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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the implementation and application of the Trade and Cooperation Agreement
between the European Union and the United Kingdom of Great Britain and Northern
Ireland**

1 January – 31 December 2021

Report from the European Commission to the European
Parliament and the Council on the implementation and
application of the Trade and Cooperation Agreement
between the European Union and the United Kingdom of
Great Britain and Northern Ireland
1 January – 31 December 2021

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1. Introduction

The Trade and Cooperation Agreement (TCA) between the European Union (EU) and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland (United Kingdom), of the other part¹ was signed on 30 December 2020. It took provisional effect on 1 January 2021. Following the completion of the ratification processes in the EU and the United Kingdom, it formally entered into force on 1 May 2021.

The TCA establishes a comprehensive basis for the relationship between the parties in a broad range of areas including trade, transport, fisheries, law enforcement and judicial cooperation in criminal matters, thematic cooperation and participation in EU programmes. It is underpinned by provisions ensuring a level playing field, sustainable development and respect for fundamental rights, as well as arrangements on governance and dispute settlement.

Among the EU free trade agreements with non-EU countries, the TCA is unique in that it was concluded with a former Member State. As a result, the conditions for trade and cooperation established by the TCA became more restricted than those that had been in place until the end of 2020, when the transition period set out in the Withdrawal Agreement² came to an end. This is an inevitable consequence of the United Kingdom leaving the EU Customs Union and the single market.

The EU's objective is to establish a stable and positive relationship with the United Kingdom. While good progress was achieved in setting up the structures for cooperation set out in the TCA, some challenges remain. There are also persisting difficulties on the broader relationship with the United Kingdom, particularly those related to the implementation of the Protocol on Ireland and Northern Ireland under the Withdrawal Agreement.

This is the first report on the TCA's implementation and application, as required by Article 2(4) of Council Decision (EU) 2021/689 of 29 April 2021.³ The report presents the state of play in relation to a range of areas covered by the TCA during the first year of its application. The report also seeks to quantify the effect of the TCA with data, where available.

¹ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (OJ L 149/10) [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22021A0430\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22021A0430(01)&from=EN)

² Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01) [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12019W/TXT\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12019W/TXT(02)&from=EN)

³ Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ L149/2) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021D0689&from=EN>

2. Institutional framework

The TCA creates its own institutional framework to supervise and facilitate its implementation. This structure was successfully put in place in 2021 and is now fully operational.

The Partnership Council, which supervises the implementation of the TCA at political level, met for the first time on 9 June 2021. The parties discussed among others fisheries, non-discrimination for work visa fees, law enforcement and judicial cooperation, as well as the United Kingdom's participation in EU programmes.⁴ However, a joint statement could not be agreed due to the United Kingdom's refusal to have a reference to the full implementation of the Withdrawal Agreement as a prerequisite for a solid future relationship.⁵

All the joint bodies assisting the Partnership Council in matters covered by the TCA, including the Trade Partnership Committee and the 11 trade specialised committees, which support its work in specific areas, held meetings during 2021:

- Specialised Committee on Social Security Coordination (6 July 2021);
- Specialised Committee on Energy (14 July 2021);
- Specialised Committee on Fisheries (20 July and 27 October 2021);
- Trade Specialised Committee on Sanitary and Phytosanitary Measures (22–23 September 2021);
- Trade Specialised Committee of Customs Cooperation and Rules of Origin (7 October 2021);
- Trade Specialised Committee on Goods (8 October 2021);
- Trade Specialised Committee on Services, Investment and Digital Trade (11 October 2021);
- Trade Specialised Committee on Public Procurement (12 October 2021);
- Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development (12 October 2021);
- Trade Specialised Committee on Intellectual Property (13 October 2021);
- Trade Specialised Committee on Regulatory Cooperation (13 October 2021);
- Specialised Committee on Air Transport (14 October 2021);
- Trade Specialised Committee on Technical Barriers to Trade (15 October 2021);
- Specialised Committee on Law Enforcement and Judicial Cooperation (19 October 2021);
- Trade Partnership Committee (16 November 2021);
- Specialised Committee on Aviation Safety (23 November 2021);
- Specialised Committee on Road Transport (24 November 2021);
- Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties (15 December 2021); and
- Specialised Committee on Participation in Union Programmes (21 December 2021).

⁴ Agendas and minutes of the meetings of the Partnership Council and the committees: https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement/meetings-eu-uk-partnership-council-and-specialised-committees-under-trade-and-cooperation-agreement_en

⁵ The European Commission's statement following the first meeting of the Partnership Council: https://ec.europa.eu/info/sites/default/files/20210609_unilateral_pc_statement_002_final.pdf

In line with the agreed arrangements, the EU was represented in these meetings by the European Commission, whereas positions to be taken on behalf of the EU were coordinated with the Council. Member States' representatives joined the meetings as part of the EU delegation. The European Parliament was informed of the joint bodies' activities.

