EU DAG under the Trade & Cooperation Agreement (TCA)

EU-UK relations Issues Tracker

December 2022*

In full agreement with its UK counterpart, the EU DAG is convinced that the TCA can be a sound basis to build a stronger, more stable, resilient and sustainable relationship for the benefit of EU and UK citizens: a relationship that supports a positive and constructive framework of rights and standards.

In order to achieve this, it is essential to promote an open, pragmatic and good faith cooperation between regulators on both sides. It is equally necessary that both parties engage closely with civil society organisations, adopt a broad and constructive approach towards inputs provided by both DAGs, and give a timely follow-up to their recommendations.

With the aim of structuring and facilitating this ongoing dialogue, the EU DAG member organisations across business, workers and NGOs identified and collected their main issues and recommendations with regard to TCA implementation and more broadly on EU-UK relations.

This document is the result of that exercise: a coherent and structured list, evolving over time and open to relevant additions and updates by DAG members, representing the views and priorities of EU civil society.

The EU DAG believes that this list will contribute to a more open and focused discussion, at the same time providing relevant inputs to the European Commission to feed into its interactions with UK counterparts.

** In light of most recent legislative developments in the UK, the section on workers' rights (non-regression) has been updated in January 2023.*

Contents

SECTORIAL AND SPECIFIC ISSUES

CUSTOMS

1. Reinforcement of customs cooperation and trade facilitation between the Parties

The reinforcement of customs cooperation between the EU and the UK is pertinent to support appropriate levels of compatibility in customs legislation and procedures and to ensure the promotion of trade facilitation. It will contribute to a stable and predictable regulatory framework for border controls and trade in goods to guarantee a smoothly functioning transport and logistics chain. Experiences have shown that **effective exchange of information and constructive dialogue between customs administrations** are indispensable for successful cooperation in the area of customs. So is a strong partnership with the trade community.

Notably, the TCA confirms the commitment of the EU and the UK to establishing a shared **Single Window Environment**, which plays a prominent role. Depending on its design and implementation, it has the potential to modernise customs and border processes and enhance efficiency and simplifications for trade. If effectively implemented, it can streamline exchange of information and customs controls and ultimately improve trade facilitation through simplified processes, time saving, faster clearance and reduction of administrative burden and costs for businesses.

The provisions on mutual recognition of **Authorised Economic Operator** (AEO) programs are highly important to trade, as is fostering cooperation between customs and other government authorities regarding the AEO program. The correct and timely implementation, as well as subsequent monitoring, of the commitments related to AEO will increase competitiveness and also secure and further facilitate cross-border trade.

Some further points related to customs regulations and border controls that in our view should be addressed as a matter of priority include **harmonising data requirements for import, export and other customs procedures by implementing common standards and data elements** aimed at simplifying clearance processes. Furthermore, it is important to establish a **Safety & Security mutual recognition agreement** to waive advanced security filings between the Parties, as additional customs safety and security declarations that are required for entry and exit of goods form a major additional administrative burden for transport and logistic operators. Furthermore, digital solutions to facilitate the entry of ships to ports and the exchange of regulatory information wherever possible should be also encouraged.

It is also critical to take appropriate measures to **simplify the Union Customs Code (UCC) provisions on return goods** to facilitate release without a formal declaration for both EU goods located in the UK and UK goods located in the EU. In particular, EU goods located in the UK are now subject to extremely burdensome formalities and procedures upon return to the EU, and consideration should be given to establishing a common threshold between EU and UK under within which there is no need for a formal proof of origin for imported goods.

Specifically relating to **cross-border e-commerce**, additional easements could be provided by waiving Power of Attorney (POA) for goods in small consignments (goods of negligible value) and increasing the low value threshold to a commercially meaningful level.

In addition, designating some transport services as an essential service could ease crisis situations in future, along with adopting simplifications initiated during the COVID-19 crisis on a permanent basis in an EU-UK context.

2. Impact of customs procedures on transport and logistics

Shipment times have increased significantly. It is more difficult to get timely deliveries from mainland Europe, due to UK land bridge delays.

There are fewer logistics and transport companies. This has led to much higher shipment costs. There are additional fixed costs for all shipments between UK and EU, in both directions. The administrative burden for businesses has increased, with significant costs for agriculture and customs clearance, and increased delivery times. This has a huge impact, for example on book imports/exports from/to the UK.

