

**UK IN A  
CHANGING  
EUROPE**



**REVIEWING THE TRADE AND  
COOPERATION AGREEMENT:  
POTENTIAL PATHS**

# FOREWORD

On Christmas Eve 2020 the UK and EU finally agreed a treaty to regulate their relationship post Brexit. The Trade and Cooperation Agreement was provisionally applied from 1 January 2021 and formally ratified in April.

Among its numerous provisions, the treaty contains Article 776 stating that, ‘The Parties shall jointly review the implementation of this Agreement and supplementing agreements and any matters related thereto five years after the entry into force of this Agreement and every five years thereafter.’ Within the UK at least, many are looking to this review to deliver significant changes to the relationship. This report examines those provisions within the TCA and reflects on what might or might not reasonably be achieved in the context of the review.

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As ever, I hope that you will find what follows interesting, and do please get in touch if it raises any issues you would like to discuss further.

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# EXECUTIVE SUMMARY

- The Trade and Cooperation Agreement (TCA), signed in December 2020, contains a clause requiring it to be reviewed after five years (i.e. 2026). The review has been identified by some, most notably the Labour Party, as an opportunity to expand the terms of the TCA, as a way of reducing barriers to trade. Yet this report finds that using the review for such ends will be challenging, for both political and practical reasons.
- The review clause is vague: it does not specify a date, nor describe the process, nor specify results which need to be produced. It states only that the parties must “review” the agreement’s “implementation”. This does not obligate the UK and EU to do anything other than conduct a light-touch stock-take of the agreement. The review could be more wide-reaching, but this would require the UK and EU to jointly agree on the aims and process.
- The report sets out three potential models for the TCA review
  - **Examine (minimalist):** a technical check on how the TCA is being implemented, as part of existing reporting duties. No ambition to change the agreement.
  - **Exploit (moderate):** realise more of the TCA’s potential by acting on as yet unfulfilled commitments in the treaty, and/or improving underlying processes and structures.
  - **Expand (maximalist):** widen or deepen the scope of the TCA, by adding new elements which are not foreseen by the treaty.
- At the moment, the EU has a clear minimalist position: a short, technical review of the treaty’s implementation in 2026. It also considers that the parties can take steps to improve the functioning of the current TCA at any time (through the TCA’s governance framework) without waiting for the review.
- The EU’s position stems from a general satisfaction with the TCA, which it considers to be working well. Moreover, there is significant Brexit fatigue in Brussels, trust in the UK remains low, and the EU has a long list of higher priorities.
- If the review is to be anything other than a short, technical exercise, the onus will be on the UK to incentivise the EU to shift its position. The UK government has so far not pronounced publicly on its attitude towards the review.

- Should the Conservatives win the general election, we could see a continuation of the current policy of seeking “close and friendly” cooperation without much interest in expanding the terms of the TCA (implying an ‘Examine’ or ‘Exploit’ review).
- The Labour Party, by contrast, has outlined a clear stance on the review. Its aims include agreements on veterinary standards, mutual recognition of conformity assessments and professional qualifications; more flexible labour mobility arrangements for short-term trips; and UK association with EU programmes. They might also discuss equivalence in financial services and would pursue a UK-EU security pact.
- Assuming Labour’s position holds, it will need to persuade the EU to undertake an expansive TCA review. Its current proposals focus on UK priorities (trade easements), and it would have to refine its offer to address key EU interests, which are likely to lie in improving mobility arrangements for young people and enhanced cooperation on security and defence.
- The kinds of agreements Labour is seeking often entail long, technical negotiations which can take years to conclude. They would demand significant administrative resources at a time when the party would have many other priorities. There could also be political costs to signing up to agreements which require continuous, ongoing alignment with EU regulations over which the UK will have no say. The EU would also have to trust that future UK governments, which could be far more eurosceptic, will uphold such agreements.
- While these kinds of agreements would have clear benefits for certain sectors, they would not address the bulk of the overall economic cost of Brexit for the UK, as it would remain outside the Single Market and Customs Union. Labour would have to think carefully about whether the benefits of a maximalist TCA review justify the administrative and political capital it would have to expend.

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# INTRODUCTION

The Trade and Cooperation Agreement (TCA), agreed on Christmas Eve 2020, fundamentally reshaped the relationship between the UK and EU. While it maintains zero tariffs and quotas on almost all goods, it has made trade more administratively complex and, therefore, costly. It has also made it more complicated for people to travel between the UK and EU for work, study or leisure, and reduced the level of cooperation in areas ranging from climate to policing.

Nonetheless, both sides are clear that the TCA is here to stay. The [EU](#) thinks that, overall, the agreement is functioning well. Within the UK, despite a majority of the public [regarding](#) Brexit as more of a failure than a success, neither main political party is suggesting replacing the TCA with a model of closer institutionalised cooperation.

Following the breakthrough on arrangements for Northern Ireland earlier this year, the focus is increasingly on the full implementation of the agreement and how to make the best of it. Within the UK, in particular, there is interest in deepening its provisions. A growing number of [politicians](#), [think tanks](#) and [business groups](#) have expressed dissatisfaction with the impact of the TCA on trade and wider cooperation, and argue that its terms should be expanded. Recommendations range from alignment on veterinary standards and mutual recognition of conformity assessments, to business travel and youth mobility schemes, and institutionalised cooperation on foreign and security policy.

Increasing attention is also being paid to a clause in the TCA which mandates its review after five years. For proponents of reform in the UK, this ‘TCA review’ represents something of a beacon on the horizon.

Shadow Foreign Secretary David Lammy has [identified](#) the review as an opportunity to “improve our trade deal with the European Union”, by going through the TCA “page-by-page, seeking ways to remove barriers and improve opportunities for business”. Northern Ireland Secretary Steve Baker, in a similar vein, [says](#) “it is possible that we could achieve great things in that TCA review”.

There is a stark difference, however, between those views and the attitude expressed by Commission representatives. Vice-President Maros Sefcovic [has said](#) the review “does not constitute a commitment to reopen the TCA”. Discussions in Brussels about it are few and far between. Quite simply, officials are tired of Brexit and the EU has a long list of higher priorities.

Herein lies the fundamental challenge of the TCA review, which has not yet been fully acknowledged in the UK. The treaty is a set of negotiated compromises. For all the ambitions some in the UK might have to seek major changes to the agreement, it will require the consent of the EU to use the review for this purpose.

As for the TCA review clause itself, its wording is vague. It implies anything from a light-touch stock-take of how the treaty is functioning, to a comprehensive set of negotiations to expand the agreement. But again, whatever form it takes, the UK and EU will have to agree on the process.

Two key factors will thus shape the nature of the review. One is political will. If the UK wants to make the review expansive - and provide the opportunity to secure benefits that it either did not seek or failed to negotiate first time round - it will have to think carefully about how it incentivises the EU to agree to this. The report draws on extensive conversations with figures on the UK and EU sides to consider where interests could both intersect and conflict.

The other factor is process. A more expansive review entails multiple, potentially complex negotiations, demanding significant time and administrative effort. The UK and EU will have to consider whether and how the review can be structured in a manner which is commensurate with their ambitions.

This report outlines three models the TCA review could follow. It may seem somewhat premature to undertake this exercise, given the review is still two to three years away and there will be elections both in the UK and EU before then. Yet, given the ambiguity of the review clause, it is incumbent upon the UK and EU to define its ambitions and structure. If they want it to be anything other than a short, technical exercise, they will have to start thinking about their approach relatively soon.

# 1) WHAT IS THE TCA REVIEW CLAUSE?

The provisions for the TCA review are found in Article 776 of the agreement:

**“The Parties shall jointly review the implementation of this Agreement and supplementing agreements and any matters related thereto five years after the entry into force of this Agreement and every five years thereafter.”**

This clearly leaves much room for interpretation. There are, however, four key elements.

First, the review shall take place “five years after the entry into force of this Agreement”. The TCA was provisionally applied from 1 January 2021 and officially [entered into force](#) on 1 May 2021, setting the presumptive start as 2026. However, because no fixed date is specified, it will be up to the two sides to agree on the exact timing. They could in theory opt to undertake it in 2025, i.e. the fifth year of its implementation.

Second, it is a commitment to “review”, not “revise”. This means that, while the parties must take stock of the TCA’s implementation, there is no obligation to change anything. The review clause is a relatively standard, technical feature of [numerous EU agreements](#). Reviews of the EU’s agreements with [Chile](#) and [Mexico](#) provide - rare - examples of more substantive renegotiations being initiated. However, both took place some two decades after the original agreements entered into force.

Third, it is a review of “implementation”. This implies a focus on how the TCA is working in practice - its structures and mechanisms - rather than on the substance of the text itself. Some specific elements in the TCA ([Article 126 \(1\)](#) on services and investment, and [Article 691 \(1\)](#) on law enforcement and judicial cooperation in criminal matters) contain commitments to review them as part of the wider TCA review. [Article 691](#) also specifies that the parties shall decide in advance how to conduct the review of law enforcement.

