

European &
International
Analysts Group



Improving the UK-EU Relationship

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Introduction

Since the UK left the EU on 31 January 2020 there have been many suggestions for building on the basic arrangements laid down in the Withdrawal Agreement and the subsequent Trade & Co-operation Agreement. A number of Parliamentary inquiries have highlighted deficiencies in the current arrangements and pointed the way towards improving them.

The outcome of the Northern Ireland Assembly elections in May 2022, when Sinn Fein became the largest party for the first time and the Democratic Unionist Party refused to agree to the Assembly electing a Speaker or establishing an Executive, is important because of its impact on the Northern Ireland Protocol included in the Withdrawal Treaty. The UK Government's response was to propose legislation enabling parts of the Protocol to be suspended unilaterally. In any event, the Assembly is due to decide by a simple majority of its members in 2024 whether or not the Protocol should continue.

The UK-EU relationship since Brexit has been characterised by tension, disputes and disappointments. The EU has sometimes been dogmatic and has succumbed to a corrosive mistrust of UK motivation. The UK has been confrontational and has prioritised its sovereignty concerns in a way that has prevented the emergence of compromises. The parties have argued over the Northern Ireland Protocol, fishing licences, the supply of vaccines, the interpretation of trading rules and the treatment of European citizens in the UK (and of UK citizens in some EU countries). Both parties have disappointed businesses with their apparent lack of enthusiasm for making the co-operative arrangements in the Trade & Co-operation Agreement (TCA) work effectively and the Horizon programme of scientific research and the movement of performing artists have suffered collateral damage. Until the hostile atmosphere between UK and the EU is addressed, it will be hard to achieve improvements in the overall relationship.

Nonetheless, there have been important developments since the UK left the EU that may change the situation in the medium-term. In this paper we look briefly at the most momentous development since Brexit, the Russian invasion of Ukraine, and then consider in more detail ways in which the UK-EU post-Brexit relationship could be improved if there was the political will on both sides to do so, including a determination to rebuild trust.

Background

The Russian invasion of Ukraine in February 2022 was a profound shock to the post-Cold War order in Europe, upsetting the assumptions of a generation and throwing into sharp relief challenges to the EU and NATO and necessitating radical changes in the future direction of their foreign, membership and trade policies.

In the EU long accepted notions about policy were swiftly abandoned. Germany dropped its policy of seeking to maintain close economic and political ties with Russia in the belief that mutual economic dependence would increase German security without having to expand its armed forces. The EU agreed for the first time to use its European Peace Facility mechanism to send military equipment and financial aid to Ukraine. Six packages of economic sanctions against Russia, in concert with the US and the UK, were adopted in short order. A continent very considerably dependent on Russian coal, gas and oil began to restrict its energy imports from that country and to look rapidly for ways to end such imports altogether. Over six million Ukrainian refugees have fled the country and over five million were accepted by EU countries after the decision was taken to waive visa requirements.¹

NATO was re-energised by the Russian attack, entering into detailed co-operation between its members in support of Ukraine. The shadow of the Trump presidency was lifted with the alliance finding a renewed unity. Finland and Sweden, two neighbours of Russia which had been neutral countries for many decades, are poised to join NATO.

Three other countries, Ukraine, Georgia and Moldova, applied to join the EU. Although accession is a lengthy process, the applications were immediately referred to the European Commission for an opinion, which will be delivered before the meeting of the European Council on 23-24 June, when these countries may be accorded candidate status.

As many commentators have noted, the greatest irony of the Russian attack on Ukraine was that far from rolling back NATO involvement in eastern and central Europe, it unified the West behind a determination to maintain the alliance and its borders in the face of Russian revanchism and to support Ukraine by any measures short of direct military involvement.

The UK Government's vigorous policy of support for Ukraine, with cross-party backing, has reminded EU Member States, particularly those in central and Eastern Europe, that the UK still has a key part to play in any issues relating to European security.

Improvements to the UK-EU relationship

It is against that background that this paper reviews some important possible elements of an improved post-Brexit UK-EU relationship.

