



House of Commons
European Scrutiny Committee

The EU's mandate for negotiating a new partnership with the UK

First Report of Session 2019–21

Documents considered by the Committee on 11 March 2020

Report, together with formal minutes

*Ordered by the House of Commons
to be printed 11 March 2020*

Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee) *
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) and letters issued by the Ministers can be downloaded from the Cabinet Office website: <http://europeanmemoranda.cabinetoffice.gov.uk/>.

Staff

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The EU’s mandate for negotiating a new partnership with the UK

This EU document is legally and politically important because:

- the Council Decision (agreed on 25 February 2020) establishes the EU’s opening position for negotiations for a new partnership with the UK after the post-exit transition period has ended; and
- it may “raise a matter of vital national interest to the United Kingdom” under section 13A of the European Union (Withdrawal) Act 2018.

Action

- Consult Select Committees on those parts of the EU’s negotiating mandate which are relevant to their policy areas, seeking their views on any aspects which may “raise a matter of vital national interest to the United Kingdom”; and
- report their findings, and the European Scrutiny Committee’s overall assessment of any impact on a vital national interest, to the House.

Overview

1.1 The UK’s exit from the EU on 31 January 2020 and the entry into force of the [EU/UK Withdrawal Agreement](#) marked the conclusion of the first phase of negotiations with the EU.¹ The Agreement sets out the terms of the UK’s exit from the EU—the divorce settlement—and establishes a transition period during which EU law will continue to apply to the UK as if it were still an EU Member State. The Prime Minister has made clear that the transition period will end on 31 December 2020, though this will only be legally certain under the terms of the Withdrawal Agreement on 30 June 2020—the deadline for the EU and UK to agree a one-off extension for up to one or two years.²

1.2 The Withdrawal Agreement does not settle the terms of the UK’s future relationship with the EU. It does, however, commit both parties to “use their best endeavours” to negotiate, conclude and ratify the agreement(s) envisaged in the (non-binding) [Political Declaration](#) accompanying the Withdrawal Agreement so that they apply from the end of the transition period.³ These second phase negotiations began on 2 March 2020.⁴ The EU and UK have both published documents setting out their approach to the negotiations.⁵

1 This first set of negotiations was based on Article 50 of the Treaty on European Union.

2 Article 132 of the EU/UK Withdrawal Agreement empowers the EU/UK Joint Committee to agree an extension of the transition period. Section 15A of the [European Union \(Withdrawal\) Act 2018](#) prohibits a Minister representing the UK in the Joint Committee from agreeing to an extension. For the UK to agree to an extension in the Joint Committee would require a statutory amendment.

3 Article 184 of the EU/UK Withdrawal Agreement.

4 This second phase of negotiations will be based on Articles 217 and 218 of the Treaty on the Functioning of the European Union. The legal base and procedures within the EU for concluding and ratifying the agreement with the UK will depend on its final scope and content.

5 The House of Commons Library has published a briefing paper on *The UK-EU future relationship negotiations: process and issues* which examines the Political Declaration agreed by the EU and the UK in October 2019 and the EU’s and UK’s objectives for the negotiations. [Briefing Paper No. 8834](#), published on 2 March 2020.

1.3 The European Commission's [Recommendation for a Council Decision](#), published on 3 February 2020, set out a [detailed negotiating mandate](#) for consideration by the Council. This document has been deposited for scrutiny. In a [Resolution](#) agreed on 12 February 2020, the European Parliament broadly endorsed the Commission's approach while insisting that UK laws dynamically align (keep pace) with changes to EU laws and policies in a number of areas in return for a comprehensive (quota and duty-free) trade agreement.⁶ While the European Parliament has no formal role in agreeing the EU's negotiating mandate, it must approve the final deal negotiated by the Commission before it can be concluded by the Council. As its Resolution makes clear, "nothing can be decided on Brexit without taking full account of the position of the European Parliament".⁷

