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# Unpacking the Brexit Deal: What It Means and Where It Takes Future UK- EU Relations

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# Introduction

It took more than four years from the Brexit referendum in June 2016 – four years of divisive politics, three prime ministers, endless parliamentary votes and difficult negotiations – to make sense of what Brexit means. The deal agreed between Britain and the EU on Christmas Eve offers some clarity. Brexit means Britain leaving the EU's single market and customs union and replacing it with a thin and imperfect agreement covering trade and security cooperation, with a different arrangement agreed for Northern Ireland last year casting a long shadow on its durability.

This agreement might be a short-term fix to the political challenges of Brexit. However, for all its promise of settling the issue, it is unlikely to be a sustainable basis for long-term relations with the EU.

## The UK–EU Future Relationship Agreement: What It Means

In many ways, the negotiators have defeated the odds. They concluded an agreement in nine months and in the middle of a pandemic. Both negotiating teams deserve credit for their determination to reach an agreement in hard circumstances. They left the fundamental disagreements – over level-playing field, governance and fisheries – until the endgame when, under pressure to avoid the disastrous no-deal, they found an eventual compromise.

That the UK and the EU have secured an agreement is the result of both sides having found a way to secure their main defensive interests. The EU has found a way to protect the integrity of the single market with level-playing field provisions which go virtually beyond any other third country and received reassurance from Johnson's government that Britain will implement the controversial Northern Irish protocol agreed last year.

For its part, Britain has successfully removed any references to EU law from the agreement and role for the European Court of Justice in resolving future disputes, allowing it to argue that this deal guarantees UK sovereignty. It has also secured sovereign control of UK fishing waters following the initial phase-out period of five and a half years. Seen through the lens of defensive interests, both sides can claim a victory.

It is not enough, however, to assess the deal purely through the lens of its obligations. All contracts, whether agreed between people, organisations or states, contain rights as well as obligations. What matters ultimately is the balance of the rights and obligations in an agreement.

If we look at this deal through the lens of offensive interests, this agreement is very thin. True, it provides zero tariffs and zero quotas on all goods moving between Britain and the EU – at least to the extent that goods satisfy the stringent rules-of-origin requirements. It also provides helpful provisions in areas such as aviation, road transport and energy. But on some of the most crucial aspects of the relationship – many of which the UK had sought in its initial ask – the agreement includes glaring holes and, in many ways, falls even below what the EU's previous agreements with Canada and Japan and its proposals to Australia and New Zealand.

There are four notable areas where the UK has failed to secure in its offensive interests. First, there are no provisions on mutual recognition of product testing (so-called 'conformity assessment'), even though the EU has such arrangements with various countries, including Canada, Japan, US and Switzerland. This will increase costs of moving regulated goods across the border, such as medicines, chemicals or electronics. Second, there is no process for recognising equivalence of food safety measures – a process

which the EU previously agreed with Canada. Third, there is no framework for mutual recognition of professional qualifications, making it considerably harder for licensed services professionals, such as lawyers and architects, to service their clients within the continent. The fourth area is financial services, where the agreement lacks any provisions for structured regulatory cooperation, although the EU has such arrangements with Japan.

The problem is not only that there are those gaps in the agreement, but also that the deal looks unbalanced when compared with its obligations.

On the level-playing field, Britain and the EU have agreed robust and enforceable rules which go beyond any other EU trade agreements (including, for example, with Switzerland). On subsidies, the UK is asked to establish an independently enforced domestic subsidy regime. While the UK will be able to revisit its subsidy policy, it has to be compliant with broad principles agreed in the treaty, which will be enforced by an independent regulator, and whose implementation could be subject to review by UK courts. This is less than the EU's initial ask but significantly more than the UK's ask. For environmental and labour rules, both sides have agreed not to lower domestic standards below the common baseline and to guarantee domestic enforcement of those rules.

The most innovative and significant aspect of the LPF rules is the "rebalancing" mechanism. If one side says the other is "significantly diverging" on standards or hands out government subsidies in ways that materially affect bilateral trade, the other can unilaterally apply rebalancing measures, such as tariffs. Importantly, the penalties can be used by both parties and their proportionality is subject to review by independent arbitration. The two underlying principles – the symmetrical obligation and the proportionality test – make it a reasonable compromise that allows Brussels to have a unilateral means of protecting itself against potentially unfair competition, but without tying Britain into future EU rules.

