

# THE FUTURE UK-EU TRADING RELATIONSHIP



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# SPECIAL THANKS

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# CONTENTS

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<b>INTRODUCTION</b>	<b>3</b>
<b>1. TRADE IN GOODS</b>	<b>4</b>
1.1 Regulatory alignment, convergence and mutual recognition	4
1.2 Technical co-operation	5
1.3 Sanitary and Pyhtosanitary measures	5
<b>2. TRADE IN SERVICES</b>	<b>6</b>
2.1 Financial Services	7
<b>3. HORIZONTAL ISSUES</b>	<b>9</b>
3.1 Recognition and enforcement of judgements	9
3.2 Data flows	10
3.3 Energy and Climate	11
3.4 Transport	11
<b>4. THIRD COUNTRY TRADE AGREEMENTS</b>	<b>12</b>

# INTRODUCTION

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The British Chamber of Commerce | EU & Belgium is strongly in favour of a comprehensive trade agreement encompassing all aspects of trade policy from tariffs to regulatory issues, including ambitious provisions on goods and services. We note the strong need for continuity and predictability for business to be able to thrive and for jobs to be safeguarded.

Since the creation of the European Single market in 1993, EU-UK business has become highly integrated with sophisticated supply chains of goods and services crossing EU-UK borders multiple times before becoming finished products for industry or consumer clients. The geographic, cultural and regulatory proximity combined with elimination of all trade and customs barriers has been and is a major driver for economic growth between the EU and the UK. Compromising one or several of these drivers will have major consequences for how business will operate in future.

The Chamber and our members acknowledge the fact that the United Kingdom has taken a new political path, but ask for UK and EU27 authorities not to take measures that will cause unnecessary damage or cause greater uncertainty than necessary in the future to the existing economic relations between the EU and the UK.

The integrated trading links and the close proximity of the UK market to the EU mean that in addition to the trade in goods and services, there are some horizontal issues that will need to be concluded at the same time as the UK enters into the new arrangements. These issues consist in particular of recognition and enforcement of commercial judgments and ensuring that data can be processed and flow between the two. For deeper cooperation, understanding how the competition and anti-subsidy regimes will operate will be key. These provide the most important parts of the level playing field for business operators and there are consequences to the market access if these are not included in the agreement.

The Chamber therefore requests the UK and EU negotiating teams focus on the following key areas:

## **1. Trade in Goods**

- » Regulatory divergence and mutual recognition
- » Technical co-operation
- » Sanitary and Phytosanitary measures

## **2. Trade in Services**

- » Mobility
- » Rights of establishment
- » Financial Services
- » National reservations and nationality restrictions

## **3. Horizontal Issues**

- » Recognition and enforcement of judgements
- » Data Flows
- » Energy and Climate
- » Transport
- » Pharma

## **4. Third Country Trade Agreements**

# 1. TRADE IN GOODS

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Any future preferential trade agreement should seek to eliminate virtually all tariffs and quotas between the EU and the UK. Whilst the UK's withdrawal from the EU will mean some new barriers to trade due to divergence of policy, we strongly support a no-tariff, no quota deal as a baseline to avoid increased costs for industry and consumers. We therefore ask the UK and EU27 authorities to ensure a smooth transition for any changes that may occur in respect of market access, by ensuring the appropriate transparency and implementation period for businesses of all sizes to adapt to those changes.

At the end of the transition period, the UK will become a third country to the EU with the consequence that full free movement of goods will cease. Customs procedures will change and become more complex for anyone wishing to move goods across the EU-UK border regardless of the direction. Export and import documentation will become more complex and much will change for companies seeking to benefit from advantages negotiated through preferential trade agreements.

Rules of Origin (RoO) are the key issue for any preferential trade agreement between the EU and the UK or between the UK and any third country outside the EU. In the context of Rules of Origin, the UK should seek the highest possible continuation of all existing EU trade agreements with third countries.

