



*Committee on Employment and Social Affairs
The Chair*

26.5.2020

Mr David McAllister
Chair of the Committee on Foreign Affairs
15E201

Mr Bernd Lange
Chair of the Committee on International Trade
12G301

Subject: EMPL recommendations on the negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland (2020/2023(INI))

Dear Chairs,

Under the procedure referred to above, the Committee on Employment and Social Affairs has decided to submit an opinion to your committees in the form of a letter.

The Committee on Employment and Social Affairs considered the matter at its meeting of 26 May 2020. At that meeting, it decided to call on the Committee on Foreign Affairs and the Committee on International Trade, as the committees responsible, to incorporate the following suggestions into their resolution.

Yours sincerely,

Lucia Ďuriš Nicholsonová

SUGGESTIONS

- A. Whereas the withdrawal of the United Kingdom of Great Britain and Northern Ireland (“UK”) from the European Union (“EU”) and the European Atomic Energy Community affects millions of citizens - both UK citizens living, travelling or working in the Union and Union citizens living, travelling or working in the UK, as well as people other than Union and UK citizens;
- B. Whereas third countries, which are not subject to the same obligations as Member States, cannot have the same rights or enjoy the same benefits as a member;
- C. Whereas since 2008, the EU included provisions on labour standards in the Trade and Sustainable Development chapters of its trade agreements with third countries;
- D. Whereas the Political Declaration that accompanied the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 19 October 2019 and the Protocol on Northern Ireland (“the Withdrawal Agreement”) sets out the framework for the future relationship between the EU and the UK, by establishing the parameters of an ambitious, broad, deep and flexible partnership across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement (FTA) at its core;
- E. Whereas Article 184 of the Withdrawal Agreement provides that the EU and the UK are to use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the Political Declaration and to conduct the relevant procedures for the ratification and conclusion of those agreements, with a view to ensuring that those agreements apply, to the extent possible, as from the end of the transition period;
- F. Whereas the European Council adopted its negotiating guidelines with a view to the opening of negotiations on the overall understanding of the framework for the future relationship that was to be elaborated in the Political Declaration;
- G. Whereas, given the geographic proximity and economic interdependence and connectedness of the EU and the UK (the Parties), as well as the large amount of EU citizens living in the UK and UK citizens living in the EU, the envisaged partnership between the EU and the UK should be comprehensive, encompassing a FTA as well as wider sectoral cooperation where it is in the Union’s and its citizens’ interests;
- H. Whereas this partnership should, in particular, aim to establish a FTA ensuring no tariffs, no quota and no dumping, including as regards social and employment standards, through robust commitments,
- I. Whereas these commitments should prevent distortions of trade and unfair competitive advantages so as to ensure a sustainable and long-lasting relationship between the Parties; whereas the envisaged partnership should therefore be based on high standards and a balance of rights and obligations which will ensure the indivisibility of the four freedoms, and guarantee a level playing field that will stand the test of time;

- J. Whereas, to that end, the envisaged partnership should uphold common high social and employment standards, and corresponding high standards developed over time with EU social and employment standards and rights as a reference point;
- K. Whereas the envisaged partnership should commit the Parties to a continuing improvement of their respective levels of protection with the goal of ensuring corresponding high social and labour standards so as to maintain a level playing field;
- L. Whereas in light of the level playing field committed to in the Political Declaration, the envisaged partnership should in particular ensure that the level of labour and social protection provided by laws, regulations and practices is not reduced below the level provided by the common standards applicable within the EU and the UK at the end of the transition period in relation to at least the following areas: fundamental rights at work; occupational health and safety, including the precautionary principle; fair working conditions and employment standards, and information, consultation and rights at company level and restructuring; whereas the envisaged partnership should also protect and promote social dialogue among workers and employers, and their respective organisations, and governments, and encourage dialogue with civil society;
- M. Whereas in this regard the principle of non-regression of the current and future levels of labour and social protection, as outlined in the Commission draft text of the Agreement on the New Partnership with the United Kingdom, is essential;
- N. Whereas the envisaged partnership should ensure the effective enforcement of the UK's commitments and of its laws, regulations and practices that reflect those commitments, through adequately resourced domestic authorities, an effective system of labour inspections and effective administrative and judicial proceedings;
- O. Whereas mobility arrangements should be based on non-discrimination between the Member States and full reciprocity; whereas the envisaged partnership must also provide for an extensive and profound social security coordination;
- P. Whereas the envisaged partnership should include appropriate arrangements for dispute settlement and enforcement, and should in particular establish a governing body responsible for managing and supervising the implementation and operation of the envisaged partnership, facilitating the resolution of disputes; whereas it is important that the social partners are, where appropriate, involved in the dispute settlement process;
- R. Whereas the Court of Justice of the European Union should remain the sole arbiter of Union law;
- S. Whereas before adopting the European Union (Withdrawal Agreement) Act 2020, the UK Government deleted clauses which would have provided some limited domestic legal protection for EU-derived workers' rights, and committed itself to re-introducing these provisions in a forthcoming Employment Bill; whereas this Bill has not yet been introduced;
- T. Whereas the COVID-19 pandemic has had an impact on the process and timetable of the negotiations;

