

Notes on the EU deal

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DRAFT - this document is a work in progress

References:

[Financial Times 24th December 2020](#)

[Bloomberg: In Bullet Points: The Key Terms of the Brexit Deal](#)

[The Guardian: Erasmus membership](#)

[The Guardian - here's what's in the Brexit deal](#)

[Politico: UK-EU Brexit trade deal at a glance](#)

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Trade - Summary

The agreement ensures that most goods traded between the EU and UK won't face new tariffs or quotas. However, British exporters will face new regulatory hurdles that will make it more costly and burdensome to do business in Europe. The EU and UK may pursue tariffs and other sanctions according to rules established at the World Trade Organization (WTO).

It will be possible to self-certify goods to show compliance with the rules. However, there will be fresh paperwork and procedures for exporters. In a separate agreement, the EU granted the UK so-called third-country listing, confirming the UK has met the necessary animal health and biosecurity standards required to export live animals and animal products to the EU.

Mobility – No freedom of movement

UK nationals no longer have the freedom to work, study, start a business or live in the EU. Visas will be required for stays over 90 days.

Employees seconded to the EU on business can stay for up to 3 years if they are managers and specialists and up to one year for trainee employees. Those on short-term business will need a work permit and may stay for a period of up to 90 days in any 12-

month period. Under the deal, reciprocal arrangements have been made “to facilitate short-term business trips and temporary secondments of highly-skilled employees”.

There are provisions for UK companies and individuals to have “legal certainty and administrative clarity they need to continue engaging in business activity and delivering services in the EU when the transition period ends.” The parties have also agreed not to impose work permits on business visitors for establishment purposes.

Tariffs

Tariff-free and quota-free access to one of the world’s biggest markets is the backbone of the Brexit deal and goes beyond the EU’s deals with Canada or Japan.

Trusted Trader Programmes

There will be mutual recognition of trusted trader programmes. This means UK producers will have to comply with both UK and EU standards.

Customs

Both sides pledge to limit customs red tape, including through programs for trusted traders known as Authorized Economic Operators (AEOs have benefits including fewer controls). “Bespoke” measures including cooperation at “roll-on roll-off” ports such as Dover and Holyhead in Britain are also foreseen, according to the UK, while the EU refers to specific “facilitation arrangements” for wine, organics, automotive, pharmaceuticals and chemicals.

Rules of origin

New rules require the UK to self-certify the origin of its exports to the EU. Certain products that contain a high threshold of inputs from outside the EU and UK may face new tariffs. A product would only attract tariffs under the agreement if more than 40% of its pre-finished value was either not of British origin or from a non-EU country. UK ‘products’ with content from countries such as Japan and Turkey, with whom the UK and the EU have a trade agreement, will not be counted as British input.

Health and safety

The EU will require UK agri-food exporters to provide health certificates and undergo sanitary and phyto-sanitary controls at border inspection posts.

Level playing field: standards

The deal commits both sides to upholding their environmental, social, labour and tax transparency standards to make sure they don’t undercut each other. The British say the deal doesn’t include a ratchet mechanism that would force it to stiffen its rule in lockstep with the EU. Either side will be able to impose tariffs if they diverge too much; subject to arbitration. European companies unhappy about any British government subsidies to rivals could ask UK courts to examine if they are unfair.

There will be a review after 4 years to ensure the level playing field is working. If either side drags their feet on agreeing a new floor for standards, the other may apply tariffs subject to the approval of an ‘independent arbitration panel’.

Level playing field: state aid

Companies in the EU will be able to challenge state aid awarded to UK rivals in Britain's national courts if they feel it violates common principles set out in the trade deal. British companies will enjoy equivalent rights in the EU. Britain also agreed to set up an independent state-aid authority, although the deal does not require the UK to have an "ex ante" regime that will vet subsidies before they are granted. Either side would also be able to unilaterally impose tariffs to counter the effect of trade-distorting subsidies, although the other party could then call for accelerated arbitration. No set limit for how much state help is problematic, this is taken on a "case-by-case" basis.

A "rebalancing mechanism", governed by arbitration, will allow either side to impose tariffs should it be determined that their businesses were at an unfair disadvantage. Crucially for the UK, the system does not rely on EU law or the European Court of Justice. Both the EU and the UK will need an independent authority to check state subsidies. Courts must be able to order repayment of any illegal subsidies.

One of the biggest sticking points in the talks was the EU's insistence on an "evolution clause", or "equivalence mechanism". This would have allowed the EU to unilaterally apply tariffs on UK goods in the event of standards diverging over time. If one side upgraded their rulebook, the other would have to follow, or face consequences. In the end, compromise was reached. The deal provides for a review and "rebalancing" clause, which allows either side to initiate a formal review of the economic parts of the deal, including the minimum level of standards.

