

Chapter 16 Negotiating a Future Relationship: EU External Relations Law

Context for this chapter

'Our relationship with the EU is already very well developed. It doesn't seem to me to be very hard ... to do a free trade deal very rapidly indeed.'

Boris Johnson, Treasury Select Committee, March 2016
<https://parliamentlive.tv/event/index/66ab01e2-3d9b-4eb9-9186-2a669355c082?in=10:09:15>

In light of the aims set out in the Political Declaration, discuss the quote.

Approaching the question: taking a position

Implied in the Boris Johnson statement are *two* distinct propositions. The first is that a 'free trade deal' is what the UK seeks to get out of the 'future relationship' negotiations. The second is that obtaining this 'free trade deal' will be a rapid process. Having read Chapter 16, you are in a position to think critically about both these propositions: is the UK indeed only looking for a 'free trade deal' as its future relationship? And, regardless, will it be possible to conclude the future relationship agreement 'very rapidly'?

Once you have taken a clear **position** on that question, you can (as you did in Chapters 1, 2, 4, 6, 9, and 10) proceed to use Chapter 16 to compile **evidence** to build the **arguments** that support your **position**. It is not a question to which there is a clear 'correct' answer. Although by the end of the chapter you should have a strong feeling that concluding everything in the Political Declaration by January 2021 is highly ambitious, it is possible to nonetheless argue that the *primary* thing the UK is seeking from that relationship is a trade agreement, and, if formalized, this may be easier than other parts of the negotiations to conclude.

The approach to the question at the start of the chapter is very tentative: at the time I am writing this material (May 2020, in the middle of the Coronavirus pandemic), very little progress has been made in the negotiations, and the UK and the EU differ significantly on key issues in those negotiations (such as the EU's 'level playing field' demands, and the content of an agreement on fisheries). By the time you are reading this, the transition period may have been extended, or may have become impossible to extend—and this too will have an impact on both the speed and content of the negotiations. As such, what I hope to do here is flag up only how *legally* the EU engages in international relations. The political aspects of these negotiations are, alas, beyond my ability to predict. It will also help you significantly to consider the Political Declaration itself in more detail before attempting to answer this question. The Declaration sets out the *scale* of ambition the UK and EU hold in ways that are only summarized in the Chapter itself.

Regardless of your approach to the question—and what the **evidence** may suggest about the possibility of concluding a future relationship agreement at all by the time you are reading this—the one thing that we wish to avoid is that you engage in what we call **sitting on the fence**: rather than adopting a position, you try to write an answer that, for example, just *describes* that some people think it is impossible to conclude an agreement by January 2021, whereas others think it is possible, so in conclusion it may be possible. This kind of answer, which fails to develop a clear **argument**, usually falls into the trap of being very descriptive. It is likely to result in just a list of qualities of the processes set out in the Treaties for the EU's international relations, without actually using those qualities to tackle the question and present a clear **position**.

Examples of possible positions you could take include, but are not limited to:

Agreeing with the statement: *'The Political Declaration first and foremost seeks a simple trade agreement, which in and of itself should not be difficult to conclude as it is an exclusive EU competence and can be adopted under qualified majority voting. Finishing the future relationship negotiations by January 2021 should not be a problem if they are focused on trade.'*

Disagreeing with the statement: *'The Political Declaration seeks collaboration in many areas other than trade, and as such will result in a series of agreements covering shared and exclusive competences. Mixed agreements in particular are very difficult to conclude, and any agreement that hopes to benefit from the close integration the UK and EU have so far will more likely than not be mixed. If the transition period is not extended, these negotiations will not conclude by the end 2020.'*

Mostly agreeing with the statement: *'The UK and the EU do start from a point of identical regulation, which will make trade negotiations on tariffs straight-forward; similarly, exiting the Single Market will simply end cooperation on a number of other fronts. Agreeing a new trading relationship should thus not take very long, if both parties can agree that they are happy with a skinny agreement rather than the more elaborate set of agreements set out in the Political Declaration.'*

Mostly disagreeing with the statement: *'The trade dimension of the future relationship negotiations is actually likely to be the hardest. In most other areas, the UK and the EU are pledging minimal cooperation compared to Single Market membership—but getting a meaningful trade agreement where both parties agree to create new trade barriers rather than remove them will be very complex in the details.'*

Building your argument: evidence

In an exam question, or even in a piece of coursework, you cannot cover *every aspect* of the EU Treaties' coverage of external relations, let alone discuss in any detail all the different types of agreements that the EU has concluded to date. Part of writing university-level essays is making smart decisions on what to include and what not to include in your response.

A first step is determining what, specifically, the question *needs* you to discuss. What are the **key issues** that come up in the quote that you have to engage with in order to actually answer the question?

In this specific quote, there are two **key issues** that must be addressed to answer the question:

- 1) Are the UK and the EU seeking a ‘free trade agreement’ or something more complex, according to the political declaration?
- 2) And, given what you know of the EU external relations processes after reading Chapter 16, how ‘very quickly’ are any of those likely to be concluded?

