



HOUSE OF LORDS

European Union Committee

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21st Report of Session 2019-21

# **Beyond Brexit: the institutional framework**

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Ordered to be printed 16 March 2021 and published 22 March 2021

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Published by the Authority of the House of Lords

HL Paper 246

### *The European Union Committee*

The European Union Select Committee and its four sub-committees are appointed each session to consider EU documents and draft laws; to consider other matters relating to the UK's relationship with the EU, including the implementation of the UK/EU Withdrawal Agreement, and the Government's conduct of negotiations on the United Kingdom's future relationship with the European Union.

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### *Committee Staff*

The current staff of the Sub-Committee are Christopher Johnson (Principal Clerk), Stuart Stoner (Clerk), Tim Mitchell (Legal Adviser), Alex Horne (Legal Adviser) and Samuel Lomas (Committee Assistant).

### *Contact Details*

Contact details for individual Sub-Committees are given on the website. General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW. Telephone 020 7219 5791. Email [euclords@parliament.uk](mailto:euclords@parliament.uk).

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Q in footnotes refers to a question in oral evidence.

## SUMMARY

The first paragraph of the Preamble to the Trade and Cooperation Agreement (TCA), published on 24 December 2020, sets out the shared commitment of the United Kingdom and the European Union to democratic principles, to the rule of law, to human rights, to countering the proliferation of weapons of mass destruction and to the fight against climate change. As liberal democracies, more unites the UK and the EU than divides them, and we welcome this acknowledgement of the shared values that will underpin their ongoing relationship.

But the haste with which the TCA was agreed, as the deadline of 31 December 2020 approached, means that it is incomplete: the text is provisional, and there are many items of ‘unfinished business’, including those outlined in the 15 Declarations accompanying the TCA. There is also the prospect of a further UK-EU treaty, on Gibraltar, which we welcome.

Not only is the TCA incomplete, but at the time of writing it has yet to be ratified by either side—and the response of the European Parliament to the UK Government’s unilateral decision to extend certain ‘grace periods’ under the Protocol on Ireland/Northern Ireland has cast doubt on the timetable for ratification. The European Union Committee warned in December 2017 that it was difficult to envisage a worse outcome for the United Kingdom than a ‘no deal’ Brexit. We are therefore concerned that recent developments have so undermined trust that the possibility of ‘no deal’—in other words, a failure to ratify the TCA—has now resurfaced. It is incumbent on both sides to approach the new relationship constructively, in good faith, with the aim of rebuilding trust.

The aim of this report is to analyse the cross-cutting provisions of the TCA, particularly those relating to governance and dispute settlement.

On governance, the TCA establishes a complex but flat structure, which will sit alongside the structure already put in place by the Withdrawal Agreement. This complexity is likely to prove challenging, and there may be a case for simplifying and rationalising it in due course. We are also concerned by the absence of any provision for regular ministerial and Head of Government-level dialogue with the EU-27 and the Commission, to provide strategic direction to the UK-EU relationship.

A more immediate problem is that the entire governance structure is, in effect, in abeyance: pending ratification the Government has stated that none of the governance bodies can meet. The TCA, despite being only provisionally applied, is fully operational, and we see no justification for allowing such a complex and important relationship, affecting the security and livelihoods of over 500 million citizens in the UK and in the EU, to drift without the formal governance arrangements having been activated.

The complexity of the proposed governance structure underlines the need for accountability and parliamentary oversight. We call on the Government to commit to supporting effective scrutiny by both Houses, and to undertake that the Minister overseeing relations with the EU should appear regularly before designated Select Committees of both Houses.

Both sides need also to commit to transparency. We welcome the TCA's provision for a Parliamentary Partnership Assembly (PPA), which will have the power to request information from the main governance body, the Partnership Council. The PPA's initial goal should be to help rebuild relationships between the UK and the EU and strengthen channels of communication between the two Parliaments.

Within the dispute resolution provisions of the TCA, the Government has, with some caveats, broadly achieved its aim of bringing the direct jurisdiction of the Court of Justice of the European Union to an end. But instead the TCA creates a varied series of dispute resolution mechanisms to deal with the many areas of potential disagreement that could arise between the UK and the EU. Some of these mechanisms are novel, untested, and without clear precedents. Only time will tell if they are workable in practice, or if they will have a destabilising effect, given that some of them could lead to a broader renegotiation of the TCA as a whole—or even, in an extreme case, to termination of all or part of the agreement.

We regret the fact that the bulk of the dispute settlement arrangements are State-to-State, and as a result access to justice for individuals and businesses will be restricted: we call on the Government to take steps to mitigate this impact. This is a particular concern so far as Part Three of the TCA, on law enforcement and judicial cooperation in criminal matters, is concerned, and we call on the Government to explain what safeguards and rights will be available to those who may be subject to extradition requests from EU Member States under the terms of the TCA.

This is the final report of the European Union Select Committee. It will be published alongside four reports from our sub-committees, analysing the TCA's provisions on the environment, trade in goods, trade in services, and law enforcement.

The five reports are unified by the theme of moving 'Beyond Brexit': the TCA is a starting point, not a final destination. Both sides need to approach the new relationship constructively, in good faith, with the aim of rebuilding the trust that has been so undermined in recent times. Liberal democracies are precious, and they should work together, not pull apart.

# Beyond Brexit: the institutional framework

## CHAPTER 1: THE STORY SO FAR

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### The Trade and Cooperation Agreement

1. On 24 December 2020, four and a half years after the people of the United Kingdom voted to leave the European Union, negotiators representing the two sides finally agreed the terms of the future UK-EU relationship and published the EU-UK Trade and Cooperation Agreement (TCA).<sup>1</sup>
2. The process that led to the publication of the TCA was long-drawn-out. On 29 March 2017 the then Prime Minister, Rt Hon Theresa May MP, formally notified the EU of the United Kingdom's intention to withdraw from the EU in accordance with Article 50 of the Treaty on European Union. This triggered a two-year period within which, according to Article 50, the two sides were to "negotiate and conclude an agreement ... setting out the arrangements for [UK's] withdrawal, taking account of the framework for its future relationship with the Union".<sup>2</sup> Article 50 also established a procedure whereby the two-year period might be extended, and in the face of the rejection by the House of Commons of the Withdrawal Agreement negotiated by Theresa May's Government, this procedure was repeatedly invoked. Only after the new Prime Minister, Rt Hon Boris Johnson MP, secured a general election victory in December 2019 was a revised Withdrawal Agreement approved and ratified, allowing the United Kingdom to leave the EU on 31 January 2020.
3. Upon ceasing to be an EU Member State the United Kingdom entered into a transition period, during which EU law continued to apply. The transition period was intended to give stability, providing reassurance to citizens and businesses while the terms of the new UK-EU relationship were negotiated and agreed. The original proposed Withdrawal Agreement, in November 2018, had envisaged a transition period of almost two years, beginning on 29 March 2019 and ending on 31 December 2020. This reflected the view of the former Prime Minister, that it would take "around two years" to "prepare and implement the new processes and new systems that will underpin that future partnership".<sup>3</sup> But the end date remained unchanged in successive iterations of the Withdrawal Agreement, so that following the UK's eventual withdrawal in early 2020 just 11 months remained within which to negotiate the terms of a complex, broad and enduring UK-EU relationship.<sup>4</sup>

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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 (24 December 2020): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/948119/EU-UK\\_Trade\\_and\\_Cooperation\\_Agreement\\_24.12.2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf) [accessed 5 February 2021]

2 Article 50, Treaty on European Union, *OJ C 326* (consolidated version of 26 October 2012)

3 Rt Hon Theresa May MP, *PM's Florence speech: a new era of cooperation and partnership between the UK and EU* (22 September 2017) : <https://www.gov.uk/government/speeches/pms-florence-speech-a-new-era-of-cooperation-and-partnership-between-the-uk-and-the-eu> [accessed 12 February 2021]

4 The Withdrawal Agreement allowed for the two sides to agree, no later than 30 June 2020, to extend the transition period, but the UK Government made it clear early in 2020 that it would not seek an extension.

4. As a result, the more than 1,200 pages of the TCA were negotiated and agreed at extraordinary pace. Time pressure was compounded by intense political interest, as well as the challenges of the ongoing COVID-19 pandemic. It is therefore no surprise that the text of the TCA published on 24 December was provisional, containing some errors, and requiring further legal checking (or ‘scrubbing’) prior to ratification.<sup>5</sup> It was accompanied by two much shorter agreements, on Nuclear Cooperation and on Security Procedures for Exchanging and Protecting Classified Information, as well as 15 Declarations agreed by the Parties, setting out their intention to address various still-unresolved questions on matters as diverse as road haulage and data adequacy. Then on 31 December it emerged that the UK, Gibraltar and Spain had agreed in principle on the framework for a separate UK-EU legal instrument setting out Gibraltar’s future relationship with the EU.
5. Not only was the TCA published in unfinished form, alongside a range of documents looking forward to further agreements, but it appeared too late for the EU to be able to ratify it before the end of the transition period on 31 December 2020. It therefore had to be provisionally applied by both Parties, initially until 28 February 2021, a period subsequently extended to 30 April 2021.<sup>6</sup> This has allowed time for detailed scrutiny by the European Parliament, leading up to a vote on the TCA. In contrast, the UK Government, in bringing forward the implementing legislation required to give effect to the TCA before the end of the year, chose to disapply the requirement for parliamentary scrutiny that would otherwise have existed under the terms of Part 2 of the Constitutional Reform and Governance Act 2010<sup>7</sup>—even though there has been ample time for such scrutiny to be completed prior to ratification. The result is that neither House of Parliament has had the opportunity for a formal debate or vote on the TCA itself, as opposed to the implementing legislation.
6. But despite its unfinished quality, and the limited scope for parliamentary scrutiny, the TCA marks a critical shift in UK-EU relations. From the moment Theresa May triggered the Article 50 process on 29 March 2017 there was the risk of a chaotic Brexit, without agreement on a host of issues of vital mutual interest. That is why, as long ago as December 2017, this Committee warned:

“‘No deal’ would mean the abrupt cessation of over 40 years of economic, political and legal partnership. It is difficult, if not impossible, to envisage a worse outcome for the United Kingdom.”

As we launched this inquiry it appeared that the publication of the TCA, along with the Withdrawal Agreement, had averted the risk of ‘no deal’. Then the Government’s announcement that it would unilaterally extend certain ‘grace

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5 At the time of writing the TCA has yet to be ratified by either side: ratification will formally take place once both sides have completed the internal processes necessary to implement the Agreement and are thus in a position to exchange instruments of ratification.

6 The Agreement was provisionally applied with effect from the end of the transition period on 31 December 2020, pending completion of ratification procedures on the EU side (which require a vote in the European Parliament). [Trade and Cooperation Agreement, 24 December 2020 \(Article FINPROV.11\)](#) provides that provisional application will cease on 28 February 2021, unless the Partnership Council established under the Agreement agrees another date. Shortly before the scheduled expiry of the period for provisional application, the Partnership Council agreed, following a request by the European Union, to extend this period until 30 April 2021. See Written Ministerial Statement, [HCWS791](#), Session 2019–21 by Rt Hon Michael Gove MP.

7 European Union (Trade and Cooperation Agreement) Act 2020, section 36

periods' in relation to the Protocol on Ireland/Northern Ireland first led the European Parliament to suspend plans to vote on the agreement (a necessary pre-condition for EU ratification) and then prompted the Commission to announce that it would take action against the UK.<sup>8</sup> Although issues relating to the Protocol are beyond the scope of this report,<sup>9</sup> these latest tensions reflect and compound a broader breakdown of trust between the UK Government and the EU. As a result, while the existence of the TCA has certainly lessened the risk of 'no deal', it has not wholly removed it.

7. **We welcome the achievement of the United Kingdom and European Union lead negotiators, Lord Frost and Michel Barnier, along with their teams, in delivering the Trade and Cooperation Agreement under extraordinarily difficult circumstances, thereby averting the threat of a chaotic and damaging conclusion to the post-Brexit transition period.**
8. **We note that the final text of the TCA has yet to be published, and that it has been provisionally applied on the EU side. We regret that the UK Government, in bringing forward section 36 of the European Union (Trade and Cooperation Agreement) Act 2020, chose to disapply the procedure for parliamentary scrutiny of the TCA that would otherwise have applied under Part 2 of the Constitutional Reform and Governance Act 2010. An agreement of such complexity and importance surely merited formal debates in both Houses prior to ratification.**
9. **We also note that, at the time of writing, and in response to the UK Government's decision unilaterally to extend certain 'grace periods' under the Protocol on Ireland/Northern Ireland, the European Parliament has declined to set a date for its vote on the TCA—a vote that is a precondition for EU ratification. The threat of 'no deal' thus remains, and a 'no deal' that took effect on 1 May 2021 would carry just as much risk as one taking effect four months earlier.**
10. **The current state of UK-EU relations underlines the importance of completing the process of ratifying the TCA. Whatever the imperfections of the TCA and the challenges presented by the text, and whatever the deficiencies of the process whereby it was implemented in domestic law, the TCA will provide a structure within which the UK-EU relationship can be managed and can develop. That structure is needed now more than ever.**

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8 On 15 March 2021 the European Commission announced that, as a result of the UK's unilateral action, it would commence infringement proceedings against the UK, and that unless the UK entered into consultations in the Joint Committee, in good faith, with the aim of reaching a mutually agreed solution, the EU would also trigger the dispute settlement procedure contained in the Withdrawal Agreement. See European Commission, 'Withdrawal Agreement: Commission sends letter of formal notice to the United Kingdom for breach of its obligations under the Protocol on Ireland and Northern Ireland', 15 March 2021: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_1132](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1132) [accessed 16 March 2021]

9 See Letter from Lord Kinnoull, Chair, House of Lords European Union Committee to Lord Frost CMG, Minister of State, Cabinet Office, dated 11 March 2021: <https://committees.parliament.uk/publications/5055/documents/50169/default/> and Letter from Lord Kinnoull, Chair, House of Lords European Union Committee to Lord Frost CMG, Minister of State, Cabinet Office, dated 11 March 2021: <https://committees.parliament.uk/publications/5056/documents/50170/default/>

## The work of the European Union Committee

### *The European Union Committee, 1974–2021*

11. The European Union Committee was first established, as the European Communities Committee, in 1974. The core task of the Committee and its sub-committees was to scrutinise EU (EEC, as it then was) legislation, bringing accountability and transparency to the work of UK Ministers in negotiating and adopting new laws that would bind the UK. The Committee has also published detailed, evidence-based inquiries on almost every aspect of EU policy, drawing on formidable experience and expertise at both Member and staff level, and setting a benchmark for engaged scrutiny by committees across the Member States.
12. The structure adopted in 1974 served Parliament and the public well, but the 2016 referendum was a turning-point. Since 2016 the European Union Committees have published 48 reports addressing the policy implications of Brexit, or various aspects of the Brexit process, but only six addressing the wider areas of EU policy or activity that before 2016 were their bread-and-butter. This refocusing of committee activity was justified because Brexit was an unprecedented and hugely complex task, involving not just the disentangling of almost half a century of legal, economic and political integration, but also the birth of a new relationship between the United Kingdom and its largest trading partner, closest neighbour and key strategic ally.
13. We have also been aware throughout that our Brexit-focused work would be finite: there would come a time when Brexit would be achieved, and Parliament and the country would move on. So we have repeatedly updated our working practices and structures in response to new challenges:
  - In early 2019 we took over responsibility for scrutinising Brexit-related international agreements with third countries, on which we have published a further 30 reports;
  - In early 2020 we presented proposals to the Liaison Committee to update our terms of reference, and to reorganise the European Union Committees for the duration of the transition period;
  - In spring 2020, following the Liaison Committee’s report, we implemented a slimmed-down sub-committee structure, with a reduction to four EU-facing sub-committees, and a new sub-committee dedicated to scrutiny of international agreements.
  - At the same time, we agreed with the Cabinet Office a streamlined process for scrutiny of EU laws, one that was proportionate to the UK’s status as a former Member State still subject to EU law.
14. Most recently, in late 2020, we contributed to the final phase of the Liaison Committee’s comprehensive review of the House’s committee structure, which began in January 2018 in the wake of the referendum. In January 2021 the House agreed the report of the Liaison Committee,<sup>10</sup> and as a result the European Union Select Committee and its sub-committees will cease their work on 31 March 2021. In their place there will be a European Affairs

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<sup>10</sup> House of Lords Liaison Committee, *Review of investigative and scrutiny committees: strengthening the thematic structure through the appointment of new committees* (5th Report, Session 2019–21, HL Paper 193)

Committee, with one sub-committee focusing on the Protocol on Ireland/Northern Ireland. A free-standing International Agreements Committee has already been appointed, replacing the previous EU sub-committee, and from April there will be four new committees with cross-cutting policy remits, on the Built Environment, Environment and Climate Change, Industry and Regulators, and Justice and Home Affairs.