The EU had insisted the UK align with its state aid rules. The EU was concerned that the UK would seek to find a competitive advantage through subsidies. The UK successfully killed off this idea. The UK will set up its own subsidy regime. The new domestic enforcement body can make decisions over whether state aid has distorted trade after the subsidy has been granted. However, the UK will have to ensure that its subsidy regime respects key principles set out in the Treaty. The deal also allows both parties to adopt remedial measures if there is evidence that the domestic enforcement body has failed to uphold the shared principles.

Break Clauses

The trade deal could be reopened if the two sides cannot resolve a dispute, or want to change the terms of the agreement, according to people familiar with the matter. One of the biggest stumbling blocks in the negotiations was the question of how to settle disputes over trade in future. The mechanism is likely to work like this:

- Either side can hit the other with tariffs in particular areas if they think they are justified under the terms of the agreement.
- If one side thinks the other is being unfair on such tariffs, they can take the issue to an arbitration panel, which is independent and will not be the European Court of Justice
- Individual chapters of the trade agreement can be reopened to renegotiate particular areas where there are disputes.

- A nuclear option will be available to terminate the whole trade deal if it's not working out, but the security agreement would stay in place.

Dispute Settlement

Disputes on the deal must be negotiated between the EU and the UK with no role for the EU courts, according to a UK reading of the agreement. An 'arbitration panel' may rule on some areas and can order one side to resolve the problem or offer compensation. Failure to do so allows the other side to "suspend obligations" which could mean blocking some access or cooperation. If there is a "serious economic, societal or environmental difficulty," either side can react with time-limited measures.

If either party feels trade is being distorted, it can take measures after consultation. An arbitration panel would meet within 30 days and adjudicate. If the measures were later seen to have been deemed erroneous or excessive, the aggrieved party would be able to take compensatory measures.

Testing and certification

The absence of a mutual recognition agreement means UK regulatory bodies won't be able to certify products for sale in the EU, a potentially big barrier to trade.

Fishing rights

The UK now leaves the Common Fisheries Policy.

EU fishing fleets will have a five and a half-year transition period with guaranteed access to UK waters. After that, access will depend on annual negotiations. During the transition, EU fishing rights in UK waters — currently worth about €650m per year — will be reduced by 25%, with British quotas increased by a corresponding amount. The shift will boost UK boats' current share of fishing rights in British waters from about a half to two-thirds. After the transition, access to waters will depend on annual negotiations, such as those the EU already has with Norway. But the EU will have some leverage: should the UK revoke access, it will be able to take compensatory measures, including hitting UK fish exports with tariffs, and even shutting the UK out of its energy market.

The EU vessels that fish 6 to 12 nautical miles from the British coastline will be able to continue during the transition, but access will be negotiated on an annual basis after that. Should access be denied to either side, the other may seek compensation or apply tariffs in a proportionate way.

Agriculture

Trade of farm goods will benefit from the zero-tariff, zero-quota terms between the two sides. However, there will be new requirements at the border, adding costs and hurdles for shippers. The lack of levies is welcome for the agriculture and fishing sector, as some meat and dairy products would have faced taxes topping 40% under WTO terms, the EU's summary said. Extra checks: "UK agri-food consignments will have to have health certificates and undergo sanitary and phyto-sanitary controls at Member States' border inspection posts," the EU says. The UK summary notes that both sides will be able to maintain their own sanitary standards going forward.

Organic products: There will be an equivalence agreement allowing for foods certified organic in one market to be recognized in the other, the UK said.

Data flows

The Brexit deal includes a temporary solution to keep data flowing between the EU and UK until the bloc has adopted a data adequacy decision, according to EU officials and a UK summary of the agreement. This period will last a maximum six months, or end as soon as the EU's data adequacy decision has been finalized, which could happen in early 2021, EU officials said. Both sides also committed to upholding high levels of data protection standards, which would include data-adequacy decisions from both sides.

The trade agreement **does not** contain a section covering the vast flow of personal data between the UK and EU which will be concluded in a separate "adequacy" decision due in early 2021. But the trade deal does cover data flows in specific areas of law enforcement and police co-operation between the two sides. A senior EU official said the broader data adequacy decision — which is unilaterally granted by Brussels — could be concluded in the "coming weeks". If granted, it would mean that the EU in effect recognises UK data protection standards as equivalent to its own to allow for the free flow of personal information of EU and UK citizens that underpins the digital economy.

Logistics and road haulage

For British hauliers the deal contained mixed blessings. The two sides recognised the validity of each others' licences and permits and included full transit rights, allowing drivers to cross multiple countries in order to drop a load. This will enable Irish lorries to use the UK as a "land-bridge" to deliver goods into the EU. However, the agreement limits British truckers to a single drop-off and a single pick-up when in Europe, a significant downgrade from EU membership, under which drivers could do three pick-ups inside an EU country before returning home.

