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# EU-UK Trade and Cooperation Agreement

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An analytical  
overview

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## IN-DEPTH ANALYSIS

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EPRS | European Parliamentary Research Service

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Members' Research Service  
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This EPRS publication seeks to provide an analytical overview of a range of issues relating to the EU-UK Trade and Cooperation Agreement, which was agreed between the two parties on 24 December 2020, and has been applied provisionally since 1 January 2021. With the European Parliament required to give consent before the Agreement can be concluded by the Council on behalf of the EU, several of the Parliament's committees have started examining the text with a view to informing the vote in plenary.

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## Executive summary

On 30 December 2020, the European Union (EU) and the United Kingdom (UK) signed a Trade and Cooperation Agreement (TCA), concluding nearly ten months of negotiations. Since 1 January 2021, the TCA has been provisionally applied. Should the European Parliament agree to consent to the Council decision concluding the agreement, the TCA will constitute the cornerstone for a new future relationship between the EU and the UK, as it creates a single framework covering a wide range of areas of economic activity and cooperation, and allows for the broadening of those areas.

A large part of the TCA is made up of chapters touching upon economic activity. First and foremost, these envisage that trade in goods will take place under conditions of zero tariffs and quotas, although trade will now be subject to non-tariff barriers such as rules of origin. On digital trade, the TCA safeguards the primacy of data protection and privacy rules, and provides for a ban on customs duties on electronic transmission, as well as on data localisation requirements. The energy chapters grant access to wholesale markets and provide a framework for developing rules on the management of electricity and gas interconnectors; key principles of EU law will continue to apply. In air and road transport, the TCA allows operators to provide services from points in the EU to points in the UK and vice versa, with a limited number of road haulage operations allowed in each other's territories. Regarding the movement of people, the TCA grants visa-free short-term tourism, and facilitates temporary migration for business purposes; it also provides for social security coordination for pensions, among other things. On fisheries, the TCA provides for a gradual shift of quota shares from the EU to the UK, worth a quarter of the EU's catch value in UK waters, beyond which they can only be changed by mutual consent. The TCA also provides for compensatory measures in case of a reduction in access to waters, for example through tariffs. Finally, the negotiations dealt only marginally with financial services.

The level playing field provisions constrain the parties to maintain at least the same level of standards as prevailed on 1 January 2021, in the social, labour, and environmental areas (non-regression), and establish rebalancing mechanisms whenever significant divergences in these areas lead to 'material impacts' on trade or investment. These non-regression and rebalancing principles were a major source of divergence during the negotiations, and were strongly supported by the EU.

In a separate part, the TCA provides for continued cooperation in law enforcement and judicial cooperation in criminal matters. Among other things, it provides for the exchange of data between the parties – but without granting the UK direct access to the EU's databases and information systems – and introduces a new surrender mechanism for those accused or convicted of crimes. The UK will also continue to cooperate with the EU agencies in this field (Europol and Eurojust), under the third-country model. The TCA also sets the general framework for UK participation in EU programmes. Based on draft protocols, still to be adopted, the UK is expected to participate in a number of programmes in the areas of research, innovation and space, including Horizon Europe. The UK will participate as a third country, subject to making a financial contribution.

The core governance component of the TCA is the Partnership Council, co-chaired by a member of the European Commission and of the UK government, and assisted by 19 specialised committees; it will oversee the attainment of the TCA objectives, and supervise its implementation and application. The TCA also provides a horizontal, as well as field-specific, dispute-settlement mechanisms, which involve decisions by arbitration tribunals or panels of experts. The format of a single agreement, coupled with a horizontal dispute-settlement mechanism linking various fields within the TCA, was another major source of divergence during the negotiations, with the EU strongly supporting this single agreement approach.

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# 1. Introduction

On 24 December 2020, the European Commission, on behalf of the European Union (EU), and the United Kingdom (UK) reached an [agreement](#) on the terms of their future relationship. On 29 December 2020, the Council [adopted](#) the decision on the signing of the EU-UK Trade and Cooperation Agreement (the Agreement or TCA) and its provisional application as of 1 January 2021 (see Box 1).<sup>1</sup> European Council President Charles Michel and European Commission President Ursula von der Leyen then [signed](#) the agreement on behalf of the EU, and Prime Minister Boris Johnson on behalf of the UK, on 30 December 2020. The TCA establishes the terms of the new relationship between the EU and the UK, following the end of the transition period established by the [Withdrawal Agreement](#) (WA).

## Box 1 – Provisional application

The possibility for an international treaty to [apply provisionally](#) under EU law is set out under [Article 218\(5\)](#) of the Treaty on the Functioning of the EU (TFEU), and the decision on provisional application can take place, '*if necessary*', before the European Parliament gives its consent. However, in accordance with [Article 218\(6\)](#) TFEU, the Council may only adopt the decision concluding the agreement after obtaining the consent of Parliament.

In her [Political Guidelines](#), Commission President Ursula von der Leyen committed that provisional application of trade agreements would take place only once the European Parliament had given its consent. The [Parliament](#) agreed to accept the provisional application of the TCA prior to its consent vote, but it made clear that this was a unique exception, and that, under no circumstances could this be a precedent for future trade agreements.

Entering into force on 1 February 2020, the WA provided for a 'transition period' during which, although no longer an EU Member State, EU law applied to the UK (with some exceptions), and allowed for EU-UK negotiations on their future partnership to take place. The WA settled issues associated with the UK withdrawal from the EU. In particular, it preserved the essential rights of EU citizens and their families residing in the UK at the time of the end of the transition, as well as many rights for UK citizens resident in the EU,<sup>2</sup> and established that the UK will honour its share of the financing of the EU's liabilities incurred before the end of the transition. In addition, the Protocol on Ireland/Northern Ireland declares that Northern Ireland is part of the customs territory of the UK, while goods from

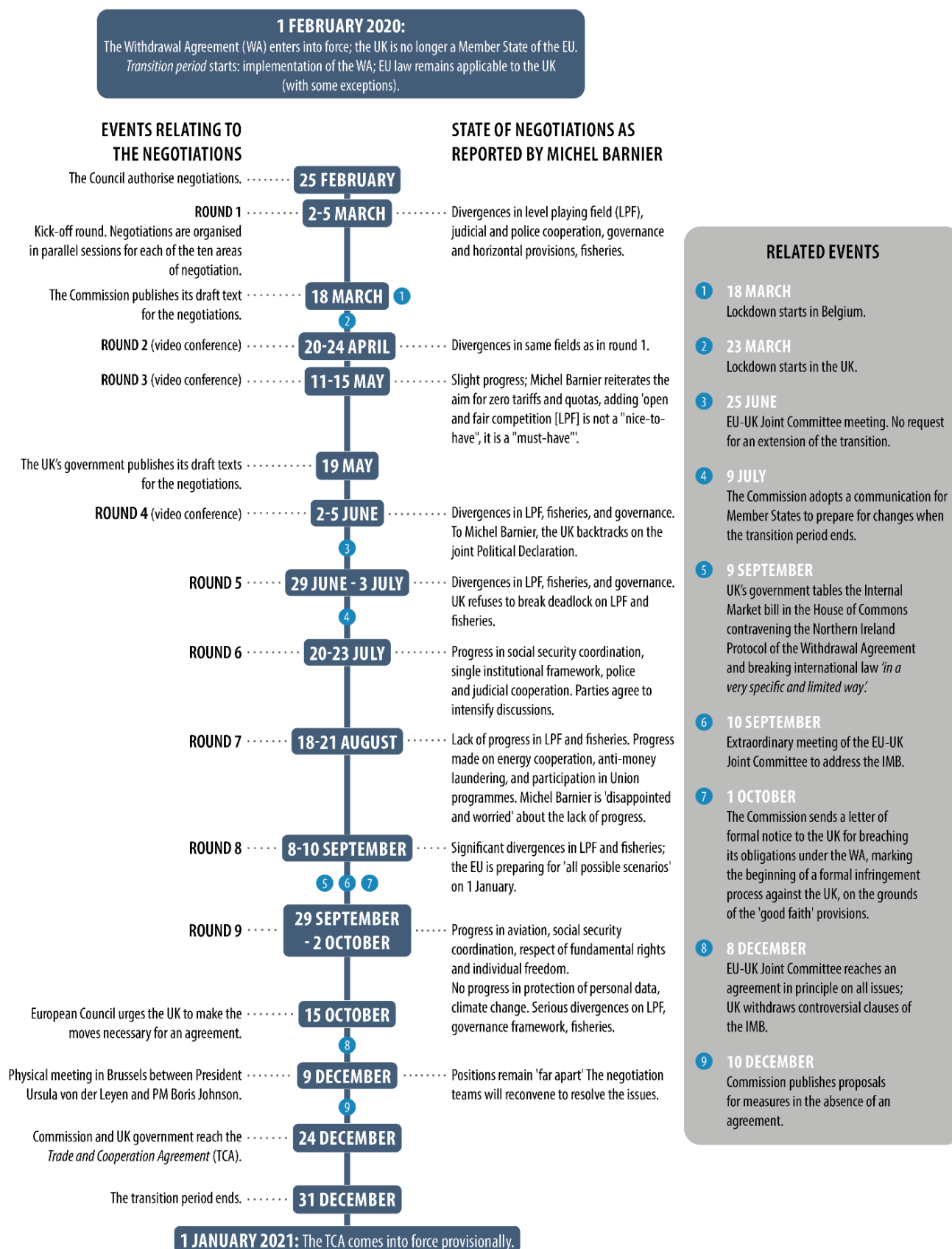
Northern Ireland continue to benefit from tariff-free access to the EU.<sup>3</sup> Furthermore, the WA was accompanied by the joint (non-binding) [Political Declaration](#), which set out the objectives for the new EU-UK relationship. The provisions of the Political Declaration in relation to the [objectives](#) of the economic partnership affirmed that the parties agree to develop an ambitious, wide-ranging and balanced economic partnership. The aim was for the latter to be comprehensive, including a free trade agreement (FTA), as well as sectoral cooperation, and supported by provisions ensuring a level playing field. The partnership was to aim at facilitating trade and investment to the extent possible, while respecting the integrity of the EU single market and the customs union, the UK's internal market, and recognising the future development of the UK's [independent trade](#) policy.

<sup>1</sup> For further details, see L. Puccio, '[A guide to EU procedures for the conclusion of international treaty agreements](#)', EPRS, European Parliament, 2016.

<sup>2</sup> Note that the WA does not provide rights to free movement across the EU to the UK citizens it covers, only rights in the host EU state at the end of the transition period.

<sup>3</sup> The Northern Ireland Protocol is aimed at preventing the establishment of a 'hard border' between Ireland and Northern Ireland and safeguarding the [Good Friday \(Belfast\) Agreement](#).

Figure 1 – Timeline of the negotiations



Source: EPRS.

The Council adopted a decision [authorising](#) the opening of negotiations on 25 February 2020, which began with the first round on 2 March 2020. The negotiations were led by Michel Barnier on behalf of the EU, and David Frost on behalf of the UK. In February 2020, the EU and the UK announced their respective approaches and objectives for the negotiations. The UK's [approach](#) diverged with respect to the Political Declaration, as it promoted the adoption of separate agreements in the respective areas. In contrast, the [Council directives](#) for the negotiations supported the approach of reaching a single overarching agreement. For the EU, separate agreements would result in the proliferation of instances governing each agreement. In addition, the areas covered by negotiations are intertwined and, for the EU, should be treated jointly, allowing for cross-area retaliation if necessary.<sup>4</sup>

Nine [rounds](#) of negotiations, covering [eleven areas](#), were held between March and October 2020, with negotiations intensifying thereafter. The European Commission, on behalf of the EU, and the UK published their negotiating text proposals in March and May 2020 respectively. The UK published nine [draft texts](#) separating the areas, among which a Comprehensive Free Trade Agreement (CFTA) and a [Fisheries Framework Agreement](#). Conversely, the EU issued a single draft text, entitled [Agreement on the New Partnership with the United Kingdom \(ANP\)](#). In June 2020, despite outstanding divergent positions on major areas, the UK declined to request an extension to the transition period, possible under the WA, asserting that the transition would expire on 31 December 2020. The parties therefore intensified negotiations, meeting daily in December 2020. While several issues surfaced during the negotiations, three major questions were repeatedly reported by the parties as being far from settled: the level playing field (i.e. sufficient regulatory convergence in specific domains), fisheries, and the governance of the agreement.

As regards the European Parliament, the UK Coordination Group ([UKCG](#))<sup>5</sup> was established in February, succeeding the [Brexit Steering Group](#), and chaired by David McAllister (EPP). The UKCG had meetings with the EU chief negotiator Michel Barnier on a weekly basis. It prepared a [resolution](#) on the mandate for negotiations that was adopted by Parliament on 12 February by a large majority (543 votes in favour, 39 against, 69 abstention), showing strong support to Michel Barnier. Another [recommendation](#) on the ongoing negotiations was adopted on 18 June by a large majority giving further support to EU negotiators. The procedure was jointly led by the Committees on Foreign Affairs (AFET) and International Trade (INTA), and involved nearly all committees.

