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UKTF (2020) 4 – Commission to EU 27

Subject: Internal EU27 preparatory discussions on the future relationship: "Level playing field"

Origin: European Commission, Task Force for Relations with the United Kingdom

Remarks: These slides are for presentational and information purposes only and were presented to the Council Working Party (Article 50) on 14 January 2020. The contents are without prejudice to discussions on the future relationship.

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Internal preparatory discussions on
future relationship

Level playing field and sustainability

AD HOC WORKING PARTY ON ARTICLE 50 (*Seminar mode*)

14/01/2020

General introduction

If UK withdraws with agreement on 31 January 2020:

Transition period of 11 months for:

- 1. adoption of negotiating directives;***
- 2. conduct of negotiations;***
- 3. signature/conclusion and entry into force of future agreement by 1 January 2021***

=> Complex and politically sensitive negotiations

=> Possibility of a "cliff edge" as of 1 January 2021

Purpose of the seminar series

- Respect established EU principles and objectives:

- 1. European Council (Art. 50) guidelines on the framework for the future EU-UK relationship, 23 March 2018;**
- 2. Revised Political Declaration agreed with the UK government on 17 October 2019, setting out the framework for the future relationship between the EU and the UK.**

- Preparing the negotiating directives

- Take into account Member States' views

- Commission will present the recommendation after UK withdrawal

→ no surprises

→ allow for swift adoption

General approach (1)

European Council Guidelines of 29 April 2017 (§§1, 20), Guidelines of 23 March 2018 (§§8, 9, 12), Conclusions of 13 December 2019 (§2)

- *“any agreement with the UK will have to be based on a balance of rights and obligations, and ensure a level playing field”;*
- Balanced, ambitious and wide-ranging free trade agreement **“insofar as there are sufficient guarantees for a level playing field.”** / “[any free trade agreement] must ensure a level playing field.”
- Given the **UK's geographic proximity and economic interdependence with the EU27**, the future relationship will only deliver in a mutually satisfactory way if it **includes robust guarantees which ensure a level playing field.**
- The aim should be to **prevent unfair competitive advantage** that the UK could enjoy through undercutting of levels of protection with respect to, inter alia, competition and state aid, tax, social, environment and regulatory measures and practices.
- This will require a combination of **substantive rules** aligned with EU and international standards, **adequate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement mechanisms** in the agreement as well as Union autonomous remedies, that are all **commensurate with the depth and breadth of the EU-UK economic connectedness.**
- The future partnership should **address global challenges**, in particular in the areas of climate change and sustainable development, as well as cross-border pollution, where the Union and the UK should continue close cooperation.

General approach (2)

Political Declaration (§§17, 21, 58, 60, 70) – Economic partnership

Economic partnership

- Objectives and principles: “the Parties agree to develop an ambitious, wide-ranging and balanced economic partnership. [...] It will be underpinned by provisions ensuring a level playing field for open and fair competition, as set out in Section XIV of this Part”.

Trade in goods

- Objectives and principles: “the Parties envisage comprehensive arrangements that will create a free trade area, combining deep regulatory and customs cooperation, underpinned by provisions ensuring a level playing field for open and fair competition, as set out in Section XIV of this Part.”

Transport

- Aviation: “The [Comprehensive Air Transport Agreement] should cover market access and investment, aviation safety and security, air traffic management, and provisions to ensure open and fair competition, including appropriate and relevant consumer protection requirements and social standards.”
- Road: “The Parties should ensure comparable market access for freight and passenger road transport operators, underpinned by appropriate and relevant consumer protection requirements and social standards for international road transport, and obligations deriving from international agreements in the field of road transport to which both the United Kingdom and the Union and/or its Member States are signatories [...]”

Energy

- Carbon pricing: “The Parties should consider cooperation on carbon pricing by linking a United Kingdom national greenhouse gas emissions trading system with the Union’s Emissions Trading System.”

General approach (3)

Political Declaration (§77) – Level playing field

Principles:

- Given the Union and the United Kingdom's geographic proximity and economic interdependence, the future relationship must ensure open and fair competition, encompassing robust commitments to ensure a level playing field.
- The precise nature of commitments should be commensurate with the scope and depth of the future relationship and the economic connectedness of the Parties.
- These commitments should prevent distortions of trade and unfair competitive advantages.

