

Three critical issues in EU-UK relations

SUMMARY

Following the withdrawal of the United Kingdom (UK) from the European Union (EU) on 1 February 2020, the EU and the UK launched negotiations on a new partnership agreement, to come into effect at the end of the transition period, scheduled for 31 December 2020. The negotiations are intended to address nearly all the domains covered in the Political Declaration negotiated by both parties alongside the Withdrawal Agreement, including trade and economics, fisheries, thematic cooperation, and internal and external security. As far as negotiations on the future economic relationship are concerned, while the parties agree in principle on an exceptional zero-tariff and zero-quota comprehensive and balanced free trade agreement (FTA) aiming for as 'frictionless' trade as possible, they still disagree on major aspects of the economic partnership, especially fisheries and level playing-field (LPF) commitments.

The EU wants the future agreement in the fisheries domain to retain the status quo as far as possible, including reciprocal access to waters in return for access to markets and quota-shares that are based on historical fishing patterns. The EU also insists that an effective LPF would ensure fair competition. After the third round of talks, which took place in May 2020, the UK's chief negotiator, David Frost, said that the EU proposal on fisheries was 'simply not realistic', and it was unacceptable that the LPF binds the UK to EU law or standards; if need be, the UK would aim for a less ambitious FTA. The EU's chief negotiator, Michel Barnier, said that negotiating an FTA providing for tariffs would be far more time-consuming, and the EU would still demand the same LPF commitments because 'open and fair competition is not a "nice-to-have", it is a "must-have" '.

Following the fourth round of negotiations, from 2 to 5 June, the positions therefore still seemed irreconcilable. However, the long stand-off in the earlier negotiations on UK withdrawal had seemed equally irreconcilable before the final agreement was reached and then ratified. One area in which the two sides did manage to agree in those negotiations is the financial settlement included in the Withdrawal Agreement. While that settlement is now being implemented, it had initially been seen as one of the more difficult areas of the withdrawal negotiations.



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Introduction

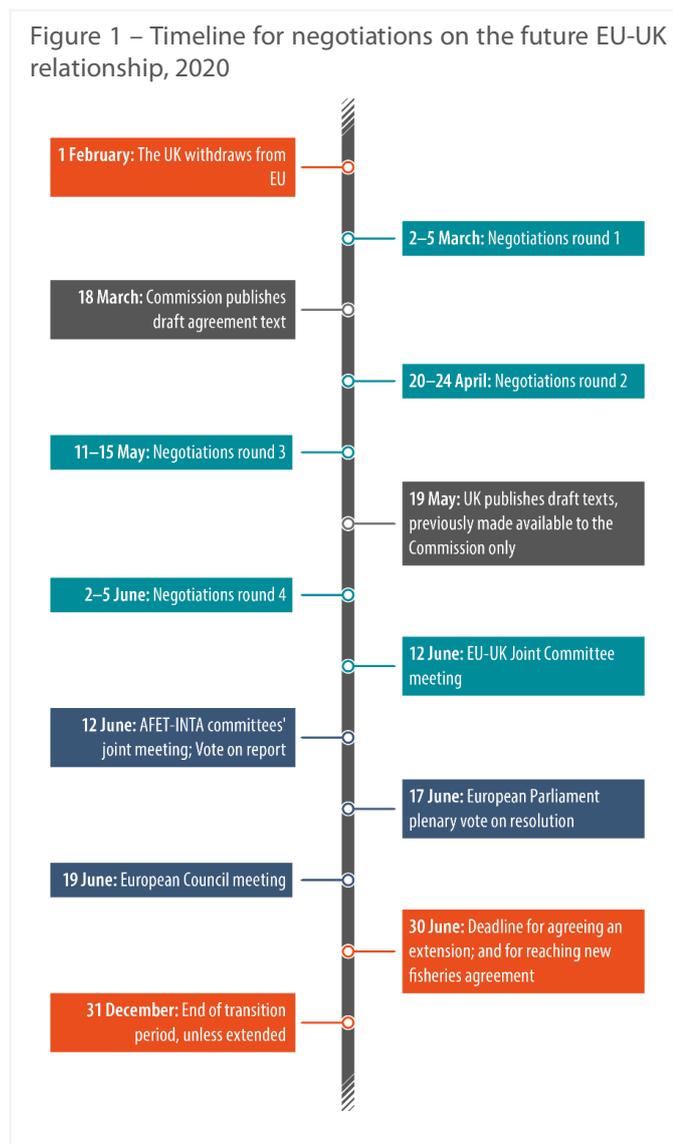
The United Kingdom withdrew from the EU on 1 February 2020 and entered a 'transition period', which runs until 31 December 2020. During this period, albeit no longer a member of the EU, the UK remains part of the EU single market and customs union, and EU law remains applicable (with some exceptions). The [Withdrawal Agreement](#) is accompanied by a [Political Declaration](#), which sets out the objectives for the future EU-UK relationship. According to the Withdrawal Agreement the parties will implement the agreement and negotiate the future relationship during the transition period.

