



The new Brexit Agreement

*Your questions answered on the
EU-UK Trade and Cooperation Agreement*

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Introduction

The adoption in December 2020 of the Trade and Cooperation Agreement between the European Union and the United Kingdom was welcome because it avoided a No Deal Brexit.

However, the 1200+ page agreement, which is in the form of legally binding treaty, adds another layer of complexity for business leaders.

To assist executives in deciphering the legalese and the legal rules in the treaty, we have prepared this Q&A to address some of the most pressing questions for businesses arising from the Agreement.

This guide draws on the expertise and experience of the A&L Goodbody teams in Dublin, Belfast and London, thereby linking all the key factors in the Brexit equation.

We hope that this guide assists and clarifies matters for you, however do not hesitate to contact your usual A&L Goodbody contact if you need further information or advice on the new legal regime.



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You will find a full range of timely materials for businesses in our dedicated **BREXIT HUB** on our website.

Key takeaways for business

The European Union (EU) and the United Kingdom (UK) have agreed a Trade and Cooperation Agreement, which took effect from 1 January 2021.

What are the key takeaways?

- The EU and the UK have agreed a trade and cooperation agreement
- The Agreement will not be the last Brexit agreement – there will be others so Brexit is not complete
- It provides for zero tariffs and no quotas for goods meeting the “rules of origin” regime in the Agreement
- It is more than a trade agreement: it provides for cooperation between the parties on a variety of issues
- Some services are covered by the Agreement but not financial services – it is hoped that progress will be made on this sector by Spring 2021 but progress will be difficult
- Transport connectivity is maintained to some extent but UK operators no longer have full access to the EU’s internal transport market
- Control over fishing in UK waters (which is currently shared by the EU and the UK) is being gradually handed over to the UK
- The Agreement facilitates investment in each territory by nationals and businesses from the other party to some extent but we could see some obstacles to investment (particularly investment in the UK by EU nationals and businesses)
- The parties are committed to high levels of protection/standards in key areas such as environmental protection, the fight against climate change, carbon pricing, social and labour rights, tax transparency and State aid
- There are provisions on State aid which bind both sides – this is to avoid the “race to the bottom” – this area could prove controversial with “State aid”/trade clashes occurring between the EU and the UK in the future
- There is a dispute resolution mechanism for settling disputes between the EU and the UK – this includes a new Partnership Council
- It is worth recalling that the Agreement is not a permanent regime because either side may terminate it on 12 months’ notice which would bring us back to what would be, in practical terms, a “no deal Brexit”
- For businesses operating on an all-island/ West-East basis, emerging opportunities and challenges are likely to become apparent in 2021 given the changes brought about by Brexit. Our Dublin, Belfast and London offices are assisting clients in that regard.

The agreement is available to read [here](#).

A | Background

A&L Goodbody



Background to the Trade and Withdrawal Agreement

What is the Agreement?

It is both:

- a trade agreement; and
- a co-operation agreement setting out a roadmap for further cooperation between the parties.

Who are the parties to the Agreement?

It is a treaty between:

- the European Union (EU) and the European Atomic Energy Community (EAEC); and
- the United Kingdom of Great Britain and Northern Ireland (UK).

How long have they been negotiating the Agreement?

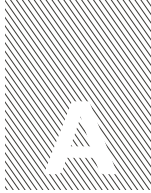
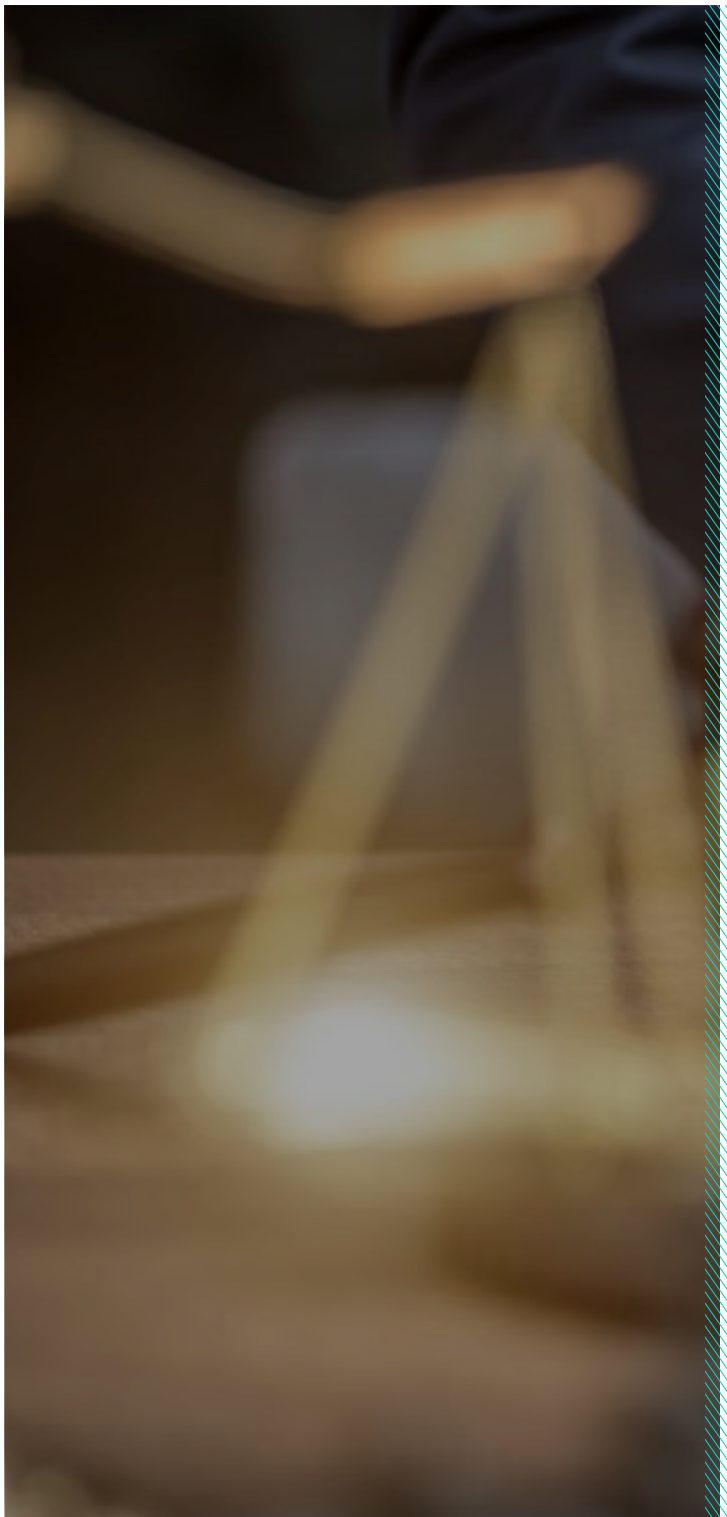
The negotiations commenced on 2 March 2020 and completed on 24 December 2020 (i.e. 297 days later).

When does the Agreement enter into force?

- In practical terms, it entered into operation at 00:00 on 1 January 2021 (Brussels time) or 23:00 31 December 2020 (UK time).
- However, as it was adopted so close to the holiday period, the Agreement is still only a “provisional agreement” because the European Parliament has not approved it.
- The Agreement was signed on behalf of the parties but it has been adopted only on a “provisional basis” (until 28 February 2021) so as to allow the European Parliament review and, if it chooses, approve it. While it is still “provisional” in nature, it is unlikely to be unwound fully at this stage.
- The version which has been [published](#) is still not the official one because there is a process of “legal cleansing” going on so errors will be corrected and the numbering of each article will be changed. Minor teething problems could possibly be addressed. It is anticipated that the final version will be published before 30 April 2021.

Is that it then, Brexit is complete?

Not quite. The UK has left the EU (31 January 2020) and the transition period has ended (31 December 2020) but there will probably be other agreements between the parties. Indeed, this Agreement explicitly contemplates further agreements (e.g., over fishing and financial services).



Background to the Trade and Withdrawal Agreement

Yes, but isn't this agreement the "final" one and doesn't it establish a permanent and final regime?

- No, the Agreement is not the final agreement.
- Nor is it permanent – it may be terminated by twelve months' notice by either the EU/EAEC or the UK. If the Agreement was terminated then the Withdrawal Agreement would survive but there would be, in practical terms, a "No Deal Brexit".

Does the Agreement need approval by way of referendums of the national electorates or approved by the EU Member State parliaments?

- The European Commission believes that the Agreement may be agreed as a so-called "EU-only agreement".
- An EU-only agreement covers only those areas which are already within the EU's competence (whether it is: (a) an exclusive EU competence; or (b) a competence shared between the EU and the Member States) so the Member States do not have to approve the Agreement.
- Article 217 of the Treaty on the Functioning of the European Union (TFEU) has been chosen as the legal basis for the Agreement.
- Article 217 TFEU requires: (a) the unanimous agreement of the Member States in the European Council; and (b) with the consent of the European Parliament. All the Member States in the European Council have agreed unanimously so the only step remaining is the consent of the European Parliament.

