

Dr Andrew Glencross - Written evidence (EEH0002)

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1. This evidence focuses on health policy, specifically the health security relationship with the EU on the basis of the Trade and Cooperation Agreement (TCA).
2. What is your assessment of the relevant provisions in the UK-EU Trade and Cooperation Agreement, and their impact on your business or policy area?

It was a relief to see health security feature in the TCA because the UK government's Draft UK-EU Comprehensive Free Trade Agreement had not covered this topic. The relevant section is Part 4: Thematic Cooperation, Title I. The agreed text is in line with the wording of the UK-EU Political Declaration of October 2019 (para. 113), which set out plans to negotiate on this topic.

However, the new provisions are extremely thin when compared with the nature of the previous health security arrangement. During the transition period, the UK benefited from a special status meaning it could participate in EU health security measures on the same terms as EU member states. Hence the UK retained full access (overseen by Public Health England) to the Early Warning and Response System (EWRS),¹ administered by the European Centre for Disease Control (ECDC), for the prevention and control of communicable diseases, while UK representatives could also attend meetings of the Health Security Committee (HSC).² In the last HSC meeting before Christmas, the UK briefed other participants on the prevalence of the new COVID-19 variant, which had already been the subject of a UK alert via the EWRS.³

Now the UK is outside the HSC structure [at the time of writing no formal request to participate in the HSC has been made] and, according to the TCA, can only ask that the EU "grant the United Kingdom ad hoc access to its Early Warning and Response System" in situations where there is a serious cross-border threat to health. The document also suggests the UK may be invited to participate in the HSC "for the purposes of supporting the exchange of information and of coordination in relation to the serious cross-border threat to health". In addition, the TCA also allows the ECDC to sign a memorandum of understanding with a relevant UK body to "cooperate on technical and scientific matters of mutual interest to both

¹ <https://www.ecdc.europa.eu/en/early-warning-and-response-system-ewrs>

² https://ec.europa.eu/health/preparedness_response/risk_management/hsc/members_en

³ https://ec.europa.eu/health/sites/health/files/preparedness_response/docs/ev_20201221_sr_en.pdf

parties". This outcome is similar to the arrangement the EU has with Switzerland, which is not a full member of the ECDC, but which was provided with ad hoc access to EWRS when co-hosting the men's European football championship in 2008. Third countries thus do not have routine access to the full range of ECDC health coordination systems. At the start of the COVID-19 pandemic, the Swiss government had to make a formal request to gain temporary access to the EWRS.⁴

3. What do these provisions achieve?

The TCA offers the bare minimum for supporting UK health security. There is no automatic right to participate and share information within the HSC and no automatic access to the EWRS. Temporary access is at the discretion of the EU and pursuant to a case-by-case request by the UK. Hence the two-way sharing of epidemiological and other public health data will be much more limited, while the ability to coordinate a cross-border response in a crisis will be similarly impaired.

4. What, if any, challenges arise because of those provisions? How could these challenges be resolved?

The TCA does not extend the UK's ability to participate in the Joint Procurement Agreement (JPA). Under the terms of the Withdrawal Agreement, the UK could join this EU collective buying scheme for medical equipment and pharmaceutical products. There was fairly extensive press coverage of the UK government's decision not to participate in the JPA tender in March 2020 for ventilators, PPE, and COVID-19 testing kits. Less well known is the fact that, in May 2020, the UK received a delivery of Personal Protective Equipment (PPE) via the EU's Emergency Support Instrument, for which the EU allocated €2.7 billion to support member states' health care systems. According to the British Medical Association, "the UK requested access to the scheme and had been selected based on a formula which considered 'epidemiological data, needs of the countries and the access to equipment'".⁵ In October 2020, the UK was part of a JPA order of the antiviral remdesivir for treatment of COVID-19.⁶

The JPA is open to EU, EEA and candidate countries. Switzerland, which does not fit existing categories for membership is not able to participate in the JPA. Thus it is very unlikely that the UK could negotiate a new arrangement to allow for continued participation. Moreover, the JPA is subject to EU law, which means the UK would have to accept involvement of the Court of Justice of the EU (CJEU) in the event of disputes over procurement processes.

⁴ <https://www.reuters.com/article/china-health-swiss/swiss-seek-access-to-eu-early-warning-system-as-coronavirus-spreads-idUSL8N29X4M7>

⁵ <https://www.bma.org.uk/media/2514/bma-european-brief-may20.pdf>

⁶ https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/public-health_en#ensuring-the-availability-of-supplies-and-equipment

Looking to the future, EU-organized joint procurement and stockpiling could limit supplies to the UK – or at least increase the cost of bidding against the EU on the global market, which is dominated by Chinese producers that supply 40% of the global PPE market. The greater the scale of the EU’s joint efforts in purchasing and stockpiling, the more market power it will have in comparison to the UK government. This fear of exclusion explains the rush of countries that joined the JPA in 2020 as the pandemic struck Europe and countries worldwide sought to block exports of essential medical supplies.⁷ The European Commission’s intention to provide more funds for stockpiling and facilitate the development of EU-based PPE manufacturing⁸ only amplifies the risk the UK faces as a third country.

5. What should the UK seek to accomplish with the EU in relation to your industry or policy area within the parameters of the Agreement in the short- and mid-term?

The UK should prioritize obtaining observer status – like EEA states as well as Serbia and Turkey⁹ – in the HSC, as well as negotiate a memorandum of understanding with the ECDC. Unfortunately, given the legal structure of the JPA, it is not clear how the UK can find a new way of participating in this scheme.

A more mid-term priority concerns the UK’s relationship with the RescEU programme nested within the EU’s Civil Protection Mechanism. As part of the EU’s promotion of “health sovereignty” in the wake of the pandemic, RescEU is intended to function as an emergency medical stockpile of pharmaceuticals, PPE and the like. The European Commission will fund up to 100% of the costs for the development and deployment of stockpiles designed to offer emergency supplies during the COVID-19 crisis and for future health crises.¹⁰ In 2020 €380 million was earmarked from the Emergency Support Initiative to pay for these stockpiles, which started with Romania and Germany ordering medical masks that were subsequently distributed to Italy, Spain and Croatia.

The Civil Protection Mechanism is not exclusive to EU Member States: Iceland, Montenegro, North Macedonia, Norway, Serbia and Turkey all take part in it. The wording of the Civil Protection Mechanism’s rules for participation (Art. 28) specifies that, beyond EU and EEA countries “other European countries when agreements and procedures so provide” can participate in this arrangement”. On this basis, the UK should explore the ability to benefit from RescEU stockpiling as a participating state, albeit dependent upon a financial contribution.

⁷ In April 2020 Global Trade Alert had identified 75 countries that placed export restrictions on medical goods because of COVID-19.

⁸ https://eeas.europa.eu/headquarters/headquarters-homepage/80567/united-resilient-and-sovereign-europe_en

⁹ https://ec.europa.eu/health/sites/health/files/preparedness_response/docs/hsc_rules_procedure_en.pdf

¹⁰ https://ec.europa.eu/echo/what/civil-protection/resceu_en