The TCA contains seven parts, two of which include 'horizontal' provisions, i.e. the institutional framework, and the dispute-settlement mechanism, and four parts address specific fields (see Box 2). The parts are divided into titles covering more specific areas such as trade, transport, fisheries, and law enforcement and judicial cooperation in criminal matters.

The [recommendation](#) on the European Parliament's consent to the Council

#### Box 2 – Content and structure of the EU-UK TCA

Part One.	Common Provisions
Part Two.	Trade, Transport, Fisheries and Other Arrangements
Part Three.	Law Enforcement and Judicial Cooperation in Criminal Matters
Part Four.	Thematic Cooperation
Part Five.	Participation in Union Programmes, Sound Financial Management and Financial Provisions
Part Six.	Dispute Settlement and Horizontal Provisions
Part Seven.	Final Provisions

<sup>4</sup> For instance, tariff-free access to EU markets for UK fishery and aquaculture products needs to be conditioned on the level of access to UK waters for EU vessels.

<sup>5</sup> The UKCG is composed of representatives of all the political groups represented in the EP, as well as of the Committees leading the process (Foreign Affairs, International Trade, Sub-Committee on Security and Defence, and Chair of the Conference of Committee Chairs)

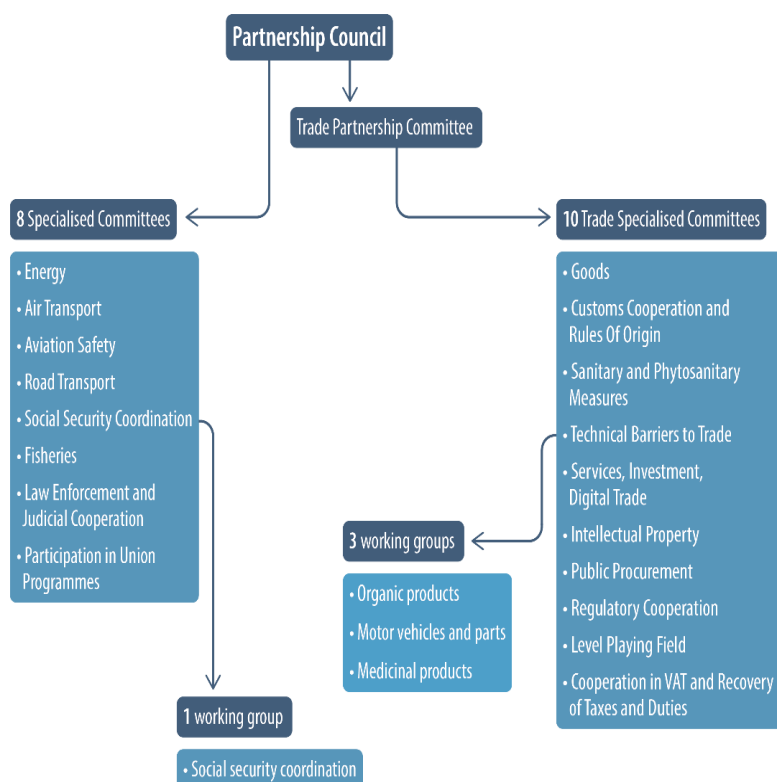


decision to conclude the TCA is now being prepared in the Parliament. The legal basis for the decision is Article [217](#) (association agreement), Article [218\(6\)a](#) (Parliament consent), and Articles [218\(8\)a\(2\)](#) and [218\(7\)](#) of the Treaty on the Functioning of the EU (TFEU). The Parliament will do its utmost to ensure a thorough and timely scrutiny of the Agreement. The process follows [Rule 105](#) (consent procedure) and [Rule 58](#) (joint committee) of the Rules of Procedure of the European Parliament. The committees jointly responsible for the file are the Committees on Foreign Affairs (rapporteur: Kati Piri, S&D, the Netherlands), and International Trade (rapporteur: Christophe Hansen, EPP, Luxembourg). Nearly all other standing committees have been invited to provide an opinion. Together with the opinion-giving committees, the lead committees are now carefully examining the TCA and preparing Parliament's consent. In parallel, the political groups will prepare a draft resolution to be voted alongside the consent vote.

## 2. Institutional framework and dispute settlement

The governance of the Agreement is covered in two titles. Part One, [Title III](#) sets up the institutional framework that governs the TCA. It establishes the Partnership Council, which will oversee the implementation and application of the agreement. This council is composed of representatives of the EU and the UK, and will be co-chaired by a member of the European Commission and a

Figure 2 – Institutional framework



Source: EPRS.

representative of the UK government at ministerial level. The Partnership Council will be assisted by the Trade Partnership Committee, which will supervise the work of the ten Trade Specialised Committees with specific areas of competence, including goods, customs cooperation and rules of origin, and the level playing field. The Trade Partnership Committee will also have the power to dissolve trade specialised committees or establish other committees. In addition, eight (non-trade) specialised committees are planned in relation to other chapters, including energy, aviation safety, transport, law enforcement and judicial cooperation, and participation in Union

programmes. Committees will monitor the implementation of the agreement and assist the Partnership Council, and may also adopt decisions or make recommendations. Finally, the TCA establishes four working groups; three of which (on organic products, motor vehicles and parts, and



medicinal products), are supervised by the Special Committee on Technical Barriers to Trade. The working group on social security coordination will be supervised by the Specialised Committee on social security coordination.<sup>6</sup>

In Part Six, [Title I](#), the Agreement establishes the state-to-state dispute-settlement framework, envisaging the potential intervention of a tribunal of arbitrators. Within 180 days after the TCA enters into force, the Partnership Council will establish a list of 15 experts who would serve as members of an arbitration tribunal. This list is to be composed of two sub-lists of five individuals appointed by each party, respectively, and one sub-list of five experts, nationals of neither the EU nor the UK (non-nationals sub-list). In case of dispute – and should consultation fail to settle the matter – the complaining party can request the establishment of an 'arbitration tribunal', composed of three arbitrators. If the parties do not agree on the composition of the tribunal, the co-chair of the Partnership Council from the complaining party will select the third arbitrator from the sub-list of non-nationals to serve as chair of the arbitration tribunal.

The arbitration tribunal deliberations are private, but its decisions are public and binding. The courts of each party shall have no jurisdiction in the resolution of disputes. The TCA also provides for remedial measures and rebalancing. Annexes provide the [rules of procedure](#) for dispute settlement and the [code of conduct](#) for arbitrators. It is worth noting that a few chapters are not covered by the dispute-settlement mechanism established in Part Six; including, partially or entirely, trade remedies, medicinal products, the level playing field, law enforcement and judicial cooperation in criminal matters, and thematic cooperation (see below).

#### Box 3 – Parliamentary cooperation

[Article INST.5 \[Parliamentary cooperation\]](#) provides that the European Parliament and the UK Parliament may establish a Parliamentary Partnership Assembly consisting of Members of both parliaments, as a forum to exchange views on the partnership. The Assembly (a) may request information regarding the implementation of the Agreement from the Partnership Council, (b) shall be informed of the decisions and recommendations of the Partnership Council, and (c) make recommendations to the latter.

## 3. Trade in goods

### 3.1. Background

The EU and the UK are mutual [major trading partners](#). With total EU-UK trade in goods (exports plus imports) representing 48 % of UK total trade and 13 % of EU total trade (see Figure 3), the EU is by far the UK's largest trading partner for goods, and the UK comes third for the EU after the United States of America (USA) and China. Moreover, the [value chains](#) involved are highly integrated: the share of EU intermediate goods used in UK production of exported goods is 48 %, and that of UK intermediate goods used in EU exports is nearly 11 %. Without an FTA, trade would take place under World Trade Organization (WTO) terms, whereby imports are subject to the schedules of tariffs and quotas determined by the importing country. An FTA without tariffs would therefore constitute a means of preserving the status quo. Nevertheless, even in the case of no duties being imposed on imports, FTAs do not remove all 'non-tariff barriers', which are thoroughly addressed in modern

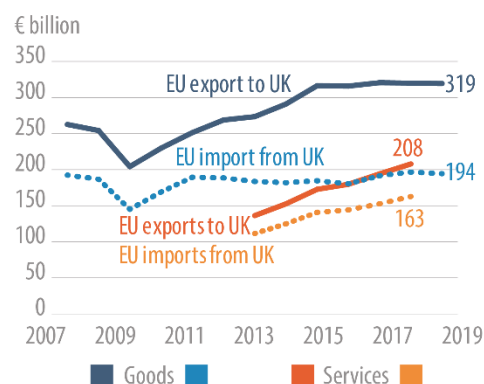
<sup>6</sup> [Article 2](#) of the Council decision on the signing of the TCA stipulates that the Commission will represent the EU within the Partnership Council, Trade Partnership Committee, Trade Specialised Committees and Specialised Committees. Each Member State will be allowed to send one representative to accompany the Commission representative, as part of the EU delegation, in meetings of the Partnership Council and of other joint bodies.

trade agreements. Two major sources of non-tariff barriers are sanitary and phytosanitary (SPS) measures and rules of origin (RoO).

Figure 3 – Trade in goods and services between the EU and the UK

## EU-27 trade in goods and services with UK

### EU trade with UK



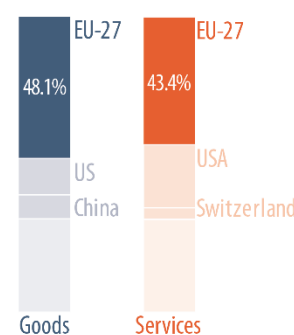
### Top 3 partners

(exports plus imports; services, 2018 and goods, 2019)

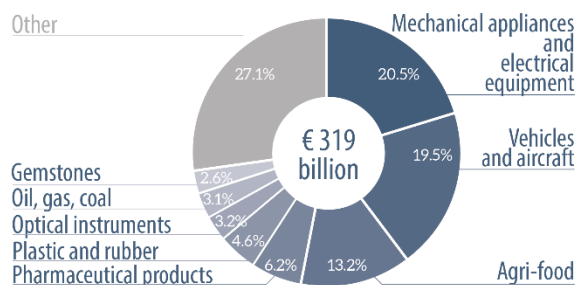
#### EU partners



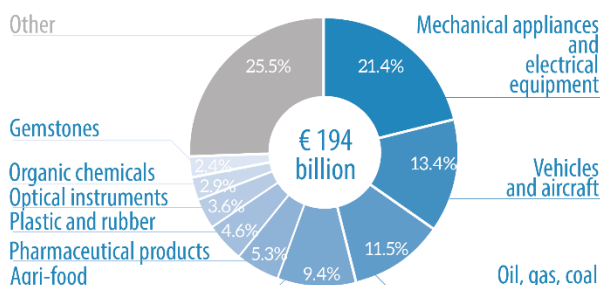
#### UK partners



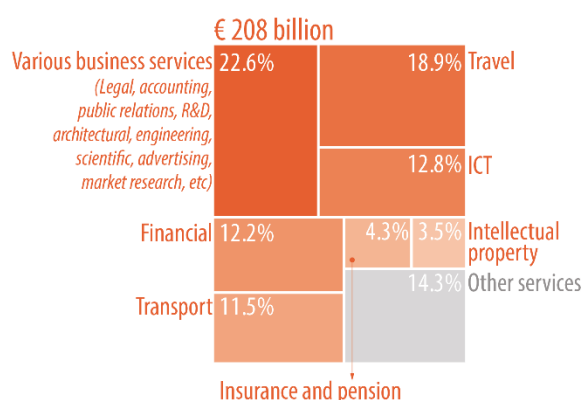
### EU exports of goods to UK (2019)



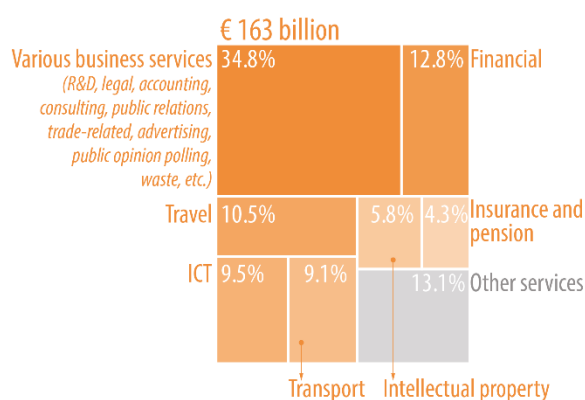
### EU imports of goods from UK (2019)



### EU exports of services to UK (2018)



### EU imports of services from UK (2018)



Data source: Eurostat and IMF

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Data source: [Eurostat COMEXT](#), IMF, [UN COMTRADE](#).

