a senior UK source as saying there could be no “halfway house” on the EU’s level playing field demands as these would result in EU laws being “imposed” on the UK. The report said that the working assumption in the UK was that it would take the high-level meeting involving Boris Johnson and Commission President Ursula von der Leyen in June to break the impasse.³²

On 17 May, Ireland’s foreign minister Simon Coveney said no deal was a risk. He said the negotiating rounds had not gone well so far and this was “essentially because the two sides are looking for different things” and the UK was “rewriting what was committed to in previously in the Political Declaration”. He said that in agreeing the PD it was quite clear that

... both sides needed to find a way of getting a comprehensive agreement in place that could allow for tariff free and quota free trade between the UK and the EU but in order to do that, needed to agree essentially a common rulebook to make sure that the UK wasn’t creating competitive advantage for itself and still having barrier free access into to the EU single market. And that’s why Michel Barnier is absolutely correct to insist on their being a level playing field and a governance arrangement to make sure that both sides can be reassured that they are operating essentially to the same standards Likewise it was very clear in the Political Declaration that was agreed to by the British Government that fisheries would be part of that overall trade deal as well³³.

1.9 UK publishes draft treaty texts and letter to Michel Barnier

The UK Government published the ten draft treaty texts it has tabled in the negotiations on 19 May. These were as follows:

- [Draft Comprehensive Free Trade Agreement](#) (CFTA), plus [annexes](#)
- [Draft Fisheries Framework Agreement](#)
- [Draft Air Transport Agreement](#)
- [Draft Civil Aviation Safety Agreement](#) plus [annexes](#)
- [Draft Energy Agreement](#)
- [Draft Social Security Coordination Agreement](#)
- [Draft Civil Nuclear Agreement](#)

³¹ *The Times*, [Brussels ‘ready to back down on’ on call for more fishing rights](#), 18 May 2020

³² *The Guardian*, [British negotiator gives EU two-week deadline to drop ‘ideological’ stance](#), 15 May 2020

³³ Simon Coveney [speaking on RTE’s, The Week in Politics](#), 17 May 2020.

- [Draft Agreement on Law Enforcement and Judicial Cooperation in Criminal Matters](#)
- [Draft Agreement on the transfer of unaccompanied asylum-seeking children](#)
- [Draft Agreement on the readmission of people residing without authorisation](#)

The Government also published a letter from David Frost to Michel Barnier sent on the same day.

Mr Frost said the UK was making the texts public “as a constructive contribution to the negotiations” and to help Mr Barnier explain the UK proposals in more detail to Member States.

Mr Frost said that the UK texts “draw on precedent where relevant precedent exists”. For example he said:

our draft FTA approximates very closely those the EU has agreed with Canada or Japan. Our draft fisheries agreement is very close to the EU / Norway Agreement. Our aviation proposals are similar to those the EU has agreed with other third countries. Our draft civil nuclear agreement is very close to similar cooperation agreements that Euratom (and indeed the UK) has concluded with other third countries. And so on.

Where there was no precedent, Mr Frost said that the UK had made pragmatic proposals, for example on road transport and energy cooperation. He said it was therefore “perplexing” that the EU was “insisting on additional, unbalanced, and unprecedented provisions in a range of areas, as a precondition for agreement between us”.

He said it was also surprising that the EU was not only insisting on additional provisions, but also “not willing even to replicate provisions in previous FTAs”. He gave the following examples:

your proposals to us contain no provision for mutual recognition of conformity assessment (which the EU agreed with or proposed to Canada, Australia, New Zealand and the US); no sector-specific provisions for key industries with particular technical barriers such as motor vehicles, medicinal products, organics and chemicals (agreed with or proposed to one or more of Canada, South Korea, Chile and the US, among others); and no equivalence mechanism for SPS measures (agreed with or proposed to Canada, Japan, New Zealand, Australia, Mexico and Mercosur).

In services, the EU is resisting the inclusion of provisions on regulatory cooperation for financial services, though it agreed them in the EU-Japan EPA. The EU's offer on lengths of stay for short-term business visitors (Mode 4) is less generous than CETA, and does not include the non-discrimination commitment found in EU-Mexico.

On services he said that the EU had “not proposed anything on services which reflects the specific nature of our relationship” and the EU negotiating team had “told us that the EU's market access offer on services might be less than that tabled with Australia and New Zealand.” He added:

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Overall, we find it hard to see what makes the UK, uniquely among your trading partners, so unworthy of being offered the kind of well-precedented arrangements commonplace in modern FTAs.

On the issue of the level playing field, Mr Frost insisted that the UK was not deviating from its commitments in the Political Declaration as the FTA text it was proposing “sets out a comprehensive set of proposals designed specifically (as the Political Declaration puts it) to “prevent distortions of trade and unfair competitive advantages”. He said the UK proposals were modelled on similar arrangements in other EU FTAs, notably the one with Canada. On this issue he said:

The EU is now asking the UK to commit to much more than that. Your text contains novel and unbalanced proposals which would bind this country to EU law or standards, and would prescribe the institutions which we would need to establish to deliver on these provisions. To take a particularly egregious example, your text would require the UK simply to accept EU state aid rules; would enable the EU, and only the EU, to put tariffs on trade with the UK if we breached those rules; and would require us to accept an enforcement mechanism which gives a specific role to the European Court of Justice. You must see that this is simply not a provision any democratic country could sign, since it would mean that the British people could not decide our own rules to support our own industries in our own Parliament. Similar issues manifest themselves across labour, environment, climate change and taxation. We have been clear that the UK will have high standards and, in many cases, higher standards than those in the EU. However, we cannot accept any alignment with EU rules, the appearance of EU law concepts, or commitments around internal monitoring and enforcement that are inappropriate for an FTA.

Mr Frost referred to the EU justification for the level playing field proposal that the UK was “being offered a future relationship of unprecedented depth” and said that this was “not obvious on the basis of the evidence we have so far”. He also referred to the UK’s offer to discuss an FTA based on less than the “zero tariff” objective if the EU thought that was a justification for his level playing field ask. But he noted that the EU was not willing to discuss this.

In relation to the EU view that the level of economic integration between the UK and the EU justified such provisions, Mr Frost said.

In fact, as a share of our economy, the UK is already less integrated in trade terms with the EU than Switzerland, Norway, or Ukraine. Alternatively, you justify it in terms of trade flows: yet the EU did not insist that the US made any “level playing field” commitments in the TTIP negotiations beyond those typical to an FTA, although US and UK trade flows with the EU are roughly similar.

In relation to the EU’s argument that geographical “proximity” between the UK and the EU might require level playing field provisions, Mr Frost said:

This is a novel argument in trade agreements and is hard to justify from precedents elsewhere. The US and Canada, for example, trade together through a trade agreement without provisions of the kind the EU would like to see. This proximity argument amounts to saying that a country in Europe cannot expect to

determine its own rules, simply on the grounds of geography, and that it must bend to EU norms. That is not an argument that can hope to be accepted in the 21st century.

Mr Frost pointed to similar concerns about the EU's approach in other areas. On fisheries, he said the EU's position on continuity of access to UK waters was "clearly not realistic". On governance, he said the EU was proposing a structure "not replicated in other EU agreements with third countries except those which aspire to join the EU". On law enforcement he said

you describe EU proposals as providing for an unprecedentedly close relationship, but in fact they do not go beyond agreements you have made with other third countries, many of whom have far less data to offer the EU and are less closely involved in the mutual fight against crime. We do not agree that the simple fact of putting a set of standard measures into a single agreement can itself justify the exceptional and intrusive safeguards you are seeking in this area.

Mr Frost said that overall what was on offer from the EU "is not a fair free trade relationship between close economic partners, but a relatively low-quality trade agreement coming with unprecedented EU oversight of our laws and institutions". He said he remained convinced that agreeing a high-quality FTA and other agreements similar to that that the EU had agreed with other partners would be "very straightforward" and could be done quickly. Finally, he said he hoped the EU would "think again about its proposals in a way that will enable us to then find a rapid and constructive alternative way forward".³⁴

1.10 Response from Michel Barnier

Michel Barnier responded in a letter the next day. He said he shared David Frost's commitment to helping the process move forward together but did not think "that an exchange of letters regarding the substance of the negotiations is necessarily the best way to discuss on substantial points". He went on:

It cannot be a substitute for serious engagement and detailed negotiations and, in particular, I would not like the tone that you have taken to impact the mutual trust and constructive attitude that is essential between us.

