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BRIEFING PAPER

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The UK-EU Trade and Cooperation Agreement: summary and implementation

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Summary

With a week to go until the end of the Brexit transition period, the UK and EU announced the Trade and Cooperation Agreement (TCA) on 24 December. The deal will cover the future UK-EU relationship, with the two parties aiming to implement it in time for the end of the Brexit transition period on 31 December. Alongside the TCA, the UK and EU also agreed the Nuclear Cooperation Agreement (NCA) and the Security of Classified Information Agreement (SCIA).

Implementing the Trade and Cooperation Agreement

On the UK side, the Government published the *European Union (Future Relationship) Bill* on 29 December. The purpose of the Bill is to implement the provisions of the TCA, NCA and SCIA in domestic law.

Parts 1 and 2 of the Bill implement specific parts of the agreements, including on security, trade, transport and social security. It does this by amending parts of UK law, creating powers to make regulations and, in the case of social security, incorporating parts of the TCA directly into UK law.

Part 3 of the Bill covers general implementation. It has two key components. First, it creates broad powers for the UK Government and devolved authorities to make regulations to implement the agreements. These regulations can do anything that primary legislation can do, subject to certain limitations (Henry VIII powers). Second, to the extent that the Government or devolved authorities have not taken steps to implement the agreements, there is a general provision that says all existing domestic law is modified to ensure the UK is complying with its obligations under the TCA and SCIA. While the modifications will not appear in the text of the law, the courts will need to treat the law as if it has been amended. This does not apply to domestic laws enacted or made after the agreements become provisionally applied.

Finally, the Bill disapplies the relevant provisions of the *Constitutional Reform and Governance Act 2010* for the TCA, NCA and SCIA. This normally provides that a treaty cannot be ratified until it has been laid before Parliament and 21 sitting days have passed.

Parliament has been recalled on 30 December to approve the legislation. The Bill is scheduled to go through all of its Commons and Lords stages before 31 December so that, if passed, it can receive Royal Assent before the end of the transition period.

On the EU side, the TCA will require unanimous approval in the Council of the EU (Member State Government representatives) and European Parliament consent prior to ratification. There is not enough time for the European Parliament to scrutinise and approve the TCA before the end of the year. However, the European Commission proposed provisional application of the TCA prior to ratification.

The Council of the EU approved provisional application on 29 December. The European Commission proposal for ratification initially envisaged a Parliament consent vote prior to conclusion of the Agreement by the end of February 2021. However, the European Parliament is considering a longer period of scrutiny with a consent vote in March.

The Trade and Cooperation Agreement: key points

Key features of the TCA include the following:

- **Trade:** There will be no tariffs or quotas on trade in goods provided rules of origin are met. There are increased non-tariff barriers, but measures on customs and trade facilitation to ease these.
- **Governance:** The Agreement is overseen by a UK-EU Partnership Council supported by other committees. There are binding enforcement and dispute settlement mechanisms covering most of the economic partnership, involving an independent arbitration tribunal. There is no role for the Court of Justice of the EU in the governance and dispute settlement provisions.

  Both parties can engage in cross-sector retaliation in case of non-compliance with arbitration rulings (through suspension of obligations, including imposition of tariffs). This cross-sector retaliation applies across the economic partnership.
- **Level playing field provisions:** Both parties have the right to take counter-measures including imposition of tariffs, subject to arbitration, where they believe divergences are distorting trade. There is also a review mechanism where this occurs frequently.
- **Subsidies/state aid:** Both parties are required to have an effective system of subsidy control with independent oversight. Either party can impose remedial measures if a dispute is not resolved by consultation.
- **Fisheries:** 25% of the EU's fisheries quota in UK waters will be transferred to the UK over a period of five years. After this, there will be annual discussions on fisheries opportunities. Either party will be able to impose tariffs on fisheries where one side reduces or withdraws access to its waters without agreement. A party can suspend access to waters or other trade provisions where the other party is in breach of the fisheries provisions.
- **Security:** A new security partnership provides for data sharing and policing and judicial co-operation, but with reduced access to EU databases. A new surrender agreement takes the place of the European Arrest Warrant. Cooperation can be suspended by either side swiftly in the case of the UK or a Member State no longer adhering to the European Convention of Human Rights.
- **EU Programmes:** Continued UK participation in some EU programmes: Horizon Europe (Research), Euratom Research and Training, ITER fusion and Copernicus (satellite system).
- **Review and Termination:** The TCA will be reviewed every five years. It can be terminated by either side with 12 months' notice, and more swiftly on human rights and rule of law grounds.

1. Implementation of the Trade and Cooperation Agreement

The UK-EU Trade and Cooperation Agreement (TCA) was announced on 24 December, a week before the end of the Brexit transition period. The TCA has two supplementary agreements: the Nuclear Cooperation Agreement (NCA) and the Security of Classified Information Agreement (SCIA). The UK and EU will still need to take steps to ensure the agreements are implemented before the end of the transition period.

1.1 The TCA and international law

The TCA will be a treaty binding in international law.

Article COMPROV.3 of the TCA provides that the parties must take all appropriate measures to ensure that they comply with the obligations in the treaty:

> 1. The Parties shall, in full mutual respect and good faith, assist each other in carrying out tasks that flow from this Agreement and any supplementing agreement.
>
> 2. They shall take all appropriate measures, whether general or particular, to ensure the fulfilment of the obligations arising from this Agreement and from any supplementing agreement, and shall refrain from any measures which could jeopardise the attainment of the objectives of this Agreement or any supplementing agreement.

Article COMPROV.13 provides that the TCA must be interpreted in accordance with rules of customary international law, including those codified in the Vienna Convention on the Law of Treaties 1969 (VCLT). Article 27 of the VCLT specifically provides that parties cannot invoke a provision of domestic law to justify a breach of an international treaty.

As such, the UK must ensure that its domestic law is aligned with its obligations under the TCA.

It is important to note that there are significant differences between the TCA and the Withdrawal Agreement (WA).

Under Article 4 of the WA, the UK was required to incorporate the agreement directly into UK law and had to ensure that individuals could rely on their rights under the WA before UK courts. The *European Union (Withdrawal Agreement) Act 2020* gives the WA effect in UK law and created a new body of law called "relevant separation agreement law".[1]

There is no such requirement under the TCA. As such, the UK primarily needs to ensure that existing provisions of domestic law do not conflict with its obligations under the agreement.

[1] For more information see Constitutional implications of the Withdrawal Agreement legislation, Commons Library Briefing Paper CBP-8805, 20 February 2020

1.2 UK Implementation: The European Union (Future Relationship) Bill

On 29 December 2020, the UK Government published a draft of the *European Union (Future Relationship) Bill*. The purpose of the Bill is to allow the implementation of the provisions of the Trade and Cooperation Agreement (TCA), the Nuclear Cooperation Agreement (NCA) and the Security of Classified Information Agreement (SCIA) in domestic law.

The Bill is scheduled to go through all of its Commons and Lords stages before 31 December so that, if passed, it can receive Royal Assent before the end of the transition period.

Part 1 of the Bill makes provision to implement the parts of the agreements relating to security, including obligations about sharing and retaining criminal record data with EU member states.

Part 2 of the Bill makes provision to implement certain parts of the agreements relating to trade and other matters. This includes provision on sharing information on non-food product safety, sharing information about customs, powers to make regulations about the movement of goods and amendments to certain laws relating to transport. Through Part 2, the UK has also decided to incorporate the social security provisions of the TCA directly into UK law, meaning individuals will be able to rely on these provisions before UK courts.

Part 3 of the Bill makes provision about general implementation. It provides the UK Government and devolved administration with powers to make regulations to implement the TCA, the NCA and the SCIA, including regulations that can amend primary legislation ('Henry VIII powers'). Schedule 5 includes provisions about the scrutiny of these regulations. There is also a general provision that, to the extent that the agreements are not otherwise implemented, all "existing domestic law" will be modified to ensure that the UK is compliant with its obligations under the TCA and SCIA.

Part 4 of the Bill includes supplementary provisions.

This paper focuses on Part 3 and Schedule 5 of the Bill which concern the general implementation of the agreements. For commentary on specific sectors, see the series of Library Briefings, End of Brexit transition period: Deal and no-deal scenarios.