*This report and its four companion reports*

15. This report, and the four companion reports from sub-committees that will be published in the same week, are the European Union Committee's final contributions to almost 50 years of debate on the UK's relationship with the European Union. In this report the Select Committee comments on those parts of the TCA that establish institutional structures to oversee its implementation, and to manage the developing UK-EU relationship. We also review the processes for resolving disputes between the Parties. Our sub-committees will report separately on the substantive provisions of the TCA, on trade in goods and services, on the environment, energy, and on law enforcement and criminal cooperation. The constraints of time, given the breadth and inherent complexity of the issues, have meant that our analysis cannot be exhaustive, but we have sought to identify and explore the most important elements.
16. These are still early days: the institutional arrangements envisaged by the TCA have in most cases not yet been implemented, and businesses are still adapting to the new terms of trade. So it would be premature to provide a full assessment of the agreement's impact. Nonetheless, our aim in analysing the TCA and its associated documents is to look forward, not back. We have published many reports over the last four years on the Government's conduct of the Brexit negotiations, its objectives and its red lines. Our priority now is to look beyond Brexit itself, and explore how the structures established under the Withdrawal Agreement and the TCA can be used most effectively to support good UK-EU relations in the years ahead.
17. In preparing this short report, we have drawn on evidence provided by a panel of experts, who gave evidence on 2 February. The following week, on 9 February, we heard from the Chancellor of the Duchy of Lancaster, Rt Hon Michael Gove MP, and the UK's chief negotiator (and now Minister of State in the Cabinet Office), Lord Frost, along with officials. We heard separately from the Chief Minister of Gibraltar, Hon Fabian Picardo QC MP, on 19 January. We are grateful to our witnesses for their input.
18. **We make this report for debate.**

## CHAPTER 2: PURPOSE, SCOPE AND UNDERLYING PRINCIPLES

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### Purpose, essential elements and termination

19. The Preamble to the Trade and Cooperation Agreement (TCA) begins with a commitment, on behalf of both the United Kingdom and the European Union, to their core shared values, to “democratic principles, to the rule of law, to human rights, to countering proliferation of weapons of mass destruction and to the fight against climate change”. These are described as “essential elements of this and supplementing agreements”.
20. Article COMPROV.1, the first substantive Article of the TCA, then sets out its formal purpose:
 

“This Agreement establishes the basis for a broad relationship between the Parties, within an area of prosperity and good neighbourliness characterised by close and peaceful relations based on cooperation, respectful of the Parties’ autonomy and sovereignty.”
21. The juxtaposition of these two passages, the first Recital of the Preamble and the first Article of the TCA, demonstrates that the mutual respect of the Parties for each other’s “autonomy and sovereignty” sits against a backdrop of shared commitment to certain “essential elements” that bind them in common cause. We particularly welcome the inclusion of the fight against climate change as an “essential element”: this is, to the best of our knowledge, the first time it has been placed front and centre in an agreement of this kind.
22. The two Parties’ commitment to these “essential elements” is developed and reinforced by Title II of Part Six of the Agreement, ‘Basis for Cooperation’. Although the relevant provisions (Articles COMPROV.4 to COMPROV.11 and INST.35) are buried deep in a Part of the TCA that ostensibly addresses Dispute Settlement and Horizontal Provisions,<sup>11</sup> in reality they are less about dispute settlement than over-arching principles. Article COMPROV.4 develops the two Parties’ commitment to democracy, human rights and the rule of law, Article COMPROV.5 their commitment to fight climate change, described as an “existential threat to humanity”, and Article COMPROV.6 addresses the proliferation of weapons of mass destruction. The following Articles outline other areas of common interest: crimes of concern to the international community; counter-terrorism; personal data protection and other areas of cooperation.
23. Article INST.35 then outlines the measures that either Party may take if they consider there has been “a serious and substantial failure by the other Party to fulfil any of the obligations that are described as essential elements”. To constitute a “serious and substantial failure”, an act would have to “[threaten] peace and security” or have “international repercussions”. Any act or omission that “materially defeats” the purpose of the Paris Agreement would be considered as falling within this definition. If no “mutually agreeable solution” can be found within 30 days, the concerned Party may “decide to

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<sup>11</sup> All references, and all Article numbers, refer to the draft text of the TCA published on 24 December 2020. The logic behind the ordering of Articles (which frequently contradicts their numbering) is impenetrable.

terminate or suspend the operation of this Agreement or any supplementing Agreement in whole or in part”.

24. Article INST.35 describes a self-contained procedure, and even though it sits (at least in the current, provisional text of the TCA) in Part Six, Dispute Settlement and Horizontal Provisions, there is nothing in the Article itself to suggest that it is subject to the general dispute settlement or arbitration procedures. It may also be compared with Article FINPROV.8, which sits in Part Seven of the Agreement, Final Provisions. This confers a more general and similarly self-contained power upon either Party, to terminate the TCA in its entirety with just 12 months’ notice:

“Either Party may terminate this Agreement by written notification through diplomatic channels. This Agreement and any supplementing agreement shall cease to be in force on the first day of the twelfth month following the date of notification.”

### Unfinished business

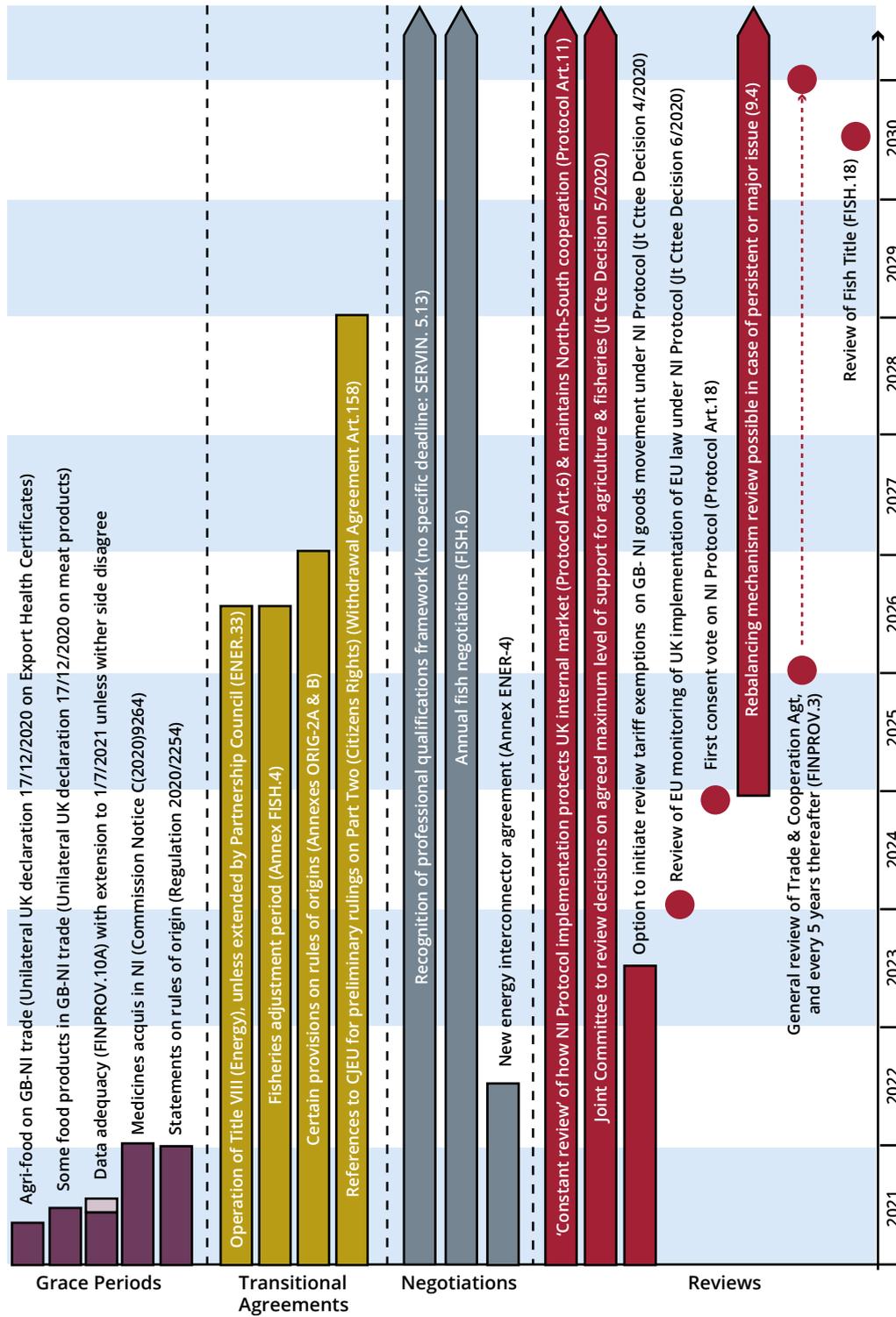
25. As noted above, the TCA, while establishing “the basis for a broad relationship”, was accompanied by a range of other documents, outlining further work to which the Parties are committed. The 15 Declarations accompanying the TCA set out the following items of unfinished business:
- A “structured regulatory cooperation on financial services”;
  - An annual dialogue on measures to counter harmful tax regimes;
  - Facilitation by each Party of “the entry and temporary stay of drivers” in the road haulage sector carrying out the activities permitted under the TCA;
  - Bilateral discussions between the UK and concerned Member States on “suitable practical arrangements” on asylum, family reunion for unaccompanied minors and illegal migration;
  - Potential bilateral agreements between the UK and Member States on the collection and processing of Passenger Name Record data, other than provided for in Part Three of the TCA;
  - An affirmation of the “principle of proportionality” in the operation of the Title VII of Part Three of the TCA, on extradition;
  - Commitment to review and if necessary extend the TCA’s provisions on the exchange of criminal records and law enforcement and judicial cooperation in criminal matters;<sup>12</sup>
  - Agreement to complete negotiations “as soon as it is reasonably practicable” on the exchange of classified information;
  - Adoption of a series of protocols on UK participation in EU programmes, which “could not be finalised during the negotiations of the Trade and Cooperation Agreement”;

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12 The TCA does not cover judicial cooperation in civil matters or family law, either in the substantive text or the accompanying declarations. This omission is considered in the report of the EU Security and Justice Sub-Committee. *Beyond Brexit: policing, law enforcement and security* (25th Report, HL Paper 250)

- Adoption on the part of the EU of adequacy decisions in respect of UK data protection standards every four years;
  - Establishment of arrangements for the Bailiwicks of Guernsey and Jersey to cooperate with the EU on the recovery of claims relating to VAT, customs duties and excise duties.
26. Taken alongside the proposed UK-EU agreement in respect of Gibraltar, this is a formidable list of ‘unfinished business’. It sits alongside a range of tasks, including decisions linked to the termination of ‘grace periods’, or review provisions, that are provided for in the body of the TCA itself or in the Withdrawal Agreement. Figure 1, based on a graphic produced by Professor Simon Usherwood and reproduced with his permission, shows some of the outstanding work that will have to be undertaken over the next decade.

**Figure 1: Forthcoming UK-EU timetables and deadlines**



Source: Professor Simon Usherwood, 'The next Brexit timetables and deadlines (3 January 2021)

**Territorial scope**

*The Crown Dependencies*

27. The Committee has regularly scrutinised the impact of Brexit on the Crown Dependencies since 2016, including in a March 2017 report on *Brexit: the*

*Crown Dependencies*,<sup>13</sup> and through engagement with the Chief Ministers and other representatives of the Governments of the Crown Dependencies.

28. Article FINPROV.1 of the TCA states that the Agreement applies to the territories to which the EU treaties apply, and to the territory of the United Kingdom. The provisions on fisheries and trade in goods, however, also apply to the Crown Dependencies (the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man), while a separate Declaration (as noted above) confirms the willingness of all sides to promote future cooperation between Guernsey, Jersey and the EU in respect of the recovery of claims related to VAT, customs or excise duties.

### *The Overseas Territories*

#### *Gibraltar*

29. Article FINPROV.1(3) states that the Agreement “shall neither apply to Gibraltar nor have any effects in that territory”.
30. Since 2016 the European Union Committee has regularly taken stock of the impact of Brexit upon Gibraltar, including through the publication of a report on *Brexit: Gibraltar* in March 2017,<sup>14</sup> a follow-up visit to Gibraltar in March 2018,<sup>15</sup> and regular engagement with the Chief Minister of Gibraltar, Hon Fabian Picardo QC MP. In its work, the Committee noted three overriding priorities:
- Maintaining and enhancing the fluidity of the border with Spain and cross-border cooperation with the Campo de Gibraltar;
  - Maintaining and enhancing UK-Gibraltar relations post-Brexit; and
  - The moral duty on the UK Government to defend and represent the interests of Gibraltar in the Brexit negotiations.
31. Most recently, on 19 January 2021, we took evidence from the Chief Minister on the proposed framework for a UK-EU legal instrument setting out Gibraltar’s future relationship with the EU, which was agreed in principle by Gibraltar, the UK and Spain on 31 December 2020.<sup>16</sup> This proposes provisions to permit the application of elements of the Schengen *acquis* to Gibraltar, and a possible bespoke customs union arrangement between Gibraltar and the EU.<sup>17</sup>
32. Although formal negotiations with the EU on converting the in-principle agreement into a treaty have yet to start, we wrote to the Foreign Secretary on 10 February to welcome the progress already made.<sup>18</sup> It will be for the new

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13 European Union Committee, *Brexit: the Crown Dependencies* (19th Report, Session 2016–17, HL Paper 136)

14 European Union Committee, *Brexit: Gibraltar* (13th Report, Session 2016–17, HL Paper 116)

15 European Union Committee, ‘EU Committee visits Gibraltar to examine impact of Brexit’ (13 March 2018): <https://committees.parliament.uk/committee/176/european-union-committee/news/92985/eu-committee-visits-gibraltar-to-examine-impact-of-brexit/>

16 Oral evidence taken on 19 January 2021 (Session 2019–21), *QQ 1–14* (Hon Fabian Picardo QC MP)

17 ‘Deal between Spain and UK plans to eliminate Gibraltar border checkpoint’, *El Pais*, (11 January 2021): <https://english.elpais.com/brexit/2021-01-11/deal-between-spain-and-uk-plans-to-eliminate-gibraltar-border-checkpoint.html> [accessed 4 March 2021]

18 Letter from Lord Kinnoull, Chair of the European Union Committee, to Rt Hon Dominic Raab MP, Secretary of State for Foreign, Commonwealth and Development Affairs, dated 10 February 2021: <https://committees.parliament.uk/publications/4638/documents/46899/default/>

European Affairs Committee to scrutinise any UK-EU treaty on Gibraltar as and when it is agreed.

*The other Overseas Territories*

33. Article FINPROV.1(4) states that the TCA does not apply to the other Overseas Territories “having special relations with the United Kingdom”, which it then lists.<sup>19</sup>
34. We explored the issues facing the Overseas Territories as a result of Brexit in an evidence session in July 2017 with the Premiers, Chief Minister and other representatives of a number of Overseas Territories. More recently, we wrote to Lord Ahmad of Wimbledon, Minister of State, FCDO on 27 January 2021, expressing regret that the Overseas Territories had not been given the opportunity to be included in the TCA, and noting the particularly serious economic implications for the Falkland Islands of the imposition of tariffs and quotas upon its trade in fisheries (including Loligo squid) with the EU.<sup>20</sup> Other Overseas Territories will also now be disadvantaged compared to neighbours enjoying free access to EU markets as developing countries.

**Domestic and international law**

35. Article COMPROV.13 confirms that the provisions of the TCA shall be interpreted “in good faith” and in accordance with the “customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties”. It then states in terms that, as an Agreement in international law, it imposes no obligation to interpret its provisions in accordance with the domestic law of either Party; nor shall an interpretation of the Agreement by the courts of either Party be binding on the other.<sup>21</sup> From the UK perspective, this explicitly precludes the possibility that any interpretation of the Treaty by the CJEU could bind the UK.
36. Article COMPROV.13 thus establishes the TCA as an Agreement operating purely on the international plane. One consequence of this is spelled out in Article COMPROV.16, namely that nothing in the TCA is to be construed as conferring rights on individuals, including the right to invoke the Agreement in domestic courts. Neither Party is to “provide for a right of action under its law against the other Party” on the grounds of a breach of the Agreement. This significant limitation on the rights of individuals and businesses is discussed further in Chapter 4 (see paragraph 128).
37. As Marie Demetriou QC pointed out, Article COMPROV.13 imposes a duty of good faith in “the interpretation of the agreement”. This is reinforced by Article COMPROV.3, which, in terms echoing Article 26 of the Vienna Convention,<sup>22</sup> imposes the same duty “in the performance of the agreement”:

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19 The listed Overseas Territories are: Anguilla; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Montserrat; Pitcairn, Henderson, Ducie and Oeno Islands; Saint Helena, Ascension and Tristan da Cunha; South Georgia and the South Sandwich Islands; and Turks and Caicos Islands.

20 Letter from Lord Kinnoull, Chair of the European Union Committee, to Lord Ahmad of Wimbledon, Minister of State, Foreign, Commonwealth and Development Office, dated 27 January 2021: <https://committees.parliament.uk/publications/4487/documents/45133/default/>

21 [Trade and Cooperation Agreement, 24 December 2020 \(Article COMPROV.13\(2\)–\(3\)\)](#)

22 This provides that every treaty in force “is binding upon the parties to it and must be performed by them in good faith”. See Vienna Convention on the Law of Treaties (1969), Article 26: [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) [accessed 20 February 2021]

“The Parties shall, in full mutual respect and good faith, assist each other in carrying out tasks that flow from this Agreement and any supplementing agreement.”<sup>23</sup>

The second paragraph of Article COMPROV.13 makes the point even clearer: the Parties shall “take all appropriate measures ... to ensure the fulfilment of obligations arising from this Agreement”, and they shall “refrain from any measures which could jeopardise the attainment” of those objectives.