1.4 The Council has reviewed the draft negotiating mandate proposed by the European Commission and made some changes. The [Decision](#) it adopted on 25 February 2020 authorises the Commission to open negotiations for a new partnership with the UK and sets out the EU's official [negotiating mandate](#). The Decision was adopted by the Council acting unanimously. Michel Barnier, Head of the European Commission's [Task Force for Relations with the United Kingdom](#), will lead the negotiations for the EU, consulting with the Council's Working Party on the United Kingdom on which each of the EU27 Member States is represented.⁸ Whilst urging the European Commission to complete "as much as possible" of the negotiations during the transition period, the Council anticipates that some elements may take longer.⁹

1.5 The Prime Minister (Rt Hon. Boris Johnson MP) set out the Government's approach to the negotiations with the EU in his [Written Statement of 3 February 2020](#),¹⁰ since supplemented by a more detailed [Command Paper](#) published on 27 February 2020.¹¹ The Government envisages "friendly cooperation between sovereign equals" based on "a suite of agreements" covering trade, fisheries, law enforcement and criminal justice cooperation, transport and energy, each with its own "appropriate and precedented governance arrangements, with no role for the Court of Justice".¹² Its aim is to secure "the broad outline of an agreement" by June 2020, when the Prime Minister will meet with the leaders of the EU27, which can be finalised by September.¹³ The Government is emphatic that:

[...] we will not agree to any obligations for our laws to be aligned with the EU's, or for the EU's institutions, including the Court of Justice, to have any jurisdiction in the UK.¹⁴

1.6 The Government does not consider that a treaty framework is necessary for cooperation in other areas, such as foreign policy and immigration.

6 European Parliament 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 (P9_TA-PROV(2020)0033).

7 Paragraph 102 of the EP Resolution.

8 The Council Working Party on the UK was established by [Council Decision \(EU\) 2020/121](#). It will be chaired by the Council's General Secretariat (rather than the rotating EU Presidency) until 31 December 2020.

9 See para 9 of the Council's negotiating mandate which says the Commission should be ready to continue negotiations on any remaining issues after transition.

10 HCWS86, Hansard, 3 February 2020.

11 CP 211 on *The Future Relationship with the EU: The UK's Approach to Negotiations*.

12 See para 6 of the Command Paper.

13 Para 74 of the [Political Declaration](#) accompanying the EU/UK Withdrawal Agreement says that the EU and UK will use their "best endeavours to conclude and ratify their new fisheries agreement by 1 July 2020".

14 See para 5 of the Command Paper.

The EU's approach to the negotiations

1.7 The Council shares the European Commission's vision of a future partnership which is comprehensive, “as close as possible”, and capable of evolving over time. It has made some changes to the negotiating mandate proposed by the European Commission, but these largely reflect differences of nuance and tone rather than substance. The Council envisages that negotiations will be broken down by sector and taken forward in parallel but form part of a “coherent structure” embedded within “an overall governance framework” covering all areas of economic and security cooperation.¹⁵ This might mean a single agreement or an overarching framework linking separate agreements. Underpinning this framework is a set of “principles and key objectives” which are intended to:

- ensure the autonomy of the EU's decision-making processes and legal order as well as respect for the integrity of the EU single market and customs union and the indivisibility of the “four freedoms” (goods, persons, services and capital);
- safeguard the EU's “core values”, with human rights, democracy, the rule of law, and the non-proliferation of weapons of mass destruction constituting essential elements of the future partnership;
- maintain a balance of rights and obligations and ensure a “level playing field” for open and fair competition, with EU standards on competition and State aid, social and employment rights, the environment, climate change, and aspects of taxation serving as “a reference point”; and
- reflect the UK's status as a non-Schengen third country “that cannot have the same rights and enjoy the same benefits as a member”.¹⁶

