

Beyond the UK-EU Trade and Cooperation Agreement: Priorities for consumers

The UK-EU Trade and Cooperation Agreement

The Trade and Cooperation Agreement (TCA) has secured tariff-free trade between the UK and EU and sets out many areas for cooperation, as well as future negotiation. It also marks some fundamental changes to how consumers will interact with the EU, the rights that will underpin any transactions and introduces new processes for how goods and services will be traded.

This paper considers what the Agreement will mean from a consumer perspective, as several aspects of the TCA are worked out in the coming months and years. It is crucial that the government builds on what has already been agreed by prioritising consumer interests as part of further talks with a particular focus on the following areas.

1. Governance and representation

The TCA provides for cooperation and further negotiations in a number of areas. This means that the implications of the TCA may take many years to become clear in some important areas, such as energy and financial services.

A wide range of bodies will be created to oversee the implementation of the Agreement, led by a Partnership Council. This includes a number of trade specialised committees being established covering everything from sanitary and phytosanitary (human, animal and plant health) issues to energy.

The Agreement also establishes a series of focused working groups, for example, on organic foods and motor vehicles and parts. The agreement also requires a civil society forum, as well as domestic advisory groups to be established to enable a dialogue on the implementation of the TCA.

- **It is important that the government sets out a clear implementation plan based on an inclusive and transparent approach. There should be effective consumer interest representation and consultation, including on the domestic advisory groups. It is important to ensure that the full wealth of expertise available to the government is drawn on, and issues are considered from a range of perspectives minimising the risk of important aspects being overlooked.**

2. Trade in goods

The Agreement ensures that trade between the UK and EU can continue tariff free, subject to rules of origin. If tariffs had been imposed consumers would have seen significant price rises, with tariffs on some goods, such as food, especially high.

The introduction of non-tariff barriers, in the form of customs and border controls is, however, having some impact on the free flow of goods. It is unclear the extent to which this is impacting consumers in Great Britain because of disruption to supply chains or additional costs – although some retailers have warned of price rises.

For consumers in Northern Ireland, the situation is different due to the Northern Ireland Protocol with goods remaining aligned with EU rules. There have been reports of the new border controls between Great Britain and Northern Ireland causing some supply issues and further border control checks are due to come into effect later in the year. Many household name retailers have suspended deliveries to Northern Ireland consumers because of the impact of the new measures.

- **The Agreement includes provisions for further negotiations on customs and so it is important that procedures are simplified as much as possible, along with border checks and conformity assessments in line with the Withdrawal Agreement. The government must also continue to work with businesses to ease disruption as much as possible, as well as monitor and mitigate the impact on consumers in all parts of the UK.**

3. Cross-border shopping costs

Since January, a number of new charges have applied to consumers when buying directly from EU countries. This has meant some people have unexpectedly faced additional charges for products that they have ordered. It has also affected the availability of certain products and services where the new costs, or bureaucracy associated with them, have made trading with UK consumers no longer viable for some EU traders. The costs apply because of a number of changes:

- **VAT changes:** VAT is now dealt with differently. In the UK it is charged at 20% for the majority of products and will be applied to most goods. Some consumers have been asked to pay this by couriers delivering from the EU before they can receive their goods. If the total cost of your order is more than £135 or a gift is over £39, VAT is often collected at point of delivery. Since the UK is no longer part of the EU's VAT regime (with the exception of Northern Ireland as it remains within the EU's single market for goods) the new rules require EU sellers to register with HMRC to account for VAT in order to sell to the UK. While most larger retailers are likely to be registered for VAT, the smaller ones might not be. Some retailers have clarified that they will try to include VAT at the point of sale but this may not always be the case.
- **Import charges:** Online shoppers who buy items from the EU that originate from outside the EU (eg from a Chinese seller on an EU platform) that cost more than £135 will also have to pay additional customs duties, again with the exception of Northern Ireland. This is because the product does not 'originate' from the EU but from China, so the zero-tariff preference between the UK and EU does not apply. Customs charges can range from 0–25% depending on the goods.
- **Delivery charges and 'handling fees':** To account for the changes, some delivery firms have chosen to introduce additional 'handling costs' because of the new checks and paperwork. Royal Mail, for example, is charging a flat £8 handling fee and DHL Express will charge a minimum of £11 or 2.5% of the total duty.

