



# **Fisheries: The Transition Agreement and Future Arrangements**



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## Introduction

The agreement in March 2018 between the UK Government and the EU on the transition period to apply following the UK's departure from the Union provoked an angry reaction from the fishing industry. This paper examines the agreement that has been reached and the reasons for this reaction and considers the prospects for how the eventual end-state agreement on the future EU-UK relationship might apply to fisheries. It builds upon and develops the previous Senior Experts paper on Brexit and the fishing industry, published in 2016.<sup>1</sup>

## Background

The fishing industry strongly supported the Leave campaign in the 2016 referendum. The industry had long criticised the Common Fisheries Policy (CFP) – notably the right of EU vessels to fish anywhere in the “Community pond”<sup>2</sup> as well as fishing quotas which it considers unfair to the UK. It saw an opportunity, through Brexit, to regain UK sovereignty over British fishing grounds and the resources they contain.

The industry recognises that most commercial fish stocks in the British Exclusive Economic Zone (EEZ)<sup>3</sup> are “shared” with other EU countries (because the stocks straddle national boundaries and move across them) and would therefore have to be jointly managed post-Brexit. But as a “third country”, the UK would have control over which foreign vessels were permitted to fish in its waters and would therefore be able to trade access to its waters in exchange for higher shares (quotas) of the available catches than it was allocated under the CFP. The UK EEZ contains extensive and rich fishing grounds in which vessels from many other Member States have traditionally fished (since long before the UK joined the EU). As far fewer British vessels fish in the waters of other Member States, the prospects for extracting significant benefits appeared promising.<sup>4</sup> However, this argument has always been undermined by the fact that the UK exports the bulk of its catch (tariff free) to other EU Member States (although it imports most of the fish we consume from outside the EU).<sup>5</sup>

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<sup>1</sup> Senior European Experts, *Brexit: The Implications for the Fishing Industry*, October 2016

<sup>2</sup> Apart from countries' six mile and (with some exceptions) 12-mile zones.

<sup>3</sup> In accordance with international law, the UK's EEZ extends to 200 nautical miles from its coast or to the median line with another state.

<sup>4</sup> Belgium, Denmark, France, Germany, Ireland, Netherlands and Spain all have quotas for stocks found in UK waters. Norway also fishes in UK waters under the EU-Norway fisheries agreement.

<sup>5</sup> See evidence submitted by the UK Seafood Industry Alliance to the Environment, Food and Rural Affairs Committee: UK Seafood Industry Alliance, *Brexit: Impact on UK fishers and seafood processors*, FSH0252, 6 December 2017, para 6

## What was agreed for the transition period?

The agreement on transition provides that the UK will remain subject to CFP rules during the transition period.<sup>6</sup> The Council will continue to make all the rules governing fishing throughout EU and UK waters, including the setting of Total Allowable Catches (TACs) and quotas. The UK will not be a party to Council negotiations or decisions, though it will be consulted in the margins.<sup>7</sup> For the fishing industry this represents a double disappointment: the moment when the UK “takes back control” of fisheries policy, with the additional leverage this implies, is deferred to the end of the transition period (1 January 2021); and its absence from Council negotiations means the UK will have even less control during the transition period than it does now as a member of the EU.

## Implications for the future

It is no surprise that the industry was angry at this outcome, especially as fishermen had been led to believe that they would be in a position to benefit from Brexit from the day the UK left the Union. The Government announced in July 2017 that the UK would withdraw from participation in the 1964 London Fisheries Convention, the agreement (brokered at the time by the UK) which allowed other countries’ vessels to fish in UK waters before we joined the EU. The Secretary of State for Environment, Food and Rural Affairs, Michael Gove, claimed that this would mean that “for the first time in more than fifty years we will be able to decide who can access our waters”.<sup>8</sup> In the same release, the Government said that “we will regain control of fishing access to our waters and become fully responsible for the management of fisheries”.<sup>9</sup>

The statement was part of a wider policy commitment to a new fishing policy, to be set out in a White Paper and to be followed by legislation. However, since fisheries is a devolved matter it will not be possible for the UK to produce legislation which does not take account of that fact. And it seems likely that the strength and vociferousness of the fishing industry reaction to the transition agreement – backed by Nigel Farage and a number of Brexit-supporting MPs – also reflected concern that this was not just a temporary setback and that the Government would come under pressure in the future relationship negotiations to make further, more permanent concessions.