What are the legally binding elements to the Agreement?

The Agreement comprises the main text along with various annexes, protocols, appendices and footnotes – they all form an integral part of the Agreement.

What are the seven parts of the Agreement?

Part One: "Common and Institutional Provisions"

Part Two: "Trade, Transport, Fisheries; and other arrangements"

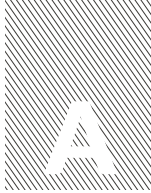
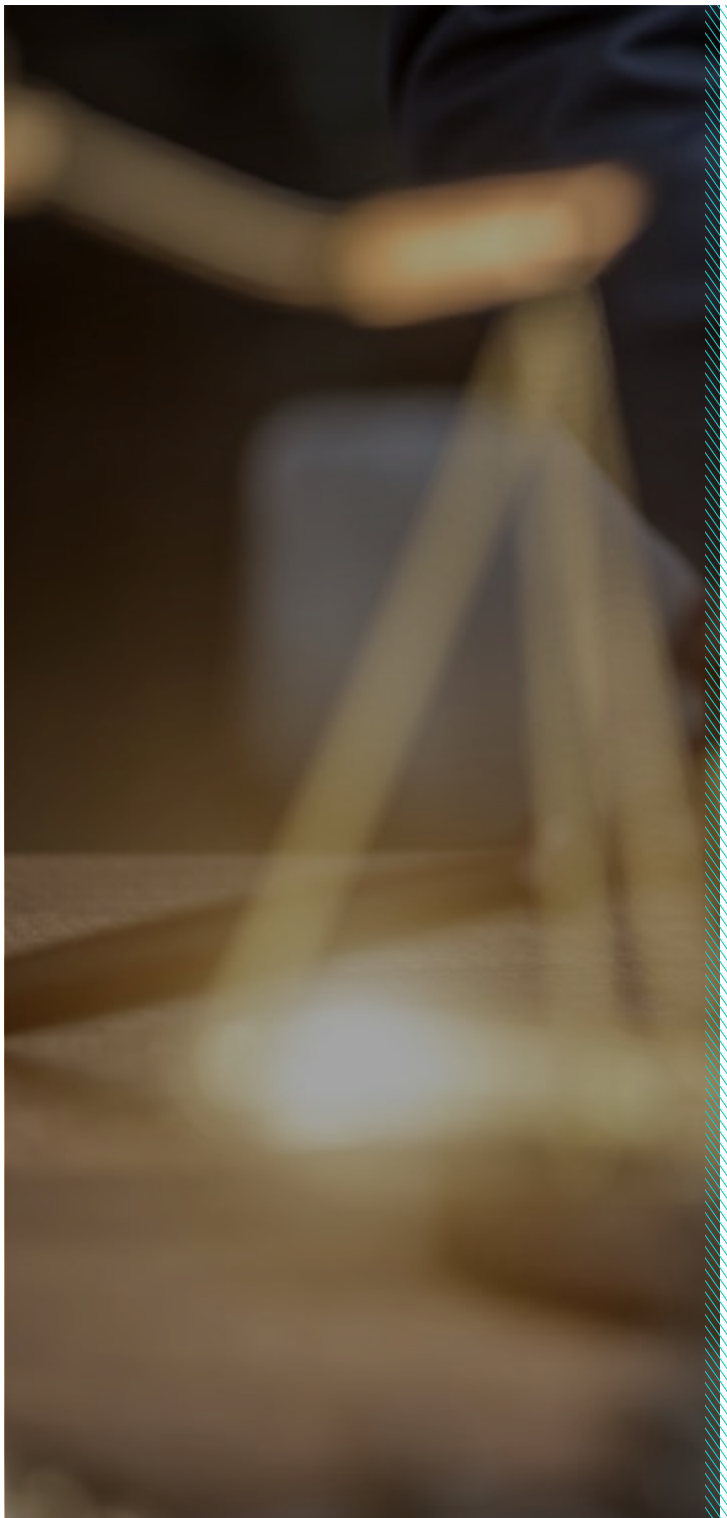
Part Three: "Law Enforcement and Judicial Co-operation in Criminal Matters"

Part Four: "Thematic co-operation"

Part Five: "Participation in Union Programmes, Sound Financial Management and Financial Provisions"

Part Six: "Dispute Settlement and Horizontal Provisions"

Part Seven: Final Provisions"



Background to the Trade and Withdrawal Agreement

The Agreement has three protocols - what is the subject matter of the protocols?

- The first protocol is on administrative co-operation and combating fraud in the field of Value Added Tax (VAT) on mutual assistance for the recovery of claims relating to taxes and duties.
- The second protocol is on mutual administrative assistance in customs matters. It obliges the EU and the UK to assist each other to ensure the correct application of customs legislation and prevent fraud, including through the exchange of information.
- The third protocol is on social security co-ordination.

Does this Agreement mean that the Northern Ireland Protocol is now gone?

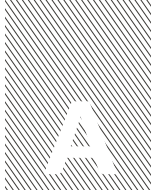
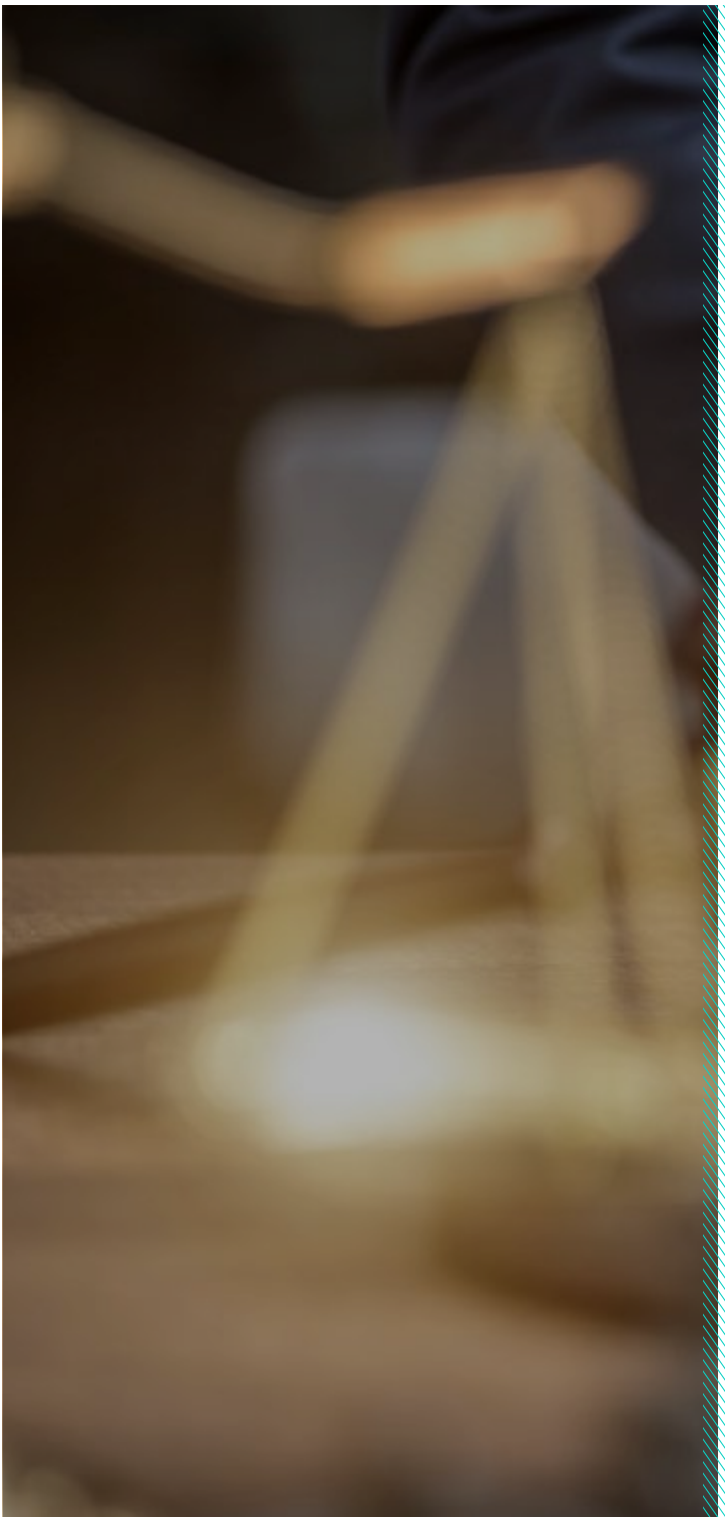
- No
- The Protocol on Ireland and Northern Ireland (which is part of the earlier Withdrawal Agreement) remains in place and in force.
- The Withdrawal Agreement (which entered into force on 1 February 2020) remains in place and the Protocol on Ireland and Northern Ireland came into operation on 1 January 2021.
- The EU-UK Joint Committee met on 17 December 2020 to endorse all formal decisions relating to the implementation of the Withdrawal Agreement (including the Protocol).
- The UK has agreed to withdraw the controversial provisions in its proposed Internal Market legislation and not to introduce comparable provisions in its taxation legislation.