Now that you know what key issues you need to discuss, you can start thinking about what the best **evidence** is for your position. This will depend on your position. If you agree with the quote, you will want to focus on the fact that there are strict processes in place in the EU to ensure that agreements covering exclusive competences (such as the Common Commercial Policy) can be adopted, and that the EU is experienced at this and will be able to streamline them well. You will also need to consider why what the UK is seeking is unlikely to be ‘mixed’, in your view, and why many of the agreements not involving trade will, in many ways, be simpler to conclude because they are less ambitious and so less controversial.

This will feel frustrating, but there is no *right or wrong* answer to what works as the ‘best evidence’. It is a matter of you thinking about which of the material covered in Chapter 16 stood out to you most; in this case, considering which material stood out as being *irrelevant*—rather than relevant—to the future relationship negotiations.

For those of you who instinctively disagree with the quote, your focus will be on the detail of the EU processes for concluding international agreements set out in the Chapter in the negative sense, in that they all involve many actors and many formal stages, which adds time pressure. You will also want to consider the pre-existing agreements discussed in the chapter to indicate that, the more of the issues raised in the Political Declaration are negotiated on, the more complex the agreement will become and the harder it will become to conclude.

Following the ‘**Discussing the quote**’ boxes throughout the chapter will mean you have already reflected on the following potential issues to raise as evidence:

- The actors and stages involved in Article 218 TFEU;
- The goals in the Political Declaration, and how those map onto different processes set out in the Treaties and different ‘forms’ of agreements (e.g. ‘mixed agreements’).

Given the speculative nature of Chapter 16, the ‘**Pause for reflection**’ boxes may also be generally useful in guiding you towards issues to address in your response. They addressed:

- The relative importance of the ‘trade’ and ‘non-trade’ dimensions of the UK’s interests (and the Political Declaration);
- Which partnership—economic or security—is likely to be the most difficult to conclude in the form of an agreement;
- Whether those partnerships are likely to be ‘mixed’, and what that suggests about their ease of conclusion;

- How ‘shallow’ or ‘deep’ a relationship the UK is seeking, given the Political Declaration.

For the purposes of making your approach workable, the emphasis here is on selecting your **best** evidence. As mentioned, you cannot possibly discuss everything! So perhaps pick around 3 pieces of evidence that best support your position, and get ready to discuss them in detail before concluding that *you* are correct.

Dealing with counterarguments

In building an **argument**, it is important that you are consistent in arguing for the **position** you start your essay with. If you are not, you risk falling into the ‘**fence-sitting**’ trap, whereby you describe a number of different views but do not clearly argue in favour of one.

That said, you cannot ignore the arguments that you disagree with! Doing that would make you far less persuasive to anyone that you are arguing with (including your future markers). For example, ignoring the length of the processes set out in Treaty articles like Article 218 TFEU is not helpful. Likewise, pretending that the Political Declaration suggests that the UK seeks *no* cooperation in areas beyond free trade is also unhelpful. Anyone reading your argument would be thinking, ‘But what about...?’. And at that point, you are failing to convince the reader that your **position** is the correct one.

In other words, you must address counterarguments and explain *why* you think they are less persuasive. So, while you should make clear that the process in Article 218 TFEU is detailed, you could argue that the UK and EU find themselves in a unique position given the starting point of these negotiations: identical rules on trade. Likewise, you can stress that, while the Political Declaration alludes to more than trade, the trade dimension is (in your view, based on the focus of, for example, news reporting) the most important one. It will therefore be prioritized over other agreements—which will make conclusion of an agreement possible.

Both of these positions are far more difficult for any reader to disagree with: you have not ignored evidence that is inconvenient for your **position**, but instead you have made it clear why that evidence does not *change* your **position**. This is the most effective way to tackle arguments that you do not agree with, and you should find some room to do this in your response.

Again, in terms of identifying possible counterarguments to your position, having another look at the material you prepared for the ‘**Discussing the quote**’ and ‘**Pause for reflection**’ boxes should help you identify the different positions on the development of the EU.

If you are writing this when an agreement has been concluded...

You’re in the future!

Joking aside, you will be able to assess with greater accuracy if a) it was *purely* a trade agreement that was prioritized, and b) if it was concluded ‘very quickly’, and if so, what that meant for its coverage. I would recommend comparing it to the three existing

agreements discussed in the Chapter so as to be able to ‘benchmark’ it as ‘deep’ or ‘shallow’.

In terms of what you will cover in detail, this is beyond the scope of Chapter 16, as I am not in the future. However, when a ‘future relationship’ agreement takes shape, online materials will be made available to supplement what was set out in Chapter 16. Stay tuned!

Answer the question!

As a final and general note on essay-writing at university, it is imperative that you *conclude* your argumentation by ending on your **position** again. Be sure to explain how what you are discussing *proves* your **position**, and conclude with a firm statement of the position that you have by now proven to be correct. You can follow this up with a short summary of the **evidence** you have discussed, but in general, you need to ensure that the reader comes away from your essay with a clear understanding of your position on the quote.