



TONY BLAIR
INSTITUTE
FOR GLOBAL
CHANGE

Unpacking the Brexit Deal: What to Look Out for

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ANTON SPISAK

Summary

Britain and the EU are now in the final phase of negotiations over their future relationship. We are yet to see whether they can strike a deal on their future trade and security relationship.

If, and when, a deal comes, much of the focus will be on analysing how the remaining negotiating issues, particularly on level playing field, fisheries and governance, were resolved; what the next steps are for political and parliamentary approval of the agreement; and, finally, what it means for the domestic legislation (Internal Market Bill) that the UK government has introduced in recent months to alleviate some of its problems with the Withdrawal Agreement that it negotiated last year.

Behind the headline issues, however, the deal will be an extensive and detailed document. It will likely exceed 500 pages of legal text, with at least a dozen accompanying technical annexes. It might even be split into several separate agreements, covering areas from aviation and nuclear cooperation, to coordination on social security and judicial and security matters.

This briefing note sets out what to look out for amid all the minutiae. It sets out three key questions to ask on the overall shape of the deal and 30 questions to assess the quality of any deal that is on the table. This list is in no way comprehensive – there are many other questions to be asked about the implications of any deal. However, it does highlight questions that, in our view, are most significant either economically or politically.

The three big questions to ask about the shape of the deal...

1. What is the overall balance of rights and obligations within the deal?

All international treaties involve certain obligations. The key question is what are the rights that those obligations provide in return, and what is the overall balance of rights and obligations within the deal. The UK was promised a zero-tariff, zero-quota trade agreement if it signs up to corresponding obligations, particularly on level playing field. The question is not just whether the UK has secured this ambition, but also how far it has secured its other offensive interests, particularly on services, and how this compares with the obligations it has been asked to sign up to as part of the deal.

2. What is the gap between the agreed commitments and their implementation?

Some areas of the agreement will be easier to implement than others. On many issues, such as customs and regulatory questions, the break with the status quo will likely be immense and new arrangements will require swift implementation of new rules by governments on both sides and businesses. We should ask how ready both sides are to implement the new arrangements in time for the 31 December deadline and what, if any, measures have been agreed to smooth the rollout.

3. What does the deal mean for the Northern Ireland Protocol?

The UK government has said that the Withdrawal Agreement, and the Northern Ireland Protocol in particular, contains “ambiguities” that required the government to provide a legal “safety net” through the UK Internal Market Bill. Another key question for the deal is, therefore, whether it alleviates the government’s fears over the aspects of the Protocol which the government finds unacceptable – state aid, possible tariffs on certain goods moving from Great Britain to Northern Ireland, and customs formalities – thereby allowing it to withdraw the offending clauses from the bill. A failure to withdraw the controversial parts of the bill would likely threaten ratification of the final agreement by the European Parliament and EU member states.

...and 30 more detailed questions to assess the quality of the deal

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Manufactured goods

Questions to consider	Why it matters	Where to find the answer	Context
1. Does the agreement provide zero-tariff and zero-quota access on all goods?	Economically significant	Chapter on Tariffs	Both sides have said that the agreement should provide zero tariffs and quotas on all goods. In recent months, the UK has suggested that it would be willing to accept tariffs on certain product categories should that be required to get a standard “Canada style” free trade agreement (FTA) without stringent obligations on level playing field.
2. Under what circumstances might tariffs be imposed in the future?	Economically and politically significant	Chapters on Trade Remedies and potentially Subsidies and Trade and Labour, and Trade and Environment	Even if no tariffs are agreed now, there will be circumstances under which the parties could impose them in the future (e.g., by way of “suspending concessions” or imposing “temporary remedies”). While such possibility is not unusual in mostly zero-tariff trade agreements, it will be particularly important to ask whether, and on what conditions, potential tariffs might be imposed for breaches of level-playing-field commitments (e.g., over harmful subsidies or risks of competitive disadvantage).
3. Is there “mutual recognition of conformity assessment”? If so, what products does it cover?	Economically significant	Chapter on Technical Barriers to Trade (TBT) and relevant annexes	Mutual recognition of conformity assessment is an arrangement that lowers the costs of product safety testing between trading partners, which is particularly important for regulated products, such as medicines, electrical equipment and others. The UK has asked for broad recognition of conformity assessment that would allow UK-based notified bodies to certify products to EU standards. A failure to secure such arrangements would increase costs for manufacturers of regulated products, as well as for consumers, and put the UK’s regulatory arrangements behind countries even without an FTA with the EU, such as the US and Australia.
4. What are the agreed “rules of origin” requirements?	Economically significant	Chapter on Rules of Origin	Rules of origin establish the extent to which a firm can source product components from different parts of the world so that it qualifies for tariff-free access that a trade deal offers. The UK has sought more expansive arrangements that would allow companies to count all EU and UK content as local, as well as content from other countries with which Britain and the EU both had trade deals, such as Japan. It also wanted bespoke rules for UK-produced competitive products such as electric vehicles. Rules of origin are a major source of costs for manufacturers, particularly those sectors that rely on complex and just-in-time supply chains, such as the automotive and aerospace sectors, so more liberal rules would be an important gain for the UK. Failing to do so would mean that many products that are part of complex supply chains would not be able to qualify for zero-tariff treatment. As a result, for many products, these costs could outweigh the cost of potential tariffs.

