

Afterword: what Brexit and COVID-19 mean for EU and UK social policy

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What Brexit means for EU and UK social policy was published in February 2019 at a time when Brexit remained to ‘be done’. It took another year of frenzied political activity, involving elections in the UK and European Parliaments, a new European Commission, a change of prime minister in the UK and president of the European Council, before the UK officially left the EU on 31 January 2020. The amended Withdrawal Act had eventually been signed off by all parties (UK and EU Parliaments and European Council) a few days before this extended deadline elapsed. The EU and UK embarked on the next phase of negotiations – the eleven-month transition or implementation period – as mapped out in the Political Declaration accompanying the Withdrawal Agreement. Neither party anticipated the global threat to public health that would be posed by the COVID-19 pandemic nor its longer-term impact on EU and UK social policy. As the two chief Brexit negotiators, and then the British prime minister, fell victim to the virus, the public health crisis temporarily eclipsed the Brexit negotiations.

By taking a long view on the past and future of social policy for both the EU and the UK, and by drawing on different disciplinary, conceptual and theoretical approaches, *What Brexit means for EU and UK social policy* sought to throw analytical light on the complex interconnections between social policy formation, implementation and governance before, during and after the UK’s EU membership. The book provides insights into the issues, debates and policy challenges facing the EU at different stages in its development. It illustrates how national interests evolved and polarised under pressures from public and parliamentary opinion. In the UK, EU-scepticism was fanned by a persistently hostile British press. Across the EU, it was shaped by the personalities, beliefs, judgements and prejudices of politicians and their electorates.

By documenting how UK governments, officials and social scientists both promoted and hampered European social and employment policy, the book was designed to help readers understand why social

policy remained a contentious issue throughout the construction of the European Union, and what role it played in the 2016 referendum. Brexit, it was argued, was unlikely to facilitate closer social integration within EU27. Nor was it thought likely that Brexit would result in a reversal or the unravelling of many decades of social and employment legislation implemented by UK governments. The expectation was rather that, as in the 1957 Treaty founding the European Economic Community (EEC), post-Brexit social policy would be subordinated to market exigencies and wider political concerns.

The book's 'timeline for EEC/EU/UK social policy' charted political events, debates and crises in both EU and UK social policy from the early 1950s, ending with Theresa May's failed attempt to hold her first meaningful Brexit vote in December 2018. The updated timeline highlights key events during 2019 and through to June 2020 when the UK and EU had to decide whether to extend the transition phase. The original timeline did not report the dates when the EU introduced public health legislation. The EU's competence in this area is referenced in the updated timeline due to its importance in understanding what COVID-19 means for EU and UK social policy.

Timeline for EU/UK social policy

Date	Events and EU/UK legislation	Comments
7 February 1992	Treaty on European Union signed in Maastricht	Article 129 lays down the legal basis for the adoption of public health measures
13 December 2007	Treaty of Lisbon signed, subsequently renamed Treaty on the Functioning of the European Union	Article 168 TFEU stipulates the competences of the EU and member states in the field of public health
25 November 2018	EU27 endorse Prime Minister May's Withdrawal Agreement and Political Declaration on the Future Relationship between the EU and UK	Arrangements set out for leaving the EU as required under Article 50
11 December 2018	Postponement of UK Parliament's meaningful vote on the Withdrawal Agreement and Political Declaration	Parliament demands further negotiations on the Irish backstop
15 January 2019	UK's first meaningful vote in parliament	May's government defeated by 432 votes to 202
12 March 2019	UK's second meaningful vote in parliament	May's government defeated by 391 votes to 242