Steps were also taken to establish parliamentary cooperation between the EU and the United Kingdom. The parties agreed that the Parliamentary Partnership Assembly (the Assembly) established in the TCA would consist of 35 Members of the European Parliament and the United Kingdom's parliament respectively. The EU delegation to the Assembly was approved in October 2021.⁶ The Assembly will begin its work in 2022.

The process of involving civil society in the implementation of the TCA has also begun. The Civil Society Forum's operational guidelines were informally agreed by the Commission and the United Kingdom. These guidelines need to be endorsed by the Partnership Council in order for the Civil Society Forum to start work.⁷ The EU Domestic Advisory Group was also set up to enable a broader dialogue on the matters covered by the TCA. The Domestic Advisory Group is supported by the European Economic and Social Committee, which coordinates meetings and maintains contacts with civil society partners. The first meeting of the Domestic Advisory Group took place on 25 November 2021.⁸

3. Enforcement tools and dispute settlement

In response to requests from the Member States, the Commission set up a central point⁹ allowing stakeholders to register complaints related to the implementation of the TCA. Businesses, NGOs, employers, trade unions and the general public in the EU can use this system as a first point of entry to report problems related to the implementation of the TCA. The central point is linked with the existing tools developed by the Commission, such as the single entry point for registering trade-related complaints, including market access issues, level playing field or sustainable development. These tools reflect the Commission's increased efforts to strengthen the enforcement and implementation of its international agreements.

Furthermore, to be able to trigger enforcement measures, the Commission made proposals¹⁰ to govern the adoption of unilateral and enforcement measures, which would replace the

⁶ See: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0398_EN.pdf

⁷ Information on the meetings of the Civil Society Forum will be available at <https://trade.ec.europa.eu/dialogue/index.cfm>

⁸ <https://www.eesc.europa.eu/en/tags/international-trade?page=1>

⁹ https://ec.europa.eu/assets/sg/complaint_eu_uk_tca/complaints_en/

¹⁰ Proposal for a Regulation of the European Parliament and of the Council laying down rules for the exercise of the Union's rights in the implementation and enforcement of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community and of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, COM(2022) 89; and Proposal for a Council Regulation laying down rules for the exercise of the Community's rights in the implementation of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, COM(2022) 100.

empowerment provided for in the Council Decision (EU) 2021/689¹¹ on the conclusion of the TCA.

In 2021, neither party requested consultations or the establishment of an arbitration tribunal under the rules on dispute settlement of the TCA. As part of the implementation of these rules, the EU formally proposed, on 14 December 2021, individuals who are willing and able to serve as members of an arbitration tribunal.¹²

4. Trade in goods

At the end of the transition period, the United Kingdom and the EU split into two separate customs territories, and two separate markets for goods, each with its own regulatory regime, inevitably creating barriers to trade.

Although the TCA provides for trade without tariffs and quotas on all imports between the parties, frictionless trade in goods ended and non-tariff barriers re-emerged. As of 2021, all exports from the United Kingdom to the EU are subject to customs procedures and checks. Agri-food consignments must be accompanied by health certificates and undergo sanitary and phytosanitary (SPS) inspections at Member States' border control posts. In addition, all goods need to comply with different rules and regulatory measures, as the principle of mutual recognition ceased to apply.

Furthermore, goods traded between the two parties must comply with the rules of origin established in the TCA if they are to benefit from preferential treatment with 0% of customs duties. Proving the origin of a good can be burdensome, particularly if businesses source components from several countries. To ease the uptake of preferential treatment, the Commission adopted legislation¹³ establishing a transitory period during which EU exporters could issue statements on origin based on suppliers' declarations, even in the absence of complete documentation, provided that they would have it by the end of 2021. As of 2022, standard requirements to make out statements on origin apply. On EU imports from the United Kingdom, over 80% of goods benefitted from preferential treatment. The Commission together with the Member States ensures the correct implementation of the rules of origin and provides guidance and explanations to customs authorities and businesses.

Despite there being no customs duties on originating goods, businesses reported widely about disruptions in supply chains. The difficulties faced by EU businesses are consistent with what could be expected, namely:

¹¹ Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ L149/2) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021D0689&from=EN>

¹² https://ec.europa.eu/info/system/files/ares_20217728182_letter_from_vice-president_sefcovic_to_the_united_kingdom_minister_of_state_lord_frost_signed.pdf

¹³ Commission Implementing Regulation (EU) 2020/2254 of 29 December 2020 on the making out of statements on origin on the basis of supplier's declarations for preferential exports to the United Kingdom during a transitory period (OJ L446/1) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R2254&from=EN>

- increased costs because of having to comply with dual regulatory systems and additional formalities;
- delays at the border due to new procedural requirements; and
- difficulty in complying with changing import rules.