General recommendations

1. Recalls that under no circumstance a third country can have the same rights or enjoy the same benefits as a Member State; recalls, on the other hand, that it is in the EU's and UK's mutual interests to pursue an ambitious, wide-ranging and balanced relationship through the future partnership agreement; believes that such an Agreement can only be agreed if a level playing field as outlined in the Political Declaration is secured through robust and enforceable commitments on various standards; stresses in particular that the EU workers' rights and social standards under the EU acquis must not, on any account, be negatively affected by any future FTA;
2. Welcomes the comprehensive Draft text of the Agreement on the New Partnership with the United Kingdom issued by the Commission on 18 March 2020 ("Draft Agreement"), which is broadly in line with the Political Declaration, its negotiating mandate and Parliament's resolution of 12 February 2020 on the proposed mandate for negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland; deeply regrets the fact that the UK mandate is, in comparison, short on details; also regrets that the UK has made some text proposals on various topics, but that they remained confidential until May 19;
3. Strongly regrets the fact that the UK refuses to make provisions on labour law in the future FTA subject to the dispute resolution mechanism provided for in the Agreement, while not specifying the type of dispute settlement mechanism would apply in this area; recalls that dispute settlement mechanisms must be available for all elements of the Agreement;
4. Regrets the fact that the UK Government has not yet fulfilled its commitment for a new Employment Bill and urges the UK to do so before the end of the transition period; stresses that avoiding any gaps where workers' rights are neither protected by existing Union law nor the UK Employment Bill is of utmost importance; recalls that social and labour standards in the Employment Bill should not be static, but should directly follow any improvements made to social and labour standards in the EU, in order to ensure a level playing field between the EU and the UK;
5. Refers in this regard especially to recently adopted Union legislative acts whose transposition deadlines is during the transition period, such as the revision of the Posting of Workers Directive, the Directive on work-life balance for parents and carers and the Directive on Transparent and Predictable Working Conditions in the European Union, and reiterates the absolute necessity for the full and proper implementation of those legislative acts;
6. Encourages the continued participation by the UK as a third-country observer with no decision-making role in the agencies which are within the remit of Parliament's Employment Committee, such as the European Foundation for the Improvement of Living and Working Conditions (based on the model of Norway)¹, as this would allow

¹ Norway has a bilateral agreement with Eurofound and pays to be included in the European Working Conditions Survey, participating since 2000 (previous four editions). It also participated in the second edition of the European Quality of Life Survey in 2007–2008. Norway also acts as observers for the European Free Trade Association (EFTA) on Eurofound's Governing Board. Furthermore, Eurofound maintains a Network of European Correspondents covering all EU Member States plus Norway, which provides expert national input relevant for the European debate. Via the network, Eurofound's European

both Parties to share data, best practices and methodologies; also strongly encourages the UK to cooperate with the European Labour Authority (under articles 17(6) and 42 of Regulation 2019/1149) and the Administrative Commission under Regulation 883/2004/EC;

7. Reiterates that, in accordance with paragraph 125 of the Political Declaration, civil society dialogue should be encouraged on all aspects of the agreement and should encompass in particular, organisations representing both Union citizens living and working in the UK and UK citizens living and working in the Union (youth and citizens' organisations and employees' associations);
8. Regrets the fact that insufficient efforts have been made by the UK and the Member States to raise awareness among citizens on the effects of the UK's withdrawal from the EU and strongly encourages both Parties to initiate or step up targeted information campaigns to inform all citizens covered by the Withdrawal Agreement of their rights and any possible changes to their status, including the application of social security coordination rules; recalls that citizens affected by the UK's withdrawal rely on timely and reliable information regarding their rights and status and urges both the Member States and the UK to prioritise this matter.
9. Stresses that more efforts are needed from Member States to detail their application process and timeframe to adopt measures that provide legal certainty for UK citizens resident in the Member States, through constitutive or declaratory scheme;

