

ETUC Resolution on the future partnership between the UK and the EU

Adopted at the Executive Committee Meeting of 13-14 December 2017

Current situation

On December 14th- 15th the EU leaders met in Brussels for the European Council. The summit (in its Art.50 configuration i.e. only EU27) announced that sufficient progress has been made on the three issues of the financial settlement, citizens' rights and Northern Ireland. Brexit negotiations will now move onto both transitional arrangements and the future EU-UK Partnership Agreement. The summit conclusions specify the Council of the European Union is expected to adopt negotiating directives on transitional arrangements in January 2018. On the other hand, the European Council is expected to adopt additional guidelines in March 2018, as regards the framework for the future relationship. The ETUC continues to be concerned that the situation of EU workers in the UK and UK workers in the EU is still far from clear and there is almost no detail on how a border between the Republic of Ireland and Northern Ireland will be avoided. This Resolution sets out the ETUC demands for the future EU-UK Partnership Agreement that protects citizens, their jobs, rights and living standards.

A fair transitional arrangement

A transitional arrangement is needed to bridge the gap between the UK leaving the EU and a future EU-UK Partnership Agreement. The ETUC calls for a transitional arrangement to avoid a cliff edge situation which would neither be beneficial for workers in the UK nor in the EU. Upheaval in the internal market caused by barriers to trade being reinstated would affect the economy, jobs, rights, and living standards of the EU27 and the UK, albeit in different proportions. Uncertainty is not beneficial for either side.

Failing to agree a transitional arrangement brings both the EU and the UK dangerously close to hard Brexit on 29 March 2019, when EU treaties cease to apply. This would be reckless particularly since it takes time to put in place the necessary contingency plans. A transitional period would allow negotiators more time to define the future relationship while avoiding immediate shocks to the European economy as a whole.

The purpose of a transitional arrangement is to act as a bridge between the Withdrawal Agreement (Art.50 TFEU) and the implementation of the future EU-UK Partnership Agreement. The ETUC is of the view that the length of the transitional period should depend on achieving the intended outcomes and should be clearly spelled out in the Withdrawal Agreement. In any event, there should be no undue delay in order to give legal certainty to people, governments and market operators alike.

The transitional arrangement should be essentially an extension of membership of the EU on the same conditions i.e. the UK should remain in the single market and customs union during the transition, EU law should continue to apply and financial contributions maintained, in line with the ETUC [statement](#) adopted in March 2017.

This would mean that a level playing field on workers' rights is upheld; trade in goods and services would continue to be frictionless, barrier-free and tariff-free, thereby protecting jobs in the EU and the UK. This would also keep current arrangements between Ireland and Northern Ireland in place and would allow continuation of a border-free zone.

Conditions for the future EU-UK Partnership Agreement

The ETUC believes that the following tests should be applied to any proposed future relationship between the EU and the UK after the transitional arrangement. We call for these tests to be included in the new negotiating guidelines.

- a) Firstly, existing **workers' rights** must be protected and there should be a level playing field in the future, so that the UK upholds EU employment and social standards (see Annex II). The ETUC also calls to grant family reunification rights, establishing clear procedural guarantees. Family reunification helps to create socio-cultural stability and to promote economic and social cohesion – a fundamental EU objective. Workers also need guarantees that their pension entitlements they have built up will not be endangered because of Brexit. The ETUC believes that the UK is too big and too close to be treated like any other 3rd country with which the EU negotiates trade deals, and a higher set of standards should be upheld, regardless of whether these are currently being required of other trading partners across the world. To protect the existing *acquis* a non-regression clause will be necessary¹. Preventing a race to the bottom is fundamental to avoid undercutting of standards and rights for workers across EU 27. A level playing field would also ensure that British workers' rights did not fall behind those in the rest of Europe. In addition, the UK has now subscribed to the European Pillar of Social Rights (EPSR). We expect the future EU-UK Partnership Agreement to uphold the EPSR principles and ensure they are effectively implemented in the UK after Brexit. A binding clause for workers' rights and standards must be written into the future EU-UK Partnership Agreement.
- b) Secondly, the future EU-UK Partnership Agreement should maintain jobs and living standards for workers across Europe by ensuring that access for the UK to the Single Market is only possible on condition of continuing adherence to the four freedoms (free movement of goods, services, capital and persons). This would also preserve current **frictionless, tariff-free and barrier-free trade in goods and services, as well as allowing movement of workers** between the UK and the rest of Europe, along with the maintenance of existing consumer, environmental and labour standards. In addition, to redress the imbalance of the application of the four freedoms, the ETUC calls for a Social Progress Protocol and for upward pay convergence between East and West.

