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The future EU-UK relations

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I. Introduction

Brexit challenges the complex supply chains and close-knit partnerships that European and British companies were able to establish over the past decades thanks to the European Single Market and the free-trade agreements (FTAs) concluded by the EU with the rest of the world. Keeping the EU-UK future economic relationship as close as possible whilst preserving the integrity of the Single Market and a level playing field is thus a central concern of the European business community.

All existing EU FTAs with third countries result from different preferences and choices and there is a certain scope for creativity. It is clear, however, that a disruption in the balance between the rights and obligations of cooperation is unacceptable to both the EU and the European business community. Looking at existing models, one can therefore distinguish between two fundamentally different approaches: market integration and trade liberalisation¹.

The European Single Market with its free movement of goods, services, capital and people follows the market integration approach. The abolishment of border controls is possible only through the harmonisation and convergence of domestic legislation necessary for mutual recognition on such a scale. Another condition is the participation of its member countries in the EU's legal system, ensuring that EU Treaty rules and EU legislation are an integral part of their domestic ones and prevail in case of conflict. Moreover, a number of flanking policies – such as competition and state aid policy, common environmental, consumer protection, and social policies or the opening of government procurement to prevent government purchases to favour domestic companies – are required to establish a level playing field.

By contrast, the trade liberalisation approach, as evidenced by CETA (the EU-Canada Comprehensive Economic Trade Agreement), the EU-Japan Economic Partnership Agreement and other FTAs, aims at facilitating international economic exchanges from a trade perspective without harmonising product and market regulations to a similarly significant extent as the Single Market. Whilst tariffs are reduced or eliminated, rules of origin apply and non-tariff barriers to trade are tackled to a much lesser extent. Especially for services trade, liberalisation in FTAs is very limited when compared to the Single Market as here barriers predominantly result from divergences in domestic product and market regulations. Although the EU's new-generation FTAs contain comprehensive chapters on competition, environmental protection, social policies and other flanking policies, these chapters merely establish minimum standards rather than harmonise legislation. As a result, many non-tariff barriers remain and border checks are necessary to ensure the compliance of traded goods with domestic legislation.

As an FTA cannot provide the same level of frictionless trade as a customs union, nor a similar level of regulatory alignment as staying in the Single Market, choices will have to be made, particularly in the UK between regulatory independence and maintaining comprehensive access to the EU market. For the European business community, it is important that the current level of frictionless market access for trade and investment be

¹ Eeckhout, P., [Future trade relations between the EU and the UK: Options after Brexit](#), 2018



maintained as much as possible. EU-UK trade must remain tariff and quota-free and non-tariff barriers must be minimised, including through the continuous mutual recognition of technical and regulatory standards, where possible. Regulatory cooperation will be crucial to ensure minimum disruption. In this context, EU regulatory agencies play a critical role. Whilst full participation in a number of EU agencies is conditional upon membership in the EU Single Market, BusinessEurope would encourage UK participation, and strong cooperation and continued exchanges of expertise and information between EU and UK agencies in a structured format, where possible. The conditions of UK participation should be determined on an ad hoc basis, in line with the rules of the respective agencies and respecting the interests of other third-country members.

It must be kept in mind, however, that the existing situation is based on the UK's membership in the Single Market with its balance of benefits and obligations. When the UK leaves this framework, the risk that its future policies distort competition will increase. It is therefore necessary that the future agreement establishes the right balance between rights and obligations in order to safeguard a level playing field, with appropriate safeguard measures in place in case of non-compliance. Here, especially competition policy, including taxation and state aid, is highly relevant and needs to be adequately addressed, alongside a high level of environmental, safety and other standards. Most importantly, the integrity of the Single Market must be preserved while ensuring the closest possible future relationship between the UK and the EU.

Moreover, it is of utmost importance for companies that the transition period is used as efficiently as possible in order to finalise, ratify and implement the agreement on EU-UK future relations. If it becomes evident that the initial transition period is insufficient to achieve this, both sides should agree on a prolongation of the transitional period, which must be adequately long as the Withdrawal Agreement only allows for this once. It should be avoided that businesses have to adapt twice to changing framework conditions as this would cause huge costs.

This paper seeks to provide a basis for informed discussions on the EU-UK future relationship by shedding more light on what the European Single Market actually offers in key areas and juxtaposing it to what existing FTAs can offer, then setting out the priorities of the European business community for future EU UK-relations. The first chapter sets out issue areas that are usually covered by recent EU FTAs² while the second chapter focuses on issues that go beyond existing FTAs³.

² As CETA is the most ambitious EU FTA in many areas, this paper mostly focuses on CETA when setting out what existing FTAs can offer, and it only refers to other FTAs if these go beyond CETA in a given area. Nevertheless, it should be kept in mind that a CETA-like agreement will not suffice to guarantee frictionless trade between the EU and the UK and it will fall far short of the benefits offered by the Single Market.

³ This paper does not claim to be comprehensive and set out all relevant aspects of the Single Market and existing FTAs.



II. The trade agreement

1. Customs and trade facilitation⁴

The European Single Market

The European Single Market allows for the free circulation of goods, services, people and capital. Its common external tariff and its common regulatory framework, establishing a level playing field for companies, setting high safety and environmental standards and promoting mutual recognition of related compliance tests, have made border checks between its member states almost entirely redundant. This allows the quick processing of goods at the EU internal borders and minimises the administrative procedures companies need to perform when trading within the EU. The EU Union Customs Code (UCC; [Regulation 952/2013](#)), which replaced the former Community Customs Code in May 2016, provides a comprehensive framework for customs rules and procedures in the EU customs territory. It also aims to establish a paperless and fully electronic customs environment by 2025. Nevertheless, amendments with regards to the [UCC's Implementing Act](#) and [Delegated Act](#) concerning simplifications and implementation of innovative solutions for business, such as centralised clearance and self-assessment, are still necessary.

The European Economic Area (EEA) brings together the EU member states and the three countries member of the EEA European Free Trade Association (EFTA) — Iceland, Liechtenstein and Norway — in the European Single Market. The [EEA Agreement](#) guarantees equal rights and obligations within the Single Market for individuals and economic operators in the EEA. It provides for the inclusion of EU legislation covering the four freedoms throughout the 30 EEA states. In addition, the agreement covers cooperation in other important areas such as research and development, education, social policy, the environment, consumer protection, tourism and culture, collectively known as flanking and horizontal policies. When a country becomes a member of the EU, it also needs to apply to become party to the EEA Agreement.

Finally, the EU has bilateral customs unions with 3 non-EU countries: Turkey, Andorra and San Marino. The customs union with Turkey ensures free movement of industrial goods and certain processed agricultural products but it does not cover primary goods, agricultural products or services. In addition, Turkey is aligned with EU regulation in certain areas necessary for the proper functioning of the customs union.

Existing EU free-trade agreements

CETA contains a specific chapter on customs and trade facilitation which simplifies, streamlines and modernises procedures and requirements related to the import, export and transit of goods. Instead of each shipment being examined upon entry, the agreement promotes risk-based procedures and pre-arrival processing. It also enhances transparency through requiring parties to make public all relevant information relating to customs requirements, including e.g. legislation and information on fees and charges.

⁴ For more information on customs challenges caused by Brexit and possible solutions, see also BusinessEurope's 2018 study [Brexit: the customs implications and solutions](#)



Moreover, CETA encourages parties to the agreement to use automated, electronic customs procedures, where possible with fully interconnected single-window systems to facilitate a single submission of the required information. Certainty and predictability are increased through ensuring a transparent and efficient review or appeal process as well as reliable advance rulings on tariff classifications. Lastly, the agreement promotes enhanced cooperation between the customs authorities, e.g. on convergence and simplification of data and documentation requirements, the exchange of information and best practices, mutual assistance and coordination in international fora.

The agreement contains complementary chapters on technical barriers to trade (TBT) and sanitary and phytosanitary measures (see Chapter II.2.). A specific protocol on rules of origin allows cumulation of origin between the parties and also contains provisions that open the possibility for diagonal cumulation of origin for products originating in a country with which both Canada and the EU have a free-trade agreement. For more transparency, exporters can consult the Market Access Database to check which rules of origin apply for a specific product.

However, it is clear and unchallenged that CETA, as well as FTAs in general, fall short of achieving the type of frictionless trade enabled by the European Single Market. In particular, regulatory convergence remains limited in scope and depth.

What counts for business

Whilst future trade between the EU and the UK must remain tariff and quota-free, the possible re-introduction of costly and time-consuming border formalities is a major concern for companies. An EU-UK agreement should therefore foster **dialogue between regulators** within a framework of permanent cooperation to facilitate customs procedures and promote regulatory alignment in goods trade. It will be important to secure good **cooperation and information exchange between customs authorities** to ensure market surveillance and anti-fraud actions are effective. For effective market surveillance, options should be explored with respect to the “Safety Gate” (the rapid alert system for dangerous non-food products or RAPEX) and the Information and Communication System on Market Surveillance (ICSMS). Keeping the UK in these systems would help avoid duplication of structures and consumer protection. How a participation can be arranged should be subject to further examination.

Regarding customs declarations, self-assessment and simplification have the potential to reduce disruptions of trade between the EU and the UK. However, **simplified customs procedures** need to be developed for all businesses to ensure that enterprises, particularly SMEs and those that have never traded outside the EU before, can comply with the new customs obligations arising after Brexit in order to prevent supply chain disruptions. Particularly, customs authorities should adopt a process-oriented approach to customs clearance as opposed to a transaction-based approach. Moreover, pre-clearance of goods should be explored to reduce customs controls and to avoid queues at the border. In the EU Union Customs Code, possibilities for simplified customs procedures already exist for authorised economic operators (AEOs). However, these have not been fully implemented and the vast majority of companies trading between the EU and the UK do not hold this status and would have great difficulties obtaining it. BusinessEurope is in favour of a mutual recognition of AEO authorisations



between the EU and the UK so that companies that have already obtained their AEO authorisations benefit from less customs controls in the UK and the EU. In this context it should be recalled that most border checks are not linked to customs but to Single Market rules.