38. As Marie Demetriou noted, Article COMPROV.3 is unusual: “You do not see expressly the duty of the good-faith obligation in the Canadian-EU agreement, for example.” She speculated that it might have been introduced into the TCA at the request of the EU, “following the United Kingdom Internal Market Bill and the threat of the UK to breach”. But even if this is not the case, the repeated references to good faith underline the importance to both Parties, in Ms Demetriou’s words, “that they stick to the spirit as well as the letter of the agreement and that they operate in an honest way”.<sup>24</sup>

### Safeguard measures

39. Article INST.36 provides for “safeguard measures”. If either Party experiences “serious economic, societal or environmental difficulties of a sectorial [*sic*] or regional nature, including in relation to fishing activities and their dependent communities, that are liable to persist”, it may unilaterally take appropriate safeguard measures. These must be “restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation”, and should, as far as possible not disturb the functioning of the Agreement. There are requirements for immediate consultation, and for the other Party to take “proportionate rebalancing measures”.
40. Article INST.36 is not in itself unusual: comparable emergency or safeguard provisions are found in other agreements.<sup>25</sup> What is striking, given the difficulty the UK and EU negotiators had in reaching agreement on fisheries, is the reference to “fishing activities and their dependent communities”. Nor is Article INST.36 time-limited, so it will remain in force even after the initial five-year adjustment period on fish quotas has come to an end in 2026—for instance, if the UK were then to take unilateral action that caused serious difficulties for EU fishing communities.

### Conclusions

41. **The first Recital of the Preamble sets the tone for the entire Trade and Cooperation Agreement. The United Kingdom and the European Union hold to the same fundamental values of democracy and the rule of law, and face the same global challenges of the proliferation of weapons of mass destruction and climate change: these are rightly the “essential elements” of their relationship. As liberal democracies more unites them than divides them, and while the UK’s EU membership has now ended, the two Parties’ mutual interest in close and peaceful relations is as strong as ever.**

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23 [Trade and Cooperation Agreement, 24 December 2020 \(Article COMPROV.3\(1\)\)](#)

24 [Q 7](#)

25 See for instance Article 92 of the Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part: [https://eur-lex.europa.eu/resource.html?uri=cellar:f83a503c-fa20-4b3a-9535-f1074175eaf0.0004.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:f83a503c-fa20-4b3a-9535-f1074175eaf0.0004.02/DOC_2&format=PDF) [accessed 20 February 2021]

42. **The process described in Article INST.35, in the event of a failure by one or other Party to respect the “essential elements” of the TCA, is a nuclear option: it is unlikely that either Party would seek to suspend the TCA in its entirety except in unprecedented and dire circumstances, even though, under Article FINPROV.8, they may do so without any explanation, and with just 12 months’ notice. A better reading of Article INST.35 is that it demonstrates to both Parties that the high-flown declaration in the first Recital of the Preamble has teeth, embodying as it does a shared and lasting commitment to the values that unite liberal democracies and their citizens.**
43. **We welcome the application of the TCA to the Crown Dependencies in relation to trade in goods and fisheries, guaranteeing as it does the continuation of tariff-free trade in goods, and serving as a sound basis for the Crown Dependencies’ future relationship with the EU. By contrast, the exclusion of Gibraltar and the United Kingdom’s other Overseas Territories from the scope of the TCA is striking.**
44. **We welcome the proposed framework for a UK-EU legal instrument setting out Gibraltar’s future relationship with the EU, which was agreed by Gibraltar, the UK and Spain on 31 December 2020. We hope that this can be swiftly converted into a separate UK-EU treaty concerning Gibraltar.**
45. **We invite the Government to confirm whether a UK-EU treaty on Gibraltar will be a stand-alone agreement (as appears to be envisaged by Article FINPROV.1(3) of the TCA), or whether it will be a supplementing agreement, and therefore subject to the same overarching governance structure as the TCA itself.**
46. **The outlook for the other Overseas Territories, following their exclusion from the TCA, is more worrying. We note for instance the serious economic implications for the Falkland Islands of the imposition of tariffs and quotas upon its trade in fisheries (including Loligo squid) with the EU. We call on the Government to continue to defend the interests of the Falkland Islands and the other Overseas Territories.**
47. **It is notable that the TCA not only states, in terms, that its provisions shall be interpreted in good faith, but that the Parties shall take all appropriate measures in good faith to fulfil their obligations under the Agreement, and refrain from any measures that might undermine their fulfilment of those obligations. Given recent events, which have undermined trust on both sides, it will all the more important for the UK Government and the European Commission to reflect on this explicit commitment.**

## CHAPTER 3: THE INSTITUTIONAL FRAMEWORK

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### The Partnership Council, its committees and working groups

#### *The governance structure*

48. The institutional framework underpinning the TCA is provided for in Title III of Part One. The structure is, in summary, as follows:
- A Partnership Council is established to “oversee the attainment of the objectives of this Agreement and any supplementing agreement”.<sup>26</sup> It will be co-chaired by a Member of the European Commission and a representative of the Government of the United Kingdom “at ministerial level”; it may also “meet in different configurations depending on the matters under discussion”. It will meet at the request of either side, and in any event “at least once a year”.<sup>27</sup>
  - Sitting immediately beneath the Partnership Council and reporting to it will be a Trade Partnership Committee, with a broad remit in respect of UK-EU trade.<sup>28</sup> This will be co-chaired by “a senior representative of the Commission” and a “representative of the United Kingdom with responsibility for trade-related matters”, or “their designees”. Like the Partnership Council, it will meet at the request of either side, and in any event “at least once a year”.<sup>29</sup>
  - The Trade Partnership Committee will in turn “supervise” the work of 10 Trade Specialised Committees, covering various sectors and issues relating to UK-EU trade, from Goods to Tax.<sup>30</sup> It may establish new Trade Specialised Committees, dissolve those already in existence, or change the tasks assigned to them.<sup>31</sup>
  - There are also eight Specialised Committees addressing other aspects of the UK-EU partnership, including air transport, fisheries, law enforcement and judicial cooperation, and UK participation in EU programmes. They report direct to the Partnership Council, rather than to the Trade Partnership Committee.
  - Each of the Trade Specialised Committees and Specialised Committees will be co-chaired by a “representative” of each side, and will meet at least once a year, “unless the co-chairs decide otherwise”.<sup>32</sup>
  - The TCA also establishes four Working Groups, three reporting to the Trade Specialised Committee on Technical Barriers to Trade (on organic products, motor vehicles and parts, and medicinal products) and one reporting to the Specialised Committee on Social Security Coordination (on social security coordination). These will be co-chaired by representatives of the EU and UK, and will operate flexibly,

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26 [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.1\(3\)\)](#)

27 [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.1\(1\)–\(2\)\)](#)

28 The precise remit is defined in [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.2\(1\)\(a\)\)](#).

29 [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.2\(6\)\)](#)

30 The full list is contained in [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.2\(1\)\(b\)–\(k\)\)](#).

31 [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.2\(2\)\(g\)\)](#)

32 [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.2\(7\)\)](#)

setting their own rules of procedure and agreeing meeting schedules by “mutual consent”.<sup>33</sup>

49. The structure just outlined is not yet operational (see paragraph 59) but will, when the TCA is ratified, sit alongside the existing governance structure established under the UK-EU Withdrawal Agreement, made up of a Joint Committee and six Specialised Committees on withdrawal-related issues, including one on the Protocol on Ireland/Northern Ireland that is supported by a Joint Consultative Working Group.<sup>34</sup> The complete architecture is illustrated in Figure 2, also based on a graphic prepared by Professor Simon Usherwood, and reproduced with his permission.
50. In summary, therefore, oversight of the post-Brexit UK-EU relationship will rest initially with a total of 32 governance bodies, though this number could rise or fall over time:
- Two Minister/Commissioner level bodies (the Partnership Council and Withdrawal Agreement Joint Committee)<sup>35</sup>;
  - 25 Committees and Specialised Committees; and
  - Five working groups.
51. This is an elaborate double-headed structure, with two leadership bodies, into which a further 15 bodies report directly. Perhaps in acknowledgement of this complexity, both Parties have taken steps since 1 January to consolidate their input into the governance structure. On 19 January the Commission announced that the Task Force for Relations with the United Kingdom, which conducted the negotiations, would be dissolved with effect from 1 March, and a new Service for the EU-UK Agreements established from the same date. It also announced that Vice-President Maroš Šefčovič, the Commission Vice-President in charge of inter-institutional relations, and already co-chair of the Joint Committee, would also be the EU co-chair of the Partnership Council.<sup>36</sup>

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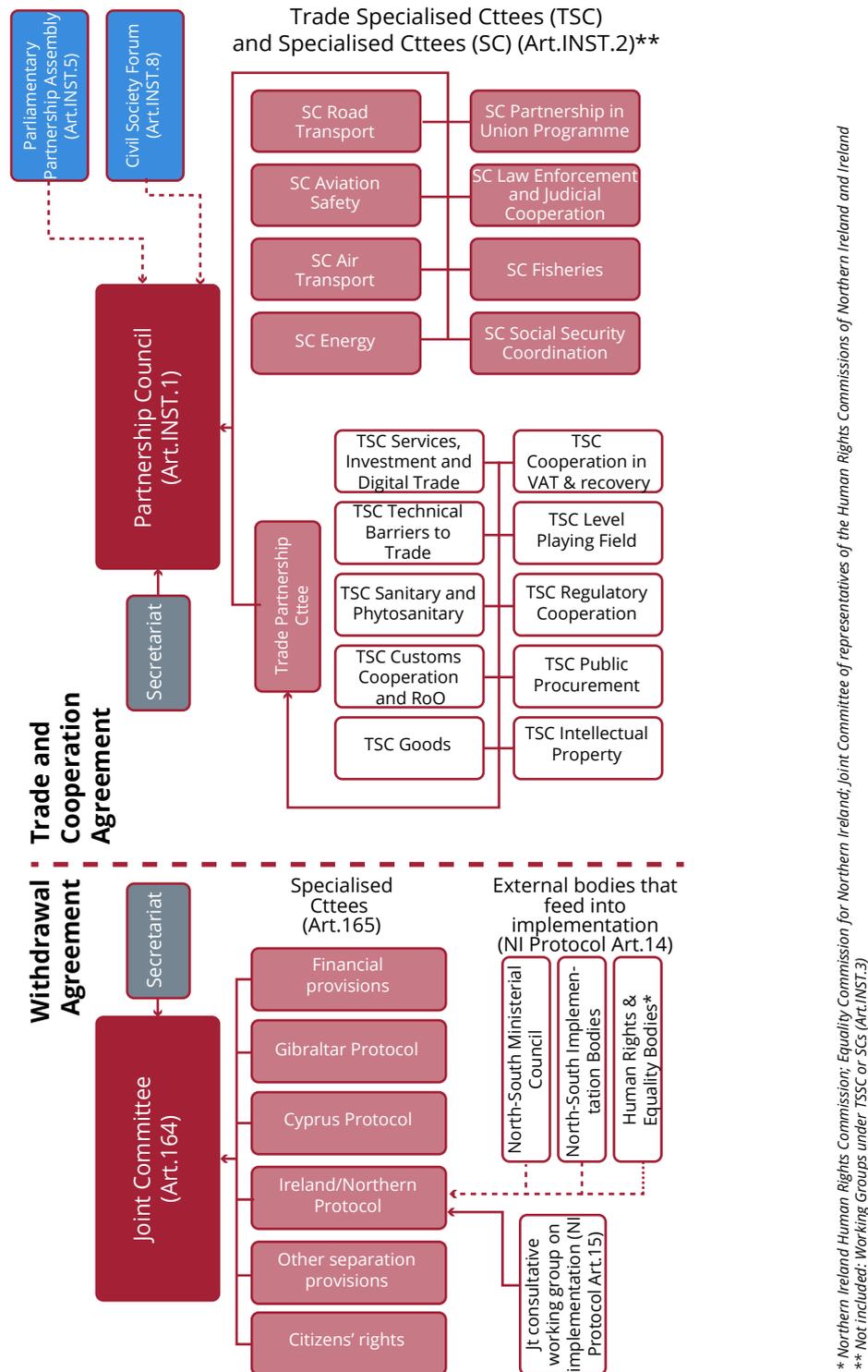
33 [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.3\)](#)

34 For more detail, see European Union Committee, *Brexit: the revised Withdrawal Agreement and Political Declaration* (1st Report, Session 2019–21, HL Paper 4), paras 22–39 and 178–187

35 The Withdrawal Agreement states that the Joint Committee is to comprise “representatives of the Union and of the United Kingdom”, without specifying that they should be either a Member of the Commission or a Minister of the Crown. In implementing the Withdrawal Agreement, the Government subsequently included a provision requiring that the powers of the UK co-chair “are to be exercised personally by a Minister of the Crown”, and in practice the Joint Committee has always met in a Commissioner/Minister configuration. See European Union (Withdrawal Agreement) Act 2020, [section 34](#). As the TCA itself imposes such a requirement in [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.1\)](#), no comparable provision was made in the European Union (Future Relationship) Act 2020.

36 European Commission, *College meeting: European Commission reorganises the “Task Force for Relations with the United Kingdom” into the “Service for the EU-UK Agreements”* (19 January 2021): [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_160](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_160) [accessed 15 February 2021]

**Figure 2: The governance architecture of the EU-UK relationship**



Source: Professor Simon Usherwood, 'The governance architecture of the EU-UK relationship' (28 January 2021)

52. The Government was slightly slower out of the blocks. On 9 February we asked Mr Gove when the UK co-chair of the Partnership Council would be named. He responded: "The Prime Minister will make that announcement in due course." Almost a week later, on 15 February, it was reported that Mr Gove himself had been nominated as UK co-chair "on an interim

basis”,<sup>37</sup> but on 23 February, a few days after the announcement that Lord Frost would be appointed as Minister of State in the Cabinet Office and a full member of the Cabinet with effect from 1 March,<sup>38</sup> Mr Gove wrote to confirm that Lord Frost would act both as UK co-Chair of the Partnership Council and (in succession to Mr Gove himself) as UK co-Chair of the Withdrawal Agreement Joint Committee.<sup>39</sup>

53. As for the inherent complexity of the governance structure, Marie Demetriou QC described it as “sensible”, on the basis that the intention was “to set up an infrastructure that is capable of being used for deeper cooperation, should that take place”. Professor Hestermeyer suggested that it was not “set in stone”, noting that new committees could be established, and warning that “we do not really know how complex it will end up being in reality”.<sup>40</sup>
54. Asked how this complex structure would be supported across Whitehall, Lord Frost told us:

“[The TCA] is the broadest international agreement I am aware of, certainly in this field, in the number of subjects it covers. Inevitably, it has a large number of committees and a committee structure that reflects that complexity. We are working through at the moment how these committees will be staffed out, which departments will sit on which and how the reporting mechanisms will work. Although it is complex, it is not unusual. All these committees have their parallels in other international agreements. What is unusual is simply that they are all in one place because of the nature of this agreement.”<sup>41</sup>

55. If UK influence is to be maximised, investment will be required not just in Whitehall, but in Brussels. As we concluded in 2019, “The experience of other third countries suggests that the UK Government will, paradoxically, need to enhance its diplomatic presence in Brussels post-Brexit, and ensure that its officials are equipped with a different set of skills”. We also reflected on the experience of other third countries to whom the EU relationship is vital, noting that “the Swiss and Norwegian missions in Brussels are among the largest of their diplomatic representations”.<sup>42</sup> In that same report we also emphasised the need to increase the resources available to diplomatic missions across Member State capitals,<sup>43</sup> and Mr Gove brought the two strands together in underlining the crucial role of the FCDO: “The Foreign Office and its excellent team will ensure that our mission in Brussels and our posts across the EU are well staffed.”<sup>44</sup>

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37 See @Barnes\_Joe, tweet on 15 February 2021: [https://twitter.com/Barnes\\_Joe/status/1361329622558859264](https://twitter.com/Barnes_Joe/status/1361329622558859264) [accessed 4 March 2021]

38 Prime Minister’s Office, 10 Downing Street, ‘Lord Frost CMG appointed as a Minister of State in the Cabinet Office’, (17 February 2021): <https://www.gov.uk/government/news/lord-frost-cmg-appointed-as-a-minister-of-state-in-the-cabinet-office> [accessed 4 March 2021]

39 Letter from the Chancellor of the Duchy of Lancaster, Rt Hon Michael Gove MP to Lord Kinnoull, Chair, House of Lords European Union Committee, dated 23 February 2021: <https://committees.parliament.uk/publications/4775/documents/48216/default/>

40 Q 2

41 Q 26

42 European Union Committee, *Beyond Brexit: how to win friends and influence people* (35th Report, Session 2017–19, HL Paper 322), paras 79, 75