Fourth, [Article 776](#) adds, somewhat ambiguously, that the parties may review the TCA’s implementation and “any matters related thereto”. On one reading, this allows the UK and EU to discuss other matters related to the TCA’s implementation (perhaps the functioning of the related Withdrawal Agreement). A more expansive interpretation might suggest that it allows the parties to address other matters affecting the TCA, beyond the issue of implementation.

This might provide grounds for expanding or revising the agreement, if both the EU and UK wish to do so.

Ultimately, the imprecise and open-ended wording of Article 776 means it is up to the UK and EU to jointly decide on the exact scope of the review.

## 2) HOW COULD THE REVIEW WORK?

As Simon Usherwood [has argued](#), “if the review is to produce anything of substance, then both Brussels and London need to agree on a process and a realistic set of objectives”. Depending on the ambitions of the UK and EU, this process could vary markedly.

In its most limited form, the TCA review may amount to little more than an acknowledgement of the five year milestone in the parties’ regular assessment reports. At the other extreme, attempts to substantially expand its terms would require the EU to obtain a formal mandate prior to structured negotiations, which could take years to conclude.

We outline three models for the TCA review. This is, of course, not a definitive framework, but rather aims to offer a general indication of how the review might unfold depending on the ambition of the parties. For each model, we outline what purpose the review would serve, what types of issues could be addressed, and what structures and processes would be required.

### HOW THE TCA IS GOVERNED

First, however, it is important to emphasise that the parties do not have to wait for 2025/2026 to address the workings of the TCA. It is designed as a framework agreement, to which new areas of cooperation can be added, and other changes made, as needed. To do so, it is underpinned by a comprehensive governance structure empowered to make amendments, [as outlined](#) by Cleo Davies and Hussein Kassim. There are also separate dispute resolution processes, which either party can initiate, if it has concerns about the other not living up to specific obligations.

The UK-EU Partnership Council is the main body responsible for overseeing the TCA’s implementation and interpretation, supported by a network of specialised committees which consider specific elements in greater depth. It is co-chaired by a UK Minister and Member of the European Commission, meets at least once a year, and can take decisions by mutual consent. It has the power to make any amendments which the TCA or its supplementing agreements provide for. It also has the power to “correct errors” and “address omissions or other deficiencies” in the TCA: a potentially wide-reaching licence to add substantive new elements. This power, however, expires four years after the TCA entered into force (i.e. [May 2025](#)) - most likely before the review takes place.

Thus, existing governance structures could address most of the matters covered by the first two review models we outline ('Examine' and 'Exploit'). Other than linking the two sides' emission trading schemes in the 'Exploit' model, they do not involve adding substantively new elements to the TCA. Indeed, the Partnership Council is already [overseeing efforts](#) to advance the implementation of the current agreement, in relation to energy, security, Horizon Europe, financial services, counter terror and cyber security.

There are some issues outside the TCA framework which need to be addressed [before the review takes place](#), such as decisions on data adequacy and financial services equivalence. There are also matters arising from the TCA - like renewing cooperation on energy and fisheries, and content requirements for electric vehicles - which may need to be addressed before the review, depending on its timing.

This raises the question as to why wait for the TCA review, given many elements of the relationship can (and in some cases must) be reviewed sooner. There is a potential political and procedural rationale for using the review, as it could serve as a focal point around which to centre several simultaneous discussions. This could add momentum to talks, and prove easier to manage than a set of disconnected, ad hoc negotiations. Moreover, should the two sides seek to widen or deepen the terms of the TCA review (the 'Expand' model), this would require powers beyond those of the Partnership Council, necessitating the use of the TCA review or a similar process.

**Table 1: Three possible models for the TCA review**

<b>Examine</b>	A technical check on how the TCA is being implemented, as part of existing reporting duties. No ambition to change the agreement.
<b>Exploit</b>	Realise more of TCA's potential, by acting on as yet unfulfilled commitments in the treaty, and/or improving underlying processes and structures.
<b>Expand</b>	Widen or deepen the scope of the TCA, by adding new elements which are not foreseen by the treaty.

### **EXAMINE THE TCA (MINIMALIST MODEL)**

The parties could treat the review simply as a light-touch stock-take. The EU and UK are required to examine the functioning of the agreement. However, there is no obligation to follow a specific process or, indeed, to actually do anything once they have looked at it.

This 'look, don't touch' approach seems most in line with the Commission's current interpretation of the review. In this scenario the Commission could

acknowledge the review as part of its existing reporting duties. For a period of five years from 1 January 2021, the Commission is [required](#) to report annually to the European Parliament and the Council on the implementation and application of the TCA.

The Commission is expected to publish its fifth report, covering 2025, in early 2026. This can be expected to be similar to the latest annual [report](#) (covering 2022) which provides an overview of the functioning of the institutional framework, including enforcement tools and dispute settlement. It also highlights (sectoral) implementation issues and looks at regulatory developments in the UK and how these might impact the level playing field. The report in 2026 could summarise and assess the functioning of the agreement over the last five years and thereby acknowledge the review clause. The UK published its [first report assessing](#) the implementation of the TCA in June 2023, and is set to publish further reports every two years. It could delay its next report, or publish a supplementary edition to coincide with the five year review.

Article 776 says the parties shall do the review jointly. Whilst the EU and UK reports are separate, they draw on discussions in the joint specialised committees and working groups under the TCA. This could satisfy the ‘joint’ element. The ‘Examine’ model would therefore require no additional layer of coordination, stakeholder input, or political intervention. Whilst providing an opportunity to reflect on implementation issues that persist (or emerge) after five years of application, the reports would not propose changes to the agreement.

They could, however, trigger political tensions if either side raises significant grievances in its report - for example a perceived breach of level playing field obligations. The UK has already [expressed](#) concerns about the longer-term trade and investment impacts of EU subsidies granted in response to Covid-19 and the war in Ukraine. The EU [remains concerned](#) about the impacts of the UK’s Retained EU Law Act and [threats](#) to withdraw from the European Court of Human Rights. By 2026 the longer-term effects of these policies could have come to the fore and pushed either side to consider rebalancing measures under the TCA (Article 411), including tariffs or the temporary suspension of parts of the agreement. That said, the TCA review could afford the two parties a more flexible means of talking through their concerns and seeking an amicable resolution, without triggering formal dispute resolution processes.

### **EXPLOIT THE TCA (MODERATE MODEL)**

In addition to assessing the first five years of implementation, an ‘Exploit’ review would seek to realise the TCA’s full potential. This could include efforts to upgrade the governance framework, and identify areas for enhanced cooperation

and the kinds of supplementing agreements provided for in the TCA. It could also be an opportune moment to take stock of upcoming deadlines, such as the expiring chapter on energy, the end of the adjustment phase on fisheries in 2026, and changing rules of origin for electric vehicles in 2027.

Unlike the ‘Examine’ model, this would require both parties to agree which TCA structures and commitments to reconsider or drive forward. Given the range of potential subjects, it could range from a fairly limited review (perhaps making a few governance tweaks) to a quite wide-ranging exercise involving, for instance, the negotiation of one or more supplementing agreements. Apart from the negotiation of such agreements, an ‘Exploit’ review could take place at the annual meeting of the Partnership Council, which is empowered to make recommendations regarding the implementation and application of the TCA or of any supplementing agreement.

### **Governance framework**

An ‘Exploit’ review could take stock of the governance framework that underpins the TCA. It could, for instance, examine the functioning of the Partnership Council, specialised committees, and working groups. This could include an assessment of the frequency of meetings, attendance, and efficiency of the different fora. The Partnership Council has the power to establish or dissolve Specialised Committees or Trade Specialised Committees. It can also change the tasks assigned to them.

### **Enhanced cooperation**

The review could look to enhance cooperation in areas like cyber security, competition policy, intellectual property, or energy, as provided for in the TCA (see table 2). The TCA contains further opportunities to establish regular dialogues in areas including cyber security, counter-terrorism and intellectual property (which do not need a supplementing agreement or MoU) (see table 2).

### **Supplementing agreements**

The TCA includes the possibility of supplementing agreements in certain policy areas. For example, it makes provision for UK participation in the Union programmes on science, research and innovation; nuclear research; and space. The TCA also encourages both parties to ‘give serious consideration to linking their respective carbon pricing systems’ (Article 392). The Commission [has indicated](#) the latter would require a separate negotiation, including a mandate for it to negotiate on behalf of EU member states.

Yet fulfilling these types of commitments could be easier said than done. Despite the improved mood music created by the Windsor Framework agreement, the two sides took another six months to agree on the terms of the UK’s accession to

Horizon Europe, due to protracted disputes over the UK's financial contribution. Issues involving financial contributions, and which stray into sensitive economic territory, are proving challenging to resolve.

The two sides have been more successful in finding agreement when it comes to the lighter-touch opportunities for dialogue provided for by the TCA, which entail few formal obligations. A [memorandum of understanding on financial services cooperation](#) has been signed, allowing for exchanges of information and views, and talks have begun to similarly enhance cooperation on [competition policy](#) (via a supplementing agreement). Though not foreseen by the TCA, talks are also [set to begin](#) on greater cooperation on migration between UK agencies and the European Border and Coast Guard Agency Frontex.