Regarding food and agricultural products, SPS measures aim to protect, for example, against diseases and the risks arising from additives in food and beverages. Typically, each country sets local standards, and allows imports from other parties' territory under strict conditions, including by making a list of authorised establishments. A complex set of rules establishing the country where a

product has been produced or manufactured, [RoO](#) are based on the share of added value and/or processing operations. Only goods produced on partners' territories benefit from preferential tariffs under an FTA. The RoO may include a 'cumulation' rule, which accounts for intermediate goods originating from the FTA partner countries (bilateral cumulation), and/or those originating from third countries (diagonal cumulation).<sup>7</sup>

## 3.2. Content of the Agreement

The TCA establishes trade without tariffs on all goods – i.e. zero tariffs and quotas. In fact, no schedules of tariffs and quotas are attached in an annex, as is traditionally the case in an FTA.

The RoO [provisions](#) in the TCA admit (bilateral) cumulation of production occurring in the territories of both parties, but exclude (diagonal) cumulation with other third-party territories. Nevertheless, as a standard rule, the TCA notes that insufficient processing in one party would not confer preferential origin, even though the intermediate material originates from the other party. Therefore, EU goods that are redistributed from the UK to the EU, i.e. re-exported to the EU, would not be considered as preferential trade, given that processing such as repackaging on UK territory would be '[insufficient](#)'. Goods that are shipped back and forth between the EU and the UK for manufacturing are subject to the same risks. This is likely to have significant implications for trade and value chains between the EU and UK.

The TCA [SPS chapter](#) states that parties may maintain separate regimes, and it reaffirms their rights and obligations under the (WTO) [SPS Agreement](#), which allows a right to adopt measures 'in cases where relevant scientific evidence is insufficient'. The exporting party must ensure that the exported products meet the importing party's SPS requirements, and the importing party may carry out audits and verifications. Whenever justified for a product for which they were required at the end of the transition period, parties may provide a list of approved establishments. The TCA provides that each party will undertake to cooperate in animal welfare and encourage its services to cooperate with its counterparts with the aim of promoting sustainable food production systems. The parties shall also provide a framework for dialogue and cooperation with a view to strengthening the fight against the development of [antimicrobial resistance](#) and shall collaborate in the development of international guidelines, standards and action in international organisations to promote responsible use of antibiotics in animal husbandry and veterinary practices.

The SPS will be subject to regular review, based on criteria laid down in the [Annex](#) relating to specific issues with the procedure, for instance, the information provided by the exporting party, and the frequency and severity of non-compliance detected by the importing party, as well as to available scientific assessments and any other pertinent information regarding the risk associated with the products.

## 3.3. EU and UK negotiating positions

Both the EU and the UK sought an FTA with zero tariffs and quotas. However, as hurdles surfaced regarding the level playing field, the UK negotiator David Frost [stressed](#) a desire to retain regulatory autonomy even at the cost of introducing some tariffs and quotas. Michel Barnier nevertheless

<sup>7</sup> Diagonal cumulation typically operates between more than two countries provided they have FTAs containing identical origin rules and provision for cumulation between them. For more details, see I. Hallak, '[EU-UK future relationship: Rules of Origin](#)', EPRS, European Parliament, April 2020.

[reiterated](#) that determining schedules of tariffs and quotas by product line would require years of negotiation, and the EU would still have demanded the same LPF guarantees.

Positions [diverged](#) in respect of cumulation of origin. Nearly all [EU FTAs](#) provide for bilateral cumulation but rarely for diagonal cumulation. The [European Parliament](#) has also been cautious, considering that unrestrictive cumulation rules in the EU-UK FTA could be used by producers as a tool to allow free-riding. Conversely, as shown by its draft text, the UK supported RoO allowing diagonal cumulation of production across other FTA partners, as declared in the UK [approach to negotiations](#).

With regard to SPS rules, the EU's draft text sought measures built on the WTO [Agreement on the Application of Sanitary and Phytosanitary Measures Agreement](#). The EU draft text would also have allowed a party to provisionally adopt SPS measures in cases where scientific evidence is insufficient, and to seek scientific evidence for an assessment of risk within a 'reasonable period of time'. The UK's draft text proposed that the Food and Agriculture Organization [International Standards for Phytosanitary Certification](#) apply for the determination of plant certification and equivalence.

## 4. Financial services

### Background

The principle of free movement of services stemming from the EU Treaties has been further specified in secondary EU law, where the concept of the 'passport' has gradually emerged. The EU passport is particularly well-established in banking services. In the field of banking and other financial services, the '[passport](#)' gives financial institutions established in the EU the right to provide financial services throughout the EU, under the licence granted by and the supervision of their home Member State. The passport relies on two elements: i) a set of prudential requirements harmonised under EU law; and ii) mutual recognition of licences. Beyond the EU, passporting rights are only available to members of the European Economic Area ([EEA](#)). However third countries are entitled to ask for '[equivalence](#)' treatment by the EU where this is explicitly envisaged in EU legislation. Equivalence allows non-EU financial institutions to offer a limited number of services in the EU, if the EU recognises their home country regulatory framework as 'equivalent' to EU standards. Equivalence clauses are designed for the needs of each specific act and their meaning varies from one legal text to another. Examples include the areas of central securities depositories (CSDs), and central counterparties (CCPs). Equivalence to EU standards is [assessed by the Commission](#). The Withdrawal Agreement provided that the UK would retain the 'passport' for banks and financial services during the transition period, but would lose it beyond this period.

### Content of the Agreement

Despite their strategic importance in the UK economy, the EU-UK trade negotiations did not deal with the bulk of financial services. In fact, the [specific financial services provisions](#) in the TCA are limited, and concern:

- the general commitment to implement international standards in the area of prudential, anti-money-laundering, tax avoidance and anti-terrorism standards;
- new services provision: the TCA covers any new service that could be supplied under existing regulation; and

- guarantee of access by foreign firms to any self-regulatory bodies required for the conduct of their business and to public clearing and payment systems.

Those provisions are subject to a prudential carve-out: each party may take any measure deemed necessary for consumer and investor protection or the integrity of its financial system.

That means that since 1 January 2021 the UK and EU financial services industries have been operating under a kind of no-deal scenario, where the bulk of financial services provision will be based on unilateral equivalence decisions with regard to specific activities and types of financial services. To avoid 'cliff-edge' effects, the UK government adopted a [Temporary Permissions Regime](#) allowing relevant EEA financial firms and funds that had formerly operated through an EU passport in the UK, to continue operating for up to [three years](#) once the passporting regime has ceased, while they seek UK authorisation. Regarding equivalence decisions to access its market – for which the UK is now responsible rather than the EU – it has adopted an outcomes-based approach, something it proposed during the 2020 trade negotiations but was rejected by the EU. This means that a third-country regulatory framework can be considered equivalent to UK standards even if specific regulations differ, as far as they achieve a similar outcome. This represents a more flexible interpretation of equivalence than that adopted by the EU.

The EU has not put in place similar arrangements. As of 1 January 2021, UK financial institutions have lost the passport to provide financial services in the EU and have been reliant only on a very limited set of equivalence decisions to access the single market. Those limited equivalence decisions do not offer permanent access to the single market, as the EU can revoke equivalence at any time with 30 days' notice. In order to continue to durably provide financial services in the EU, UK financial institutions need to offer these services by complying with Member States' national market access and exemption regimes.

Alongside the TCA, the EU and the UK adopted a [Joint Declaration on Financial Services Regulatory Cooperation](#), including transparency and dialogue on equivalence decisions. A framework for this is due to be agreed by March 2021 in a Memorandum of Understanding (MOU). This broad, non-binding commitment to regulatory cooperation is noticeably different to the guaranteed single market access that UK financial services firms had until 31 December 2020.

## EU and UK negotiating positions

[Valdis Dombrovskis](#), the Commission Vice-President, responsible for financial services until September 2020, insisted that the EU was willing to grant the UK access through a system of 'equivalence' decisions, depending on UK regulatory soundness and alignment. The [negotiating mandate submitted by the Commission](#) on 3 February 2020 recommended that the key instrument to regulate interaction between financial systems would be the unilateral equivalence frameworks. In its [July 2019 communication](#), the Commission describes [third-country equivalence](#) as a key instrument to promote 'open, fair and efficient financial markets that operate within rigorous prudential and conduct frameworks'. While that communication is of a general nature and does not specifically deal with the UK withdrawal, it nevertheless outlines a stronger regime (and 'stronger assurances') in relation to 'high-impact' countries along the lines of recently adopted legislation.

The EU draft text included a single section on financial services as part of the title on services and investments. The EU proposed to base market access for financial services on unilateral equivalence decisions with regard to specific activities and types of financial services. The EU emphasised the unilateral nature of its equivalence decisions, while noting that transparency and appropriate

consultation with the UK would be important. The EU has highlighted the importance of UK financial services regulation remaining closely aligned with the EU, for equivalence to be maintained.

The UK draft text included a whole chapter specific to financial services. Market access for financial services would be based on unilateral equivalence decisions that allow mutual recognition of specific activities and types of financial services. The UK proposed that the agreement should promote financial stability, market integrity, and investor and consumer protection for financial services. Moreover, the UK proposed reciprocal most-favoured access for financial services, with no restrictions or limitations and extended this to 'new' financial services, subject to regulatory authorisation. The UK also proposed the establishment of a joint Financial Services Committee, to oversee implementation of the new arrangements and to resolve disputes.

## 5. Digital trade

### 5.1. Background

Digital trade, understood as exports and imports that are digitally ordered and/or delivered,<sup>8</sup> represents an important part of EU-UK economic relations. It encompasses, for instance, cross-border financial services delivered via the internet, retailers that deliver parcels ordered online, and intermediary platforms that match buyers and sellers.<sup>9</sup> Digital trade statistics are currently inconclusive, but according to [UK estimates](#), in 2018 exports of 'potentially information and communications technology (ICT)-enabled services' totalled approximately £221 billion, of which EU-bound exports accounted for about 38 %. At the same time, imports of digital services stood at about £107 billion, with the EU the main origin (39 %). Digital trade chapters in trade agreements seek to address emerging trade barriers, such as customs duties on e-transmissions, localisation requirements, or intellectual property rights infringement. Nevertheless, digital trade did not feature among the most controversial topics in the EU-UK negotiations.

### 5.2. Content of the Agreement

The digital trade chapter (Part Two, [Title III](#)) applies to trade enabled by electronic means, but does not apply to audiovisual services. The parties agree to ban customs duties on electronic transmissions, prior authorisation requirements for services provided by electronic means, as well as requirements on the transfer of source code, except when, for instance, required by a court or competition authorities. Specific provisions facilitate the use of e-contracts, e-authentication and electronic trust services, as well as protection against spam. The parties agreed to apply measures to enhance online consumer protection and trust. Regulatory cooperation is envisaged to tackle the evolving policy space of digital trade. While the UK had proposed to include rules on regulatory and non-regulatory cooperation as well as policy-making related to emerging technologies ('Emerging Technologies Dialogue'), the parties agreed to simply exchange information on regulatory matters concerning this policy area.

As regards cross-border data flows and the protection of personal data, the parties compromised on wording but essentially opted for the EU model ([Chapter 2](#)). They placed a ban on data localisation requirements, but prescribed the primacy of data protection and privacy rules over all trade provisions. Since the EU's [General Data Protection Regulation](#) (GDPR) provides for a selection

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<sup>8</sup> OECD, [Handbook on Measuring Digital Trade](#), 2020.

<sup>9</sup> Cambridge Econometrics, [Digital trade in a post-Brexit Britain](#), 2020.



of mandatory data transfer mechanisms, of which the most convenient and cost-effective mechanisms are currently under development or revision, the parties risked disruptions in cross-

#### Box 4 – Adequacy of the UK's level of data protection?

Independent from FTA negotiations, the parties have been discussing what is called an 'adequacy decision' since 11 March 2020. The effect of a positive European Commission decision on the UK's data adequacy would be that personal data can flow from the EU to the UK, under simplified and less costly conditions. In comparison to other transfer mechanisms available under the GDPR, it is the commercially [least costly](#), although potentially equally [uncertain](#). A positive European Commission decision on adequacy, requires that the third country, here the UK, grants EU data subjects an [essentially equivalent](#) (not identical) level of data protection to that guaranteed by the GDPR and the EU Charter of Fundamental Rights, which is what the UK is currently attempting to [demonstrate](#). Faced with these strict requirements, the UK might feel subject to a certain disciplinary effect of the GDPR – however, only as regards 'personal data of data subjects who are in the Union'.