The Commission made every effort to assist Member States and EU businesses to navigate the new environment. For instance as regards SPS requirements, where certain problems occurred at the beginning of 2021, guidance on the correct application of the SPS rules was provided promptly. In the area of customs, guidance on the rules of origin and other customs related issues was published together with check lists and other relevant information.¹⁴ As a result, the number of issues in both areas significantly dropped as the year progressed. For its part, the United Kingdom repeatedly postponed the implementation of customs and SPS requirements on imports from the EU in 2021. The implementation of these formalities began in January 2022 and will be phased in until October 2022, according to the staged approach defined in the Border Operating Model. Their application may be challenging for EU exporters and Member States due to the logistical impact of the new procedures, in particular the need to submit required declarations and supporting documents before goods are shipped from EU ports to the United Kingdom, as well as the complexity of the IT system put in place by the United Kingdom.

The Commission is in close contact with Member States to ensure that their administrations and businesses are well prepared. The relevant information is also available on the Commission's website.¹⁵ To facilitate trade in goods that fall under SPS requirements, electronic model health certificates required for exports to Great Britain have been made available to all Member States and the Commission engaged in discussions with the United Kingdom's authorities on their acceptance.

While it is still too early to assess the full economic impact of the United Kingdom's exit from the EU single market, latest data shows that trade flows between the EU and the United Kingdom have partially stabilised in 2021 after an initial drop following the end of the transition period. However, they remained lower than in 2019 and earlier.

On trade in goods, Eurostat estimates, for 2021, EUR 146 billion of EU imports from the United Kingdom which is a marked decline both compared to 2020 (-13.6%) and to 2019 (-24.8%). EU exports to the United Kingdom are estimated at EUR 283 billion, up by 1.9% compared to 2020 but still 11.4% below the level registered in 2019.

Table 1 shows that both EU imports and exports of goods with the rest of its partners sharply rose in 2021 compared to 2020 (+27% and +14.6% respectively) and above the 2019, pre-pandemic, levels (12.5% for imports and 4.7% for exports) while trade with the United Kingdom is still far from its pre-pandemic levels.

Machinery and transport equipment, which represent a relevant share of bilateral trade were particularly affected. EU imports from the United Kingdom in this sector contracted by 26.2% in 2021 compared to 2020 and by 37.9% compared to 2019. EU exports contracted by 3.1% in 2021 relative to 2020 and 20.5% relative to 2019. In absolute terms, EU imports and

¹⁴ https://ec.europa.eu/taxation_customs/customs-4/international-affairs/third-countries/united-kingdom_en

¹⁵ https://ec.europa.eu/taxation_customs/customs-4/international-affairs/third-countries/united-kingdom/new-import-formalities-bring-goods-eu-uk-1-january-2022_en

exports in machinery and transport equipment with the United Kingdom, in 2021, was more than EUR 52 billion below the level recorded in 2019.¹⁶

¹⁶ Statistics measuring EU trade with the United Kingdom were affected by a major change as of 1 January 2021, when survey-based statistics used to measure intra-EU trade were replaced by customs-based statistics measuring country of origin rather than country of consignment. It is likely that (a part of) the losses in EU trade with the United Kingdom were compensated by gains in trade with other non-EU countries. At this stage, it is not possible to quantify this statistical effect.

Table 1. EU27 Merchandise trade in 2021 by partner and SITC sector compared to previous years