Does the Agreement preserve all the rights that UK citizens and businesses had before 1 January 2021?

- No
- UK businesses and citizens generally have fewer and lesser rights than when the UK was an EU Member State.
- Gone are the EU rules on free movement of persons, free movement of goods, free movement of capital/payments and the freedom of establishment/freedom to provide services.
- Instead, there are lesser and more qualified rights but the UK is no longer subject to EU rules or the jurisdiction of the Court of Justice of the European Union (CJEU).

Is there less red tape now when trading between the EU and the UK?

- No, there is more red tape.
- The EU rules remain in place but they have now been supplemented by: (a) new UK rules; (b) the Withdrawal Agreement; as well as (c) the Trade and Cooperation Agreement. So there is now more red tape, more chances of delay and more costs with doing business. Businesses should plan in their contracts as to who bears the costs of delays and the responsibility for the red tape (e.g., completion of forms).



Background to the Trade and Withdrawal Agreement

Did this Agreement lead to a Hard or Soft Brexit?

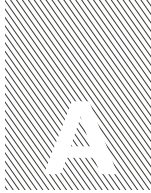
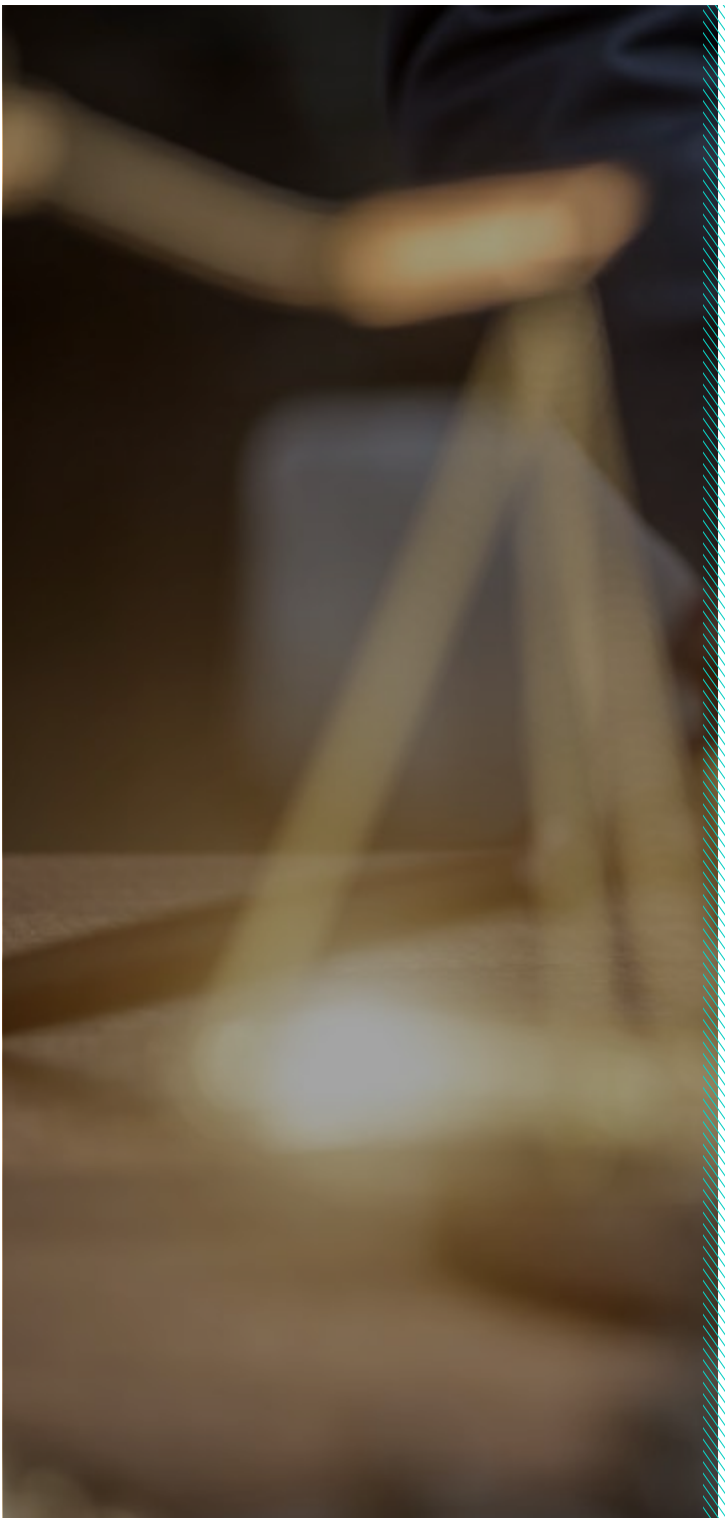
- Largely, a Hard Brexit.
- For example, the UK is no longer part of the EU's Internal Market (i.e. the Common Market) and the EU's Customs Union.
- Moreover, there are entire sectors which have been removed from the EU regime and no alternative has yet been put in place (e.g., financial services).

Did the Agreement lead to a Skinny Brexit or a Detailed Brexit?

- Largely, a Skinny Brexit. For example, it does not cover a whole variety of areas (e.g. most services (including financial services)).
- There is a real sense that an agreement had to conclude before the end of the transition period (i.e. by 31 December 2020) and therefore even an imperfect and incomplete one was agreed to avoid a political, economic, legal and diplomatic "gap" occurring. It will, in all probability, be supplemented over time with additional agreements.

Will this be the end of the Brexit debate?

- No.
- Firstly, the Agreement provides for more agreements to be negotiated and concluded.
- Secondly, the Agreement was not scrutinised carefully by governments, parliaments, businesses or others – it was agreed on 24 December 2020, published on 27 December 2020 and signed on 30 December 2020 – few politicians ever read the 1,259 page document which is a complicated and complex read even for lawyers. The UK Government had some remorse in September 2020 over the Withdrawal Agreement which it has signed in January 2020 and the UK Government announced in September 2020 to introduce new national legislation to try to counter some provisions of the Withdrawal Agreement. The same may happen with the Trade and Cooperation Agreement, which has been subject to even less scrutiny and was more rushed.
- Thirdly, there will be teething difficulties with the Agreement so it will need amendment.



Background to the Trade and Withdrawal Agreement

If it is not the end of the Brexit debate, were there other agreements concluded at the same time as this main Agreement?

- Yes.
- The so-called “Classified Information Agreement”: Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information.
- The so-called “Nuclear Cooperation Agreement”: Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy.
- The Declarations referred to in the Council Decision on the signing on behalf of the Union, and on a provisional application of the Trade and Cooperation Agreement and of the Agreement concerning security procedures for exchanging and protecting classified information.
- The Declarations are politically important but not legally binding.

Given the adoption of this Agreement, has the UK therefore stopped paying money to the EU?

- No.
- The UK is committed under the Withdrawal Agreement to continue paying to the EU until 2064 a sum of around £33.4bn.

But the UK is no longer subject to the Court of Justice of the European Union (CJEU)?

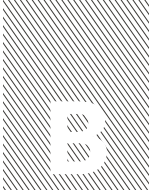
- No.
- The Withdrawal Agreement still provides a role for the CJEU (particularly in regard to Northern Ireland) but the role is much diminished and it is not involved as much as it once was in UK affairs. Disputes about the Agreement may well be decided by the Partnership Council.

What is the Partnership Council?

- This body (not an institution) will manage the operation of the Agreement.
- It is co-chaired by a European Commissioner and a UK Government Minister.
- Decisions are taken by “mutual consent”.
- Disputes may be referred to the Partnership Council by either party.
- The Partnership Council has 16 committees and four working groups.
- It is a political way of resolving disputes where possible.