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Agricultural goods

Questions to consider	Why it matters	Where to find the answer	Context
5. Is there an agreed framework for recognising “equivalence” of sanitary measures?	Economically significant	Chapter on Sanitary and Phytosanitary Measures (SPS)	Recognising that Britain’s and the EU’s animal welfare regulations might be “equivalent” would be an important way of preventing significant barriers to trade as the UK diverges from EU standards over time. As part of the negotiations, the UK has asked for a framework for recognising equivalence of sanitary measures, similar to one provided by the EU-Canada trade agreement (CETA). The EU has rejected these proposals. Failing to secure this concession would impose higher costs for the transfer of animal products from the UK to the EU and vice versa. Furthermore, this would likely increase the checks on the movement of livestock and products of animal origin from Great Britain to Northern Ireland.

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Fisheries

Questions to consider	Why it matters	Where to find the answer	Context
6. Is there reciprocal access to each other’s waters provided for by the agreement? How durable is this access?	Politically significant	Chapter/Agreement on Fisheries	The UK has sought a new fisheries arrangement which would be renewed annually. If the annual negotiations were to fail, access of EU vessels to UK waters would cease. By contrast, the EU’s priority has been to secure a more stable framework for allocating quotas, even if some periodic negotiations may be required.
7. Is there a higher share of fishing quotas for UK vessels than under the Common Fisheries Policy (CFP)?	Politically and economically significant	Chapter/Agreement on Fisheries	The government has been adamant that any future agreement must allow the UK to secure full control of UK waters and lead to a higher allocation of higher quotas for UK vessels than under the EU’s CFP. The EU, on the other hand, has sought to preserve reciprocal rights and “uphold existing quota shares”.

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Customs

Questions to consider	Why it matters	Where to find the answer	Context
8. What customs simplifications have been agreed?	Economically significant	Chapter on Customs and Trade Facilitation	The UK and the EU have been negotiating range of measures to simplify customs procedures, such as mutual recognition of trusted trader schemes (Authorised Economic Operator). While these measures would not remove the need for customs declarations entirely, they could reduce new costs, particularly by allowing eligible firms to use simplified procedures at the border and ease administrative burdens.

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Professional and business services

Questions to consider	Why it matters	Where to find the answer	Context
9. Is there mutual recognition of professional qualifications? What professions does it cover?	Economically significant	Chapter on Services and Investment	The UK has asked for reciprocal recognition of qualifications for licensed professionals, a proposal which the EU has rejected. Given that professional and business services are the UK's largest services export to the EU, this has been a key UK offensive ask. Lack of mutual recognition of professional qualifications would likely result in the UK's professional and business services sectors having to reorganise EU-facing client operations, leading to a significant hit to UK services exports to the EU.
10. Are there special rules on the temporary movement of business professionals?	Economically significant	Chapter on Services and Investment	As part of the services negotiations, the two sides have been negotiating whether temporary business visitors would be allowed to enter on more preferential terms between the UK and the EU.