General provisions on implementation

The core provisions of the Bill are Part 3 and Schedule 5, which concern the general implementation of the TCA, the NCA and the SCIA.

Part 3 has two key components:

- Powers for the UK Government and devolved administrations to make regulations to implement the TCA, NCA and SCIA, any remedial measures taken under these agreements or any dispute resolutions relating to these agreements (Clauses 31-33); and
- To the extent that the agreements are not otherwise implemented, a general provision that all "existing domestic law" is modified to

ensure that the UK is complying with its obligations under the TCA, NCA or SCIA (Clause 29).

Schedule 5 sets out procedural rules for how the regulations under the Bill can be made.

Implementation powers

Clause 31 of the Bill provides "relevant national authorities" with the power to make regulations that it considers necessary to implement or otherwise deal with matters relating to the TCA, the NCA or SCIA or "any relevant agreement".

"Relevant agreements" are defined in clause 31(6) as a "future relationship agreement". This, in turn, is defined in clause 37 as a supplementing agreement or any other agreement made under the TCA, the NCA or SCIA, provided it is not a treaty within the meaning of section 20 of the *Constitutional Reform and Governance Act 2010*.

Clause 31(2) provides that regulations made under this power can do anything that an Act of Parliament can do. This will include amending or repealing primary legislation (a Henry VIII clause). There are some limitations. Regulations made under this power cannot amend the *Human Rights Act 1998,* the *Scotland Act 1998*, the *Government of Wales Act 2006* or the *Northern Ireland Act 1998*. In addition, regulations cannot make impose or increase taxation, cannot create a "relevant criminal offence" or make retrospective provision. Relevant criminal offence means an offence that is capable of attracting a sentence of imprisonment for two or more years.[2]

Regulations under clause 31 can make retrospective provisions if the reason is to make amendments to reflect the fact that the final revised version of the agreements is different from the current version (for example, the renumbering of provisions).[3]

Clause 32 provides powers in connection with the TCA, NCA or SCIA coming into force or becoming provisionally applied later than the end of the transition period. The Explanatory Notes say that these are contingency provisions that can be used if, for some reason, there is a gap between the transition period ending and the agreements coming into effect or beginning provisional application.[4] The power may also be used to "turn-off" the domestic implementing provisions if provisional application of the Agreements comes to an end other than due to ratification of the Agreements.

Clause 33 provides similar powers relating to the suspension, resumption or termination of the TCA or SCIA, as well as the power to implement any remedial measures or resolution of disputes relating to these agreements.

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2 Clause 37, *European Union (Future Relationship) Bill*
3 Clauses 31(5) and 37(4), *European Union (Future Relationship) Bill*
4 Explanatory Notes to the European Union (Future Relationship) Bill, paras. 276-277

Procedure for making regulations

As noted above, the powers under clauses 31-33 can be exercised by "relevant national authorities". This includes a Minister of the Crown, a devolved authority or a Minister acting jointly with a devolved authority.

Schedule 5 contains rules about the procedure for making regulations.

As a general matter, Part 2 of Schedule 5 provides that the devolved authorities, acting alone, cannot make regulations which are outside their devolved competence. Furthermore, devolved authorities must act with the consent, in joint exercise or in consultation with a Minister of the Crown if they would normally otherwise be required to do so.

Part 1 of Schedule 5 sets out the rules for how regulations under clauses 31 to 33 can be made. The rules vary depending on the type, content and the date on which the regulations are being made:

- Regulations that are made under clause 31 *before* Implementation Period (IP) completion day (31 December 2020) by a Minister or devolved authority acting alone will be subject to the draft affirmative procedure or the devolved equivalent. This means that the regulations cannot be made into law until the legislature has approved them in draft.[5]
- Regulations that are made under clause 31 *after* IP completion day by a Minister or devolved authority acting alone and which amend primary legislation or retained direct principal EU legislation or which create a power to legislate will be subject to the draft affirmative procedure or the devolved equivalent.[6]
- Regulations that are made under clause 31 *after* IP completion day by a Minister acting alone and which do not amend primary legislation or retained direct principal EU legislation and do not create a power to legislate can be made under the negative procedure. This means that the regulations can be made without prior legislative approval and will remain in force unless the legislature passes a motion to annul them. However, if the regulations are made within two years of IP completion day, the negative procedure can only be used if certain conditions are met. This includes that the Minister makes a written statement that the negative procedure is appropriate and that the relevant Committees in the House of Commons and House of Lords have made a recommendation as to the appropriate procedure. Otherwise, the draft affirmative procedure must be used.[7] Similar provisions exist for Welsh Ministers acting alone.[8] When such regulations are made by Scottish and Northern Ireland authorities acting alone, the negative procedure can be used.[9]
- Regulations made under clause 32 by a Minister or devolved authority acting alone will be subject to the draft affirmative procedure or the devolved equivalent.[10]

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5 Para. 4 of Schedule 5, *European Union (Future Relationship) Bill*
6 Para. 6 of Schedule 5, *European Union (Future Relationship) Bill*
7 Para. 6(2) and 8 of Schedule 5, *European Union (Future Relationship) Bill*
8 Para. 6(8) and 9 of Schedule 5, *European Union (Future Relationship) Bill*
9 Para. 6(6) and (11), *European Union (Future Relationship) Bill*
10 Para. 10 of Schedule 5, *European Union (Future Relationship) Bill*

- Regulations made under clause 33 by a Minister or devolved authority acting alone and which amend primary legislation or retained direct principal EU legislation will be subject to the draft affirmative procedure or the devolved equivalent. Regulations made under clause 33 which do not amend primary legislation will be subject to the negative procedure or devolved equivalent.[11]
- Regulations made under clauses 31 to 33 jointly by a Minister and a devolved authority will be subject to the relevant procedures in Parliament and in the devolved legislature.[12]
- Regulations made under clauses 31 to 33 by a Minister acting alone and which would normally be subject to the draft affirmative procedure can be subject to the made affirmative procedure if the Minister makes a statement that this is necessary for reasons of urgency. In such cases, the regulation can be made without a draft instrument being approved. However, the regulation will cease to have effect unless it is approved by both Houses of Parliament within 28 sitting days of it being made. Equivalent provisions exist for the devolved authorities.[13]

General implementation

Clauses 31 to 33 of the Bill give the UK Government and devolved authorities the power to make specific regulations in order to bring UK law in line with its obligations under the TCA, the NCA (except for clause 33) and the SCIA.

Clause 29 contains a further provision about general implementation of the TCA and SCIA. It provides:

> Existing domestic law has effect on and after the relevant day with such modifications as are required for the purposes of implementing in that law the Trade and Cooperation Agreement or the Security of Classified Information Agreement so far as the agreement concerned is not otherwise so implemented and so far as such implementation is necessary for the purposes of complying with the international obligations of the United Kingdom under the agreement.

The effect of this provision is that to the extent that the Government or devolved authorities have not otherwise taken steps to implement parts of the agreements, UK law will nevertheless be modified so as to be compatible with the UK's obligations under the agreements. The Explanatory Notes state:

> The Bill will ensure that the UK is compliant with its international obligations and that such obligations are appropriately implemented. Clause 29 provides that existing domestic law has effect with any modifications that are required to implement the TCA and the Security of Classified Information Agreement. This general implementation is subject to more detailed provision which means that, over time, the general implementation will be replaced with detailed provision made under the general implementation power. The general implementation clause applies to the version of the agreement when it comes into force

11 Para. 12 of Schedule 5, *European Union (Future Relationship) Bill*
12 Paras. 5, 7, 11 and 13 of Schedule 5, *European Union (Future Relationship) Bill*
13 Paras. 14-17, *European Union (Future Relationship) Bill*

> which means that domestic law is to be modified in line with that version of the Agreements.[14]

As modifications will not appear in the text of the relevant UK law, in practice this will mean that courts will be required to treat UK law as if it had been so modified.

"Domestic law" means the laws of England, Wales, Scotland and Northern Ireland.

"Existing domestic law" means any enactment or other domestic law that has effect on the "relevant day".

"Relevant day" means the day the agreement is provisionally applied or, if it is not provisionally applied, the day it comes into force.

