

The EU-UK Free Trade Agreement negotiations

Summary

The EU-UK Brexit negotiations [remain stuck](#) on disagreements over provisions on the 'level playing field', fisheries and state aid, despite UK claims of [progress](#) in talks. Most EU leaders expect the UK Prime Minister Boris Johnson to give in on these crucial points to avoid a domestic crisis and the prospect of a disastrous [no-deal outcome](#). The talks will reach a [crunch point](#) on 15-16 October, when EU leaders are holding a summit dedicated to Brexit, which could be the last opportunity to salvage the negotiations.

Progress in the negotiations

The last formal round of talks between the UK and the EU on a Free Trade Agreement (FTA) ended on 2 October and was followed by a video conference between the UK's Prime Minister Johnson and the European Commission's President Ursula von der Leyen on 3 October.

The EU and the UK disagree on the progress in the negotiations of the EU-UK FTA. The UK has presented them as steadily progressing while the EU repeated that the negotiations are still stuck on core elements. The EU's view is that Johnson wants to restore his reputation following the difficulties that he is facing in the Covid-19 crisis and other domestic issues. Indeed, the prevailing view in the EU is that he will cave to the EU to show some success in reaching the FTA.

The situation has been further complicated by the UK's Internal Market Bill, which is designed to govern trade within the UK, presented by the UK government on 9 September. The 54-page bill openly infringes international law and the most sensitive part of the UK's Withdrawal Agreement (WA) - the protocol on Northern Ireland - which was signed just a few months ago. The EU launched legal proceedings against the UK on 1 October and gave the UK government until the end of October to respond. This move has temporarily settled the matter, but it is inconceivable for the EU to sign an FTA unless the incriminating clauses are removed from the bill. The bill will also stand in the way of any future agreement with the UK, in case the FTA negotiations collapse. The European Court of Justice will have the power to rule on this case until 2025 and can impose fines on the UK under the provisions of the WA.

During the last EU Summit on 2 October, von der Leyen informed EU leaders on the status of the negotiations. Most EU leaders still believe that a deal will be concluded as they expect Johnson to give in on the crucial points at the last minute to avoid a domestic crisis. EU leaders expressed their support for the EU's chief negotiator Michel Barnier and the EU's negotiation strategy. However, several heads of state were pessimistic on the UK's intention to reach a deal and even wondered whether a no-deal is preferable to a bad agreement.

The debate among EU leaders on Brexit was followed by a video conference on 3 October between Johnson and von der Leyen. It was the first time the two leaders spoke since June, when they agreed to speed up the negotiations and tasked the chief negotiators on both sides to work 'intensively' to resolve the remaining differences. Their call on 3 October reiterated this plan.

The negotiations will resume on 7 October but in restricted sessions with the two negotiators only, mirroring the process of the final stages of the WA. The EU is not yet prepared to engage in the final negotiations, where both sides make a last attempt to agree on a common text, as it needs proof that the UK is prepared to substantially move on the main outstanding points.

The main outstanding points

The most contentious elements are the level playing field (LPF) provisions preventing the UK from undercutting EU standards on state aid, social policy, tax, environment and climate, coupled with robust enforcement and dispute-settlement mechanisms. The EU sees the LPF provisions as essential to any agreement with the UK. They influence the overall ambition of the agreement and several other topics still under negotiation, such as road transport rules. The EU will not accept UK deregulation in these areas but will refrain from asking for explicit references to EU law.

The EU has insisted that its unprecedented offer of customs- and quota-free access to its market is conditional on the UK's acceptance of the LPF provisions and a deal on fisheries, which is another sticking point in the negotiations. The EU knows that its current demand for unchanged fishing quotas and access to UK waters will not hold, but it has the upper hand and can be expected to link market access to fisheries products to EU access to UK waters.

On state aid, Barnier is ready to give up the insistence that UK state aid rules should continue to be aligned with the EU in perpetuity. He maintains his demands on:

- a set of basic principles to be respected when according state aid;
- some exceptions such as for natural disasters or support for the audio-visual sector;
- the creation of an independent authority in the UK to manage state aid policy;
- robust dispute settlement procedures, including the possibility to withdraw concessions in other parts of the agreement awaiting the outcome of the arbitration procedure. These are set out in the EU's proposal on the FTA governance.


The EU is likely to be more flexible in other parts of its competition policy, such as mergers and acquisitions.

Next steps

The UK will need to show some concrete willingness to compromise on the main outstanding issues before the next EU summit on 15-16 October to ensure a breakthrough at the summit.

It is excluded that the European Council will engage itself in the negotiations or start a process of softening the EU's negotiation mandate, but other options could be available:

- The European Council could ask von der Leyen to engage in direct negotiations with Johnson to force him to engage directly in the negotiations.
- The European Council could entrust another member of the European Council to act as a facilitator, as it happened before when the Irish Prime Minister played such a role in the conclusion of the WA. During the negotiations on the WA, EU leaders agreed on all points except the Irish chapter and were prepared to agree on whatever could be accepted by the Irish Prime Minister. However, when it comes to the FTA, member states have different priorities and interests.



Even the German Chancellor Angela Merkel might be hesitant to take on the special responsibility of carrying the negotiation forward. This does not exclude that the German Presidency of the Council of the EU might be invited to engage more directly during the last two weeks of the negotiations in October, which the UK would welcome.

If agreed, the negotiated text will be translated into all EU languages and “scrubbed” by legal and linguistics experts. The deal will then need to be approved by the European Parliament, the EU Council (by unanimity), the UK House of Commons and signed by the two parties. This procedure applies since the content of the deal falls exclusively in the remit of the EU institutions as provided for under the EU treaty. Some member states consider that parts of the draft agreement fall under national jurisdiction but have agreed to show flexibility and accept approval by EU institutions only and without national ratification. Without the member states’ flexibility, the entry into force of the FTA on 1 January 2021 would be excluded.

The nightmare of a no-deal scenario

The transitional period in the WA expires on 31 December 2020 and there is no legal possibility for extension. If an FTA is not in force on 1 January 2021, the UK will have no privileged access to the EU market and will trade under World Trade Organizations’ (WTO) conditions.

The Commission is, however, prepared to take some unilateral decisions in areas such as financial services, where a 14-month extension on Euro-clearing by UK financial operators will be offered. An equivalence decision on data transfers is currently under examination but the outlook is uncertain, following the European Court of Justice’s recent decision to strike down a data-transfer agreement with the US. UK law enforcement agencies have similar access to EU citizens’ data as under the EU-US deal, which led to its annulment. The EU is also likely to agree on transitional agreements in the transport sector (road transport and aviation) for a few months to avoid the worst chaos on 1 January 2021.

The UK would face greater obstacles to trade in goods and services with the EU than most other countries, which have concluded general trade agreements with the EU, in addition to the introduction of customs control which will be put in place in any case, with or without an FTA. Indeed, the EU is ready to apply full customs controls with from day one, but it is less likely that the UK will be ready to do the same.