The issue of fisheries is unlike any other chapter of the Brexit negotiations. It is a zero-sum game whose sum needs to be determined by scientifically calculated figures of the amount of a particular stock which can be fished in a given year without damaging that stock’s sustainability. Every increase in quota shares on fish stocks for UK vessels means reduced quota shares for vessels from other EU countries. Similarly, each exclusion of vessels from the others’ fishing grounds benefits one side and harms the other. Fisheries is also one of the few areas of the Brexit negotiations where the EU is in the position of *demandeur*.<sup>10</sup> As far as the UK is concerned, there is no need to include a chapter on fishing rights in the future relationship

<sup>6</sup> See European Commission, *Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, TF50 (2018) 35, 19 March 2018, esp. Article 125

<sup>7</sup> The UK also secured a commitment that the quota allocation “key” would not be changed.

<sup>8</sup> HM Government, ‘UK takes key step towards fair new fishing policy after Brexit’, 2 July 2017

<sup>9</sup> *Ibid.*

<sup>10</sup> Others include citizens’ rights and the financial settlement and securing the intra-Ireland border whilst safeguarding the internal market against illegal imports.

negotiations: questions of access to waters, quotas and TACs could be negotiated annually with the EU post-Brexit through a separate agreement between sovereign entities, along the lines of the EU-Norway fisheries agreement. If there is to be such a chapter in the future relationship agreement therefore, it will only be because the EU has insisted on it.

### **The EU negotiating position**

In its negotiating guidelines of 23 March 2018, for the long-term new EU-UK relationship the European Council makes an explicit link between the adoption of a comprehensive FTA and maintenance of the *status quo* as regards reciprocal access to waters and to resources (*i.e.* fish). The guidelines express the EU's readiness to negotiate a Free Trade Agreement (FTA) with the UK which would address, *inter alia*:

Trade in goods, with the aim of covering all sectors and seeking to maintain zero tariffs and no quantitative restrictions with appropriate rules of origin.

In the overall context of the FTA, existing reciprocal access to fishing waters and resources should be maintained.<sup>11</sup>

As a minimum it would seem the EU is asserting that access to its market free of tariffs and quantitative restrictions for UK fishery exports would depend on maintenance of the *status quo* on access to UK waters and resources for EU vessels. However, the European Council's language does not exclude a broader link being made to other aspects of the FTA.

The EU does not appear to be calling into question the UK's rights as a sovereign state to apply technical rules (such as minimum net sizes or a ban on discarding fish at sea) or to enforce those rules within its Exclusive Economic Zone (EEZ) or to negotiate annual TACs on shared stocks with the EU and other coastal states as appropriate. What it is inviting the UK to agree is that current access to UK waters for EU fishing vessels and *vice-versa* be maintained, along with maintenance of the existing UK share of the TAC on each fish stock. The effect of this would not be to make the situation of UK fishermen worse than it is currently, but it would nullify most of the anticipated benefits from leaving the CFP.

### **The negotiating prospects**

For EU fishermen, exclusion from UK waters and cuts to their quota shares pose a real threat to their livelihoods. According to the European Fisheries Alliance, should an agreement guaranteeing reciprocal access to fishing grounds not be found, the Member States fishing in UK waters would lose approximately 6,000 full time job equivalents in the entire seafood sector, destroying many communities across Europe dependent on fishing.<sup>12</sup> Interested EU Member States and their fishing industries regard the existing "relative stability" quota allocation as fair, being based on historic fishing patterns stretching back to the 1970s prior to the extension of countries' EEZs to 200 miles.<sup>13</sup> European fishing interests have evidently been successful in