On 25 February 2020, the [Council of the EU](#) authorised the European Commission to open negotiations on the future partnership agreement with the UK. The Commission is leading the negotiations on behalf of the EU, with Michel Barnier, the chief negotiator, heading the Task Force for Relations with the United Kingdom ([UKTF](#)). The UK negotiating team is led by David Frost, EU adviser to the British Prime Minister, Boris Johnson. On 23 February, the [UK](#) published its objectives for the negotiations, which, as summarised in a [speech](#) by Mr Johnson, are geared towards achieving a deal similar to the one between Canada and the EU.

The Political Declaration provides that an agreement on fisheries should be reached before 1 July 2020 ([point 74](#)) in order for it to be implemented as of the following year. The Withdrawal Agreement ([Article 132](#)), for its part, states that an extension of the transition period, for up to one or two years, must be mutually agreed by 30 June 2020, including agreement on a UK financial contribution to the EU budget for the extended transition period.

Four [rounds](#) of negotiations have been scheduled so far. The first round took place from 2 to 5 March. The coronavirus pandemic then hit and the second round was [postponed](#) until 20 to 24 April. The third round took place from 11 to 15 May. The [fourth](#) round, the last before the two sides take stock of progress, ran from 2 to 5 June. The rounds are organised in bilateral sessions and agendas are publicly available. The second meeting of the [EU-UK Joint Committee](#), which oversees and monitors the application of the Withdrawal Agreement, is due to take place on 12 June (following the first meeting on 30 March). As it is for the Joint Committee to take the decision on an extension, any request for such an extension would be expected at that meeting. Finally, the high-level conference envisaged in the Political Declaration, at which representatives of the EU and the UK will take stock of progress in the negotiations, is due to take place around the time of the European Council meeting on 19 June.

Figure 1 – Timeline for negotiations on the future EU-UK relationship, 2020



After the third round of negotiations, a number of major hurdles remain unresolved, for example issues in the areas of data protection and cooperation in law enforcement. However, as far as the future trading relationship is concerned, two key areas of difference are fisheries and the level playing field (LPF). In his remarks following the [third round](#), Michel Barnier [stated](#) that the beginnings of a dialogue had been initiated on fisheries, but that positions remained 'very far apart' and that certain British professionals could not be granted favourable market access conditions if European fishermen were excluded from British waters and risked losing their livelihoods.

Box 1 - Topics covered by the negotiations

1. Trade in goods
2. Trade in services and investment and other issues
3. Fisheries
4. Level playing-field for open and fair competition
5. Transport (aviation and roads)
6. Law enforcement cooperation
7. Energy and civil nuclear cooperation
8. Mobility and social security coordination
9. Thematic cooperation
10. Participation in Union programmes.

With regard to the LPF, David Frost sent a [letter](#) to Michel Barnier on 19 May 2020, declaring that the UK could not accept 'any alignment with EU rules', and that 'if it is the mutual commitment to zero tariffs that makes these [LPF] provisions necessary ... , then [the UK] would be willing to discuss a relationship that was based on less than that, as in other FTAs'. In his [remarks](#) after the third round, Michel Barnier declared that an FTA with tariffs would give rise to time-consuming product-by-product negotiations and require an extension of the transition period. Nevertheless, even in an FTA with tariffs, the EU would still 'demand the same strong LPF guarantees because it is a core part of our

modern trade policy'; 'open and fair competition is not a "nice-to-have", it is a "must-have" '.

An extension of the transition period could give more room for negotiations. However, the UK's EU Withdrawal Agreement Act ([Section 33](#)) explicitly prohibits any extension of the period. An extension would thus require a further act of the UK Parliament to repeal that provision, which is widely seen as politically difficult. If no extension is agreed, the remaining months of 2020 would need to serve both to reach an agreement and to ratify it, if a new relationship is to come into force, at least provisionally, as of the end of the transition period.

Fisheries

Common Fisheries Policy and 'relative stability'

The principle of reciprocal access, namely, the principle that Union fishing vessels have equal access to all Union waters, has been in place since the first EU fisheries regulations in 1970. With the 1973 accession of the UK, Ireland and Denmark, a temporary 10-year derogation to this principle was introduced to reserve access for the local fleet within 12 nautical miles of the coast. In 1977, Member States extended their fishing zones along the Atlantic and North Sea coast, declaring an exclusive economic zone (EEZ) of 200 nautical miles, in line with the international trend. The need arose to manage these new common resources, and to allocate the fishing rights. The Common Fisheries Policy ([CFP](#)), officially created in 1983, introduced a system of catch limitations for most commercial fish stocks, namely the total allowable catches ([TACs](#)), also termed 'fishing opportunities', which are distributed among Member States as quotas. These quota shares are based on the principle of 'relative stability', namely reflecting the proportion of catches taken in those areas by the various countries before the adoption of the CFP. As regards the principle of free access, the derogation within the 12-mile zone remained, whereby coastal states are allowed to reserve access to the first six miles for their own national fleets, while permitting the continuation of fishing activities by other Member States that traditionally fished in these waters in the zone between 6 and 12 miles. This derogation has been maintained and [renewed](#) with each CFP reform.