Date	Events and EU/UK legislation	Comments
14 March 2019	Motion in parliament to extend Article 50 from 29 March 2019 to 30 June 2019	Motion passed 412 to 202
10 April 2019	European Council grants further extension of Article 50 to 31 October 2019	Extension sought when May's new Brexit deal is lost on amendment
23 May 2019	European Parliament elections in UK	Brexit Party wins 29 seats, Liberal Democrats 16, Labour 10, Green Party 7, Conservatives 4
7 June 2019	Theresa May's resignation takes effect	Conservative leadership contest begins
24 July 2019	Boris Johnson Prime Minister	
14 October 2019	State opening of parliament, background paper to Queen's speech published	Proposals for supporting the NHS and reforming adult social care
18 October 2019	Briefing paper on the future of immigration	Proposals for reforming the immigration system
19 October 2019	Revised Political Declaration presented to parliament	Retains commitment to level playing field for social and employment standards; lost on amendment
21 October 2019	UK government introduces EU (Withdrawal Agreement) Bill	Arrangements for implementing the Withdrawal Agreement into domestic law
28 October 2019	EU agrees to extend Brexit deadline to 31 January 2020	Third extension; prospect of no-deal Brexit taken off the table
30 October 2019	UK ministers approve the European Union (Withdrawal) Act 2018; Government introduces Early Parliamentary General Election Act 2019	Exit day set at 31 January 2020; election scheduled for 12 December 2019
12 December 2019	UK General Election held	80-seat majority for Conservative Party with 365 seats
3 December 2019	Prime Minister Johnson makes statement outside 10 Downing Street	Pledges to 'get Brexit done' by 31 January 2020
20 December 2019	Withdrawal Agreement passes its second reading	Passed with 358 to 234 majority
8 January 2020	Speech by European Commission President Ursula von der Leyen, London School of Economics; meeting with Prime Minister Johnson	Stresses importance of observing the level playing field

Date	Events and EU/UK legislation	Comments
23 January 2020	Withdrawal Agreement Bill receives Royal Assent in UK	Bill becomes an Act of Parliament
24 January 2020	Ursula von der Leyen, Charles Michel, President of the European Council, and Boris Johnson sign Withdrawal Agreement	Terms accepted by all parties
29 January 2020	President of the European Parliament signs European Withdrawal Agreement	Passed by 621 votes to 49; UK MEPs sit for the last time
30 January 2020	The Council of the European Union ratifies the Withdrawal Agreement	31 December 2020 set for the end of the transition/ implementation period
31 January 2020	23.00 GMT the UK withdraws from the EU	Transition/implementation period can begin
3 February 2020	Prime Minister Johnson issues a written statement to parliament on UK/EU relations	No reference to level playing field; recognition of commitments to high standards for labour and practical provisions for social security coordination
3 February 2020	Michel Barnier, EU's chief negotiator, sets out a timeline for Brexit negotiations	Schedule set for each round of bilateral talks
20–21 February 2020	European Council meeting to discuss 2021–2027 budget	Fails to agree on budget cap and priorities
25 February 2020	Directives for the Negotiation of a New Partnership with the United Kingdom of Great Britain and Northern Ireland	Provisions for upholding EU levels of labour and social protection.
2–5 March 2020	First round of negotiations between Michel Barnier and David Frost, UK Brexit negotiator	Described as constructive; areas of disagreement include level playing field
10 March 2020	Videoconference of EU heads of state or government	Disagreement on how to contain pandemic
13 March 2020	WHO declares EU as new epicentre of coronavirus pandemic	EU member states introduce restrictive measures unilaterally, including closure of internal EU borders
16 March 2020	EU proposal to shut down Schengen Area borders for non-essential travel	UK and other non-Schengen EU member states invited to join in ban

Date	Events and EU/UK legislation	Comments
26 March 2020	UK's Chancellor, Rishi Sunak, launches Coronavirus Job Retention Scheme and other measures to protect incomes	Universal Credit extended to self-employed; unprecedented funding for welfare system
2 April 2020	European Commission launches Support to mitigate Unemployment Risks in an Emergency (SURE)	State aid introduced; EU's structural funds deployed; UK invited to join
8 April 2020	Communication from the Commission: Guidelines on the optimal and rational supply of medicines to avoid shortages during the COVID-19 outbreak	Aims to encourage solidarity and sharing between member states.
14 April 2020	EU adopts amended budget for 2020	Frees up funds to respond to COVID-19 crisis
16 April 2020	European Commission publishes Joint European Roadmap towards lifting COVID-19 containment measures	Offers a framework for a coordinated approach to ease lockdown
10 May 2020	Johnson speech announcing progressive easing of lockdown	Conditional plan for reopening society
27 May 2020	European Commission launches Next Generation EU	Green European economic recovery plan focusing on mitigating the effects of COVID-19 and supporting recovery, building on the Green Deal
2–5 June 2020	Fourth round of EU–UK Future Relationship negotiations via videoconference	Level playing field and social security on the agenda
30 June 2020	EU–UK high level group summit	Convened to take stock of progress
21 July 2020	Deadline for the UK to request an extension of the transition period beyond 2020	UK government has legislated to prohibit an extension being requested
15–16 October 2020	European Council meeting	State of negotiations on the agenda
31 December 2020	Transition/implementation period due to end	

