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Written evidence submitted by Oliver Garner to the European Scrutiny Committee inquiry: The institutional framework of the UK/EU Trade and Cooperation agreement

Introduction

This evidence has been prepared by Dr Oliver Garner, Research Fellow in the Rule of Law in Europe at the Bingham Centre for the Rule of Law, British Institute of International and Comparative Law, in an individual capacity. I am submitting evidence due to my expertise in the institutional dimensions of the UK's withdrawal from the European Union and its future relations with the EU, as demonstrated in a chapter contribution on Justice and Home Affairs for the upcoming edited collection "The Law & Politics of Brexit Volume III: The Framework of New EU-UK Relations". I have also previously been invited to submit evidence to the European Scrutiny Committee on the Protocol on Ireland/Northern Ireland.

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Executive Summary

The TCA Partnership Council (PC) has the power to make legally binding decisions, and to oversee implementation and application. The Specialised Committees have the power to assist in this function. This extends to the development of the TCA in areas such as mutual recognition of professional qualifications, where explicitly provided. The PC and the Committees are also the forum for consultations on disputes before an arbitration panel can be established. The EU is approaching implementation of the TCA by involving the European Parliament closely. Due to the law-making role of the PC, this written evidence recommends that the EU and the UK utilise the mechanisms for transparency, accountability, and scrutiny to their full extent. This includes consistent publication of decisions and recommendations, holding meetings in public, and involving civil society, business, and parliaments proactively. The establishment of the Parliamentary Partnership Assembly with the European Parliament would enable Parliament to empower itself in relation to decisions made under the TCA.

What are the most important powers of the Trade and Cooperation Agreement (TCA) Partnership Council and the different Specialised Committees and what could the practical impact of the exercise of these powers be?

The objectives of the Partnership Council (PC) are outlined in Article 7(3) of the Trade and Cooperation Agreement (TCA):[1] to oversee the attainment of objectives; to supervise and facilitate implementation and application; and to act as a referee for the Parties on any issues concerning implementation, application and interpretation.

[1] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part OJ L 149, 30.4.2021.

Article 7(4) TCA summarises the powers of the PC: (1) to adopt decisions where provided; (2) to make recommendations on implementation and application; (3) to adopt amendments where provided; (4) to adopt amendments when necessary to correct errors, omissions or other deficiencies, excluding institutional provisions, and limited to four years.

Article 8 establishes the 19 Committees under the TCA. Paragraph 4 details the general powers of the Specialised Committees: (1) monitoring implementation and ensuring proper functioning; (2) assisting the PC and reporting to it and carrying out tasks assigned by the senior body; (3) adopting decisions when powers are delegated by the PC; (4) discussion of technical issues; (5) providing a forum to exchange information; (6) overseeing the Working Groups; and (7) providing a forum for consultation ahead of formal dispute resolution.

The Partnership Council and the Specialised Committee on Law Enforcement and Judicial Cooperation also have an important dispute resolution power in relation to security co-operation in Part Three, where the ordinary dispute settlement provisions are excluded. Under Article 698 TCA the Parties may specify either the Specialised Committee or the PC as the forum for dispute resolution on security issues, with the former able to refer to the latter at any point, and the latter more senior institution able to "seize itself of the matter." The crucial adjudicative power is stated in Article 698(5) TCA: "the Specialised Committee…or….the Partnership Council may *resolve the dispute* by a decision". If the mutually agreed solution concerns a joint interpretation of the TCA, then the more senior body of the PC must be involved in the adoption of the decision.

The practical impact of the exercise of these powers is the alteration of the legal obligations attendant upon the United Kingdom and the European Union. A theme that will be considered further below is the practical issue of such decisions to alter the TCA being solely based on consensus between members of the executive branch of government, without any input from elected representatives in the legislature. This means that self-empowerment through the Parliamentary Partnership Assembly is particularly important.

How could the implementation of the TCA and the actions of the UK/EU joint bodies impact the operation of the Northern Ireland Protocol to the UK/EU Withdrawal Agreement?

Decisions to deepen co-operation under the TCA in areas regulated by the Northern Ireland Protocol could have an impact, as already shown by the UK Government's arguments in its Command Paper on the Protocol that the subsidies chapter of the TCA makes Article 10 NIP redundant.[2] The text of the Protocol allowed the possibility of formal displacement by future agreements in Article 13(8) NIP: "any subsequent agreement between the Union and the United Kingdom shall indicate the parts of this Protocol which it supersedes". However, no such explicit indication is provided for in the current text of the TCA.

