

EU-UK Trade and Cooperation Agreement

IndustriAll Europe's initial reaction

From 1 January 2021 the EU-UK Trade and Cooperation Agreement is provisionally applied (still to be ratified by the European Parliament). This Policy Brief provides an overview of the Agreement and looks at how it will likely impact both European industry and its workers.

Overview

On the 24 December, the EU-27 and UK concluded the [EU-UK Trade and Cooperation Agreement](#), which following rapid ratifications by the European Council and UK Government came into provisional application on the **1 January 2021**. Full application is dependent on the ratification of the European Parliament – which is currently foreseen for **March 2021** at the latest. The Agreement consists of three main pillars:

- 1. A Free Trade Agreement: a new economic and social partnership with the United Kingdom;**
- 2. A new framework for law enforcement and judicial cooperation in criminal and civil law matters;**
- 3. A horizontal agreement on Governance.**

In broad terms, the Agreement will make trade between the UK and the EU more complicated than it has been while Britain was a member of the bloc, but it does go some way to smoothing the cliff-edge that would have been inevitable if no trade deal had been struck at all. However, as a detailed analysis of the legal text of the Agreement shows a lot is still missing in the deal, such as financial services arrangements, other services aspects and recognition of chemicals and consumer goods regulation, among other things. It is a bare-bones trade deal and a commitment to further negotiations in a myriad of areas. **Brexit is not done yet, but the UK is out of the EU customs union and Single Market from 1 January 2021.**

What does it mean for Europe's industrial workers?

In July 2020, industriAll Europe made a series of demands on the UK and EU Governments to defend European industrial workers' interests and rights:

1. A deal that puts workers, in both the EU and the UK, first.
2. Tariff-free trade which is as frictionless as possible outside of the EU Single Market and the custom union.
3. Full compatibility of (safety, environmental and other) requirements placed on products and processes to ensure fair competition, as well as a coordinated approach regarding carbon pricing schemes applied to industry.
4. Protection of health and safety legislation, of social legislation and of information and consultation rights, for all European workers, in the EU and the UK.

5. Both Parties to ensure close cooperation in relevant fields of mutual interest (e.g. research, energy and cross channel industrial supply chains).
6. The strengthening of the likelihood of a level playing field by ensuring that:
 - The non-regression clause is extended to the whole EU social acquis.
 - The UK keeps pace with the EU in any future improvements in employment or social standards
 - The CJEU remains the sole arbitrator of union law and its rulings should be referred to in cases of social and employment standards.
 - The place of work principle (guarantee of the same pay for the same work in the same place) is applied.
7. A commitment from the UK and the EU to counteract any harmful impact on jobs and local communities.
8. Social Partners have a genuine role in both the monitoring and the enforcement of the Withdrawal Agreement including the power to submit official complaints.
9. Full transparency of the negotiation process including the involvement of Social Partners from the beginning of the negotiations.

This paper sets out an initial assessment of how the Agreement addresses these concerns for industrial workers on both sides of the Channel and Irish Sea, as well as specific industrial sectors, drawing on the ETUC's legal analysis of the Agreement.

Trading of goods

The deal guarantees **zero tariffs and zero quota for goods**, as long as the UK remains aligned with EU standards through the Level Playing Field provisions, thus ensuring the continued flow of goods and components that are essential for manufacturing sectors.

Automotive, transport equipment, aerospace, chemicals and chemical products and textiles were the sectors facing the greatest Brexit-related risks from the prospect of tariffs. However, there remain other obstacles in the form of **non-tariff barriers** that will have a bearing on timings of just-in-time supply chains and could drive up production costs. These technical barriers to trade will entail **regulatory checks** for example sanitary and phytosanitary checks, conformity assessment and labelling.

Suppliers will have to certify **rules of origin**, adding significant additional trade frictions. These barriers will not be completely eliminated by the custom facilitation scheme within the Agreement: while cooperation between custom authorities and the mutual recognition of 'trusted trader schemes' is ensured; controls will be in place from 1 January 2021 for goods entering the EU and from June 2021 for goods entering the UK. This reality means that trade will not be frictionless in the long term, and in the short term, there are likely to be many administrative costs for business both foreseen and unforeseen.