UK legislation made after the relevant day will not be modified by this provision in order to comply with the obligations under the agreements.

Disapplication of the CRAG Act 2010

The *Constitutional Reform and Governance Act 2010* (CRAG) makes provision about Parliament's role in the scrutiny of international treaties. CRAG requires that the Government lay treaties before both Houses of Parliament. Normally, the Government cannot ratify a treaty until at least 21 days have passed and the House of Commons has not passed a resolution against ratification. CRAG also allows for this process to be expedited in certain exceptional cases.[15]

Clause 36 of the Bill disapplies the relevant provisions of CRAG for the TCA, NCA and SCIA. This means that the Government will be able to ratify these agreements provided the Bill is passed.

Similar provisions were included in the *European Union (Withdrawal Agreement) Act 2020* concerning the ratification of the Withdrawal Agreement.[16]

1.3 EU implementation

The European Commission Q&A confirmed that it had chosen Article 217 of the Treaty on the functioning of the EU (TFEU), providing for the establishment of Association agreements, as the EU's basis for concluding the agreement. As with other types of agreement, Article 218 of the Treaty on the functioning of the EU provides that such agreements are approved by the Council of the EU (Member State government representatives) by unanimity, and receive the consent the European Parliament.[17]

In normal circumstances, the European Parliament consent vote would come prior to final approval by the Council of the EU. However, there is no longer enough time available for the European Parliament to

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14 Explanatory Notes to the European Union (Future Relationship) Bill, para. 75

15 For further information see UK Parliament's role in ratifying a UK-EU future relationship treaty, Commons Library Insight, 11 November 2020

16 Section 32, *European Union (Withdrawal Agreement) Act 2020*

17 The EU's procedures for negotiating and concluding agreements are set out in Article 218 TFEU. For association agreements and other forms of international agreements including trade agreements, the consent of the European Parliament is required prior to the conclusion of the agreement by the Council of the EU.

organise a consent vote. The European Parliament had previously said it was prepared to organise an extraordinary plenary session on 28 December but it needed to see a deal by 20 December to do so.

The European Commission's press release announcing the agreement with the UK confirmed that it would seek to apply the agreement provisionally. Provisional application also needs to be agreed by the Council of the EU. [18]

Provisional application of treaties is possible under international law[19] and is often used by the EU. The European Commission had previously said it would not seek provisional application of agreements prior to European Parliament consent except for urgent or technical reasons. The press release stressed that the entry into application of the agreement is "a matter of special urgency" given the risk of significant disruption if an agreement is not in place after 31 December 2020 and the late timing of the negotiations. It clarified that

> Such late timing should not jeopardise the European Parliament's right of democratic scrutiny, in accordance with the Treaties.

In light of the exceptional circumstances, the Commission proposed to apply the Agreement on a provisional basis "for a limited period of time until 28 February 2021".

It said it would swiftly propose Council decisions on the signature and provisional application, and on the conclusion of the Agreement. The Council, acting by the unanimity of all 27 Member States, would then need to adopt a decision authorising the signature of the Agreement and its provisional application as of 1 January 2021. Once this process is concluded, the Agreement can be formally signed.

The European Parliament will then be asked to give its consent to the Agreement, and the Council will then adopt the decision on the conclusion of the Agreement. These last two steps will come after 1 January.

European Parliament consent vote

Although the Commission proposal implied that the European Parliament would give its consent by 28 February, a statement by Parliament Political Group leaders on 29 December indicated that this might not take place until March 2021. The Conference of Presidents (Political Group leaders) said it had "decided to examine with the Council presidency and the Commission a proposal to slightly extend the period of provisional application, allowing for a parliamentary ratification during the March plenary session".

Provisional application and 'EU only' agreements

The EU has provisionally applied international treaties in the past. For example, the EU-Canada Comprehensive Economic and Trade

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[18] See section 2.1 of Commons library briefing 8834: The UK-EU future relationship negotiations: process and issues. See this blog from the Institute for Government which discusses issues relating to last-minute ratification of the agreement and possible "provisional application" of the agreement.

[19] See Article 25 of the Vienna Convention on the Law of Treaties.

Agreement (CETA) has been provisionally applied ahead of full ratification by each EU Member State. The UK-EU October 2019 Political Declaration referred to the possibility of provisional application of a UK-EU agreement. But this was previously viewed as only being necessary if (like CETA) the UK-EU agreement was categorised as a mixed agreement[20]. These are agreements which go beyond the EU's exclusive competence. These need to ratified in each Member State according to their own constitutional procedures. However, the Council of the EU can agree that even where the agreement covers competences shared by the EU and Member States that it can be classified as an "EU only".

The UK-EU Agreement will be classified as an "EU only" agreement rather than a mixed agreement. Nevertheless, some Member State Governments will still need to get approval from their Parliaments before they approve the deal in the Council of the EU, even if full national ratification is not needed.

Council decision on signature and provisional application

The Council of the EU adopted a decision on the signing of the TCA and its provisional application on 29 December. The decision was taken by written procedure. The Council press release said that the agreement would now be signed by the two parties on 30 December 2020. European Council President Charles Michel and Commission President Ursula von der Leyen would sign in Brussels on behalf of the EU and Boris Johnson would sign in London on behalf of the UK. This would enable provisional application of the TCA from 1 January 2021.

[20] See the explainer of the EU's external competences on the EU's Eur-Lex website here and the explainer of mixed agreements on the UK in Changing Europe website here.

2. The Trade and Cooperation Agreement

The Government published a summary explainer of the Agreement shortly after it was announced. The European Commission also published explanatory materials, including a detailed Q&A.

The Government document explained that the Agreement would mean no tariffs or quotas on trade in goods between the UK and EU. It said there would be no role for the European Court of Justice (CJEU) and no requirements for the UK to continue following EU law.

In her press conference announcing the deal Commission President Ursula von der Leyen said a "fair and balanced" agreement had been reached. The Commission press release said the trade agreement would cover a broad range of areas including investment, competition, state aid, tax transparency, air and road transport, energy and sustainability, fisheries, data protection, and social security coordination.

The Trade and Co-operation agreement (TCA) itself was published on 26 December[21]. Two additional agreements were published alongside the main agreement: a Security of Classified Information Agreement (SCIA) and a Nuclear Cooperation Agreement (NCA). The latter was agreed by Euratom and the UK.

There were also a set of joint UK-EU declarations accompanying the TCA.

The TCA has seven parts:

Part One: Common and institutional provisions.

Part Two: Trade, transport, fisheries and other arrangements (other arrangements covered include intellectual property, public procurement, aviation, road transport, energy, social security and visas for short term visits).

Part Three: Law enforcement and judicial co-operation in criminal matters.

Part Four: Thematic co-operation (including on health security and cybersecurity).

Part Five: Participation in EU programmes.

Part Six: Dispute settlement and horizontal provisions.

Part Seven: Final provisions.

In addition there are several annexes and three attached protocols. The protocols cover: i) Administrative co-operation and combatting fraud in the VAT field and mutual assistance in tax recovery; ii) Mutual administrative assistance in customs matters; iii) Social security co-ordination.

[21] An update version was published on 28 December, correcting the name of one Member State.

The Agreement does not apply to Gibraltar and other UK overseas territories.

Below is a summary of key features of the TCA. References to the Agreement are to the TCA only, unless otherwise specified:

2.1 Governance

Part One of the TCA sets out common and institutional provisions, relating to the governance of the Agreement. It establishes a UK-EU Partnership Council to supervise the operation of the Agreement at a political level, providing strategic direction. The Partnership Council will be supported by a network of other committees, including on trade. Similar to the Joint Committee set up by the UK-EU Withdrawal Agreement, the Partnership Council will be chaired by a UK Government Minister and European Commissioner. Decisions will be taken by mutual consent and will be binding on the two parties. The Partnership Council will meet at least once a year.

The Partnership Council will oversee the attainment of the objectives of the Agreement and any supplementing agreeing. Either party can refer any issue relating to the implementation or interpretation of the Agreement to the Partnership Council. It will have the power to adopt decisions and recommendations in relation to the application of the Agreement.