B Goods





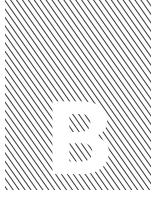
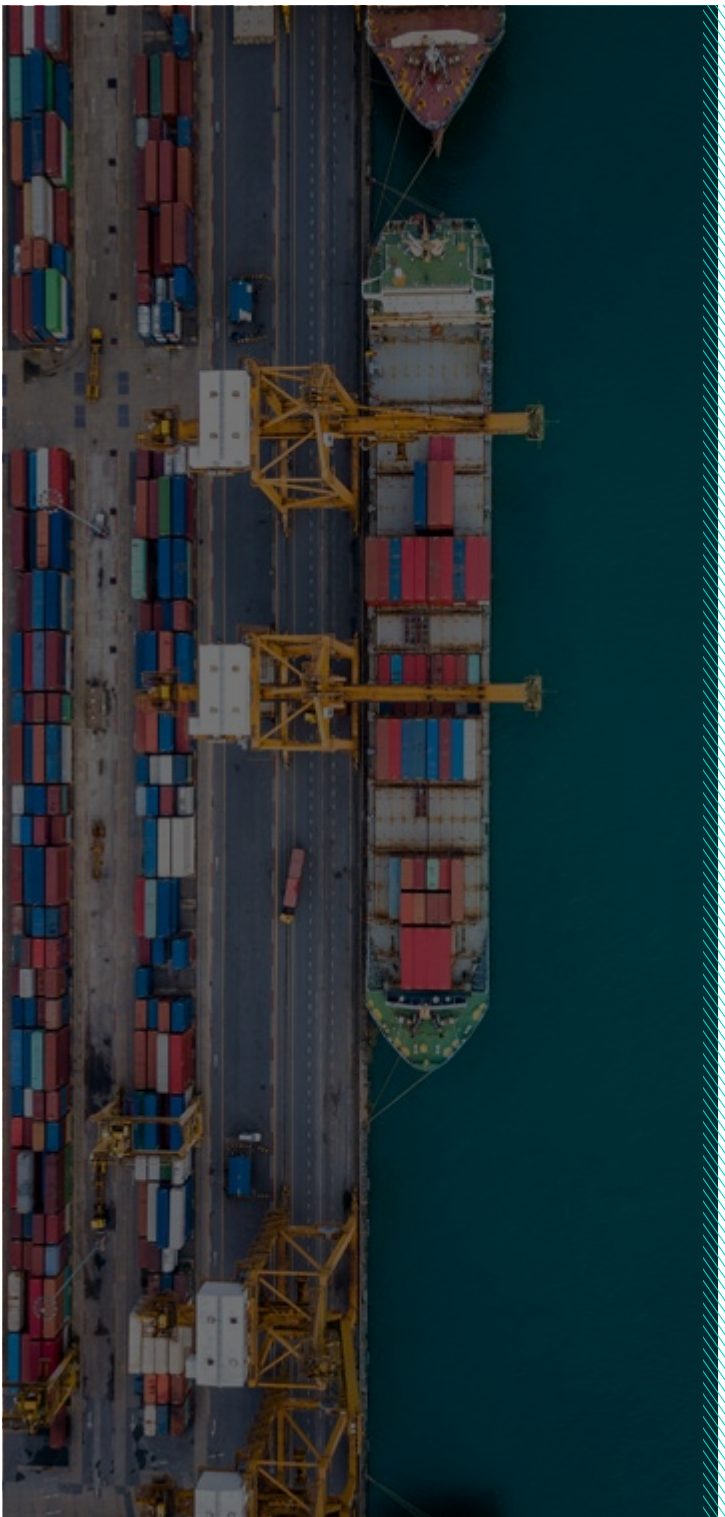
Goods

Is the Agreement mainly about goods?

- Yes.
- Trade in goods is important to both the EU and the UK. In terms of goods, in 2019: UK exports to the EU were 43% of all UK exports; UK imports from the EU were 52% of all UK imports; and 13% of the EU's exports to third countries went to the UK.
- Surprisingly, when setting out its ambitions for the Brexit negotiations, the UK was less interested in services. This is surprising given the significance of services to the UK economy. In 2019, the service sector accounted for 80% of total UK economic output/value added and 82% of employment.

So there will be no tariffs (i.e. fees/ charges) or quotas (i.e. restrictions on the numbers of products which may be traded) on any good moving between the EU and the UK?

- Not quite.
- There will be no tariffs or quotas on many goods but it is necessary to check.
- There are zero tariffs and zero quotas on goods that comply with the appropriate "Rules of Origin".
- To benefit, the goods must meet the "Rules of Origin" requirements, which are contained in the Agreement.
- This means that the goods must meet sufficient "local" content.
- For example, if say 80% of a product manufactured in Great Britain (GB) come from GB then it counts as a GB good and may be traded quota free and tariff free with the EU.
- The same applies to the goods "manufactured" in the EU.
- So, it is important to have as much local content as possible and to be able to verify, through documentation, the level of local content.
- It is worth checking if there are any special rules on the rules of origin for the particular product in question.



Goods

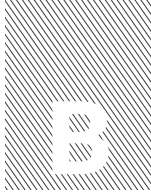
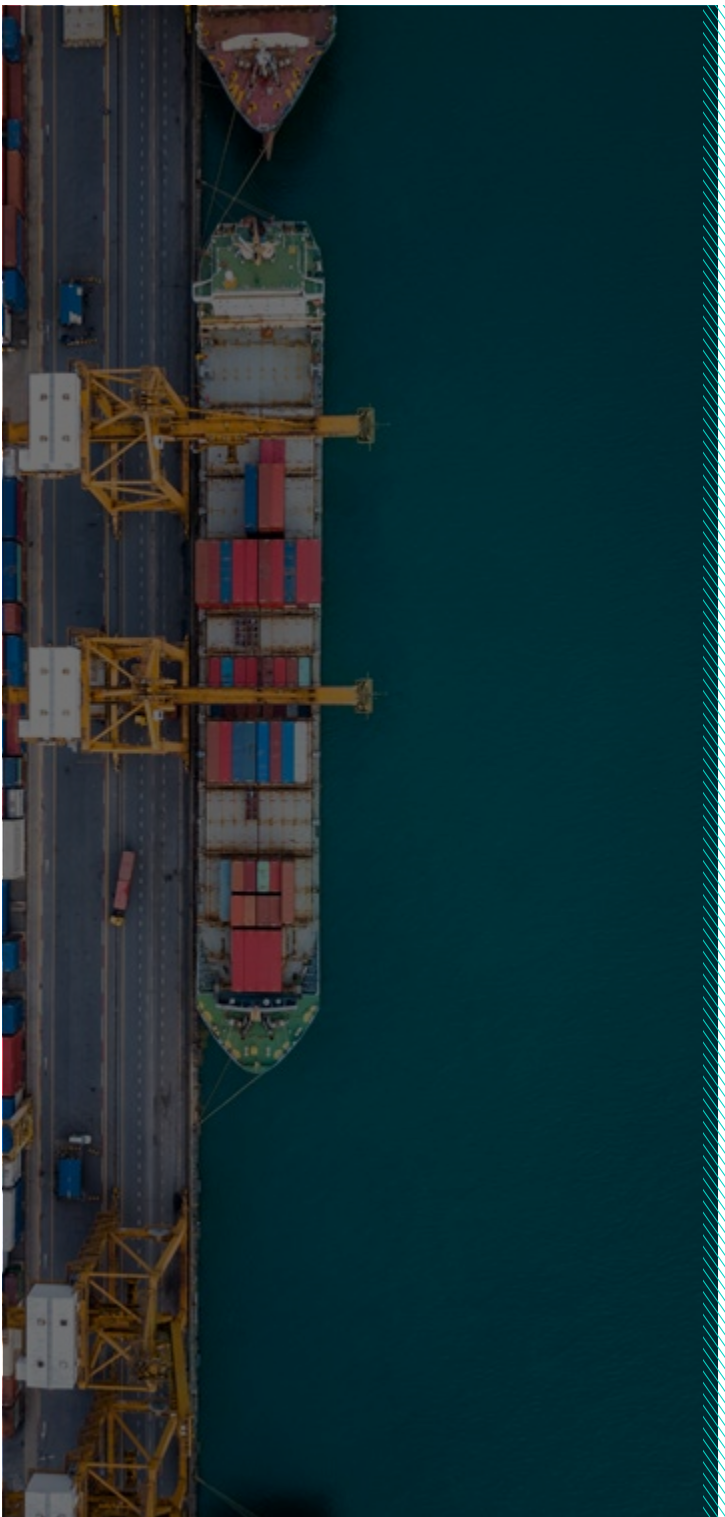
What are the Rules of Origin?

- “Rules of Origin” looks at the combined value of the places where the product is sourced in terms of its components. For example, an electric car might comprise of a Chinese battery, German steel, French equipment and be manufactured in GB – the value of each component/input needs to be calculated and one item (e.g. an expensive battery) could have a disproportionate impact on the origin of the good – so, for example, an electric version of a model of car could have a different origin than the petrol-driven version because of the origin of the battery/engine.
- The rules of origin determine the “nationality” of the goods for the purposes of the Agreement.
- If goods are “local” in origin in GB or in the EU then they would generally benefit from the Agreement (and vice versa).
- It is simply not a case of adding up the value of the components because there are special rules for some products (e.g., electric vehicles).
- Businesses have to maintain the documentation to demonstrate the origin of each of the components.
- The EU and the UK are implementing these rules over time:
 - » In regard to imports into the UK, “staged import controls” under the UK’s Border Operating Model mean that full declarations for goods that are not on the controlled list do not need to be made until 30 June 2021
 - » For trade from the UK to the EU, businesses do not need supplier’s declarations from suppliers in place when the goods are exported before 31 December 2021 but businesses may be asked to retrospectively provide a supplier’s declaration after that date so best to have documentation compiled and maintained

- The EU has issued [guidance](#) on rules of origin.
- The UK has issued [guidance](#) on rules of origin.
- The Agreement contains a provision on “full cumulation”. This means that a trader may account not only for the origin of materials used, but also if the good’s processing occurred in the territory.
- Usually, exporters are able to self-certify the origin of the goods.

Will there be more paperwork and checks?