Moreover, the Agreement is extremely limited on **services** – replicating much of the EU-Canada CETA provisions – this will have a knock-on impact on industry-related business and professional services.

While all products entering the EU will have to meet EU product standards (and vice versa). There are some substantial points in the deal covering **mutual recognition of standards**, rules that allow one regulator's rubber-stamp to carry clout in the other's jurisdiction. But while this deal goes beyond World Trade Organization rules on standards in some areas, there will be considerable **non-tariff barriers for many industries**. An annex on medicinal products, for instance, sets out an agreement on mutual recognition of inspections and good manufacturing practice — a key demand of the pharmaceutical industry. This avoids doubling up on processes for the two markets. But there are areas, such as chemical regulation and data sharing, where the deal falls far short of such collaboration (see below).

Level playing field

The Agreement sets out that the EU and UK commit to **fair competition** based on a level playing field between them and to maintain their respective high standards, through a **non-regression clause**. This commitment is not static since the parties commit to continue to maintain and improve those standards so that fair competition stands the test of time – but there is no ratchet clause.

Moreover, there is no mention of EU law being the framework of reference for the level playing field, and the non-regression clause is not a legally enforceable commitment as it is excluded from the dispute resolution mechanism that applies to the rest of the Agreement and is only subject to domestic enforcement.

The Level Playing Field provisions cover different chapters on competition, State aid, State enterprises, taxation, the environment and climate. The chapter on labour and social standards refers to the level of protection in the areas of:

- Fundamental rights at work;
- Occupational health and safety;
- Fair working conditions and employment standards;
- Information and consultation rights at company level;
- Restructuring.

The main body overseeing the implementation of the Agreement is the **Partnership Council**, a political body where the EU and the UK are represented. Both parties can also resort to **arbitration to solve disputes**. However, the Level Playing Field provisions on competition (except State subsidies), labour, environmental protection and taxation are not subject to the main dispute settlement process, but rather a specific process.

In the first instance, the Agreement primarily focuses on domestic labour market measures to ensure compliance with their labour commitments, but if there is a dispute and consultations with the other side fail, a panel of experts can issue a report and the Parties then consider the appropriate measures to take. If a party decides not to conform with the report, the injured party can trigger temporary remedies. Individual workers cannot use the Agreement in legal terms to defend their rights, which is in direct contrast to the rights of companies to use the Agreement in court if they feel damaged by a State aid decision.

There is also a **rebalancing mechanism** that is triggered if a violation of Level Playing Field provisions, including violation of workers' rights, has a material impact on trade that can be demonstrated with reliable evidence. In this case, the injured party can take retaliatory measures unilaterally and adapt the market access granted to the other party so that it is commensurate with the level of compliance with the Agreement. This is a standard approach in free trade deals and one trade unions have always rejected as impractical because of the **burden of proof**.

Trade Union involvement

In terms of trade union involvement in the monitoring and enforcement of the Agreement, a **Domestic Advisory Group** will be established – composed of trade union, business and civil society actors – as well as a **Civil Society Forum**. These are standard EU trade agreement measures and have been widely criticised as inadequate to ensure proper involvement.

What does it mean for specific industries?

Brexit will undoubtedly impact all industrial and manufacturing sectors in both the UK and the EU-27. However, specific concerns have been raised in three of our sectoral networks: **automotive, aerospace and chemicals**. Key aspects of the EU-UK Trade and Cooperation Agreement, including the Annexes, which cover these individual sectors are highlighted below.