Regarding **rules of origin**, simplifications in the area of preferential origin are required in order to minimise the workload for all parties. The rules should allow companies on both sides to benefit from preferential EU-UK trade. At the same time, these rules also need to make sure that companies from third countries do not divert their trade through the EU or the UK to the other's market. One of the most important simplifications is the so-called registered exporter. It allows a company to issue the proof of preferential origin directly whilst the company ensures that it fulfils the rules of preferential origin. Customs authorities only conduct spot checks in case of postponed audits. If the EU27 and the UK negotiate an FTA, the number of required authorisations for approved exporters will increase significantly. It is therefore key that the authorisations be issued on time. Moreover, the future FTA between the UK and the EU should include an origin verification system that is strictly based on the judgement of the customs authority of the exporting country – unlike the EU-Japan EPA where it is based on the importing country – in order not to complexify the relationship between the importer and the exporter.

Another example where the EU and the UK can minimise the burden of increased customs declarations relates to **low-value consignment relief**. This is the threshold under which low-value consignments can enter the EU and UK without taxes and duties being payable. It should be maintained for low-value consignments indefinitely after Brexit. This simplified customs process will avoid adding hundreds of millions of additional annual declarations into the EU's and the UK's IT systems, with knock-on effects on the wider economy.

To maintain the ease of trade with developing countries, the UK should seek to stay within the EU **Registered Exporter System** (REX), since it is a vital device to boost trade with developing countries whilst reducing the potential of administrative duplication for businesses operating in the UK and the EU.

To avoid that inspections for sanitary, phytosanitary, food safety or security purposes have to be conducted twice (e.g. for Irish goods that transit the UK before entering the EU or *vice versa*), the UK should implement its stated desire to remain in the **EU Common and Union Transit System**, and thereby maintain its access to the EU's new computerised transit system. Nevertheless, the administrative and economic burden of the scheme would need to be reduced. IT systems can also contribute to make the customs and administrative procedures more efficient and less complex and time-consuming for companies. In this regard, the EU should speed up the development of a 'single window' as a one-stop-shop for companies to lodge all their customs-related paperwork while the UK should develop its own 'single window' system.

Finally, the UK should maintain the **harmonised customs classification** based on the Integrated Tariff of the European Union (TARIC code) to avoid additional costs and resources due to product classification. In this context, the data required to lodge a customs simplification from both sides should be made as simple as possible.



2. Relations with third countries

Current situation

The EU has concluded more than 1,100 bilateral and multilateral agreements with third parties⁵, ranging from trade, development and sectoral economic issues, such as energy, aviation, or fisheries, to matters related to visa, human rights, and the Common Foreign and Security Policy. In the area of trade alone, the EU has negotiated over 40 Preferential Trade Agreements with over 70 countries. In addition, it has concluded numerous trade-related agreements, such as customs cooperation agreements or mutual recognition agreements on conformity assessment. From the day the UK withdraws from the EU, it will no longer be covered, neither by EU-only agreements (concluded by the EU or by the member states on its behalf) nor by bilateral mixed agreements (concluded by the EU and its member states on the one hand and the third country partner on the other). The UK has managed to roll over some of the EU's bilateral agreements in negotiations with the respective third countries.

What counts for business

The impact of Brexit on supply chains might be reduced by the EU-UK trade agreement but, in some cases, it will depend on how the UK will define and implement its own trade policy. Rolling over existing EU agreements, including FTAs, for the UK, where possible, is essential to reduce the damage. This especially applies to agreements with major trading partners and to non-EU European countries that are closely linked in pan-European value chains. Regarding FTAs, the cumulation and diagonal **cumulation of rules of origin** is vital to mitigate disruptions to supply chains in sectors and businesses that have integrated operations across Europe and more widely. To make this more feasible, the UK needs to adopt the same rules of origin as the EU and in this regard could also remain party to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin (PEM Convention). If it is not possible to keep the UK in the PEM-zone, the future agreement between the UK and EU should allow for cumulation with EFTA, Turkey and the Western Balkans.

3. Mutual recognition and regulatory cooperation

The European Single Market

Whilst intra-EU tariffs have been eliminated since 1968, many non-tariff barriers remain. The Single European Act adopted in 1986 sought to tackle this problem by deepening cooperation and harmonisation across all relevant policy areas amongst EU member states to eliminate barriers to the free movement of goods, people, services and capital. To date, more than 3,500 Single Market measures have been adopted, most of which establish EU-wide common minimum regulatory standards. Trade in goods is regulated at three levels. First, there are a number of horizontal measures covering issues such as health, safety, the environment or a level playing field. For example, [Decision 768/2008/EC](#) establishes general principles and reference provisions for the marketing of products; [Regulation 765/2008/EC](#) establishes the requirements for accreditation and

⁵ CEPS, [The Impact of Brexit on the EU's International Agreements](#), 2016



market surveillance (NB: from 19 April 2020, [Regulation 2019/1020](#) replaces the chapter of Regulation 765/2008/EC that deals with market surveillance); and the general safety requirements on any product placed on the market are set out in [Directive 2001/95/EC](#). Second, dozens of sectoral measures establish rules for specific groups of products – there are 68 legal instruments harmonising EU rules on non-food products alone, including e.g. type approval of motor vehicles or CE marking for medical devices. And third, there are thousands of product standards (both harmonised and non-harmonised) agreed upon by industry. Here, the European standardisation organisations CEN, CENELEC and ETSI are increasingly replacing national standards with voluntary EU-wide standards, many of which complement the harmonised essential requirements.

The compliance with regulatory standards is in many cases verified by tests and auditing procedures, whereby mutual recognition of testing and certification ensures that tests only need to be conducted in one EU member state for a product to be marketed in the entire EU. To help supervise compliance with EU law, implement EU policies and provide in-depth expertise to improve policy-making, the EU has set up 36 regulatory agencies, including e.g. the European Banking Authority, the European Chemicals Agency or the European Medicines Agency. These are independent bodies although their decisions need to be reviewed and approved by member state representatives and EU institutions. Almost all these agencies have established rules for the cooperation with or participation of third countries – Norway, for example, participates in 28 agencies⁶.

Existing EU free-trade agreements

The horizontal chapter on regulatory cooperation in CETA encourages regulators to exchange experiences and information and identify areas where they could cooperate. Amongst other things, the chapter applies to regulatory measures covered by the WTO Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) Agreements, the GATT 1994, the GATS (General Agreement on Trade in Services), and the CETA chapters on TBT, SPS and cross-border trade in services. It aims at promoting the use of regulatory best practices and transparency as well as the recognition of equivalence and the alignment of legislation, reducing compliance and administrative costs for industry, and contributing to the protection of human life, health or safety, animal or plant life or health and the environment. For these purposes, regulators exchange information, including on contemplated regulatory action, and engage in consultations to avoid unnecessary regulatory divergences. They also identify solutions to reduce adverse effects of existing regulatory differences on bilateral trade and investment and cooperate on international standards. Regulatory cooperation is facilitated by the Regulatory Cooperation Forum composed of officials of both parties and convening at least annually.

The CETA TBT chapter incorporated most of the WTO TBT Agreement and contains provisions improving transparency and fostering cooperation between the EU and Canada in the field of technical regulations, standards, metrology, conformity assessment procedures, market surveillance or monitoring and enforcement activities. The parties also agree to promote closer cooperation between their standardisation bodies and their testing, certification and accreditation organisations. A separate protocol

⁶ von Ondarza, N.; Borrett, C., [Brexite and EU agencies - What the agencies' existing third country relations can teach us about the future EU-UK relationship](#), April 2018



improves the mutual recognition of the results of conformity assessment in the two countries by allowing certification bodies from each party to certify for the other party's market according to the technical regulations of this party. It contains a list of goods for which the parties recognise conformity assessment bodies, with the possibility to extend the coverage following demands by economic operators. This reduces the costs for businesses on both sides.

On SPS measures, CETA incorporates the rights and obligations of the parties under the WTO SPS Agreement and promotes the mutual recognition of SPS measures. Whereas all products exported to Canada or the EU need to fully comply with applicable SPS rules, which are not amended by the agreement, CETA streamlines the process, thereby protecting health while reducing costs and improving the predictability of trade in animal and plant products. It simplifies the approval process and encourages the EU to work towards an EU-wide instead of the current member state-specific SPS assessment and approval process. Moreover, a fast-track approval process is introduced for items jointly identified as priorities. For meats and meat products, the parties commit to minimising trade restrictions for unaffected goods in the event of a disease outbreak. Finally, the agreement increases transparency on SPS requirements and requires the parties to exchange information on significant disease and food safety issues, changes in SPS measures and competent authorities and relevant risk assessments and scientific opinions produced by a party.

What counts for business

For the European business community, avoiding disruptions both from an economic and from a legal point of view is key for future EU-UK trade and investment relations. That is why, ideally, the UK should incorporate the '*acquis communautaire*' upon its exit from the EU considering the need for an appropriate dynamic and as far as possible automatic mechanism to manage regulatory alignment and regulatory and supervisory cooperation. Moreover, the EU-UK agreement should be subject to a proper dispute settlement mechanism to ensure legal certainty whilst respecting the fact that the EU Court of Justice remains the only body authorised to interpret EU rules.

If this is not possible, the second-best option would be setting an ambitious framework for **regulatory cooperation and dialogue**. Recent agreements with Canada and Japan could serve as the basis for an arrangement that should go much deeper and include more sectors. Creating the necessary framework to ensure a systematic dialogue between regulators and good cooperation between standardisation bodies in the EU and the UK could to some extent mitigate the negative impact of Brexit (e.g. duplications and additional costs for companies). However, if no binding regulatory alignment for goods is agreed, this will fall short of ensuring frictionless trade in the medium and long term.

With European supply chains that have developed over decades, establishing a separate and possibly different UK regulatory regime would create enormous problems in practice and would involve significant costs for many companies in sectors including chemicals, the automotive sector, medicines, waste shipment and aeronautics. In addition, the duplication of certification procedures is time-consuming and cost-intensive. Therefore, many UK regulations should remain aligned with the EU for the long term. This would create the necessary conditions to negotiate and conclude **mutual recognition**



agreements (MRAs) between the EU and the UK, allowing the mutual recognition of reports, certificates and authorisations issued by conformity assessment bodies. To facilitate this, related classifications, registration requirements, test methods, data protection rules and authorisation obligations should also remain harmonised. Such MRAs could be negotiated in parallel to FTA negotiations to speed up the process. Additionally, an appropriate level of participation of UK authorities in relevant EU regulatory agencies should be considered.

The agreement's provisions on **sanitary and phytosanitary measures**, including veterinary rules, need to be compatible with European supply chains.

Decisions by and **cooperation between market surveillance authorities** (MSAs) in the EU and the UK should ideally take place on equal terms (i.e. UK MSAs should have the same status as EU MSAs both in terms of decisions and in terms of their role in any EU networks / cooperation mechanisms and *vice versa*).