3. Taxation

VAT must now be paid for goods subject to VAT between the UK and EU; effectively a 20% price increase on a wide range of goods. This is inconvenient but it is how things are supposed to work now; however, it also happens that e-commerce orders delivered in several parcels are subject to VAT on the value of the whole consignment for each individual parcel, resulting in customers being charged the full VAT several times over.

4. Rules of origin

Lots of uncertainty remains when it comes to **bilateral cumulation** of origin and what constitutes "sufficient processing" in this regard, particularly for agri-food products.

Tolerance rules: EU operators are unsure about the quantity of UK ingredients that can be incorporated in the final product (especially if exported to a third country).

5. Statements of origin

UK customs was requesting that the statement of origin indicate which Member State the product is from (even though according to TCA the statement should only mention "the Union" as the origin).

6. Other technical issues and concerns arising from the new EU-UK trade regime

Addressing technical issues and concerns arising from the new EU-UK trade regime (e.g. groupage of products, availability of Border Control Posts for relevant trade such as livestock, mutual recognition of plant passports and the overall operation of the new UK Border Control Model, digitisation of administrative procedures, etc.).

TRANSPORT

1. Competitiveness and reciprocal market access

The EU and the UK must remain on par as competitive locations for transport operators (shipping companies, rail operators, ports, logistics) to conduct business. Therefore, a level playing field - in the environmental, fiscal, social, and other regulatory domains – is a priority. This must respect the different sea routes and road/rail transport routes between the EU/EEA and the UK and also the different transport modes, so that maritime, road, aviation and rail transport are all treated in the same way. Furthermore, reciprocal market access should be preserved.

2. The issue of freeports and the level playing field

Last year, the UK decided to set up seven (maritime) freeports with the intention for these areas to act as national hubs for global trade and investment in their region. Although free zones and freeports are relatively common in the EU, these are no more than areas for storage and warehousing in combination with simplified customs procedures. On the other hand, UK freeports could offer more benefits to the companies established there as the UK will have more freedom over the flexibilities and tax concessions it can offer in free zones, including tax reliefs, planning liberalisations and incentives for innovation, in order to attract more investment in the freeports. This is because EU Free Zones are governed by the Union Customs Code as well as by EU rules on State aid, which stop Member States using selective tax exemptions and financial incentives to distort competition. As the UK freeports could benefit from a competitive advantage, which ultimately could lead to business moving from the EU to the UK, they might conflict with the provisions on the level playing field and State aid in the TCA.

Freeports may also undermine the UK government's Level Playing Field commitments on upholding workers' rights. The UK government has cited "free zones" in the Gulf States and the U.S. as models for UK freeports to follow. In both cases, employers were attracted to these free zones because they were areas with far fewer workers' rights[1]. Concerns include the possibility that freeports could be used as sites for smuggling and tax evasion.

The Commission should monitor closely the further development of the UK's freeports, and analyse, as well as address, any conflicts with the provisions on the level playing field foreseen in the TCA.

[1] For example, US trade unions have highlighted that employers in the free zones routinely use union busters and subject workers to a high level of surveillance to intimidate and exploit them.

3. EU-UK maritime passenger transport

The EU is currently implementing the Entry Exit System (EES) Regulation (implementation deadline: May 2022) and the European Travel Information and Authorisation System (ETIAS) Regulation (implementation deadline: December 2022). These regulations will require detailed checks of UK passengers as close to the border as possible before entering or exiting the Schengen area. This in practice means that UK passengers will need to be checked in ports, which sometimes simply don't have the space to perform such checks. The Commission should therefore investigate how the implementation of these regulations can be reconciled with the vast number of maritime passengers coming from the UK to the EU and at the same time the lack of space in certain European ports.

4. Ensuring a level playing field for ports in-between the EU and UK decarbonisation policy agendas[2]

The regional scope of maritime proposals in the Commission'' Fit for 55 package can pose a challenge to the level playing field between the EU and the UK. There are two key legislative proposals that are especially relevant in this regard: the EU Emission Trading System (ETS) and the Energy Taxation Directive.