### **Deadlines and grace periods**

The TCA also contains an array of deadlines and grace periods, several of which will be looming by the time of the review. These include the expiry of the energy chapter and the end of the adjustment period on fisheries in June 2026, and the ending of the grace period on electric vehicle 'rules of origin' in 2027. A [2021 EU Council decision](#) foresaw that member state concerns "in particular with regard to fisheries" shall be examined "as a matter of priority" and, where no solution is found, be addressed as part of the TCA review.

Past experience suggests discussions on fisheries in particular could be tense, and so bringing them inside the TCA review opens up the possibility of trade-offs being made which could make it easier to find solutions. Yet, conversely, disputes over fish could also politicise the review and disrupt its wider progress. Moreover, waiting until the review to renew the fisheries and energy chapters gives very little time to find a resolution, thus risking the inadvertent expiry of key TCA provisions.

Table 2: Key TCA deadlines and areas for further cooperation in the ‘Exploit’ model

TCA deadlines in 2026	Potential areas for further cooperation	Possible supplementing agreements
<p><b>2026 (presumptive):</b> Review of the TCA. The UK and EU must jointly decide on its scope.</p> <p><b>30 June 2026:</b> Expiry of the TCA’s provisions on energy cooperation. The UK and EU must jointly agree on whether to renew and/or update the provisions.</p> <p><b>30 June 2026:</b> Expiry of the TCA’s provisions on fisheries. The UK and EU must renegotiate terms of access.</p> <p><b>1 January 2027:</b> Second increase in rules of origin requirements for electric vehicles under the TCA. The UK and EU can jointly decide to extend this.</p>	<p><b>Competition policy:</b> The TCA encourages closer cooperation between competition authorities (Article 361) (negotiations set to begin).</p> <p><b>Intellectual property:</b> As discussed at the second meeting of the Partnership Council, the UK and EU are encouraging the signing of a MoU on intellectual property to foster cooperation between the UK and EU Intellectual Property Offices.</p> <p><b>Cyber security:</b> Option to establish a regular dialogue (provisionally agreed) and for the UK to participate by invitation in activities of the European Union Agency for Cybersecurity (Articles 703 - 707).</p> <p><b>Energy:</b> Option to set up a regular dialogue on the objectives of Title VIII on energy (Article 330); developing arrangements for more efficient electricity trade over interconnectors; and the development of a framework for UK-EU cooperation on the security of supply of electricity and natural gas.</p> <p><b>Digital trade:</b> The TCA encourages information sharing on regulatory matters (Article 211).</p> <p>The parties shall provide a framework for dialogue and cooperation with a view to strengthening the fight against the development of <b>antimicrobial resistance</b> (Article 85); and establish regular dialogues on <b>counter-terrorism</b> (Article 768) (provisionally agreed); <b>countering proliferation of weapons of mass destruction</b> (Article 765); <b>small arms</b> and light weapons and other conventional weapons (Article 766); the most <b>serious crimes</b> of concern to the international community (Article 767).</p>	<p><b>Participation in Union programmes:</b></p> <ul style="list-style-type: none"> <li>- Nuclear research (Euratom)</li> <li>- Student exchanges (Erasmus + (not foreseen in the TCA))</li> </ul> <p><b>Emissions trading:</b> The TCA encourages both parties to consider linking their respective carbon pricing systems (Article 392).</p>

## EXPAND THE TCA (MAXIMALIST MODEL)

Given the politics on both sides (see next section) a wholesale re-negotiation of the TCA is unlikely. At its most comprehensive, the TCA review could therefore seek to build on the existing agreement by identifying new areas for cooperation not covered in the original treaty. This could include chapters or supplementing agreements in areas like foreign and security policy and mobility, or trade easements such as agreements on animal and plant health standards, and mutual recognition of conformity assessments and professional qualifications. The UK could also seek association to EU programmes other than those already foreseen under the TCA, like Erasmus+.

Expanding the terms of the TCA would require political buy-in from both sides, as well as a new mandate for the European Commission. The TCA does not provide a forum for regular discussions between the UK and EU heads of state and government. The political momentum for an ‘Expand’ review would therefore have to originate elsewhere, perhaps from the UK first seeking discussions in the margins of other international fora, or a decision to hold a UK-EU summit to discuss ambitions for an expanded relationship.

If leaders agree to expand the terms of the TCA, the Commission will require a new mandate from the Council to negotiate supplementing agreements.

[Article 218](#) of the Treaty of the Functioning of the European Union sets the provisions for negotiations with third countries. The Council authorises the opening of negotiations, adopts negotiating directives (the ‘mandate’), and appoints a negotiator, after receiving a recommendation from the Commission. Once a deal is agreed, the Council and the European Parliament examine and approve it. Though not specified by Article 218, the appointed negotiator could consult with member states via the Working Party on the United Kingdom prior to and during negotiations. Coordinating the input from 27 member states can be a lengthy process. And whilst the ticking clock of no deal required quick and effective decision-making in 2020, there is no longer the same incentive to invest equivalent time and resources.

Negotiations could be done as a single package (with the possibility to draw linkages between different areas) or as a series of standalone negotiations on one (or several) area(s). This could involve rounds of detailed talks similar to the original TCA negotiations. However, any new negotiation(s) would potentially be time consuming. EU agreements with third countries on emissions trading schemes, veterinary standards, and mutual recognition of professional qualifications are detailed documents running to sometimes hundreds of pages, which typically take years to finalise. Whilst the EU and UK continue to be closely aligned in many of these areas (potentially making an agreement easier),

some will entail sensitive discussions around UK sovereignty (e.g. on dynamic alignment with veterinary standards). Depending on UK domestic politics, making trade-offs on these questions might be more or less difficult. The EU-Chile trade agreement took five years to review as political barriers slowed talks, and it is still yet to be fully ratified.

**Table 3: Taxonomy of approaches to the TCA review**

	<b>Model I - Examine</b>	<b>Model II - Exploit</b>	<b>Model III - Expand</b>
<b>Scope</b>	<p>Tick-box exercise reporting on how the TCA is functioning.</p>	<p>Same as Model I, plus discussion of <b>upcoming deadlines</b> and how to <b>optimise the TCA's implementation</b>.</p> <p>Are both sides fulfilling their <b>core obligations</b>?</p> <p>Can <b>structures for implementation</b> be improved?</p> <p>Are there <b>commitments or deadlines</b> which are yet to be addressed?</p>	<p>Same as Model I and Model II, plus review of whether the TCA can be <b>added to</b>, via <b>new agreements</b> which are not provided for in the original treaty.</p>
<b>Potential policy areas</b>	<p><b>Summary</b> of overall functioning of the institutional framework, (sectoral) implementation issues, and regulatory developments on both sides.</p> <p><b>No substantive discussion or changes</b> to the TCA are likely.</p>	<p>Core obligations to review could include <b>level playing field commitments</b>.</p> <p>Potential implementation issues include reviewing and setting up new <b>governance structures</b>.</p> <p>Unfulfilled commitments could include UK membership of <b>EU programmes</b>; improving efficiency of <b>energy trading</b>; <b>competition</b> policy cooperation; linking of <b>emissions trading schemes</b>.</p> <p>Deadlines to consider include <b>energy</b> and <b>fisheries</b> chapters; and grace periods on <b>electric vehicle rules of origin</b>.</p>	<p><b>Trade easements</b> like alignment of sanitary and phytosanitary standards; mutual recognition of conformity assessments; mutual recognition of professional qualifications; business travel.</p> <p><b>Other policy issues</b> like formal cooperation on foreign and security policy; youth mobility; regulatory cooperation on artificial intelligence; cooperation on trade in critical minerals and sectors of strategic sensitivity.</p>

<b>Structure and actors</b>	<p>Conduct as <b>part of existing reporting duties</b> on both sides.</p> <p>Reports would draw on discussion in the TCA's joint <b>specialised committees and working groups</b>.</p>	<p>The <b>Partnership Council</b> could make recommendations on which optimisations to pursue.</p> <p>Once agreed, most matters could be pursued under the <b>existing governance structures</b>.</p> <p>Certain matters, like ETS linking, would likely require a separate <b>negotiating mandate</b> and comprehensive talks between UK and EU officials.</p>	<p><b>Political-level agreement</b> (UK PM and designated EU representative) would most likely be needed to agree on a <b>package of additions and framework for negotiations</b>.</p> <p>The European Commission would require a <b>new mandate</b>. Comprehensive negotiations between <b>UK and EU officials</b> would likely occur outside of the TCA's governance structures and could involve multiple rounds. This could be a <b>single negotiation or a set of non-linked ones</b>.</p>
<b>Formal outcomes</b>	<p>Review acknowledged as part of the UK and EU's respective reports on the TCA's implementation.</p>	<p>The two parties could use the <b>joint statement</b> which is usually produced following each meeting of the Partnership Council to highlight any recommendations and agreed actions.</p> <p>Most elements (bar ETS linking) could be approved by the <b>Partnership Council</b>.</p>	<p>The UK and EU could agree on a <b>series of supplementing agreements</b> providing for cooperation in new areas. This would require <b>formal ratification</b> by the UK and EU (not the Partnership Council).</p>
<b>Duration</b>	<p>n/a</p>	<p>The review itself could be incorporated into the <b>annual Partnership Council</b> meeting. Some optimisations could be implemented <b>almost immediately</b> but other elements could take <b>much longer</b> to finalise.</p>	<p>The review itself could take place as part of a <b>single political summit</b>. Negotiations would then take several <b>months to years</b> to finalise (depending on extent of negotiations). Some elements could potentially be phased in before others.</p>

### 3) EU AND UK ATTITUDES TOWARDS THE REVIEW

The single most important factor shaping the scope of the TCA review will be the political interests of the UK and EU. At the moment, the EU has a very clear position: the review should be a narrow, technical exercise, in line with the ‘Examine’ model; but the two sides can work to realise the “[full potential](#)” of the existing agreement (in line with the ‘Exploit’ model) as part of its ongoing implementation. This is indicative of general satisfaction with the TCA. As noted by Stefan de Rynck, senior advisor to Michel Barnier, in his book on the Brexit negotiations, EU negotiators ‘achieved most of their mandate’.