Foreign policy & security issues

Following the Ukraine crisis's demonstration of the need for the UK and the EU to co-operate closely on foreign policy and security issues, the UK will need to:

- work closely with the EU (and other Western countries, including the US) on Russia policy to ensure that West remains united, including over sanctions policy, avoiding a beauty contest with the EU;
- respond to EU policy developments on strategic autonomy; the UK was dismissive of similar ideas when a member of the EU but now needs to recognise that the pandemic and Ukraine crises have created a fresh dynamic; the UK must also

¹ See United Nations High Commissioner for Refugees, 'Operational Data Portal: Ukraine Refugee Situation', 13 May 2022

accept that the US wants Europe to do more to strengthen its own security, both in NATO and in the EU, for example by greater EU involvement in Africa;

- recognise that EU-NATO co-operation should be strengthened in the near term and the UK will need to engage constructively with this at the NATO Summit in July;
- continue to demonstrate pragmatism, as the current Foreign Secretary did when she invited the EU High Representative to the G7 Foreign Ministers' meeting in Liverpool;
- understand that the interrelationship between foreign, security and economic policy has been demonstrated by the over-dependence on Russian energy imports and that this has implications for other areas of policy and other relationships (notably with China).

There needs to be a recognition too that the absence of any structured mechanism for foreign policy and security co-operation in the TCA works to the disadvantage of both sides; such a structure would not tie the hands of either party but strengthen both.

Increasing GB-EU Trade

It is clear that the impact of Brexit on trade has been negative.² There has been a sharp reduction in imports and while exports have maintained their value, there has been a significant fall in the number of businesses exporting to the EU. The fall in the number of goods exporters is mostly due to small and medium-sized businesses withdrawing from export to the EU.³ The main cause of this would seem to be the reintroduction of customs formalities and other border controls.⁴

Trade in goods

There are various measures that would help to increase trade and reduce friction in trade between the UK (or Great Britain, where Northern Ireland is at issue) and the EU. These include:

- a UK-EU sanitary and phytosanitary agreement (SPS) to reduce the checks currently needed for agri-food exports; GB has a weaker relationship with the EU on this issue than either New Zealand or Switzerland;⁵
- modifying the current rules of origin provisions so that UK could elect to pay the relevant EU import tariff on a non-EU/UK component in order that the final product would carry zero EU tariffs;⁶
- allowing greater flexibility with regard to cumulation, that is UK businesses importing goods from the EU and then exporting them back to the EU without sufficient processing;⁷
- UK recognition of EU product standards and regulations and the EU granting recognition of equivalence where those standards have not been changed by the UK

² For one approach, see John Springford, *The Cost of Brexit: December 2021*, Centre for European Reform, 10 March 2022

³ See Rebecca Freeman *et al.*, *Unravelling deep integration: UK trade in the wake of Brexit*, Discussion Paper No. 1847, LSE Centre for Economic Performance, 26 April 2022

⁴ But excluding customs duties as the UK-EU TCA is a tariff and quota free agreement.

⁵ British Chambers of Commerce, *The Trade and Cooperation Agreement: One Year On – The Experiences of UK Businesses*, 1 January 2022, p. 10; and EIAG research

⁶ David Vines & Adam Bennett, 'The Trade & Co-operation Agreement: what to do next', UK in a Changing Europe, 11 March 2022

⁷ British Chamber of Commerce, *op cit.*, p. 8

since Brexit. Dropping the requirement for UK product certification and retaining the CE mark;⁸

- eliminating separate VAT registration requirements in each of the 27 EU Member States as these are time consuming and complex. These are proving to be a significant disincentive to smaller firms to continue exporting across the EU single market. Norway has an agreement with the EU on this;
- the UK could drop plans for a separate system of chemicals authorisation, which will increase costs for GB businesses and duplicates the existing (and now well-established) EU REACH regulation;
- clearer guidance for customs officers in EU Member States and for HMRC to reduce differences of interpretation of the rules;⁹
- consistent but more business-friendly enforcement of deferred import paperwork and payments from last year by HMRC (a UK matter).

The Government's decision not to introduce already delayed checks on EU imports for a further period (likely to be late 2023) reduces costs to importers but is arguably unfair to domestic producers.¹⁰ In effect, it amounts to a one-sided acceptance of the EU's SPS rules without giving similar benefits to UK exporters.