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Financial services

Questions to consider	Why it matters	Where to find the answer	Context
11. Will the EU approve the UK's equivalence for financial services alongside the FTA?	Economically and politically significant	Not provided in the legal text - likely to be included in a political statement	Access of the UK's financial sector to the EU will be governed by the EU's "equivalence" framework. The EU is yet to recognise the UK as being equivalent for most financial services activities. It will be important to see whether the EU commits to finalising equivalence assessment at the time of ratifying the FTA. The UK's failure to secure equivalence at the time of signing a trade deal would be a clear signal to the UK financial sector that they cannot rely on equivalence for stable and long-term access to the EU markets, prompting a further re-organisation of many financial activities into the EU.
12. Are there any "equivalence-plus" provisions for financial services within the trade deal?	Economically significant	Chapter on Services and Investment/ Financial Services	The UK has sought "equivalence-plus" provisions that would provide greater stability for UK firms to access the EU market, for example by giving firms a 12-month notice before withdrawal of equivalence or regulator-to-regulator consultations. The EU has resisted such provisions, insisting that market access must be governed solely by EU rules, which cannot be constrained by a bilateral treaty. Without such provisions, firms' future access to the EU market will be provided only on the terms of the European Commission, with the EU largely able to grant and withdraw the access rights at any time.

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Cross-border data

Questions to consider	Why it matters	Where to find the answer	Context
13. Will the UK be granted a “data adequacy” decision by the EU alongside the FTA?	Economically and politically significant	Not provided in the legal text – like to be included in a political statement	“Data adequacy” is an EU status granted to third countries allowing them to transfer data with the EU more freely. The Commission has said that it would seek to decide on the UK’s “adequacy” before the end of the transition period. In practice, this would happen after the FTA is signed. Without this decision, businesses wishing to exchange cross-border sensitive data between the UK and the EU would have to comply with additional legal requirements, raising the cost of cross-border exchange of sensitive data for hundreds of thousands of companies.

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Transport

Questions to consider	Why it matters	Where to find the answer	Context
14. Are there any restrictions on UK and EU road transport operators services to, from and through each other’s territories?	Economically significant	Chapter on Transport	Both the UK and the EU have sought open access arrangements for road freight transport, however the EU has argued that UK hauliers should not be granted the same level of rights and benefits as those enjoyed by EU road operators. A failure to agree clear rules on road transport risks new red tape, delays in transport of goods, and uncertainty for the road haulage and transport industries.
15. Is there a comprehensive aviation agreement with reciprocal traffic rights and cooperation on safety?	Economically significant	Chapter/Agreement on Transport/Aviation Cooperation	Both sides have sought cooperation on aviation, both with respect to traffic rights and aviation security. However, the EU made clear that reciprocal traffic rights would be granted only if the UK complies with appropriate obligations, including on level playing field. It will be important to ask whether traffic rights are provided; on what basis; and whether there is mutual recognition of appropriate aviation safety equipment. Without such cooperation arrangements, the air transport industry would face additional restrictions and costs at the time when the sector has been severely hit by the ongoing recession.

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Level playing field: State aid

Questions to consider	Why it matters	Where to find the answer	Context
16. What are the “common principles” governing subsidies between the UK and the EU?	Politically significant	Chapter on Subsidies	Rules governing state aid have been a major sticking point in the negotiations. The UK has agreed to include a set of common principles in the future treaty. It will be important to see how prescriptive these principles are, and in particular whether they are based upon the language of the Treaty on the Functioning of the EU (Art 107).

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Level playing field: State aid (Continued)