Regarding **standardisation** as such, this needs to be dealt with outside the agreement as standards organisations are private bodies. Nonetheless, continued membership of the British Standards Institute in CEN-CENELEC, to the extent that the internal procedures of CEN/CENELEC allow for this, would be beneficial for the European industry. In this context, it is worth mentioning that standards institutions from Norway, Iceland, Turkey, Switzerland, Serbia and Macedonia are part of CEN-CENELEC.

Finally, **continued cooperation on information sharing** is vital in many areas. For medicines and medical devices, for example, the UK will no longer be automatically obliged to report to EU authorities when a product is considered faulty or dangerous on the UK market even if the same product is also on the EU27 market, or automatically notified of the same in the EU. It is in the interest of European consumers for cooperation that information sharing continues.

4. Digital economy and data flows

The European Single Market

In this area, the central pieces of legislation are the [General Data Protection Regulation](#) (GDPR) and the [Regulation on the free flow of non-personal data](#). In force since May 2018, the GDPR is the basis for the free flow of personal data across the EU. Besides introducing principles like the 'right to be forgotten' or 'clear and affirmative consent' for the processing of personal data, it also sets the conditions allowing operators the right to transfer personal data to another service provider, obliges them to notify customers in case of data breaches and provides principles for transfers of personal data to third countries or international organisations. Moreover, it places higher demands on data protection procedures and is underpinned with strong enforcement mechanisms, including significant fines. The [Regulation on the free flow of non-personal data](#) applicable as of May 2019 seeks to maximise the potential of new digital technologies like Artificial Intelligence and the Internet of Things by eliminating data localisation requirements to improve legal certainty and enhance portability. It applies both to non-personal data and sets of mixed personal and non-personal data subject to the GDPR.



Existing EU free-trade agreements

The European Commission recently recognised the importance of using FTA provisions to address both free data flows and unjustified data localisation requirements in third countries, but the language developed for this purpose lacks ambition. To date, no EU FTA contains provisions facilitating the free flow of data. Article 8.81 of the EU-Japan FTA merely states that the parties “shall reassess within three years of the date of entry into force of this Agreement the need for inclusion of provisions on the free flow of data into this Agreement”. Rather, the free flow of personal data between the EU and a third country is either contingent on an adequacy decision from the European Commission on the basis of Article 45 of [Regulation \(EU\) 2016/679](#) or contingent on the use of various transfer mechanisms highlighted in Article 46 of [Regulation \(EU\) 2016/679](#). The easiest, and preferred, method for business to transfer data is through an adequacy decision. An adequacy decision determines that a third country offers an essentially equivalent level of protection compared to provisions laid out in EU law and is based on the Commission’s full review of the country’s domestic data regime to determine how its data protection landscape matches the requirements of EU law. So far, the Commission has recognised 13 states and territories, including Argentina, Canada, Israel, Japan, New Zealand, Switzerland, Uruguay and the USA (limited to the privacy shield framework) as providing adequate protection and talks are ongoing with South Korea.

However, there is no set timeframe for an adequacy decision. For Brexit that means that, in the absence of an agreement, there will be a period of time after the end of the transition period where data transfers will have to be done through the transfer mechanisms of Article 46 of the GDPR (i.e. standard contractual clauses, binding corporate rules or permitted deviations⁷). Moreover, adequacy can be unilaterally renounced by the European Commission if an adequate level of protection is not satisfied. Thus, a more stable, permanent alternative would be preferred, given the close commercial (and therefore digital) ties between the UK and the EU.

What counts for business

Uninterrupted flows of both personal and non-personal data between the EU and the UK are indispensable for European businesses. Data flows take place in virtually all types of today’s businesses: without a free flow of data, companies might face serious obstacles in basic operations including salary payments, customer relationship management, or data backups. The free flow of data is of the utmost importance for the European business community.

It is essential either to have an arrangement in place or to ensure that any UK application for an adequacy decision from the European Commission is in place on the effective date of Brexit. In light of the UK leaving the Single Market, BusinessEurope sees the

⁷ Beyond the binding corporate rules which only apply within a group of enterprises, certification mechanisms and codes of conduct take extremely long to put in place. Finally, standard contractual clauses could be challenged because the Court of Justice of the European Union was asked for a preliminary ruling on their validity. Consequently, standard contractual clauses are not a sufficiently stable and secured legal mechanism and, given the excessively short periods, codes of conduct and certification mechanisms are not adequate. It is therefore clear that compliance of enterprises is almost impossible.



urgent need for action on the following items to allow for a frictionless flow of data between the EU and the UK after Brexit.

- We call on both the EU and the UK to strive for a **deep and comprehensive agreement on data flows** as a permanent framework that provides business certainty and addresses the potential for regulatory divergence. Such an ambitious agreement could serve as a standard for future negotiations with other nations around the world.
- Every data regime between the EU and the UK – interim or permanent – should encompass **personal and non-personal data**.
- To ensure a level playing field, the current **level of data protection in the EU must not be undermined**.
- BusinessEurope calls on the UK government, which was an early adopter of the GDPR and a leader in its implementation, to keep implementing the GDPR and other data-related EU laws after Brexit. **Data protection requirements in the UK must not be any lower than in the EU** as business favours a harmonised approach. In this regard, BusinessEurope welcomes the UK's implementation of the GDPR via its new Data Protection Act, which transposed GDPR requirements into national law⁸.
- The procedure for an **adequacy decision** should be launched now. As this process takes significant time the Commission should ensure that a decision is completed by the end of 2020, given the unprecedented alignment between EU and UK data protection standards. At the same time, it is essential that the UK ensures adequacy from its side; data flows must be reciprocal in a post-Brexit set-up.
- **Temporary rules** need to be put in place for UK-EU data flows until an adequacy decision comes into force. This includes pragmatic flexibility from data protection authorities in the possible limbo period between the end of the transition period and until a data adequacy agreement is fully in place, recognising that the UK's standards of data protection will be unchanged the day after Brexit.
- To ensure a streamlined development of rules in the future, BusinessEurope would welcome the participation of the **UK as observer in the European Data Protection Board and vice versa** to the extent that the rights of other countries – member states and third countries alike – are not infringed upon.
- To provide more certainty, the future agreement must include **provisions preventing forced localisation** that are more ambitious than the existing EU proposal for data flows in FTAs.
- The EU should encourage the UK to align its rules with the **Regulation on the free flow of non-personal data** and limit any exceptions to free data flow as strictly as possible.
- **Harmonised cybersecurity certification schemes and standards for ICT** should be aligned between the EU and the UK. Information on cyberattacks

⁸ UK, [Data Protection Act 2018](#).



should also be shared to protect the Internet of Things and related products, services and processes.

5. Trade in services

The European Single Market

The *acquis* for the internal market for services comprises provisions enshrined in the treaties, a horizontal services regime (e.g. the [Services Directive](#), legislation on public procurement, works and concessions), a sectoral services regime, and cross-cutting regimes for Single Market activities (e.g. the Digital Single Market, internal retail market, internal market for logistics). Additionally, some overarching aspects of the Single Market are of particular importance for the existing levels of services trade within the EU: the unified court system with the European Court of Justice (ECJ) as final arbiter, the free mobility of labour and the mobility of data. The [Services Directive](#), which was adopted in 2006, is the most significant single piece of legislation in this area. Although certain economic sectors, including taxation and non-economic services of general interest, were exempted, it covers services accounting for 46% of EU GDP. It specifies requirements that member states cannot impose on those seeking to provide services in their territory as well as requirements that are permissible if they are non-discriminatory, necessary and proportionate. [Directive 2005/36/EC](#) on the recognition of professional qualifications, as revised, and [Directive 2018/958](#) on a proportionality test before adoption of new regulation of professions are also central in this field. The latter serves as a preventive tool against excessive and disproportionate regulation of professions and will ensure that member states do not introduce unjustified barriers to the free movement of professionals.

On financial services, within the EU/EEA, the single passport typically enables a firm that is authorised and incorporated in one EU/EEA member state to conduct cross-border business across the EU/EEA and set up branches to conduct such business without needing a separate authorisation from other member states.

As part of the Digital Single Market strategy, the e-commerce directive ([Directive 2000/31/EC](#)) is one of the cornerstones of the services economy. It provides the legal framework for online services in the Single Market, removing obstacles to cross-border online services, providing legal certainty to business and citizens and preventing unfair discrimination against consumers and businesses who access content or buy goods and services online within the EU.

Existing EU free-trade agreements

With its negative list approach for Mode 1 (cross-border services), Mode 2 (consumption abroad) and Mode 3 (commercial presence), CETA is the most comprehensive trade agreement on services the EU has ever concluded. That being said, it falls far short of the degree of liberalisation in the Single Market. While CETA opens some services sectors, other sectors such as financial services, transport services and recreational and cultural services remain highly restricted. Generally, CETA closely follows the GATS schedule and although commitments by parties go beyond their WTO obligations, the most restricted sectors in GATS are also the most protected ones in CETA.



Chapter 8 of CETA covers investment (Mode 3), Chapter 9 cross-border trade in services (Mode 1 and 2), Chapter 10 temporary entry and stay of natural persons for business purposes (Mode 4). Chapter 10 on the mutual recognition of professional qualifications provides a detailed framework for the negotiation and conclusion of agreements on the mutual recognition of professional qualifications whilst leaving it up to the associations of regulated professions of both parties to initiate the process of negotiating such agreements and to agree on the conditions. Moreover, CETA contains additional chapters on financial services (without offering cross-border financial services market access), international maritime transport services, telecommunications, and electronic commerce.

For areas not subject to policy space reservations, CETA locks in the level of liberalisation through the inclusion of a standstill and a ratchet clause. The former ensures that adoption of new regulations or amendments of existing ones can go only in the direction of further openness for foreign companies. The ratchet clause stipulates that if a party unilaterally liberalises a measure it has listed in the Annex on reservations, that liberalisation becomes automatically bound in the FTA. Lastly, the most favoured nation (MFN) clause in CETA means that any CETA-plus services sector commitments made by one party to a third country in the future need to be extended to the other party, subject to the usual WTO exclusions.

What counts for business

Services play a fundamental role in the competitiveness of EU and UK economies accounting for over 70% of both the EU GDP and the EU labour force. The UK is the largest services exporter in the EU28, at €184.8 billion in 2017, representing 20.2% of total EU28 services exports (extra-EU)⁹. The EU27 and the UK trade in services are highly integrated thanks to the EU Single Market in services: the future EU-UK relationship should reflect this and retain as much ease of trade in services on each side as possible.