These LPF rules stand in sharp contrast with the limited rights that the deal guarantees. The issue is not that level-playing field provisions themselves are unbalanced; they are a reasonable compromise given both sides' red lines. Rather, the problem is that limited rights and comparatively high obligations make this deal look unbalanced overall.

How did Britain end up with such a deal? The kindest interpretation is that the UK tried to secure better rights but failed. A more cynical view is that the UK set its own trap when it miscalculated earlier in the negotiation, having dropped most of its offensive asks in the hopes of making the EU's ask for stringent level-playing field look unreasonable. In August, Cabinet Office minister, Michael Gove, went as far as suggesting that the UK would be prepared to accept tariffs on certain products for the price of "Canada-style" obligations on LPF. Not only did Britain fail to win the argument over LPF, but it also lost most of its interests.

Another reason, perhaps, is that the EU's legal text, rather than Britain's, was used for drafting the final treaty. Even though UK negotiators had tried to avoid the mistake from the withdrawal negotiations by tabling its own text in parallel with the EU's early on, the EU's version was chosen for the eventual treaty. This has manifested itself not only with form, but also with substance, where the UK appears to have been forced to leave out aspects of the agreement closer to its own offensive asks.

## What the Deal Means for Future UK–EU Relations in the Short Term and Beyond

The biggest value of this agreement, beyond avoiding the short-term economic and political consequences of no-deal, is that it provides a way for the UK and the EU to revisit their relationship in the future.

The immediate challenge facing both sides will be implementing the agreement: issuing new regulatory guidance, putting in place a fully operational border, and adjusting existing systems to new arrangements. Given the little time for adjustment, many companies selling goods and services across the border will face a confusing environment of new requirements and rules. Many are still waiting for some of the unresolved questions: equivalence for financial services firms and data adequate decisions that will guide how cross-border data is transferred between Britain and the EU.

In the meantime, Britain and the EU will need to quickly find new ways of working together constructively. New institutional structures will have to be created to manage the agreement. Britain, for its part, will need to redirect its diplomatic efforts to influencing the EU from the outside, not least because part of its territory, Northern Ireland, will continue following vast swathes of EU single market rules without having a seat at the table or access to formal channels for shaping the legislation, like Norway does.

At home, Britain will have to consider the domestic implications of its new settlement with Europe. It will have to develop a new subsidy policy in line with its new international obligations and consider the deal's implications for policies on fisheries, environmental protection and climate policy, energy, aviation, and so much more.

However, while this agreement might shift the question of Europe away from the political mainstream, this is a fragile arrangement that is unlikely to last for the term. There are two main reasons for this.

The first is Northern Ireland and its different relationship with the EU from Great Britain. Not only will there be new checks for goods moving from Great Britain to Northern Ireland, but as EU single market rules for goods evolve over time, the regulatory gulf between GB and NI will grow larger. It remains to be seen whether, with the totemic issue of Brexit out of the way, the UK will quietly become a rule-taker to minimise political and economic trouble in NI, or whether the GB-EU divergence places ever-growing strain on Northern Irish politics. The first opportunity to review the Protocol, which rests on periodic consent by the Northern Irish Assembly, will in 2024. At that point, the relationship with Europe might be back on the table.

The second factor putting the relationship under strain will be the sparse coverage of key UK economic interests, such as cross-border services. The gaps within this deal will be increasingly clear in the years to come, becoming a significant downside for many interest groups of people and businesses.

Future government will almost certainly want to find a new, more balanced settlement that manages regulatory differences in goods trade more effectively and covers services further. The first opportunity to review the economic part of the deal will be in four years, when the review clause within the agreement formally kicks in. At that point the UK would be seeking to recover some of its offensive interests from a position of significant disadvantage.



# Conclusion

This agreement, however thin and imperfect, is better than no deal. With it, the immediate political challenge of Brexit will disappear from the public eye. The next difficulty for governments on both sides will be implementing the deal and, for businesses, adjusting to the new costly arrangements in an extremely difficult economic climate. The economic consequences of Brexit will play out before us in the weeks and months ahead.

However, this agreement, for all its promise of settling the issue of Europe for at least a generation, is very unlikely to prove a sustainable basis for future UK-EU relations. New political choices will arise as a result of this unsatisfactory deal. It might be the end of a chapter in relations between Britain and the EU, but it will certainly not be the end of a story.



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