Although such a decision is in the mutual interest and the cost of inadequacy high ([£1-1.6 billion for UK firms](#)), the UK's legislative framework may not provide an adequate level of protection. These concerns were reinforced by a recent [CJEU judgment](#), which held that the UK's Investigatory Powers Act violates fundamental rights to privacy, data protection and freedom of expression. (For details see Korff and Brown: [The inadequacy of UK data protection law](#) (November 2020) and Patel: [EU-UK Data Flows, Brexit and No Deal: Adequacy or Disarray?](#) (August 2019))

Conversely, the UK has transitionally issued the EU with data adequacy based on a national replication of the GDPR, to enable the convenient export of personal data to (as opposed to importing from) the EU.

border transfers of personal data. To ensure the smooth continuation of EU-UK transfers, the parties included a '[bridging mechanism](#)' in the TCA, which transitionally preserves the status quo (Article [FINPROV.10A](#) TCA). This mechanism delays the applicability of mandatory data transfer mechanisms intended for [third-country](#) data transfers, for up to six months following the entry into force of the Agreement (Article [FINPROV.11](#) TCA), or until the European Commission adopts an adequacy decision. As part of the TCA, which is [based on](#) Article 217 TFEU, the mechanism [outranks](#) secondary law, such as the GDPR, but must be consistent with primary law, such as the EU Charter of Fundamental Rights. Unless the UK is prepared to jeopardise the bridging mechanism, it will refrain from making changes to its data protection regime or exercise international transfer powers without the agreement of the EU for the duration of the transitional arrangement. During this period, the parties will continue to pursue an adequacy decision.

### 5.3. EU and UK negotiating positions

The EU's draft text included a dedicated chapter on digital trade and data flows ([Title VII](#)), while the UK's draft CFTA included similar provisions under [Chapter 18](#). In contrast to the EU, the UK took a more liberal approach, in part as a reflection of [parallel negotiations](#) with the USA, for instance on data transfers. The EU and UK agreed on a number of matters, reaching from a ban on customs duties on electronic transmissions to online consumer protection measures. Provisions on data were among the more contentious areas of the digital trade negotiations. It was clear that, following the end of the transition period, the ease of EU-UK data transfers would depend largely on the trade and adequacy (see Box 4) arrangements between the EU and the UK. In their proposals, the parties disagreed on the extent to which transfers may be limited for public policy reasons, such as data protection and privacy. The UK proposed that the parties commit to the free flow of data, including personal data, while the EU narrowed its commitment to a ban on data localisation requirements,



without prejudice to data protection and privacy measures, including with respect to cross-border data transfers.

The proposals suggested that both parties recognise the economic and social benefits of data protection and privacy rules. While the UK's proposal required that each party adopt or maintain data protection rules, the EU's text left the formal enactment to the discretion of the parties, but stipulated the primacy of data protection and privacy rules over all trade provisions. These distinct approaches reflected the underlying positions: while the EU wants to bolster high standards of data protection, the UK included a formalistic obligation, but left room for manoeuvre in line with its [wavering commitment](#) to GDPR standards post-Brexit.

## 6. Energy

### 6.1. Background

The EU has specific competences in the energy field ([Article 194 TFEU](#)), including common rules for gas and electricity markets, which the UK played an active role in crafting over several decades of EU membership. The EU has a further role in the promotion of renewable energy sources and energy efficiency measures, security of energy supply, and interconnection between national markets. The [European Green Deal](#) envisages that future EU energy and climate policies will reflect the overarching goal of curbing climate change and reaching net zero greenhouse gas emissions by 2050. While the clean energy transition constitutes an important incentive for future EU-UK cooperation, divergent policies could undermine its effectiveness. Energy is also a vital dimension of the future relationship because of the physical interconnection between UK and EU markets. Under the terms of the Withdrawal Agreement, EU rules for electricity markets will continue to apply in full to Northern Ireland because it is part of the single electricity market covering the whole island of Ireland.

### 6.2. Content of the Agreement

The TCA sets out a framework for close EU-UK energy relations, guaranteeing a high degree of mutual access even as the UK leaves the EU single market and customs union.<sup>10</sup> The TCA includes provisions to ensure that electricity and natural gas prices reflect actual supply and demand, by means of transparency and non-discrimination in balancing markets and capacity mechanisms, as well as prohibition of market abuse. The TCA allows third-party access to transmission and distribution networks on the basis of cost-effective, transparent and non-discriminatory tariffs and charges. The TCA commits both parties to upholding the core EU principles of unbundling transmission and distribution networks, as well as independent regulatory authorities. The TCA extends existing exemptions under EU and UK law for electricity and gas interconnectors, and contains provisions to ensure their efficient use in future, with the goal of reaching an EU-UK agreement on their operation by April 2022. However, energy trade will be less efficient and more costly under the TCA. The UK will no longer participate in EU trading mechanisms and transmission system use-fees may be levied on imports and exports. Such fees would be waived for electricity markets once both parties reach a technical agreement for UK participation in EU 'day ahead'

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<sup>10</sup> A separate EU-UK agreement was negotiated to cover [future cooperation on safe and peaceful uses of nuclear energy](#), under the framework of the Euratom Treaty. This includes continued UK participation in the Euratom research programme as well as the multinational ITER project on nuclear fusion, subject to final agreement on the costs of participation.

capacity allocation and congestion management. Prospects for UK participation in EU intraday and balancing markets for electricity are more distant, since these will require a political agreement and new technical procedures. UK participation in EU gas trading mechanisms is not envisaged.

The TCA allows for continued cooperation on network development and security of supply, including sharing of information relating to risk preparedness and emergency plans. The TCA also envisages close technical cooperation between EU and UK transmission system operators and possible administrative arrangements between their regulators, but rules out UK membership of ENTSO-E or ENTSO-G (associations representing electricity and gas transmission system operators in the EU energy market) or ACER (EU body for cooperation of national energy regulators).

The TCA commits both parties to promoting energy efficiency and the use of energy from renewable sources, with the UK reaffirming its commitment to the 2030 targets set out in the national energy and climate plan it had finalised with the European Commission before leaving the EU. Biofuels will also need to meet sustainability and greenhouse gas emission saving criteria, in line with the EU *acquis*. The TCA envisages cooperation on offshore renewable energy, including a specific forum for technical discussions along the lines of the North Seas Energy Cooperation. Both parties will cooperate and share information on offshore safety risks, and cooperate on international standards on energy efficiency and renewables. The TCA clarifies key principles for future trade in energy goods and raw materials, in particular those relating to regulated pricing, export pricing, and authorisation for exploration and production of hydrocarbons and generation of electricity. Both parties agreed key principles relating to environmental and energy subsidies.

While the TCA text closely reflects the EU energy *acquis*, it does not legally oblige the UK to align with future EU energy policies, nor does it extend the main benefits of the single market and customs union to the UK. Nevertheless, energy policies will be subject to the broader provisions of the TCA relating to subsidy control and a level playing field. Regular cooperation between the two parties will take place in a Specialised Committee on Energy, under the framework of the Partnership Council. The energy provisions of the TCA are valid until 30 June 2026, but can be extended by the Partnership Council until 31 March 2027 and annually thereafter. As a result, the energy chapter is more or less linked in time to maintaining access to UK waters in fisheries.

### 6.3 EU and UK negotiating positions

The EU's draft text for the future relationship with the UK included a dedicated part on [energy and raw materials](#). This would have bound the UK to complying with all key principles of the [EU energy acquis](#), as agreed during its period of membership. Each party would have been required to develop a non-discriminatory framework for access to their wholesale *and* retail gas and electricity markets, including third-party access. As in the TCA, transmission and distribution system operators would remain unbundled and overseen by independent regulatory authorities, while cooperation on security of supply would be very extensive. In addition, the UK would have been required to align *and* evolve with EU renewable and energy efficiency targets for 2030. The EU draft text was consistent with the Council mandate and the Parliament resolution on future relations with the UK. Most key principles relating to the EU energy *acquis* were retained in the TCA text, but they were made somewhat less binding on the UK and without the more dynamic alignment (or evolution) initially supported by the EU institutions.

The UK's draft text for an [energy agreement](#) with the EU (May 2020) recognised their common challenges in energy transition but looked to resolve these primarily through consultative mechanisms. More contentious issues would have been resolved by a panel of experts, appointed

by and reporting to an Energy Cooperation Group (ECG) composed of UK and EU representatives. Cooperation in gas and electricity markets would have been mainly voluntary, with both sides committing to non-discrimination, market-based pricing and third-party access to their infrastructure. The UK would have cooperated with the EU on carbon pricing (e.g. linking to the [Emissions Trading System](#), ETS) and offshore hybrid projects. A shared commitment to carbon pricing was ultimately taken up in a different Chapter of the TCA relating to environment and climate change. The UK sought a commitment to minimal restrictions on the operation of electricity interconnectors with the EU, with capacity only curtailed in the event of an emergency. The UK would have continued to participate in all price allocation (coupling) and balancing platforms, take part in compensation mechanisms between transmission system operators, and avoid network charges on individual transactions.

The UK wanted to remain a full member of ENTSO-EU and an observer in ENTSO-G and ACER. The UK envisaged the ECG being the main forum for dispute resolution, without the possibility of cross-cutting retaliation affecting other policy areas. Where ECG could not reach agreement, there would have been recourse to a three-person arbitration panel chosen by both parties.

## 7. Level playing field

### 7.1. Background

As trade tariffs and quotas between two economies are eliminated, competition between businesses increases. To preserve fair competition conditions, FTAs may include level playing field (LPF) provisions, which typically touch upon state subsidies but may also promote the 'convergence' of standards in other relevant areas, such as labour and environment. The EU-UK case is exceptional, since, given that EU law applied to the UK for 48 years, EU and UK regulation was already 'convergent' and only 'divergence' could occur in the short term. To avoid divergence with adverse effects on fair competition, the [Political Declaration](#) stated that the parties should uphold the common EU and UK standards prevailing at the end of the transition, making specific reference to the areas of State aid, competition, social and employment standards, environment, climate change, and relevant tax matters. This commitment is motivated by the context of 'economic interdependence' and 'geographic proximity' between the EU and the UK.<sup>11</sup> The LPF provisions were a major hurdle in the negotiations, especially with respect to State aid as well as social, labour, and environmental standards.

### 7.2. Content of the Agreement

The LPF provisions are set out under [Title XI](#) of Part One and cover six fields: competition, subsidy control (State aid), state-owned enterprises and designated monopolies, taxation, labour and social standards, environment and climate. The initial general provisions recognise the 'common understanding' of mutual benefits of the LPF that prevents distortion of 'trade or investment', and stress that the objective is not to 'harmonise' standards.<sup>12</sup> Interestingly, this first chapter explicitly declares the 'right [of parties] to regulate' and acknowledges the 'precautionary approach'

<sup>11</sup> The EPRS briefing '[EU-UK future relationship: Rules of origin](#)', section 6, describes the geographical motivations for an EU-UK FTA with zero tariffs and quotas to be framed in a sound LPF.

<sup>12</sup> This sentence thus suggests a distinction that 'harmonisation' is not the opposite of 'divergence', which is mentioned as a cause for rebalancing measures. In fact, the issue is the 'material effects', and combining several new pieces of legislation may have zero total effect, even though single pieces of legislation could have significant effects.

(principle) for the environment and human health. Finally, the parties explicitly commit to climate neutrality by 2050.

[Chapter three](#) on subsidy control (State aid) is by far the largest chapter within LPF Title XI. It includes general principles but also provisions on specific sectors such as air carriers and energy. Exceptions to state subsidies prohibition include 'national or global economic emergency' and subsidies in relation to energy and environment aimed at promoting sustainability of the energy system or increasing the level of environmental protection. Subsidies may also be granted in the context of large cross-border or international cooperation for, for example, transport, energy, research and development, and deployment of new technologies.

A party may deliver to the other party a written request for information and consultations regarding a subsidy. The requesting party may unilaterally take appropriate remedial measures. The notified party may request the establishment of an arbitration tribunal in accordance with Part VI, horizontal provisions.

The 'non-regression' principle applies in the two chapters regarding labour and social standards, and environment and climate.

[Chapter eight](#) declares that parties commit to 'other instruments for trade and sustainable development', which affirms commitment to multilateral agreements such as those of the

[International Labour Organization](#) and the [Rio Agenda](#), as well as acknowledgement of the importance of taking urgent action against climate change and to conserve biological diversity. The parties also recognise the importance of [United Nations \(UN\)](#) multilateral environmental governance and agreements, committing to effective implementation of these agreements, and to work together on trade aspects of environmental policies.

