

Written evidence submitted by Fabian Zuleeg and Jannike Wachowiak (FRE0007)

What impact has the COVID-19 pandemic had on the negotiations? Have the UK and EU been affected differently? What further consequences might the pandemic have on the progress of the negotiations and the nature of any future relationship?

- The Covid19 pandemic is already having a major impact on the negotiations between the EU and the UK. In the short-term the pandemic affects the practical execution of the talks as well as decision makers' bandwidth to focus on the negotiations. Overall, the impact of the pandemic increases the risk of not reaching a trade deal before 31st December 2020, that is, unless an extension to the transition period is agreed before 1st July 2020. The UK's outright refusal to discuss an extension seems therefore reckless. No matter what one's hopes are for the future relationship, an outright refusal to contemplate an extension in face of a far-reaching and unprecedented economic crisis is irresponsible.¹
- On a practical level the pandemic has disrupted the talks by making it impossible to meet face-to-face. Travel restrictions and Covid19 cases in both negotiating teams have delayed an already compressed timetable. It appears that the UK has been more strongly affected in terms of its staff capacities as several UK civil servants had to be redeployed to work on the government's Covid19 response. Even though the negotiations have now resumed via videoconferencing, virtual meetings cannot fully replace the personal rapport and trust-building that comes with in-person meetings.
- On a political level there will not be any bandwidth to focus on the Brexit negotiations while the pandemic's economic, social and political fallout requires full attention. Therefore, Brexit is necessarily given less priority by governments in the UK and the EU. The lack of political capacity and guidance makes it extremely difficult to move beyond technical negotiations and into a state where political compromise and deal-making become possible.
- On an economic level, the global economic downturn strengthens the case for an extension to the transition period. An extension would avoid adding a second economic shock to the system at the end of the year. The economic impact on the UK of such a shock could even be aggravated if firms choose not to restart their operations after the lockdown has ended due

¹ See also Zuleeg, Fabian (2020), "The need for a longer transition", Brussels: European Policy Centre.

to the prevailing uncertainty about market access to the EU. It would create greater legal and planning security for governments, businesses, and citizens to extend transition.

- In terms of consequences on the substance of a possible agreement, the pandemic strengthens the EU's case for protecting the integrity of the single market and for having strong level playing field provisions in place to allow for an even economic recovery. It is therefore very unlikely that the pandemic leads to a loosening of the EU's negotiating mandate. The EU will not agree to a trade deal without ambitious level playing field provisions or an agreement in fisheries. Additionally, the proper and timely implementation of the Protocol on Ireland and Northern Ireland remains a big challenge and under any scenario a precondition for a deal on the future relationship.
- With view to progress on the most contentious issues, it is important to note that there is a landing zone for a deal provided that the UK decides to seriously engage with all parts of the negotiation. It is not possible to reach an overall compromise if the UK pursues a selective approach of not engaging on areas where there are significant differences. If the UK does not change its approach it becomes very difficult to reach a deal in the remaining time.

How would you characterise the approach the UK and EU are taking to the future relationship negotiations? In which ways, if any, do these approaches differ from the withdrawal negotiations? What new challenges might both parties face?

- In terms of substance, the EU has been approaching the negotiations on the basis of the revised Political Declaration agreed with the UK government on 17 October 2019. The UK's approach seems to be to refer to other EU free trade agreements (FTAs) as blueprints rather than referencing the Political Declaration. Given the unique EU-UK relationship in terms of proximity, size of the UK economy, and economic interdependence, the EU does not see these as realistic templates and these are thus not on offer (and have never been on offer). In addition, the EU approaches the negotiations as one package and aims at achieving progress in all areas in parallel, including an overarching governance structure. The UK on the other side pursues a more selective approach and would like to negotiate separate agreements covering different sectors. These fundamental differences have made it difficult to achieve any tangible progress so far.
- In addition to the existing content-related differences in various areas, the UK's aggressive rhetoric on sovereignty and divergence undermines trust and risks creating serious doubts about the UK's commitment to reaching a deal or even to adhering to legally binding agreements, such as the Withdrawal Agreement.
- In terms of its negotiating style the EU approaches the future relationship negotiations in a similar way to the withdrawal negotiations:
 - o Personnel: The EU kept most of its experienced personnel in place, thereby ensuring a smooth transition into the next negotiating phase.