The Protocol on Ireland/Northern Ireland forms an integral part of the Withdrawal Agreement,[3] and its operation is separate from the Trade and Cooperation Agreement. Article 178(2)(a) WA connects the two agreements, through the permission for the complainant in a dispute to suspend "parts of any other agreement between the Union and the United Kingdom under the conditions set out in that agreement" if the other party does not comply with an arbitration panel ruling. This suggests the converse situation to the scenario proposed in the question – the implementation of the Withdrawal Agreement could impact the operation of the TCA.

However, in relation to the Protocol, the Court of Justice of the EU has ongoing jurisdiction and the EU institutions can bring infringement claims under Article 12(4) of the Protocol on Ireland/Northern

[2] HM Government, 'Northern Ireland Protocol: the way forward', July 2021 CP 502, para 41.
[3] Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community OJ C 384I, 12.11.2019.

Ireland. The EU has already used the Article 12 NIP legal basis to bring infringement claims, and is likely to do so again in the future, for example if the UK engages in further unilateral suspension of its obligations under the Protocol after the end of the extended grace period on 30 September. On 28 July, the EU announced that it was suspending a pre-existing infringement claim following the UK's proposals in the Command Paper on the Northern Ireland Protocol of 21 July.[4]

Tobias Lock has identified a possible scenario in which action under the Protocol could impact upon the TCA.[5] Article 16(1) NIP enables safeguard measures "restricted with regard to their scope and duration to what is strictly necessary to remedy the situation" if the Protocol leads to serious economic, societal or environmental difficulties, or to diversion of trade. Article 16(2) NIP allows the other Party in such a situation to take "proportionate rebalancing measures as are strictly necessary to remedy the imbalance" in rights and obligations under the Protocol. It is unclear whether either safeguard measures or rebalancing measures could be applied to the TCA in such a situation, depending on whether this would fall within the scope of strict necessity, and least disturbing to the functioning of the Protocol. One may argue that, in the absence of explicit authorisation such as found in Article 178(2)(a) WA, the scope of Article 16 NIP is restricted to the rights and obligations found in the Protocol on Ireland/Northern Ireland.

The Joint Committee of the Withdrawal Agreement and the Committee on issues related to the implementation of the Protocol on Ireland/Northern Ireland are also separate legally from the Partnership Council and the Specialised Committee under the TCA. Functionally, however, they may operate similarly as they have the same personnel representing the EU and the UK, and also the same meeting times as demonstrated by the first meeting of the Partnership Council taking place at the same time as meetings of the Specialised Committee on the Protocol on 7 June. Therefore, disputes in either of the bodies could spill over to affect the operation of either the Protocol or the TCA. In particular, the brinkmanship demonstrated by the UK Government in proposing and then removing clauses in the UK Internal Market Bill pertaining to the Protocol on Ireland/Northern Ireland after negotiations on the future relationship are a precedent for the political linking together of decisions on one agreement on the basis of events pertaining to the other.

What structures does the TCA provide to develop or deepen areas of cooperation such as mutual recognition of professional qualifications?

The development or deepening of areas of cooperation concerns the mechanisms for dynamic development of the TCA as a starting-point for UK-EU relations post-withdrawal. This raises the Rule of Law issues of the transparency of such decisions developing the legal obligations, and their accessibility. The specific provisions on mutual recognition of professional qualifications are contained in Article 158 TCA, with further details in Annex 24. Article 158(3) TCA provides that "[t]he Partnership Council may…develop and adopt an arrangement on the conditions for the recognition of professional qualifications by decision as an annex to this Agreement, which shall be considered to form an integral part of this Title". The prior condition is a bottom-up mechanism whereby "the professional bodies or authorities, which are relevant for the sector of activity concerned in their respective territories, may develop and provide joint recommendations" supported by an evidence-based assessment of the economic value and the compatibility of the respective regimes (Art 158(2) TCA).

