

# **EU-UK TRADE AND COOPERATION AGREEMENT ANALYSIS**

## JANUARY 2021



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# EU-UK TRADE AND COOPERATION AGREEMENT ANALYSIS: JANUARY 2021

Section	Text
Intro	<p>On 24 December 2020, the UK and EU negotiators reached an “agreement in principle” on the text of a <a href="#">new trade and cooperation agreement</a> to govern their relations now that the UK has left the EU. The provisional application of this agreement went live on 1 January 2021 following the ratification of this agreement by both the EU and UK.</p> <p>Available resources:</p> <ul style="list-style-type: none"><li>• <a href="#">UK Government summary of UK-EU Trade and Cooperation Agreement</a></li><li>• <a href="#">EU Commission summary of UK-EU Trade and Cooperation Agreement</a></li><li>• <a href="#">EU Commission UK-EU Trade and Cooperation agreement Q&amp;A</a></li></ul> <p>Below is a summary of the key points from the new UK-EU Trade deal from a business perspective.</p> <p>Please review the BCC’s <a href="#">End of Transition Period Checklist</a> which sets out many of the areas you should look at and plan for and links to helpful guidance, following the announcement of a trade deal.</p> <p>Your firm does not have to navigate the end of the Brexit transition period alone. Contact your <a href="#">local accredited Chamber of Commerce</a> to find out how your Chamber can support you. For specialist customs advisory services, please visit <a href="#">ChamberCustoms</a> a customs advisory, training and brokerage service delivered through Chambers of Commerce across the UK.</p>
People	<p>The agreement confirms that <b>mutual recognition of professional qualifications</b> will end. This means that providers will need to conform to the qualification requirements in each EU member country they wish to</p>

	<p>work in. Although the agreement includes a mechanism for qualifications to be recognised in future, there is currently no guarantee that this will happen.</p> <p>The mutual recognition of professional qualifications for UK citizens living in the EU and EU citizens residing in the UK before the end of the transition period remain protected by the Withdrawal Agreement.</p> <p>The agreement confirms that <b>visa-free short-term business trips</b> will be limited to 90 days in any 180-day period. The list of activities permitted in the agreement for short-term business visitor are limited to:</p> <ul style="list-style-type: none"> <li>• Meetings and consultations</li> <li>• Research and design</li> <li>• Marketing research</li> <li>• Training seminars</li> <li>• Trade fairs and exhibitions</li> <li>• Sales (taking orders, negotiating sales or entering into an agreement, but not supplying the goods or services themselves)</li> <li>• Purchasing goods or services</li> <li>• After-sales or after-lease service (e.g. repair and maintenance)</li> <li>• Commercial transactions (e.g. insurers, bankers)</li> <li>• Tourism personnel (e.g. tour operators, guides)</li> </ul> <p>Those professionals whose activities fall outside those permitted in the agreement are unlikely to benefit from visa-free business trip. Furthermore, individual member states may have additional requirements or restrictions. For example, Austria requires a work permit for market research.</p> <p>Work trips will also be permitted for establishment purposes, including intra-company transfers (who can be accompanied by their partners and dependents) and contract fulfilment (up to 1 year).</p>
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	Freedom of movement between the UK and EU has ended. The government have brought in a new <a href="#">UK points-based immigration system</a> , replacing the current, reciprocal automatic rights to work and settle.
Trade	The UK would no longer be a member of the EU's Customs Union and the Single Market and a hard customs and regulatory border will exist between the UK and EU. The agreement confirms that the UK and the EU have agreed that there should be no <b>tariffs or quotas</b> on any goods that qualify (see below). However, the agreement also includes a number of mechanisms to switch off zero tariffs (see section on Regulations, Standards and the 'level playing field'). Details on how to claim preferential rates of duty on goods covered in the UK's deal with the EU (via CHIEF and CDS) and how to declare goods imported into the UK on your import declaration can be found <a href="#">here</a> .
	In order to qualify for tariff-free access, goods from Great Britain will need to meet <b>rule of origin</b> requirements. This means meeting rules on the amount of local content, sufficient transformation or specific processing required, which are set out in annexes of the agreement. A detailed guide to Rules of origin for goods moving between the UK and EU (including examples of what will not qualify for free trade under UK-EU FTA) can be found <a href="#">here</a> .
	There will be various transitional rules and special arrangements for different types of products included in the annexes of the agreement. For example, there will be a six-year phase-in period for rules-of-origin requirements covering electric cars. The agreement confirms that manufacturers will benefit from full bilateral cumulation of both materials and processing included, encouraging trade between both markets, including those businesses with complex supply chains. However, it also introduces serious restrictions as seen by the fact that EU goods imported into the UK that only undergo minimal processing are subject to full tariffs when sent back to the EU.
	<p>The agreement does not include diagonal accumulation, which would have allowed parts from countries such as Japan, with whom the UK and the EU have a trade agreement, to be counted as British input.</p> <p>For goods imported from the EU to the UK (but currently not UK to EU) from 1 January 2021 traders will have up to six months to submit a full customs declaration, including declaring any proof of origin. Until 31 December 2021, for goods imported EU to the UK and vice versa, traders do not need supplier's declarations</p>

