



**Democratic Services Section  
Chief Executive's Department  
Belfast City Council  
City Hall  
Belfast  
BT1 5GS**

5th October, 2018

**MEETING OF BREXIT COMMITTEE**

Dear Alderman/Councillor,

The above-named Committee will meet in the Lavery Room - City Hall on Thursday, 11th October, 2018 at 4.30 pm, for the transaction of the business noted below.

You are requested to attend.

Yours faithfully,

SUZANNE WYLIE

Chief Executive

**AGENDA:**

1. **Routine Matters**
  - (a) Apologies
  - (b) Minutes
  - (c) Declarations of Interest
2. CBI - skills shortages following Brexit. **(Pages 1 - 4)**
3. Update on Proposals for the External Workshop on the Potential Impact of Brexit **(Pages 5 - 8)**
4. Brexit Considerations - Article 56 'Freedom to Provide Services' **(Pages 9 - 152)**
5. Update on Provision of Technical Notices from the UK and Irish Governments **(Pages 153 - 156)**
6. Update on Site Visit to Port Health Unit **(Pages 157 - 166)**
7. Update on Proposed Programme for All-Party Delegation to Brussels **(To Be Tabled)**





Subject:	CBI analysis of NI migration and the Migration Advisory Committee report on EEA migration
Date:	11 <sup>th</sup> October 2018
Reporting Officer:	Nigel Grimshaw, Strategic Director City & Neighbourhood Services
Contact Officer:	Kim Walsh, Business, Research & Development Manager, City & Neighbourhood Services.

<b>Restricted Reports</b>	
Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, when will the report become unrestricted?	
After Committee Decision	<input type="checkbox"/>
After Council Decision	<input type="checkbox"/>
Some time in the future	<input type="checkbox"/>
Never	<input type="checkbox"/>

<b>Call-in</b>	
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

<b>1.0</b>	<b>Purpose of Report or Summary of main Issues</b>
	The purpose of this report is to bring to the attention of Members the analysis that CBI NI has undertaken of NI migration and the publication of UK Migration Advisory Committee (MAC) report on EEA migration in advance of the CBI presenting to the Brexit Committee. A representative from the CBI is in attendance and will address the Committee on this issue, if they so wish.
<b>2.0</b>	<b>Recommendations</b>
	Members are asked to note the report.
<b>3.0</b>	<b>Main report</b>

## Key Issues

The CBI (Confederation of British Industry) Northern Ireland have been carrying out research and analysis to understand the potential impact of migration as a result of the UK's decision to leave the EU. They recently launched a new report '*All Together Better: Accessible Labour – a Necessity for Regional Economic Prosperity*' which provides an analysis on how restricting migration would impact population growth and subsequent real GDP in Northern Ireland. It highlights the acute need for local private and public-sector employers to have continued access to the people and skills they need to succeed post-Brexit.

The CBI also provided an analysis of the UK's Migration Advisory Committee's report on European Economic Area (EEA) migration which was published on 18 September. (the MAC report is available: <https://www.gov.uk/government/publications/migration-advisory-committee-mac-report-eea-migration> and the CBI analysis and summary of key findings is available at: <http://www.cbi.org.uk/cbi-prod/assets/File/pdf/cbi-mac-analysis.pdf>)

The CBI has been engaging with multiple UK Government departments, across all levels, to influence the upcoming White Paper on migration (due in the Autumn). Key messages which the CBI has been making include:

- *Any new system must be easily accessible to all firms*– The current Tier 2 non-EU immigration system is highly bureaucratic and hard for firms to navigate, but particularly difficult for small and medium sized business, which constitute most of Northern Irish industry. Radically reforming the existing process of 'employer sponsorship' is required to have a global system which is accessible.
- *Firms require access to all levels of skill, not only 'the brightest and best'*– The £30,000 salary threshold is a major barrier preventing firms from accessing both mid and lower-skilled roles. The MAC's own analysis shows 60% of mid-skilled jobs wouldn't qualify; this is a figure that would be exacerbated in Northern Ireland. Furthermore, lower-skilled migrant labour supplies industries in Northern Ireland that have a relatively high multiplier effect, such as agriculture and agri-food. Firms must be able to recruit workers from overseas below this salary level under any new system.
- *Migration should be part of trade negotiations, starting with the EU* – Despite media coverage focussing on an end to preferential treatment for EU nationals, the MAC made clear it was not making a decision on including migration as part of future

	<p>trader deals. If Government chooses to implement a single global system, having this flexibility to take a more open approach to migration where we have close trade and economic relations is key.</p> <ul style="list-style-type: none"> <li>• <i>Any new system must work from 'Day 1'</i>– If the Government decides to establish a single global system, it will take time to make the radical changes required for it to meet business needs. Government must commit to ensuring the system delivers for the economy from its first day of operation, rather than the promise of future reforms – even if this means an extension of the current immigration arrangements beyond December 2020.</li> </ul> <p>The CBI is seeking feedback on the MAC's recommendations and is keen to engage with the council about the issues raised.</p> <p><u>Financial &amp; Resource Implications</u> There no financial implications relating to this report.</p> <p><u>Equality or Good Relations Implications/Rural Needs Assessment</u> There are no implications relating to this report.</p>
<b>4.0</b>	<b>Appendices</b>
	None

This page is intentionally left blank



Subject:	Update on external workshop on the potential impact of Brexit
Date:	11 <sup>th</sup> October 2018
Reporting Officer:	Nigel Grimshaw, Strategic Director City & Neighbourhood Services
Contact Officer:	Kim Walsh, Business, Research & Development Manager, City & Neighbourhood Services.

<b>Restricted Reports</b>	
Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, when will the report become unrestricted?	
After Committee Decision	<input type="checkbox"/>
After Council Decision	<input type="checkbox"/>
Some time in the future	<input type="checkbox"/>
Never	<input type="checkbox"/>

<b>Call-in</b>	
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

<b>1.0</b>	<b>Purpose of Report or Summary of main Issues</b>
	The purpose of this report is to outline for Members the proposal for the holding of the workshop to help identify the potential impact of Brexit on external organisations in the City.
<b>2.0</b>	<b>Recommendations</b>
	Members are asked to note the date and details of the workshop.
<b>3.0</b>	<b>Main report</b>
	<u>Key Issues</u>

Members are reminded that in September the Brexit Committee agreed to the holding of an external workshop regarding the potential impact of Brexit on a range of sectors including businesses and community organisations.

A workshop has now been organised for Tuesday 30<sup>th</sup> October from 9.30-12.30 in the Banqueting Hall. An invite list has been compiled across a range of sectors and officers are currently working on issuing invites.

The format of the workshop will be a an externally facilitated roundtable discussion and the agenda for the workshop is:

9.30am – Registration (tea/coffee & scones will be available on arrival)

10.00am – Welcome and introductions – Nigel Grimshaw

10.05am – Opening remarks by Councillor Séanna Walsh, Chair of the Brexit Committee

10.15am – Outline of workshop format – External facilitator

10.25am – Roundtable discussion – What are the potential issues and opportunities from Brexit for your sector?

11.00am – Feedback from each table

11.20am – Comfort break

11.30am - Roundtable discussion – What are possible solutions to the issues and how can opportunities be maximised?

12.00pm - Feedback from each table

12.20pm – Next steps - Nigel Grimshaw

12.30pm - Close

Members of this Committee are also invited to attend the workshop.

#### Financial & Resource Implications

There will be expenses related to the holding of the workshop including an external facilitator and catering. Considering that the Brexit Committee has no allocated budget, these will be met through existing departmental resources, subject to this being allowed under the current scheme of delegation.

#### Equality or Good Relations Implications/Rural Needs Assessment

There are no implications relating to this report.



	<b>Appendices</b>
	None

This page is intentionally left blank



Subject:	Brexit considerations - Article 56 `freedom to provide services`
Date:	11th October 2018
Reporting Officer:	John Greer, Director of Economic Development
Contact Officer:	Claire Patterson, Business Research & Development Manager

<b>Restricted Reports</b>	
<p><b>Is this report restricted?</b></p> <p style="margin-left: 40px;"><b>If Yes, when will the report become unrestricted?</b></p> <p style="margin-left: 40px;"><b>After Committee Decision</b></p> <p style="margin-left: 40px;"><b>After Council Decision</b></p> <p style="margin-left: 40px;"><b>Some time in the future</b></p> <p style="margin-left: 40px;"><b>Never</b></p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p style="margin-left: 100px;"><input type="checkbox"/></p> <p style="margin-left: 100px;"><input type="checkbox"/></p> <p style="margin-left: 100px;"><input type="checkbox"/></p> <p style="margin-left: 100px;"><input type="checkbox"/></p>

<b>Call-in</b>	
<p><b>Is the decision eligible for Call-in?</b></p>	<p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>

<b>1.0</b>	<b>Purpose of Report or Summary of main Issues</b>
1.1	Trade in services increasingly dominates the global economy and there is recognition of the inter-connectedness of the financial, legal and professional services markets. The Committee is aware that a full understanding of the potential implications of Brexit remains uncertain while negotiations between the UK government and EU continue to determine the future relationship.
1.2	As requested by the Committee, given the importance of the services sector for the Belfast and the regional economy, this report summarises the main considerations if Article 56 `freedom to provide services` of the Treaty on the functioning of the EU does not apply to that sector following the UK's departure from the European Union.

<b>2.0</b>	<b>Recommendations</b>
2.1	The Committee is asked to note the content of this report.
<b>3.0</b>	<b>Main report</b>
3.1	<p><u>Key Issues</u></p> <p>At the initial meeting of the Brexit Committee, the Committee requested further information on the options to be considered in the event of Article 56 'freedom to provide services' of the Treaty on the functioning of the EU not applying to that sector when the current negotiations between the UK government and the EU conclude.</p>
3.2	Article 56 of the Treaty on the functioning of the EU states that restrictions on "freedom to provide services" within the Union are prohibited in respect of nationals of Member States who are established in a State other than that of the person for whom the services are intended. This paper summarises the proposals and main considerations identified in the existing policy documents.
3.3	The HM Government white paper 'The Future Relationship between the UK and EU' (July 2018) proposes that a new relationship between the UK and EU will be structured around an economic partnership, which will see the UK leave the Single Market and the Customs Union and be broader in scope than existing relationships between the EU and a third country. It notes that this will be informed by the UK and EU meeting their shared commitments to NI, by protecting the peace process and avoiding a hard border.
3.4	The white paper proposes the establishment of a free trade area for goods that would sit alongside new arrangements for services, acknowledging that 'there will be more barriers to the UKs access to the EU market than is the case today'. These proposals would allow the UK to negotiate new international trade agreements in line with its priorities and interests covering goods, services, investment etc.
3.5	<p>In terms of the services and digital sectors, the HM Government's vision for the economic partnership is outlined as:</p> <ul style="list-style-type: none"> <li>- 'New arrangements for services and digital, providing regulatory freedom where it matters most for the UK's services-based economy ... while recognising that the UK and the EU will not have current levels of access to each other's markets;</li> <li>- New economic and regulatory arrangements for financial services, preserving the mutual benefits of integrated markets and protecting financial stability while</li> </ul>

	<p>respecting the right of the UK and the EU to control access to their own markets – noting that these arrangements will not replicate the EUs passporting regimes</p> <ul style="list-style-type: none"> <li>- Continued co-operation on energy and transport – preserving the Single Electricity Market in NI and ROI, seeking broad co-operation on energy, developing an air transport agreement and exploring reciprocal arrangements for road hauliers and passenger transport operators;</li> <li>- a new framework that ... enables UK and EU citizens to continue to travel to each other's countries and businesses and professionals to provide services – in line with the arrangements that the UK might want to offer to other close trading partners in the future'. The report notes that the Migration Advisory Committee is due to report on patterns of EU migration and the role of migration in the wider economy in September 2018.</li> </ul> <p>A copy of the white paper is attached at Appendix 1 and available at: <a href="#">The Future Relationship between the UK and EU</a></p> <p><b>EU Directorate General Report</b></p> <p>3.6 A report produced by the EU Directorate General for Internal Policies (July 2017) acknowledges the uncertainty around how Brexit will affect trade in services and outlines different scenarios for exit and future co-operation on services and establishment (attached at appendix 2 and available at <a href="#">European Parliament (DG for Internal Policies) - Different Scenarios</a>).</p> <p>3.7 The report notes that trade in services is growing faster than trade in goods and to facilitate the freedoms in services through Article 56, also requires the implementation of a wide range of EU secondary legislation. Trade in services on a cross-border basis requires regulation, such as common standards for licenses or diplomas. This enables the application of mutual recognition of standards or waiving supervision of trade in services (i.e. passporting).</p> <p>3.8 The report considers a number of trade agreement options. It concludes that the option of the UK applying European Economic Area (EEA) would, in essence, allow for passporting in regulated sectors and minimise the disruption to the service industry as EEA law is largely aligned to the EU single market law. However, the UK would have to transpose single market law into domestic law and would be without representation in the European Parliament.</p>
--	---

3.9	<p>The report notes that there are limitations with using other existing trade agreements as a blueprint for a future UK-EU agreement. Other trade agreements considered in the report are described as being more limited in scope or not providing enforceable rules and therefore less integrated in terms of setting common standards. The following trade agreements have been included:</p> <ul style="list-style-type: none"> <li>- EU-Ukraine Association Agreement</li> <li>- Customs Union (EU-Turkey Customs Union)</li> <li>- Comprehensive Economic and Trade Agreement (EU-Canada)</li> <li>- Free Trade Agreement (EU-Korea)</li> <li>- General Agreement on Trade in Services (GATS) (World Trade Organisation)</li> </ul>
3.10	<p>The report notes that the current alignment and integration between EU and UK law and standards creates positive ‘starting conditions’ and that cross border trade in services is likely to be affected more from differences between legal orders and a lack of right to temporary presence. It suggests that any UK-EU ‘Trade Agreement should grant market access’ and agree ‘a mechanism to ensure and monitor common standards as condition for far reaching rights to market access’. This would be considered feasible as long as standards are approximated; with the potential for the suspension of market access and mutual recognition if either party changes standards unilaterally. However, it would require the development of a mechanism to monitor the alignment of standards between the UK and EU.</p>
3.11	<p>The main issues to be considered in the negotiations for a future EU-UK Trade Agreement have been summarised as:</p> <ul style="list-style-type: none"> <li>- A common standard setting mechanism</li> <li>- The importance of agreeing mutual recognition and enforcement mechanisms</li> <li>- Clarifying whether service providers and established persons in an EU-UK relationship can rely on ‘acquired rights’ post-Brexit</li> </ul>
3.12	<p><b>The Belfast Context</b></p> <p>The EU and UK have recognised the economic importance of the trade in services, particularly the financial sector. Belfast is the regional economic driver, with 30% of the region’s jobs. The Belfast economy is dominated by the service sector (93% of people are employed in the services sector in Belfast; 83% in the region<sup>1</sup>).</p>

---

<sup>1</sup> Invest NI: Belfast City Council Profile 2018

3.13	<p>The Belfast City region accounts for around 50% of the NI business base with strengths in the knowledge economy<sup>2</sup>. Financial Services employs 33,000 in Northern Ireland, with 55% employed in Belfast, around one third of whom are employed by major international financial services companies with centres in the region<sup>3</sup>; technology companies employ 28,000 &amp; is the top sector for inward investment projects (40%)<sup>4</sup>.</p>
3.14	<p>The NI Draft Industrial Strategy<sup>5</sup> (Economy 2030) identifies the key growth sectors where Northern Ireland has world class capabilities. This includes financial, business and professional services, creative and digital technologies and life and health sciences. The City Region Industrial Strategic Framework recognises the Belfast Region's strengths in these sectors and for Belfast, financial services and related professional services such as legal services, as well as digital technologies (for example, cyber security) are high-value, high growth sectors which tend to cluster in the city. The City Growth &amp; Regeneration Committee, have previously noted the potential for Belfast to build on these strengths in order to strengthen its role and strategic relationships with both London and Dublin.</p>
3.15	<p>It is worth noting that previous research indicates that the limited data on services sector exports for the region adds a further complexity when assessing any potential impacts (Nevin Economic Research Institute 2016). However, as previously noted by the Committee, the key interests for business in terms of considering Brexit, lie in potential changes to labour mobility and talent/workforce availability, access to supply chains, regulation and compliance, tax, customs and tariffs.</p>
3.16	<p>The Committee should note that in August 2018, HM Treasury updated their publication outlining the proposed approach to taking forward the statutory requirements for financial services, as part of the wider programme of work in preparation for the UK's exit from the EU. This states that the implementation period will be from 29 March 2019 - 31 December 2020 and gives a commitment 'to a workable legal regime being in place regardless of the current negotiation outcome'. It confirms that during the implementation period, common rules will continue to apply. The UK will continue to implement new EU law that comes into effect and the UK will continue to be treated as part of the EU's single market in financial services. Businesses will therefore be able to continue to trade on the same terms until 31</p>

<sup>2</sup> UUEPC: Belfast City Region Economic Opportunities - Draft Report July 2017

<sup>3</sup> The City UK: Key Facts about UK-Based Financial and Related Services 2018

<sup>4</sup> MATRIX: NI Digital ICT Report 2016

<sup>5</sup> Department of Economy, Economy 2030

	December 2020 and comply with any new EU legislation that becomes applicable during the implementation period.
3.17	The need to provide certainty and continuity for businesses and consumers has been acknowledged. HM Treasury has expressed an intention to introduce transitional regimes for those operating cross-border and outside the passporting framework. It also notes the intention to provide the financial services regulators with a general power to phase in post-exit requirements, allowing flexibility for firms to transition to a fully domestic UK regulatory framework.
3.18	<p>Given the current position, businesses have emphasised the importance of sufficient transition arrangements to help plan, manage and maximise the potential impacts of growth, competitiveness and financial stability. An Invest NI sector-briefing note for financial services (2017) identifies the importance of a sufficient transition period and explains that impacts will depend on a number of factors:</p> <ul style="list-style-type: none"> <li>- The nature of the withdrawal agreement between the UK and the EU;</li> <li>- The extent to which UK-based financial firms move operations before any agreement is concluded;</li> <li>- The overall resilience of the sector, through its broader global relationships and position.</li> </ul>
3.19	As previously noted, it is vital that efforts remain focused on the city's priorities to grow the economy and build economic resilience by diversifying and strengthening the local economy, continuing to attract investment and tourism and building on the city's strengths to position the city as an internationally relevant, attractive and competitive location of choice.
3.20	<p><u>Financial &amp; Resource Implications</u></p> <p>There are no resource implications attached to this report.</p>
3.21	<p><u>Equality or Good Relations Implications/Rural Needs Assessment</u></p> <p>None.</p>
<b>4.0</b>	<b>Appendices</b>
	<p>Appendix 1: HM Government white paper proposals on The Future Relationship between the UK and EU</p> <p>Appendix 2: European Parliament Directorate General for Internal Policies report on different scenarios for exit and future co-operation</p>





This page is intentionally left blank



# THE FUTURE RELATIONSHIP BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION





# THE FUTURE RELATIONSHIP BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION

Presented to Parliament  
by the Prime Minister  
by Command of Her Majesty

July 2018



© Crown copyright 2018

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](http://nationalarchives.gov.uk/doc/open-government-licence/version/3)

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.uk/government/publications](http://www.gov.uk/government/publications)

Any enquiries regarding this publication should be sent to us at [publiccorrespondence@cabinetoffice.gov.uk](mailto:publiccorrespondence@cabinetoffice.gov.uk)

ISBN 978-1-5286-0701-8

CCS0718050590-001 07/18

Printed on paper containing 75% recycled fibre content minimum.

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

## Foreword by the Prime Minister



In the referendum on 23 June 2016 – the largest ever democratic exercise in the United Kingdom – the British people voted to leave the European Union.

And that is what we will do – leaving the Single Market and the Customs Union, ending free movement and the jurisdiction of the European Court of Justice in this country, leaving the Common Agricultural Policy and the Common Fisheries Policy, and ending the days of sending vast sums of money to the EU every year. We will take back control of our money, laws, and borders, and begin a new exciting chapter in our nation's history.

It now falls to us all to write that chapter. That is why over the last two years I have travelled up and down the country, listening to views from all four nations of our United Kingdom and every side of the debate. One thing has always been clear – there is more that binds this great country together than divides it. We share an ambition for our country to be fairer and more prosperous than ever before.

We are an outward-facing, trading nation; we have a dynamic, innovative economy; and we live by common values of openness, the rule of law, and tolerance of others.

Leaving the EU gives us the opportunity to deliver on that ambition once and for all – strengthening our economy, our communities, our union, our democracy, and our place in the world, while maintaining a close friendship and strong partnership with our European neighbours.

But to do so requires pragmatism and compromise from both sides.

At the very start of our negotiations, the Government set out the principles which would guide our approach – and the EU set out theirs. Some of those principles, as you would expect, were in tension. Some of the first proposals each side advanced were not acceptable to the other. That is inevitable in a negotiation. So we have evolved our proposals, while sticking to our principles. The proposal set out in this White Paper finds a way through which respects both our principles and the EU's.

This was the spirit in which my Cabinet agreed a way forward at Chequers. It is the spirit in which my Government has approached this White Paper. And it is the spirit in which I now expect the EU to engage in the next phase of the negotiations.

Our proposal is comprehensive. It is ambitious. And it strikes the balance we need – between rights and obligations.

It would ensure that we leave the EU, without leaving Europe.

It would return accountability over the laws we live by to London, Edinburgh, Cardiff and Belfast, and end the jurisdiction of the European Court of Justice in the UK.

It would preserve the UK's and the EU's frictionless access to each other's markets for goods, protecting jobs and livelihoods on both sides, and propose new arrangements for services.

It would meet our shared commitments to Northern Ireland and Ireland through the overall future relationship, in a way that respects the EU's autonomy without harming the UK's constitutional and economic integrity.

It would end free movement, taking back control of the UK's borders.

It would see the UK step out into the world, driving forward an independent trade policy by striking trade deals with new friends and old allies.

It would maintain the shared security capabilities that keep citizens in the UK and the EU safe, as we work in partnership with Member States to tackle crime and terrorism.

It would end vast annual contributions to the EU budget, releasing funds for domestic priorities – in particular our long-term plan for the NHS.

It would take us out of the Common Agricultural Policy and Common Fisheries Policy, ensuring we can better meet the needs of farming and fishing communities.

It would maintain our current high standards on consumer and employment rights and the environment.

And it would enable co-operation to continue in areas including science and international development, improving people's lives within and beyond Europe's borders.

In short, the proposal set out in this White Paper would honour the result of the referendum.

It would deliver a principled and practical Brexit that is in our national interest, and the UK's and the EU's mutual interest.

So together we must now get on and deliver it – securing the prosperity and the security of our citizens for generations to come.



**PRIME MINISTER**  
**RT HON THERESA MAY MP**



## Foreword by the Secretary of State



Leaving the European Union involves challenge and opportunity. We need to rise to the challenge and grasp the opportunities.

Technological revolutions and scientific transformations are driving major changes in the global economy. In line with our modern Industrial Strategy, this Government is determined to make sure the UK is ready to lead the industries of the future and seize the opportunities of global trade.

At the same time, we need to cater for the deeply integrated supply chains that criss-cross the UK and the EU, and which have developed over our 40 years of membership.

The plan outlined in this White Paper delivers this balance.

It would take the UK out of the Single Market and the Customs Union.

It would give the UK the flexibility we need to strike new trade deals around the world, in particular breaking new ground for agreements in services.

It would maintain frictionless trade in goods between the UK and the EU through a new free trade area, responding to the needs of business.

It would deliver on both sides' commitments to Northern Ireland and Ireland, avoiding a hard border without compromising the EU's autonomy or UK sovereignty.

This is the right approach – for both the UK and for the EU. The White Paper sets out in detail how it would work.

Alongside this unprecedented economic partnership, we also want to build an unrivalled security partnership, and an unparalleled partnership on cross-cutting issues such as data, and science and innovation.

And to bolster this cooperation, we will need a new model of working together that allows the relationship to function smoothly on a day-to-day basis, and respond and adapt to new threats and global shifts while taking back control of our laws.

The White Paper details our proposals in all of these areas, setting out a comprehensive vision for the future relationship.

It is a vision that respects the result of the referendum, and delivers a principled and practical Brexit.

A handwritten signature in blue ink, which appears to read "Dominic Raab". The signature is fluid and cursive, with a long, sweeping tail at the end.



# Contents

<b>Executive Summary</b>	<b>6</b>
<b>Chapter 1 – Economic partnership</b>	<b>13</b>
1.1 Summary	13
1.2 Goods	15
1.3 Services and investment	25
1.4 Framework for mobility	32
1.5 Digital	35
1.6 Open and fair competition	37
1.7 Socio-economic cooperation	41
1.8 Independent trade policy	47
<b>Chapter 2 – Security partnership</b>	<b>51</b>
2.1 Summary	51
2.2 Shared security context	53
2.3 Law enforcement and criminal justice cooperation	54
2.4 Foreign policy, defence and development	63
2.5 Wider security issues	69
<b>Chapter 3 – Cross-cutting and other cooperation</b>	<b>73</b>
3.1 Summary	73
3.2 Data protection	73
3.3 Classified information	76
3.4 Cooperative accords	76
3.5 Fishing opportunities	81
<b>Chapter 4 – Institutional arrangements</b>	<b>84</b>
4.1 Summary	84
4.2 A practical and flexible partnership	84
4.3 New forms of dialogue	87
4.4 Administrative provisions	89
4.5 Resolving disputes	92
4.6 Accountability at home	94
<b>Conclusion and next steps</b>	<b>97</b>

# Executive Summary

The United Kingdom will **leave the European Union on 29 March 2019** and begin to chart a new course in the world.

The Government will have **delivered on the result of the 2016 referendum** – the biggest democratic exercise in this country’s history. And it will have reached a key milestone in its principal mission – to build a country that works for everyone. A country that is stronger, fairer, more united and more outward-looking.

## A detailed vision

To fulfil that mission, the Government is advancing a detailed proposal for a **principled and practical Brexit**.

This proposal **underpins the vision set out by the Prime Minister at Lancaster House, in Florence, at Mansion House and in Munich**, and in doing so addresses questions raised by the EU in the intervening months – explaining how the relationship would work, what benefits it would deliver for both sides, and why it would respect the sovereignty of the UK as well as the autonomy of the EU.

At its core, it is a package that strikes a **new and fair balance** of rights and obligations.

One that the Government hopes will yield a **redoubling of effort in the negotiations**, as the UK and the EU work together to develop and agree the framework for the future relationship this autumn.

## A principled Brexit

A principled Brexit means **respecting the result of the referendum** and the decision of the UK public to take back control of the UK’s laws, borders and money – and doing so in a way that supports the Government’s wider objectives across five key areas of the UK’s national life.

For the **economy**, developing a broad and deep economic relationship with the EU that maximises future prosperity in line with the modern Industrial Strategy and minimises disruption to trade between the UK and the EU, protecting jobs and livelihoods – at the same time making the most of trading opportunities around the world.

For **communities**, addressing specific concerns voiced in the referendum by ending free movement and putting in place a new immigration system, introducing new independent policies to support farming and fishing communities, using the Shared Prosperity Fund to spark a new wave of regeneration in the UK’s towns and cities, and keeping citizens safe.

For the **union**, meeting commitments to Northern Ireland by protecting the peace process and avoiding a hard border, safeguarding the constitutional and economic integrity of the UK, and devolving the appropriate powers to Edinburgh, Cardiff and Belfast – while

ensuring the deal delivers for the Crown Dependencies, Gibraltar and the other Overseas Territories, noting there will be no change in their long-standing relationships with the UK.

For **democracy**, leaving the EU's institutions and reclaiming the UK's sovereignty, ensuring the laws people live by are passed by those they elect and enforced by UK courts, with clear accountability to the people of the UK.

For the **UK's place in the world**, continuing to promote innovation and new ideas, asserting a fully independent foreign policy, and working alongside the EU to promote and protect shared European values of democracy, openness and liberty.

## A new relationship

Guided by these principles, the Government is determined to build a **new relationship that works for both the UK and the EU**. One which sees the UK leave the Single Market and the Customs Union to seize new opportunities and forge a new role in the world, while protecting jobs, supporting growth and maintaining security cooperation.

The Government believes this new relationship needs to be broader in scope than any other that exists between the EU and a third country. It should **reflect the UK's and the EU's deep history, close ties, and unique starting point**. And it must deliver real and lasting benefits for both sides, supporting shared prosperity and security – which is why the Government is proposing to structure the relationship around an economic partnership and a security partnership.

The future relationship also needs to be informed by both the UK and the EU taking a **responsible approach to avoiding a hard border between Northern Ireland and Ireland**, in a way that respects the constitutional and economic integrity of the UK and the autonomy of the EU.

## Economic partnership

In designing the new trading relationship, the UK and the EU should therefore focus on ensuring continued **frictionless access at the border to each other's markets for goods**.

To deliver this goal, the Government is proposing the establishment of **a free trade area for goods**.

This free trade area would **protect the uniquely integrated supply chains and 'just-in-time' processes** that have developed across the UK and the EU over the last 40 years, and the jobs and livelihoods dependent on them, ensuring businesses on both sides can continue operating through their current value and supply chains. It would avoid the need for customs and regulatory checks at the border, and mean that businesses would not need to complete costly customs declarations. And it would enable products to only undergo one set of approvals and authorisations in either market, before being sold in both.

As a result, the free trade area for goods would see the UK and the EU **meet their shared commitments to Northern Ireland and Ireland** through the overall future relationship.

It would avoid the need for a hard border between Northern Ireland and Ireland, without harming the internal market of the UK – doing so in a way that fully respects the integrity of the EU’s Single Market, Customs Union, and its rules-based framework.

These **close arrangements on goods should sit alongside new ones for services and digital**, giving the UK the freedom to chart its own path in the areas that matter most for its economy. The Government wants to minimise new barriers to trade between the UK and the EU, and hopes that both sides will work together to reduce them further over time – but acknowledges that there will be more barriers to the UK’s access to the EU market than is the case today.

Finally, a relationship this deep will need to be supported by provisions giving both sides confidence that **the trade that it facilitates will be both open and fair**. So the Government is proposing reciprocal commitments that would ensure UK businesses could carry on competing fairly in EU markets, and EU businesses operating in the UK could do the same.

On this basis, the Government’s vision is for an **economic partnership** that includes:

- a common rulebook for **goods including agri-food**, covering only those rules necessary to provide for frictionless trade at the border – meaning that the UK would make an upfront choice to commit by treaty to ongoing harmonisation with the relevant EU rules, with all those rules legislated for by Parliament or the devolved legislatures;
- participation by the UK in those EU **agencies that provide authorisations for goods** in highly regulated sectors – namely the European Chemicals Agency, the European Aviation Safety Agency, and the European Medicines Agency – accepting the rules of these agencies and contributing to their costs, under new arrangements that recognise the UK will not be a Member State;
- the phased introduction of a new **Facilitated Customs Arrangement** that would remove the need for customs checks and controls between the UK and the EU as if they were a combined customs territory, which would enable the UK to control its own tariffs for trade with the rest of the world and ensure businesses paid the right or no tariff, becoming operational in stages as both sides complete the necessary preparations;
- in combination with **no tariffs on any goods**, these arrangements would avoid any new friction at the border, and protect the integrated supply chains that span the UK and the EU, safeguarding the jobs and livelihoods they support;
- new arrangements on **services and digital**, providing regulatory freedom where it matters most for the UK’s services-based economy, and so ensuring the UK is best placed to capitalise on the industries of the future in line with the modern Industrial Strategy, while recognising that the UK and the EU will not have current levels of access to each other’s markets;
- new economic and regulatory arrangements for **financial services**, preserving the mutual benefits of integrated markets and protecting financial stability while respecting the right of the UK and the EU to control access to their own markets – noting that these arrangements will not replicate the EU’s passporting regimes;

- continued cooperation on **energy and transport** – preserving the Single Electricity Market in Northern Ireland and Ireland, seeking broad cooperation on energy, developing an air transport agreement, and exploring reciprocal arrangements for road hauliers and passenger transport operators;
- a **new framework** that respects the UK's control of its borders and enables UK and EU citizens to continue to travel to each other's countries, and businesses and professionals to provide services – in line with the arrangements that the UK might want to offer to other close trading partners in the future; and
- in light of the depth of this partnership, binding provisions that guarantee an **open and fair trading environment** – committing to apply a common rulebook for state aid, establishing cooperative arrangements between regulators on competition, and agreeing to maintain high standards through non-regression provisions in areas including the environment and employment rules, in keeping with the UK's strong domestic commitments.

Taken together, such a partnership would see the UK and the EU **meet their commitments to Northern Ireland and Ireland through the overall future relationship**: preserving the constitutional and economic integrity of the UK; honouring the letter and the spirit of the Belfast ('Good Friday') Agreement; and ensuring that the operational legal text the UK will agree with the EU on the 'backstop' solution as part of the Withdrawal Agreement will not have to be used.

And while what the Government is proposing is ambitious in its breadth and depth, it is also workable and delivers on the referendum result – **fully respecting the sovereignty of the UK, just as it respects the autonomy of the EU** – with Parliament having the right to decide which legislation it adopts in the future, recognising there could be proportionate implications for the operation of the future relationship where the UK and the EU had a common rulebook.

In short, this proposal represents a **fair and pragmatic balance** for the future trading relationship between the UK and the EU – one that would protect jobs and livelihoods, and deliver an outcome that is truly in the interests of both sides.

## Security partnership

Europe's security has been and will remain the UK's security, which is why the Government has made an **unconditional commitment** to maintain it.

During the UK's membership of the EU, it has **worked with all Member States to develop a significant suite of tools that supports the UK's and the EU's combined operational capabilities**, and helps keep citizens safe. It is important that the UK and the EU continue that cooperation, avoiding gaps in operational capability after the UK's withdrawal.

The UK will no longer be part of the EU's common policies on foreign, defence, security, justice and home affairs. Instead, the Government is proposing a new security partnership that maintains close cooperation – because **as the world continues to change, so too do the threats the UK and the EU both face**.

On this basis, the Government's vision is for a **security partnership** that includes:

- maintaining existing **operational capabilities** that the UK and the EU deploy to protect their citizens' security, including the ability for law enforcement agencies to share critical data and information and practical cooperation to investigate serious criminality and terrorism – cooperating on the basis of existing tools and measures, amending legislation and operational practices as required and as agreed to ensure operational consistency between the UK and the EU;
- **participation by the UK in key agencies**, including Europol and Eurojust – providing an effective and efficient way to share expertise and information, with law enforcement officers and legal experts working in close proximity so they can coordinate operations and judicial proceedings quickly – accepting the rules of these agencies and contributing to their costs under new arrangements that recognise the UK will not be a Member State;
- arrangements for **coordination on foreign policy, defence and development issues** – acting together to tackle some of the most pressing global challenges where it is more effective to work side-by-side, and continuing to deploy the UK's significant assets, expertise, intelligence and capabilities to protect and promote European values;
- **joint capability development**, supporting the operational effectiveness and interoperability of the UK's and the EU's militaries, and bolstering the competitiveness of the European defence industry, delivering the means to tackle current and future threats; and
- **wider cooperation**, taking a 'whole of route' approach to tackle the causes of illegal migration, establishing a strategic dialogue on cyber security, putting in place a framework to support cooperation on counter-terrorism, offering support and expertise on civil protection and working together on health security.

## Cross-cutting and other cooperation

Finally, the Government believes the future relationship should include areas of cooperation that sit outside of the two core partnerships, but which are still of vital importance to the UK and the EU. These include:

- the protection of **personal data**, ensuring the future relationship facilitates the continued free flow of data to support business activity and security collaboration, and maximises certainty for business;
- collective endeavours to better understand and improve people's lives within and beyond Europe's borders – establishing **cooperative accords** for science and innovation, culture and education, development and international action, defence research and development, and space, so that the UK and the EU can continue to work together in these areas, including through EU programmes, with the UK making an appropriate financial contribution; and
- **fishing**, putting in place new arrangements for annual negotiations on access to waters and the sharing of fishing opportunities based on fairer and more scientific methods – with the UK an independent coastal state.



## A practical Brexit

To deliver the kind of practical relationship needed to secure prosperity for the UK and the EU, and maintain the security of UK and EU citizens, **both sides will need to be confident they can trust and rely on the commitments made to each other.**

So to underpin the future relationship, the Government is proposing joint **institutional arrangements** that provide for proper democratic accountability, allow for the relationship to develop over time, mean cooperation can be managed effectively and enable the UK and the EU to address issues as they arise.

These arrangements, which could take the form of an Association Agreement, would **ensure the new settlement is sustainable** – working for the citizens of the UK and the EU now and in the future.

They would provide for **regular dialogue between UK and EU leaders** and ministers, commensurate with the depth of the future relationship and recognising the significance of each other's global standing.

They would **support the smooth functioning of the relationship**, underpinning the various forms of regulatory cooperation agreed between the UK and the EU. Where the UK had made a commitment to the EU, including in those areas where the Government is proposing the UK would remain party to a common rulebook, there would be a clear process for updating the relevant rules, which respected the UK's sovereignty and provided for Parliamentary scrutiny.