	EU imports		% change compared to		EU exports		% change compared to	
	2021 million €	2020	2019		2021 million €	2020	2019	
EU27 trade by partner	TOTAL All products							
UK	146,025	-13.6	-24.8		283,589	1.9	-11.4	
Extra-EU27 (excl. UK)	1,965,514	27.0	12.5		1,896,887	14.6	4.7	
EU27 trade by SITC sector	Partner : United Kingdom							
0 - Food and live animals	9,444	-26.8	-31.5		31,716	-4.5	-3.9	
1 - Beverages and tobacco	2,637	-9.8	-23.5		6,269	5.1	7.3	
2 - Crude materials, inedible, except fuels	4,349	34.1	22.9		9,535	53.9	55.3	
3 - Mineral fuels, lubricants and related materials	20,913	37.8	-6.5		10,775	92.6	6.9	
4 - Animal and vegetable oils, fats and waxes	451	-21.4	-6.3		1,034	2.6	9.7	
5 - Chemicals and related prod, n.e.s.	26,286	-20.8	-20.6		45,316	2.8	-6.8	
6 - Manufactured goods classified chiefly by material	16,274	-0.3	-11.9		35,604	11.8	-1.7	
7 - Machinery and transport equipment	42,823	-26.2	-37.9		102,872	-3.1	-20.5	
8 - Miscellaneous manufactured articles	13,917	-36.0	-44.3		33,592	-8.3	-22.1	
9 - Commodities and transactions n.c.e.	8,931	83.0	72.7		6,877	-9.6	1.3	
EU27 trade by SITC sector	Partner : Extra-EU27 (excl UK)							
0 - Food and live animals	98,296	8.2	5.1		103,475	5.9	12.2	
1 - Beverages and tobacco	6,599	4.2	-3.1		34,035	15.5	6.7	
2 - Crude materials, inedible, except fuels	87,727	34.3	29.5		53,542	32.2	26.8	
3 - Mineral fuels, lubricants and related materials	359,916	74.6	5.6		93,312	59.5	-0.1	
4 - Animal and vegetable oils, fats and waxes	13,458	27.2	48.7		6,642	20.0	32.9	
5 - Chemicals and related prod, n.e.s.	244,176	22.1	20.9		410,917	12.0	14.7	
6 - Manufactured goods classified chiefly by material	222,081	26.8	24.0		203,994	18.4	5.8	
7 - Machinery and transport equipment	627,878	18.5	10.3		727,950	11.3	-1.9	
8 - Miscellaneous manufactured articles	272,572	17.8	8.2		223,366	16.7	4.4	
9 - Commodities and transactions n.c.e.	32,811	1.2	24.9		39,655	2.1	-1.3	

Source : Eurostat EXT_ST_EU27_2020SITC 18-Feb-22

5. Services and investment, digital trade, intellectual property, public procurement and small and medium-sized enterprises

With the end of the transition period, the free movement of persons, as well as the freedom to provide services, capital movement and of establishment came to an end, resulting in a major change to the way both parties' service providers are able to access each other's markets. The provision of services, which now takes place on a non-EU country basis, has become more challenging. Businesses planning to deliver services or investors willing to establish themselves in the other party's territory face new regulatory and administrative barriers. For instance, authorisations from the home country are no longer valid in the host country, professional qualifications are not as easily recognised as they are within the EU and immigration rules apply. For United Kingdom service providers and investors different rules for each of the 27 Member States apply.

Although the TCA contains provisions reducing certain access barriers, for example by prohibiting quantitative restrictions such as economic needs tests for investors and service providers or providing for a possibility to recognise professional qualifications,¹⁷ the TCA framework does not compare with the freedoms of establishment or to provide services within the single market. The TCA also provides for the facilitation of digital trade and enhanced standards on the protection of intellectual property, as well as rules on access to respective public procurement markets.

Data for the first three quarters of 2021 show that trade in services did not return yet to pre-pandemic levels. Table 2 shows that despite the rebound relative to the first nine months of 2020, EU imports from the United Kingdom and from the rest of its trading partners are much lower than in the same period in 2019, -9.3% from the UK and -8% relative to the rest of the world. When comparing EU exports in the first three quarters of 2021 with those in the same period of 2019, the drop is more significant for the United Kingdom (-13.2%) than for the rest of the EU trading partners (-4.8%).

Showing no signs of recovery relative to 2020, the travel sector is one of the most affected. EU imports and exports with both the United Kingdom and the rest of its trading partners, in the first nine months of 2021 are still far from the levels of the same period in 2019.

Trade in Transport services, Construction services and Charges for the use of intellectual property are also heavily affected but this mostly applies to trade between the EU and the United Kingdom, trade between the EU and its other trading partners is now exceeding the levels recorded in the first nine months of 2019. This is indicative of the effect of the withdrawal of the United Kingdom from the EU.

Throughout 2021, the Commission concentrated its efforts on overcoming obstacles related to implementing the TCA. For instance, it was possible to clarify the United Kingdom immigration rules regarding subcontractors' right to perform installation and maintenance services in its territory.

For its part, the Commission complied with the transparency obligations under the TCA. Information on the provision of services by natural persons is now publicly available.

¹⁷ Both parties' professional bodies can call upon the Partnership Council to approve recognition in their sector.

The Commission also met its obligation to develop a public website with information on SMEs.¹⁸

The Commission will continue to monitor the implementation of the TCA in services and investment, digital trade, intellectual property, public procurement and SMEs and insist on complying with the TCA. It will follow up with the relevant United Kingdom's authorities on future public procurement legislation¹⁹, which has raised concerns among EU stakeholders. The Commission will also continue to closely monitor the impact of other legislative developments in the United Kingdom, affecting the matters covered by the TCA.