The discretion for the Partnership Council to take a "decision" that would make mutual recognition of professional qualifications part of the TCA falls under the power to "adopt decisions in respect of all matters where this Agreement or any supplementing agreement so provides" (Art 7(4)(a) TCA). Such decisions do not have any democratic input beyond the relevant European Commission member and

[4] HM Government, 'Northern Ireland Protocol: the way forward', July 2021 CP 502.
[5] Tobias Lock, 'Towards a Radical Revision of the Northern Ireland Protocol?' Verfassungsblog, 23 July 2021.

the Ministerial representative of the UK Government. The rules of procedure in Annex 1 prescribe that the formal requirement for adoption of decisions is "mutual consent" pursuant to Rule 1. Rule 9 permits such decisions to be adopted by written procedure.

Finally, and most significantly, Rule 10(3) on transparency holds that "Each Party *may* decide on the publication of the decisions and recommendations of the Partnership Council in its respective official journal or online". This language strongly suggests that there is merely a permission rather than an obligation for the Parties to publish all decisions. This means that the development or deepening of cooperation in the TCA may be subject to accessibility problems if the legal regime changes are not accessible to relevant stakeholders if this discretion is not exercised. The Government should commit itself to the publication of all decisions to avoid this problem.

An alternative for the development or deepening of the area is also provided for in a footnote to Article 158(1) TCA: "this Article shall not be construed to prevent the negotiation and conclusion of one or more agreements between the Parties on the recognition of professional qualifications on conditions and requirements different from those provided for in this Article". This option, which would constitute a "supplementing agreement" under Article 2 TCA unless explicitly provided otherwise, could offer both more flexibility for the Government, and the chance for more scrutiny and democratic input for Parliament.

Such an agreement could dispense with the Article 158 requirements for a prior joint recommendation from professional bodies with the requirement for prescriptive evidence-based assessment. With regard to democratic input, if concluded as a separate international agreement then the deepening of relations should be subject to usual parliamentary scrutiny as provided for in section 20 of the Constitutional Reform and Governance Act 2010.[6] Presumably, this mechanism would not be disapplied, as it was for the TCA ratification by section 36 of the European Union (Future Relationship) Act 2020,[7] as there would not be time pressure similar to the end of the transition period for a possible future agreement on professional qualification.

What are the key features of the dispute resolution procedures provided for in the TCA and what are the likely legal and policy implications of these for the UK? How closely do they follow precedent in other trade agreements and do they raise any concerns with respect to the UK's regulatory autonomy?

Perhaps the key feature of dispute resolution for the UK is that, in contrast to the Withdrawal Agreement, there is no role for the Court of Justice of the European Union and the interpretation of EU law. Article 4(2) TCA confirms that "neither this Agreement nor any supplementing agreement establishes an obligation to interpret their provisions in accordance with the domestic law of either party". Article 4(3) TCA states that "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".

An exclusivity clause obliges the Parties not to submit disputes concerning the interpretation and application of the TCA to any other dispute resolution mechanisms (Art 736 TCA). However, if a dispute concerns a substantially equivalent obligation under another agreement, the Party may choose between the alternative forums. Once chosen, they may not undertake another form of dispute resolution unless the first forum fails due to procedural or jurisdictional reasons (Art 737 TCA).

The two forms of dispute resolution are diplomatic consultations between the Parties, which takes chronological priority, and arbitration procedures. Consultations under Art 738 TCA can be commenced if a Party believes the other has breached an obligation, and must be entered into in good faith with the aim of reaching a mutually agreed solution. A written request must specify the reasons

[6] Constitutional Reform and Governance Act 2010, s 20.
[7] European Union (Future Relationship) Act 2020, s 36.

and legal basis and the provisions under dispute. The respondent must reply within 10 days, and consultations must be held within 30 days. Consultations conclude within 30 days unless the Parties agree to continue. The urgency procedure has a limit of 20 days. The Parties are obliged to provide sufficient factual information to allow examination of the issues. Consultations are held within a Specialised Committee, or the Partnership Council, and either body may resolve the dispute by a decision. The former body may refer to the latter, and the PC may also seize itself of the matter independently.

Article 739 TCA establishes the arbitration procedure. A party may request an arbitration tribunal upon four conditions: (1) failure by the other party to respond to a request for consultations within 10 days; (2) consultations not being held within the prescribed time periods of 30 days, or 20 days for matters of urgency; (3) the Parties agreeing not to have consultations; or (4) consultations being concluded without a mutually agreed solution.