He referred back to the Political Declaration agreed with the UK Government and said:

This is the only precedent that the EU is following. We have remained faithful to the Political Declaration in the legal text we have proposed to the UK, which shows how the objectives that we had jointly defined in October 2019 can be translated into a comprehensive agreement.

Referring to the independent and sovereign choice the UK had made, Mr Barnier said:

The EU and the UK are equally sovereign and as such will set the conditions for access to their respective markets. Regardless of what your letter suggests, there is no automatic entitlement to

³⁴ [Letter from David Frost to Michel Barnier, UK draft legal texts, 19 May 2020](#)

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any benefits that the EU may have offered or granted in other contexts and circumstances to other, often very different, partners.

Every agreement that the EU has concluded is unique, with its own balance of rights and obligations, tailored to the partner and era in which it is concluded. There is no model, no uniform precedent to follow in EU trade policy.

Neither is there a right to what you admit are unprecedented UK proposals in a number of areas. Just as we do not accept selective benefits in the Single Market without the corresponding obligations, we also do not accept cherry picking from our past agreements. The EU is looking to the future, not to the past, in these negotiations.

On the question of the level playing field, Mr Barnier said:

The UK cannot expect high-quality access to the EU Single Market if it is not prepared to accept guarantees to ensure that competition remains open and fair. The EU has been clear about this since 2017. This was unequivocally stated by the European Council guidelines of 23 March 2018 mandating “work towards a balanced, ambitious and wideranging free trade agreement (FTA) insofar as there are sufficient guarantees for a level playing field”. Given our geographic proximity and economic interdependence, there must be robust level playing field safeguards to avoid distortions of trade and unfair competitive advantages, to the benefit of consumers and companies on both sides. Modern high-quality trade and economic agreements go beyond the traditional goal of simply eliminating tariffs and need to protect – or even raise – social and environmental standards, in the general interest of citizens and consumers.

Mr Barnier said this would mean “upholding the common high standards” applicable in the EU and in the UK at the end of the transition period in stated level playing field areas, and appropriate implementation and enforcement mechanisms. But he said:

This does not mean that the UK would be bound by EU law after the end of the transition period in these areas; the UK will remain entirely free to set its own higher standards. But we need to give ourselves concrete, mutual and reciprocal guarantees for this to happen.

Regarding the UK proposal to move away from the zero tariff, zero quota” commitment as a way of breaking the impasse on the level playing field issue, Mr Barnier said that

apart from the fact that we do not have necessary time for a negotiation on each tariff line, the EU has always made clear that any future trade agreement between us will have to include strong level playing field guarantees, irrespective of whether it covers 98% or 100% of tariff lines.

Regarding law enforcement and judicial cooperation, Mr Barnier said that “the EU has never previously offered such a close and broad security partnership with any third country outside the Schengen area”. He said that some UK demands in this area went “well beyond the well precedented approach it declares to be taking”. He gave the example of the continued access to EU or Schengen databases the UK is seeking. He said that such access “is linked to the obligations that Member

States have to comply with and would go beyond what some of them have today". He said that these are areas that require strong safeguards in terms of protection of fundamental rights. He said that the EU needed the UK "to provide those guarantees, as agreed only seven months ago in the Political Declaration, such as adequate data protection standards".

Mr Barnier concluded by restating the EU position that success in the negotiation would "only be possible if tangible and parallel progress is made across all areas of negotiations". This also required commitments on "appropriate governance mechanisms" and "to balanced, sustainable and long-term arrangements on fisheries". He said he remained convinced that the negotiations could move forward "with mutual respect and constructive engagement by the UK across the board" in "the limited available time".³⁵

Other EU responses

Spain's foreign minister Arancha González told the BBC Today programme on 20 May that the two sides needed to engage in a real "mutually beneficial negotiation" and to stop posturing. She said:

The most important thing now is to stop posturing, stop sending letters, to stop sending emails, sit down and negotiate — that's what we need to see now. And again it has to be clear that when you're not a member of the European Union, you can't enjoy the same benefits as if you were a member of the European Union.³⁶

1.11 Timeline and transition period

The original [terms of reference](#) for the negotiations provided for five rounds of negotiations to have taken place by the middle of May 2020, with further rounds to be mutually agreed. The revised schedule means that three rounds will have taken place by the middle of May and with one further round scheduled in early June.

As envisaged by the PD a high level UK-EU meeting should take place in June "to take stock of progress with the aim of agreeing actions to move forward in negotiations"³⁷. The PD also set out the shared UK-EU intent to get future relationship agreements in place by the end of 2020. This would be with the aim of having these in place on 1 January 2021, the day after the transition period provided for by the WA comes to the end. Without an agreement in place, the UK-EU trading relationship will revert to WTO rules and arrangements governing UK-EU co-operation in several other policy areas will cease.

When presenting the draft EU negotiating directives on 3 February, Michel Barnier set out a timeline for negotiations which envisaged negotiations being concluded by the European Council (EU heads of state or government) meeting on 15-16 October 2020. This would allow

³⁵ [Reply from Michel Barnier, Chief Negotiator, to David Frost, UK Chief Negotiator, 20 May 2020](#)

³⁶ *Politico Pro*, [Spain: UK and EU need to engage in 'real' Brexit talks](#), 20 May 2020.

³⁷ [Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#), 17 October 2019, Paragraph 141

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time for ratification of any agreement so that it would be ready for implementation on 1 January 2021. Negotiation of outstanding issues could then continue in 2021.³⁸

The proposed timeline for concluding an agreement by the end of 2020 was seen as ambitious by [several commentators](#). The loss of negotiating rounds, the switch to negotiating by videoconference and the diversion of resources and political attention towards addressing the coronavirus outbreak has increased concerns about the viability of the timeline. In his statement following the second round of negotiations on 24 April, Mr Barnier suggested it would be realistic to think about

whether, in the midst of the terrible economic crisis that is forecast due to the coronavirus crisis, we will be able to reach an intelligent agreement that limits the shock that the UK's departure from the Single Market and Customs Union will entail in any case.³⁹

In his evidence to the House of Commons Future Relationship Committee on 27 April, Michael Gove suggested that the coronavirus crisis "in some respects should concentrate the minds of EU negotiators, enforcing the vital importance of coming to a conclusion", adding later that "deadlines concentrate minds." He said that it was "still entirely possible to conclude negotiations on the timetable that has been outlined" and that there was a "better than 2-1" chance of deal.⁴⁰

Government rejects extending the transition period

Under Article 132 of the WA, the Joint Committee can agree to extend the transition period for up to years, but the decision would need to be taken by the Joint Committee by 1 July 2020. The Government has repeatedly stated that it will not agree to an extension of the transition period and has [legislated to prohibit itself](#) from doing so.

The [Scottish](#) and [Welsh](#) Governments have called on the UK Government to seek a transition to the extension. Several [other organisations](#), [former UK diplomats](#) and other [commentators](#) have also called for an extension. In May, the SNP Westminster leader Ian Blackford, acting leader of the Liberal Democrats Sir Ed Davey and MPs from the Green Party, and the Social Democratic and Labour Party and Alliance Party in Northern Ireland [wrote](#) to Michel Barnier in support of an extension of the transition period. The Labour party leader, Keir Starmer, said that he didn't think the current timeline was practical, but that "we're going to hold them to that" and "see how they get on."⁴¹

The Government has continued to reject the possibility of a transition extension. On 16 April, David Frost [tweeted](#) that the UK would not ask

³⁸ European Commission, [Slides used by M. Barnier on occasion of the presentation of the Commission's proposal for a Council recommendation on directives for the negotiation of a new partnership with the UK](#), 3 February 2020.

³⁹ European Commission, [Press statement by Michel Barnier following the second round of future relationship negotiations with the United Kingdom](#), 24 April 2020.

⁴⁰ Committee on the Future Relationship with the European Union, [Oral evidence: Progress of the negotiations on the UK's Future Relationship with the EU](#), HC 203, 27 April 2020..

⁴¹ *The Independent*, [Keir Starmer refuses to back Brexit transition extension](#), 11 May 2020

for an extension transition and if the EU asks “we will say no”. He [added](#):

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

In his evidence to the Commons Future Relationship Committee on 27 April, Mr Gove said that the UK wanted transition to end “so that we can have the maximum flexibility when it comes to state aid, to Government procurement and to other steps that we may need to strengthen our economy”. He said that

If we were to extend, it would involve us paying more money into the European Union at a time when that money could be spent on our National Health Service. It would involve us accepting not just the existing EU acquis but potentially new EU laws over which we would have no say, which could potentially constrain this country. Those EU laws would be shaped in the interests of the EU 27, rather than the UK as well.

