



International
Academy
Europe Faculty

Working with Europe and the EU – A New Context

2.1

Practitioner training for UK civil servants
organised by the European Institute of Public Administration
(EIPA), Maastricht on behalf of
the Foreign, Commonwealth and Development Office (FCDO)

26 - 28 June 2023



© EIPA 2023 1

Working with Europe and the EU – A New Context 26 – 28 June 2023

Day 2

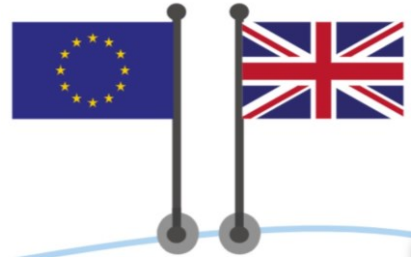
How will the new framework of UK-EU relations work?
Prof. Alexander Tuerk, King's College London



© EIPA 2023 2

Relevant arrangements

- **International Agreements with the EU**
 - *Withdrawal Agreement* (October 2019), as amended by the Windsor Framework Agreement (2023)
 - *Trade and Cooperation Agreement* (December 2020)
Supplemented by *Security and Information Agreement*
 - *Cooperation Agreement on Peaceful Use of Nuclear Energy* (December 2020)
- **Domestic Statutes**
 - *European Union Withdrawal Act 2018, as amended 2020*
Implements the Withdrawal Agreement
Retains EU law in the UK
 - *EU Future Relationship Act 2020*
Implements the Trade and Cooperation Agreement



Withdrawal Agreement: Background

- 23 June 2016: Referendum
Based on European Union Referendum Act 2015
Outcome: 51.9% in favour of leaving the EU
- UK: Notification on 29 March 2017
The notification required an Act of Parliament
- Preliminary Conclusion of Negotiations
Withdrawal Agreement and Political Declaration: draft agreed on 14 November 2018
Revised Agreement: agreed on 17 October 2019
- Ratification: January 2020 with exit on 31 January 2020
- Amended by the Windsor Framework (agreed in February 2023 with the new arrangements being adopted by the Joint Committee in March 2023), which replaces the Northern Ireland Protocol

Withdrawal Agreement: Content

- Common Provisions (Part One)
- Citizens' Rights (Part Two)
- Separation Provisions (Part Three)
- Transition (Part Four)
- Financial Provisions (Part Five)
- Institutional and Final Provisions (Part Six)
- Windsor Framework (previously Protocol on Ireland and Northern Ireland No 15)

Withdrawal Agreement: After the transition period

- Transition period until 31 December 2020: *Article 126*
- Special arrangements for Northern Ireland continue (*Windsor Framework*)
- Continued rights for EU citizens in the UK provided they are lawfully residing in the UK by the end of the transition period (*Article 10*)
- Obligation of financial payments
- Continued relevance of preliminary reference procedure
- Otherwise, application of *European Union Withdrawal Act 2020*

Withdrawal Agreement: Windsor Framework

- Windsor Framework amends and replaces the Protocol on Ireland and Northern Ireland No 15
- To avoid a hard border between ROI and NI
- It continues to apply until it is superseded by an agreement or if the Northern Ireland Assembly votes to discontinue the application of EU law (*consent mechanism*)

Main provisions:

- The whole of the UK comes out of the EU Customs Union
- But: different level of regulatory harmonisation for goods (industrial goods and agricultural foods) between NI and GB
- Does not cover services, fisheries, and aquaculture products



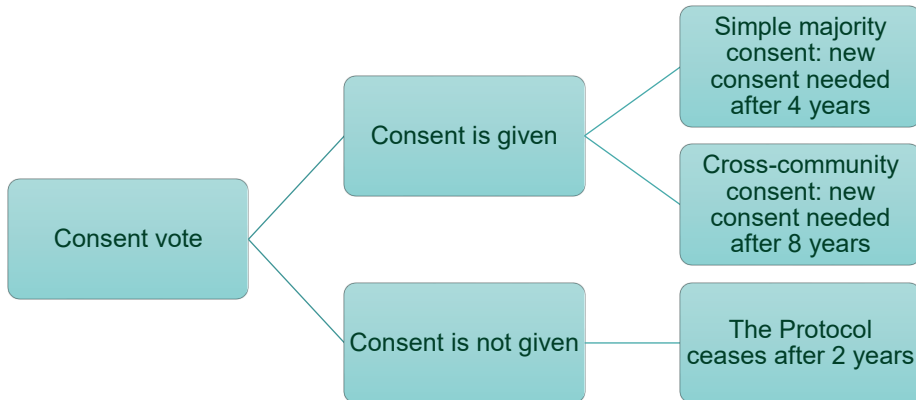
Withdrawal Agreement: Windsor Framework - Consent Mechanism