Due to the limited scope of the ETS proposal, concerns have been raised by a number of port stakeholders regarding the risk of cargo leakage due to possible evasive ETS stops at British ports rather than calling at European ones, in order to avoid falling within the scope of the EU ETS as much as possible and thus minimise costs. Such practices must be prevented to protect the integrity of EU climate policy, and to avoid undermining the competitiveness and connectivity of EU markets and ports. As long as the UK does not introduce some form of CO_2 pricing or participate in the EU Directive, the competitive position of European seaports could be negatively affected.

With regard to the Energy Taxation Directive, a tax on marine fuels is proposed which only applies to vessels in intra-EU waterborne navigation. This creates a risk that bunkering operations shift outside the EU, for instance towards the UK, since the marine fuels tax would only be levied in ports in the EU when the next port of call is another port in the EU.

5. The need to return to a single safety framework in the Channel Tunnel

One of the consequences of Brexit for the Intergovernmental Commission (IGC) supervising Eurotunnel's activities was the loss of its mission as safety authority for the cross-Channel fixed link. Incidentally, the EPSF has become the safety authority and will be followed soon by the ORR on the sections of the tunnel located respectively in France and in the UK. Two regulatory frameworks for railway safety in the tunnel have therefore been put in place, with no guarantee of convergence. Any divergence in safety rules and their application can only lead to significant additional operational costs and disrupt existing and potential new traffic by considerably increasing the standards that the equipment will have to meet, not to mention

[2] ECSA believes it is premature at this point to address the effect of the Fit for 55 package on EU-UK trade as the legislation is still being negotiated. However, EU ship owners strongly support the objective of maintaining a level playing field between the EU and the UK including in the environmental regulatory domain.

the risk to safety given the operational complexity generated by this situation. It is therefore necessary to return as quickly as possible to a single regulatory framework supervised by a single safety authority. The TCA concluded on 24 December 2020 does not include a relevant provision, so France and the United Kingdom must adopt bilateral agreements.

6. The issue of rail interoperability

The EU has no longer accepted notified body reports or certificates from the UK (now renamed "approved bodies" in the UK) since the end of the transition period. On the other hand, the UK still accepts EU documents, but will eventually accept only UK certificates/reports as of 1 January 2023. This leads to unnecessary double assessments that are costly and do not provide any added value. While today it is "simply" duplication, the more the EU and UK diverge in future, the more the assessments and certificates will consequently differ. Although this issue was the subject of several "notices to stakeholders" released by the Commission regarding preparedness, the rail transport industry is currently confronted with this barrier, which may become graver in the future.

In addition, the Commission and the EU Agency for Railways are currently working on the revision of the Technical Specifications for Interoperability (TSIs) to be voted on by the Railway Interoperability and Safety Committee (RISC) at the end of 2022. This revision will comprise both new functions and requirements, an overhaul to the transitions regime, a significant update to the referenced standards, and also many smaller or editorial changes. Once implemented in the EU, the risk of a delayed and/or diverging corresponding update to the UK NTSNs may arise. The Commission should ensure sufficient cooperation with the UK to minimise this two-speed update to the regulatory frameworks and avoid technical barriers being established due to the TSI/NTSN revisions outline above.

7. Issues related to public procurement

Public procurement clauses are of outmost importance for the rail supply industry. The basis of the public procurement chapter is the UK's membership of the WTO Agreement on Government Procurement, effective since 1 January 2021, but with increased in ambition. In this context, it is fundamental to be vigilant in relation to the implementation of the commitments reached between the EU and UK, particularly on the imperative of EU companies being able to participate on an equal footing with UK companies in bids. Special attention should be given so that private-owned entities in the covered utilities sectors that operate on the basis of special or exclusive rights granted by a competent UK authority are covered by the agreement. Moreover, it is also important to be vigilant and report any concern in bids below the GPA thresholds ("small-value procurement"), for which there is a guarantee of non-discrimination of EU companies established in the UK. The non-respect of these provisions would not only be out of line with the agreement reached between the Parties but would also seriously harm the European rail supply industry on a dynamic and very important market.

CULTURAL AND CREATIVE INDUSTRIES

1. Online Liability and Liability Privileges

There is a risk of regulatory divergence due to the lack of implementation of Article 17 of Directive 2019/790 (and the future Digital Services Act and Digital Markets Act) and a risk of the dilution or distortion of the EU's established online liability and liability privilege principles.

2. Enforcement of Intellectual Property Rights

The IPR enforcement provisions are positive but further arrangements would be useful to set out specific minimum standards and alignments in greater detail.