¹⁸ <https://trade.ec.europa.eu/access-to-markets/en/home>

¹⁹ See: <https://www.gov.uk/government/consultations/green-paper-transforming-public-procurement/outcome/transforming-public-procurement-government-response-to-consultation>

Table 2. EU27 Services trade in the first 9 months of 2021 by partner and service sector compared to the same period in previous years

	EU imports Jan-Sept 2021 Million €	% change compared to Jan-Sept 2020 2019		EU exports Jan-Sept 2021 Million €	% change compared to Jan-Sept 2020 2019	
EU27 trade by partner				TOTAL All services		
UK	114,858	3.9	-9.3	143,253	6.4	-13.2
Extra-EU27 (excl. UK)	499,174	-4.4	-8.0	574,356	12.3	-4.8
EU27 trade by services sector				Partner : United Kingdom		
Manuf. services on physical inputs owned by others	1,349	1.8	-8.7	3,721	-3.1	-2.9
Maintenance and repair services n.i.e.	1,414	-6.2	-27.6	1,792	-19.5	-24.9
Transport	9,101	-7.9	-27.4	15,534	4.0	-24.9
Travel	3,934	-33.0	-71.9	9,912	-9.7	-70.2
Construction	1,339	-5.6	-51.4	1,599	-12.8	-57.7
Insurance and pension services	6,342	25.4	37.8	8,487	35.4	55.8
Financial services	20,121	22.8	19.8	22,693	12.1	11.9
Charges for the use of intellectual property n.i.e.	9,061	4.0	-21.8	7,267	8.6	-8.4
Telecommunications, computer, and information services	14,181	2.9	8.3	27,357	9.7	14.7
Other business services	44,670	4.0	2.5	38,337	4.8	1.8
Personal, cultural, and recreational services	2,990	4.4	-11.5	2,798	15.8	8.1
Government goods and services n.i.e.	258	-55.6	-64.5	822	13.2	13.5
Services not allocated	101	-39.4	-27.4	2,936	-1.0	13.3
EU27 trade by services sector				Partner : Extra-EU27 (excl. UK)		
Manuf. services on physical inputs owned by others	11,556	10.5	14.5	16,907	12.4	8.5
Maintenance and repair services n.i.e.	8,427	-8.4	-17.3	11,019	-0.9	-11.1
Transport	96,165	20.4	1.8	126,803	31.8	8.0
Travel	26,230	-11.3	-63.6	32,400	-4.5	-66.4
Construction	2,371	1.3	-0.3	5,205	-16.5	-28.3
Insurance and pension services	12,707	18.4	20.6	11,094	-0.4	3.1
Financial services	38,530	22.7	32.9	42,347	11.3	13.5
Charges for the use of intellectual property n.i.e.	104,010	21.6	38.4	51,547	-1.8	1.4
Telecommunications, computer, and information services	43,818	11.6	8.2	119,666	22.0	22.1
Other business services	148,391	-31.3	-21.8	140,995	4.8	-1.2

Personal, cultural, and recreational services	4,779	-2.2	-12.6	7,318	5.9	-0.5
Government goods and services n.i.e.	1,984	-11.9	-14.1	3,738	-18.3	-15.3
Services not allocated	208	-52.8	-50.0	5,319	72.8	63.2

Source: Eurostat. European Union and euro area balance of payments - quarterly data (BPM6) - Extracted on 18 Feb. 2022

6. Energy

With the end of the transition period, the United Kingdom no longer participates in the EU single energy market, including its governance and its trading arrangements. Although the TCA sets out provisions to ease the flow of energy, trading processes have become more complicated.

The TCA allows for the development of special trading arrangements for electricity flows between the EU and the United Kingdom. As a first step, both parties' transmission system operators were requested to draw up a cost-benefit analysis. However, the analysis presented jointly in May 2021, delivered unsatisfactory results indicating among others a serious risk of market manipulation and disruption. The Commission is working on options and alternatives to implement this obligation.

The TCA also provides for cooperation in the development of offshore renewable energy, which is due to play a key role in meeting both parties' net zero targets for their greenhouse gas emissions. Building on the North Sea Energy Cooperation, negotiations began in 2021 with the view to signing a Memorandum of Understanding to create a specific forum for technical discussions with the United Kingdom in relation to offshore grid development and the large renewable energy potential of the North Sea region.

7. Level playing field for open and fair competition and sustainable development

The EU and the United Kingdom agreed in the TCA that trade and investment require conditions to ensure a level playing field and sustainable development. In this regard, any relevant developments in United Kingdom law on subsidy control, taxation, labour and social standards, as well as the environment and climate must be monitored and reported, as required by Article 2(4) of the Council Decision (EU) 2021/689.