	<p>from business suppliers in place at the time the goods are exported. However, the trader must be sure that they will be that the goods they are exporting do meet the rules of origin requirements as they could be required provide a supplier's declaration retrospectively.</p>
	<p>Following the end of the Brexit transition period, EU trade agreements with other countries no longer apply to the UK. However, agreeing a trade deal with the EU has meant that the UK was then also able to agree a continuity trade agreement with Turkey. The UK continues to seek to reproduce the effects of existing EU agreements for when they no longer apply to the UK to help ensure <b>continuity of trading arrangements</b> for UK businesses. A list of signed continuity trade agreements that came into effect since 1 January 2021 can be found <a href="#">here</a>.</p>
	<p><b>Aviation and haulage</b> will continue as before with passenger and cargo planes still able to fly and land in the EU including stopover flights from Heathrow and elsewhere in the UK that originated from outside the UK. While hauliers will be allowed to continue to drive without special permits, the agreement limits the number of journeys.</p> <p>The UK have also secured an agreement with all EU Member States to recognise UK licences without the need for an International Drivers Permit.</p>
<b>Borders</b>	<p>While the agreement does not remove the need for customs declarations and paperwork for GB–EU traders, it does allow for mutual recognition of <b>Trusted Trader Schemes</b> (i.e. AEO - Authorised Economic Operator schemes).</p> <p>If you hold AEO status and are based in Great Britain, you could benefit from, a faster application process for customs simplifications and authorisations, a lower risk score which may reduce the number of checks customs carry out on your documents and goods and a guarantee waiver up to the level of your deferment account. If you hold AEO status and are a NI trader, you could benefit from a faster application process for customs simplifications and authorisations, your consignments receiving priority treatment for customs controls, a lower risk score which may reduce the number of checks customs carry out on your documents and goods, a reduction or waiver of comprehensive guarantees, a 70% reduction in a business's deferment</p>

