

EU-UK Trade and Cooperation Agreement (TCA): Governance, Dispute Resolution, Enforcement

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Four years after the Brexit referendum, the EU and the United Kingdom have reached an agreement on the [EU-UK Trade and Cooperation Agreement](#) (TCA), which follows the [Brexit Withdrawal Agreement](#). BLOMSTEIN presents the key contents of the new trade agreement in a briefing series. In [Part 1](#), we have looked at the implementation and substantial changes in the EU-UK relationship. [Part 2](#) focused on the trade in goods. [Part 3](#) looked at a variety of areas from services and investments to digital commerce, energy and the level playing field. [Part 4](#) analyzed the areas of transport and aviation, fishing, social security cooperation, freedom of movement and other cooperations. Part 5 concerns the governance structures, dispute settlement mechanism and enforcement of the agreement within the framework of national jurisdiction and the ECJ.

Governance structures

Part 1, Title III, constitutes the institutional framework of the agreement. In addition to a joint partnership council, the agreement calls for the creation of various committees, working and advisory groups, a parliamentary partnership assembly, and a so-called Civil Society Forum, whose interaction is to ensure compliance with, implementation of, and uniform interpretation of the agreement.

The **Partnership Council** is composed of representatives of the EU and the United Kingdom. It has the authority to take decisions on all matters where the agreement or supplemental agreements provide for it (Art. INST.1 No. 4 EU-UK-FTA-E). Decisions taken by the Partnership Council are binding on the parties and on all bodies established under the agreement – including the arbitration tribunal institutionalized by the agreement. In addition, it may make recommendations to the parties regarding the implementation and application of the agreement and may make amendments to the agreement or a supplemental agreement by resolution. However, the recommendations shall not have binding effect. For the purpose of uniform application and interpretation of the agreement, the Partnership Council also discusses all issues arising in connection with the agreement or supplementary agreements.

The Partnership Council may delegate powers and responsibilities to the “**Trade Partnership Committee**” and may establish or dissolve special trade committees and other

special committees. The Trade Partnership Committee assists the Partnership Council in the performance of its duties, oversees the implementation of the agreement and the trade committees, and has the authority to establish, supervise, coordinate and dissolve working groups.

The agreement institutionalizes a number of other **committees** (Art. INST.2 No. 1 EU-UK-FTA-E). On the one hand, they act in an advisory capacity and in support of the Trade Partnership Committee. In addition, they also have a monitoring responsibility with regard to the implementation and functioning of the agreement and supplementary agreements. Under their supervision, the **working groups** assist the committees in fulfilling their tasks and, in particular, prepare their work.

Furthermore, the European Parliament and the Parliament of the United Kingdom may establish a **Parliamentary Partnership Assembly** from their respective members (Art. INST.5 EU-UK-FTA-E). The Assembly is to be informed as a parliamentary control body about the decisions and recommendations of the Partnership Council. In this context, however, the Parliamentary Partnership Assembly is only entitled to make non-binding recommendations to the Partnership Council.

Issues arising in relation to the agreement or supplementary agreements are to be discussed in future at least once a year with newly established or existing **advisory groups** of the contracting parties – consisting, inter alia, of independent civil society organizations, business and employers' associations and trade unions (so-called “Domestic Advisory Groups”). The views and recommendations presented by the advisory groups shall then be taken into account by each party (Art. INST. 7 No. 1 and 2 EU-UK-FTA-E).

Finally, Art. INST. 8 EU-UK-FTA-E provides for the establishment of a so-called **Civil Society Forum**. It shall enable a societal dialogue on the implementation of the second part of the agreement (trade, transport, fisheries and other agreements) and, unless otherwise agreed by the contracting parties, shall meet at least once a year.

Dispute Resolution

The dispute settlement mechanism provided for in Title I of Part 6 of the EU-UK FTA-E aims at preventing and resolving disputes between the contracting parties concerning the interpretation and application of the agreement and supplementary agreements, with a view to reaching a mutually agreed solution where possible. According to Art. INST.13 EU-UK-FTA-E the contracting parties shall therefore first consult each other in the event that one contracting party (*“the complaining Party”*) is of the opinion that the other contracting party (*“the respondent Party”*) has violated an obligation under the agreement or a supplementary agreement with the aim of reaching a mutually agreed solution.

