

Brexit negotiations - what is the 'level playing field'? ^[1]



The Single Market operates to a set of common rules and standards, designed to ensure fair competition between members. Some of these are technical, for example specific product standards, but others are designed to make sure that companies operating in different countries operate in a similar enough environment – the so-called 'level playing field'. The European Commission and the European Court of Justice enforce those rules, to prevent member states giving their businesses a competitive advantage by changing – or not enforcing – those rules.

The [EU's guidelines](#) ^[2] for the future trading relationship with the UK makes an “ambitious and wide-ranging trade agreement” dependent on “sufficient guarantees for a level playing field”.

Why is the EU27 keen to ensure a level playing field between the EU and the UK? ^[3]

The guidelines also explain why the EU is so concerned about the UK: because of its “geographic proximity and economic interdependence with the EU27”. This sets the UK apart from Canada or Japan, with whom the EU has trade deals. The areas the EU is particularly worried about are:

- competition and state aid (business subsidies)
- tax
- social and environmental protection.

Why do they focus on these issues? ^[4]

The Commission set out its detailed concerns [in slides](#) ^[5] Michel Barnier's team presented to member states in January.

The EU has a state aids and competition regime, which the Commission actively enforces. The EU is concerned that the UK, in a close trading relationship, could pursue a more active state aids policy – or a more relaxed competition regime. There are already concerns in the Commission and some member states about the assurances the government gave to [Nissan after Brexit](#) ^[6] (though the Commission did not launch a [formal investigation](#) ^[7]) and about the [approach to Hinkley Point C](#) ^[8].

On tax, the Commission seems particularly concerned about corporation tax, where the UK might cut its already relatively low rate further (there is no common EU approach in this area). It is also worried about the loss of transparency and information sharing on anti-avoidance measures.

Social and environmental protection are two areas where the EU has legislated to raise standards across Europe. Those standards impose costs on business and the EU is concerned that lower standards in the UK would give UK based business a competitive edge – or force the EU to reduce its own standards – and possibly impose “costs on EU citizens” eg through cross-border pollution. Environmental protection is the area where the UK ends up most often before the [European Court of Justice](#) ^[9].

Will the EU expect the same solution for all these areas? ^[10]

No. The EU will expect different sorts of commitments in these areas – depending on what its rules are now, and how good access the UK has in the future. Its minimum ask appears to be a “non-regression clause” - which would bind both sides not to move back from current levels of protection. The EU has included these in other FTAs.

As important as the commitments are mechanisms to oversee and [enforce them](#) ^[11], which range from political committees to full-scale judicial enforcement, and adequate sanctions against non-compliance. That will need to be set out in the final agreement.

How will the UK react to the EU's demands? ^[12]

Early last year the Chancellor suggested that the UK could try to become “[Singapore on Thames](#)” ^[13] – a low regulation, low tax economy. But more recently Ministers have tried to reassure the EU; David Davis said the UK has no intention of creating a “[Mad Max dystopia](#)” ^[14] with a bonfire of regulation. However, no Government can commit its successors and the EU will want firmer commitments than a few speeches.

At [her speech in Mansion House](#) ^[15], the Prime Minister offered binding commitments on state aid and competition law, though did not go into any detail about how the UK would secure that. This is the key area where [Jeremy Corbyn](#) ^[16] has said a Labour government would wish to diverge from Single Market rules, although Labour appears much more willing to sign up to EU rules in other level playing field areas. On other areas the Prime Minister repeated commitments not to undercut the EU's “high regulatory standards”, but did not go into any detail on how this would be overseen or enforced.

These commitments were then set out in the [Government's white paper](#) ^[17] published after the Chequers Cabinet

meeting. In particular, the Government proposed that state aids policy would form part of the “common rulebook” where the UK would generally harmonise with EU law in return for frictionless market access for goods, and would continue close co-operation with the EU on competition policy. and offer “no regression” commitments on environmental and social protection. The white paper offered no commitments on tax where it pointed out that its proposed “future economic partnership with the EU would not fetter its sovereign discretion on tax”.

Do the Commission's concerns give the UK any negotiating leverage? [18]

Potentially yes. The EU has rejected the notion of UK “cherry picking” [19] – and has been sceptical about the Prime Minister’s demands for a “bespoke deal”. But the EU’s own guidelines acknowledge that the provisions they have accepted in free trade agreements with Canada or Japan are not adequate protection for the EU because of the UK’s geographic position and historic trading ties to the EU – and therefore any deal will have to reflect the UK’s specific circumstances. The EU is trying to make level playing field protection a precondition of any FTA. But EU concerns offer an opening [20] for UK negotiators if they can use it.

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- [4] <http://twitter.com/intent/tweet?text=Why%20do%20they%20focus%20on%20these%20issues%3F>
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- [17] <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>
- [18] <http://twitter.com/intent/tweet?text=Do%20the%20Commission's%20concerns%20give%20the%20UK%20any%20negotiating%20leverage%3F>
- [19] <https://uk.reuters.com/article/uk-britain-eu-barnier-future/eus-barnier-firmly-rules-out-british-cherry-picking-on-brexit-idUKKCN1GB1W4>
- [20] <https://www.instituteforgovernment.org.uk/blog/eu-canada-plus-post-brexit-trade>