The arrangements would include **robust and appropriate means for the resolution of disputes**, including through a Joint Committee and in many areas through binding independent arbitration – accommodating through a joint reference procedure the role of the Court of Justice of the European Union as the interpreter of EU rules, but founded on the principle that the court of one party cannot resolve disputes between the two.

And they would make sure both the UK and the EU **interpreted rules consistently** – with rights enforced in the UK by UK courts and in the EU by EU courts, with a commitment that UK courts would pay due regard to EU case law in only those areas where the UK continued to apply a common rulebook.

Finally, these arrangements would **enable flexibility**, ensuring the UK and the EU could review the relationship, responding and adapting to changing circumstances and challenges over time.

## Moving forward

The Government believes **this proposal for a principled and practical Brexit is the right one** – for the UK and for the EU.

It would respect the referendum result, and deliver on its promise, while ensuring the UK leaves the EU without leaving Europe – **striking a new balance of rights and obligations** that is fair to both sides.

In keeping with the spirit of Article 50, and both sides' commitment to the principle that 'nothing is agreed until everything is agreed', **the Withdrawal Agreement and the**

**framework for the future relationship are inextricably linked** – and so must be concluded together.

Both sides will need to focus on **turning the ‘Future Framework’ into legal text as soon as possible**, before ratifying the binding agreements to give it effect – with the aim of ensuring a smooth and orderly transition from the implementation period into the future relationship.

On the basis of this proposal, the Government will now **charge the UK’s negotiating team to engage with the EU’s at pace**, working to reach a substantive agreement on the Future Framework alongside the Withdrawal Agreement later this year.

# Chapter 1 – Economic partnership

## 1.1 Summary

1. Following the decision of the people of the UK in the referendum, the UK is leaving the EU, and as a result will leave the Single Market and the Customs Union – seizing new opportunities and forging a new role in the world. At the same time, the UK wants to protect jobs and support growth through a new economic partnership with its nearest neighbours. This proposal respects the UK's sovereignty, building in a clear role for Parliament, and preserves the constitutional and economic integrity of the UK's own Union.
2. A deep and comprehensive economic partnership between the UK and the EU would have distinct benefits for both sides. The UK is the world's fifth largest economy,<sup>1</sup> and the EU is the UK's biggest market.<sup>2</sup> The UK's proposal, set out in this chapter, reflects the unique ties that exist between the UK and the EU economies, businesses and consumers. It represents a serious offer, which the Government believes would benefit the UK and its close partners in the EU. In formulating this offer, the Government has listened carefully to the positions that the EU has set out. This proposal respects the EU's autonomy and the integrity of the Single Market. These principles, together with strong reciprocal commitments on open and fair trade, and propositions for a new institutional framework, inform the design of the UK's proposal. The UK hopes that this will be the basis of a serious and detailed negotiation in the coming weeks and months that will lead to a historic agreement in the interests of both sides.
3. At the core of the UK's proposal is the establishment by the UK and the EU of a free trade area for goods. This would avoid friction at the border and ensure both sides meet their commitments to Northern Ireland and Ireland through the overall future relationship. It would protect the uniquely integrated supply chains and 'just-in-time' processes that have developed across the UK and the EU over the last 40 years, and will remain important given our geographical proximity, and the jobs and livelihoods dependent on them.
4. These close arrangements on goods would sit alongside new arrangements for services and digital, recognising that the UK and the EU will not have current levels of access to each other's markets in the future. This would provide regulatory flexibility that is important for the UK's services-based economy.
5. Every trading relationship has varying levels of market access, depending on the respective interests of the countries involved. The EU has adopted different agreements with countries beyond its borders and outside the Single Market, which are tailored to the depth and nature of its relationships with the countries concerned. It is right for the UK and the EU to take a similarly tailored approach.

---

<sup>1</sup> 'IMF World Economic Outlook', IMF, April 2018

<sup>2</sup> 'UK Economic Accounts: all data (January to March 2018)', ONS, June 2018

6. At the same time, the UK recognises that the Single Market is built on a balance of rights and obligations, and that the UK cannot have all the benefits of membership of the Single Market without its obligations. The UK's proposal therefore establishes a new framework that holds rights and obligations in a fair but different balance. This would be to the economic advantage of both the UK and the EU. It is a principled and practical response to a unique situation, and offers a constitutionally appropriate solution to the UK and the EU's commitments on the Northern Ireland/Ireland border.
7. The UK's proposal for the economic partnership would:
  - a. establish a new free trade area and maintain a common rulebook for **goods**, including agri-food, covering only those rules necessary to provide for frictionless trade at the border. The common rulebook would be legislated for in the UK by the UK Parliament and the devolved legislatures, as set out in detail in chapter 4. The UK would also seek participation in EU agencies that facilitate goods being placed on the EU market, and the phased introduction of a new Facilitated Customs Arrangement (FCA);
  - b. include new arrangements on **services and investment** that provide regulatory flexibility, recognising that the UK and the EU will not have current levels of access to each other's markets, with new arrangements on financial services that preserve the mutual benefits of integrated markets and protect financial stability, noting that these could not replicate the EU's passporting regimes;
  - c. **end free movement**, giving the UK back control over how many people come to live in the UK;
  - d. include a new **framework** that respects the UK's control of its borders, enabling UK and EU citizens to continue to travel to each other's countries and businesses and professionals to provide services, and to help students and young people to enjoy the opportunities and experiences available in the UK and the EU – in line with the arrangements that the UK might want to offer to other close trading partners in the future;
  - e. include new arrangements on **digital** trade, including e-commerce, which enable the UK and the EU to respond nimbly to the new opportunities and challenges presented by emerging technologies, recognising that the UK and the EU will not have current levels of access to each other's markets;
  - f. incorporate binding provisions related to **open and fair competition**, with a common rulebook for state aid, cooperative arrangements on competition, and reciprocal commitments to maintain current high standards through non-regression provisions in other areas, such as environmental and employment rules. The UK has already made strong domestic commitments to maintaining high standards;
  - g. provide for **socio-economic cooperation** in areas including energy, transport and civil judicial cooperation; and
  - h. be consistent with the UK's ambitions as a global trading nation, with its own **independent trade policy** – able to represent itself at the World Trade Organization (WTO), to make credible and balanced offers to third country trading partners, and to implement a trade remedies and sanctions regime.

8. The UK will be seeking specific arrangements for the Crown Dependencies, Gibraltar and the other Overseas Territories.<sup>3</sup> These arrangements should take account of the significant and mutually beneficial economic ties between these economies and EU Member States, including their overseas countries and territories.

## 1.2 Goods

9. The UK and the EU have deeply integrated goods markets, covering manufactured, agricultural, food and fisheries products. The UK is an important market for the EU, and vice versa. In 2017 the value of imports and exports between the UK and the EU stood at over £423 billion, with the UK reporting an overall trade deficit in goods with the EU of £95 billion.<sup>4</sup> In the same year, the EU accounted for 70 per cent of UK agricultural imports.<sup>5</sup> The close trading relationship between the UK and the EU has developed over many decades. It will continue to be important in the future, given the importance of geographical proximity for goods trade.
10. While there has been a trend towards the opening up of services markets, existing trading relationships involve greater liberalisation on goods than on services. Regulatory frameworks draw a distinction between goods, which are physical products that tangibly cross a border, and services.
11. The UK proposes the establishment of a free trade area for goods, including agri-food. This would avoid friction at the border, protect jobs and livelihoods, and ensure that the UK and the EU meet their commitments to Northern Ireland and Ireland through the overall future relationship. The UK and the EU would maintain a common rulebook for goods including agri-food, with the UK making an upfront choice to commit by treaty to ongoing harmonisation with EU rules on goods, covering only those necessary to provide for frictionless trade at the border. This common rulebook would be legislated for by the UK Parliament, as set out in detail in chapter 4.

---

<sup>3</sup> The UK's overseas territories are: Anguilla, Cayman Islands, Falkland Islands, Gibraltar, South Georgia and the South Sandwich Islands, Montserrat, Pitcairn, Saint Helena, Ascension and Tristan da Cunha, British Antarctic Territory, British Indian Ocean Territory, Turks and Caicos Islands, British Virgin Islands, Bermuda, and the Sovereign Base Areas.

<sup>4</sup> 'UK Economic Accounts: all data (January to March 2018)', ONS, June 2018

<sup>5</sup> 'Agriculture in the UK: 2017' (p97), DEFRA, May 2018. Agri-food products referred to are food, feed and drink

12. The UK's proposal for a free trade area includes:
- a. the phased introduction of a new **Facilitated Customs Arrangement** that would remove the need for customs checks and controls between the UK and the EU as if in a combined customs territory, while enabling the UK to control tariffs for its own trade with the rest of the world and ensure businesses pay the right tariff;
  - b. the elimination of **tariffs**, quotas and routine requirements for rules of origin for goods traded between the UK and the EU;
  - c. a common rulebook for **manufactured goods**, alongside UK participation in EU agencies that facilitate goods being placed on the EU market;
  - d. a common rulebook for **agriculture, food and fisheries products**, encompassing rules that must be checked at the border, alongside equivalence for certain other rules, such as wider food policy; and
  - e. robust domestic **market surveillance** and cooperation between the UK and the EU to ensure the rules are upheld in both markets.

### 1.2.1 Facilitated Customs Arrangement

13. Upon its withdrawal from the EU, the UK will leave the Customs Union. The UK has been clear that it is seeking a new customs arrangement that provides the most frictionless trade possible in goods between the UK and the EU, while allowing the UK to forge new trade relationships with partners around the world. The arrangement must also allow the EU to protect the integrity of its Single Market and Customs Union.
14. The UK's proposal is to agree a new FCA with the EU. As if in a combined customs territory with the EU, the UK would apply the EU's tariffs and trade policy for goods intended for the EU. The UK would also apply its own tariffs and trade policy for goods intended for consumption in the UK.
15. Mirroring the EU's customs approach at its external border would ensure that goods entering the EU via the UK have complied with EU customs processes and the correct EU duties have been paid. This would remove the need for customs processes between the UK and the EU, including customs declarations, routine requirements for rules of origin, and entry and exit summary declarations. Together with the wider free trade area, the FCA would preserve frictionless trade for the majority of UK goods trade, and reduce frictions for UK exporters and importers. The UK's goal is to facilitate the greatest possible trade, whether with the EU or the rest of the world.

16. This would mean:
- a. where a good reaches the UK border, and the destination can be robustly demonstrated by a trusted trader, it will pay the UK tariff if it is destined for the UK and the EU tariff if it is destined for the EU. This is most likely to be relevant to finished goods; and
  - b. where a good reaches the UK border and the destination cannot be robustly demonstrated at the point of import, it will pay the higher of the UK or EU tariff. Where the good's destination is later identified to be a lower tariff jurisdiction, it would be eligible for a repayment from the UK Government equal to the difference between the two tariffs. This is most likely to be relevant to intermediate goods. Under the UK's proposals, it is estimated up to 96 per cent of UK goods trade would be most likely to be able to pay the correct or no tariff upfront, with the remainder most likely to use the repayment mechanism.<sup>6</sup>
17. The UK recognises that this approach would need to be consistent with the integrity of the EU's Customs Union and that the EU would need to be confident that goods cannot enter its customs territory without the correct tariff and trade policy being applied. The UK therefore proposes a range of areas for discussion with the EU.
- a. The UK and the EU should agree a mechanism for the remittance of relevant tariff revenue. On the basis that this is likely to be the most robust approach, the UK proposes a tariff revenue formula, taking account of goods destined for the UK entering via the EU and goods destined for the EU entering via the UK. However, the UK is not proposing that the EU applies the UK's tariffs and trade policy at its border for goods intended for the UK. The UK and the EU will need to agree mechanisms, including institutional oversight, for ensuring that this process is resilient and verifiable.
  - b. The UK and the EU should agree a new trusted trader scheme to allow firms to pay the correct tariff at the UK border without needing to engage with the repayment mechanism. This is most likely to be relevant to finished goods.
  - c. The UK and the EU should agree the circumstances in which repayments can be granted, which is most likely to be relevant to intermediate goods. To support UK and EU businesses, particularly smaller businesses, the UK proposes that repayment should occur as soon as possible in the supply chain – for example, at the point at which the good is substantially transformed into a UK product, rather than at the point of final consumption. The UK proposes to explore an approach with the EU using existing concepts such as those within the Regional Convention on pan-Euro-Mediterranean preferential rules of origin. The UK recognises that the rules and processes governing eligibility for repayment, including risk profiling and effectively targeted audit and assurance activity, must be sufficiently robust to ensure the mechanism cannot be used to improperly evade EU or UK tariffs and duties, through methods such as re-exporting of goods from the UK to the EU, or vice versa.

---

<sup>6</sup> Based on 2017 data on trade flows, proportion of goods classified as intermediate/unfinished and MFN tariff schedules. UN Comtrade statistics, World Integrated Trade Solution tariff data, Broad Economic Category data, EU Customs and Taxation website

- d. The UK would maintain a common rulebook with the EU, including the Union Customs Code and rules related to safety and security, and would apply and interpret those rules consistently with the EU. The UK already applies the Union Customs Code, and the new Customs Declarations Service (CDS), due for implementation by 2019, is fully compatible with it.
  - e. There will need to be appropriate mechanisms for the UK to implement new rules related to customs with the EU, to provide for the proper functioning of the arrangement. There will need to be mechanisms to ensure that rules are applied appropriately, interpreted and enforced consistently, and that disputes between the UK and the EU related to those rules are resolved effectively. Further detail is set out in chapter 4.
18. To ensure that new declarations and border checks between the UK and the EU do not need to be introduced for VAT and Excise purposes, the UK proposes the application of common cross-border processes and procedures for VAT and Excise, as well as some administrative cooperation and information exchange to underpin risk-based enforcement. These common processes and procedures should apply to the trade in goods, small parcels and to individuals travelling with goods (including alcohol and tobacco) for personal use.
19. The UK is seeking to be at the cutting edge of global customs policy. In addition to the mechanisms set out above, the UK also proposes a range of unilateral and bilateral facilitations, to reduce frictions for UK trade with the rest of the world, and promote the greatest possible trade. In particular, the UK will look to:
- a. accede to the Common Transit Convention: the UK has already begun the application process for accession;
  - b. agree mutual recognition of Authorised Economic Operators (AEOs);
  - c. introduce a range of simplifications for businesses, including implementing self-assessment over time to allow traders to calculate their own customs duties and aggregate their customs declarations;
  - d. speed up authorisations processes, for example through increased automation and better use of data; and
  - e. make existing simplified procedures easier for traders to access.
20. The FCA is designed to ensure that the repayment mechanism is only needed in a limited proportion of UK trade, and to make it as simple as possible to use for those who need to use it. The UK will take into account the views of third countries, to ensure that the UK's tariff offer is as valuable to them as possible and to continue to explore options to use future advancements in technology to streamline the process. This could include looking to make it easier to allow traders to lodge information in one place. This could include exploring how machine learning and artificial intelligence could allow traders to automate the collection and submission of data required for customs declarations. This could also include exploring how allowing data sharing across borders, including potentially the storing of the entire chain of transactions for each goods consignment, while enabling that data to be shared securely between traders and across relevant government departments, could



reduce the need for repeated input of the same data, and help to combat import and export fraud.

21. There will need to be a phased approach to implementation of this model, which the UK and the EU will need to agree through discussions on the future economic partnership.

### 1.2.2 Tariffs and rules of origin

22. A necessary underpinning of a UK-EU free trade area, in addition to the FCA, would be an agreement not to impose tariffs, quotas or routine requirements for rules of origin on any UK-EU trade in goods. This would recognise that goods coming into the UK would have faced the same treatment at the border as goods coming into EU Member States, so there would be no need for further restrictions between the UK and the EU.
23. To ensure the trade in goods between the UK and the EU remains frictionless at the border, the UK proposes:
  - a. zero tariffs across goods (including manufactured goods, agricultural, food and fisheries products), with no quotas;
  - b. no routine requirements for rules of origin between the UK and EU; and
  - c. arrangements that facilitate cumulation with current and future Free Trade Agreement (FTA) partners with a view to preserving existing global supply chains. This would allow EU content to count as local content in UK exports to its FTA partners for rules of origin purposes, and UK content to count as local content in EU exports to its FTA partners. Diagonal cumulation would allow UK, EU and FTA partner content to be considered interchangeable in trilateral trade.

### 1.2.3 Manufactured goods

24. The UK and the EU are both home to strong manufacturing sectors such as automotives, aerospace, chemicals, electronics, machinery and pharmaceuticals. The production of manufactured goods rarely takes place in one location, with modern manufacturing seeing increasingly specialised firms, with complex supply chains that stretch across multiple countries and operate on a 'just-in-time' basis. Both the UK and the EU will want to ensure that European manufacturing continues to thrive in an increasingly competitive global market.
25. The UK's proposal for a common rulebook would underpin the free trade area for goods. It would cover only those rules necessary to provide for frictionless trade at the border. In the case of manufactured goods, this encompasses all rules that could be checked at the border, as they set the requirements for placing manufactured goods on the market, and includes those which set environmental requirements for products, such as their energy consumption. Certainty around a common rulebook would be necessary to reassure the UK and the EU that goods in circulation in their respective markets meet the necessary regulatory requirements, removing the need to undertake regulatory checks at the border. It would also ensure interoperability between UK and EU supply chains, and avoid the need for manufacturers to run

separate production lines for each market. As now, UK firms would be able to manufacture products for export that meet the regulatory requirements of third countries.

26. A common rulebook for manufactured goods is in the UK's interests. It reflects the role the UK has had in shaping the EU's rules throughout its membership, as well as the interests of its manufacturers, and the relative stability of the manufactured goods acquis. The UK would also seek participation – as an active participant, albeit without voting rights – in EU technical committees that have a role in designing and implementing rules that form part of the common rulebook. This should ensure that UK regulators could continue to contribute their expertise and capability to EU agencies, including preparing expert opinions that facilitate decisions about individual products.
27. The UK has long advocated a convergence of rules and standards for goods, whether as a member of the EU or on the global stage. The adoption of a common rulebook means that the British Standards Institution (BSI) would retain its ability to apply the “single standard model” – so that where a voluntary European standard is used to support EU rules, the BSI could not put forward any competing national standards. This would ensure consistency between UK and EU standards wherever this type of standard is adopted, with input from businesses, by the European Standards Organisations (ESOs). It would ensure consumers do not face multiple standards for the same products. It would also enable the UK to continue playing a leading role in the ESOs, and with the EU on a global stage, for example in the International Organization on Standardization (ISO), to ensure that there is greater convergence at the international level.
28. In the context of a common rulebook, the UK believes that manufacturers should only need to undergo one series of tests in either market, in order to place products in both markets. This would be supported by arrangements covering all relevant compliance activity, supplemented by continued UK participation in agencies for highly regulated sectors including for medicines, chemicals and aerospace. This would be underpinned by strong reciprocal commitments to open and fair trade and a robust institutional framework.

29. In order to achieve this, the UK's proposal would cover all of the compliance activity necessary for products to be sold in the UK and EU markets. This includes:
- a. testing products to see if they conform to requirements, including conformity assessments and type approval for vehicles, as well as other tests and declarations. It would also apply to labels and marks applied to show they meet the regulatory requirements;
  - b. accreditation of conformity assessment bodies – testing the testers within a jointly agreed accreditation framework, to provide mutual reassurance that UK and EU conformity assessments are robust;
  - c. manufacturing and quality assurance processes, such as Good Laboratory Practice and Good Manufacturing Practice, which ensure production methods are being respected, and that declarations are made during manufacturing;
  - d. the role of nominated individuals, such as the “responsible persons” for certain high-risk products, who interact with authorities or perform a specific role during and after production;
  - e. bespoke provisions for human and animal medicines which reflect their unique status, including the release of individual batches by a qualified person based in the UK or EU, and the role of the qualified person for pharmacovigilance, responsible for ongoing safety monitoring of potential side effects; and
  - f. licensing regimes and arrangements, such as export licenses, for the movement of restricted products.

#### **Example: mutual recognition of Vehicle Type Approvals**

The common rulebook would include the type approval system for all categories of motor vehicles. The UK and the EU would continue recognising the activities of one another's type approval authorities, including whole vehicle type approval certificates, assessments of conformity of production procedures and other associated activities. Member State approval authorities would continue to be permitted to designate technical service providers in the UK for the purpose of EC approvals and vice versa.

Both the UK and the EU would continue to permit vehicles to enter into service on the basis of a valid certificate of conformity. Once in production, the UK and the EU would continue to recognise the ongoing role of type approval authorities, including monitoring of a manufacturer's conformity of production procedures and issuing any extensions or revisions to existing type approval certificates. UK and EU type approval authorities would continue to uphold their current obligations, including working closely with other authorities to identify non-conformities and ensure appropriate action is taken to rectify them.

30. In some manufactured goods sectors where more complex products have the potential to pose a higher risk to consumers, patients or environmental safety, a greater level of regulatory control is applied. The European Medicines Agency (EMA), the European Chemicals Agency (ECHA) and the European Aviation Safety Agency (EASA) facilitate part of these regulatory frameworks. In line with the UK's objective of ensuring that products only go through one approval mechanism to

access both markets, the UK is seeking participation in these EU agencies, as an active participant, albeit without voting rights, which would involve making an appropriate financial contribution. The UK would want to secure access to relevant IT systems, ensuring the timely transfer of data between UK and EU authorities. In addition, it would seek:

- a. for EASA, becoming a third country member via the established route under Article 66 of the EASA basic regulation, as Switzerland has;
  - b. for ECHA, ensuring UK businesses could continue to register chemical substances directly, rather than working through an EU-based representative; and
  - c. for the EMA, ensuring that all the current routes to market for human and animal medicine remain available, with UK regulators still able to conduct technical work, including acting as a 'leading authority' for the assessment of medicines, and participating in other activities like ongoing safety monitoring and the incoming clinical trials framework.
31. To ensure that there is no market disruption as the UK and the EU transition from the implementation period to this new free trade area, the UK proposes that all manufactured goods authorisations, approvals, certifications, and any agency activity undertaken under EU law (for example, to register a chemical), completed before the end of the implementation period, should continue to be recognised as valid in both the UK and the EU. Moreover, any such processes underway as the UK and the EU transition from the implementation period should be completed under existing rules, with the outcomes respected in full.

#### 1.2.4 Agriculture, food and fisheries products

32. There is extensive trade between the UK and the EU in agriculture (food, feed and drink) products and the EU is the UK's single largest trade partner.<sup>7</sup> 70 per cent of UK agri-food imports came from the EU in 2017.<sup>8</sup> Food and drink manufacturing is the UK's largest manufacturing sector, contributing £27.8 billion in Gross Value Added (GVA) in 2017.<sup>9</sup> Much like manufactured goods, the agri-food sector relies on complex international supply chains.
33. Under the existing constitutional settlements in Scotland, Wales and Northern Ireland, each devolved administration and legislature generally has competence to make its own primary and secondary legislation in relation to agriculture, as well as in related areas such as animal health and welfare, food safety, plant health and fisheries. The UK Government will work closely with the devolved administrations, who share high ambitions for a sustainable agricultural industry in the UK, as the UK withdraws from the EU, and will ensure future arrangements within the UK work for the whole of the UK.

---

<sup>7</sup> 'Agriculture in the UK' (p96), Defra, May 2018. Agri-food products referred to are food, feed and drink

<sup>8</sup> 'Agriculture in the UK: 2017' (p97), Defra, May 2018. Agri-food products referred to are food, feed and drink

<sup>9</sup> 'UK GDP(O) low level aggregates' (using SIC codes 10 and 11), ONS, June 2018

34. There are three broad categories of rules that apply to agriculture, food and fisheries products:
  - a. those that must be checked at the border, including relevant Sanitary and Phytosanitary (SPS) rules, which safeguard human, animal and plant health;
  - b. those relating to wider food policy, such as marketing rules that determine how agri-food products can be described and labelled, which do not need to be checked at the border; and
  - c. those relating to domestic production, such as the Common Agricultural Policy (CAP) and the Common Fisheries Policy (CFP).
  
35. The UK's proposal for a common rulebook on agri-food encompasses those rules that must be checked at the border. The UK and the EU have set the global standard for the protection of human, animal and plant health, and both have set an ambition to maintain high standards in the future. As for manufactured goods, certainty around a common rulebook is necessary to reassure the UK and the EU that agri-food products in circulation in their respective markets meet the necessary regulatory requirements. This would remove the need to undertake additional regulatory checks at the border – avoiding the need for any physical infrastructure, such as Border Inspection Posts, at the border between Northern Ireland and Ireland. A common rulebook would also protect integrated supply chains, trade between the UK and the EU, and consumers and biosecurity.
  
36. There are wider food policy rules that set marketing and labelling requirements. It is not necessary to check these rules are met at the border, because they do not govern the way in which products are produced, but instead determine how they are presented to consumers. These rules are most effectively enforced on the market, and as such it is not necessary to incorporate them into the common rulebook. Indeed there are differences between Member States currently on aspects of food policy, for example food labelling. Tailoring the regulatory environment to best suit businesses operating in the local market is better for consumers, businesses and the environment. The UK will tailor its food policy to better reflect business needs, improve value for money and support innovation and creativity.
  
37. For these rules, there are existing precedents of equivalence agreements covering testing and approval procedures. For example, the EU has reciprocal equivalence arrangements or agreements for organic production rules and control systems with a number of countries: Canada, Chile, Israel, Japan, the Republic of Korea, Tunisia, the US and New Zealand. The UK wants equivalence arrangements on wider food policy rules. The UK has high standards in place on food policy, including areas of UK leadership such as unfair trading practices.
  
38. Included in the remit of wider food policy rules are the specific protections given to some agri-food products, such as Geographical Indications (GIs). GIs recognise the heritage and provenance of products which have a strong traditional or cultural connection to a particular place. They provide registered products with legal protection against imitation, and protect consumers from being misled about the quality or geographical origin of goods. Significant GI-protected products from the UK include Scotch whisky, Scottish farmed salmon, and Welsh beef and lamb.

39. The UK will be establishing its own GI scheme after exit, consistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). This new UK framework will go beyond the requirements of TRIPS, and will provide a clear and simple set of rules on GIs, and continuous protection for UK GIs in the UK. The scheme will be open to new applications, from both UK and non-UK applicants, from the day it enters into force.
40. The UK will be leaving the CFP and CAP: these and other areas of domestic production are not relevant to the UK's and the EU's trading relationship, and so would not be captured by the common rulebook or any form of regulatory equivalence. The EU's view at the WTO is that direct payments under CAP are not market distorting – and the EU has deep relationships on fisheries with the other North Sea countries on the basis of annual negotiations. The UK will be free to design agricultural support policies that deliver the outcomes most relevant to its market, within the confines of WTO rules. The UK has been clear that it will seek to improve agricultural productivity and deliver improved environmental outcomes through its replacement for CAP. Similarly, on the CFP, the UK will be an independent coastal state, able to control access to its waters and the allocation of fishing opportunities. The UK's proposals for fisheries are covered in chapter 3.
41. By being outside the CAP, and having a common rulebook that only applies to rules that must be checked at the border, the UK would be able to have control over new future subsidy arrangements, control over market surveillance of domestic policy arrangements, an ability to change tariffs and quotas in the future, and the freedom to apply higher animal welfare standards that would not have a bearing on the functioning of the free trade area for goods – such as welfare in transport and the treatment of live animal exports.
42. In acknowledging the specific situation in respect of Northern Ireland and Ireland, all North-South cooperation on agriculture flowing from the Belfast ('Good Friday') Agreement has been mapped in detail through the joint mapping exercise conducted in Phase 1, and will be protected in full. Northern Ireland and Ireland form a single epidemiological unit. The UK is fully committed to ensuring that the Northern Ireland Executive and North South Ministerial Council can, through agreement, continue to pursue specific initiatives, such as the All Ireland Animal Health and Welfare Strategy.

### **1.2.5 Market surveillance**

43. As now, all products that enter the UK market will need to comply with the UK's regulations and standards. The new free trade area for goods, including agri-food, would need to be supported by robust domestic market surveillance and cooperation, to ensure that rules are upheld in both markets.
44. Following its withdrawal from the EU, the UK intends to maintain its robust programme of risk-based market surveillance to ensure that dangerous products do not reach consumers. This includes the ability to intercept products as they enter the UK, check products already on the market, and gather information through a variety of intelligence sources.

45. UK regulators propose establishing cooperation arrangements with EU regulators to ensure that authorities on both sides can take appropriate, consistent and coordinated action to prevent non-compliant products from reaching consumers or patients, or harming the environment. This should be complemented by the exchange of intelligence, including information received directly from businesses and consumers, and reporting mechanisms.
46. In order to support these cooperation arrangements, the UK is seeking access to the EU's communications systems, such as the Rapid Alert System for Food and Feed (RASFF), Rapid Alert System for Serious Risk (Rapex), and the Information and Communication System for Market Surveillance (ICSMS). This would ensure that UK and EU authorities could issue alerts to one another to respond in an effective and timely manner when they had identified unsafe or non-compliant products.

### 1.3 Services and investment

47. The UK is world leading in many services sectors, including legal, business and financial services. In 2017, services made up 79 per cent of total UK GVA worth £1.46 trillion.<sup>10</sup> In 2017, 21 per cent of EU27 services imports came from the UK, and 20 per cent of EU27 services exports went to the UK.<sup>11</sup> Globally services trade is growing rapidly; UK services trade with non-EU countries grew by 73 per cent between 2007 and 2017.<sup>12</sup>
48. The UK is proposing new arrangements for services and digital that would provide regulatory flexibility, which is important for the UK's services-based economy. This means that the UK and the EU will not have current levels of access to each other's markets.
49. The UK's proposal builds on the principles of international trade and the precedents of existing EU trade agreements, and reflects its unique starting point. It would include:
  - a. **general provisions** that minimise the introduction of discriminatory and non-discriminatory barriers to establishment, investment and the cross-border provision of services, with barriers only permitted where that is agreed upfront;
  - b. a system for the **mutual recognition of professional qualifications**, enabling professionals to provide services across the UK and EU;
  - c. additional, mutually beneficial arrangements for **professional and business services**; and
  - d. a new economic and regulatory arrangement for **financial services**.

<sup>10</sup> 'UK GDP(O) low level aggregates', ONS, June 2018

<sup>11</sup> 'European Union and euro area balance of payments - quarterly data (BPM6) [bop\_eu6\_q]', Eurostat, June 2018

<sup>12</sup> 'UK Economic Accounts: all data (January to March 2018)', ONS, June 2018

### 1.3.1 General provisions

50. The WTO's General Agreement on Trade in Services (GATS) provides a framework for global services trade and defines four modes of services supply:
  - a. a service crossing a border (for example, a service being provided over the telephone);
  - b. a consumer of a service crossing a border (for example, tourism);
  - c. a service provider establishing a legal presence across a border (for example, a retail chain opening a new establishment in another country); and
  - d. a service provider crossing a border to a consumer (for example, a lawyer going to another country to provide legal advice to a client).
51. Under GATS, FTAs are obliged to cover all modes of services supply and to have substantial sectoral coverage. But each new FTA is unique to the parties involved, giving service providers different market access rights. Over time FTAs have promoted a more liberalising approach to services trade.
52. The UK proposes arrangements with broad coverage, ensuring that service suppliers and investors are allowed to operate in a broad number of sectors without encountering unjustified barriers or discrimination unless otherwise agreed. Specifically, the UK is seeking:
  - a. broad coverage across services sectors and the modes of supply, in line with GATS obligations;
  - b. deep Market Access commitments, eliminating, among other things, explicit restrictions on the number of services providers from one country that can operate in another;
  - c. deep commitments on National Treatment, to guarantee that foreign service providers are treated the same as equivalent local providers, with any exceptions kept to a minimum;
  - d. provisions to ensure the free and timely flow of financial capital for day-to-day business needs, including payments and transfers; and
  - e. best-in-class arrangements on domestic regulation, which ensure that all new regulation is necessary and proportionate.



### 1.3.2 Mutual recognition of professional qualifications

53. The EU regime for the recognition of professional qualifications enables UK and EU professionals to practise across both the UK and the EU on a temporary, longer-term or permanent basis, without fully having to retrain or requalify. Since 1997 the UK has recognised over 142,000 EU qualifications, including for lawyers, social workers and engineers.<sup>13</sup> Over 27,000 decisions to recognise UK qualifications have been undertaken in the EU.<sup>14</sup>
54. The UK agrees with the position set out in the European Council's March 2018 Guidelines, which stated that the future partnership should include ambitious provisions on the recognition of professional qualifications. This is particularly relevant for the healthcare, education and veterinary/agri-food sectors in the context of North-South cooperation between Northern Ireland and Ireland.
55. The UK's arrangements with the EU should not be constrained by existing EU FTA precedents. CETA includes some of the EU's most ambitious third country arrangements on the mutual recognition of professional qualifications. Yet CETA only sets a framework within which regulators may negotiate recognition agreements for professional qualifications; it does not itself provide for mutual recognition. The UK proposes establishing a system that:
  - a. is broad in scope, covering the same range of professions as the Mutual Recognition of Qualifications Directive;
  - b. includes those operating either on a permanent or temporary basis across borders;
  - c. is predictable and proportionate, enabling professionals to demonstrate that they meet the necessary requirements, or to undertake legitimate compensatory measures where there is a significant difference between qualifications or training, in a timely way; and
  - d. provides transparency, with cooperation between regulators to facilitate the exchange of information about breaches of professional standards, and to review changes to professional qualifications over time.

---

<sup>13</sup> 'Regulated professionals database' (search results are produced by entering the country of qualification as all EU countries, the host country as the UK, for the year 2016), European Commission, accessed April 2018

<sup>14</sup> 'Regulated professionals database' (search results are produced by entering the country of qualification as the UK, the host country as all EU countries, for the year 2016), European Commission, accessed April 2018

### 1.3.3 Professional and business services

56. The UK and EU economies rely on the cross-border provision of professional services. This includes legal services, where the UK is the destination for 14.5 per cent of total EU legal services exports.<sup>15</sup> It also includes accounting and audit services. In 2016, UK firms provided over 14 per cent of EU27 audit and accountancy imports.<sup>16</sup>
57. In addition to the general services provisions, the UK proposes supplementary provisions for professional and business services, for example, permitting joint practice between UK and EU lawyers, and continued joint UK-EU ownership of accounting firms. The supplementary provisions would not replicate Single Market membership, and professional and business service providers would have rights in the UK and the EU which differ from current arrangements.

### 1.3.4 Financial services

58. The UK and EU financial services markets are highly interconnected: UK-located banks underwrite around half of the debt and equity issued by EU businesses;<sup>17</sup> UK-located banks are counterparty to over half of the over-the-counter interest rate derivatives traded by EU companies and banks;<sup>18</sup> around £1.4 trillion of assets are managed in the UK on behalf of European clients;<sup>19</sup> the world-leading London Market for insurance hosts all of the world's twenty largest international (re)insurance companies; and more international banking activity is booked in the UK than in any other country. This interconnected market has benefits for consumers and businesses across Europe. For example, one study has found that if new regulatory barriers forced the fragmentation of firms' balance sheets, the wholesale banking industry would need to find £23-38 billion of extra capital.<sup>20</sup> These are costs that would ultimately be borne by consumers and businesses.
59. This interconnectedness also highlights the UK's and the EU's shared interest in financial stability. The UK is host to all 30 global systemically important banks and is the home regulator for four of them. Given its scale, the International Monetary Fund (IMF) has described financial stability in the UK as a "global public good".<sup>21</sup> Alongside its European partners, the UK has developed an institutional framework to manage financial stability while ensuring the regulatory system supports a global financial centre.