Fisheries and the trade agreement

The issues of access to waters and relative stability have re-emerged as a highly sensitive element in the discussions on the future EU-UK relationship. For the EU, a fisheries agreement building on reciprocal access and quota shares is a condition for a comprehensive trade agreement including fish products, thereby linking access to markets with access to waters. The UK, as an independent coastal state, wants to reopen the issue of relative stability, with the aim of obtaining a larger share of quota allocations.

The scale of the future fisheries agreement cannot be under-estimated. The EU and the UK share some 100 stocks in the North-East Atlantic and the North Sea, for which, according to the United Nations Convention on the Law of the Sea ([UNCLOS](#)), they need to seek agreement on the coordination of conservation and management measures.¹ Further, on fishing opportunities, coastal states have an obligation under UNCLOS to grant other states fisheries access if they do not have the capacity to harvest their entire allowable catch. They are also obliged to take into account, inter alia, 'the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks'.²

According to a [2016 study](#), more than half of the fish and shellfish landed from UK waters are caught by non-UK vessels (especially France, Ireland, the Netherlands and Denmark, but also Belgium, Germany, Spain and Sweden), which landed seven times more fish and shellfish (by weight) from the UKs EEZ than UK vessels from EU-27 EEZs, and four times more by value. On the other hand, the EU fish market is the largest importer of fishery and aquaculture products in the world, with the UK as the second biggest supplier to the EU-27, after Norway. Around 70 % of the total value of UK seafood exports is exported to EU-27 countries, with France as the main market for UK exports.

The fisheries part of the trade agreement is the subject of an early deadline in order to be able to apply the new mechanism to manage the joint stocks. The [Political Declaration](#), agreed between the EU and the UK and accompanying the [Withdrawal Agreement](#) states that the fisheries agreement should be established 'within the context of the overall economic partnership' covering, 'inter alia, access to waters and quota shares' and that 'parties will use their best endeavours to conclude and ratify their fisheries agreement by 1 July 2020 in order for it to be in place in time for determining the fishing opportunities for the first year after the transition period [2021]'.³

EU position

The [Commission recommendation](#) on the negotiating mandate restated that negotiations on fisheries will take place within the context of the overall economic partnership, including a direct link with negotiations on trade in goods. On fishing opportunities, it mentions the aim to 'avoid economic dislocation for Union fishermen that have traditionally fished in the United Kingdom waters' by means of provisions providing for continued reciprocal access and 'stable quota shares, which can only be adjusted with the consent of both Parties'. This position was broadly [confirmed](#) in the [negotiating directives](#) adopted by the Council, and reflected in the [draft text](#) published by the Commission. On fisheries, it includes several provisions regarding the sustainable exploitation of fishery resources, covering important CFP objectives such as the [obligation](#) to land all catches, and achieving and maintaining the [maximum sustainable yield](#). On TACs, it mentions that both parties would need to agree before 10 December each year on the fishing opportunities for the following year, on the basis of an annually set calendar and based on the best available scientific advice. These catch limits would be set for a list of 97 stocks and allocated using fixed EU and UK shares.³ If an annual agreement on the catch limits was not reached, the limits would not be set higher than those shares, out of a total catch level recommended on the basis of scientific advice. Reciprocal access in all waters beyond 12 nautical miles would be maintained, as well as more limited access for fishing vessels targeting certain species in the territorial waters between 6 and 12 nautical miles.⁴ Failure to comply with the agreements on reciprocal access rights and fishing opportunities could eventually

lead to the suspension of tariff concessions 'equivalent to the impairment caused by the non-compliance'.

The 25 May [opinion](#) of the European Parliament's Committee on Fisheries, contributing to the Parliament's [recommendation](#) on the negotiations, expected to be voted in the June plenary session, reiterates the EU position, namely the conditionality between access to UK waters and access to the EU common market for UK fisheries products. On the allocation of fishing opportunities, it firmly states that quota shares should be 'in accordance with the principle of relative stability in force'.

UK position

The UK's draft [fisheries agreement](#), first shared between the negotiating teams in the third round, confirmed the UK's [negotiation objectives](#) as an independent coastal state at the end of the transition period. The UK should no longer be bound by the CFP objectives and each party would manage its own fisheries independently and taking 'such measures in its relevant waters, as it considers appropriate to ensure the rational and sustainable management of fisheries'. Each party would notify in advance any significant new management measures or changes to existing measures that would affect the vessels of the other party. The current arrangements based on fixed quota-sharing would end, and future fishing opportunities would be based on the principle of zonal attachment. This would reflect the resources in each fishing zone, and is a concept that has also been applied in the management of shared stocks between the EU and Norway.