Moreover, he said that an extension of the transition would remove the incentive to come to an agreement⁴².

⁴² Committee on the Future Relationship with the European Union, [Oral evidence: Progress of the negotiations on the UK's Future Relationship with the EU](#), HC 203, 27 April 2020.

2. The EU draft treaty text, March 2020

On 12 March 2020, the European Commission circulated a draft text of the Agreement on the New Partnership between the European Union and the United Kingdom.⁴³ Following consultation with the European Parliament and Council, an amended text was submitted to the UK Government on 18 March 2020.⁴⁴ The amendments strengthened wording in some areas, including in sections on the level playing field and fisheries.

The draft treaty text operationalises the positions set out in the EU's negotiating directives in several areas. Some parts of the text provide more details and give greater clarity to the EU's position in the directives. The discussion below provides an outline of where the EU text goes beyond the existing known position or provides more detail, although it is not intended to be an exhaustive analysis.

Some parts of the text, such as Title VI on services and investment, closely follow the text of the EU-Japan FTA, which entered into force in 2019. Title VIII on capital movements, and Title XV which helps SMEs access the benefits of the agreement through information and single contact-points, also mimic the EU-Japan FTA.

The UK Government published its [draft texts](#) for ten separate agreements on 19 May. The Library intends to provide briefings on the UK texts in due course.

2.1 General principles and basis for co-operation

Title I of the EU draft treaty states that all areas of the partnership should be within a unified governance structure. Any other future bilateral EU-UK agreements would be supplementing agreements to this main agreement and should be an integral part of the partnership and the overall governance framework (Article COMPROV 2).

Title II outlines the various shared values and principles for co-operation that the partnership should be based upon. These elaborate on the core values set out in part 1 of the Political Declaration. These include the following:

- Human rights, involving respect for the Universal Declaration of Human Rights, international human rights treaties and continued commitment to respect the European Convention on Human Rights (COMPROV.4).

⁴³ European Commission, [Draft text of the Agreement on the New Partnership between the European Union and the United Kingdom](#), UKTF (2020) 14, 12 March 2020

⁴⁴ European Commission, [Draft text of the Agreement on the New Partnership between the European Union and the United Kingdom](#), UKTF (2020) 14, 18 March 2020

- The fight against climate change, including commitment to the United Nations Framework Convention on Climate Change and Paris Agreement and that both parties refrain from any acts or omissions that would undermine adherence (COMPROV.5).
- Co-operation to counter proliferation of weapons of mass destruction, including through steps to ratify or accede to the relevant international instruments and establishment of effective systems of national export controls (COMPROV.6).
- Co-operation and dialogue on regulation of international trade in conventional arms and to eradicate illicit arms trade. This would include implementation of international obligations to deal with the illicit trade in small arms and light weapons and undertaking to fully implement the Arms Trade treaty (COMPROV.7).
- Full support for the “universality and integrity” of the Rome statute of the International Criminal Court and related instruments (COMPROV.8).
- Co-operation and regular dialogue on counterterrorism (COMPROV.9).
- Commitment to high level of personal data protection and to working together to promote high international standards (COMRPOV.10).
- Co-operation on global issues of common interest, seeking to co-ordinate positions in multilateral organisations such as the G7, G20 and United Nations (COMPROV.11).

COMPROV.12 states that Article 4 (1) on democracy, rule of law and human rights, Article 5 (1) on climate change, and Article 6 (1) on countering weapons of mass destruction constitute essential elements of the partnership.

As noted in section 1.4, Michel Barnier expressed concern in his statement on 24 April following the second round of negotiations that the UK was rejecting elements of the EU’s proposed governance framework including the need to refer to common values, such as democracy, rule of law and human rights, counter-terrorism and the fight against climate change as essential principles. He said these were standard in all EU international agreements. The *Financial Times* reported on 6 May that the EU desire to include a reference to the Paris Agreement on climate change as an essential element of the proposed partnership was a particular source of disagreement in the negotiations. The *Financial Times* said that the EU proposal would create a legal justification for the EU to suspend preferential trading arrangements if the UK walked away from its Paris obligations. It cited an EU official who said of the EU proposal:

This means de facto that both the EU and the UK commit to respect the Paris agreement, and in case one does not, the other party can take measures. For now, the UK does not seem to want this.⁴⁵

The report also cited a UK government spokesperson, who said the UK-EU agreements should “reaffirm both parties’

⁴⁵ *Financial Times*, [Brussels and Britain clash over climate conditions in trade deal](#), 6 May 2020.

commitments to the Paris agreement and recognise both sides' right to decide their own regulation to meet our respective climate goals" but that this "does not require an additional binding international legal commitment".

The European Commission has said that it wants a commitment to the Paris climate change agreement to be included among the "essential elements" clauses of any new trade agreements that the EU negotiates. This view was also supported in a joint France-Netherlands paper in May.⁴⁶

Title III of the EU text covers principles of interpretation and definition, referring to the customary rules of public international law and WTO case law. COMPROV.14 states that all provisions of EU law referred to in the Agreement or supplementing agreement "shall in their application and implementation be interpreted in accordance with the methods and general principles of Union law and in conformity with the case-law of the Court of Justice of the European Union".

2.2 Level playing field and sustainability

Title III of the draft treaty text elaborates provisions on level playing field and sustainable development in line with the EU's negotiating directives. It proposes to reaffirm "the common understanding" that a commitment to high standards in the areas of state aid, competition, state-owned enterprises, taxation, social and labour protection, environmental protection and the fight against climate change is crucial to fair competition. Recognising the geographic proximity and economic interdependence of both parties, an extra emphasis on the 'long-lasting' nature of the level playing field commitments has been added to the 18 March text (LPFS.1.1 (4)).

The parties affirm their right to regulate. They would also accept the precautionary principle where appropriate. This could affect for example what evidence the parties consider appropriate to establish that there is a threat to animal/plant/human health.

State aid

As set out in the EU negotiating directives, the text on state aid (Section 1) requires the UK to give effect to EU state aid law including future amendments in its domestic law. There is an exemption for UK support to agriculture.

The UK would establish an independent enforcement authority. It would ensure that its courts could apply state aid rules and would be able to refer questions of interpretation of EU state aid law to the CJEU. In addition, the European Commission would have legal standing before UK courts to bring cases in respect of state aid measures adopted by UK authorities and would have a right to intervene. Trade news service

⁴⁶ *Financial Times*, [France and Netherlands call for tougher EU trade conditions](#), 4 May 2020.

Borderlex has commented that this would be an unprecedented extra-territorial effect of EU law into a third state.⁴⁷

There would be a consultation mechanism within the Specialised Committee on Level Playing Field and Sustainability (SCLPF) and the Agreement dispute settlement mechanism would apply. The EU could take “interim measures” if, for example, consultations failed or the SCLPF could not come to an agreement on whether new EU state aid provisions would be adopted by the UK. The text does not explain the nature of such interim measures.

The text resembles the original WA backstop protocol on Ireland/Northern Ireland in 2018 agreed by the EU and Theresa May’s Government, with the exception that cooperation between the independent UK state aid authority and the European Commission would now be voluntary.⁴⁸

Competition

Section 2 elaborates on commitments in the area of competition as set out in the EU [negotiating directives](#). Anti-competitive practices by undertakings are prohibited as far as those affect trade between the UK and the EU, but there is no reference to EU competition law.

Also state-owned enterprises and enterprises granted special rights are covered by competition provisions, insofar as this does not obstruct their performance of public services (LPFS.2.14). Article LPFS.2.10(2) states that these commitments do not apply to production and trade in agricultural products. There are provisions regarding cooperation on policy development and cooperation between competition authorities. Provisions on competition would not be covered by the Treaty dispute settlement mechanism (Part Five, Title II), except for the requirement to have an enforcement body.

State-owned enterprises (SOEs)

Largely in line with other EU FTAs, the text of Section 3 affirms parties’ rights and obligations under the GATS and GATT, and international standards such as the OECD guidelines on Corporate Governance of SOEs. When buying and selling on commercial markets, SOEs will be required to treat other parties’ companies, services and goods similarly to their local counterparts. Each party will ensure enforcement by an independent regulatory body and exchange information upon request (LPFS 2.23-24).

Provisions on SOEs would be covered by the Agreement dispute settlement mechanism (Part Five, Title II).

