



## Independent Commission on UK - EU Relations

### The Independent Commission on UK-EU Relations

The Independent Commission on UK-EU Relations is a timebound commission which examines the impact of the Trade and Cooperation Agreement (TCA) and Northern Ireland Protocol (NIP) on the UK.

As well as looking at impacts on different sectors of the economy we look more broadly at impacts on sectors including security and defence, health, education, and human rights.

There are 13 members of the Commission from business, journalism, civil society, and academia, along with a team of advisors. The intended outcome of the Commission is to recommend changes to the TCA and Protocol which, if implemented, would improve outcomes for UK sectors.

[28 October 2022]

### **The overall political, diplomatic and institutional relationship**

Question 1: How would you describe the current state of UK-EU relations? Has this changed since the end of the transition period and, if so, how and why?

- UK-EU relations are in a difficult place, and the situation has deteriorated since the end of the transition period. The impasse over the Northern Ireland Protocol casts a long shadow over other areas of potential collaboration and cooperation. The Northern Ireland Bill is seen by the European Commission as a particularly serious obstacle to good UK-EU relations. The direction of travel following Rishi Sunak's election as leader of the Conservative Party is reasonably unclear at this time.
- There is a lack of trust between the European Commission and the UK which hinders potential constructive engagement elsewhere – although this is not always the case with Member State Permanent Representations and certain parts of the European Parliament. The important exception to this situation is the area of foreign and security policy, especially sanctions towards Russia, which are dealt with later in this submission.
- The European Commission, presumably with the support (tacit or explicit) of Member States, is increasingly reluctant to engage with their UK counterparts on such areas as data flows and financial services. There are early signs that this situation is also affecting potential cooperation in energy security.
- Due to the breakdown in trust, there now seems to be an approach of minimal cooperation with the UK government by the European Commission, which also impacts efforts by UK companies, trade associations and others to engage with the Commission apparatus. In general terms, Commission officials seem to have to secure permission from their hierarchy (centralised in Maroš Šefčovič's office) for any engagement with UK stakeholders.

Question 2: Are there any future developments in the EU or the UK that you would identify as having a significant impact on the UK-EU relationship?

- The whole area of ‘Level Playing Field vs Regulatory Divergence’ is clearly one which can impact UK-EU relations in either direction in the future. The UK government frequently refers to its right to diverge from EU regulations and standards – which concerns the EU greatly – although ironically there is little evidence to suggest that this is foremost in any government strategy: arguably the opposite is the case. Nonetheless this rhetoric (which is contrary to language in the TCA) does nothing to rebuild trust with EU partners.
- The significance of a closer future UK-EU relationship is that this is now part of a newer debate on the creation of a European Political Community (EPC), set out by President Macron in Strasbourg on 9 May. Liz Truss had in the past expressed doubts about UK participation in the EPC, crucially at this formative stage. However, her participation at the 6 October meeting of heads of state and government to discuss the EPC has had tremendous symbolic importance.
- When Foreign Secretary, Truss expressed views about making the G7 a more strategic entity with a permanent secretariat. This idea has merit (especially as the Presidents of the European Commission and European Council attend G7 summits). Truss may have seen participation in the EPC as a ‘necessary evil’ in securing broader support for her G7 ideas. It is too soon to say how the EPC will develop, and Sunak’s view on the community is not clear, but to the extent that it is an essentially governmental enterprise then the UK should acknowledge its opportunity to help shape its future evolution.
- On paper the institutional governance structures of both the WA and the TCA are well-considered and comprehensive. However, the negative state of UK-EU relations is testing the efficacy of these structures. Clearly a more ‘hands-on’ answer to this question should come from the officials who attend these meetings.

Question 3: Are the institutional architectures of the Withdrawal Agreement (WA) and the Trade and Cooperation Agreement (TCA) functioning as intended? If not, how could their functioning be improved within the existing framework?