To monitor such developments, the Commission uses information gathered by its services and Member States, input from EU stakeholders, formal and informal contacts in the context of international and multilateral fora, as well as specialised committees established under the TCA. The Commission also closely monitors the development of regulatory changes, analysing reports by think tanks, business, non-governmental organisations, media and other stakeholders. The single entry point²⁰ established by the TCA also provides the Commission with information for its analyses.

²⁰ The Single Entry Point is the centralised contact point for EU-based stakeholders wishing to lodge a complaint on market access issues, level playing field or non-compliance with Trade and Sustainable Development or Generalised System of Preferences system commitments. More information may be found on <https://ec.europa.eu/trade/trade-policy-and-you/contacts/chief-trade-enforcement-officer/>

7.1. Labour and social standards, environment and climate, sustainable development

Following its withdrawal from the EU, the United Kingdom announced wide-reaching regulatory reform as part of its *'taking back control of our laws'* ambition and launched a public consultation on reforming the framework for better regulation.²¹

In labour and social policy, the United Kingdom government announced its intention to establish a single enforcement body for employment rights, which will be tasked with ensuring centralised supervision of its labour laws.²² The Commission is closely following up this legislative development, in particular on the body's powers and resources to carry out its enforcement role. Once the law enters into force, the Commission will closely monitor if the relevant labour and social standards are effectively enforced, as required by the TCA. The Commission and the United Kingdom discussed this issue at the first meeting of the Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development where both parties agreed on the importance of the effective enforcement of workers' rights.

The United Kingdom also adopted the Environment Act 2021²³ setting up the Office for Environmental Protection and addressing specific policy aspects related to waste, biodiversity, air quality, water and conservation. In this instance, the Commission will also monitor if the Office is provided with sufficient powers and resources to be able to effectively enforce the environmental rules, in line with the TCA obligations. Furthermore, the Commission will pay attention to the effective implementation of environmental commitments following the adoption of the act and the secondary legislation that will follow.

The EU rules regulating the chemical sector were brought into the United Kingdom's domestic law²⁴ in 2021 with some adaptations resulting from the country's withdrawal from the EU. The Commission is closely monitoring the United Kingdom's approach to restrictions, authorisations and registrations of chemical substances to ensure compliance with the relevant TCA obligations.

On climate protection, the United Kingdom introduced its own Emissions Trading Scheme.²⁵ The scheme applies to energy intensive industries, the power generation sector and aviation. It covers activities involving combustion of fuels in installations. In aviation, the scheme applies to flights within the United Kingdom, as well as those to Gibraltar and the European Economic Area. Since May 2021, the United Kingdom has been organising auctions related to trade in allowances. The clearing prices have so far been at levels comparable to or higher than those in the EU.

²¹ Announcement of the regulatory reform of key sectors: <https://www.gov.uk/government/publications/brexit-opportunities-regulatory-reforms>

²² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991751/sing-le-enforcement-body-consultation-govt-response.pdf

²³ <https://www.legislation.gov.uk/ukpga/2021/30/contents/enacted>

²⁴ <https://www.hse.gov.uk/reach/index.htm>

²⁵ <https://www.gov.uk/government/publications/participating-in-the-uk-ets/participating-in-the-uk-ets>

Article 18(2) of European Social Charter²⁶ requires the United Kingdom to abolish or reduce chancery dues, including work-related visa fees. Until recently, the United Kingdom applied a reduction of GBP 55 on long-term visa fees to all workers coming from the states that consented to the Charter open for signature in 1961. In December 2020, the United Kingdom announced that as of 2021, the reduction would not apply to nationals of five EU Member States.²⁷ In July 2021, the United Kingdom served a notice of its intention to denounce Article 18(2) of the European Social Charter. In September 2021, the United Kingdom decided to remove the visa fee reduction for all EU citizens as of February 2022. The Commission raised this issue at the meetings of the Partnership Council and the Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development. It expressed disappointment that the United Kingdom did not extend the visa fee discount to citizens of the five EU Member States concerned, but instead decided to remove the discount altogether.

7.2. Subsidy control

In June 2021, the United Kingdom government tabled a Subsidy Control Bill²⁸ aiming to establish a legal framework for future subsidy oversight. The bill provides for substantive and enforcement rules.

On the substantive rules, the bill provides for a definition of subsidy and a set of general and specific subsidy principles, which are grounded in the principles laid down in the TCA, as well as the provisions on transparency.