The UK, by contrast, has not publicly spelled out its preferred approach. This could be a tacit acknowledgement that it is content with the EU’s position, or a function of a government which does not want to be seen to be reopening the Brexit deal. It could also stem from a belief that it is too early for the scope of the review to be firmly set. EU elections will take place in June 2024, resulting in a new European Commission, and a UK general election will take place by January 2025 at the latest. Therefore, much could still change between now and the time of the review. This section draws on interviews with figures connected to both sides to elucidate both current thinking, and how matters could evolve.

#### EU POSITION

Prompted by growing interest on the UK side, senior Commission officials have [laid out](#) the EU’s interpretation of the TCA’s review clause as a commitment to review its implementation, not to revisit or amend the agreement. They also point out there is no obligation to produce any results. While the EU is committed to realising the TCA’s full potential, the view is that this can be done step-by-step and need not wait for the 2026 review. For now, there are various reasons why the Commission wants to focus on implementation in 2026.

First, there is a strong sense of Brexit fatigue in Brussels. Managing a highly politicised divorce in a short period of time required an unprecedented degree of coordination between EU institutions and member states. Even once negotiations had concluded, the UK government’s refusal to implement parts of the Northern Ireland Protocol continued to take up considerable bandwidth, necessitating not only EU legal action, but, eventually, political interventions from Commission President Ursula von der Leyen and Prime Minister Rishi Sunak to negotiate the ‘Windsor Framework’. Following the breakthrough in February 2023, the EU’s priority is a period of stability in the relationship to focus on implementing

existing agreements - which are still in their early stages - rather than embarking on new, comprehensive negotiations.

Second, the EU faces a number of more pressing issues. The bloc's approach towards the war in Ukraine, rising tensions with China, migration, and the green and digital transformations have long replaced Brexit on the European Council's agenda. What is more, the next decade will be about [preparing](#) the EU for enlargement rather than relations with a former member.

Third, trust in the UK remains low. There is little appetite on the EU side to engage in discussions on new agreements, given the UK has not yet implemented all its existing commitments (such as its new border control regime). The EU will also be hesitant to engage in negotiations unless it believes future governments will uphold whatever is agreed.

Fourth, incentives for the EU to reopen negotiations are low. Two and a half years into the TCA's application, the Commission's most recent assessment maintains that it is a ['very good'](#) agreement for the EU and is functioning well. The Commission's second implementation report concludes that it secures the EU's interests in trade and cooperation with the UK, whilst respecting its red lines. The agreement was painstakingly negotiated to balance the interests of 27 member states. There is little appetite to reopen it and risk upsetting this. This would indicate a high threshold for reviewing the economic elements of the deal in particular, given that the individual material interests of 27 economies would be in play.

Fifth, the EU will also be acutely aware of how any review of the TCA is perceived by other third countries. Should it grant the UK significant trade concessions without demanding closer institutional integration, it could weaken the EU's leverage in negotiations with other third countries, such as Switzerland, with which it [is seeking](#) a new framework agreement. The experience of Brexit has reinforced the EU's desire for a ['consistent way'](#) across its relationships with third countries.

The combination of Brexit fatigue, other priorities, looming elections and overall satisfaction with the TCA means the EU will be reluctant to invest resources into rethinking the partnership. The European Commission is likely to take a wait and see approach and reassess its interests vis-a-vis the UK closer to the actual review, and in any case after the European and UK elections. New faces in the top jobs on the EU side (Presidents of the European Parliament, European Commission, and European Council) could mean fresh perspectives and less Brexit baggage. However, it could also mean a further de-prioritisation of UK-EU relations.

## **How will the EU manage the review?**

There is no process linked to Article 776. However, we can expect the EU to use its tried and tested approach. During the Brexit negotiations, the European Commission, led by chief negotiator Michel Barnier, pursued a [strategy](#) of continuous consultation and transparency with member states and EU institutions. Within the EU, this is thought to have allowed the EU to effectively defend collective interests and neutralise UK attempts to divide member states.

The EU remains committed to this approach and has maintained some of the underlying structures. As well as maintaining a UK unit in the Commission's Secretariat-General, the Council has preserved its Working Party on the United Kingdom to ensure coordination and exchange of information with the EU<sup>27</sup>. These structures continue to ensure a coordinated approach vis-a-vis the UK, albeit in a more technocratic and less political form than at the height of the Brexit negotiations. Particular attention is paid to areas like youth mobility, where the UK government appears to be interested in signing bilateral deals with some but not all member states.

Over time, and as the memory of the Brexit negotiations fades, it might become more difficult to maintain a united approach, particularly if some member states have specific interests and want to drive forward bilateral initiatives (for instance on mobility). As of yet, however, there is [little evidence](#) that any of the 27 are seeking to forgo an EU-wide approach, and the Commission continues to define the EU's position.

## **A new mandate?**

In case of a more extensive review, the Commission will require a new mandate from the Council to negotiate supplementing agreements (see 'Expand' review for further detail on the process).

The clear political and legal mandate provided to the European Commission was a defining feature of the Brexit negotiations. This was based on a set of [core principles](#), notably the integrity of the single market, the indivisibility of the four freedoms, and ensuring a clear difference between being in or out. These principles will remain valid regardless of electoral changes on either side of the Channel. A new UK government is therefore likely to encounter the same set of EU red lines in 2026 as both Theresa May and Boris Johnson did when they were negotiating the future relationship.

## **EU areas of interest**

Given the Commission's narrow interpretation of the review clause, there has been no public mention of areas that the EU might be interested in reviewing. However, the joint [Political Declaration](#), published in 2019 and based closely on

the declaration agreed earlier with the May government, could provide some tentative pointers.

The TCA establishes a more distant and less comprehensive relationship than envisioned by the two sides in the Political Declaration. The latter held out the possibility of a mobility chapter, of formal arrangements on foreign and security policy, and UK participation in Union programmes on youth, culture and education, none of which made it into the TCA.

Based on ambitions in the Political Declaration, the EU [published](#) proposals for a close EU-UK political dialogue and structured consultation on foreign policy, security and defence in March 2020, in areas such as sanctions, joint missions and UK involvement in EU projects. It reportedly made another [offer](#) of a strategic dialogue in June 2023, but this was rebuffed by the government in London.

A more structured dialogue on foreign, security and defence could be a springboard for wider-reaching conversations about strategic challenges around emerging technologies, climate change, critical raw materials, and shifting geopolitics. In the face of supply disruptions during the pandemic, the war in Ukraine, and rising tensions with China, the EU has placed a new focus on [economic security](#), reflected in a shift towards onshoring supply chains and imposing trade restrictions. The EU [says that](#) ‘expanding its bilateral and plurilateral cooperation’ is a ‘core element’ of its economic security strategy, meaning there may be grounds to form alliances, for example on the supply of critical raw materials, with the UK.

However economic security, and the linkage between international trade and security, may equally [mean](#) that it will be increasingly difficult to build on UK-EU trade relations. One example is the Commission’s reluctance to postpone the introduction in 2024 of stricter local-content requirements for electric vehicles (EVs). The Commission [argues](#) that extending the current rules would slow down the creation of an EU battery industry, even though EU manufacturers are [pushing](#) for a delay.

As [pointed out](#) by the Commission, the UK rejected the inclusion of a general mobility chapter in the TCA. This has impacted on various aspects of the relationship, such as business travel, student mobility, and youth exchanges. The Commission has been clear that it [regrets](#) the UK’s decision not to take part in the Erasmus+ programme as an associated third country. Members of the European Parliament have also [raised](#) concerns about the significant drop in school exchanges due to the UK’s unilateral decision to require all students to have passports - rather than national ID cards - and (if necessary) visas. The EU is likely to be more interested in improving access for young Europeans to UK

universities and schools than in facilitating business travel - where the relative burden of the new relationship is heavier on British companies (who have seen access to a market of around 450m people disrupted, and in some cases must conform with different rules in 27 EU member states). In his account of the negotiations, Stefaan de Rynck [reiterates](#) that some member states wanted ‘a more open migration regime’, and ‘as a minimum’ the Commission was asked to obtain ‘easier arrangements for students, researchers and youth exchanges, which it failed to deliver’.