Taxation

On taxation, the text repeats commitments to global standards on taxation included in the [negotiating directives](#). It reiterates commitments to non-regression with regard to taxation standards (e.g. tax avoidance

⁴⁷ Nikos Lavranos, [EU UK agreement: an analysis of the EU’s proposed dispute settlement provisions](#), *Borderlex*, 23 March 2020

⁴⁸ George Peretz, [Is there any scope for agreement between the EU and UK on subsidies?](#) UK State Aid Law Association, 14 April 2020

and the exchange of information). The Partnership Council would be authorised to extend the scope or level of common standards. Provisions on tax (good governance) would not be covered by the Agreement dispute settlement mechanism (LPFS 2.25). However, the dispute settlement (Part Five, Title II) would cover taxation standards with respect to tax avoidance and the exchange of information (LPFS 2.26)

Labour and social protection

The text of Section 5 follows the guidance of the [negotiating directives](#) and includes non-regression provisions for labour law. There is a ratchet clause whereby if both parties increase the level of protection one cannot reduce it again. The Partnership Council may lay down higher standards and include new areas of commitments. The Agreement dispute settlement provisions apply alongside domestic enforcement.

Environment and health

Following the [negotiating directives](#), Section 6 of the Agreement text includes non-regression provisions with regard to common standards of environmental protection applicable at the end of the transition period as well as common targets agreed at that point. In line with the objective to establish “long-lasting and robust commitments” on LPF, the 18 March text adds a new paragraph 3 to Article LPFS 2.30, indicating that common targets can also be ambitious as opposed to current achievements. Similar to the section 5 on labour standards, a ratchet clause is included, and the Partnership Council may lay down higher standards and expand the scope of commitments.

Independent bodies would be responsible for monitoring and enforcement of the agreed standards, whereby the UK body would cooperate with the European Commission. The Agreement’s dispute settlement provisions apply to commitments on environment and health alongside cooperation on domestic enforcement (LPF.2.32-3).

Fight against climate change

Section 7 expands on the EU ambitions set out in the [negotiating directives](#). Each Party would reaffirm their commitment to climate neutrality (known as net zero in the UK) by 2050. It has a non-regression clause on “climate protection” which is defined as including emissions from industrial installations, transport, land use, forestry and agriculture. The UK would implement a system of carbon pricing of at least the same scope and effectiveness of, and possibly linked to, the EU Emission Trading System.

Like in section 5 on environment and health, commitments on climate protection would also cover agreed future targets. As in labour and environment sections of the Agreement, there is a non-regression clause (LPFS.2.34) and a ratchet clause (LPFS.2.36), and the Partnership Council may extend the level of commitments and targets, and their scope. The Agreement’s dispute settlement provisions apply alongside cooperation on domestic enforcement (LPFS.2.37-8).

Climate change, including implementation of the UNFCCC and the Paris Agreement, is also covered in Section 8 (Other instruments for trade and sustainable development).

Trade and sustainable development

Section 8: “Other Instruments for trade and sustainable development” is complementary to sections 5, 6 and 7 and aims to integrate labour and environmental dimensions of the sustainable development agenda into the new UK-EU trading relationship.

This section refers to common international commitments and aspirations of the parties with regard to labour and environmental standards, and climate protection. This involves extensive policy cooperation bilaterally and in international fora such as the International Labour Organisation, the UN and the OECD. Cooperation would cover environmental governance and agreements, trade and climate change, trade and biological diversity, trade and forests, trade and responsible supply chain management as well as other areas.

The parties would commit to transparency when their policies might affect trade or investment (LPFS.2.49).

In derogation from the Dispute settlement mechanism under Title II of Part Five, disputes pertaining to matters covered by this section would be resolved through a two-tier process: direct consultations between the parties (LPFS.2.51) and a panel of independent experts (LPFS.2.52) which “shall have specialised knowledge or expertise in labour or environmental law ... or the resolution of disputes arising under international agreements.”⁴⁹

For the draft of 12 March the EU was contemplating giving the SCLPFS a role in the consultation process. In the 18 March text, the SCLPFS has no role, and the parties can now request consultations directly with each other.

Further reading

Commons Library Briefing CBP-8852, [The UK-EU future relationship negotiations Level playing field](#), provides background information to the UK and EU positions on level playing field at the start of the negotiation.

2.3 Trade in goods

Title VI covers rules establishing a free trade area for trade in goods. As expected, the text proposes to abolish customs duties (zero tariffs) (Article GOODS.5). Mutual trade would be excluded from the parties’ existing product import quotas (GOODS.18). Furthermore, the text gives details on customs cooperation, customs procedures, and allowed import and export restrictions, in line with the relevant GATT provisions.

⁴⁹ Comparable ‘panel of expert’ procedures are also part of CETA regarding the labour and environmental protection chapters. See Nikos Lavranos, [EU UK agreement: an analysis of the EU’s proposed dispute settlement provisions](#), Borderlex, 23 March 2020

It has been noted that the UK is seeking maximum customs flexibility regarding customs procedures at the border (such as electronic pre-declaration), but the EU does not want such arrangements to be locked in the FTA.⁵⁰

Trade remedies such as anti-dumping duties, duties to countervail other party's subsidies and safeguard duties will be deployed within the framework of the relevant WTO agreements (GOODS.17). The 18 March iteration of the text adds a clarification on agricultural subsidies which comply with the WTO Agreement on Agriculture and are considered to be non-distorting (the so-called "green box" payments). Such subsidies are shielded from trade remedies.⁵¹

GOODS.19 sets out the measures in case of breaches of customs legislation, such as a unilateral suspension of preferential treatment of the affected products. A suspension can be applied after a consultation in the Partnership Council, if no bilateral solution can be found.

GOODS.21 Cultural Objects has a placeholder allowing for a negotiation on the return or restitution of unlawfully removed cultural objects to their countries of origin.

Chapter 2 of the Title IV on goods trade is dedicated to the rules of origin which determine whether an imported good qualifies for a zero tariff.⁵² As stated in the negotiating directives, the EU seeks to apply a standard approach to **rules of origin (RoO)**.⁵³ The UK side has said it [wants a bespoke approach](#).⁵⁴

One of the possible off-the-shelf models the EU could use is the pan-Euro-Mediterranean Convention on rules of origin (PEM).⁵⁵ Although the draft text of the Agreement has no reference to the PEM Convention, customs experts expect that the Convention's provisions would feed into the detailed discussions on product-specific rules of origin, for which the EU's draft text makes no proposals.⁵⁶

The conditions for the so-called 'cumulation' in RoO determine what percentage of foreign content in a good is counted towards RoO-thresholds to be eligible for preferential terms of trade. As *Borderlex* explains, the proposed EU text currently contains rules for bilateral EU-

⁵⁰ Trade expert Sam Lowe, [Twitter, 30 April 2020](#)

⁵¹ See international trade expert [Peter Ungphakorn, Twitter thread, 19 March 2020](#)

⁵² The rules of origin determine the "economic nationality" of a good to see whether it qualifies for a zero tariff under the trade agreement. These rules would be used to distinguish a UK good (which would qualify for a preferential tariff) from, for example, a Chinese good being transported from the UK to the EU (which wouldn't).

⁵³ EU Council [Negotiating Directives](#), 25 February 2020, paragraph 21

⁵⁴ [HM Government command paper](#), 27 February 2020, cp211, ch3

⁵⁵ [Regional Convention on pan-Euro-Mediterranean preferential rules of origin \(PEM Convention\)](#), EU OJ L54, 26 February 2013. The PEM Convention sets identical rules of origin for EU member states, the EFTA members, and participating non-EU Mediterranean countries. The Convention defines the maximum percentages of imported intermediates which any given product may contain in order to qualify for tariff-free market access under an FTA; See also EU Parliament Research Service, [Future EU-UK trade relationship: Rules of origin](#), April 2020

⁵⁶ Chris Horseman, [Unprepared and in a hurry – the UK's dilemma over rules of origin](#), *Borderlex*, 19 March 2020

UK cumulation “with EU-sourced inputs counting as UK content for FTA purposes, and vice-versa.” This would contribute to sustaining bilateral supply chains between the EU and UK. However, rules on diagonal cumulation, which would allow broader coverage, including other trading partners as well, are omitted altogether in the EU proposed text. Diagonal cumulation operates, for instance, between PEM signatories. But the UK Government has asked for a more ambitious and bespoke form of diagonal cumulation – “whereby components and ingredients could be sourced interchangeably in cases where the UK and EU share common FTA partners”, beyond the signatories of the PEM Convention.⁵⁷

Sanitary and Phytosanitary issues

The objectives of Chapter 3 Sanitary and Phytosanitary (SPS)⁵⁸ issues are broadly in line with the UK objectives to protect human, animal or plant life and health, ensure SPS measures do not create unnecessary barriers to trade and ensure effective cooperation between both parties.⁵⁹

The draft Agreement sets out that the SPS provisions in the future arrangement should “respect Union rules”, as well as take into account the respective international standards.⁶⁰

The Agreement includes many provisions similar to those in the draft EU-New Zealand FTA but with notable exceptions such as provisions on equivalence of standards.⁶¹ The UK negotiating guidelines specifically refer to the [EU New Zealand Veterinary Agreement](#) measures on equivalence.⁶²

Technical barriers to trade

Chapter IV details provisions to minimise technical barriers to trade with regard to standards, technical regulations and [product conformity assessment](#). The text does not contain a proposal for mutual recognition of conformity assessment or sector-specific provisions for industries with particular technical barriers, such as motor vehicles and chemicals. Chapter V expands on customs and trade facilitation.