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<sup>11</sup> European Council, *European Council (Art. 50) (23 March 2018) - Guidelines*, XT 20001 2018 INIT, 23 March 2018, p. 4

<sup>12</sup> See European Fisheries Alliance, 'In our daily life, what Brexit means for our communities', 8 July 2017

<sup>13</sup> Relative stability is the fundamental principle underpinning the allocation of quotas between Member States within the CFP, based on historic fishing patterns. It has been strongly supported by all fishing Member States (including until recently the UK) except for Spain which regards the current quota shares as unfair to its fishing industry.

convincing their leaders to fight their cause in the negotiations with the UK. But what leverage does the EU have to force the UK to come to an agreement? There are two main levers:

1. threatening to impose tariffs on the export of UK fishery products; and
2. making linkages with other aspects of the FTA negotiations.

Option 1 in effect asserts that the EU would be willing to grant the UK privileged (*i.e.* tariff free) access to its fish markets only in exchange for access for its vessels to UK waters and resources. Were the UK not to grant that access, tariffs would be imposed on UK fish exports, as they are currently on Norwegian fish exports.

This is a serious threat. Imposing tariffs on UK exports of fishery products would deliver a major economic blow to sections of the British fishing industry. The industry exports the major part of its catch, the great bulk of it (around 80 per cent) to the EU. The UK's top five export markets are all other EU Member States.<sup>14</sup> The domestic market for many of the species exported is limited, as are alternative markets. EU tariffs could be expected to apply, as they do to much of Norway's fish exports to the EU, and they vary from two per cent up to 20 per cent depending on the type of fish.<sup>15</sup> Such tariffs would either make UK exports uncompetitive on the European market or would oblige exporters to reduce their prices, in some cases significantly. In both cases, the impact on UK fishermen, as well as on producers and exporters of salmon, could be dramatic.

The UK industry is highly geographically diverse and would not be impacted in a uniform way by the imposition of EU tariffs. Those catching products destined for the home market – for example cod and haddock – may well feel only limited impact from tariffs. Those catching species for the EU market, such as Norway lobster, scallops, mackerel and prawns as well as producers of salmon, would by contrast be severely affected. As a broad generalisation, the bulk of UK cod and haddock are caught by fishermen based in the north and east of the country, whilst the major ports on the southern and western side are more reliant on exports (including the Welsh fishing fleet). Similarly, the prospects for securing economic advantage from regaining control over access to UK waters will vary according to geographical location – with Scottish waters perhaps having the greatest potential. The industry may thus be under different pressures in determining how it wants the Government to respond to the EU's negotiating position. An additional potential complication may be the fact that over 40 per cent of quotas in England are allocated to fishing vessels in foreign ownership.<sup>16</sup> In any event it is clear there is no simple, easy way forward.

Were the UK to decide not to concede the EU's demand, effectively accepting EU tariffs as a price worth paying, the EU may decide to increase the pressure by linking concessions in other economic sectors to the outcome on fish (option 2). Such a decision may not be easy for the EU to make, and there is no indication yet that such an approach will be pursued or in relation to which sector(s). But the threat is there in the European Council guidelines and the political voice of the fishing industries of the seven Member States concerned cannot be discounted.

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<sup>14</sup> UK Seafood Industry Alliance, *supra* n. 5, paras 35-41

<sup>15</sup> This issue was investigated by the House of Lords European Union Committee: see *8th Report of Session 2016–17: Brexit: Fisheries*, HL Paper 78, 17 December 2016, p. 45, para 154