	<p>account guarantee a notification waiver when making entries into a declarant's records and moving goods in temporary storage between different member states.</p> <p>While the agreement outlines limiting the frequency of <b>Sanitary and Phytosanitary</b> (SPS) checks as a broad goal, it confirms that there is no mechanism for recognising equivalence for SPS measures. This will mean extra regulation, checks and costs and confirmation that the SPS chapter does not lead to any simplifications at the border.</p> <p>The UK and the EU will maintain separate regimes and a new Trade Specialised Committee on SPS measures will be created to ensure that any SPS border controls are 'proportionate to the risks identified'. The committee will also explore whether further facilitations are feasible without compromising biosecurity.</p> <p>The Department for Environment, Food and Rural Affairs (Defra) has confirmed that the UK has been granted 'national listed status', which ensures exports to the EU of live animals and products of animal origin such as meat, fish and dairy can continue after the transition. This was confirmed by the EU after it met the health and biosecurity assurances required for a third country.</p> <p>The UK has said that it expects to phase in checks for EU goods entering Great Britain. While these checks will also be required on goods moving GB–NI, but the UK and the EU have previously agreed certain mitigations and 'grace periods'.</p>
<p><b>NI-GB Arrangements</b></p>	<p>The EU and UK already have a deal on Northern Ireland through the Northern Ireland protocol where the rules would have applied regardless of whether the two sides had agreed a trade deal. An agreement in principle was reached on 9th December by the EU-UK Joint Committee to ensure the Northern Ireland protocol is fully operational as of January 1st 2021.</p> <p>As part of the agreement, the EU and UK have agreed a trusted trader scheme which the government estimates would mean exemptions from tariffs for 98% of goods flowing between GB and Northern Ireland from 1 January 2021. The other 2% would potentially avail of rebates from any tariffs. The trusted trader scheme would be subject to a sunset clause, three and a half years after the Protocol comes into effect. If the</p>

	<p>EU is not satisfied with the way the scheme is operating, it can trigger an emergency brake through the EU UK Joint Committee. The system could be tweaked rather than halted completely, depending on how it is operating.</p> <p>Exit summary declarations for goods going from NI-GB will not be required and the information will instead be generated from data from transport and ferry companies. Entry summary declarations and customs declaration required for imports into NI. On state aid, it was confirmed that GB firms will stay outside state aid rules where there is no 'genuine and direct' link to Northern Ireland, and no 'real foreseeable' impact on NI-EU trade.</p> <p>Although the implementation of the protocol is the subject of a separate negotiation between the EU and UK, through EU-UK Joint Committee, the trade agreement means that the implementation work of Joint Committee will be easier compared to No-deal. This is because an issue facing the Joint Committee is "at risk" goods (goods travelling from Great Britain through Northern Ireland and into the EU without the correct tariff). But with a trade deal, which eliminates tariffs on all goods that meet rule of origin requirements, the potential risk is greatly reduced. In addition, even if goods fall in the "at risk" category, if provided rules of origin are met tariffs would not be due.</p>
<b>Data</b>	<p>Although the UK and EU continue to reiterate their aim to maintain cross-border data flows, <b>data adequacy</b> is not covered by the agreement.</p> <p>The EU is expected to confirm that the UK's data protection regime is adequate. However, with this process unlikely to be concluded for several months, the UK and EU have agreed to allow cross-border data flows after 1<sup>st</sup> January 2021 to continue unchanged. This 'data bridge' easement will last for a minimum of four months (and a maximum of six months) and would mean that businesses and other holders of data will not be required to make costly changes to the way they transfer data from the EU to the UK.</p>



<b>Regulations, Standards and the 'level playing field'</b>	Under the terms of the treaty, a joint <b>Partnership Council</b> will be formed to vote on amendments to the UK-EU trade deal in the future and to handle any disputes. The council will be supported by various technical committees covering business critical issues covering matters such as rules of origin and services.
	Under <b>the terms of</b> the agreement, a Trade Specialised Committee on Technical Barriers to Trade will be formed to facilitate cooperation between UK and EU on <b>technical standards</b> . If the UK or the EU decides to diverge from international standards, the other party can request an explanation for any amendments as well as an obligation for an impact assessment to be made. National standards body including the British Standards Institution (BSI), are expected to remain involved in the development of international standards.
	The agreement confirms that there will be no mutual recognition of <b>conformity assessment</b> processes. This means manufacturers will have to pay to certify their products twice (as well as additional paperwork), both in the UK and EU. However, the agreement also confirms that the UK and the EU have agreed to simplify conformity assessments on a number of different product areas, including chemical products, motor vehicles, organic products and wine.
	The UKCA marking came into effect on 1 January 2021. However, to allow businesses time to adjust to the new requirements, you will still be able to use the CE marking until 1 January 2022 in most cases. The CE marking is only valid in Great Britain for areas where GB and EU rules remain the same.
	The agreement confirms that <b>Intellectual property rights</b> (copyright, patents, trademarks etc) will be protected to at least the standards required by the international agreements that the UK and the EU are subject to. The agreement also includes mechanisms for co-operation and exchange of information on intellectual property issues where UK-EU interests are aligned.
	The agreement introduces a <b>rebalancing mechanism</b> to address future divergences in technical standards (including on subsidies, workers' rights and the environment) by the UK or the EU that negatively impact the level playing field. If the UK or EU raises its standards and the other party does not follow suit, an arbitration panel could be convened to establish whether 'other party' has infringed the level playing field. The panel