Social policy in the revised Withdrawal Act and Political Declaration

Boris Johnson's version of the Withdrawal Act was similar in overall content to that negotiated by Theresa May and endorsed by EU27

in November 2018, but rejected by the UK Parliament the following month. Significantly for social policy, Schedule 4 on the Protection of Workers' Rights, related directives and sections on non-regression of labour and social standards were expunged from the document presented to parliament on 19 October 2019 and finally ratified by all parties. The revised Political Declaration setting out the framework for the future relationship between the EU and the UK was also largely unchanged. Both the May and Johnson versions referred to the level playing field for open and fair competition, covering state aid, competition, social and employment standards, environmental standards, climate change, and relevant tax matters. However, the revised version omitted the earlier reference to 'building on the level playing field arrangements provided for in the Withdrawal Agreement' (HM Government, 2018: §79). Instead, it stated that 'the Parties should uphold the common high standards applicable in the Union and the United Kingdom at the end of the transition period', meaning that:

The Parties should in particular maintain a robust and comprehensive framework for competition and state aid control that prevents undue distortion of trade and competition; commit to the principles of good governance in the area of taxation and to the curbing of harmful tax practices; and maintain environmental, social and employment standards at the current high levels provided by the existing common standards. In so doing, they should rely on appropriate and relevant Union and international standards, and include appropriate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement. The future relationship should also promote adherence to and effective implementation of relevant internationally agreed principles and rules in these domains, including the Paris Agreement. (HM Government, 2019: §77)

Following the UK General Election in December 2019, the Withdrawal Bill passed its second reading, putting the Conservative government, with its large parliamentary majority, on track to 'get Brexit done' by 31 January 2020. In a speech in London on 8 January 2020, Ursula von der Leyen, the incoming president of the European Commission, laid down the EU's red lines: no trade deal without a level playing field; no Brexit deal unless the four freedoms (of movement of goods, persons, services and capital) were respected; and no state aid to

prop up failing industries. Already in the 1950s, the EEC founding member states (Belgium, France, Germany, Italy, Luxembourg and the Netherlands) were alert to the concern that individual member states might gain a competitive advantage if their labour and social standards were lower than elsewhere, thereby initiating ‘a race to the bottom’. They advocated a level playing field to avoid distortion of competition. The EU feared that, post-Brexit, the UK might embark on a process of deregulation of labour standards to gain a competitive advantage; that they might weaken information and consultation rights, thereby lowering costs for businesses; and that they would limit collective bargaining rights to drive down wages (Morris, 2020: 7).

The Johnson government countered by insisting on its commitment not to lower the level of protection afforded by its own standards to encourage trade or investment. In a written statement to parliament on EU–UK relations issued on 3 February 2020, the prime minister made explicit his own red lines: the UK government would not countenance ‘any regulatory alignment, any jurisdiction for the CJEU over the UK’s laws, or any supranational control in any area, including the UK’s borders and immigration policy’. On the same day, Michel Barnier, the EU’s seasoned chief negotiator, set out a timeline for negotiations, envisaging that they would be concluded by 15–16 October 2020. On 25 February 2020, the European Council issued Directives for negotiating the new partnership with the UK, stating that the EU would seek ‘a level playing field that will stand the test of time’ (Council of the European Union, 2020: §10). As well as social and employment standards, the areas targeted covered public health, social services and education, with provision to include ‘additional areas or to lay down higher standards over time’ (Council of the European Union, 2020: §95). The section on Labour and Social Protection specified that:

The envisaged partnership should ensure that the level of labour and social protection provided by laws, regulations and practices is not reduced below the level provided by the common standards applicable within the Union and the United Kingdom at the end of the transition period in relation to at least the following areas: fundamental rights at work; occupational health and safety, including the precautionary principle; fair working conditions and employment standards; and information, consultation and rights at company level and restructuring. It should also protect and promote social dialogue on labour matters among workers and employers, and their respective

organisations, and governments. (Council of the European Union, 2020: §101)

The section on Environment and Health did not deal with public health, although an anodyne reference was made to Health Security and the need to cooperate with third countries on ‘prevention, detection, preparation for and response to established and emerging threats to health security in a consistent manner’ (Council of the European Union, 2020: §146).

