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### The End of the Beginning? EU-UK Relations 100 Days after Brexit

Przemysław Biskup

Signing of the EU-UK Trade and Cooperation Agreement (TCA) on 30 December 2020 avoided the most destructive scenario of the end of the transition period following the United Kingdom's withdrawal from the EU. However, the circumstances of the conclusion of the TCA, as well as its legal structure, indicate the need for further discussions concerning its operationalisation and potential revision in 2025. However, the problems with its implementation in the first quarter of this year combined with the new UK national security strategy of 16 March point to the risk of the rapid disintegration of many existing EU-UK economic and non-economic links. The EU and the UK therefore face the challenge of effectively maintaining cooperation before the first TCA review scheduled for 2025.

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## Legal Characteristics of the Agreement

The shape of the *Trade and Cooperation Agreement* stems from the EU's will to make it fit into its system of international agreements as well as the time pressure that forced the concentration of the eleven-month negotiations on issues necessary for the conclusion of the treaty or non-controversial.

The shape of the *Trade and Cooperation Agreement*<sup>1</sup> stems from the EU's will to make it fit into its system of international agreements as well as the time pressure that forced the concentration of the eleven-month negotiations on issues necessary for the conclusion of the treaty or non-controversial,<sup>2</sup> while leaving flashpoints for the future talks. The UK initially sought to conclude several separate sectoral agreements while the EU wanted a single comprehensive one. In view of the uncertainty over the post-Brexit models of many British public

policies, the EU has also sought to build correction mechanisms into the agreement. Consequently, the TCA contains specific revision clauses, as well as a five-year general clause. When the TCA's general review scheduled for 2025 will take place the signatories will be able to modify or add rules by consent or unilaterally renounce the treaty in its entirety or in part. Moreover, the TCA has a framework character: its rules on implementation, fair competition, or dispute settlement will apply to further EU-UK agreements.

The TCA sets a precedent in terms of managed obstruction of economic exchange of exceptionally high value to both sides, rather than its liberalisation.<sup>3</sup> In addition, in relation to other agreements concluded by the EU with third countries (e.g., associations with Georgia, Moldova, and Ukraine), the TCA combines economic and non-economic regulations (as illustrated by three of its seven chapters). Finally, the agreement is distinguished by extensive rules on broadly understood competition (or level-playing field, LPF) policy, including labour law, wage- and non-wage labour costs, environmental, (phyto)sanitary and safety standards combined with a balancing mechanism. The mechanism adjusts the scope and depth of access to the EU internal market to the degree of harmonisation of competition rules on the UK market vis-à-vis the EU. The European Commission has been arguing that these LPF rules could become a model for the EU's future agreements with third countries.

The TCA sets a precedent in terms of managed obstruction of economic exchange of exceptionally high value to both sides, rather than its liberalisation.

From the perspective of the four freedoms of the single market, the TCA allows for a significant preservation of the free movement of goods (instead of the fallback on the World Trade Organisation rules), offers facilitation of the movement of services in some sectors (primarily transport), minimally facilitates the free movement of capital, and ends the free movement of persons.

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The relatively general character of many TCA provisions makes it possible to practically define them in the implementation process upon a decision of the Partnership Council, the supreme body set up to manage

<sup>1</sup> *Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland*, OJ L 444, 31.12.2020, <https://eur-lex.europa.eu/>.

<sup>2</sup> P. Biskup, "The Need to See the Wood Despite the Trees: The High Stakes of the EU-UK Talks on Their Future Relations," *PISM Policy Paper*, No. 10 (185), 23 November 2020.

<sup>3</sup> EU-UK turnover in 2019 was £668 billion/€788 billion, with a trade surplus for the EU of £79 billion/€92 billion. M. Ward, "Statistics on UK-EU trade," House of Commons Library Research Briefing, 10 November 2020, [www.parliament.uk](http://www.parliament.uk). TCA-based exchanges have the greatest value among the existing EU trade agreements. EC, "Trade Agreements: Geography and trade intensity," 19 February 2020 r., [www.ec.europa.eu](http://www.ec.europa.eu).