---

<sup>15</sup> 'International trade in services (since 2010) (BPM6) (bop\_its6\_det)', Eurostat, January 2018 – covers BPM6 codes SJ211

<sup>16</sup> 'International trade in services (since 2010) (BPM6) (bop\_its6\_det)', Eurostat, January 2018 – covers BPM6 codes SJ212

<sup>17</sup> 'Financial Stability Report: June 2017 Issue No. 41' (page viii), Bank of England, June 2017

<sup>18</sup> 'Financial Stability Report: June 2017 Issue No. 41' (page viii), Bank of England, June 2017

<sup>19</sup> 'Asset Management in the UK 2016-2017: The Investment Association Annual Survey' (page 17), The Investment Association, September 2017

<sup>20</sup> A study undertaken by Oliver Wyman: 'One Year on from the Brexit Vote: A briefing for the wholesale banks', Oliver Wyman, 2017. Original figures \$30-50 billion, converted to £ using Bank of England daily spot exchange rate for 30 June 2017

<sup>21</sup> 'United Kingdom financial sector assessment program', International Monetary Fund, June 2016

60. As the UK leaves the EU and the Single Market, it recognises the need for a new and fair balance of rights and responsibilities. The UK can no longer operate under the EU's "passporting" regime, as this is intrinsic to the Single Market of which it will no longer be a member.
61. In addition, given the importance of financial services to financial stability, both the UK and the EU will wish to maintain autonomy of decision-making and the ability to legislate for their own interests. For example, in some cases, the UK will need to be able to impose higher than global standards to manage its financial stability exposure. In other areas, the UK market contains products and business models that are different to those found elsewhere in the EU, and regulation would need to reflect these differences. The decision on whether and on what terms the UK should have access to the EU's markets will be a matter for the EU, and vice versa. However, a coordinated approach leading to compatible regulation is also essential for promoting financial stability and avoiding regulatory arbitrage.
62. The EU has third country equivalence regimes which provide limited access for some of its third country partners to some areas of EU financial services markets. These regimes are not sufficient to deal with a third country whose financial markets are as deeply interconnected with the EU's as those of the UK are. In particular, the existing regimes do not provide for:
  - a. institutional dialogue, meaning there is no bilateral mechanism for the EU and the third country to discuss changes to their rules on financial services in order to maximise the chance of maintaining compatible rules, and to minimise the risks of regulatory arbitrage or threats to financial stability;
  - b. a mediated solution where equivalence is threatened by a divergence of rules or supervisory practices;
  - c. sufficient tools for reciprocal supervisory cooperation, information sharing, crisis procedures, or the supervision of cross-border financial market infrastructure;
  - d. some services, where clients in the UK and the EU currently benefit from integrated markets and cross-border business models. This would lead to unnecessary fragmentation of markets and increased costs to consumers and businesses; or
  - e. phased adjustments and careful management of the impacts of change, so that businesses face a predictable environment.
63. In this context, the UK proposes a new economic and regulatory arrangement with the EU in financial services. This would maintain the economic benefits of cross-border provision of the most important international financial services traded between the UK and the EU – those that generate the greatest economies of scale and scope – while preserving regulatory and supervisory cooperation, and maintaining financial stability, market integrity and consumer protection.

64. This new economic and regulatory arrangement would be based on the principle of autonomy for each party over decisions regarding access to its market, with a bilateral framework of treaty-based commitments to underpin the operation of the relationship, ensure transparency and stability, and promote cooperation. Such an arrangement would respect the regulatory autonomy of both parties, while ensuring decisions made by either party are implemented in line with agreed processes, and that provision is made for necessary consultation and collaboration between the parties.
65. As part of this, the existing autonomous frameworks for equivalence would need to be expanded, to reflect the fact that equivalence as it exists today is not sufficient in scope for the breadth of the interconnectedness of UK-EU financial services provision. A new arrangement would need to encompass a broader range of cross-border activities that reflect global financial business models and the high degree of economic integration. The UK recognises, however, that this arrangement cannot replicate the EU's passporting regime.
66. As the UK and the EU start from a position of identical rules and entwined supervisory frameworks, the UK proposes that there should be reciprocal recognition of equivalence under all existing third country regimes, taking effect at the end of the implementation period. This reflects the reality that all relevant criteria, including continued supervisory cooperation, can readily be satisfied by both the UK and the EU. It would also provide initial confidence in the system to firms and markets.
67. Although future determinations of equivalence would be an autonomous matter for each party, the new arrangement should include provisions through the bilateral arrangement for:
  - a. common principles for the governance of the relationship;
  - b. extensive supervisory cooperation and regulatory dialogue; and
  - c. predictable, transparent and robust processes.

### **Common principles for the governance of the relationship**

68. As established in many existing EU provisions, this approach would be based on an evidence-based judgement of the equivalence of outcomes achieved by the respective regulatory and supervisory regimes. The UK and the EU would set out a shared intention to avoid adopting regulations that produce divergent outcomes in relation to cross-border financial services. In practice, as the UK and the EU have since the financial crisis, the UK will continue to be active in shaping international rules, and will continue to uphold global norms. To reflect this, the UK-EU arrangement should include common objectives, such as maintaining economic relations of broad scope, preserving regulatory compatibility, and supporting collaboration – bilaterally and in multilateral fora – to manage shared interests such as financial stability and the prevention of regulatory arbitrage.

### **Extensive supervisory cooperation and regulatory dialogue**

69. The UK proposes that the UK and the EU would commit to an overall framework that supports extensive collaboration and dialogue.
- a. Regulatory dialogue: for equivalence to be maintained over the long term, the UK and the EU should be able to understand and comment on each other's proposals at an early stage through a structured consultative process of dialogue at political and technical level, while respecting the autonomy of each side's legislative process and decision-making.
  - b. Supervisory cooperation: in a close economic relationship between the UK and the EU financial services sectors, it would be necessary to ensure close supervisory cooperation in relation to firms which pose a systemic risk and/or that provide significant cross-border services on the basis of equivalence. It will be essential for the UK and the EU to commit to reciprocal and close cooperation to protect consumers, financial stability and market integrity with codified procedures for routine cooperation and for coordination in crisis situations. This should include appropriate reciprocal participation in supervisory colleges, which are coordination structures that bring together regulatory authorities involved in the supervision of banks and other major financial institutions – as well as other supervisory structures, including information exchange, mechanisms for consultation over decisions affecting the other party, and arrangements for the supervision of market infrastructure.

### **Predictable, transparent and robust processes**

70. To give business the certainty necessary to plan and invest, transparent processes would be needed to ensure the relationship is stable, reliable and enduring. The UK envisages that some of these processes would be bilaterally agreed and treaty-based; others would be achieved through the autonomous measures of the parties.
- a. Transparent assessment methodology: the process for assessing equivalence should be based on clear and common objectives; make use of consultation with industry and other stakeholders; and include the possibility of using expert panels.
  - b. Structured withdrawal process: if circumstances arise that cause either party to wish to withdraw equivalence, there should be an initial period of consultation on possible solutions to maintain equivalence. Either party may also indicate to the other that it no longer seeks equivalence in a certain area. There should then be clear timelines and notice periods, which are appropriate for the scale of the change before it takes effect. There should also be a safeguard for acquired rights to avoid risks to financial stability, market integrity or consumer protection from sudden changes to the regulatory environment.
  - c. Long-term stabilisation: in accordance with WTO principles, there should be a presumption against unilateral changes that narrow the terms of existing market access regimes, other than in exceptional circumstances. This would mean each side trying to avoid future changes that assess equivalence in entirely new ways that could destabilise an established relationship. Existing equivalence decisions should only lapse after a new decision has been taken.

71. Finally, where disputes arise between the UK and the EU on the binding treaty-based commitments, the institutional arrangements set out in further detail in chapter 4 should apply.

## 1.4 Framework for mobility

72. EU citizens are integral to communities across the UK, with 3.5 million EU citizens living in the UK.<sup>22</sup> Approximately 800,000 UK nationals play an equally important role in communities across the EU.<sup>23</sup> The UK and the EU have already reached an agreement on citizens' rights which provides EU citizens living in the UK and UK nationals living in the EU before the end of the implementation period with certainty about their rights going forward. Individuals will continue to be able to move, live and work on the same basis as now up until the end of December 2020.

### 1.4.1 Ending free movement of people

73. In future it will be for the UK Government and Parliament to determine the domestic immigration rules that will apply. Free movement of people will end as the UK leaves the EU. The Immigration Bill will bring EU migration under UK law, enabling the UK to set out its future immigration system in domestic legislation.
74. The UK will design a system that works for all parts of the UK. The Migration Advisory Committee (MAC) report, due in September 2018, will provide important evidence on patterns of EU migration and the role of migration in the wider economy to inform this. Further details of the UK's future immigration system will be set out in due course.
75. The UK will continue to be an open and tolerant nation, and will want to continue to attract the brightest and best, from the EU and elsewhere. The UK's future immigration arrangements will set out how those from the EU and elsewhere can apply to come and work in the UK. This will be crucial to supporting its public services, as well as enhancing the UK's attractiveness for research, development and innovation.

### 1.4.2 Future mobility arrangements

76. Any future mobility arrangements will be consistent with the ending of free movement, respecting the UK's control of its borders and the Government's objective to control and reduce net migration. Trade agreements which cover trade in services include provisions on the mobility of people for the provision of services (known as 'Mode 4' commitments). Given the depth of the relationship and close ties between the peoples of the UK and the EU, the UK will make a sovereign choice in a defined

---

<sup>22</sup> 'Population of the UK by country of birth and nationality', ONS, May 2018. Estimate covers January 2017 to December 2017 and excludes Irish nationals. In 2017, the UK was also the most popular residence in the EU for long-term migrants from Ireland, France, Cyprus, Latvia, Lithuania, Malta, Poland and Sweden (Population on 1 January by age group, sex and citizenship', Eurostat, 2017 Note: Data is unavailable on EU citizens living in Malta, Cyprus and Spain)

<sup>23</sup> 'Living abroad: British residents living in the EU: April 2018', ONS, April 2018. Estimate is at 1 January 2017 and excludes Ireland

number of areas to seek reciprocal mobility arrangements with the EU, building on current WTO GATS commitments. The UK has already proposed that this should be achieved in an appropriate framework for mobility, in line with arrangements that the UK might want to offer to other close trading partners in the future, where they support new and deep trade deals. The UK's future economic partnership should therefore provide reciprocal arrangements, consistent with the ending of free movement, that:

- a. support businesses to provide services and to move their talented people;
  - b. allow citizens to travel freely, without a visa, for tourism and temporary business activity;
  - c. facilitate mobility for students and young people, enabling them to continue to benefit from world leading universities and the cultural experiences the UK and the EU have to offer;
  - d. are as streamlined as possible to ensure smooth passage for legitimate travel while strengthening the security of the UK's borders; and
  - e. provide for other defined mobility provisions, including arrangements to ensure that UK citizens living in the EU, in future, continue to benefit from their pension entitlements and associated healthcare.
77. These proposals are without prejudice to the Common Travel Area (CTA) arrangements between the UK and Ireland, and the Crown Dependencies. The CTA means that Irish citizens will continue to enjoy a special status in the UK, provided for by domestic legislation, distinct from the status of other EU nationals.
78. The principle of non-discrimination between existing Member States should apply to all of the provisions agreed as part of the framework for mobility.

### **Business and services**

79. UK firms and global investors rely on the ability to move and attract talent to support global operations, and to send people to provide services across Europe. Indeed, mobility is a key element of economic, cultural and scientific cooperation, ensuring professional service providers can reach clients, advanced manufacturers can deploy key personnel to the right place, and scientists can collaborate on world-leading projects.
80. The UK would seek reciprocal arrangements that would allow UK nationals to visit the EU without a visa for short-term business reasons and equivalent arrangements for EU citizens coming to the UK. This would permit only paid work in limited and clearly defined circumstances, in line with the current business visa policy.
81. As is the case with non-EU countries with whom the UK has a trading agreement, the UK also wants to agree reciprocal provisions on intra-corporate transfers that allow UK and EU-based companies to train staff, move them between offices and plants and to deploy expertise where it is needed, based on existing arrangements with non-EU countries. The UK will also discuss how to facilitate temporary mobility of scientists and researchers, self-employed professionals, employees providing services, as well as investors.

## **Tourism**

82. In the year ending September 2017, UK residents made approximately 50 million non-business related visits to the EU spending £24 billion,<sup>24</sup> and EU residents made over 20 million non-business related visits to the UK spending £7.8 billion.<sup>25</sup>
83. The UK therefore proposes reciprocal visa-free travel arrangements to enable UK and EU citizens to continue to travel freely for tourism in the future, maintaining the close links between the people of the UK and the EU.
84. The Government wants UK and EU nationals to continue to be able to use the European Health Insurance Card (EHIC) to receive healthcare should they need it while on holiday.

## **Students and young people**

85. The UK and the EU should continue to give young people and students the chance to benefit from each other's world leading universities, including cultural exchanges such as Erasmus+.
86. The UK proposes a UK-EU youth mobility scheme to ensure that young people can continue to enjoy the social, cultural and educational benefits of living in each other's countries. The UK already operates a number of youth mobility schemes with other global partners, for example with Australia and Canada, on which this could be modelled.

## **Streamlined border arrangements and administrative procedures**

87. The UK already has existing arrangements with low-risk, non-EU countries that enable smooth access at the border, such as the Registered Traveller Scheme in place with a number of countries like the US and Japan. The UK wants to agree reciprocal arrangements with the EU that ensure smooth passage for UK nationals when they travel to the EU, for example on business or on holiday. The UK will strengthen the security of its borders, which should include exploring whether to apply the electronic travel authorities proposed for third country nationals to each other's nationals, and ensuring travel documents meet minimum security standards. But at the border, as now, tourists and business visitors should not routinely have to face questions about the purpose of their visit. The UK also wants to minimise administrative burdens for those seeking permission to travel, enter or reside in each other's territories, including short, simple and user-friendly application processes.
88. Streamlined arrangements are particularly important at the Gibraltar-Spain border, which is crossed every day by thousands of people from other Member States.

## **Other mobility provisions**

89. While ending free movement, the UK will also make a sovereign choice to discuss other specific mobility areas. The UK will seek reciprocal arrangements on the future rules around some defined elements of social security coordination. This will be important for UK nationals who want to live, work or retire in the EU in the future, as

---

<sup>24</sup> 'ONS Overseas travel and tourism, quarterly', ONS, January 2018

<sup>25</sup> 'ONS Overseas travel and tourism, quarterly', ONS, January 2018



part of our new arrangements. This could cover provisions for the uprating of state pensions, including export rules and accompanying aggregation principles for people who have contributed into multiple countries' systems. It would also ensure workers only pay social security contributions in one state at a time. There should be reciprocal healthcare cover for state pensioners retiring to the EU or the UK, continued participation in the EHIC scheme and cooperation on planned medical treatment. This would be supported by any necessary administrative cooperation and data-sharing requirements.

90. The UK will also seek to secure onward movement opportunities for UK nationals in the EU who are covered by the citizens' rights agreement. Some of these UK nationals have chosen to make their lives in the EU, and this should be respected in the opportunities available to them if they decide to change their Member State of residence.
91. The framework for mobility could also cover the recognition of professional qualifications held by UK and EU nationals as covered in section 1.3 of this chapter.

## 1.5 Digital

92. Digital is a fast evolving, innovative, sector that is driving economic transformation across the world. Digital sectors contributed £116.5 billion to the UK economy in 2016, representing 6.7 per cent of GVA.<sup>26</sup> Facilitating growth and removing barriers will drive competitiveness and help the UK tap into the potential from the top ten largest economies of the world, estimated by one study to be worth £890 billion.<sup>27</sup> It will be particularly important to have domestic regulatory flexibility, to ensure the UK can respond nimbly to new developments, and be at the forefront of emerging technologies.
93. Digital services trade between the UK and the EU will continue to be important, as both try to capitalise on the growth of digital technologies globally. While the UK will not be a part of the EU's Digital Single Market, the UK wants to develop an ambitious policy on digital trade with the EU, as well as globally. The UK therefore proposes a digital relationship that covers:
  - a. **digital trade and e-commerce;**
  - b. **telecommunications and digital infrastructure;**
  - c. **digital technology;** and
  - d. **broadcasting.**
94. The UK's proposals should provide a framework for enduring solutions, which are sufficiently agile and flexible, reflecting the fast evolving and innovative characteristics of the sector. The UK also proposes arrangements to ensure the continued free flows of personal data between the UK and the EU. The UK believes

<sup>26</sup> 'DCMS Sector economic estimates 2016: GVA', DCMS, November 2017

<sup>27</sup> A study undertaken by Accenture: 'Digital Density Index: Guiding Digital Transformation', Accenture, 2015. Original figure \$1.4 trillion, converted to £ using Bank of England daily spot exchange rate for 30 June 2015

the EU's adequacy framework provides the right starting point for these arrangements but wants to go beyond this to allow ongoing cooperation between data protection authorities. This is set out in detail in chapter 3.

### 1.5.1 Digital trade and e-commerce

95. The global digital economy is built on the ability to collect, share and process data. This underpins not just digital trade but all trade flows. Any disruption in cross-border data flows would therefore be economically costly while unnecessary barriers, such as the unjustified localisation of data, could also have a serious impact on future prosperity.
96. The UK's proposals would include:
  - a. ensuring cross-border data flows, providing for the removal and prevention of barriers to the flow of data across borders;
  - b. protecting the free, open and secure internet, working with EU partners to lead the global effort to ensure that the internet is safe and open; and
  - c. recognising equivalent forms of electronic ID and authentication, ensuring that these are secure, trustworthy and easy to use across borders.

### 1.5.2 Telecommunications and digital infrastructure

97. Telecommunications services provide key digital infrastructure that society depends on to communicate and operate globally. In the UK, telecoms contributed £30 billion of GVA in 2016<sup>28</sup>, with exports of services to the EU in the sector worth £2.7 billion in 2015 and imports worth £3.4 billion.<sup>29</sup>
98. The UK and the EU have a joint history of regulatory innovation in telecommunications in areas such as competition reform and net neutrality. This shared regulatory vision has promoted consumer benefits, competition and investment. The UK therefore proposes:
  - a. joint commitments to an open and liberalised electronic communications sector allowing for fair, equal and competitive access for UK and EU businesses to public telecoms services and networks; and
  - b. continuing to share cyber threat information to ensure the UK's and the EU's infrastructure is robust, resilient and able to adapt to evolving threats online or to digital infrastructure.

### 1.5.3 Digital technology

99. The UK believes that trade should promote the development of new technologies, such as artificial intelligence (AI), and notes that they are vulnerable to non-tariff barriers. New and emerging technologies are also creating new and shared challenges. The UK therefore proposes exploring new models for regulatory

---

<sup>28</sup> 'DCMS Sector economic estimates 2016: GVA', DCMS, November 2017

<sup>29</sup> 'DCMS Sector economic estimates 2016: Trade', DCMS, June 2018

cooperation between the UK and the EU to tackle these shared challenges and advance shared objectives in the future.

100. For example, the European Commission recently committed to set up a European AI Alliance to develop draft ethics guidelines by the end of 2018. After the UK withdraws from the EU, the UK's Centre for Data Ethics and Innovation intends to participate in this Alliance, alongside its European partners.

#### 1.5.4 Broadcasting

101. The audiovisual sector is both economically and culturally important to the UK and the EU. The UK's creative hub contributes significantly to the development of products that are much in demand by European consumers.
102. The UK is leaving the Single Market. As a result, the "country of origin" principle, in which a company based in one Member State can be licenced by a national regulator and broadcast into any other Member State, will no longer apply. The UK is seeking the best possible arrangements for this sector. The UK's commitments to the provision of Irish language broadcasting in Northern Ireland by RTE and TG4, as set out in the Belfast ("Good Friday") Agreement and a subsequent Memorandum of Understanding with the Irish Government, will be guaranteed through UK statutory and domestic provisions.
103. European Works is a system designed to promote domestic European production and preserve cultural identity. The European Works content quota applies to works which originate in Member States and non-EU European countries which are party to the European Convention on Transfrontier Television of the Council of Europe (CTT). This requires broadcasters to reserve a certain amount of air time for European works. In the case of on-demand services, providers must promote the production of and access to European works.
104. As confirmed in the EU's "Notice to Stakeholders" in the field of audiovisual media services, works originating in the UK will continue to be classed as European works. The UK's position as a party to the CTT will not be affected by the UK's withdrawal from the EU, and therefore the UK will continue to be able to treat audiovisual works originating in the EU as European works.

### 1.6 Open and fair competition

105. Commitments on open and fair competition are fundamental to all trading relationships. Reciprocal commitments that go beyond those usually made in FTAs will be particularly important to support the breadth and depth of the future UK-EU economic partnership, and hold rights and responsibilities in balance.
106. The UK has been a leading advocate of the development of the EU state aid and competition regime, and has much to gain from maintaining disciplines on subsidies and anti-competitive practices.
107. Some horizontal rules are not primarily designed to ensure open and fair markets. Nonetheless, it is usual to include commitments on these areas in FTAs. The UK has

made strong domestic commitments to maintaining high standards on the environment, climate change, social and employment, and consumer protection, and will continue to meet its international obligations in these areas.

108. The UK's proposals include:

- a. committing to a common rulebook on **state aid**, to be enforced and supervised in the UK by the Competition and Markets Authority (CMA);
- b. maintaining current antitrust prohibitions and the merger control system with rigorous UK enforcement of **competition** law alongside strong cooperation with EU authorities;
- c. committing to high regulatory **environmental** standards through a non-regression requirement;
- d. maintaining high standards on **climate change**, noting the UK's world leading ambitions;
- e. committing to high levels of **social and employment** protections through a non-regression requirement for domestic labour standards; and
- f. committing to high levels of **consumer protection**.

### 1.6.1 State aid

109. The UK has long been a proponent of a rigorous state aid system – this is good for taxpayers and consumers, and ensures an efficient allocation of resources. The UK has an excellent record on compliance, and has been among the lowest granters of state aid as a proportion of Gross Domestic Product (GDP) in the EU. In 2016 the UK gave 0.3 per cent of GDP as state aid, half the EU average of 0.7 per cent.<sup>30</sup>

110. The Government has made clear that it is committed to continuing the control of anti-competitive subsidies by creating a UK-wide subsidy control framework. The CMA, which is a world leading competition authority, will take on the role of enforcement and supervision for the whole of the UK. The Government will continue working with the Scottish Government, Welsh Government and Northern Ireland Executive, when in place, to ensure the new framework for state aid works for the whole of the UK.

111. To support the depth and breadth of the future UK-EU economic partnership, the UK would propose to incorporate its domestic choice to maintain a robust state aid regime into its future economic relationship with the EU. In light of this, the UK would make an upfront commitment to maintain a common rulebook with the EU on state aid, enforced by the CMA. This is without prejudice to the UK's intention to develop new tailored arrangements in relation to payments to farmers and other land managers for environmental benefits, and the UK's future public procurement policy.

112. The UK's proposal for its future economic partnership with the EU would not fetter its sovereign discretion on tax, including to set direct or indirect tax rates, and to set its own minimum tax rates.

---

<sup>30</sup> 'Aid by main objectives - % of GDP', Eurostat, processed May 2018

## 1.6.2 Competition

113. The UK has led the way globally in the field of competition law and enforcement and has one of the strongest competition regimes in the world.
114. The CMA is a highly regarded competition authority with significant powers and resources at its disposal to ensure open and fair competition, and a proven record of effective competition enforcement. It has a statutory duty to seek to promote competition, both within and outside the UK, for the benefit of consumers. After the UK leaves the EU, the CMA will want to continue to work together with DG Competition, building on their existing highly effective relationship, to provide certainty for business.
115. There are currently no strict requirements that apply to national competition regimes or requirements to have the same procedural rules. Instead, the UK has kept in step with the EU's competition regime, and has gone further than EU minimum standards. The UK legal system already has the key components the EU expects: it has a robust framework for merger control, and prohibits abuse of a dominant position and anti-competitive agreements. The UK's markets regime contains significant powers to investigate potential market failure and prevent, remedy or mitigate any adverse effects on competition.
116. It will be important to ensure that competition decisions are compatible. The UK will seek to work with the EU to build on established cooperative arrangements, such as those found in existing FTAs, to manage parallel merger and antitrust investigations. This should include provisions on sharing confidential information and working together on live cases, and ensuring that the UK and the EU continue to take a robust approach in enforcing competition rules.

## 1.6.3 Environment

117. The UK and its constituent parts have long-standing commitments to protecting the environment. The Government has been clear that the UK will maintain high environmental standards once it has left the EU, and has published a 25 Year Environment Plan for England to set out the scale of its future ambitions.<sup>31</sup> Scotland, Wales and Northern Ireland have made clear that they have equally high ambitions. The UK has also fulfilled the commitment to consult on a new, independent, statutory body to hold the government to account on environmental protections.<sup>32</sup> The UK is party to numerous Multilateral Environmental Agreements, and the UK is committed to upholding its international obligations under these agreements after it leaves the EU.
118. In the context of a deep economic partnership, the UK proposes reflecting its domestic choice to maintain high regulatory standards for the environment. To that effect, the UK and the EU should commit to the non-regression of environmental standards. There should also be a reciprocal commitment to ongoing environmental

---

<sup>31</sup> '25 Year Environment Plan', Defra, January 2018

<sup>32</sup> 'Environmental Principles and Governance after EU Exit', Defra, May 2018

cooperation, including in international fora, to solve shared global environmental challenges.

#### 1.6.4 Climate change

119. The UK is a global leader in the fight against climate change<sup>33</sup> and was the first country to set out a long-term legally binding target for reducing greenhouse gas (GHG) emissions in domestic law, in the Climate Change Act 2008.<sup>34</sup> Between 1990 and 2016, the UK saw the greatest reduction in total GHG emissions across G7 countries.<sup>35</sup>
120. The UK recognises the UK's and the EU's shared interest in global action on climate change and the mutual benefits of a broad agreement on climate change cooperation. The UK's world leading climate ambitions are set out in domestic law and are more stretching than those that arise from its current obligations under EU law. The UK will maintain these high standards after withdrawal.

#### 1.6.5 Social and employment

121. The UK firmly believes in the importance of strong labour protections while also embracing the opportunities arising from the changing world of work. Existing workers' rights enjoyed under EU law will continue to be available in UK law on the day of withdrawal.
122. The UK already exceeds EU minimum standards in a number of areas, such as parental leave and flexible working arrangements, and is a leader in many others. For example, on health and safety, the UK has one of the strongest records in Europe, and in 2015, the UK's standardised rate of fatal injury was among the lowest in the EU28.<sup>36</sup> The UK is also ensuring employment practices keep pace with rapid technological change in its response to the Taylor Review of Modern Working Practices. On equalities, the UK ranks third in the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) Rainbow Europe index and also ranks above the EU28 average on the European Institute for Gender Equality 2017 Index.<sup>37</sup> The UK has also demonstrated its commitment to tackling modern slavery, for example through the introduction of the Modern Slavery Act 2015, and will continue to lead the global fight against it.
123. Given this strong record, and in the context of the UK's vision for the future relationship with the EU, the UK proposes that the UK and the EU commit to the non-regression of labour standards. The UK and the EU should also commit to uphold their obligations deriving from their International Labour Organisation commitments.

---

<sup>33</sup> 'Policy paper, International Climate Fund', GOV.UK, January 2017

<sup>34</sup> 'Policy paper, 2010 to 2015 government policy: greenhouse gas emissions', GOV.UK, May 2015

<sup>35</sup> 'GHG data - UNFCCC', UN Framework Convention on Climate Change, accessed July 2018

<sup>36</sup> 'Accidents at work statistics (table hsw\_mi01)', Eurostat, November 2016

<sup>37</sup> 'Rainbow Europe', ILGA-Europe, 2017 data - the UK is second to Malta in the EU28

### 1.6.6 Consumer protection

124. The UK believes strongly in the importance of consumer protection, and is committed to maintaining high standards.
125. The UK has a strong track record, underpinned by statutory safeguards and enforcement mechanisms, in protecting consumers when they buy goods and services from businesses based in the UK and the EU. The UK has gone beyond EU minimum requirements in a number of areas, for example UK law offers a 30-day short-term right to reject faulty goods and provides a six-year legal guarantee period (five years in Scotland), well above the two-year EU minimum.
126. To ensure that open trade between the UK and EU economies is not at the expense of consumers, and in the context of the future economic partnership, the UK proposes to commit to maintain reciprocal high levels of consumer protection. There should be cooperation on enforcement, including provisions to allow mutual exchange of information and evidence, and a framework to work collectively on areas of wider consumer detriment.

## 1.7 Socio-economic cooperation

127. There are many other areas where the UK and EU economies are closely linked, including transport, energy, civil judicial cooperation, intellectual property, and audit and accountancy. The particularly close integration between EU Member States in these areas reflects their membership of the Single Market, and the UK recognises that it will not be possible to replicate this entirely once it has left the EU. However there are precedents outside of the Single Market for close cooperation. The UK will look to draw on these precedents in the future relationship, ensuring arrangements of mutual benefit to the UK and the EU that respect UK sovereignty and the autonomy of the EU's institutions.
128. The UK's proposals include:
- a. an Air Transport Agreement which seeks to maintain reciprocal liberalised **aviation** access between and within the territory of the UK and the EU, alongside UK participation in EASA;
  - b. exploring options for **road transport**, including reciprocal access for UK and EU road hauliers and passenger transport operators;
  - c. close cooperation on **maritime**, including with the European Maritime Safety Agency (EMSA);
  - d. bilateral **rail** agreements with relevant Member States to support the continued operation of services through the Channel Tunnel and on the Belfast-Dublin Enterprise line;
  - e. exploring options for our future **energy** relationship – maintaining the Single Electricity Market (SEM) across the island of Ireland in any eventuality;
  - f. a new **civil nuclear** relationship based on a comprehensive Nuclear Cooperation Agreement (NCA) between Euratom and the UK;

- g. seeking to join the Lugano Convention, and exploring a new bilateral agreement with the EU on **civil judicial cooperation**, covering a coherent package of rules on jurisdiction, choice of jurisdiction, applicable law and recognition and enforcement of judgments in civil, commercial, insolvency and family matters;
- h. exploring options on **intellectual property**, including participation in the Unified Patent Court and unitary patent system; and
- i. seeking EU equivalence and adequacy decisions under the EU's **audit and accounting** third country regimes by the end of the implementation period.

### 1.7.1 Aviation

129. The UK has the largest aviation industry in Europe,<sup>38</sup> and the UK's geographical position in the network is key, with around 80 per cent of all North Atlantic traffic passing through UK or Irish controlled airspace.<sup>39</sup> Air travel is vital in connecting people and businesses and facilitating tourism and trade. In 2017, 164 million passengers travelled between the UK and other EU Member States by air.<sup>40</sup> It is in the UK's and the EU's interests to protect the connectivity, choice and value for money that UK and EU consumers enjoy today. Moreover, the future arrangements should allow for innovation within the industry, giving flexibility to current and future airlines to offer greater choice and connectivity to passengers.
130. The UK will explore options for maintaining reciprocal liberalised access through an Air Transport Agreement. This would permit UK and EU carriers to operate air services to, from and within the territory of both the UK and the EU on an equal basis. This could be supported through an approach to ownership and control that avoids introducing additional barriers to businesses. There is precedent for this within the EU-Canada Air Services Agreement, which provides for the possibility of fully liberalised access subject to a sufficiently open bilateral approach to ownership and control.
131. As set out in section 1.2 of this chapter, the UK will seek participation in EASA. In addition to ensuring that manufacturers should only need to undergo one series of tests in either market, this would also support collective work on aviation safety, reducing regulatory barriers for businesses and ensuring continued high standards for safety across Europe.
132. The UK will seek close cooperation on air traffic management to maintain interoperability, and benefit consumers and the environment, through reduced journey times, lower costs and lower emissions. In addition, the UK will continue close collaboration on aviation security, so that the UK and the EU can continue to address evolving shared threats in the most effective way.

---

<sup>38</sup> 'Beyond the Horizon: The Future of UK Aviation' (page 8), Department for Transport, July 2017

<sup>39</sup> 'NAT News 2016', NATS, 2016, accessed August 2017

<sup>40</sup> 'International and Other International Terminal Traffic 2017', CAA, 2018



## 1.7.2 Road transport

133. The road transport sector provides a highly efficient network of connections between the UK and the EU, supporting supply chains. While the vast majority of freight lifted in the UK is domestic,<sup>41</sup> approximately 80 per cent of UK cross-border haulage is handled by non-UK hauliers,<sup>42</sup> demonstrating the importance of continued connectivity to both the UK and the EU.
134. The UK wants to explore options for reciprocal access for road hauliers and passenger transport operators, and arrangements for private motoring. The UK is taking legislation through Parliament to ensure that a permitting system can operate if required. The UK has already agreed with the EU that the necessary conditions must be maintained for North-South cooperation on transport between Northern Ireland and Ireland. In line with the statutory provisions the UK has brought forward in Parliament, and the progress made with the EU on preserving cross-border cooperation, the UK will ensure that there is no requirement in any scenario for new permits for transport services between Northern Ireland and Ireland.

## 1.7.3 Maritime

135. The maritime sector is liberalised at a global level. On that basis, UK ship operators will be able to serve EU ports largely as now, following the UK's withdrawal from the EU. In the interests of tackling shared safety, security and environmental issues, the UK proposes to continue cooperating closely with both the EU and the EMSA, including sharing information on safety and to counter pollution. The UK is at the heart of the global maritime industry and has recognised expertise in areas such as safety and accident investigation, which are vital to ensuring the safety of ships, passengers and crew. The UK will continue to be a strong advocate for the safety and environmental performance of shipping, and an active member of the International Maritime Organization (IMO).

## 1.7.4 Rail

136. The UK and relevant Member States have a common interest in ensuring that cross-border rail services, the Channel Tunnel and the Belfast-Dublin Enterprise line, continue without disruption. Over 10 million passengers travelled on the Eurostar in 2017, and the Eurotunnel's passenger and freight shuttle carried 2.6 million passenger vehicles, 1.6 million HGVs and 51,000 coaches in 2017.<sup>43</sup> The EU and the UK have agreed that the UK will pursue bilateral agreements with France, Belgium and the Netherlands to ensure the continued smooth functioning and operation of services through the Channel Tunnel, and with Ireland to do the same for the Belfast-Dublin Enterprise line. Beyond those cross-border services, the UK will have the flexibility to shape its own domestic railway legislation to meet the needs of its

<sup>41</sup> 'National, international loaded and unloaded, cross-trade and cabotage transport, 2014-2015 (million tkm)', Eurostat, 2017, accessed August 2017

<sup>42</sup> 'International Road Freight Activity Statistics', Tables RSF0201, RFS0208, RFS0209, Department for Transport, 2017. Data for 2015

<sup>43</sup> 'Traffic Figures', Eurotunnel, accessed February 2018

passengers and freight shippers, and reflect the unique characteristics of the rail network within the UK.

### 1.7.5 Electricity and gas

137. The UK remains committed to delivering cost-effective, clean and secure energy supplies. The UK has worked closely with European partners to liberalise and open energy markets, with wide-ranging UK energy sector expertise being highly regarded across the EU.
138. The Government is committed to facilitating the continuation of the Single Electricity Market (SEM) between Northern Ireland and Ireland. This is an example of North-South cooperation that has benefited consumers and the economies of Northern Ireland and Ireland. Negotiators have already made good progress on a legal provision to underpin the SEM in the Withdrawal Agreement and the UK will work with the EU to ensure that the SEM is maintained in any future scenario.
139. The UK is seeking broad energy cooperation with the EU, including arrangements for trade in electricity and gas, cooperation with EU agencies and bodies, and data sharing to facilitate market operations. It is common practice for countries to trade internationally in electricity and gas, and there has been a trend towards greater interconnectivity that has brought mutual benefits to trading partners, including lower prices for consumers and improved security of supply. Trade in electricity takes place through interconnectors, the physical links which allow electricity to be moved between markets. There are currently three interconnectors between Great Britain and EU Member States, one to France, one to the Netherlands, and one to Ireland. There are others in development, for example with Belgium, Norway and Denmark.<sup>44</sup>
140. The UK wants to explore with the EU the options for the future energy relationship. One option would be for the UK to leave the Internal Energy Market (IEM). In this case, the UK would explore what would be needed to ensure trade over interconnectors would continue without automatic capacity allocation via the IEM system. An alternative option would be for the UK to participate in the IEM to preserve the existing efficient trading practices over interconnectors. In this case, the UK would need a common rulebook with the EU on the technical rules for electricity trading, such as the market coupling mechanism – as well as a consistent approach to carbon pricing necessary for the market to function, which, for example, could be delivered by remaining in the EU's Emissions Trading System. However, the UK does not believe that participation in the IEM should require a common rulebook on wider environmental and climate change rules.
141. There are also advantages to close cooperation on technical and regulatory energy arrangements. The UK wants to explore with the EU the options for continued Transmission System Operator participation in the Inter-Transmission System Operator Compensation Mechanism, and continued membership of the European Networks of Transmission System Operators for Electricity (ENTSO-E) and Gas (ENTSO-G).

---

<sup>44</sup> 'Electricity Interconnectors', OFGEM, accessed May 2018

142. The UK is also putting in place arrangements so that, when trading after exit, businesses will have certainty that they will not face substantially different requirements compared to their current obligations under the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT).

### 1.7.6 Civil nuclear

143. The UK will seek a close association with Euratom: a new relationship that is more comprehensive and broad than any existing agreement between Euratom and a third country and would help ensure the UK's standing as a leading and responsible civil nuclear state is maintained. This would be mutually beneficial for the UK and the Euratom Community, who will continue to share a common interest in ensuring energy resilience and security within Europe. Close cooperation on civil nuclear matters would also benefit citizens and businesses in the UK and across the EU, whether related to secure energy supplies, or the safeguarding of nuclear materials, equipment and technology.
144. The UK proposes that this new relationship should be based on a comprehensive NCA between Euratom and the UK. This should:
- a. establish a cooperation mechanism between the UK safeguards regulator (the Office for Nuclear Regulation) and Euratom, enabling activity such as technical information exchanges, joint studies and consultation on regulatory or legislative changes;
  - b. provide for UK association with the Euratom Research and Training Programme, as part of an ambitious science and innovation accord;
  - c. ensure continuity of contractual arrangements for the supply of nuclear material, either by allowing for existing nuclear supply contracts with the UK to remain valid after the UK's exit, or by providing for their seamless re-approval prior to the UK's exit;
  - d. minimise barriers and simplify export control arrangements in the trade and transfer of sensitive nuclear materials, equipment and technology between the UK and the Euratom Community;
  - e. provide for technical cooperation on nuclear safety including continued notification and information sharing arrangements on radiological events and monitoring, with the UK participating in EU systems such as the European Community Urgent Radiological Information Exchange (ECURIE) and the European Radiological Data Exchange Platform (EURDEP); and
  - f. continue UK cooperation and information-sharing with the European Observatory on the Supply of Medical Radioisotopes.