It will also be important that the EU carry out parallel comprehensive reviews of its relationship with British Crown Dependencies. This review should focus on tax transparency and the implementation of information sharing arrangements. Regardless of the type of the future partnership, the EU will have to make sure to prevent tax evasion schemes promoted by these territories. The recent "Paradise papers" show that there is still a lot more the UK could do end tax secrecy.

- c) Thirdly, there needs to be a method of **dispute resolution** and supervision of rights and protections. The ETUC is of the view that only the CJEU can assure a uniform interpretation of EU law and access to justice for workers. Importantly workers and their unions must be able to take complaints if their rights guaranteed under the agreement are not secured.

¹ If the EU (withdrawal) Bill is adopted unchanged by the British parliament, the UK would clearly not be offering sufficient guarantees to maintain the level playing field that will also be a crucial element of the future relationship.

- d) Fourthly, while the ETUC supports freedom of movement and would reject any cherry-picking on the part of the UK, we demand a better way of **managing migration** that protects workers – regardless of their passport – from exploitation, unfair treatment and undercutting. We support the non-discrimination principle for all workers: equal pay for equal work in the same place. The ETUC is calling for the UK to adopt measures to achieve those aims similar to what other countries have put in place over the years, and we will continue to press for such measures at EU level, such as the revision of the posted workers directive.

The ETUC also reiterates its demand that EU citizens living and working in the UK – as well as UK citizens in the rest of the EU – should have the right to remain guaranteed, on the basis of their existing and acquired rights being maintained. Protections are also needed for workers in Gibraltar: the future EU-UK Partnership Agreement needs to protect the status quo.

And fifthly, the ETUC insists that the future relationship between the EU and the UK should protect the Good Friday Agreement and the peace process generally, as well as the jobs, rights and living standards of workers in **Ireland and Northern Ireland**. To this end, the future relationship must maintain the free movement of people and an all-Island economy, ensuring that there is no border on the island of Ireland. The UK should be required to remain a signatory of the European Convention of Human Rights which is a cornerstone of the Good Friday Agreement.

Considering the above, the ETUC supports the UK having a new relationship with the Single Market that could be achieved by the UK acceding to EFTA and the European Economic Area (EEA) Agreement in the future. While no model outside full EU membership, membership of the single market and customs union, duplicate the exact same benefits, the EEA agreement would satisfy much of the ETUC's five tests. The EEA Agreement would allow the UK to participate in the Single Market but not in the customs union. This model allows tariff and barrier free trade on the basis that members of the EEA uphold the same technical, safety and labour standards as the EU. This would be important for the island of Ireland: the EEA Agreement, if it included the customs union could avoid a customs border and allow for the Good Friday Agreement to be respected².

The advantage of the EEA Agreement is that it is a dynamic one, so any new development in EU law is automatically received in EEA countries. This would ensure that in the future workers in the UK do not fall behind those in the rest of the EU, thereby reducing the risk of a race to the bottom. Importantly for the UK, it is the EFTA court that is responsible for hearing complaints: this would mean that direct jurisdiction of the CJEU has indeed ceased, while workers could continue to benefit from CJEU case law as it influences the EFTA court opinions.

The EU has repeatedly said that it would not be possible for the UK to enjoy the same exact benefits of EU membership when it becomes a third country. In particular, the EU would not agree to the UK cherry-picking parts of the internal market without abiding by all of the rules including the jurisdiction of the CJEU.

² See [Art. 121 EEA Agreement](#) and [Protocol 41](#).

Next steps

The ETUC calls on EU27 employment ministers to adopt a joint position in the Employment and Social Affairs Council demanding that employment rights be explicitly included in the negotiating mandate for the future EU-UK relationship.

The ETUC calls for the European Council to issue guidelines to establish a clear roadmap for the second phase of negotiations to guarantee the involvement of trade unions at every stage of the process, including preparation of the mandate and conduct of the negotiations; in this respect, the guidelines should impose the greatest possible degree of openness with a presumption of transparency unless a strong case for confidentiality can be shown.

Workers need improved legal protection to ensure they are not discriminated against or disadvantaged during the transition phase. The ETUC calls for impact assessments setting out the likely impact on jobs, living standards and rights of workers in Europe and the UK. Finally, recognising that there are already negative impacts on jobs and workers, the ETUC is calling for the immediate establishment of funding means, to help counteract any harmful consequences for jobs and communities.