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the agreement, and its associated working committees. These bodies can also provide a forum for broader political dialogue, which would partly replace the one previously held within the EU institutions (e.g., the European Council). A similar model of dialogue, based on the Joint Committee and specialised committees, is provided for in the Withdrawal Agreement of October 2019. Between 1 February 2020 and 1 March 2021, all these bodies were led by Maroš Šefčovič, EC vice-president, and Michael Gove, minister in charge of the Cabinet Office. On 1 March this year, the latter was replaced by Lord David Frost, the former UK chief negotiator, who was appointed into the cabinet as the minister of state. He is also responsible for bilateral relations with the Member States.

The TCA is based on the principle of equality between the parties and on public international law (instead of EU law), including references to international conventions to which the EU/Member States and the UK are parties (e.g., the European Convention on Human Rights or the Paris Climate Agreement). The United Kingdom has also left the jurisdiction of the Court of Justice of the European Union (CJEU). In reference to most economic policies, the non-regression principle has been adopted. The dispute-settlement mechanism is based on independent arbitration, composed of representatives of both parties and independent judges. The parties will be able to apply compensating instruments by decision of the arbitration panel. Its decisions shall be based on material (real) differences between the regulations of both parties (and not just formal ones).

Although the TCA was signed on 30 December 2020, ratified by the UK<sup>4</sup> and provisionally entered into force on 1 January by decision of the Council of the European Union, it is still awaiting the completion of ratification by the EU. The European Parliament (EP) was due to finish it by 28 February 2021, but this period was extended until 30 April due to a lengthy review of the treaty.<sup>5</sup> Regrettably, the escalating political and legal dispute over the functioning of the border between the Republic of Ireland and Northern Ireland in February and March may hinder the final ratification of the agreement.<sup>6</sup>

## TCA's Basic Provisions

The agreement creates a free trade area that abolishes tariff and quantitative restrictions on trade in goods but does not provide for harmonisation of trade or economic policies.

The agreement creates a free trade area that abolishes tariff and quantitative restrictions on trade in goods but does not provide for harmonisation of trade or economic policies. The solutions adopted in the agreement create barriers to economic exchange, such as mandatory border controls or an end to the mutual recognition of certificates, even if the factual standards of both parties remain identical. The TCA also breaks with the favouring of one party's goods on the other's market over goods imported under other trade

agreements from third countries. Generally, barrier-free exchanges only apply to goods produced in the UK or the EU (extensive rules of origin), which will affect transnational production chains.

The TCA protects trade and investment, security of supply, and environmental protection in the energy market. Although the UK is treated as a third country from the point of view of the EU's internal energy market, the TCA exempts trade in gas, electricity, and equipment for its production

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<sup>4</sup> *European Union (Future Relationship) Act 2020*, [www.legislation.uk](http://www.legislation.uk).

<sup>5</sup> EC, *The EU-UK Trade and Cooperation Agreement*, <https://ec.europa.eu/>.

<sup>6</sup> M. Rosca, "EU commissioner says UK's Northern Ireland policy could delay Brexit ratification," *Politico*, 4 March 2021, <https://www.politico.eu/>.

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from customs duties and quantitative restrictions. The agreement also indicates the conclusion of further agreements concerning this sector.<sup>7</sup>

A five-and-a-half-year transition period was agreed on fisheries, during which EU fishing quotas in UK waters will be reduced by 25% in exchange for maintaining UK access to EU waters and for the duty- and quota-free export of fish and seafood to the EU. It will be followed by annual negotiations in which the UK can completely exclude EU ships from its waters at the price of tariffs on its catches exported into the single market.

The agreement allows the EU and the UK to create immigration policies without the obligation to automatically favour each other's nationals over third-country nationals.

The agreement allows the EU and the UK to create immigration policies without the obligation to automatically favour each other's nationals over third-country nationals. Persons migrating to the other side's territory lost the automatic and non-discriminatory right to residence, family reunification, access to the labour market, and social benefits. At

the same time, the agreement established visa-free travel for tourist and family purposes. The new UK immigration policy favours highly skilled workers and those contributing skills lacking in the UK labour market. Also provided is a separate path for seasonal workers in agriculture and other sectors of the economy.<sup>8</sup> The TCA does not provide for additional facilitation for business travellers or service providers, especially since within the EU those rules are mostly regulated on the Member State level.