If the contracting party (*“the respondent Party”*) does not respond within 10 days of the delivery of the request for consultation, the consultation shall not take place within the time limit. If the parties agree not to hold a consultation, or if the consultation is concluded without reaching a mutually agreed solution, the complaining party may request in writing the establishment of an **arbitration tribunal** (Art. INST.14 No. 1 and 2 EU-UK-FTA-E). The requested arbitration tribunal shall be composed of three arbitrators. The composition of the arbitration tribunal shall either be agreed upon by the contracting parties or shall be chosen by lot by the co-chairman of the Partnership Council of the complaining contracting party from the lists of the contracting parties after the expiry of the stipulated period. The same shall apply to the appointment of the presiding arbitrator. The date on which the last arbitrator accepts his election to the contracting parties shall be considered as the date of establishment of the arbitration tribunal.

The arbitration tribunal shall then make an objective assessment of the matter at issue and base its decisions and resolutions on findings of fact and law. It shall consult regularly with the parties and provide reasonable opportunities for the development of a mutually agreeable solution (Art. INST.17 lit. (c) EU-UK-FTA-E). Within 100 days of the establishment of the arbitration tribunal, an **interim report** shall be submitted to the parties, with respect to which either party may request the arbitration tribunal in writing, within 14 days from the date of service, to review certain aspects of the interim report (Art. INST.20 No. 1 and 2 EU-UK-FTA-E). In the absence of such a request, the interim report of the arbitration tribunal shall become the decision.

The arbitration tribunal shall deliver its decision to the parties within 130 days of the establishment of the arbitration tribunal. It shall contain the discussion of all written submissions of the parties and shall address their comments. If the arbitration tribunal finds that a party has breached an obligation under the agreement or a supplemental agreement, the respective party shall take the necessary measures to comply with the decision of the arbitration tribunal and the provisions of the agreement. The party shall communicate the action taken, or the action it intends to take, to the claimant party within 30 days of service of the arbitration award. If there is a disagreement as to the existence of such measure or as to its compliance with the terms of the arbitration award and the agreement, the claimant party may request the arbitration tribunal in writing to rule on the matter (Art. INST.21 EU-UK-FTA-E).

In addition, there is also the possibility of provisional compensation (e.g. by way of a compensatory payment) of the infringement by the defendant party, if it is not possible for it to comply with the arbitration award (Art. INST.24 EU-UK-FTA-E). The respondent party shall then notify the claimant party of any action taken after the application of the provisional compensation. The respondent party may then, within 30 days from the notification of the measures, terminate the application of the interim compensation. If the parties do not reach an agreement on whether the respondent party now complies with its obligations within 30 days from the delivery of the notification of the measure, the

complaining party may request the arbitration tribunal in writing to decide thereon. Depending on the decision of the arbitration tribunal, the compensation shall then be terminated or the amount of the compensation shall be adjusted (Art. INST.25 No. 2 EU-UK-FTA-E).

Enforcement of the agreement within the framework of national jurisdiction and the ECJ

In view of the United Kingdom's critical position toward the ECJ over many years, it is hardly surprising that the Court of Justice has not been entrusted with any powers under the cooperation agreement. In this context, its conflict resolution tasks will henceforth be assumed by the arbitration tribunals to be set up for this purpose. For companies, this means that in the future they will no longer be able to take action themselves against what they see as illegal measures, but will have to rely on the support of the EU or the United Kingdom as subjects of international law. National courts also have a limited role to play in the agreement. Thus, the agreement stipulates that in the area of non-regression, national administrative or judicial procedures are to be provided for (Art. 7.5 No. 2 EU-UK FTA-E). Same applies in the area of social security (Art. SSC.67 No. 2 EU-UK-FTA-E).

BLOMSTEIN is monitoring the foreign trade law implications of the new free trade agreement with the United Kingdom and their impact on companies. [Dr. Roland M. Stein](#) and [Dr. Leonard von Rummel](#) are available for this purpose at any time.