Questions to consider	Why it matters	Where to find the answer	Context
17. How will the subsidy rules be enforced – through dispute resolution or a domestic regulator? If the latter, what are the powers of the domestic body?	Politically significant	Chapter on Subsidies	An important aspect of state aid discussions is how any agreed rules would be enforced in practice. The agreement should set out whether the principles are enforced through a bilateral dispute-settlement process (arbitration) or through a domestic regulator. The former would be more in line with the UK's negotiating position and an international precedent. The latter, in contrast, would require the UK to set up a new regulator, raising important questions about its powers, status and accountability, as well as its interaction with the devolved competences. It might also require domestic legislation to establish the body. Furthermore, implementing a new regime, with an independent regulator, is unlikely to be possible within several weeks from agreeing the final deal. The two sides might specify temporary arrangements until the new regime is in place.
18. What are the consequences of breaking the subsidy rules agreed in the treaty?	Politically significant	Chapter on Subsidies and potentially on Trade Remedies	The agreement will also set out what happens if there is a breach of the agreed subsidy rules. Usually, if there is a proven breach, this could lead to "suspension of obligations" (e.g., imposing tariffs or withdrawing other concessions in a deal). However, the EU has also asked for "unilateral remedies" which could be imposed by the EU without using dispute settlement first; proposals which the UK has rejected throughout the negotiations. If adopted, such proposals would allow the EU to retaliate swiftly to any potential harm.
19. What does the FTA commitment on state aid mean for the state-aid commitments made under the Northern Ireland Protocol?	Politically significant	Chapter on Subsidies	The state-aid provisions agreed in the FTA might have consequences for the same provisions under the Northern Ireland Protocol. Under the NIP, any future UK subsidies that "affect trade between NI and the EU" will continue to be subject to EU state-aid rules. This is a broad commitment that could include subsidies given to GB firms operating in NI. However, if new robust provisions on subsidies between GB and the EU were agreed, then the UK might push for amendment to the state-aid clause under the Northern Ireland Protocol to make its scope less ambiguous.

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Level playing field: Environment, labour and climate

Questions to consider	Why it matters	Where to find the answer	Context
20. Do both sides commit to a "non-regression clause" on environment, labour and climate? Are these provisions subject to dispute settlement?	Politically significant	Chapters on Trade and Environment, Labour and Sustainable Development	Both sides agree, in principle, on the need for a "non-regression" clause (ensuring that there will be no lowering of the standards as defined at the end of the transition period), although their views have differed on the details of the clause and its enforcement. The key question is how this provision will be enforced (i.e. whether dispute settlement will apply to the non-regression); and, finally, whether there can be any sanctions if there is a breach of the provisions. The UK initially resisted making non-regression subject to arbitration.

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Level playing field: Environment, labour and climate (Continued)

Questions to consider	Why it matters	Where to find the answer	Context
21. Is there a “ratchet clause” related to environment, labour and climate regulations?	Politically significant	Chapters on Trade and Environment, Labour and Sustainable Development	The EU has asked for a “ratchet clause” on environmental, labour and climate rules, meaning that once the parties increase their domestic standards in future, they cannot subsequently lower them below the new common floor. The EU has sought dispute resolution to apply to this clause. The UK has resisted this provision on the ground of sovereignty. It will be important to consider not just whether the clause is included in the text, but also whether it is enforceable (i.e. subject to arbitration and temporary remedies in the event of non-compliance).

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Security cooperation

Questions to consider	Why it matters	Where to find the answer	Context
22. Will the UK have continued access to the critical EU security databases (e.g. PNR, ECRIS, SIS2, PRUM)?	Strategically and politically significant	Chapter/Agreement on Law Enforcement and Judicial Cooperation	The UK’s future access to EU security and criminal databases – such as EU SIS2 information system and the European Criminal Records Information System (ECRIS), and the European Passenger Name Records (PNR) – is critically important for managing border security and the ability of police and security services to act swiftly to potential threats. A failure to agree continued access would diminish the capacity of UK government and security bodies to act on security concerns. If such access is granted, the agreement will set out the conditions on ongoing access has been granted, particularly whether there is a requirement for the ECJ to be involved.
23. Is there going to be a new extradition agreement between the UK and the EU?	Strategically and politically significant	Chapter/Agreement on Law Enforcement and Judicial Cooperation	While the UK has said that it would not seek to participate in the European Arrest Warrant, both sides have sought new extradition arrangements that would maintain a degree of cooperation between UK and EU authorities. Lack of an alternative agreement on extradition would risk diminishing a vital aspect of UK-EU security cooperation.
24. Is there a link between security cooperation and the UK’s obligations with respect to the European Convention on Human Rights?	Politically significant	Chapter/Agreement on Law Enforcement and Judicial Cooperation	The two sides have disagreed about whether future security cooperation should be pre-conditioned on the possibility of either side revoking cooperation on human-rights grounds (a “human rights safeguard”). The EU, in particular, has asked the UK to continue adhering to the European Convention on Human Rights (ECHR) and the domestic implementing legislation (the Human Rights Act), seeking to premise future cooperation on the UK’s domestic compliance with the ECHR. The EU has also sought to reserve the possibility of unilateral sanctions for any potential breaches of “essential elements” of the treaty, such as the human-rights clause. This would mean that, if the UK were to be found in breach of the ECHR obligations, the EU could take measures to suspend parts of the agreement. The UK has rejected the conditionality of future security cooperation on its ongoing compliance with the ECHR. The resolution of this issue might have implications on the UK’s future flexibility with respect to the ECHR.