- First consent vote due in December 2024
- UK set out the consent mechanism in the *Protocol on Ireland/Northern Ireland (Democratic Consent Process) (EU Exit) Regulations 2020*
- Consent by simple majority of the NI Assembly in favour of consent (deviating from the normal process of voting)
- Special process if there is no government in NI
 - Stormont Executive is currently not in place
 - Situation depends on whether direct rule is imposed or not



The Northern Ireland Assembly pictured during a vote on the Withdrawal Agreement in January 2020. The Assembly's first vote on the Protocol will take place in 2024. Source: NI Assembly

Withdrawal Agreement: Windsor Framework - Consent Mechanism



Withdrawal Agreement: Citizens' Rights (Part Two)

- **Who benefits?**
Union citizens/ UK nationals and their family members
If resident by the end of the transition period
- **What rights?**
 - Non-discrimination (*Article 12*)
 - Residence rights, also permanent residence after 5 years (*Articles 13-17*)
 - New residence document (*Article 18*)
 - Free movement rights (workers and self-employed)
 - Rights are maintained life-long
- **No recognition of qualifications since the end of the transition period**
- **Co-ordination of social security**

Withdrawal Agreement: Financial Provisions (Part Five)

Components

- EU's outstanding spending commitments by end of 2020 (reste à liquider): to be paid until 2028
- Liability (for pensions of EU staff): to be paid until 2057 (OBR)
- Minus payments to UK (capital to EIB and ECB; fines)

How much in total?

- Not clear
 - OBR: £39 billion (January 2021)
 - UK Government: £42.5 billion (July 2022)
 - EU Commission: £40.8 billion (€47.5 billion)
- £14 billion has been paid with £25 billion left (OBR, as of January 2021)

Possible contributions (Horizon Europe, Euratom, Copernicus)

Withdrawal Agreement: Institutional and Final Provisions (Part Six)

• Protection of EU citizens in the UK

Preliminary reference procedure: references concerning rights of EU citizens (*Article 158*)

Case has started at first instance within 8 years from the end of the transition period before a UK court

Ruling by Court has binding legal effects on UK court

Independent UK authority to monitor implementation (*Article 159*)

• Jurisdiction of the Court in certain aspects of Part Five (*Article 160*)

• Joint Committee (*Article 164*) with six specialized committees

• Dispute Settlement

Joint Committee

Arbitration Panel (with CJEU jurisdiction; with cross-suspension under TCA)

Special arrangements for NI (*Windsor Framework*)

EU Withdrawal Act

- Adopted in 2018, amended in 2020
 - To implement the *Withdrawal Agreement*
 - To determine the status of EU law in the UK

Main points

- EU law (as EU law) ceases to apply in the UK
- Repeals *EC Act 1972* (thereby removes the primacy of EU law): *Section 1*
- Gives legal effect to all existing EU laws that applied in the UK on 'exit day' - three categories

Directly effective EU law (*Section 4(1)*)

- Continues to have legal force in the UK

Direct EU Legislation (*Section 3*)

- Forms part of UK law
e.g: regulations, decisions

UK laws derived from EU law (*Section 2*)

- Continues to apply in UK
e.g: Statutory instruments implementing directives

- Retained EU law has primacy over other UK law until repealed (*Section 5*)
 - Gives government the power to amend retained laws by statutory instruments

EU Withdrawal Act, cont.

- Continued relevance of CJEU after the transition period

Case law of the CJEU after Brexit

- Not binding on UK courts after Brexit (*Section 6(1)*)
- But UK courts 'may give regard' to such case law (*Section 6(2)*)

The Retained EU Law (Revocation and Reform) Bill 2022

- Currently in the final stages (outstanding issues now in the House of Lords for consideration)
- Seeks to set out rules to amend retained EU law
 - list of the REUL which will be revoked directly under the Bill at the end of 2023 (via a revocation schedule).
 - Sets out the powers that allow for amending, restating and revoking REUL until 23 June 2026.

Trade and Cooperation Agreement: Background

- Negotiations ended just before the deadline (24 December 2020) with fisheries, governance (CJEU) and LPF as main hurdles
- Provisional application from 1 January 2021
- Formal approval by EP on 28 April 2021; entry into force on 1 May 2021
- TCA sits alongside two other agreements
 - Cooperation Agreement UK/Euratom* (use of nuclear energy)
 - Security and Information Agreement* (exchange of classified information)
- Implemented in UK by *EU Future Relationship Act 2020*

Trade and Cooperation Agreement: Background

- **European Union**
 - Customs Union
 - Single Market (free movement of goods, services, people and capital)
 - Common policies (competition, state aid, environment, social policy, transport, external trade policy)
 - Common currency (only eurozone MS) with special arrangements for banking supervision and resolution
 - Oversight by CJEU (with enforceable rights for individuals)
- **Key objectives for the UK**
 - End of free movement of people
 - Regulatory autonomy
 - No CJEU oversight
 - Independent trade policy
 - No direct effect