## UK POSITION

Unlike the EU, the UK government has not made any public pronouncements on the review. Much will depend on the outcome of the next general election, which will take place in January 2025 at the latest. Brexit is unlikely to figure prominently as [only 8%](#) of the public think relations with the EU is the most important issue facing Britain today. And neither major party wants to discuss it. Labour does not want to alienate Leave supporters in those marginal seats they wish to win back by proposing a closer relationship, while the Conservatives will struggle to sell the benefits of Brexit at a time when [over 60%](#) of the public think it has been more of a failure than a success.

### A Conservative government

Should the Conservatives triumph at the next election, it will give a renewed mandate to a Sunak administration which has sought a more constructive relationship with the EU than its immediate predecessors. The Windsor Framework has (for now at least) settled the dispute over the Northern Ireland Protocol and ushered in what Foreign Secretary James Cleverly [calls](#) a period of “close and friendly UK-EU cooperation”, based on “full implementation” of existing agreements and thinking “creatively” about common challenges in areas like security, energy, AI and financial services. This appears broadly aligned with the EU’s stated ambition to realise the full potential of the TCA step-by-step, without necessarily linking this to the review.

There are some signs that a second Sunak administration might seek to push the envelope further. Chancellor Jeremy Hunt is on the record [stating](#) his ambition to “remove the vast majority of the trade barriers that exist between us and the EU”, which could be amplified if inflationary pressures continue to hit the UK economy. Indeed, Sunak’s government has adopted a [number of policies](#) which prioritise economic growth over symbolic ‘Brexit dividends’. Most notably, the sunset clause - which would have seen thousands of inherited EU regulations expire by default at the end of 2023 - has been removed from the Retained EU Law Act. Meanwhile, the once influential caucus of eurosceptic Conservative

backbenchers appears depleted, mustering only twenty MPs to vote against elements of the Windsor Framework.

Yet, should Sunak win a second term, it will most likely be with a much smaller parliamentary majority, thereby empowering backbenchers. The parliamentary party is likely to be more radical, as many of the party's more moderate, pro-EU/soft-Brexit MPs have announced they will not stand at the next election or occupy seats likely to swing to Labour or the Liberal Democrats. Should the Conservatives win the election by fighting on cultural issues, this might also encourage them to return to the Boris Johnson playbook of treating the EU as a 'wedge' issue with Labour.

### **A Labour government**

The Labour Party has, by contrast, been explicit about how it would seek to use the TCA review. Shadow Foreign Secretary David Lammy [stated](#) "we will seize on our opportunity to improve our trade deal with the European Union in 2025 when it comes up for review", adding his intention to go through the deal "page-by-page, seeking ways to remove barriers and improve opportunities for business".

This would include seeking agreements on veterinary standards, mutual recognition of conformity assessments and professional qualifications; more flexible labour mobility arrangements for short-term trips; and UK association with EU research programmes. He says Labour also wants the EU to maintain its data adequacy decision for the UK, and has separately [said](#) they "may be able to" discuss issues of equivalence in financial services (these are unilateral decisions for the EU but could theoretically be discussed at the TCA review). Lammy has also [said](#) Labour will pursue a UK-EU security pact.

Domestic political factors could curtail Labour's ambitions. The economy and health service are likely to be the party's top priorities, potentially leaving limited bandwidth for managing a major review of the TCA. Moreover, the Conservative Party might respond to electoral defeat by shifting rightwards, which could well mean a strongly eurosceptic leader of the opposition who zeroes in on any closer regulatory alignment with the EU as examples of 'Brexit betrayal'.

Yet, assuming Labour's position on the TCA review holds, it clearly differs from that of the EU. First, it foresees the review taking place in 2025, whereas the EU insists on 2026. Second, Labour is looking to use the review as a set-piece moment to enhance the relationship, whereas the EU considers that improvements can be made step-by-step, at any time. Third, and most fundamentally, Labour is seeking to significantly widen and deepen the terms of the TCA, whereas the EU's priority is maximising the effectiveness of the existing agreement.

## Shifting the dial

The central challenge for a Labour government would be how to motivate the EU to agree to the ‘Expand’ – or even ‘Exploit’ – model of the TCA review. Given that the EU is generally happy with the terms of the TCA, has not changed its red lines, and considers the UK relationship a low-priority issue, the UK would have to come up with a tempting offer.

A Starmer government would have to balance UK interests against those of the EU, which do not include an emphasis on trade easements, but lie in the areas of foreign and security policy and improved arrangements for students and young EU citizens (see section on EU interests).

Labour would also have to outline a much more detailed plan, to demonstrate it is a serious negotiating partner with a realistic grasp of the issues at hand (for instance: does an SPS agreement extend to novel goods like gene-edited ones? Which sectors would be covered by mobility or mutual recognition agreements?). As the next section of this report shows, the kinds of agreements entailed by an ‘Expand’ TCA review typically take years for the EU to complete. Labour will therefore need to refine Lammy’s long list of ideas for reform into a shorter and more coherent set of objectives which can realistically be achieved in the relatively short term (within one parliamentary term).

In addition, the UK would have to rebuild trust in the relationship. An agreement on veterinary standards would require ongoing UK alignment with a swathe of EU regulations, while an agreement on conformity assessments would empower UK authorities to certify that goods meet EU standards. The EU would thus need to have firm confidence that the UK government and regulatory bodies would act competently and in good faith, or else risk non-approved goods leaking into its single market.

Many factors could help improve trust. Prior to the review, the UK will have to fully implement its existing commitments, such as its (repeatedly delayed) border control regime and the systems required to underpin the Windsor Framework. Until these are in place, the EU is unlikely to countenance any new agreements (it would also give the UK more negotiating leverage should it ask for border controls to be streamlined under the TCA – as EU exporters would also have something to gain). In addition, the UK could provide some gestures of goodwill. One obvious option would be to address concerns around EU [citizens’ rights in the UK](#) (such as a lack of physical proof of settled status and individuals [being asked to repay benefits](#) paid in error). Another would be to cease attempting to bypass the Commission’s authority (for instance via attempts to conclude bilateral mobility agreements with individual member states). The EU will also need to be persuaded that any deal negotiated will endure under future UK governments.

## Why wait for the review?

An additional question is whether the review is the most appropriate forum for seeking fundamental changes to the TCA. After all, it is possible to deepen the treaty through ad-hoc revisions or supplementing agreements without waiting for 2025 (or 2026). Indeed, attempting multiple revisions simultaneously may lead to disagreement in one area stymieing progress in all others. Eking out more specific changes individually might prove a more effective way to achieve change.

The counter-argument is that, because the EU is so reluctant to countenance anything other than a technical review of the TCA, it will take high-level political intervention to shift the dial, likely involving face-to-face talks between the UK Prime Minister and President of the European Commission. The TCA review could serve as a focal point for a step-change in the relationship - especially as it [will likely occur](#) around eighteen months after the next UK general election, and two years after the EU Parliamentary elections, giving both sides time to lay the groundwork.

Indeed, many of the most significant developments in recent UK-EU history have been unexpected and stemmed from such interventions. A [meeting](#) of Boris Johnson and Leo Varadkar in the Wirral unlocked the original Northern Ireland Protocol, and the Windsor Framework was made possible by the change in UK Prime Minister and a [highly choreographed meeting](#) involving King Charles. More prosaically, recent agreements on cooperation on renewable energy and migration have also emerged from meetings of the [European Political Community](#) and the [Council of Europe](#) respectively.

## 4) WHAT POLICY ISSUES COULD BE ADDRESSED?

Issues can broadly be separated into three groups, the first two covering matters for an ‘Exploit’ review, and the last consisting of potential matters for an ‘Expand’ review.

- **Fixes:** are at the more limited end of what could be changed at an ‘Exploit’ review. These would not amend the substance of the TCA, but rather amount to technical changes to update and improve its functioning. Fixes could be made to the wording of text or governance structures, or to the procedures which operationalise its provisions.
- **Enhancements:** would be included in a more expansive ‘Exploit’ review. This involves identifying and acting upon commitments in the TCA - to enhance (or consider enhancing) cooperation - which are yet to be realised.
- **Additions:** could only come into play in an ‘Expand’ review. This involves agreements to deepen cooperation beyond what is currently provided for in the TCA or to extend cooperation to areas not currently covered by the TCA.

What follows is an indicative rather than exhaustive selection of issues, which does not prejudice the priorities of the EU and UK. Moreover, the two sides may find it more expedient to consider any or all of them outside of the review.