A UK Government spokesperson has described the detail of the EU’s offer on goods trade as “well short” of recent precedent in free trade agreements.⁶³

⁵⁷ Chris Horseman, [Unprepared and in a hurry – the UK’s dilemma over rules of origin](#), Borderlex, 19 March 2020; CETA, [Article 3 \(8-9\)](#)

⁵⁸ SPS measures are provisions countries make to ensure that food is safe for consumers, and to prevent the spread of pests or diseases among animals and plants. They can include import checks on plants and animals/animal products and rules over standards of products such as pesticide residues or requiring processing in certain ways.

⁵⁹ Council of the European Union, [ANNEX to COUNCIL DECISION authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement](#), 25 February 2020

⁶⁰ Ibid, para 30

⁶¹ European Commission, [European Union’s \(EU\) proposal for the EU-New Zealand FTA](#), August 2018, chapter XX

⁶² [COMMISSION IMPLEMENTING DECISION \(EU\) 2015/1084](#), 18 February 2015

⁶³ [UK and EU heading for trade deadlock as Barnier castigates ‘unrealistic’ UK stance](#), Borderlex, 24 April 2020

2.4 Fisheries

The EU [Draft Agreement](#) text published on 18 March included strengthened wording compared to the [earlier draft circulated on 12 March](#). The first common fisheries objective was amended from:

- (a) defining clear and stable rules and conditions on access to waters and resources;

To a much more robust objective that would uphold existing reciprocal arrangements:

- (a) upholding clear and stable rules and existing reciprocal conditions on access to waters and resources;

A further objective, objective (m) was amended from “respecting the existing fishing activities” to “upholding the existing fishing activities”.

Both of these changes suggest that Member States continue to take the position, already set out on a number of occasions, that there should be very little change to existing rules and quota allocations for fisheries after Brexit. This change further reinforces the position set out in the rest of the text, which has remained unchanged between the two drafts.

Fisheries is covered in Title Five in the draft document. There are three chapters. The first sets out 15 common fisheries objectives and a number of definitions; the second covers the “conservation and sustainable exploitation of fisheries resources”; and the third covers access to waters and resources. Overall, they present a position that would result in a continuation of fisheries management in the UK along the principles of the Commons Fisheries Policy (CFP). The proposals cover 97 different stocks of fish which are shared between the UK and EU.⁶⁴

Fisheries Objectives

The 15 common fisheries objectives set out in the draft text include upholding reciprocal access and fishing activities for both parties. They do not make any reference to annual negotiations to agree share of fish stocks.

Several of the objectives mirror those that have been set out by the Government, in both the fisheries white paper and the 25 year environment plan. For example, there are objectives on stock recoveries; co-operating on conservation, management and data collection; basing policies on best available science; and cooperating to prevent illegal, unregulated and unreported fishing.

However, a number would appear restrictive on future UK fisheries policies. There is a commitment to continue to fish at Maximum Sustainable Yield (MSY), which would mean that [Total Allowable Catches](#) could not be set below or above this by the UK, should it wish to do so, as they would be agreed jointly with the EU.

⁶⁴ Further background can be found in the Commons Briefing Papers on [Fisheries and Brexit](#), and on [Fisheries Management in the UK](#).

There is an objective on the [landing obligation](#) (or discard ban) which commits to eliminating discards and ensuring all caught fish are landed. However, the [Fisheries Bill](#) currently in the House of Lords already contains measures for amending the landing obligation, which could result in changes that do not fall within the objective.

Conservation and sustainable exploitation

The document sets out that both parties should “adopt joint long-term strategies for conservation and management as the basis for the setting of fishing opportunities and other management measures”.

[Technical measures](#) are the detail of how and when fishing for different stocks can be carried out and set out in EU regulations, and transposed into UK regulations. In the draft, any changes to technical measures by either party must be notified with four months’ notice, and either party can request a consultation to the Specialised Committee on Fisheries, which would be set up as part of the Partnership Council proposed by the Commission.

Emergency measures could be imposed by either party to protect stocks for a maximum of a year, and again either party can request a consultation via the Specialised Committee on Fisheries. The measures would be suspended during a month long consultation.

Further details on the governance structures proposed by the EU can be found below in section 2.14.

In addition, both parties “shall establish joint control, monitoring and surveillance programmes in order to coordinate and cooperate on control, monitoring and surveillance of fishing activities within Union and United Kingdom waters.”

Access

The section on access to stock and resources, together with Annex Fish 1 (setting out the fishing areas and the stock in each) and Annex Fish 2 (setting out % share of each stock for EU and UK), and Annex 3 (on which areas there will be access for UK and EU fishing boats) set out the EU’s proposal for how stocks should be shared.

Annex Fish 2 includes a table, currently blank, for percentage allocation of each stock to EU and the UK. This may be an indication that there could be some flexibility in the EU’s position on whether the current percentage share should remain or could be amended. However, the Annex also states “it is planned to uphold here existing quota shares”

On access, the EU proposes access to “all jointly managed stocks and other stocks”, as set out in Annex 3.

The provision is for negotiations on agreeing the annual total catches of each stock, which would then be shared based on fixed percentages as set out in the agreement. This is similar to the current annual negotiations within the CFP.

Negotiations would begin on 31 January each year for the following year, and be completed by 10 December of that year. Failure to reach agreement by that date would require allowable catches to be set at

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MSY levels or, if this data is not available, using a precautionary principle.

Provisions are included for quota exchanges between countries, as is currently the case within the CFP.

Failure to comply with any of the provisions would allow each party to use the suspension of trade tariff concessions (i.e. impose tariffs) as a remedy, within 7 days. The matter would be considered under arbitration, and could not be pursued through other international channels such as the WTO.

2.5 Trade in services

Title VI containing the Investment and services chapters closely follows the EU [negotiating directives](#). The text shows many similarities to the [EU-Japan Economic Partnership Agreement](#). The annexes containing any reservations – specific areas where the agreed general rules of free trade do not (fully) apply – are not available at this point. Also, in contrast to Title IV on goods trade, the services and investment title *at this stage* does not contain proposals for institutionalised cooperation in specialised committees covering services and investment (see section 2.14 of this briefing). Such committee(s) could be responsible for the implementation of commitments in this area and furthering the cooperation. Such committees are part of EU FTAs with Canada and Japan.

In line with its mandate, the EU has excluded the audio-visual services sector from the agreement, while the UK [aims to cover](#) this area. In addition to the general provisions on market access and national treatment of investors and service providers, the EU text has specific provisions for delivery services, telecommunications services, financial services and international maritime transport services. Air services are covered in Title XII of the agreement, on transport.

The EU reserves the right to propose a text on most favoured nation treatment which it may offer with regard to establishment of a business (SERVIN.2.4) and cross-border provision of services (SERVIN.3.5). For more information on MFN clauses in FTAs see section 6.1 of Commons Library Briefing [CBP-8586, Trade in Services and Brexit](#).⁶⁵

SERVIN.2.6: Performance Requirements prevents parties from setting certain requirements on enterprises which want to trade or establish an office in their territory. For example, a party cannot request that a business locate its headquarters to a specific region or the world market in its territory, but it may request that the headquarters for the purpose of serving that party's market are located in its territory.

⁶⁵ Specific Most favoured nation clauses, included in the EU's free trade agreements with countries like Canada (CETA) and Japan, guarantee that the preferential treatment granted to service providers and investors under that agreement cannot be eroded by one of the parties if it decides to offer better conditions in another agreement with a third party. MFN clauses generally require that equally good conditions are also made available to the existing FTA partner.

Chapter 4: Entry and Temporary Stay of Natural Persons for Business Purposes (otherwise known as 'Mode 4') sets out conditions of temporary entry for five categories of business travellers:

- business visitors for establishment purposes,
- contractual service suppliers,
- independent professionals,
- intra-corporate transferees, and
- short-term business visitors.