The common provisions refer to supplementing agreements to the TCA which "shall be an integral part of the overall bilateral relations as governed by [the TCA] and shall form part of the overall framework" (Article COMPROV.2). The SCIA is a supplementing agreement to the TCA. The NCA is not.

Parliamentary cooperation

Article INST.5 of the TCA provides for Parliamentary co-operation between the UK and the EU. The UK Parliament and the European Parliament

> may establish a Parliamentary Partnership Assembly consisting of Members of the European Parliament and of Members of the Parliament of the United Kingdom, as a forum to exchange views on the partnership.

The Parliamentary Partnership Assembly may request relevant information from the Partnership Council regarding the implementation of the TCA and any supplementing agreement and may make recommendations to the Partnership Council.

Dispute settlement

Dispute settlement mechanisms are detailed in Part Six of the TCA and involve possible recourse to an independent arbitration panel. However, these provisions do not apply to all areas of the Agreement. Among the exceptions (where the dispute settlement provisions do not apply) are elements of the level playing field provisions, Part Three relating to law enforcement and judicial co-operation in criminal matters, and Part Four relating to thematic co-operation.

The Government explainer refers to "tailored provisions for dispute settlement" in the chapters on labour, environment and sustainable development, involving non-binding opinions by a Panel of Experts. The level playing field provisions have their own bespoke "rebalancing" mechanism to address disputes over divergence involving the possibility of retaliatory tariffs following arbitration (see below).

The main dispute settlement provisions set out in Part Six will apply to most areas of Part Two covering trade, transport and other arrangements, and Part Five covering UK participation in EU programmes.

The dispute settlement provisions set out in Part Six involve independent arbitration. They apply to most areas of the economic partnership.

Where one party feels that the other is in breach of the TCA, there will be "good faith" consultations between the two parties lasting 30 days. They can decide to prolong these consultations or refer the matter to an arbitration panel, consisting of three independent arbitrators (including a chairperson). The panel has up to 160 days to make a ruling. Its rulings are legally binding.

Unlike the Withdrawal Agreement (WA) there is no role for the Court of Justice of the EU (CJEU) in the dispute settlement provisions. In the WA, the CJEU provides interpretations of EU law where such question arise in the arbitration process. The EU initially sought a similar role for the CJEU in the dispute settlement provisions of the UK-EU agreement, but the CJEU does not have such a role in the TCA. Provisions of the TCA will be interpreted in line with public international law including the Vienna Convention on the Law on Treaties 1969.

Both parties can engage in cross-sector retaliation in case of non-compliance with arbitration rulings. This can include suspension of parts of the Agreement, although there are various exceptions. The European Commission Q&A explains:

> If compliance is not achieved immediately or within a reasonable period of time, the complaining Party may suspend its own obligations in a proportionate way until the other Party complies with the ruling of the tribunal.
>
> This includes the suspension of obligations across all economic areas, for instance by imposing tariffs on goods if the other Party persists in breaching its obligations on social security, transport or fisheries. Such "cross-suspension" mechanisms are an essential tool to ensure that both Parties ultimately comply with all their commitments under the Trade and Cooperation Agreement.
>
> The use of cross-suspension mechanisms must be proportionate and appropriate; it can be challenged before an arbitration tribunal.

Review and termination of the Agreement

The Final Provisions (Part Seven) provide for a review of the Agreement every five years and also provides for the possibility of termination with twelve months' notice:

Article FINPROV.3 states:

> The Parties shall jointly review the implementation of this Agreement and supplementing agreements and any matters

> related thereto five years after the entry into force of this Agreement and every five years thereafter.

Article FINPROV.8 states:

> Either Party may terminate this Agreement by written notification through diplomatic channels. This Agreement and any supplementing agreement shall cease to be in force on the first day of the twelfth month following the date of notification.

The Agreement can be terminated more swiftly if one party breaches the "essential elements" of the partnership. These are defined in Article COMPROV.12 as comprising "democracy, rule of law and human rights", "the fight against climate change", and "countering proliferation of weapons of mass destruction".

Article INST.35 provides that if either party considers that there has been a serious and substantial failure by the other party to fulfil any of these essential elements "it may decide to terminate or suspend the operation of this Agreement or any supplementing agreement in whole or in part". Before doing so, the Party invoking the application of this Article shall request that the Partnership Council meet immediately, with a view to seeking a timely and mutually agreeable solution. If no mutually agreeable solution is found within 30 days from the date of the request to the Partnership Council, the Party may take the termination measures referred to.

Article FINPROV.10 also provides that the UK will be kept informed on any new requests by other countries to join the EU, and subsequent accession negotiations. The EU will "take into account" any UK concerns in relation to this.

2.2 Trade

Background

Announcing the trade agreement with the EU on 24 December 2020, the Prime Minister described it as "a comprehensive Canada style free trade deal between the UK and the EU, a deal that will protect jobs across this country."[22] The agreement is important as the EU, taken as a bloc, is the UK's largest trading partner, accounting for 42% of UK exports and 52% of UK imports in 2019. Total UK trade with the EU was £662 billion in 2019 (£291 billion of exports and £371 billion of imports).

This trade agreement is highly unusual in that it raises barriers to trade between the parties. This was inevitable once the UK decided to leave the EU single market and customs union. While the barriers to UK-EU trade will not be as high compared to a no deal outcome, barriers will be higher than during the UK's membership of the EU and during the transition period, despite the agreement. There is more information on these barriers in a separate Commons Library Briefing, End of Brexit transition: trade.

22 Prime Minister's statement on EU negotiations: 24 December 2020

Box 1: Statistics on UK trade with the EU

- In 2019, the UK exported goods and services worth £291 billion to the EU (42% of all UK exports). UK imports from the EU were £371 billion (52% of all UK imports). The UK had a trade deficit with the EU of £80 billion.[23]
- For trade in goods only, the UK exported £171 billion to the EU in 2019 (46% of all UK goods exports). Imports of goods from the EU were £268 billion (53% of all UK goods imports). The UK had a deficit with the EU of £98 billion on trade in goods.[24]
- For trade in services only, the UK exported £121 billion to the EU in 2019 (38% of all UK exports of services). Imports of services from the EU were £103 billion (48% of all UK imports of services). The UK had a trade surplus of £18 billion on trade in services with the EU in 2019.[25]
- For more information on UK-EU trade, see Commons Library, Statistics on UK-EU trade.

Heading One of Part Two of the TCA covers Trade. The Trade heading has twelve titles. These include titles on trade in goods, services and investment, digital trade, capital movements, intellectual property, public procurement, energy and the level playing field.

The agreement has been described as "thin" with commentators noting limited provisions on trade in services (which accounts for 80% of the UK economy).[26] Anand Menon, director of the UK in a Changing Europe project, commented that service industries "will face serious impediments in accessing the European market – not least securing visas and ensuring the acceptance of professional qualifications."[27]

The provisions of the TCA will not apply to trade in goods between the EU and Northern Ireland, where instead the provisions of Protocol on Ireland and Northern Ireland included in the Withdrawal Agreement will apply.

Tariffs

There will be no tariffs or quotas on trade in goods between the UK and the EU, provided rules of origin are met (see below). The Government's summary of the agreement says that this "is the first time the EU has agreed a zero tariff zero quota deal with any other trading partner." There are no tariffs or quotas on trade between EU Member States and there were no tariffs or quotas on UK-EU trade during the transition period. Other EU trade agreements have eliminated the vast majority of tariffs.[28]

23 ONS, Balance of payments, UK: July to September 2020, 22 December 2020, Tables B and C
24 ONS, Balance of payments, UK: July to September 2020, 22 December 2020, Tables B and C
25 ONS, Balance of payments, UK: July to September 2020, 22 December 2020, Tables B and C
26 The deal is done. Now Britain needs a post-Brexit vision [editorial], Financial Times, 24 December 2020
27 Anand Menon, A deal is done: what happens now?, UK in a Changing Europe, 27 December 2020
28 The trade agreement between the EU and Canada removes tariffs on 99% of trade.

There are provisions in the TCA which effectively allow tariffs to be imposed on imports from the other party if that party does not comply with the level playing field commitments, subject to certain conditions (see section 2.3 below).