### FIXES

#### Rebalancing and dispute resolution

**Issue:** Either side could, in a review of the implementation of the agreement, raise concerns about the other failing to live up to obligations enshrined in the TCA. For example the EU’s relaxation of its state aid measures or the UK’s [Retained EU Law and Illegal Migration Acts](#) could conflict with level playing field provisions. [Level playing field provisions](#) cover competition policy, subsidy control, state-owned enterprises, taxation, labour and social standards, environmental protection and climate change.

**Process:** Should either side have concerns relating to the level playing field, it can raise a dispute which is referred to an expert panel. If the panel finds there to be a breach of commitments, the parties can discuss what action to take, or ask the panel to provide recommendations. The breaching party does not have to follow these but the complainant could then take remedial measures.

Separately, in relation to environmental and labour standards, the TCA allows either party to take “appropriate rebalancing measures” - such as applying tariffs - where it perceives “material impacts on trade or investment between the Parties are arising as a result of significant divergences between the Parties”. These could be applied by either party if the other does not align with significant future regulatory changes which it implements.

The TCA also contains a main ‘dispute settlement mechanism’, covering most of the agreement, which can result in the suspension of specific parts of it. The TCA review could, however, offer the parties a more informal means of airing concerns and discussing remedial action, at a political level, without initiating official dispute proceedings - which is a potentially more inflammatory course of action that could result in retaliatory measures like tariffs.

### **Governance**

**Issue:** The TCA establishes a comprehensive [governance structure](#) which oversees the agreement, including processes for agreeing and implementing amendments. The TCA review could be a moment to take stock of governance structures and ask whether improvements can be made (for instance reviewing the frequency of meetings or dispute resolution processes) or new elements added (for instance creating new specialised committees or assigning new tasks to them).

**Process:** Changes to governance structures can be approved by the Partnership Council. Significant changes, for instance to dispute resolution processes, would require formal revision of the TCA, while technical changes, for example to specialised committee working processes, would not.

### **Operations**

**Issue:** The TCA created a new state of UK-EU relations in many areas, but in some cases operational difficulties have made the situation more challenging than was anticipated. For example, limited capacity to carry out longer passport checks has led to severe delays at UK travel terminals at peak times, and further planned changes to UK and EU border regimes could make matters worse. In other cases, the necessary processes or infrastructure are yet to be fully implemented (such as border controls on EU imports at the GB border and technical changes to the UK’s [passenger name record data](#)).

**Process:** Amending the TCA would not resolve these issues, which are consequences of unilateral decisions by the UK and EU about how they manage their respective external frontiers. Nonetheless, the TCA review could provide momentum for attempts to agree improvements. The Partnership Council could discuss potential practical changes which each side could enact, perhaps based on

reports by specialised committees, and publish a joint communiqué on actions to be taken forward.

## ENHANCEMENTS

### Programmes

**Issue:** The TCA says “the Parties have agreed that the United Kingdom participates” in a selection of EU programmes including Horizon Europe, Copernicus and Euratom, which respectively allow for collaboration in research and innovation, earth observation and nuclear activity. The two sides have just agreed on UK’s association to Horizon Europe and Copernicus, following more than two years of protracted negotiations over the terms of the UK’s accession and in particular its financial contribution. The current UK government [does not consider](#) Euratom to be value for money.

The UK also opted, during the TCA negotiations, not to participate in the EU’s Erasmus+ programme which funds study placements, instead developing its own [Turing scheme](#). This offers [less funding per capita](#) and no opportunities for international students to study in the UK and its non-participation is a matter of significant regret among EU member states, whose students can no longer take on funded study placements at UK universities. The UK could seek association to Erasmus+.

**Process:** Because EU programmes operate on budget cycles (Euratom runs until [2025](#) and Horizon Europe and Erasmus+ run until [2027](#)), the TCA review could serve as the catalyst for negotiations on the terms of the UK’s association to EU programmes for the next budgetary cycle. Association requires a supplementing agreement setting out the exact terms of the UK’s participation.

### Energy cooperation

**Issue:** The TCA commits both sides to the optimised use of shared infrastructure like gas and electricity interconnectors. This has largely been successful, with active [discussions](#) taking place on deepening cooperation (for instance on new pipelines and an early warning mechanism) at the Specialised Committee on Energy. The UK has also agreed a [memorandum](#) with certain EU member states on offshore wind development in the North Sea. However, a TCA commitment to improve the efficiency of energy transfers as a “matter of priority” has not yet been fulfilled (though [discussions are ongoing](#)), which [risks](#) inflating UK energy costs and stymying investment in infrastructure.

The TCA provisions on energy cooperation also expire on 30 June 2026. Given the increased salience of energy cooperation, due to the war in Ukraine and the spike in global energy prices, there are good reasons for both sides to extend or even expand the provisions.

**Process:** Rolling over or updating the TCA's energy provisions requires agreement by the Partnership Council. While this could be done at the TCA review, it provides very little time to finalise an agreement before the provisions expire on 30 June 2026. There is also a risk that the wider review stalls, leading to the chapter on energy cooperation expiring by default. Other improvements to energy cooperation (like improving the efficiency of trading) are largely technical matters, which require detailed, working-level effort. It therefore makes little sense to wait for the review to address such matters (and indeed the specialised committees are already a forum for discussion).

## Climate

**Issue:** The TCA [affirms](#) a joint commitment to achieve economy-wide climate neutrality by 2050 and effectively commits the Parties to non-regression from existing ambitions. It also contains opportunities to expand cooperation, by giving “serious consideration to” linking their emissions trading schemes (ETS), which cap and impose tariffs on carbon emissions in certain sectors.

Failure to link the schemes will [create new trade costs](#) for UK exporters of cement, iron, steel, aluminium, fertilisers, electricity and hydrogen to the EU, once the EU's Carbon Border Adjustment Mechanism (CBAM) - which effectively applies the EU ETS to third country imports - takes provisional effect in October 2023. UK exporters will have to report on the emissions embedded in their products, and from 2026, they will have to pay the difference in the price of those emissions under the UK ETS compared to the EU scheme.

Linking the UK and EU ETS regimes (the process is [explained here](#)) would likely see the UK exempted from the EU CBAM, give UK firms access to a [larger and more liquid](#) carbon market, and address potentially difficult questions over whether the CBAM applies in Northern Ireland. It could also allay [EU concerns](#) about distortion of the level playing field, given carbon prices under the UK ETS are now significantly lower than under the EU's.

**Process:** Stefan Fuehring, the head of the EU's TCA Unit, [says](#) that the linking of ETS regimes would entail “a fully fledged international agreement” requiring a mandate from the European Council. The negotiation would be technical and comprehensive, likely resulting in a separate treaty requiring formal ratification by the UK and EU (as opposed to simply approval by the Partnership Council). Switzerland in 2020 became the [first country](#) to link its ETS to the EU's, after almost ten years of discussions, though the UK's task should be made much easier by the fact that it was part of the EU ETS and the two regimes remain largely aligned.

However, because the UK and EU ETS regimes are likely to diverge in scope over time, it will become harder to link the schemes the longer they wait. Moreover,

the EU CBAM takes provisional effect from October 2023, creating new trade barriers for UK exporters, providing another reason not to wait for the TCA review. The negotiations could also be politically challenging for the UK, as it may have to sacrifice some autonomy over its scheme, for instance in relation to control of stability mechanisms and how revenues are spent. The UK could also join the EU ETS wholesale (as Iceland, Liechtenstein and Norway have done), though this might well be politically unpalatable as it means handing over regulatory control to the EU entirely. Another option is to seek a partial ETS linkage, only for the most exposed UK sectors, though the EU may resist such a proposal.

### **Electric vehicles**

**Issue:** The TCA's 'rules of origin' requirements for electric vehicles (determining what proportion of the vehicle's content has to originate from the UK or EU to qualify for tariff-free trade) become more onerous at the start of 2024 and again in 2027. This graduated approach was designed to give manufacturers time to adapt their supply chains, but companies on both sides of the Channel [fear](#) they will not be able to meet the new requirements, due to [lack of European battery production](#). Should that be the case, they will face 10% tariffs on exports.

The European Auto Employers' Federation has argued that, without an extension, additional customs duties on EU exports to the UK [could reach €4.3 billion](#), reducing sales by as much as 500,000 cars. Meanwhile, Stellantis (which makes Vauxhall vehicles in the UK) [warns](#) that it will have to close its operations there if costs become unsustainable. It also means electric vehicles would become more expensive, impacting on efforts to phase out combustion engine cars.

**Process:** Any extension to the 2024 grace period will clearly have to be agreed before the TCA review (the UK and EU are [in discussions](#)). However, if the 2027 deadline remains of concern, the UK and EU might use the TCA review to discuss its implications and/or try and agree to a further extension. Extensions [require](#) a joint resolution of the Partnership Council and ideally need to occur six months in advance or businesses will have to start [making contingency plans](#).