Although most requirements would be set by national immigration laws, some commitments in the draft agreement are specific. For example, to gain access, an independent professional would be required to show a contract and demonstrate (an equivalent of) at least six years of professional experience in the relevant activity.

The proposed chapter 4 does not cover long-term migration.

With regard to domestic regulation – licensing, qualifications and technical standards applying to service providers – the text suggests transparent and non-discriminatory procedures and single points of contact for businesses where possible (Chapter five: Regulatory Framework).

The offer on mutual recognition of professional qualifications is limited in the draft text. The Partnership Council would be asked to consider conditions for the mutual recognition of professional qualifications, based on the economic value of an arrangement in a particular area, as well as the compatibility of the respective regimes (SERVIN.5.14).

Regarding telecommunications services (Section 4), the parties would permit the provision of telecommunications networks or telecommunications services without a prior formal authorisation. The agreement would give suppliers rights to interconnection.⁶⁶ There is no mention of arrangements for roaming price caps for mobile phone users traveling to the EU, which [the UK would seek](#).

Section 5: Financial services, while sparse on detail, offers third country treatment comparable to other EU FTAs. It contains a so-called 'prudential carve-out' – for steps to protect investors, or to ensure the integrity and stability of the party's financial system. The 18 March text of SERVIN.5.40 adds an option that parties may have to disclose information relating to the affairs of individual consumers or confidential business information if required under the anti-money laundering provisions of the agreement. The parties would also make their best efforts to follow internationally agreed standards in the financial services sector. There is no mention of regulatory cooperation on financial regulation. Alongside a few other regulatory commitments, there are provisions for financial services new to the territory of the party.

⁶⁶ Interconnection is the linking of telecommunications networks to allow customers of one network to communicate with customers of another network.

Further reading

Commons Library Briefing CBP-8586, [Trade in services and Brexit](#), provides background information on trade in services.

2.6 Digital trade

In line with the EU [negotiating directives](#), Title VII on Digital trade sets out provisions to facilitate cross-border data flows and principles of consumer and data protection in trade by electronic means. The text reaffirms the parties' rights to maintain their personal data protection and privacy rules.

In order to continue free flow of personal data between the EU and UK both for commercial and other purposes beyond the transition period, the EU will need to take a 'data adequacy decision', meaning it is satisfied that the UK will continue to provide adequate protection to EU citizens' data (as the UK will of the EU, conversely). These decisions are not part of the FTA but would enable digital trade.⁶⁷

On 13 March, the UK government published [a number of documents](#) setting out its data protection standards to provide background for its discussions with the Commission about the 'adequacy decisions'. *MLex* reports that the UK's draft text proposal on digital trade contains "US-type solutions that favour the free flow of data over privacy protection."⁶⁸

2.7 Geographical indications

Intellectual property rights, such as copyrights, trademarks, designs, patents, geographical indications (regional food trademarks) and plant varieties, as well as the enforcement of these rights, are covered by Title IX of the draft agreement.

Section 4 on geographical indications includes provisions set out in the EU mandate: the EU wants to see future geographical indications established by the EU recognised in the UK. The current ones are protected under the WA unless superseded by a new agreement.⁶⁹ The *Financial Times* has reported that the UK is now seeking "looser rules" on the protection of GIs than agreed under the WA. GIs are one of the EU's core interests in international trade negotiations, but the UK's commitments to protect EU GIs could limit the Government's options for a UK-US deal, trade experts have said.⁷⁰

⁶⁷ For background information see CBP-8834, [The UK-EU future relationship negotiations: process and issues](#), 2 March 2020, section 4.7.

⁶⁸ Joanna Sopinska, [UK's draft EU trade deal proposal leaves out fisheries, climate change, procurement](#), *MLex.com*, 1 April 2020

⁶⁹ Commons Library Briefing [The UK's EU Withdrawal Agreement](#), CBP-8453, Section 4.7, 8 July 2019

⁷⁰ [UK pushes back on Brexit promises on EU regional trademarks](#), *Financial Times*, 2 April 2020

2.8 Mobility

Title XI (on 'Mobility') covers the same issues as identified in the related section of the October 2019 Political Declaration.

Article MOBI.5 proposes reciprocal visa conditions for certain groups of EU/UK citizens. Specifically, these would facilitate temporary migration for the purposes of research, study, training and youth exchanges. The UK's Immigration Rules already provide comparable visa routes for non-EEA nationals.

The UK and EU have already each confirmed that they intend to allow visa-free travel for short visits to their respective territories. The UK Government has said that it does not intend to change the terms of the standard visitor visa for the UK, which usually allows up to 6 months' stay, to bring it in line with the Schengen Borders Code (which allows for visa-free stays in the EU of up to 90 days in any 180 day period).

The UK's Immigration Rules already provide for the categories of people referred to in Article MOBI.5 as potential beneficiaries of reciprocal mobility arrangements (namely, students, researchers, trainees and certain categories of youth exchange).

The draft treaty text does not provide for British citizens already living in EU Member States to retain their free movement rights after the end of the transition period. This issue was not covered in the UK-EU WA. It was suggested at the time that it would be more appropriate to deal with it in the next stage of negotiations.

2.9 Energy

Electricity and gas

The EU draft includes provisions on energy (and raw materials) under Title XIII. The articles set out detailed requirements in line with the [negotiating directives](#) the EU published in February 2020, including support for renewable and energy efficiency technologies, and measures to maintain competitive markets.

The proposed [draft treaty](#) makes clear that some areas of energy policy would stay aligned. For example, Article ENER.11 includes requirements for the UK to set out renewable and energy efficiency targets for 2030 that are no less ambitious to those the UK submitted as a Member State in its [National Energy and Climate Plan](#). While [some had suggested](#) that leaving the EU is an opportunity to remove or amend EU energy efficiency laws, such as on household items like hoovers and lightbulbs, the [Government has said](#) that the UK will "uphold common high product standards wherever possible and appropriate".

Some other areas of energy in the future relationship, such as the use of electricity interconnectors, have been specifically mentioned in negotiations. From the EU side, following the second round of negotiations in April, Michael Barnier said in a [press statement](#) "our economic partnership would be broad and comprehensive encompassing [amongst other things] energy". The [EU negotiating directives](#), alongside provisions for the future cooperation on energy,

confirmed that the UK would leave the Internal Energy Market which facilitates the trade of electricity through interconnectors.

However, in his 15 May [remarks following Round 3 of negotiations](#), Mr Barnier included electricity interconnectors in a list of what he regarded as the “many areas [where the UK is] looking to maintain the benefits of being a Member State, without the obligations”. Specifically, Mr Barnier said the UK’s demands included “to obtain electricity interconnection mechanisms equivalent to the Single Market – “existing arrangements” as the UK says”. From the UK side, in a [24 April Statement in response to the second round of negotiations](#), the UK Government listed energy as a core area of a Free Trade Agreement where there had been some “promising convergence”.

Civil nuclear

Civil nuclear power is covered in Title XIV. The provisions are in line with what the EU outlined in its [negotiating directives](#), including facilitating trade in nuclear materials and equipment, the transfer of nuclear technology, and information exchange including in relation to safeguards, safety, and radioactivity in the environment. The draft agreement also leaves open the possibility of the UK’s participation in nuclear research, such as Euratom research and training and the ITER fusion project. Article CIVNU.9 states specific terms and conditions of the UK’s participation and membership of such projects, and the financial contribution, shall be determined in accordance with Part four of the draft treaty which covers participation in Union programmes. More information is available in the Library briefing paper on [Euratom](#) (January 2020).

2.10 Law enforcement and judicial co-operation

Part three of the draft treaty is consistent with the position set out in the EU’s negotiating mandate, providing some further detail about processes.⁷¹ It would provide for access to mechanisms for exchange of fingerprints and DNA; exchange of PNR passenger data; exchange of operational information and intelligence; cooperation with Europol and Eurojust; surrender (extradition); mutual legal assistance; exchange of criminal records; and coordination of anti-money laundering and counter-terrorist financing measures. It also sets out the data protection and human rights requirements that would underpin the agreement and provides for the suspension or disapplication of all or part of it in the event that these were not met.