Aviation and travel

The deal hinged on the UK remaining a member of the European Common Aviation Area. It allows flying rights between the EU and UK to continue, but UK carriers will not be able to fly between two points within the EU. This was expected, and airlines on both sides have set up foreign subsidiaries to continue current routes, allowing easyJet, for example, to fly between France and Italy. For travellers, visas will be required for visits of more than 90 days, and there may be additional passport checks.

The EU has stopped short of granting automatic recognition to British aerospace designs and products, according to a synopsis published by the UK government. Such recognition will be confined to minor changes until the EU "gains confidence in the UK's capability for overseeing design certification," the document says.

Hauliers will be allowed to continue to drive without special permits allocated in limited numbers to countries outside the EU.

Food and drink

An overview published by the European Commission suggested the EU would immediately implement tough new checks on agri-food products, with no grace period. Still, food and farming businesses welcomed the deal but warned that leaving the customs union and single market in a week's time would still disrupt the food supply chain.

Retail

The British Retail Consortium, which had estimated that tariffs in the event of a no-deal Brexit would add £3bn a year to the cost of food for UK consumers, said it welcomed the deal. "Given that four-fifths of UK food imports come from the EU, today's announcement should afford households around the UK a collective sigh of relief," said chief executive Helen Dickinson. However, she added that the zero-tariff agreement should be implemented as soon as possible and new ways needed to be found "to reduce the checks and red tape that we'll see from the January 1".

Chemicals

The chemicals industry is among the most exposed to costs of new trading arrangements, with products that enter a large number of cross-border supply chains, from car paint to haircare products, food to pharmaceuticals. Steve Elliott, head of the Chemical Industries Association, welcomed the "zero-tariff" element of the deal, saving the industry up to £1bn in feared tariff costs, but continued to raise concerns about UK plans to duplicate the EU's Reach safety regime, in which UK companies had invested £500m in recent years. The CIA said that unless the UK government had secured access to costly product safety databases on which Reach was based, the industry faced a bill of more than £1bn in "unnecessarily duplicating that work for a new UK regime". Peter Foster

Pharmaceuticals

A key pharma industry goal — that tests and inspections for medicines carried out on one side of the English Channel should be considered valid on the other — has been only partially achieved. The agreement included "mutual recognition" clauses that should mean UK manufacturing facilities will "not need to undergo separate UK and EU inspections". However, initial indications on Thursday evening were that the deal did not appear to embrace another key industry demand: mutual recognition of the safety and quality tests. This would mean presale safety tests carried out on medicines in the UK will now need to be duplicated in the EU, causing delays for patients and additional costs.

Car industry

The car industry warned that the deal would introduce "much more red tape and regulatory burden for the industry", which trades almost 3m vehicles a year between the EU and the UK. Cross-Channel trade in automotive parts accounts for almost €14bn. The UK has already conceded that the EU would not agree to taking a more flexible approach when it came to assessing whether UK cars manufactured with large amounts of non-UK components could qualify for zero-tariff access to the bloc under a trade deal. As a result, some cars may incur tariffs on entering the EU. However, the UK government said it had won concessions for batteries and electric vehicles that would

ensure that British-made electric vehicles were at least eligible for preferential tariff rates.

Manufacturing

The UK manufacturing sector welcomed the fact tariffs had been avoided that risked wiping out profits in the sector but warned that companies still faced border delays and the loss of mutual conformity assessment. This could mean two lots of certification and testing to meet both EU and UK standards, according to Stephen Phipson, chief executive of the manufacturers group Make UK. "This would add significant complexity and cost, for a sector that operates on fine margins," he said.

A so-called 'trusted trader scheme' — where qualified companies could speed through customs — was also welcomed, although companies said they would need to see details, given the costs of participating in the system. Far fewer companies in the UK have this "authorised economic operator" status than in Europe, given the costs, which means that it may end up benefiting larger groups with in-house experts over smaller operators.

Services

By quitting the single market, the UK lost some market access for trade in financial services. This is still the case since there is no provision for the sector in the agreement. More than 40 percent of the UK's exports to the EU are services, and the sector accounts for around 80 percent of the UK's economic activity.

For smaller contracts the two parties will be able to access one another's public procurement markets.

Professional services

The deal means that there will no longer be automatic mutual recognition of professional qualifications, according to the EU's reading of the treaty.

"Doctors, nurses, dentists, pharmacists, vets, engineers or architects must have their qualifications recognized in each member state they wish to practice in," the EU said. This is a loss for the UK, which had wanted "comprehensive coverage" to ensure there were no "unnecessary" barriers to regulated services. However, the deal does still provide a "framework" for the recognition of qualifications, according to the UK's summary of the agreement.