In addition, the UK and the EU should seek to agree a system allowing extensive diagonal accumulation of origin for materials sourced from third countries with which the EU has preferential agreements, which will ensure the highest possible continuation of the existing integrated supply chain across the EU-UK border.

Overall, the British Chamber of Commerce | EU & Belgium asks the negotiating parties to seek all possible customs and trade facilitation measures and grant sufficient time to businesses, large and small, to adapt. This includes facilitating training of existing customs staff and recruitment of additional customs officers, as well as the development of required customs infrastructures to be able to handle these UK-EU trade volumes outside of the Customs Union, limiting additional burden as much as possible.

In this regard it remains fundamental to establish complete clarity on how the future border systems will apply to Northern Ireland and its borders with the Republic of Ireland and Great Britain.

## 1.1 REGULATORY ALIGNMENT, CONVERGENCE AND MUTUAL RECOGNITION

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The British Chamber of Commerce | EU & Belgium and its members fully recognize the political will to bring the control of UK law back to the UK, but ask the UK authorities to consult with UK businesses prior to enacting any divergence in areas that may negatively affect trade with the EU and the rest of the world.

**We encourage the UK and the EU to find an efficient and effective mechanism to manage ongoing divergence.**

Therefore, we ask the UK authorities to work closely with UK businesses to ensure that the needs of business are not only taken into account prior to seeking divergence from the EU, but that the needs of business will be the primary driver for policy actions.

## **1.2 TECHNICAL COOPERATION**

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**Technical cooperation between business and government and between EU and UK governments is essential to ensure there is full understanding of business needs to help the facilitation of any future trade relationship.**

The common system of rules and regulations that presently exists in the EU and that the UK businesses presently profit from is at jeopardy unless technical cooperation in all fields of trade (Goods & Services) is maintained at the highest possible level.

Strong technical cooperation encompassing both EU and UK authorities and businesses is the most viable way forward to ensure a sustainable economic and environmental future for the UK and the European continent as a whole.

Therefore, the British Chamber of Commerce | EU & Belgium strongly advocates that close technical cooperation between the UK and the EU be set into a firm, legally binding future arrangement between the UK and the EU ensuring maximum convergence and common ownership of regulatory and technical standards.

## **1.3 SANITARY AND PHYTOSANITARY MEASURES (SPS)**

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**SPS measures governing agriculture and food are of significant importance for bilateral EU-UK trade and any regulatory divergence between the EU and the UK will constitute an additional and undesired barrier to trade.**

Any future preferential trade agreement should seek to guarantee upholding existing rulesets in food safety, sanitary and phytosanitary standards and propose mechanisms to ensure that this will be upheld in future through regulatory convergence and mutual recognition where appropriate.

# 2. TRADE IN SERVICES

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The Chamber notes that the EU-UK future trade framework on services will also be based on an FTA structure. As the services sector accounts for 81% of the economic output and 84% of the UK workforce, it is essential that the framework for the future EU-UK relationship includes an ambitious chapter on cross-border trade in services which would allow service providers from the EU in the UK and vice versa. Services chapters in trade agreements notably are about much more than services per se. They cover public procurement, movement of people, investment, and intellectual property.

After its withdrawal from the EU, the UK will no longer be part of the EU's Single Market, which guarantees the free movement of services and where needed, supported by the right of establishment.

It is often argued that there is no single market in services. However, it is the Chamber's position that this is too simplistic. The provision of services covers a very wide range of activities and each will have specific considerations. The Single Market has generally operated well for business and professional services in particular. Services have been able to benefit from various internal market structures, such as the mutual recognition system,

the prohibition of discrimination on the basis of nationality and the ability of service providers to cross borders and engage in a wide range of business activities. The services industry is also supported by broad establishment rules, including the use of branches and agencies to support services provision on a more permanent basis.