Data protection and human rights

The draft treaty would require a favourable data adequacy assessment for the UK as a whole or for one or more relevant specified sectors in order for there to be any transfers of personal data. The Commission would have to make this decision in accordance with Article 45 of the General Data Protection Regulation for the transfer of PNR data or anti-

⁷¹ See [Library Briefing Paper 8834, part 4.8](#) for further detail on the parties’ negotiating positions

money laundering and counter-terrorism data. For all other data transfers the Commission would have to make a data adequacy decision in accordance with Article 36 of the Law Enforcement Directive.⁷²

In the event that the Commission repealed or suspended an adequacy decision, or the CJEU declared it invalid, the provisions enabling data transfers would be suspended.

It would also require the UK's continued adherence to the European Convention on Human Rights and for it to continue to give effect to the Convention in domestic law, as it does currently through the Human Rights Act 1998 (HRA). In the event that the UK repealed the HRA, or amended it in a way that reduced the extent to which individuals could rely on it in the domestic courts, this part of the agreement would be suspended, and it would be terminated in the event that the UK denounced the Convention.

Data exchange

The treaty would enable automated searching and comparison of DNA profiles, fingerprints and vehicle registration data (under the Prüm framework). This would be conditional on the UK ensuring that forensic service providers are accredited by a regulator as complying with relevant international standards.⁷³ Commencement would also depend on prior assessment of whether the UK had fulfilled technical and procedural requirements.

Exchange of PNR data would be permitted, subject to safeguards as previously determined by the CJEU.⁷⁴ The UK would be required to share analysis of PNR data with Europol, Eurojust, and Member States' authorities.

The UK's negotiating mandate called for arrangements for PNR data to go beyond existing third country precedents in some respects. An article in *The Guardian* suggested that the UK wanted to extend the arrangements to passengers arriving by boat or rail.⁷⁵ However the draft treaty would only apply with respect to air passengers.

The treaty would provide for 'cooperation on operational information', which refers to the exchange of existing information and intelligence for the purpose of conducting criminal investigations, or otherwise detecting, preventing or investigating certain criminal offences.

This would be a replacement for the capabilities currently provided for by SIS II. The UK's negotiating mandate called for a mechanism for the UK and Member States to share and act on real-time data on persons and objects of interest. However, the draft treaty makes clear that these provisions would not give the UK access to data processed in databases established on the basis of Union law, and that information would be

⁷² Directive (EU) 2016/680

⁷³ ISO/IEC 17025, see LAW.PRUM.15a

⁷⁴ In Opinon 1/15 of 2017 on the EU-Canada PNR Agreement

⁷⁵ *The Guardian*, [UK making 'impossible demands' over Europol database in EU talks](#), 23 April 2020

provided in response to a request. It would not therefore provide capabilities comparable to those of SIS II.

Cooperation with Europol and Eurojust

The draft treaty would provide for ongoing cooperation with Europol and Eurojust, including the secondment of liaison officers to Europol, and of liaison prosecutors to Eurojust. It sets out safeguards and limitations on the exchange of personal and non-personal data in this context.

The scope of cooperation with Europol envisaged, beyond the exchange of personal data, includes

[E]xchange of specialist knowledge, general situation reports, results of strategic analysis, information on criminal investigation procedures, information on crime prevention methods, the participation in training activities, the provision of advice and support in individual criminal investigations as well as operational cooperation.⁷⁶

There is no indication that the arrangements would go beyond existing precedents for cooperation with third countries, as the UK's mandate proposed.

Extradition

The most detailed section of part three of the draft treaty is chapter seven, which would provide for a fast-track system of extradition, or 'surrender', between the UK and Member States to replace the European Arrest Warrant (EAW).

The provisions are similar to those of the EU-Norway/ Iceland Surrender Agreement,⁷⁷ which was identified as a precedent in the UK's negotiating mandate. That agreement is based largely on the EAW, but includes further grounds on which extradition can be refused. These include:

- As with the WA (but not the EAW), the draft treaty would permit the parties to refuse to surrender their own nationals.
- It includes a requirement of 'double criminality' (the act for which the individual is sought must constitute an offence in both jurisdictions), but the parties can waive this requirement on a reciprocal basis for certain serious offences.⁷⁸ Unlike the EAW, this waiver would be optional.
- It also provides for the parties to refuse on a reciprocal basis to surrender individuals sought for political offences, with the exception of certain specified terrorist offences.⁷⁹

⁷⁶ Article LAW.EUROPOL.49: Scope of cooperation

⁷⁷ [Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway](#), OJ L 292. This agreement provides for political settlement of disputes and requires the parties to keep under review the case law of the CJEU and national courts to ensure uniform application and interpretation: Articles 37 and 38

⁷⁸ Offences carrying a custodial sentence of at least three years, listed at Article LAW.SURR.78: Scope

⁷⁹ Article LAW.SURR.81: Political offence exception

It sets out a procedure for the transmission of arrest warrants to replace the arrangements under the EAW, which include issuing alerts via SIS II and communication through EU mechanisms. Under the draft treaty, arrest warrants could be issued via Interpol, or directly to the relevant authority.

The draft treaty would also guarantee certain procedural rights for the requested person, which are currently provided for in other EU instruments. These include the right to legal representation, translation, legal aid, and specific safeguards for children.

It sets out time limits for dealing with requests in line with existing limits under the EAW, but also provides for the parties to notify each other of cases in which these time limits would not apply. As with the Norway/Iceland Agreement it provides that arrest warrants be dealt with and executed as a matter of urgency.

Mutual legal assistance and criminal records

The provisions on mutual legal assistance are intended to supplement and facilitate the application of the [1959 European Convention on Mutual Assistance in Criminal Matters](#). They do so by setting out in detail the procedure for making requests for assistance (such as evidence or access to witnesses) and the parameters and timeframe for responding to such requests.

This accords with the position of both parties' negotiating mandates, which called for time limits and standardised or streamlined procedures.

However, the draft treaty does not make specific provision for asset freezing and confiscation, which were referenced in the UK's mandate.

The provisions on exchange of criminal records also supplement, and in some respects replace, the 1959 Convention. Rather than a system of periodic communication of criminal record information on each other's nationals at least once a year, the treaty would provide for this information to be communicated at least once a month.

With respect to requests for information, the UK's negotiating mandate called for capabilities similar to those currently provided by the European Criminal Records Information System (ECRIS), which is an automated electronic system for exchanging information. The draft treaty provides for the electronic exchange of information, but leaves the technical and procedural details to an annex which has not yet been published.⁸⁰ It therefore remains to be seen whether the UK's expectations have been met on this issue.

Anti-money laundering and counter-terrorism financing

Chapter 10 would commit the parties to supporting international efforts to prevent money laundering and terrorist financing, including through compliance with [Financial Action Task Force](#) standards. It sets out transparency requirements for beneficial ownership of corporations (and

⁸⁰ Article LAW.EXINF.126

other entities) and would require the parties to have effective sanctions for enforcement.

Other matters

The UK's negotiating mandate called for prisoner transfer arrangements going beyond those in the existing Council of Europe Convention on the Transfer of Sentenced Persons. Theresa May's Government noted that this provides extensive grounds for refusing to take prisoners, and that this could have resource implications for the Prisons Service.⁸¹

The draft treaty does not provide for the transfer of prisoners, indicating that the EU are content to fall back on the Council of Europe Convention.

2.11 Foreign policy, security and defence

The EU published a [draft text for Part three, Title II on Foreign policy, Security and Defence](#) separately on 18 March. However, it would form part of the Agreement on the New Partnership with the UK published on the same day. In publishing the text, the Commission acknowledged "that the United Kingdom has stated that it does not wish to engage in negotiations on these matters".

The draft text closely reflects the provisions of the revised Political Declaration and the EU's negotiating mandate. There is nothing in the text which would indicate a change of position by the EU on the contentious issues of UK access to operational planning documents for CSDP operations, or the terms of UK participation in the EU's defence capability development mechanisms.

There are two observations worthy of note:

- **Defence capability development** - While the draft text makes provision for potential inclusion in the European Defence Agency and possible participation by the UK in individual PESCO projects, a notable omission is any reference to UK access to the European Defence Fund.
- **Protocol on participation in CSDP operations** - The draft text includes a new Protocol on arrangements for the UK's participation in EU-led crisis management operations. It is the first time either Party has included detailed terms of participation.

The Protocol sets out arrangements for decision making on participation, the status of British forces, the command and control of forces, the financing of operations, and the exchange of classified information. However, the Protocol largely mirrors existing third-party Framework Participation Agreements that the EU has with other countries.⁸² It does not include any provisions that would be unique to the UK. The draft text reiterates the EU's longstanding position that

⁸¹ [Assessment of the security partnership](#), para 42

⁸² See for example: [Agreement between the European Union and Australia establishing a framework for the participation of Australia in European Union crisis management operations](#), L 160,21/06/2012

cooperation, including the exchange of information, would be proportionate to the level of the UK's contribution.