With the UK no longer at the EU table, on 2 March 2020 the new European Commission, led by Ursula von der Leyen and represented by Michel Barnier, began negotiations with his opposite number, David Frost, the UK’s Brexit negotiator, on the future EU–UK relationship. The first round of talks was described as constructive, although differences were identified, among others, in stances towards the level playing field. The second and third rounds of talks were cancelled as Michel Barnier, David Frost and Boris Johnson developed symptoms of COVID-19, and attention turned to the growing threat from the pandemic.

The EU’s public health competence put to the test

In the EEC Treaty, public health was not identified as a field of social policy where the Community had competence to act. National governments retained sole responsibility for making and implementing decisions concerning public health. The 1992 Maastricht Treaty on European Union provided the EU with a formal public health mandate. Article 129 charged EU institutions with ensuring a high level of human health protection, with coordinating action between member states, and cooperating with them to prevent diseases and combat cross-border threats to health. Maastricht made explicit the EU’s remit to promote research into the causes and transmission of ‘major health scourges’. The 2007 Lisbon Treaty (Article 168) conceded that ‘Union action shall respect the responsibilities of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care’. Both treaties deliberately excluded any harmonisation of the laws and regulations of EU member states in this area of social policy. By virtue of their membership of the European Council, heads of state or government were assigned a dual, and potentially incompatible, role in taking decisions at EU and national levels regarding public health policy, as has been amply demonstrated during the COVID-19 crisis.

The European Council's failure to reach agreement over the 2021–27 EU budget at their meeting on 20–21 February 2020 provided evidence of enduring underlying national divisions, which were to resurface in their responses to the outbreak of the pandemic. The 'frugal four' (Austria, Denmark, the Netherlands and Sweden), which might in other circumstances have been able to rely on support from the UK, had advocated capping the budget at 1% and focusing on more 'modern' (economic) policy priorities. By contrast, the seventeen 'friends of cohesion' group of countries (essentially the Southern and Central and Eastern European member states) were looking for reassurances that they would not be left on the periphery. Their leaders reiterated the importance of continuing support for cohesion policy if the EU were to achieve greater economic and social convergence among EU27 member states.

While the Commission hesitated to acknowledge the seriousness of the outbreak, the European Council was unable to agree on a concerted and collegiate strategy at its videoconference on 10 March 2020. EU heads of state or government recognised the situation as an integrated policy crisis emergency, severely testing EU solidarity and justifying a centrally coordinated response. Despite the apparent unity expressed in the summit's conclusions, national leaders disagreed over how to contain the pandemic without causing irreparable damage to the economy.

By 13 March 2020, when WHO identified the EU as the epicentre of the pandemic, governments in EU member states were already reacting by unilaterally applying protective and preventative measures. Partial or full lockdowns, bans on travel, public gatherings, school, retail and hospitality closures, social distancing, the wearing of face masks and public procurement of personal protective equipment (PPE), and medical supplies were among the measures introduced differentially across the EU as the pandemic progressed.

One of the EU's core conditions for EU membership, free movement of people, over which the EU's Brexit negotiators remained adamant, was the first of the EU's red lines to be widely flouted as member states closed their internal borders. On 16 March 2020, amid growing criticism of its lack of leadership, the European Commission began unveiling its own proposals based on the summit's conclusions. Citizens of non-Schengen EU countries, explicitly including the UK, were invited to apply a ban on non-essential travel from non-EU countries in the hope that they would then ease restrictions within the EU. Paradoxically, the UK kept its borders open. The Commission drew on carefully argued analyses by the European Centre for Disease

Prevention and Control, an EU agency based in Sweden, to justify its recommendations. The ECDP offered the Commission a timely reminder that: 'Restrictive public health measures must always respect existing national legislation, as well as international legal and ethical principles' (ECDP, 2020: 5).

On 26 March 2020, the UK government 'put aside ideology and orthodoxy to mobilise the full power and resources of the British state'. It was not alone in breaching another of the EU's red lines. The Chancellor, Rishi Sunak, announced that the goal was 'to protect people's health and economic security, by supporting public services like our NHS, backing business, and protecting people's jobs and incomes'. The measures included the Coronavirus Job Retention Scheme and the extension of Universal Credit to the self-employed, involving an unprecedented level of funding for the UK's welfare system and for the NHS.