The LPF title introduces specific institutional provisions under [Chapter nine](#), which include dispute-settlement procedures applicable to the chapters on social and labour standards and environment and climate, as well as chapter eight on other instruments. The title envisages that, should parties be unable to address disagreements through consultation and dialogue, a party may request that a panel of experts be created to examine the case. Such panels are to be composed of three experts drawn from a list of 15 experts, to be established by the Trade Specialised Committee on the LPF at its first meeting. The list of 15 experts is to be composed of two sub-lists of five experts, each designated by one party, plus a sub-list of five non-nationals of the EU or the UK. Those on the lists are to be experts in the field of labour or environmental law, or other relevant fields.

#### Box 5 – Non-regression from levels of protection

'A Party shall not weaken or reduce, in a manner affecting trade or investment between Parties, its labour and social protection below the levels in place at the end of the transition period, including by failing to effectively enforce its laws and standards.'

Source: [Article 6.2](#), TCA. (labour and social standards)

[Article 9.4](#) makes provision for rebalancing measures in cases where 'significant divergences' arise in the areas of labour and social, environmental or climate protection, or with respect to subsidy control, and which result in 'material impacts on trade and investment'. In

#### Box 6 – The rebalancing principle

'If material impacts on trade or investment between the parties are arising as a result of significant divergences between the Parties in the areas [of labour and social, environmental or climate protection, or subsidy control], either Party may take appropriate measures to address the situation' (extract).

Source: [Article 9.4\(2\)](#), TCA.

this case, the parties may enter into consultation upon notification by the party concerned. Should no mutually acceptable solution be reached, the concerned party may adopt strictly necessary and proportionate 'rebalancing measures'<sup>13</sup> to remedy the 'material impact', unless the other party requests the establishment of an

arbitration tribunal. If after 30 days, the arbitration tribunal has not delivered its final ruling, the party concerned may adopt rebalancing measures, and in that case, the other party may take proportionate counter-measures, until the tribunal delivers its ruling. The tribunal is established in accordance with the horizontal dispute-settlement mechanism under Part six (see Section 2, above)

The LPF provisions therefore not only provide for a rebalancing mechanism against divergences due to decisions 'lowering' standards, but also allow a party to increase their own standards and adopt measures that rebalance the material impact and preserve fair competition. It is noteworthy that these rebalancing measures can be adopted before the arbitration tribunal decision.

### 7.3. EU and UK negotiating positions

The EU and UK positions converged with respect to the definitions and objectives of competition, state-owned enterprises, and taxation (with one exception on tax avoidance). In contrast, substantial divergences surfaced in the areas of social and labour regulation, environmental laws, and the fight against climate change. The EU insisted that the economic and geographic proximity justified a requirement for an EU-UK FTA with zero tariffs and quotas to incorporate LPF provisions that ensure convergence of standards. To this end, the EU draft text affirmed the non-regression principle and future alignment provisions in the areas of social and labour regulation and environmental law. With regard to State aid, the EU draft text provided that the Court of Justice of the EU (CJEU) would have had [jurisdiction](#) for binding rulings on questions of interpretation of EU law in respect of State aid. The [European Parliament](#) held the same position.

The non-regression and future alignment principles were rejected by the UK in its approach, and its draft negotiating text called for the parties to commit to international conventions and reiterated the 'right to regulate', without making provision for any involvement of EU law and bodies for dispute settlement. For instance, the UK draft text reaffirmed the rights and obligations of parties under the WTO agreements, referring implicitly to the [subsidies and countervailing measures dispute-settlement body](#).

<sup>13</sup> The text does not specify which rebalancing measures the parties may or may not adopt.

## 8. Transport

### 8.1. Background

The EU and UK are deeply integrated with regard to the transport of people and goods. The sector is also an important employer for both the EU and the UK. In 2015, the EU-28 transport and storage sector [employed](#) 9.7 million people and employed 1.2 million people in the UK. In 2019, it was estimated that UK residents made [66.9 million](#) visits to EU destinations (72 % of all overseas visits by UK residents) and EU residents made [24.8 million](#) visits to the UK (61 % of all visits to the UK). With respect to [trade in goods](#), the EU accounted for 48 % of goods exports from the UK in 2016, while goods imports from the EU were worth more than imports from the rest of the world combined. Some [75 % of goods](#) were transported by sea (of those, 80 % were carried by heavy goods vehicles (HGVs) loaded on ferries) and 25 % were transported via the Channel Tunnel (of those, 95 % in HGVs loaded on rail shuttles). Of the HGVs travelling between Great Britain and the EU, [80 % are registered in EU](#) countries. An agreement was necessary to maintain connectivity, in particular in aviation and road transport, given the high traffic volumes. In the absence of an agreement, there would have been no legal basis allowing UK and EU air carriers to operate flights between the EU and UK, while the alternative mechanism in the form of the European Conference of Ministers of Transport quota-based licence system is seen as insufficient to sustain previous levels of flows of goods. Meanwhile, ensuring equivalent social and environmental standards in the transport sector has been seen by the EU as a requirement to prevent unfair competition.

### 8.2. Content of the Agreement

For [air transport](#), the TCA allows EU and UK carriers to provide services between points in the EU and the UK, but not between points within the EU or points within the UK for the carriers of the other party. In addition, UK carriers with majority ownership by EU/European Economic Area (EEA)/Switzerland or their nationals, with a licence issued before the end of the transition period, would also be allowed to provide these services. The TCA also allows operators of the two parties to fly over each other's territory and make non-traffic stops. The agreed rights are referred to as the first four freedoms of the air. The Agreement also provides for the possibility of EU Member States and the UK to enter into bilateral arrangements for cargo operations with regard to the fifth freedom of the air (e.g. an EU carrier may make a stop in the UK to provide cargo services between the UK and a third country). In addition, there are provisions that allow '[code-sharing](#)' of operations permitted under the Agreement. A UK carrier would also, for example, be able to sell tickets from London to Vienna via Munich, flying passengers to the intermediate point (Munich), where they are transferred to a flight to Vienna on an aircraft operated by an EU carrier. With regard to [ownership and control](#) rules, the text recognises the potential benefits of reciprocal liberalisation and agrees to examine options for this. The air transport chapter also states that both sides will cooperate to achieve a high level of [consumer protection](#) in areas such as access to information, handling of complaints, assistance, reimbursement and, if applicable, compensation in case of denied boarding, cancellation or delays.

For [transport of goods by road](#), the agreement allows bilateral operations, including transit rights through each other's territories, which also includes the right to cross Great Britain carrying goods between mainland EU countries and Ireland, known as the 'land bridge', for EU operators and transit through EU territory between points in the UK for UK operators. It also permits the following limited number of operations within each other's territories: for UK operators: following an international journey to the EU, up to two operations from one EU country to another ('cross-trade') can be



completed; within an EU country, one operation is allowed for UK operators (known as 'cabotage'), except those registered in Northern Ireland, which can complete two operations within Ireland following an international operation to Ireland. However, the maximum number of operations by UK operators following an international journey to the EU should not exceed two journeys. Following an international journey, EU operators would be allowed to complete a maximum of two journeys within the UK.

The road transport chapter lists the requirements that road haulage operators need to fulfil to receive the operating licences to allow them to carry out the transport operations permitted by the Agreement. These requirements will also start to apply to lighter vehicles with a laden mass of between 2.5 and 3.5 tonnes from 21 February 2022. The Agreement furthermore defines the professional qualification requirements for drivers carrying out such operations and the rules on driving time and rest breaks. The latter will also apply to drivers of lighter vehicles of between 2.5 and 3.5 tonnes from 1 July 2026. These agreed rules mirror the EU rules in place at the end of the transition period. The agreement further stipulates that posting of drivers rules listed in the agreement must be followed (for instance, UK operators must follow posting rules for cross-trade and cabotage operations).

Both road haulage and air transport chapters include specific provisions to ensure a level playing field. The air transport chapter asserts the principle of non-discrimination and outlines the procedure to remove discrimination, including the right to suspend, or limit the operating authorisations for carriers benefiting from the discrimination. The EU and UK agree to cooperate in a Specialised Committee on air transport (see Section 2, above), to remove obstacles to doing business and distortions to competition. The road transport chapter envisages a Specialised Committee on road transport to discuss the compatibility of any new regulatory measures with the Agreement on transport of goods by road. Furthermore, if one side adopts measures that the other side considers non-compliant with the TCA, they may take remedial measures. General level playing field requirements listed in the TCA also have to be respected, such as the commitment not to reduce [social and labour protection levels](#) and [climate and environmental protection](#) levels (see Section. 7, above). The parties also commit to strengthen cooperation on trade-related aspects of labour policies and climate change measures, including in fora such as the International Labour Organization, International Maritime Organization and the International Civil Aviation Organization. With regard to climate policies, the text specifies that this cooperation may include promoting sustainable transport and supporting the development of emission reduction measures in shipping and aviation. It was also agreed that both the EU and the UK would have a [carbon-pricing system](#) in place as of 1 January 2021, which should include aviation within two years at the latest, if not already included.

The TCA also sets out conditions for providing international [bus and coach services](#). These reflect the Protocol of the multilateral Interbus Agreement, which is expected to come into force in 2021, at which point the corresponding chapters in the Agreement will cease to apply. The TCA envisages that both parties allow unrestricted access to the international [maritime](#) markets and trade on a commercial and non-discriminatory basis (for example, access to ports, use of port infrastructure, and container repositioning). National maritime cabotage is excluded. No special provisions on rail transport are stipulated in the Agreement. Cross-border rail services will continue in the short term, as [measures](#) were adopted in December 2020 to extend the certification and licences issued to operators beyond the end of the transition period.



### 8.3. EU and UK negotiating positions

The EU approach to transport services aimed to ensure continued connectivity between the EU and the UK, with limitations on access to the EU's internal transport services market. For air transport, the EU's position envisaged freedom to provide services between points in the UK and points in the EU, with the Council [specifying](#) that UK operators should not have the same rights in the internal market as EU operators. Elements included in the fifth freedom of the air could be considered if balanced with 'corresponding obligations'. Similarly, on road transport, the EU proposed allowing point-to-point operations between the EU and UK, with the Council [stressing](#) that UK operators should not have the same rights within an EU Member State (cabotage) and between EU Member States (cross-trade). The draft agreement tabled by the European Commission did not elaborate on arrangements for rail transport, but the Council directives [stated](#) that the partnership should address, if necessary, the specific situation of the Channel Tunnel and the Belfast-Dublin 'Enterprise' line. On maritime transport, the draft agreement [envisaged](#) mutually unrestricted access to the international maritime markets and trade. The Council further [stressed](#) that specific provisions were needed to ensure that the existing level of protection for operators and drivers (including social rules) in road transport would not be reduced. It also envisaged sector-specific level playing field rules for aviation and international maritime transport. On climate protection, the draft agreement [proposed](#) that both sides commit to no reduction in the existing level of protection, including for transport, while stating that a UK carbon-pricing system should be of at least the same scope as the EU Emissions Trading System (ETS).

The UK position provided for liberalised market access for air services on a reciprocal basis whereby, as a minimum, UK and EU airlines would be able to operate services between points in the UK and points in the EU without frequency and capacity restrictions. For road haulage and transport of passengers by bus and coach, the UK approach [proposed](#) a liberalised market for road transport between and through the UK and the EU. The UK approach contained no specific provisions on rail and maritime transport. In addition, the UK position made no mention of the level playing field concept, but proposed reciprocal commitments not to weaken environmental and labour standards to encourage trade and investment. However, while UK road hauliers and passenger transport operators would be expected to comply with the relevant international rules when operating outside the UK, as a third country, the UK position stated it should not be required to follow EU standards. Similarly, on aviation, the UK approach [envisaged](#) cooperation in social aspects, but also the right of each party to establish its own level of domestic labour protection. The UK was also open to [considering](#) a link between any future UK ETS and the EU ETS, if that suited both sides' interests.

## 9. Social security coordination and visas for short-term visits

### 9.1. Background

Free movement of persons is a fundamental principle of the single market, allowing EU citizens to travel freely from one country to another, and to live, work and study in any Member State. Movement rights are set out in [Directive 2004/38/EC](#), according to which, to stay in another EU country, only a valid identity document is required. EU citizens do not need a residence permit (although they may need to register on a similar basis to nationals of the host Member State). After they have stayed for five years they are able to apply for permanent residence, subject to certain conditions. To facilitate free movement, specific EU legislation gives EU citizens access to benefits, healthcare and pensions while living in other Member States.

Early in the negotiations, it became clear that the UK would not accept continued free movement for all citizens. However, the Withdrawal Agreement guarantees that UK citizens and their families who have already exercised their right to live in an EU Member State before the end of the transition period can stay in that Member State; in the UK, EU citizens who became permanent residents before December 2020 can stay under similar conditions as before; those who did not have to register for an EU [Settlement Scheme](#), which will eventually give them the option of permanent residence.