- It is relatively early days in the life of the UK-EU institutional framework. A so far little noticed part of that framework – the Parliamentary Partnership Assembly – has potential for parliamentarians (not in government) to conduct and convene informed and constructive discussions about the future of the UK-EU relationship. To many it seems that neither the EU nor the UK has given much priority to this future relationship, so the PPA could and should fill this role.
- As for regular summit-level meetings they are self-evidently a good idea but are unlikely to happen – or, if they do, be useful – unless the UK-EU relationship improves. The Swedish presidency, which starts on 1 January 2023, had tentative and unpublished plans to hold an EU-UK Summit during its six-month term, but that was before the double change of PM in the UK and the change of government in Sweden.

### **The foreign policy and security relationship**

Question 5: How would you assess the current state of UK-EU cooperation on foreign policy, security and defence?

- The decision by the Johnson government to rescind the commitment in the Political Declaration (published alongside the TCA in 2019) to work towards an ‘ambitious, broad, deep and

flexible partnership' in foreign, security and defence policy (FSDP) ensured post-Brexit UK-EU FSDP cooperation would only continue on a third party and largely ad hoc basis.

- Diplomatic recognition between the two entities continued (although there was a public spat over the level of recognition the Johnson government was prepared to grant the EU), but the extensive and highly institutionalised relationship in FSDP from the UK's time as an EU member state has ended. Prior to the Russian invasion of Ukraine, there was a vacuum where that relationship once existed. This was demonstrated most clearly in the minimal references to the EU in the UK government's 2021 Integrated Review.
- Russia's invasion of Ukraine in February 2022 has been a reality check for the UK, and its European (and transatlantic partners) in terms of: Europe's long-term security architecture; what it will require to secure this; common perceptions of the strategic threats and vulnerabilities faced; and the importance of the EU as a European security actor and interlocutor for the UK. In particular, it has served as an important reminder for London that for the 27 member states, the EU remains a crucial forum for collective FSD policymaking, regardless of the UK's preference for alternative channels and forums.
- For UK-EU relations, Russia's invasion of Ukraine has therefore acted as a circuit breaker at a time when the wider relationship had reached something of a nadir due to tensions around the Northern Ireland Protocol - an issue that retains a significant capacity to disrupt efforts at a re-set.
- The current context therefore offers an opportunity for a re-set in UK-EU relations in terms of FSDP. There is recognition in London of the EU's strategic and structural relevance in terms of galvanising a Europe-wide response (e.g. on sanctions); meanwhile, the UK has demonstrated unambiguously its commitment to European security through its extensive support for Ukraine, providing an important reminder to European partners of its continuing relevance in FSDP.
- The UK's recent decision to join the EU's Military Mobility PESCO project, as a third country alongside the US, Canada and Norway indicates a willingness to look more pragmatically at opportunities for UK-EU defence cooperation and coordination.

Question 6: Has the absence of an institutional framework for structured UK-EU cooperation on foreign policy, security and defence made it more difficult for the UK and the EU to work together in this area?

- The challenge of responding to Russia's invasion of Ukraine provides an illustration of the difficulties resulting from the lack of an institutional framework for UK-EU co-operation in FSDP.
- Withdrawal from the EU has meant the UK has not been 'in the room' during key discussions and negotiations at EU level over sanctions, where it would have expected to exercise considerable influence and shape decision-making; nor has it participated in discussions around the wider EU response - for example, deployment of the recently established European Peace Facility to fund weapons for Ukraine, coordinated economic support for Kiev, etc.
- The UK has clearly been able to make use of its bilateral European diplomatic network and the expanded UK Mission to the EU (UKMis) to communicate its positions to EU partners. It has also been able to utilise other important multilateral forums, notably NATO, the UN and G7. However, none of these operates at the same level of diplomatic intensity as EU

structures (notably the Foreign Affairs Council, Coreper II, Political and Security Committee, working groups, etc). The lack of a way to feed directly into or influence the discussions and decision-making there will have hampered coordination and cooperation for both sides.