This marks a key feature of dispute resolution under the TCA: a binding legal resolution via arbitration is a matter of last resort. This means that any constraints placed upon the "regulatory autonomy" of the UK through findings against measures by an arbitration panel will only result at the end of a process – the UK will always have the option to ensure consultations before any move to formal legal procedures. Furthermore, the time scales are clear and so would allow the UK Government to make any unilateral adjustments before being compelled to do so by a legal ruling. The UK Government itself appears satisfied that the dispute resolution procedures follow the precedent of other international agreements, stating in their Command Paper on the Protocol on Ireland/Northern Ireland that the collective management of disputes signifies a "normal Treaty framework".[8]

Analysis of the dispute resolution framework in the EU-Canada Comprehensive Economic and Trade Agreement (CETA)[9] seems to back up this claim. The consultations and dispute resolution mechanisms in Chapter Twenty-Nine of CETA broadly correspond to the TCA mechanism, apart from small procedural differences, such as the urgency procedure being 15 days in CETA rather than the 20 days under the TCA (Article 29.4(4) CETA). Two differences may be more significant. Whereas Article 738 TCA outlines the condition for consultations as a Party considering the other has breached an obligation, Article 29.4 combined with Article 29.2 CETA merely use the language of "any dispute". This suggests the scope may be narrower under the TCA, albeit under CETA the requesting Party still has to identify the "legal basis for the complaint" (Art 29.4(2) CETA). Secondly, Article 29.6 CETA outlines the conditions for establishment of an arbitration panel as the matter not being resolved within 45 days of the date of receipt of the request, or 25 days for the urgent procedure, with the caveat of "unless the Parties agree otherwise". By contrast, Article 739 TCA introduces a stricter condition of a request to establish an arbitration panel being available after 10 days if a Party does not respond to a request for consultations, meaning that an arbitration panel can be established far more rapidly under the TCA, and without the accused Party having the opportunity to present its case in prior joint consultations.

A further provision should be mentioned in relation to regulatory autonomy. Despite not falling under the dispute resolution mechanism, the clause concerns adjudication at the domestic level. Article 372 TCA obliges the Parties to ensure that their courts and tribunals are competent to review acts and omissions in relation to subsidies, and to impose remedies. The provision also provides the right for the respective Party to intervene in these domestic proceedings. However, substantive safeguards are provided through the caveats that this provision does not require the creation of new competencies,

[8] HM Government, 'Northern Ireland Protocol: the way forward', July 2021 CP 502, para 41.
[9] Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part OJ L 11, 14.1.2017.

remedies, and right of intervention, nor widening the scope of grounds of review beyond any that are pre-existing in domestic law.

How, ideally, should the transparency requirements around the meetings of UK/EU joint bodies, as set out in the TCA, be implemented both ahead of meetings and afterwards? How satisfactory are the requirements as currently set out in the Agreement?

Recommendations in Bingham Centre evidence submitted to the Committee on the Future Relationship with the EU on the Withdrawal Agreement Joint Committee in May 2020[10] also apply to the TCA. The Government should exercise the option to publish all decisions of the Partnership Council to ensure clarity and accessibility of the TCA. Transparency is necessary for any institutional proceedings that can result in law-making. Furthermore, the Government should suggest holding meeting in public where possible. Finally, the Government should also adopt the practice of publishing potential areas of disagreement in the Partnership Council and the Specialised Committees.

Rule 10 of Annex 1 on the Rules of Procedure for the Partnership Committee and the Specialised Committees concerns transparency. The requirements are more satisfactory than the rules for the Withdrawal Agreement Joint Committee. Whereas the Parties are afforded discretion on whether to publish agendas and minutes of meetings of the Withdrawal Agreement institutions, for the TCA bodies Rule 10(4) prescribes that "the provisional agenda of the meetings *shall* be made public before the meeting", and "the minutes of the meetings *shall* be made public following their approval in accordance with Rule 8". It would be desirable if these minutes of the meetings contained more detail than the summary press releases and ministerial statements in relation to Joint Committee meetings that have already taken place.

Discretion persists for arguably the most significant legal element of the meetings, as Rule 10(2) outlines that "each party *may* decide on the publication of the decisions and recommendations". It would be desirable for certainty of the law that the Government commits to publishing these decisions and recommendations, preferably on www.legislation.gov.uk as the equivalent of the "official journal" mentioned in the text of the TCA, so that the binding legal status of these decisions is clear rather than being lost in more ephemeral publications such as press releases.