The agreement does not include the free movement of services, which became limited by the lack of mutual recognition of qualifications, or the cessation of passporting rights and free flow of commercial data.

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rights<sup>9</sup> and free flow of commercial data. An exception was made for transport, which functionally complements the trade in goods. Road carriers of one party obtained the right to carry out unlimited cross-border, point-to-point deliveries, but the treaty allows only a maximum of two additional deliveries after crossing the border (cabotage).<sup>10</sup> British airlines lost access to the Open Skies programme within the EU. Many key

service sectors are now regulated on the basis of EU and UK unilateral decisions, in particular concerning recognition of equivalence of the other party's regulations and data-processing security regime.

An important part of the agreement is the provisions relating to the non-economic aspects of EU-UK cooperation, in particular concerning Justice and Home Affairs, or the UK's participation in EU research and development programmes. These provisions concern issues which either have no alternative international regulatory system or have one that is inadequate from the point of view of existing EU-UK cooperation.<sup>11</sup> The TCA largely allows for the intense exchange of data concerning DNA, fingerprints, vehicle registration, passengers in international traffic, or persons convicted of

<sup>7</sup> S. Goldberg, C. Davis, "Key TCA issues for the energy sector," Herbert Smith Freehills, 19 January 2021, <https://hsfnotes.com/>.

<sup>8</sup> *Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020*, [www.legislation.gov.uk](http://www.legislation.gov.uk).

<sup>9</sup> Passporting concerns the right of a company registered in one party's territory to provide service in the other party's market without the need to apply for further authorisation in the country importing that service.

<sup>10</sup> Due to the EU's trade surplus, one in five lorries returning to the Union from the UK ran empty before the pandemic, hence the pressure on hauliers to reduce freight costs by operating additional en-route services.

<sup>11</sup> For example, a return to the 1957 European Convention on Extradition in place of the European Arrest Warrant system would multiply procedural costs and increase the transfer time of detainees by a factor of 4 or 5.

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crimes. The agreement also provides for the establishment of preferential treatment of the UK by the EU in comparison to other third countries in the field of police and judicial cooperation within the frameworks of Europol and Eurojust, as well as operational cooperation against terrorism and money laundering. The TCA also provides for the conclusion of a future agreement on the coordination of sanction policies, as well as the freezing or confiscation of funds and other material resources at the request of the other party. Finally, the TCA allows the UK to participate in selected EU programmes, such as Erasmus, Horizon, and Galileo, subject to co-financing by Britain during the full multiannual financial perspective.

The TCA has also been complemented by a number of joint declarations specifying its provisions and an agreement between the UK and the European Atomic Energy Community on cooperation in the field of peaceful uses of nuclear energy,<sup>12</sup> in particular the production of medical equipment and materials and the development of energy production technologies. Moreover, also concluded was an agreement on procedures related to the exchange and protection of classified information.<sup>13</sup>

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## Challenges for EU-UK Cooperation Strategies

The first weeks of the TCA's implementation do not give a clear picture of whether the new EU-UK relations take the form of cooperation or competition. On the one hand, there are protracted negotiations on the detailed rules for implementing the agreement, while on the other hand, a risk of trade conflict. Also, there is the process of clarifying both parties' strategies. The new UK national security strategy, presented in the form of the Integrated Review of Security, Defence, Development and Foreign Policy<sup>14</sup> (Integrated Review) and the EU Strategic Compass<sup>15</sup> to be approved in 2022, will be crucial for the future relationship.

A key long-term challenge to EU-UK relations is the process of redirecting UK exports from the EU single market to third-country markets. Moreover, the third-country markets are where the UK gains a trade surplus, in opposition to the systematically widening trade deficit with the EU.<sup>16</sup> The TCA's market-access balancing mechanism will motivate the UK in the medium and long term to diversify its trade streams away from the EU. A trade conflict like the one demonstrated by the dispute over vaccine production in Q1 2021<sup>17</sup> would accelerate the dismantling of EU-UK production and supply chains. EU-UK economic rapprochement would require a fundamental expansion of trade in services, which would balance the economic benefits to both sides.

Another fundamental challenge to the parties' relationship stems from the UK's pivoting towards the Indo-Pacific.