Rules of origin

Goods must meet the relevant "rules of origin" to qualify for zero tariff/zero quota treatment. These rules determine the "economic nationality" of a good and prevent goods manufactured in third countries, but routed through the UK (or EU), taking advantage of the zero tariffs. They are particularly significant for industries, such as car manufacturing, where components are sourced from a number of countries. Rules of origin can be expensive for businesses as they have to demonstrate the origin of their product.

The agreement allows both the UK and EU to count inputs from the other party when assessing the origin of goods. The UK had wanted to include content from other countries towards the rules of origin but this was rejected by the EU. Professor David Bailey of Birmingham Business School has commented that "what's been agreed will be enough for most car makers in the UK to avoid tariffs unless they are importing lots of high value components from, say, Japan."[29]

The Institute for Government (IFG) argue that some industries may not be able to meet these rules of origin and would therefore miss out on zero tariff, zero quota trade. The IFG say that "cane sugar imported from the Caribbean and refined in the UK will not qualify for access to the EU tariff-free, nor will basmati rice imported from India and milled in the UK."[30]

Customs and trade facilitation

The agreement includes measures on customs and trade facilitation. These measures are aimed at streamlining customs processes to enable goods to cross borders more easily. They include mutual recognition of "trusted trader" schemes. Authorised Economic Operators recognised by either the UK or the EU will face fewer checks when moving goods between the parties, allowing trade to flow more freely at the border.[31] Businesses said that they would need more information on this scheme, especially on the costs involved.[32] The agreement also contains "measures that are bespoke to the UK-EU trading relationship, such as cooperation at 'roll-on roll-off' ports like Dover and Holyhead".[33] There are also measures to protect revenue and prevent fraud through

29 David Bailey, The Brexit deal and UK automotive sector, UK in a Changing Europe, 28 December 2020
30 Institute for Government, UK–EU future relationship: the deal: goods
31 HM Government, UK-EU Trade and Cooperation Agreement: Summary, December 2020, para 35
32 Brexit trade deal explained: the key parts of the landmark agreement, Financial Times, 25 December 2020
33 HM Government, UK-EU Trade and Cooperation Agreement: Summary, December 2020, para 32

reciprocal exchange of information and mutual assistance in customs matters.[34]

Mutual recognition of conformity assessment

Once the UK has left the EU single market, its exports to the EU will need to demonstrate that they conform to EU standards. This is easier if there is agreement on mutual recognition of conformity assessment. This would mean the EU accepting that UK bodies can certify that UK goods meet EU standards and vice versa.[35]

While agreements have been reached in some specific sectors, the IFG comment that "the agreement falls short of the broad 'mutual recognition of conformity assessment' the UK was asking for …"[36]

Services and investment

Outside the EU single market, UK service providers will no longer be covered by the harmonised EU standards in certain sectors, and the common EU regulatory and supervisory framework. UK businesses will lose the "automatic right to offer services across the EU". They may need to establish a business (a subsidiary) in the EU for this purpose, and will have to follow the domestic rules of each EU Member State (the so-called host country rules) in which they have a branch or sell a service.[37]

The Agreement provides for market access for services and national treatment of service providers, thus avoiding discrimination. The UK Government Summary Explainer states:

> The Agreement also includes provisions to support trade in services (including financial services and legal services). This will provide many UK service suppliers with legal guarantees that they will not face barriers to trade when selling into the EU and will support the mobility of UK professionals who will continue to do business across the EU.[38]

In practice, the ability to provide services or invest in a certain sector will also depend on specific exceptions listed in the annexes to the agreement which vary from one EU Member State to another.

A most-favoured nation clause ensures that "if either the UK or the EU gives more favourable terms to another country in future, those terms will automatically extend to the UK/EU."[39]

On financial services, according to Professor Sarah Hall, writing for the UK in a Changing Europe:

> [t]he TCA does not (and was not intended to) make provisions for financial services firms in the UK to access the single market. As a

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34 HM Government, UK-EU Trade and Cooperation Agreement: Summary, December 2020, para 34

35 It is important to note that this is about mutual recognition of certifying bodies, not mutual recognition of the standards themselves by the UK and EU.

36 Institute for Government, UK–EU future relationship: the deal: goods

37 European Commission, Questions & Answers: EU-UK Trade and Cooperation Agreement, 24 December 2020

38 HM Government, EU-EU Trade and Cooperation Agreement. Summary, December 2020, para 3

39 Institute for Government, UK-EU future relationship: the deal: services

> result, from the 1 January 2021, UK financial services firms will lose their passporting rights. Passporting has allowed firms to sell their services into the EU from their UK base without the need for additional regulatory clearances.[40]

But the UK and the EU have agreed in a non-binding declaration to establish a framework for cooperation on matters of financial regulation. The EU and UK are undertaking equivalence assessments separate to the TCA to enable access to each other's market for financial services. See Commons Library Insight, 'Equivalence' with the EU on financial services.

Initial comments on the TCA emphasise that the provisions for services are limited, albeit "promissory," i.e., it includes some commitments to agree more enhanced terms in the future. As a result, the UK service sector access to the EU market becomes more complicated compared to EU membership, but this largely reflects the limited initial ask of the UK Government.

On the services provisions of the agreement, the Institute for Government comments:

> The general provisions in the agreement sound like they offer very extensive market access, but they are subject to enormous numbers of exceptions in the annexes that vary by sector and member state. UK nationals will not, for example, be able to sell actuarial services in Italy or construction services in Cyprus. They will not be able to be surveyors in Bulgaria or tobacconists in France.[41]

Ernst & Young suggest that the outcome for services trade is disappointing:

> While services provisions have been included, they do not go much beyond existing EU practice, and notable barriers will limit the scope of many services providers to trade between the EU and the UK. Barriers include the end of the mutual recognition of professional qualifications, and significant carve outs from the EU regarding the extent to which it commits to allowing UK service providers to access their EU customers.[42]

Anton Spisak, of the Tony Blair Institute for Global Change, notes that the Agreement offers less in some aspects than some recent EU FTAs. For example, the commitments on temporary movement of business visitors (Mode 4) are more limited than the EU-Japan agreement. They exclude provisions for accompanying family members, that the UK had initially proposed. Sam Lowe, of the Centre for European Reform, summarises the terms for short business trips:

> The TCA allows for British short-term business visitors to enter the EU visa-free for 90 days in any given six-month period, but there are restrictions on the activities they can perform. Crudely speaking, the list of permitted activities shows that while meetings, trade exhibitions and conferences, consultations and

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40 Sarah Hall, What does the Brexit deal mean for Financial Services, UKandEU, 27 December 2020

41 Institute for Government, UK-EU future relationship: the deal: services

42 Ernst & Young, Explainer, What the Brexit deal means for businesses, 28 December 2020

> research are fine, anything that involves selling goods or services directly to the public requires an actual work visa.[43]

The commitments on mutual recognition of professional qualifications in the TCA are limited. From 1 January 2021, UK qualified workers wishing to work in the EU will have to meet the qualification requirements of each individual Member State. The same is true for EU workers seeking recognition of their qualifications in the UK. The Agreement includes a commitment from both sides that they may seek to negotiate more detailed reciprocal arrangements on a sector by sector basis in the future.

2.3 Level playing field

The "level playing field" (LPF) has been one of the most contentious areas of the negotiations. The Agreement sets out LPF provisions for competition, subsidies, state owned enterprises, taxation, labour and social standards, environment and climate, and trade and sustainable development.