- A more institutionalised framework in FSDP would to some extent act as a shock absorber, insulating cooperation in these areas from problems in other aspects of the UK-EU relationship. The current absence of a formalised framework means FSDP cooperation is vulnerable to potential disruption because of disputes in other areas of the relationship. For example, UK diplomats and officials have been able to re-establish connections and working relationships with EU peers in Brussels in recent months; however, if the Northern Ireland Protocol Bill becomes law, these contacts will almost certainly be suspended as the EU calibrates a wider, formal response.
- Foreign and diplomatic cooperation and coordination is an area where the UK and EU could enhance and expand their relationship relatively quickly and easily. Foreign policy and diplomacy have the advantage that they do not require legal commitments or oversight by the European Court for more formalised cooperation to be established.
- There is a clear and obvious shared agenda that could form the basis of new, more formalised relationship: the range of strategic threats and challenges facing both - e.g. on energy security, security of supply chains, strategic threats posed by Russia and increasingly China; the desire to strengthen and promote liberal democratic values and human rights, etc. Considerable common ground exists between the UK and EU and would provide the basis for cooperation and international alignment, for example in the UN and other international forums.
- Formalising a shared agenda around these issues would also be well received by the British public. For example, recent polling by the Tony Blair Institute for Global Change shows a significant majority support an improved UK-EU relationship in general, with 66% in favour of greater cooperation in foreign policy specifically.<sup>1</sup>
- There are a range of options open for how a more formalised relationship could be structured. For example, the EU has established several strategic partnerships with non-member states - e.g. the USA, Canada, and Japan - as a means of demonstrating their particular importance. There is no fixed model for the policy content and focus of these partnerships and they can therefore represent whatever the two sides wish to prioritise; in practical terms they usually involve annual summits and opportunities for high level diplomatic and ministerial interactions. The commitments involved in such a relationship would therefore not be onerous but would allow both sides to highlight a new and closer level of mutual engagement and confidence. It is also worth noting that while a member state, the UK championed the establishment of strategic partnerships as a means of strengthening EU international engagement.
- Whilst there is no specific provision for security cooperation in the TCA it is worth noting that it does facilitate important aspects of cooperation through its provisions on cybersecurity, cooperation with Europol and Eurojust, provisions on the exchange of information and in political clauses which provide a foundation for cooperation in areas such as terrorism.

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<sup>1</sup> <https://institute.global/sites/default/files/articles/Moving-On-How-the-British-Public-Views-Brexit-and-What-It-Wants-From-the-Future-Relationship-With-the-European-Union.pdf>

- However, the impact of the loss of SIS II is still not fully understood and may have been obscured by Covid-19 restrictions. Little progress seems to have been made on the proposed International Law Enforcement Alert Platform. Secondly, sharing passenger name records (PNR) is of critical importance to the UK and the interim period during which the UK may derogate from its obligations under Art 552(4) TCA expires on 31 December 2022. There is no publicly available information on the progress made towards the UK transforming its PNR processes to ensure exchange continues without interruption.
- Finally, the Specialised Committee on Law Enforcement and Judicial Cooperation could perform a key role in ensuring cooperation under the agreement is maximised. However, it has only met twice to date.

### **Environment and climate change**

Question 10: How would you assess the current state of UK-EU cooperation on environment and climate change matters?

- Climate change is one of the strongest areas for cooperation between the UK and the EU. The TCA states that a failure to maintain climate obligations as set out under the Paris Agreement, could be considered a condition for the suspension of the Brexit Trade Agreement. The agreement also requires non-regression on environmental standards. Therefore, there are strong incentives in place for both sides to at a minimum maintain, or more likely improve their climate commitments, and this in turn provides opportunities for cooperation as they both seek to move in the same direction.
- The UK has been attempting to move somewhat faster than the EU in terms of its climate commitments, but this does not mean that there is not room for cooperation. Overall, as outlined below, their aims are generally aligned, especially in areas like the ETS or CBAM. However, concerns have also been raised about the deregulation of many environmental laws which would be at odds with EU environmental protections, and with the language of the TCA. It is difficult to know in which direction government policy will head at this time.
- Climate campaigners have raised concerns about the potential direction of climate policy under Rishi Sunak's government, which may impact future UK-EU cooperation. The retained EU law bill threatens at least 570 pieces of environmental legislation and may challenge the level playing field requirements of the TCA. In the last year the Government signed multiple new fossil fuel licences. The investment zones proposed by Liz Truss, and which remain government policy, are a polluters' charter setting up a race to the bottom for towns and cities in the UK, a competition of who can have the worst environmental standards. The agricultural transition promised in the 2019 manifesto, which would reward farmers handsomely for delivering for nature, remains unimplemented. Fracking should be re-banned. A mass scale insulation programme should be established, and the moratorium on onshore wind brought to an end.