### 1.7.7 Civil judicial cooperation

145. Civil judicial cooperation is mutually beneficial to both the UK and the EU. Businesses benefit from legal certainty in the event of disputes and are more confident trading across borders. Consumers and employees benefit from protections for weaker parties. Cross-border families benefit from clear rules to resolve disputes in sensitive matters quickly and efficiently. The future relationship between the UK and the EU should protect these advantages.
146. The EU has already shown that a deeper level of civil judicial cooperation with third countries is both legally viable and operationally achievable, including through the Lugano Convention, which provides for cooperation between EU and European Free Trade Association (EFTA) countries. Under this Convention, EU Member States and third countries apply the same rules on civil and commercial judicial cooperation, and commit to pay due regard to how each other's courts interpret those rules. This architecture provides a clear precedent for close cooperation between the EU and a third country.
147. To ensure cooperation can continue in these areas at least, the UK will therefore seek to participate in the Lugano Convention after exit. However, while the UK values the Lugano Convention, some of its provisions have been overtaken, and it is limited in scope. In addition, the European Council's Guidelines have suggested the possibility of going beyond existing precedent.
148. The UK is therefore keen to explore a new bilateral agreement with the EU, which would cover a coherent package of rules on jurisdiction, choice of jurisdiction, applicable law, and recognition and enforcement of judgments in civil, commercial, insolvency and family matters. This would seek to build on the principles established in the Lugano Convention and subsequent developments at EU level in civil judicial cooperation between the UK and Member States. This would also reflect the long history of cooperation in this field based on mutual trust in each other's legal systems. The Government will also continue to work closely with the devolved administrations to ensure that the future arrangements for cooperation with the EU take into account the separate and distinct legal systems in Scotland and Northern Ireland.

### 1.7.8 Intellectual property

149. Intellectual property (IP) rights play an essential part in encouraging the universal benefits of innovation and creativity, as well as protecting the reputation of products and services and helping prevent consumers from being misled about the quality or provenance of goods. The high quality service offered by the UK's rights-granting bodies and courts system help to make the UK one of the best places in the world to protect and enforce IP rights.<sup>45</sup>

---

<sup>45</sup> The UK's intellectual property system is highly rated in international indices. For example, the UK is ranked third in the world in the Global Intellectual Property Index ('Global IP Index', Taylor Wessing, June 2016) and fifth in the world in the Global Innovation Index 2017 ('Global Innovation Index 2017', The Global Innovation Index, 2017)

150. There is a long history of European cooperation on patents, which can be costly to enforce in multiple jurisdictions. Most recently, this includes the agreement on a Unified Patent Court to provide businesses with a streamlined process for enforcing patents through a single court, rather than through multiple courts.
151. The UK has ratified the Unified Patent Court Agreement and intends to explore staying in the Court and unitary patent system after the UK leaves the EU. The Unified Patent Court has a unique structure as an international court that is a dispute forum for the EU's unitary patent and for European patents, both of which will be administered by the European Patent Office. The UK will therefore work with other contracting states to make sure the Unified Patent Court Agreement can continue on a firm legal basis.
152. Arrangements on future cooperation on IP would provide important protections for right holders, giving them a confident and secure basis from which to operate in and between the UK and the EU.

### 1.7.9 Audit and accounting

153. UK and EU companies benefit from shared accounting standards and accounting and audit regulatory frameworks. These provide access to capital markets, foster investor confidence, and facilitate the cross-border provision of accounting and audit services.
154. There are numerous precedents between the EU and third countries for audit equivalence and adequacy, and accounting equivalence. The UK will seek EU equivalence and adequacy decisions under the EU's third country regimes by the end of the implementation period.

## 1.8 Independent trade policy

155. The UK's proposal for its future economic partnership with the EU would provide a strong foundation for the UK to establish a broad and ambitious independent trade policy with the rest of the world.
156. Trade is essential for growth and prosperity. It stimulates greater business efficiency and higher productivity, sharing knowledge and innovation across the globe. Trade boosts jobs, raises living standards and provides a foundation for stronger and more prosperous communities. It ensures more people can access a wider choice of goods at lower cost, making household incomes go further. Businesses also benefit from cheaper and better inputs, and trade is vital to the UK's prosperity – total UK trade (covering imports and exports of goods and services) was worth £1.26 trillion in 2017.<sup>46</sup>

---

<sup>46</sup> 'ONS Balance of Payments: Quarter 1 (January to March)', ONS, June 2018

### 1.8.1 Delivering an independent trade policy

157. As the UK leaves the EU, the Government is committed to ensuring that UK and EU businesses and consumers can continue to trade freely with one another, as part of a new deep and special partnership. The UK would also boost trade relationships with old friends and new allies. The EU itself estimates that 90 per cent of global economic growth over the next two decades will be generated outside the EU.<sup>47</sup> The UK is already seeking continuity in its existing trade and investment relationships, including those covered by EU FTAs or other EU preferential arrangements. The UK's exit from the EU will provide considerable additional opportunities for UK business through potentially ambitious new trade arrangements and meaningful trade deals that play to the strengths of the UK economy.
158. The UK's proposals for its new economic partnership with the EU would allow the UK to negotiate new international trade agreements in line with its priorities and interests covering goods, services, investment, data, government procurement, and intellectual property, consistent with the commitments in the economic partnership. Under the terms of the Withdrawal Agreement with the EU, the UK would be free to negotiate, sign, and ratify FTAs during the implementation period, and to bring them into force from January 2021. When concluded, these would be the first FTAs signed by the UK in its own right since the European Free Trade Association in 1960.
159. The UK would be able to pursue an ambitious bilateral trade agenda, taking full advantage of the flexibility its proposal for the future economic partnership provides. This would include agreements with the US, Australia and New Zealand. The UK will potentially seek accession to Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and this would be on terms consistent with the future relationship with the EU, and domestic priorities.
160. On services, the UK would seek to achieve provisions at the cutting edge of global best practice, reflecting both the great potential to deepen services trade worldwide, and the significance of services trade to the UK which is growing at a faster rate than the trade in goods.<sup>48</sup> The UK would push for greater liberalisation of global services, financial services, investment and procurement markets, and seek ambitious digital trade packages.
161. On goods, the proposals set out in section 1.2 of this chapter, including the Facilitated Customs Arrangement (FCA), would enable the UK to set its own tariffs and vary them as it chooses, independently of the tariffs the EU applies. Under the UK's proposal, it is estimated up to 96 per cent of UK goods trade would be most likely to pay the correct or no tariff upfront, with the remainder most likely to use the repayment mechanism.<sup>49</sup> This would minimise administrative burdens and maximise the value offered by UK preferential tariff reductions, enabling the UK to make a strong and compelling tariff offer in negotiations. For the small proportion of trade

---

<sup>47</sup> 'GDP estimates 2014-2020 and EU contribution to world GDP growth (year-on-year changes)', EU Commission, March 2016

<sup>48</sup> 'UK Economic Accounts: all data (January to March 2018)', ONS, June 2018

<sup>49</sup> Based on 2017 data on trade flows, proportion of goods classified as intermediate/unfinished and MFN tariff schedules. UN Comtrade statistics, World Integrated Trade Solution tariff data, Broad Economic Category data, EU Customs and Taxation Union website

where the importer would need to pay the higher tariff and reclaim the difference, processes would be as smooth and efficient as possible.

162. Where there is a material risk of circumvention of higher UK tariffs, the UK would make it illegal to pay the wrong tariff, and use risk and intelligence based checks across the country, rather than at the border, to check that the right tariffs are being paid. This would protect against fraud, ensure that the UK has an effective trade remedies regime and strengthen the UK's position in trade negotiations.
163. In the context of trade negotiations, a common rulebook for goods would limit the UK's ability to make changes to regulation in those areas covered by the rulebook. If the Government wanted to make a change, including in light of trade negotiations with other partners, it could discuss this with the EU through the mechanisms set out in chapter 4. However, the UK would retain the freedom to make changes in other areas of regulation if considered desirable domestically. It would also have the freedom to reach new agreements with third country trading partners on the underpinning compliance activity, for instance through the mutual recognition of conformity assessments. The latter would mean that testing bodies in partner countries could test products for the UK market, and vice versa. This could be achieved through the introduction of a UK mark.
164. The UK would play a full and prominent role in the multilateral and plurilateral trade agenda, as a member of the Government Procurement Agreement in its own right, working with others to make progress on the Trade in Services Agreement, and seeking new agreements in areas of significance to the global economy such as digital.
165. More widely, the UK would have its own seat and vote in the WTO, where it would support the rules-based global trading system. It would become an independent member, with the right to set its own trade schedules and strike its own bilateral, plurilateral and multilateral deals. The UK would advocate for the reduction of barriers to trade, particularly those stopping poorer countries accessing richer markets. The UK would also use its voice in the WTO to resist unfair protectionism, tackle unfair trading practices and hold others to account for the global rules.
166. The UK would aim to make trade work for everyone. The UK would work with all stakeholders to ensure the benefits of trade are widely felt and understood. The UK's approach to trade would align with its modern Industrial Strategy. That will be key to delivering an innovative, competitive and growing UK economy that benefits individuals and communities and makes sure the value of trade is more widely shared.
167. Free trade does not mean trade without rules. To operate an independent trade policy, the UK will need to put in place an independent trade remedies framework to protect domestic industry against unfair and injurious trade practices. The UK will be able to investigate cases and enforce measures that offer proportionate protections for producers. In preparation for this, the UK is identifying existing EU measures that are essential to UK business and will need to be carried forward.

168. In addition, the WTO's existing trade dispute settlement mechanism aims to resolve trade conflicts between countries and, by underscoring the rule of law, makes the international trading system more predictable and secure. The UK will be ready to act independently to protect UK interests should its trading partners fail to meet their international obligations and to defend any disputes brought against the UK.
169. The UK would support developing countries to reduce poverty through trade. As the UK leaves the EU, it would maintain current access for the Least Developed Countries (LDCs) to the UK market and aim to maintain the preferential access of the remaining (non-LDC) developing countries, including those countries with which it has Economic Partnership Agreements. The UK would promote the economic empowerment of all women through a gender-responsive trade policy. One study has estimated that if women played the same role as men in labour markets, as much as £18 trillion could be added to global GDP by 2025.<sup>50</sup>
170. Global trade rules and agreements are only as good as the use that people can make of them. The Government will ensure that the UK's export and inward investment environments are world-class, supporting the domestic aspects of the modern Industrial Strategy. The frictionless access to the EU market provided by the FCA and common rulebook would also support the UK's ongoing attractiveness as a destination for Foreign Direct Investment for overseas firms seeking to service both UK and EU markets. This is likely to be particularly relevant to manufacturing sectors with integrated supply chains.
171. Taken together, the UK's independent trade policy will ensure the UK is ready for the opportunities and challenges presented by the global mega-trends: industrialisation and urbanisation in emerging economies; the rise of disruptive technologies in all sectors; a radical demographic transformation across the world; and greater, deeper, and quicker global interconnectedness. The UK will be agile enough to provide thought leadership on the shape and design of new global rules for new and disruptive technologies.<sup>51</sup>

---

<sup>50</sup> A study undertaken by McKinsey: 'The Power of Parity' McKinsey Global Institute, September 2015. Original figure \$28 trillion, converted to £ using Bank of England daily spot exchange rate for 30 June 2015

<sup>51</sup> Renewable energy, advanced oil and gas exploration and recovery, advanced materials, 3D printing, energy storage, next generation genomics, autonomous and near-autonomous vehicles, advanced robotics, internet of things, cloud technology, automation of knowledge work, mobile internet



# Chapter 2 – Security partnership

## 2.1 Summary

1. The UK and the EU face a host of new and growing security threats and challenges. These are unprecedented and do not recognise the borders of individual nations or discriminate between them. As the European Council guidelines<sup>52</sup> set out, these threats are common to European countries, and they call for a pan-European response. Europe should stand strong and united in its efforts to ensure the collective security of UK and EU citizens.
2. The UK has already set out an ambitious vision for the UK's future security relationship with the EU.<sup>53</sup> The UK recognises that leaving the EU means the security relationship between the UK and the EU cannot continue on the same basis as before. Nevertheless, given shared interests and threats, the UK seeks an ambitious partnership covering the breadth of security interests including foreign policy, defence, development, law enforcement and criminal justice cooperation. It should be supported by ongoing cooperation through partnership programmes and key safeguards such as individual rights, data protection and robust governance arrangements, to underpin the trust which is essential to such a close relationship.
3. The future security partnership needs to protect citizens across Europe, including the 3.5 million EU citizens living in the UK<sup>54</sup> and approximately 800,000 UK nationals living in the EU.<sup>55</sup> The ability to protect citizens within Europe is increasingly intertwined with broader foreign policy, defence and development objectives outside Europe. It is necessary to have a single, coherent security partnership between the UK and the EU to address: the roots of terrorism and prevent attacks; identification of terrorists and efforts to bring them to justice; instability in the neighbourhood and work to prevent offering a haven for organised crime; migration challenges affecting Europe; the provision of development funding across the world; and the use of data in a range of contexts.
4. The UK and the EU sit at the heart of the rules-based international system as champions of multilateralism. The security partnership should reinforce the UK's and the EU's network of international relationships, including the UK's role as a leading NATO Ally and a permanent member of the United Nations Security Council. The UK will work alongside the EU and its Member States in international fora such as the United Nations (UN), G7, G20, International Monetary Fund (IMF), World Bank, Organisation for Economic Cooperation and Development (OECD) and Organisation for Security and Cooperation in Europe (OSCE), to promote global security and prosperity, and to hold to account those who seek to do the UK and its allies harm.

<sup>52</sup> 'European Council (Art.50) Guidelines, European Council', 23 March 2018, Para. 13 (i)

<sup>53</sup> 'PM speech at Munich Security Conference', 17 February 2018

<sup>54</sup> 'Population of the UK by country of birth and nationality, January 2017 to December 2017', ONS, May 2018

<sup>55</sup> 'Living abroad: British residents living in the EU', April 2018', ONS, 2018

5. The UK's vision for the future security relationship is underpinned by five key principles. The relationship should:
- a. **protect shared operational capabilities that keep people safe.** Working together through different structures should not be at the expense of protecting the public. The shared tools, measures, initiatives and capabilities that have been developed over the last 40 years have been proven to save lives. The UK proposals are both legally viable and operationally important.
  - b. **respect the sovereignty of the UK and the autonomy of EU decision making.** The UK will play no formal role in EU decision making and will make independent decisions in foreign policy, defence and development. National security will remain the sole responsibility of the UK and Member States respectively. These proposals ensure that the UK and the EU can continue to work together where it is mutually beneficial.
  - c. **have an institutional framework that delivers a practical and flexible partnership.** The UK proposal is for scalable arrangements that would ensure the UK and the EU can combine efforts to the greatest effect, and can be intensified when a crisis or serious incident occurs.
  - d. **be dynamic and keep pace with growing global challenges and evolving threats.** Where the UK participates in EU measures as part of its future relationship, it is in the shared interest of the UK and the EU to ensure that as these measures evolve, or new measures are introduced, consideration can be given to continued cooperation with the UK.
  - e. **be underpinned by appropriate safeguards:** respect for human rights, comprehensive data protection arrangements and robust, appropriate governance arrangements. The UK is committed to membership of the European Convention on Human Rights (ECHR). The UK also has very high standards of data protection in line with the General Data Protection Regulation (GDPR) and the Law Enforcement Directive, and intends to remain a global leader on data protection standards. The UK's approach to data protection is set out in chapter 3.2, and this would underpin the data flows and protections necessary to support the security partnership. The UK proposes that robust governance arrangements should be established, appropriate to the security arrangements agreed by the UK and the EU, as set out in chapter 4.

6. To deliver on these principles, the security partnership should:
  - a. be informed by the UK's and the EU's **shared security context**, recognising the links between the 2016 EU Global Strategy and the 2018 UK National Security Capability Review (NSCR), and their assessments of threats at home and overseas;
  - b. protect shared **law enforcement and criminal justice cooperation capabilities**, including the ability to share time-sensitive data and information, practical cooperation to investigate serious criminality and terrorism, and cooperation through the EU agencies Europol and Eurojust;
  - c. continue cooperation on **foreign policy, defence and development**, including consultation on the global challenges that the UK and the EU face, coordination where it is more effective to work side-by-side, and capability development to deliver the means to tackle current and future threats; and
  - d. support joint action on **wider security issues**, including asylum and illegal migration, cyber security, cooperation on counter-terrorism, civil protection and health security.
  
7. The security partnership will be a core pillar of the future relationship between the UK and the EU. The UK and the EU share the objective of an ambitious future relationship which protects the safety and interests of EU and UK citizens.

## 2.2 Shared security context

8. The UK and the EU share a common assessment of threats, as set out in the 2016 EU Global Strategy<sup>56</sup> and the 2018 UK National Security Capability Review (NSCR)<sup>57</sup>:
  - a. **The increasing threat posed by terrorism, extremism and instability.** The threat of Islamist terrorism, demonstrated in despicable attacks across Europe, is expected to continue for the foreseeable future. Extreme right-wing terrorism also continues to be a growing threat. Protracted conflicts, including those ongoing in the Middle East, Sahel and Sub-Saharan Africa, have destroyed basic social infrastructure, stalled education, created large-scale humanitarian and development need and hampered economic growth. This drives migration, with criminals exploiting the vulnerable including through human trafficking and modern slavery. Conflict and instability can also allow terrorists and organised crime groups to thrive.
  - b. **The resurgence of state-based threats.** There is a well-established pattern of Russian State aggression and disruption, including Russia's indiscriminate and reckless use of a military-grade nerve agent on British soil, the illegal annexation of Crimea, the fomenting of conflict in the Donbas, support to the Assad regime and a sustained campaign of cyber espionage. North Korea has flagrantly violated international law through repeated nuclear and missile tests. Iran's destabilising activity in the Middle East continues. Competition between states in the Middle

<sup>56</sup> 'A Global Strategy for the European Union's Foreign And Security Policy', European Commission, June 2016

<sup>57</sup> 'National Security Capability Review (NSCR)', Cabinet Office, March 2018

East, South Asia and East Asia, including in the South China Sea, increases tensions and the risk of conflict.

- c. **The erosion of the rules-based international order the UK and the EU seek to uphold, making it harder to build consensus and tackle global threats.** This is most clearly evidenced by the repeated stalemates in the Security Council on the use of chemical weapons in Syria.
  - d. **The ongoing growth in serious and organised crime and its impact on security and prosperity.** Serious and organised crime is inherently transnational and many of the threats the UK and the EU face within Europe emanate from overseas. Organised crime groups have a daily, corrosive impact on public services and infrastructure. The same forces that benefit legitimate business, globalisation and technological change, make organised criminal networks and markets more resilient. Wider economic cooperation is more important than ever in tackling anti money laundering regimes.
  - e. **The impact of technology, especially cyber threats and wider technological developments.** Malicious cyber activity knows no international boundaries and has grown in terms of intensity, complexity and severity over the course of the last year. There are several established and capable states that seek to target and exploit UK and European networks and devices to gather intelligence or intellectual property. Indiscriminate, disruptive incidents cost billions in damage to Europe's economy. The proliferation of low-cost, high-end commercial capabilities, novel weapons and sophisticated data-driven technologies, including autonomous systems are also changing the security environment.
  - f. **Diseases, natural hazards and deliberate threats affecting the UK and the EU.** No country is immune to an infectious disease in another part of the world. The Ebola outbreak in 2014 is just one example of this threat, where cooperation between the UK, Member States and the European Commission mobilised international resources and helped halt the spread of the disease across West Africa.
9. The world is becoming more complex and volatile. These complex and overlapping challenges are likely to remain security priorities for the UK and the EU over the next decade. To respond effectively will require a transformative approach, using the widest possible range of capabilities at the disposal of the UK and the EU. They require an unprecedented depth and breadth of cooperation to keep people safe across the whole of the continent.

## 2.3 Law enforcement and criminal justice cooperation

10. Criminals and terrorists operate across borders. The threat they present has grown in intensity, complexity and severity. Criminal networks are increasingly resilient and adaptable, exploiting technology and becoming involved in almost every type of crime.
11. The EU and its Member States have created a range of legal, practical and technical capabilities to combat these challenges at a European level through close cooperation between countries. These capabilities are mutually reinforcing, from the

initial stages of identification and investigation of a suspect, through to arrest, prosecution and prisoner management. Together, they prevent criminals from using international borders to avoid detection and justice, safeguard against threats to public security and protect citizens and victims of crime.

12. It is vital that the UK and the EU maintain these capabilities in the future, while recognising that the relationship has changed. The UK currently participates in around 40 EU tools that support and enhance police and judicial cooperation in criminal matters.<sup>58</sup> Many of these tools work together to provide an integrated operational system to identify, pursue and prosecute criminals and terrorists.
13. The UK therefore proposes an ambitious partnership with the EU that goes beyond existing precedents in this area, covering:
  - a. mechanisms for rapid and secure data exchange;
  - b. practical measures to support cross-border operational cooperation; and
  - c. continued UK cooperation with EU law enforcement and criminal justice agencies.
14. The EU's position, as set out in the European Council's guidelines in March, is that the relationship will need to take into account the fact that the UK will be a third country outside of Schengen. The UK recognises that leaving the EU will have consequences for the nature of the security relationship between the UK and the EU.
15. Nevertheless, the UK believes there is mutual interest in avoiding the creation of unnecessary gaps in operational capabilities. It will be important that the UK and the EU approach discussions with a focus on achieving the operational outcomes necessary to protect the security of the continent. As the UK leaves the EU, the UK will continue to have operational processes which closely align with EU tools and data sharing systems which are uniquely compatible with the EU. This means it is possible for operational cooperation to continue, albeit on the basis of a different legal relationship.
16. The UK also currently cooperates on the basis of some Schengen measures such as the Schengen Information System (SIS II), despite not being a full member of Schengen, and there will continue to be a substantial number of people crossing the UK border each year once the UK has left the EU.
17. The EU and third countries have previously agreed new legal frameworks for close cooperation on other areas of the *acquis* through strategic agreements, where there is mutual interest in doing so.<sup>59</sup> A similar structured framework would enable the UK and the EU to continue cooperation on the basis of existing EU measures, whilst respecting the UK's sovereignty and the EU's decision making autonomy and with appropriate safeguards.

---

<sup>58</sup> 'Technical Note: Security, Law Enforcement and Criminal Justice', Department for Exiting the European Union, May 2018

<sup>59</sup> 'Technical Note: Security, Law Enforcement and Criminal Justice', Department for Exiting the European Union, May 2018

18. The UK therefore proposes a coherent and legally binding agreement on internal security that sets out respective commitments and reflects the integrated operational capabilities that the UK and the EU share. The UK's ambition is to cooperate on the basis of existing tools and measures that support these capabilities, amending legislation and operational practices as required and as agreed to ensure operational consistency between the UK and the EU. Such an arrangement would preserve shared capabilities, recognise that the relationship has changed and ensure that a dynamic relationship is maintained to meet the shared, evolving threats faced by the UK and the EU. This would:
  - a. provide a legal basis for future cooperation on the basis of existing EU law enforcement and criminal justice tools;
  - b. clearly define the scope of cooperation;
  - c. contain provisions that allow for new areas of cooperation to be added, where it is mutually beneficial, so that the future relationship is dynamic and able to keep pace with technology and changing threats; and
  - d. set out appropriate horizontal provisions on agreed safeguards that will underpin the future relationship.
19. The UK envisages these safeguards would include robust governance arrangements and a dispute resolution mechanism, as set out in chapter 4, supported by comprehensive data protection arrangements. The agreement should also include a mutual commitment to individuals' rights, noting that the UK will remain a party to the ECHR after it has left the EU.
20. The partnership should also include strategic and operational dialogues that allow the exchange of expertise and experience. The EU already holds Justice and Home Affairs (JHA) policy dialogues with a number of third countries, ranging from six-monthly meetings with the US to full consultation, and a mixed committee with Schengen countries on areas of Schengen-relevant JHA policy.

### **2.3.1 Data exchange**

21. The international nature of crime makes the swift, effective and efficient exchange of data essential in modern law enforcement. Increasing volumes of data create a greater need to share and access different datasets quickly and securely, enabled by ever more sophisticated analytical capabilities.
22. The EU has established unrivalled mechanisms which allow Member States to exchange data including passenger name record information, alerts on wanted or missing persons, criminal records, fingerprints and DNA. There are either no precedents, for instance the European Criminal Record Information System (ECRIS), or very limited precedents, for instance Passenger Name Records (PNR), for non-Schengen third countries to participate in these measures. Nevertheless, despite the lack of existing precedents, UK participation in these EU data exchange tools is the only effective way to protect specific cross-border capabilities for UK and EU operational agencies.

23. Without the UK's participation in, and contribution to, these data exchange tools, there would be a significant loss of capability which would reduce the UK's and the EU's ability to protect citizens across Europe. This would mean EU law enforcement agencies lose the ability to identify serious criminals and missing persons as they cross the UK border. It would also result in a reduction in the UK's and the EU's ability to identify and track terrorist networks across Europe.
24. The UK therefore proposes an agreement that helps disrupt criminal activity and facilitate law enforcement activity through the swift exchange of sensitive information and data, including but not limited to:
  - a. information about airline passengers;
  - b. alerts to police and border forces, with access to systems that allow for efficient responses;
  - c. efficient, accurate and reliable exchanges of criminal record information; and
  - d. DNA, fingerprint and vehicle registration.

#### **Information about airline passengers**

25. Identifying known and unknown individuals involved in terrorism related activity and serious crime, and tracking criminal networks from their patterns of travel, are vital law enforcement capabilities currently delivered through the EU-wide approach to processing PNR data. The UK led the development of capabilities to use PNR data to protect the public, building intelligence on the activities of criminals and terrorists to help keep people safe, including through the establishment of a Passenger Information Unit (PIU).
26. As third countries, the US, Canada and Australia have agreements with the EU on the transfer by airlines of European PNR data to their authorities, but they fall short of the cooperation the UK and the EU share today. They do not provide for reciprocal exchange for police and judicial cooperation, and do not enable third countries to work with EU Member States' PIUs to identify travel patterns in the same way as Member States are able to do under the PNR Directive. The UK will therefore seek to maintain the UK's and the EU's capabilities on analysis of PNR, including for intra-EU flights, based on the PNR Directive and its accompanying safeguards and rules.

#### **Alerts to police and border forces**

27. The ability to share and act on real-time data on wanted criminals, missing persons, suspected terrorists and stolen objects ensures they are detected at border crossings and through national police databases. SIS II currently enables police and border force staff to enter and find alerts on wanted or missing persons and objects.
28. In 2017, the UK created over 1.4 million alerts on SIS II. In 2017 alone, UK authorities registered almost 10,000 hits against alerts put on the system by other countries,<sup>60</sup> many of which were related to people linked to terrorism, sex offences, missing children and fugitives.

---

<sup>60</sup> 'National Crime Agency supplementary written evidence to EU Home Affairs Sub-Committee inquiry into the proposed UK-EU security treaty after Brexit (BST0015)', Home Affairs Committee, July 2018

29. The UK's participation in SIS II means that when an EU Member State issues an European Arrest Warrant (EAW), it is transmitted to police and border forces in the UK, and vice versa. This increases the chance of a suspect who has evaded police being arrested in the UK or another Member State and extradited to face justice.
30. SIS II is a major shared operational capability for law enforcement and security agencies across Europe. The UK would protect that capability through maintaining the reciprocal ability to transmit alerts in real time, with access to systems that allow for a timely and efficient response to these alerts through SIS II.
31. As the UK leaves the EU, free movement of people will end. But the numbers of EU nationals living in the UK and the volume of passenger arrivals entering the UK, approximately 130 million in the year ending June 2017, demonstrate just how important it is to continue to share information that can prevent and detect serious crime and terrorism.<sup>61</sup> By continuing to participate in SIS II, the UK would remain bound by its rules, including peer evaluation. The UK is committed to ensuring full compliance in the implementation of SIS II and other EU data exchange measures in which the UK participates in the future.

#### **Exchange of criminal records information**

32. The timely exchange of criminal records is a vital tool in keeping communities safe. ECRIS is a guaranteed and secure source of criminal records for use at any stage in criminal proceedings. Importantly, it is also used for vetting people who work with children and other vulnerable individuals.
33. Between 2014 and 2016, the UK was in the top three most active Member States on ECRIS. In 2016, the UK notified Member States of more than 35,000 convictions handed down to their nationals in the UK, and responded to almost 13,500 requests for information from the EU relating to UK nationals offending in the EU.<sup>62</sup>
34. The UK proposes continued participation in ECRIS as part of the new legal relationship. There is currently no precedent for Member States to systematically exchange criminal records with third countries. Consequently, under the EU's current approach of basing the future relationship on existing precedents for cooperation with third countries, the UK would cease to contribute to and participate in ECRIS. That would deny EU Member States timely access to large volumes of vital information that currently protects the most vulnerable people and supports justice systems to be fair and effective across Europe.

---

<sup>61</sup> 'How many people come to the UK each year?' Home Office National Statistics, August 2017. This includes returning UK nationals

<sup>62</sup> 'National Crime Agency written evidence to Home Affairs Committee inquiry into UK-EU security cooperation after Brexit (PSC009)', Home Affairs Committee, February 2018



### DNA, fingerprint and vehicle registration data

35. Exchanging national DNA data, fingerprints and vehicle registration data helps law enforcement agencies investigate criminality and terrorism. The data exchange tool 'Prüm' currently enables Member States to exchange data in a faster and more efficient way.
36. When the UK piloted Prüm in 2015, approximately 2,500 DNA profiles were shared by the UK with the Netherlands, Spain, France and Germany. The result was 118 hits for offences such as rape, sexual assault and burglary.<sup>63</sup> The UK holds five million DNA profiles, which would nearly double those currently available to the Prüm community. The UK's 500,000 DNA samples from unsolved crimes would bring many criminals to justice.<sup>64</sup>
37. The UK is ready to begin exchanging DNA and fingerprint data with partners via the Prüm system. The UK's approach has been fully evaluated and assessed and the UK has gone to considerable lengths to satisfy all parties of the UK's readiness to participate in full. The UK is seeking to resolve any final outstanding technical issues but is confident there needs to be no barrier to making a substantial contribution to this system. In the future, the UK will be able to run automated, real-time searches against DNA, fingerprint and vehicle data. The UK seeks to protect this capability as part of its future relationship.

### 2.3.2 Practical cooperation

38. In addition to unrivalled data exchange tools, the EU, together with the UK and Member States, has developed a range of practical capabilities that provide for effective cross-border law enforcement and judicial cooperation, all with the aim of bringing more criminals to justice.
39. As the UK and the EU design a new partnership, maintaining efficient and reliable operational capabilities will be vital, including but not limited to:
  - a. the efficient extradition of criminals and wanted individuals between Member States and the UK;
  - b. cooperation of judicial, police and customs authorities in different states; and
  - c. delivering cross-border criminal investigations and prosecutions.
40. New arrangements between the UK and the EU on law enforcement and security must respect Scotland's and Northern Ireland's separate and distinct legal systems, as well as protect and enable continued direct links between justice agencies and their EU counterparts. Similarly, any new arrangements must continue to recognise the independent role of the Lord Advocate, as head of the criminal prosecutions system and the system of investigation of deaths in Scotland.
41. The following examples of practical cooperation illustrate how these tools enable the UK and Member States to work together to act swiftly in response to real-time

<sup>63</sup> 'Prüm Business and Implementation Case', Home Office, November 2015

<sup>64</sup> 'National DNA Database Strategy Board Annual Report 2015/16', Home Office, February 2017

developments, to arrest criminals who have fled overseas and to efficiently extradite them to face justice before the relevant jurisdiction.

### **Extradition of wanted individuals**

42. The swift extradition of wanted individuals to ensure they face prosecution or serve prison sentences is a vital tool in delivering justice and helping to keep communities safe. The EAW has closed loopholes and transformed extradition arrangements within the European Union. The EAW has streamlined the extradition process within the EU and made it easier to ensure wanted persons are brought to justice, or serve a prison sentence for an existing conviction. When a request is issued for an individual wanted to face prosecution for a crime, the receiving Member State's courts recognise this automatically and start simplified domestic proceedings, avoiding the need for the request to pass through government ministries. This is based on the principle of mutual recognition and trust between Member States. The EAW continues to play a vital role in police cooperation between Ireland and the UK (including Northern Ireland).
43. Since April 2009, as a result of the EAW, the UK has arrested more than 12,000<sup>65</sup> individuals, and for every person arrested on an EAW issued by the UK, the UK arrests eight on EAWs issued by other Member States<sup>66</sup>.
44. Existing extradition arrangements between the EU and third countries do not provide the same level of capability as the EAW. The agreement with Norway and Iceland was concluded in 2006 but has not yet come into force. Once implemented, it will leave a capability gap relative to the EAW, including additional grounds for refusal to surrender.
45. Likewise, reverting to the Council of Europe Convention on extradition would result in cumbersome, slow and significantly more expensive arrangements between the UK and the EU, delaying justice and reducing shared capabilities to keep citizens safe.
46. The UK recognises that being a third country creates some challenges for the full operation of the EAW as it stands, particularly in terms of the constitutional barriers in some Member States to the extradition of their own nationals. The Withdrawal Agreement will address this issue as part of the implementation period. The UK believes the arrangements for the EAW during the implementation period, which will take account of constitutional barriers in some Member States, should be the basis for the future relationship on extradition. This will be underpinned by the mutual trust generated by the long history and experience of operating the EAW between the UK and the EU.

### **Cooperation between judicial, police and customs authorities**

47. Cooperation between judicial, police and customs authorities enables them to share evidence between different states and provide practical assistance in live investigations. Currently, this is done through Mutual Legal Assistance (MLA) within the EU. Requests can involve the exchange of information and evidence or the

---

<sup>65</sup> 'National Crime Agency written evidence to Home Affairs Committee inquiry into UK-EU security cooperation after Brexit (PSC009)', February 2018

<sup>66</sup> 'European Arrest Warrant statistics', National Crime Agency

provision of practical investigative assistance. In the EU, a number of mutual recognition measures have been introduced to facilitate faster cooperation in this field, such as the European Investigation Order (EIO). This obliges Member States to recognise and action requests made by other Member States, as they would from their own authorities.

48. The UK routinely exchanges evidence with Member States to support investigations in a timely and reliable manner and in a way that is admissible in domestic court proceedings. Since the EIO entered into force in August 2017, the UK has received hundreds of requests. These levels are expected to rise as more Member States participate. Applying a streamlined approach to recognising and executing requests is therefore mutually beneficial to the UK and other Member States.
49. The UK proposes retaining an efficient and secure evidence exchange in cross-border criminal investigations on the basis of the EIO. There is no precedent for third country participation in the EIO. Although there are some precedents on MLA with countries such as the US and Japan, these agreements fall short of the levels of cooperation that currently benefit both the UK and the EU. The result would be significantly slower and less efficient provision of assistance that would impede justice being served. In contrast, UK participation in the EIO would enable UK and EU investigation and prosecution authorities to continue to cooperate on the basis of a successful, understood and highly effective mechanism.

### **Cross-border criminal investigation and prosecution teams**

50. Given the intricacies of cross-border criminality, the coordination of criminal investigations and prosecutions between several Member States is increasingly important. Currently, this is done through Joint Investigation Teams (JIT) which are established to support criminal investigations and prosecutions across multiple jurisdictions. JITs enable more efficient, effective and speedier justice.
51. The UK contributes cutting-edge expertise and leadership to cross-border JITs that collect and exchange evidence in the investigation of the most serious crimes. The UK participates in a number of JITs, many of which are in partnership with one other Member State. Under the EU framework, third countries can be invited to join a JIT in some circumstances, but they cannot participate in JITs with just one Member State nor can they apply for funding or initiate the establishment of coordination meetings at Eurojust to discuss establishing a JIT. The current level of cooperation would not be possible if the UK were no longer able to join a JIT involving just one Member State, meaning investigations could be significantly delayed or compromised altogether. The UK is therefore seeking full participation rights in JITs including the ability to initiate them.

### **2.3.3 Agencies**

52. EU agencies provide forums for exchanging expertise, sharing resources, coordinating investigations and developing new methods for cooperation. Having law enforcement officers and legal experts working in close proximity means operations and judicial proceedings can be coordinated quickly.

53. It is in the mutual interests of the UK and the EU for the UK to continue close cooperation with EU law enforcement and criminal justice agencies to:
  - a. prevent serious and organised crime and terrorism, via access to analytical capabilities and databases; and
  - b. enable prosecutors, magistrates and law enforcement officers to assist national authorities in investigations and prosecutions of serious cross-border criminal cases.
54. Where the UK participates in an EU agency, the UK will respect the remit of the Court of Justice of the European Union (CJEU) as set out in chapter 4.