Many of these changes have come as a surprise to consumers and there have been inconsistencies in the way that the new charges are handled and collected by different businesses.

A recent Which? survey¹ of over 2000 consumers found that two in five (37%) had issues with online orders since the Brexit transition period ended on 1 January. One in five (21%) had experienced delays while one in ten (10%) had been asked to pay additional handling or delivery fees, ranging from £1–£300.

- **The government must make these new costs clear to consumers so they are not hit by unexpected costs – or misled into paying other charges that are not required. It must also work to make the processes for how they are charged as simple as possible for both businesses and consumers. Businesses must also be up front about the full charges consumers will have to pay.**

1 Which? interviewed 2010 adults, weighted to be nationally representative of the UK population, online between 12th–16th February 2021.

4. Cross-border consumer rights

Hopes that the Agreement would have a strong focus on cooperation on cross-border consumer rights were not realised. This means that UK regulators, including the Competition and Markets Authority (CMA) and Trading Standards will no longer be able to benefit from being part of the Consumer Protection Cooperation Network of enforcement authorities across Europe. This leaves consumers with more limited protections when buying goods and services from EU firms.

The deal does importantly recognise the value of cooperation on competition matters although the UK will no longer be part of the EU's Competition Network. It foresees a separate agreement on cooperation and coordination between the respective authorities which may include conditions for the exchange and use of confidential information. This will be important where parallel competition investigations are undertaken – for example when dealing with tech companies that are important in both markets. Similar provisions on consumer enforcement are missing – other than recognition of the importance of regulatory cooperation for the protection of consumers in relation to digital trade (see below).

If consumers have an issue with an EU trader, for example because of misleading pricing, faulty goods or another breach of consumer law, they will generally need to pursue it with the authority in the country where the business is based. They can no longer pursue it via the UK authorities as was previously the case, adding a new barrier to consumers' ability to enforce their rights.

UK authorities will also no longer be able to take part in coordinated enforcement activities against companies who breach the law in multiple markets or have access to the same level of intelligence. UK consumers will also no longer have access to the EU's online dispute resolution (ODR) platform for cross-border purchases – although business sign up to this is limited in any case. The government has said that it will fund the European Consumer Centre, hosted by the Chartered Trading Standards Institute, for a further year to help people navigate these changes.

- **The government should work with the EU to secure ongoing reciprocal cooperation and intelligence-sharing on consumer rights enforcement, as well as on competition policy and enforcement, so that when something goes wrong with a good or service bought from an EU-based company, there's still an easy route to redress.**

5. Pursuing legal action

A related issue is that where consumers need to pursue legal action against an EU-based business because of breaches to consumer law, they will no longer be assured that this can be heard in the UK courts. The Agreement has some provisions on criminal judicial cooperation, but not for civil law. However, there is express provision in the Agreement itself for supplementing agreements to be integrated at a later stage.

This is a complex area of law and the UK can fall back on some wider international agreements. But the exclusive jurisdiction in contracts provisions of the Hague Convention 2005 will not apply to consumer cases, for example. The UK is seeking to accede to the Lugano Convention. But the rights that consumers might have under this regime would also be more limited than what has previously been in place. The application to join also requires unanimous approval by all contracting states, including the EU. The end result is that if consumers need to go to court to seek redress against a business in France or Italy for example, they can no longer do that from the UK and may need to navigate the French or Italian judicial systems.

- **As part of further negotiations, the government must seek an agreement on civil judicial cooperation to allow consumers to continue to have the choice to pursue legal action against EU businesses on consumer rights matters via the UK courts (and vice versa), keeping this option of redress open as a viable route of resolution for consumers.**

6. Digital trade and rights

The Agreement sets out the ambition to facilitate digital trade by addressing unjustified barriers to trade and data flows while also ensuring an open, secure and trustworthy online environment for businesses and consumers. It also includes a specific article focused on online consumer trust.

