

EU–UK Relations After the High Level Conference

by Ferdinando Nelli Feroci

In their virtual meeting of 15 June 2020, leaders of EU institutions and the British prime minister acknowledged that new momentum was required in the negotiations on the future of EU–UK relations. They further announced their determination to accelerate these negotiations in the month of July, with the objective of concluding a deal by the end of the year.

The EU side also took note of the British government's intention not to ask for a postponement of the end-of-year deadline. This was a request by prime minister Boris Johnson, who had long promised that no further delay would be accepted by the British Government.

Facts aside, the positive news is that the atmosphere of the conversation was apparently good. The meeting was conducted in a friendly climate, and in a context of mutual understanding, underlined by both parties. No threats to suspend or stop the negotiations,

as one could have expected, were announced. Both Johnson and his EU interlocutors were seemingly willing to compromise in order to achieve an agreement, thus avoiding the worst-case scenario of a “no deal” as we approach the end of 2020.

The bad news is that, good intentions aside, no progress was actually made and announced on the main points of dissent that have so far characterized the negotiations. As a consequence, it is reasonable to conclude that the respective positions of the two parties continue to remain quite distant. The four rounds of negotiations conducted so far, complicated as they were by the COVID-19 emergency and the social distancing measures implemented to halt the spread of the pandemic, have in fact only confirmed the divergences in the respective negotiating positions as well as the difficulties of finding common ground.

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The first divergence is related to the very nature and structure of the agreement. The EU wants, in coherence with the Political Declaration annexed to the Withdrawal Agreement,¹ a wide, comprehensive and ambitious deal covering all aspects of the future relations. A deal that should correspond to the expectations of a deep and articulated future relation with an ex-member destined to remain an essential partner. Such a deal would not be limited to trade, but should also include home and justice affairs, security and foreign policy.

The UK so far has only shown interest in gaining access, as free as possible, to the EU's internal market, accompanied by a series of separate agreements covering sectors of direct interest for the British economy. London has especially insisted on the need to preserve its national sovereignty and to retain, after Brexit, full control over the definition and implementation of its policies.

The second difference relates to the UK's request for open and unhindered access to the EU internal market. The EU is willing to concede such access, but only if the UK will accept the definition of a fair and shared level playing field, aimed at avoiding unfair competition by UK companies and businesses. Accordingly, the EU wants the UK to accept the principle of a convergence of British standards with EU standards on the environment and labour, competition and state

aid as a guarantee against the risk that British businesses may retain an unfair advantage over their Europeans competitors in the EU internal market. This request has so far been rejected by the UK's negotiators, described as an unacceptable limitation of British national sovereignty.

A third area of disagreement is on fisheries and fishing rights. The UK wants full access to the EU market for its fish; but is only willing to concede limited access in scope and timing to EU fishing boats within UK waters. The EU wants a broad access for its boats in British waters based on historical rights. Fishing markets make up only a very modest part of the EU's and the UK's GDP. The dispute, however, has assumed a symbolic value that goes well beyond its economic dimension.

Finally, there are still divergent points of view on the governance of the agreement, and in particular on the role of the EU Court of Justice, to which the UK is not ready to recognize any competence in the settlement of disputes that may arise in the implementation of the agreement. There is also still little clarity on the follow-up provisions of the Political Declaration, attached to the Withdrawal Agreement, which had spelled out the intention of the two parties to define a broad and intense cooperation in the field of justice, police and home affairs, security, foreign policy and defence.

In conclusion, if prime minister Johnson actually wants to stick to the end-of-year deadline as the target date for the conclusion of an agreement, there seems realistically to be very

¹ See *Official Journal of the European Union*, C 384I, 12 November 2019, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2019:384I:TOC>.

limited time to reach such a deal. In normal conditions a deal of this scope and complexity would have required years, as demonstrated by the time that was necessary for the EU to conclude the recent free trade agreements with Canada or Japan.

No agreement at the end of the year seems therefore at this stage the most likely scenario despite the outcome of the High Level Conference. But if wisdom will prevail and the two parties will converge on the idea that an agreement is a better option, there is still a chance for an intermediate solution: an understanding on some fundamental principles that would regulate the bilateral relations, and the decision to postpone the definition of the details to later stage. Such a solution would evidently be in the interest of both sides.

At the end of the day, Boris Johnson, whose pragmatism has already been tested in previous occasions (including on the Withdrawal Agreement), may conclude that some sort of an interim agreement better suits his interests. This could help his government maintain its promise of no further delays, thereby increasing the chances of him successfully selling the agreement to parliament, while at the same time providing more time to EU and UK negotiators to outline more concrete details and provisions of a wider and deeper arrangement that undoubtedly will require further complex negotiations between the sides.

18 June 2020

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