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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)


Online, 25-27 November 2024



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Today's work

Aim: Understanding the formal UK-EU relationship

- 09.30 – 10.45: **Overview**
- 10.45 – 11.00: **Pause**
- 11.00 – 12.00: **Trade in Goods**
- 12.00 – 13.00: **Group Exercise**
- 13.00 – 14.00: **Lunch**
- 14.00 – 15.10: **Trade in Services**
- 15.10 – 15.20: **Break**
- 15.20 – 16.20: **Governance**
- 16.20 – 16.30: **Recap**



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Themes of today's sessions

- Strategic ambition: cooperation versus autonomy
- Governance: efficiency versus protection of national interests
- Dispute Resolution: political versus legal instruments

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Working with Europe and the EU – A New Context

25-27 November 2024

Day 2

How does the new framework of UK-EU relations work?

Prof. Simon Usherwood, Open University

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Relevant arrangements

	Ending UK Membership of EU	Building new EUK relationship
EU-UK agreements	<i>Withdrawal Agreement (2019), as amended by the Windsor Framework Agreement (2023)</i>	<i>Trade and Cooperation Agreement (2020) Security and Information Agreement Cooperation Agreement on Peaceful Use of Nuclear Energy</i>
UK enabling legislation of EU-UK agreements	<i>European Union Withdrawal Act 2018, amended 2020</i>	<i>EU Future Relationship Act 2020</i>
UK legislation to handle internal effects of ending EU membership	<i>Retained EU Law (Revocation and Reform) Act 2023</i>	



Withdrawal Agreement: Background

- Referendum (23 June 2016)
- UK Notification under Art. 50 TEU (29 March 2017)
- Negotiations:
 - Draft Withdrawal Agreement and Political Declaration (14 November 2018)
 - Revised Agreement (17 October 2019)
- Ratification post December 2019 General Election and exit (31 January 2020)
- Windsor Framework (agreed February/March 2023), which amends the Northern Ireland Protocol



Withdrawal Agreement: Content

- Purpose: To manage the end of UK membership of the EU
- Key substantive elements:
 - Citizens' Rights (Part Two)
 - Financial Provisions (Part Five)
 - Protocol on Ireland and Northern Ireland No 15 (now known as Windsor Framework)
- Also handles transitional elements

Withdrawal Agreement: Still in effect

- 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

- Purpose: to maintain international obligations under the Belfast/Good Friday Agreement (1998) and UK demand for territorial integrity
- Applies until superseded by an agreement
- Northern Ireland Assembly can vote to discontinue the provisions on trade (*Consent mechanism*)

Main provisions:

- The whole of the UK comes out of the EU Customs Union
- NI remains (largely) in EU Single Market for goods



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



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: 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: to be paid until 2028
- Liability (for pensions of EU staff): to be paid until 2065
- Minus payments to UK (capital to EIB and ECB; fines)

How much in total?

- Net liabilities: £ 30.2 billion (with £ 6.4 billion remaining)

Future contributions (e.g. Horizon Europe and Copernicus)

- Around €2.5 billion per year (with an adjustment mechanism)

Withdrawal Agreement: Institutional and Final Provisions (Part Six)

- Protection of EU citizens in the UK
- Jurisdiction of the Court in certain aspects of Part Five
- Joint Committee 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 2018

Main points:

- Repeals *EC Act 1972*, so EU law ceases to apply in UK
- 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
- Gives government the power to amend retained laws by statutory instruments



Retained EU Law

The Retained EU Law (Revocation and Reform) Act 2023

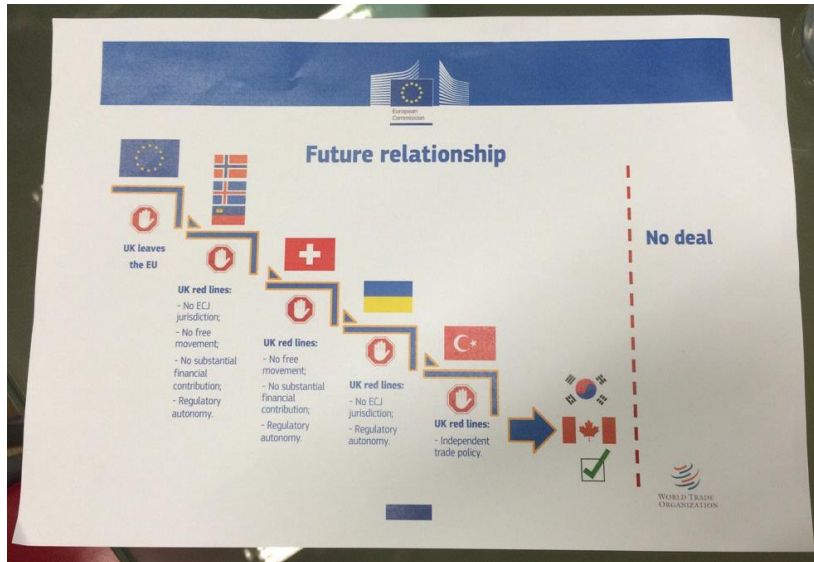
- Purpose: Set out rules to amend retained EU law (REUL)
 - Revokes some REUL at end of 2023 (c.600 pieces of legislation)
 - REUL not revoked re-categorized as 'assimilated law' (c.6,000 pieces of law)
 - Sets out the powers that allow for amending, restating and revoking REUL
- Issues:
 - Extent of REUL
 - Unintended consequences of revocation/amendment



Trade and Cooperation Agreement



Trade and Cooperation Agreement: Negotiations



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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

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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
- Specific dispute settlement mechanisms



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



Beyond the TCA

TCA acts as a framework for EU-UK relations:

- Some pre-programmed negotiations (e.g. energy, mutual recognition of qualifications)
- Some transitional arrangements (e.g. fisheries, tariff applications)
- Plus anything else that might be felt important by either party