A final element that is still discretionary, but marks an improvement from the Withdrawal Agreement Joint Committee, is Rule 10(1) and the option that the "co-chairs may agree that the Partnership Council shall meet in public". Meetings should be held in public as much as possible, and most particularly when matters of concern for particular political and civil society stakeholders are being discussed. The mechanisms for civil society engagement in Article 12 TCA, whereby the Parties shall consult civil society on the implementation of the TCA through the Civil Society Forum in Articles 13 and 14 TCA, and inter-parliamentary dialogue provided for by Article 11 TCA could be used to ascertain such areas of concern.

This proposed institution of a Parliamentary Partnership Assembly is another departure from the Withdrawal Agreement, and could also be utilised to bolster transparency and scrutiny. If the European and UK Parliaments are able to establish the Assembly, this would impose an obligation for them to be informed of the decisions and recommendations of the Partnership Council (Art 11(2)(b) TCA). This would overcome any transparency problems that could arise if discretion is exercised not to publish decisions or recommendations, or only to do so in an opaque and inaccessible manner.

Furthermore, the proposed power for the Parliamentary Partnership Assembly to "request relevant information regarding the implementation of this Agreement", and the obligation for the Partnership Council to supply that requested information (Art 11(2)(a) TCA), may provide Parliament with a proactive mechanism to remain fully informed of the issues that will be discussed in the meetings of

[10] Written evidence submitted by Oliver Garner (FRE0017).

the EU-UK joint bodies. Perhaps even more significantly, the Assembly would also have the power to "make recommendations to the Partnership Council" (Art 11(2)(c) TCA). This could enable the elected legislatures to shape the agenda of the Partnership Council and Specialised Committee meetings, albeit with the caveat that there is no obligation imposed upon the co-chairs of the EU-UK bodies in relation to such recommendations.

How could the UK/EU TCA institutions be utilised by the UK and EU to raise and, where possible, address, concerns about legal and policy developments on the other side which are of importance to them respectively (e.g. for the UK, changes in EU regulation in key areas like financial services, pharmaceuticals and energy)?

The Partnership Council Rules of Procedure provide ample opportunity for the UK and EU to raise concerns about legal and policy developments on the other side. Rule 7(2) outlines that "the provisional agenda shall include items requested by the Union or the United Kingdom". Furthermore, Rule 7(4) enables "an item other than those included in the provisional agenda" to be included in the agenda by consensus.

Functionally, the EU and UK representatives can draw upon the bottom-up means of feeding concerns into the joint institutions. The domestic advisory groups that each Party is obliged to consult in Article 13 TCA include business and employers' organisations and trade unions who may be able to identify the relevant legal and policy developments in areas such as financial services, pharmaceuticals and energy. This should act as an incentive for the European Commission and the UK Government to consult as widely as possible with civil society and the domestic advisory groups as a means to identify issues that may concern the key interests of the EU and the UK respectively.

With regard to addressing the concerns, Rule 4(2) of the Rules of Procedure enables the co-chairs to invite experts to attend meetings in order to provide information on a specific subject, where appropriate. This could enable resolution of concerns on the basis of information provided through impartial non-governmental expertise.

What should the Government's approach to representing the UK in meetings of the TCA's joint bodies be? Should the Devolved Administrations be involved in discussions that relate to devolved competences? How should the Government ensure cross-departmental and cross-sectoral coordination of its positions in the various bodies established by the TCA?

Ideally, the Government should seek to use the Civil Society Forum, the domestic advisory groups, and the Parliamentary Partnership Assembly, if established, to represent various interests in the UK in a proactive manner by allowing them to shape the agenda for meetings, rather than pursuing a reactive approach of merely informing these stakeholders after the fact. As discussed in response to the final question below, this is the approach that the European Parliament is seeking to achieve with the European Commission. As the TCA may be regarded as a starting-point for dynamic future relations rather than a fixed end-point, proactive parliamentary involvement in the UK could mitigate the sparse time for scrutiny of the agreement due to the hasty passage of the EU (Future Relationship) Act 2020.