As with CETA, an ambitious EU-UK free-trade agreement should take a **negative list approach and foster dialogue between regulators** to facilitate and promote regulatory alignment. The precedents set by existing FTAs on regulatory cooperation and mutual recognition are not sufficiently ambitious to sustain EU-UK economic relations. Working together would allow the UK and the EU to continue to adopt best practices, ensure new regulations are appropriate for their respective economies, and allow both sides to maintain a level playing with a major trading partner. The future EU-UK agreement should mirror what is granted under the [Services Directive](#), the [Directive on the recognition of professional qualifications](#) and the [Directive on a proportionality test](#) before adoption of new regulation of professions as much as possible. Simultaneously, all steps beyond CETA that fall under the MFN clauses of EU FTAs with other countries must be in line with the EU's overall trade strategy.

The **audio-visual media services** sector, including telecoms and broadcasting, should be included in any scoping exercise. In current EU FTAs with third countries, this sector

⁹ [ILOSTAT](#) and [Eurostat](#).



is subject to serious limitations. Therefore, a future agreement should be more ambitious, based on reciprocity.

On **financial services**, the EU and the UK committed in the political declaration on their future relationship to preserving financial stability, market integrity, investor and consumer protection and fair competition, whilst respecting their regulatory and decision-making autonomy. As in light of the political circumstances, equivalence is the way forward in this area, we urge negotiators to conclude the assessments of their respective equivalence frameworks on regulatory and supervisory regimes by end of June 2020. We are aware that third-country equivalence regimes cannot bring the same level of benefits in terms of market access as being a member of the Single Market. First, many areas of financial services are not covered, in particular in the area of banking. Second, the scope of third-country market access is more limited in some areas of financial services, such as investment services. And third, market access for foreign financial services providers is not granted on a permanent basis as equivalence decisions can be discretionally revoked by both sides at any time. In the future agreement, assessments and decisions on equivalence regimes should be driven by a spirit of reciprocity, appropriate consultation, transparency and cooperation on regulatory and supervisory matters.¹⁰

Regarding **postal and courier services**, the future agreement should include provisions to ensure a level playing field with the universal service provider as well as equal treatment of international courier services and international postal services regarding customs and other laws and procedures related to import and export. This includes those related to border procedures, customs clearance and security procedures. Moreover, there should be transparent and non-discriminatory licence application procedures, if required.

Concerning **electronic commerce**, the country-of-origin principle should be pursued in some shape in the future agreement with the UK.

6. Government procurement

The European Single Market

EU law sets out minimum harmonised public procurement rules in order to create a level playing field for all businesses across its member states. Three directives¹¹ set out the main rules organising the way public authorities and certain utility operators purchase goods, works and services. They apply to tenders of which the monetary value exceeds a certain amount (EU thresholds) whilst national rules apply for tenders of a lower value. Tenders exceeding their sector-specific threshold must be published at EU level and awarded in a fair, equitable, transparent and non-discriminatory manner. Lighter rules apply to the utilities sector (water, energy, transport and postal services) and specific

¹⁰ On the continuity of financial contacts and access to finance, please refer to the dedicated section III.6.

¹¹ [Directive 2014/24/EU on Public Procurement](#); [Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors](#); [Directive 2014/23/EU on the award of concession contracts](#)



services, such as legal services, catering, health and social services. Two further important EU directives for remedies in view of public procurement and procurements of the above-mentioned utilities operators rule that for procurement procedures from EU thresholds member states must provide for an effective remedies procedure which allows for effective remedies in case of infringement of EU procurement law.

The EU procurement market is one of the most open in the world. Nevertheless, its legal framework contains certain provisions that can limit access for non-EU operators. For the utilities sector, for example, Article 85 of [Directive 2014/25/EU](#) sets forth that tenders submitted in the EU may be rejected if the proportion of the products originating in third countries that do not grant EU operators comparably open access to their procurement market, exceeds 50% of the total value of the tender.

Existing EU free-trade agreements

Rules for public procurement form part of several important modern bilateral trade agreements the EU has concluded with third countries in recent years. This applies especially to the FTA concluded between the EU and Canada. Firstly, CETA further opens the public procurement market at federal level. Secondly, it leads to a remarkable opening of procurement markets at provincial and municipal level, significantly exceeding the earlier, rather low level of market opening at sub-federal level. Finally, it also covers the procurement of public enterprises. Moreover, Canada committed to increasing transparency by publishing all of its public tenders on a single procurement website, corresponding to existing intra-EU arrangements. The parties ensure non-discrimination for each other's businesses by committing to limiting the conditions for a supplier to participate in a tender to its "legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement".

The agreement covers a broad range of sectors, set out in a positive list. For example, CETA offers unlimited access to rolling stock from EU suppliers. A number of sectors are excluded. For example, CETA contains a general exception of procurement indispensable for national security. Moreover, non-commercial services supplied in the exercise of government authority are excluded completely from the scope of CETA. Regarding the thresholds, for goods and services procured on federal level, a threshold of SDR 130 000 applies, with a threshold of 5 000 000 applying to construction services.

What counts for business

In the area of government procurement, provisions in the future agreement should mirror the existing EU legal framework as far as possible. This would be advantageous for companies on both sides. On the one hand, EU27 companies would maintain their access to one of the biggest markets for public procurement in Europe. On the other hand, it would be easier for UK enterprises to apply for EU27 tenders, which constitute an even bigger market. As the existing EU directives on public procurement have been transposed into UK law, they are already known and applied not only in the EU27, but also in the UK. Whilst the level of mutual market access should, in principle, not be lower after Brexit, access to the EU procurement market should only be granted to UK entities if a level playing field in terms of competition policy and particularly regarding state aid is ensured, and this should be subject to an appropriate dispute settlement mechanism.



Any bilateral agreement without a comprehensive chapter on public procurement would fall back behind the standard of other modern trade agreements of the EU concluded with third countries and would therefore not be acceptable. Whilst the UK needs to formally adhere to the WTO Government Procurement Agreement (GPA) in any case, the level of **commitments in the future EU UK agreement should go significantly beyond the GPA.**

Furthermore, the EU27 should clearly state from the beginning that the future agreement with the UK should **cover not only procurement at national level, but at all levels of government**, also including public procurement of regional and local authorities as well as public entities and state-owned enterprises. Furthermore, the rules should cover provisions on effective legal remedies for public procurement. It must be ensured that the conditions of those public contracts and concessions awarded to European companies by UK public authorities and *vice versa* before the date of Brexit or during the transition period, respectively, will be maintained after the transition period expires.

7. Competition and state aid

The European Single Market

With the aim of safeguarding the correct functioning of the Single Market, the EU competition policy comprises a wide array of areas, ranging from antitrust and cartels, merger examination and state aid to the liberalisation of markets and international cooperation. With the EU having exclusive competence in this field, the main actor is the Commission. Whilst the respective national competition authorities (NCAs) typically handle violations of competition rules occurring within one member state, the Commission monitors EU markets, receives complaints, collects evidence on anti-competitive activities affecting cross-border trade. Work between NCAs and the Commission is coordinated in the European Competition Network, sharing information, evidence and best practices and ensuring that competition rules are applied consistently across the EU. The decisions taken by the Commission can be challenged in the Court of Justice of the European Union (CJEU). The EU has one of the strongest systems of competition policy worldwide and its rules also apply extra-territorially, if actions of entities outside the EU have effects within the Union.

Existing EU free-trade agreements

CETA contains a competition chapter, in which the parties agree to prohibit and sanction practices that distort competition and undermine the benefits of free trade, including cartels, anti-competitive mergers and abusive behaviour by companies with a dominant market position. Additionally, the parties agree on rules limiting the potential negative effects of subsidies, through increased transparency and a consultation mechanism on subsidies that may have a negative effect on trade between them. This is without any prejudice to subsidies for public policy objectives such as research and development, training and regional development. Ambitious disciplines on state-owned enterprises ensure a level playing field with private enterprises in many sectors without limiting the government's ability to set up such enterprises.



Whilst the use of trade defence instruments in CETA is based on WTO rules, CETA provisions regarding anti-dumping and countervailing duties go beyond these. In particular, the parties agree to enhance transparency and information sharing, endeavour to apply the lesser duty rule and consider the wider public interest before imposing such duties.

Apart from FTAs, the EU also concluded dedicated bilateral competition agreements with several other countries such as Switzerland, the USA, South Korea or Japan. These agreements provide for a framework for coordination of and cooperation on enforcement activities.

What counts for business

After the UK's withdrawal, the British Competition and Markets Authority may no longer be part of the European Competition Network. Therefore, there should be specific provisions promoting cooperation between competent authorities in the EU and the UK to avoid parallel investigations with divergent outcomes.

Problems related to unfair competition could be partially addressed by the use of trade defence instruments although the UK will have to adopt its own legislation. Nevertheless, considering the intensity of EU-UK economic relations, UK regulations on competition and state aid should mirror the EU's regulatory setup as much as possible (treaty, block exemption and other regulations, frameworks and communications) to ensure a level playing field with appropriate mechanisms for influence and enforcement that benefit both sides. **Ex-ante notification and strong transparency provisions** should be put in place in the UK, and there should be an intensified focus on the implementation of state aid rules in both the EU and the UK.

As concrete language on **state aid** is currently being developed in the framework of EU FTAs, the EU-UK agreement could serve as a benchmark agreement in this area. It would be important that UK rules are aligned with EU rules and that there is a system in place that allows for notifications and the exchange of information regarding state aid.

Lastly, if the UK leaves the Customs Union, it will have to develop **trade defence instruments** of its own. It is therefore fundamental that the future UK trade defence regime retains close cooperation with that of the EU to avoid the risks of trade diversion.

8. Intellectual property

The European Single Market

Intellectual property rights (IPR)-intensive industries account for about 82% of EU trade with the rest of the world, generating an overall trade surplus for the EU of EUR 182 billion in 2016¹². The Single Market has a set of harmonised laws relating to protection and enforcement of IPRs in EU countries, including an EU-wide system for the protection of such rights. This framework consists of directives and regulations protecting copyright,

¹² European Patent Office and European Union Intellectual Property Office (EPO/EUIPO), [Intellectual property rights intensive industries and economic performance in the European Union](#), 2019



trademarks, patents¹³, designs and geographical indications (GIs). The Commission also fights against piracy and counterfeiting and helps businesses access and use IPRs more effectively.