- Yes for trade between GB and the EU. There is no additional paperwork or checks for trade (a) between Northern Ireland and the EU or (b) within the EU.
- But if there are no tariffs or quotas then why are there checks? The checks are for various reasons (e.g., to test whether standards are met).
- Imports into the EU are subject to customs formalities and need to comply with the rules.
- Imports into the EU must meet all EU standards. Such imports are subject to regulatory checks and controls for safety, health and related purposes.
- The extra formalities arise because the UK is no longer part of the EU Customs Union. Customs controls and formalities under EU law (e.g., the EU’s Union Customs Code) often require entry and exit summary declarations. These rules apply to all goods entering the EU customs territory from the UK or leaving the EU customs territory to the UK. The only exception relates to trade in goods between the EU and Northern Ireland (this is due to the Protocol on Ireland and Northern Ireland which is in the Withdrawal Agreement).



Goods

Is there a difference in terms of exports from (a) Great Britain (i.e. England, Wales & Scotland) to the EU and (b) Northern Ireland to the EU?

- Yes.
- Exports from Northern Ireland to the EU are covered by the Protocol on Ireland and Northern Ireland.
- Exports from Great Britain to the EU are covered by the new Agreement (i.e. the Agreement on Trade and Cooperation).

Is the UK (i.e. England, Scotland, Wales and Northern Ireland) treated as one under the Brexit Arrangements?

- No.
- Northern Ireland is distinct from the rest of the UK insofar as the Withdrawal Agreement (or the Trade and Cooperation Agreement). This is because the Protocol on Ireland and Northern Ireland in the Withdrawal Agreement applies.

Are there new barriers?

- Yes, for trade going in either direction (i.e. EU to UK and UK to EU) with the narrow exception, in certain circumstances, of trade in goods between Northern Ireland and Ireland.
- The Agreement limits the fees that customs authorities may charge for services.

What type of paperwork is involved?

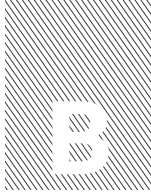
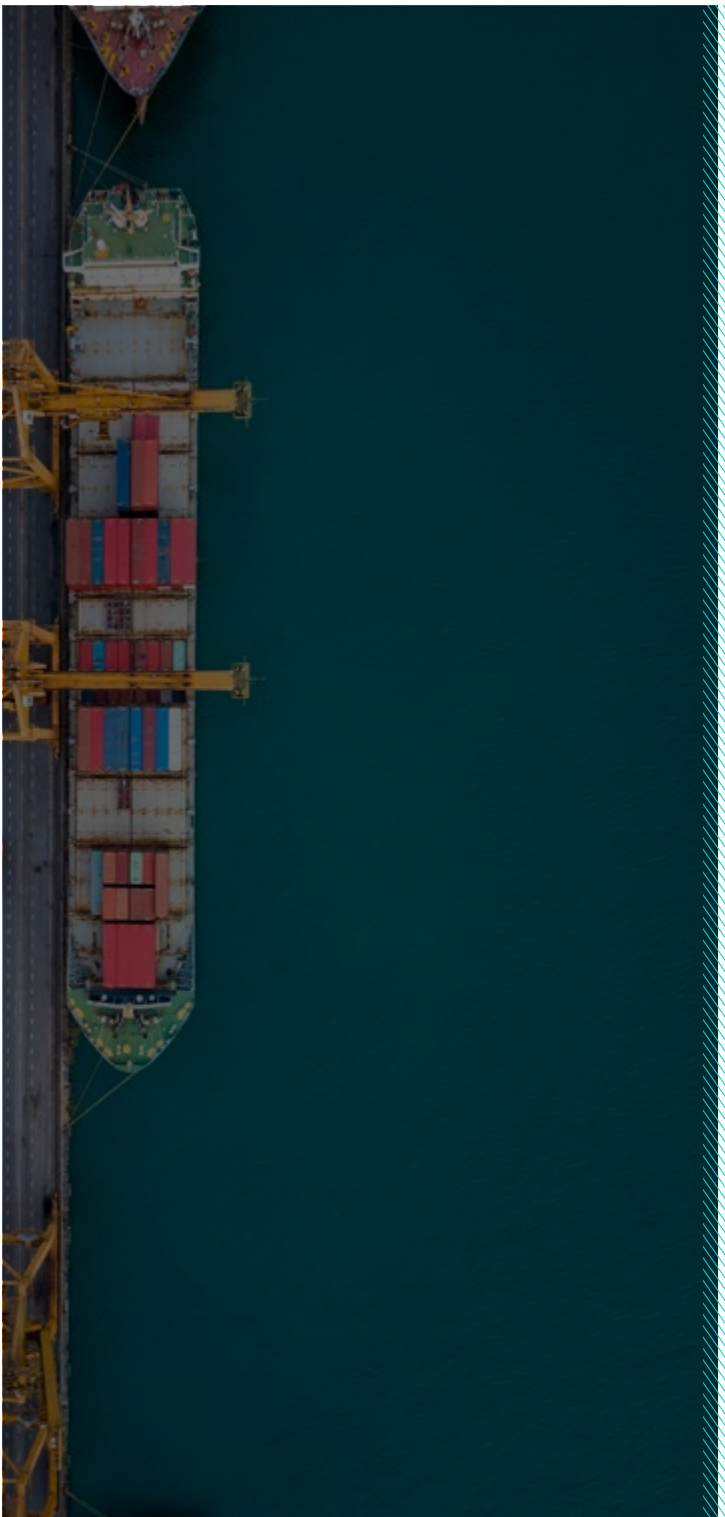
- Customs declarations and paperwork will be needed for businesses to process the movement of goods.
- There is mutual recognition by the EU and the UK of the Trusted Trader Scheme/Authorised Economic Operator. This should facilitate trade involved registered traders.

What about conformity assessments?

- “Conformity assessment” checks whether goods meet particular standards and rules.
- The Agreement provides for mutual recognition of conformity assessments but only in limited circumstances so this means that many goods will have to undergo two conformity assessments (i.e. an EU and a UK one).
- Some mutual/streamlined conformity assessments are provided for in the Agreement for sectors such as the automotive, chemicals, and wine ones.

What about the agri-sector?

- Sanitary and phytosanitary (so-called **SPS**) border checks are required for trade in live animals and products of animal origin.



Goods

What should businesses do about the extra paperwork?

- Traders should set out in contracts who will meet the extra costs so as to avoid disputes and unexpected losses.
- Traders should dry-run possible trips (e.g., routes and cargoes) to check if the paperwork is in order and ask the authorities as many questions as are needed so as to iron out issues. It is useful to have such dialogue with the authorities by email so as to provide a record which could ease issues later.

What regimes apply in Northern Ireland?

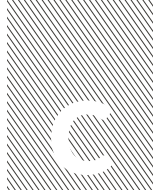
- The Trade and Cooperation Agreement and the Withdrawal Agreement (including the Protocol on Ireland and Northern Ireland) both apply.
- Under the Protocol, Northern Ireland continues to apply the EU Customs Code, the EU VAT regime and the EU excise rules and, most importantly, the EU's internal/single market rules on goods entering and leaving Northern Ireland.
- If EU customs duties apply then they are payable on goods coming into Northern Ireland unless those goods are not 'at risk' of onward movement into the EU (i.e. they are not remaining in Northern Ireland).

What about goods from Northern Ireland to Great Britain?

- Goods moving from Northern Ireland to Great Britain will continue to benefit from unfettered access.

C | Services





Services

What happens with Services?