This commits each Party to adopt or maintain measures to ensure the effective protection of consumers engaging in electronic commerce transactions, including fraudulent and deceptive commercial practices; requiring suppliers of goods and services to act in good faith and abide by fair commercial practices, requiring suppliers of goods or services to provide consumers with clear and thorough information, including when they act through intermediary service suppliers, and granting consumers access to redress for breaches of their rights, including a right to remedies if goods or services are paid for and are not delivered or provided as agreed. It also stresses that the UK and EU recognise the importance of their consumer protection agencies having adequate enforcement powers and the importance of cooperation.

A key issue underpinning this is, however, whether the EU grants the UK an adequacy decision in terms of its data protection regime. A temporary transition has been agreed for four months while the EU makes an assessment. It issued a draft opinion on 19 February which would designate UK data protection standards as being ‘essentially equivalent’ to those that apply in the EU. This would ensure that there was no disruption to services for UK consumers when accessing goods or services from the EU. There is, however, still an approval process to be carried out before the European Commission formally adopts the adequacy decision. An adequacy decision would be valid for four years. This can then be renewed, but the European Commission has also said that it reserves the right to rescind the decision should the UK diverge from EU data protection rules to a ‘problematic’ degree.

- **It is essential that the UK assures an adequacy decision and does not diverge from the current level of protection that the UK General Data Protection Regulation provides for consumers. The UK must also ensure that its trade negotiations with other countries, where digital trade and opening up data flows will be a big focus, do not put this at risk.**

7. Food safety and standards

Which? research² has repeatedly shown how important it is for consumers that the UK maintains its high food standards after leaving the EU – and ideally takes opportunities to enhance these. Which? has regularly polled consumers over the last three years to understand how important it is to them to maintain existing food standards. A consistently high proportion of consumers (94% in September 2020)³ say this is very important.

² <https://www.which.co.uk/policy/euexit/6731/nationaltradeconversation>

³ Populus, on behalf of Which?, surveyed 2,112 UK adults online between 18 and 20 September 2020. The data were weighted to be demographically representative of the UK population.

When asked what their top trading priority was for the UK from a consumer perspective, 50% of consumers polled in December 2020 said it was to maintain existing standards for food and other consumer goods.⁴

Under the Agreement, the UK will be free to determine how it regulates food in the coming years (with the exception of Northern Ireland), but several provisions within the Agreement will limit this to some extent. Under the Agreement, both the UK and EU have highlighted the importance of a precautionary approach. The non-regression provisions within the deal will also apply as they focus on the environment and make specific mention of use of antimicrobials and decontaminants (eg. chlorine washes used in chicken processing). These provisions provide for the introduction of tariffs should there be divergence. The test of this will, however, be in terms of how trade is affected, rather than how consumers are protected.

Several areas of cooperation are set out within the Agreement, including on animal welfare, sustainable food systems and tackling antimicrobial resistance. A Trade Specialised Committee on Sanitary and Phytosanitary (SPS) Measures will have an important role in defining how provisions are applied and therefore the standards that UK consumers can expect. Reference is made to Codex (the UN body which sets international food standards) as reference for many aspects of the work of the Committee. It is therefore important that the UK continues to proactively engage in Codex's work – but also recognises that its standards, reached by international consensus and so often the lowest common denominator, will not always offer UK consumers the protection that they expect.

Although the Agreement refers to notification of significant food safety issues, it does not contain the same commitment to work to share information via each other's respective rapid alert systems for food, as is the case for non-food products (see below). Reference is made to resourcing for competent authorities and resourcing of food surveillance will be important to uphold food standards. This will also need to be taken into account in relation to the challenges for border controls outlined above. A balance is needed so that measures are not too disruptive to trade flows, but there are sufficient checks to ensure that imports comply with UK law and food crime is prevented.