In practice, this concept aims to allocate fish to a coastal state based on a scientific assessment of the zones in which the stock is primarily located. Applying this principle might imply that the quota shares would be subject to annual negotiations, rather than only the total catch levels. According to a [report](#) published by the UK in 2018, the UK shares of the overall catch volumes would be significantly higher when applying this principle. Furthermore, EU fishing vessels would need a licence to fish in UK waters, following the annual negotiations on the volumes that could be fished.

Risk of no agreement

As the UK does not want an extension of the transition stage, the risk of the transition period ending without an agreement remains. In this scenario, EU fishing vessels risk losing their access to UK waters, while the current UK fishing opportunities in EU waters would be redistributed among EU Member States. In return, the UK would lose its preferential access to the lucrative EU fish market and WTO rules would apply. This implies relatively high [tariffs](#) on fisheries products (of up to 26 %). On the other hand, the EU currently applies a system of autonomous Union tariff quotas ('ATQ', [currently](#) set for the 2019-2020 period), which are applicable to defined import quotas of (mostly raw) products intended for human consumption. These unilaterally set tariff reductions (mostly suspensions) ensure an adequate supply to the EU processing industry, which is highly dependent on imports. The UK may be able to supply large volumes of fisheries products duty-free under the ATQ, even in a no-deal scenario. Further, imports into the EU must also meet sanitary and phytosanitary requirements ([SPS](#)) and be accompanied by a health certificate. Norway, the biggest EU supplier, is as an EEA country currently excluded from this requirement. As the UK wants to avoid any institutional links, the SPS inspection rules may represent an extra barrier for UK fisheries exporters, even in the event of a deal. This would have an impact on fresh seafood products in particular and represent a hurdle for producers, who might in return not necessarily profit from increased quotas (e.g. for species currently not subject to a quota regime or aquaculture products).

Level playing-field (LPF)

The level playing-field (LPF) is the regulatory environment that affects business competition between the parties. The economies of the EU and the UK are strongly interconnected. Indeed, in [2018](#), the EU-27 represented 52 % of the UK's total trade in goods (imports plus exports), and nearly

50 % of its exports, a share far greater than the United States (US) (11 % total trade, 16 % exports), the UK's second trading partner. The UK is the EU's third biggest trading partner (13 %) and second export destination (15 %). Because of this strong economic interdependence, [Title XIV](#) of the Political Declaration affirms that the establishment of an LPF must be ensured:

Given the Union and the United Kingdom's geographic proximity and economic interdependence, the future relationship must ensure open and fair competition, encompassing robust commitments to ensure a level playing field. The precise nature of commitments should be commensurate with the scope and depth of the future relationship and the economic connectedness of the Parties. These commitments should prevent distortions of trade and unfair competitive advantages. To that end, the Parties should uphold the common high standards applicable in the Union and the United Kingdom at the end of the transition period in the areas of state aid, competition, social and employment standards, environment, climate change, and relevant tax matters.⁵

The same concerns are raised by the European Parliament in the [resolution](#) it adopted on 12 February 2020. The latter is more specific as it demands that the UK should align with EU rules 'dynamically' in a range of areas, meaning that alignment would be maintained beyond the transition period.⁶ Dynamic alignment was rejected outright by Boris Johnson in his [Greenwich speech](#) (on 3 February 2020). Today, the drafts put forward by the [Commission](#) (on 18 March 2020) and the [UK](#) (on 18 May 2020) – in particular from the latter, the draft [UK-EU Comprehensive Free Trade Agreement \(CFTA\)](#) – provide the most up-to-date and accurate information regarding the respective positions. The Commission has drafted a demanding LPF, while the UK's CFTA proposal is to a great extent inspired by the Comprehensive Economic and Trade Agreement ([CETA](#)) between Canada and the EU.

Seven areas are covered under the LPF: State aid, competition, state-owned enterprises (SOE), taxation, labour and social protection, environmental protection, and the fight against climate change. Of these seven areas, two have reached relative convergence (SOE and competition). Three major obstacles have been encountered in the other fields: the role of the Court of Justice of the EU (CJEU) in the interpretation of EU law (State aid), the principle of non-regression (tax avoidance, labour, environment and climate), and the alignment of future legislation (labour, environment and climate change).⁷

Box 2 - Major areas of divergence

- *Non regression principle:* regulations should stay at least at the level existing at the end of the transition period.
- *Alignment:* where both parties have increased their level of regulation, neither party shall reduce its level below a level that is at least equivalent to that of the other party's.
- *Court of Justice of the EU (CJEU):* the CJEU should retain the right to make binding rulings interpreting EU law.

