



## Negotiating directives for a new partnership with the UK

A brief analysis and comparison with Australia and Canada negotiating directives

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## Introduction

The United Kingdom of Great Britain and Northern Ireland (UK) left the European Union on 31 January 2020 and should also exit the transition period on 31 December 2020. Under the terms of the Withdrawal Agreement, an extension to the transition period of one or two years can be agreed by 1 July 2020. However, the extension scenario is excluded because the UK Parliament passed a legislation which bans it. This means there are roughly eight months to mutually agree on a future partnership, in absence of which the UK will fall on World Trade Organisation terms in their trade relations with the European Union.

On 3 February 2020, the European Commission issued to the Council its recommendation to open the negotiations for a new partnership with the UK, which also contained an annex with a set of negotiating directives<sup>1</sup>. They provide for an ambitious partnership, with zero-tariffs and zero-quotas trade which is conditional on level playing field requirements. The negotiating directives have been taken forward by Member States representatives within the Council, which will adjust them and eventually adopt a negotiation mandate. The mandate will guide the European Union negotiation team – the Task Force for Relations with the United Kingdom, led by the chief negotiator Michel Barnier.

On the UK side, there is no sign of ambition for the moment. The general philosophy is that of taking back control and rejecting any requirements on European Union standards. The current Prime Minister, Boris Johnson, announced on several occasions he wants a free trade agreement like Canada or Australia.

This document aims to present and analyse the main features of the negotiating directives with the UK, while also comparing them to those proposed back in 2009 for Canada<sup>2</sup>, respectively 2017 for Australia<sup>3</sup> (the preferred options of Prime Minister Johnson). There is no agreement concluded yet with Australia, but this text considers the negotiating directives with Australia reflect the level of ambition Prime minister Johnson intends to go for, and are thus relevant for the analysis.

**Disclaimer:** this document only looks at the draft negotiating mandates proposed by the European Commission, and not the negotiation mandates adopted by the Council (for Australia and Canada), final deal agreed with Canada or the current form of the chapters under negotiation now with Australia.

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<sup>1</sup> European Commission (3 February 2020), [Recommendation for a COUNCIL DECISION authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland](#)

<sup>2</sup> European Commission (7 April 2009), [Recommendation from the Commission to the Council in order to authorize the Commission to open negotiations for an Economic Integration Agreement with Canada](#)

<sup>3</sup> European Commission (13 September 2017), [Recommendation for a COUNCIL DECISION authorising the opening of negotiations for a Free Trade Agreement with Australia](#)



## 1. What makes the negotiating directives with the UK stand out?

### *Generalities*

The negotiating directives presented by the European Commission on 3 February are considerably more detailed and comprehensive compared to previous negotiating directives. One can tell it straight away by looking at the **number of pages**: 25 pages vs. 15 pages for Canada and 9 pages for Australia.

Ahead of publishing the negotiating directives on Australia, the Commission organised a **public consultation** (which lasted 3 months), did an **impact assessment**<sup>4</sup> and started as well a **sustainability impact assessment**. In preparation of the Canada negotiating directives, the Commission did an economic impact assessment<sup>5</sup> as well as a sustainability impact assessment<sup>6</sup>, and later a public consultation on the investment dispute resolution<sup>7</sup> (which lasted 3 months). All of this is missing from the preparations for the UK negotiating directives. Nevertheless, the Commission based its proposal on a series of European Council guidelines (mainly those from 23 March 2018<sup>8</sup>) and the Political Declaration signed together with the UK (the version agreed with Prime Minister Johnson on 17 October 2019<sup>9</sup>).

The **legal basis** for the treaty also differs from the others: Article 218 TFEU for Australia and 217 TFEU for the UK (which is an association agreement legal basis). The published negotiating directives for the Canada deal do not specify a legal basis. This distinct legal basis implies mainly a difference in the voting procedure: unanimity in the Council during all the negotiation procedures vs. qualified majority voting (provided by Article 218(8) TFEU). It also reflects a different intention of the Commission - ambitious and far-reaching provisions. The Article 217 TFEU legal basis has been used in the past for association agreements signed especially with third countries in the European Neighbourhood (such as Ukraine, Republic of Moldova). The objective of this type of agreements is to bring third countries closer to the EU legislation, standards and EU's political approach.

The singularity of these negotiations is also shown by the **procedure to be followed in the Council**. In the past, the Council usually designed the Trade Policy Committee as special committee due to assist the Commission during negotiations (Article 218(4) TFEU). This time the Council created a dedicated special committee – Working Party on the United Kingdom (WPUK)<sup>10</sup> - which will follow closely only this negotiation, while the Trade Policy Committee will continue to follow all the other open trade negotiations.

