

CEEAC Convenor and Deputy Convenor attendance at EU-UK Parliamentary Partnership Assembly, Brussels 11-12 May

Scottish Government Background Brief on EU-UK Trade and Cooperation Agreement and Northern Ireland Protocol

Trade and Cooperation Agreement: major Scottish Interests

The Trade and Cooperation Agreement (TCA) marks a significant step backwards from our trading position within the EU. Businesses seeking to trade with the EU must navigate additional bureaucracy, costs and potential delays as exporting to the EU now requires extensive certification – especially for agrifood products. This has been especially difficult for industries (such as sea food) where there is a premium paid for freshness and relatively slight delays can significantly impact the value of the product.

The loss of freedom of movement has compounded the difficulties with labour shortages associated with the pandemic and we have lost access to a range of EU programmes worth millions of pounds to Scotland, including both Erasmus and European Territorial Cooperation programmes.

While not strictly part of the TCA, there are also several other major issues in EU–UK relations which are often explicitly or implicitly linked to progress on the TCA. Three of the most notable are: the Northern Ireland Protocol (NIP) data protection and financial services.

Due to the unique circumstances of Northern Ireland having a land border with a EU member state, where it is politically infeasible to erect border infrastructure, the UK and EU agreed the **Northern Ireland Protocol**. This replaced the controversial Backstop provisions in the previous Withdrawal Agreement. The Protocol has proved controversial, with some Unionists fearing that it undermines Northern Ireland's constitutional position within the UK.

On **data protection**, the EU has recognised the UK's data protection regime as "adequate," for both protecting business and law enforcement data (but not immigration data). This provides much-needed certainty for businesses, and removes the additional cost and administrative burdens that would be required in the absence of adequacy decisions. Loss of adequacy would also risk crucial information not being shared with Police Scotland.

The Commission must review the adequacy decisions in 2024, and any significant departure from EU-law based rules by UKG could result in the existing decisions being reviewed before then.

On **financial services** the TCA includes very limited commitments which are broadly limited to a reiteration of the parties' existing commitments. Given the importance of Banking and Finance to our economy – with Scotland being one of Europe's leading financial centres and the second largest international financial hub in the UK - we are disappointed with the minimalist outcome of the TCA.

Our Financial Services industry – which employs nearly 160,000 people - faces ongoing uncertainty about access to EU markets, risking further costly restructuring and putting Scottish jobs and investment in doubt. Access to markets is facilitated through equivalence decisions – which are entirely at the discretion of the Commission. There has been limited progress on the decisions regarding many areas of equivalence, inflicting ongoing uncertainty to the sector.

Scottish Government officials are currently working with UK officials to address a range of TCA issues – including the six major issues discussed below.

1. PROGRAMMES (Horizon Europe association)

Scotland is a significant player on the EU research stage and has benefitted substantially from access to EU research programmes, most importantly Horizon Europe. The scope, scale and prestige of this €95.5bn programme is globally unparalleled. Scotland has benefited greatly and performed extremely well in Horizon initiatives to date.

Scotland may have stood to gain up to £182m per year in research funding under Horizon Europe (based on Scottish participation rates in Horizon 2020, and the new Horizon Europe budget) but this could fall dramatically if the UK cannot secure association to Horizon Europe and no alternative funding is provided. Non-EU countries including Georgia, Kosovo, Montenegro, North Macedonia and Serbia have all now secured association agreements, but the UK Government has been unable to do so, it is widely thought this is “collateral damage” due to ongoing disagreements over the Northern Ireland Protocol.

The longer the uncertainty, the greater the risk of Scottish researchers losing out, damaging our international collaborations and research excellence.

2. FISHERIES

Although the TCA nominally increases the fisheries quotas assigned to Scottish industry in practice the vast majority of this new quota is based on quotas which EU industry did not use in previous years. Just as EU industry could not use these quotas, Scottish industry cannot make use of these – leaving the additional quota mere “paper fish.”

While we were in the Common Fisheries Policy Scottish industry was able to secure additional quota by buying or swapping quota directly with EU companies. This flexibility has now been lost and the quota shares negotiated by UKG through the TCA have on the whole left Scotland with less opportunities, leading to disadvantage for Scottish industry.

3. AGRIFOOD EXPORTS

Under EU law certain agrifood products (prohibited and restricted (P&R)) goods cannot be imported from third countries (such as the UK) to the EU, or can only be imported by complying with impractically restrictive health requirements. Major Scottish exports in this category includes: chilled mince and meat preparations, seed potatoes and live bivalve molluscs.

- **Chilled meats**

Currently EU law does not allow certain chilled meats and meat preparations to be imported from third countries – although frozen exports are possible.

Historically this was justified by the EU's distance from major meat producing countries.

