

Update on the EU-UK future relationship negotiations

Brexiteers have been nervously holding their breath for updates on the negotiations between the UK and the EU on the future relationship. Following the depressing experience of the May years, the fear is that the UK side would cave in to EU demands, leaving us stuck under EU 'vassalage'.

Fortunately, the two sides' progress reports at the end of the most recent negotiation round in late April have provided some welcome reassurance. While the EU is predictably making unreasonable demands, especially on access to UK fishing waters, the UK government is so far standing firm.

Below we reproduce key extracts from both sides' reports, which show the key areas of disagreement and illustrate why an agreement seems unlikely.

Delivery & tone

Perhaps the most striking thing about the two sides' statements was the huge difference in delivery and tone. Michel Barnier, usually calm and unflappable, gave a lengthy statement which by diplomatic standards can only be described as bad-tempered. He accused the UK of failing to 'engage seriously' in negotiations:

'I regret that the United Kingdom refused to engage seriously on a number of fundamental issues.'

He also complained about the UK side ruling out any extension to the transition period, and implied that it was deliberately holding up negotiations:

'The UK cannot refuse to extend the transition and, at the

same time, slow down discussions on important areas.'

Barnier also complained that the UK side was refusing to 'budge' on key issues, apparently missing the irony that the EU was equally refusing to budge – from a much more unreasonable position, as detailed below.

In contrast to Barnier's grandstanding press conference, No. 10 simply issued a short statement from 'a UK government spokesperson'. This dispassionately observed that, *'limited progress was made in bridging the gaps between us and the EU.'*

The EU, it would seem, is much more frustrated with the current situation than No. 10.

Fisheries

The EU is demanding that the UK remain in the Common Fisheries Policy (CFP) in all but name. Rather than negotiating annual bilateral agreements on reciprocal access – as is the norm with third countries – the EU wants automatic access rights to fish in UK waters with quota shares remaining unchanged.

The UK position is that it should be treated like any other third country, with EU access to UK waters negotiated on an annual basis, and without being tied in to the CFP management system. The government's statement shows that it continues to hold the line on this:

'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.'

This was reiterated by the UK's chief negotiator David Frost, who tweeted later the same day:

'[W]e are ready to work to agree a fisheries agreement which reflects our rights under international law to control our own waters, & provides for annual negotiations over access based on scientific principles. We won't agree to continuing the Common Fisheries Policy.'

The EU is holding an EU-UK free trade agreement (FTA) hostage to the UK giving in to its demands on fisheries. Barnier stated:

'The EU will not agree to any future economic partnership that does not include a balanced, sustainable and long-term solution on fisheries. That should be crystal clear to the UK.'

There is no *international* precedent, let alone an EU precedent, for an FTA with a third country being made conditional on access to natural resources. Even EEA members such as Norway negotiate annual bilateral agreements with the EU on reciprocal access, based on exchange of fishing opportunities of equal value. The EU's demand can only be described as neo-colonial in this regard.

Sovereignty and the 'level playing field'

On the FTA element, the EU is trying to keep the UK subject to key elements of EU law under the guise of a 'level playing field'. While level playing field arrangements are common in FTAs, the specific arrangements the EU is demanding are uniquely one-sided, based on regulatory subjugation. The UK would be required to follow EU laws on state aid, even if they change in the future. And in whole swathes of other areas (e.g. environment, taxation, labour) the UK must continue to abide by existing EU laws.

Barnier's statement strongly implied that the UK could not expect to be treated as an equal, because it is a much smaller

market than the EU:

'The UK negotiators keep repeating that we are negotiating as sovereign equals.'

'As sovereigns, each side must be able to decide, with full sovereignty, on the conditions of access to our respective markets. That's fine.'

'But the reality of this negotiation is to find the best possible relationship between a market of 66 million consumers on one side of the Channel and a market of 450 million consumers on the other.'

Yet the populations of both Canada and South Korea are significantly lower than that of the UK: 51 million and 37 million respectively, so this can hardly be a justification for the uniquely unequal relationship the EU is demanding.

The UK statement insists that any agreement must respect our sovereignty as an independent state. We will not accept unprecedented provisions that subjugate us to EU laws under the guise of a 'level playing field':

'...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.'

David Frost added on Twitter:

'We support high standards. But there is no need for novel and unprecedented "level playing field" rules, for example tying us to EU laws, or a role for the EU Court. What the EU proposes is unlike anything agreed in other such FTAs and we will not agree to it here.'

The UK is not asking for special treatment, added Frost, only

an FTA along the lines of those already granted to Canada and South Korea:

'If we are to make progress now, we need to focus on agreeing a future relationship that has a comprehensive FTA at its core, like those the EU has agreed elsewhere.'

Indeed, this is exactly what Barnier offered in his famous 'staircase' PowerPoint slide, which depicted the various pre-existing options for the future relationship available to the UK on a descending staircase. The option of a free trade agreement was symbolised by the flags of Canada and South Korea and accompanied by a large green tick. That green tick has now been snatched away.

What next?

The next round of negotiations is scheduled for w/c 11 May. For us observers, that means another collective holding of breath on 15 May, when we can expect the two sides to report once again.

Remainers have already been on manoeuvres pushing for an extension of the transition period beyond 31 December 2020, with the Covid-19 crisis providing them with a convenient excuse. Legally, an extension can be secured with the agreement of both parties, for a maximum of two years, but it can only happen once. The deadline for agreeing an extension is 30 June.

It is currently written into UK law that the UK government may neither request nor agree to an extension, although of course fresh legislation could override this. But for now, the government continues to insist that it will not request an extension, nor would it grant one if the EU requested it. Given that the two sides remain at an impasse on the issues of fishing access and the 'level playing field', it is hard to

see what the point of an extension would be, other than to delay the inevitable switch to trade on a WTO basis.

The other key deadline is 1 July, by which date under the terms of the Withdrawal Agreement an agreement on fisheries must be reached. As things stand, such an agreement looks impossible. Once this legal deadline is missed, it will become a political matter as to how the two sides decide to proceed – whether the entire future relationship talks are allowed to collapse, or whether pragmatism prevails and they strive to reach a more basic agreement.

Photo credit: European Commission