There is a precedent for representation of the Devolved Administrations in the joint bodies under the Withdrawal Agreement. A representative of the Northern Ireland Executive has been attending meetings of the Committee on issues related to the implementation of the Protocol on Ireland/Northern Ireland, most recently on 19 July 2021, despite no such legal obligation in the text of Article 165 WA or Article 14 of the Protocol. Under the "New Decade, New Approach" deal,[11] the UK Government made a commitment to include such representatives in any meetings of the EU-UK

[11] 'New Decade, New Approach', January 2020.

Specialised or Joint Committee discussing Northern Ireland specific matters which are also being attended by the Irish Government as part of the EU delegation.

The Government could extend this approach to the Partnership Council and Specialised Committees of the TCA in matters relating to Northern Ireland. This would be justified by the differentiated legal regime applied to Northern Ireland as a matter of public international law through the continuing application of EU law via the Protocol, whereas in the other devolved regions the situation as a matter of international law is the same, and devolved competences are a matter of internal domestic law. The UK's Command Paper on the Protocol on Ireland/Northern Ireland demonstrates how the conclusion and implementation of the TCA may be relevant to this distinct regime under the Withdrawal Agreement. The Paper argues that the robust commitments on subsidy control in the TCA make existing provisions in Article 10 NIP redundant. In the unlikely event that the EU were to accept this argument, representation of the Northern Ireland Executive in the Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development would provide a forum for substantive discussion to ensure there is indeed no significant distortion to goods trade as a result of such measures.

How is the EU approaching the implementation of the TCA and the work of the joint UK/EU bodies, and what are the potential implications of its approach?

The European Commission undertook to include the European Parliament in the implementation of the TCA, as listed in the European Parliament resolution accompanying ratification.[12] This includes a transposition of the Treaty obligation during negotiations to keep Parliament "immediately and fully informed" of the activities of the Partnership Council and other joint bodies. The Commission also commits to "involve Parliament in important decisions under the Agreement in relation to any unilateral actions of the Union under the Agreement", to take utmost account of the EP's views, and undertakes a duty to provide reasons for when it does not follow its views. Furthermore, the European Parliament will be involved sufficiently in advance if the Commission presents a proposal to terminate Part 3 of the TCA on law enforcement and judicial cooperation in criminal matters if the UK does not uphold its ECHR commitments.

Perhaps more significantly, the Commission has committed to roles for the European Parliament in the processes of law-making, and law-enforcement, under the TCA. The Commission will involve Parliament in the selection process of arbitrators and panellists, ensuring the input of directly elected representatives in the dispute resolution process. On implementation on the EU side, the Commission commits "to submit to Parliament any proposal for legislative acts regarding the modalities for adopting the autonomous measures that the Union is entitled to take under the Agreement". This ensures democratic input into implementation. The Commission will also involve the European Parliament in the implementation by *both* Parties, by taking "utmost account" of its views, including on breaches and imbalances in the Level Playing Field, and again obliges itself to explain its reasons if it does not follow the view of Parliament. Finally, the European Commission will also keep the EP fully informed of the unilateral decisions to be taken around the TCA – on data adequacy, arrangements for regulatory cooperation on financial services, and possible granting of equivalence.

The European Parliament has made further demands in relation to implementation – the institution requests that the Commission's commitments are made legally binding through an Interinstitutional Agreement.[13] Furthermore, it argues for an enhanced role for the Parliamentary Partnership Assembly, claiming that it "should be tasked with monitoring the full and proper implementation of the Agreement and making recommendations to the Partnership Council".

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[12] European Parliament resolution of 28 April 2021 on the outcome of EU-UK negotiations (2021/2658(RSP), para 9.
[13] ibid.

The implications of this approach of involving the European Parliament could see a more fragmented approach from the EU towards implementation of the TCA than during its negotiation, with diverging viewpoints rather than the strong centralised approach through the Commission. The prominence of the Parliament could also see a more combative approach to the implementation of the agreement and the EU's relations with the UK. The European Parliament was vocal throughout withdrawal negotiations on its disapproval of the UK triggering Article 50, and continues this in the resolution approving the TCA through the statement that it considers the UK's withdrawal to be a "historic mistake".[14]

However, the permission that the Commission has created for itself not to follow the recommendations and views of the European Parliament, subject to a duty to explain itself, may mitigate either of these eventualities.

[14] ibid, para 2.