

ETUC Statement on the draft EU negotiating mandate for a new partnership with the United Kingdom of Great Britain and Northern Ireland

Adopted at the Extraordinary Executive Committee Meeting of 6 February 2020

The ETUC supports the EU draft negotiating mandate for a new partnership with the United Kingdom of Great Britain and Northern Ireland. The draft mandate is comprehensive and seeks a broad association agreement with the UK, which would be beneficial to working people on both sides of the Channel in guaranteeing their jobs and livelihoods by keeping trade flows going.

The draft also includes new features compared to traditional EU FTAs such as horizontal Level Playing Field provisions that are not confined to a separate and toothless Trade and Sustainable Development Chapter. Also, important is the fact that such provisions would be subject to the same dispute settlement mechanism as other parts of the agreement. Thus, the EU plans to reserve the possibility to apply unilateral measures in the event of the UK non-compliance with Level Playing Field provisions. Furthermore, the draft foresees the possibility to claim financial compensation or to take proportionate and temporary measures, including total or partial suspension of the agreement.

The ETUC calls on EU Member States to hold on to these features when they adopt the mandate on 25 February.

Additionally, we call on Member States to seek improvements in the following areas:

1. The Level Playing Field commitment on workers' rights (para 96) provides for a **non-regression clause** on the following areas: fundamental rights at work, occupational health and safety, including the precautionary principle; fair working conditions and employment standards; and information and consultation rights at company level and restructuring; promotion of social dialogue.
The ETUC agrees that these should be the minimum requirements but demands broadening the scope to the whole EU social acquis and any other EU law provisions affecting working conditions.
2. The draft envisages the possibility to **modify the level playing field commitments** in order to include additional areas or to lay down higher standards over time (para 90). The way it is formulated severely limits this possibility because it would depend on a joint agreement of the Parties in the Governing Body. **The ETUC calls for the strengthening of this para by introducing a requirement that the UK keeps pace with future improvements of the EU social and employment standards.**
3. The draft sets out that should a **dispute raise a question of interpretation of Union law, an arbitration panel should refer the question to the CJEU** as the sole arbiter of Union law, for a binding ruling. The arbitration panel should decide the dispute in accordance with the ruling given by the CJEU (para 155).
The ETUC calls on MS to make clear that this procedure would not apply exclusively to issues pertaining to State aid, competition law and taxation policy but also to social and employment standards clearly derived from EU law at the end of the transition period. In other words, para 97 should be reworded so that the EU is not relying solely on domestic enforcement of the level playing field commitments.
4. The mandate refers to the possibility to exclude activities carried out in the exercise of governmental authority (para 33). **The ETUC strongly advocates**

ringfencing of public services through a general exclusion clause. Workers would not support further liberalisation of public services through this Agreement.

5. The draft deals with the **mobility of workers** under the temporary provisions of services (para 35). **For the ETUC it must be clear that the place of work principle must be applied. This means that the same pay for the same work in the same place must be guaranteed.** Thus, market access to Mode 4 service delivery must be complemented with an explicit mention that national labour, social, and collective agreement provisions will be upheld in the temporary placement of workers for service provision. This also means that these workers should receive equal treatment with regard to overtime, breaks, rest periods, night work, holidays and the like, without prejudice to a more favourable treatment.
6. The draft envisages the **civil society participation and dialogue** (para 107). The ETUC has strong reservations on existing civil society monitoring mechanisms of EU FTAs (so called Domestic Advisory Groups) mainly because these have no effective powers to call the Parties to account in case of breaches of labour commitments. **The ETUC would therefore insist on giving social partners a role in the monitoring and enforcement procedures of the Agreement, by submitting complaints.**