

EU-UK Trade and Cooperation Agreement – governance arrangements and opportunities for scrutiny

Context

The EU-UK Trade and Cooperation Agreement (TCA) includes provisions affecting areas of devolved competence such as fisheries, animal and plant health, the environment and justice.

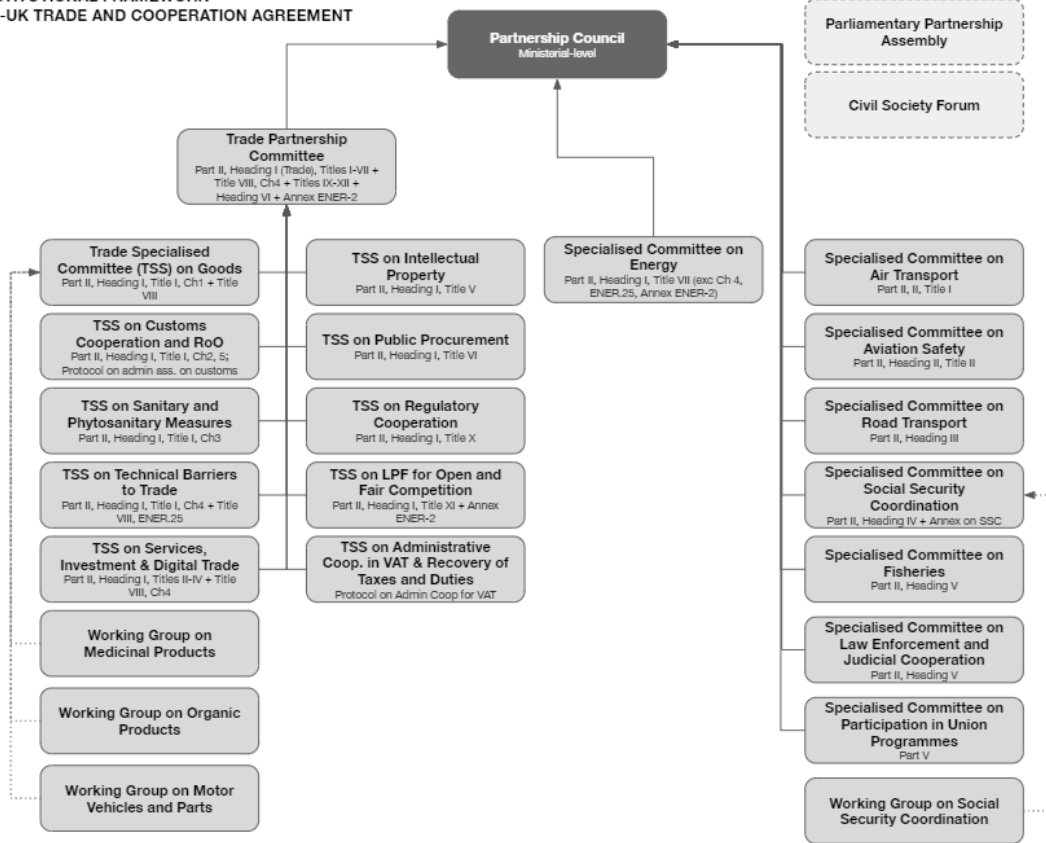
The TCA includes governance arrangements to ensure its smooth and effective operation. These governance arrangements include EU-UK groups including a Partnership Council and a number of Specialised Committees. The governance arrangements provide wide-ranging powers for the European Commission and the UK Government in the management of the Agreement (including in areas of devolved competence). It also provides a limited role for the UK Parliament in partnership with the European Parliament

There are currently no formal arrangements in place for scrutiny by either the UK Parliament or the devolved legislatures of the operation of the TCA. This briefing provides details of the governance arrangements included in the TCA, the role of the Scottish Government and where there are opportunities for the Scottish Parliament to scrutinise.