### **Serious and organised crime and terrorism**

55. Europol is the EU law enforcement agency that aims to strengthen and facilitate cooperation to prevent serious and organised crime and terrorism. Member State partners as well as non-EU partner states and organisations participate in Europol. The agency itself provides crucial analytical support and houses databases of significant law enforcement data that can be connected to better facilitate intelligence-led investigations.
56. The UK is one of the biggest contributors of data, information and expertise to Europol, providing key technical and operational knowledge to the development of new and existing EU measures. In 2016, the UK was the highest contributor to Europol serious and organised crime analysis projects, and the highest contributor of information in relation to firearms, child sexual exploitation and abuse, money laundering, cyber, and modern slavery.<sup>67</sup> UK liaison officers offer valuable expertise in dealing with other countries' policing systems and helping progress EU wide investigations.
57. The existing third country agreements with Europol do not provide direct access to Europol's databases and the streamlined exchange of data. They generally do not allow national experts to be embedded within Europol and do not enable the third country to initiate activity in the same way. The UK would not be able to maintain its current contribution to Europol on the basis of an agreement along those lines, in part due to the sheer volume of activity the UK participates in and the data that the UK shares.

### **Investigations and prosecutions of serious criminal cases**

58. Eurojust is the EU agency that brings together prosecutors, magistrates and law enforcement officers from each of the EU Member States who assist national authorities in investigating and prosecuting serious cross-border criminal cases. It does so by coordinating the activities of the national authorities responsible for a particular case and facilitating the collection of evidence under EU and other international mutual legal assistance arrangements.
59. The UK contributes to Eurojust by providing specialist law enforcement intelligence capabilities and knowledge via liaison networks and national experts. In 2016, the UK

---

<sup>67</sup> 'National Crime Agency written evidence to Home Affairs Committee inquiry into UK-EU security cooperation after Brexit (PSC009)', Home Affairs Committee, February 2018

participated in more than 80 coordination meetings at Eurojust and the UK coordinated over 30 of these, all of which support law enforcement activities. In 2017, UK support through national desk officers was requested 290 times, making the UK the second highest Member State receiving information requests and a net contributor to Eurojust.<sup>68</sup>

60. If the UK's participation in Eurojust were limited to the terms of existing third country agreements, the UK and Member States would lose the ability to initiate bilateral coordination meetings and there would be limitations on the extent to which the Crown Prosecution Service and Crown Office prosecutors could work with Eurojust. As a result, there would be fewer opportunities for the UK to contribute to the work of Eurojust and reduced capability for the UK and the EU to cooperate in tackling serious cross-border and organised crime.

## 2.4 Foreign policy, defence and development

61. The UK, the EU and its Member States share values and interests. The UK deploys significant assets, expertise, intelligence and capabilities to protect and promote them. The UK will remain a committed partner, including as a leading NATO Ally and a permanent member of the UN Security Council.
62. The UK and the EU share a range of ever-evolving global security threats. To respond to these challenges, the UK proposes continued consultation, development of shared capabilities and combining efforts to the greatest effect where it is in the UK's and the EU's shared interest.
63. The UK therefore proposes a tailored partnership with the EU covering:
- a. **consultation** and regular dialogue on geographic and thematic issues and the global challenges the UK and the EU face;
  - b. mechanisms to discuss and coordinate the implementation of existing and new **sanctions**;
  - c. arrangements to enable cooperation on crisis management **operations**, including using civilian and military assets and capabilities to promote global peace and stability, where it is mutually beneficial;
  - d. commitments to support a collaborative and inclusive approach to European **capability development** and planning;
  - e. commitments to continue to work together to address global development challenges, supporting a cooperative accord between the UK and the EU on **development and external programming**;
  - f. continued cooperation on EU strategic **space** projects, including their secure aspects; and
  - g. a Security of Information Agreement that facilitates the sharing of information and intelligence, as set out in chapter 3.3.

---

<sup>68</sup> 'Eurojust Annual Report 2017', Eurojust, 2017.

64. The partnership should be based on common values of peace, democracy, human rights and the rule of law, and the protection of shared interests. It will need to be flexible and scalable, allowing the UK and the EU to respond effectively to emerging threats and international crises as they arise.
65. Future UK-EU foreign policy, defence and development cooperation is likely to require a combination of formal agreements enabling coordination on a case-by-case basis. Given the particular intergovernmental nature of foreign and defence policy, it is especially important that the partnership must respect the sovereignty of the UK and the autonomy of the EU and its Member States.
66. The UK and the EU agree that arrangements for future cooperation on foreign and defence policy could come into effect during the implementation period. This would allow the UK and the EU to benefit from closer, more intense and more productive cooperation than the EU enjoys with any other partner. It would ensure that there is no drop off in mutual efforts to support European security and that the UK and the EU remain able to respond most effectively to crises ahead.

#### 2.4.1 Consultation and coordination

67. Consultation is vital for an effective foreign, defence and development policy partnership that allows the UK, the EU and its Member States to combine efforts around the world to the greatest effect and achieve common objectives.
68. The future security partnership should enable flexible responses where different situations and policy issues require them.
69. The UK proposes:
  - a. consultation across all foreign policy areas, with regular dialogue between officials, ad hoc invitations to meetings, for example to the Political and Security Committee in informal sessions, provisions for discussion between EU27 leaders and the UK Prime Minister and at other political levels;
  - b. information and intelligence sharing, for example through the EU Intelligence and Situation Centre (INTCEN),<sup>69</sup> European Union Satellite Centre (SATCEN)<sup>70</sup> and EU Military Staff (EUMS);<sup>71</sup>
  - c. reciprocal exchange of expertise and personnel in areas of mutual interest and collaboration, which would enable greater understanding between the UK and the EU and thus facilitate practical cooperation; and
  - d. cooperation in multilateral fora, such as the UN, G7, G20, IMF, OECD, OSCE and World Bank, and in third countries, to enable the use of other foreign policy levers, including an option to agree shared positions and statements, joint demarches

---

<sup>69</sup> The EU Intelligence and Situation Centre (EU INTCEN) is an intelligence body of the External Action Service (EEAS) of the European Union (EU) under the authority of the EU's High Representative

<sup>70</sup> The European Satellite Centre (SATCEN) supports the Common Foreign and Security Policy (CFSP) by providing services based on space assets and collateral data

<sup>71</sup> The European Union Military Staff (EUMS) is the Directorate-General of the European Union's (EU) External Action Service (EEAS) that contributes to the EU's Common Security and Defence Policy (CSDP) by providing strategic advice to the High Representative (HR/VP)

and jointly organised events, as well as cooperation on consular provision and protection.

70. Much of this can be done within existing third country precedents in this area. Where the UK proposes going beyond these, it does so to reflect the unprecedented nature of the UK-EU security relationship, given its starting point, potential scale and the shared values and interests. The proposals described above are fundamental to working together as close partners around the world.

### 2.4.2 Sanctions

71. Sanctions are a key foreign policy tool and are most effective when designed and applied alongside international partners. As well as communicating a clear political signal, sanctions can be used to constrain or help effect a change in behaviour.
72. The UK currently implements over 30 sanctions regimes targeting approximately 2,000 people or entities.<sup>72</sup> Around half of these are UN sanctions<sup>73</sup> and the rest are EU-coordinated<sup>74</sup>.
73. The UK's new Sanctions and Anti-Money Laundering Act 2018 provides for national powers to impose sanctions. These powers will enable the UK to act in support of foreign policy objectives, including in partnership with others.
74. In future, it will be in the UK's and the EU's mutual interest to discuss sanctions policy and decide where and how to combine efforts to the greatest effect. Consultation and cooperation on sanctions should therefore include:
- a. agreement to exchange information on listings, and their justification, as well as technical support;
  - b. UK-EU dialogue on future designations and regimes; and
  - c. intensive interaction to support coordination between the UK and the EU and the adoption of mutually supportive sanctions, including during crises.

### 2.4.3 Operations and missions

75. The UK will continue to collaborate with European allies and partners on military and civilian operations around the world. UK armed forces are engaged in active duties across the globe, including degrading and defeating Daesh in Iraq, providing humanitarian aid and combating the international drugs trade.
76. NATO will remain the cornerstone of European defence and security, supported by strong multilateral<sup>75</sup> and bilateral alliances and partnerships. The EU has an

---

<sup>72</sup> 'Brexit: sanctions policy 8th report of session 2017-19', House of Lords European Union Committee, December 2017

<sup>73</sup> 'Consolidated United Nations Security Council Sanctions List', United Nations, 2017

<sup>74</sup> 'Official Journal of the European Union', Council Decisions and Council Regulations for sanctions regimes

<sup>75</sup> The UK will maintain its active membership of the wide range of multilateral bodies and groupings to which we belong, including the UN, NATO, the G7, G20, OCSE, CoE counter-proliferation regimes and international financial institutions.

important, complementary role to play, including helping to prevent crises, countering hybrid threats, enhancing resilience and stabilising post-conflict situations.

77. The UK therefore proposes:

- a. arrangements to enable cooperation on crisis management operations, including using civilian and military assets and capabilities to promote global peace and stability, where it is mutually beneficial; and
- b. intensifying cooperation when needed, including during times of crisis.

78. There are opportunities to build on existing precedents for third country participation in EU operations and missions, for example through an enhanced Framework Participation Agreement.<sup>76</sup> The UK welcomes the recent proposals from the EU for a more differentiated approach to Common Security and Defence Policy (CSDP) partnerships. The UK's involvement would be decided on a case-by-case basis so as not to prejudice the sovereignty of the UK or the decision making autonomy of the EU.

#### **Using assets and capabilities in mutual interest**

79. UK expertise and assets make a significant contribution to the EU's ability to deploy crisis management missions across the world. In future, UK contributions could range from the provision of specific expertise and intelligence, to the deployment of personnel, specialist assets or operational enablers, such as strategic airlift. The UK could also use its diplomatic network to support EU operations. The UK has offered to host an Operational Headquarters (OHQ) and consider future contributions to EU Battlegroups as part of the enhanced future partnership.

80. Any UK decision to deploy armed forces must be taken on the basis of adequate information and consultation. This is the case for the UK in any international operation. In order to enable the EU to make best use of UK assets, the UK would require sufficient insight, including access to planning documents. The UK could bring its significant expertise to support EU operational planning. This does not undermine the important principle that only EU Member States have a formal role in the decision making process and a vote over the launch of EU operations.

#### **2.4.4 Capability development**

81. Collaboration on defence and security capabilities will ensure that armed forces remain capable and interoperable, that the best use of defence budgets is made and that support is given to the innovation and global competitiveness of the European defence industrial base, putting European defence industry in the best place to compete in the global market. Europe's ability to act autonomously and effectively will be enhanced with the UK at the EU's side.

---

<sup>76</sup> So far 25 third (partner) countries have contributed to 16 CSDP missions and operations. 'CSDP structure, instruments, and agencies', European External Action Service, July 2016.



82. The UK's defence research and development spending represents around 40 per cent of the EU's total.<sup>77</sup> All of Europe benefits from the strength of this sector. European collaboration has led to the development of cutting-edge technologies; for example, Meteor, a world leading air-to-air missile, is the result of collaboration between six European nations and has generated significant export orders. The future security partnership should support a collaborative and inclusive approach to European capability development and planning, including:
- a. exchange and growth of expertise, through regular technical knowledge sharing, supported by UK liaison presence;
  - b. collaboration on specific projects, programmes and initiatives, including through the European Defence Agency (EDA),<sup>78</sup> Permanent Structured Cooperation (PESCO),<sup>79</sup> through a cooperative accord on defence research and development, and the European Defence Fund (EDF); and
  - c. provisions to ensure a competitive European Defence Technological and Industrial Base.

### **Collaboration on specific projects, programmes and initiatives**

83. Future UK participation in EDA programmes and initiatives will be beneficial for both parties. There are precedents, for example via a third country Administrative Arrangement.<sup>80</sup> The UK is also open to continue contributing to the EU's Force Catalogue<sup>81</sup> to support the EU's assessment and prioritisation of its capability requirements. Proposals for the UK's participation in the EDF are in chapter 3.3.
84. Defence capability development is an area where EU structures are evolving, which underlines the importance of a flexible partnership. The development of PESCO provides new opportunities to strengthen Europe's defence capabilities, for example through improvements to military mobility within and beyond the EU. The UK supported PESCO's launch and wants to see it develop in a way that is coherent with NATO.

---

<sup>77</sup> 'Defence Data 2013-2014 and 2015 (est)', European Defence Agency, June 2016

<sup>78</sup> The European Defence Agency was established under a Joint Action of the Council of Ministers on 12 July, 2004, "to support the Member States and the Council in their effort to improve European defence capabilities in the field of crisis management and to sustain the European Security and Defence Policy as it stands now and develops in the future".

<sup>79</sup> Permanent Structured Cooperated (PESCO) is a political framework based on a set of commitments intended to improve the respective military assets and defence capabilities of participating Member States (MS). PESCO will allow groups of participating MS to join together to propose and pursue specific capability initiatives and projects.

<sup>80</sup> Administrative Arrangements are agreements between the EDA and other EU institutions, international organisations or third countries, which enable these parties to participate in EDA projects and programmes.

<sup>81</sup> The EU Force Catalogue describes, in qualitative and quantitative terms, the military capabilities that the EU Member States hold in their inventories, which is then compared to what the EU actually requires to achieve the EU military level of ambition as set out in the EU Global Strategy. The resultant comparison produces a list of prioritised capability shortfalls and recommends high impact capability goals, which the Member States are meant to develop in a cooperative manner. The member state contributions to the EU Force Catalogue are voluntary and non-binding, and not for operational planning purposes or for Force Generation.

85. The EU is developing proposals for third country participation in both PESCO and EDF. Current EDF proposals would limit the potential for third country involvement. The UK will work constructively with the EU to develop arrangements to facilitate mutually beneficial cooperation in future, respecting the EU's decision making autonomy. These arrangements should ensure that Member States can benefit from the EDF, while also working closely with third country partners on projects of mutual interest. The UK is seeking the best possible deal for the European defence industry and the UK's and the EU's mutual prosperity and security.

### **European Defence Technological and Industrial Base**

86. The UK and the EU will both benefit from a globally competitive European Defence Technological and Industrial Base that ensures armed forces have the equipment they need. The future security partnership should support the effective operation and collaboration of UK and EU defence companies, facilitating complex supply chains. It should also ensure that the UK and Member States can work together on research and development projects, in support of the cooperative accord set out in chapter 3.4.

### **2.4.5 Development and External Programmes**

87. The UK and the EU are both global development actors and share the same commitment to meet the UN Sustainable Development Goals, direct development expertise and spend to alleviate poverty.
88. The UK and the EU should seek to pool resources and exchange expertise to deliver the maximum impact from combined development assistance. There is a strong case for close collaboration in the areas of peace and security, humanitarian aid and migration. The UK is open to collaboration in other areas, and working closely with the EU to contribute to the EU's development and external programmes and instruments, where the EU and UK agree.
89. The UK therefore proposes a cooperative accord with the EU, as set out in chapter 3.4, that will allow for UK participation in specific EU programmes, instruments or bespoke projects, with appropriate influence and oversight.
90. The UK will critically assess the rationale for close collaboration depending on the situation and be rigorous in assessing whether each contribution to the EU offers value for money.

### **2.4.6 Space**

91. The UK and the EU are both reliant on access to space technologies for national resilience and military capabilities, and to reduce vulnerability to threats such as hacking and severe space weather.
92. The UK and the EU should continue to cooperate closely on relevant space technologies, through continued UK participation in EU space programmes, including Galileo, the EU Global Navigation Satellite System (GNSS) that, once fully operational, will provide accurate position, navigation and timing information. It will benefit governments, citizens and industry alike.

93. The UK wants Galileo to be a core component of the future security partnership. The UK's continued participation in Galileo is in the mutual interests of the UK and the EU, benefitting European competitiveness, security, capability development and interoperability. An end to close UK participation would be to the detriment of Europe's prosperity and security and could result in delays and additional costs to the programme.
94. However, at present there is a fundamental difference of views between the UK and the EU about the conditions under which the UK could participate in Galileo. The UK has put forward proposals which are intended to respect the EU's decision making autonomy and establish a balance of rights, distinct from Member State access, and obligations.<sup>82</sup> These include a UK ability to independently assure the integrity of the system, so the UK can rely on it for strategic defence and security purposes.
95. The EU has put forward proposals which have the effect of ending UK participation. This would be to the detriment of Europe's security and prosperity. The UK and the EU must work through issues relating to access to security-related elements of the programme urgently in the framework of negotiations on the security partnership. The UK's clear preference remains to participate in Galileo, in a new balance of rights and obligations, after it has left the EU. The programme must also offer value for money to justify an ongoing UK contribution. As a logical consequence of the exclusion and uncertainty surrounding future UK participation, the UK is exploring alternatives to fulfil its needs for secure and resilient position, navigation and timing information.

## 2.5 Wider security issues

96. There are a number of wider security issues beyond those in the preceding sections of this chapter which are important to European security and which should be addressed as part of the future security partnership.
97. This chapter sets out the UK's approach for continued cooperation, covering:
- a. **asylum and illegal migration**, where the UK proposes taking a 'whole of route' approach to tackle the causes of illegal migration, agree a framework to return illegal migrants and ensure unaccompanied asylum seeking children can be reunited with families in the UK;
  - b. a new UK-EU strategic dialogue on **cyber security** to continue close cooperation in specific EU programmes, and agree a framework to work together internationally to promote shared values;
  - c. a new UK-EU framework for dialogue on **counter-terrorism and countering violent extremism**, working together on emerging threats, new capabilities and new opportunities where it is mutually beneficial;
  - d. continued support and expertise on **civil protection** and participation as a third country in a civil protection mechanism; and
  - e. ongoing work with key EU agencies on **health security** to enable information sharing and access to key datasets.

---

<sup>82</sup> Technical note: UK participation in Galileo, HM Government, May 2018

### 2.5.1 Asylum and illegal migration

98. Properly managed migration brings benefits to local communities and economies. But high levels of illegal migration present a global challenge, enabling organised crime, people trafficking and modern slavery to prosper.
99. The UK has a significant presence overseas, conducting capacity and capability building in source and transit countries and deconstructing criminal business models, through participation in development programmes and through seconded national experts. It is vital that the UK and the EU establish a new, strategic relationship to address the global challenges of asylum and illegal migration.
100. The UK therefore proposes a comprehensive, 'whole of route' approach that includes interventions at every stage of the migrant journey and ensure no new incentives are created to make dangerous journeys to Europe. It should cover:
  - a. ongoing operational cooperation, for example working with Frontex to strengthen the EU's external border, and Europol to combat organised immigration crime;
  - b. a new legal framework to return illegal migrants and asylum-seekers to a country they have travelled through, or have a connection with, in order to have their protection claim considered, where necessary. People should be prevented from making claims in more than one country, and on multiple occasions. A clear legal structure, facilitated by access to Eurodac (the biometric and fingerprint database used for evidencing secondary asylum claims) or an equivalent system will help achieve this;
  - c. new arrangements that enable unaccompanied asylum-seeking children in the EU to join close family members in the UK, where it is in their best interests and vice versa;
  - d. a continued strategic partnership to address the drivers of illegal migration by investing and building cooperation in source and transit countries;
  - e. continued UK participation in international dialogues with European and African partners, frameworks, and processes, such as the Rabat and Khartoum Processes, to tackle illegal migration upstream; and
  - f. the option to align and work together on potential future funding instruments through the cooperative accord on overseas development assistance and international action outlined in chapter 3.4.

### 2.5.2 Cyber security

101. There is a significant cyber threat to the UK and its European allies from state actors and cyber criminals. The UK has played a leading role in developing Europe's approach to cyber security with the EU institutions themselves, such as the EU Cyber Diplomacy Toolbox, and with related bodies and Member States in sharing threat intelligence and responding operationally to cyber attacks affecting Europe.
102. The UK's National Cyber Security Centre (NCSC) should continue to work with the EU's Computer Emergency Response Team (CERT-EU) to share information on cyber incidents. The National Crime Agency, one of Europol's European Cybercrime Centre's most effective partners, will continue to allow the UK and Member States to

bring criminals to justice and combat cross-border crime effectively. The UK shares a significant volume of classified threat intelligence assessments with European allies. For example the NCSC, part of the UK's intelligence agency GCHQ, shares cyber-related threat intelligence with INTCEN and EU Member States alike.

103. While that cooperation will continue, the UK proposes going further through:
- a. close collaboration between the UK and the Network and Information Security (NIS) Cooperation Group, Computer Security Incident Response Team (CSIRT) Network and the European Union Agency for Network and Information Security (ENISA); and
  - b. building on existing cooperation to identify opportunities to work together through a regular strategic dialogue and to promote and uphold shared values and beliefs that existing international law applies to cyberspace, underpinned by a vision of a “free, open, peaceful and secure global cyberspace”.<sup>83</sup>

### 2.5.3 Counter-terrorism and countering violent extremism

104. Terrorists do not recognise international borders. While the UK's main operational cooperation on counter-terrorism exists via bilateral and multilateral fora outside of the EU, the law enforcement tools and systems that the UK has developed with the EU strengthen the UK's and the EU's ability to counter the terrorist threat.
105. The UK's contribution to, and participation in, EU tools and measures provides important additional counter terrorism capabilities beyond what is available bilaterally between the UK and Member States' operational agencies. Cooperation between the UK and the EU using SIS II and the EU PNR framework are particularly important to protect the public across Europe from terrorist attacks. The UK contribution to Member States' coordination through the EU Internet Forum has also led to increased pressure on communication service providers (CSPs) to deliver on their commitments to prevent terrorist use of their platforms and improve transparency.
106. The UK is committed to a security partnership with the EU, including Ireland, that will allow the Police Service of Northern Ireland to continue to tackle security threats, including the severe threat from dissident republicans, and serious and organised crime. Cooperation between law enforcement agencies in Northern Ireland and Ireland is vital to suppressing terrorism and will continue to be so after the UK leaves the EU.
107. Our new relationship should be dynamic and adaptable to respond to evolving threats. It should also enable the sharing of best practice and expertise on key issues and themes relevant to counter-terrorism and countering violent extremism, and assessment sharing and cooperation through the appropriate intelligence analysis bodies, such as INTCEN.
108. To support the shared aim of fighting terrorism and countering violent extremism, the UK proposes a framework for dialogue to work together on emerging threats, new capabilities and new opportunities where it is in the UK's and the EU's mutual interest.

---

<sup>83</sup> 'National Cyber Security Strategy 2016 to 2021', HM Government, September 2017

## 2.5.4 Civil protection

109. Natural and man-made disasters can occur at any moment. They can cause not only economic and environmental damage, but more importantly loss of lives. Civil protection assistance consists of governmental aid delivered in the immediate aftermath of a disaster. This emergency relief can take the form of in-kind assistance, deployment of specially-equipped teams, or assessment and coordination by experts sent to the field.
110. The UK has been, and remains, one of the most active countries in civil protection. Between 2013 and 2017 the UK sent thousands of tonnes of assistance items and more than 1,200 experts for emergency responses.<sup>84</sup>
111. The UK proposes to:
- a. continue to support Member States, the EU and other international partners with respect to preparedness and response; and
  - b. participate as a third country in a civil protection mechanism, which supports European nations in preparing for and responding to disasters, benefitting the security of citizens across Europe and more globally.

## 2.5.5 Health security

112. Infectious diseases and other factors harmful to human health and life, whether from natural sources, accidental releases or deliberate actions, are geographical threats that require global responses.
113. The UK has worked closely with EU partners to make sure systems and infrastructure are in place to protect citizens within the UK, the EU and beyond from health threats that do not recognise borders. Maintaining the ability to act in a similar way in the future is key to protecting citizens. The UK proposes:
- a. continuing close collaboration with the Health Security Committee and bodies such as the European Centre for Disease Prevention and Control (ECDC), including access to all associated alert systems, databases and networks, to allow the UK and the EU Member States to coordinate national responses;
  - b. ongoing cooperation with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) to combat the harm caused by illicit drugs;
  - c. collaboration with the European laboratory surveillance networks to monitor the spread of diseases across Europe; and
  - d. continued collaboration between the EU and the devolved administrations in these areas, including direct sharing of information with ECDC and the ability for Microbiology Reference Laboratories in Glasgow, and Public Health Wales, to provide European Public Health Microbiology (EUPHEM) training.

# Chapter 3 – Cross-cutting and other cooperation

## 3.1 Summary

1. There are a number of areas where cooperation supports or complements our proposals for the economic or security partnerships.
2. For each of these areas, the UK and the EU should agree specific arrangements that support ongoing cooperation. These include:
  - a. **data protection** arrangements that provide for the continued exchange and protection of personal data between the UK and the EU, and allow for ongoing cooperation between authorities;
  - b. a security of information agreement enabling the exchange of **classified information**;
  - c. a series of **cooperative accords** that enable the UK and the EU to work together in areas ranging from science and innovation to development and international action; and
  - d. an agreement on **fishing opportunities** that establishes a framework for reciprocal and fair access to waters and the allocation of opportunities, based on the most up-to-date scientific methodology, promoting sustainable fishing and respecting the UK's position as an independent coastal state.

## 3.2 Data protection

3. Data plays an increasingly important role in the global economy. Recent research suggests data flows already account for a higher proportion of global growth than trade in physical goods.<sup>85</sup> Data also helps keep people safe by maximising the effectiveness of law enforcement agencies and bringing more criminals to justice.
4. It will therefore be important that a future UK-EU agreement:
  - a. provides for the **continued exchange of personal data** between the UK and the EU with strong privacy **protections** for citizens; and
  - b. allows **ongoing cooperation** between Data Protection Authorities.

---

<sup>85</sup> As indicated by McKinsey research: 'Digital Globalization: The New Era of Global Flows, 2016', McKinsey, March 2016

### 3.2.1 The continued exchange and protection of personal data

5. The UK is a global leader in strong data protection standards. As a member of the EU, the UK has worked closely with other Member States and the EU institutions to develop robust protections for personal data, ensuring businesses and law enforcement agencies can share data safely and smoothly.
6. Given the importance of data flows for economic growth and our collective security, the UK and the EU must maintain the ability to exchange data in a way that keeps personal data protected. New arrangements will also be essential in underpinning the economic and security partnerships. For instance, enabling consumers in the EU to continue purchasing goods from the UK over the internet, and supporting the exchange of data between law enforcement authorities to combat crime and terrorism.
7. Personal data can be transferred freely between Member States and European Economic Area (EEA) countries. Data can flow freely to third countries if the European Commission judges there to be sufficient protection for this data in the destination country. If the Commission assesses that an 'adequate' level of data protection is in place, an Adequacy Decision is granted for the third country, allowing EU businesses and public authorities to transfer relevant personal data without having to satisfy themselves that sufficient safeguards are in place each time data is transferred. It also avoids the need for other costly and burdensome legal mechanisms, such as Standard Contractual Clauses. The EU currently has 12 Adequacy Decisions in place, including for each of the Crown Dependencies, and partial Adequacy Decisions with the US and Canada.<sup>86</sup>
8. The UK believes that the EU's adequacy framework provides the right starting point for the arrangements the UK and the EU should agree on data protection but wants to go beyond the framework in two key respects:
  - a. on stability and transparency, it would benefit the UK and the EU, as well as businesses and individuals, to have a clear, transparent framework to facilitate dialogue, minimise the risk of disruption to data flows and support a stable relationship between the UK and the EU to protect the personal data of UK and EU citizens across Europe; and
  - b. on regulatory cooperation, it would be in the UK's and the EU's mutual interest to have close cooperation and joined up enforcement action between the UK's Information Commissioner's Office (ICO) and EU Data Protection Authorities.

---

<sup>86</sup> 'Adequacy of the protection of personal data in non-EU countries', European Commission. To date, the Commission has adopted 12 Adequacy Decisions under the 1995 Directive with: Andorra, Argentina, Canada (for transfers to commercial organisations who are subject to the Canadian Personal Information Protection and Electronic Documents (PIPED) Act), the Faroe Islands, Guernsey, Israel, the Isle of Man, Jersey, New Zealand, Switzerland, Uruguay, and the US (for certified companies). All are subject to routine review.



9. The UK and the EU start from a position of trust in each other's standards and regulatory alignment on data protection. The UK's recent Data Protection Act 2018 strengthened UK standards in line with the EU's General Data Protection Regulation (GDPR)<sup>87</sup> and the Law Enforcement Directive,<sup>88</sup> providing a unique starting point for an extensive agreement on the exchange of personal data that builds on the existing adequacy framework. The UK is ready to begin preliminary discussions on an adequacy assessment so that a data protection agreement is in place by the end of the implementation period at the latest, to provide the earliest possible reassurance that data flows can continue.

### 3.2.2 Ongoing cooperation between Data Protection Authorities

10. In the context of globalised data flows, cross-border cooperation between domestic data protection authorities is important in monitoring data protection standards and enforcing standards effectively. The ICO is an internationally respected, influential and well-resourced regulator in this regard. As a result, the future UK-EU arrangements on data protection should provide for ongoing cooperation between the ICO and EU data protection authorities.
11. This would avoid unnecessary complexity and duplication, and overcome barriers for EU citizens and UK nationals in enforcing their rights across borders and accessing effective means of redress. A continuing role for the ICO would also reduce administrative burdens for businesses and provide for cooperation on resolving data protection disputes. Under the new EU data protection regime, this is achieved through the ICO's participation in the One Stop Shop mechanism.
12. The UK believes its proposals on regulatory cooperation between data protection authorities are in line with the EU's developing thinking on cooperation with third countries on data protection.
13. The GDPR recognises that the European Commission and EU Data Protection Authorities shall take steps to develop international cooperation mechanisms to facilitate effective enforcement of data protection legislation.
14. The Commission's January 2017 Communication recognised that "enhancing cooperation with relevant privacy enforcement and supervisory authorities of third countries is increasingly necessary" and that cooperation between these authorities could make the protection of individuals more effective. The Commission also noted that "economic operators would benefit from a clearer legal environment where common interpretation tools and enforcement practices are developed at global level".<sup>89</sup>

---

<sup>87</sup> Regulation 2016/679

<sup>88</sup> Directive 2016/680

<sup>89</sup> 'Exchanging and Protecting Personal Data in a Globalised World', European Commission, Communication From The Commission To The European Parliament And The Council, January 2017

15. On this basis, the Communication states that “the Commission will develop international cooperation mechanisms with key international partners to facilitate effective enforcement”.<sup>90</sup>

### 3.3 Classified information

16. The UK and the EU agree that arrangements allowing the exchange of classified information will be important in building the future partnership. These arrangements should reflect the depth of trust between the UK and the EU and facilitate common analysis, help inform operational planning and deliver cutting-edge capabilities. The exchange of classified information is fundamental to cooperation across the future partnership, especially in relation to security, but also in the context of economic cooperation. The UK and the EU have commenced discussions on a Security of Information Agreement (SoIA) on classified information, which should facilitate, but not mandate, the exchange of classified information.
17. The real-time exchange of classified information will be key to underpinning the deep and special relationship that the UK envisages across the future partnership. The UK and the EU also need to exchange sensitive but non-classified information, outside of an SoIA, to support some key areas of the security partnership, such as sanctions.

### 3.4 Cooperative accords

18. The UK has long been at the forefront of collective endeavours to understand and improve the lives of citizens within and beyond Europe’s borders, working with friends and allies across the globe on areas including scientific research, international development assistance and the development of defence capabilities.
19. There have been significant benefits to this collaboration. For instance, publications with international co-authorship are on average more highly cited than UK domestic publications.<sup>91</sup>
20. It is therefore in the shared interest of the UK and the EU to continue this cooperation. The UK proposes to do so through new cooperative accords that provide for a more strategic approach than simply agreeing the UK’s participation in individual EU programmes on a case-by-case basis. This strategic approach would ensure that the UK and the EU could build on existing activity or develop new forms of cooperation, taking advantage of emerging opportunities and responding to global challenges, where it was in both parties’ mutual interest.

---

<sup>90</sup> ‘Exchanging and Protecting Personal Data in a Globalised World’, European Commission, Communication From The Commission To The European Parliament And The Council, January 2017

<sup>91</sup> ‘Drivers of International collaboration in research’, European Commission, 2009

21. Based on key areas of current cooperation between the UK and the EU, these accords should cover:
  - a. **science and innovation;**
  - b. **culture and education;**
  - c. **overseas development assistance and international action;**
  - d. **defence research and capability development;** and
  - e. **space.**
22. Each of these accords should support joint activity by the UK and the EU, including providing for the participation of UK individuals or entities in EU programmes, and enabling the exchange of expertise and information. Where the UK and the EU have an accord, the UK would make appropriate financial contributions that would be agreed between the parties, and each accord would need governance arrangements that ensured both parties could shape the activity covered, recognising these will need to respect the autonomy of the EU's decision making.
23. Regulations for the next generation of EU funding programmes are expected to be agreed and adopted over the next year, providing a basis for third country participation. These should inform the development of the cooperative accords, but the UK and the EU may want to go further.
24. The UK also wants to consider participation in other EU programmes in addition to those covered by the accords. For example, the UK remains committed to delivering a future PEACE programme to sustain vital work on reconciliation and a shared future in Northern Ireland. The UK welcomes the European Commission's commitment to a future programme protecting this work and broader cross-border cooperation, and is committed to finalising the framework for this programme jointly over the coming months.
25. The UK and the EU will also need provisions that allow for mobility in relation to these accords, for example enabling scientists to attend conferences and musicians to perform at concerts.

### 3.4.1 Science and innovation

26. As a leader in the advancement of science and innovation, and a top five collaboration partner<sup>92</sup> for every EU Member State,<sup>93</sup> the UK plays a vital role in making Europe a base for pioneering research.
27. This collaboration is underpinned by shared principles of scientific excellence, openness to the world and European added value. Working in partnership has increased the impact of our scientific activity, leading to major breakthroughs, such

---

<sup>92</sup> Collaboration measured by the number of co-authored publications

<sup>93</sup> 'Research and Innovation Performance and Horizon 2020 Country Participation', European Commission, individual EU Member State country profiles accessed 15 March 2018

as the development of an Ebola vaccine and the discovery of graphene, the toughest material ever tested.

28. The UK therefore proposes that the future relationship includes a science and innovation accord that:
  - a. provides for UK participation in EU research funding programmes;
  - b. enables continued cooperation through joint participation in networks, infrastructure, policies and agencies which are to the UK's and the EU's joint benefit; and
  - c. establishes channels for regular dialogue between regulators, researchers and experts.
29. On EU research funding programmes, the UK wishes to explore association in research and innovation programmes, including Horizon Europe, the Euratom Research and Training Programme, the Joint European Torus (JET) project and ITER.<sup>94</sup> There are a range of precedents for participation by third countries, which by their nature are unique to the participating country. For instance, sixteen countries are associated with Horizon 2020 and Switzerland has an agreement on scientific and technical cooperation with Euratom. The accord should also allow the UK and the EU to discuss and agree the UK's participation in other programmes in the future.
30. To support cooperation, the UK should seek to participate in specific policies and networks which benefit businesses, researchers, citizens and patients across the UK and the EU, including:
  - a. the European Reference Networks, which support European cooperation and knowledge sharing related to clinical care and research on rare diseases; and
  - b. the European Research Infrastructure Consortia, two of which are currently hosted in the UK, the European Social Survey and INSTRUCT, which promotes innovation in biomedical science by making high-end technologies and methods in structural biology available to users.
31. Regulators, researchers and experts would also need a regular dialogue to facilitate the cooperation outlined in this section, which would require suitable UK involvement through representation at strategic fora and committees.

### 3.4.2 Culture and education

32. The UK is home to a world leading creative industries sector. The £66 billion fashion industry accounts for six per cent of our economy;<sup>95</sup> UK qualifying films took £6.2 billion at the box office globally in 2017;<sup>96</sup> and one in every eight albums bought worldwide was by a UK act<sup>97</sup>.

---

<sup>94</sup> ITER is an international nuclear fusion research and engineering project

<sup>95</sup> 'UK fashion industry statistics', FashionUnited 2016

<sup>96</sup> 'UK films at the worldwide box office, 2017', BFI Research and Statistics Unit, March 2018. Original figure \$8.1 billion, converted to £ using Bank of England daily spot exchange rate for 30 June 2017

<sup>97</sup> 'One in eight albums bought worldwide in 2017 were by British acts, including Ed Sheeran, Sam Smith and Harry Styles', Official Charts, June 2018

33. The UK's cultural, sporting and creative exports are an expression of the values and ideas the UK shares with the rest of Europe, as well as being an important way to bring communities together. The UK will always be a European country that advocates cultural diversity as part of its global identity and is committed to continuing its support of European culture.
34. The UK also attaches importance to the continued mobility of talented individuals and groups to support cultural, creative and sporting cooperation.
35. The UK proposes a new UK-EU culture and education accord that:
  - a. provides for UK participation in EU programmes, and allows UK institutions to be partners, associates, or advisers to EU projects and vice versa;
  - b. facilitates continued UK membership of EU cultural groups and networks;
  - c. supports the restitution of cultural objects where these have been unlawfully removed; and
  - d. allows for the temporary movement of goods for major events.
36. The UK's and the EU's current education cooperation is centred around Erasmus+. The end of the implementation period coincides with the natural end of the scheme. The UK is open to exploring participation in the successor scheme, and continued involvement in Creative Europe<sup>98</sup> to support the cultural, creative and audiovisual sectors.
37. The UK is a world leader in cultural protection, with recent initiatives such as the establishment of the Cultural Protection Fund and the ratification of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. Disincentivising the illegal trade of cultural objects will be important in the future relationship.
38. The current EU regime allows Member States to circulate details of cultural objects that are unlawfully removed and ask for assistance from fellow Member States for return of the objects. The UK proposes continued affiliation with the cultural object restitution regime system to underpin efforts to prevent the illicit removal and trading of cultural objects.
39. The temporary movement of goods and equipment is a priority for cultural, creative and sports sectors. This includes instruments used by touring musicians, objects and collections loaned between museums, and sporting equipment taken to competitive events.
40. As part of the accord, the UK would like to explore options to build on existing precedents such as the EU's Cultural Cooperation Protocols with third countries.