The ETUC opposes any deal for a future EU-UK Partnership Agreement that focuses narrowly on trade, without a strong social dimension. The new agreement must provide for enhanced labour rights and protection for EU citizens. While the EU Single Market is not perfect, and the ETUC has criticised its neo-liberal excesses and will continue to push for reforms (importantly a Social Progress Protocol), it is to date the best vehicle to create and protect jobs, improve livelihoods and secure a level playing field for workers' rights.

Annex I:

Testing the options for a future EU-UK partnership

Based on the five tests set by the ETUC, the following models are examined:

- a) Starting with the **WTO** model, there is no requirement for WTO member states to comply with international labour standards as set by the ILO (see annex), and certainly not EU employment standards. This model would also be costlier as tariffs and non-tariff barriers would immediately disrupt trade, and trade in services in particular. As explained above, it would be reckless to go down this path.
- b) **The customs union** model, as the one with **Turkey**, is also less preferable as a model. **Custom unions** with 3rd countries do not include any clauses for the respect of ILO standards, let alone EU ones. Also, tariffs would remain on agriculture which would add significantly to the price of food and would disrupt the Irish economy as the agri-food sector represents an important part of the local economy³. In addition, barriers would remain for trade in services, which represent 80% of the UK economy.
- c) The UK government has in the past pointed at **CETA** as a model **free trade agreement**. The ETUC would reject it as only ILO core conventions are mentioned and fall substantially short of what is included in EU employment protections. The agreement also does not provide an effective enforcement system for these standards: trade unions can only monitor labour rights and raise concerns with governments, with no systematic follow up and redress being guaranteed. The whole system rests entirely on the political discretion of governments appointing a panel of experts, and there are no effective sanctions. Moreover, tariffs would remain on agriculture, not all services are covered and there are serious concerns with the threat to public services. The ETUC does not believe that even a revised CETA would constitute a suitable model to follow.
- d) **A bespoke free trade agreement** is something the UK government is seeking. The EU has repeatedly said that it would not be possible for the UK to enjoy the same exact benefits of EU membership when it becomes a third country. In particular, the EU would not agree to the UK cherry-picking parts of the internal market without abiding by all of the rules including the jurisdiction of the CJEU. The ETUC shares of the view that the UK cannot have its cake and eat it. Moreover, it is not realistic to negotiate, conclude and ratify a tailor-made FTA in the time that is left, unless an adequate transition period is agreed upon.
- e) The EU has indicated that it would not want to replicate the experience of bilateral agreements as it has with **Switzerland**: these are too complicated, and a new agreement would need to be negotiated on any new issue that might arise since the accord with Switzerland is a static one. The ETUC shares this view, also because Switzerland is not required to comply with or incorporate EU employment law. There are however elements in the Swiss agreement that would allow for wider protections of the local labour market that are in line with the principle of freedom of movement, a feature the ETUC would support.

³ An EFFAT internal report on Brexit shows that the food and drink industry in Ireland rely on a strongly linked supply chain across the border. The whole agriculture and food sector in the Republic of Ireland employs around 170,000 people (8% of total employment) and has a share of 7-10% in the overall economy.

- f) A little overlooked is the **deep and comprehensive free trade area with Ukraine**. It has the advantage of setting out in legally precise terms the entire scope of the relationship with the EU, sector by sector, for virtually all EU areas of competence. The agreement entails legally binding provisions and compliance with the EU acquis – indeed it is an asymmetric agreement that privileges EU law (whereas CETA puts EU and Canadian law on equal footing). However, the monitoring mechanism rests on an advisory group and a dispute settlement system similar to that in the WTO – both elements would need to be strengthened if applied to the EU-UK partnership. The DCFTA can assure a very high degree of access to the EU single market for goods, but not for the free movement of people or services (the latter being limited to financial, telecom, postal, courier and maritime sectors), which in either case would not be satisfactory.
- g) So far only the European Parliament negotiator has mentioned the DCFTA as a possible model, but the EU has refused to confirm, waiting for the UK to make its demands known. The OECD has estimated that a DCFTA of this kind would result in a loss of 5.1% of GDP for the UK compared to 0.05% for the EU27 – which might push them to view a DCFTA as a desirable outcome. Moreover, the fact that the agreement foresees regulatory alignment in competition, public procurement and customs would reassure EU27 that UK would lock steps with the EU on these standards at least. Nevertheless, the ETUC would insist that the language around compliance with employment protections is strengthened to achieve the same degree of regulatory convergence if not total alignment.
- h) Lastly, the **EEA** option allows member countries⁴ to participate in the Single Market but in the customs union. This model allows tariff and barrier free trade except for agriculture and fisheries, on the basis that member of the EEA uphold the same technical, safety and labour standards as the EU. Obviously, to accede to the EEA Agreement the UK would have to apply for membership of EFTA, which requires existing EFTA members to agree.
- i) Members of the EEA trade freely within the Single Market – but they are not members of the Customs Union. Under EU Rules of Origin any product not wholly or substantially produced within an EEA Member State can invite a tariff when it is traded within the Single Market. For firms engaged in cross-border trading Rules of Origin regulations could prove problematic.
- j) While EEA countries have not formally ceded sovereignty to the EU (an important aspect for the UK of ‘taking back control’), their access to the Single Market depends on the degree of adherence to EU law, leaving very little option but to comply with it. The advantage of this agreement is that it is a dynamic one, unlike Switzerland’s, so any new development in EU law is automatically received in EEA countries. This would ensure that in the future workers in the UK do not fall behind those in the rest of the EU, thereby reducing the risk of a race to the bottom – which is a stronger guarantee than the current UK government’s commitment to “protect and enhance” workers’ rights (already reneged on various occasions). Importantly for the UK, it is the EFTA court that is responsible for enforcement: this means that *direct* jurisdiction of the CJEU has indeed ceased, while workers could continue to benefit from CJEU case law as it influences the EFTA court opinions.