Trade and Cooperation Agreement: Content

- Part 1: Common and Institutional Provisions
- Part 2: Trade
- Part 3: Law Enforcement and Judicial Cooperation in Criminal Matters
- Part 4: Thematic Cooperation
- Part 5: Participation in Union Programmes
- Part 6: Dispute Settlement and Horizontal Provisions
- Part 7: Final Provisions

Trade and Cooperation Agreement: Home Affairs

- Detailed provisions on Law Enforcement and Judicial Cooperation in Criminal Matters (Part 3 TCA), incl.
 - Exchanges of DNA, Fingerprints and Vehicle Registration data;
 - Transfer and Processing of Passenger Name Record PNR data;
 - Exchange of Operational information;
 - Cooperation with Europol and Eurojust;
 - Surrender Pursuant to an Arrest Warrant;
 - Mutual Assistance and Exchange of Criminal Record Information
 - Anti Money-laundering and Counter Terrorist Financing
 - Confiscation of property (freezing);
- See also Security and Information Agreement
- But no provisions on
 - cooperation in civil and commercial matters
 - immigration and asylum (except as provided for in the Withdrawal Agreement for UK and EU citizens)

Trade and Cooperation Agreement: Overview

Treaty Series No.8 (2021)

Trade and Cooperation Agreement

between the United Kingdom of Great Britain and Northern Ireland, of the one part,
and the European Union and the European Atomic Energy Community,
of the other part

Brussels and London, 30 December 2020

- The TCA is an **Association Agreement for the EU** (only EU, no involvement of MS)
Free Trade Agreement + additional elements
- In some areas, **further unilateral decisions** are necessary
 - Equivalence for financial services
 - Data adequacy decision
 - SPS listing

Trade and Cooperation Agreement

Institutional architecture

- Partnership Council
- Trade Partnership Committee (with 10 trade specialised committees)
- 8 Specialised Committees

Dispute Settlement

- **General dispute settlement mechanism** (consultation, arbitration, remedies)
- **Specific dispute settlement mechanisms** (fisheries, level playing field, road transport, law enforcement) with remedial measures

Trade and Cooperation Agreement: shared values and remedies

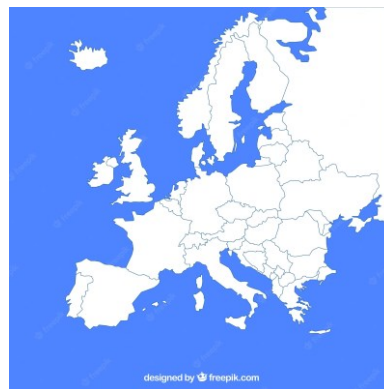
- Includes essential elements of the partnership (*Articles 763-771*)
 - Democracy, rule of law, human rights
 - Fight against climate change
 - Countering proliferation of weapons of mass destruction
 - Fulfilment of Obligations and Safeguard Measures
- Consequences of breach (*Article 772*)
 - In case of 'serious and substantial' failure, one party can terminate or suspend the operation of the TCA
- Safeguard measures (*Article 773*)
 - In case of serious economic, societal, or environmental difficulties of sectorial or regional nature

Trade and Cooperation Agreement: termination clauses

- Termination of the entire agreement
- General (12 months' notice) and fast track procedures
- Termination of parts (at least 8 specific clauses)
 - Trade; fisheries; law enforcement; energy; air transport; aviation safety; haulage; Union programmes

EU Future Relationship Act

- Introduced and passed on 30 December 2020 to implement the TCA and to allow its ratification (without parliamentary oversight)
- Incorporates parts of the TCA directly (see *Section 24* on international road haulage)
- Incorporates other parts of the TCA into (and amending) domestic law merely by reference (see *Section 26* on social security)



EU Future Relationship Act, cont.

- *Section 29* provides that any change to domestic law required by the TCA is deemed to be made (some sort of direct effect)
P: implicit repeal of constitutional statutes or rights
- *Sections 31-33* endow the UK government and devolved administrations with general implementing powers
The UK government can amend Acts of Parliament and the *EU Future Relationship Act* itself on this basis

Unfinished Business

- UK/EU Treaty on Gibraltar (and other overseas territories)
See Commission proposal for negotiation guidelines
- Grace periods (e.g. veterinary medicines in case of GB/NI trade)
- Transitional arrangements (e.g. preliminary references in WA)
- Negotiations (e.g. annual fishing negotiations)
- Reviews (e.g. TCA with general (Article 776) and specific review provisions)

Unfinished Business, cont.

- 15 TCA Declarations
- Financial services
 - Arrangements on asylum, family reunion for unaccompanied minors and illegal migration
 - Arrangements on exchange of classified information
 - Protocols on UK participation in EU programmes
 - Adoption of adequacy decisions by the EU every 4 years