---

<sup>98</sup> Creative Europe is the European Union's framework programme for support to the culture and audiovisual sectors

### 3.4.3 Overseas development assistance and international action

41. The UK is a leading global actor on international development, and continues to meet the United Nations' (UN) target of spending 0.7 per cent of Gross National Income as Official Development Assistance (ODA).<sup>99</sup> UK contributions, alongside those of other Member States, ensure the EU is the largest international donor of development assistance, while UK expertise helps support the efficacy of EU policy and spending.
42. Leaving the EU will not change the UK's commitment to support the world's poorest and most vulnerable people. Nor will it mean that the UK and the EU should stop acting together to alleviate poverty, promote peace and security, tackle migration and provide humanitarian aid. There will continue to be areas where the UK and the EU can achieve more by acting in concert than they would do alone.
43. The UK is therefore proposing that the future partnership includes an overseas development assistance and international action accord that provides for UK participation:
  - a. in EU development programmes and instruments; and
  - b. in EU external spending programmes.
44. Cooperation under this accord could take various forms. As well as UK participation in specific EU programmes and instruments, this could include involvement in individual projects under the framework of such programmes and instruments.
45. UK participation would require an appropriate level of influence and oversight over UK funds in line with the significant contribution and benefits that the UK brings. UK organisations should also be able to deliver EU programmes and apply for funding on an open and fair basis from programmes to which the UK contributes.
46. This accord would complement the consultation on foreign, defence and development policy envisaged in chapter 2.4, and be enhanced by the reciprocal exchange of expertise and personnel between UK and EU institutions.

### 3.4.4 Defence research and capability development

47. The UK has the largest defence budget in Europe<sup>100</sup> and the UK's defence market is one of the most open and competitive in the world. Defence capability collaboration between the UK and the EU supports the defence of Europe. It helps maintain our shared security, enhances our collective prosperity, and ensures that our defence industries continue to be globally competitive.

---

<sup>99</sup> 'Net Official Development Assistance (Indicator)', OECD, 2017

<sup>100</sup> 'Defence expenditure of NATO countries (2010-2017)', NATO, June 2017 and 'General Government Expenditure by Function', Eurostat, March 2018

48. The UK is therefore proposing that the future relationship includes a defence research and capability development accord that provides for UK participation in:
  - a. research elements of EU defence programmes; and
  - b. capability development aspects of EU defence programmes.
49. This cooperative accord would complement UK and EU capability collaboration through the European Defence Agency (EDA) including: coordination on capability priorities and planning processes; cooperation in specific EDA projects and initiatives; and potential UK involvement in specific European Development Fund (EDF) and Permanent Structured Cooperation (PESCO) projects, as outlined in chapter 2.4.

### 3.4.5 Space

50. The UK is home to a world leading space technologies sector which has helped drive the EU's space programmes. This brings benefits to the UK and the EU. The value of the European space sector was estimated at £37-43 billion in 2014, representing around 21 per cent of the value of the global sector.<sup>101</sup> The UK and the EU should develop new arrangements for cooperation on space that support European security and mutual prosperity.
51. The UK is therefore proposing that the future relationship includes a space accord that:
  - a. provides for UK participation in EU strategic space projects; and
  - b. establishes channels for regular dialogue between the UK and the EU on space policy.
52. The UK and the EU should continue to cooperate on the development and operation of EU space programmes, including Galileo and Copernicus, and ensure the eligibility for UK entities to compete for all programme contracts on an open and fair basis, including those relating to the Galileo programme's secure elements, as set out in chapter 2.4.6.

## 3.5 Fishing opportunities

53. The seas that surround the UK are an important part of its history, economy and way of life. The commercial fishing industry and wider seafood sector are integral to coastal communities across England, Scotland, Wales and Northern Ireland.
54. On leaving the EU, the UK will become an independent coastal state under the UN Convention on the Law of the Sea (UNCLOS). As a result, the UK will control access to fish in its waters, both in territorial seas and the Exclusive Economic Zone (EEZ).

---

<sup>101</sup> 'Space Strategy for Europe', European Commission, October 2016. Original figures ~46-54 billion, converted to £ using Bank of England daily spot exchange rate for 30 June 2014

55. While the UK will be leaving the Common Fisheries Policy (CFP), the UK is committed to working closely with Member States and other coastal states to ensure sustainable management of shared stocks and the wider marine environment.<sup>102</sup> The UK has long championed sustainable fishing and is committed to such cooperation in line with its international obligations under UNCLOS and the UN Fish Stocks Agreement.
56. As a result, the UK therefore proposes to:
  - a. agree a mechanism for annual negotiations on **access to waters and fishing opportunities**; and
  - b. **promote sustainable fisheries** to meet international commitments such as sustainable development goals.
57. In pursuing this agreement, the Government will continue working closely with the devolved administrations, Crown Dependencies and Overseas Territories. During international fisheries negotiations, the UK delegation will include representatives from each administration of the UK, as is the case now.
58. Access to markets for fish and fish products is dealt with separately in chapter 1.2. This approach is consistent with international fisheries agreements and with EU-third country precedents.

### 3.5.1 Access to waters and fishing opportunities

59. At present, under the CFP's principle of 'Relative Stability', the UK receives a fixed share of fishing opportunities based on historical fishing patterns in 1973-1978. On average, between 2012 and 2016, UK vessels landed approximately 90,000 tonnes<sup>103</sup> of fish each year caught in other Member States' waters, and other Member States' vessels caught in the region of 760,000 tonnes<sup>104</sup> of fish each year in UK waters.
60. As an independent coastal state, the UK will have control over access to its waters from the end of the implementation period. Any decisions about giving access to UK waters for vessels from the EU, or any other coastal states will be a matter for negotiation.
61. The UK, the EU and coastal states should agree to annual negotiations on access rights and fishing opportunities for UK, EU and coastal state fleets. This could include multi-annual agreements for appropriate stocks.
62. The UK will seek to move from relative stability towards a more scientific method for informing future Total Allowable Catch (TAC) shares. Further, non-UK registered vessels granted access to fish in UK waters would also need to meet the same requirements as UK fleets across all UK fishing zones, including adherence to sustainable practices.

---

<sup>102</sup> 'Sustainable Fisheries for future generations: consultation document', DEFRA, July 2018

<sup>103</sup> 'UK sea fisheries annual statistics report 2016', Marine Management Organisation, September 2017

<sup>104</sup> 'EU landings from UK territorial waters and EEZ', Marine Management Organisation, July 2018



### **3.5.2 Promoting sustainable fisheries**

63. The UK has long championed sustainable fishing and marine conservation and will continue to apply the maximum sustainable yield (MSY) principle. Further to our commitments under United Nations Sustainable Development Goal 14, the UK will continue to work with European partners to regulate fishing and to set harvest rates that restore and maintain fish stocks. The UK remains fully committed to ending the wasteful discarding of fish.
64. After the UK leaves the EU, the Government will publish an annual assessment on the state of stocks of interest and our approach to setting fishing opportunities for the year ahead. If particular stocks are becoming depleted, the Government will work with all interested parties to draw up and implement recovery plans.
65. The Government will work closely with the devolved administrations, Crown Dependencies and Overseas Territories who are responsible for conservation measures for stocks concentrated in their territorial waters.

## Chapter 4 – Institutional arrangements

### 4.1 Summary

1. A relationship as deep as the one that the UK envisages will require a broad range of cooperation between the UK and the EU in the future. In order to ensure that this cooperation can function properly, that the relationship is transparent and accountable and that the trust established through the commitments made by both parties is maintained, there will need to be a new set of institutional and governance arrangements.
2. These institutional arrangements should ensure that the relationship is:
  - a. **practical and flexible**, so that it can support a wide range of economic and security cooperation;
  - b. managed effectively through **new forms of dialogue**, so that it is sustainable;
  - c. operational on a day-to-day basis, through **administrative provisions** and a proper parliamentary process;
  - d. robust, with a mechanism for **addressing disputes** so they can be resolved fairly and quickly; and
  - e. **accountable at home**, so that people and businesses in the UK and the EU can be confident that their rights will be protected.
3. These arrangements should reflect that the UK will no longer be a member of the EU. The EU institutions, including the Court of Justice of the European Union (CJEU), will no longer have the power to make laws for the UK and the principles of direct effect and of the supremacy of EU law will no longer apply in the UK. The new institutional arrangements should respect the UK's sovereignty and the EU's autonomy, and be sufficiently rigorous such that people across the UK and its wider family, and across the EU and its Member States can depend on them.

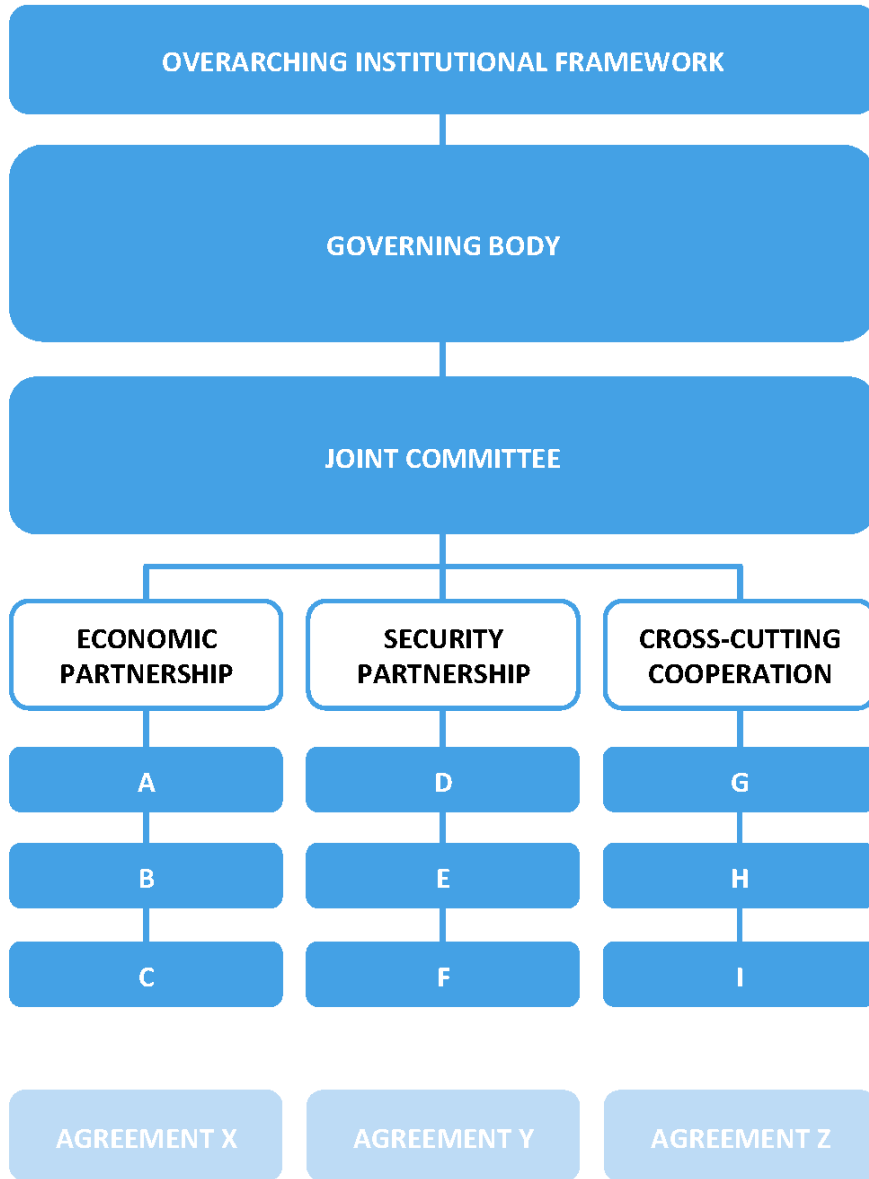
### 4.2 A practical and flexible partnership

4. To ensure that the future relationship between the UK and the EU is consistent and coherent, it should be structured around an overarching institutional framework. While the legal base that would need to be cited under the EU Treaties would be for the EU to determine, and would depend on the content of the institutional framework, precedent suggests that the UK's proposal would take the form of an Association Agreement between the UK and the EU.
5. The future relationship is likely to consist of a number of separate agreements, each covering different elements of economic, security and cross-cutting cooperation. The details of each individual agreement will be subject to negotiation with the EU, but some should be legally binding, for instance, components of the economic partnership such as a core Free Trade Agreement (FTA) and of the security partnership such as internal security, while others should be based on political

commitments, for instance, components of external security cooperation. The majority of these individual agreements should sit within the overarching institutional framework.

6. This framework should also facilitate many of the different forms of dialogue that would manage and administer the relationship, with a Governing Body providing political direction and a Joint Committee to underpin its technical and administrative functions. These are discussed further in the next section, and summarised in figure 1.
7. To ensure that the relationship is sustainable, the UK and the EU should also build in two elements of flexibility. First, both parties should ensure that the relationship is adaptable and can change over time, with the option for additional agreements to be added to the framework where this would facilitate new cooperation. Second, specific agreements should be able to sit outside of the overarching framework if this meant that they would function better for legal or operational reasons, for instance, to bring them into force quickly, or because specific governance arrangements were required. All international agreements are of course entered into voluntarily and either party should be able to withdraw if they decided to do so, with consideration given to the merits of a mechanism allowing the provisions of an agreement to be reviewed. There should also be specific provisions that ensure any termination of an agreement between the UK and the EU was managed in a smooth and orderly way.
8. The UK's proposed structure draws on precedents from other international agreements, which all have some form of institutional architecture. For instance, the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and the EU-Ukraine Association Agreement include an overarching institutional structure, while the North American Free Trade Agreement establishes a Free Trade Commission and provides for a system of international arbitration for disputes, and the Association of Southeast Asian Nations (ASEAN) trade in goods agreement is managed by an ASEAN Free Trade Area Council. The EU and Switzerland are also currently in negotiations over a new institutional framework agreement.

Figure 1. Structure of the future partnership



The **overarching institutional framework** would cover the majority of the future partnership, but some agreements would sit outside of it.

**The Governing Body** would provide for leaders and ministers from the UK and EU to give direction to the development of the future relationship - making decisions about how and when changes to the relationship were necessary, and ensuring accountability to our Parliaments.

The **Joint Committee** would be accountable to the Governing Body and ensure that the agreements operate effectively, manage the processes for legislative changes, and propose new cooperation as necessary.

The **Economic Partnership, Security Partnership and Cross-Cutting Cooperation** would each consist of a number of different chapters or agreements, covering a broad range of issues. The majority of these chapters or agreements would fall under the overarching institutional structure...

... but some agreements would sit **outside of the overarching framework** with their own governance arrangements, where this made sense.

## 4.3 New forms of dialogue

9. The UK's vision for how firms, individuals and public authorities will cooperate with their EU counterparts in future, whether related to aviation, pharmaceutical products entering respective markets, or how authorities share data on criminal suspects, will require dialogue between the UK and the EU at a political and technical level. This will ensure that the cooperation that is agreed as part of the relationship is kept up to date, and works not just over the next five years, but beyond.
10. Dialogue between the UK and the EU will mean that the relationship itself can evolve and respond to changing circumstances. This could be a new technology, where agreement may be needed on how the product or service could be sold into each other's markets, or a new shared threat, which requires joint working to exchange time-sensitive information or new capabilities.
11. This dialogue will need to take place at different levels, in different formats and cover a broad range of issues, through a Governing Body at leader and ministerial level; through a Joint Committee, including sub-committees where relevant, at a technical level; through formal consultation between experts on regulatory issues and legislative changes; and through exchanges between the UK Parliament and the European Parliament.

### 4.3.1 Setting direction through a Governing Body

12. To set the strategic direction for the future relationship and make decisions at the highest level, a new Governing Body should be established. This would be a political body that would give leaders and ministers a forum in which they would:
  - a. set the direction for the future relationship;
  - b. discuss and determine if, how and when changes to the relationship were necessary; and
  - c. provide transparency and accountability.
13. In line with the breadth of the relationship and to ensure unforeseen challenges could be dealt with quickly, the Governing Body should meet biannually at leader level, including at least once between the UK Prime Minister and the heads of state and governments of the Member States of the EU as well as the presidents of the EU institutions, with additional ad hoc formal and informal ministerial dialogue as necessary.
14. This would enable the UK and the EU to coordinate responses to new global crises or to change approach in response to shifting objectives over time. It would also reflect the UK's and the EU's status as key global players, and ensure that where it is appropriate, the UK's and the EU's shared values could be projected on the world stage. This would include discussion of coordinated action beyond the UK-EU relationship. This could relate to foreign policy, defence or development objectives, or international standards, where the UK and the EU may choose to coordinate activity.

15. In line with the Memorandum of Understanding and Supplementary Agreements between the UK Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive, the UK Government will represent the interests of all parts of the UK in this forum, ensuring that the interests of the devolved administrations are taken into account.

#### **4.3.2 Technical discussion through the Joint Committee**

16. To ensure that relevant parts of the future relationship function effectively, officials from the UK and the EU should meet for detailed discussions through a Joint Committee, and sub-committees where appropriate. This is a common feature of international agreements in this respect and would:
  - a. steer the development of the future relationship, as agreed by the Governing Body;
  - b. manage and monitor the implementation of the future relationship;
  - c. resolve disputes related to the future relationship; and
  - d. provide additional administrative functions related to the future relationship.
17. The Joint Committee would be directed by the Governing Body and make recommendations to it on whether changes were needed to improve the functioning of the relationship. Where provided for under the future relationship, the Joint Committee would also be able to make decisions that would facilitate the implementation of the various components of the relationship, and manage issues that arise.
18. In order to manage and monitor the implementation of the future relationship, the Joint Committee would also provide a forum for the UK and the EU to share information and views. This could relate to legislative changes and the processes in place to ensure that commitments related to rules and regulations were managed effectively and implemented correctly in the respective domestic contexts in the UK and the EU. Alongside this joint surveillance, the UK authorities would monitor the UK's compliance, as they do now, to ensure that the UK is meeting its international obligations.
19. Through regular and structured dialogue, the Joint Committee would be designed to prevent disputes from arising, whether related to implementation, enforcement or compliance. However, in the unlikely event that such disputes did arise, the Joint Committee would facilitate their resolution. The process for how this should work is detailed later in this chapter.

#### **4.3.3 Parliament to Parliament discussions**

20. The relationships between the UK Parliament and the European Parliament and national parliaments in Member States are of course for the two Houses to determine. Both Houses and their committees have existing networks and relationships in this respect, which are expected to continue. Given the importance of these relationships, the UK Government will play its part in supporting them.

21. Therefore, alongside the role that the UK legislatures will play in the implementation of the future relationship in the UK, a regular and formal dialogue between the UK Parliament and the European Parliament should be established. This would enable legislatures, where they saw fit, to share views and expertise on a wide range of issues, from the functioning of the future relationship and its development, to specific legislative changes that might be relevant. It should also build on the existing precedents for cooperation, including between Parliamentary Committees and their European Parliament and Member State equivalent counterparts. This cooperation will be supplemented by arrangements for the formal role of the UK Parliament, proposals for which are set out in chapter 4.6.

#### 4.3.4 Consultation over legislative proposals

22. In areas where the UK commits to a common rulebook, where the UK makes an upfront choice to commit to ongoing harmonisation with the relevant EU rules and requirements, it will be important for the UK to be able to share its views with the EU as those EU rules are developed. While the UK would not have a vote on relevant rule changes, its experts should be consulted on the same basis as Member States in line with the existing arrangements the EU has with third countries. As part of that process, the UK Government could also seek the opinion of the relevant domestic UK legislatures. Proposed arrangements for this are covered in chapter 4.6.

### 4.4 Administrative provisions

23. To ensure the future relationship is administered effectively, the UK and the EU will need to agree arrangements for regulatory cooperation. This includes:
- a. an upfront choice to maintain a common rulebook with the EU, in particular, in relation to the free trade area for goods; and
  - b. a recognition that some rules are equivalent.
24. By making firm commitments, the UK and the EU would agree to establish a new free trade area for goods; the access that should be provided to firms and individuals to provide services in each others' markets; provisions related to socio-economic cooperation; and the arrangements for how the UK and the EU will jointly combat security threats.
25. Where the UK has made these commitments, the governance and institutional arrangements would need to ensure that:
- a. there is technical dialogue in the Joint Committee to oversee the **application of legislative and regulatory commitments**;
  - b. where there is a common rulebook, these rules can be relied on by individuals and businesses and enforced by UK and EU courts in the same way, because they have been **interpreted consistently**; and
  - c. there are arrangements in place for UK **participation in EU bodies and agencies**, where this is required for the agreed cooperation to take place.

26. Resource and administrative commitments would be necessary to ensure that the governance arrangements in the future relationship are robust enough to support the breadth of cooperation that would be in the interests of the UK and the EU. This will ensure that the rights of both parties are properly protected over time.

#### **4.4.1 Application of legislative and regulatory commitments**

27. There should be a clear process to manage the regulatory and legislative changes that result from the commitments in the future relationship between the UK and the EU. This would differ between rule changes that relate to different elements of cooperation, but would follow the same sequence of steps.
28. First, the UK and the EU would notify each other through the Joint Committee of any proposed and adopted legislative proposals, where these were related to specific commitments in the future relationship. Either the UK or the EU could request an initial discussion in the Joint Committee if this were necessary.
29. Second, the Joint Committee would agree on whether the rule changes were in scope of the future relationship and whether the relevant agreement may need to be updated to reflect this change.
30. Third, where changes were in scope, there would be a period of consultation and adaptation in the Joint Committee. This would include a decision between the UK and the EU about whether the relevant rule change should be added to the agreement. There would therefore always be an option for the rule not to be added.
  - a. Where the UK had committed to retain a common rulebook with the EU, the Joint Committee would need to agree on whether the proposed EU rule change should be incorporated into the agreement.
    - i. If the UK and the EU agreed that the change should be adopted, this would be reflected in the relevant agreement, taking into account any necessary adaptations for its functioning in the UK context.
    - ii. If the UK and the EU could not agree, the Joint Committee should consider all other possibilities and endeavour to maintain the functioning of the relevant agreement, including the possibility to recognise the equivalence of legislation. If this was not possible after a defined period and an imbalance was created, proportionate and where possible localised rebalancing measures could be proposed, for instance, requesting financial compensation. Where there was no agreement over these measures, or they were not possible, the relevant part of the future relationship could be suspended.
  - b. Where the UK and the EU had recognised within the future relationship that their rules were equivalent, the Joint Committee would consider whether a proposed new or amended UK rule remained equivalent with the EU's existing rule, or an existing UK rule remained equivalent to a proposed new or amended EU rule. This would not apply to the parties' autonomous equivalence regimes, which would continue to operate outside of any legal agreements between the UK and the EU.



- i. If the Joint Committee determined that equivalence was maintained, this would be reflected in the agreements.
  - ii. If the Joint Committee determined that the rules were no longer equivalent, the UK could propose an alternative rule to maintain equivalence or the Joint Committee could seek to agree a different solution for maintaining equivalence.
  - iii. If the Joint Committee could not agree on equivalence, there should be the option of recourse to independent arbitration for a binding ruling.
  - iv. If the UK decided to accept that rules were no longer equivalent, this could create an imbalance, and the EU could propose proportionate and where possible localised rebalancing measures, for instance, requesting financial compensation. Where there was no agreement over these measures, or they were not possible, the relevant part of the future relationship could be suspended.
31. Finally, if an agreement had been updated to reflect a rule change, this would become a binding obligation on both parties in international law. The agreed rule changes would also need to be given effect in UK law through domestic legislation. The UK Parliament would scrutinise this legislation in accordance with normal legislative procedure, respecting the principle that a sovereign Parliament has complete control over domestic law. This means that the UK Parliament could decide not to give effect to the change in domestic law, but this would be in the knowledge that it would breach the UK's international obligations, and the EU could raise a dispute and ultimately impose non-compliance measures.
32. In deciding whether and how to deal with differences as they arise, the UK would of course be conscious of a number of factors, including its commitments to Northern Ireland.

#### **4.4.2 Ensuring consistent interpretation**

33. The rights stemming from the future relationship would be enforced in the UK by UK courts and in the EU by EU courts. However, to ensure that businesses and citizens have confidence in the rules and regulations that affect them, there should be consistent interpretation of the agreements in the UK and the EU. So when courts in the UK or the EU interpret provisions of national legislation intended to give effect to the agreements, they could take into account the relevant case law of the courts of the other party. This would continue to respect the independence of the different courts.
34. To support this, it will be important for both parties to encourage and facilitate dialogue between the judiciaries of the UK and the EU. The Joint Committee should also keep under review the case law of both the senior courts of the UK and the CJEU, where this was relevant to the interpretation of the agreements. If significant divergences were found between respective courts' interpretation of the agreements, the Joint Committee could be empowered to act to preserve the consistent interpretation of the agreements.

35. Where the UK had agreed to retain a common rulebook with the EU, the UK would commit by treaty that its courts would pay due regard to CJEU case law, insofar as this was relevant to the matter before them. UK courts would not, however, be able to make preliminary references to the CJEU. Once the UK has left the EU, such references would no longer be appropriate or necessary. This would not affect consistent interpretation of a common rulebook, which would be delivered through the commitment to pay due regard to case law. The proposal for a common rulebook relates to areas of EU law where there is already a body of case law stretching back for decades.

#### **4.4.3 Participation in bodies and agencies**

36. To fulfil the aims set out in this paper across the economic and security partnerships, the UK should continue to participate in certain EU bodies and agencies. UK participation would be important for different reasons, but could relate to enabling mutual recognition of standards, sharing essential expertise and personnel, and exchanging data and information.
37. The nature and structure of the UK's participation will vary depending on the EU body or agency in question. In some cases, there may be an appropriate precedent for third country involvement, as in the case of Switzerland's participation in the European Aviation Safety Agency (EASA). In other cases, such as the European Medicines Agency (EMA) and Europol, the future relationship should go beyond existing third country provisions, in line with the depth and breadth of the proposed relationship.
38. Where the UK participated in EU bodies or agencies, this would involve a number of commitments. First, it may be appropriate for the UK to make a financial contribution, the form and structure of which would depend on the type of working relationship agreed. Second, the UK would respect the rules under which those bodies or agencies operated. Third, the UK would respect the remit of the CJEU such that if there was a challenge to a decision made by an agency that affected the UK, this could be resolved by the CJEU, noting that this would not involve giving the CJEU jurisdiction over the UK.

#### **4.5 Resolving disputes**

39. The institutional framework should prevent disputes arising but in the unlikely event that they did, it should be designed in a way that facilitates dialogue. But where international agreements include binding commitments on the parties, it is important that they include provisions to ensure that formal disputes over these commitments can be resolved quickly and fairly. To provide as much legal certainty as possible, the future relationship should also outline the potential implications of a party not complying with these commitments. Further, to ensure that both parties can respond to unforeseen shocks, whether economic, social, environmental or security related, the future relationship should include provisions for how the agreements would allow both the UK and the EU to respond.

### 4.5.1 The mechanisms for resolving disputes

40. The different types of dialogue between leaders and experts should ensure that cooperation is maintained without issues arising. However, in those few circumstances where informal discussions did not resolve a particular issue, a formal dispute would be raised in the Joint Committee.
41. Should efforts to resolve a dispute by negotiation fail after a defined period of time, it would make sense in some cases for either party to have the option of referring the issue to an independent arbitration panel, which would include members from both parties. In some instances, the arbitration panel might include specialist expertise such as where a dispute required detailed sectoral knowledge. This would ensure that there was fair, prompt and independent resolution, with the decision of the panel binding on the parties. The merits of whether this should be an option should be assessed on a case by case basis across different forms of cooperation.
42. Where the UK and the EU had agreed to retain a common rulebook, it is possible that a dispute could relate to whether these rules had been interpreted correctly. The UK recognises that only the CJEU can bind the EU on the interpretation of EU law, and therefore in these instances, there should be the option for a referral to the CJEU for an interpretation, either by mutual consent from the Joint Committee, or from the arbitration panel. The CJEU would only have a role in relation to the interpretation of those EU rules to which the UK had agreed to adhere as a matter of international law. The Joint Committee or arbitration panel would have to resolve the dispute in a way that was consistent with this interpretation. This would respect the principle that the court of one party cannot resolve disputes between the two.
43. This process would be separate to other routes the parties might have for resolving disputes in other international agreements. For instance, the parties could choose whether to raise a dispute through the WTO, where relevant, or through the process set out above.

### 4.5.2 Dealing with non-compliance

44. Once an agreement is reached between the UK and the EU on the shape of the future relationship, there is no reason to expect that either party will break the commitments the UK and the EU have made to each other. However, as is normal in international agreements, the UK and the EU will still need to agree on what should happen if one party is in breach of the agreements. Of course in parts of the future relationship where the UK does not make binding commitments, non-compliance would not be relevant.
45. There are two main scenarios where non-compliance might happen. First, if a dispute was not resolved by the Joint Committee within a defined period of time and the agreement did not provide the option for the dispute to be passed to independent arbitration. Second, if either the UK or the EU considered that the other party had not complied with a decision made by the Joint Committee or arbitration panel within a reasonable period of time.

46. In either of these situations, the complaining party should be able to take measures to mitigate any harm caused by the breach. To ensure that they are fair, and do not unnecessarily disrupt cooperation, these measures should be:
  - a. proportionate to the scale of the breach;
  - b. temporary, and only in effect for, or related to, the period of non-compliance; and
  - c. localised to the extent possible to the area of the future relationship that the dispute concerned.
47. The type of measures that could be imposed for different sorts of breaches would be technical, but could include financial penalties or suspension of specific obligations. The proportionality and duration of such temporary measures should be subject to challenge through independent arbitration. If the offending party failed to comply with the finding of the independent arbitration panel, the only option available to the complaining party would be to suspend parts of the future relationship on a temporary basis. This should only be considered as a last resort.
48. The parties should commit to give priority to those measures which cause the least damage to the functioning of the future relationship, as this would be in the interests of citizens and businesses across the UK and the EU.
49. By way of example, the US has included financial compensation in eleven free trade agreements, including US-Australia, and the EEA Agreement has a provision for suspension. Consideration should also be given to whether defined consequences could be included within the agreements, such as predetermined reductions in market access where the UK relied on a provision in the agreements allowing it not to apply every aspect of EU rules.

### **4.5.3 Safeguarding against shocks**

50. The UK and the EU are expected to maintain the commitments that they make in the future relationship. However, there may be times where unexpected events mean that the parties need to respond quickly, and with provisions that would otherwise be in breach of the agreements. This would apply in circumstances of significant economic, societal or environmental difficulties.
51. It will be important for the future relationship to recognise that in these circumstances, there should be provision for temporary action to be taken, without breaching the relevant agreement. But to ensure that the future relationship is still fair, if the action resulted in one party gaining an undue competitive advantage, the other party would have the right to take steps to rebalance the agreement. Any measures would be subject to challenge through independent arbitration.

## **4.6 Accountability at home**

52. A core objective of the institutional provisions set out in this section is to ensure that there is accountability. The role of the UK Parliament and the devolved legislatures is integral to this process. This section sets out how such accountability will be assured.

53. First, the agreements that the UK will conclude with the EU will require domestic legislation to give them effect in the UK. The UK Parliament will need therefore to consent to the proposals, including for a common rulebook in specific areas.
54. Second, where these proposals relate to ongoing cooperation between the UK and the EU, the UK Parliament would also have a role in overseeing and scrutinising any legislative proposals. In areas where the UK had committed to maintain a common rulebook with the EU, the UK Parliament's role in the proposed system would work as follows.
  - a. Notification: if the EU proposed a change to the rules related to the agreements, the UK would be notified through the Joint Committee and the UK Government would inform the UK Parliament.
  - b. Scope: in determining whether the rule change was in scope of the agreements in the Joint Committee, the UK Parliament would have the opportunity to provide the Government with its opinion.
  - c. Consultation and adaptation: there would be a decision in the Joint Committee about whether to add a rule change to the relevant agreement, and whether technical adaptations were required for the UK context. There would be a process for the UK Parliament to be consulted.
  - d. Legislation: following consultation and adaptation, if the Joint Committee had agreed to adopt a rule change into the relevant annex of the agreement, the UK Parliament would be notified with an explanatory memorandum ahead of any domestic legislative proposals coming forward. The UK Parliament would then scrutinise any legislation to bring the proposals into UK law. As would be its right, the UK Parliament could ultimately decide not to pass the legislation, but it would be in the knowledge that there would be consequences from breaking the UK's international obligations, as there would be for any international treaty, potentially for market access, border frictions or security cooperation.
55. The UK Government will work with the UK Parliament to ensure that both Houses have the mechanisms they need to properly scrutinise proposed changes to UK law, whether to primary or secondary legislation. The Government has already demonstrated during the passage of the EU (Withdrawal) Bill that it will actively engage with suggestions from both Houses about the oversight of secondary legislation, adapting scrutiny arrangements as appropriate, and recognising the quality and expertise in the existing scrutiny structures in the Commons and the Lords.
56. Some changes to common rules will be within devolved competence. In those circumstances, there will also be a role for the devolved administrations and legislatures in shaping the UK Government's position ahead of discussions in the Joint Committee, and in ensuring that changes to common rules are reflected in law across the UK. The UK Government will work with the devolved administrations to ensure that processes are put into place which reflect the devolution settlements and provide for appropriate input from all parts of the UK.
57. A similar process would take place in relation to areas where the UK and the EU had agreed that there was equivalence between respective rules.

58. This process should give confidence to people across the UK that wherever the UK had agreed that there should be cooperation with the EU, whether related to the trade or the economic relationship, or law enforcement and criminal justice, this decision would have been taken by elected representatives accountable to the people of the UK.
59. This also means that the future relationship would be consistent with the UK's commitment to deliver for the whole UK family, including the devolved administrations, and the Governments of the Overseas Territories and the Crown Dependencies. The future relationship with the EU will have implications for the existing structures of Joint Ministerial Committees being discussed as part of the joint review of Intergovernmental Relations. The UK Government will work with the devolved administrations to ensure that any modifications to the existing arrangements reflect the new relationship between the UK and the EU. The UK Government will continue to engage with the Governments of the Crown Dependencies and Overseas Territories through the Joint Ministerial Councils and the Chief Ministers' Quarterly.

# Conclusion and next steps

## Conclusion

1. This White Paper has set out the UK's proposal for a principled and practical Brexit, following the decision of the people of the UK to leave the EU. The Government believes that this proposal is the right one for both sides, striking a new balance of rights and obligations.
2. Taken together, the package presented in this White Paper would:
  - a. deliver for the economy, preserving frictionless trade at the border for goods and making sure that the UK is best placed to capitalise on the industries of the future in line with the modern Industrial Strategy, striking new trade deals with old friends and new allies;
  - b. meet the needs of communities, ending free movement, taking the UK out of the Common Agricultural Policy and the Common Fisheries Policy, and supporting regeneration through the Shared Prosperity Fund, while preserving vital cooperation to tackle crime and terrorism;
  - c. protect the union, avoiding the need for any hard border between Northern Ireland and Ireland, preserving the constitutional and economic integrity of the UK, and meeting the needs of the wider UK family, including the Crown Dependencies and the Overseas Territories;
  - d. strengthen the UK's democracy, returning accountability to the elected representatives who make the UK's laws in London, Edinburgh, Cardiff and Belfast, and ending the jurisdiction of the CJEU in the UK; and
  - e. support the UK's stepping out into the world, asserting a fully independent foreign policy and working alongside the EU to promote and protect shared European values.
3. In short, this is a Brexit which will deliver in full on the democratic decision of the people of the UK, and work for the whole country.

## Next steps

4. On the basis of the proposal set out in this White Paper, the UK's negotiating team will now engage with the EU's at pace, in order to conclude the Article 50 negotiations this autumn. This means finalising both the Withdrawal Agreement and the framework for the future relationship (the 'Future Framework').
5. The UK and the EU have been clear that the Withdrawal Agreement and the Future Framework form a package. Article 50 sets out that the terms of the UK's withdrawal from the EU must be agreed taking account of the framework for the future relationship, and the EU's guidelines of March 2018 confirmed that, in line with Article 50, this political declaration will accompany and be referred to in the Withdrawal Agreement. The UK and the EU have also been clear that 'nothing is agreed until

everything is agreed' meaning that neither document can be considered final until this is true of both.