### **Security and counter-terrorism**

**Issue:** The TCA provides for security cooperation between law enforcement and judicial authorities in criminal matters, reflecting a joint desire to combat organised crime and terrorism. An integral element is the TCA's quasi-replication of the EU's 'Prüm I' rules, allowing UK and EU law enforcement agencies to exchange anonymised DNA profiles and fingerprint data. The TCA [anticipates](#), however, that these provisions will need updating if, as is now happening, the Prüm regime changes substantially. The EU has [proposed](#) an updated 'Prüm II'

regulation, which [will allow](#) automated searches of more data (facial images and police records) and creates a new, EU-managed, central hub for the exchange of biometric data.

Cooperation on law enforcement is also conditional on the UK and EU member states' adherence to the European Convention on Human Rights (ECHR), and high levels of personal data protection. The UK has [not entirely ruled out](#) leaving the former, while the latter could be affected by the UK Data Protection and Digital Information Bill.

**Process:** If the EU seeks to formally amend the TCA in light of Prüm II, it [must formally notify](#) the UK, triggering a nine-month consultation. This could take place at the joint Partnership Council or the Specialised Committee on Law Enforcement and Judicial Cooperation. The UK government [says](#) detailed discussions with the EU will begin once the new text is adopted, which it anticipates to be [later this year](#) or in 2024. This means it is unlikely to be a topic for the TCA review, unless the legislation is significantly delayed.

An 'Examine' review might trigger discussions on whether UK proposals on the ECHR or data protection break the conditions required for cooperation. An 'Exploit' review could provide for discussion of other means of deepening cooperation, given the TCA's preamble contains an ambition to conclude a cooperation agreement on "prevention, investigation, detection or prosecution of criminal offences" and criminal penalties.

### **Competition policy**

**Issue:** The TCA has only a [limited component on competition](#) (recognising "the importance of free and undistorted competition"), and the mechanisms which EU competition authorities use to cooperate and exchange information are [no longer open](#) to the UK. However, the TCA says the UK and EU "may enter into a separate agreement... which may include conditions for the exchange and use of confidential information". The Council of the EU [has now authorised](#) negotiations with the UK for a supplementing agreement on enhanced cooperation in competition matters. This could entail, for instance, UK and EU competition authorities notifying each other about significant actions being taken, sharing information or coordinating activities, for instance on antitrust investigations.

Such a dialogue could help overcome differences in approach to [merger regulation](#), which have resulted in the UK blocking Microsoft's acquisition of Activision despite EU approval. Moreover, in other areas the UK and EU have similar ambitions, for instance to rein in big tech's dominance of [digital markets](#) and clamp down on [greenwashing](#). A dialogue could help the two sides hone their respective regimes, even implementing co-ordinated investigations or remedies.

**Process:** This supplementing agreement will be negotiated by the Commission and the UK government (not the Partnership Council), and is likely to be concluded before the TCA review. However the review might offer an opportunity to discuss how the supplementing agreement is going, or to consider extending it further.

### **Non-TCA issues**

**Issue:** Although the review is explicitly about the TCA, it could in theory address other, related agreements. For example, citizens' rights (governed by the Withdrawal Agreement) is an area of concern for the EU in particular. Some EU citizens living in the UK [have had trouble](#) demonstrating that they have settled status, and the High Court [recently ruled](#) that a UK requirement for EU citizens to upgrade from pre-settled status to settled status, or else lose their rights, is unlawful. Some UK citizens in the EU have also [faced the risk of deportation](#) because of difficulties proving their right to reside. Other discussion points could be the implementation of the Northern Ireland Protocol and the Windsor Framework (the accompanying infrastructure for which will not be fully in place before 2025) and the status of Gibraltar (where negotiations are [still ongoing](#)).

**Process:** These matters are already monitored and enforced by different mechanisms, meaning they could not be addressed by amending the TCA. However, discussing them as part of the TCA review could be a way for either side to generate negotiating leverage or goodwill. The review could offer a forum for politicians to air concerns and discuss solutions, potentially making commitments as part of a joint communiqué at the end of the review.

## **ADDITIONS**

### *Trade easements*

#### **Sanitary and phytosanitary standards**

**Issue:** Since the TCA came into effect, Great Britain and the EU have had separate sanitary and phytosanitary (SPS) regimes. Consequently, animal and plant-based goods are subject to health inspections and declarations when moving from Britain to the EU and (in some cases) Northern Ireland, increasing the administrative costs for agrifood trade. The UK has repeatedly delayed the introduction of reciprocal controls on EU imports at the GB border. It [is feared](#) that their introduction could lead to shortages of certain foods and an increase in prices for UK consumers. This means EU exporters face fewer administrative costs than GB ones.

The Labour Party has said it would pursue a “[veterinary agreement](#)” with the EU modelled on those it has with other countries. The EU’s [agreement](#) with New Zealand, for example, recognises their respective SPS standards as equivalent, which significantly simplifies export procedures for agrifood compared to the TCA.

**Process:** Because it is a technical and sensitive matter, an SPS agreement would require a detailed and comprehensive negotiation, with the parties first needing to decide the exact areas they would want the agreement to cover (for example, would gene-edited goods be included?). Negotiations would also have to address how the UK demonstrates equivalence and how the two sides can monitor that the other is living up to its obligations. An agreement could constitute a new chapter in the TCA or a supplementing treaty.

The political barriers to opening negotiations are also significant. The UK would have to be prepared to continuously align with a range of EU regulations while having no say over them. The EU would have to have confidence that future UK governments (of any political persuasion) would maintain regulatory alignment and implement their obligations in good faith.

### **Mutual recognition of conformity assessments**

**Issue:** The UK [sought](#), but failed to obtain, an agreement on mutual recognition of conformity assessments as part of the TCA negotiations. This would have allowed UK and EU certifying bodies to confirm that a product made in one territory meets the regulations of the other. Absent an agreement, a British product being exported to the EU has to be certified by an EU-based body and awarded an EU ‘CE’ mark - creating administrative costs. The UK government, by contrast, [recently decided](#) to accept CE-marked goods on the GB market indefinitely, rather than requiring goods (including EU imports) to have a ‘UKCA’ mark from 2025. There is a major lack of capacity for administering UKCA certifications, risking shortages of critical goods if a UKCA mark had been made compulsory for imports from 2025, particularly in sectors like [construction](#).

**Process:** If the UK wants an agreement on conformity assessments it will have to formulate a clear proposal, outlining exactly which products it wants included and how mutual recognition will work. For example, the [EU-Australia agreement](#), which runs to 55 pages, covers a range of sectors including medicines and medical devices, low-voltage equipment and automotive products, and the agreement enables EU companies to have their products tested and certified for the Australian market in the EU (and vice-versa).

The [EU-Swiss agreement](#) is more extensive in scope and based on a model whereby Swiss conformity marks are accepted in the EU and vice-versa. However, this is based on ongoing harmonisation of EU and Swiss technical standards, which could be more politically challenging for the UK, and would require significantly more work to achieve regulatory harmonisation.

The fact that the UK has decided to accept CE-marked goods in perpetuity reduces the appeal for the EU to sign up to a mutual recognition agreement, as its

businesses already get the main benefit - not being required to obtain separate certifications for the GB and EU markets.

### **Mutual recognition of professional qualifications**

**Issue:** Since the introduction of the TCA, the UK and EU no longer mutually recognise professional qualifications. This means British nationals who want to work in an EU member state now have to seek formal recognition of their qualification in that country and vice-versa. The TCA contains provisions allowing the UK and EU to agree sector-specific mutual recognition agreements (which render recognition near-automatic) and the UK can also agree bilateral deals with member states, outside of the TCA framework. The Labour Party [says](#) it would strengthen the TCA's terms on mutual recognition.

**Process:** Should the UK and EU want to agree new sector-specific deals on mutual recognition, this need not wait for the TCA review. Sectoral bodies from both sides can at any time submit a joint recommendation to the Partnership Council. Similarly, bilateral deals with member states can occur at any time. However, as Canada's [experience](#) attests, this can be a slow and piecemeal process. Another option would be to seek a more comprehensive agreement like the one the EU has with [Switzerland](#). As with an SPS agreement, this would require complex negotiations (for instance over which professions to include and the scope of mutual recognition).

### **Financial services**

**Issue:** The TCA contains relatively limited provisions on financial services cooperation, with enhanced market access provided for through supplementing agreements. The UK's 'Temporary Permissions Regime' (TPR) allows EEA-based financial service providers to retain simplified access to the UK market until 31 December 2023. The EU, by contrast, has only granted the UK one 'equivalence' decision (which similarly simplifies market access) for [clearing houses](#), which expires on 30 June 2025. The UK and EU could seek to extend these provisions, or agree on enhanced levels of market access.

**Process:** Extensions to the 2023 and 2025 deadlines would clearly have to be agreed before the TCA review, and are unilateral decisions for the UK and EU. Yet the TCA review could be a focal point for new commitments on enhanced market access, if the political will exists. This could be achieved through an agreement by both sides to take unilateral measures granting equivalence to elements of each other's financial services sectors. Alternatively, binding, reciprocal provisions on enhanced market access could be added to the TCA or established as part of a supplementing treaty. Preparatory talks could take place at the soon-to-be-established [semi-annual Forum](#) on financial services cooperation (a framework which was committed to in a [joint declaration](#) published alongside the TCA).

