



GOVERNMENT ENGAGEMENT ON IMPLEMENTATION OF THE TRADE AND COOPERATION AGREEMENT

Issued 14 September 2021

ICAEW welcomes the opportunity to comment on **Government engagement on implementation of the Trade and Cooperation Agreement** (TCA) published by the Cabinet Office on 9 August 2021.

We're pleased the Government is reaching out to engage widely with business and civil society on the implementation of the TCA. The Domestic Advisory Group (DAG) and Civil Society Forum (CSF) are not only required by the TCA, but are crucial opportunities to ensure the Partnership Council is well supported. It needs a clear understanding of how EU trade and regulation affects business and society. That is vital to making the most of opportunities negotiated in the TCA, as well as mitigating tensions with the EU. We recommend:

- Both groups must meet more frequently than bi-annually. Monthly seems appropriate.
- The groups have an important contribution to make to a smooth, constructive relationship with the EU. They will need to be on top of complex matters, including sometimes litigation. If they're ineffective or insufficiently timely, opportunities will be lost, important issues will lack proper consideration and we may frustrate our EU partners.
- They will need to manage an extremely diverse, often deeply technical agenda where a few pressing, specific issues risk overshadowing wider opportunities. Delegation will be essential, using existing government structures. It will need careful attention to get information to flow productively and actionably between the groups.
- Interaction between the DAG and CSF will need to be calibrated – not least to avoid or resolve different views. Outputs from the groups should ideally help foster a positive relationship with the EU. The scope and timeliness of the agenda has a role here.
- They will need public spirited and well-informed members who will frequently have to contribute strongly on topics outside their area of expertise and direct interest. A compelling offer and careful selection of members will be needed. The groups will need to prove their value to members and the EU will also have an interest in their effectiveness.
- The groups will of course need proper representation of those most affected by the TCA and by EU trade/regulation – not necessarily the same thing – as well as representing the diversity of business and society. SMEs need special consideration. Appointments will need sufficient longevity to foster team spirit between participants, with thought given to the format of meetings and digestibility of the papers.

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- **investigate** complaints and hold ICAEW firms and members to account where they fall short of standards;
- **respond** and comment on proposed changes to the law and regulation; and
- **educate** through guidance and advice to help stakeholders comply with laws, regulations and professional standards.

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ANSWERS TO SPECIFIC QUESTIONS

Question 1: How should the UK Government engage formally on Trade and Cooperation Agreement (TCA) implementation issues through a domestic advisory group (DAG)? The Government is planning a meeting once or twice a year with one group and would welcome your comments on the format, scope, and other ways of consultation. How do you see this group operating effectively?

Format

1. Meeting once a year is clearly inadequate. It will be out of synch with the development of regulation and may frustrate our EU partners. At this frequency participants won't be able to foster a constructive team spirit and may not be properly informed or engaged. Monthly would be a more appropriate frequency.
2. It will be a challenge to make the best use of participants' time and enable informed contributions. The scope of the DAG will be very broad, while its agenda may be dominated by a few areas of specialist interest. It will be reliant on versatile, public-spirited individuals willing to read widely before meetings and generous with their time in areas that may not be of direct relevance to them. An attractive offer and robust selection process will be essential.
3. Delegation will be necessary below the DAG, to enable detailed consideration, and the format needs to be driven by facilitating and overseeing this. Concise and timely two-way communication is needed to give the Partnership Council actionable input. Interaction between the DAG and CSF needs managing to avoid conflicting or out of sync conclusions.
4. In our view proper due process is essential and we would expect there to be appropriate routes for consultation on proposals seeking implementation through the Partnership Council.

Scope

5. Engagement should be wide and rigorous. Some sectors, like Fisheries and Aviation, are directly affected by the TCA, have a close interest in its operation, and may already have representation on the specialised committees. Yet EU trade and regulation affects business and society in many more ways. Businesses outside sectors directly affected will find it difficult to assess how engaged they should be. The risk is high that opportunities are lost.
6. The emphasis of the DAG and CSF should be on mutually beneficial cooperation rather than providing a mechanism for mediation. The tone and format of the DAG needs to help this. It should be decided whether it will be best calibrated to support diplomacy, or mediation; often there may be much more common ground than points of conflict. Will the purpose of the DAG and CSF to resolve points of difference or to promote points of consistency? Even with shared objectives, consistent regulation won't be achieved without persistent cooperation. Equally, if outputs from the DAG and CSF are unconstructive or arrive too late, the group itself might frustrate our EU partners. Thought should also be given to equivalence and adequacy implications.
7. Rebalancing measures in the TCA are limited to: labour and social; environmental and climate protection; and subsidy control matters. Although there is ambiguity about which laws fall into this, they will apply only to a sub-set of the laws governing business activity. It should be decided how the DAG will deal with EU or UK legislative proposals that do not fall into these areas. Will these be excluded on the grounds that they're not directly addressed in the TCA, or included on the basis that there may be scope for regulatory cooperation?
8. There is also a question of capacity. It is to be expected that a large part of the business of the DAG will be taken up in these directly relevant matters – which raises the question of how it will ensure that issues outside these areas will not be 'lost' and how wider stakeholders can be kept engaged when much of the subject matter may not be of direct relevance to them. It may be envisaged that some specific business of the DAG is informed by or delegated to other specialised groups – either formed directly for this purpose, or put on the agenda of existing government engagement channels.