6. Once the UK and the EU have reached agreement on the Withdrawal Agreement and the Future Framework, under the terms of the European Union (Withdrawal) Act 2018, there will be a debate in both Houses of the UK Parliament. If the House of Commons supports a resolution to approve the Withdrawal Agreement and the Future Framework, the Government will bring forward the Withdrawal Agreement and Implementation Bill to give the Withdrawal Agreement legal effect in the UK. In the EU, the European Parliament must give its consent to the conclusion of the Withdrawal Agreement. The UK and the EU have a shared ambition to agree both documents by October in order to give sufficient time for their respective Parliaments to give their approval before the UK leaves the EU on 29 March 2019.
7. Recognising that the EU is only able legally to conclude agreements giving effect to the future relationship once the UK has left the EU in March 2019, the Withdrawal Agreement should include an explicit commitment by both parties to finalise these legal agreements as soon as possible in accordance with the parameters set out in the Future Framework, in order to achieve a smooth transition out of the implementation period and into the future relationship.





CCS0718050590-001  
978-1-5286-0701-8



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT  
ECONOMIC AND SCIENTIFIC POLICY **A**

The Consequences of Brexit on Services and Establishment: Different Scenarios for Exit and Future Cooperation



Economic and Monetary Affairs

Employment and Social Affairs

Environment, Public Health and Food Safety

Industry, Research and Energy

**Internal Market and  
Consumer Protection**

# The Consequences of Brexit on Services and Establishment: Different Scenarios for Exit and Future Cooperation

In-depth analysis for the IMCO Committee





DIRECTORATE GENERAL FOR INTERNAL POLICIES  
POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

# The Consequences of Brexit on Services and Establishment: Different Scenarios for Exit and Future Cooperation

IN-DEPTH ANALYSIS

## Abstract

This paper addresses the challenges Brexit will pose to the future of trade in services between the EU and the UK. It discusses the specific barriers to cross-border establishment and trade in services and possible solutions for a future EU-UK trade agreement. Hereby, it takes existing EU Free Trade Agreements with other states into consideration.

This research paper has been commissioned by Policy Department at the request of the Internal Market and Consumer Protection Committee.

IP/A/IMCO/2016-22

June 2017

PE 602.035

EN

This document was requested by the European Parliament's Committee on Internal Market and Consumer Protection.

## **AUTHOR(S)**

Prof. Dr Friedemann KAINER

## **RESPONSIBLE ADMINISTRATOR**

Mariusz MACIEJEWSKI

## **EDITORIAL ASSISTANT**

Janetta Cujkova

## **LINGUISTIC VERSIONS**

Original: EN

## **ABOUT THE EDITOR**

Policy departments provide in-house and external expertise to support EP committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU internal policies.

To contact Policy Department A or to subscribe to its newsletter please write to:

Policy Department A: Economic and Scientific Policy

European Parliament

B-1047 Brussels

E-mail: [Poldep-Economy-Science@ep.europa.eu](mailto:Poldep-Economy-Science@ep.europa.eu)

Manuscript completed in May 2017

© European Union, 2017

This document is available on the Internet at:

<http://www.europarl.europa.eu/studies>

## **DISCLAIMER**

The opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the publisher is given prior notice and sent a copy.

## CONTENTS

<b>LIST OF TABLES</b>	<b>4</b>
<b>EXECUTIVE SUMMARY</b>	<b>5</b>
<b>1. TRADE IN SERVICES AND ESTABLISHMENT: CHALLENGES FOR MARKET INTEGRATION</b>	<b>8</b>
<b>2. SERVICES AND ESTABLISHMENT: CONDITIONS FOR INTEGRATED MARKETS</b>	<b>9</b>
<b>3. SERVICE MARKETS AND ESTABLISHMENT UNDER DIFFERENT TRADE REGIMES</b>	<b>11</b>
3.1. Service Markets and Establishment under the EEA	11
3.2. Service Markets under EU-Ukraine Association Agreement	12
3.3. Service Markets and Establishment under a Customs Union: EU – Turkey Customs Union	12
3.4. Service Markets and Establishment under CETA	13
3.5. Service Markets and Establishment under FTA EU-Korea	13
3.6. Service Markets under World Trade Law (GATS)	14
<b>4. COMPARISON AND LESSONS FOR FUTURE EU-UK TRADE IN SERVICES</b>	<b>15</b>
<b>5. CHALLENGES FOR EU-LEGISLATION: TRANSITORY MEASURES TO MATCH LEGITIMATE EXPECTATIONS</b>	<b>17</b>
5.1. Legal Uncertainties for EU-Citizens in UK and UK-Citizens in EU after Brexit	17
5.2. Specific Policies of EU Legislation Affected by Brexit	17
5.3. Upholding Rights in the UK; Categorisation of rights by the UK High Court	23
5.4. Possible Solutions	23
5.4.1. Legitimate Expectations and the Principle of Acquired Rights; Fundamental Freedoms	23
5.4.2. Adapting EU Legislation	24
5.4.3. Negotiating Rights in the Withdrawal Agreement	25
<b>6. CONCLUSIONS: CHALLENGES FOR NEGOTIATION AND REGULATION</b>	<b>26</b>
<b>REFERENCES</b>	<b>27</b>

## LIST OF TABLES

Table 1:	Comparison of different trade agreements	15
Table 2:	Market Access in detail	16



## EXECUTIVE SUMMARY

Unlike goods, services are intangible products. Therefore, international trade in services and cross-border establishment pose specific regulatory problems. Liberalizing trade in services and opening borders for establishment requires regulation, such as common standards for licenses or diplomas. Future EU-UK relations should consider the specific challenges for cross-border trade in services and establishment.

To facilitate cross-border trade in services, hindering regulation and discrimination have to be eliminated as a means of negative integration. Cross-border trade in services and establishment is largely dependent on mutual recognition, which only works when standards are similar. Therefore positive integration (e.g. mutual standards) is often necessary. However, the efficiency of liberalisation by market law is dependent not only on the scope and substance, but also on the quality of law. Enforceable rules with direct effect together with judicial review such as provided for by the European Treaties and the EEA will lead to a high level of market liberalisation and integration.

On the way towards a withdrawal agreement, existing International Trade Agreements between the EU and Third Parties to some extent can serve as blueprints for future EU-UK relations.

If the UK stayed in the EEA (or would regain membership, herein), for service markets and establishment not much would change. The substance of EEA Law is largely aligned to the EU single market law. Whereas, other Trade Agreements in substance (scope of the agreements, rights to market access, passporting) and efficiency (quality of law) lag way behind the EU's and EEA's level of integration: Most of those agreements only have limited scope (e.g. only specific sectors are subject to liberalisation), do not provide for enforceable rules with direct effect or judicial review and are rather reluctant regarding common standard setting.

In order to make trade in services effective, a future EU-UK Trade Agreement should not only grant market access, but also find a mechanism to ensure and monitor common standards as condition for far-reaching rights to market access. This could be done by granting market access as well as mutual recognition as long as standards in the UK and the EU are still approximated. Market access and mutual recognition could be suspended when either the EU or the UK change standards unilaterally – until standards are in line again. This would require to developing a mechanism to monitor the alignment of standards in the UK and the EU.

Worst case would clearly be a Brexit without agreement as then the relation between UK and the EU in trade in services would be governed by the General Agreement on Trade in Services (GATS). Here, the status of the UK in detail remains to be unclear. Also, GATS as a rather weak framework does not allow for passporting and leaves numerous uncertainties.

Furthermore, Brexit will lead to the result that British citizens and companies no longer fall within the personal scope of EU law, and EU law will no longer be applicable in UK. Service providers and natural or legal persons established in an EU-UK relationship will suffer from massive legal uncertainties. Not only the access to the markets is affected but also, e.g., judicial cooperation, intellectual property, data protection or consumer rights. As there are no reliable legal instruments to solve the problem of legal uncertainties, it is necessary to find a political solution and at least preliminarily uphold the rights of UK and EU citizens on a reciprocal basis.

The main challenges for a future EU-UK Trade Agreement are: (1) to find a common standard setting mechanism; (2) agree on mutual recognition and on (3) effective

enforcement mechanisms; (4) clarify the rights of persons which have made use from their right of establishment in the past.

## 1. INTRODUCTION

Trade in services is an increasingly important factor in our economy as it is growing even faster than trade in goods. In the European Union the freedom to provide services and the freedom of establishment are widely guaranteed in Art. 56 and 49 TFEU. Furthermore, to facilitate the use of these freedoms, a wide range of EU secondary law has been implemented.

There is a great deal of uncertainty how Brexit will affect trade in services between the UK and the EU. This is because the character of trans-border trade in services makes any future agreement particularly challenging. The specific barriers to trade in services need to be identified and addressed in order to effectively uphold the freedom to provide services between EU and UK.

The EU is a member of a multiplicity of Free Trade Agreements, including the European Economic Area (EEA), the Deep and Comprehensive Free Trade Area (DCFTA) with the Ukraine, the EU-Turkey Customs Union, the Comprehensive Economic and Trade Agreement (CETA) with Canada, the EU-Korea FTA and the General Agreement on Trade in Services (GATS). Those agreements differ considerably regarding their scope and their quality of law – making it difficult to serve as blueprint for any future EU-UK relationship.

One of the most important issues is the possible loss of rights after Brexit for EU-citizens in UK and UK-citizens in EU. Not only will Art. 49 and 56 TFEU no longer be applicable but also a variety of secondary law will cease to apply. This particularly affects regulated services (e.g. financial services, insurance services, transport services) and regulated professions (e.g. legal professions). It is yet unclear whether service providers and established persons in an EU-UK relationship can rely on previously “acquired rights”.

This paper gives an overview of the described problems and discusses possible solutions for a future EU-UK agreement.

## 2. TRADE IN SERVICES AND ESTABLISHMENT: CHALLENGES FOR MARKET INTEGRATION

### KEY FINDINGS

- International trade in services and cross-border establishment pose specific regulatory problems which have to be identified and addressed in trade agreements.
- Liberalizing trade in services and opening borders for establishment requires regulation, such as common standards for licenses or diplomas.

The exit of the United Kingdom will pose challenges to the future of trade in services between the EU and the UK. In any case, a trade agreement has to address specific regulatory problems. In order to make trade in services effective and cross-border establishment possible, specific barriers to trade must be identified.

It is the character of trans-border trade in services which makes trade agreements challenging: Domestic rules may set specific standards aiming at consumer or environmental protection or protection of any other public good; barriers may stem from mere differences between legal orders.<sup>1</sup> *Secondly*, barriers to trade in services very often do not address the product but rather the service supplier.<sup>2</sup> For example, the practice of legal professions normally is reserved to professionals in possession of a domestic legal diploma. This makes it difficult to meet the requirements of domestic law whereas adapting to technical standards on goods often rather results to be a mere cost factor. *Thirdly*, trade in services often requires the establishment of a branch or at least temporary access of staff.<sup>3</sup> A topic which dives into the conflict of immigration control schemes and therefore affects core national interests.<sup>4</sup>

One of this paper's main arguments shall be that liberalising trade in services and opening borders for establishment requires regulation, such as common standards for licenses or diplomas. On this basis Member States can be obliged to allow mutual recognition of standards or may even waive supervision.

This, as an ideal solution, allows the application of the country of origin principle, or, what is called "passporting"<sup>5</sup>.

---

<sup>1</sup> *Delimatsis*, International Trade in Services and Domestic Regulations: Necessity, Transparency, and Regulatory Diversity, 2007, p. 70; for an overview over barriers to trade in services see: *Hoekman/Braga*, Protection in Trade in Services – a Survey, The World Bank Policy Research Working Paper No 1747, 1997, pp. 5 et seqq.

<sup>2</sup> *Sampson/Snape*, Identifying the Issues in Trade in Services, The World Economy 1985, 171.

<sup>3</sup> *Delimatsis*, International Trade in Services and Domestic Regulations: Necessity, Transparency, and Regulatory Diversity, 2007, pp. 63 et seqq.; *Sampson/Snape*, Identifying the Issues in Trade in Services, The World Economy 1985, 171, p. 172.

<sup>4</sup> See: *Lehmann/Zetzsche*, Brexit and the Consequences for Commercial and Financial Relations between the EU and the UK, referring to the Prime Minister's statement saying, that 'We need to find a solution that addresses the concerns of the British people about free movement, while getting the best possible deal on trade in goods and services. We should be driven by what is in the best interests of the UK and what is going to work for the European Union, not by the models that already exist.', <http://www.reuters.com/article/us-britain-eu-may-idUSKCN1081QL>, accessed 20 March 2017.

<sup>5</sup> See: *Cherednychenko*, The UK's Potential Withdrawal from the EU and Single Market Access under EU Financial Services Legislation, In-Depth Analysis for the ECON Committee, 2016, p. 11.

### 3. SERVICES AND ESTABLISHMENT: CONDITIONS FOR INTEGRATED MARKETS

#### KEY FINDINGS

- Hindering regulation and discrimination have to be eliminated as a means of negative integration.
- Mutual recognition only works for services and establishment when standards are similar. Therefore positive integration (e.g. mutual standards) can be necessary.
- Unlike Art. 56 and 49 TFEU, International Trade Agreements usually only have a restricted scope, which makes it difficult and complex to handle the trade agreement.
- The efficiency of liberalisation by market law is dependent on the quality of law.

There are several conditions for integrated service markets which can also be applied to integrated establishment markets.

First, hindering regulation and discrimination have to be eliminated as a means of **negative integration**.<sup>6</sup> The EU treaties allocate this task primarily to the fundamental freedoms, **granting market access** and **prohibiting discrimination**. This may lead – in the best case – to a self-executing rule of **mutual recognition** as the Court of Justice of the EU has spelled out in its *Cassis de Dijon*-jurisdiction concerning the freedom of goods<sup>7</sup>.

However, as mentioned above, mutual recognition only works for services and establishment when standards are similar. Otherwise, the receiving country might want to insist on its own standards and therefore argue to justify restrictions of the freedoms of services and establishment.<sup>8</sup> Therefore, it is often necessary to **set standards** to approximate national laws.<sup>9</sup> This **positive form of integration eases mutual recognition**, cuts of **justification of restrictions** and allows **passporting** as a principle. Without common standards, the integration of markets may be a lengthy process in small steps, each step based on an uncertain lawsuit, sometimes without success.

As a third important point, it is necessary to bear in mind **the scope of a trade agreement**. Whereas Art. 56 and 49 TFEU are applicable almost without restrictions, International Trade Agreements tend to have a restricted scope laid down in commitments or in an annex to the treaty, making it difficult and complex to handle the trade agreement. Some trade agreements apply specific sectors to liberalisation (**positive list method**),<sup>10</sup> others exclude specific sectors from liberalisation (**negative list method**)<sup>11, 12</sup> One can

<sup>6</sup> *Craig/De Burca*, EU Law, 6th edition 2015, p. 608.

<sup>7</sup> Judgment of the Court of 20 February 1979, Case 120/78, *Cassis De Dijon*, ECLI: EU: C:1979:42.

<sup>8</sup> Judgment of the Court of 12 December 1996, Case C-3/95, *Reisebüro Broede*, ECLI:EU:C:1996:487; Judgment of the Court of 29 November 2007, Case C-393/05, *Commission/Austria*, ECLI:EU:C:2007:722; Judgment of the Court of 15 November 2011, Case C-320-03, *Commission/Austria*, ECLI:EU:C:2005:684.

<sup>9</sup> *Craig/De Burca*, EU Law, 6th edition 2015, p. 608.

<sup>10</sup> See for example EU-South Korea FTA, Articles 7.5, 7.11; GATS, Article XVI.

<sup>11</sup> See: CETA, Chapter IX, Article 9.2.

<sup>12</sup> For a more detailed explanation, see: European Commission, Services and investment in EU trade deals – Using positive and negative lists, 2016, [http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc\\_154427.pdf](http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154427.pdf), accessed 20 March 2017.

argue that the negative list method is more efficient in terms of trade liberalisation.<sup>13</sup> In particular, Member States should be bound by positive or negative lists.

Finally, as a fourth point: the efficiency of liberalisation by market law is dependent on the quality of law. Enforceable rules with **direct effect** will serve better. Together with **judicial review** it allows to enforce subjective rights through the affected market players which, as the ECJ called it, would amount to an effective supervision by increasing the vigilance of individuals concerned with the protection of their rights.<sup>14</sup> Trade rules without direct effect may need enforcement under an international jurisdiction; the efficiency of such a dispute settlement is dependent on the procedures provided for in the trade agreement.

---

<sup>13</sup> *Sauvé/Mattoo*, Regionalism in Services Trade, 2004, p. 43, [http://siteresources.worldbank.org/INTRANETTRADE/Resources/WBI-Training/sauve-mattoo\\_regionalism\\_april2004.pdf](http://siteresources.worldbank.org/INTRANETTRADE/Resources/WBI-Training/sauve-mattoo_regionalism_april2004.pdf), accessed 20 March 2017; *Low/Mattoo*, Is there a better way? Alternative Approaches to Liberalization under GATS, in: Sauvé/Stern (ed.), GATS 2000: New Directions in Services Trade Liberalization, 2000, pp. 467 et seq.

<sup>14</sup> Judgment of the Court of 5 March 1963, Case 26/62, Van Gend en Loos, ECLI: EU: C:1963:1, p. 13.

## 4. SERVICE MARKETS AND ESTABLISHMENT UNDER DIFFERENT TRADE REGIMES

### KEY FINDINGS

- If the UK stayed in the EEA or would regain membership, for service markets and establishment not much would change. The substance of EEA Law is largely aligned to the EU single market law.
- Other existing Free Trade Agreements fall way back behind the EU`s level of integration, in particular regarding the scope of the agreements and the quality of law.
- Worst case would clearly be a Brexit without agreement as then the relation between the UK and the EU in trade in services would be governed by GATS. Here, the status of the UK in detail remains to be unclear and GATS as a rather weak framework does not allow for passporting and leaves numerous uncertainties.

A trade agreement between the EU and the UK could be inspired by different trade regimes such as the EEA, the EU-Ukraine Association Agreement or other International Trade Agreements.

#### 4.1. Service Markets and Establishment under the EEA

The best solution for future EU-UK trade relations after Brexit would be – from a market point of view – an EEA membership. At this point, the legal problems of the UK staying or becoming a member in the EEA shall not be addressed; they seem to be more political than legal in nature.<sup>15</sup> If the UK stayed in the EEA or would regain membership,<sup>16</sup> for service markets and establishment not much would change. The substance of **EEA Law is largely aligned** to the EU single market law. The fundamental freedoms are identical<sup>17</sup> and, most importantly, the EEA Members<sup>18</sup> outside the EU adopt almost 100% of EU single market legislation. Apart from a few exceptions, the scope of EEA law is very wide. The quality of law is also very similar. Even though EEA law does not necessarily have direct effect, the Law has to be transposed into national law with direct effect and stands under an efficient legal review by the EFTA Court.

Assessing the EEA, it appears to be the perfect solution: comprehensive market integration, functioning legal review both of which allow for passporting in regulated sectors. However, the UK would be bound by the fundamental freedoms including the freedom of workers. It would have to transpose single market law into domestic law without having voting rights in the Council or sending representatives to the European Parliament.

<sup>15</sup> One of the resulting problems would be that the EEA States only have a right to participate in the preparation of new legislation on the expert level, but don't have any voting rights, see: EEA Agreement, Articles 99 f. and *Baudenbacher*, After Brexit: EEA plus as a solution for the UK, NZKart 2016, 498.

<sup>16</sup> See: *Baudenbacher*, After Brexit: EEA plus as a solution for the UK, NZKart 2016, 498, In order to join the EEA, the UK would first have to join EFTA. For that the consent of the four EFTA States Iceland, Liechtenstein, Norway and Switzerland would be required, see EFTA Convention, Article 56 para 1 (though Switzerland is an EFTA State it is not a Contracting Party to the EEA Agreement following a negative referendum`s result on 6 December 1992).

<sup>17</sup> See: EEA Agreement, Article 1 (2).

<sup>18</sup> These are Iceland, Liechtenstein and Norway.

#### 4.2. Service Markets under EU-Ukraine Association Agreement

A rather new model for trade relations is the Deep and Comprehensive Free Trade Area (DCFTA),<sup>19</sup> which is part of the EU-Ukraine Association Agreement. It aims at aligning the Ukrainian economy with EU standards. For two reasons this agreement cannot serve as a blueprint for a Brexit-agreement: Firstly, the UK economy already matches EU standards. Secondly, contrary to the EU-Ukraine Association Agreement, an UK-EU agreement would rather be aimed at disengagement than at rapprochement.

Like CETA (see below, 3.4), DCFTA is rather ambitious regarding negative integration. The agreement provides for a right of establishment including national treatment and MFN-treatment in services and non-services sectors, subject to reservations in a negative list.<sup>20</sup> For cross-border supply of services the agreement follows a positive list approach.<sup>21</sup>

For some key services sectors (financial services, telecommunications services, postal and courier services, and international maritime services) the agreement provides for an implementation of the EU-acquis and thus a gradual expansion of the internal market in those sectors.<sup>22</sup>

Another approach of positive integration is to present a framework which facilitates future mutual recognition agreements, empowering the professional bodies to provide recommendations on mutual recognition, which would allow service suppliers and investors to rely on their domestic diplomas, licences and market admissions.<sup>23</sup>

Even though the agreement does not yet contain investment protection provisions and investor-to-state dispute settlement procedures,<sup>24</sup> it obliges the parties to provide effective legal protection in areas covered by the agreement.<sup>25</sup> However, regarding the quality of law, the agreement remains behind the EEA, as it is not directly applicable.<sup>26</sup>

#### 4.3. Service Markets and Establishment under a Customs Union: EU – Turkey Customs Union

Service markets and free establishment between the EU and the UK might also be formed through agreements establishing a customs union. However, a customs union as such does not make a big difference for service markets and establishment. Customs unions abolish tariffs for trade within the customs union and provide for an external tariff. Services and establishment are normally not subject to tariffs as these – typically – cover goods.<sup>27</sup> The effect of a customs union on services and establishment depends on other trade arrangements in the agreement which could be more similar to the EEA or to CETA or GATS. In the EU-Turkey customs union there are rules on national treatment and on market access for services, but there is no basis for positive integration which in the end hinders passporting rights in the area of services and establishment.

---

<sup>19</sup> EU-Ukraine Association Agreement, Title IV.

<sup>20</sup> See: EU-Ukraine Association Agreement, Title IV, Article 88.

<sup>21</sup> See: EU-Ukraine Association Agreement, Title IV, Article 95.

<sup>22</sup> See: EU-Ukraine Association Agreement, Title IV, Articles 114, 124, 133 and 138.

<sup>23</sup> See: EU-Ukraine Association Agreement, Title IV, Article 106.

<sup>24</sup> See: EU-Ukraine Association Agreement, Title IV, Article 89.

<sup>25</sup> See: EU-Ukraine Association Agreement, Title IV, Article 286.

<sup>26</sup> See: Council Decision 2014/295/EU of 17 March 2014 on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, as regards the Preamble, Article 1, and Titles I, II and VII thereof, recital 5.

<sup>27</sup> *Hoekman/Braga*, Protection in Trade in Services – a Survey, The World Bank Policy Research Working Paper No 1747, 1997, p. 5



#### 4.4. Service Markets and Establishment under CETA

Instead, CETA could be treated as a possible solution for EU-UK trade relations in the future, as it is the EU's most ambitious trade agreement. A first glance at the substance of the law shows that rather far-reaching approaches concerning negative integration can be found<sup>28</sup>. There are rules on national treatment<sup>29</sup> and on market access.<sup>30</sup> CETA also requires domestic regulation on standards affecting services to be fair and equitable instead of being arbitrary.<sup>31</sup> There also are rules on the temporary entry of staff and of natural persons for business purposes,<sup>32</sup> though this does remain subject to conditions<sup>33</sup>. This framework of negative integration falls short to standards of EU law but is, compared to other trade agreements, rather progressive.

However, there are no legal bases to enact **common standards**. One can find, as an approach of positive integration, a framework to facilitate future mutual recognition agreements<sup>34</sup> which would allow service suppliers and investors to rely on their domestic diplomas, licences and market admissions. This as such will not be sufficient for closely integrated service markets such as the EU and will not allow passporting as long as mutual recognition agreements are not concluded.

On the positive side of CETA falls the wide **scope of the agreement** which is mainly based on a negative list.<sup>35</sup>

Talking about the **quality of law**, there is no direct effect.<sup>36</sup> Investors, however, can rely on the right to claim for damages if obligations under CETA have been breached.<sup>37</sup> Here, the agreement provides for direct access to arbitration<sup>38</sup> whereas service suppliers do not have the right to invoke their rights directly. In this respect, judicial review is restricted to state-to-state dispute settlement<sup>39</sup>. The bottom line is that CETA represents an ambitious approach. However, parties can be required to obey national laws, there is no setting of common standards, no self-executing mutual recognition and therefore no passporting.

#### 4.5. Service Markets and Establishment under FTA EU-Korea

The EU-Korea FTA contains quite similar provisions to CETA. Regarding negative integration, it is slightly less ambitious than CETA as it follows a positive list approach.<sup>40</sup> In the liberalised sectors, the principles of National Treatment and MFN-Treatment apply.<sup>41</sup> Like CETA, the agreement contains provisions on the temporary entry of natural persons.<sup>42</sup> It also does not include any base to enact common standards but only a framework for future mutual recognition agreements.<sup>43</sup>

<sup>28</sup> See: CETA, Chapter VIII, Articles 8.1 et seq., Chapter IX, Articles 9.3, 9.6.

<sup>29</sup> See: CETA, Chapter IX, Articles 9.3 and 9.5.

<sup>30</sup> See: CETA, Chapter IX, Article 9.6.

<sup>31</sup> See: CETA, Chapter XII, Article 12.3.

<sup>32</sup> See: CETA, Chapter X.

<sup>33</sup> See: CETA, Chapter X, Article 10.2.

<sup>34</sup> See: CETA, Chapter XI.

<sup>35</sup> See: CETA, Chapter IX, Article 9.2.

<sup>36</sup> See: CETA, Chapter XXX, Article 30.6.

<sup>37</sup> See: CETA, Chapter VIII, Article 8.39.

<sup>38</sup> See: CETA, Chapter VIII, Article 8.23.

<sup>39</sup> See: CETA, Chapter XXIX, Article 29.2.

<sup>40</sup> See: EU-South Korea FTA, Articles 7.5, 7.11.

<sup>41</sup> See: EU-South Korea FTA, Articles 7.7 and 7.8 regarding cross-border supply of services; Articles 7.12 and 7.14 regarding establishment.

<sup>42</sup> EU-South Korea FTA, Articles 7.17 et seqq.

<sup>43</sup> EU-South Korea FTA, Article 7.21.

Like other International Trade Agreements, the EU-Korea FTA does not have direct effect.<sup>44</sup> Furthermore, it does not contain any investor-to-state but only state-to-state dispute settlement mechanisms.<sup>45</sup> In conclusion, regarding the **quality of law**, it is rather unattractive to have this agreement serving as a blueprint for future EU-UK relations.

#### 4.6. Service Markets under World Trade Law (GATS)

An older trade agreement is GATS, whose objective is to extend the WTO system to the trade in services. GATS constitutes a **broad framework for the liberalisation** of trade in services rather than setting compulsory rules. However, GATS as a general instrument in international trade has to be viewed as the worst possible outcome of negotiations between the EU and the UK, if no withdrawal agreement were to be concluded. In any case, UK would remain within the WTO system and therefore would remain to be a GATS member.<sup>46</sup> The details are difficult and should be assessed accurately, because GATS is a shared agreement and, for example, the commitments of GATS which open the application of the trade rules are commitments laid down by the EU; also, they apply only to territory of the EU. Maybe, the UK would have to submit new commitments; the details are controversial in legal discourse.<sup>47</sup> There are several good reasons for the possibility to transfer the EU commitments to the UK by legal interpretation.

Looking closer at GATS, we find that the substance of the law is less far-reaching compared to CETA. There are no rules on positive harmonisation and also **no approach to ease mutual recognition**. This can be subject to negotiation, but agreements between states may trigger the principle of most-favoured-nation and open mutual recognition to all parties. As mutual recognition requires common or similar standards there is no basis for mutual recognition of standards from states who aren't are a member of the respective agreements.

The scope of GATS is restricted to a **positive list**<sup>48</sup> which is submitted by each Party for their territory unilaterally and is not binding; it can be changed **unilaterally** which makes trade relations less reliable.

The quality of the law obeys **international principles**, so GATS law has no direct effect. Judicial review is restricted to a procedure under the Dispute Settlement Understanding<sup>49</sup>, which provides for a complex and rather slow process without the possibility for individuals of invoking their rights.

The **assessment** is clear: GATS is a rather weak framework which does not allow for passporting and leaves a lot of uncertainties.

One last word concerning establishment: it is covered by GATS, but only when the established company itself supplies services.

---

<sup>44</sup> Council Decision 2011/265/EU of 16 September 2010 on the signing, on behalf of the European Union, and provisional application of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, Article 8.

<sup>45</sup> See: EU-South Korea FTA, Articles 14.1 et seqq.

<sup>46</sup> Both the EU and the UK have signed the WTO Agreements (Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994). The UK will therefore continue to be bound by the revised GATT and the GATS, see: *Lehmann/Zetzsche*, European Business Law Review 2016, 999, 1003. For a more detailed discussion of the UK's status as a WTO Member see *Bartels*, The UK's status in the WTO after Brexit, pp. 3 et seqq., [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2841747](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2841747), accessed 20 March 2017.

<sup>47</sup> See: *Lehmann/Zetzsche*, European Business Law Review 2016, 199, 1003. Some authors argue that a renegotiation of the UK's membership is needed as it will not be able to fulfil the obligations undertaken by the EU on its behalf; *Gehring*, EU Law Analysis: Brexit and EU-UK Trade Relations with Third States, <http://eulawanalysis.blogspot.com/2016/03/brexit-and-eu-uk-trade-relations-with.html>, accessed 20 March 2017 and *Bartels*, The UK's status in the WTO after Brexit, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2841747](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2841747), accessed 20 March 2017.

<sup>48</sup> See: GATS, Article XVI.

<sup>49</sup> See: GATS, Article XXIII.

## 5. COMPARISON AND LESSONS FOR FUTURE EU-UK TRADE IN SERVICES

### KEY FINDINGS

- Whereas all trade agreements include rights for market access and a non-discrimination rule, the effects of these rights are very different in substance and in their enforcement.
- Most attention should be paid to the relation between common standards and market access.
- As a principle, market access as well as full and self-executing mutual recognition should be granted as long as standards in the UK and the EU are still approximated.
- Market access and mutual recognition could be suspended when either the EU or the UK change standards unilaterally – until standards are in line again.
- A mechanism to monitor the alignment of standards in the UK and the EU should be developed.

Comparing these different trade agreements shows several main points: Whereas all trade agreements include rights for market access and a non-discrimination rule, the effects of these rights are very different in substance and in their enforcement. Mainly because only the EU and the EEA allow standard setting and have effective judicial review.

**Table 1: Comparison of different trade agreements**

	European Union	CETA	FTA EU-S.Korea	GATS
Negative Integration	Art. 56, 49 TFEU Market access National treatment	Art. 9.6, 9.3: limited market access, national treatment Art. 8.1 ff.: limited market access for investment	Art. 7.5 f., 7.9 f: limited market access, national treatment	Art. XVI, XVII: limited market access, national treatment
Mutual Recognition	Art. 56, 49 TFEU, Principle of origin	framework to develop Mutual Recognition Agreements (Art. 11)	mechanism on negotiation of Mutual Recognition Agreements	framework for further negotiation
Common Standards	Art. 114, Art. 62, 53 TFEU	(-)	(-)	(-)
Scope	not restricted	Negative list	Positive list	Positive list, unilateral
Direct Effect	yes	no	no	no
Judicial Review	CFEU	arbitration, restricted	restricted	restricted

The table shows an overview of trade in service regimes. There are big differences in the rule of mutual recognition and standard setting, the scope of the agreements, the quality of law and judicial review. But also market access rules are rather different, as the following table shows.

**Table 2: Market Access in detail**

	European Union	CETA
<b>Market Access in the Treaty Law</b>	Art. 56, 49: right to access markets free from unjustifiable discrimination and hindrances (e.g., national diploma) self-executing mutual recognition	Art. 9.6, 8.4: prohibition of free from unjustifiable discriminations and quantitative restrictions no self-executing mutual recognition
<b>Secondary Law</b>	numerous regulations and directives (see EU mapping: overview of the internal market and consumer protection related legislation)	negotiation to achieve MRA

Firstly, it has to be taken into account, that free market access can be facilitated by secondary law.<sup>50</sup> For example, the harmonization of private or procedural law removes obstacles to trade.<sup>51</sup> Secondly, also the wordings of the rules giving rights to market access are different. Whereas CETA, for example, only guarantees market access “free from unjustifiable discriminations and quantitative restrictions”, Art. 56 and 49 TFEU cover mere hindrances which affect market access.

What lessons can be learned from this for future EU-UK trade in services? As trade in services is growing faster than trade in goods, and the financial sector is extraordinarily important for the UK as well as for the EU, great efforts should be made to approximate a future trade agreement in this sector to current EU-law as much as possible. Most attention should be paid to the relation between common standards and market access. Starting conditions are very good, as the UK currently is in line with EU law. As a principle, market access and full and self-executing mutual recognition should be granted as long as standards in the UK and the EU are still approximated. Market access and mutual recognition could be suspended when either the EU or the UK change standards unilaterally – until standards are in line again. This mechanism would give the UK an incentive to voluntarily align their law in sectors which are important for trade in service. It remains to be seen if the negotiations lead to a trade regime which provides treaty rules with direct effect and effective judicial control.

<sup>50</sup> See for example: Directive 2011/83/EU of 25 October 2011 on consumer rights, recital 7: « The effect of such harmonisation should be to eliminate the barriers stemming from the fragmentation of the rules and to complete the internal market in this area. »; Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, recital 5 et seqq.

<sup>51</sup> Gómez, The Harmonization of Contract Law through European Rules: a Law and Economics Perspective, in: *European Review of Contract Law*, 2008, 89; for an overview over the advantages and disadvantages of harmonizing private and procedural law, see: *Visscher, A Law and Economics View on Harmonization of Procedural Law*, RILE Working Paper No. 2010/09, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1669944](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1669944), accessed 20 March 2017.

## 6. CHALLENGES FOR EU-LEGISLATION: TRANSITORY MEASURES TO MATCH LEGITIMATE EXPECTATIONS

### KEY FINDINGS

- Brexit will lead to the result that British citizens and companies no longer fall within the personal scope of EU law and EU law will no longer be applicable in UK.
- Service providers and natural or legal persons established in an EU-UK relationship will suffer from massive legal uncertainties.
- Not only the access to the markets is affected but also, e.g., judicial cooperation, intellectual property, data protection or consumer rights.
- As there are no reliable legal instruments to solve the problem of legal uncertainties, it is necessary to find a political solution and at least preliminarily uphold the rights of UK and EU citizens on a reciprocal basis.

The last chapter deals with a **transitory problem**. Thinking about the future of services and establishment in EU-UK relations, the EU might have to adopt transitory measures concerning British citizens and companies, who already made use of their freedom to services or establishment.

### 6.1. Legal Uncertainties for EU-Citizens in UK and UK-Citizens in EU after Brexit

The question at stake is whether Brexit would, for the persons indicated above, lead to a **loss of rights** granting free and non-discriminatory access to European or British markets. It must be kept in mind, that British business in EU Member States always relies on the rights given by EU primary and secondary law. On the one side, Brexit will lead to the result that British citizens and companies no longer fall in the personal scope of EU law as most rules granting market access address EU citizens or companies established in the EU.<sup>52</sup> On the other side, EU law will no longer be applicable in the UK as the territorial scope of EU law is restricted to the territory of the EU Member States which the UK no longer will be.

The topic can be explained by highlighting a specific problem in Germany with English companies such as private limited companies, after transferring the company's headquarters to Germany. This has been a popular instrument to circumvent German company law and in particular the German minimal capital condition. Such companies have to be recognised as legal persons as a result of the ECJ's jurisdiction on Art. 49 TFEU in the *Überseering* case.<sup>53</sup> When the UK leaves the EU, British companies would be excluded from the scope of Art. 49 TFEU and therefore would lose their right to be recognised as legal persons.

However, the problem has much broader effects. These can be experienced by service providers concerning different market access rules, for example the recognition of diplomas or licenses, the rule of mutual recognition, passporting rules and anti-discrimination rules.

### 6.2. Specific Policies of EU Legislation Affected by Brexit

Self-employed persons, professionals and legal persons in the EU may transfer their economic activity without hindrances and discriminations to another Member State

<sup>52</sup> One important exception is the freedom to capital, Art. 63 TFEU.

<sup>53</sup> Judgement of the Court of 5 November 2002, Case C-208/00, *Überseering*, ECLI:EU:C:2002:632.