The governance arrangements in the TCA

A key element of the TCA are the governance arrangements included to oversee its operation. These are made up of the Partnership Council, a series of Specialised Committees and the Parliamentary Partnership Assembly.

INSTITUTIONAL FRAMEWORK
EU-UK TRADE AND COOPERATION AGREEMENT



The Partnership Council

The Agreement is overseen by a Partnership Council which is co-chaired by a Member of the European Commission (currently Vice-President Maroš Šefčovič) and a representative of the UK Government (currently Foreign Secretary Liz Truss). It comprises representatives of the EU and the UK.

The TCA leaves the precise composition of each party’s delegation up to the parties. This means that the UK delegation may feature representatives from the devolved administrations, but this is not a requirement stipulated in the TCA. Irrespective of whether the devolved administrations are represented at Partnership Council meetings, the UK must speak with one voice, i.e. through the UK Government.

The Partnership Council is required to meet at least once a year, or more regularly at the request of either party.

According to the Agreement, the role of the Partnership Council is to:

“oversee the attainment of the objectives of this Agreement and any supplementing agreement. It shall supervise and facilitate the implementation and application of this Agreement and of any supplementing agreement. Each Party may refer to the Partnership Council any issue relating to the implementation, application and interpretation of this Agreement or of any supplementing agreement.”

Decisions taken by the Partnership Council require the mutual consent of both the European Commission and the UK Government. The Partnership Council's decisions are binding upon the parties.

The TCA includes provisions affecting areas of devolved competence such as fisheries, animal and plant health, the environment and justice.

A key function of the Partnership Council is that it can be a forum for the EU and the UK Government to agree to amendments of aspects of the TCA (or to supplementing agreements) (see Article 7(4)(c)) with the exception of amendment of Title III of Part 1 which provides the institutional framework for oversight and implementation of the Agreement. There is no provision in the TCA for any of the Parliaments within the jurisdiction of the parties to scrutinise such decisions before they are taken.

Meetings and Decisions of the Partnership Council

Research for this paper shows that according to the UK Government's published information, the Partnership Council has met once on 9 June 2021. The devolved administrations were represented at the meeting. No decisions were taken.

The Specialised Committees and working groups

There are 18 Specialised Committees and 4 working groups that sit beneath the Partnership Council. They oversee particular elements of the Agreement. The policy areas covered by these committees include devolved competences such as fisheries, animal and plant health, the environment, law enforcement and judicial cooperation, and public procurement.

The primary role of the Specialised Committees is to "monitor and review the implementation and ensure the proper functioning" of the TCA. In addition, the Specialised Committees should:

"assist the Partnership Council in the performance of its tasks and, in particular, report to the Partnership Council and carry out any task assigned to them by it".

An analysis of the relevant provisions of the TCA shows that an important element of the work of the Specialised Committees is information flow. E.g. the role of the trade specialised committee on sanitary and phytosanitary measures entails the exchange of 'views, information and experiences' (Article 87 (e)). The Specialised Committee on law enforcement and judicial cooperation also plays a central role in managing the flow of information between the EU and UK sides.

Finally, the Committees are assisted by four themed Working Groups which have responsibility for assisting the specialised committees in their work.

Meetings and Decisions of the Specialised Committees

Research for this paper shows that according to the UK Government's published information, most Specialised Committees have met once and, in a few cases, twice in total so far.

The UK Government has published two decisions made by Specialised Committees:

The [Fisheries Specialised Committee](#) published a Decision on 3 March 2022 on the establishment of a Working Group on Fisheries.

The [Specialised Committee on Social Security Coordination](#) published a Decision on 28 October 2021 on the amendment of the Annexes to the Protocol on Social Security Coordination

Parliamentary Partnership Assembly

The only link between legislatures and the Partnership Council is provided by the Parliamentary Partnership Assembly (PPA) which has been established under the Agreement. It consists of Members of the European Parliament and Members of the UK Parliament. The TCA does not require the representation of devolved legislatures in the PPA. The UK delegation includes the [following MPs from Scottish constituencies](#):

- Andrew Bowie MP
- David Mundell MP
- Phillipa Whitford MP

Alyn Smith MP has been named as a substitute member.