2.12 Participation in EU programmes and financial provisions

Part Four of the draft text covers UK participation in EU programmes, sound financial management and financial provisions. Chapter One sets out general conditions for participation in programmes and states that the programmes in which the UK shall participate, duration of participation, conditions of participation and UK financial contribution to the programmes shall be set out in a separate protocol to the agreement. However, the protocol in the draft text is currently a blank placeholder, presumably because this will be subject to later agreement.

Article UNPRO 1.5 provides that where an EU programme implies mobility of persons (in particular students, researchers, trainees or volunteers), UK participation will be conditional on there being no discrimination between Member States in relation to mobility and that conditions for such persons for moving to the UK "do not entail unjustified administrative or financial burden".

Article UNPRO 1.6 provides for UK participation in EU committees and meetings related to the management of programmes it is participating in, but the UK will not have a vote at such meetings.

Article UNPRO 2.1 covers financial conditions for UK participation in EU programmes. The UK financial contribution will be the combined sum of a participation fee and an operational contribution. The participation fee will be a fixed percentage of the annual operational contribution. The operational contribution will be calculated on the basis of the ratio between UK GDP and that of the EU Member States. There will also be a rebalancing mechanism (UNPRO 2.2) for certain programmes (to be specified) in which there would be an adjustment to the UK financial contribution if the financial benefit received by the UK exceeds the annual operational contribution paid by the UK.

The EU would be able to suspend UK participation in programmes where conditions for participation are breached or financial contributions are not paid (UNPRO 3.1). This can lead to termination of UK participation if UK has not demonstrated compliance after two years (UNPRO 3.2).

The UK would also be able to terminate participation in an EU programme if conditions for participation in the programme are substantially modified by the EU (UNPRO 3.3).

Chapter Two of Part Four covers sound financial management relating to UK receipt of EU funding. EU bodies would have the right to carry out reviews and audits of persons and entities in the UK receiving EU funds (UNPRO 4.1). Agents of the EU (the European Commission and European Court of Auditors) shall have "appropriate access to sites, works and documents" and all required information. The UK shall not present any obstacle to this. The European Commission, European Anti-

Fraud office, and European Public Prosecutor Office would be able to carry out investigations and on the spot inspections (UNPRO 4.2). The UK will also be expected to inform the EU of any suspected fraud or irregularity and to collaborate with inspections.

Article UNPRO 4.4 makes clear that in joining Union programmes, the UK is also expected to enforce any Union decisions about those programmes. As such, the article provides that European Commission decisions imposing monetary obligations on persons in relation to any claims stemming from EU programmes, activities, projects or actions are to be enforceable by an indicated relevant authority in the UK and under UK law. CJEU judgments relating to the application of arbitration clauses in contracts or agreements relating to EU programmes will be enforceable in the UK in the same way. The CJEU will have jurisdiction to review the legality of European Commission decisions relating to monetary obligations stemming from claims about Union programmes, as it does within the Member States—but UK courts will have jurisdiction over complaints that enforcement of these decisions is being carried out in an irregular manner.

2.13 Governance

Part Five of the draft treaty, which sets out the EU proposals for governance of the future relationship and dispute settlement *in general*, is in line with the PD and EU Council negotiating directives. It proposes a single future relationship arrangement in Part Five, Title I, overseen by two layers of institutions: a Partnership Council and specialised committees dedicated to distinct parts of the agreement.

The dispute settlement regime set out in Part Five, Title II likewise resembles that set out in the Political Declaration. It proposes for consultations in the Partnership Council as a first stage, with the possibility for referral to arbitration as a second stage. Where a dispute raises a question of interpretation of EU law, the question will be referred to the CJEU for a ruling. This will be binding on the arbitration tribunal.

There are also proposals for compliance review, where one party feels the other has not complied with an arbitration report. Finally, Title III of Part Five enables one party to take safeguard measures and to suspend obligations under the agreement where the other party has failed any 'essential obligations', set out in Article COMPROV.12. The 'essential obligations' are those on the rule of law and human rights; the fight against climate change; and countering the proliferation of weapons of mass destruction (see section 2.1).

The most interesting aspect of Part 5 is what is *not* included; or, the sections to which these general dispute settlement provisions do not apply. These have been discussed in part above, but for completeness, the EU envisages the following exceptions and additions to the general dispute settlement proposal:

- GRP.15 (Part II, Title II) on 'Good Regulatory Practices and Regulatory Cooperation' from the dispute settlement provisions, without providing for an alternative.
- Part II, Title III, Chapter 2, Section 1 makes clear that the EU wishes for state aid under the agreement to be enforced by the EU Commission in the EU and a 'relevant authority' in the UK, as well as domestic courts in both jurisdictions. In addition to this domestic enforcement, however, the parties can use the processes in Part 5 if in disagreement about the meaning or application of the agreement's state aid provisions.
- LPFS.2.17 (Part II, Title III) excludes the agreement's provisions on competition law from the dispute settlement provisions, instead requiring that each party set up an adequate domestic enforcement mechanism.
- LPFS.2.25 (Part II, Title III) excludes the level playing field commitments made in the field of taxation from the dispute settlement provisions in Part Five, with no alternative set out.
- LPFS.2.29 (Part II, Title III) bolsters the level playing field commitments made on labour and social protection, by stressing that in addition to the inter-party dispute settlement provisions in Part Five, enforcement of these commitments is to be ensured domestically.
- LPFS.2.32 and LPFS.2.37 (Part II, Title III) likewise appear to supplement the inter-party dispute settlement provisions in Part Five regarding the level playing field commitments made on the environment and health and the fight against climate change, by making clear that the Commission and a relevant independent authority in the UK will be solely responsible for enforcing these commitments and disputes about them will be resolved before domestic authorities.
- LPFS.2.50 (Part II, Title III) excludes the agreement's general commitments to trade and sustainable development from the application of Part Five of the agreement. While the parties can use consultations to resolve disagreements, under rules specifically set out in this section that do not differ much from the general rules (LPFS.2.51), any second-level complaints will instead be resolved by a so-called 'Panel of Experts'. Unlike an arbitration report, which is explicitly acknowledged as binding, the findings of the 'Panel of Experts' are to be taken 'into account' by the parties (LPFS.2.52).
- GOODS.17 (Part II, Title IV) excludes disputes about trade remedies (eg, anti-dumping, countervailing measures and safeguard measures investigations) regarding the trade in goods from the mechanism in Part Five, acknowledging these will be resolved before the WTO's Dispute Settlement institutions.
- SME.4 (Part II, Title XV), after setting out a range of commitments regarding information sharing with small and medium enterprises, excludes the application of the Part Five dispute settlement provisions from these commitments.

The State Aid requests here are the most onerous, as they directly refer to EU law. The other alternative dispute settlement arrangements proposed by the EU do not use EU standards as a benchmark, or require the adoption of and compliance with EU standards.

2.14 Final Provisions

Part Six of the draft text contains a variety of ‘final provisions’ that do not clearly fit in any other part of the agreement. It sets out seemingly standard provisions on what the process for potentially terminating the agreement and its entry into force are, and on security exceptions to the application of the Agreement, as well as how confidential information and classified information are to be treated under the Agreement.

The two provisions here that are of interest relate to the territorial scope of the agreement (FINPROV.1) and the relationship of this agreement to the WA (FINPROV.2).

In relation to the territorial scope that the EU indicates for the future relationship, it expressly states that the Agreement will have ‘no effects’ in Gibraltar, and moreover specifies that the Agreement will not apply to Gibraltar, the Channel Islands, the Isle of Man, or the Sovereign Base Areas in Cyprus. These exceptions were not stated in the Political Declaration, but Gibraltar’s exclusion from these negotiations was made clear by the EU Council’s negotiating directives.⁸³ It is a source of disagreement between the parties, in that the UK position has been to include Gibraltar in the future relationship negotiations.⁸⁴

Regarding the relationship between this new agreement and the WA, FINPROV.2 makes clear that the agreements are in principle separate— but that if the WA is breached by either party, retaliation to such a breach can take place by suspending aspects of this *new* Treaty.

⁸³ Council of Ministers, ‘[ANNEX to COUNCIL DECISION authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement](#)’ (25 February 2020), paragraph 167.

⁸⁴ HM Government of Gibraltar, ‘[United Kingdom Issues Negotiating Mandate for Future Relationship with the EU: Gibraltar Included](#)’ (27 February 2020).

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