Key provisions:

- The Parties should uphold the common high standards applicable in the Union and the United Kingdom at the end of the transition period in the areas of state aid, competition, social and employment standards, environment, climate change, and relevant tax matters.
- The Parties should in particular maintain:
 - a robust and comprehensive framework for competition and state aid control that prevents undue distortion of trade and competition;
 - commit to the principles of good governance in the area of taxation and to the curbing of harmful tax practices;
 - maintain environmental, social and employment standards at the current high levels provided by the existing common standards.
- In so doing, they should rely on appropriate and relevant Union and international standards, and include appropriate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement.
- The future relationship should also promote adherence to and effective implementation of relevant internationally agreed principles and rules in these domains, including the Paris Agreement.

General approach (4)

Political Declaration (§§18, 71, 75, 91) – Sustainability

- The economic partnership will recognise that sustainable development is an overarching objective of the Parties.
- The Parties should cooperate bilaterally and internationally to ensure fishing at sustainable levels, promote resource conservation, and foster a clean, healthy and productive marine environment.
- Parties will promote sustainable development and will continue to support the implementation of the United Nations Sustainable Development Goals and the European Consensus on Development.
- The Parties recognise the importance of global cooperation to address issues of shared economic, environmental and social interest. As such, while preserving their decision-making autonomy, the Parties should cooperate in international fora, such as the G7 and the G20, where it is in their mutual interest, including in the areas of [...]
 - climate change;
 - sustainable development;
 - cross-border pollution.

Level playing field and sustainability

- I. General***
- II. Competition and State-owned enterprises***
- III. Taxation***
- IV. Labour and social protection***
- V. Environment***
- VI. Climate action***
- VII. Other instruments for sustainable development***

Conclusions

I. General (1)

Context

- Geographic proximity
- Economic interdependence and connectedness

Objectives

- Ensure open and fair competition, encompassing robust commitments to ensure a level playing field across the economic partnership
- Prevent distortions of trade and unfair competitive advantages
- Address cross-border UK-EU pollution
- Address global sustainability and climate change challenges, including through continued close cooperation between the EU and the UK

I. General (2)

□ Principles

- Robust commitments, to ensure a level playing field
- Commensurate with the overall EU-UK future relationship and the Parties' economic connectedness

□ Substantive rules

- Uphold high EU and international standards in certain areas of horizontal nature
- EU and UK to continue improving their respective levels of protection with the goal of ensuring high levels of protection

□ Areas to be covered

- Horizontal: competition including state aid, state-owned enterprises, taxation, labour and social, environment, fight against climate change
- Sectoral: additional commitments in relevant sectors

□ Implementation and enforcement

- Effective implementation domestically
- Effective enforcement and dispute settlement between the EU and the UK
- EU autonomous remedies – interim measures to react quickly to disruptions of the equal conditions of competition in relevant areas

□ Evolution of level playing field commitments

- Empowerment of Joint Committee to modify commitments over time to lay down higher standards or include additional areas

II. Competition – State-owned enterprises

□ Substantive Rules

- Application of EU State aid rules to and in the UK
- Anticompetitive conduct and concentrations of undertakings that threaten to distort competition: to be prohibited unless remedied
- State-owned enterprises, designated monopolies and enterprises granted special rights or privileges must not distort competition or create barriers to trade and investment

□ Implementation and enforcement

- Domestically
 - State aid: independent enforcement authority in the UK for State aid granted by the UK – to work in close cooperation with Commission
 - Effective enforcement of competition law and domestic administrative and judicial proceedings for anticompetitive conduct etc.
- Dispute settlement

III. Taxation

□ Substantive rules

- Implementation of the principles of good governance in taxation
- Application by the UK of the common standards in place at the end of the transition period in relation to at least:
 - Exchange of information on income, financial accounts, tax rulings, country-by-country reports, beneficial ownership and potential cross-border tax-planning arrangements
 - Anti-tax avoidance practices
 - Public country-by-country reporting by credit-institutions and investment firms
- Curb harmful tax measures, notably by ensuring the UK reaffirms its commitment to the Code of Conduct for Business Taxation