43 *Ibid.*, paragraph 101

44 Q 26

56. But as well as resources, effective coordination demands high-level political leadership. Mr Gove highlighted Lord Frost's recent appointment as the Prime Minister's 'Representative for Brexit and International Policy',<sup>45</sup> and the key role of the Cabinet Office: "Through the leadership that Lord Frost will have from No. 10, there will be effective co-ordination of that work across government. The Cabinet Office, through its secretariat structure, will support that." Lord Frost's leadership role was reinforced on 17 February with the announcement that he would be appointed to a Cabinet-level ministerial role based in the Cabinet Office.
57. A striking feature of the TCA's institutional structure is that on the EU side only the Commission is represented. There is no provision for direct involvement of the Member States and, unlike some UK agreements with third countries, such as Chile,<sup>46</sup> no provision for summit-level meetings. Asked about this, Lord Frost responded:

"We took the view on this, and on certain other similar issues, that there was no need for a treaty provision, that the depth of contacts and the nature of the relationship was likely to make this happen naturally ... It is absolutely not that we do not wish to see summits happen. It is just that we think they will happen naturally and organically, as part of the very rich quality of the relationship we will have."<sup>47</sup>

58. Professor Usherwood gave a less sanguine take on the lack of provision for regular summit-level dialogue:

"This is an agreement that manages divergence rather than convergence. It does not sit within a broader convergent relationship. That absence particularly of summit-level meetings reflects a question of what those summit meetings would deal with. The architecture of this agreement provides for dispute settlement. Absent a clear programme of future additions, at this stage there is not an immediate need for those summit-level meetings."<sup>48</sup>

*All very well in theory ...*

59. Whatever the merits or the shortcomings of the complex governance structure just described, there is a more pressing problem: so far it exists only on paper. This issue was exposed after the Partnership Council agreed to extend provisional application of the TCA from 28 February to 30 April, to allow time for the EU to complete its internal procedures in all 24 official languages.<sup>49</sup> We then received a letter from Mr Gove, at that point still the UK co-chair of the Partnership Council, stating that given the "uncertainty"

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45 Prime Minister's Office, 10 Downing Street, 'International Affairs Appointments in No.10 and Cabinet Office', (29 January 2021): <https://www.gov.uk/government/news/international-affairs-appointments-in-no10-and-cabinet-office> [accessed 16 February 2021]

46 Q 2 (Professor Hestermeyer). The UK-Chile Association Agreement replicates the provision in the precursor EU-Chile Agreement that mandates (albeit without prescribing their frequency) "regular meetings between Heads of State and Government". See Council Decision (EC) of 18 November 2002 on the signature and provisional application of certain provisions of an Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, [OJ L 352](#) (30 December 2002), Article 13

47 Q 25

48 Q 2

49 See footnote 6 above. See also letter from Vice President Maroš Šefčovič to Rt Hon Michael Gove MP (undated): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/963819/Letter\\_by\\_VP\\_Sefcovic\\_to\\_CDL\\_Gove.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/963819/Letter_by_VP_Sefcovic_to_CDL_Gove.pdf) [accessed 11 March 2021]

arising as a result of the continued provisional application of the TCA, “we do not consider that the Partnership Council and other bodies established under Title III of the Agreement should begin their work formally during the period of provisional application, except where there are essential decisions which cannot be deferred”.<sup>50</sup> It now appears that, following recent tensions over the implementation of the Protocol on Ireland/Northern Ireland, much of the governance structure established under the Withdrawal Agreement is also not currently operational.

60. In other words, while both the Withdrawal Agreement and the TCA are fully operational, and while the implementation of the TCA is at an early and critical stage, the entire governance structure for the UK-EU relationship appears to be in abeyance.

### *Powers and procedures*

61. Within the institutional framework, the Partnership Council will be pre-eminent. Its powers are listed in Article INST.1(4) of the TCA, and are closely analogous to those of the Withdrawal Agreement Joint Agreement.<sup>51</sup> The powers conferred upon the Partnership Council include making decisions provided for in the TCA itself, making recommendations to the Parties, and, within certain limits, adopting amendments either to the TCA or to any further agreement supplementing the TCA.<sup>52</sup> It can set up and abolish specialised committees, and is a forum for discussion between the Parties on any matter covered by the TCA.
62. The decision-making powers of the other governance bodies are more constrained, and at least initially will be limited to those areas where the TCA itself so provides—though the Partnership Council may delegate additional powers to the Trade Partnership Committee or to Specialised Committees.<sup>53</sup> Nonetheless, they too have a broad remit, including appointing working groups, as well as providing a forum for exploring technical issues, or exchanging information and best practice.
63. The manner in which these powers will be exercised is set out in the Rules of Procedure, contained in an annex to the TCA. These are closely modelled upon the Rules of Procedure of the Withdrawal Agreement Joint

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50 Letter from the Chancellor of the Duchy of Lancaster, Rt Hon Michael Gove MP to Lord Kinnoull, Chair, House of Lords European Union Committee, dated 23 February 2021: <https://committees.parliament.uk/publications/4775/documents/48216/default/>

51 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, presented to Parliament pursuant to Section 1 of the European Union (Withdrawal) Act (No. 2) 2019 and Section 13 of the European Union Withdrawal Act 2018 (19 October 2019), Article 164: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840655/Agreement\\_on\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_from\\_the\\_European\\_Union\\_and\\_the\\_European\\_Atomic\\_Energy\\_Community.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf) [accessed 4 March 2021]

52 [Trade and Cooperation Agreement, 24 December 2020 \(Articles INST.1\(4\)\(c\)–\(d\)\)](#): the Partnership Council will have a lasting power to adopt amendments in cases provided for by the TCA itself (or by any supplementing agreement); it also has the power, until the end of a four-year period, to adopt amendments not so provided for, if they are necessary to correct errors or omissions. We note that this Committee, and the new International Agreements Committee, have repeatedly raised concerns over the extent to which Parliament can effectively scrutinise changes to agreements that are made by governance bodies, and which are not required to be laid under the Constitutional Reform and Governance Act 2010.

53 [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.1\(4\)\(f\)\)](#)

Committee.<sup>54</sup> They state that the decisions and recommendations of the Partnership Council will be adopted by mutual consent (Rule 1). They also provide for a small secretariat, made up of one official from each Party (Rule 2). The secretariat will organise meetings, circulate papers, draw up draft agendas (to be finalised by the co-chairs), and prepare minutes (Rules 7 and 8). Meetings (which, as we have noted, will take place at least once a year) will normally alternate between Brussels and London, though virtual meetings are also permitted (Rule 3). In all these respects the rules governing the two main governance bodies are essentially the same.

64. It is all the more notable, therefore, that whereas the Government introduced a statutory provision ensuring that Ministers are prohibited from making use of the written procedure to take decisions in the Withdrawal Agreement Joint Committee,<sup>55</sup> no equivalent prohibition covering the Partnership Council was included in the European Union (Future Relationship) Act 2020.
65. Rule 10 of the Rules of Procedure, entitled ‘Transparency’, largely replicates the provisions of Rule 10 of the Joint Committee Rules of Procedure, entitled ‘Publicity and Confidentiality’. But there is a change of emphasis, as implied by the new title: whereas there was a clear presumption in favour of confidentiality for the Joint Committee (“Unless otherwise decided by the co-chairs, the meetings of the Joint Committee shall be confidential”), the presumption for the Partnership Council appears to have swung towards openness (“The co-chairs may agree that the Partnership Council shall meet in public”).
66. Despite this change of emphasis, Rule 10 places few formal requirements upon the Parties to publicise the work of the Partnership Council and, by extension, the wider governance structure—its provisions are largely voluntary, and if either Party submits information to the Partnership Council that it deems confidential, the other Party must respect that confidentiality. Professor Catherine Barnard, drawing on experience of the Withdrawal Agreement governance structures, highlighted this lack of transparency as a key challenge:

“It is almost impossible to find out what was on the agenda and what the minutes were of these meetings ... One of the major issues for this House and the devolved Administrations is how they are going to scrutinise what is going on in these committees and monitor the follow-up from these committees.”<sup>56</sup>

### *Conclusions*

67. **The EU-UK Trade and Cooperation Agreement establishes a complex but flat governance structure, which will sit alongside the structure already put in place by the Withdrawal Agreement. Such breadth and complexity are, in our view, likely to prove challenging. We also note the possibility that further agreements could in due course be brought under the same governance umbrella, adding still more breadth to governance. While initially we expect both sides will respect and adhere to the newly established structures, we recommend that the**

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54 [Withdrawal Agreement \(19 October 2019\)](#), Annex VIII, Rules of Procedure of the Joint Committee and Specialised Committees

55 European Union (Withdrawal Agreement) Act 2020, [section 35](#)

56 [Q2](#)

**Government keep them under review—there may well be a case for simplifying and rationalising them in due course.**

68. **One area of difference between the two structures is in the use of written procedure, which is prohibited in respect of the Joint Committee, by virtue of section 35 of the European Union (Withdrawal Agreement) Act 2020, but is permitted in respect of the Partnership Council. We call on the Government to explain the reasoning behind this difference of approach.**
69. **The Government will need to commit significant resource to support the governance structure. This resource should primarily be focused in Brussels and in Whitehall: the extent of EU competence is such that Brussels will remain the key forum for developing UK relations with the EU-27. We therefore urge the Government to ensure not only that dedicated resource is available across Departments, but, as we recommended in our 2019 report *Beyond Brexit*, that the UK Mission to the EU in Brussels is able to draw on additional resource to support it in monitoring and influencing developments in Brussels.**
70. **Although the Member States are excluded from the governance structure established under the TCA, they will have a major say on the policy positions adopted by the EU. It will therefore be important also to provide the resource needed to develop the UK's bilateral relationships with the Member States.**
71. **There will also be a critical need to coordinate the Government's contribution to the governance structures of both the TCA and the Withdrawal Agreement. The close symmetry between these structures, and the overlap of personnel, is helpful, given the synergies between the two Agreements, particularly in respect of Northern Ireland: it should assist in coordination and may ultimately pave the way for a formal rationalisation of the current two-headed structure. We welcome the fact that, at a time when the crucial UK-EU relationship is developing rapidly, there will be a designated Cabinet-level Minister charged with coordinating the Government's engagement with the EU and leading the UK's input into the governance of both Agreements.**
72. **But this new ministerial role will bring with it increased accountability to Parliament. We welcome the recent decision that Lord Frost should answer questions in the House of Lords on a regular basis, and we underline the urgent need for effective mechanisms to allow the House of Commons to hold him to account. We also invite the Government to agree that any holder of the role to which Lord Frost has been appointed should appear at regular and predictable intervals before designated Select Committees of the two Houses.**
73. **We note the absence of any provision in the TCA for regular summit-level meetings between the Parties. We note Lord Frost's confidence that such meetings will occur naturally and organically, but given the number of bilateral relationships that are subsumed within the UK-EU relationship, we regret this omission, and believe there would be huge benefit to the UK in adopting a more structured approach. We invite the Government therefore to set out its plans for ensuring**

**regular ministerial and Head of Government-level dialogue with the EU-27 and the Commission.**

74. **The complexity of the governance structure underlines the need for both sides to commit to transparency. Although the TCA appears to establish a presumption in favour of transparency, its substantive provisions are weak, and unless further commitments to transparency are made it may be impossible for Parliament, the devolved legislatures, or wider civil society, to contribute effectively to the developing UK-EU relationship. Formal ministerial statements after meetings are not enough: we call on the Government to draw up a comprehensive mechanism to support document-based scrutiny by designated select committees, and more generally to promote the transparent operation of the governance bodies established by the TCA.**
75. **Finally, we note with concern the Government’s decision not to allow the governance structure established under the TCA to meet. We acknowledge that the agreement has yet to be ratified, and is currently only provisionally applied. But it is fully operational, and it is now, when the new arrangements are still unfamiliar, that problems are most likely to be encountered. We see no justification, particularly given the agreed extension of provisional application, for allowing such a complex and important relationship, affecting the security and livelihoods of over 500 million citizens in the UK and in the EU, to drift without the formal governance arrangements having been activated.**

### **Parliamentary and civil society structures**

#### *The Parliamentary Partnership Assembly*

76. Article INST.5 of the TCA states that the European Parliament and the UK Parliament “may establish a Parliamentary Partnership Assembly consisting of Members of the European Parliament and of Members of the Parliament of the United Kingdom, as a forum to exchange views on the partnership”. The creation of such a body, originally proposed in the Political Declaration on Future Relations that accompanied the Withdrawal Agreement, was an early negotiating objective for the EU,<sup>57</sup> though only after repeated questioning by this Committee and a joint letter from our Chair and the Chair of the Commons Future Relationship with the EU Committee<sup>58</sup> did the Government agree to include such a provision in the TCA.<sup>59</sup>
77. The powers of the Parliamentary Partnership Assembly (PPA), as set out in the TCA, are broad, but ill-defined. It “may request relevant information” from the Partnership Council, which “shall then supply ... the requested information”; it “shall be informed of the decisions and recommendations”

57 See European Union Committee, *Report pursuant to section 29 of the European Union (Withdrawal Agreement) Act 2020: Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement* (8th Report, Session 2019–21, HL Paper 32), paras 132–33

58 Letter from Lord Kinnoull and Rt Hon Hilary Benn MP to the Speaker of the House of Commons and Lord Speaker, dated 21 July 2020: <https://committees.parliament.uk/publications/2494/documents/24775/default/>

59 Letter from Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster, to the Speaker of the House of Commons, dated 14 August 2020: <https://committees.parliament.uk/publications/2476/documents/24633/default/>

of the Partnership Council; and it “may make recommendations” to the Partnership Council. Our academic witnesses emphasised the PPA’s importance as, in Professor Usherwood’s words, “another line of communication”. Professor Barnard warned of the risk that the PPA would become a ‘talking shop’, but also spoke of its role in “the rebuilding of trust”, adding that it would also “have some role in triggering alerts to what is coming through and down the system”.<sup>60</sup> Similarly, Mr Gove, while emphasising that he had no wish to prescribe how the PPA might work, was clear that it could “facilitate strong relationships”. Notwithstanding the provisions of Article INST.5, he did not think that it would have “a scrutiny role” with regard to the Partnership Council.<sup>61</sup>

78. It therefore appears that there is consensus on the benefits of establishing the PPA to help rebuilding relationships and opening channels of communication between the European and UK Parliaments; there is less clarity on whether and how the PPA should exercise other powers, such as the right to request information, which could amount to a scrutiny function. There is also a more immediate uncertainty in the wording of Article INST.5, which is not mandatory, but simply says that the Parliaments “may” establish an assembly. This wording may be compared with that found in comparable third-country agreements rolled over as part of the Brexit process. For instance, an “Association Parliamentary Committee” was “hereby established” by the EU-Chile Association Agreement, bringing together members of the European Parliament and the Chilean National Congress “to meet and exchange views”.<sup>62</sup> But the UK’s rollover agreement with Chile, in one of the few deliberate changes made to the precursor EU agreement, replaced “is hereby established” with “may be established”.<sup>63</sup> At the time, Department for International Trade officials told committee staff that the reason for not automatically re-establishing the Association Parliamentary Committee was to avoid the appearance of binding the UK Parliament without prior consultation.<sup>64</sup> But the upshot is that no steps have since been taken, either by the Government or the parliamentary authorities, to bring a UK-Chile interparliamentary body into being.
79. Thus even if the non-mandatory wording was adopted simply out of respect for the autonomy of the Westminster Parliament, the absence of a clear duty to set up the PPA, combined with the lack of suitable precedents or obvious decision-makers, gives rise to a risk that the PPA may simply not materialise. Mr Gove placed the onus on committees, telling us that “ultimately it is for the House, but if Lord Kinnoull, Sir Bill Cash and Tom Tugendhat<sup>65</sup> were to come forward with proposals as to how that might work, that would

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60 [Q 12](#)

61 [Q 32](#)

62 See Council Decision (EC) of 18 November 2002 on the signature and provisional application of certain provisions of an Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, [OJ L 352](#) (30 December 2002), Article 9

63 Agreement establishing an Association between the United Kingdom of Great Britain and Northern Ireland and the Republic of Chile, CP 35, 2019, (February 2019) : <https://www.gov.uk/government/publications/cs-chile-no22019-ukchile-agreement-establishing-an-association> [accessed 17 February 2021]

64 See European Union Committee, *Scrutiny of international agreements: Treaties considered on 26 February 2019*, (31st Report, Session 2017–19, HL Paper 300), para 46

65 The Chairs of the House of Lords European Union Committee and of the House of Commons European Scrutiny and Foreign, Commonwealth and Development Office Select Committees respectively.

be great”. But these three committee Chairs certainly have no delegated authority to establish the PPA, and do not command the resources needed to make it a success. While we understand that informal discussions between the two Houses are now underway, the support of the Government will be vital, particularly in the Commons, where it is difficult to see how a motion establishing the PPA could be moved other than by a Government Minister.