Implementation of the Withdrawal Agreement

10. Underlines the importance of the effective implementation of the Withdrawal Agreement, including on maintaining the integrity of the single market and customs union; underlines that the Agreement on the future relationship should apply without prejudice to the Withdrawal Agreement; stresses that EU citizens in the UK are experiencing significant problems in obtaining settled status and that those who have obtained pre-settled status suffer reduced rights compared to UK citizens in accessing certain benefits;
11. Stresses that the full implementation of the Withdrawal Agreement and the respect of the commitments made in the Political Declaration, in word and deed, are prerequisites for and the basic components of a future partnership between the EU and the UK; deplores the UK Government's statements demonstrating a lack of political will to fully comply with its commitments under the Withdrawal Agreement and the Political Declaration; underlines that trust between the Parties is essential in these negotiations
12. Highlights the importance of the mutual recognition of qualifications and diplomas in both the EU and the UK and emphasises the need for appropriate arrangements in this respect; recalls the UK's ambition to improve the recognition mechanism for third-country nationals; calls on the negotiators to opt for mechanisms of recognition that uphold the standards without creating new barriers; . calls on the negotiators to ensure that the recognition of qualifications and diplomas is not limited to the "country of

Restructuring Monitor also monitors the employment impact of large-scale restructuring events, restructuring support instruments and restructuring-related legislation in the EU Member States and Norway.

issue“, thereby creating barriers for UK citizens who move from one Member State to another;

Level playing field

13. Strongly objects to the fact that the UK’s negotiating mandate does not contain the term “level playing field”; notes, at the same time, that the UK Government claims that it will maintain de facto the highest labour and social standards but insists that it will not agree to legal obligations that go further than commitments to which the EU has agreed with countries such as Canada, Japan and South Korea; recalls however that commitments in the EU’s other FTAs offer insufficient safeguards for the EU-UK partnership as no other country outside the EU enjoys tariff-free and quota-free access to the single market and that geographic proximity, residence of UK citizens in the EU and EU citizens in the UK and the volume of EU-UK trade require rigorous level playing field arrangements, and thus deeper commitments than those which were requested for FTAs between the EU and Canada, Japan or South-Korea; will reject, in this regard, any ‘cherry-picking’ from different legal and trade frameworks applicable in the context of relations between the EU and other third countries;
14. Reiterates that, with a view to preserving the integrity of the EU and its single market, of the customs union and the indivisibility of the four freedoms, it is crucial to ensure that the level of quota and duty-free access to the world’s largest single market can only be commensurate to the extent of regulatory convergence and the commitments taken with respect to observing a level playing field for open and fair competition with a view to dynamic alignment; underlines that it requires a combination of substantive rules and measures, including non-regression clauses and mechanisms to ensure effective implementation, enforcement and dispute settlement; underlines that a proper complaints mechanism must be guaranteed for citizens and non-governmental organisations with respect to the enforcement of labour standards;
15. Emphasises in particular the non-regression clauses in the following areas under article LPFS.2.27: (i) fundamental rights at work, (ii) occupational health and safety standards, (iii) fair working conditions and employment standards, and (iv) information and consultation rights at company level, and (v) restructuring; welcomes the provisions of article LPFS.2.28 which pave the way towards dynamic alignment; notes, in particular, the Commission proposal to give the Partnership Council powers to modify the commitments to reflect evolving labour and social standards;
16. Recalls that any future FTA aiming for zero tariff and zero quotas should therefore be underpinned by robust legal commitments ensuring a level playing field for open and fair competition, including as regards labour and social standards, to avoid a ‘race to the bottom’ and the acquisition of unfair competitive advantages through the undercutting of levels of protection or other regulatory divergences;
17. Therefore fully supports the provisions of Title III (level playing field and sustainability) and especially its Section 5 (labour and social protection) of the Draft Agreement, which are in line with those of the Political Declaration;
18. Supports the system for governance, cooperation, monitoring and enforcement and conflict resolution presented by the Commission, in particular as regards labour

inspections and administrative and judicial proceedings including the provision of remedies, and the role of the Partnership Council and of the Specialised Committee on the Level Playing Field and Sustainability;