The Assembly will act as a forum to exchange views on the UK-EU partnership. In addition, the Assembly will be able to seek information from the Partnership Council, be informed about decisions and recommendations of the Partnership Council and make recommendations to the Partnership Council. This effectively gives the Parliamentary Partnership Assembly access to information but very little power to influence decision making under the Agreement.

The role of the PPA is:

- It may request relevant information regarding the implementation of this Agreement and any supplementing agreement from the Partnership Council, which shall then supply that Assembly with the requested information;
- It shall be informed of the decisions and recommendations of the Partnership Council; and
- It may make recommendations to the Partnership Council.

On 8 April 2022, Sir Oliver Heald MP, Leader of the UK Delegation to the PPA wrote to the Presiding Officer to invite two Members of the Scottish Parliament to attend the first meeting of the PPA in Brussels on 12-13 May 2022.

The Convener and Deputy Convener of the Constitution, Europe, External Affairs and Culture Committee subsequently attended the PPA as observers. Ahead of the PPA, there was a meeting of the UK delegation, the Convener and Deputy Convener were not invited to attend this meeting. Given the UK Parliamentary position will usually be agreed at the UK delegation meeting, it would be helpful if members of the devolved legislatures were able to attend. This would allow them to highlight the key issues of interest for each of the devolved legislatures as the UK delegation agrees its position. For example, given the PPA can request information from the Partnership Council and Specialised Committees, without access to the UK delegation it will be difficult for the Scottish Parliament representatives to request specific information about the operation of the TCA where it might affect devolved policy areas.

The Scottish Government's role

As referred to above, some of the Specialised Committees include consideration of issues which are within devolved competence such as fisheries, law enforcement and judicial co-operation. On 27 May 2021, the [Minister of State in the Cabinet Office, Lord Frost wrote to the Scottish, Welsh and Northern Irish Governments](#) to set out how the UK Government intends to work with the Devolved Administrations to ensure effective implementation of the TCA.

In his letter, Lord Frost set out that where items of devolved competence are on the agenda for the Partnership Council or the Specialised Committee, the UK Government expects to “facilitate attendance by Devolved Administrations at the appropriate level, i.e. at roughly similar seniority to UK Government attendees”. Lord Frost added that the preparations for a meeting where items likely to be discussed include matters of devolved competence the UK Government officials preparing the UK Government position should include representatives of the Devolved Administrations in those preparations.

In addition, Lord Frost confirmed that ahead of meetings of the Partnership Council (as with meetings of the Joint Committee - which oversees the operation of the Withdrawal Agreement) a meeting would be held between himself and Devolved Administration Ministers.

It is not clear whether the UK Government and the Devolved Governments have any agreement in place for the sharing of information about the operation of the Partnership Council and Specialised Committees.

Scottish Government representatives have been present at all specialised committee meetings that have taken place so far with the exception of meetings of the Committees on Intellectual Property and on Public Procurement. The involvement of the Scottish Government appears to have happened irrespective of whether the remit of the specialised committee overlapped with devolved competence.¹

Why oversight of the governance arrangements is important for the Scottish Parliament

Oversight of the governance arrangements will be crucial for the Scottish Parliament, not least because the TCA includes provisions in some areas of devolved competence and the Partnership Council has the following powers:

- The power to adopt binding decisions in respect of all matters where the Agreement or any supplementing agreement so provides. This includes the power to adopt decisions to issue binding interpretations of the provisions of Part Two of the TCA, which includes devolved areas, such as fisheries, level playing field obligations concerning the environment, and sanitary and phytosanitary measures (Article 519 (b)).
- The power to make recommendations to the Parties (the EU and the UK) regarding the implementation and application of the Agreement or of any supplementing agreement.
- The power to adopt, by decision, amendments to the Agreement or to any supplementing agreement in the cases provided for in the Agreement or in any supplementing agreement.