The Council took eight months to discuss the negotiating directives on Australia and 20 days for Canada. The Council has now approximately 22 days to exchange and then adopt the negotiation mandate on the future partnership with the UK in the General Affairs Council on 25 February

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<sup>4</sup> European Commission (13 September 2017), [Impact Assessment accompanying the document Recommendation for a Council Decision authorising the opening of negotiations for a Free Trade Agreement with Australia](#)

<sup>5</sup> European Commission (2017), [The Economic impact of the Comprehensive Economic and Trade Agreement \(CETA\)](#)

<sup>6</sup> European Commission (June 2011), [A Trade SIA Relating to the Negotiation of a Comprehensive and Economic and Trade Agreement \(CETA\) Between the EU and Canada](#)

<sup>7</sup> European Commission (21 December 2016), [News archive](#)

<sup>8</sup> European Council, [Guidelines - 23 March 2018](#)

<sup>9</sup> Council (17 October 2019), [Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#)

<sup>10</sup> Council (28 January 2020), [Council Decision \(EU\) 2020/121](#)



2020. For the previous trade negotiations, the negotiation mandate was adopted by the Foreign Affairs Council.

In order to respect the tight **negotiation timeframe**, the talks should end by October or November 2020 the latest, in order to leave some time for the ratification procedure before the transition period ends. This leaves roughly eight months to agree on a final deal. The Canada deal took almost eight years to be finalised, while negotiations with Australia are underway for almost two years now.

### *Main distinctive features of the negotiating directives with the UK*

The agreement with the UK is set to be the most peculiar one ever negotiated by the EU. This is not only due to the extraordinary context, such as the tight negotiation timeframe and the final end point of these negotiations – the Parties will drift apart instead of coming closer as it usually happens in every trade negotiation. A distinctive feature is the **evolving nature** the Commission aims for this treaty (para 8), accompanied by a periodical review possibility (para 143). Also, the draft mandate provides for a strong governance framework, with a **governing body** in charge of overseeing the implementation of the treaty, and with the power to take decisions and recommendations in regard to the evolution of the partnership (para 150). The European Commission proposes a series of dialogues: thematic dialogues at appropriate level, dialogues between the European Parliament and the UK Parliament, civil society dialogues (paras 146-148). The provisions under the Australia and Canada negotiating directives provide only for a weak form of governance: an institutional link, plus a Trade Commission (for Canada) and an overarching body (for Australia) which are expected to monitor the implementation – therefore without any power to take decisions on the evolution of the agreements.

One can note as well the robust **level playing field** requirements (**LPF**). The LPF requirements were not that prominently mentioned in the negotiating directives of Australia and Canada deals. LPF has been presented as an entry point for an agreement with the UK by the European Commission President von der Leyen and chief negotiator Barnier. As much as EU officials insisted on the LPF requirements orally, it is very present in the written as well. It is reiterated several times, even three times within the trade-related sections, which shows the importance of the LPF requirements. The LPF has a dedicated section (para 89) which explains its reason of being (“geographic proximity and economic interdependence”) and where it is made clear LPF is a condition for the partnership (“the envisaged partnership must (...) encompass robust commitments to ensure a level playing field”). A list of areas to be covered by the LPF is also provided (para 89): state aid, competition, social and employment standards, environmental standards etc. The text of the draft mandate mentions as well that LPF is supposed to evolve over time and that the governing body will be in charge of modifying the LPF and of extending it to additional areas.

The LPF can be found in the following parts of the negotiating mandate:

- as a general principle that applies to the whole mandate (para 10);
- as general requirement for the future partnership (para 89);
- a list of LPF requirements is provided (para 89);
- as a general principle for the “economic” part of the mandate (para 16);
- as a principle for the “goods” section (para 18);
- as a condition for the free trade area ensuring zero tariffs and quotas (para 19);
- as a requirement for “road transport” cooperation (para 70);
- as a requirement for cooperation under the “electricity and gas” section (para 76);
- the LPF to evolve and the governing body to modify it (para 90).



Ambitious level playing field requirements were to be expected as long as the European Commission proposes to the UK the most far-reaching trade relationship the EU has with a third country to this date: no tariffs and no quotas. Furthermore, LPF requirements were also mentioned in the Political Declaration on the future relationship, that both the EU and the UK agreed to.

A **ratchet clause** has also been included to prevent both Parties from lowering existent high standards and the level of protection in the following areas: carbon pricing, labour and social protection, environment (“the envisaged partnership should prevent them from lowering (...)” - para 105). This type of clause cannot be found in the other two negotiating mandates.

The text proposed by the Commission mentions **additional agreements and arrangements** can supplement the provisions provided by the future treaty (para 143). This can allow for cooperation on specific issues that have not been covered by the agreement.