## Other areas of cooperation

### Mobility

**Issue:** The ending of free movement of people has created a range of complications for different groups who travel between the UK and EU. For the UK, a major concern has been [performing artists](#), who must now comply with the specific immigration requirements of each EU country they visit, significantly [complicating administration](#) around European tours. Another concern for the UK and the EU is business professionals, who now often require a visa for travel, with uncertainty over the complex web of rules acting as a disincentive to travel and reducing business-to-business links.

Youth mobility is another issue. Young EU nationals can no longer move freely to the UK to live and work, and EU students need a visa and must pay international fees (typically three times higher than their domestic equivalents) to study in the UK. EU student numbers at UK universities [more than halved](#) between 2015 and 2021. Meanwhile, EU school visits to the UK also [dropped](#) by an estimated 83% from 2019 to 2022, as the UK no longer accepts EEA ID cards and has left the list of travellers scheme (explained in more detail [here](#)).

Last year, the UK's Chief Brexit Negotiator David Frost [acknowledged](#): “I think we have been too purist on [mobility issues]” and argued they should be looked at again.

**Process:** Mobility is a sprawling issue which could be managed in a variety of ways. First is the question of whether the UK pursues an agreement with the EU as a whole (entailing uniform, reciprocal arrangements for all 27 member states) or instead seeks separate bilateral agreements with individual member states. The latter would give the UK more control - and there are [reports](#) that it has already contacted Germany, France and Spain, among others, about potential bilateral deals. However, the European Commission may have concerns about such bilateral initiatives creating discord between member states if some receive more preferential terms than others.

The second question is which groups to include and how to enshrine provisions. Agreements on young people, students, and various professional sectors all entail separate provisions. These could be implemented as a new mobility chapter in the TCA, or as a series of supplementing agreements. Mobility therefore makes for a complex set of negotiations, which could potentially occupy a lot of bandwidth during the TCA review. Because youth mobility issues are a major EU concern about the current status quo, offering preferential access for EU citizens is potentially one of the UK's major bargaining chips.

## Cabotage

**Issue:** [Cabotage](#) refers to the transportation of goods between two places within the same country, by a company from another country. Under EU rules, a haulier from one member state can make up to three deliveries within a seven day period in another member state, after arriving as part of an international journey. Although the UK argued for more liberal arrangements in the TCA, the final deal limits EU drivers in the UK to two cabotage trips in seven days, and UK drivers in the EU to one in seven days (plus an additional ‘cross-trade’ trip from one EU country to another). Cabotage became a [hot topic in the autumn of 2021](#), when a shortage of HGV drivers was linked to gaps on British supermarket shelves.

**Process:** The idea of allowing EU drivers to make unlimited cabotage trips within seven days has [previously been mooted](#). However, this was [unpopular with the Road Haulage Association](#), as UK drivers would not have seen reciprocal benefits in the EU, and could have been undercut by EU competitors for domestic trips. The UK could propose a reciprocal agreement with the EU on more flexible cabotage rules (given the EU is [also struggling](#) with HGV driver shortages) though such a proposal could somewhat undermine the UK government’s [decision to invest](#) £10m in training domestic HGV drivers.

## Foreign and security policy

**Issue:** The Theresa May administration published a [framework for a security partnership](#) in 2018, which [would have enabled](#), among other things, UK participation in initiatives under Permanent Structured Cooperation (PESCO) - the EU’s structure for cooperation on military policy. However, the UK government under Boris Johnson rejected the idea of an institutionalised security relationship, despite a 2020 EU [proposal](#) for a new partnership in areas including sanctions, information exchange, peacekeeping and crisis management operations, and defence capabilities.

The war in Ukraine has since [re-emphasised](#) to both sides the value of cooperation in this area. The UK is [close to an agreement](#) on formally joining a PESCO operation which facilitates military transport, and the government [says](#) it will consider joining other operations on a case-by-case basis. At a meeting of the Partnership Council in March 2023, [the parties agreed](#) to establish a regular dialogue on counter-terrorism and the UK proposed another on cyber security (both are provided for by the TCA). Yet the UK is still [reportedly](#) refusing new EU offers for a formal strategic dialogue, though the Labour party says it would pursue a formal security pact.

**Process:** The UK’s agreement to join its first PESCO operation [is based](#) on a confidential memorandum of understanding. Further ad hoc agreements could

take the same approach. Similarly, new structured dialogues on security do not entail any formal obligations or changes to the TCA, and could instead be underpinned by further memoranda of understanding. However, a more comprehensive UK-EU pact based on formal commitments would require negotiation to define the scope and the conditions of cooperation, with a treaty setting this out. This could be a new chapter in the TCA or a supplementing agreement.

As with mobility, enhanced cooperation on defence is one of the UK's biggest bargaining chips (because of its expertise and resources) if it seeks changes to other parts of the TCA during its review.

### **Emerging issues**

**Issue:** New policy priorities have emerged for the UK and EU since the TCA was signed in 2020, which the agreement could be expanded to cover. The Covid pandemic and global energy crisis have accelerated the EU's push towards 'strategic autonomy' - reducing dependence on third countries in strategically critical areas. This includes measures to subsidise domestic manufacturing of green technology, and to restrict market access for some third countries in sensitive areas. The UK has also [outlined a strategy](#) to improve security of supply in critical areas, though this is based more on [strategic interdependence with international partners](#). The UK and EU could seek to sign strategic partnerships on critical materials (this was a key reason why the [EU-Chile trade agreement](#) was renegotiated), or the UK could ask for exemptions from EU measures which protect its industries from foreign competition (as both sides have done regarding the US Inflation Reduction Act).

Both the UK and EU are also highly focused on AI, and are in the process of developing their respective regulatory frameworks. However, because these diverge in scope, they could in future seek to establish a regulatory dialogue or formalise alignment on certain core principles.

**Process:** These issues could be discussed at existing specialised committees, but only at a technical, working level. Should the UK and EU want to have deeper political conversations or enhance formal cooperation in areas of strategic sensitivity, they could agree to a strategic dialogue (which would not require reopening the TCA), or to establish formal obligations, for instance on supply sharing or exempting one another from certain trade restrictions (which would likely require a supplementing agreement to the TCA).

Similarly, generalised commitments to the safe use of AI, or provisions for structured dialogue on it, could be made outside of the TCA. But if the parties thought it was a matter of major importance, they could add commitments on

the safe use of AI into the TCA. This could involve generalised commitments to particular outcomes, or non-regression from certain regulatory principles, and would still allow the two sides to largely set their own regulatory frameworks.

# CONCLUSION

While the mood music between the UK and the EU has improved significantly since the signing of the Windsor Framework agreement, there is at present little desire on the part of either to expand the terms of the TCA. As things stand, the most likely outcome is that the TCA review is a short, technical exercise reporting on its implementation.

However, much could change between now and 2025/26. The next UK general election could produce a government which is more hostile to the EU, especially if Rishi Sunak returns with a slim parliamentary majority. The review could also serve to inflame tensions over implementation issues, such as the non-application of measures in relation to the Windsor Framework or deviation from the level playing field (in relation, perhaps, to the EU's state aid rules or the UK Retained EU Law Act).

On the other hand, the election of the Labour Party would likely increase the impetus on the UK side for a more ambitious review to expand the terms of the TCA. External factors like developments in the European neighbourhood, the results of the US election or climate events could also encourage both sides to seek closer cooperation in some areas. Yet the incentives for the EU to return to the negotiating table will likely remain low. The EU is tired of Brexit, has many higher priorities, and is generally happy with a trade deal which favours trade in goods over trade in services. The onus will therefore be on the UK government to persuade politicians in the EU, if it wants to build on the current relationship.

In so doing, the UK would have to think carefully about its approach. It will first have to improve the level of trust in the relationship, and then offer tangible benefits to the EU which can be negotiated in the relatively short term. It will also have to consider how much sovereignty it is willing to give away for trade easements. All the while, the UK will have to remain mindful of the wider political picture in the EU, and how any significant changes to the agreement could disrupt harmony between the 27 member states, or lead to charges from other third countries that the UK is being granted special treatment.

This raises the question as to whether an 'Expand' review, in line with the Labour Party's current ambitions to build on the terms of the agreement, would be worth the UK's while. We have argued that this could cost significant political and administrative capital, and prove quite time-consuming for a Starmer government which is likely to have many other priorities. Agreements on animal and plant health standards or mutual recognition of professional qualifications could take

years to negotiate. While they would offer benefits to some specific sectors, they would not fundamentally alter the trading relationship, nor address the bulk of the economic cost of Brexit for the UK, as it would remain outside the Single Market and Customs Union.

Should the Labour Party seek to expand the TCA in this way, it will probably have to focus its energy on a small number of priorities. A more moderate approach, to fully exploit the provisions of the current TCA, would be less ambitious but also less difficult to manage. Ultimately, the UK and EU must reflect on how great their desire for closer relations is, and calibrate this against the level of effort and resources they are willing to put into building on the TCA.



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