



## UK-EU negotiations in 2020 | **What hangs in the balance for State Aid?**

On Tuesday 19 May, the UK Government published [twelve texts](#), detailing draft agreement proposals for the country's future relationship with the EU. The publication came over two months after the EU published its own [draft agreement](#), and shed some light on the significant gulf in negotiating positions.

The Johnson government maintains that it will not seek an extension to the transition period, leaving negotiators less than nine months to settle the terms of an unprecedented agreement – the first time in which barriers are established in an agreement, rather than removed. When the COVID-19 crisis first hit, only one negotiating round had been completed – and talks have since continued by video conference.

Future relationship talks have been quite acrimonious thus far. Much of the disagreement between both sides has centred upon the EU's demand that the UK sign up to “level-playing field” conditions - maintaining commensurate standards for state aid, employment, environment and taxation. Boris Johnson's announcements during the 2019 election campaign that he planned to make it “faster and easier” to prop up faltering companies after Brexit - by introducing a less restrictive state aid regime more closely aligned to WTO rules - had sparked major concern in EU quarters. Member -



states remain wary that the UK could attempt to use state aid to give its businesses a competitive edge against EU counterparts.

When the UK exits the EU Single Market and Customs Union at the end of the transition period, as it likely will on December 31 of this year (given the Johnson's administration's resolve that it will not pursue an extension) the UK Competition and Markets Authority (CMA), which is currently in charge of UK antitrust enforcement, will also become the UK's state aid authority - conducting investigations and recovering any illegitimate state aid. A fundamental issue in the ongoing UK-EU negotiation will be, therefore, whether after Brexit the CMA's authority will be in any way constrained by EU regulators in performing its function.

The [EU's draft FTA text](#) essentially sets out a system where EU state aid law continues to apply in the UK. When there are disputes, the European Court of Justice will be the arbiter and have primacy to issue binding rulings, which UK courts should then implement. If the EU establishes novel state aid regulations, it will inform the UK via a "Specialised Committee on Level Playing Field and Sustainability," which would have to sit within six weeks and "add the new act or provision." In scenarios where competition law violations have been found, sanctions should have a "real and deterrent effect" as the below excerpt states:

*"... each Party shall establish administrative and judicial proceedings allowing public authorities and interested natural or legal persons to bring timely actions against violations of its competition law and practices, and provide for remedies, including interim measures, which shall ensure that sanctions are effective, proportionate and dissuasive and have a real and deterrent effect."*

*UK Task Force: Draft text of the Agreement on the New Partnership with the United Kingdom: Article LPFS.2.17: Enforcement and dispute settlement (p.27 of 440)*



Critically, if the EU considers the UK to be distorting fair competition or trade via its practices, then the Parties should consult with the Specialised Committee to agree a solution, with an obligatory Committee meeting within 30 days of notification. If a consultation was not held, or a consultation was held, but Parties did not agree a solution within the 30-day period, then the EU would, according to its text, be able to impose interim measures. Such stringent measures, with the primacy of the European Court of Justice, are unlikely to be accepted under any circumstances by the UK side at time of writing.

Meanwhile the UK's draft FTA text merely gives the EU the option to “express its concerns” and request consultation if instances of UK market activity are deemed damaging. “The responding party shall afford full and sympathetic consideration to that request,” the document states.

Moreover, in a [letter](#) addressed to Michel Barnier released alongside the UK's twelve texts, David Frost made his frustration with the EU's state aid demands amply clear:

*“To take a particularly egregious example, your text would require the UK simply to accept EU state aid rules [...] and would require us to accept an enforcement mechanism which gives a specific role to the European Court of Justice. You must see that this is simply not a provision any democratic country could sign, since it would mean that the British people could not decide our own rules to support our own industries in our own Parliament.”*

*[David Frost letter to Michel Barnier, 19 May 2020](#)*



When recently asked if state aid control will be key to rebuilding the UK’s economy after the COVID-19 crisis, the UK’s Chancellor of the Duchy of Lancaster and Cabinet Office Minister Michael Gove had stated “absolutely.” This would appear to be a good indication of the Johnson administration’s intentions – to leave the EU’s state aid regime and form its own, independent apparatus under the CMA. Furthermore, to use this freer system to help businesses struggling to stay afloat in light of the effects of the crisis and apply state aid, where possible, to boost the UK’s business competitiveness. All the while, the UK side has maintained it will maintain high standards, and “in some cases, higher standards” than the EU. Though admittedly, such assurances are unlikely to alleviate much concern in Brussels.

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**Key Contacts**



**Alberta Laschena**  
Partner, Competition  
t.: +32 495259646  
e.: [alberta.laschena@kreab.com](mailto:alberta.laschena@kreab.com)



**Theodoros Birmpoutsoukis**  
Associate Director  
t.: +32 499920649  
e.: [theodoros.birmpoutsoukis@kreab.com](mailto:theodoros.birmpoutsoukis@kreab.com)



**John Bethell**  
Associate  
t.: +32 467821998  
e.: [john.bethell@kreab.com](mailto:john.bethell@kreab.com)