3. Exceptions and Limitations

We welcome Article 233 of the TCA. However, there is a risk of potential influence from the UK's other prospective trading partners that could dilute this provision.

4. Collective Rights Management

Both the EU and UK have very good standards with regard to rules on collective management of rights (see Collective Rights Management Directive 2014/26/EU) which are worth being promoted in each of the Parties' relations with third countries.

5. Road haulage/cabotage rules for organisations in the live performance and music sector

The TCA does not distinguish between own-account transport (which allows an unlimited number of stops) and other commercial road haulage operations. From the EU side, Regulation 1072/2009 applies. Both the TCA and the EU regulation led to difficulties in the organisation of touring activities for live performance organisations from the EU to the UK and vice versa. These touring activities fall under commercial road haulage and cabotage rules even if the carriage of the goods is only ancillary to the overall activities. This means a restriction of only three stops in one country, which makes the organisation of longer tours impossible. The TCA does not distinguish between operations of different sectors (commercial and non-commercial).

6. Visas for the purpose of paid activity

There is a problem for artists and cultural professionals from the UK. The EU-UK TCA does not lay down an option for artists/authors to provide services as a paid activity, because they do not fall under the EU-

UK TCA chapter on the Mode 4 category of Contractual Service Suppliers or others. As a consequence, Regulation 2018/1806 applies. According to Article 6(3), a Member State may make the undertaking of a paid activity subject to obtaining a work permit: it may also decide to require a visa even in the case of short-term stays, where such stay includes the undertaking of "paid activities".

Conclusion: there is a missing gap in the agreement that would make it possible for artists/authors and cultural professionals from UK to provide their services.

BOATING INDUSTRY

1. Regulatory divergence

Currently the EU Recreational Craft Directive 2013/53/EU and UK Recreational Craft Regulations are aligned without substantive changes.

However, discussions are ongoing in the UK about how to adapt the product regulations stemming from EU law, and the Commission is also reviewing the Recreational Craft Directive with potential changes to the legislation in future.

Divergence in the legislative framework for recreational craft between the EU and UK, as well as in the standards supporting these, would negatively impact trade and manufacturers in the sector from a cost perspective.

This is particularly relevant due to the limited number of large producers, with many manufacturers producing only a limited number of boats per year, and a significant number of SMEs in the recreational boating industry (over 95%).

2. Second-hand craft

There is a large second-hand market for recreational boats, due to their long lifetime (up to 50 years or more) and an estimated boat fleet of over six million boats in European waters.

The issue of second-hand goods, including recreational boats, has not satisfactorily been dealt with in the EU-UK agreements.

While some issues have received clarification from the side of the Commission already, a number still exist in relation to re-certification (under the Recreational Craft Directive) and VAT treatment.

We have also raised these issues with DG GROW and DG TAXUD.

3. Unfettered access NI-GB

The UK Government has announced "unfettered access" to goods in trade between Northern Ireland and Great Britain. There is however a lack of detail and clarity on how this will be implemented in practice.

METAL, ENGINEERING & TECHNOLOGY-BASED INDUSTRIES

1. Divergence assessment unit in the Commission

There will be inevitable legislative divergence between the EU and the UK, via either inertia or legislative action from either side. Consequently, the Commission should set up a specially tasked divergence assessment unit to monitor regulatory divergence in the interest of all stakeholders.

2. Mutual Recognition of Professional Qualifications (MRPQs)

While the TCA establishes a process in which regulators and industry bodies can work together to establish MRPQs, it does not contain a formal process for recognition.

3. EU third-party contractors carrying out services in the UK

Short-term deployment of EU citizens to the UK can take place without a work permit and/or visa if there is a contract between the manufacturer of the products and the British customer. However, a work permit and/or visa is required if the person being deployed is a third-party contractor or supplier.

4. The UK's accession to the Lugano convention

The Lugano Convention is an international judicial treaty negotiated by the EU with Iceland, Norway and Switzerland on matters of jurisdiction in civil matters. The limits of the TCA no longer provide this certainty for businesses as there is no provision for civil judicial cooperation.

INSURANCE REGULATION/FINANCIAL SERVICES

1. Level playing field

The EU DAG is a strong advocate of a level playing field between the European Union and the United Kingdom and carefully monitors potential divergence between the two markets in the financial services field.

Developments related to insurance regulation, and particularly Solvency II, are especially relevant.

