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Working with Europe and the EU – A New Context

2.5

Practitioner Training for UK Civil Servants

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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?

- **Governance**

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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

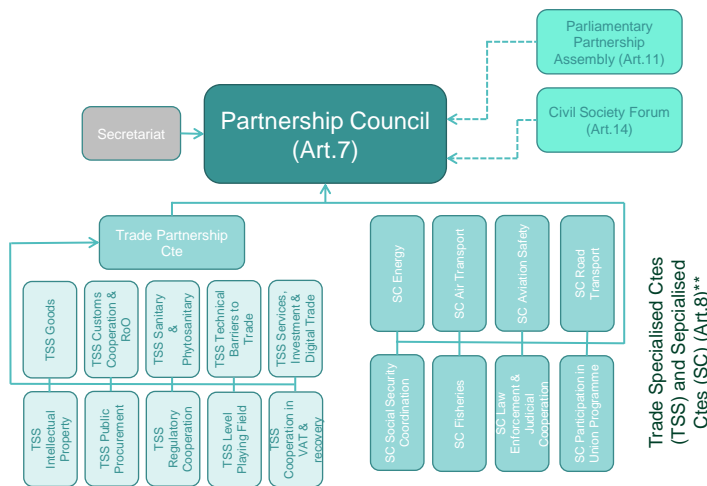
- **Basic shared values** (*Articles 763-771*)
Includes essential elements of the partnership
 - Democracy, rule of law, and human rights
 - Fight against climate change
 - Countering proliferation of weapons of mass destruction
- **Remedies** against breach of essential elements (*Article 772*)
In case 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)

Institutional Architecture: TCA



Trade Specialised Ctes (TSS) and Specialised Ctes (SC) (Art.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



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 (Part Six, Title I)

Single legal framework

But exceptions and special procedures

- Level playing field (panel of experts instead of arbitration panel)
- Law enforcement section
- Fisheries

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