Passporting, which allowed automatic access to the single market, is gone, as is a key ask from British business lobbying groups: Mutual Recognition of Professional Qualifications (MRPQs), the mechanism that allows workers such as doctors, engineers and architects to have their qualifications recognized across member states. This will not be simply rolled over.

The devil will be in the detail of the full document on MRPQs and other frameworks for recognition of standards. The short summary document from the EU on the deal says there will be: "Facilitations for short-term business trips and temporary secondments of

highly-skilled employees." The UK side said: "From early 2021, the government will provide help and guidance to UK regulatory authorities and professional bodies" on how to make use of a framework for MRPQs within the deal.

Financial services

The deal offers little clarity for financial firms. There is no decision on so-called equivalence, which would allow firms to sell their services into the single market from the City of London. The agreement only features standard provisions on financial services, meaning it doesn't include commitments on market access.

The UK and EU will discuss how to move forward on specific equivalence decisions. The European Commission, which is in charge of allowing access to the EU's market, said it needs more information from the UK and it doesn't plan to adopt any more equivalence decisions at this point. The deal offers little clarity for financial firms.

Regulatory cooperation

The two sides made a joint declaration to support enhanced cooperation on financial oversight. They aim to agree on a Memorandum of Understanding by March.

Defence and security

UK police and intelligence agencies will not have access to the EU's most sensitive real-time crime databases. However, British security services will still be able to see crucial air passenger data, criminal record information, and DNA, fingerprint and vehicle registration data, with ongoing access to so-called PNR and Prüm databases. This means they will still be able to work with EU allies on joint investigations into terrorism and all forms of organised crime. The UK will not participate in the European Arrest Warrant scheme, which allows swift extradition of criminals between EU countries. The UK also loses membership in Europol and Eurojust. The UK will maintain a "mechanism for access" to the Schengen Information System (SIS II), an automated database that shares police alerts on stolen goods and missing persons.

Extradition

The UK said there will be cooperation on extraditions to that between the EU and Norway and Iceland, "but with appropriate further safeguards for individuals beyond those in the European Arrest Warrant." Where extradition isn't possible, there will still be "a path to justice in every case" such as requiring EU countries to refer cases to prosecution.

Science

The UK will continue to participate in the EU's flagship €80bn Horizon Europe programme as a paying associate member for 7 years. It will also continue in Copernicus and Euratom.

Education - Erasmus exchange programme

Students and young people from Britain will no longer take part in the Europe-wide Erasmus exchange programme after the UK failed to reach agreement over its post-Brexit membership. The UK is to start its own scheme with "the best universities in the world".

The omission of Erasmus from the UK-EU deal ends a scheme that had offered student exchanges as well as school links, work experience and apprenticeships across Europe since 1987. Under the latest version of the scheme, Erasmus+, around 200,000 people have taken part including around 15,000 British university students each year.

The scheme already has non-EU countries in the scheme:

<https://www.erasmusplus.org.uk/participating-countries>

The Irish government will fund students in Northern Ireland so they can access the Erasmus scheme.

Energy

The UK won't have access to the EU's internal energy market. This was expected but there will be new arrangements in place by April 2022 to make sure that trading is smooth and efficient on interconnectors -- huge power cables that run between the UK and Europe. The UK is a net importer of electricity and gets 8% of its power from the continent. As an island nation, making sure trading across these interconnectors is efficient is important to Britain. The deal includes guarantees on security of energy supply.

Carbon/Greenhouse Gas Emissions

The UK is no longer part of the EU's emissions trading system but both sides agreed to cooperate on carbon pricing in future and "consider linking their respective systems." The UK-EU agreement would be suspended if either side breaches their commitments to the 2015 Paris Agreement on climate, according to the summaries.

The agreement also commits the two sides to cooperating on renewable energy and tackling climate change. The agreement can be suspended if either party breaches their commitments under the Paris climate accord. A separate agreement deals with nuclear energy cooperation.

Taxation

There are no provisions constraining our domestic tax regime or tax rates," according to the UK Both sides pledge to "uphold global standards on tax transparency and fighting tax avoidance."

TV Services

Britain's thriving TV and video-on-demand service providers will no longer be able to offer pan European services to European viewers unless they relocate part of their business to an EU member state.

Health

Healthcare provisions will still be available for UK visitors into Europe on a basis similar to the current European Health Insurance Card. Citizens in Northern Ireland can also avail of a scheme to replace the European health insurance card (EHIC) funded by the Irish government.

Social Security & Pensions

In an acknowledgement of how embedded EU and UK citizens are within one another's jurisdictions, the deal will provide for coordination of some social security benefits such as pensions.