A level playing field in relation to protection of personal data is also of the utmost importance.

AGRICULTURE

1. New EU health certificate for dairy

Animal health attestation in the new health certificates for dairy products are problematic for imports from the UK.

It is not possible for UK veterinarians to certify products that contain both UK and EU milk (because of an "either/or" formulation in the certificate). The announced postponement of UK import controls (2023) gives some more time to switch to a fully digital environment between the EU and UK.

Three-month residency requirement: it is not possible to certify products containing milk from cows that have been in the UK for at least three months prior to milking and milk from cows that have been introduced from an EU Member State more recently.

2. Digital certificates

UK health certification (for most animal products) will be introduced in stages from July onwards. Paper certificates/physical copies travelling with the goods are not practical due to the number and frequency of shipments.

3. Border Checkpoints (BCPs)

There needs to be a higher number of BCPs in the UK capable of enabling the transport of egg and poultry from the EU (Ireland and Mainland EU) to the UK and vice versa.

4. Egg yolk UK import certificates to be effective as of 1 April

The matter has been addressed at EU level but there has been little movement in the discussions so far. Regarding egg yolk, besides a TRQ for the UK there is no possibility to export liquid egg yolk without any additives (sugar or salt) to the UK; the product is missing in the veterinary certificate. This product is not on the EU certificate, which the UK translated.

5. Administrative burden in the ornamental horticulture industry

The ornamental horticulture industry is concerned about the massive administrative burden and possible disruptions of the trade flow of cut flowers to the UK as from 1 July 2022. Cut flowers are low-risk products. However, without a risk-based diversification by the UK, all cut flowers seem to require a phytosanitary certificate and thus a physical inspection for export to the UK. This is especially complicated in light of the fact that consignments consist of a broad diversity of cut flower varieties (over 100 in one consignment is not rare) and the issue concerns about 200 000 consignments yearly.

6. Trade of seed potato

Trade of seed potato has been disrupted.

SANITARY AND PHYTOSANITARY MEASURES

1. Ensure that EU-UK food, drink and agri-food trade continues to flow as frictionlessly as possible

Operators have to deal with new export/import requirements, SPS and customs controls, administrative procedures, and future regulatory developments.

The new requirements have a considerable impact on the administrative workload of companies as well as costs, and are complicating the logistics of deeply integrated supply chains.

Looking at the latest EU trade statistics, agri-food exports to the UK in the period January-September 2021 were up 0.5% compared to the same period in 2020. Meanwhile, imports from the UK registered a sharp decline of 27%.

While this signals a smoother flow of EU exports to the UK, at least for the time being, one should keep in mind that EU operators themselves now have to deal with the phase-in of new UK import requirements and controls on EU goods. These include pre-notification of agri-food imports, full customs controls & declarations for all goods (from 1 January 2022) & new requirements for Export Health Certificates (from 1 July 2022).

PHARMACEUTICALS

The TCA importantly includes an annex on medicinal products that provides for mutual recognition of Good Manufacturing Practice (GMP) inspections and certificates. It also provides that the EU and UK authorities should endeavour to cooperate from a regulatory perspective and that a joint Working Group on Medicinal Products should be established.

The recent adoption by the EU of bespoke measures to allow continuity of supply of essential medicines to patients located in Northern Ireland and in those EU markets historically dependent on the United Kingdom, such as Cyprus, Ireland and Malta, was another important step, particularly relevant for the off-patent sector, which supplies close to 85% of prescription medicines in Northern Ireland.

At the same time, it would be key to strengthen further the regulatory cooperation between the EU and UK and in particular to agree on the mutual recognition of batch testing, to avoid duplicative and unnecessary operations that can delay patients' access to medicines.

This would minimise the negative economic consequences of Brexit on both sides of the Channel, thus safeguarding the competitiveness of both the EU and the UK vis-à-vis other global players in the life science sector. It would also be in line with the objectives of the TCA Annex to facilitate the availability of medicines in each Party's territory and promote regulatory approaches in line with the relevant international standards.

LUGANO CONVENTION

Concerns have been raised by human rights lawyers on the UK not acceding to the Lugano Convention. The Lugano Convention ensures the recognition and enforcement of civil and commercial judgments and rules on jurisdiction and smoothens procedural aspects. Without the Convention the principle of *forum non conveniens* applies in the UK, meaning that a case can be dismissed where an appropriate and more convenient alternative forum exists. For example, the health and safety of tea pickers in Kenya: in practice this means that such a case can be dismissed by the UK judge and needs to be brought in front of the courts of the state where e.g. the work is performed, in this case Kenya. This makes it harder to bring human rights cases before courts in the UK.