Most importantly, Michel Barnier continues as the European Commission's Head of Task Force for Relations with the United Kingdom.

- Transparency: The EU is adhering to its transparent negotiating style, i.e. the EU's red lines and goals are well known, a draft legal agreement for the future EU-UK partnership has been published on 18th March, and member states and the public are regularly informed about the state of the negotiations via press conferences and official statements.
 - Coordination and political buy-in: Similar to the withdrawal negotiations, Barnier and his team regularly consult and coordinate with the member states and the relevant EU institutions.
- The EU's approach has been very successful in keeping a unified and coherent position throughout the withdrawal negotiations. The EU's aim will be to continue speaking with one voice by keeping these structures in place. This will unarguably be more challenging in the future relationship negotiations due to the politically sensitive character of some topics, such as trade, fisheries, etc. However, the UK needs to be aware that any fragmentation on the EU's side does not increase its chance of getting a deal. A divided EU will settle on the lowest common denominator as the default solution, thus, the chance of a no deal by default increases.
 - A new challenge that comes with Covid19 is that social distancing measures and virtual meetings make it more difficult and time-consuming for both sides to debate and to potentially ratify any deal.

How likely is a transition period extension? Does an extension request from one party place any obligations on the other side? What steps would the UK and EU need to take for an extension to be agreed? What practical matters would need to be decided? What role would the UK Parliament and EU institutions play in this process? How might an extension affect the dynamics of the negotiations and the scope of any future agreement?

- **Process**: Under the terms of the Withdrawal Agreement an extension must be agreed before 1st July 2020. The Joint Committee (JC), which is made up of representatives from the EU and the UK, must decide by mutual consent. Therefore, both sides need to agree. It is important to note that there is a process to agreeing to an extension and that the request should therefore not come at the last minute on 30th June. The Joint Committee can only formally adopt the decision to extend once the terms and conditions, including the length of the transition and the UK's financial contribution, have been decided. The EU and UK representatives in the JC must factor in some time for the internal discussions among the EU27 and within the UK. The UK will additionally have to repeal its domestic ban before being able to agree to an extension. This is where the UK parliament comes in since the government will most likely have to pass an Act of Parliament to repeal the ban.

- **Likelihood of an extension:** The Joint Committee must decide by mutual consent, i.e. both the UK and the EU must agree on an extension. The EU has been clear that the UK must ask for an extension. If the UK's outright refusal does not change, the UK will leave the EU's single market with or without a deal on 31st December 2020. At the moment it seems unlikely that Boris Johnson will ask for an extension as provided for in the provisions of the Withdrawal Agreement. The British government seems to be strongly influenced by the belief that the current Covid19 crisis has weakened the EU and its unity and that the EU member states will start making concessions once the UK threatens to walk away from the negotiations later this year. This form of brinkmanship underestimates the EU's willingness to protect the integrity of the single market, i.e. the cornerstone of its economic and political project. Even though the EU would prefer to conclude a deal, it is a misconception that it is ready to pay any price to prevent no deal.

- There is a possibility that the British government might ask for an extension after the deadline under the Withdrawal Agreement has passed. All the available options for an extension after 1st July are legally and politically tricky. Legally, it would probably require the conclusion of a mixed treaty and therefore a unanimous decision in the Council, the agreement of the European Parliament, and depending on the laws of each member state the parliamentary approval not only of national, but also of regional parliaments. Politically, it will be more difficult to come to an agreement. The UK would have to expect the same terms and conditions, i.e. agreeing a financial contribution and a length of up to 1 or 2 years. An agreement of fisheries would also remain a precondition for any future negotiations. Additionally, vested interests might come into play. Under the impression of the severe Covid19 crisis some member states might make additional demands. The potential political and legal pitfalls make it uncertain if a late extension request could still be accommodated, again increasing the chance of a no deal default.