State aid

State aid (subsidies) includes grants, tax relief, and other forms of support from public authorities that distort competition. State aid is prohibited in the EU under [Article 107](#) of the Treaty on the Functioning of the EU (TFEU) unless justified by reasons of general economic development, and the [Commission](#) is in charge of ensuring compliance with EU law. The [EU](#) draft text does not actually define State aid, and some space is reserved in the annex for this purpose. The [UK](#) meanwhile proposes to use the definition provided by the WTO agreement on [subsidies and countervailing measures \(SCM\)](#). Provisions provide for cooperation through exchange of information and consultation of each other's authority (the Commission for the EU). In the event of objections, the EU proposal suggests parties communicate their 'opinion' while the UK proposal suggests the responding party 'shall accord full and sympathetic considerations to concerns'. The UK does not refer to dispute settlement, but rejects the application of the dispute settlement provisions of the agreement. The EU draft text notes that the 'Court of Justice of the European Union (CJEU) has jurisdiction under the Treaties in respect of acts of the Commission in the area of State aid'

([article LPFS.2.6](#)). It also provides that the CJEU has jurisdiction to give binding rulings on questions of interpretation of EU Law. The UK draft text [article 21.7](#) is word for word the same as [Article 7.8 of CETA](#) whereby the parties reaffirm their rights and obligations under the WTO agreements, referring implicitly to the [SCM dispute settlement body](#).

Competition

Competition policy deals with anti-competitive business practice and market-dominant positions. The [EU](#) and [UK](#) texts converge on definitions and objectives. Each party would take care of enforcement through national laws and independent authorities, which would settle disputes. Both emphasise the need for cooperation between authorities, supported by exchange of information between authorities. Both parties rule out competition issues being subject to the dispute settlement mechanism provided by the agreement.

State-owned enterprises

State-owned enterprise (SOE) provisions cover firms owned by states,⁸ designated monopolies and firms granted special rights. The [UK](#) and [EU](#) drafts show converging views in this area. The definitions of SOEs are similar and both refer to rights, obligations and principles in international agreements, including [Article XVII](#) of the General Agreement on Tariffs and Trade (GATT) agreement and the Organisation for Economic Co-operation and Development (OECD) [guidelines](#) on Corporate Governance of State-Owned Enterprises. Both require the establishment of an independent body and the application of national laws. Finally, both drafts provide for information exchange.

Taxation

Taxation provisions are converging, as both the [EU](#) and the [UK](#) have affirmed recognition and implementation of the OECD principles of good governance, including the global standards on transparency, and exchange of information, fair taxation, and the OECD standards against base erosion and profit-shifting ([BEPS](#)). Nevertheless, the EU text refers specifically to the commitment to 'curb harmful tax measures' of BEPS, and adds a commitment to the [Code of Conduct for Business Taxation](#) set out in the conclusions of the Council of the EU of 1 December 1997. The EU is also calling for parties to preserve at least the levels of protection (non-regression principle) against tax avoidance at the end of the transition period ([article LPFS.2.26](#)) in relation to the exchange of information, rules against tax avoidance, and reporting by credit institutions and investment firms.

Labour and social standards

Labour and social standards rely to a great extent on agreements concluded in the framework of the International Labour Organization (ILO), typically its [Declaration on Fundamental Principles and Rights at Work](#), adopted on 18 June 1998, and the Annex thereto, revised on 15 June 2010. All ILO members are obliged to abide by its fundamental principles (see Box 3). [Chapter 27](#) of the UK draft is an adaptation of [Chapter 23 of CETA](#). It proposes to base the agreement firmly on multilateral standards ([article 27.3](#)), such as the ILO conventions, but emphasises the 'right to regulate' ([article 27.2](#)), recognising the right of each party to set its labour priorities and adopt laws consistently with international labour commitments. It calls for levels of protection to be upheld ([article 27.4](#)) and cooperation to promote the objectives of the chapter ([article 27.7](#)). The EU draft [LPFS.Section.5](#) is relatively short and does not call for commitments to international agreements. It includes two articles, one affirming non-regression principles directly

Box 3 - Fundamental principles of the ILO Declaration

- (a) Freedom of association and the effective recognition of the right to collective bargaining
- (b) Elimination of all forms of forced or compulsory labour
- (c) Effective abolition of child labour
- (d) Elimination of discrimination in respect of employment and occupation

in the title, and one stating that future levels should be higher, and where both parties have increased the level, neither party should weaken its level (alignment). This is considered by the UK to be a breach of its sovereignty, and it thus [rejects](#) it.