EUROPEAN WORKS COUNCILS (EWCS)

1. EWCs and SE Representative Bodies (SE RBs)

Thousands of workers in the UK risk losing access to transnational information and consultation which in many cases they have been entitled to for more than 20 years.

There are three key issues:

1. For EWCs and SE RBs that were established on the basis of UK law, the role of central management has to be transferred to a Member State. As central management is free to choose in which country the representative agent will be located, some companies have decided to relocate the EWC or SE RB to a country with lower standards for the functioning of these bodies.

2. There is no legal obligation for UK representatives to remain on EWCs. In practice, this means it depends on the goodwill of management whether or not UK representatives will stay on board. In many companies it has been agreed that UK representatives can remain as ‘"full" members, but in several other cases the presence of UK representatives has only been extended for a limited period or their status has been reduced to "guests"’. Some have categorically refused to allow UK representatives to continue to attend, with the only argument that there is no legal obligation. Another consequence of such decisions is that matters that have an impact on the UK and one Member State are no longer considered as transnational, and therefore no information and consultation have to take place.

3. There is no guarantee that UK activities will be within the scope of future EWCs and SE RBs.

WORKERS' RIGHTS

1. Non-regression

A number of UK government announcements or legislative proposals over the past months could constitute a breach of its non-regression commitments in the Level Playing Field chapter of the TCA if put into place[3]. These include:

GDPR

In September 2021, the UK government consulted on plans to deviate from the EU General Data Protection Regulations (GDPR), including by:

- diluting the powers held by the Information Commissioner's Office
- reducing the protections against automated decision-making by removing Article 22 of the UK GDPR, allowing solely automated decision-making where it has lawful grounds in data protection legislation
- placing less emphasis on the importance of the needs of the individual data subject when assessing whether processing of data is lawful by removing the legitimate interests "balancing test"
- relaxing protections for personal data used for research purposes, which might lead to the appropriation of health data from patients in the UK's National Health Service databases without their express consent
- introducing fees for data subject access requests
- reducing or removing the protections against automated decision-making

The Data Protection and Digital Information Bill 2022-23 was introduced in July 2022 but it is currently stalled to give ministers more time to consider the bill and introduce further changes.***Review of retained EU law***

Following a number of announcements of the UK government over the course of 2021/2022 on planning a review of EU retained law[4], the Retained EU Law (Revocation and Reform) Bill was introduced in September 2022, and includes a sunset clause: after 31 December 2023 all EU derived laws will cease to apply unless replaced (though such deadline can be extended to 2026).

The UK government has provided no assurance that EU-derived rules will eventually be replaced by UK-specific laws. Both business and trade unions have jointly called for the bill to be scrapped as it would

[3] Findings of a legal opinion by Professor Federico Ortino that were referenced by DAG members at the 2nd EU DAG meeting on 4 February 2022. See full report published at https://www.tuc.org.uk/research-analysis/reports/protecting-workers-rights-using-eu-uk-trade-and-cooperation-agreement .

[4] "Brexit opportunities: review of retained EU law", see https://questions-statements.parliament.uk/written-statements/detail/2021-12-09/hlws445

create legal chaos, threaten to remove fundamental rights and undermine the government's commitments under the TCA.[5]

The scope of the Bill includes Northern Ireland and risks being at odds also with commitments undertaken by the UK government in the framework of the Northern Ireland Protocol to the Withdrawal Agreement.[6]

Strikes (Minimum Service Levels) Bill

In January 2023, the UK government also published the Strikes (Minimum Service Levels) Bill that would require that in the event of industrial action, a 'minimum service level' would have to be maintained in fire, ambulance, transport, health services, education, nuclear decommissioning and border security. This would further restrict the ability of trade unions to strike without negotiations, compensatory measures, or an independent arbitrator as set out in International Labour Organisation (ILO) jurisprudence.

Thus, if it becomes law, the bill would undermine UK government commitments under the TCA to uphold fundamental ILO conventions, including that on freedom of association.