	<p>would be required to issue its decision within 30 days of assembling and if a breach has been established tariffs could be temporarily imposed by the complainant.</p> <p>Under the terms of the agreement, if after four years the UK or EU believe that the other side have consistently and significantly breached the level playing field, they will be able to activate a year review and renegotiation of the trade section of the EU-UK Trade and Cooperation Agreement. If any outstanding issues have not been resolved after a year of negotiations this could lead to a suspension of parts, or all of the trade deal. Postponement of the trade deal would likely see the UK and EU trading on WTO terms. The number of mechanisms included in the treaty to switch off zero tariffs is likely to limit the extent to which the UK can lower standards and increases the fragility of the agreement with the threshold to either side using trade remedies against the other relatively low.</p>
	<p>EU and UK can apply safeguarding measures, including anti-dumping duties and anti-subsidy interventions. The agreement sets out definitions of a <b>subsidy</b> and common principles (see article 3.4 of the treaty) to be applied to any future subsidy regime. Both definitions and common principles are similar to the EU's current system of state aid and under the terms of the agreement, any UK subsidy regime would therefore need to respect the key and binding principles outlined in the treaty. Exemptions to these principles, such as the need to waive rules in a national emergency, have also been outlined.</p> <p>The agreement also contains mechanisms for tackling disputes with both sides committing to legal remedies for a breach, including through their respective court systems. An arbitration tribunal can also be contravened to rule if there has been a breach, with countermeasures such as suspending parts of the trade deal or tariffs outlined in the agreement.</p>
	<p>The agreement confirms that the UK and EU have agreed to permit businesses to continue to tender for each other's <b>public sector procurement</b> contracts. This has been achieved through the agreement of common rules for a transparent and non-discriminatory system to bid on contracts.</p>
	<p>While the UK and EU have committed to key common principles on <b>competition policy</b>, have an independent competition agency and to continue to apply domestic competition law, these obligations won't be subject to dispute resolution.</p>