80. The wording of Article INST.5 begs other questions. It contains no reference to the overall size of the body, its pattern of meetings, its procedures, or the balance between Members of the two Houses in the UK delegation. Moreover, the reference to “Members of the Parliament of the United Kingdom” appears to exclude direct representation of the devolved legislatures—as Catherine Barnard pointed out, “If you were looking at this from Scotland, Wales or Northern Ireland, you would say, ‘What about us?’”<sup>66</sup> Her comment has since been borne out by correspondence sent to us by committees in the Scottish Parliament, Welsh Senedd and Northern Ireland Assembly, calling for the devolved legislatures to be represented on the PPA as part of the UK delegation.<sup>67</sup>

### *Parliamentary scrutiny*

81. Whether or not the PPA ultimately develops a joint scrutiny function, the bulk of parliamentary scrutiny of the implementation of the TCA will be conducted independently by the legislatures of the EU and the UK. As Professor Barnard pointed out, this is “not just scrutinising at high level the implementation of the TCA”. The legislative and regulatory frameworks of the UK and the EU are currently closely aligned, but the TCA is designed to allow divergence over time. The effects of such divergence, whether on the EU or the UK side, will be complex and multi-faceted, and tracking them will require a correspondingly agile scrutiny system. As Professor Barnard put it, it will mean “scrutinising domestic UK legislation, which has nothing to do directly with EU law but in fact may ultimately trigger the rebalancing mechanism”.<sup>68</sup> Her reference was to Article 9.4, which explicitly recognises the right of each Party “to determine its future policies and priorities with respect to labour and social, environmental or climate protection, or with respect to subsidy control”, but also acknowledges that the exercise of such autonomy may affect trade and investment in “a manner that changes the circumstances that have formed the basis for this Agreement”. In such circumstances the Party affected may take “appropriate rebalancing measures”. We discuss the rebalancing mechanism further in the next chapter.
82. The complexity of such scrutiny, requiring a simultaneous awareness of developments in both UK and EU law, and of the interaction between them, will be added to by the continuing application of much EU legislation in Northern Ireland, thanks to the Protocol on Ireland/Northern Ireland, and by the interaction between devolved and reserved competences within the UK

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66 [Q 12](#)

67 Letter from David Rees MS, Chair, External Affairs and Additional Legislation Committee, Welsh Senedd, dated 21 February 2021: <https://committees.parliament.uk/publications/5069/documents/50248/default/>, Letter from Colin McGrath MLA, Chairperson, Committee for the Executive Office, Northern Ireland Assembly, dated 25 February 2021: <https://committees.parliament.uk/publications/5070/documents/50249/default/> and Letter from Joan McAlpine MSP, Convener, Culture, Tourism, European and External Affairs Committee, Scottish Parliament, dated 4 March 2021: <https://committees.parliament.uk/publications/5071/documents/50251/default/>

68 [Q 12](#)

itself. Undertaking such scrutiny will be a task not just for the Westminster Parliament, but for all the legislatures of the UK, working together.

83. The House of Lords has already agreed structures to undertake its share of scrutiny. The European Union Committee will cease its work on 31 March, and will be replaced by a European Affairs Committee, with a dedicated Sub-Committee on the Protocol on Ireland/Northern Ireland. But it will be important that other Select Committees, with sectoral expertise, for instance in environmental law or the regulation of financial markets, are also alert to the implications of ostensibly domestic-focused work for the wider UK-EU relationship.
84. The House of Lords has also been instrumental in establishing the Interparliamentary Forum on Brexit, which first met in October 2017, bringing together representatives of committees from Westminster and the devolved legislatures with an interest in Brexit. The Forum has not met since the lockdown began in March 2020 and is unlikely to meet until after the forthcoming elections in Scotland and Wales. When it does meet, it will be essential that it reviews its role and priorities, thereby starting the process of devising new forms of interparliamentary cooperation to support coordinated scrutiny of both intra-UK and UK-EU relations, in all their dimensions.

#### *Civil society engagement*

85. Article INST.7 requires each Party, in addressing issues covered in the TCA or in any supplementing agreement, to consult “its newly created or existing domestic advisory group or groups comprising a representation of independent civil society organisations including non-governmental organisations, business and employers’ organisations, as well as trade unions, active in economic, sustainable development, social, human rights, environmental and other matters”. They should aim to do so “at least once a year”, and should take steps “to promote public awareness” of these groups.
86. Article INST.8 mandates the establishment by the Parties of a Civil Society Forum. Although this joint body overlaps with the domestic advisory groups (and members of those groups will be able to participate), its remit is narrower. Its sole function will be to “conduct a dialogue on the implementation of Part Two” of the TCA—that is to say, the economic elements of the Partnership, covering trade, transport, fisheries and other matters. It has no power to make formal recommendations to the Partnership Council, and it has no locus to discuss Part Three, on law enforcement and judicial cooperation in criminal matters. The Partnership Council is charged with adopting “operational guidelines” for the Forum, which will meet “at least once a year, unless otherwise agreed by the Parties”. While Mr Gove told us that “the richer the dialogue we can have with civil society ... the better”,<sup>69</sup> in effect, it appears, the Forum will meet at the pleasure of the Partnership Council.

#### *Conclusions*

87. **We welcome the TCA’s provision for a Parliamentary Partnership Assembly, bringing together Members of the Westminster and European Parliaments—there should be a presumption that any modern, multi-faceted international agreement of this kind includes**

**an integral parliamentary dimension. In our view, the initial goal of the Assembly should be to help rebuild relationships between the UK and the EU and strengthen channels of communication between the two Parliaments.**

88. **We note that the PPA will be particularly important, given that the European Parliament remains co-legislator in respect of all legislation affecting the EU Single Market in goods that applies in Northern Ireland under the Protocol on Ireland/Northern Ireland. MEPs will shape the laws that apply to the people of Northern Ireland: it is therefore vital that there should be a structure to enable parliamentarians in Westminster and Stormont to engage with MEPs throughout the EU's legislative processes.**
89. **We note that the TCA does not mandate the Parliamentary Partnership Assembly, placing the onus for establishing it upon the two Parliaments. A similar provision in the UK-Chile Agreement has yet to be implemented, and we note with concern the Chancellor of the Duchy of Lancaster's view that this would be a matter purely for the two Houses, not the Government. The Government has extensive power of initiative in both Houses, and also has the power to frustrate committee-driven initiatives if it so chooses, simply through inaction. The Government should give impetus to the Assembly, by supporting Members and committees in bringing forward proposals, and by committing to table the relevant motions in both Houses.**
90. **We note with regret that the wording of the relevant Article appears to preclude Members of the devolved legislatures from membership of the PPA. If this is indeed the case, it will be all the more important not only for other forms of direct engagement between the devolved legislatures and the European Parliament to be found, but for the legislatures of the United Kingdom to work together to support coordinated scrutiny of both intra-UK and UK-EU relations, in all their dimensions.**
91. **The provisions of the TCA on civil society engagement are relatively weak. In particular, we regret that the Civil Society Forum will essentially meet at the pleasure of the Partnership Council, and we therefore call on the Government to explain how it plans to give effect to this provision in facilitating the work of this new body.**

## CHAPTER 4: DISPUTE SETTLEMENT

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### Introduction

92. The dispute settlement provisions in the TCA are wide ranging, complex and in some respects novel. In short, where the parties are unable to agree in dispute in the Partnership Council then in most cases the Agreement provides for a period first of consultation,<sup>70</sup> and then arbitration.<sup>71</sup>
93. The TCA's dispute settlement provisions differ greatly from those in the earlier Withdrawal Agreement. Notable differences include the jurisdiction of the Court of Justice of the European Union (which under the Withdrawal Agreement is retained in several discrete areas, but is more broadly excluded from the TCA, save in respect of UK participation in EU programmes). Moreover, while the Withdrawal Agreement contains fairly streamlined arbitration provisions, the TCA not only contains a dispute settlement mechanism (Part Six: Articles INST.9–34B), but also a variety of additional provisions relating to remedies on trade in goods, the Level Playing Field, law enforcement and data transmission.

### The TCA and the role of the Court of Justice of the European Union

94. The Government has been clear, throughout the Brexit process, that it would not contemplate a continuing role for the Court of Justice of the European Union (CJEU, but sometimes still referred to as the ECJ). We acknowledged this position in our report *Dispute resolution and enforcement after Brexit*, where we observed that outside the jurisdiction of the CJEU there was no “one size fits all” dispute resolution model, and that it would be necessary to agree “multiple dispute resolution procedures ... post-Brexit”. We also concluded that this could mean that the UK “would only be obliged to accept the jurisdiction of the CJEU in specific and limited areas, for instance those involving direct cooperation with EU agencies, or within the field of justice and home affairs”.<sup>72</sup>
95. In the absence of a defined role for the CJEU, the provisions of the TCA will be interpreted in good faith, in line with general public international law including the Vienna Convention on the Law on Treaties 1969.<sup>73</sup> As noted above (see paragraph 44), this is reinforced by Article COMPROV.13(3), which states that “for greater certainty, an interpretation of this Agreement or any supplementing agreement given by the courts of either Party shall not be binding on the courts of the other Party”.
96. The Chancellor of the Duchy of Lancaster, Rt Hon Michael Gove MP, repeated the importance of the Government's ‘red line’ on CJEU jurisdiction, and its determination to draw instead on general principles of international law, in evidence to us:

“The key thing to say by way of preface is that it was assumed by some that we would have to accept, in effect, a form of ECJ jurisdiction or

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70 [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.13\)](#)

71 [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.14\)](#)

72 European Union Committee, *Dispute resolution and enforcement after Brexit* (15th Report, Session 2017–19, HL Paper 130), paras 56, 178

73 There are two good-faith obligations, [Trade and Cooperation Agreement, 24 December 2020 \(Article COMPROV.3 and Article COMPROV.13\)](#). COMPROV.3 is that the principle that the duty of good faith applies in the performance of the agreement. COMPROV.13 is that it applies in the interpretation of the agreement. These mirror the obligations in the Vienna Convention.

suzerainty in this whole area of dispute resolution. In fact, we have something that connoisseurs of classic free trade agreements would recognise and appreciate as very much in that mould. That was our aim. We were told that it was unlikely to be achievable, but it is to Lord Frost's credit that we got there."<sup>74</sup>

97. This view was broadly supported by Professor Hestermeyer, who said that the Government had “largely achieved” its aim of leaving the jurisdiction of the Court. But he then offered some qualifications:

“Yes, largely it has been achieved. There are several caveats, however. The first caveat is that the Withdrawal Agreement remains in force and the function of the Court of Justice under the Withdrawal Agreement remains there. The second caveat is Union programmes. If you look, for example, at UNPRO.4.4, it is clear that the Court of Justice retains functions where the UK joins Union programmes, but that is very limited and also voluntary, so that was regarded as largely unproblematic. The Government were well aware of what they were doing.”<sup>75</sup>

98. In terms of potential linkage with the Withdrawal Agreement, while some of the potential areas of dispute may fall away over time, the continuing jurisdiction of the CJEU over the Protocol on Ireland/Northern Ireland may prove significant.<sup>76</sup> Marie Demetriou QC suggested that particular issues might arise in respect of State aid and subsidies under Article 10 of the Protocol<sup>77</sup>—an issue discussed in detail in our 2020 report *The Protocol on Ireland/Northern Ireland*.<sup>78</sup>

### Dispute resolution under the TCA

99. Article INST.10 sets out the scope of the dispute resolution mechanism and exceptions to it. Article INST.11 is an exclusivity clause, like that found in the Withdrawal Agreement.<sup>79</sup> It provides that the parties “undertake not to submit a dispute between them regarding the interpretation or application of provisions of this Agreement or of any supplementing agreement to a mechanism of settlement other than those provided for in this Agreement”. However, unlike the Withdrawal Agreement, this provision is subject to a proviso in Article INST.12, which provides for a “choice of forum” in cases where there is “a substantially equivalent obligation under another international agreement”. This would include the WTO Agreement. Article INST.12(2) is clear that once a party has commenced dispute settlement procedures in a forum, it should not seek to bring further multiple proceedings in other fora unless “the forum selected first fails to make findings for procedural or jurisdictional reasons”.

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74 [Q 30](#)

75 [Q 7](#)

76 See footnote 8 for an example.

77 [Q 10](#). Other issues which may arise as between the Withdrawal Agreement and the TCA have been analysed by the House of Commons Library, in its paper House of Commons Library, *The UK-EU Trade and Cooperation Agreement: governance and dispute settlement*, Library Note, [CBP 09139](#) 16 February 2021, p14. Notably, Article INST.24 (4) provides that the suspension of treaty obligations covered by the Part Six dispute settlement provisions can also result from persistent non-compliance with a ruling of an arbitration panel established under “an earlier agreement” between the two parties.

78 European Union Committee, *The Protocol on Ireland/Northern Ireland* (9th Report, Session 2019–21, HL Paper 66), Chapter 9

79 [Withdrawal Agreement \(19 October 2019\)](#), Article 168

100. Article INST.13 sets an over-arching expectation that disagreements will normally be resolved politically, without the need to invoke formal arbitration or dispute resolution procedures:

“If a Party ... considers that the other Party ... has breached an obligation under this Agreement or under any supplementing agreement, the Parties shall endeavour to resolve the matter by entering into consultations in good faith, with the aim of reaching a mutually agreed solution.”

A 30-day period is allowed for these consultations, less in cases of urgency; they are subject to conditions of confidentiality, and will not prejudice the rights of either Party in subsequent proceedings.

101. Only if a dispute cannot be resolved through consultations under Article INST.13, do the Parties move on to next step, which is usually arbitration. But it is important to note that these more formal mechanisms may not be used extensively. Professor Catherine Barnard told us that, in general, in free trade agreements, the dispute resolution mechanisms were not often invoked. She noted that even under the WTO dispute settlement, just 600 or so complaints had been initiated since 1995. She continued:

“When these mechanisms are invoked, a lot of things get resolved at the consultation phase. They do not go all the way to what is called the compliance phase, where you are looking at the excitement of retaliation and cross-retaliation. I think there are only about 15 or so cases at the WTO that have gone all the way to retaliation. They are the ones we know about, but they are relatively few.”<sup>80</sup>

102. The procedure to establish the arbitration panel is set out at Art INST.15, and provides for a tribunal composed of three arbitrators,<sup>81</sup> selected from a list of at least 15 potential panel members, five nominated by the UK and five by the EU, and five potential chairs, not nationals of either Party, who are jointly nominated.<sup>82</sup> The functions of the tribunal are set out in Article INST.17. It shall “make an objective assessment of the matter before it” and set out “its decisions and rulings, the findings of facts and law and the rationale behind any findings that it makes”. Rulings and decisions of the arbitration tribunal will be made publicly available, but its deliberations are confidential. The tribunal will make “every effort” to reach consensus, but if this is not possible it will decide the matter by majority vote. Separate opinions of arbitrators will not be disclosed.
103. The basic position under the TCA is that if the arbitrators rule that one Party has breached the agreement, in principle it has to comply with the ruling within a reasonable period.<sup>83</sup> The tribunal rulings are legally binding, and if the losing Party does not comply, remedies are available, including compensation.<sup>84</sup> The winning Party can also invoke proportionate

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80 [Q 8](#)

81 [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.15\(1\)\)](#)

82 [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.27\(1\)\)](#)

83 [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.22\)](#)

84 If the complaining party has decided not to request temporary compensation, or if it has requested compensation but the two sides have not reached agreement on this within 20 days, then it can notify the responding party that it intends to suspend obligations under certain provisions of the Agreement.

retaliation by withdrawing benefits under the Agreement.<sup>85</sup> If the losing Party subsequently complies with the arbitrators' ruling, the other Party is required to stop suspending benefits under the TCA.

104. Lord Frost told us that these provisions were modelled on standard free trade agreements:

“Part 6 [of the TCA] describes the standard arbitration mechanism and processes that lead up to it, which is the normal thing you get in free trade agreements. Then it lists some areas to which that applies and areas from which it is excluded. That is the basic mechanism and it is completely standard for free trade agreements. That is relevant to most of the agreement.