Environmental protection

On environmental protection legislation, the EU draft provides for the principle of non-regression of the level of protection ([article LPFS.2.30](#)) and alignment of future levels ([article LPFS.2.31](#)). Each party would establish 'administrative and judicial proceedings, which shall allow public authorities and individuals to bring timely actions against violations of the environmental law' ([article LPFS.2.32](#)). An independent body would monitor non-regression of the level of protection and future levels of protection. In contrast, [Chapter 28](#) of the UK proposal recognises that the environment is a fundamental pillar of sustainable development ([art. 28.2](#)), but also insists on each party's 'right to regulate', namely, to set its own environmental priorities and to adopt its laws and policies accordingly and in a manner consistent with 'multilateral environmental agreements' ([article 28.3](#)).

Climate change

Climate change is the last item to be found in both sides' texts. In the EU draft, Section 7 ([Fight against climate change](#)) affirms the parties' commitment to achieve climate neutrality by 2050 (point 1) and non-regression to the standards at the end of the transition period (point 2). It also introduces a clause on carbon pricing, where it states that 'the UK should implement a system of carbon pricing of at least the same scope and effectiveness as that provided by the EU emissions trading system' ([EU ETS](#)). In the future, 'neither Party shall weaken or reduce its level of climate protection below a level of protection which is at least equivalent to that of the other Party's increased level of climate protection' ([article LPFS.2.36](#)). Stances recently taken by EU Member States support this position.⁹

Box 4 - Non-regression provision on climate change (EU draft)

'A Party shall not adopt or maintain any measure that weakens or reduces the level of climate protection provided by the Party's law and practices, and by the enforcement thereof, below the level provided by the common commitments and targets applicable in the Union and the United Kingdom at the end of the transition period, and by their enforcement.'

Table 1 – Summary of the respective EU and UK proposals regarding LPF provisions

Policy area	EU proposal	UK proposal
<i>State aid</i>	Definition to be added in annex CJEU has jurisdiction over interpretation of EU law	Definition based on the WTO SCM WTO Dispute Settlement Body
<i>Competition</i>	Anti-competitive business practice and dominant position Domestic competition law and judicial proceedings Cooperation and exchange of information	Anti-competitive business practice and dominant position Domestic competition law and judicial proceedings Cooperation and exchange of information
<i>State-owned enterprises</i>	International agreements (GATT , OECD) Independent regulatory body, national laws	International agreements (GATT , OECD) Independent regulatory body, national laws
<i>Taxation</i>	OECD standards + Code of Conduct (1997) Non-regression principle in tax avoidance	OECD standards

<i>Labour and social standards</i>	Non-regression principle Alignment of future levels Domestic enforcement	International standards Right to regulate Panel of experts
<i>Environmental protection</i>	International standards, 1992 Rio Declaration Non-regression principle Alignment of future levels	International treaties Right to regulate of each party
<i>Climate change</i>	Carbon pricing in the UK as in the EU Non-regression principle Alignment of future levels	Paris Agreement Right to establish its own priorities and laws

In a separate article (Chapter 2, [Section 8](#)), the EU draft refers to international standards and the integration of sustainable development, notably in the parties' trade and investment relationship, and the commitment to promote the development of international trade consistently with ILO conventions. The parties will strengthen their cooperation on trade-related aspects of labour policies ([point 8](#)). The UK refers to the fight against climate change in a separate draft [energy agreement](#) ([Chapter 2](#)) that recognises the importance of achieving the ultimate objective of the [United Nations Framework Convention on Climate Change](#) (of 9 May 1992) and the [Paris Agreement](#) (of 12 December 2015), with parties' commitment to effectively implement the Paris Agreement. Nevertheless, 'each party retains the right to establish its own climate change priorities and to adopt or modify its laws and policies accordingly in a manner consistent with the international climate change agreements to which it is a party and with this Agreement'.

EU budget – The UK-EU financial settlement

Contrary to some initial fears¹⁰ that the financial settlement between the EU and the UK would be difficult, the agreement on the conditions of the UK's withdrawal from the EU budget was reached very early on and without great controversy. Indeed a financial settlement was a key condition for reaching a deal on the Withdrawal Agreement, and that settlement is now being implemented.

The European Parliament's views on the financial settlement

In a [resolution of 5 April 2017](#) on the Brexit negotiations, the European Parliament underlined that 'the United Kingdom must honour all its legal, financial and budgetary obligations, including commitments under the current multiannual financial framework, falling due up to and after the date of its withdrawal'. Subsequently, in a [resolution of 3 October 2017](#) on the state of play of negotiations with the United Kingdom, the Parliament set a condition for 'entering into discussions on other issues, including the framework for the future relationship between the European Union and the United Kingdom', of achieving substantial progress in settling the UK's financial obligations. In its [resolution of 13 December 2017](#), Parliament briefly evaluated the financial settlement included in the 8 December joint report, concluding that the UK had 'clarified adequately' the financial obligations it would honour as a departing Member State.