The situation does not change for travel between the UK and Ireland, as the UK-Ireland [Common Travel Area](#) allows Irish and British citizens to travel, live and work in the two countries, regardless of EU citizenship. The WA confirms that the Common Travel Area remains intact.

The WA only covers the situation of EU citizens already resident in the UK by the end of the transition period (and vice-versa). For the rest of the population, mobility is regulated by the TCA.

## 9.2. Content of the Agreement

On short-term travel, the Agreement states that, on the date of its entry into force, short-term travel (currently up to 90 days) by EU and UK nationals remains visa-free. EU Member States and the UK have the right to introduce visas for short-term travel in future, but must give at least three months' notice before doing so. If the UK decides to introduce visas, it must apply the same requirements to all EU Member States.

For business travel, subject to certain conditions, the TCA allows 'EU and UK nationals to travel and stay for business purposes' (in WTO terminology, [Mode 4 services trade](#)), without requiring work permits. This includes business visitors for the purposes of setting up a company, contractual service providers, independent professionals, intra-corporate transferees and short-term business visitors. For example, a company may send managers and specialists to work in offices abroad for a period of up to three years. All other kinds of travel – including for research, study, training and youth exchanges – are outside the scope of the TCA, and therefore subject to the conditions set out in EU and individual Member States' law applicable to non-EU citizens, or in UK law, as appropriate.

Finally, on social security coordination, the TCA provides for coordination on pensions, and other kinds of benefits such as sickness, disability and unemployment benefits. As a result, persons moving between the UK and EU would only pay contributions to one country at a given time, and are subject to the social security rules of that country, even if they have lived and worked in other countries. UK nationals can continue drawing benefits while living in EU countries, and vice versa. Moreover, periods worked in the UK count towards benefits in the country of residence. Pensions paid to UK nationals living in the EU will continue increasing in line with pensions back home.

The TCA does not cover child benefits, income support and other kinds of non-contributory benefits, which are dealt with under national legislation.

Those EU and UK nationals on short-term stays continue to have access to emergency healthcare. However, the TCA does not cover healthcare during longer stays. EU nationals living in the UK will therefore have to pay the same healthcare surcharge as other third-country nationals living in the UK. However, the surcharge will be refunded for students, EU state pensioners living in the UK, and cross-border workers who live in an EU country but work in the UK.

### 9.3. EU and UK negotiating positions

On short-term travel, the EU envisaged continued visa-free travel by UK citizens to the EU, and EU citizens to the UK, for up to 90 days. The UK text did not mention short-term travel; nevertheless, [guidance](#) issued by the UK government in autumn 2020 confirmed that trips of up to 90 days would remain visa-free.

For other kinds of travel, the EU's proposals were considerably more ambitious, and envisaged a certain amount of continuity with the status quo. For example, the EU text envisaged the possibility for the two sides to establish reciprocal conditions for temporary migration exceeding 90 days for the purposes of research, study, training and youth exchanges.

Such provisions were completely absent from the UK text, which only envisaged facilitating business travel for the purposes of Mode 4 services trade.

On social security, the UK text envisaged 'practical, reciprocal provisions on social security coordination', similar to the existing UK arrangements with non-EU countries, with an emphasis on business travel and cross-border workers. The EU envisaged coordination for a broader range of people living in a cross-border situation.

## 10. Fisheries

### 10.1. Background

Marine fishing has developed for centuries on the basis of the idea of free access to fishing resources, and particularly in the North-East Atlantic, fish stocks have traditionally been exploited in remote areas. The first EU fisheries policy regulations were introduced in 1970 and established the principle that fishing vessels have equal access to all EU waters. With the 1973 accession of the UK, Ireland and Denmark, a 10-year derogation to this principle was introduced to reserve access for local fleets within 12 nautical miles of the coast. In 1977, Member States expanded their fishing zones along the Atlantic and North Sea coasts, declaring an exclusive economic zone (EEZ) of up to 200 nautical miles, in line with the international trend. The need arose to manage these new common resources and allocate fishing rights. The EU common fisheries policy ([CFP](#)), officially created in 1983, introduced a system of total allowable catches ([TACs](#)), distributed as quotas among Member States. The quota shares were based on the principle of 'relative stability', reflecting the share of catches in those areas by the different countries before the adoption of the CFP. Regarding the principle of free access, the derogation within the 12-mile zone remained, allowing coastal states to reserve access to the first six miles for their own national fleets, while permitting the continuation of fishing activities by other Member States in the zone between 6 and 12 miles. This derogation has been maintained and [renewed](#) with each CFP reform. Based on [2012-2016 data](#), about 48 % of the landed weight from UK waters was caught by EU vessels (mainly from Denmark, the Netherlands, France, Ireland and Germany, but also Sweden, Belgium, Spain and Lithuania), 37 % was caught by UK vessels, and the remaining 16 % mainly by Norwegian vessels. However, in terms of value, the share of the UK landings is 51 %, as UK vessels land more high-price species (such as shellfish and haddock), while EU vessels land 38 % (with France landing the largest share of the EU value), and Norwegian vessels 11 %. In comparison, the UK takes about seven times less catch from EU waters than the EU from UK waters in terms of weight, and about five times less in terms of value.

Fishery and aquaculture products are one of the [most traded](#) products in the world and the EU, by far the largest importer of such products, is the first and most attractive [market](#). The UK is a major supplier to the EU, ranked third after Norway and China (in value in 2019).<sup>14</sup> Overall, about two-thirds of the total value of UK seafood exports goes to EU countries, with France as the main importer.<sup>15</sup> Salmon is by far the most exported species from the UK. Other important species exported by the UK are lobsters, nephrops (scampi), crabs, mackerel and scallops.

The issue of access to waters and relative stability re-emerged as a highly sensitive element in the discussions on the future EU-UK relationship. The EU and the UK share some 100 stocks, for which they must seek agreement on the coordination of conservation and management measures under the United Nations Convention on the Law of the Sea ([UNCLOS](#)). Coastal states have further obligations under UNCLOS to grant fishing access to other states if they do not have the capacity to harvest their entire allowable catch and to take into account, inter alia, 'the need to minimise economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks'. Fishing remained one of the main sticking points until the very end of the EU-UK negotiations. At stake were EU catches in UK waters and the possible introduction of tariffs that would particularly affect exports of UK fishery and aquaculture products to the EU internal market. The European Fisheries Alliance [estimated](#) that a termination of EU fishing rights in UK waters would reduce the profit for the affected fleets by about 50 %. The absence of a trade agreement would have led to the application of standard WTO tariffs, which depend on the species and its level of preservation and processing. For example, a WTO rate of 2 % applies to fresh and frozen salmon, while it is 25 % for prepared or preserved mackerel. Non-tariff measures could create an even greater barrier to trade, especially for fresh fish and shellfish.<sup>16</sup> An exception are exports from Northern Ireland that, following the [Northern Ireland Protocol](#) agreed between the UK and the EU, can continue to enter the EU single market without tariffs, customs checks or requirements. A number of studies modelled the impact of Brexit on the seafood trade in different scenarios.<sup>17</sup> Overall, given the great importance of the EU markets for UK fishery and aquaculture products, the application of tariffs and non-tariff measures would reduce the profit gains the UK could make through a higher share of catch quotas. Sectors producing farmed (e.g. salmon) and non-quota species (e.g. crab and scallop) would not be able to benefit from increased quota and would suffer only the negative consequences, leading to a reduction in export value.

## 10.2. Content of the Agreement

The new agreement between the EU and UK provides that there are no tariffs on trade in goods, including fishery and aquaculture products, and that EU vessels can continue to fish in UK waters, but that UK vessels will have a larger share of catches. Both sides have agreed on a gradual shift of quota shares from the EU to the UK, worth 25 % of the EU's catch value in UK waters, over a five-year period (2021-2025). The TACs for each of the stocks will have to be agreed following annual negotiations and 'on the basis of the best available scientific advice, as well as other relevant factors,

<sup>14</sup> Own calculations based on Eurostat's reference database on international trade in goods ([COMEXT](#)), which is also used by the European Market Observatory for fisheries and aquaculture ([EUMOFA](#)) as the source for trade statistics.

<sup>15</sup> In trade policy, it is important to keep in mind that fishery catches are considered 'specific', given that the criterion for production and trade is not necessarily linked to the origin of the good, but to the ownership of the catching vessel.

<sup>16</sup> According to the Scottish salmon producers' organisation, the cost of the export health certificate for that sector would be [£1.3 million and £8.7 million](#) per year, with additional border delays giving international competitors an advantage (in particular Norway is fully harmonised with EU food hygiene legislation through the European Economic Area Agreement, meaning their fish can be imported into the EU without veterinary border controls).

<sup>17</sup> e.g. [Impact of hard Brexit on European fisheries](#) (Wageningen University) and [Seafood Trade Modelling Research Project - Assessing the Impact of Alternative Fish Trade Agreements Post EU-Exit](#) (Marine Scotland).

including socio-economic aspects; and in compliance with any applicable multi-year strategies for conservation and management agreed by the Parties'. Once the TACs have been agreed, they are to be allocated according to the agreed quota shares. The annual consultations however may also cover, inter alia, exchanges in quotas, the prohibition of certain fisheries or the fixing of TACs and quota shares for non-quota stocks. The agreement also provides for a protocol to guarantee access to each other's waters until 30 June 2026. The continued access to waters will not only be granted to EU vessels targeting quota species in the UK's EEZ of 12 to 200 nautical miles from the coast, but also for vessels fishing non-quota stocks and for vessels fishing traditionally in the territorial zone between 6 and 12 nautical miles (based on historical data). After 30 June 2026, access to waters will be granted following the annual negotiation of TACs. In case of a withdrawal or reduction of access rights, compensatory measures can be used, which may lead to the introduction of tariffs. The Agreement also provides for a joint review of the entire fisheries section four years after June 2026, which may be repeated every four years thereafter, to allow for an evaluation of, inter alia, the provisions on access to waters and quota shares. Any change to the section, including amendments to the quota shares, can only be made with the agreement of both parties.

While the UK has left the CFP and is [establishing](#) its own conservation and management measures, the Agreement also contains a number of provisions on cooperation in fisheries management, such as the general objectives of exploiting shared stocks at levels that can produce the maximum sustainable yield, of avoiding or reducing by-catch, and of ensuring selectivity in fisheries to protect juvenile fish. It also lists the possible tasks of a specialised joint committee on fisheries, such as the development of multiannual strategies for conservation and management of stocks, approaches for data collection and joint monitoring and control.

### 10.3. EU and UK negotiating positions

The UK wanted to reopen the issue of relative stability, with the aim of obtaining a higher share of quota allocations, and proposed a separate agreement on fisheries, including access to waters, catch limits and cooperation on fisheries management, while the FTA would have covered trade in fisheries products. The [UK draft fisheries agreement](#) reaffirmed the UK's [objective](#) of being recognised as an independent coastal state. It envisaged that the current fixed quota regime would end, while future quota sharing would be based on the principle of zonal attachment. This concept has also been applied in the management of shared stocks with Norway and aims to allocate fish to a coastal state based on a scientific assessment of the zones in which the stock is mainly located. Application of this principle would have implied that the quota shares themselves would be the subject of annual negotiations, rather than just the total catch limits.

However, for the EU, a fisheries agreement that builds on reciprocal access and quota shares was a condition for a comprehensive trade agreement that includes fish products. Access to waters was therefore linked to access to markets. The draft EU text included [provisions](#) for continued access to waters and fixed quota shares, while non-compliance would lead to the suspension of tariff concessions 'equivalent to the impairment caused by the noncompliance', a principle reflected in the final agreement. Regarding the quota shares themselves, the European Parliament's [recommendation](#) stated firmly that shares should be included in the agreement according to the principle of relative stability.

While there are no detailed official reports on the negotiation positions, [press reports](#) indicated that at a late stage of the negotiations, the EU had conceded a 15-18 % reduction in EU quotas in the UK's EEZ, while the UK was initially aiming for an 80 %, then 60 % reduction. A transition period to allow for a gradual reduction and a guarantee of some stability beyond that period were also part



of the discussions, with the EU calling for a transition of seven to eight years, while the UK suggested three years. Ultimately, the EU proposed a 25 % reduction in catch value over a six-year period, which was further cut by one year in the final compromise. The EU has obtained some assurance on access to waters, which are safeguarded by compensation arrangements. While the UK wanted to exclude EU fishing boats from their territorial waters, the EU was also granted continued access in part of the 6-12 miles zone.