(freedom of establishment, Art. 49 TFEU) or offer and provide their service in other Member States on a temporary basis (freedom to provide services, Art. 56 TFEU). To allow the effective use of these freedoms and to make them effective, EU legislation has been implemented. The following – not exhaustive – list gives a first overview on relevant secondary legislation and areas potentially affected by Brexit.

(i) Freedom to provide services

- In addition to special rules for specific sectors (see next sections), secondary EU law establishes a general legal framework for the freedom to provide services. The main set of general rules is laid down in the **Services Directive**<sup>54</sup>: It requires the Member States to abolish discriminatory and particularly restrictive requirements, such as nationality requirements or economic needs tests. It establishes points of single contacts – one-stop-shops for services providers to get information and complete administrative formalities in all EU Member States. It also contains rules on administrative cooperation and mutual assistance in the supervision of service providers which is performed – in general – by the country of origin (no double supervision). After Brexit, EU service providers in the UK and UK service providers in the EU cannot rely on continuance of these rules.

(ii) freedom of establishment

- Currently, **legal persons** of any EU member state have to be acknowledged as such in any Member State. After Brexit, in Member States following the “incorporate system”, British companies would still be acknowledged as legal persons. EU corporations in the UK would still be acknowledged there as legal persons as the UK traditionally follows the “incorporate system”. It should be noted however that the UK would not be obliged to hold on to this. The situation is more difficult for British companies in Member States following the “seat theory” – meaning that a company must fulfil the conditions for setting up a company in the state where their headquarter is located: In those States UK companies would not necessarily be recognised as legal persons anymore. The withdrawal agreement should address this topic to avoid legal uncertainty and clarify whether or not companies are acknowledged in all Member States and the UK.
- **EU legal entities**, Societas Europea/SE<sup>55</sup>, European Cooperative Society/SCE<sup>56</sup>, European Economic Interest Groupings/EEIGs<sup>57</sup>, require having their true centre of operations in an EU Member State. The withdrawal agreement should address the issue of EU legal entities with their true centre of operation in the UK and their future legal acknowledgment.

(iii) mutual recognition of diplomas and Academic qualification

- **Legal professions:** Under the Lawyers’ Establishment Directive<sup>58</sup>, lawyers have the right of establishment on a permanent basis in another Member State. They have to register with the competent authority in the host State and can pursue activities under their home-country professional title (e.g. Barrister, Rechtsanwalt, Abogado). After three years of effective and regular practice in

---

<sup>54</sup> Directive 2006/123/EC.

<sup>55</sup> Directive 2157/2001/EC.

<sup>56</sup> Regulation 1435/2003/EC.

<sup>57</sup> Regulation 2137/85/EC.

<sup>58</sup> Directive 98/5/EC.

the host Member State they are entitled to acquire the professional title of the host State. Under the Lawyers' Services Directive<sup>59</sup>, lawyers are allowed to advise clients in other Member States on a temporary basis under their home-country title with no requirement to register. It should also be noted that, according to Article 19 Statute of the Court of Justice, only lawyers authorised to practice before a court of a Member State or an EEA State may represent or assist a party before the European Court. The withdrawal agreement at least should find a solution for those lawyers that have acquired the professional title of the host State and answer the question whether or not they can continue to provide services under this title.

- **Other regulated professions:** For professions whose minimum training conditions are harmonised at European level (doctors, nurses responsible for general care, dentists, veterinary surgeons, midwives, pharmacists and architects), the Professional Qualification Directive<sup>60</sup> provides for automatic recognition of qualifications obtained in a Member State; other professionals may request recognition of their qualifications if they can demonstrate they are fully qualified in their home-country. However, in such cases if the authorities of the host country find significant differences between the training acquired in the country of origin and that required for the same activity in their country, they can require the individual to undertake an adaptation period or an aptitude test, in principle at the choice of the individual. The withdrawal agreement should clarify whether qualifications obtained before Brexit still are recognised in the Member States and the UK.
  - Although there is no automatic recognition of other qualifications in the EU on the basis of secondary law,<sup>61</sup> European citizens can use the European Qualifications Framework<sup>62</sup> and the Europass<sup>63</sup> to list their skills and qualifications when applying in other Member States. These are standardised documents that help to compare applicants from countries across Europe. A withdrawal agreement should make sure that UK institutions continue to issue the documents, such as the diploma supplement.
- (iv) secondary legislation including passporting rights, e-Commerce, etc.
- **Financial services:** The financial services "passport" under Directive 2013/36/EU allows financial institutions authorised and regulated in one of the EEA Member States to provide cross-border services, to provide certain products cross-border and to set up branches to provide financial services in any EEA state. For third countries there is only an equivalence regime. Even though the UK most likely would fulfil equivalence requirements (at least until it would liberalise financial market in the UK), the recognition of equivalence is time-consuming and brings legal uncertainty. Furthermore, a third country pass would not allow EU firms to provide services in the UK. The easiest way to deal with this problem in the withdrawal agreement would be maintaining status quo at least for a transition period. However, it should be noted, that "passporting" is only possible due to a number of EU legislation that establishes common rules for financial services, consumers and market participants can rely on. Those

<sup>59</sup> Directive 77/249/EC.

<sup>60</sup> Directive 2005/36/EC.

<sup>61</sup> Service providers may rely on the fundamental freedoms (Art. 56 or Art. 49 TFEU) directly.

<sup>62</sup> See Recommendation 2008/C 111/01.

<sup>63</sup> See Decision 2241/2004/EC.

include: The Markets in Financial Instruments Directive<sup>64</sup>, the Mortgage Credit Directive<sup>65</sup>, the Banking Directive<sup>66</sup>, the Banking Regulation<sup>67</sup>, and the Consumer Credit Directive<sup>68</sup>. Maintaining mutual recognition seems only possible as long as the UK accepts to further comply with these common rules.

- **Insurance services:** For insurance services, EU secondary legislation has established an EU “passporting” system. It is based on the concept of harmonisation and mutual recognition through the Solvency II Directive<sup>69</sup>, the Omnibus II Directive<sup>70</sup>, and implementing acts by the Commission<sup>71</sup>. The common framework covers three main areas, related to capital requirements, risk management and supervisory rules. The European Commission can recognise that the supervisory regime for insurers in force in certain non-EU countries is equivalent to the Solvency 2 regime. Such an *equivalent decision* allows third country insurers to operate in the EU without need to prove compliance with all EU rules and EU insurers to use local rules to report on their operations in these countries. An equivalent decision for the UK would allow insurers to continue their EU-UK services.
- **Transport services:** This sector is largely covered by EU legislation providing a framework for market liberalisation across a number of sectors including aviation, rail, maritime and road transport, e.g.: The Reservation System Regulation<sup>72</sup>, the Air Service Regulation<sup>73</sup>, the Single European Sky Regulation<sup>74</sup>, the Single European Railway Area Directive<sup>75</sup>, the Road Haulage Regulation<sup>76</sup>, the Coach and Bus Services Regulation<sup>77</sup>, the Interoperability Directive<sup>78</sup>, the Inland Navigation Regulation<sup>79</sup>, the Maritime Cabotage Directive<sup>80</sup>, the Non-resident Carriers Regulation<sup>81</sup>, and the Maritime Transport Regulation<sup>82</sup>. The rules differ from sector to sector. Some of the legislation also applies to third country nationals, e.g. the right to carry passengers or goods by sea between any port of an EU country and any port or offshore installation of another EU country or of a non-EU country also applies to non-EU nationals established in the EU. Brexit will also effect international agreements concerned with transport services, such as the US-EU Open Skies Agreement. Due to the numerous different rules governing transport services in the European Union

---

<sup>64</sup> Directive 2014/65/EU.

<sup>65</sup> Directive 2014/17/EU.

<sup>66</sup> Directive 2013/36/EU.

<sup>67</sup> Regulation (EU) 575/2013.

<sup>68</sup> Directive 2008/48/EC.

<sup>69</sup> Directive 2009/138/EC [recast], amended by Regulation EU/2016/567.

<sup>70</sup> Directive 2014/51/EU.

<sup>71</sup> Under the Solvency 2 directive the European Commission can adopt delegated and implementing acts, including technical standards and information for the calculation of technical provisions and basic own funds, such as Regulation (EU) 2015/35.

<sup>72</sup> Regulation (EC) 80/2009.

<sup>73</sup> Regulation (EC) 1008/2008.

<sup>74</sup> Regulation (EC) 549/2004.

<sup>75</sup> Directive 2012/34/EU.

<sup>76</sup> Regulation (EC) 1072/2009.

<sup>77</sup> Regulation (EC) 1073/2009.

<sup>78</sup> Directive 2008/57/EC.

<sup>79</sup> Regulation (EC) 1356/96.

<sup>80</sup> Regulation (EEC) 3577/92.

<sup>81</sup> Regulation (EEC) 3921/91.

<sup>82</sup> Regulation (EEC) 4055/86.



and the major impact of those services to the economy, there is particular need for a quick solution here.

- **Payment services:** Right now, the UK is an active member of two harmonised regulatory frameworks, the Single Euro Payments Area (SEPA)<sup>83</sup> and Payment Service Directive (PSD)<sup>84</sup>. The payment services directive establishes the same set of rules on payments across the whole European Economic Area. It is yet unclear what impacts Brexit will have on cross-border payment services. This uncertainty is even further intensified as by 2018 the new Payment Service Directive<sup>85</sup> will become applicable. One of the aims of this new directive is to strengthen the role of the European Banking Authority (EBA) to coordinate supervisory authorities and draft technical standards – possibly contradicting the UK's will to self-govern. Other secondary legislation in this field that are possibly affected include: The E-Money Directive<sup>86</sup>, the Funds Transfer Regulation<sup>87</sup>, and the Regulation on Interchange Fees<sup>88</sup>.
- **Postal services:** The Postal Services Directive<sup>89</sup> sets out the rules that EU Member States must implement to complete the EU's internal market for postal services. After Brexit, postal services between the EU and UK will be governed by the Universal Postal Union and CERP (Committee of European Postal Regulators).

(v) Secondary Law in the Area of Justice

Cross-border trade is less attractive if service providers could not judicially enforce claims against their customers.

- **Recognition and Enforcements of Judgements:** Currently, the Brussels Ia Regulation<sup>90</sup> provides for enforceability of judgments of courts of EU member States within the EU. The Regulation also contains provisions on international jurisdiction. After Brexit, it is uncertain whether or not jurisdiction clauses still will be respected and judgements with a British party to the proceedings continue to be enforceable throughout the EU. The withdrawal agreement insofar could be based on the Denmark-EU Jurisdiction Agreement which basically leads to the applicability of the Brussels Ia regulation under international law.
- **Insolvency:** The Regulation on insolvency proceedings<sup>91</sup>, soon to be replaced by Regulation 2015/848/EU, establishes common rules on the court competent to open insolvency proceedings, the applicable law and the recognition of insolvency proceedings and judgments. The withdrawal agreement should particularly address the question what happens to insolvency proceedings commenced but not completed before Brexit.

(vi) Other secondary law with effects on service providers

---

<sup>83</sup> Regulation (EU) 1215/2012.

<sup>84</sup> Directive 2007/64/EC.

<sup>85</sup> Directive 2015/2366/EU.

<sup>86</sup> Directive 2009/110/EC.

<sup>87</sup> Regulation (EC) 1781/2006.

<sup>88</sup> Regulation (EU) 2015/75.

<sup>89</sup> Directive 2008/6/EC.

<sup>90</sup> Regulation (EU) 1215/2012.

<sup>91</sup> Directive (EC) 1346/2000/EC.

All legislation granting rights to service providers will affect EU-UK business after Brexit. Some examples are:

- **Intellectual Property:** As the European Patent Convention is not part of the EU legislation but an international treaty, it will not be affected by Brexit. Other intellectual property rights derive from EU legislation and thus will cease to apply to the UK. These include the Community Trade Mark<sup>92</sup>, Registered Community Designs<sup>93</sup> and Community Plant Variety Rights<sup>94</sup>. The Copyright Directive<sup>95</sup> which harmonises key rights granted to authors and neighbouring rights holders (the reproduction right, the right of communication to the public and the distribution right) is possibly affected by Brexit, too. Under international law, acquired rights are not automatically invalid in the case of State Succession.<sup>96</sup> This outcome could possibly be applied to Brexit. However, this would prevent neither the UK nor the EU to change the law and for example stop the recognition of an EU trade mark registered by an UK company. To avoid legal uncertainty, the withdrawal agreement should address this issue. There is a particular need for transition rules.
- **E-commerce:** The E-commerce Directive<sup>97</sup> establishes harmonised rules on electronic commerce, such as transparency and information requirements for online service providers, commercial communications, electronic contracts and limitations of liability of intermediary service. According to the Directive, E-commerce in principle is subject to the law of the Member State in which the service provider is established and Member States are not allowed to restrict incoming services. The Directive will cease to apply to the UK after Brexit and the UK as well as EU Member States would be able to impose restrictions on incoming services. More legal acts possibly affected by Brexit include the Directive on Privacy and Electronic Communications<sup>98</sup> that sets out specific rules and safeguards to ensure the users' right to privacy and confidentiality, the Access Directive<sup>99</sup> that harmonises the way in which EU Member States regulate access to, and interconnection of, electronic communications networks and associated facilities, the Universal Service Directive<sup>100</sup> ensuring specific rules for the provision of electronic communications services within the EU. As E-commerce is one of the fastest growing industries, it should be given high priority.
- **Data protection law:** It is yet unclear whether it will be legal for companies to transfer data to the UK after Brexit. This issue should be addressed to avoid legal uncertainty, the requirements set out by the ECJ in the Case Schrems<sup>101</sup> should be considered. However, under the General Data Protection Regulation<sup>102</sup>

---

<sup>92</sup> Regulation (EC) 207/2009.

<sup>93</sup> Regulation (EC) 6/2002.

<sup>94</sup> Regulation (EC) 2100/94.

<sup>95</sup> Directive 2001/29/EC.

<sup>96</sup> *Zimmermann*, State Succession in Other Matters than Treaties, in: Max Planck Encyclopedia of Public International Law [MPEPIL], paragraph 31, <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1108?rskey=1KKFI4&result=1&prd=EPIL>, accessed 19 April 2017.

<sup>97</sup> Directive 2001/31/EC.

<sup>98</sup> Directive 2002/58/EC.

<sup>99</sup> Directive 2002/19/EC.

<sup>100</sup> Directive 2002/22/EC.

<sup>101</sup> European Court of Justice, Judgment of 6 October 2015, Case C-362/14, Schrems, ECLI:EU:C:2015:650.

<sup>102</sup> Regulation 679/2016/EU.

British companies offering goods or services to data subjects in the EU would be required to adapt to EU data protection law. Thus, from an EU-perspective, there is no need for an immediate solution.

- **EU consumer law:** It is well known that EU consumer law has the objective to create consumer confidence which encourages them to order from cross-border sellers (goods) or service providers (services). As secondary consumer law is legislated in the form of directives (e.g., directive on consumer rights<sup>103</sup>), Brexit will not affect the transposed British law as long as this law is not repealed.

### 6.3. Upholding Rights in the UK; Categorisation of rights by the UK High Court

The UK High Court in the case *Miller* has categorised the rights of UK citizens that might be lost due to Brexit as following: (1) rights capable of replication in the law of the UK, (2) rights enjoyed in other EU member states, e.g. freedom of movement; and (3) rights that could not be replicated in UK Law, e.g. the right to stand for election to the European Parliament.<sup>104</sup> This was one of the main reasons, why the High Court as well as the Supreme Court<sup>105</sup> ruled that the Government does not have the power to trigger the withdrawal from the EU but that an act of Parliament is needed. The view on selected secondary law, above, identified rights mostly in the category 1. It shows that the UK, in category 1, has *the power* to replicate EU law in a kind of autonomous implementation. If it refrains from doing so, when Brexit becomes effective, all rights deriving from directly applicable EU law, e.g. freedom of movement, freedom of establishment, regulations and general principles, such as non-discrimination for UK citizens as well as EU citizens in the UK will automatically cease to exist with entry into force of the withdrawal agreement. Other rights, deriving not immediately from EU law but from national law based on EU directives, will continue to exist. However, the British parliament will be free to repeal these rights; this power is a source of legal uncertainty. Any withdrawal agreement should address this issue and include at least transitional provisions to temporarily uphold said rights.

### 6.4. Possible Solutions

In the current situation, service providers and established persons in an EU-UK relationship will suffer from massive legal uncertainties which will present great challenges for the EU and UK legislators – and possibly for the courts. Courts could provide for a solution by applying the legal institution of Legitimate Expectations or the principle of Acquired Rights (5.4.1.). However, this might lead to a mitigation of problems in particular cases, but does not overcome the big economic and social costs of legal uncertainties.

#### 6.4.1. Legitimate Expectations and the Principle of Acquired Rights; Fundamental Freedoms

A preliminary question is whether there is a legal obligation to enact transitory measures. A possible legal approach could be based on the idea of legitimate expectations or the principle of acquired rights. British citizens or companies, which are active in business before Brexit, could perhaps rely directly on Art. 56 and 49 TFEU.

<sup>103</sup> Directive 2011/83/EU.

<sup>104</sup> High Court, R (*Miller & Dos Santos*) v. Secretary of State for Exiting the European Union, [2016] EWHC 2768 (Admin).

<sup>105</sup> Supreme Court, R (*on the application of Miller and another*) v Secretary of State for Exiting the European Union, [2017] UKSC 5.

Legitimate expectations<sup>106</sup> require a representation of the EU that the rights these companies or service suppliers rely on would continue. Under international law, private persons basically cannot rely on rights when a state chooses to terminate an international agreement or in the case of state succession<sup>107</sup>. The exception to this general rule, namely that of human rights, would not apply. However, the EU is not a normal international organisation. It is therefore possible to argue that Brexit does not lead to a loss of rights under Art. 56 and 49 TFEU of British citizens after Brexit.

Acquired rights<sup>108</sup> however, are restricted to property and certain contractual rights; a right to work or a right to be recognised would probably not be seen as an acquired right.

There might be a solution in legal theory. EU law could be applied to British persons with a sufficient link as a means of intertemporal application of EU law.<sup>109</sup>

The legal problem of legitimate expectations as well as its solution, especially intertemporal application, still need closer legal examination. One could base this solution on the fundamental freedoms themselves: It would be less attractive to make use of the freedoms when one has to take into account a possible exit of the host or home country with the effect of possible loss of rights. However, this solution would only work for the EU, not for the UK after Brexit, as EU law would not be applicable any more.

#### 6.4.2. Adapting EU Legislation

In the end, it seems to be better to find a political solution to secure rights of UK citizens and companies. This would serve to **create legal certainty** and could be done in the form of a European regulation on the basis of Art. 114 TFEU. However, this concept could only be of preliminary nature. Granting equal rights to access EU markets free from discrimination requires a guarantee for equal standards in the UK. The necessity for this becomes clear with a view to the passporting principle in financial markets. Passporting rights and the related principle of supervision on the home Member State are bound to equal standards; concerning consumer protection, the protection of the banking system and the standards of banking supervision.

This would require an in-depth examination of legal instruments in order to

- i. detect necessities for adaption;
- ii. develop solutions for granting rights to UK citizens (EU law or withdrawal agreement);
- iii. develop a mechanism to assess and secure the equivalence of standards.

---

<sup>106</sup> *Garner*, After Brexit: Protecting European citizens and citizenship from fragmentation, EUI Working Paper LAW 2016/22, pp. 10 et seq.

<sup>107</sup> *Zimmermann*, State Succession in Other Matters than Treaties, in: Max Planck Encyclopedia of Public International Law [MPEPIL], paragraph 31, <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1108?rskey=1KKFI4&result=1&prd=EPIL>, accessed 20 March 2017.

<sup>108</sup> *Zimmermann*, State Succession in Other Matters than Treaties, in: Max Planck Encyclopedia of Public International Law [MPEPIL], paragraph 31, <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1108?rskey=1KKFI4&result=1&prd=EPIL>, accessed 20 March 2017. See: *House of Lords*, European Union Committee, Brexit: acquired rights, 10th Report of Session 2016–17; *Lowe*, Written Evidence (AQR0002) to the House of Lords EU Justice Sub Committee, [http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-justice-subcommittee/brexit-acquired-rights/written/38137.html#\\_ftn3](http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-justice-subcommittee/brexit-acquired-rights/written/38137.html#_ftn3), last accessed 20 March 2017; *O'Connell*, *International Law*, 1970, pp. 762 et seqq.

<sup>109</sup> *Weller/Thomale/Benz*, NJW 2016, 2378, pp. 2381 et seq.

#### 6.4.3. Negotiating Rights in the Withdrawal Agreement

Adapting EU legislation, however, can be an option only on a reciprocal and equivalent basis. It would hardly be politically acceptable to secure rights of UK citizens only by the EU without reciprocity. This will make it necessary to introduce the topic of upholding rights of EU and British citizens and companies in the withdrawal agreement. Efforts should be made to ensure individual rights at least preliminarily as uncertainties may lead to suboptimal location decisions affecting general welfare.

## **7. CONCLUSIONS: CHALLENGES FOR NEGOTIATION AND REGULATION**

Barriers to trade in services usually do not derive from tariffs but rather from mere differences between legal orders and a lack of right to temporary presence. The design of a Free Trade Agreement between the EU and the UK should consider these specific challenges for cross-border trade in services and establishment.

Any existing International Trade Agreement between the EU and Third Parties lags way behind the EU's/EEA's level of integration. International Trade Agreements usually do not have a comprehensive scope or allow common standard setting and although they include rules on market access and national treatment, those rules are not directly applicable. Thus, existing trade agreements should not serve as blueprints for future EU-UK relations.

In the meanwhile, specific attention should be paid to identify policy fields where the upcoming Brexit leads to legal uncertainties concerning the loss of rights and the emergence of (trade) barriers in the field of services and establishment.

This leads to some implications for the negotiation process with the UK:

One of the main difficulties will be to effectively extend the scope of the freedom of services and establishment to the post-Brexit UK. This not only requires rules on market access and national treatment but also to find a mechanism to continue setting common standards in the future, such as an EU-UK joint committee or a mechanism that automatically suspends market access when either the EU or the UK change standards unilaterally. This would also allow continuing mutual recognition as a self-executing rule. It is desirable for a future EU-UK agreement to provide for direct applicability and effective judicial protection to guarantee its effective enforceability.

## REFERENCES

- *Bartels, L.*, The UK's status in the WTO after Brexit, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2841747](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2841747).
- *Baudenbacher, C.*, After Brexit: EEA plus as a solution for the UK, NZKart 2016, 498.
- *Cherednychenko, O.*, The UK's Potential Withdrawal from the EU and Single Market Access under EU Financial Services Legislation, In-Depth Analysis for the ECON Committee, 2016.
- *O'Connell, D.*, International Law, 1970.
- *Craig, P./De Burca, G.*, EU Law, 6th edition 2015.
- *Garner*, After Brexit: Protecting European citizens and citizenship from fragmentation, EUI Working Paper LAW 2016/22, Garner, Oliver, After Brexit: Protecting European Citizens and Citizenship from Fragmentation (2016). EUI Department of Law Working Paper No. 2016/22, SSRN: <https://ssrn.com/abstract=2871404>.
- *Gehring, M.*, EU Law Analysis: Brexit and EU-UK Trade Relations with Third States, <http://eulawanalysis.blogspot.com/2016/03/brexit-and-eu-uk-trade-relations-with.html>.
- *Gómez, F.*, The Harmonization of Contract Law through European Rules: a Law and Economics Perspective, in: European Review of Contract Law, 2008, 89.
- *Hoekman, B./Braga, C.*, Protection in Trade in Services – a Survey, The World Bank Policy Research Working Paper No 1747, 1997.
- *Delimatsis, P.*, International Trade in Services and Domestic Regulations: Necessity, Transparency, and Regulatory Diversity, 2007.
- *Lehmann, M./Zetzsche, D.*, Brexit and the Consequences for Commercial and Financial Relations between the EU and the UK, 27 European Business Law Review (2016), p. 999.
- *Low, P./Mattoo, A.*, Is there a better way? Alternative Approaches to Liberalization under GATS, in: Sauvé/Stern (ed.), GATS 2000: New Directions in Services Trade Liberalization, 2000.
- *Sampson, G./Snape, R.*, Identifying the Issues in Trade in Services, The World Economy 1985.
- *Sauvé, P. /Mattoo, A.*, Regionalism in Services Trade, 2004, p. 43, [http://siteresources.worldbank.org/INTRANETTRADE/Resources/WBI-Training/sauve-mattoo\\_regionalism\\_april2004.pdf](http://siteresources.worldbank.org/INTRANETTRADE/Resources/WBI-Training/sauve-mattoo_regionalism_april2004.pdf).
- *Visscher, L.*, A Law and Economics View on Harmonization of Procedural Law, RILE Working Paper No. 2010/09, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1669944](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1669944).
- *Weller, M./Thomale, C./Benz, N.*, Englische Gesellschaften und Unternehmensinsolvenzen in der Post-Brexit-EU, NJW 2016, 2378, pp. 2381 et seq.
- *Zimmermann, A.*, State Succession in Other Matters than Treaties, in: Max Planck Encyclopedia of Public International Law [MPEPIL], paragraph 31, <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1108?rskey=1KKFI4&result=1&prd=EPIL>.

**NOTES**



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

## POLICY DEPARTMENT ECONOMIC AND SCIENTIFIC POLICY **A**

### Role

Policy departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

### Policy Areas

- Economic and Monetary Affairs
- Employment and Social Affairs
- Environment, Public Health and Food Safety
- Industry, Research and Energy
- Internal Market and Consumer Protection

### Documents

Visit the European Parliament website:  
<http://www.europarl.europa.eu/supporting-analyses>



PHOTO CREDIT:  
iStockphoto.com; Shutterstock/beboy

ISBN 978-92-846-1208-6 (paper)  
ISBN 978-92-846-1207-9 (pdf)

doi:10.2861/509625 (paper)  
doi:10.2861/56816 (pdf)



This page is intentionally left blank



Subject:	Update on provision of technical notices from the UK and Irish Governments
Date:	11 <sup>th</sup> October 2018
Reporting Officer:	Nigel Grimshaw, Strategic Director City & Neighbourhood Services
Contact Officer:	Kim Walsh, Business, Research & Development Manager, City & Neighbourhood Services.

<b>Restricted Reports</b>	
Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, when will the report become unrestricted?	
After Committee Decision	<input type="checkbox"/>
After Council Decision	<input type="checkbox"/>
Some time in the future	<input type="checkbox"/>
Never	<input type="checkbox"/>

<b>Call-in</b>	
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

<b>1.0</b>	<b>Purpose of Report or Summary of main Issues</b>
	The purpose of this report is to bring to the attention of Members: <ul style="list-style-type: none"> <li>a) an update on the technical notices produced by the UK government to help sectors prepare in the case of a 'no deal' Brexit scenario and</li> <li>b) the information being provided by the Irish Government.</li> </ul>
<b>2.0</b>	<b>Recommendations</b>
	Members are asked to note the report.
<b>3.0</b>	<b>Main report</b>

	<p><u>Key Issues</u></p> <p>Members are reminded that, at last month’s meeting, they were provided with information of technical notices that have been published by the UK Government setting out information to allow businesses and citizens to understand what they would need to do in the event of a ‘no deal’ scenario. These notices are meant for guidance only but to enable them to make informed plans and preparations. In the period since the last Committee several further notices have been released and at the timing of writing this report over 70 technical notices have been published. It is likely that further technical notices will be produced over the coming months and all the notices can be found at:</p> <p><a href="https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal">https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal</a></p> <p>Members had requested information about advice being provided by the Irish Government and the North-South Bodies. The Irish Government has a section on their website which provides information on the steps that are being taken to prepare for Brexit, including the support and information available to citizens, businesses and others with specific concerns about how the UK’s departure from the EU will affect them. This information can be accessed at <a href="https://www.dfa.ie/brexit/getting-ireland-brexit-ready">https://www.dfa.ie/brexit/getting-ireland-brexit-ready</a>. The Irish Government are also running four ‘Getting Ireland Brexit Ready workshop’ in October. These are being held on Cork, Galway, Monaghan and Dublin. Further events are planned for the future.</p> <p>InterTrade Ireland are also providing information for firms in relation to Brexit, details of this is available on their website <a href="https://intertradeireland.com/brexit">https://intertradeireland.com/brexit</a>. Among the support available for SMEs is financial support up to £2,000 towards professional advice in relation to Brexit matters.</p> <p>It does not appear that any of the other North-South Bodies are currently offering advice or information to their users at this point.</p> <p><u>Financial &amp; Resource Implications</u></p> <p>There no financial implications relating to this report.</p> <p><u>Equality or Good Relations Implications/Rural Needs Assessment</u></p> <p>There are no implications relating to this report.</p>
<b>4.0</b>	<b>Appendices</b>

None
------

This page is intentionally left blank



Subject:	Update re Port Health Unit
Date:	11 <sup>th</sup> October 2018
Reporting Officer:	Nigel Grimshaw, Strategic Director City & Neighbourhood Services
Contact Officer:	Damian Connolly, Environmental Health Manager, ext 3361

<b>Restricted Reports</b>	
Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, when will the report become unrestricted?	
After Committee Decision	<input type="checkbox"/>
After Council Decision	<input type="checkbox"/>
Some time in the future	<input type="checkbox"/>
Never	<input type="checkbox"/>

<b>Call-in</b>	
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

<b>1.0</b>	<b>Purpose of Report or Summary of main Issues</b>
	The purpose of this report is to update Members on the recent site visit to the Port Health Unit. This enabled the team to show their work to Members and so help Members to better understand this activity in the context of Brexit.
<b>2.0</b>	<b>Recommendations</b>
	Members are asked to note the update provided.
<b>3.0</b>	<b>Main report</b>
	<u>Key Issues</u>

	<p>Members are reminded that at its meeting in August this Committee agreed to undertake a site visit to the Port Health Unit and that this visit took place on Friday 28<sup>th</sup> September.</p> <p>Members were shown the port facility including the administration, consignment checking, and testing areas. These are used to monitor a sample of the almost 5,900 ships, 125,000 containers, 155,000 cruise passengers, and £1,200,000 worth of high-risk food per year. This was followed by a presentation from the team (see Appendix 1), a ‘questions and answer’ session and a brief tour of some of the other key sites in the dock area.</p> <p>During the presentation, the team showed the EU databases for shipping and ‘at risk’ goods that they currently use and mentioned the UK Government’s work on developing alternative databases. The emerging Government technical guidance was also mentioned and updates on this will be brought to members in due course.</p> <p><u>Financial &amp; Resource Implications</u></p> <p>There are no financial and resources implications relating to this report. There may be future additional resources required for the Port Health Unit and Members will be kept informed of any developments in future reports.</p> <p><u>Equality or Good Relations Implications/Rural Needs Assessment</u></p> <p>There are no implications relating to this report.</p>
<b>4.0</b>	<b>Appendices</b>
	Appendix 1: Port Health Presentation 28 Sept 2018



# Belfast Port Health Our role & BREXIT

City and Neighbourhood Services  
Department



Belfast  
City Council

[www.belfastcity.gov.uk](http://www.belfastcity.gov.uk)



**Belfast Docks**



Belfast  
City Council

[www.belfastcity.gov.uk](http://www.belfastcity.gov.uk)

## Belfast Port Health

- 70% of NI's seaborne trade
- 20% the island of Ireland's trade
- 125,000 containers
- 3% increase in cargo handled by the port 2017
- Substantial investment into the container handling facility 2018/19.
- 5,874 ships into the ports 2017
- 155,000 cruise passengers 2017



Belfast  
City Council

[www.belfastcity.gov.uk](http://www.belfastcity.gov.uk)

## Belfast Port Health

- 1988 BCC approved the provision of this facility.

### Today

- 3 BCC staff work in the unit.

### Duties:-

- Imported food control.
- Infectious disease control - Shipping



Belfast  
City Council

[www.belfastcity.gov.uk](http://www.belfastcity.gov.uk)

## Belfast Port Health Imported Food

- The inspection facilities are approved by the EU as a DPE, DPI and BIP.
- Work in partnership with DAERA'S Portal branch on POAO.



Belfast  
City Council

[www.belfastcity.gov.uk](http://www.belfastcity.gov.uk)

## Belfast Port Health First 6 months of 2018 Imports

- 15 countries, imports from every continent
- Strawberries from Morocco, Vodka from USA, Onions from Chile, Flaxseed from Kazakhstan, Dates from Iran, Spices from India, Plastic kitchenware from China.



Belfast  
City Council

[www.belfastcity.gov.uk](http://www.belfastcity.gov.uk)

## Belfast Port Health

### Imported Food

- More than £1,200,000 worth of High risk food entered NI via the DPE.

&

- More than 1,700,000 kg of POAO entered NI via the BIP.



Belfast  
City Council

[www.belfastcity.gov.uk](http://www.belfastcity.gov.uk)

## Belfast Port Health



Belfast  
City Council

[www.belfastcity.gov.uk](http://www.belfastcity.gov.uk)

# Belfast Port Health



Belfast  
City Council

[www.belfastcity.gov.uk](http://www.belfastcity.gov.uk)

# Belfast Port Health



Belfast  
City Council

[www.belfastcity.gov.uk](http://www.belfastcity.gov.uk)

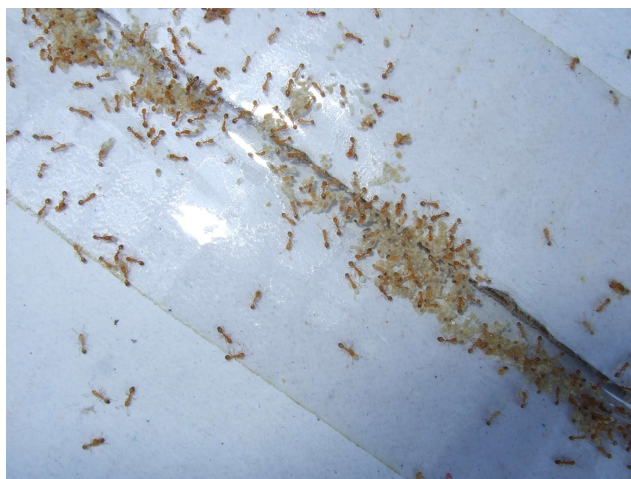
## Belfast Port Health



Belfast  
City Council

[www.belfastcity.gov.uk](http://www.belfastcity.gov.uk)

## Belfast Port Health



Belfast  
City Council

[www.belfastcity.gov.uk](http://www.belfastcity.gov.uk)

## Belfast Port Health



Belfast  
City Council

[www.belfastcity.gov.uk](http://www.belfastcity.gov.uk)

## Belfast Port Health EU IT systems

### TRACES

TRAdE Control & Expert  
System

TRACES is the European Commission's multilingual online management tool for all sanitary requirements on intra-EU trade and importation of animals, semen and embryo, food, feed and plants.

### RASFF

Rapid Alert System for  
Food and Feed

A key tool to ensure the flow of information to enabling swift reaction when risks to public health are detected in the food chain

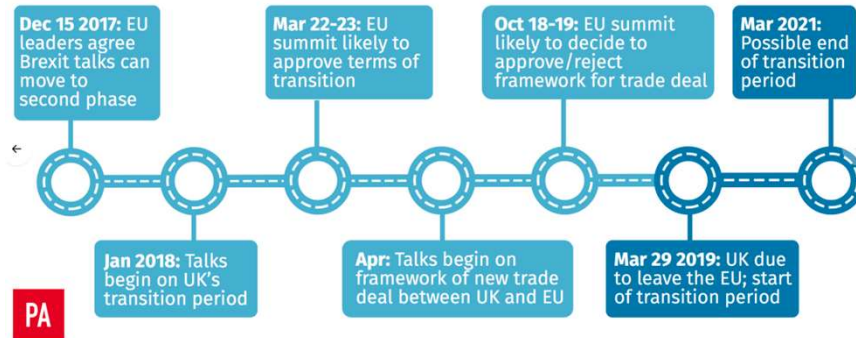


Belfast  
City Council

[www.belfastcity.gov.uk](http://www.belfastcity.gov.uk)

# Belfast Port Health

## Countdown to Brexit: key events

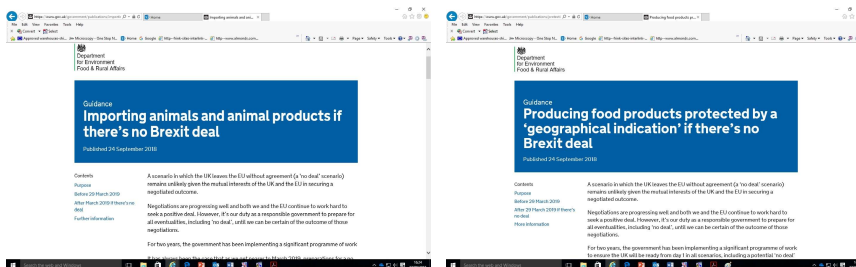


Belfast City Council

www.belfastcity.gov.uk

# Belfast Port Health

Published 24<sup>th</sup> Sept., gov.uk



Belfast City Council

www.belfastcity.gov.uk