Automotive

- **Rules of origin:** goods will be subject to the principle of **bilateral cumulation** of rules of origin facilitated by self-certification of suppliers.
 - **Electric cars:** some specific rules have been agreed for electric vehicles parts with an exemption of up to **six years** in order for strategic battery supply chains to be established in the EU.
- **Annex on Motor Vehicles and Parts (technical barriers to trade):** further to the general Agreement, a specific Annex was agreed to facilitate bilateral trade and regulatory cooperation for motor vehicles and equipment parts.
 - **Regulatory convergence:** based on UNECE international standards.
 - **UN type approval certificates:** all products covered by these certificates will be accepted by both Parties.
 - **Market surveillance:** both Parties will cooperate to support the identification and will address non-conformities.
 - **Research cooperation:** both Parties commit to cooperation in research in new vehicle safety regulations or related standards, advanced emission reduction and emerging vehicle technologies.
 - **Working Group on Motor Vehicles and Parts:** shall assist the Trade Specialised Committee on Technical Barriers to Trade in monitoring and reviewing the implementation and ensuring the proper functioning of the special agreement (Annex).

Industry Reaction (04/01/2021):

The **European Automobile Manufacturers' Association (ACEA)** [reacted favourably](#) to the announcement of the deal as a no-deal outcome would have been disastrous for the industry. However, they highlight that trade in goods will be *"heavily impacted by barriers to trade in the form of new customs procedures"* and that the deal still introduces much **more red tape and regulatory burden for the industry**.

The **European Association of Automotive Supplies (CLEPA)** also [reacted positively](#), but views the deal as a starting point to ensure the cooperation of both Parties and underline that **trade barriers will be resurrected**.

The **UK's Society of Motor Manufacturers and Traders (SMMT)** also [welcomed the Agreement](#) including the Rules of Origin with phase-in periods and a commitment to reduce customs burdens. However, they [continue to call](#) on the UK Government to provide specific additional phase-in periods for administration requirements and **invest in the UK's electrified supply chain**.

However, although OEMs active in the UK such as **Toyota, Nissan, PSA and BMW**, have welcomed the Agreement, they have also announced they are assessing the legal details of the text **before communicating on the impact it will have on their operations in the UK**.

Aerospace

- The Agreement sets out new terms and conditions for market access, as well as arrangements for cooperation in the areas of aviation safety, security and air traffic management.
- The UK will no longer apply the **EU's regulatory framework for aviation safety** and will not be part of the **European Union Aviation Safety Agency (EASA)** with the regulatory work being undertaken instead by the UK's Civil Aviation Authority.
- **Trade in aeronautical products:** new arrangements for the recognition of future design and environmental certificates and production organisation oversight are included in the Agreement.
- **Existing design certificates:** those issued under EU rules before 01/01/2021 remain valid and these products can continue to be used.
- **Aviation Safety Annex:** both Parties agree to co-operate in the following areas, airworthiness certificates and monitoring of civil aeronautical products, environmental certificates and testing of civil aeronautical products, design and production certificates and monitoring of design and production organisations, maintenance organisation certificates and monitoring of maintenance organisations, personnel licensing and training, flight simulator qualification evaluation, operation of aircraft, air traffic management and air navigation services, and other areas related to aviation safety.
- **Specialised Committee on Aviation Safety:** may only adopt Annexes (see above) where each Party has established a sufficiently equivalent level of safety.
- **Safeguard measures:** either Party can implement safeguard measures should a real risk be identified with the other Party being notified in writing within 15 working days.
- **Workers holding UK certificates (e.g. pilots, mechanics, examiners, instructors, etc.):** were encouraged to obtain a certificate from an EU Member State **before the end of the transition**

period (31/12/2020). UK organisations currently certified by the UK competent authorities can apply to EASA for a certificate to operate as a **third country organisation**.

- **Recognition of professional qualifications:** is not covered in the Agreement, however the Parties believe that arrangements for specific professions or additional arrangements for the mutual recognition of certain professional qualifications may be possible. In the mean-time, this may cause issues for qualified engineers or technicians moving between the UK and EU.
- **End of freedom of movement:** workers will no longer be able to freely move between the EU-27 and the UK in order to work. This will impact the aerospace sector, as highly specialised workers have previously moved between the UK and the EU-27 to work on time-sensitive technical issues (as opposed to moving huge and/or delicate parts/equipment). However, the Agreement foresees mobility of workers only for the purposes of the temporary provision of services in the form of:
 - Short-term business trips, for a maximum of 90 days;
 - Intra-company transfers (ICTs), for a maximum of 3 years for managers and 1 year for trainees;
 - Self-employed providing services as part of a contract with a client, for a maximum cumulative period of 12 months.