This follows another fundamental challenge to the parties' relationship in the form of the UK's pivoting towards the Indo-

<sup>12</sup> *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy*, 24 December 2021, [www.gov.uk](http://www.gov.uk).

<sup>13</sup> *Agreement between the European Union and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Security Procedures for Exchanging and Protecting Classified Information*, 24 December 2021, [www.gov.uk](http://www.gov.uk).

<sup>14</sup> Cabinet Office, *Global Britain in a Competitive Age: The Integrated Review of Security, Defence, Development and Foreign Policy*, 16 March 2021, [www.gov.uk](http://www.gov.uk).

<sup>15</sup> M. Terlikowski, "In Search of Direction: The EU Strategic Compass process", *PISM Policy Paper*, TBA.

<sup>16</sup> The EU's share in UK exports fell from 54% to 43% between 2002 and 2019, with the UK's trade deficit steadily increasing (from £13 billion to £79 billion between 1999 and 2019). M. Ward, "Statistics ...," *op. cit.*

<sup>17</sup> L. Fisher, J. Bradshaw, "British pharma giant to 'fill and finish' Novavax Covid vaccines amid threat of jobs trade war," *The Telegraph*, 29 March 2021, [www.telegraph.co.uk](http://www.telegraph.co.uk).

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Pacific, as signalled in the new UK strategy. The Integrated Review clearly points to the growing importance of this macro-region for the UK's wider foreign, security, and economic policy, in practice at the expense of European links. The new UK strategy should be read in the context of its accession application to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) of 1 February<sup>18</sup> or tightening of cooperation with Japan in the context of the renewal of the 67 trade agreements originally negotiated by the EU.<sup>19</sup> In the Integrated Review, China is characterised not only as a “systemic competitor” but also as an important partner in terms of economic cooperation and solving global problems.<sup>20</sup>

Important challenges for EU-UK relations stem from British domestic politics. In particular, in December the *United Kingdom Internal Market Act 2020* (UKIMA),<sup>21</sup> consolidating its internal single market and extending the economic intervention instruments available to central and national/regional authorities, was adopted.<sup>22</sup> This development is important in the context of manifesto commitments of the Conservative Party under Boris Johnson's leadership of December 2019 concerning economic aid to neglected parts of the UK (levelling-up agenda), for example, Northern England and the Midlands, Wales, and parts of Scotland. UKIMA provides for infrastructure investment and the creation of duty-free zones, or freeports, in these regions (the creation of eight freeports was announced on 3 March).<sup>23</sup> Since the outbreak of the COVID-19 pandemic, the issue of state intervention in the economy has gained significant weight, especially in combination with the plans for the green transformation. Finally, it is worth noting the restructuring of the UK's decision-making centres concerning European policymaking (No. 10, the Cabinet Office, departments of the Treasury, Defence, International Trade on top of the Foreign, Commonwealth and Development Office), each with its own set of priorities, expectations, and stakeholders. While decisions on European affairs, whether EU or bilateral, are now in Lord Frost's hands within the Cabinet Office, the future institutional leadership for relations with the EU remains an open question.

The top conceptual challenge on the EU side seems to be how to balance its short- and long-term objectives concerning the UK as well as balancing the interests of individual Member States and EU institutions.

The top conceptual challenge on the EU side seems to be how to balance its short- and long-term objectives concerning the UK as well as balancing the interests of individual Member States and EU institutions. The significant differences in perception of the objectives and principles of the future EU-UK partnership between EU institutions and its Member States surfaced during the 2020 negotiations<sup>24</sup>. When some Members (e.g., Poland) gave priority to close cooperation with

the UK covering the full spectrum of policies (economic, political, defence), others (e.g., France) preferred to use EU policy instruments to take over investments and supply chains operating from the UK. The tendency to think in the short-term perspective was demonstrated in the first weeks of 2021 with the emphasis on the UK's new status as a third country through the application of meticulous border controls by France and the Netherlands. This contrasted with the UK's phasing-in of respective controls over a few months. Meanwhile, there has been a setback in the long-term objectives of EU policy towards the UK concerning, for example, cooperation in the areas of foreign,

<sup>18</sup> W. James, “UK makes formal request to join trans-Pacific trade deal,” *Reuters*, 1 February 2021, [www.reuters.com](http://www.reuters.com).