There are broadly three categories of services regulation. The provision of financial services is tightly regulated but limited in coverage. Due to the very specific nature of this sector, we have included a separate section on financial services here below.

Business and professional services are provided across a range of professions including legal, accountancy, surveying, architectural, etc. These are regulated professions and have benefited from the mutual recognition of qualifications.

Services can also be provided in areas that are not regulated professions. These types of services include, for example, agreements where in addition to the delivery of goods, there is a service agreement attached to the sale which provides for the maintenance of the goods. Indeed, the simple delivery of goods is also considered a service.

Generally, to support the services sector, the FTA should include the following:

- The appropriate **provisions on mobility**: Visa and travel facilitation in the field of activities of short-term business visitors and the provision of services by contractual services suppliers and independent professionals,
- The appropriate **support for establishment forms**: The right to set up a company under host or home state rules and forms. This may entail arguing for recognition of legal forms of companies in force in the UK,

- **Removal of nationality restrictions,**
- **Removal of national reservations** involving equity caps, voting rights or limiting profit sharing for non-EU partners.

It is unlikely that the agreement itself will include a mutual recognition of titles for regulated services. Instead, the agreement should include a mutual recognition chapter that allows the EU and the UK to agree further agreements on mutual recognition of titles in the case of regulated services. This agreement should allow a flexible and transparent set up, whereby it should be possible to reach these mutual recognition agreements in a speedy and flexible manner.

## 2.1 FINANCIAL SERVICES

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**The Chamber calls for the agreement to recognise the importance of cross-border financial services activity. Cross-border access for corporate and wholesale financial services and capital markets create cost savings and efficiencies that benefit both UK and EU business end-users, consumers and economies.**

The cross-border provision of financial services is different to the treatment of other service sectors. This is because there has been an attempt to create a common rulebook which has brought the Single Market closer together. Additionally, there is an equivalence mechanism in EU financial regulation which is the usual basis for third country access to the EU market. This mechanism is based on a unilateral decision taken by the EU. It is also important to note that it does not cover all subsectors in financial services.

The inclusion of financial services in FTAs has been relatively limited and has focused on the importance of supervisory and regulatory cooperation. FTAs also make use of what is referred to as a prudential carve out, whereby both parties are able to adopt measures in relation to the trade in financial services where they think the measures are necessary for prudential purposes, such as to preserve financial stability.

Different industry subsectors will have specific needs and requirements from the UK-EU future relationship negotiations, but any deal should work for all parts of the financial services ecosystem and its customers. The industry does not take a stance on the precise mechanism by which the future relationship in financial services is delivered.

An important feature of the relationship between the UK and EU will be the equivalence determinations, which will be made by each jurisdiction. In the areas that they cover, they will define the rights afforded to financial sector firms, as well as the regulatory and prudential treatment of those firms. In some areas this will include market access.

It will be important that the future framework supports the granting and withdrawing of these equivalence decisions in a manner that provides legal and regulatory certainty, whilst protecting regulatory autonomy of both parties. These equivalence decisions should be supported by co-operation on regulatory and supervisory matters.

These autonomous equivalence decisions should be made on the basis of regulatory outcomes. Therefore, the assessment should look at not only the content of the law and regulations, but also take into account the supervisory and enforcement approaches of each party.

In order to support the robust process for granting and withdrawing equivalence, a formal EU-UK forum for regulatory and supervisory dialogue should be established.

A strong focus on regulatory and supervisory cooperation will be essential to ensuring the successful achievement of an agreement that works for both the UK and EU. This forum should help facilitate supervisory co-operation for cross-border firms and its aims should include:

- Taking a **consistent approach to changes in regulation** or the development of new regulation with a view to avoiding opportunities for regulatory arbitrage,
- **Co-operating on international standards**, both in terms of their development and of their consistent implementation,
- **Considering the impacts of new initiatives** on market operators in each other's markets;
- **Structured engagement** with industry representatives,
- **Clear understandings of any use of the prudential exceptions** so that the process is clear and applied consistently.