In its [resolution of 18 September 2019](#) on the state-of-play of the UK's withdrawal from the European Union, Parliament stated that the value of the Withdrawal Agreement was that it provided for a single financial settlement with the UK, covering all legal liabilities arising from outstanding commitments.

The financial provisions of the [Withdrawal Agreement](#) originate in the [8 December 2017 joint report](#) agreed by the European Commission and the United Kingdom summarising progress made during the first phase of negotiations on the UK's withdrawal from the EU. The part of the joint report dealing with the financial settlement largely reflected the [Commission's position paper, 'Essential principles on financial settlement'](#), which was published on 12 June 2017. At that stage the UK government did not publish any paper outlining its position on the financial settlement. However,

in the [speech delivered in Florence on 22 September 2017](#), the then Prime Minister, Theresa May, recognised the UK's obligations to the EU budget when she said that 'the UK will honour commitments we have made during the period of our membership'. The joint report of 8 December 2017 established the main principles of the financial settlement, and the draft withdrawal agreement translated those commitments into detailed obligations for both the UK and the EU. This early political agreement on EU-UK settlement became law once the Withdrawal Agreement was approved by the UK Parliament and the European Parliament in January 2020.

How big is the UK's financial settlement?

The Withdrawal Agreement does not refer to any estimate of the total amount of the financial settlement. However, it does describe the EU's and the UK's financial relations for the initially envisaged transition years 2019 and 2020. As far as these two budgetary years are concerned, the UK will have the same rights and obligations as if it remained an EU Member State. Beyond 2020, the UK will remain liable to the EU, but those liabilities and assets are impossible to estimate precisely, because they will result from out-turns, some paid out well beyond 2020, such as pensions to retired EU staff. Further uncertainty as to the final total amount of the financial settlement owed by the UK is added by exchange rate fluctuations, contingency for some EU financial activities, and payments resulting from closing the current and past EU multiannual financial frameworks (MFF).¹¹

Principles underpinning the financial settlement

The Withdrawal Agreement sets out several principles for the financial settlement. First, the UK will not finance any commitments that do not require funding from Member States, and will receive a share of any financial benefits that would have been due to the UK had it remained a Member State. UK opt-outs from EU programmes existing at the date of withdrawal will continue to apply in respect of the financial settlement. Second, with the exception of UK payments relating to participation in EU annual budgets to 2020, the UK share in relation to the EU budget will be a percentage calculated as the ratio between the own resources made available by the UK during the 2014-2020 period and the own resources made available by all Member States, including the UK, during the same period. Third, payments arising from the financial settlement will become due as if the UK had remained a Member State. The UK's share of the liability relating to pension and other post-employment benefits of EU staff will be paid when these amounts fall due. Fourth, data for the calculation of UK obligations will be drawn up from publicly available sources where possible, and audited by the European Court of Auditors and auditors appointed by the UK. Finally, the financial settlement will be drawn up and implemented in euros.

UK contribution to EU liabilities

The UK will contribute its share of the financing of the EU's liabilities incurred before 31 December 2020 with certain exceptions. For those liabilities related to guarantees given by the EU budget to support financial operations (for example, loans for financial assistance, financial operations managed by the European Investment Bank (EIB) such as the European Fund for Strategic Investments (EFSI) or the external lending mandate, financial operations managed by other financial institutions or EU budgetary financial instruments), UK liability will be limited to decisions on each financial operation adopted prior to the date of withdrawal.

Currently the EU is mobilising significant resources to address the socio-economic impact of the coronavirus crisis. A notable example is the European instrument for temporary support to mitigate unemployment risks in an emergency (SURE). As it was agreed after the UK's withdrawal, the UK will not participate in SURE.¹² However, for contingent liabilities relating to legal cases because of participation in the budget, programmes and policies, the cut-off date will be 31 December 2020. In the event of EU contingent liabilities for which the UK is liable being triggered, the UK will receive its share of any subsequent recoveries. In particular, the UK shall be liable for its share of the EU liability for pensions and other employee benefits rights accrued on or before 31 December 2020.

UK withdrawal from non-budget EU financial arrangements

The UK's paid-in capital held in the European Central Bank (ECB) will be reimbursed to the Bank of England. The UK shall remain liable for the financial operations approved by the European Investment Bank before the date of entry into force of the Withdrawal Agreement.

The UK shall remain party to the European Development Fund (EDF), which is governed by a separate international agreement and is outside the EU budget, until the closure of the 11th EDF (for the years 2014 to 2020). The UK will honour its share of the total commitments made under this EDF and the payments relating to its share of the outstanding commitments made under previous EDFs. The UK share of the EDF Investment Facility from successive EDF periods shall be reimbursed to the UK as the investment matures.

The UK shall honour its commitments to the EU trust funds established before the date of entry into force of the Withdrawal Agreement and to the Facility for Refugees in Turkey.