<sup>19</sup> The UK's renegotiated trade agreement with Japan strengthens cooperation in financial services, data flow, online trade and services, and automotive parts manufacturing. According to Nissan, it will facilitate the creation of a pan-European electric car manufacturing centre in the UK.

<sup>20</sup> Department of International Trade, “DIT provides trade and investment services and practical support. We help UK companies succeed in China, and Chinese companies set up and invest in the UK,” [www.gov.uk](http://www.gov.uk).

<sup>21</sup> *United Kingdom Internal Market Act 2020* (UKIMA), [www.legislation.uk](http://www.legislation.uk).

<sup>22</sup> P. Biskup, “Devolution in the UK and the Combined Challenges of Pandemic and Brexit,” *PISM Bulletin*, No. 253 (1683), 9 December 2020.

<sup>23</sup> C. Barnard, “Freeports,” *UK in a Changing Europe*, 2 March 2021, <https://ukandeu.ac.uk/>.

<sup>24</sup> P. Biskup, “The Need ...,” *op. cit.*

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security, and defence policy. This policy has not only been excluded by the UK from the TCA negotiations, but the Integrated Review has identified selected Member States as UK partners rather than the Union itself.

The EU also seems to lack a clear vision of how to maintain cooperation with the UK under the new conditions. The debate has focused instead on creating or developing solutions beyond the Union's present structures, such as the E3 Group (bringing together Germany, France, and the UK) and the European Security Council. However, there is no model for involving the EU institutions and other Member States in this dialogue.<sup>25</sup> The ultimate success of EU-UK cooperation in the field of foreign and security policy will also depend on the development of the EU's own defence capabilities and on the strengthening of the EU's economic cooperation with the UK, the touchstone of which seems to be trade in financial services. This is due both to the sector's major share in British exports (around 30%) and to the symbolism of the Union's decision to recognise the equivalence of U.S. or Brazilian regulations, but not British ones, despite the considerable differences in reference to the former and the identity of the latter with the EU's system.<sup>26</sup>

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Africa and Southeast Asia can become an important field of EU-UK competition. In reference to the less-developed countries of these regions, the question of the coordination of official development aid (ODA)<sup>27</sup> between the EU and UK remains open. Importantly, it should be noted the merger in March 2020 of the Department for International Development with the Foreign and Commonwealth Office, which leads to defining ODA as an integral instrument of UK foreign policymaking. As concerns the more developed Southeast Asian and African countries, trade agreements concluded with them by the EU and UK will be decisive. The high economic growth rate of some of them will be motivating the UK government to adapt their national regulations to cooperation with them at the expense of harmonisation with the EU. EU-UK competition in some Asian and African markets is likely to involve Britain offering these countries wider access to the agri-food market (the UK imports two-thirds of the food it consumes) and partly industrial goods, and in some cases (e.g., India) on immigration facilitation. Hence, the British moves could put competitive pressure on the EU.

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The link between their trade policies and climate policies—both in the field of low-carbon technology development, as well as in taxes, customs and levies—will be crucial for the economic future of the EU and the UK. The UK is one of the countries with the highest renewable electricity production potential and is the current leader in its offshore production. Green

transformation will be promoted by the UK at the G7 summit in Cornwall in June and COP26 Glasgow in October. Since 2016, the UK has been implementing a new industrial strategy to support investment in infrastructure, biotechnology, electromobility, artificial intelligence, information technology, and fintech. In these fields, Britain has ambitions not only to develop domestic capacity and capabilities but also to set international standards. An example of the successful implementation

<sup>25</sup> S. Lehne, "Rivals or Partners? The EU-UK Foreign Policy Relationship After Brexit," Carnegie Europe, 30 March 2021, <https://carnegieeurope.eu/>.

<sup>26</sup> The EU-UK dialogue on equivalence only concluded the "talks on talks" in the form of announcing on 26 March the establishment of the Joint UK-EU Financial Regulatory Forum. P. Kellner, "The UK and the EU Are Dancing for a Relationship," Carnegie Europe, 30 March 2021, <https://carnegieeurope.eu/>. HM Treasury, "Technical negotiations concluded on UK-EU Memorandum of Understanding," 26 March 2021, [www.gov.uk](http://www.gov.uk).