# 3. HORIZONTAL ISSUES

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## 3.1 RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

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By leaving the EU, the UK is also exiting from the current arrangements that allow recognition and enforcement of judgments in civil and commercial matters. This is a key issue in particular for Small and Medium Size businesses who will face increased costs of litigation. Whilst this is not a traditional issue for an FTA, the Chamber asks for the EU and UK negotiators to agree a separate agreement in this area.

Currently, there are two main mechanisms that apply in this field and without having them agreed, the automatic enforcement of judgments between the UK, EU and EFTA countries will stop. The main EU mechanism is the Brussels I Regulation and the mechanism between the EU and EFTA is the Lugano Convention.

This area is particularly important for SMEs. Without an enforcement mechanism in place, they are likely to face increased costs for the litigation where there are even simple contractual disputes. This is because the agreements in this area help to provide clear rules to procedural questions and they do not need to be separately be argued. These rules, for example, provide for mechanisms to honour the choice of court agreements where the businesses have chosen a specific court or forum to solve the disputes. In some cases, it may be that enforcement also gets more difficult and expensive. Where the national law excludes enforcement possibility the parties would need to re-litigate the case again. All this applies both where there would be a UK judgment to be enforced in the EU or an EU judgment to be enforced in the UK. Therefore, this affects the EU businesses and UK businesses alike.

As the future relationship is based on an FTA model, it is unlikely that this economic agreement would include judicial cooperation issues. There is no FTA precedent which covers recognition and enforcement of judgments or other aspects of commercial justice cooperation. Furthermore, there is no mention of commercial judgments in the EU mandate either.

However, it does not stop the EU and the UK reaching out for a separate agreement, for example by using the Lugano Convention. As the continued enforcement of judgments is important between all the parties to this Convention (the UK, EU and EFTA states) and as it is an international convention already in operation between all the parties, it provides a fitting solution that provides the least amount of disruption and cost for all businesses involved in cross-border disputes. It can also be put in place in the limited time available. The UK Government and the EFTA states have already indicated their willingness for the UK to continue in the Lugano Convention\*.

\* <https://www.gov.uk/government/news/support-for-the-uks-intent-to-accede-to-the-lugano-convention-2007>

## 3.2 DATA FLOWS

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Business from the UK and the EU/EEA serve customers across the two territories in the consumer and business market segments alike. Hence, citizens and business will be seriously affected if personal data cannot flow freely in the same way as is currently the case.

Business from all sectors, such as auto-mobile, banking, insurance, pharmaceuticals, energy, food, retail, logistics, airlines etc., need to move data. Cross-border data flows are an essential part of keeping supply chains functioning – whether within the EU, between the EU and the UK or globally. This involves, for instance, orders, billing information, customer and supplier data, pricing information, and employee data. Companies on both sides run back office functions in finance, HR or customer contract fulfilment and procurement. Cyber security measures heavily depend on analysing data for security purposes. All this makes it essential that the current ease of cross-border movement of data between the UK and the EU27 can continue.

The free cross-border flow of personal and non-personal data between their sites in the UK and EU/EEA is crucial and should continue to be managed in the most efficient way.

The most efficient way to provide a legally sound and stable option for ensuring the continued ability to transfer data, without having to rely on standard contractual clauses or binding corporate rules, would be to secure mutual data adequacy decisions between the EU and UK as soon as possible in order for this to be effective immediately after the end of the transition period.