Industry Reaction (04/01/2021):

The UK's **Aerospace, Defence, Security and Space sectors** (ADS) [welcomed the Agreement](#) which they believe gives the best framework for the future relationship but **doesn't meet all of their ambitions**.

Chemicals/Pharmaceuticals

- The UK will no longer be part of the **European Chemicals Agency** (ECHA) who are responsible for managing **REACH** (Registration, Evaluation, Authorisation, and restriction of Chemicals).
- **REACH:** from 01/01/2021 EU REACH Regulation was brought into UK law and is now known as **UK REACH**. Businesses must now ensure that they meet the relevant duties under **both** UK and EU REACH if supplying or purchasing substances, mixtures, or articles to and from the EU, EEA and the UK. This will undoubtedly create more **administrative burdens** on companies.
- **Annex on Chemicals:** covers trade, regulation, import and export of chemicals in respect to their registration, evaluation, authorisation, restriction, approval, classification, labelling and packaging.
 - **Classification and labelling:** both Parties' commit to implementing the United Nations Globally Harmonized System of Classification and Labelling of Chemicals plus any scientific and technical guidelines issued by relevant international organisations and bodies.
 - **Procedures for classification:** agreement reached on transparent procedures for the classification of substances and the possibility of the exchange of non-confidential information.
 - **Risk of divergence:** as the objectives include the acknowledgement that the commitments made under the Annex "do not prevent either Party from setting its own priorities on chemicals regulation, including establishing its own levels of

protection in respect of the environment, and human and animal health” there is a risk of divergence and the inability to maintain a level playing field.

- **Annex on Medicinal Products:** aims to provide for mutual recognition of Good Manufacturing Practice (GMP) inspections and certificates, meaning that manufacturing facilities do not need to undergo separate UK and EU inspections, as well as ongoing co-operation.
 - **Facilitate the availability of medicines:** via mutual recognition in each Party’s territory.
 - **Recognition for inspections:** both Parties will accept the results of inspections carried out by the other Party following the agreed conditions.
 - **Good Manufacturing Practice (GMP):** each Party shall notify the other Party at least 60 days before adopting any new measures or changes relating to GMP.
 - **Regulatory cooperation:** the Parties shall endeavour to consult one another, as permitted by their respective law, on proposals to introduce significant changes to technical regulations or inspection procedures.
 - **Suspension:** each Party has the right to suspend totally or partially the recognition of inspections and acceptance of official GMP documents via written validation.
 - **Working Group on Medicinal Products:** shall assist the Trade Specialised Committee on Technical Barriers to Trade in monitoring and reviewing the implementation and ensuring the proper functioning of the Annex.

Brexit: this is only the beginning

Although the transition period has ended, and the EU-UK Trade and Cooperation Agreement is applied (provisionally), the conversation is far from over. All of our sectors will be impacted by Brexit in some way and companies are currently conducting detailed analysis on how their business will be affected.

As such, we ask our members in EWCs and SEs, as jointly advised by the European Trade Union Federations, to **request information and consultation on the foreseen impact of Brexit** on the economic and employment situation in their multinational company.

Many further discussions and agreements still need to be debated and agreed (such as services) and there is much still unknown. However, industriAll Europe will continue to keep our members updated and stand up for our sectors and workers in both the UK and the EU, as well as across wider Europe.

Useful links

Please find below links to the relevant texts from both the European Commission and the UK Government:

- [Final full text](#) (subject to legal scrubbing)
- [European Commission Overview](#)
- [European Commission Q&A](#)
- [UK Government Overview](#)