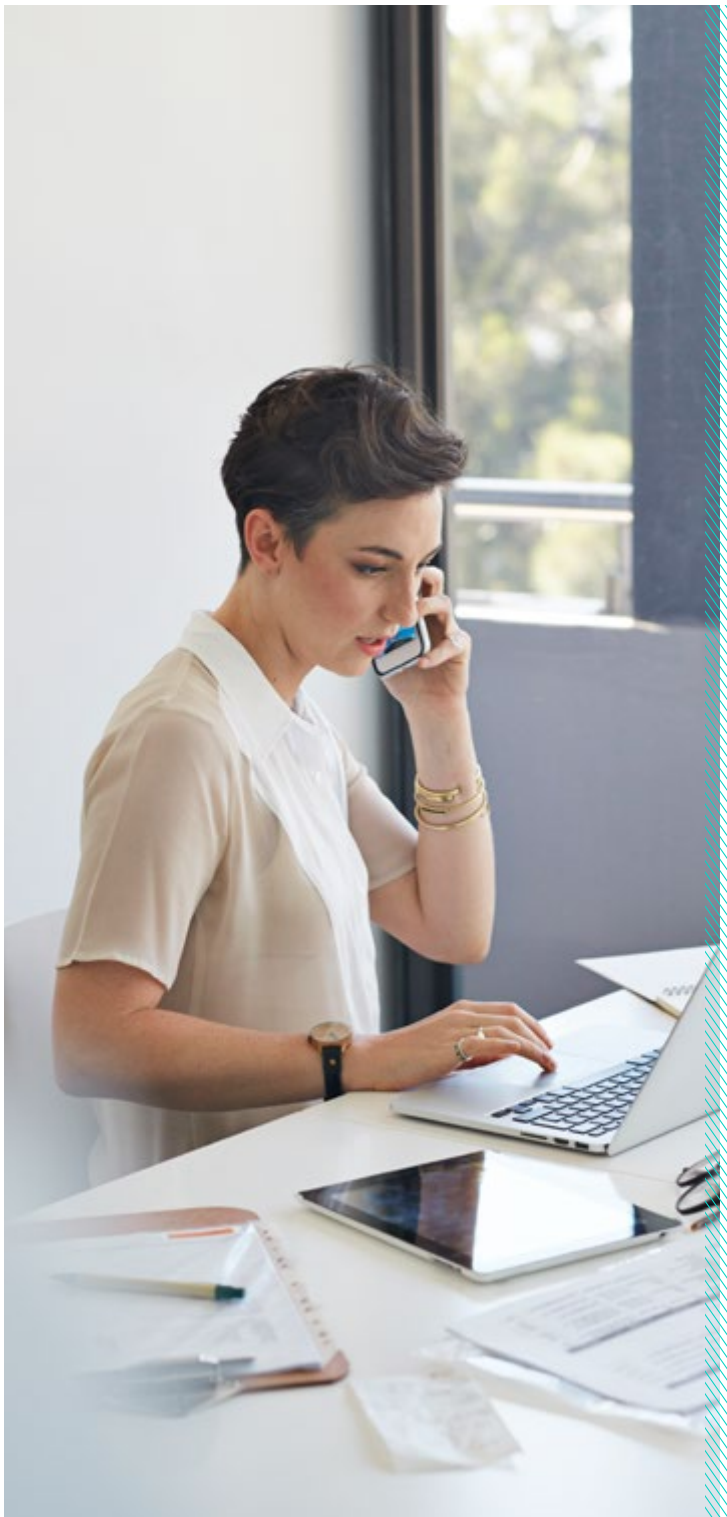
- From 1 January 2021, UK businesses and individuals no longer benefit from the EU's freedom to provide services regime.
- A UK business or person is not entitled to provide services in EU Member States except where, for example, the host State permits it, the Agreement permits it or there is some other legal basis.
- UK business and individuals may not benefit from the EU's free trade agreements which the EU has concluded with third States around the world.
- Instead, a UK business or person would rely on the agreements which the UK has concluded with various States around the world (e.g., Singapore, Switzerland, South Korea, Turkey and Vietnam).
- As expected, the Agreement contains no binding legal regime relating to financial services. However, the parties have expressed a keenness to reach agreement soon on aspects of it and there is a date of 31 March 2021 set for an agreement.

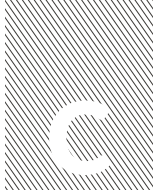
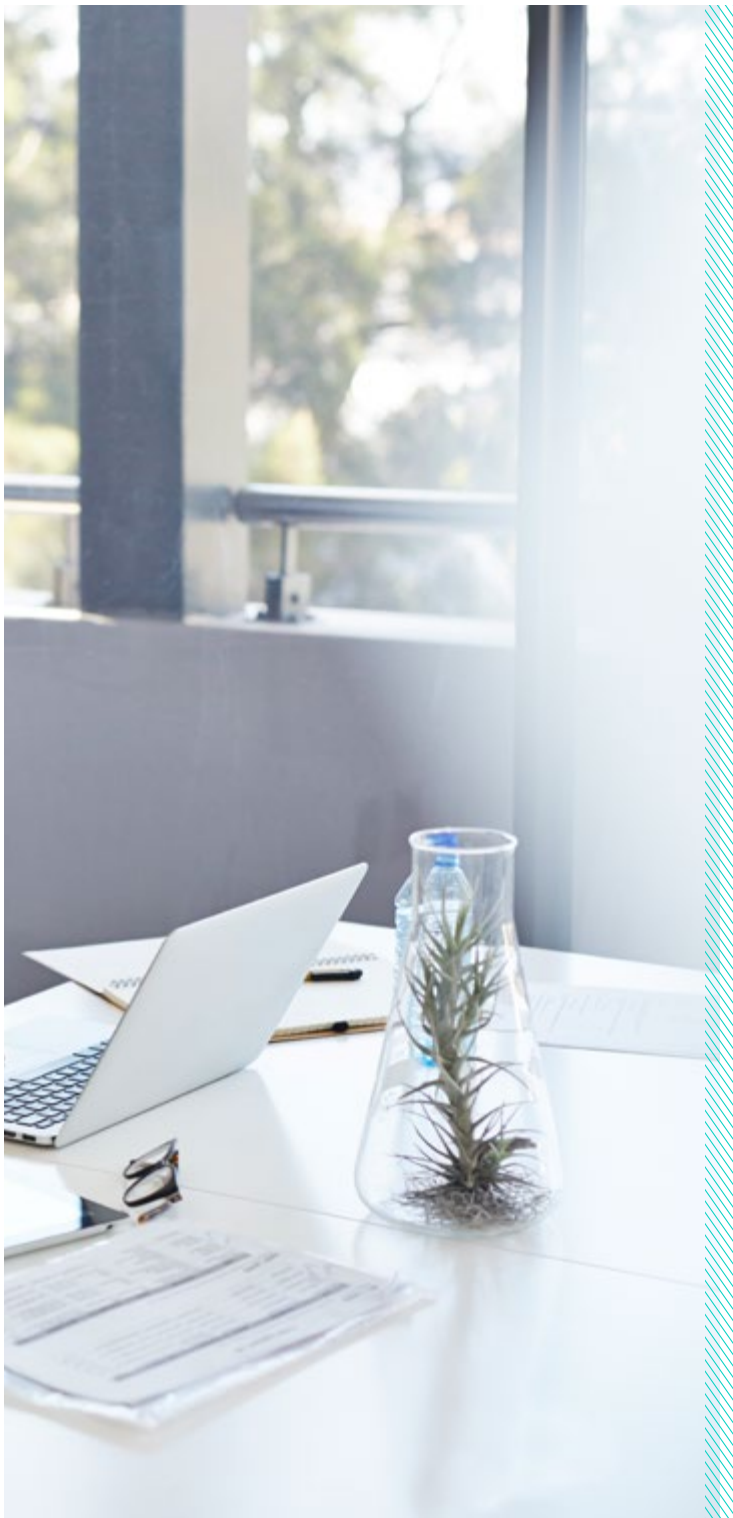
Is there nothing in the Agreement about Services?

- No, the Agreement does have provisions about some services. The regime in the Agreement is less extensive than the EU regime so UK businesses have less ability to provide services in the EU since 1 January 2021. The provisions on services are quite limited but they are a possible indication that future agreements could be reached on services.
- There are provisions on services such as aviation transport, digital trade, energy, maritime transport and, road transport. There are also some general provisions on services and investment.

Is there anything in the Protocol on Northern Ireland and Ireland about Services?

- Apart from some specific references to some services (e.g. electricity), there are no provisions in the Protocol on services generally.
- Services in Northern Ireland are governed largely by UK law with the limited exceptions in the Withdrawal Agreement and the Agreement as well as any future EU-UK agreements.





Services

What are the headlines about Services?

- The parties have agreed to prohibit discrimination between EU and UK nationals in the context of the provision of services.
- There is, generally speaking, no need to open a place of business or local subsidiary to provide a service where it is otherwise lawful to provide the service.
- The regime is not a “one size fits all” arrangement and there are different rules for different sectors.

What about Financial Services?

- Access to the financial services sector is subject to a complete carve-out for prudential measures.
- The EU and the UK adopted a non-binding declaration that they will establish a framework for regulatory co-operation.
- The EU and the UK have committed to agreeing this framework by March 2021.

Will EU or UK professional qualifications, recognised by the other party prior to 31 December 2020, going to remain recognised by all parties?

- Yes.
- There is continued mutual recognition for those nationals who already had their qualifications recognised prior to 31 December 2020.

What about new qualifications?

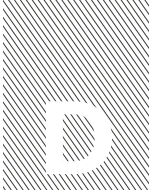
- On and after 1 January 2021, no new professional qualifications will be automatically recognised by EU Member State or UK authorities – as would have happened had Brexit not occurred.
- This means EU/UK professionals will have to comply with professional qualification requirements in the UK/each EU Member State in which they wish to provide their services.

Will new qualifications ever be recognised?

- Yes, it is possible. It would be done by the new Partnership Council.

D | Issues





1. People

Do UK nationals retain “free movement of persons” under EU law by virtue of the Agreement?

- No is the short answer.
- This means that there is no near-automatic right to move freely between the EU and the UK or within the EU. Instead, there may be visa and other requirements going in either direction. Some people may acquire some rights under the Withdrawal Agreement.

What about business trips between the EU and the UK?

- The Common Travel Area (CTA) between Ireland and the UK continues in force and that facilitates travel within the region so travel should remain free and unrestricted. Indeed, the Brexit process has strengthened the legal basis for the CTA which is now fully documented.
- Travelling to the UK (from the EU) or to the EU (from the UK) to sell goods or services to the public directly would typically require a work visa but the CTA regime is somewhat different.
- Under the Agreement, visa-free, short term business trips for employees are allowed for up to 90 days in any 180-day period between the UK and the EU for specific purposes. These purposes include attending meetings, engaging in commercial transactions, market research, purchasing goods or services, research and design, taking orders as well as attending trade fairs or training seminars.
- Self-employed professionals may be able to spend longer in the other’s territory.
- Entrepreneurs establishing a business or fulfilling a contract may be able to spend longer in the other’s territory.
- The Agreement contains numerous restrictions. Those restrictions are also complex and complicated. Moreover, UK nationals would have to comply with the relevant Member State migration rules (and vice versa).