- **Given the global nature of food supply chains and of food sustainability and security challenges, it is crucial that the UK and EU continue to cooperate closely. This should include sharing information on food safety alerts and food fraud intelligence, benefitting the safety of consumers in both the UK and the EU. The government must also strongly stand up for consumer interests in the SPS specialised trade committee and food-related dialogues and working groups that will be established to expand on the measures agreed in the TCA. Longer-term, the government needs to demonstrate that it will uphold its commitments and use the flexibility provided to diverge from EU legislation and standards in a positive way that will uphold the high level of protection consumers expect.**

8. Wider product standards

The Technical Barriers to Trade (TBT) provisions within the Agreement will also be crucial in terms of the future approach to standards for food and a much wider range of consumer products. The UK and EU have agreed to further discussions in a number of areas, including through a Trade Specialised Committee on TBT and working groups on medicinal products and motor vehicles and parts. Gaps remain in the agreement in crucial areas such as approaches to conformity assessments. As with food, product standards will remain aligned with the EU in Northern Ireland.

⁴ Yonder, on behalf of Which? conducted a survey of more than 1,000 consumers in each UK nation from 4–18 December 2020, with quotas and response weighting used to obtain a nationally representative sample for each nation according to their known age and gender profiles.

The Agreement sets out a shared view for which standards bodies are to be the international benchmark – for example the United Nations Economic Commission for Europe (UNECE) in relation to cars and the International Standards Organisation (ISO) for wider standards. The UK and EU both agree to continue to cooperate on standards development. It will be important that the British Standards Institution (BSI) can continue to work as part of European standards bodies CEN and CENELEC for the longer-term as well as the provisional continued membership that has so far been agreed.

The Agreement also includes important provisions for cooperation on market surveillance. This is for example important in terms of cooperation on the safety of non-food consumer products. Our research⁵ has repeatedly highlighted challenges with online marketplaces selling unsafe products for example, many of which come from outside of the UK and EU.

- **The UK and EU should continue to cooperate and work together to drive up standards globally. As with food, the UK must use the flexibility to diverge from EU regulations to the benefit of consumers, improving on current standards; not weakening them – whether for safety, security or environmental protection for example. More specifically the UK and EU should urgently take forward the commitment to further negotiations to agree to mutual access to each other’s rapid alert systems for non-food consumer products in line with the six month target for an annex covering this set out in the trade deal, again providing benefit both to UK and EU consumers.**

9. Energy

The maintenance of open energy trading arrangements between the UK and EU is important so that there remains flexible access to gas and electricity to help avoid increased costs for consumers. The UK will no longer be part of the EU single energy market – although Northern Ireland will continue to be part of the Single Energy Market with Ireland. EU regulations regarding ‘solidarity’ supply of gas and electricity between countries in the event of a crisis have unfortunately not been reflected in the Agreement as regards the EU.

The EU and the UK will establish a new framework for future cooperation on energy to ensure the efficiency of cross-border trading, along with cooperation and strong commitments on climate change, including to promote energy efficiency and the use of energy from renewable sources. There are also provisions in the Agreement regarding control of energy-related subsidies, as in relation to subsidies in other areas, which will need to be monitored to ensure that energy market interventions for the benefit of consumers are not prevented. Under the deal, UK energy transmission companies must be required to develop working arrangements including ‘frameworks for cooperation’ with the electricity and gas EU transmission operators networks ENTSO-E and ENTSOG, but this does not mean membership. Cooperation between the EU regulatory authority ACER and the equivalent UK designated body is required according to guidance that will be developed by the Specialised Committee on Energy ‘as soon as practicable’

As with much of the agreement, the precise nature of how the new frameworks will work and what they will mean for consumers has still to be determined. The timetable for establishing new electricity trading arrangements is challenging and the Agreement requires it to be done by April 2022. It is important for consumer prices that this timetable does not slip. There are also considerations regarding gas trading and added costs and regulatory burdens, including licensing and customs processes on imports and exports.