The Government's Summary Explainer of the Agreement says that under the agreement reached, both parties have the right to determine their own laws "subject to the broad constraints of this Agreement in this area as in any other."[44] There is no reference to EU law or dynamic alignment on state aid. There is also no role for the Court of Justice of the EU in interpreting the level playing field provisions of the agreement.[45]

In her press conference announcing the deal, Commission President Ursula von der Leyen stated that the agreed level playing field measures would mean "the EU´s rules and standards will be respected" and it would "have effective tools to react if fair competition is distorted and impacts our trade". According to the Commission press release, both parties had committed to

> ensuring a robust level playing field by maintaining high levels of protection in areas such as environmental protection, the fight against climate change and carbon pricing, social and labour rights, tax transparency and State aid, with effective, domestic enforcement, a binding dispute settlement mechanism and the possibility for both parties to take remedial measures.[46]

Labour and social protection, environment and climate

For provisions on labour and social protection, and the environment and climate, the Agreement recognises that both the UK and EU may establish their own levels of protection. At the same time, a form of non-regression approach is used which requires that the level of protection is not lowered below the level in place at the end of the

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43 The Guardian, Committees, visas and climate change: Brexit experts' verdicts on the deal details, 28 December 2020

44 HM Government, UK-EU Trade and Cooperation Agreement: Summary, December 2020, para 81

45 For an initial analysis see Anton Spisak, Tony Blair Institute for Global Change, 28 December 2020

46 European Commission, Press release, 24 December 2020

transition period *if* that would impact trade or investment between the UK and EU. This means that in order to demonstrate a breach of the non-regression clause either party would have to show that any attempt to lower labour or environmental standards affects trade or investment. The Institute for Public Policy Research has described this qualification as "setting a very high bar for proof."[47]

The UK and EU both commit to maintaining effective oversight and enforcement systems, with administrative or judicial means of challenge and redress.

Disputes about compliance with the requirements may be addressed by consultation or using a panel of experts. In addition, the Agreement's overarching dispute settlement mechanisms allow for temporary remedies, and the related rebalancing and review mechanism also applies (see below).

Subsidies

With regard to subsidies, both UK and EU are required to have an effective system of subsidy control and an independent body to oversee it from 1 January 2021. However, the Agreement does not require the UK Government to set up a control mechanism, before any subsidy is paid out, as is required under the current EU regime. The UK can itself determine the precise role of any independent enforcement body.[48]

The TCA defines what is a subsidy but does not refer to concepts of EU law. It sets out the common "broad principles" according to which UK and EU subsidy control would operate.[49] It also contains some exemptions to the prohibition on providing subsidies – for example, temporary subsidies granted to respond to a national emergency. Certain subsidies are prohibited if they "have or could have a material effect on trade or investment between the Parties". Conditions are created to grant subsidies in some areas (e.g. sustainable energy).

Besides an independent enforcement body, the subsidy control system requires that the courts must be able to hear claims from interested parties, review subsidy decisions and grant effective remedies, in accordance with each sides' domestic law. A unique feature is that "either side can intervene in each either's domestic court proceedings if the court permits it to do so. That means a case can be brought through the domestic legal system of each side rather than through arbitration of an expert panel."[50] Additionally, a mechanism must be in place to recover subsidies which are provided illegally. However, if a subsidy is granted by an Act of Parliament, recovery will not be required.

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47 Marley Morris, IPPR, The agreement on the future relationship: first analysis, p7

48 Institute for Government, UK-EU Future Relationship: Level playing Field, December 2020

49 According to the Institute for Public Policy Research, these principles "in large part reflect the underlying rules and case law which currently apply to EU state aid measures." Marley Morris, IPPR, The agreement on the future relationship: first analysis, p8

50 Institute for Government, UK-EU Future Relationship: Level playing Field, December 2020

The Agreement contains specific provisions to address any disputes on subsidies and includes the option to apply remedial measures, such as tariffs or partial suspension of the Agreement. The Institute for Government summarises the process:

> If a dispute is not solved by consultation then each party can impose "remedial measures" if either assesses a subsidy to have breached the rules. If this happens, there is an option to request an arbitration tribunal to assess whether there was a breach. If the panel finds there was a breach, then it can authorise the complainant to suspend parts of the agreement – this includes the provisions on fish.

The provisions on subsidies in the Agreement do not amend the state aid provisions (Article 10) of the Protocol on Ireland and Northern Ireland, meaning that EU state aid rules apply to subsidies affecting trade in goods and wholesale electricity between Northern Ireland and the EU. See further Commons Library Briefing UK subsidy policy: first steps, section 2.3.

Rebalancing mechanism

A novel aspect of the agreement is a rebalancing mechanism for the level playing field. In certain circumstances, both parties have the right "to take countermeasures if they believe they are being damaged by measures taken by the other Party in subsidy policy, labour and social policy, or climate and environment policy", subject to arbitration.[51]

This would be the case if significant divergences between the UK and EU in those areas would arise and have material impacts on trade or investment. In simple terms, if one side raises its standards and the other does not, it can impose countermeasures such as tariffs, subject to independent assessment.[52]

The mechanism in the agreement foresees that, if consultations between the UK and EU are unsuccessful, either party can take unilateral temporary and proportionate "rebalancing measures," based on "reliable evidence" and not on "conjecture or remote possibility." Exactly what measures may be taken, or how connected they must be to the area of divergence, is not specified, suggesting that they need not be limited to the precise matter at dispute. Commentators refer to tariff measures or partial suspension of the agreement. The other party may challenge any such measures before an arbitration tribunal. This rebalancing mechanism is reciprocal, as opposed to the unilateral mechanisms initially proposed by the EU.

The Government document explains further that:

> If such measures are used too frequently either side can trigger a review of these provisions and the trade aspects of the Treaty more broadly, aiming to end with a different balance of rights and obligations.

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51 HM Government, UK-EU Trade and Cooperation Agreement: Summary, December 2020, para 81

52 Institute for Government, UK-EU Future Relationship: Level playing Field, December 2020

The Institute for Government summarises the review mechanism:

> After four years, if one party considers that there have been too many breaches – or if a measure with a material impact on trade and investment has been in place for a year – they can trigger a review of the whole trade pillar of the agreement. In that review, a party can propose amendments to the agreement which, if not resolved after a year of negotiations, can lead to the suspension of the trade parts and other linked parts like transport or, more specifically, aviation.

This could mean that in case of a persistent dispute, the UK and the EU could end up reverting to trade on WTO terms if the entire trade part of the agreement is suspended.[53]

2.4 Energy

The Commission Q&A explains that EU and UK have agreed to establish a new framework for their future cooperation in the energy field, ensuring the efficiency of their cross-border trading. This framework is underpinned by strong provisions "aimed at creating a robust level playing field". Safe and peaceful uses of nuclear energy are covered by the separate UK-Euratom Nuclear Cooperation Agreement (NCA) (see section 2.10 below).

The UK has left the EU's Internal Energy Market and as such, the mechanisms that were used to trade energy when the UK was an EU Member State and during the transition period.[54] The Government summary on the TCA explains that it commits both Parties to develop and implement new, efficient energy trading arrangements by April 2022. The energy provisions cover "the way in which the parties trade electricity and gas over interconnectors, work together on security of supply, integrate renewables into our respective markets and cooperate to develop opportunities in the North Sea".

The Commission Q&A explains that the TCA includes provisions guaranteeing non-discriminatory access to energy transport infrastructure and a predictable and efficient use of electricity and gas interconnectors. This includes a new framework for cooperation between EU and UK Transmission System Operators (TSOs) and energy regulators (given that the UK will no longer participate, inter alia, in the European Network of Transmission System Operators for Electricity and Gas).

It also explains that the provisions regulate subsidies to the energy sector to ensure they will not be used to distort competition. Furthermore, the provisions commit the parties to ensuring the security of supply, particularly relevant for Ireland, which will remain isolated from the EU internal energy market until new interconnections become operational.

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53 Institute for Government, UK-EU Future Relationship: Level playing Field, December 2020

54 For background information on Euratom and the Internal Energy Market, see Commons Library briefing paper 8394, Brexit: energy and climate change.

According to the Government explainer, the TCA also covers cooperation on renewable energy and supports trade and investment in energy goods and raw materials between the UK and EU.

2.5 Fisheries

Heading Five of Part Two covers fisheries. The Government document explains that 25% of the existing EU quota in UK waters will be transferred to the UK. These will be phased in over five years with "an adjustment period for access to waters which provide stable access for 5 ½ years" (ending 30 June 2026). From then on, the EU and the UK will hold annual consultations to agree on fishing opportunities with a view to sustainable management of fisheries and marine resources (Article FISH.6). The Agreement also allows for multiannual agreements on fisheries for both quota and non-quota stocks.