## 2. Comparative tables on substantive matters covered by the negotiating directives on Australia, Canada and the UK

Main distinctions on substantive matters		
Australia	Canada	UK
Scope of the partnership		
“the agreement should exclusively contain provisions on trade and foreign direct investment” (section A)	“agreement will exclusively contain provisions on trade and trade-related areas” (para 1)  “investment-related areas” (introduced 2 years later after the negotiating mandate has been modified)	“aim is to establish a new partnership that is <b>comprehensive</b> and covers the areas outlined in the Political Declaration (...) the partnership may encompass <b>areas beyond those described therein (...)</b> <b>recognizes partnership might evolve over time</b> ” (paras 7 & 8)
Trade in goods		
“ensure highest possible degree of trade liberalisation (...) tariffs on most line to be eliminated (...) exceptions to be kept for a minimum” with quotas on agricultural products	“dismantle import duties and charges (...) on both sides within 7 years” (para 8)	“free trade area ensuring <b>no tariffs</b> ” and <b>no quotas</b> (para 19)  <b>Conditionality:</b> “provided that LPF is ensured through robust commitments” (para 19)
Non-tariff barriers		
Mostly World Trade Organisation approach	Mostly World Trade Organisation approach	The partnership to uphold the <b>application of the precautionary principle</b> (para 30)



		Establish framework for voluntary regulatory cooperation (para 31)
<p>Few details</p> <p>Sectors covered:</p> <ul style="list-style-type: none"> <li>• financial services</li> <li>• digital trade</li> <li>• capital movements and payments</li> <li>• intellectual property</li> <li>• public procurement</li> <li>• SMEs</li> </ul> <ul style="list-style-type: none"> <li>• energy and raw materials</li> </ul> <ul style="list-style-type: none"> <li>• competition</li> </ul> <p>A general trade and sustainable development chapter:</p> <ul style="list-style-type: none"> <li>• -</li> </ul> <ul style="list-style-type: none"> <li>• labour (adherence and implementation of international standards + provisions foreseen)</li> </ul>	<p>Some details</p> <p>Sectors covered:</p> <ul style="list-style-type: none"> <li>• -</li> <li>• -</li> <li>• capital movement and payments</li> <li>• intellectual property</li> <li>• public procurement</li> <li>• -</li> </ul> <ul style="list-style-type: none"> <li>• -</li> </ul> <ul style="list-style-type: none"> <li>• competition (reinforce cooperation on anti-trust and merger control through the negotiation of a specific agreement)</li> </ul> <p>A general trade and sustainable development chapter:</p> <ul style="list-style-type: none"> <li>• -</li> </ul> <ul style="list-style-type: none"> <li>• labour (adherence and implementation of international standards, support social responsibility international standards + monitor)</li> </ul>	<p>Extensive details</p> <p>Sectors covered:</p> <ul style="list-style-type: none"> <li>• financial services</li> <li>• digital trade</li> <li>• capital movements and payments</li> <li>• intellectual property</li> <li>• public procurement</li> <li>• SMEs (specifying which info needs to be delivered to SMEs: rules, regulation, procedures on doing business including public procurement)</li> <li>• energy and raw materials (focus on renewables and renewables investments, avoiding double pricing, promotion of low carbon economy)</li> <li>• <b>competition</b> (the partnership to ensure <b>application of EU state aid rules</b> + UK to set up independent enforcement authority)</li> </ul> <p><b>Distinct section on LPF provisions and requirements</b></p> <p>Sectors covered outside of the "trade and sustainable development" chapter which does not exist:</p> <ul style="list-style-type: none"> <li>• transport, fisheries, taxation, fight against climate change</li> <li>• labour and social protection (non-regression clause + list with different policies + details on UK national enforcement mechanism)</li> </ul>



<p>on effective implementation)</p> <ul style="list-style-type: none"> <li>environment (multilateral environmental agreements including climate change-related)</li> </ul>	<p>implementation through public review, scrutiny and mechanisms to address disputes)</p> <ul style="list-style-type: none"> <li>environment: adherence to international environmental agreements, provide conditions to increase trade in environmental goods and services + monitor implementation through public review, scrutiny and mechanisms to address disputes)</li> </ul>	<ul style="list-style-type: none"> <li><b>environment: non-regression clause + list of areas + minimum commitments including targets</b> (e.g. on air and water quality, climate target) + <b>precautionary principle &amp; polluter pays principle</b> + details on <b>UK national enforcement mechanism</b></li> </ul>
Regulatory cooperation		
<p>Provision on general regulatory cooperation on cross-cutting disciplines</p>	<p>Consideration should be given to include regulatory cooperation in specific areas (para 40)</p>	<p>Regulatory cooperation mentioned specifically in several parts of the text / fields: goods, services and investments, financial services, aviation safety</p>
Governance		
<p>Weak governance</p> <ul style="list-style-type: none"> <li>Overarching body to monitor the implementation</li> </ul>	<p>Weak governance</p> <ul style="list-style-type: none"> <li>an institutional link + a Trade Commission to monitor the implementation</li> </ul>	<p>Strong governance</p> <ul style="list-style-type: none"> <li><b>Governing body</b> in charge of overseeing the implementation of the treaty, and with the <b>power to take decisions</b> and recommendations in regard to the <b>evolution of the partnership</b> (para 150).</li> <li>A series of dialogues proposed (paras 146-148 – see in part 1 of this document)</li> </ul>