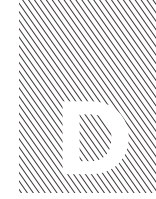
2. Data

Does the Agreement establish a regime to deal with data adequacy?

- No is the short answer.

So what is the position on data flows by virtue of the Joint Declaration?

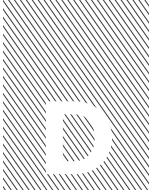
- The Joint Declaration states that the EU will undertake an adequacy assessment.
- Until this decision is made, there will be a temporary arrangement to allow data to continue being transferred from the EU to the UK.
- This temporary arrangement will last for four months but may be extended to six months provided the UK does not alter its data protection laws.
- So “standard clauses” do not have to be introduced immediately but the situation does need to be monitored.



3. Automotive sector

Does the Agreement deal with the Motor Sector?

- Yes, but it is mainly about regulatory standards and vehicle conformity.
- Internationally, it is largely the United Nations Economic Commission for Europe (UNECE) which sets international technical standards for motor vehicles in Europe. In this Agreement, the EU and the UK agreed to cooperate and, where appropriate, plan initiatives to promote greater international harmonisation of technical requirements.
- The EU and the UK have agreed that each accepts, in its market, products that are covered by a valid UN type-approval certificate.
- The parties have also agreed in the Agreement that there will be cooperation and exchange of information in the field of market surveillance to support the identification and addressing of non-conformities of motor vehicles.
- The Agreement provides that there will be cooperation between the parties in regard to research as well as the exchange of information linked to the development of new vehicle safety regulations or related standards, advanced emission reduction, and emerging vehicle technologies.



4. Aviation sector

Does the Agreement preserve the pre-Brexit position for the air transport sector?

- No.
- The special position of EU airlines (e.g., the right to fly within EU Member States (“cabotage”) or between EU Member States) has not been extended by the Agreement to UK airlines.
- UK airlines are no longer classified as EU airlines or EU carriers. So pure UK airlines lose certain EU rights.
- So UK shareholders or UK management no longer constitute EU shareholders or controllers of EU airlines.

What type of connectivity is permitted and not permitted?

- The Agreement provides for continued air connectivity in certain circumstances but market access for UK operators falls below the Internal Market regime.
- UK airlines may continue to fly over the EU without landing (i.e. so-called “first freedom” rights).
- UK airlines may make technical stops in the EU but for non-traffic purposes (e.g. refuelling) i.e. so-called “second freedom” rights.
- UK airlines may carry passengers and/or cargo between the EU and the UK (i.e. so-called “third freedom” and “fourth freedom” rights).
- UK airlines may not fly passengers on a route between two EU Member States (e.g., Dublin-Paris), operate a route between the UK and two (or more) EU Member States (e.g., London-Madrid-Lisbon) or between the UK, the EU and a third country (e.g., London-Dublin-New York).

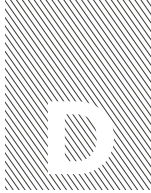
- There is an exception for bilateral arrangements between the EU Member States and the UK with regard to so-called extra-EU all cargo flights (e.g. London-Dublin-New York) (but not passengers).

Are there conditions attaching to these rights under the Agreement?

- Yes.
- The airline will have to hold a valid UK licence, have its principal place of business in the UK and be majority UK-owned and controlled.

What about the Level Playing Field and aviation?

- EU competition law still applies to the air transport sector and UK operators whenever there is an actual or potential effect on trade between EU Member States.
- Many of the EU rules on social and environmental issues continue to apply to the aviation sector.
- The Agreement also contains rules on ground handling and slots to ensure non-discrimination and effective access.



4. Aviation sector

What about passenger rights?

- As is well known, airline passengers derive various rights from EU law.
- The EU air passenger rights regime continues in place for flights operated from the UK to the EU by an EU airline.
- The EU air passenger rights regime continues in place for flights operated from the EU to the UK operated by an EU or a UK airline.
- The EU air passenger rights regime will not continue to operate however for UK-operated flights from the UK to the EU.
- The parties to the Agreement have agreed that each party will guarantee that effective measures are in place to protect access to information, passengers with disabilities or reduced mobility, compensation, reimbursement and complaint handling.

What about aircraft safety?

- The UK is no longer part of the European Union Aviation Safety Agency (EASA).
- This means that there are now EU and UK aviation safety regimes.
- Nonetheless, the Agreement has some provisions relating to aviation safety.
- There are provisions in the Agreement on design and environmental certificates and provisions on spare parts.
- All design certificates issued under the EU regime before 1 January 2021 remain valid.

What about aviation and climate change?

- The EU and the UK agreed rules on the discriminatory taxation of aviation fuel to maintain a level playing field and meet climate-change targets. Both sides have agreed not to exempt aviation fuel from taxation.
- The Agreement provides that carbon-pricing systems cover greenhouse gas emissions from the aviation sector.

5. Climate change and energy

What does the Agreement say about climate change?

- The Agreement places a high priority on addressing the challenge of climate change.
- The EU and the UK have agreed a robust level playing field by maintaining high levels of protection in the fight against climate change and carbon pricing.
- The EU and the UK both recognise in the Agreement the importance of the Paris Climate Agreement of 2015. This is so fundamental that any violation of this principle would enable the other party to terminate or suspend all or some of the Agreement.
- The EU and the UK reaffirm in the Agreement their ambition to achieve economy-wide climate neutrality by 2050.

May the UK now set its own targets?

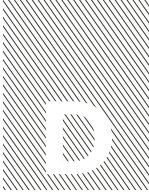
- Subject to the Agreement, the UK will be able to set its own climate change targets.

Are there conditions attaching to these rights under the Agreement?

- The Agreement has provisions on offshore energy (particularly in the context of the North Sea).

Any downsides for the UK?

- The UK is no longer part of the EU's joint action against climate change.
- The UK no longer benefits from the EU financial support, which Member States receive to develop and deploy low-carbon technologies, or for adaption measures.
- The UK is now outside the EU's Emissions Trading Scheme (**EU ETS**).
- Not being part of the EU ETS means that the UK may not share with other Member States decarbonisation targets.



6. Competition

Does the Agreement mean that EU competition law no longer applies to UK businesses?

- No.
- EU competition law applies to businesses (known as “undertakings”) and associations of businesses (known as “associations of undertakings”) irrespective of their nationality. So EU competition law could apply to UK companies just as it applies to US corporations. The test is more whether the conduct could actually or potentially affect trade between EU Member States. Conduct which is apparently confined to the UK could still affect trade between Member States.
- So the EU rules on anti-competitive arrangements, abuse of dominance, merger control, State aid and so on could all still apply to UK businesses.

Are there specific competition rules?

- Yes, for example, there are provisions controlling subsidies to the energy sector to ensure they will not be used to distort competition.
- However, there are relatively few provisions relating to competition in the Agreement.
- So the pre-existing EU competition law regime continues to apply.
- As the UK is no longer in the EU, the concept of “effect on trade between Member States” of the EU will have to be re-evaluated.

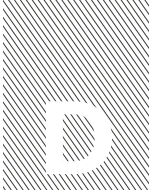


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7. Consumer rights

Does the Agreement affect consumer rights? What do businesses need to know?

- The Agreement does not create a new body of EU consumer law. However, the Agreement has a number of implications for consumers.
- The Agreement includes commitments for the protection of consumer rights.
- The Agreement also has relevance for consumers in terms of data, labelling (e.g. on wine) and transport passengers.



8. Dispute settlement/governance of the Agreement

Wasn't Governance a big issue in the negotiations?

- Yes, one of the sticking points in the negotiations was how disputes between the EU and the UK would be resolved. The UK wanted to avoid the CJEU. The EU was keen that there would be an effective regime because the UK had already indicated that it intended breaching the Withdrawal Agreement concluded between the parties only months earlier.

Is there one or more governance regimes?

- The Agreement contains a single governance regime for the Agreement, which is efficient.

May each side retaliate?

- The Agreement provides, in a specific chapter on governance, for each side to be able to take measures to retaliate against the other when there is a breach of the Agreement. This is the remedial regime. The retaliation may apply in all sectors of the economic partnership so it is an area to be monitored carefully.

Is the CJEU involved?

- The CJEU is not involved in the governance of the Agreement.

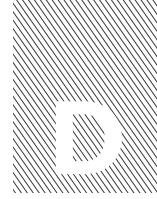
So who deals with governance?

- There is a Joint Partnership Council which will deal with the application and interpretation of the Agreement.

Is there a Trade Partnership Committee too?

- Yes. There is a Trade Partnership Committee which comprises trade specialised committees and other specialised committees. All these committees assist the Partnership Council.