105. Figure 3, reproduced by permission of the House of Commons Library, highlights the main features of the process.

106. While the general architecture is relatively straightforward, the precise procedure used will vary depending on the part of the TCA that is at stake in any particular case: there are numerous exceptions to the general principles,<sup>86</sup> and a range of novel provisions which apply in specific circumstances. The differences were addressed by Lord Frost in his evidence:

“What is different? There are some areas where we have agreed that standard arbitration could be extended into, where that is not true in analogous agreements elsewhere, for example parts of aviation, some very targeted elements of fisheries and the energy elements of this agreement. Those bring in arbitration. Arbitration is carved out of quite a lot of areas, notably law enforcement in toto, important areas of fisheries and others. This is all set out in INST.10. Then, as you say, there are some tailored mechanisms, and they are notably in the level playing field area, with tailored arrangements for remedial measures on subsidies and a panel of experts on non-regression. Those were some of the most heavily discussed and negotiated bits of this agreement, as you can probably imagine.”<sup>87</sup>

107. Some of the more unusual features of these exceptions to the general rule are described in further detail below.

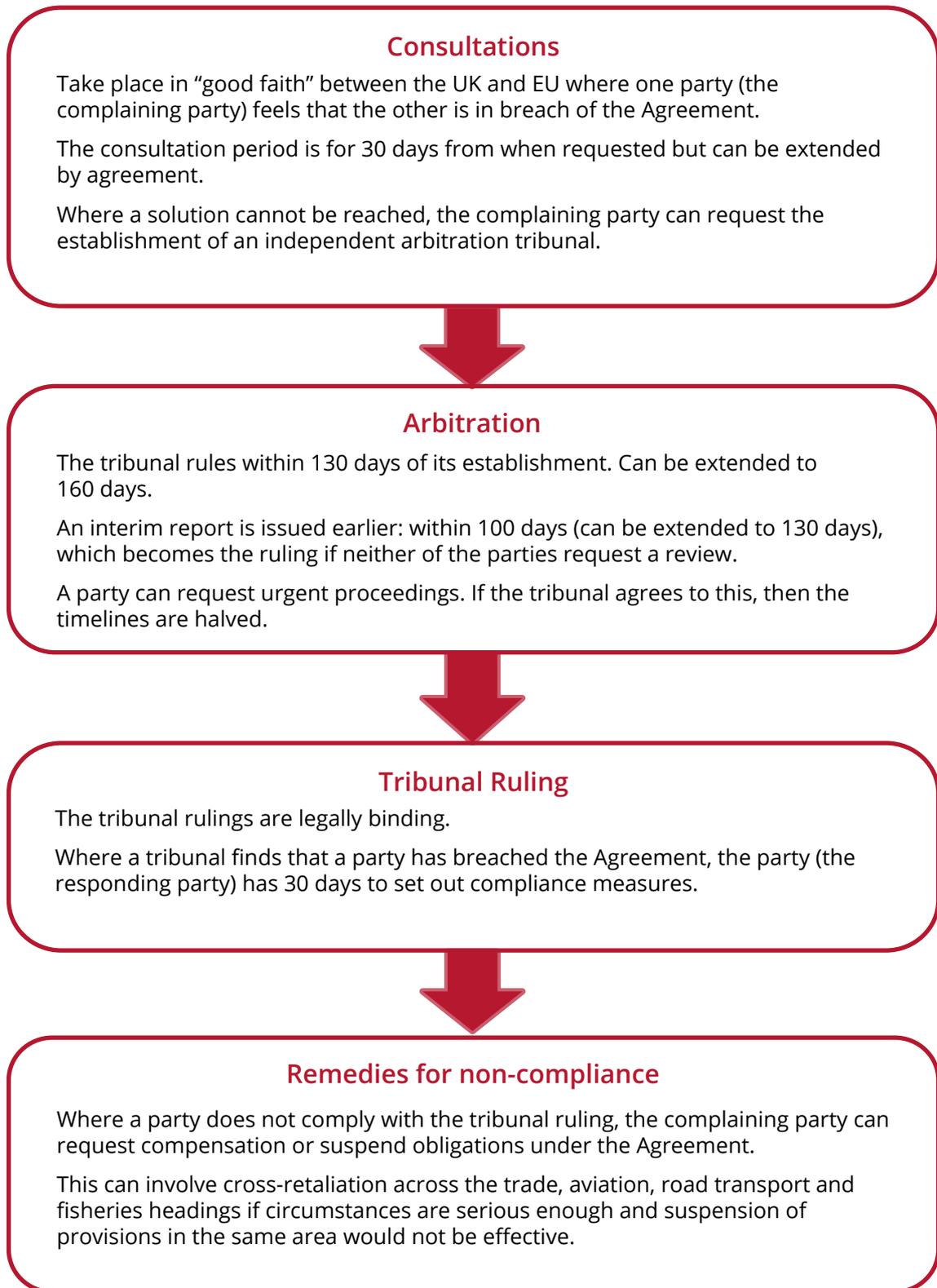
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85 [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.24\)](#) (and referred to as “Temporary Remedies”. This can involve cross-retaliation across the trade, aviation, road transport and fisheries headings if circumstances are serious enough and suspension of provisions in the same area would not be effective. [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.24 \(3\)\)](#) sets out areas of the TCA which cannot be suspended under these provisions.

86 As noted above, numerous exceptions are set out at [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.10\)](#). Among the exceptions are Part Three of the TCA (covering law enforcement and judicial co-operation, which has its own specific mechanism, which is essentially political) as well as Part 4 (covering thematic co-operation) and the level playing field provisions in the Trade heading to Part 2 of the TCA. Other parts of the TCA not subject to the provisions include the bulk of the provision on trade remedies, cultural goods and the exchange of classified information. A helpful blogpost by Professor Stephen Peers sets these exceptions out in more detail: ‘EU Law Analysis, Analysis 4 of the Brexit deal: Dispute settlement and the EU/EK Trade and Cooperation Agreement’, (8 January 2021): <http://eulawanalysis.blogspot.com/2021/01/analysis-4-of-brexite-deal-dispute.html> [accessed 4 March 2021]

87 [Q 30](#)

**Figure 3: Trade and Cooperation Agreement: Part Six, dispute settlement provisions**



Source: House of Commons Library, *The UK-EU Trade and Cooperation Agreement: governance and dispute settlement*, Briefing Paper, [CBP-09139](#), 19 February 2021, p 6 figure 2

### Fisheries

108. The fisheries heading in Part Two of the TCA contains additional dispute resolution mechanisms. These are contained in Articles FISH.9 (Compensatory measures in case of withdrawal or reduction of access) and FISH.14 (Remedial measures and dispute resolution).
109. The first of these provisions relates to any changes in the level of access to its waters granted by one Party (the “host Party”) to the other Party (the “fishing Party”). Notification of any such changes must be given annually.<sup>88</sup> Under Article FISH.9 the fishing Party may then take “compensatory measures commensurate to the economic and societal impact of the change”.<sup>89</sup> Such measures could include suspending in whole, or in part, access to its waters and the preferential tariff treatment granted to fishery products—though priority should be given to those “which will least disturb the functioning of this Agreement”.<sup>90</sup> If such compensatory measures are adopted, the host Party then may refer the matter to an arbitration tribunal without the need for the consultations which would normally be required under Article INST.13.
110. Article FISH.9 thus provides for arbitration even in cases where changes in access have been notified in accordance with the terms of the TCA, if they have adverse social or societal impacts. More formal dispute resolution procedures are set out in Article FISH.14. This provides for an escalating level of responses which can be applied by a Party in response to an alleged failure by the other Party to comply with the fisheries heading. This could potentially lead to application of tariffs on both fisheries and non-fisheries products (and ultimately to suspension of the entire trade and road transport provisions). However, measures should be “proportionate to the alleged failure by the respondent Party and the economic and societal impact thereof”.<sup>91</sup> Moreover, the suspensions should cease if an arbitration tribunal determines that the respondent Party has not failed to comply with its obligations.

### The level playing field and ‘rebalancing measures’

111. One of the key novel features of the TCA is found in the level playing field provisions. These are intended to ensure fair competition between the Parties in respect of subsidies; labour and social standards; environment and climate; competition; and taxation.<sup>92</sup> Within this broad spectrum of policy areas, disputes relating to labour, social standards, the environment and climate would be referred to a panel of experts, nominated by the Trade Specialised Committee on the Level Playing Field.<sup>93</sup> The many scenarios

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88 [Trade and Cooperation Agreement, 24 December 2020 \(Article FISH.8\(5\)\)](#)

89 The Article does not specify the scale of the change required to trigger compensatory measures, but does state that it “shall be measured on the basis of reliable evidence and not merely on conjecture and remote possibility”.

90 [Trade and Cooperation Agreement, 24 December 2020 \(Article FISH.9\(1\)\)](#)

91 [Trade and Cooperation Agreement, 24 December 2020 \(Article FISH.14\(3\)\)](#)

92 The specific policy areas falling within the level playing field are discussed in more detail in the reports of our sub-committees, European Union Committee, *Beyond Brexit: trade in services* (23rd Report, Session 2019–21, HL Report 248) and European Union Committee, *Beyond Brexit: trade in goods* (24th Report, Session 2019–21, HL Report 249).

93 [Trade and Cooperation Agreement, 24 December 2020 \(Title XI, Level Playing Field for Open and Fair Competition and Sustainable Development, Article 9.2\)](#)

that could arise will be addressed in greater detail in reports by our Sub-Committees.<sup>94</sup>

112. The subsidy provisions of the level playing field are covered by a set of special rules. If a subsidy has allegedly caused a “significant negative effect on trade or investment”, or there is a “serious risk” that it may do so, the complaining party, following consultations, can retaliate without prior approval by the arbitrators and different processes then flow from this.<sup>95</sup>
113. The variations embodied in these provisions demonstrate that reliance on the general dispute settlement mechanism of the TCA was considered insufficient in respect of the level playing field. Moreover, underpinning the provisions on subsidy control, labour and social policy, and environment and climate change, is the possibility of so-called “rebalancing” measures,<sup>96</sup> a mechanism that Marie Demetriou QC told us was “unusual”.<sup>97</sup> Professor Holger Hestermeyer went further, describing it as “utterly novel and remarkable”.<sup>98</sup>
114. Article 9.4 of the level playing field Title of the TCA begins by acknowledging the autonomy of the Parties, their “right of each Party to determine its future policies and priorities with respect to labour and social, environmental or climate protection, or with respect to subsidy control in a manner consistent with each Party’s international commitments”. Rebalancing measures partly offset this autonomy: they can be imposed by a Party unilaterally, if there are “significant divergences” between the Parties in respect of the level playing field that would have “material impacts on trade or investment”. Such divergences could be in either direction: if one Party were to raise standards in a particular area, and judged that this gave the other Party a competitive advantage, leading to a material impact on trade, it could in principle invoke the rebalancing mechanism.<sup>99</sup> The main limitation is that the assessment of these impacts would have to be “based on reliable evidence and not merely on conjecture or remote possibility”. And the resulting measures—which could for instance include the imposition of temporary tariffs—would have to be restricted in scope and duration to what is “strictly necessary and proportionate”.<sup>100</sup> They would then be subject to the approval of an independent arbitration panel within 30 days. If the panel finds there has not been a breach, the concerned Party would be obliged to withdraw any measures taken within five days of the ruling.

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94 The Institute for Government has published a helpful ‘explainer’ setting out the way in which the TCA approaches issues under the level playing field in respect of each of these headings, which can be accessed at: Institute for Government, ‘UK-EU future relationship: the deal’, (January 2021): <https://www.instituteforgovernment.org.uk/publication/future-relationship-trade-deal/level-playing-field> [accessed 4 March 2021]. A more detailed explanation of the operation of the procedural rules under the Level Playing Field (including expedited arbitration) is available from the House of Commons Library. The UK-EU Trade and Cooperation Agreement: governance and dispute settlement, [CBP 09139](#), 16 February 2021.

95 [Trade and Cooperation Agreement, 24 December 2020 \(Title XI, Level Playing Field for Open and Fair Competition and Sustainable Development, Article 3.12\)](#)

96 [Trade and Cooperation Agreement, 24 December 2020 \(Title XI, Level Playing Field for Open and Fair Competition and Sustainable Development, Article 9.4\)](#)

97 [Q 1](#)

98 [Q 8](#)

99 This point is covered in more detail in the report of our Environment Sub-Committee, European Union Committee, *Beyond Brexit: food, environment, energy and health* (22nd Report, Session 2019–21, HL Paper 248), paras 84–88

100 [Trade and Cooperation Agreement, 24 December 2020 \(Title XI, Level Playing Field for Open and Fair Competition and Sustainable Development, Article 9.4\(2\)\)](#)

115. Marie Demetriou QC warned that the novelty of this provision may lead to some uncertainty:

“The rebalancing process arises if there is significant divergence in regulatory rules leading to a material impact on trade. Those words, ‘significant divergence’ and ‘material impact’, need to be given meaning by adjudicators, by the arbitral tribunal. It is a spectrum. What is meant by ‘significant’? What is meant by ‘material’? There is a spectrum of meanings.”<sup>101</sup>

116. Moreover, four years after the coming into force of the TCA, if one Party considers that there have been too many breaches (or if a measure with a material impact on trade and investment has been in place for a year) it can trigger a review of the operation of the entire trade part of the agreement. The parties would also be entitled to agree that other parts of the TCA could be added to that review.<sup>102</sup>

117. As Professor Holger Hestermeyer noted, the “mechanism is untested”:

“On the one hand, it is an ingenious way to resolve the problem of what happens if the two parties do not trust each other in terms of regulation. In particular, the EU thought the UK would drift away from the regulation system, but nevertheless it wants to dismantle tariff barriers entirely, which is unprecedented in EU trade agreements. On the other hand, the mechanism also risks unbalancing the whole treaty. If you read through the provision, it can result in a review if used too often and the capacity to terminate the trade part of the agreement. So what we need here is political savvy in the application.”<sup>103</sup>

118. Lord Frost acknowledged the uniqueness of these provisions and indicated that they had been introduced as an alternative to an ‘equivalence’ mechanism:

“The rebalancing mechanism is special and was subject to a lot of debate and negotiation. The EU originally wanted a kind of equivalence mechanism. That became a very fraught point of the negotiating process. What we have now is something that can only apply in the case of material divergence on both sides. It is restricted to a limited number of areas, requires rapid arbitration and is reversible in case measures that are taken do not pass the arbitration test. If it is too much used, it triggers a broader renegotiation. We felt that was a reasonable balance to deal with both sides, but I do not think there is anything like it in any other treaty.”<sup>104</sup>

### Law enforcement and judicial cooperation in criminal matters

119. Part Three of the Agreement, on law enforcement and judicial cooperation in criminal matters, includes an entirely different political dispute settlement mechanism, one designed to be exclusive,<sup>105</sup> “swift, effective and efficient”, and aimed at “avoiding and settling disputes” with a view to reaching a “mutually agreed solution”.<sup>106</sup>

101 [Q 7](#)

102 [Trade and Cooperation Agreement, 24 December 2020 \(Title XI, Level Playing Field for Open and Fair Competition and Sustainable Development, Article 9.4\(4\)\)](#)

103 [Q 9](#)

104 [Q 30](#)

105 [Trade and Cooperation Agreement, 24 December 2020 \(Article LAW.DS.3: Exclusivity\)](#)

106 [Trade and Cooperation Agreement, 24 December 2020 \(Article LAW.DS.1: Objective\)](#)

120. If one Party complains that the other Party has breached an obligation in Part Three, it shall “endeavour to resolve the matter by entering into consultations in good faith”. Such consultations shall seek to reach a “mutually agreed solution”,<sup>107</sup> with the complaining Party kicking off the process “by means of a [detailed] written request delivered to the responding Party”,<sup>108</sup> which is obliged to reply “promptly” and no later than two weeks after delivery.
121. Consultations will be held regularly for a period of three months,<sup>109</sup> and at “any time” the Parties may reach a “mutually agreed solution”, which may be adopted by means of a decision of the Specialised Committee on Law Enforcement and Judicial Cooperation.<sup>110</sup> But if there is no “mutually agreed solution”, and the complaining Party continues to consider that the responding Party is in “serious breach of its obligations”, then it may suspend the relevant Title (or Titles) of Part Three by written notification through diplomatic channels. Further cross-retaliation, including suspending the other Titles of Part Three, is then possible.<sup>111</sup>
122. As if this is not complicated enough, certain areas of Part Three, such as the suspension clause dealing with “serious and systemic deficiencies” as regards the protection of fundamental rights and/or data protection, or the retention of passenger name record data, are excluded from this method of dispute settlement and enjoy their own dispute settlement procedure.<sup>112</sup>

### Access to justice

123. In our 2018 report on *Dispute resolution and enforcement after Brexit*, we indicated that one of the challenges in crafting bespoke dispute resolution mechanisms would be to ensure that “any enforcement and dispute resolution established under the future relationship should be accessible to citizens and business and should be transparent”. We concluded that it would be “prejudicial to the interests of citizens and businesses if the future dispute resolution system were conducted entirely at a state-to-state level”.<sup>113</sup>
124. It is plain that the TCA does little to meet these aims. Article COMPROV.16 of the TCA provides that, subject to certain exceptions set out in that Article relating to the protection of individual rights and law enforcement and judicial cooperation “with regard to the Union”, nothing in the Agreement, or any supplementing agreement, will be construed as “conferring rights or imposing obligations on persons other than those created by the Parties under public international law”, nor as “permitting this Agreement, or any supplementing agreement to be directly invoked in the domestic legal system of the Parties”. Moreover, the same Article is clear that a Party to the TCA “shall not provide for a right of action under its law against the other Party on the ground that the other Party has acted in breach of this Agreement or any supplementing agreement”.