□ Implementation and enforcement

- Dispute settlement

IV. Labour and social protection

□ Substantive Rules

- Non-regression from common standards in place at the end of the transition period in labour and social protection in relation to at least:
 - fundamental rights at work
 - occupational health and safety, including the precautionary principle
 - fair working conditions and employment standards
 - information and consultation rights at company level and restructuring
- Protection and promotion of social dialogue on labour matters among workers and employers, and their respective organisations, and governments

□ Implementation and enforcement

- Domestically: authorities in the UK; effective system of labour inspections; administrative and judicial proceedings
- Dispute settlement

V. Environment (1/2)

□ Substantive rules

- Non-regression from common standards in place at the end of the transition period in a number of areas [*see next slide*],
- Taking into account that the EU and UK share a common biosphere in relation to cross-border pollution
- Minimum commitments on standards (including targets)
- Respect of principles such as the precautionary principle and the “polluter pays” principle

□ Implementation and enforcement

- Domestically: independent body/bodies in the UK
- Dispute settlement

V. Environment (2/2)

Environmental areas, at least

- access to environmental information
- public participation and access to justice in environmental matters
- environmental impact assessment and strategic environmental assessment
- industrial emissions; air emissions and air quality targets and ceilings
- nature and biodiversity conservation; waste management
- the protection and preservation of the aquatic environment
- the protection and preservation of the marine environment
- the prevention, reduction and elimination of risks to human health or the environment arising from the production, use, release and disposal of chemical substances
- climate change

VI. Fight against climate change

□ Substantive rules

- Reaffirm the EU and UK's commitments to effectively implement international agreements to tackle climate change (e.g. Paris Agreement)
- UK to maintain a system of carbon pricing:
 - Effectiveness and scope as per common standards/targets in place at the end of the transition period
 - Possibility of linking UK's national greenhouse gas emissions trading system with the EU's Emissions Trading System (ETS) – provided the integrity of the EU ETS is respected
- UK to maintain common standards (including targets) in place at the end of the transition period in areas not covered by carbon pricing

□ Implementation and enforcement

- Domestically: independent body/bodies in the UK
- Dispute settlement

VII. Other instruments for sustainable development

- ❑ Promote the implementation of the United Nations 2030 Agenda for sustainable development
- ❑ Adherence to and effective implementation of relevant internationally agreed principles and rules:
 - Conventions of the International Labour Organisation (ILO) and European Social Charter of the Council of Europe
 - Multilateral environmental agreements, including on climate change
 - Climate change mitigation-related multilateral initiatives
- ❑ Non-lowering of higher domestic labour and environmental standards in order to encourage trade and investment
- ❑ Promote greater contribution of trade and investment to sustainable development
 - Trade in environmental and climate-friendly goods/services, voluntary sustainability assurance schemes, corporate social responsibility
 - Cooperation in international fora (e.g. G7, G20, UNFCCC)
 - Bilateral cooperation to increase the level of ambition on sustainable development and in the fight against climate change
 - Trade favouring low-emission, climate resilient development
 - Trade in legally obtained and sustainably managed natural resources
- ❑ Provide for civil society participation and dialogue
- ❑ Monitoring, implementation and enforcement

Conclusion

- Economic partnership must be underpinned by robust safeguards ensuring a level playing field
- Commensurate with future relationship and economic connectedness
- A free trade agreement requires robust horizontal level playing field commitments and additional commitments in relevant sectors
- Clear and ambitious floor provided by common standards and ambition to improve over time
- Non-lowering of higher domestic labour and environmental standards in order to encourage trade and investment
- Effective enforcement domestically and through dispute settlement
- Autonomous interim measures to react quickly
- Cooperation bilaterally and at international level to promote and contribute to sustainable development

Other relevant seminars

- Free trade agreement (13/1)
- Fisheries (14/1)
- Transport (15/1)
- Energy (15/1)
- Governance (20/1)