5 <https://www.which.co.uk/policy/consumers/5234/onlinemarketplaces>

- **As with the other committees and new governance arrangements, it is important that the Specialised Trade Committee on Energy operates transparently and that the government regularly consults all stakeholders, including consumers. The cooperation frameworks between UK and EU energy regulators and operators require Specialised Committee Guidance to be agreed ‘as soon as practicable’ and it is crucial that this guidance is progressed urgently.**

10. Travel

Travel is one key area where it was essential, looking beyond current Covid restrictions, that the UK and EU reached agreement in order to avoid disruption, inconvenience and additional costs for consumers.

The TCA avoids major disruption, but means there will be some additional complications. For visits of up to 90 days in any 180 day period, visa free travel has been agreed for most EU countries as well as Iceland, Liechtenstein, Norway and Switzerland. People will need to have 6 months left on their passport to be able to travel. A green card will be required from your insurance company if you are taking your car abroad, but the need for an international driving permit, which would have been required if a deal was not agreed, has been avoided. Access to healthcare will also continue, but with some changes. Expired EHIC cards will need replacing with a new Global Health Insurance Card. Taking your pet away with you will now require an animal health certificate from a vet. This also applies if travelling to Northern Ireland.

Unfortunately there are no provisions within the deal that will enable free ‘roam like at home’ to continue when travelling in the EU. There is scope for reciprocal provisions on measures affecting the supply of telecommunications services but on a more limited basis. Consumers are therefore now reliant on the approach of their provider, none of which have, to date, reintroduced roaming charges for EU travel.

The Agreement ensures that travel can continue between the UK and EU – whether by air, ferry, train or coach. UK owned airlines will be able to operate between the UK and EU – and the same for EU owned airlines in the case of the UK, but on a more limited basis. UK carriers will no longer be able to transport passengers between two points in the EU, between the UK and two other Member States or carry passengers onwards between the UK, a Member State and a third country (eg. London-Amsterdam-Bangkok). The Agreement sets out a shared ambition for future cooperation on air traffic management, aviation security and consumer protection.

- **Future negotiations must focus on ensuring that when people are once again able to travel that there is minimal disruption, additional costs are minimised and cooperation on future consumer protection is realised. This includes working on an agreement that will ensure free roaming can be reinstated. As international travel is reintroduced, the government must ensure consumers are aware of new requirements for travelling in the EU, EEA and EFTA countries.**

11. Financial services

Financial services is one area where the future arrangements have still to be determined. The UK and EU have agreed the wording of a Memorandum of Understanding. One signed, this will create a framework for voluntary regulatory cooperation and establish the Joint UK-EU Financial Regulatory Forum.

The Agreement does not include any provisions on equivalence frameworks for financial services. The implications for consumers in terms of access to products and services is as yet unclear. Insurance and pensions contracts provided by EU companies to UK customers, and vice-versa, are not protected by the TCA, and many insurers have set up local subsidiaries in advance in the UK or EU as the case may be so that they can continue to service these types of contracts.

- **The UK and EU must ensure that consumer interests are taken into account as part of discussions through the joint Financial Regulatory Forum. The implications for consumers must be clearly communicated.**

12. Environment and climate change

The Agreement uniquely and crucially places tackling climate change central to the agreement as an essential element and core basis for cooperation. Which?'s research has shown that this is a priority issue for people when asked about trade deals.⁶ The TCA includes strong commitments to tackling climate change and reaffirms the ambition of both parties to reach net zero by 2050. Environmental provisions also form a key part of the non-regression and future balancing provisions within the Agreement.

- **As with many other aspects of the Agreement, the mechanisms that are now taken forward to ensure effective cooperation will be vital and provide important opportunities for global leadership on this issue in the run up to COP26. The Government should clarify as soon as possible how the commitments on carbon-pricing will be taken forward for example – and must ensure that consumer interests are reflected so that any actions support consumers in making more sustainable choices.**

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6 <https://www.which.co.uk/policy/euexit/6731/nationaltradeconversation>

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