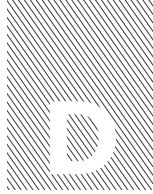




9. Employment

What does the Agreement say on employment?

- Most of the key provisions relating to employees are in the Withdrawal Agreement rather than in this Agreement.
- The EU and UK have agreed a playing field by maintaining high levels of protection in the area of employment including social and labour rights.
- The Agreement provides that the levels of protection on fair working conditions and employment standards will be upheld by both parties.
- With regard to unemployment benefits, the Agreement provides that periods worked both in the EU and in the UK will be taken into consideration in the determination of the employee's benefits.
- With regard to social security, there are more provisions relating to the topic in the Withdrawal Agreement than in this Agreement. The Agreement provides for social security coordination. The Agreement aims at ensuring a number of rights for EU citizens and UK nationals. The Agreement relates to EU citizens working in, travelling or moving to the UK and to UK nationals working in, travelling or moving to the EU after 1 January 2021.



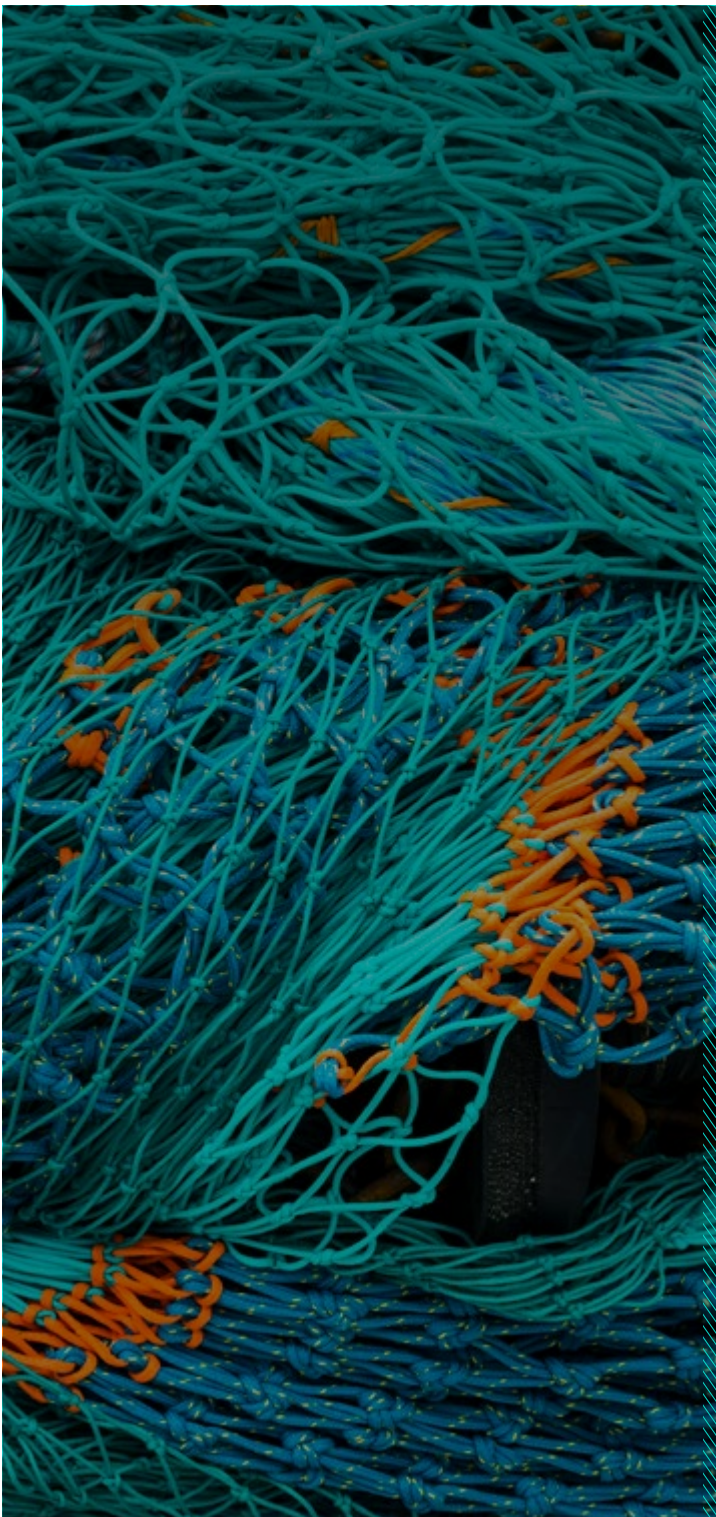
10. Fisheries

Fishing was a big issue in the negotiations on the Agreement but how important is fishing to the EU and the UK?

- The value of fishing in UK waters for EU vessels was over €600m while the value of fishing in EU waters for UK vessels was over €110m.
- Fishing in UK waters represents about 12% (by value) of the EU catch but this is 38% in the case of Ireland and 43% for Belgium but less than 1% for Spain.
- Ironically, more than 66% of UK fisheries production is exported to the EU while most fish products consumed in the UK are imported from outside the EU (i.e. Iceland and Norway in particular) or by processing plants in the EU.

What does the Agreement say about fisheries?

- The Agreement does not bring finality to the fisheries debate.
- The UK left the EU's Common Fisheries Policy on 1 January 2021.
- The EU and the UK will jointly manage around 100 species of fish.
- The Agreement has a grace period of 5.5 years. The current rules remain in operation regarding reciprocal access during the grace period. There will be annual consultation.
- Over time, there will be further changes.
- The Agreement avoids tariffs on fish products – processed fish products would have faced tariffs of up to 25%.





11. Level playing field

Who wanted a level playing field?

- The EU was keen to have a level playing field between the EU and the UK post-Brexit.

What would be involved in a level playing field?

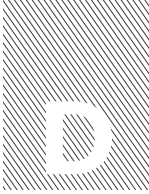
- If there are unfair trade practices then there could be remedial actions by the other party.
- Remedial action may be taken against imports that are causing material injury (e.g. because of a sudden increase in foreign goods or unfair practices such as dumping of goods below cost or trade-distorting subsidies).
- The Agreement provides that either the EU or the UK may apply trade defence instruments (in accordance with the WTO rules).
- Either the EU or the UK may avail of an agriculture safeguard mechanism to protect farmers against sudden increases in imports or price declines below a certain level.
- If there are unfair practices affecting the level playing field, specific, autonomous, and swift measures are also envisaged.



12. Public procurement

What does the Agreement say about public procurement?

- The Agreement has provisions on public procurement.
- The Agreement goes beyond the World Trade Organization's "Government Procurement Agreement" (GPA). This means that the UK will get more access to public procurement contracts under the EU Agreement than it would under the GPA.
- EU and UK businesses will be able to participate on an equal footing with each other in tenders covered by the Agreement.
- The Agreement provides for non-discrimination of EU companies established in the UK (and vice versa) for small-value procurement, i.e. below the threshold of the GPA (from €139,000 to €438,000, depending on the contracting entity, and €5.35m for construction services).



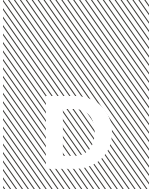
13. Road transport

What changed on 31 December 2020?

- UK businesses lost the right to hold an EU licence or be able to perform transport services within the EU as part of the EU Internal Market.

What does the Agreement cover for road transport?

- The Agreement provides for quota-free point-to-point access for operators transporting goods by road between the EU and the UK.
- UK trucks may drive to the EU and return from the EU, including when not loaded. The same rights are conferred to EU hauliers travelling from any point in the EU to the UK, and back from the UK to anywhere in the EU.
- Each side has full transit rights across the other's territory so as to reach third countries or other parts of their own territory (e.g., an Irish truck may cross through GB to get to France while a GB truck may arrive in Dublin from Holyhead and drive through Ireland to reach Northern Ireland).
- GB and EU trucks may perform up to two additional operations in the other party's territory once they have crossed the EU/GB border. So, an EU haulier travelling to the GB may perform two cabotage operations in GB (i.e. domestic journeys in the UK) while a UK haulier may perform two cross-border operations in the EU or one-cross-border and one cabotage operation.
- There are special rules relating to Ireland and Northern Ireland: Northern Ireland hauliers will be able to conduct two operations in Ireland while Irish hauliers will have the same right in Northern Ireland.



14. Tax transparency

Is there anything on tax transparency?

- There are measures on tax transparency including a “Declaration” in respect of the Bailiwick of Guernsey and the Bailiwick of Jersey on co-operation with the EU on the recovery of claims related to VAT, customs duties and excise duties.

15. What is not covered by the Agreement?

Is the Agreement missing anything?

- A great deal.
- This is the first of many deals.
- Among the topics which could have been part of the Agreement but the UK decided not to include are defence, external security and foreign policy. This could lead to some divergence – for example, the EU and the UK could have divergent approaches on issues such as sanctions, foreign policy and security issues.
- The reality is that this will not be the last agreement but one of many agreements.

If you would like further information on any aspect of this guide or the Brexit Agreement, please feel free to get in touch with your usual A&L Goodbody contact, or any member of our [Brexit team](#).



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