Copyright issues for example are governed by but not limited to [Directive 2001/29/EC](#), which covers issues such as territorial licensing, harmonisation of the rights of reproduction, distribution, the legal protection of anti-copying devices and rights management systems. [Reviewed EU copyright](#) rules entered into force in May 2019. These include the [Directive on Copyright in the Digital Single Market](#), which particularly regards the digital and cross-border use of protected content.

On patents, the EU Unitary Patent under Regulations [1257/2012](#) and [1260/2012](#), once it enters into force, will reduce costs for businesses significantly. It will provide uniform patent protection across EU member states (except Croatia and Spain) by submitting a single request to the European Patent Office (EPO). The Unitary Patent Court (UPC), resulting from the UPC Agreement, an international treaty, will have exclusive jurisdiction to resolve certain types of patent disputes, previously entrusted to national courts and the EPO boards of appeal, e.g. on the infringement and validity of European patents with unitary protection as well as “classic” European patents (as we know them today) for the countries that have ratified the agreement.

A Community trade mark, (since 2016 known as EU trade mark), was established in 1993 under [Council Regulation 40/94 \(now repealed and replaced by Regulation 2017/1001 on the EU trade mark\)](#). The EU trademark provides uniform protection throughout the EU. It is granted by the EU Intellectual Property Office (EUIPO) following a single online procedure available in any EU language.

Lastly, the Community design introduced in 2002 under [Directive 98/71/EC](#) and [Council Regulation 6/2002](#) can be registered at the EUIPO and covers the entire EU. It reduces registration fees, transaction, litigation and enforcement costs, and facilitates registration filing in the Single Market. Through the regulation there is also an unregistered design right. Moreover, the protection of business secrets, governed by [Directive 2016/943](#), is also linked to intellectual property.

Existing EU free-trade agreements

The chapter on intellectual property in CETA builds on the WTO TRIPs Agreement. Its provisions on copyright most notably require the parties to comply with the World Intellectual Property Organisation Internet treaties, enhancing protection especially for creative industries. CETA also includes provisions on trademarks, designs and patents. The latter particularly improves IPRs for research-based pharmaceutical products, making their level of protection in Canada closer to what is granted in the EU. Provisions on border measures help in the fight against counterfeited and pirated goods. Moreover, Canada agreed to protect 143 geographical indications (GIs). EU right holders can use an administrative process to enforce their GI rights in Canada, rather than having to rely on more complex proceedings in the country’s domestic court system. The procedures

¹³ The European patent system is governed by the European Patent Convention, which is not part of EU law.



for the enforcement of IPRs must be fair and equitable, not unnecessarily complicated or costly and without unreasonable time limits and delays.

What counts for business

It is the primary interest of companies that they can continue to rely on existing intellectual property rights (IPRs) already in force, or applied for, after Brexit. To have frictionless relations in this area includes that the UK maintains the same level of IPR protection that it has today and endeavours to align with EU IPR rules in the future within a structured and cooperative consultation process that contains mechanisms for influence and enforcement. Any transitional measures that may be necessary to ensure the above should be as simple as possible and the least burdensome. Furthermore, the EU and the UK should continue to cooperate in the area of IPRs after Brexit, including on ensuring a good coordination in fighting counterfeiting.

Companies need to be sure of the validity of their IPRs after Brexit. This includes the status in the UK of registered EU trademarks and Community designs. The status of unregistered design protection also must be clarified. It was thus with high appreciation that BusinessEurope took note of the note on common understanding on IPRs issued in July 2018 by the EU27 and the UK as well as the note of UK IPO on continuing the validity of current EU IPRs in the UK (e.g. EU trademarks and Community designs) after Brexit. We encourage the parties to secure this in any future agreement.

Post-Brexit **participation of the UK in the unitary patent and the UPC** would ensure the broadest possible geographical coverage and increase the attractiveness of the system in Europe, meeting the expectations of the business community. However, there are some legal and political issues that should be solved in order to allow the UK to be part of the unitary patent system after Brexit. For instance, an agreement should be reached on the UK's acceptance of the arrangements under Article 20 and Article 21 of the UPC Agreement which stipulate the primacy of EU law and its application being ensured by the Court of Justice of the EU via preliminary rulings pursuant to Article 267 TFEU. Accordingly, BusinessEurope urges negotiators that solutions to secure such post-Brexit participation of the UK in the unitary patent and the UPC be elaborated.

For trademark holders, this means that UK and EU trademark holders owning EU **trademarks** should continue to be protected within the EU and the UK alike after Brexit so that existing trademarks are either maintained in their geographical scope or split in two with the same geographical coverage. Otherwise, EU trademarks owned by EU holders would no longer be protected in the UK, nor would EU trademarks owned by UK holders be protected in the EU. The dates of seniority in all cases should be preserved. The new UK legal regime for trademark rights should be mirrored after the EU's scheme of exhaustion rather than the USA's: there should be a national exhaustion scheme applicable within the UK or a regional exhaustion scheme covering both the EU and the UK.

Moreover, the UK should recognise and continue to take part in the EU system of **GIs** so that UK GIs are afforded continued protection in the EU after Brexit and that EU GIs are similarly protected within the UK in the future.



IPRs also affect the **intragroup organisation of companies** the business units of which are structured on an EU basis. When business activities involve sites in the UK and continental Europe, it is necessary to create a regulatory IPR framework that preserves the intragroup fluidity of people and knowledge.

9. Investment

The European Single Market

EU law also protects investment within the Single Market. First, investors benefit from the four freedoms of the Single Market. Second, investors can rely on the fundamental rights protected by the EU Charter of Fundamental Rights, including non-discrimination and access to justice. The applicable general principles of EU law, such as the principle of proportionality, legal certainty and the protection of legitimate expectations add to this. And third, investors are protected through a large body of sector-specific legislation, including on public procurement or intellectual property. The enforcement of those rights is guaranteed by national courts with the CJEU as final arbiter.

In this context, a reference should be made to the so-called intra-EU bilateral investment agreements (BITs), traditionally signed between older and newer EU member states and found incompatible with EU law by the ECJ Opinion in case C-284/16 *Slovak Republic v Achmea*. The UK has 12 intra-EU BITs, namely with Bulgaria, the Czech Republic, Croatia, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia. Unless the UK decides to terminate those agreements before exiting the EU and until a trade agreement between the UK and the EU is concluded, they will remain in place (as they will become extra-EU BITs). In terms of investment protection, this could give UK investors a competitive advantage over investors originating in EU member states when they invest in EU countries where their investments are protected by a UK BIT.

Existing EU free-trade agreements

On foreign direct investment (FDI), CETA removes barriers such as foreign equity caps, quotas, and joint venture or performance requirements, and it ensures the free transfer of capital between the parties. It grants investors of each party national treatment and MFN treatment as well as fair and equitable treatment. CETA is also the first EU FTA to adopt the Investment Court System (ICS) instead of ISDS for the settlement of investment disputes. Under the ICS, cases are heard under a permanent tribunal, the members of which are appointed by the EU and Canada. An appeal system makes it possible to check and reverse decisions by the tribunal in case of error. For any other disputes between the parties about the way in which they apply or interpret CETA, the agreement provides a formal state-to-state dispute settlement mechanism.

What counts for business

Legal certainty is important for investment decisions. As long as there is no certainty on what the future EU-UK relation will be, contracts and investment decisions might be cancelled, or postponed. Therefore, the EU and the UK should negotiate a trade and investment agreement that, whilst respecting the integrity of the Single Market and the



EU's and the UK's decision-making autonomy, includes **ambitious market access as well as adequate investment protection** provisions. The EU should also guarantee adequate investment protection amongst EU27 countries to ensure a level playing field between a UK and an EU investor in an EU member state.

10. Cooperation on climate, environment and energy

The European Single Market

The EU has some of the world's highest environmental standards. Its environment policy rests on the principles of precaution, prevention and rectifying pollution at its source, as well as on the 'polluter pays' principle. EU legislation has established more than 130 separate environmental targets and objectives to be met between 2010 and 2050. For example, the EU has set targets for reducing its greenhouse gas (GHG) emissions and decarbonising the economy. It has agreed on a reduction of emissions by 20% by 2020, and by 40% by 2030, compared to 1990. It has also adopted a number of targets on waste collection and recycling and works towards making the economy more circular.

The European emissions trading system (ETS) established by [Directive 2003/87/EC](#) and amended by [Directive 2018/410/EU](#) is a key element of EU climate policy. It applies to EU member states as well as Iceland, Liechtenstein and Norway. The scheme covers emissions of CO₂, nitrous oxide and perfluorocarbons, and provides a fixed annual number of emission allowances which can be traded among GHG emitters. The number of allowances is reduced every year, encouraging businesses to invest in emissions-reducing technology in a market-based way. National emission targets for sectors not covered by the ETS are set in [Regulation 2018/842/EU](#). Simultaneously, the EU seeks to increase the share of renewable energy in EU energy consumption ([Directive 2018/2001/EU](#)) and promote energy efficiency ([Directive 2018/2002/EU](#)). The UK's departure from the overall EU climate effort would have far-reaching consequences for the methodology to calculate targets, which takes account of the *per capita* GDP. Moreover, instruments like the Regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH – [1907/2006/EC](#)) and the [Directive 2010/75/EU](#) on industrial emissions establish strict environmental rules for industry operating in Europe.

Regarding energy, the EU has been working on creating a true internal market for energy since 1996, removing trade barriers, approximating tax and pricing policies as well as norms and standards and environmental and safety regulations. The measures the EU has adopted aim to build a more interconnected, competitive, flexible and non-discriminatory EU electricity market with market-based supply prices. In addition, the security of supply of electricity, gas and oil, and the development of trans-European networks for transporting electricity and gas play a central role. Since 1996, the Commission has adopted [three legislative packages](#) and put a set of legislative proposals forward to create a real [Energy Union](#) in November 2016.

Existing EU free-trade agreements

Recent EU FTAs cover climate and environmental issues in a dedicated chapter on trade and sustainable development. In CETA, this chapter recognises the interlinkage between



growth, social development and environmental protection. The parties commit to promoting trade and investment practices supporting sustainable development objectives (e.g. eco-labelling) as well as the sustainable use and trade of natural resources. The parties also commit to respecting and implementing a number of international labour standards and environment agreements and not relaxing their domestic legislation in these fields to unfairly encourage trade or investment. Moreover, the parties guarantee they will not misuse labour and environmental standards as a form of disguised protectionism.