<sup>27</sup> Between 2010 and 2020, the UK was among the top three ODA donors in the world, with spending comparable to the EU aid budget.

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of this strategy was the UK's efforts dating back to spring 2020 to create a British anti-COVID vaccine and a strong domestic production centre of modern bioactive components and medicines.<sup>28</sup>

Another challenge to the EU's post-Brexit strategy concerning the UK will be posed by the Scottish and Northern Irish separatisms. As concerns the first, in the context of the Copenhagen Criteria for EU membership, the UK government's recognition of the legality of a possible independence referendum in Scotland will be crucial for its fulfilment of the rule of law and the functioning of democracy conditions.<sup>29</sup> Scotland's potential accession to the EU would entail far-reaching transformations in UK and NATO security policy, and consequently in the Union's. In particular, the future of Britain's nuclear capability and control of routes in the North Sea and Atlantic would be crucial.<sup>30</sup>

Another challenge to the EU's post-Brexit strategy concerning the UK will be posed by the Scottish and Northern Irish separatisms.

The Northern Ireland case is different from the Scottish one due to the former's right under the Belfast/Good Friday Agreement (GFA, 1998) to opt to unify with the Republic of Ireland.<sup>31</sup> In 2019, Northern Ireland was also guaranteed automatic accession to the EU in the event of Irish reunification. The *Protocol on Ireland and Northern Ireland to the Withdrawal Agreement* generally extended Northern Ireland's membership of the EU single market for goods. However, from the unionist point of view the implementation of the Protocol from 1 January 2021 has created severe barriers to trade with the UK. While many of them were imminent, some of the problems arise from an overly literal interpretation of the Protocol, which leads to highlighting the document's internal contradictions rather than pursuing its stated objectives.<sup>32</sup> The border conflict flared up again as a result of the EC's decision of 29 January to establish a so-called hard land border on the island of Ireland to prevent the export of anti-COVID vaccines from EU territory.<sup>33</sup> According to Lord Trimble, the Nobel Peace Prize winner and GFA co-author, the absence of a referendum preceding the adoption of the Protocol has permanently undermined the Good Friday Agreement.<sup>34</sup> UK domestic pressure led to the British unilateral suspension until 1 October 2021 of some of the checks required by the Protocol on the UK-NI maritime trade border, leading to the EC suing the UK before the CJEU.<sup>35</sup> Consequently, the EU is currently facing a renewed dilemma as to whether, and to what

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<sup>28</sup> Six vaccine factories have been set up in the UK and over 40 million vaccinations have been carried out. The UK is also a leader in genome sequencing (50% of the world's research is done there). Licensed production of Oxford-AstraZeneca was undertaken by the Serum Institute of India.

<sup>29</sup> "Indyref2: SNP reveal 'roadmap' to another independence referendum," *BBC News*, 24 January 2021, [www.bbc.com/news/](http://www.bbc.com/news/).

<sup>30</sup> P. Biskup, "The Upcoming Scottish Parliamentary Elections and the Challenges of Brexit and the Pandemic," *PISM Bulletin*, No. 15 (1711), 28 January 2021.

<sup>31</sup> P. Biskup, "The Long-Term Implications of Brexit for Northern Ireland," in: F. Zuleeg, A. Aktoudianakis, J. Wachowiak (eds.), *Towards an Ambitious, Broad, Deep and Flexible EU-UK partnership?*, Brussels: European Policy Centre, 17 June 2020, <https://epc.eu/>.

<sup>32</sup> For example, the Protocol guarantees Northern Ireland's position as part of the UK's customs territory and the UK's integrity, but at the same time requires the application of the Union Customs Code at the Northern Irish-British border. The legal structure of the Protocol indicates the need to use a teleological method in its interpretation. *Ibidem*.