19. Welcomes the proposal to establish a parliamentary partnership assembly for Members of the European Parliament and of the UK Parliament, with the right to receive information from the Partnership Council and submit recommendations to it; also highlights the need to continue with detailed monitoring of the implementation and application of the Withdrawal Agreement via the UK Coordination Group and further reevaluate the need to establish a dispute settlement system at EU level;
20. Stresses that it will not give its consent to any agreement which may directly or indirectly weaken the role of the Court of Justice of the European Union on deciding questions of Union law;

Mobility and social security coordination

21. Recalls that UK citizens residing in the EU and EU citizens residing in the UK are currently covered and protected by social security coordination rules regarding sickness benefits, maternity and equivalent paternity benefits, invalidity benefits, old-age benefits, survivors benefits, benefits in respect of accidents at work and occupational diseases, death grants, unemployment benefits, pre-retirement benefits, family benefits under the Withdrawal Agreement;
22. Recalls the importance of preserving existing and future social security rights of affected persons in all dimensions; recalls the strong demands by citizens affected both in the EU and the UK to protect their rights; calls on the negotiators of the Agreement to prioritise these citizens' rights in regard to social security coordination by all means;
23. Notes that the objective of Title XI: Mobility of Natural Persons is to provide mobility arrangements between the Parties, to ensure the full reciprocity of these arrangements and non-discrimination among the Member States, and to ensure the coordination of social security systems of the Parties; notes that reciprocal visa-free travel is foreseen for short stays of a maximum of 90 days but visas may be required by both Parties for citizens carrying out a paid activity; welcomes Article MOBI.5 which provides for reciprocal conditions of entry, long-term residence and rights of EU and UK citizens pursuing research, studies, training and youth exchanges and their family members where applicable;
24. Welcomes the fact that Article MOBI.6 and the Protocol on Social Security Coordination of the Draft Agreement provides for continuous application of social security coordination rules in a number of branches of social security (e.g. sickness, invalidity and old-age benefits and benefits in respect of accidents at work and occupational diseases); deeply regrets, however, that there are no special provisions regarding unemployment benefits for cross-border and frontier workers, and therefore encourages the Parties to look into proper provisions regarding unemployment benefits for cross-border and frontier workers in order to safeguard their rights; calls on the negotiators to provide for the ongoing application of social security coordination rules in all chapters;

25. Also regrets that Article MOBI.6 of the Draft Agreement, rather than providing for the obligation, provides for the mere possibility for the Partnership Council to amend the Protocol on Social Security Coordination;
26. Stresses the importance of a dynamic agreement on social security coordination, whereby the UK would have to adapt its legislation according to the changes of EU legislative acts on social security coordination, (e.g. the forthcoming Regulation amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004); stresses that provisions of the final agreement on mobility of persons must include commensurate and robust rights as regards social security coordination in line with the Political Declaration;
27. Calls for an efficient dispute settlement procedure in cases where there is ambiguity about the competent authority;
28. Emphasises that for the purpose of application of social security coordination between the EU and the UK proper data exchange is vital; therefore also encourages the UK to take part in the Electronic Exchange of Social Security Information;
29. Urges the Parties to agree provisions on the continuation of mutual participation and financial investment in the Erasmus+ programme in line with the Political Declaration's provisions on participation in Union programmes, particularly as regards traineeships for vocational education and training students, apprentices and recent graduates; stresses that applicants from both the EU and the UK will need sufficient advance notice of the conditions and timelines for participation after the transition period;

Conclusion

30. Deplores the substantial divergences between both Parties at this stage of the negotiations, including on the scope and the legal architecture of the agreement to be negotiated; expresses deep concern at the limited scope of the future partnership envisaged by the UK Government, and points out that the UK's proposals fall short of its commitments under the Political Declaration; notes that given the current COVID-19 pandemic conducting and concluding the negotiations is a challenge; urges the UK to work swiftly and constructively with the EU to reach a partnership agreement which delivers an ambitious, wide-ranging and balanced relationship and a level playing field, in line with all commitments made under the Political Declaration, before the end of the transition period.