⁴ EEA EFTA countries are Norway, Iceland and Lichtenstein

Annex II: Standards for the protection of workers' rights

ILO standards have been mentioned by the British government as the reference framework they are willing to continue to respect after Brexit should the UK revert to trading with the EU on WTO terms, and the EU Chief Negotiator has indicated that he is not convinced it would be possible to go further on this issue than the EU has already gone in bilateral trade agreements. There are major concerns around this position: firstly, it ignores the fact that WTO membership does not per se require respect for ILO standards; secondly, the recommendations of ILO supervisory bodies have been repeatedly ignored by the British government when it comes to undue restrictions to freedom of association and bargain collectively; thirdly, compared to EU social acquis, ILO standards fall short of what would be expected of the UK in order to maintain a level playing field and prevent the risk of unfair competition.

It is worth noting that a significant amount of British employment law is derived from EU directives covering, for example, Health and Safety legislation, Part Time Workers, Anti-Discrimination rights, Equal Pay, Maternity/Paternity rights, Parental Leave, European Works Councils (TICE Directive) and Collective redundancies. However, it is changes to or abolition of the Working Time Directive, Temporary Agency Workers directive and Acquired Rights directive (TUPE) that pose the greatest risk to workers in the short term, because these changes would drive lower employment costs.

Clearly, a future partnership will have to respect the European Charter of Fundamental Rights, the European Convention on Human Rights, uphold and promote the Revised [European Social Charter](#), including the Collective Complaints Protocol.

For reference, the eight fundamental Conventions of the ILO are:

1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
2. Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
3. Forced Labour Convention, 1930 (No. 29)
4. Abolition of Forced Labour Convention, 1957 (No. 105)
5. Minimum Age Convention, 1973 (No. 138)
6. Worst Forms of Child Labour Convention, 1999 (No. 182)
7. Equal Remuneration Convention, 1951 (No. 100)
8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Annex III: ETUC Scorecard 5 tests

	WTO	Custom Union, Turkey	CETA	Switzerland	Bespoke deal	DCFTA Ukraine	EEA
1. Workers' rights	no	no	No - only the power to report if a breach of ILO core labour standards occurred	no	no	No but there is a clause to prevent undercutting	Yes
2. Tariff-free/barrier-free trade goods & services	no	no: tariffs on agriculture and barriers to services remain	No: tariffs on agriculture and barriers to services remain	yes	no	No: some preferential tariffs but other barriers remain	Yes, although the Norway version does not cover agriculture or fisheries (but provision exists to extend the EEA agreement to cover trade in them)
3. Dispute resolution & supervision of labour standards through the CJEU	no	no	no	no	no	Weak, but faster than WTO and with binding rulings and sanctions	Yes indirectly via the EFTA court
4. Freedom of movement/fair migration⁵	no*	no	no	Partial (including cross-border services)	Partly (any restriction to FoM would come at the expense of 2)	Partly (access to the labour market is controlled)	Yes: possibility of measures compatible with the agreement
5. Protects GFA in Ireland and NI	no	no	no	Partly (because Switzerland is in Schengen)	no	No as custom clearance is required (even if not at the order with the EU)	Yes, although would need 'behind the borders' customs clearance and extension to cover agriculture and fisheries. The Common Travel Area would be compatible with the EEA.

⁵ Mode 4 refers to the presence of persons of one WTO member in the territory of another to provide a service. It does not concern persons seeking access to the employment market in the host member, nor does it affect measures regarding citizenship, residence or employment on a permanent basis.