## 11. Law enforcement and judicial cooperation in criminal matters

### 11.1. Background

The EU has built up significant [cooperation](#) in the area of criminal justice and law enforcement cooperation, in particular by adopting common instruments based on the principle of mutual recognition. Since December 2014, the wider Area of Freedom, Security and Justice (AFSJ) is subject to the Community method, including the competence of the CJEU, and underpinned by the EU Charter of Fundamental Rights. While the UK has brought significant expertise to this area, during its EU membership, the country also negotiated opt-outs from AFSJ measures, wary of further integration in this field. Prior to its withdrawal from the EU, the UK participated in AFSJ measures including the [European Arrest Warrant](#) (EAW), which allows for recognition between Member States of judicial extradition decisions; the law enforcement part of the Schengen Information System (SIS II); the European Criminal Records Information System (ECRIS); EU passenger name records (PNR); [Europol](#) (the EU law enforcement cooperation body); Eurojust (the EU judicial cooperation body); joint investigation teams (JITs); the European Protection Order and the European Investigation Order; the mutual recognition of freezing and confiscation orders; as well as in some directives approximating substantive criminal law (e.g. on the sexual exploitation of children) and procedural law (e.g. on suspects' right to interpretation and translation). The UK had also rejoined the Prüm system of exchange of [DNA](#), vehicle registration and [fingerprint](#) data.

While the UK has used some EU criminal law [instruments](#) intensively (e.g. the EAW), it also contributed significantly to the EU databases and supported the development of Europol and Eurojust. Therefore, failure to reach agreement in this area after the end of the transition and reverting to the use of Council of Europe (CoE) [instruments](#) would have greatly reduced the level of cooperation and [operational](#) effectiveness as regards fighting cross-border crime for both the EU and the UK.

### 11.2. Content of the Agreement

The TCA manages to maintain close [links](#) in this area, despite the exchange of information becoming less fluid. [Part Three](#) contains extensive [provisions](#) on law enforcement and judicial cooperation in criminal matters, including a surrender mechanism replacing the EAW, data sharing and cooperation with Europol and Eurojust, but with reduced UK access to EU databases:

- Automated exchange of DNA, fingerprint and vehicle registration data (Prüm), via national contact points. The EU will determine the date as of when further related personal data may be sent by Member States to the UK, following an evaluation report and visit; an interim period of nine months, renewable once, is established.
- UK [access](#) to EU passenger name records (PNR), subject to safeguards on the use and storage of the data. The UK must share, in exchange, analysis of PNR files with Europol,

Eurojust and Member States' authorities. The UK has a temporary derogation to make the necessary technical adjustments for the deletion of PNR files, which ceases after three years. PNR-related cooperation may be suspended, after notification and six months of consultation.

- Cooperation on operational information, if not provided for elsewhere in the Agreement.
- Cooperation with Europol and Eurojust, on a third-country model: UK members are replaced by liaison officers (Europol), a liaison prosecutor and assistants (Eurojust). Data transfers must comply with the Europol Regulation. Working and administrative arrangements will establish other details (e.g. security of information exchange).
- Surrender mechanism replacing the EAW, and [mirroring](#) the [EU-Norway/Iceland agreement](#). Unlike the EAW, states may refuse to surrender their own nationals or execute a warrant for political offences; double criminality (i.e. the acts must also constitute an offence under the law of the executing state) is required, although it may be waived in certain cases (offences also listed by the EAW). Nevertheless, a surrender request must be executed for some offences, such as terrorism, or participating in a criminal group in relation to drug trafficking, murder, kidnapping, etc.
- Mutual assistance provisions aim to supplement the related [CoE convention](#) and additional protocols. UK participation in JITs is subject to EU law.
- Exchange of information on criminal records to take place between state authorities, generally once a month, with special requests replied to within 20 days; this implies no direct UK access to ECRIS.
- Cooperation on freezing and confiscation of assets and proceeds, in the framework of criminal investigations and proceedings.
- Anti-money-laundering and counter-terrorism financing obligations (AML).

The Agreement does not include direct UK access to EU databases and information systems, such as SIS II, ECRIS and the Europol information system, as the UK had requested. On the other hand, the EU conceded that the dispute resolution mechanism applying to this part of the agreement would not involve a role for the CJEU (see below). Moreover, data sharing will rely on EU adequacy decisions – under the [General Data Protection Regulation](#) (for PNR and AML) and the [EU Police Data Protection Directive](#) (for the rest of Part Three). Pending the European Commission's adoption of the adequacy decisions, during an [interim period](#) of four months after the Agreement's entry into force, extendable to another two months, the UK will not be considered a third country for the purposes of data transfers, provided that it does not modify its data protection legislation in place as of 31 December 2020.

Part Three of the TCA can be suspended or terminated by written notification through diplomatic channels. The Part is terminated on the ninth month from notification; if the UK or a Member State denounces the ECHR or its Protocols [1](#), [6](#) or [13](#), termination occurs on the date of such denunciation, or after 15 days if the notification of its termination is made after that date. The Part may be suspended in cases of serious and systemic deficiencies regarding fundamental rights and rule of law, as well as regarding the protection of personal data (after notification).

Finally, Part Three has a specific dispute-settlement mechanism that excludes a role for the CJEU. Instead, in case of dispute, consultations will be held within the Specialised Committee on Law Enforcement and Judicial Cooperation overseeing Part Three, or the Partnership Council overseeing the entire agreement. If no mutually agreed solution is found within a certain timeframe, the party that considers the other party to be in serious breach of an obligation under this Part may suspend cooperation under the respective title, after written notification. The other party may suspend cooperation under all the remaining titles, after notification.



## 11.3. EU and UK negotiating positions

Both the EU and the UK expressed their wish to enter a [future partnership](#) to fight organised crime and terrorism, but the special status sought by the UK and the limits set by EU law and existing third-country cooperation strained the negotiations. Moreover, the EU insisted that the UK remain a party to the European Convention on Human Rights (ECHR), a [controversial](#) topic in the UK, whereas the UK rejected a role for the CJEU in dispute resolution. The [UK](#) and [EU](#) positions became largely aligned at the start of 2020, despite remaining contentious points, such as UK adherence to the ECHR and its direct access to databases set up under EU law (e.g. SIS II and ECRIS).

## 12. Participation in Union programmes

### 12.1. Background

Regarding the EU budget, the WA establishes that the UK will honour its share of financing of the EU's liabilities incurred before the end of the transition, including those stemming from the 2014-2020 multiannual financial framework (MFF). On this basis, the UK will continue to take part in 2014-2020 Union programmes until their closure. The WA sets out the principles underpinning the financial settlement that allow payments to be calculated as they become due.<sup>18</sup>

With regard to participation in future EU programmes, the Protocol on Ireland and Northern Ireland recalls the EU and UK commitment to financing the [PEACE PLUS programme](#), which will build on the current PEACE and INTERREG programmes. The financing key is to be the same as that applied to the current programmes. In August 2020, British Cabinet Office Minister [Michael Gove](#) announced UK financing worth £300 million for peace, prosperity and reconciliation projects on the island of Ireland under PEACE PLUS. In December 2020, during negotiations for the TCA, the [UK government](#) announced an additional £200 million for the scheme, bringing the total UK commitment for PEACE PLUS to over £500 million. Possible UK participation in other post-2020 EU programmes has been negotiated as part of the Agreement on the future relationship.

### 12.2. Content of the Agreement

Part Five of the TCA sets principles, terms and conditions for UK participation in a number of Union programmes, subject to the conditions set out in the corresponding instruments. This framework includes provisions on sound financial management (e.g. audit and control) and financial aspects. Participation in the programmes will be that of a third country and is subject to a financial contribution to the EU budget by the UK, based on a contribution key linked to the EU and UK's respective gross domestic product (GDP). In addition to the operational contribution, the UK will pay a participation fee, calculated as a share of the former. Rules for suspension and termination of participation are established. Part Five does not apply to UK participation in cohesion programmes, such as PEACE PLUS, under the European territorial cooperation goal.

Separate protocols include the lists of 2021-2027 programmes, activities and services involved: Protocol I (Programmes and activities in which the UK participates); and Protocol II (UK access to services established under certain programmes and activities). A Specialised Committee on

<sup>18</sup> Related payments, for which the UK will remain liable to the EU beyond 2020, are impossible to estimate precisely for a number of reasons, such as the fact that they will result from out-turns (e.g. pensions for retired EU staff).

Participation in Union Programmes is in charge of a number of tasks under Part Five, including adoption of the Protocols.

The EU and UK could not finalise Protocols I and II during the TCA negotiations, pending the adoption of the MFF and relevant EU programmes for 2021-2027. A [joint declaration](#) provides the draft of both protocols, which were agreed in principle and will be submitted to the Specialised Committee for discussion and adoption. Both parties reserved their right to reconsider participation in the programmes and activities listed in the draft protocols. As for PEACE PLUS, this will be the subject of a separate financing agreement, while commitment to this programme is underlined.

Based on draft Protocol I, the UK is expected to participate in four programmes and activities in the areas of research, innovation and space:

- Horizon Europe;
- the Euratom Research and Training programme;
- the ITER fusion test facility; and
- the Copernicus earth monitoring system.

Article 2 of draft Protocol I sets the duration of UK participation in the programmes, tying it to their specific duration or to the duration of the 2021-2027 MFF, whichever is shorter. Articles 3-8 set specific terms and conditions for UK participation in the listed programmes, including: limited access as authorised user to the Copernicus Security Service components, to the extent the cooperation between the parties in the relevant policy areas is agreed; exclusion of the UK and UK entities from the European Innovation Council (EIC) Fund established under Horizon Europe; and detailed rules for the application of the automatic correction mechanism to Horizon Europe, which may trigger additional UK contributions to the programme if certain conditions apply. Article 9 enables EU entities to participate in UK programmes equivalent to Horizon and nuclear research, based on reciprocity. Article 10 sets rules on intellectual property.

The list in draft Protocol I does not include the Erasmus+ programme in the field of education. Both EU and UK stakeholders [regretted](#) the UK's exit from the scheme. A few days after the deal on the TCA, [Ireland](#) announced that it would enable students from Northern Ireland institutions to study in the EU under Erasmus+, by allocating some €2.1 million annually to finance their participation.

Draft Protocol II sets the rules for UK access to services under EU programmes and activities, in which the UK does not participate. It concerns EU' Satellite Surveillance & Tracking (SST) services, setting the duration of and specific conditions for access along lines similar to draft Protocol I.

### 12.3. EU and UK negotiating positions

According to the Council's [negotiation directives](#), the partnership envisaged should establish general principles, terms and conditions for UK participation in and contribution to Union and Euratom programmes, in areas such as science and innovation, youth, culture and education, development and international cooperation, defence capabilities, civil protection, space and other relevant areas, when in the Union's interest. This was to include the general rules for the financing and the control and audit of the implementation of the programmes, as well as appropriate consultation of the UK. In addition, the partnership should ensure shared commitment to delivering a new PEACE PLUS. The [European Parliament](#) stressed that the rules for UK participation in EU programmes would be the rules applicable to third countries outside the EEA, noting that participation should not confer any decisional power on the UK. The importance of preserving the benefits of the PEACE programme was underlined. The Parliament encouraged UK participation in

cross-border, cultural, development, education and research programmes, while stressing that any UK participation should not entail net transfers from the EU budget to the UK. In addition, appropriate provisions, including on audit and controls, should ensure the protection of EU financial interests.

The [UK](#) was ready to consider standard third-country participation in the Horizon Europe, Euratom Research and Training, and Copernicus programmes. As for EU Space Surveillance and Tracking and the European Geostationary Navigation Overlay Service, the UK would consider service access agreements. With regard to Erasmus+, the UK intended to consider options for participation in some strands on a time-limited basis. The UK added that any agreements relating to Union programmes should contain fair terms for its participation, while repeating its commitment to PEACE PLUS.