<sup>33</sup> D. Young, "Chaos sees EU backtrack on plans for 'hard vaccine border'," *The Belfast Telegraph*, 29 January 2021, [www.belfasttelegraph.co.uk](http://www.belfasttelegraph.co.uk). Between September and December 2020, the UK moved to unilaterally repeal part of the Protocol in the absence of EU concessions concerning the mode of its implementation. The crisis was then resolved by agreeing within the Joint Committee transitional periods that end between April and December 2021. P. Biskup, "The Need ...," *op. cit.*

<sup>34</sup> D. Trimble, "Tear up the Northern Ireland protocol to save the Belfast Agreement," *The Irish Times*, 20 February 2021, [www.irishtimes.com](http://www.irishtimes.com).

<sup>35</sup> B. Lewis, "Our lawful steps are consistent with a good faith implementation of the Northern Ireland Protocol," *The Telegraph*, 4 March 2021, [www.telegraph.co.uk](http://www.telegraph.co.uk). H. von der Burchard, "Brussels launches legal action against UK over Brexit breach," *Politico*, 15 March 2021, [www.politico.eu](http://www.politico.eu). S. McBride, "Northern Ireland is now a proxy battleground for the EU and the UK—and that is dangerous," *Belfast News Letter*, 6 March 2021, [www.newsletter.co.uk](http://www.newsletter.co.uk).



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extent, it is possible to make the land and maritime border on the island of Ireland implemented in a more flexible way in order to protect the peace process from violent unionist protests<sup>36</sup> without significantly undermining the integrity of the single market.

Finally, the first review of the TCA scheduled for 2025 will be a major challenge for the EU and UK strategies. The UK and EU elections in 2024 mean that the talks on this issue will most probably be conducted by the new European Commission and the new UK government. Before then, one should also expect electoral changes in a number of Member States. This raises the question on the EU side

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whether to opt for immediate reconstruction of the EU-UK partnership in cooperation with the Johnson government or to wait for a future political change in Britain. Johnson's relatively fresh mandate, combined with the UK's new global strategy, and post-COVID green economic agenda, is likely to create by 2024 difficult-to-reverse changes in relations with the European Union. The current problems with a constructive EU-UK dialogue can only accelerate

changes that are unfavourable to the EU, while the pragmatic approach of implementing and improving the TCA provides an opportunity to protect many EU-UK economic and political links until the treaty can be reviewed.

## Challenges and Conclusions for Poland

For Poland, an EU border state in the east, it is important to maintain cooperation on internal security (e.g., the exchange of data on organised crime and terrorism) and broadly understood friendly relations between EU NATO member states and the UK. Despite the weakening trade dynamics on exchange of PLN 120 billion (€26.7 billion), with a surplus on Poland's side of PLN 40 billion (€8.9 billion), the UK has been Poland's third most important export market.<sup>37</sup>

The TCA has allowed Polish operators to maintain basic access to the British market for goods and transport services. This is crucial for the automotive, agri-food (UK is the second largest market for Polish agri-food exports), and haulage industries, which are the most vulnerable to customs duties and problems at the EU-UK border. The first weeks of TCA implementation demonstrated many practical trade restrictions.

Figures for January and February 2021 show a net decrease of 32% in EU exports to the UK (by £5.5/€6.3 billion) and of 48% in imports (by £2.0 billion/€2.3 billion) in comparison to December 2020.<sup>38</sup> While this data may change (e.g., due to changes in pandemic restrictions), the full introduction of UK border controls (currently suspended unilaterally) by 1 October will increase the costs for EU exporters. These difficulties are likely to be overcome by transnational corporations operating from Poland due to their technical, financial, organisational, and legal resources. However, the same barriers can have a much stronger and enduring impact on small and medium-sized Polish companies in the transport or agri-food sectors.

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<sup>36</sup> "Belfast: Police fire water cannon at rioters on another night of violence in Northern Ireland," *The Telegraph*, 8 April 2021, [www.telegraph.co.uk](http://www.telegraph.co.uk).

<sup>37</sup> Data for 2019. P. Biskup, "The Need ...," *op. cit.*

<sup>38</sup> A. Casey, "UK trade: January 2021," Office for National Statistics, 12 March 2021, [www.ons.gov.uk](http://www.ons.gov.uk). D. Scott, "UK trade: February 2021," Office for National Statistics, 13 April 2021, [www.ons.gov.uk](http://www.ons.gov.uk).