Trade in services

Trade in services has been particularly affected by Brexit as the TCA made little provision for services despite the fact services represent 80 per cent of the UK economy. Steps to improve services trade would include:

- reducing visa requirements to enable travel for business purposes between the parties, including allowing individuals to work for short periods in connection with existing contracts between businesses; this is not about reintroducing free movement but mirrors arrangements in other free trade agreements which both the UK and the EU have concluded;¹¹
- adopting new visa rules in respect of performing artists and other creative professionals and their support staff to remove needless restrictions on their movement (and that of their equipment) in the UK and EU;¹²
- mutual recognition of professional qualifications beginning with the most urgent – medicine and allied health professionals;¹³ [the TCA makes provision for this, although its approach mirrors that of the EU-Canada FTA, which has not so far proved easily workable];
- easing UK migration rules to allow a greater number of EU workers into GB, not just in low-skill areas such as agriculture and fish processing but also in certain higher skill areas and in sectors experiencing critical labour shortages;

⁸ *Op. cit.*

⁹ *Ibid.*, p. 25

¹⁰ See HM Government, 'New approach to import controls to help ease cost of living', 28 April 2022

¹¹ House of Lords European Union Committee, *23rd Report of Session 2019–21: Beyond Brexit: Trade in Services*, HL 248, 24 March 2021, para 97 *et seq.*

¹² *Ibid.*, paras 191-202

¹³ *Ibid.*, paras 122-137

- protecting the data adequacy decision made by the EU in respect of UK data protection regulation during the UK's own legislative process so as to ensure that it will be maintained and extended beyond its current 2025 end date.

Financial services

- Implementing the relevant EU-UK Joint Declaration by signing and bringing into force the memorandum on co-operation between the parties on financial services, negotiations for which were completed in March 2021;¹⁴
- The speeding up of EU equivalence decisions (only two have been reached out of a potential 32, compared to 28 by the UK, a startling imbalance¹⁵) which would improve GB-EU trade in financial services; [EU action is required as equivalence decisions appear to have been held up for political reasons].

Energy, climate change and the environment

The UK prioritised access to the EU's energy market in the TCA. This turned out to be a wise move in view of the subsequent volatility of the global energy market. It will be important for the UK to maintain that approach but there are other areas where co-operation could be further developed. These include:

- net zero target - the UK and the EU are already committed to similar emission reduction targets and are close partners in the UN-based negotiations (COP 27). This cooperation needs to be consolidated by close working together on the details of their policies;
- emission trading schemes – this co-operation will be particularly important as changes are made to their respective emission trading schemes;
- the EU's Climate Border Adjustment Mechanisms (CBAM) – the EU plans to introduce this mechanism could lead to increased friction in UK/EU trade if the two sides do not work together closely on this matter.

Science, research & students

One of the biggest failures of Brexit has been jeopardising the extensive scientific, research and student links that operated through various EU programmes, despite promises before Brexit that they would be maintained. To move forward action is needed:

- to unblock urgently the obstacles to concluding and implementing the agreement between the parties enabling UK involvement in the Horizon science collaboration programme; the difficulties appear to be political;¹⁶
- to link the UK's Turing student exchange programme to the EU's Erasmus scheme; the Turing scheme has some benefits for UK students but its budget is short-term, it does not include either inbound student placements or the staff

¹⁴ See House of Lords European Affairs Committee, 'New UK-EU financial services inquiry launched', 4 February 2022

¹⁵ *Ibid.*

¹⁶ House of Lords European Affairs Committee, *Letter to the Foreign Secretary: The UK's participation in the Horizon Europe programme*, 3 March 2022

exchanges which were among the most valuable elements to UK universities and it excludes students and staff in colleges.¹⁷

Northern Ireland Protocol

The negotiations over the implementation of the Protocol have dragged on with little progress. Following the May 2022 Assembly elections, the UK Government announced its intention to legislate to allow it to unilaterally suspend or amend parts of the Protocol if it was unable to reach agreement with the EU but it stated that it was not seeking to scrap or replace the Protocol. In order to resolve this issue, the UK and the EU need to:

- urgently reach an amicable agreement on the way forward because the on-going dispute over the Protocol is having a negative impact on the relationship between the UK and the EU, impacting on the peace process and holding up co-operation in other areas;
- reach an SPS agreement (as outlined above) to reduce the checks on food and agricultural goods;
- agree to park the major issues over the governance of the Protocol (such as the jurisdiction of the European Court of Justice) until the review provided for in the TCA in 2024;
- work together on ways to ease the burden on businesses of the controls on the movement of goods between GB and NI, including examining the feasibility of separate green and red channels so that goods destined for NI only would require minimal checks.