Question 11: Should the UK seek to link its Emissions Trading Scheme (ETS) with that of the EU?

- The fact that the UK chose to implement an ETS in the first place, rather than a carbon tax, was a welcome development, as not only is the policy more efficient, but it presents the possibility of a future linkage between its system and the EU equivalent. In addition, the TCA states that both parties must implement a system of carbon pricing, and that they should consider linking the two systems for purposes of efficiency and to avoid divergence over Northern Ireland.
- Currently, under the Northern Ireland Protocol, some parts of Northern Ireland's industry remain part of the EU ETS, specifically electricity generators. Whilst this is hardly the biggest issue relevant to Northern Ireland and the protocol, it is an inconvenience and abnormality that could be addressed by the merging of the schemes.
- There are those that observe that the delinking of the schemes has allowed the UK to move faster on climate targets, proposing a 68% fall in emissions by 2030 compared to the EU's 55%.<sup>2</sup> However, if the schemes were linked, the UK could use its ambition to take a leading role in pushing the EU towards more ambitious climate targets, good for cooperation, and good for the planet as a whole. There is also precedent for cooperation, as non-EU members Iceland, Liechtenstein, and Norway already participate in the EU ETS. As discussed below, it would facilitate other areas of climate cooperation.

Question 12: A proposed EU Regulation on a Carbon Border Adjustment Mechanism (CBAM) potentially applies to Northern Ireland under the terms of the Protocol. Focusing on its wider policy implications, what impact would the EU CBAM have on policy in Great Britain?

- The impact of the EU CBAM, to some extent, would depend on how closely linked the UK and EU ETS schemes are. Substantial differences in carbon prices between the two parties could mean that the EU is forced to apply the CBAM to UK imports, which would be an unwelcome development. The carbon price is fundamental, as if carbon prices are the same, there would be no need to adjust, and therefore, the mechanism would not impact the UK. However, even small differences, whilst potentially financially unimportant, could provoke substantial bureaucracy and paperwork for importers and exporters forced to account for these small differences in carbon prices under the scheme. The same issues could apply, but vice versa, were the UK to introduce its own scheme.
- A UK CBAM could also bring additional problems. Whilst it could support British industry as it undergoes decarbonisation, it would likely be difficult to develop under WTO rules and other legal obligations.

Question 13: Are there any changes you would like to see the Government pursue as far as the UK-EU relationship on environment and climate change is concerned?

- In general, greater cooperation on the environment and climate change is always welcome, as the climate crisis is ultimately a collective issue. As covered above in the section on foreign policy and security, cooperation on energy policy would be beneficial to both parties. In October, the Truss government was reported to be considering effectively re-joining the North Seas Energy Cooperation (NSEC), although to fully rejoin it would have to sign up to internal market rules. Nevertheless, this would help with the coordination of wind farm construction and energy networks in the North Sea.

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<sup>2</sup> <https://www.theguardian.com/environment/2020/dec/03/uk-vows-outdo-other-major-economies-emissions-cuts-by-2030>

- Better cooperation and integration with EU climate policy would also be beneficial for the UK's relationship with the US. Since Biden took power, the EU and US have outlined plans to create an EU–US High-Level Climate Action Group and Transatlantic Green Technology Alliance. The UK is currently excluded from both, but closer cooperation with the EU could potentially open the way to a trilateral arrangement on these issues.