2. Failure to effectively enforce domestic labour law

In a range of ways, the UK government is failing to adequately enforce employment law in the UK, which the TCA commits it to do under Chapter 6, Article 388.

Labour inspectors

The UK does not have adequate numbers of labour inspectors to enforce minimum wage, health and safety, and licensing standards in exploitative sectors, and agency worker legalisation. Analysis of labour market enforcement statistics shows that the UK would need an additional 1 797 labour market inspectors to meet the ILO benchmark of one labour market inspector per 10 000 workers.[7]

A 2020 study of employment tribunal records by the Resolution Foundation think-tank found that since 2017 only one of the 141 firms found to have underpaid the minimum wage was subject to a financial penalty in addition to repaying the arrears owed.[8] The UK's HM Revenue & Customs does typically levy fines on employers who underpay workers, but in the fiscal year 2017/18 the average violation only incurred a penalty worth 90 per cent of the arrears owed. This is not a strong disincentive given the low chances of employers getting caught. There have been fewer than 20 criminal prosecutions for underpaying the minimum wage since 2007.

[5] Financial Times, Letter to the editor, 23 November 2022 https://www.ft.com/content/b894b195-6adc-48eb-80c3-efe7f818d452

[6] The Protocol contains a commitment to "no diminution of rights, safeguards and equality of opportunity" (article 2, Rights of Individuals).

[7] Published figures in the May 2021 report of the TUC on the reform of labour market enforcement, see in detail https://www.tuc.org.uk/research-analysis/reports/tuc-action-plan-reform-labour-market-enforcement

[8] https://www.resolutionfoundation.org/app/uploads/2020/01/Under-the-wage-floor.pdf

There are approximately 40 000 employment agencies operating in the UK yet there are only nineteen inspectors in the Employment Agency Standards Inspectorate to regulate the agency sector.[9]

The UK government's own research shows it is failing to enforce legislation around minimum wages and health and safety for workers on its Seasonal Worker pilot scheme. Its Home Office survey of workers on the scheme found[10]:

- 16 per cent of workers were not paid their wages in full;
- almost half of the workers had not received their employment contract in their native language;
- workers at four sites said their employers had not provided health and safety equipment as they are legally required to do;
- 15 per cent said their accommodation was neither safe, comfortable, hygienic nor warm, and 10 per cent said their accommodation had no bathroom, no running water, and no kitchen;
- 22 per cent of respondents said they were not treated fairly by firm managers. Workers reported racism, discrimination, or mistreatment by managers allegedly on grounds of workers' nationality by being subject to disrespectful language or passed over for better work or accommodation.

Enforcement

In March, the dismissal of 800 UK-based seafarers at P&O Ferries and their replacement with foreign agency workers who were paid less than the UK minimum wage revealed shortcomings in the UK's enforcement of retained EU law concerning collective redundancies. This applies where an employer proposes 20 or more redundancies, within a period of 90 days or less, at one establishment. When an employer proposes making collective redundancies affecting more than 100 employees, the employer must consult with trade unions or elected worker representatives in good time and at the very least 45 days before the first dismissal takes effect. P&O Ferries has admitted that it breached the law in deciding not to fulfil its duties in this regard.[11] The low and predictable level of the protective award that might be given to affected workers meant it could instead budget to offer affected workers the equivalent of the protective award – without consulting with trade unions or elected worker representatives. On 20 August, it was announced[12] that P&O will not be criminally charged for the breach of law, meaning the UK government is not enforcing its own protective labour legislation.

ANIMAL WELFARE

1. Animal welfare

[9] See footnote 6, in particular reference there in footnote 5

[10] https://www.gov.uk/government/publications/seasonal-workers-pilot-review/seasonal-workers-pilot-review-2019

[11] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1062461/Letter_from_PO_Ferries_to_Business_Secretary_Kwasi_Kwarteng_22_March_2022.pdf

[12] https://www.bbc.com/news/uk-62613625

The TCA (in the SPS chapter) recognises animals as sentient beings and, for the first time in a trade agreement, the link between improved animal welfare and the sustainability of food production systems.

This is important to ensure animal welfare is not traded off when looking at solutions to improve our food production systems. Yet, the section on animal welfare, whilst welcomed, could have been stronger.

There is no concrete commitment to upward regulatory alignment nor any explicit mention of the setting up of a standing Working Group on animal welfare to structure cooperation between the partners and set out priority areas for the EU and UK to work on collaboratively in forums such as the Office International des Epizooties (OIE).

