





Foreign, Commonwealth
& Development Office



International
Academy
Europe Faculty

Working with Europe and the EU – A New Context

2.5

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)

London, 28-30 January 2025



EIPA European
Institute of
Public
Administration

© EIPA 2025 1

1



Working with Europe and the EU – A New Context

28-30 January 2025

Day 2

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

- **Governance**

Prof. Simon Usherwood, Open University



Foreign, Commonwealth
& Development Office



International
Academy
Europe Faculty



EIPA European
Institute of
Public
Administration

© EIPA 2025 2

2

Governance

Context

- Compliance matters to the EU
- EU-UK relations nested within other third country relations
- Domestic political constraints

Risks

- Some mechanisms are untested
- Willingness to cross-link issues
- Escalation and conflict



Governance: Negotiations

- Key EU drivers:
 - Avoid Swiss-style mish-mash
 - Provide for robust compliance and penalty mechanisms
 - Scope for future deepening of relations
- Key UK drivers:
 - Minimise agenda to secure rapid conclusion and limit EU leveraging in negotiations
 - Minimise obligations and constraints



Governance: TCA Overview

- **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



Basis for Cooperation

- **Basic shared values** (*Articles 763-771*)
Includes essential elements of the partnership
 - Democracy, rule of law, and human rights
 - Fight against climate change
 - Countering proliferation of weapons of mass destruction
- **Remedies** against breach of essential elements (*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



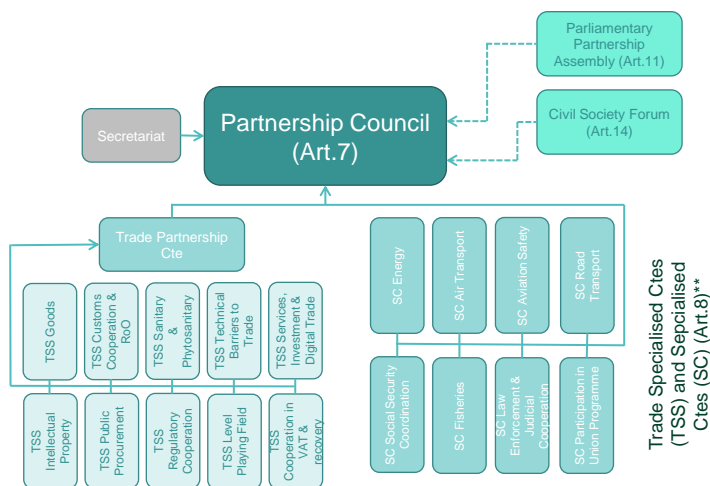
Termination Clauses

- Termination of the entire agreement
 - General with 12 months' notice: *Article 779*
 - Fast track: *Article 772*
- Termination of parts (at least 8 specific clauses)
 - Trade (*Article 521*): 9 months' notice (except Social Security Coordination)
 - Fisheries (*Article 509*): 9 months' notice; this automatically terminates headings on trade, aviation and road transport
 - Law Enforcement (*Article 692*): 9 months' notice, unless a party leaves ECHR, in which case immediate
 - See also: *Article 331* (energy), *Article 441* (air transport), *Article 458* (aviation safety), *Article 472* (haulage), *Articles 719-720* (Union programmes)



7

Institutional Architecture: TCA



8

Institutional Architecture: Withdrawal Agreement

- Joint Committee
 - with 6 Specialised Committees
- New Structures for UK-EU cooperation under the Windsor Framework Agreement
 - New mechanisms for stakeholder engagement
 - New structured expert groups
 - First and deputy First Minister will be part of UK delegation in the Joint Committee
 - *Specialised Committee on the implementation of the Protocol on Ireland and Northern Ireland* is renamed *Specialised Committee on the Implementation of the Windsor Framework* (can act as *Specialised Committee on the Enhanced Coordination Mechanism on VAT and Excise*)