In some recent trade negotiations, such as on the modernisation of the FTAs with Chile and Mexico or the FTA with Indonesia, the EU mandates also included a chapter on energy and raw materials. With the main goal of diversifying EU energy suppliers but also promoting energy efficiency, new technologies and renewables, the chapter typically eliminates restrictions to trade in energy and raw materials and ensures that operators from each party are granted access to the other party's energy transport infrastructure based on reasonable, non-discriminatory and transparent commercial terms. Moreover, the chapter promotes cooperation on standards, regulations and conformity assessments. Whilst this is far from what is granted by the EU's internal energy market, there are also deeper regimes between the EU and third countries in this area. For example, the 2006 Energy Community Treaty aims to extend the EU's internal energy market to southeastern Europe and the Black Sea region¹⁴.

What counts for business

In the area of climate and energy policy, barrier-free access as well as regulatory alignment will be important to ensure that the EU and the UK can continue to trade energy effectively, as well as maintain a level playing field. Generally, the UK should endeavour to remain aligned with existing international and EU objectives, standards and rules of the internal energy market, including the EU energy packages and the network codes for gas and electricity markets. The European business community would strongly favour the UK's continued direct participation in the EU ETS beyond 2020. However, if this is not the case, the EU ETS will have to be reviewed accordingly.

Interconnectors in Europe also play a critical role in linking and optimising national energy infrastructures and contribute to a cost-effective system across Europe. After Brexit, it is important that effective trading arrangements remain in place to support and facilitate this. Moreover, further interconnector projects should be implemented where this is economically beneficial for both the EU and the UK.

On the **nuclear** side, it is important that Euratom and the UK maintain a close relationship. This can be achieved through a dedicated Euratom-UK cooperation agreement. Such an agreement should allow for, inter alia, regulatory and research cooperation as well as the necessary provisions to avoid any disruptions in the nuclear industry sector following the UK leaving Euratom.

¹⁴ Albania, Bosnia and Herzegovina, Georgia, the former Yugoslav Republic of Macedonia, Kosovo, Moldova, Montenegro, Serbia and Ukraine.



To ensure alignment of rules and cooperation between regulators in the field of energy, an appropriate level of **participation of the UK in key EU agencies** and bodies such as the Agency for the Cooperation of Energy Regulators (ACER), the European Network of Transmission System Operators for Electricity (ENTSO-E) and Gas (ENTSO-G) as well as the European Nuclear Safety Regulators Group (ENSREG) will be important.

In the area of **environmental and health protection**, the EU has developed a comprehensive regulatory *acquis*. Establishing a separate and likely different UK regulatory regime would involve significant costs for companies. Therefore, regulatory alignment and close regulatory cooperation will be essential in this area in order to guarantee a level playing field.

11. Fisheries

The European common fisheries policy

The management of fisheries resources and the regulation of fishing activities is an exclusive EU competence and largely falls under the common fisheries policy (CFP), which governs all aspects of the sector from access to waters to net sizes and safety on board. This legal framework, whilst not perfect, guarantees a level playing field and a stable regulatory environment for businesses across the European Union. Additionally, the CFP ensures that fish stocks are managed sustainably, in the interest of both environmental protection and business sustainability.

The current EU-UK relation in this area is one of profound interdependence. Estimates suggest that on average 42% of the catches (in volume) of the eight member states surrounding the UK are caught in what will become British waters. Depending on specific species and specific fleets, this percentage could rise to well beyond 80%. Conversely, the UK seafood industry relies heavily on export (80%) and on average 75% of its export is destined for the EU27 market¹⁵.

What counts for business

The future relationship between the UK and the EU should avoid distortions or disruptions to the market or business environment. Furthermore, a level playing field for business in the EU and the UK is necessary for the good functioning of the internal market. Overall, the EU-UK future relationship on fisheries must reflect the commitment given by the Council in its 23 March 2018 guidelines: “In the overall context of the FTA, existing reciprocal access to fishing waters and resources should be maintained”.

Business would welcome continuity in EU-UK relations in this area. This should include:

- continued **reciprocal access** to each other’s waters;
- **continuation of existing allocation keys** between the EU and the UK for their shared fish stocks;
- free reciprocal market access for **seafood products**;

¹⁵ European Fisheries Alliance (EUFA), Consequences of Brexit for the European Fisheries Sector, 2017.



- science-based, **sustainable fisheries management** based on shared objectives;
- **freedom of establishment** in the fishing industry;
- developing a legal instrument that establishes **long-term rules and safeguard mechanisms**.

Moreover, the absence of an agreement on **continued regulatory and scientific cooperation** would be a challenge for the sector on both sides as it would jeopardise years of conservation efforts, threatening the long-term sustainability of the more than 100 fish stocks that are shared between the EU and the UK.

III. The overall agreement

1. Cooperation on research and innovation

The European Single Market

Since the 1980s the EU has managed its research policy through strategic multiannual framework programmes, defining common priorities and criteria for selecting joint actions and initiatives, fostering cross-border cooperation and avoiding duplication of efforts. Launched in 2014, Horizon 2020 is the eighth EU framework programme (FP8) for research and innovation, providing €77 billion of funding over 7 years to attract additional public and private funding. It aims at strengthening the EU's position in science, enhancing industrial innovation and addressing major societal concerns. Since 2000, the EU has also been working on creating a European Research Area, addressing the fragmentation, isolation and compartmentalisation of national research systems. But the EU research and innovation policy is not restricted to its member states. The EU has concluded bilateral science and technology agreements with 20 countries around the world. Moreover, initiatives like the Erasmus+ programme increase the international mobility of students and researchers within the EU but also beyond its external borders.

What counts for business

The EU business community would welcome continued cooperation with UK research entities as they play an important role in the European research and innovation landscape. We would therefore like the **UK to have the option to associate fully to Horizon Europe** (FP9), which will replace Horizon 2020 in 2021, subject to an appropriate association agreement. To enable EU and UK research institutions to cooperate in the future and avoid uncertainty around existing projects that involve UK partners, arrangements on EU-funded projects including ongoing ones will need to be made. It is equally important that the ability of EU entities to participate in UK research and innovation programmes is preserved.

The ability of EU students to study in the UK may be limited after the UK's withdrawal as they will be treated as 'international students'. The **mobility of students and researchers** between the EU and the UK should continue to be encouraged as much as possible in order to ensure the development of rich European research and innovation



networks and a strong EU research environment, both in the short and long term. Finally, participation of the UK in exchange projects like Erasmus would be desirable if a fair participation in the budget can be agreed.

2. Labour and social issues

The European Single Market

The free movement of workers is one of the fundamental freedoms underpinning the Single Market. Thanks to EU citizenship, any national of a member state has the right to seek employment in another member state in conformity with the relevant regulations applicable to national workers. As regards employment, remuneration and other conditions of work and employment, there must not be any discrimination based on nationality between workers of the member states. The free movement of people, talents and skills within the Union is facilitated by a system for recognition of professional qualifications ([Directive 2013/55/EU](#)) and the coordination of social security systems. [Regulation 883/2004](#) lays down common rules and principles aimed at coordinating social security rights acquired in different EU countries. It has a broad scope, covering sickness, maternity and equivalent paternity benefits, invalidity benefits, benefits for accidents at work and occupational diseases, family benefits, unemployment benefits, and others. In addition, [Regulation 1408/71](#), modernised by [Regulation 988/2009](#) and [Regulation 987/2009](#), establishes four main principles:

1. equal treatment of workers and self-employed persons from other member states;
2. aggregation of previous periods of insurance, work or residence in other countries in the calculation of benefits;
3. the principle of single applicable law making sure that a citizen is covered by the legislation of one country only and only pays taxes to that country;
4. exportability, meaning that social security benefits from a member state can be paid throughout the Union.

What counts for business

Under the new relationship between the EU and the UK, it is essential that companies can maintain the currently existing close exchange between their operations and investments in the EU and the UK. This involves various aspects.

Firstly, the future agreement must include arrangements for sufficient **access to labour** whereby EU workers are able to work in the UK and *vice versa* without burdensome bureaucratic and legal requirements. As regards highly skilled labour in particular, UK workers will have access to the labour markets of EU member states via the Blue Card ([Directive 2009/50/EC](#)) and the EU therefore expects the UK to ensure reciprocal access for EU highly skilled workers into the UK. A framework for the mobility of skilled workers will also be important if the UK is no-longer part of the current arrangements under the directive on the recognition of professional qualifications.



Secondly, it is of key importance to EU and UK companies that they can continue to use their internal resources most effectively via **intra-corporate transferees (ICTs)** and thus protect investments made in the UK and the EU. When the transition period expires, UK workers and companies will automatically gain access to the EU through the EU [Directive 2014/66/EU](#) on third-country intra-corporate transferees. The UK should therefore, as part of an agreement with the EU, adopt legislation on ICTs that provides reciprocity (level playing field) and that enters into force no later than at the end of the transition period. From BusinessEurope's point of view, a reciprocal agreement on ICTs should:

- not be based on the existing British ICT system (UK non-EEA Tier 2 ICT visa route), which is costly, excessively bureaucratic and not suitable for the highly integrated company structures that exist between the UK and the EU;
- define time limits (up to three years for specialists + one year for trainees);
- underline that transfers should not be limited to services (Mode 4) but cover all types of ICTs moving across the EU-UK border.

Thirdly, after Brexit the [Directive 96/71/EC](#) on the **posting of workers**, amended by [Directive 2018/957](#), will cease to apply to the UK, after which the legal status of EU workers posted to the UK will be regulated by national British law. It is thus essential that the future agreement includes reciprocal provisions ensuring that EU companies can continue to post workers to provide services in the UK and *vice versa* with the least possible administrative effort. This should include short-term postings of workers stationed to deliver specific services. Moreover, it should be considered that often business leaders and qualified personnel would like to take their families with them when working abroad for a longer term. In such cases, family members also need to have access to the host country's labour market and public services. The mutual recognition and comparison of professional qualifications must also continue to be facilitated, on the same basis as now, by the future EU-UK agreement.

A crucial issue, and a necessary complement to any form of labour mobility, is the coordination of social security systems: After Brexit, [Regulation 883/2004](#) will no longer apply to the UK. As existing bilateral agreements between the UK and EU member states were negotiated many years ago and differ from current EU legislation, there is a risk of duplicating social security contributions for UK/EU mobile workers. Bilateral agreements between the UK and each individual EU member state would lead to more administrative burdens and significant costs for companies. Moreover, bilateral agreements would not secure the necessary coordination of rules when workers move from an EU member state to the UK and after that to another EU member state. Therefore, BusinessEurope calls for an agreement between the EU and the UK which is as close as possible to the *status quo* with regards to the **coordination of social security systems**. This includes reciprocal access to public services, notably health services building on the European Health Insurance Card. In this context, additional compliance obligations for employers, fragmented social security contributions and confusion for workers must be avoided.