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107 [Trade and Cooperation Agreement, 24 December 2020 \(Article LAW.DS.4\(1\)\)](#)

108 [Trade and Cooperation Agreement, 24 December 2020 \(Article LAW.DS.4\(2\)\)](#)

109 [Trade and Cooperation Agreement, 24 December 2020 \(Article LAW.DS.4\(3\)\)](#)

110 [Trade and Cooperation Agreement, 24 December 2020 \(Article LAW.DS.5: Mutually agreed solution\)](#)

111 [Trade and Cooperation Agreement, 24 December 2020 \(Article LAW.DS.6: Suspension\)](#)

112 These areas listed in [Trade and Cooperation Agreement, 24 December 2020 \(Article LAW.DS.2: Scope\)](#).

113 European Union Committee, *Dispute resolution and enforcement after Brexit* (15th Report, Session 2017–19, HL Paper 130)

125. This is underlined in the provisions on the arbitration mechanism itself. Article INST.29 makes plain that rulings of the arbitration tribunal do “not create any rights or obligations with respect to natural or legal persons”. And while the tribunal can rule on the compatibility of domestic measures with obligations under the TCA, Article INST.29(4A) states that for “greater certainty” the courts of each party “shall have no jurisdiction in the resolution of disputes between the Parties under this Agreement”.
126. When we questioned Lord Frost about the remedies that would be available to individuals and businesses, he contended that “they will be able to use the arrangements in the treaty, so the committee structure and then the dispute settlement mechanisms”. But he then qualified this claim:
- “Those [mechanisms] are triggered by Governments, but Governments will use them when individuals and businesses think there is a problem. That comes back to the point that was raised earlier about the need to have close relationships with interest groups, industry groups and those who are aware of problems, so we can feed them rapidly into the system. One of the things we will be doing soon, as we reorganise things slightly internally, is to establish teams whose job is precisely to remain in contact, to use the mechanisms in the treaty to our country’s advantage if we believe we are being disadvantaged by decisions taken on the EU side.”<sup>114</sup>
127. The danger with this approach, as we highlighted in our earlier report, is not only that individuals or SMEs would need to go through a potentially complicated process in order to raise an issue with Government, in the hope that it will then raise it with the EU, but that Government itself may deem that it is worth raising concerns only when a significant amount of money is at stake—when it affects a significant sector of the economy, say, rather than a few individuals or businesses. The absence of direct effect, or any means of individual claim, is thus likely to give rise to an adverse impact on access to justice in some cases. Professor Barnard underlined this point:
- “This is a state-to-state dispute mechanism. It is absolutely standard in free trade agreements and under the WTO, but this is a significant mind shift for those who have been born and bred under EU law, who are used to notions of direct effect, supremacy and the ability to refer cases to the European Court of Justice. All that has been turned off, with the exception of the citizens’ rights provisions under the Withdrawal Agreement [and the] areas covered by the Northern Ireland Protocol.”<sup>115</sup>
128. Finally, we note that the limitations upon access to justice could be particularly acute in respect of Part Three of the TCA, on law enforcement and judicial cooperation—the part of the Agreement where individual rights are most directly engaged—including in respect of the replacement extradition arrangements to be found in Title VII.<sup>116</sup> Article COMPROV.16 specifically exempts these arrangements from the general presumption that the TCA does not confer any directly enforceable rights upon individuals—but does so only “with regard to the Union”. It appears therefore that citizens in the EU who are subject to UK extradition requests will be able to rely upon the criminal procedural rights contained in Part Three, such as the right “to be

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114 [Q 30](#)

115 [Q 8](#)

116 [Trade and Cooperation Agreement, 24 December 2020 \(Article COMPROV.16\(1\)\)](#)

assisted by a lawyer”—rights modelled on those already found in directly effective EU law underpinning the European Arrest Warrant.<sup>117</sup> Citizens in the UK, on the other hand, will not be able to rely upon the rights enshrined in Part Three of the TCA, even in challenging extradition requests made under that very Agreement. This position is difficult to square either with the principle that the new surrender arrangements should be based on proportionality, “taking into account the rights of the requested person”,<sup>118</sup> or with other provisions describing the “Rights of the Requested person”.<sup>119</sup>

### Conclusions

129. **Within the dispute resolution provisions of the TCA, the Government has broadly achieved its aim of bringing the direct jurisdiction of the Court of Justice of the European Union to an end. However, there are some caveats to this conclusion. The first is that some remaining obligations under the Withdrawal Agreement will continue to be subject to the CJEU (most notably those under the Protocol on Ireland-Northern Ireland). The second is that cooperation with the EU agencies will still be subject to the oversight of the CJEU. Finally, the indirect effect of CJEU judgments should not be underestimated, particularly in the fields of law enforcement, judicial cooperation and data exchange.**
130. **The ending of the direct jurisdiction of the CJEU, and the inherent breadth and complexity of the TCA, means that, as we envisaged in our 2018 report, *Dispute resolution and enforcement after Brexit*, it has been necessary to create a varied series of dispute resolution mechanisms to deal with the many areas of potential disagreement that could arise between the two Parties.**
131. **This complex architecture is necessary to deal with the unique nature of the TCA—a ‘one size fits all’ method of dispute resolution was never likely to be sufficient. Many of the mechanisms, such as arbitration, are familiar from other free trade agreements. But other mechanisms, such as the proposed ‘rebalancing’ measures, are novel, untested, and without clear precedents.**
132. **Only time will tell if these novel approaches are workable in practice, or if they will have a destabilising effect. There is a risk that, if the Parties do not behave pragmatically and reasonably, some of the dispute resolution mechanisms could be used to trigger a broader renegotiation of the TCA—or even, in an extreme case, to justify termination of all or part of the agreement.**
133. **We regret that it was not possible to find a means to protect the interests of individuals and small businesses under the TCA. The fact that the bulk of the arrangements are necessarily State-to-State**

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117 Articles 47–49 of the EU Charter of Fundamental Rights protect the following rights: the right to an effective remedy and a fair trial; the presumption of innocence and the right to a defence; and the principles of legality and proportionality of criminal offences and penalties. EU Directives cover a right to information; a right to interpretation and translation; a right to legal representation; the right to be presumed innocent; special safeguards for child suspects and accused in criminal proceedings; and the right to legal aid.

118 [Trade and Cooperation Agreement, 24 December 2020 \(Article LAW.SURR.77\)](#)

119 [Trade and Cooperation Agreement, 24 December 2020 \(Article LAW.SURR.89\)](#)

**means that access to justice will be restricted, and the interests of those who are unable to lobby effectively may be overlooked.**

- 134. We therefore call on the Government, in reflecting on the domestic consultation that will be needed to support the implementation and operation of the TCA, including the establishment of the domestic advisory groups provided for in Article INST.7, to prioritise measures to mitigate this loss of access to justice. Mechanisms are needed whereby individuals and businesses (particularly SMEs) adversely affected by the operation of the Agreement can swiftly escalate issues to Government, so that the Government can then pursue them. Even in the weeks since 1 January 2021, it has been clear that quick and effective resolution of issues experienced by individuals or businesses is essential if the wider Agreement is not to be brought into disrepute.**
- 135. More specifically, we call on the Government to set out the safeguards and procedural rights available to those citizens in the UK who may be subject to extradition requests from EU Member States under the terms of the TCA, and in particular to explain how those rights have changed from those that were available before 1 January 2021, under the terms of the European Arrest Warrant.**

## CHAPTER 5: THE FUTURE OF UK-EU RELATIONS

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### The path ahead

136. The EU-UK Trade and Cooperation Agreement, as well as establishing a broad partnership covering trade, security and judicial cooperation, establishes an extensive institutional framework within which UK-EU relations can evolve. The key question for the Government, for Parliament, and indeed for the British people, is the direction this evolution should take. The partnership will change over time—that is a given. But what form will this change take?
137. The TCA itself offers few pointers. The purpose of the Agreement, as we have noted, is to establish “the basis for a broad relationship between the Parties, within an area of prosperity and good neighbourliness characterised by close and peaceful relations based on cooperation, respectful of the Parties’ autonomy and sovereignty”. This ambivalence, between cooperation and autonomy, extends throughout the TCA. As Professor Usherwood noted, the lack of provision for summit-level dialogue, to give strategic direction to the UK-EU relationship, allied with the comprehensive provisions on dispute resolution and the rebalancing mechanism, appear to hint at long-term divergence (see above, paragraph 66). Such a direction of travel would be wholly consistent with the position adopted by the Government in its 2019 general election manifesto and subsequently. The absence of any provision in the TCA for structured dialogue on foreign and defence policy may also point in the same direction.
138. On the other hand, the TCA also allows the option of gradual extension, both in scope and depth. As we noted in March 2020, the Government’s initial objective was to negotiate “a suite of agreements”, each with their own governance arrangements. The EU, in contrast, sought an “overall institutional framework”, in the form of an Association Agreement.<sup>120</sup> The final result, the TCA, is closer to the EU’s preferred model: in EU law it is an Association Agreement, concluded under Article 217 TFEU. Not only does it provide an overarching institutional framework, but Article COMPROV.2 allows the UK and the EU, if they conclude “other bilateral agreements”, to integrate them within the framework of the TCA as “supplementing agreements to this Agreement”, and as “an integral part of the overall bilateral relations as governed by this Agreement”.<sup>121</sup> Association Agreements are, as we have previously noted, “by their nature dynamic and evolutionary”.<sup>122</sup>
139. But while the TCA creates the option of gradual extension, there is no obligation upon the Parties to take it up. As Marie Demetriou QC told us, “Although the agreement provides and envisages supplemental agreements and further cooperation, there is not actually a mechanism in this agreement for that to take place ... Had there been something set in the agreement, that would have been helpful. It would have provided some impetus.”<sup>123</sup> Lord Frost did not appear to envisage this option being taken up, describing the

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120 See European Union Committee, *Report pursuant to section 29 of the European Union (Withdrawal Agreement) Act 2020: Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement* (8th Report, Session 2019–21, HL Paper 32), paras 142–43

121 *Trade and Cooperation Agreement, 24 December 2020 (Article COMPROV.2(1))*

122 European Union Committee, *UK-EU relations after Brexit* (17th Report, Session 2017–19, HL Paper 149), para 105

123 Q 2

TCA as “a very comprehensive agreement ... We like to think that there is not much more negotiating to do for the time being about new elements to come into this.” But he also noted that the provision on supplementing agreements underlined the presumption “that it all fits together”, adding that “there are two [supplementing agreements] already, i.e. the nuclear cooperation agreement and the agreement on exchange of information. I expect there will be more over time.”<sup>124</sup>

140. Whatever path the two sides take, it will involve trade-offs. The Government’s position on UK participation in EU programmes illustrates the point. This is covered in Part Five of the TCA, which provides that the UK “shall participate in and contribute to the Union programmes, activities, or in exceptional cases, the part of Union programmes or activities, which are open to its participation, and which are listed in Protocol I”. The Protocol itself “shall be agreed between the Parties”. It will be adopted and “may be amended by the Specialised Committee on Participation in Union Programmes”.<sup>125</sup>
141. The text of the Protocol has yet to be agreed, but a draft was published in the form of a Declaration accompanying the TCA,<sup>126</sup> and the Government’s ‘Summary Explainer’ confirms likely UK participation in the Horizon Europe, Euratom Research and Training, and Copernicus programmes.<sup>127</sup> The EU Sub-Committees will weigh up the arguments for and against UK participation in these and other EU programmes: our concern here is with the process by which decisions will be taken, and the factors that will be borne in mind. Asked about ‘red lines’ that might prohibit UK participation, Mr Gove responded:

“There are three points. The first is value for money. The second is whether it involves a surrender of sovereignty, ECJ jurisdiction and the application of the direct effect of EU law within the UK. The third is the broader one, which is just a general public policy judgment: is this a programme that works? We do not have any theological objection. The objections are financial, constitutional, legal and public policy.”

This shows welcome pragmatism, as long as the three factors—cost, constitutional principle and public policy—are held in balance. To achieve this, it will be important that the Government talks to those directly affected. Mr Gove gave an encouraging example when he confirmed that the Government had “engaged with scientists and universities in the approach we took towards participation in Horizon”. Indeed, in explaining the Government’s decision not to participate in the SME funding instrument within the Horizon programme he referred back to “the priorities that were shared with us in the conversations we had with people in universities and the broader science community”.<sup>128</sup> We are not, on the other hand, aware of any comparable consultation taking place before the Government’s decision,

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124 [Q 28](#)

125 [Trade and Cooperation Agreement, 24 December 2020 \(Article UNPRO.1.3\(1\)–\(2\)\)](#)

126 See ‘Joint declaration on participation in Union programmes and access to programme services’: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/948105/EU-UK\\_Declarations\\_24.12.2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948105/EU-UK_Declarations_24.12.2020.pdf) [accessed 17 February 2021]

127 HM Government, *UK-EU Trade and Cooperation Agreement Summary* (December 2020) para 165: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/962125/TCA\\_SUMMARY\\_PDF\\_V1-.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962125/TCA_SUMMARY_PDF_V1-.pdf) [accessed 17 February 2021]

128 [Q 29](#)

on value-for-money grounds,<sup>129</sup> to withdraw from the Erasmus+ programme of student exchanges.

142. More broadly, none of the three factors identified by Mr Gove is absolute. Even UK sovereignty, which has been a red line throughout the negotiations with the EU, may be partially constrained by the continuing jurisdiction of the Court of Justice of the European Union in respect of key parts of the Withdrawal Agreement, and the potentially decisive influence of CJEU case-law over certain parts of the TCA itself, such as the provisions on data sharing.<sup>130</sup>
143. It follows that in any area of potential divergence the Government, while giving full weight to policy objectives, will have to balance these against the costs of that divergence. Such costs might be felt in the first instance by businesses, thanks to the creation of new barriers to trade, but could potentially escalate, if the Government's actions were to lead the EU to invoke the dispute resolution or rebalancing mechanisms in the TCA.
144. Similarly, if the Government were to contemplate extending the scope of the TCA, for instance by negotiating supplementing agreements, it will need to balance potential policy synergies or economic benefits against the impact upon national autonomy. As this Committee concluded as long ago as June 2018:

“The benefits that the UK and the EU could derive from a deep and durable partnership will come at a cost, and may entail trade-offs between economic and political considerations. There is no ‘free lunch’ for either side.”<sup>131</sup>

What was true of the negotiations that led ultimately to the TCA remains true today, and in the years to come.

### Conclusion

145. **The governance structure established by the Trade and Cooperation Agreement has been designed to support cooperation between the UK and the EU, as autonomous entities, across many areas of mutual interest. But the TCA is a starting point, not a final destination, for UK-EU relations. Cooperation may expand and deepen over time, or it may narrow in scope as the two Parties diverge. From the UK perspective, this Government—and future Governments, with their own democratic mandate—will have to make difficult choices. It is already clear that these choices will demand trade-offs, between economic, political and constitutional considerations. As we concluded in 2018, there is no ‘free lunch’ in UK-EU relations.**
146. **What is vital, though, is that both sides approach the new relationship constructively, in good faith, with the aim of rebuilding the trust that has been so undermined in recent times. Liberal democracies are**

129 See written answer by Michelle Donelan MP, [HCWA 133977](#) (Session 2019–21)

130 See [Trade and Cooperation Agreement, 24 December 2020 \(Article LAW.OTHER.137\)](#), which, by implication, provides that if the CJEU were to strike down any data adequacy decision granted by the Commission, the EU could then suspend all or some of Part Three of the TCA. This issue will be addressed in more detail in the reports of our Security and Justice Sub-Committee and our Services Sub-Committee.