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The escalation in the EU-UK competition in the financial sector could become a challenge for Poland due to its impact on the cost of issuing public debt or derivatives resulting from restricted access to the UK's financial hub, the largest in Europe. This creates tension between the national interests of Poland and other Member States or even the Union. From the EU's point of view, limiting recognition of the equivalence of UK financial market regulation is to defend the autonomy of its financial market, while for Member States such as France, the Netherlands, Luxembourg, and Ireland, it is to facilitate attracting investors based in the UK. From the Polish perspective, the EU-UK competition in this field could also mean strengthening the position of Russian and other post-Soviet capital in the UK market.<sup>39</sup>

The longer the TCA implementation disputes last, the more difficult it will be for Johnson to explain to the UK public the spending on cooperation with the EU and its Member States.

The Polish concerns also stem from the EU's loss of political capital over disputes regarding the border procedures applied in Northern Ireland to trade flows clearly destined for the province's domestic consumption.<sup>40</sup> These disputes tend to be well publicised in Britain, and their escalation hampers developing good neighbourly cooperation and concluding an EU-UK foreign and defence policy agreement. The longer the

TCA implementation disputes last, the more difficult it will be for Johnson to explain to the UK public the spending on cooperation with the EU and its Member States. For example, the new UK defence strategy, as described in the Defence Command Paper, assumes—taking into account the financial burdens resulting from the pandemic—a reduction in terms of numbers and equipment of British land forces.<sup>41</sup> Moreover, the Integrated Review sets plans for developing expeditionary capabilities in Indo-Pacific while strengthening the role of nuclear deterrence in self-defence (40% increase in the number of warheads). While in theory these announcements are not exclusive, in practice—if budgetary constraints limit their implementation—there is a real risk to maintaining the present British involvement on NATO's Eastern Flank. Importantly, Britain is not only a framework state for allied forces in Estonia but also responsible for maintaining open routes between the U.S. and Europe across the North Atlantic. While a full assessment of the new UK approach will only be possible once the announced changes have been implemented, it is worth remembering that the previous comparable reforms in 2010, combined with the effects of the global financial crisis, have resulted in an unintended loss of important military capabilities by Britain (e.g., aircraft carriers) for a decade.

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Another challenge for Poland is to promote within the EU coordination of sanctions policy with the UK, and to support maintaining a common front of Western countries vis-à-vis Russia and China. In the case of the former, this means that further action is needed to halt the construction of the Nord Stream 2 pipeline, to control the infiltration of Russian capital into the EU and the UK, and to counter Russian propaganda. From the Polish point of view, paradoxically, a new independent British sanctions policy could prove to be a valuable instrument, allowing the UK to initiate with greater freedom actions within NATO and in dialogue with the EU and the U.S. In cases consistent with its national interest, Poland could promote the UK sanctions policy within the EU. The UK can also be a valuable partner for

In cases consistent with its national interest, Poland could promote the UK sanctions policy within the EU.

<sup>39</sup> A. Koziol, "UK Policy towards Russia," *PISM Bulletin*, No. 6 (1702), 14 January 2021.

<sup>40</sup> For instance, deliveries of postal items, individual imports of second-hand construction and agricultural machinery, or imports within transparent supermarket supply chains of food, seedlings and grains for local individual consumption

<sup>41</sup> MoD, "Defence in a Competitive Age," 22 March 2021, [www.gov.uk](http://www.gov.uk).

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Poland in terms of military cooperation with Ukraine, for example, through British involvement in that country's military programmes.<sup>42</sup> On China, it is necessary to assess the EU-China Comprehensive Investment Agreement (CAI)<sup>43</sup> and coordinate potential counter-intelligence activities protecting critical infrastructure in Poland and EU NATO countries.

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<sup>42</sup> N. Gain, "New Details Emerge On UK-Built FACM Vessels for Ukraine," *Naval News*, 10 March 2021, [www.navalnews.com](http://www.navalnews.com).

<sup>43</sup> D. Wnukowski, M. Wąsiński (eds.), "EU-China Comprehensive Agreement on Investment: Political and Economic Implications for the European Union," *PISM-PIE Report*, March 2021, <https://pism.pl>.