Other EU member states were also implementing costly schemes to support companies and their employees as well as the self-employed and other vulnerable groups. On 2 April 2020, von der Leyen announced a European instrument for temporary Support to mitigate Unemployment Risks in an Emergency (SURE). The EU's structural funds were to be deployed for short-time work in member states needing financial support. The scheme was promoted as an essential source of social support for furloughed workers and their families at risk of poverty, in effect providing a social protection floor. The scheme required the relaxation of rules on state aid and the suspension of strict rules on public deficits in the eurozone countries, which would have been anathema a few months earlier.

In subsequent weeks, as the number of deaths from the virus spiked in the worst-affected member states, the Commission issued exhortatory recommendations with increasing frequency. On 8 April 2020, the Commission adopted a communication setting out formal guidelines to optimise the supply and availability of medicines across the EU, again extending to the UK. It used the shared public health competence to advocate direct emergency support for national healthcare sectors. The communication advised member states to support the manufacturing capacity of industry using fiscal incentives and state aid. It also provided advice on PPE, cross-border movement of goods and workers, monitoring of national stocks and flexibility in public procurement. While the Commission was finalising the guidelines on medicines, its lockdown exit plan was being circulated to national officials before being made public. Within member states, ministers of finance and health were struggling with conflicting interests

and pressures in planning their own exit strategies. They did not want interference from the Commission.

On 16 April 2020, the Commission cautiously produced what von der Leyen described as ‘a catalogue of guidelines, criteria and measures that provide a basis for thoughtful action’. While recognising the specificities of each country, the European roadmap towards lifting COVID-19 containment measures established three key principles or pre-conditions for easing lockdown: epidemiological criteria showing that the spread of the disease has significantly decreased; sufficient health system capacity, for example taking into account the occupation rate for intensive care units, the availability of healthcare workers and medical material; and appropriate monitoring capacity, including large-scale testing capacity to quickly detect and isolate infected individuals, as well as tracking and tracing capacity (European Commission, 2020). Arguably, the Commission was acting in accordance with its limited public health mandate by stressing the need for a coordinated exit strategy, while member states continued to exercise their responsibility by taking and implementing decisions concerning public health policies.

As it had done in 2008 following the financial crisis, the Commission was preparing a detailed recovery plan. Next Generation EU was released on 27 May 2020, when the European Parliament was due to vote on the long-term EU budget (Multiannual Financial Framework) and the updated Commission Work Programme for 2020. The plan focused on mitigating the effects of COVID-19 and supporting ‘a fair and inclusive recovery for all’. It built on the Commission’s Green Deal, which had been retained as a priority and had gained momentum during lockdown, while addressing the lessons that could be drawn from the crisis. The frugal four rejected the Franco-German proposal for a grant-based recovery fund involving borrowing on capital markets on an unprecedented scale. They put forward a counterproposal for an emergency fund financed by loans, again casting doubt on the viability of the Commission’s call for European unity and solidarity.

EU and UK social policy in post-Brexit and post-pandemic Europe

Throughout the history of the EU, the social dimension played a relatively minor, though necessary, role in shaping the European project. The unity demonstrated at EU level during the first stage in the Brexit negotiations concealed deeply entrenched, latent tensions and divisions within and between EU member states over social issues as

well as underlying hostility towards EU control over the social domain. The Brexit referendum shock provided a pretext and a platform for Jean-Claude Juncker, then president of the European Commission, to launch a European Pillar of Social Rights, while contentiously allowing EU member states to choose at what speed they wanted to advance their social agendas, raising fears that some countries would be left behind.

Treaty provisions for public health were modelled on the sharing of social policy competences between EU institutions and national governments. Arguably, the COVID-19 shock created unprecedented political, economic and social challenges for the EU far greater than those of Brexit. While threatening the very foundations of the European project, the pandemic provided a new opportunity for the EU to strengthen its social dimension. However, the legal basis and the cumbersome machinery of European governance complicated and delayed responses to the public health emergency at EU level. Member states exercised their treaty responsibility for defining their health policies and for organising and delivering health services and medical care in accordance with their own resources. They introduced and eased uncoordinated protective measures without waiting for a European consensus to emerge. Rather than sharing resources, member states competed to ensure the protection of their own citizens, adopting measures that flouted EU rules. Belatedly, and with the benefit of hindsight, the European Commission sought to re-establish its credibility within the parameters of its treaty commitments by refocusing attention on longer-term priorities, aware that ‘the strength of Europe lies in its social and economic balance’ (European Commission, 2020). What the combined impact of Brexit and COVID-19 will mean for EU and UK social policy in the longer term, and ultimately for European social integration, are questions that are likely to remain open for some time to come.

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