3. Transport¹⁶

The European Single Market

Within the Single Market, goods can be traded freely and without customs declarations; harmonised security and safety requirements make controls almost unnecessary. This is key for the European transport sector and saves operators significant amounts of both time and money. In addition, the EU has taken a number of other measures to facilitate the development of European transport networks.

The Single Aviation Market, set up in the 1990s, enables airlines to operate air services between any two points in the EU28, Norway, Iceland and Switzerland. [Regulation 1008/2008](#) removed all remaining commercial restrictions for European airlines operating between these countries. In addition, the EU has established a solid regulatory framework for aviation security, providing common rules and basic standards for risk assessment and screening. The European Aviation Safety Agency (EASA) develops harmonised rules on aviation safety, airworthiness and certification for its members and oversees their continuous enforcement and supervision. Lastly, to ensure a level playing field, the legislation on state aid and competition applies to the air transport sector. Because air transport is not covered by the WTO, there is no fall-back option to the existing framework governing EU-UK relations in this sector. It should be noted that the UK has the largest aviation network in Europe and the third largest in the world, handling 250 million passengers every year.

For road transport operators, the EU's regulatory framework guarantees the right to carry goods between and within EU member states. It harmonises, for example, rules on market access, requirements for drivers, weight and dimensions of the vehicles, and vehicle roadworthiness. Whilst European road transport operators can obtain a Community licence ([Regulation 1072/2009](#)) operators from outside the Single Market need an international road transport licence, which are restricted in numbers.

On maritime transport, a number of EU directives and regulations have liberalised national cabotage, abolished the restrictions on EU ship owners, ensured fair competition, established standards relating to maritime labour and training for seafarers as well as to the protection of the maritime environment.

EU rail transport policy is geared towards the creation of a Single European Railway Area. [Directive 96/48/EC](#) and [Directive 2001/16/EC](#) ensure the interoperability of the rail systems of EU member states whilst [Directive 95/18/EC](#) ensures the mutual recognition of operating licences issued by a member state. A number of other directives and regulations have opened the sector to competition, guaranteeing a fair access to the infrastructure, laid down working conditions for mobile workers and harmonised the minimum qualification requirements, amongst other things. In addition, the '4th railway package', which entered into force in June 2019, introduced a single European framework for vehicle authorisation, amongst other things.

¹⁶ For the sake of completeness, this chapter also covers maritime and rail transport although these are usually covered in the chapter on trade in services of recent FTAs, such as CETA.



For the stronger integration and interoperability of European transport networks, the Connecting Europe Facility for Transport provides funding to support investments in building new transport infrastructure in Europe or rehabilitating and upgrading the existing one.

What counts for business

If the UK does not remain a member of the Single Aviation Market after Brexit, a **comprehensive aviation agreement** will be necessary to ensure a liberal and open market access, dispute settlement mechanisms, the principle of reciprocity and a fair balance of rights and obligations to avoid restrictions of air traffic. Such an agreement should preserve equal treatment of capital and investment from either side to determine ownership and control requirements between the EU and the UK, mutually recognise capital and investment, maintain the existing freedoms for passenger and all-cargo aircraft¹⁷. To allow reliable planning and scheduling, it should be negotiated as soon as possible. The EU and the UK should also **align air safety regulations**, through close cooperation between the EASA and the UK Civil Aviation Authority. Some air transport agreements with third countries will need to be renegotiated to maintain the *status quo* regarding international air connectivity. This especially concerns the EU-US Open Skies Agreement.

The **EU external aviation policy**¹⁸, as endorsed by the European Council¹⁹, is aimed at creating new economic opportunities by opening up markets and promoting investment opportunities as much as possible for countries in which it has a significant aviation interest. Agreements in this sense have already been signed with Canada and Switzerland and should – in line with the EU's own policy – therefore also be pursued with the UK.

Sudden congestions at airport, port and other facilities due to more comprehensive passport and customs controls should be avoided. Ensuring a smooth transition would contribute to this, but controls cannot be completely avoided without solutions on customs. A sudden introduction of border checks between the EU and the UK would lead to tremendous disruptions in the flow of goods. The parties should also negotiate **robust security agreements, including on aviation security**, involving at least mutual recognition for security procedures and continued harmonisation of security equipment and screening regulations.

To avoid double certification issues and divergence of regulation, BusinessEurope supports the **affiliation of the UK to EASA** as an associated partner, subject to alignment with the EU applicable rules and to an appropriate financial contribution. If this is not possible, an EU-UK bilateral air safety agreement or a working arrangement would need to be negotiated to the same effect.

¹⁷ 3rd and 4th freedoms allow basic international service between countries; the 5th freedom allows an airline to carry revenue traffic between foreign countries as a part of services connecting the airline's own country; the 7th freedom is similar to the 5th, but just specifying passenger and cargo transport.

¹⁸ See the [Commission Communication COM \(2005\)79 of 11 March 2005](#)

¹⁹ See the [Council conclusions of 13 July 2005](#)



The EU and the UK should conclude a **sectoral road transport agreement**, granting territorial and access rights for EU operators to the UK and reciprocal rights for UK operators to the EU, both for international road transport and transit operations and based on the principles of reciprocity and free choice of mode of transport. Such an agreement should ensure equal treatment and non-discrimination between all member states to avoid fragmentation of the road transport market. The EU-UK road transport agreement should allow for cross-trade, goods in transit and cabotage. It should allow the carriage of goods or empty vehicles in transit through the EU and the UK, without any additional data or clearance requirements and be complemented by strong provisions in the framework for the future relationship on mutual recognition of professional qualifications for drivers and auxiliary road transportation services. There should also be a commitment to regulatory alignment of EU-UK road transport legislation, which aims, amongst other things, at establishing a level playing field concerning EU emissions legislation.

On maritime services, to prevent disruptions and ensure a level playing field, a **new shipping agreement** must be negotiated between the EU and the UK. It should encompass the provisions of [Regulation 4055/86](#) and [Regulation 3577/92](#) as well as parts of the Geneva Convention and Statute on the International Regime of Maritime Ports. Considering the large *acquis communautaire* in this area, agreements must also be found in order to ensure mutual recognition of certificates under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, port state controls, and safety and security requirements. This would significantly reduce the administrative burden on companies. Moreover, the continued participation of the UK in the European Maritime Safety Agency, as well as strong cooperation in the International Maritime Organisation (IMO) and in other relevant fora (e.g. the ILO) would facilitate this process. In terms of emission standards in this area, climate protection measures should be equal in effect in the EU and in the UK. Preferably, a common solution needs to be found within the framework of the IMO.

A **sectoral agreement on rail transport** based on regulatory alignment is also required to ensure smooth cross-border traffic in and around the Channel tunnel. It should also preserve railway interoperability and the internal market by covering the relevant European regulations.

4. Corporate governance and company law

The European Single Market

EU rules in the area of corporate governance and company law regulate the way companies operate, the way they relate with stakeholders (shareholders, authorities, creditors) and enable businesses to be set up anywhere in the EU27 and have access to the entire market. They provide protection for shareholders and other parties with a particular interest in companies and make business more efficient and competitive. Also, when companies are the subject of takeover bids, they protect shareholders whilst enabling sound restructuring measures among businesses. In combination with common rules on company reporting and auditing and the freedom of establishment granted by the Single Market, this facilitates the cooperation between businesses based in different EU countries. Moreover, [Regulation 2157/2001](#), also called the European Company



Statute, introduces the Societas Europaea (SE), a type of public limited-liability company regulated under EU law. It enables companies active in several member states to reorganise their activities under a single European label, instead of having to register separately in each state. In addition to the SE, EU law also provides frameworks for other EU specific entities to form and operate: European economic interest groupings and European groupings of territorial cooperation.

What counts for business

Even after the UK's withdrawal, continued similarity between rules will be important. UK companies that want to establish in or conduct business with an EU country will still need to comply with EU company law and corporate governance rules (e.g. financial and non-financial reporting requirements). Therefore, a **forum for regulatory cooperation should be established**. Furthermore, UK companies with headquarters in the EU should be governed by an agreement between the UK and the EU to prevent legal fragmentation or a “race to the bottom”. For example, the EU and the UK should conclude a reciprocal agreement to allow for European Works Councils established by EU, UK and international companies under UK law to retain their subsidiary companies and employees in the UK as an integral part of their European Works Councils.

The UK will need to clarify the future status of the 38 SEs that have been founded in the UK²⁰ as already anticipated in the UK government's [Guidance Paper of 12 October 2018](#). Moreover, companies formally established in the UK but mainly operating in the EU may no longer be recognised as legal entities because the relevant ECJ rulings regarding the freedom of establishment (e.g. Centros, Überseering, Inspire Art) will no longer apply. Solutions need to be found and therefore, **conditions for establishment** should be included in a future agreement. Its provisions should also avoid that British companies with limited liability (e.g. Ltd., PLC, LLP, Societas Europaea) established in an EU member state are treated as companies with unlimited liability after Brexit, due to their third-country company status. The EU should equally encourage the UK to take steps so that the EU companies continue to have access to the British market on a reciprocal basis.

5. Civil judicial cooperation and international private law

The European Single Market

The EU framework for civil judicial cooperation has been built on international rules, going beyond them in many cases. They offer a much higher degree of legal certainty than any FTA. Thanks to mutual recognition and direct judicial cooperation between national courts, EU businesses have easy and effective access to civil justice in the event of cross-border disputes. For example, companies can be sure that a judgement they obtain from a court in their home country will be enforced across the entire EU. [Regulation 1215/2012](#), also called Brussels I Regulation, is the main instrument in this area. It seeks to harmonise the rules of conflict of jurisdiction within member states and to simplify and expedite the recognition and enforcement of decisions in civil and commercial matters. [Regulation 4/2009](#) facilitates EU-wide recovery of maintenance

²⁰ <https://www.worker-participation.eu/European-Company-SE/Facts-Figures>



obligations whilst [Regulation 2015/848](#) sets out uniform rules on jurisdiction, recognition and applicable law in the area of insolvency proceedings, avoiding parallel proceedings in several countries. These and a number of other instruments, along with the role of the ECJ as final arbiter, deliver legal certainty and protect the rights of citizens and businesses across the EU.