On enforcement, the bill establishes a Subsidy Unit within the Consumers and Markets Authority, which will assume the role of an independent body with subsidy control powers. The bill provides for an ex-post subsidy control system with some ex-ante elements. The Competition Appeal Tribunal will be able to impose a recovery order if a subsidy is granted unlawfully. It is expected that additional implementing rules and guidance will be issued. The Commission will continue to monitor developments.

The Commission also looks into the subsidies for supporting renewable energy under the United Kingdom's 'Contracts for Difference' scheme.²⁹ The Commission expressed its concerns about the inclusion of '*the percentage of United Kingdom content*' in the supply chain plan questionnaire. The Commission raised this issue in the meetings of the Trade Specialised Committee on Goods and the Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development, as well as the Trade Partnership Committee. The Commission requested the United Kingdom to remove information on local content from the questionnaire and adapt the scoring of the eligibility criteria, as well as to issue additional guidance to confirm that the question on the United

²⁶ The European Social Charter is a treaty concluded under the Council of Europe, which was opened for signature in 1961 and initially became effective in 1965. The Charter was revised in 1996. The Revised Charter came into force in 1999:
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048b059>

²⁷ Bulgaria, Estonia, Lithuania, Romania and Slovenia.

²⁸ <https://www.gov.uk/government/collections/subsidy-control-bill>

²⁹ <https://www.gov.uk/government/publications/contracts-for-difference/contract-for-difference>

Kingdom content has been removed and would not be scored in any way, including in the implementation stage, effectively removing any role for location.

The United Kingdom proposed to establish eight freeports³⁰, two of which became operational in 2021, with specific rules such as direct tax measures (e.g. tax reliefs) and simplified customs processes or subsidies supporting trade and investment. The Commission will continue to monitor their setting-up and scrutinise their compliance with the level playing field provisions in the TCA, especially those related to subsidies and taxation.

8. Transport

With the end of the transition period, the United Kingdom no longer benefits from the EU single market in transport. Although the TCA provides for the rules maintaining connectivity between the EU and the United Kingdom, access rights of transport operators, in particular in aviation and road transport, fall well below those available in the EU single market. For instance, United Kingdom airlines can no longer offer regular air transport services between Member States.

The mutual rights agreed by the parties in air and road transport started to be immediately applied on the entry into force of the TCA and have so far been unproblematic.

The TCA also allows for the possibility of concluding bilateral agreements between the Member States and the United Kingdom for all-cargo air transport services under the so-called ‘fifth freedom rights’.³¹ Based on the authorisation under Article 6 of Council Decision (EU) 2021/689, the following Member States notified to the Commission their agreements with the United Kingdom by the end of 2021: Luxembourg, Malta, France, Slovakia, Germany, Estonia, Czech Republic, Finland, Belgium, Sweden, Denmark, Bulgaria, Hungary, Latvia, the Netherlands, Ireland, Cyprus, Greece and Lithuania.

On airworthiness checks for aircraft, engines and propellers designed in their territories, as well as related certification processes, 15 validations were completed in 2021, mainly consisting of supplementary type certificates or changes to the existing designs. Of those, 13 validations were granted by the EU Aviation Safety Agency and two by the United Kingdom’s Civil Aviation Authority.

9. Fisheries

With the end of the transition period, the United Kingdom ceased to participate in the EU common fisheries policy. Although the TCA provides for reciprocal access to each parties’ waters, as well as specific rules relating to access to the waters of the United Kingdom’s Crown Dependencies during an adjustment period, fishing conditions for both parties’ fishers have substantially changed.

The Commission secured access to the United Kingdom’s and the Crown Dependencies’ waters for most of the EU fishing fleet. However, ensuring access for EU’s smaller and

³⁰ <https://www.instituteforgovernment.org.uk/explainers/trade-freeports-free-zones>

³¹ The right or privilege, in respect of scheduled international air services, granted by one State to another State to put down and to take on, in the territory of the first State, traffic coming from or destined to a third State

replacement vessels to the United Kingdom's territorial waters (6-12 miles) and the Channel Islands' waters remained difficult. While significant progress was made, a number of vessels seeking access to those waters had not received a licence by the end of the year. The Commission is examining together with the concerned Member States the circumstances around every requested license, which has not been granted.

The parties also exchanged notifications of all new management measures, as required by Article 496(3) of the TCA. Mutually acceptable timelines and procedures for such notifications will be developed by the Specialised Committee on Fisheries.

The EU and the United Kingdom also held annual consultations on the management of shared stocks. An agreement on the total allowable catches for 2021 was reached in June 2021. An agreement on the total allowable catches for 2022 was reached in December 2021.

10. Social security coordination

With the end of the transition period, the application of EU mechanisms on social security coordination in the United Kingdom came to an end. The TCA limits the negative impact by protecting the social security rights of people moving between the EU and the United Kingdom after 1 January 2021. To this end, it allows for the coordination of most social security benefits.