1.8 The mandate agreed by the Council is divided into three parts: (i) economic (including fisheries), (ii) security, and (iii) thematic cooperation (covering cyber security, irregular migration and health security), with the greatest detail in the economic part. Whilst recognising that the EU and the UK should “retain their autonomy and the ability to regulate economic activity according to the levels of protection each deems appropriate in order to achieve legitimate public policy objectives”, the Council also makes the scope and depth of the economic partnership and the degree of market access conditional on a fisheries deal and on securing “robust” level playing field commitments to ensure “open and fair competition”.¹⁷ This conditionality reflects two concerns: the first, a desire on the EU's part to “uphold” access to UK waters and quota shares based on “the traditional activity” of the EU fleet and, second, that divergence in areas which might affect the competitiveness of goods and services traded between the EU and the UK would be particularly damaging for the EU27 because of the UK's geographic proximity to the EU market and the interdependence of the EU and UK economies. For this reason, the Council insists on the application of EU State aid rules—current and future—in the UK (with an interpretative role for the Court of Justice in the event of a dispute concerning EU law).

15 See paras 7 and 11 of the Council's negotiating mandate. The EU and UK have agreed that there will be 11 negotiating groups covering: Trade in Goods; Trade in Services and Investment and other issues; Level Playing Field for open and fair competition; Transport; Energy and Civil Nuclear Cooperation; Fisheries; Mobility and Social Security Coordination; Law enforcement and judicial cooperation in criminal matters; Thematic cooperation; Participation in Union programmes; Horizontal arrangements and governance.

16 See paras 10–12 of the Council's negotiating mandate.

17 See paras 18 and 94 of the Council's negotiating mandate.

1.9 In other areas—aspects of tax, labour and environmental law and climate change standards and targets—the Council envisages a form of non-regression, to prevent any backsliding on commitments accepted by the UK while a member of the EU (or during the post-exit transition period). In the longer term, the Council seeks a commitment to high standards which correspond to those developed by the EU, but with implementation and enforcement through domestic (rather than EU) mechanisms, and with provision for the EU to take unilateral action to address any rowing back from EU standards which would undermine fair competition between the EU and UK.

1.10 On the security partnership, respect for fundamental rights and a standard of protection for personal data which is “essentially equivalent” to the EU’s are a necessary condition for law enforcement and criminal justice cooperation, with termination or suspension of cooperation in this area envisaged if the UK withdraws from the European Convention on Human Rights, changes its domestic law to prevent individuals from invoking ECHR rights in the UK’s courts, or no longer meets EU data protection standards.¹⁸

The Government’s position

1.11 The Government has not yet provided an Explanatory Memorandum setting out its position on the EU negotiating mandate.¹⁹ The UK’s general approach to the negotiations is described in the Government’s paper, *The Future Relationship with the EU*.²⁰

Parliament’s role in scrutinising the EU/UK future relationship negotiations

1.12 Parliament has no formal role in formulating or agreeing the UK’s negotiating position. As the UK will continue to be bound by EU law during the post-exit transition period and may be affected by new laws and policies proposed by the European Commission, even if they enter into force after transition, the European Scrutiny Committee will continue to alert the House to EU documents which it considers to be legally or politically important. In addition, section 13A of the [European Union \(Withdrawal\) Act 2018](#)²¹ empowers the European Scrutiny Committee, after consulting other interested Departmental Select Committees, to put forward a motion for debate on the floor of the House if it considers that EU legislation (or a proposal for EU legislation)²² “raises a matter of vital national interest to the United Kingdom”.²³

1.13 The negotiations to agree the UK’s future relationship with the EU will involve a significant number of complex, cross-cutting policy areas. Our initial assessment is that the negotiating mandate agreed by the EU Council does raise matters of vital national interest to the UK given the potential for it to have a substantial impact, amongst other matters, on:

18 See para 118 of the Council’s negotiating mandate.

19 The Explanatory Memorandum was due on 18 February 2020.

20 [CP211](#).

21 Section 13A was inserted in the 2018 Act by section 29 of the [European Union \(Withdrawal Agreement\) Act 2020](#).

22 Legislation includes Decisions of the Council — see section 13A(5) of the Act.

23 The House of Lords European Union Committee has the same power and published a [Report](#) and motion for a debate on 5 March 2020.