On the international level, the EU is party to several regimes in this area. For example, the 1988 Lugano Convention extends some of the current EU civil judicial cooperation framework, along with associated guarantees of rights and obligations, to Iceland, Norway and Switzerland. More broadly, the Hague Conference on Private International Law, which dates back to 1893, promotes the use of common rules in individual common and civil law systems of its 83 members.

In 2009 the EU adopted the [Rome I Regulation](#) that helps national courts of EU member states (except Denmark, which is covered by the 1980 Rome Convention) to determine the governing law of contracts entered into in the event of judicial disputes. The governing law of contractual obligations determined under this regulation governs questions of interpretation, performance, assessment of damages, etc. Where a contractual obligation falls within the scope of Rome I, its rules are applied by the courts of member states even if the application of those rules results in a non-EU law being the governing law of any contractual obligations. Also, the courts of member states will apply Rome I even if some or all of the parties appearing before them are non-European.

What counts for business

To facilitate litigation and the settlement of disputes on contractual agreements, the UK should sign the **Lugano Convention** or agreements on mutual recognition with individual EU members.

It is equally important that the UK adheres to the **Convention on the Law Applicable to Contractual Obligations 1980**, the so-called [Rome Convention](#).

6. Taxation

The European Single Market

Although tax issues remain mainly a member states' affair, the EU has taken some important steps in this area. EU legislation has specifically addressed the need for harmonisation of domestic provisions on indirect taxation due to its potential distorting effect on the Single Market. Direct taxes are addressed particularly through the removal of tax obstacles, the solving of issues of double taxation and the prevention of harmful tax competition. [Directive 2006/112/EC](#) contains a common system of value-added tax (VAT), which aims to result in neutrality of competition, such that within the territory of each member state similar goods and services bear the same tax burden. Cross-border supplies are in principle zero rated to ensure that VAT is levied in the member state of consumption. In the field of direct taxation, the EU also adopted legislation to avoid double taxation. For example, the 'parent subsidiary' directive ([Directive 2006/98/EC](#)) establishes that profits distributed by a subsidiary in one member state to its parent company in another member state are exempt from withholding tax provided that the



parent company holds at least 10% of the subsidiary. Moreover, [Directive 2003/49/EC](#) makes sure that interest and royalty payments are only taxed in one member state.

What counts for business

Alignment of rules, cooperation between regulators and ensuring a level playing field will be key in this area. Tax administrations also need to keep working together closely, including on information sharing, dispute resolution and confirming advance pricing agreements.

As the UK will leave the EU VAT area after Brexit, the administrative burden and costs on trade in goods will likely increase as the **VAT regime will change**: the regime for intracommunity transactions will be replaced by the regime for exports and imports. The UK's new import VAT regime could have an impact on the cash flow and working capital cost of businesses, which can be alleviated through the use of postponed accounting. BusinessEurope also calls for clarification in terms of fiscal representatives, UK VAT repayment terms and timeframes applied to non-UK companies. Enough lead time for the implementation of new VAT law, such as rules on VAT registration, VAT returns and VAT systems for businesses and governments must be allowed for.

The development of a deep trading partnership with the UK should be dependent on the UK continuing to meet international standards regarding taxation. The benefits of relevant EU directives should be replicated in **bilateral tax treaties**, where possible. Otherwise, the tax burden on businesses could increase significantly as a result of Brexit in areas where companies currently rely on EU directives.

Finally, clear rules need to be established to **avoid double taxation**. In this regard, it is important that the relevant provisions of the international double taxation treaties continue to apply to EU subsidiaries of UK-parented groups and *vice versa*.

7. Ireland and Northern Ireland: peace, stability and the all-island economy

The European Single Market

The Good Friday Agreement and the ongoing peace process in Northern Ireland have been facilitated by virtue of shared EU membership between the UK and Ireland. The abolition of border checks between Ireland and Northern Ireland has advanced the development of the all-island economy and has allowed the border region communities to grow together in peace and prosperity. In addition, the EU PEACE funding programme has provided an important means to promote economic and social progress in Northern Ireland and the Border Region of Ireland.

What counts for business

Brexit and the possible re-imposition of trade and economic barriers between Ireland and Northern Ireland, as well as between Great Britain and Northern Ireland, presents a unique threat to the important political and economic gains of recent decades.



The reintroduction of customs clearance points at the Irish border would lead to changes in the logistics arrangements and supply chains of many companies and generate a significant financial burden for them. Thus, a **hard border between Northern Ireland and Ireland must be avoided** and the future agreement must include provisions ensuring the **continued support for peace and stability on the island of Ireland**. The [Revised Protocol on Ireland and Northern Ireland](#) included in the Withdrawal Agreement sets out a permanent framework that would see Northern Ireland legally remain within the UK customs territory whilst, *de facto*, EU tariffs would be charged on all goods entering Northern Ireland that are at risk of being shipped on to the EU. Whilst, in theory, this solution seems to have solved the Irish border issue, it remains to be seen how the arrangement will work in practice. For business, it is of the utmost importance that this solution ensures simultaneously a frictionless border between Ireland and Northern Ireland, full respect of the integrity of the Single Market and a level playing field and facilitates Northern Irish trade with the rest of the UK. Within the spirit of and the governance framework established by the Withdrawal Agreement and the Protocol, measures must be taken to avoid the creation of loopholes in the Single Market and henceforth protect consumers and businesses in the EU from non-compliant third-country products. The terms of engagement for the Joint Committee as advised by the Protocol's Specialised Committee need to be wide enough in scope to meet these objectives.

Depending on the nature of the future EU-UK relationship, **comprehensive transit procedures** may be necessary to facilitate the easy export of goods from continental Europe to Ireland, through the UK 'land bridge', and *vice versa*. Such procedures would be needed to avoid additional customs controls and inspections for sanitary, phytosanitary, food safety or security purposes. This issue can be reduced if the UK remains a member of the Common Transit Convention, ensuring continued access to the EU's New Computerised Transit System.

The Ireland-Northern Ireland **all-island electricity market** could face disruptions and operational challenges if the UK is outside the Internal Energy Market. Therefore, regulatory alignment to preserve the Integrated Single Electricity Market is also critical to protect the interests of business and consumers in Ireland, Northern Ireland and Great Britain. At a minimum, continued policy and regulatory alignment in energy across the island of Ireland will be required.

8. Cooperation on security and defence

The European Single Market

So far, most of the initiatives, funding, cooperative and defence programmes remain at the national level and as such only few will be significantly impacted by Brexit. Nonetheless, pursuing the objective of achieving the strategic autonomy of the EU and its member states, the EU has launched initiatives supporting the European defence industry. In 2016, the European Council endorsed the Commission's Defence Action Plan and proposals for EU-NATO cooperation and, in 2017, the Commission launched a European Defence Fund (EDF) to coordinate, supplement and amplify national investments in defence research, in the development of prototypes and in the acquisition of defence equipment and technology. Under the EDF, the European Defence and



Industrial Development Programme (EDIDP) provides the European defence industry with financial support during the development phase of new products and technologies in areas selected at EU level. The Preparatory Action for Defence Research (PADR) prepares the ground for the launch of a substantial EU defence research programme from 2021 onwards.

Furthermore, the EU controls the export, transit and brokering of dual-use items – goods, software and technology that can be used for both civilian and military applications. The EU's export control regime is governed by [Regulation 428/2009](#)²¹. It builds on commitments made in multilateral export control regimes such as the Australia Group, the Wassenaar Arrangement, the Nuclear Suppliers Group and the Missile Technology Control Regime and establishes EU-wide common rules. Whilst, with few exceptions, dual-use items can be traded freely within the EU, their export to third countries is subject to authorisation, for which certain conditions must be met. Export procedures for dual-use goods can take weeks to be approved, as the process involves technical, country-specific and end-user-specific risk analysis. However, the dual-use and national defence regulations provide for exemptions for exports to countries with no or close-to-zero risk of proliferation. These country-specific simplifications are endorsed in the general authorisation licences. Amongst other general licences, the EU001 is the general authorisation under which (nearly) all dual-use items can be exported without a single licence to the following countries: Australia, Canada, Japan, New Zealand, Norway, Switzerland, and the United States.

Moreover, the EU has adopted a dedicated public procurement directive, [Directive 2009/81](#), which provides procurement rules tailor-made for defence and security markets and is supposed to lead to more transparency and competition. Except in defined circumstances, offset requirements are also prohibited under EU law. To support the functioning of a real European market for defence goods the EC complemented the procurement directive with the so-called transfers directive ([Directive 2009/43](#)) that simplifies the terms and conditions of transfers of defence-related products within the EU.

What counts for business

Industrial cooperation between the EU and the UK in the field of defence is beneficial to industry on both sides. The UK represents a large part of the defence industrial base in Europe and is as such able to bring a significant contribution regarding competencies, knowledge, funding, and economies of scale. Even though the UK and its companies cannot expect to join EU-led projects on the same terms as an EU member state, business favours the conclusion of an appropriate and ambitious strategic EU-UK partnership agreement as soon as possible. In any event, **industrial cooperation in the defence industry** should take place in the context of an overall trade regime whilst respecting the integrity of the Single Market.

The partnership should provide for a regulatory environment ensuring an adequate degree of **market access**, including with regards to public procurement, and a **level**

²¹ Currently under revision



playing field, including in relation to offsets. The agreement should also ensure the autonomous decision-making of both the EU and the UK.

In addition, strong **cooperation and alignment on sanctions regimes** and the alignment of the UK framework for **exports of dual-use goods** with the EU is key. The objective is to ensure coherence at political level whilst safeguarding a level playing field for companies and protecting well-integrated supply chains. In addition, a security agreement would exempt operators from submitting import control declarations and export control declarations. Should the UK-EU future relationship not incorporate a Customs Union, such agreements must be in place the day the UK exits the Customs Union.

Regarding the export of dual-use goods, the UK should be added to the countries listed in EU001. It would also be necessary for the UK to be listed in Annex 2 Part 3 of the EU Dual-Use Regulation 428/2009 as many national general licences refer hereto. In addition, it should be agreed that the UK can still participate in the simplified export control procedures of global licences with respect to projects within the Letter of Intent/HMR-Agreement and the certification under [Directive 2009/43/EC](#) simplifying the terms and conditions for the transfer of defence-related products within the EU. Equivalent measures should be taken on the UK side to the benefit of EU products and companies.

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