The alternatives to adopting mutual data adequacy are inferior in following ways:

- **Binding corporate rules** – These are only valid for intercompany transfers. The approval process can be slow and if there is a significant increase in applications it could have resourcing implications for the Information Commissioner’s Office (ICO). They are also only available to companies with a presence in an EU Member State. Further, this process is time consuming, complex to design and secure, and requires continuous updating. They are not a feasible solution for smaller firms who do not have a group level presence,
- **Model contracts** - These are more readily useable but do not provide legal certainty, as they are currently subject to a legal challenge. In addition, the identification and re-negotiation of relevant contracts can be time consuming and complex; they are not well suited to transfers in a group using a branch structure, for multi-party or complex transfers and do not address the realities of processor to processor and processor to controller transfers,
- **Consent** – This can be withdrawn or withheld at any time making it unreliable for important activities like financial crime prevention,
- **Legitimate interests derogation** - There are limitations on the size and frequency of transfers, coupled with a requirement to notify the Data Protection Authority and the data subject, which makes this unworkable for most arrangements or transfers.

In light of the recent Attorney General opinion on the Schrems II case and the use of model contract clauses, we believe that an adequacy finding is even more urgent to assure legal certainty. In particular, SMEs depend on the use of model contract clauses for data exchanges with countries which are not “adequate”.

## 3.3 ENERGY AND CLIMATE

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The UK and the EU have a shared strategic agenda on climate change, and deeply integrated energy markets that are going through a fundamental transition with the reduction of carbon emissions and the deployment of renewable energy. The EU's Green Deal is in line with the UK's net zero commitments for 2050 and both are key parties to the Paris Agreement. There is much to be gained in the future by continuing effective co-operation in this area, and limited benefits to divergence. The shared target of net zero will be made more difficult and expensive for UK and EU consumers if effective co-operation in this area is not continued.

As such, we call for the following issues to be dealt within the FTA negotiation:

- The **maintenance of efficient trading in gas and electricity** on the basis of shared market rules,
- The **development of a framework for technical co-operation** between regulators and transmission system operators, **Co-operation on Carbon Pricing**, ideally via a linked emissions trading system, **Development of a shared approach to North Sea offshore infrastructure** to enable deployment of wind power and multipurpose interconnectors in the most efficient way possible,
- **Co-operation on the new technologies** necessary to decarbonise the economy, including on hydrogen and other renewable gases and carbon capture and storage, **A close diplomatic relationship to ensure that COP26 delivers** the necessary progress on the implementation of the Paris Agreement.

## 3.4 TRANSPORT

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EU-UK business have set up just-in-time supply chains with goods and services crossing EU-UK borders multiple times before becoming finished products for industry or consumer clients. Taking into account the shortage of qualified personnel in road freight transport on both sides of the Channel, bilateral transport agreements will be necessary to ensure continuity and predictability in those key supply chains.

Taking into account the geographical proximity of the EU and UK, these bilateral agreements should include:

**Aviation agreements** to ensure that:

- » Air carriers are treated equally and in a non-discriminatory manner in obtaining operating authorisations based on procedures with minimum delay,
- » Traffic rights are offered on a reciprocal basis to ensure continued connectivity,
- » Open and fair competition can continue.

**Road transport agreements** to ensure that:

- » UK road hauliers will continue to have a (long term) license to operate in the EU and vice versa, thereby recognising that international road haulage operators should not be granted the same cabotage rights as the local ones,
- » Professional qualifications of truck drivers are mutually recognised,
- » Requirements for tachograph technology are mutually recognised.

**Rail transport agreements** taking into account the specific situation of the Channel Tunnel,

**Maritime transport agreements** to ensure market access for the international maritime transport sector.

As custom controls will become inevitable, mutual agreements will also need to be made between HMRC and EU customs to mutually recognise Registered Exporters System (REX), Authorised Economic Operator (AEO) and other authorisations.

## 4. THIRD COUNTRY TRADE AGREEMENTS

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The British Chamber of Commerce | EU & Belgium strongly recommend the UK Authorities give absolute priority to secure continuation of all existing EU trade agreements and their preferential market access.

UK business currently benefits considerably from existing EU trade agreements and plea these to be maintained to avoid additional and unnecessary cost burdens to the detriment of jobs, growth and investment in the UK.