Fish Annex 1 and 2 of the Agreement sets out the changes over the five years in EU and UK share of catches for 87 stocks. For some stocks there will be significant changes, and some will not change at all. The tables state the figures for year five are for "2026 onwards". Mutual access will continue in the 6-12 nautical mile area in the fishing zones south, southeast and southwest of the UK (ICES zones 4c and 7d—g) for non-quota stock; together with access to non-quota stocks in each other's Exclusive Economic Zone (EEZ). Both will be based on historical activity between 2012-2016.

An article by UK in a Changing Europe explains how the agreement may impact different fishing sectors:

> One of the most widely quoted disparities in the Brexit debate was that EU vessels were allowed to catch 90% of the cod in the eastern Channel. As for a third of other shared stocks, that situation will not actually change in this agreement, but because that example is such a small fishery it was always a red herring.
>
> The biggest increases for the UK are for stocks like hake (36%) and Norway pout (20%) in the North Sea, sprat in the English Channel (32%) and horse mackerel in the southern North Sea and Eastern channel (29%).
>
> The increase for hake will be welcomed, because of its current prevalence in the UK section of the North Sea, but many of the other increases will only help specific vessels in certain areas.
>
> Although the allocation of the increased UK quota is yet to be revealed, it is difficult to see how it will benefit small-scale (under 10 m) vessels operating close inshore. These boats may have a smaller catching capacity than the larger ones, but are much more numerous and have long suffered from a lack of quota.
>
> Particularly important to them was that the deal would secure an exclusive zone for UK boats within 12 miles of shore, but foreign vessels with a track record will continue to have access to the 6 to 12 mile area under a grandfather clause.[55]

[55] UK in a Changing Europe, What does the trade deal mean for fisheries?, 27 December 2020

The Agreement includes arrangements for compensation if a party reduces or withdraws access to its waters, allowing the imposition of tariffs on fisheries products. These measures can be referred to an arbitration panel for review (Article FISH.9). A party can also suspend access to waters, or more broadly parts or the whole of the trade provisions of the TCA, also including road transport, where the other party is in breach of the fisheries heading of the Agreement. This needs to be "commensurate to the economic and societal impact" of the alleged breach and can be referred to an arbitration panel (Article FISH.14).

Mutual access has also been agreed between the EU and Crown Dependencies.

2.6 Social security coordination

Heading Four of Part Two covers social security co-ordination and visas for short-term visits. This refers to a more detailed attached Protocol on Social Security Coordination. The UK Government's summary explainer on the Agreement states that the Protocol will ensure that individuals who move between the UK and the EU after 1 January 2021 "will have their social security position in respect of certain important benefits protected." The Protocol also provides for continuing access to healthcare during short term visits between the UK and the EU, and reciprocal healthcare arrangements for state pensioners and certain categories of cross-border workers.

The UK and EU Member States will be able to take into account contributions paid into each other's social security systems, or relevant periods of work or residence, by individuals when determining entitlement to state pensions and to certain other benefits. Whereas the EU's initial draft Treaty tabled during the negotiations would have limited social security coordination to certain groups only, the Protocol applies to anyone going to travel, work or live between the UK or the EU.

A broader range of benefits are covered than in the UK's initial negotiating proposals, but the Protocol does not cover certain branches of social security including family benefits and "long-term care benefits." UK benefits falling under the latter heading include Attendance Allowance, the Disability Living Allowance care component, the Personal Independence Payment daily living component, Carer's Allowance, and the Scottish Government's Carer's Allowance Supplement and Young Carer Grant.[56]

This Protocol ensures that cross-border workers are only liable to pay social security contributions to one state at a time. This will usually be the country in which the person is working. However, the Protocol also includes "detached worker" provisions under which, if an EU Member State agrees to apply the rules, UK workers sent by their employer to

[56] For more on the two sides' positions and the impact of the end of transition on social security and health care co-ordination see Commons Library briefing CBP-9097, End of Brexit transition: Social security coordination, 18 December, 2020

work temporarily in that State remain liable for UK social security contributions only for the duration of their posting (and vice versa, for nationals of that Member State sent to work in the UK).

The Protocol provides for the continuation of the existing coordination rules for calculating state pension entitlements for people who spend periods living and working in the UK and in EU Member States. It also provides for the uprating of the UK State Pension paid to pensioners who retire to the EU.

On healthcare, the Protocol ensures that people temporarily staying in another country – such as UK nationals on holiday in an EU Member State – will have access to necessary healthcare, under arrangements similar to the existing European Health Insurance Card (EHIC) scheme. The Protocol also ensures reciprocal healthcare cover – under similar rules as apply now – for certain categories of cross-border workers, and for state pensioners who retire to the UK or to the EU. Finally, the Protocol also includes provisions to enable individuals to obtain authorisation to receive planned medical treatment in the UK or the EU, funded by their home country.

2.7 Visas for short term visits

Article VSTV.1 in Heading Four covers visas for short-term visits. It notes that each party will be providing for visa-free travel in accordance with their domestic law. The EU has previously announced that the UK citizens will be able to make short term visits to the Schengen area for 90 days within a 180 period, adding the UK to list of countries' citizens for whom this is possible. The UK has said EU citizens will be able to make short term visits to the UK for a six month period visa-free. See Commons Library briefing 9094, End of Brexit transition: key changes and preparations.

Article VSTV.1 provides that each party shall notify the other of any intention to impose a visa requirement for short-term visits by nationals of the other Party in good time and, if possible, at least three months before such a requirement takes effect. Where the UK decides to impose a visa requirement for short-term visits on nationals of a Member State, that requirement shall apply to the nationals of all Member States.

Separate arrangements apply for the UK-Ireland Common Travel Area, and this Article is without prejudice to those arrangements.

2.8 Transport

Part two of the TCA includes separate headings on aviation (covering air transport and aviation safety) and road transport (transport of goods and passengers).

The Commission press release explains that the transport provisions ensure "continued and sustainable air, road, rail and maritime connectivity, though market access falls below what the Single Market offers". This also includes provisions "to ensure that competition between EU and UK operators takes place on a level playing field, so

that passenger rights, workers' rights and transport safety are not undermined".

UK airlines will be able to operate flights to and from EU destinations but not between two different points in the EU (unless they have subsidiaries based in the EU). They can make technical stops in the EU for non-traffic purposes.

UK hauliers will have no longer have the same rights as under EU membership in terms of being able to pick up and drop off goods multiple times within the EU. The Commission Q&A explains that UK and EU trucks will be able to perform up to two additional operations in the other party's territory, once they have crossed the border.

2.9 Law enforcement and judicial co-operation

Part Three of the TCA establishes a new framework for law enforcement and judicial cooperation in criminal law matters The Commission press release explains that it "builds new operational capabilities, taking account of the fact that the UK, as a non-EU member outside of the Schengen area, will not have the same facilities as before".

Part Three covers the following:

- Exchange of Passenger Name Record (PNR) data;
- Sharing DNA and fingerprint data through Prüm.[57] The Commission Q&A explains that with regard to DNA and fingerprint data there will be no direct, real-time access to this sensitive personal data but only through a decentralised system that confirms that there is a match.
- Exchange of information relevant to policing operations, and a framework for co-operation with Europol and Eurojust, including data-sharing, which reflects the fact the UK will be a third country. The Commission Q&A explains however that the UK, as with other non-Schengen third countries, cannot have access to the Schengen Information System. It say access is intrinsically linked to the free movement of persons and access is provided only to Member States and very closely associated countries that accept all accompanying obligations (e.g. third countries building Schengen together with Member States). Instead, the agreement sets up new ways of data sharing taking into account the UK's future status. This involves making full use of Interpol alerts, other arrangements for exchange of alerts and UK co-operation with Europol, and secure information channels.
- A new surrender agreement (similar to the Norway/Iceland agreements) to take the place of the European Arrest Warrant

[57] Based on the Prüm convention between several EU member states, providing mechanisms to exchange information between Member states on DNA, fingerprint and vehicle registration data for the prevention and investigation of cross-border crime and terrorism. See Commons Library Briefing 9086 End of Brexit transition: Security cooperation

with clear conditions as to how and when the surrender must take place or can be refused;

- Mutual legal assistance, which includes a time limit for responding to any requests;
- Obligations to combat money laundering and terrorist financing.