131 European Union Committee, [UK-EU relations after Brexit](#) (17th Report, Session 2017–19, HL Paper 149), para 60

**precious, and they should work together, not pull apart. The TCA provides a structure within which the UK and the EU can do just that: the opportunity must not be wasted.**

## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

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### The story so far

1. We welcome the achievement of the United Kingdom and European Union lead negotiators, Lord Frost and Michel Barnier, along with their teams, in delivering the Trade and Cooperation Agreement under extraordinarily difficult circumstances, thereby averting the threat of a chaotic and damaging conclusion to the post-Brexit transition period. (Paragraph 7)
2. We note that the final text of the TCA has yet to be published, and that it has been provisionally applied on the EU side. We regret that the UK Government, in bringing forward section 36 of the European Union (Trade and Cooperation Agreement) Act 2020, chose to disapply the procedure for parliamentary scrutiny of the TCA that would otherwise have applied under Part 2 of the Constitutional Reform and Governance Act 2010. An agreement of such complexity and importance surely merited formal debates in both Houses prior to ratification. (Paragraph 8)
3. We also note that, at the time of writing, and in response to the UK Government's decision unilaterally to extend certain 'grace periods' under the Protocol on Ireland/Northern Ireland, the European Parliament has declined to set a date for its vote on the TCA—a vote that is a precondition for EU ratification. The threat of 'no deal' thus remains, and a 'no deal' that took effect on 1 May 2021 would carry just as much risk as one taking effect four months earlier. (Paragraph 9)
4. The current state of UK-EU relations underlines the importance of completing the process of ratifying the TCA. Whatever the imperfections of the TCA and the challenges presented by the text, and whatever the deficiencies of the process whereby it was implemented in domestic law, the TCA will provide a structure within which the UK-EU relationship can be managed and can develop. That structure is needed now more than ever. (Paragraph 10)

### Purpose, scope and underlying principles

5. The first Recital of the Preamble sets the tone for the entire Trade and Cooperation Agreement. The United Kingdom and the European Union hold to the same fundamental values of democracy and the rule of law, and face the same global challenges of the proliferation of weapons of mass destruction and climate change: these are rightly the "essential elements" of their relationship. As liberal democracies more unites them than divides them, and while the UK's EU membership has now ended, the two Parties' mutual interest in close and peaceful relations is as strong as ever. (Paragraph 41)
6. The process described in Article INST.35, in the event of a failure by one or other Party to respect the "essential elements" of the TCA, is a nuclear option: it is unlikely that either Party would seek to suspend the TCA in its entirety except in unprecedented and dire circumstances, even though, under Article FINPROV.8, they may do so without any explanation, and with just 12 months' notice. A better reading of Article INST.35 is that it demonstrates to both Parties that the high-flown declaration in the first Recital of the Preamble has teeth, embodying as it does a shared and lasting commitment to the values that unite liberal democracies and their citizens. (Paragraph 42)

7. We welcome the application of the TCA to the Crown Dependencies in relation to trade in goods and fisheries, guaranteeing as it does the continuation of tariff-free trade in goods, and serving as a sound basis for the Crown Dependencies' future relationship with the EU. By contrast, the exclusion of Gibraltar and the United Kingdom's other Overseas Territories from the scope of the TCA is striking. (Paragraph 43)
8. We welcome the proposed framework for a UK-EU legal instrument setting out Gibraltar's future relationship with the EU, which was agreed by Gibraltar, the UK and Spain on 31 December 2020. We hope that this can be swiftly converted into a separate UK-EU treaty concerning Gibraltar. (Paragraph 44)
9. We invite the Government to confirm whether a UK-EU treaty on Gibraltar will be a stand-alone agreement (as appears to be envisaged by Article FINPROV.1(3) of the TCA), or whether it will be a supplementing agreement, and therefore subject to the same over-arching governance structure as the TCA itself. (Paragraph 45)
10. The outlook for the other Overseas Territories, following their exclusion from the TCA, is more worrying. We note for instance the serious economic implications for the Falkland Islands of the imposition of tariffs and quotas upon its trade in fisheries (including Loligo squid) with the EU. We call on the Government to continue to defend the interests of the Falkland Islands and the other Overseas Territories. (Paragraph 46)
11. It is notable that the TCA not only states, in terms, that its provisions shall be interpreted in good faith, but that the Parties shall take all appropriate measures in good faith to fulfil their obligations under the Agreement, and refrain from any measures that might undermine their fulfilment of those obligations. Given recent events, which have undermined trust on both sides, it will all the more important for the UK Government and the European Commission to reflect on this explicit commitment. (Paragraph 47)

### **The institutional framework**

12. The EU-UK Trade and Cooperation Agreement establishes a complex but flat governance structure, which will sit alongside the structure already put in place by the Withdrawal Agreement. Such breadth and complexity are, in our view, likely to prove challenging. We also note the possibility that further agreements could in due course be brought under the same governance umbrella, adding still more breadth to governance. While initially we expect both sides will respect and adhere to the newly established structures, we recommend that the Government keep them under review—there may well be a case for simplifying and rationalising them in due course. (Paragraph 67)
13. One area of difference between the two structures is in the use of written procedure, which is prohibited in respect of the Joint Committee, by virtue of section 35 of the European Union (Withdrawal Agreement) Act 2020, but is permitted in respect of the Partnership Council. We call on the Government to explain the reasoning behind this difference of approach. (Paragraph 68)
14. The Government will need to commit significant resource to support the governance structure. This resource should primarily be focused in Brussels and in Whitehall: the extent of EU competence is such that Brussels will remain the key forum for developing UK relations with the EU-27. We

therefore urge the Government to ensure not only that dedicated resource is available across Departments, but, as we recommended in our 2019 report *Beyond Brexit*, that the UK Mission to the EU in Brussels is able to draw on additional resource to support it in monitoring and influencing developments in Brussels. (Paragraph 69)

15. Although the Member States are excluded from the governance structure established under the TCA, they will have a major say on the policy positions adopted by the EU. It will therefore be important also to provide the resource needed to develop the UK's bilateral relationships with the Member States. (Paragraph 70)
16. There will also be a critical need to coordinate the Government's contribution to the governance structures of both the TCA and the Withdrawal Agreement. The close symmetry between these structures, and the overlap of personnel, is helpful, given the synergies between the two Agreements, particularly in respect of Northern Ireland: it should assist in coordination and may ultimately pave the way for a formal rationalisation of the current two-headed structure. We welcome the fact that, at a time when the crucial UK-EU relationship is developing rapidly, there will be a designated Cabinet-level Minister charged with coordinating the Government's engagement with the EU and leading the UK's input into the governance of both Agreements. (Paragraph 71)
17. But this new ministerial role will bring with it increased accountability to Parliament. We welcome the recent decision that Lord Frost should answer questions in the House of Lords on a regular basis, and we underline the urgent need for effective mechanisms to allow the House of Commons to hold him to account. We also invite the Government to agree that any holder of the role to which Lord Frost has been appointed should appear at regular and predictable intervals before designated Select Committees of the two Houses. (Paragraph 72)
18. We note the absence of any provision in the TCA for regular summit-level meetings between the Parties. We note Lord Frost's confidence that such meetings will occur naturally and organically, but given the number of bilateral relationships that are subsumed within the UK-EU relationship, we regret this omission, and believe there would be huge benefit to the UK in adopting a more structured approach. We invite the Government therefore to set out its plans for ensuring regular ministerial and Head of Government-level dialogue with the EU-27 and the Commission. (Paragraph 73)
19. The complexity of the governance structure underlines the need for both sides to commit to transparency. Although the TCA appears to establish a presumption in favour of transparency, its substantive provisions are weak, and unless further commitments to transparency are made it may be impossible for Parliament, the devolved legislatures, or wider civil society, to contribute effectively to the developing UK-EU relationship. Formal ministerial statements after meetings are not enough: we call on the Government to draw up a comprehensive mechanism to support document-based scrutiny by designated select committees, and more generally to promote the transparent operation of the governance bodies established by the TCA. (Paragraph 74)
20. Finally, we note with concern the Government's decision not to allow the governance structure established under the TCA to meet. We acknowledge

that the agreement has yet to be ratified, and is currently only provisionally applied. But it is fully operational, and it is now, when the new arrangements are still unfamiliar, that problems are most likely to be encountered. We see no justification, particularly given the agreed extension of provisional application, for allowing such a complex and important relationship, affecting the security and livelihoods of over 500 million citizens in the UK and in the EU, to drift without the formal governance arrangements having been activated. (Paragraph 75)

21. We welcome the TCA's provision for a Parliamentary Partnership Assembly, bringing together Members of the Westminster and European Parliaments—there should be a presumption that any modern, multi-faceted international agreement of this kind includes an integral parliamentary dimension. In our view, the initial goal of the Assembly should be to help rebuild relationships between the UK and the EU and strengthen channels of communication between the two Parliaments. (Paragraph 87)
22. We note that the PPA will be particularly important, given that the European Parliament remains co-legislator in respect of all legislation affecting the EU Single Market in goods that applies in Northern Ireland under the Protocol on Ireland/Northern Ireland. MEPs will shape the laws that apply to the people of Northern Ireland: it is therefore vital that there should be a structure to enable parliamentarians in Westminster and Stormont to engage with MEPs throughout the EU's legislative processes. (Paragraph 88)
23. We note that the TCA does not mandate the Parliamentary Partnership Assembly, placing the onus for establishing it upon the two Parliaments. A similar provision in the UK-Chile Agreement has yet to be implemented, and we note with concern the Chancellor of the Duchy of Lancaster's view that this would be a matter purely for the two Houses, not the Government. The Government has extensive power of initiative in both Houses, and also has the power to frustrate committee-driven initiatives if it so chooses, simply through inaction. The Government should give impetus to the Assembly, by supporting Members and committees in bringing forward proposals, and by committing to table the relevant motions in both Houses. (Paragraph 89)
24. We note with regret that the wording of the relevant Article appears to preclude Members of the devolved legislatures from membership of the PPA. If this is indeed the case, it will be all the more important not only for other forms of direct engagement between the devolved legislatures and the European Parliament to be found, but for the legislatures of the United Kingdom to work together to support coordinated scrutiny of both intra-UK and UK-EU relations, in all their dimensions. (Paragraph 90)
25. The provisions of the TCA on civil society engagement are relatively weak. In particular, we regret that the Civil Society Forum will essentially meet at the pleasure of the Partnership Council, and we therefore call on the Government to explain how it plans to give effect to this provision in facilitating the work of this new body. (Paragraph 91)

### **Dispute settlement**

26. Within the dispute resolution provisions of the TCA, the Government has broadly achieved its aim of bringing the direct jurisdiction of the Court of Justice of the European Union to an end. However, there are some caveats to this conclusion. The first is that some remaining obligations under the

Withdrawal Agreement will continue to be subject to the CJEU (most notably those under the Protocol on Ireland-Northern Ireland). The second is that cooperation with the EU agencies will still be subject to the oversight of the CJEU. Finally, the indirect effect of CJEU judgments should not be underestimated, particularly in the fields of law enforcement, judicial cooperation and data exchange. (Paragraph 129)

27. The ending of the direct jurisdiction of the CJEU, and the inherent breadth and complexity of the TCA, means that, as we envisaged in our 2018 report, *Dispute resolution and enforcement after Brexit*, it has been necessary to create a varied series of dispute resolution mechanisms to deal with the many areas of potential disagreement that could arise between the two Parties. (Paragraph 130)
28. This complex architecture is necessary to deal with the unique nature of the TCA—a ‘one size fits all’ method of dispute resolution was never likely to be sufficient. Many of the mechanisms, such as arbitration, are familiar from other free trade agreements. But other mechanisms, such as the proposed ‘rebalancing’ measures, are novel, untested, and without clear precedents. (Paragraph 131)
29. Only time will tell if these novel approaches are workable in practice, or if they will have a destabilising effect. There is a risk that, if the Parties do not behave pragmatically and reasonably, some of the dispute resolution mechanisms could be used to trigger a broader renegotiation of the TCA—or even, in an extreme case, to justify termination of all or part of the agreement. (Paragraph 132)
30. We regret that it was not possible to find a means to protect the interests of individuals and small businesses under the TCA. The fact that the bulk of the arrangements are necessarily State-to-State means that access to justice will be restricted, and the interests of those who are unable to lobby effectively may be overlooked. (Paragraph 133)
31. We therefore call on the Government, in reflecting on the domestic consultation that will be needed to support the implementation and operation of the TCA, including the establishment of the domestic advisory groups provided for in Article INST.7, to prioritise measures to mitigate this loss of access to justice. Mechanisms are needed whereby individuals and businesses (particularly SMEs) adversely affected by the operation of the Agreement can swiftly escalate issues to Government, so that the Government can then pursue them. Even in the weeks since 1 January 2021, it has been clear that quick and effective resolution of issues experienced by individuals or businesses is essential if the wider Agreement is not to be brought into disrepute. (Paragraph 134)
32. More specifically, we call on the Government to set out the safeguards and procedural rights available to those citizens in the UK who may be subject to extradition requests from EU Member States under the terms of the TCA, and in particular to explain how those rights have changed from those that were available before 1 January 2021, under the terms of the European Arrest Warrant. (Paragraph 135)

### The future of UK-EU relations

33. The governance structure established by the Trade and Cooperation Agreement has been designed to support cooperation between the UK and the EU, as autonomous entities, across many areas of mutual interest. But the TCA is a starting point, not a final destination, for UK-EU relations. Cooperation may expand and deepen over time, or it may narrow in scope as the two Parties diverge. From the UK perspective, this Government—and future Governments, with their own democratic mandate—will have to make difficult choices. It is already clear that these choices will demand trade-offs, between economic, political and constitutional considerations. As we concluded in 2018, there is no ‘free lunch’ in UK-EU relations. (Paragraph 145)
34. What is vital, though, is that both sides approach the new relationship constructively, in good faith, with the aim of rebuilding the trust that has been so undermined in recent times. Liberal democracies are precious, and they should work together, not pull apart. The TCA provides a structure within which the UK and the EU can do just that: the opportunity must not be wasted. (Paragraph 146)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members of the European Union Select Committee

The Earl of Kinnoull (Chair)  
 Baroness Brown of Cambridge  
 Baroness Couttie  
 Baroness Donaghy  
 Lord Faulkner of Worcester  
 Lord Goldsmith  
 Baroness Hamwee  
 Lord Kerr of Kinlochard  
 Lord Lamont of Lerwick  
 Baroness Neville-Rolfe  
 Lord Oates  
 Baroness Primarolo  
 Lord Ricketts  
 Lord Sharkey  
 Lord Teverson  
 Lord Thomas of Cwmgiedd  
 Baroness Verma  
 Lord Wood of Anfield

### Declarations of interest

The Earl of Kinnoull (Chair)  
*Farming interests as principal and as charitable trustee, in receipt of agricultural subsidy*  
*Chairman, Culture Perth and Kinross, in receipt of governmental subsidy*  
*Chairman, United Kingdom Squirrel Accord, in receipt of governmental monies*  
*Shareholdings as set out in the register*

Baroness Brown of Cambridge  
*Chair of the Adaptation Sub-Committee of the Committee on Climate Change*  
*Chair of the Henry Royce Institute for Advanced Materials*  
*Chair of STEM Learning Ltd*  
*Non-Executive Director of the Offshore Renewable Energy Catapult*  
*Chair of The Carbon Trust*  
*Council member of Innovate UK*  
*Non-Executive Director of Ørsted*

Baroness Couttie  
*Non-Executive Director, Mitie*  
*Commissioner, Guernsey Financial Services Commission*  
*Special Advisor, Heyman AI Ltd*

Baroness Donaghy  
*Former President of the Trades Union Congress*  
*Former member European Trades Union Congress*  
*In receipt of USS Pension*

Lord Faulkner of Worcester  
*Chairman, Great Western Railway Advisory Board*

*Chairman, Alderney Gambling Control Commission*  
*Her Majesty's Government's Trade Envoy to Taiwan*

Lord Goldsmith

*Partner of Debevoise & Plimpton LLP international law firm with offices in the UK and various EU cities among others*

Baroness Hamwee

*No relevant interests to declare*

Lord Kerr of Kinlochard

*Chairman, Centre for European Reform*

*Deputy Chairman, Scottish Power PLC*

*Member, Scottish Government's Advisory Standing Council on Europe*

Lord Lamont of Lerwick

*Director, Devon European Opportunities Trust*

*Director, Compagnie Internationale de Participations Bancaires et Financières (CIPAF)*

*Director, Chelverton UK Dividend Trust*

*Adviser, Halkin Investments*

*Adviser, Official Monetary and Financial Institutions Forum (OMFIF)*

*Adviser, Meinhardt Engineering Group, Singapore*

Baroness Neville-Rolfe

*Former Commercial Secretary, HM Treasury*

*Chair, Assured Food Standards Ltd*

*Chair, UK ASEAN Business Council*

*Non-Executive Director, Capita Plc*

*Non-Executive Director, Secure Trust Bank*

*Trustee (Non-Executive Director), Thomson Reuters Founders Share Company*

*Non-Executive Director, Health Data Research UK*

*Chartered Secretary*

*Fellow of ICSA, The Chartered Governance Institute*

*Trustee (Non-Executive Director), Thomson Reuters Founders Share Company*

Lord Oates

*Director, Centre for Countering Digital Hate*

*Chairman, Advisory Board, Weber Shandwick UK*

*Director, H&O Communications Ltd.*

Baroness Primarolo

*Non-executive director and chair, Thompson's Solicitors*

Lord Ricketts

*Non-Executive Director, Group Engie, France*

*Strategic Adviser, Lockheed Martin UK*

*Charitable activities as set out in the Register of Interests*

Lord Sharkey

*Chair of the Association of Medical Research Charities*

*Chair of the Specialised Healthcare Alliance*

*Member of Council at University College London*

Lord Teverson

*Trustee, Regen SW*

*In receipt of a pension from the European Parliament*

Lord Thomas of Cwmgiedd

*Chancellor, Aberystwyth University*

*Chairman, Financial Markets Law Committee*

*Arbitrator, Essex Court Chambers*

*First Vice President, European Law Institute*

*Member, First Minister of Wales' European Advisory Group*

Baroness Verma

*No relevant interests declared*

Lord Wood of Anfield

*Chair of the United Nations Association (UNA-UK)*

*Director, Good Law Project*

*Director of Janus Henderson Diversified Income Trust*

A full list of Members' interests can be found in the Register of Lords' Interests:  
<https://members.parliament.uk/members/lords/interests/register-of-lords-interests>

## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at <https://committees.parliament.uk/work/980/future-ukey-relations-governance/publications/> and available for inspection at the Parliamentary Archives (020 7219 3074)

Evidence received by the Committee is listed below in chronological order of oral evidence session and alphabetical order. Those witnesses marked with \*\* gave both oral and written evidence. Those marked with \* gave oral evidence and did not submit written evidence. All other witnesses submitted written evidence only

### Oral evidence in chronological order

- |   |                             |                          |
|---|-----------------------------|--------------------------|
| * | Professor Catherine Barnard | <a href="#">QQ 1–16</a>  |
| * | Marie Demetriou QC          |                          |
| * | Dr Holger Hestermeyer       |                          |
| * | Professor Simon Usherwood   |                          |
| * | Rt Hon Michael Gove MP      | <a href="#">QQ 17–34</a> |
| * | Lord Frost                  |                          |
| * | Lindsay Croisdale-Appleby   |                          |
| * | Matthew Taylor              |                          |
| * | Brendan Threlfall           |                          |