- **Seed potatoes**

Pre EU-Exit Scotland exported 20-30K tonnes of seed potatoes to the EU (& NI). Post EU-exit EU will only permit imports from the UK if it 'dynamically aligns' across all EU plant health and seed potato measures - UKG will not agree to this. Post EU-exit the UK's (incl. Scotland) plant health measures have diverged to block the introduction of serious pests from EU, although not in relation to seed potato pests. The EU has the authority to grant a derogation from these requirements but has declined to do so.

- **Live Bivalve Molluscs**

EU law does not allow the import of live bivalve molluscs from class B waters.

These molluscs must be processed (depurated) before export.

In a sector where freshness is crucial to product value, depurating molluscs within the UK (rather than in the receiving nation as was done in the EU) will significantly reduce their value. There is also insufficient depuration capacity in GB.

Although 65% of Scottish waters are designated as class A, and the seafood farms can still export, this does have an impact in our aquaculture sector and a greater impact in the aquaculture sector across GB because the remainder of the farms may be in Class B for some or all of the year

4. NATIONALITY BARS IN EXTRADITION

Ten EU countries (Croatia, Finland, France, Germany, Greece, Latvia, Poland, Slovakia, Slovenia, Sweden) have declared that they shall not extradite their nationals to the UK, and an additional two countries (Czechia and Austria) have confirmed that they will only extradite their nationals if the requested person consents to extradition which, in essence, is tantamount to an absolute bar.

Most other EU countries have introduced further restrictions on extradition; with only four states (Belgium, Ireland, Spain and Italy) declaring no bar to extradition to the UK.

SG and UKG are seeking to convince states to limit or lift these barriers to extradition so our prosecutors can carry out their work.

Additionally, SG and UKG officials and prosecutors are considering how proceedings can be transferred to countries that refuse to surrender their own nationals in order to permit those countries to institute proceedings against wanted or requested persons under their own national laws. Part of this work concerns how victims and witnesses in Scotland can have their rights and interests best protected when taking part in foreign criminal proceedings.

5. SERVICES (touring artists, Cabotage)

Although the TCA incorporates some provisions for business travel, these rules specify certain activities and do not apply to touring musicians and other creative professionals. As such, the TCA contains no mobility arrangements for those working in the culture sector. Additionally, touring musicians and other creative professionals may need separate visas and permits for different legs of a tour.

This complexity is compounded by opaque information provided by some member states which makes it difficult to determine how to navigate these systems.

Additionally, there are transport rules (known as cabotage) which restrict the number of stops a haulier can make in another party's territory (for example a Scottish haulier in the EU). These rules are disruptive to industry, but are anticipated to be particularly disruptive for touring shows which need to transport props, instruments and similar equipment. New customs requirements will also mean additional financial and administrative burdens.

The impact of these rules has been obscured by Covid and the limited transport permitted during this period.

6. ENERGY

We have lost access to the EU Internal Energy Market (IEM) which enables efficient, frictionless cross-border trading of electricity which offers benefits such as energy security and lower cost energy to domestic consumers and businesses.

This has been replaced by an interim model of electricity trading that is more efficient than arrangements would have been under a no deal scenario but not as efficient as membership of, or full participation in, the IEM.

Analysis has previously been carried out to ascertain the price impacts of the use of the current less efficient trading model against the model that was in use prior to exiting the EU. Due to the complexities of the models this has proved difficult to quantify.

The TCA sets out the basis for further negotiations to agree upon a more efficient trading model to be implemented by April 2022. However BEIS have indicated that EU officials are dragging their heels in this process and it is now unlikely that a new trading model will be designed and implemented by the April 2022 deadline.

Contract for Difference (CfD)

The EU has expressed concerns about the UK Government's process for questioning 'the percentage of UK content' in the supply chain plan put forward by applicants to CfD. The EU has made clear that it considers the scheme both in breach of the UK's TCA and WTO obligations and raised the dispute through the WTO dispute settlement process. The Scottish Government has been involved in the scoring of the CfD supply chain plans, but the final decision of whether an application is successful is a matter for the UK Government. The Scottish Government takes a similar view to the UK Government in its support for utilising the local supply chain e.g. the recent ScotWind offshore wind leasing auction.

The Contract for Difference (CfD) scheme is the UK Government's main mechanism for supporting low-carbon electricity generation. Given SG ambition for the continued growth of renewable technology including ambitions for 8-12GW of onshore wind by 2030 and the recent announcement by Crown Estate Scotland to award lease options for 25GW of offshore wind the CfD will remain a vital support scheme for developers. The recent announcement to increase the frequency of CfD rounds will provide increased stability to the renewables industry and lead to greater economic opportunity for Scotland.