Cooperation in social security progressed well in 2021. No structural problems with the implementation of the Protocol on Social Security Coordination under the TCA were identified. Furthermore, amendments to the annexes of the Protocol were adopted by the Specialised Committee on Social Security Coordination to confirm that Member States continue to allow workers posted to or from the United Kingdom to be covered by the sending State's social security legislation under specific conditions.

11. Law enforcement and judicial cooperation in criminal matters

With the end of the transition period, the arrangements for cooperation in law enforcement and judicial cooperation in criminal matters between the EU and the United Kingdom changed. For instance, mechanisms based on mutual recognition were replaced by mutual legal assistance. Moreover, the United Kingdom is no longer a member of the EU law enforcement agencies and has limited or no access to EU databases. Although the TCA provides for cooperation between the parties, such cooperation is now carried out on a non-EU country basis.

In 2021, operational cooperation with Europol and Eurojust continued, albeit on a non-EU country status and subject to bilateral arrangements. To this end, a working and administrative arrangement with Europol establishing cooperative relations was signed on 27 September 2021 and the working arrangement with Eurojust was signed on 20 December 2021.

The Specialised Committee on Law Enforcement and Judicial Cooperation, which oversees the implementation of the cooperation arrangements under the TCA, extended the interim period for the ex-ante evaluation of the United Kingdom's DNA and fingerprints

connections.³² This interim period cannot be further extended beyond 30 June 2022, which is the date by which the United Kingdom's connections must be evaluated.

The TCA requires the United Kingdom to delete Passenger Name Record data received after passengers' departure from the country unless a risk assessment indicates the need to retain such data. The United Kingdom was allowed to derogate from this obligation for an interim period of one year after the entry into force of the TCA, pending the implementation of certain technical adjustments. The interim period was due to end on 31 December 2021. However, on 21 December 2021, the Partnership Council, having considered information provided by the United Kingdom on the safeguards and actions taken in view of enabling the deletion of data and using an empowerment under Article 552(13) of the TCA, took the decision to extend the interim period for an additional year in view of special circumstances.³³

12. Participation in EU programmes

As a result of its withdrawal from the EU, the United Kingdom lost access to EU programmes, including their funding and exchange opportunities. For instance, students from the country's higher education institutions are no longer eligible to participate in the exchange scheme under Erasmus+.

Although the TCA makes it possible for the United Kingdom to participate as an associated non-EU country in certain EU programmes, such participation requires the adoption of bilateral protocols and financial contributions. These protocols were not adopted in 2021.

Pending their adoption, entities from the United Kingdom benefit from transitional arrangements allowing them to apply to calls for proposals under Horizon Europe and undergo the evaluation procedures.

It is recalled that, under the Horizon Europe Regulation,³⁴ entities from non-associated non-EU countries are eligible to participate in Horizon Europe projects without receiving EU funding. In these cases third country entities would need to obtain financial support from other sources.

13. Conclusions

Despite the unprecedented sweeping scope of the TCA, and its trade facilitation measures, the TCA is not, and was never intended to be, a substitute for EU membership.

³² Decision No 1/2021 of the Specialised Committee established by Article 8(1)(r) of the TCA between the EU and the United Kingdom of 28 September 2021, as regards the extension of the period referred to in Article 540(3) of the TCA during which DNA profiles and dactyloscopic data can be exchanged with the United Kingdom.

³³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22021D2323>

³⁴ Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ L170/1) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0695&from=EN>

For trade in goods, the TCA does not eliminate customs procedures and controls, rules of origin in order to benefit from the abolition of tariffs, or the non-tariff barriers resulting from regulatory divergence. For services, the flexibilities offered by the TCA are not remotely comparable to the ease with which services can be delivered in the EU single market. The same holds true for all other EU policy areas which are addressed in the TCA, ranging from transport and energy to fisheries and judicial cooperation in criminal matters. Despite the TCA, trade and cooperation between the EU and the United Kingdom have become more complex and challenging, as compared to the situation when the United Kingdom was an EU member.

Given that Brexit marks the end of the regulatory alignment between the EU and the United Kingdom, the on-going and future legislative developments are relevant for the effective implementation of the TCA. Therefore, continued monitoring of the United Kingdom's regulatory reform in the areas covered by the TCA is of vital importance to ensure that it does not conflict with the TCA provisions and that EU businesses are not put at a competitive disadvantage.

The EU's objective is to maintain a stable and positive relationship with the United Kingdom, which remains a major trading partner. However, the quality of the future relationship will depend to a large extent on the degree of compliance by the United Kingdom with the commitments undertaken in the TCA and the Withdrawal Agreement.