¹ The minutes of the first meeting of the Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties are not yet publicly available.

In addition, during the first four years of the Agreement, the Partnership Council will have the power to:

“adopt decisions amending this Agreement or any supplementing agreement, provided that such amendments are necessary to correct errors, or to address omissions or other deficiencies”.

As a result, significant decisions about the operation of the new Trade and Cooperation Agreement can be made by political agreement between the EU and the UK Government through the Partnership Council, or through the other Specialised and expert committees. This includes the ability to amend some aspects of the TCA. The decisions made in the Partnership Council or other committees could impact on areas of devolved competence, for example by changes to the nature of the “level playing field” obligations in the Agreement. The Agreement bakes in an intergovernmental approach to its oversight and development through the governance arrangements. This is likely to make it difficult for the devolved administrations to influence and for all legislatures across the UK to scrutinise the effects of the governance decisions.

Transparency on the governance arrangements and opportunities for scrutiny

Given the wide-ranging decisions that can be made in the Partnership Council and the Specialised Committees (including potentially in devolved policy areas), Scottish Parliament scrutiny of the operation of these groups is important.

Scrutiny of these bodies requires access to information on the operation and decisions of them. The European Commission publishes details of meetings and decisions of the bodies [on its website](#). On the UK side, the [UK Government has a webpage](#) where it provides agendas and minutes of meetings of the Partnership Council and the Specialised Committees along with decisions of the Partnership Council. However, neither the UK or Scottish Government (where appropriate) appear to have a reporting system set up to inform either the UK Parliament or the Scottish Parliament of developments and decisions related to either the Partnership Council or the Specialised Committees.

In addition, the Scottish Government has not provided reports to the Scottish Parliament on meetings of the Partnership Council or Specialised Committees which it has attended.

This lack of a reporting mechanism is a hinderance to the transparency and parliamentary scrutiny of the operation of the TCA’s governance structures.

Parliamentary Scrutiny of the TCA

The European Parliament’s [Foreign Affairs](#) and [International Trade](#) Committees have responsibility for leading the European Parliament’s scrutiny of the TCA. The EP’s role is primarily to scrutinise the work of the European Commission which oversees the operation of the TCA. The Commission is also answerable to the EU member state governments in the Council. The International Trade Committee has appointed Irish MEP, Sean Kelly (of the EPP) as the standing rapporteur for the UK agreement. This means he will chair the Monitoring Group for Trade with the UK and will have a very prominent role in the “UK Contact Group”, which provides the political direction for the Parliament².

² [MEP Kelly takes up prominent role as standing Trade Rapporteur for the UK - Seán Kelly \(seankelly.eu\)](#)

The [UK Contact Group](#) is co-chaired by David McAllister MEP in his role as Chair of the Foreign Affairs Committee and Bernd Lange MEP in his role as Chair of the International Trade Committee. The role of the Contact Group is to gather representatives from all political groups to scrutinise EU-UK relations and coordinate Parliament's position in response.

In the UK Parliament the equivalent responsibility for scrutiny of UK-EU relations rests with the [European Scrutiny Committee](#) in the House of Commons and the [European Affairs Committee](#) (along with a number of sub-committees) in the House of Lords.

There are no formal arrangements in place for scrutiny by either the UK Parliament or the devolved legislatures of decisions taken by the Partnership Council and the UK Government's actions as co-chair of the Partnership Council.