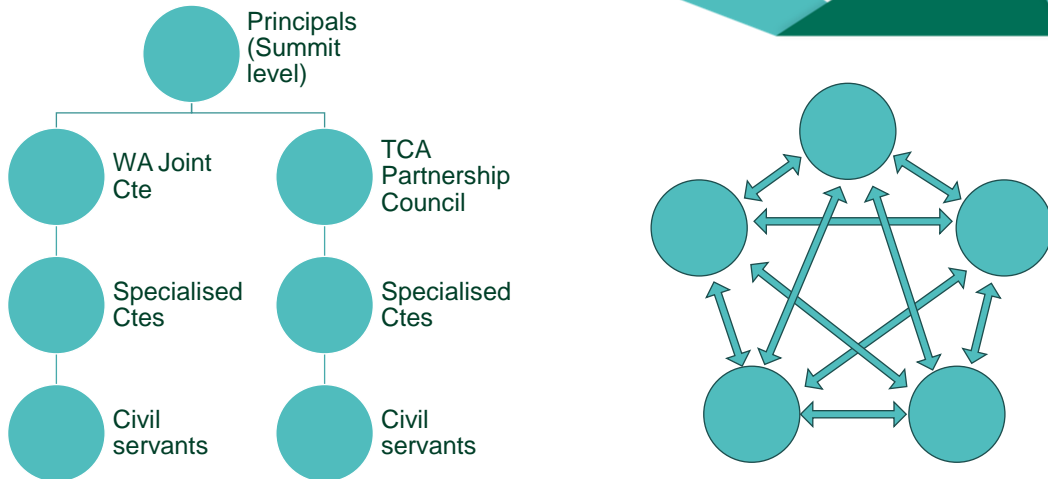


Institutional Architecture: Issues

- Existence of bodies does not make them meaningful
- Summit-level meetings not specifically included, but will start from 2025
- For EU: coordination of Commission and Member States
- For UK
 - Resources:
 - Reinforcement of UK diplomatic presence in Brussels and Member States
 - Reinforcement of resources in Whitehall
 - Need for effective coordination within Cabinet Office, FCDO and cross-government



2 Ways to Think About This



Dispute Settlement: Overview

- 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

Dispute Settlement: TCA

Not like EU membership:

- TCA precludes direct enforcement by individuals (eg in national courts); instead, state enforcement (UK v EU)
- TCA precludes penalty payments; instead, unilateral measures (suspension of obligations)
- Use of DSM will depend on political factors

Dispute Settlement: TCA-Process

- Phase 1: Consultations (Partnership Council or expert panels) (*Article 738*)
- Phase 2: Arbitration
- Phase 3: Tribunal Ruling
- Phase 4: Remedies for Non-compliance

Dispute Settlement: TCA- Phase 4 (Remedies for non-compliance)

- Complaining party can request compensation or suspend obligations under the TCA
- Request of complaining party for temporary compensation (*Article 749(1)*)
- Suspension of obligations
 - Notification (*Article 749(2)*) and conditions (*Article 749(3)*)
 - Suspension after 10 days of notification unless there is an appeal (*Article 749(10)*)
 - Respondent party can appeal to the arbitration panel (*Article 749(11)*)

Additional Dispute Resolution Mechanisms

- **Fisheries**
Compensatory measures in case of withdrawal or reduction of access (*Article 501*)
Remedial measures and dispute resolution (*Article 506*)
- **Level playing field and 'rebalancing measures'**
LPF (*Article 374*): subsidies that cause or risks causing significant negative effect on trade
LPF (*Article 411*): in case of significant regulatory divergence; this can trigger review (and possible termination) of trade and road transport provisions
- **Road transport (*Article 469*)**
New regulatory measure in breach of *Annex 31*
Remedial measures can be imposed
- **Different arrangements for Part Three (law enforcement)**
With possible suspension of Title (or cross-retaliation across other Part Three Titles)

Dispute Settlement: WA/WF

- **Withdrawal Agreement**

- Joint Committee Consultations (*Article 169*) and Arbitration Panel (*Article 170*)
- But also jurisdiction of the CJEU - binding decision on interpretation of EU law concepts (*Article 174*)
- But also cross-suspension

In case of non-compliance with arbitration ruling under the WA, suspension of obligation under the TCA possible (*Article 749(4) TCA and 178(2)(b) WA*)

- **Windsor Framework** (*Article 12(4)*)

- Infringement proceedings before CJEU (*Articles 258, 260 TFEU*)
- National courts can request preliminary ruling from CJEU



Dispute Settlement: Cross-suspension

Suspension of TCA in case of breach of WA

- **Article 749(4)**

In case of persistent non-compliance with a ruling of an arbitration panel under an earlier agreement (eg the WA)

Complaining party can suspend obligation of the provisions that are within the scope of *Article 735*

- **Article 178(2) WA**

Refers to 'any other agreement between the Union and the United Kingdom' (eg the TCA)



Review provisions

- General review clause: Article 776 TCA
 - Joint review in five-year intervals
 - Only about implementation
- Review clauses for committees
 - E.g. Article 8(3)(a): Trade Specialised Committees can review the implementation of the TCA
- Specific review clauses
 - Article 126: services and investment
 - Article 201: cross-border data flows (after three years)
 - Article 275: geographical indications
 - Article 411: rebalancing (with specific time-frames)
 - Article 510: fisheries
 - Article 691: Law Enforcement and Judicial Co-operation in Criminal Matters
 - Article 732: participation of UK in Union programmes
 - Annex 4: aluminium quotas
 - Annex 5: PSR for batteries of electric cars

Reviews-relevant dates

- Relevant dates for upcoming measures, reviews and sunset clauses
 - Rebalancing review available 1 January 2025
 - Horizontal review - 1 January 2026
 - Aluminium quota review available 1 January 2026
 - 30 June 2026: Energy title sunset clause
 - 30 June 2026: Adjustment period for access to waters ends
 - 2027: Rules of Origin for electric vehicles and batteries change (with no further change permitted until 2032)
 - 2030: Fisheries review, including access to waters
 - 2036: Social Security Coordination protocol terminates

Recap – Day 2

- UK relations with the EU run through the WA and (especially) the TCA
- Extensive range of bodies, but will only fully work with clear political commitment and accompanying informal and personal engagement between parties
- Issues are most easily addressed early on: entering into formal dispute settlement limits much room for manoeuvre