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Social-security coordination

Questions to consider	Why it matters	Where to find the answer	Context
25. Are there any bilateral arrangements for coordinating social-security benefits? How extensive are they?	Politically significant	Chapter/Agreement on Social Security Coordination	Both sides have sought to maintain a degree of coordination on social-security benefits, however their views have differed on the detail. The UK has wanted only state pensions to be covered, while the EU has sought a wider range of benefits to be coordinated, including insurance, medical treatment and others. Furthermore, there is a question as to whether some of the aspects of ongoing cooperation could involve the UK's continued compliance with EU law (and, therefore, require a role for the ECJ in the future agreement) – a position which the UK has consistently rejected on sovereignty grounds.

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Participation in EU research and innovation programmes

Questions to consider	Why it matters	Where to find the answer	Context
26. Is the UK able to participate in future EU research and innovation programmes? If so, what are the strings attached?	Economically and politically significant	Chapter/Declaration on Participation in EU Programmes	The UK's future participation in EU R&D funding programmes has been an open negotiating question, even though the EU has suggested the UK could continue its participation in the future programmes if it makes appropriate financial contributions. Lack of agreement here will likely be a result of disagreement over the expected contribution for ongoing participation. If no future arrangements are agreed, the government will likely be under pressure to provide alternative sources of funding for R&D and cross-border scientific collaboration.

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Dispute settlement and governance

Questions to consider	Why it matters	Where to find the answer	Context
27. Is there a “horizontal” dispute-settlement mechanism covering the whole relationship, or a trade-specific dispute-settlement process only?	Strategically significant for legal certainty and long-term functioning of the agreement	Chapters on Institutional Provisions and Dispute Settlement	One of the disagreements between the two sides has been over the scope of dispute settlement: The EU has sought a single overarching mechanism covering the whole relationship, while the UK wanted a more bespoke mechanism for trade and, if necessary, separate dispute-resolution arrangements for other parts of the relationship. The UK has feared that the single mechanism could raise the possibility of “cross-retaliation” in the event of future disputes (more on this in question 29).
28. Is there a role for the European Court of Justice (ECJ) within the dispute-settlement process?	Politically significant	Chapters on Institutional Provisions and Dispute Settlement	The government has consistently rejected any future role for the ECJ on sovereignty grounds. If the deal contains provisions of EU law, the ECJ will likely be involved in the dispute-settlement process (in order to interpret any such questions of EU law). A role for the ECJ in dispute settlement would, therefore, indicate that there might still be aspects of EU law applying to the UK after the end of the transition period.

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Dispute settlement and governance (Continued)

Questions to consider	Why it matters	Where to find the answer	Context
29. Is there a possibility for cross-retaliation across the agreement?	Strategically and politically significant	Chapters on Institutional Provisions and Dispute Settlement	Another point of difference between the UK and the EU has been whether, in the event of a proven breach of the future deal, the complaining party might be able to retaliate with respect to any parts of the deal (e.g., the EU would retaliate to a breach of level playing field by imposing sanctions on fisheries). The UK has opposed this. The ability to “cross-retaliate” becomes particularly important for breaches of any level-playing-field commitments.

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Legal form

Questions to consider	Why it matters	Where to find the answer	Context
30. What is the overall legal organisation of the relationship?	Strategically significant	Agreement as a whole	Finally, the UK and the EU have disagreed on the legal form that their future relationship should take. The EU has been in favour of a single overarching treaty, while the UK has advocated for separating out an FTA from other issues. The legal form has implications not only for how the overall relationship evolves over time, but also on the ratification process: A single treaty is more likely to qualify as a “mixed agreement” – requiring national ratification of all EU member states – than a trade-only FTA, which would likely involve “EU competence” only.



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