- the influence of the Court of Justice (CJEU) and other EU institutions in the UK after transition and how they affect the autonomy of the UK’s legal order;
- the role of the European Convention on Human Rights and the Human Rights Act 1998 in underpinning and protecting fundamental rights in the UK after transition;
- ease of trade between the UK and the EU and the wider ramifications for trade within the UK’s internal market (between Northern Ireland and Great Britain) as well as UK trade with (non-EU) third countries;²⁴
- the degree of regulatory autonomy that the UK will have after transition;
- the operation of particular sectors of the UK economy, from fisheries to freight transport and financial services;
- mobility and the conditions governing movement between the EU and the UK;
- UK involvement in EU programmes, for example on science and innovation or student exchanges, and the UK’s contribution to the EU budget;
- air, road and rail connectivity between the UK and the EU and the provision of services by UK operators within the EU;
- the cross-border sharing of data to facilitate trade, research, and to counter threats to public safety and security;
- operational cooperation in tackling serious cross-border criminality; and
- wider cooperation in managing and responding to global security threats.

1.14 Before deciding whether to put forward a motion under section 13A(1)(c) of the 2018 Act, we invite Select Committees across the House to provide their views on the negotiating mandate agreed by the Council in the areas of policy for which they are responsible. These views will inform our overall assessment of the potential impact of the EU’s negotiating mandate on the UK’s vital national interests and whether it is sufficient to warrant a debate on the floor of the House. We ask Select Committees to respond by the end of March 2020 so that we are able to produce a further Report and, if appropriate, recommend such a debate.

Action

1.15 Write to the Chairs of the following Select Committees requesting their views on the EU’s negotiating mandate for the future EU/UK relationship and highlighting any aspects which may “raise a matter of vital national interest to the United Kingdom”: Business, Energy and Industrial Strategy; Defence; Digital, Culture, Media and Sport; Education; Environmental Audit; Environment, Food and Rural Affairs; Future Relationship with the European Union; Foreign Affairs; Health and Social Care; Home Affairs; Housing, Communities and Local Government; International Development; International Trade; Justice; Northern Ireland Affairs; Public Administration and Constitutional Affairs;

24 See the Office for National Statistics’ [analysis](#), *Who Does the UK Trade With?*

Science and Technology; Scottish Affairs; Transport; Treasury; Welsh Affairs; Women and Equalities; and Work and Pensions. We also invite the Joint Committee on Human Rights to submit its views.

1.16 Drawing on these contributions, we will prepare a further Report to the House on any issues which we consider affect a vital national interest under section 13A of the European Union (Withdrawal) Act 2018.

Formal Minutes

Wednesday 11 March 2020

Members present:

Sir William Cash, in the Chair

Tahir Ali	Stephen Kinnock
Jon Cruddas	Mr David Lammy
Allan Dorans	Marco Longhi
Richard Drax	Craig Mackinlay
Margaret Ferrier	Anne Marie Morris
Mr Marcus Fysh	Charlotte Nichols
Mrs Andrea Jenkyns	Greg Smith
Mr David Jones	

Scrutiny Report

Draft Report (*The EU's mandate for negotiating a new partnership with the UK*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 16 read and agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned till Wednesday 18 March 2020 at 1.45 p.m.]

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers—

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at www.parliament.uk.

Current membership

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

[Tahir Ali MP](#) (*Labour, Birmingham, Hall Green*)

[Jon Cruddas MP](#) (*Labour, Dagenham and Rainham*)

[Allan Dorans MP](#) (*Scottish National Party, Ayr Carrick and Cumnock*)

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Margaret Ferrier MP](#) (*Scottish National Party, Rutherglen and Hamilton West*)

[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)

[Mrs Andrea Jenkyns MP](#) (*Conservative, Morley and Outwood*)

[Mr David Jones MP](#) (*Conservative, Clwyd West*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Mr David Lammy MP](#) (*Labour, Tottenham*)

[Marco Longhi MP](#) (*Conservative, Dudley North*)

[Craig Mackinley MP](#) (*Conservative, South Thanet*)

[Ann Marie Morris MP](#) (*Conservative, Newton Abbot*)

[Charlotte Nichols MP](#) (*Labour, Warrington North*)

[Greg Smith MP](#) (*Conservative, Buckingham*)