## 13. Annex – Summary of the main points in the Agreement and the negotiating positions

Area	Content of the Agreement	EU negotiating positions	UK negotiating positions
<b>Trade in goods</b>	<ul style="list-style-type: none"> <li>- zero tariffs and quotas;</li> <li>- cumulate intermediate goods of EU and UK origin only (bilateral).</li> </ul>	<ul style="list-style-type: none"> <li>- zero tariffs and quotas;</li> <li>- cumulate origin between EU and UK only (bilateral);</li> <li>- unilateral determination of equivalence of SPS measures.</li> </ul>	<ul style="list-style-type: none"> <li>- zero tariffs and quotas; some tariffs in exchange of less stringent LPF provisions;</li> <li>- cumulate origin EU, UK and other FTA partners (diagonal).</li> </ul>
<b>Digital trade</b>	<ul style="list-style-type: none"> <li>- applies to trade enabled by electronic means, with carve-out for audiovisual services</li> <li>- provisions on e-authentication, e-signatures, e-contracts recognition</li> <li>- ban on customs duties on e-transmissions</li> <li>- ban on data localisation requirements, but primacy of data protection and privacy rules</li> </ul>	<ul style="list-style-type: none"> <li>- would apply to trade enabled by electronic means, with carve-out for audiovisual services</li> <li>- provisions on e-authentication, e-signatures, e-contracts recognition</li> <li>- ban on customs duties on e-transmissions</li> <li>- ban on data localisation requirements; primacy of data protection and privacy rules</li> </ul>	<ul style="list-style-type: none"> <li>- would apply to trade enabled by electronic means, with carve-outs for gambling, notaries, legal representation and, partially, procurement</li> <li>- provisions on e-authentication, e-signatures, e-contracts recognition</li> <li>- ban on customs duties on e-transmissions, with reservation of rights to impose internal taxes or fees or charges</li> <li>- free flow of data, including personal data</li> </ul>
<b>Financial services</b>	<ul style="list-style-type: none"> <li>- very limited provisions on financial services.</li> <li>- the bulk of provision will be based on unilateral equivalence decisions with regard to specific activities and types of financial services.</li> <li>- Joint Declaration: commitment to pursue regulatory cooperation, including transparency and dialogue on equivalence decisions. A framework for this is due to be agreed by March 2021 in a Memorandum of Understanding (MOU).</li> </ul>	<ul style="list-style-type: none"> <li>- market access for financial services should be based on unilateral equivalence decisions with regard to specific activities and types of financial services</li> <li>- importance of UK financial services regulation remaining closely aligned with the EU, for equivalence to be maintained</li> </ul>	<ul style="list-style-type: none"> <li>- market access for financial services based on unilateral equivalence decisions that allow mutual recognition of specific activities and types of financial services</li> <li>- promotion of financial stability, market integrity, and investor and consumer protection for financial services</li> <li>- reciprocal access for financial services, with no restrictions or limitations, extended to 'new' financial services, subject to regulatory authorisation</li> <li>- joint Financial Services Committee, to oversee implementation of the new arrangements and to resolve disputes</li> </ul>

<b>Energy</b>	<ul style="list-style-type: none"> <li>- apply key principles of EU <i>acquis</i>. Non-discriminatory access to wholesale markets only.</li> <li>- efficient use of existing interconnectors. UK could participate in EU 'day ahead' electricity trading, after technical agreement is reached.</li> <li>- energy policy part of the main TCA, plus linked in time to future access agreement on fisheries.</li> <li>- no UK membership of ENTSO-E/G or ACER but with possibility for future cooperation.</li> </ul>	<ul style="list-style-type: none"> <li>- apply key principles of EU <i>acquis</i>. Non-discriminatory access to respective wholesale and retail energy markets.</li> <li>- coordination of gas and electricity interconnectors. No UK participation in EU trading mechanisms.</li> <li>- energy policy part of the main TCA.</li> <li>- no UK membership of ENTSO-E/G or ACER.</li> </ul>	<ul style="list-style-type: none"> <li>- full policy autonomy but with voluntary cooperation on market access, apply principle of non-discrimination.</li> <li>- UK participation in all EU trading mechanisms for EU-UK electricity interconnectors. Cooperation on gas.</li> <li>- separate energy agreement, no cross-cutting retaliation, panel arbitration.</li> <li>- UK membership of ENTSO-E and observer status of ENTSO-G and ACER.</li> </ul>
<b>Level playing field</b>	<ul style="list-style-type: none"> <li>- non-regression provisions in social, labour and environmental areas</li> <li>- rebalancing mechanism in the same fields and State aid: 'material impact on trade and investment' as a result of 'significant divergence'</li> <li>- dispute settlement based on panel of experts (non-regression) and arbitration tribunal (rebalancing)</li> </ul>	<ul style="list-style-type: none"> <li>- non-regression and future alignment principles in labour and environment areas</li> <li>- CJEU binding jurisdiction on EU law on State aid</li> </ul>	<ul style="list-style-type: none"> <li>- international standards only</li> <li>- right to regulate</li> </ul>
<b>Transport</b>	<ul style="list-style-type: none"> <li>- EU and UK air carriers allowed to carry passengers and goods between points in the EU and UK, make non-traffic stops and fly over each other's territories ('3rd and 4th freedom of the air'); bilateral agreements between EU Member States and UK possible for 'fifth freedom' cargo operations;</li> <li>- EU and UK transport road haulage operators allowed to transport goods between points in the EU and UK and transit through territories; UK and EU hauliers allowed to perform up to two operations in each other's territories (max. one cabotage for UK hauliers in EU); while Northern Ireland hauliers can complete two cabotage operations in Ireland)</li> <li>- specific level playing field provisions</li> <li>- conditions for providing international passenger road transport services</li> </ul>	<ul style="list-style-type: none"> <li>- basic bilateral point-to-point connectivity in air transport with possibility of fifth freedom in case corresponding obligations are met</li> <li>- bilateral point-to-point road connectivity, no access to the EU internal market</li> <li>- specific provisions ensuring protection of operators and drivers in road transport sector is not reduced and specific level playing field provisions for air transport</li> <li>- general level playing field requirements, including on social and environmental standards</li> </ul>	<ul style="list-style-type: none"> <li>- liberalised market access for air services on a reciprocal basis; as a minimum, UK and EU airlines to operate services between points in the UK and points in the EU</li> <li>- liberalised market for road transport between and through the UK and the EU</li> <li>- no mention of level playing field concept; cooperation on social aspects, but autonomy to establish own rules on labour protection</li> </ul>

	- principle of open access in provision of international maritime services		
<b>Social security coordination and visas for short-term visits</b>	<ul style="list-style-type: none"> <li>- visa-free short-term tourist travel, but with the option of future visa requirements</li> <li>- facilitation of temporary migration only for business purposes</li> <li>- social security coordination for pensions, unemployment and disability benefits. Short-term travellers have the same kind of access to emergency healthcare as before. Students, pensioners and cross-border workers have continued access to longer-term healthcare.</li> </ul>	<ul style="list-style-type: none"> <li>- visa-free short-term tourist travel</li> <li>- possibility to facilitate temporary migration for purposes such as research, study, training, youth exchanges, as well as for business travel</li> <li>- social security coordination for a broad range of people living in cross-border situations.</li> </ul>	<ul style="list-style-type: none"> <li>- short-term tourist travel: not mentioned</li> <li>- possibility to facilitate temporary migration for business purposes (Mode 4 services trade); no other kinds of temporary migration are mentioned</li> <li>- limited social security coordination, for Mode 4 services trade and cross-border workers in particular.</li> </ul>
<b>Fisheries</b>	<ul style="list-style-type: none"> <li>- single agreement linking access to waters with that to markets, and zero tariffs on trade in goods</li> <li>- a gradual shift of EU quota shares to the UK, worth 25 % of EU's catch value in UK waters (phased-in 2021-2025)</li> <li>- access to UK waters is guaranteed until June 2026, after which it is subject to annual negotiation of TACs</li> <li>- the EU has legal means to compensate for reduced access to UK waters (e.g. through tariffs)</li> <li>- historic access for EU vessels is maintained in part of the 6-12 mile zone</li> </ul>	<ul style="list-style-type: none"> <li>- a comprehensive trade agreement linking reciprocal access to waters with access to markets</li> <li>- fixed quota shares in accordance with the principle of relative stability</li> <li>- a level of legal certainty about access to waters, where non-compliance would lead to suspension of tariff concessions</li> <li>- a continuation of access rights for EU vessels in the UK's 6-12 nautical mile zone</li> </ul>	<ul style="list-style-type: none"> <li>- separate fisheries agreement, including access to waters and catch limits</li> <li>- zero tariffs on trade in fisheries and aquaculture products, to be covered by the free trade agreement</li> <li>- annual negotiations on TACs and quotas based on 'zonal attachment'</li> <li>- no more access for EU fishing vessels in territorial waters (6-12 nautical miles)</li> </ul>
<b>Law enforcement and judicial cooperation in criminal matters</b>	<ul style="list-style-type: none"> <li>- trade and cooperation agreement includes a part on law enforcement cooperation;</li> <li>- exchange of data (Prüm, PNR, criminal records); no direct access to ECRIS and SIS II, no real-time data exchange;</li> <li>- cooperation with Europol and Eurojust on the third country model;</li> <li>- judicial cooperation, including effective extradition arrangements and mutual legal assistance; JIAs including the UK based on EU law;</li> </ul>	<ul style="list-style-type: none"> <li>- chapter on law enforcement cooperation included in the overall partnership agreement; cooperation conditional on UK adherence to the ECHR and its continued domestic implementation;</li> <li>- exchange of data (Prüm, PNR, criminal records); no direct access to ECRIS and SIS II, no real-time data exchange;</li> <li>- cooperation with Europol and Eurojust on the third country model;</li> </ul>	<ul style="list-style-type: none"> <li>- separate agreement with no role for the CJEU in settling disputes and no mention of the ECHR;</li> <li>- exchange of data (Prüm, PNR, criminal records), including real time data exchange and direct access to SIS II and to ECRIS;</li> <li>- cooperation with Europol and Eurojust, with greater UK participation in some areas;</li> </ul>

	<ul style="list-style-type: none"> <li>- freezing and confiscation;</li> <li>- anti-money laundering and counter-terrorism financing;</li> <li>- personal data protection based on EU adequacy decisions; interim period where personal data exchanges can continue until their adoption;</li> <li>- specific dispute settlement applying to this part; consultations to be held; no role for the CJEU;</li> <li>- termination of the part in the ninth month after written notification; swift termination if the UK or a Member State denounces the ECHR or its Protocols 1, 6 or 13;</li> <li>- suspension in case of serious and systemic deficiencies regarding fundamental rights and the rule of law, as well as protection of personal data.</li> </ul>	<ul style="list-style-type: none"> <li>- judicial cooperation, including effective extradition arrangements and mutual legal assistance;</li> <li>- personal data protection – based on EU adequacy decisions;</li> <li>- provisions on anti-money laundering and counter-terrorism financing (AML);</li> <li>- dispute settlement under the general provisions of the overall agreement;</li> <li>- suspension or termination if UK denounces ECHR or amends related domestic law; suspension of the Title in whole or in part, if suspension or repeal of an adequacy decision.</li> </ul>	<ul style="list-style-type: none"> <li>- judicial cooperation, including effective extradition arrangements and mutual legal assistance;</li> <li>- personal data protection based on EU and UK adequacy decisions;</li> <li>- provisions on transfer of prisoners;</li> <li>- provisions on freezing and confiscation;</li> <li>- dispute settlement: in the Joint Committee established by the agreement on security;</li> <li>- suspension and termination – three months after written notification, unless otherwise agreed.</li> </ul>
<b>Participation in Union programmes</b>	<ul style="list-style-type: none"> <li>- general framework with principles, terms and conditions for UK participation in Union programmes</li> <li>- third-country participation subject to a UK financial contribution to the EU budget, based on a contribution key linked to the EU and UK's respective GDP. A participation fee will also apply.</li> <li>- Protocols I and II, still to be adopted, include: UK participation in Horizon Europe, the Euratom Research and Training programme, the ITER fusion test facility, and the Copernicus earth monitoring system; and UK access to the EU's Satellite Surveillance &amp; Tracking (SST) services.</li> <li>- PEACE PLUS will be the subject of a separate financing agreement</li> </ul>	<ul style="list-style-type: none"> <li>- general framework with principles, terms and conditions for UK participation in Union programmes</li> <li>- third-country participation subject to a UK financial contribution to the EU budget, based on a contribution key linked to the EU and UK's respective GDP. A participation fee will also apply</li> <li>- UK may participate in EU programmes, in areas such as science and innovation, youth, culture and education, development and international cooperation, defence capabilities, civil protection, space, when in the EU's interest</li> <li>- commitment to PEACE PLUS</li> </ul>	<ul style="list-style-type: none"> <li>- consideration of standard third-country participation in: Horizon Europe, Euratom Research and Training, and Copernicus.</li> <li>- consideration of time-limited participation in some strands of Erasmus+</li> <li>- consideration of service access agreements to EU Space Surveillance and Tracking and the European Geostationary Navigation Overlay Service</li> <li>- fair terms for UK participation</li> <li>- commitment to PEACE PLUS.</li> </ul>



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This EPRS publication seeks to provide an analytical overview of the Trade and Cooperation Agreement (TCA) between the European Union (EU) and the United Kingdom (UK), which was agreed between the two parties on 24 December and signed by them on 30 December 2020, and has been provisionally applied since 1 January 2021. The European Parliament is currently considering the Agreement with a view to voting on giving its consent to conclusion by the Council on behalf of the Union.

The paper analyses many of the areas covered in the agreement, including the institutional framework and arrangements for dispute settlement, trade in goods, services and investment, digital trade, energy, the level playing field, transport, social security coordination and visas for short-term visits, fisheries, law enforcement and judicial coordination in criminal matters, and participation in Union programmes. It looks at the main provisions of the Agreement in each area, setting them in context, and also gives an overview of the two parties' published negotiating positions in the respective areas.

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