Extension of transition period

The Withdrawal Agreement provides for the possibility of an extension of the transition period for up to one or two years, with the United Kingdom contributing to the Union budget (Article 132). The Joint Committee would also have to decide the amount and modalities of UK payments to the Union budget, as part of any decision on extension (to be taken before 1 July 2020).

UK participation in the EU budget and EU programmes

The UK will participate in the implementation of the EU's annual budget for 2020 as if it were an EU Member State. However, any amendments to the 2014-2020 MFF Regulation¹³ or the Own Resources Decision¹⁴ adopted after the date of withdrawal will not apply to the UK, for instance the [proposed modification](#) of the current MFF to respond to the coronavirus crisis. As far as outstanding commitments at the end of 2020 (known as *reste à liquider* or RAL) are concerned, the UK will contribute its share to the financing of the budgetary commitments. The EU rules on own resources shall continue to apply to the UK after 2020, including own resources availability, corrections and adjustments.

The UK will be able to continue to participate in EU programmes financed under the 2014-2020 MFF until their closure. Entities located in the UK will be entitled to participate in such programmes. Participation in EU programmes will require the UK and UK beneficiaries to respect all relevant EU legal provisions, including co-financing. Accordingly, eligibility to apply to participate in EU programmes and EU funding for UK participants and projects will be unaffected by the UK's withdrawal from the EU for the entire lifetime of those projects, if commitments are made before the end of the transition period.

The [Political Declaration](#) setting out the framework for the post-2020 future EU-UK relationship, opens the possibility for the UK to take part in Union programmes, subject to the conditions set out in the corresponding Union instruments (Title II A). The areas listed as eligible are science and innovation, youth, culture and education, overseas development and external action, defence capabilities, civil protection and space. This participation would involve a UK financial contribution. The declaration refers to the plan to deliver a future PEACE Plus programme for reconciliation in Northern Ireland, maintaining current funding proportions. Moreover, the Political Declaration states that the UK and the EU will also explore the possibility of UK participation in European research infrastructure consortiums ([ERICs](#)).

The UK's February 2020 document ['The Future Relationship with the EU – The UK's Approach to Negotiations'](#) states that the UK is 'ready to consider standard third-country participation in certain Union programmes'. It mentions [Horizon Europe](#), [Euratom Research and Training](#), [Erasmus+](#) and [Copernicus](#). Moreover, the UK would consider service access agreements for EU Space Surveillance and Tracking ([EUSST](#)), and the European Geostationary Navigation Overlay Service ([EGNOS](#)).

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ENDNOTES

- ¹ Article 63 of the United Nations Convention on the Law of the Sea ([UNCLOS](#)) and the UNCLOS [implementing agreement](#) on the conservation and management of straddling and highly migratory fish stocks.
- ² Article 62 of the United Nations Convention on the Law of the Sea ([UNCLOS](#)).
- ³ The 97 fish stocks are listed in Annex 'FISH.1' of the Commission's draft agreement while Annex 'FISH.2' contains a template for the quota shares.
- ⁴ As specified in annexes 'FISH.3a and 3b' the Commission's draft agreement.
- ⁵ See [EPRS briefing](#) for a discussion as of why a 'frictionless' EU-UK FTA needs to be grounded in a sound LPF.
- ⁶ In February, [France](#) declared that the UK should stick to EU laws in exchange for a deal with no tariffs or quotas, especially in domains like labour standards and state aids.
- ⁷ The draft joint report ([2020/2023 \(INI\)](#)) of the Parliament's Committees on Foreign Affairs and International Trade (6 April 2020) emphasises that provisions should ensure that 'standards are not lowered', and that commitments and provisions should be 'enforceable by autonomous interim measures with a view to dynamic alignment' ([Section 17](#)).
- ⁸ SOEs are firms in which the state directly or indirectly owns 50 % of the share capital, or holds power to appoint a majority of the members of the board of directors; EU draft article [LPFS.2.18](#) and UK draft article [23.1](#).
- ⁹ In May 2020, a [Franco-Dutch non-paper](#) called for effective enforcement of labour and environmental rules in the EU's FTAs. Another non-paper [on climate for the future of Europe](#), signed by Belgium, Denmark, Spain, France, Latvia, Luxembourg, the Netherlands, Portugal and Sweden, affirmed the commitment to sustainable development.
- ¹⁰ See EPRS briefing [The Brexit negotiations: Issues for the first phase](#) for further details.
- ¹¹ The UK Office for Budget Responsibility (OBR) recently estimated the net cost of the settlement at £32.9 billion. [Economic and fiscal outlook](#), March 2020.
- ¹² See [EPRS 'At a glance' note](#) for more details on SURE.
- ¹³ Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20 December 2013, p. 884).
- ¹⁴ Council Decision 2014/335/EU, Euratom of 26 May 2014 on the system of own resources of the European Union (OJ L 168, 7 June 2014, p. 105).

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