Criminal law & police co-operation

The important and substantial measures in the TCA to enable co-operation over law enforcement between the parties are for the most part working well. Issues that need to be resolved include:

- completing the work needed to enable the UK to continue co-operation under the Prüm Convention (the exchange of fingerprint and other personal data in law enforcement) with the EU to continue beyond 30 June 2022;
- the UK changing its procedures to allow the exchange of Passenger Name Record (PNR) data relating to airline passengers to continue after the interim period expires.

Civil law

- The EU should lift its objections to the UK acceding to the Lugano Convention to make it easier for civil disputes, including family disputes, to be resolved across European borders.¹⁸

¹⁷ See Joe Lewis, *The Turing Scheme*, House of Commons Library Research Briefing CBP 9141, 22 February 2022

¹⁸ See Lucy Trevelyan, 'Brexit: UK assesses implications after failing to accede to Lugano Convention', International Bar Association, 8 November 2021

Citizens' rights

There have been reports of difficulties for UK citizens in EU countries despite the protection offered by the TCA. Partly this is because Member States have devolved responsibility to local or regional authorities who are not familiar with the rules. There have also been concerns expressed by EU citizens in the UK about the operation of the settled status scheme here. Measures that could help would include:

- the Commission intervening to ensure that Member States provide administrators at all levels with consistent and accurate advice;
- the Commission clarifying how the 90 days in 180 days visitor rule is meant to work in practice;
- the UK agreeing to provide EU citizens with proof of their settled status in a more practical form (either paper or plastic cards).

Machinery of co-operation

There are elaborate provisions for bilateral machinery under the Withdrawal Treaty and the TCA, largely under used so far, that could address many of the issues raised in this paper as part of the ongoing bilateral relationship.

At the apex of the joint bodies under the TCA is the UK-EU Partnership Council. Below that is the Trade Partnership Committee, which in turn has nearly twenty specialised committees and groups reporting to it, mostly organised by sector. There is a joint parliamentary assembly, which held its first meeting on 12-13 May 2022. Both sides have also set up Domestic Advisory Groups under the TCA which have held their first meetings. They will form the basis of the joint Civil Society Forum, subject to the agreement of the Partnership Council. Making effective use of this machinery needs to be a priority for both parties.

Within the UK there is machinery to ensure that the devolved administrations are properly consulted as they have responsibilities that fall under the TCA in some policy areas. While some use has been made of this machinery, the UK Government should make more use of it in order to respect the responsibilities of the devolved administrations and to improve co-ordination within the UK.

Future developments

Both the Northern Ireland Protocol and the TCA itself come up for review; the Northern Ireland Protocol is subject to a consent procedure in 2024, and the first quinquennial review of the TCA is set for May 2026, five years after it came into operation. In Northern Ireland the assembly will need to decide, four years from the date on which the Protocol came into force (31 December 2020) whether the Protocol should continue for further four years (a simple majority of the Stormont assembly will be needed for this decision).¹⁹

¹⁹ If there is cross-community support, the Protocol could be extended for up to eight years. For further details, see Jess Sargeant, 'Northern Ireland protocol: consent mechanism', Institute for Government, 1 March 2021

If the TCA review is to be put to effective use this will require extensive preparatory work by both sides. It should be noted that 2024 could be a general election year in the UK and there will definitely be elections to the European Parliament and a change of Commission.

Conclusion

What is stake here is whether the parties to the Withdrawal Treaty and the TCA, the UK and the EU, treat those instruments as a floor on which to build more extensive future co-operation or as a ceiling inhibiting such a development.

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European & International Analysts Group

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