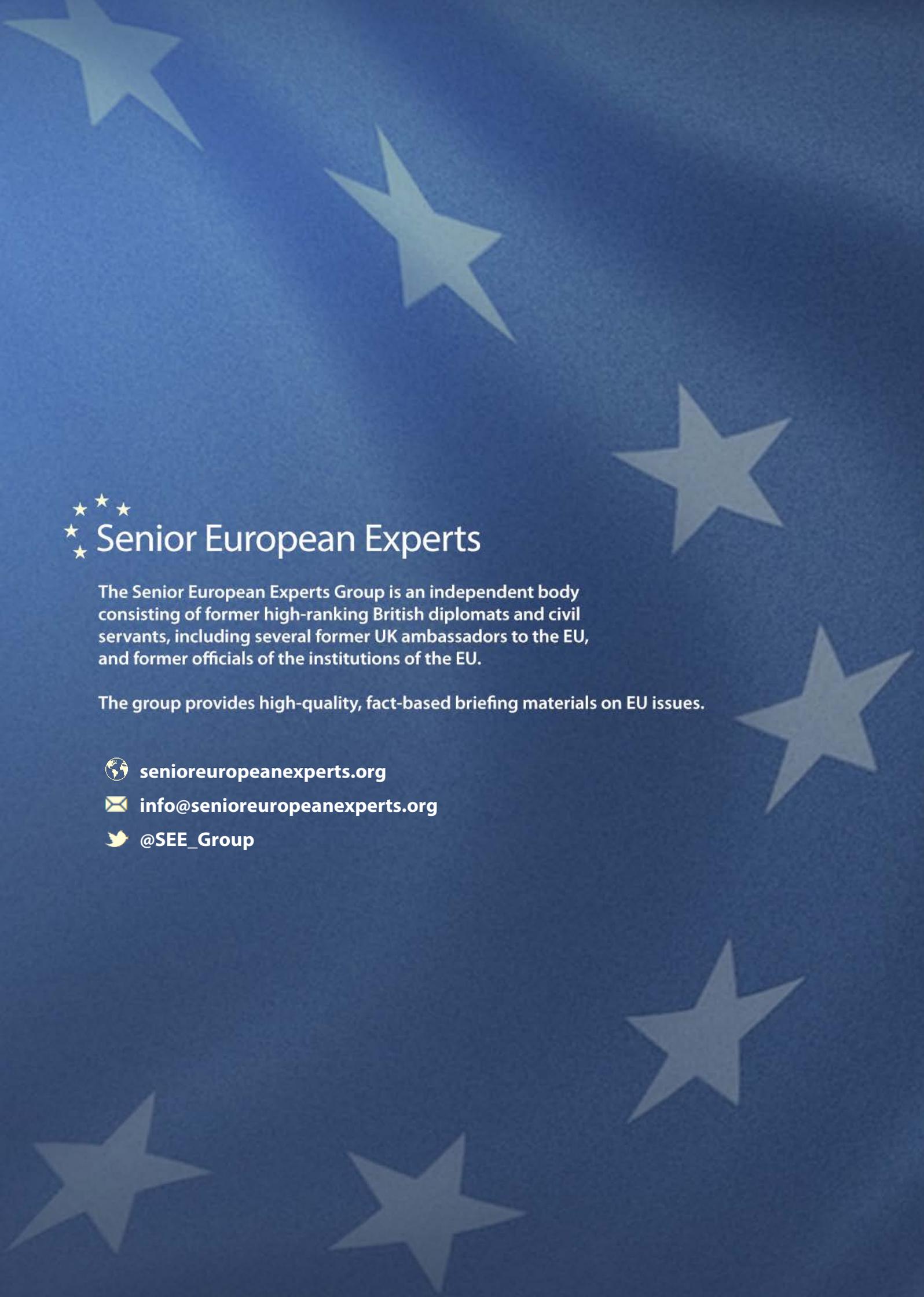
<sup>16</sup> This is permitted under UK law.

### **Is there room for compromise?**

Positions on both sides of this issue are strongly held. On the UK side, the fishermen see the opportunity to right what they regard as an historic wrong, whilst Brexit-supporting politicians view regaining control over fisheries as a major prize. EU fishermen, however, face the prospect of loss of livelihoods on a significant scale which they are bound to want to prevent. Both sides adhere to powerful points of principle – for the UK it is sovereignty, for the EU it is fairness, respecting quota allocations based on well-established historic fishing patterns. It will not be easy to find common ground.

Equally, it would be perverse for an overall agreement between the EU and UK to founder as a result of disagreement over how to handle a sector which, on both sides, accounts for a small part of GDP (but whose political impact is greater).

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