The TCA ensures tariff-free and quota-free trade in animal products that comply with the rules of origin. This ensures exchanges between the EU and the UK can continue at a similar level and that the EU does not have to turn to cheaper sources other than the UK where animal products are most often produced to lower standards.

However, animal welfare is not part of the provisions on Level Playing Field and the TCA does not contain any concrete commitments on the matter, not even a simple non-regression provision.

Should the UK diverge from EU standards – which is likely given the discussions in the UK about gene editing in farm animals, which would affect welfare as well – or should the EU improve significantly its standards – as planned in the EU's F2F strategy and with the ongoing revision of its animal welfare legislation – the TCA would lack the tools to prevent UK products produced with lower standards from entering the EU market at a preferential rate.

CONSUMERS' RIGHTS

1. Cooperation between EU and UK regulators

Consumer organisations of the BEUC network see value in EU regulators cooperating with their counterparts in third countries. The TCA encourages cooperation on a range of topics: antimicrobial resistance, animal welfare, sustainable food production, competition policy, cybersecurity, health, and financial services. At the same time, cooperation on consumer rights enforcement is absent from this list, yet – in the BEUC's view – important.

2. Mobile roaming costs

The EU's external policy – whether in terms of trade or regulatory cooperation – should deliver for consumers. While trade deals cannot and should not make decisions on regulatory affairs, they can encourage the political will for more cooperation.

One practical example through which this can be done is, for instance, to reduce mobile roaming fees. Although some telecoms providers have not re-introduced such fees after the UK's exit from the EU, some have (or might in the future).

EU PROGRAMMES

Participation in EU programmes is part of the TCA, and it was agreed already there that the UK would have associated country status for a number of programmes, most importantly (in terms of budget and people involved) the Horizon Europe programme.

There were still final details to solve, but both sides explicitly saw them as unproblematic. The European Commission went as far as explicitly telling EU researchers to form consortia with UK partners before the association agreement with the UK was signed, as it was as good as certain that association would happen quickly.

However, in parallel with the disagreements regarding the Northern Ireland Protocol the process towards association of the UK to EU programmes stalled (without a formal explanation being given). In practice, the Specialised Committee on Participation in Union Programmes only met in late December 2021 without publishing a statement.

FISHERIES

1. Fisheries (non-customs issues)

EU-UK fisheries: certain progress in 2021, but overfishing persists.

On 21 December 2021, the EU and the UK reached an agreement on 2022 fishing limits, known as Total Allowable Catches (TACs), for shared fish populations in the Atlantic Ocean and the North Sea. The agreement covers 65 jointly managed fish populations and provisions for the exploitation of non-quota stocks as well.

The DAG member organisation Oceana welcomed this agreement on catch limits for 2022 and the continued commitment of the EU and the UK to cooperate on fisheries management despite other related disputes, such as the Jersey conflict on fishing licences. This agreement provides stability for the respective fleets during 2022.

However, the agreed ambition expressed in the TCA was that of following scientific advice and allowing the recovery of shared fish populations. This is lacking in the current agreement as certain fish populations, like West of Scotland herring, Irish Sea whiting or Celtic Sea cod, will continue to be overexploited in 2022.

A UK fisheries audit released by DAG member organisation Oceana in 2021 shows that only around 43% of fish stocks shared between the UK and the EU are known to be exploited at sustainable levels, whereas the rest of the stocks are either overfished or their exploitation status is unknown.

Negotiations on 2023 catch limits are expected to start in November and finish by 20th December 2022.

OVERARCHING AND GENERAL ISSUES

In addition to the sectorial and specific issues presented above, the EU DAG listed a number of overarching and general issues to be followed throughout the DAG work and activities.

INSTITUTIONAL FRAMEWORK AND ENFORCEMENT

UK TRADE WITH THE REST OF THE WORLD

Including the impact of the UK trade negotiating agenda on the EU-UK trade relation, on the implementation of the TCA and on EU trade relations with other third countries.

NORTHERN IRELAND PROTOCOL

With focus on monitoring the implications for Ireland and Northern Ireland and the link to the Protocol on Ireland and Northern Ireland.

TRADE

With focus on the Level playing field and on Trade in goods, including rule of origin, technical barriers, customs & trade facilitation.

DIGITAL