May 2020



Committee on the Future Relationship with the European Union

House of Commons, London, SW1A 0AA

Email: freucom@parliament.uk Website: www.parliament.uk/freucom

24 April 2020

Dr. Fabian Zuleeg
Chief Executive and Chief Economist
European Policy Centre

Dear Dr Zuleeg,

The House of Commons Committee on the Future Relationship with the European Union is inquiring into the progress of the negotiations between the UK and the EU. Under normal circumstances, the Committee holds regular oral evidence sessions in Westminster. However, measures to prevent the spread of the coronavirus make this difficult.

The Committee is keen to gather as much evidence as possible to inform its deliberations so I am writing to you to ask whether you would be willing to help us with our work by making a written submission. We welcome general responses to our [call for evidence](#), which was published on 4 March. We also hope that you would be willing to answer some of the more specific questions set out below on issues that fall within your area of expertise. Such submissions need not address every bullet point and can include other matters that you think are relevant to the negotiations and should be drawn to the attention of the Committee.

- What impact has the COVID-19 pandemic had on the negotiations? Have the UK and EU been affected differently? What further consequences might the pandemic have on the progress of the negotiations and the nature of any future relationship?
- How would you characterise the approach the UK and EU are taking to the future relationship negotiations? In which ways, if any, do these approaches differ from the withdrawal negotiations? What new challenges might both parties face?
- What is your assessment of the likelihood of an agreement given both sides' negotiating mandates? Has this assessment changed since the talks began? If so, why?
- What progress would you expect to have been made by the end of June? How do you think talks might progress over the coming year? How long would you expect the UK and EU's respective ratification processes to take?
- Given the time constraint imposed by the Transition Period, what sort of agreement do you believe is possible between the UK and the EU? What issues should each side be prioritising? To what extent do the priorities set out in each side's negotiating mandates match your assessment of what they should be seeking? On which areas does each side have the most negotiating leverage?
- What would be the main differences between a UK/EU relationship as roughly set out by both sides' mandates and a no-deal scenario? If only a limited deal is agreed what are the possible consequences for areas that are not covered? What scope is there for temporary or transitional measures either agreed between the two parties or put in place unilaterally.
- Our previous witnesses have outlined four key areas of initial disagreement:
 - Governance;
 - Level Playing Field;
 - Fish; and
 - Co-operation in Criminal Matters.

Have there been any recent developments in these areas? Could you sketch out possible compromises? Which other issues do you foresee emerging as sources of disagreement as the negotiations progress?

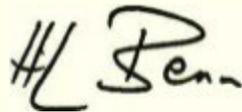
- Why does the EU want a single agreement and why does the UK want several separate agreements? How would these different governance arrangements affect how any future relationship between the UK and the EU would operate? What are the standard forms of dispute resolution contained in

FTAs? To what extent do these differ based on the scope of an FTA? What form of dispute resolution procedures are both parties seeking in this agreement? How do these differ from those set out in the Withdrawal Agreement?

- Are precedents such as CETA and the EU-Japan FTA useful as templates for an agreement between the UK and EU? Based on both sides' mandates, how would an UK-EU FTA differ from those precedents? What would be the possible implications of those differences with respect to, for example, level playing field provisions?
- Is it normal for only one side of a negotiation to publish draft legal texts? Are there any benefits or drawbacks, for either side, from doing so? What are the UK's main areas of contention going to be in the draft EU legal text? What proportion of the contents do you believe are acceptable to both sides and where will attention be focused? Because draft legal texts have been published at this stage, is an agreement more likely by the end of 2020?
- How likely is a transition period extension? Does an extension request from one party place any obligations on the other side? What steps would the UK and EU need to take for an extension to be agreed? What practical matters would need to be decided? What role would the UK Parliament and EU institutions play in this process? How might an extension affect the dynamics of the negotiations and the scope of any future agreement?
- What actions does the UK Government believe it is legally required to take by 31 December 2020 to fulfil its obligations under the Withdrawal Agreement? Would a failure to implement the Withdrawal Agreement by either side prevent agreement on a future relationship from being reached? What areas of implementation are likely to prove most controversial? How might they be resolved?

The Committee staff will be happy to discuss the inquiry, any issues raised, or the process for submitting written evidence. You can contact them at freu@parliament.uk.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'H/ Benn', written in a cursive style.

Hilary Benn
Chair of the Committee