The Government document explains that the dispute settlement mechanism for the law enforcement provisions "is political in nature and only involves the Parties, with no arbitration or role for the CJEU". Title XIII within Part Three sets out bespoke dispute settlement provisions for this area of co-operation, although there are some exceptions which are not covered. This involves consultations which, at the request of the complaining party can be within the framework of the Specialised Committee on Law Enforcement and Judicial Cooperation or in the framework of the Partnership Council. Where a mutually agreed solution is not reached, this can lead to suspension of co-operation under the Title concerned by the complaining party. The other party can respond by suspending co-operation across Part Three.

The Commission press release explains that security cooperation can be suspended in case of violations by the UK of its commitment to continued adherence to the European Convention of Human Rights and its domestic enforcement.

Article LAW.GEN.3 of the TCA states:

> The cooperation provided for in this Part is based on the Parties' and Member States' long-standing respect for democracy, the rule of law and the protection of fundamental rights and freedoms of individuals, including as set out in the Universal Declaration of Human Rights and in the European Convention on Human Rights, and on the importance of giving effect to the rights and freedoms in that Convention domestically.

Article LAW.OTHER.136 provides that either party can terminate Part Three "at any moment … by written notification through diplomatic channels". Termination would take place nine months later.

However, if Part Three is terminated on account of the UK or a Member State having denounced the ECHR or Protocols 1, 6 or 13 of it, then termination takes effect on the same date as the denunciation becomes effective or fifteen days later if the notification of termination is made after that date. Protocols 6 and 13 of the ECHR refer to the prohibition of the death penalty.

In addition, Article LAW.OTHER.137 provides that a party can suspend Part Three or individual Titles within it, in cases of "serious and systemic deficiencies within one Party as regards the protection of fundamental rights or the principles of the rule of law". The suspension would take effect three months after notification. There could be discussions in the Partnership Council to resolve this following notification.

As already noted, Article INST.35 provides that if either party considers that there has been a serious and substantial failure by the other party to fulfil any of the obligations that are described as essential elements in Article COMPROV.12 (including democracy, rule of law and human

rights) it may decide to terminate or suspend the operation of the TCA or any supplementing agreement "in whole or in part". This can be done within 30 days from the date of a request to the Partnership Council to find a "mutually agreeable solution".

Data protection

Article LAW.GEN.4 sets out the parties commitment to uphold data protection standards. The EU had previously said that law enforcement and judicial co-operation would be dependent on EU adequacy decisions in relation to UK data protection standards. The Commission Q&A explains that for the EU side, this means decisions attesting that UK standards are essentially equivalent to the EU standards set out in the EU's General Data Protection Regulation (GDPR) and Law Enforcement Directive, and that they respect specific additional data protection standards stemming from opinions of the EU Court of Justice.

The Q&A explains that the Commission has been intensively working on its adequacy decisions for the UK since March. It states that once it is satisfied with the information received, the Commission will launch the adoption process without delay. In the meantime, it explains that a bridging solution has been found and inserted in the TCA to ensure stability and continuity during an interim period.

The interim solution is set out in Article FINPROV.10A in the Final Provisions. This provides for a four month period after the TCA enters into force during which the transmission of personal data from the EU to the UK shall not be considered as transfer to a third country under EU law, provided that the data protection legislation of the UK remains unchanged from the end of the transition period. This interim period can be extended unless one of the two parties objects, and will end once the European Commission adopts its adequacy decisions in relation to the UK.

2.10 Participation in EU programmes

Part Five of the TCA sets out conditions for UK participation in EU programmes, and accompany financial arrangements for participation. The Commission press release explained that the Agreement would enable continued UK participation in a number of EU programmes for the period 2021-2027 (subject to a financial contribution by the UK to the EU budget).

The Commission Q&A explained that this was based on the existing legal framework for the participation of third countries in EU. In relation to the UK, this would involve "a fair and appropriate financial contribution, provisions for sound financial management, fair treatment of participants, and appropriate consultation mechanisms".

The financial contribution would be calculated on:

- A contribution based on the wealth of the UK (proportion to its GDP) in comparison with the wealth of the EU.

- A participation fee, covering the administrative costs of organising the system of EU programmes.
- In addition, for Horizon Europe, a standard adjustment mechanism ensuring a balance between UK contributions and the benefits for its entities, through specific corrective measures.

The UK and EU agreed that the UK would commit to the full period for each of the programmes in which it participates during the Multiannual Financial Framework 2021-2027.

Continued UK participation in the following programmes was agreed:

- Horizon Europe – the EU's research and innovation programme
- Euratom Research and Training programme
- International Thermonuclear Experimental Reactor (ITER) – the fusion test facility currently under construction in the South of France
- Copernicus – EU satellite system for monitoring the Earth.

The EU and the UK also agreed that the UK would have continued access to the services provided by EU Satellite Surveillance & Tracking.

The EU and the UK have separately jointly committed to continue the implementation of PEACE+, the EU's cross-border programme for Northern Ireland and the Border Region of Ireland. This is not covered by the TCA. The Government made an announcement regarding increased funding for this programme on 21 December.

2.11 Additional agreements

Two additional agreements were announced alongside the TCA.

Security of Classified Information Agreement

The Security of Classified Information Agreement (SCIA) is a supplementing agreement to the TCA. The Government summary explained that the SCIA will facilitate the voluntary exchange of classified information, and will govern how such information is shared and protected. The UK and EU will protect the classified information of the other to the same standards as they would their own information.

The Commission Q&A explained that if a joint security threat makes it necessary, certain EU classified information can be shared with third countries. But this is only on a case-by-case basis and provided that a dedicated Security of Information Agreement has been concluded between the EU and a third country; hence the conclusion of the SCIA.

The Nuclear Cooperation Agreement

The Nuclear Cooperation Agreement (NCA) was agreed by Euratom and the UK. It is not a supplementing agreement to the TCA.

The Commission Q&A explains that it provides for wide-ranging cooperation on safe and peaceful uses of nuclear energy, underpinned by commitments by both sides to comply with international non-proliferation obligations and uphold a high level of nuclear safety standards.

The Government summary explains that the NCA provides and facilitates:

- robust mutual assurances that traded nuclear material will remain subject to safeguards (part of global nuclear non-proliferation);
- a comprehensive framework and key assurances for transfers of nuclear materials and related items, including procedures for retransfers to third countries;
- a long-term legal basis for future cooperation on research and development in both nuclear fission and nuclear fusion;
- close cooperation on the supply and availability of medical radioisotopes.

It also includes mutual commitments to improving global standards, cooperation, and sharing of information and technical expertise in relation to nuclear safety, including the UK's participation, as a third country, in systems such as the European Community Urgent Radiological Information Exchange (ECURIE) and the European Radiological Data Exchange Platform (EURDEP).

2.12 Further reading

The Agreement

The UK Government has published a summary explainer, alongside the full text of the agreement (and additional agreements).

The European Commission has published a set of explanatory materials, including a Q&A.

Institute for Government summary of the agreement

UK in a Changing Europe commentary

Scottish Parliament Information Centre summary of the agreement

Initial analysis from Institute for Public Policy Research

Collection of Twitter threads from different experts

Politico, 10 key details in the UK-EU trade deal, 27 December 2020

Financial Times, Brexit trade deal explained: the key parts of the landmark agreement, 25 December 2020

Impact on sectors

Fusacchia, Luca Salvatici and L. Alan Winters, The Costs of Brexit, UK Trade Policy Observatory, University of Sussex, Briefing Paper 51, December 2020

EY, Explainer: What the Brexit deal means for business, 28 December 2020

George Peretz, The subsidy control provisions of the UK-EU trade and cooperation agreement: a framework for a new UK domestic subsidy regime, 28 December 2020

UK in a Changing Europe, What does the trade deal mean for fisheries?, 27 December 2020

BBC Reality Check, Will the EHIC still be valid after Brexit?, 28 December 2020

Nuffield Trust, Brexit deal reduces uncertainty for health and care but major difficulties remain, 24 December 2020

Negotiations and end of transition

For an overview of the UK-EU negotiations see Commons Library Briefing paper 9101 The UK-EU trade and co-operation agreement: the path to the deal. See also Commons Library papers on the UK-EU future relationship negotiations covering different sectors and Library briefings on the end of the transition period, what a potential deal might cover and the impact of not having a deal.

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