Some decisions taken by the Partnership Council may be subject to scrutiny by the Scottish Parliament if they are implemented in the UK by way of secondary legislation made by Scottish Ministers under section 31 of the European Union (Future Relationship) Act 2020. If Partnership Council decisions are to be implemented by way of secondary legislation laid in the UK Parliament affecting devolved areas and therefore requiring the consent of Scottish Ministers, the Scottish Parliament may be notified under the SI protocol between the Scottish Parliament and the Scottish Government. However, these mechanisms are unlikely to be used with every Partnership Council decision. In particular, as the case studies show, not all decisions taken under the TCA will require implementation at the devolved level, but can still have a significant impact in Scotland.

Moreover, these scrutiny mechanisms do not provide consistent or strategic oversight of how the TCA is being implemented in devolved areas. They also take place after the decision of the Partnership Council has been taken and can no longer be influenced. Given the binding character of Partnership Council decisions, there is very little scope for scrutiny even if an SI is laid before the Scottish Parliament.

The requirement for parliamentary scrutiny

In its [report on the UK Internal Market](#), the Committee made the following recommendations in relation to scrutiny of the TCA:

The Committee's view is that the Parliament's scrutiny of the implementation of the TCA requires transparency in relation to the Scottish Government's position in areas of devolved competence considered by the Partnership Council and the Specialised Committees. The Committee notes that awareness of the Scottish Government's position will also be essential in order for the Scottish Parliament to meaningfully contribute to the work of the PPA.

The Committee will invite the appropriate Scottish Government Minister to give evidence after each meeting of the Partnership Council. This will allow the Committee to hear an update on the Scottish Government's policy approach in discussions with the UK Government ahead of the Partnership Council and to provide details of the discussions at the meeting of the Partnership Council. The Committee also recommends that a formal parliamentary process needs to be developed in relation to the communication to the relevant subject committee of binding decisions of the Partnership Council and the Specialised Committees which relate to matters within devolved competence.

The Committee notes that there is a lack of clarity in relation to how the Common Frameworks process will work in relation to the implementation of the TCA. The Committee asks the Scottish Government to provide details of the role of Common Frameworks in relation to the TCA including whether they could provide a forum –

- to agree a UK position in advance of meetings of the Partnership Council and Specialised Committee;
- to address the implementation of binding decision of the TCA.

The Committee recommends that further consideration is given by Scottish Government and Scottish Parliament officials to the level of information which the Scottish Government is required to provide in supporting documents published alongside primary and secondary legislation relating to any consideration of the impact of the TCA including binding decisions of the Partnership Council and the Specialised Committees and other international obligations and international trade agreements.

The conclusions in relation to the TCA reached by the Committee in its Internal Market report illustrate that at present there are no mechanisms for accessing information about the governance of the TCA to assist with Scottish Parliamentary scrutiny. Based on the Internal Market report recommendations, the Committee might wish to consider what processes should be established to allow for better scrutiny of the governance of the TCA.

As this paper demonstrates, meetings of the Partnership Council and the Specialised Committees are taking place, and, in some cases, decisions are already being made. In addition, the Scottish Government is represented at some of these meetings, but no information is being provided to the Scottish Parliament on which meetings it is participating in and its policy objectives at these meetings.

As a result, the Committee may wish to consider what scrutiny process might be put in place (both in the short and medium term) for scrutinising the Scottish Government's policy objectives in discussions with the UK Government and at meetings of either the Partnership Council or the Specialised Committees. The Committee may also wish to consider how it can ensure it receives information about Decisions made by the Partnership Council and Specialised Committees where there is an impact on areas of devolved competence.

Finally, the Committee may wish to explore whether there are opportunities for collaboration with the other parliamentary committees across the UK to aid scrutiny of the TCA.

Similar impact/relationship with future UK bilateral trade agreements

The governance arrangements set out in the TCA are likely to be replicated in future UK bilateral trade agreements. As a result, the challenges the Committee faces in receiving information about and scrutinising the governance of the TCA are also likely to be faced when the committee seeks to scrutinise the governance of other UK bilateral trade agreements in the future.

Iain McIver, SPICe Research and Tobias Lock, Committee adviser