<b>Tax</b>	The agreement did not amend the <b>VAT</b> changes that came into place on 1 January 2021. The UK have left the EU's VAT zone. The changes include import VAT (though the UK Government has already announced postponed accounting for import VAT from 1 January 2021) becoming applicable, the loss of Distance Selling thresholds for UK e-commerce sellers of goods to EU consumers and scrapping of low-value consignment stock relief. UK sellers of digital services to EU consumers, the UK are no longer a member of the EU Mini One-Stop-Shop single VAT return scheme. A special VAT fiscal representative (who will hold direct liability for any VAT unpaid) will likely be required to any UK business with a foreign VAT registration in the EU. There is also the loss of VAT triangulation.
	The agreement outlines an aim to align to already agreed OECD standards on tax, including on tax avoidance, information sharing. However, these commitments are not subject to dispute resolution.
<b>Funding</b>	The UK will continue to pay into and participate in some <b>EU funding programmes</b> as outlined in the draft Joint Declaration on Participation in Union Programmes and Access to Programme Services. For example, UK science and research sector will be eligible for funding from the new Horizon Europe scheme which is due to run from 2021 to 2027, though the terms remain to be negotiated.
	The UK will no longer participate in the <b>Erasmus scheme</b> . However, the UK government have announced intention to launch a replacement initiative called the 'Turing Scheme'.
	The 2020 Comprehensive Spending Review confirmed the long overdue launch of <b>UK Shared Prosperity Fund</b> . The government have confirmed that total domestic UK-wide funding will at least match current EU receipts, on average reaching around of £1.5 billion a year. The government will also provide additional funding to support our communities to pilot programmes and new approaches. However further details won't be published until the spring. HMG have developed a UK-wide framework for investment in places receiving funding and outlined high level priorities, including bespoke employment and skills programmes that are tailored to local need. However, further details of the UKSPF in a UK-wide investment framework won't be published until spring 2021.
<b>Services</b>	The agreement makes very limited provision for the <b>trade in services</b> . The UK and the EU have agreed to make commitments on market access for services, prohibiting discrimination and no requirement for a local presence in a member state before services can be provided. The agreement also confirms a most-favoured nation clause between the UK and EU which will mean that if either party offers more generous terms to other countries in the future those terms will be automatically applied to the UK-EU agreement. However, the

	<p>detailed annexes at the back of the agreement confirms that these commitments will be subject to a wide range of exemptions which typically will vary by member state.</p>
	<p>The agreement confirms that <b>mutual recognition of professional qualifications</b> will end. This means that providers will need to conform to the qualification requirements in each EU member country they wish to work in. Although the agreement includes a mechanism for qualifications to be recognised in future, there is currently no guarantee that this will happen. The mutual recognition of professional qualifications for UK citizens living in the EU and EU citizens residing in the UK before the end of the transition period remain protected by the Withdrawal Agreement.</p>
	<p>The agreement confirms that <b>visa-free short-term business trips</b> will be limited to 90 days in any 180-day period. The list of activities permitted in the agreement for short-term business visitor are limited to:</p> <ul style="list-style-type: none"> <li>• Meetings and consultations</li> <li>• Research and design</li> <li>• Marketing research</li> <li>• Training seminars</li> <li>• Trade fairs and exhibitions</li> <li>• Sales (taking orders, negotiating sales or entering into an agreement, but not supplying the goods or services themselves)</li> <li>• Purchasing goods or services</li> <li>• After-sales or after-lease service (e.g. repair and maintenance)</li> <li>• Commercial transactions (e.g. insurers, bankers)</li> <li>• Tourism personnel (e.g. tour operators, guides)</li> </ul> <p>Those professionals whose activities fall outside those permitted in the agreement are unlikely to benefit from visa-free business trip. Furthermore, individual member states may have additional requirements or restrictions. For example, Austria requires a work permit for market research.</p>



	Work trips will also be permitted for establishment purposes, including intra-company transfers (who can be accompanied by their partners and dependents) and contract fulfilment (up to 1 year).
	The agreement does not include equivalence (recognising each other's regulations) for <b>financial services</b> with market access arrangements for UK and EU financial services companies based on unilateral decisions by UK and the EU, rather than an explicit provision in the trade agreement. It remains unclear whether this will impact UK firms' access to finance or other financial products and services. The UK and the EU have agreed a non-binding memorandum to establish a framework for regulatory co-operation which may help to firm up agreements on a system of equivalence over the coming months.
	Special rules will apply for delivery services, telecoms, financial services, legal services, digital trade. For example, the agreement includes a clause to provide scope for telecoms providers to charge for mobile roaming.
<b>Final provisions</b>	The agreement provides for a review of the agreement between the EU and the UK every five years. It also provides for the procedure to be followed if a country joins the EU. As is standard in FTAs, either the UK or EU can decide to terminate the agreement with 12 months' notice.

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