9. For example, the Professional and Business Services Council (PBSC) is a government – business engagement forum with the remit to make the UK a great place for professional and business services firms to do business. The PBSC engages with a range of professional bodies, including ICAEW, trade associations and individual businesses, as well as various government departments, to help achieve its objective. More specifically, the PBSC Working Group on International Trade is well-established, engaged in assessing trade barriers and promoting trade involving professional and business services. The Working Group has strong sub-groups on Trade Promotion and technical matters affecting trade. It would make sense to use the wider PBSC and this specific Working Group for detailed consideration of matters affecting the sector. If matters are to be delegated, points to be considered include: how the DAG will ensure proper and timely consideration has been given to these matters; how actionable input is transmitted to the DAG and on to the Partnership Council; who will make these decisions and how might they be appealed. We assume the TCA does not constrain delegation by the DAG.
10. These issues are particularly acute for SMEs who may bear the brunt of trade barriers while naturally lacking the resources to invest much time in technical discussions. They need to be properly represented.
11. Of wide relevance are the provisions in relation to regulatory cooperation (Title X). We note that the TCA appears ambitious on the scope for regulatory cooperation. Nevertheless, it recognises ‘each Party shall be free to determine its approach to good regulatory practices’ (article GRP.1) and outside of those areas specifically subject to dispute resolution, formal remedies may be limited. It may therefore be that more consensual, informal dialogue, enabled by the TCA implementation process, may be most able to add value here.
12. For example, the TCA provides that ‘each Party shall have in place internal coordination or review processes or mechanisms with respect to regulatory measures that its regulatory authority is preparing’ (article GRP.4) and allows parties to contribute to each other’s consultations, without discrimination (article GRP.7). There is a question here both of how each party will deliver these ‘coordination’ or ‘review’ measures internally and how the TCA mechanisms will operate to help enable cooperation and mediate conflicts. There might be a particular role here for the DAG.
13. Regulatory cooperation will have bounds, however. Even inside the EU the UK frequently ‘gold plated’ EU law with incremental requirements for the UK environment. Full correlation between UK and EU regulation shouldn’t therefore be expected, even where alignment is desirable. How will it be decided where cooperation is desired and how far it should go? Priorities will need careful setting to avoid distraction, yet often cooperation requires ambition and innovation.
14. We note that the regulatory cooperation provisions apply not only to UK primary and secondary legislation (article GRP.2) but also to ‘other measures of general application issued or proposed by the regulatory authority of a Party’ (article GRP.3). That potentially includes a large volume of detailed regulation and raises a number of challenges. How future regulation is promulgated may lack consistency between the UK and EU – the UK Government has stated that its preference is to implement regulation through pronouncements of the relevant regulator rather than in law, whereas the European Commission prefers more detailed requirements in legislation. Article GRP.3 does not apply to regulatory authorities in member states – so this is already potentially uneven. If the TCA implementation only applies to matters where regulation is extant at the EU institution level, it should be considered how novel UK regulation will be treated. Will new UK regulations be out of scope unless there is a direct EU equivalent? How will this be decided?
15. We raise this point because we have a strong interest in regulation in some specific areas. These include the rules related to Part 15 (accounts and reports) and Part 16 (audit) of the Companies Act 2006. At present many of these provisions derive from EU law, but this area and its regulatory framework are under review. If future decisions affecting this area are, or should be, influenced by the Partnership Council, the accountancy profession would benefit from appropriate representation in these mechanisms.

Question 2: If a selection had to be made, what further criteria, additional to those set out in Article 14 of the TCA, could be prioritised to decide the members of the UK delegation to the Civil Society Forum, e.g. the size of the economic or public interest, geographical interest, trade knowledge and experience or ability to protect and represent the UK's interest effectively?

16. The criteria should reflect the degree to which those members are affected by EU law. The challenge here will be in enabling wider participation while maintaining proper representation of groups directly affected by implementation of the TCA. As mentioned in paragraph 2, EU laws affect many more sectors than those specifically empowered in the TCA. There is a danger that the wider regulatory cooperation that the TCA encourages is 'lost' in a process that focuses heavily on a few sectors. Equally, the TCA implementation has to be made to work as well as it can for those sectors directly affected by the TCA, or indeed those heavily engaged in EU trade but not particularly well represented in the TCA.
17. Alongside the relevance of EU trade to the groups concerned, the Government should certainly take account of the size of the sector, SMEs, and geographical representation. The selection process for candidates should identify those with strong knowledge, experience and ability to project the UK's voice and deliver a representative and diverse group.

Question 3: What role should the UK Government play in supporting interactions between UK and EU stakeholders on TCA implementation, in addition to the sharing of contact information under the terms of the TCA and facilitating the CSF meetings?

18. It should be active in identifying and facilitating these conversations and channelling relevant input to them. It's important to be realistic about the scale of endeavour required for this to be effective. In particular, the wider ambition for regulatory cooperation envisaged in the TCA can only be achieved through active and direct dialogue on a variety of levels.
19. Often these conversations will be organic and mutually beneficial, but sometimes divergent interests may arise. Without an active understanding of these relationships by the Government the opportunity for intervention and support may be lost. Equally, most direct interaction between stakeholders will proceed smoothly without government intervention and any escalation of issues can be expected to be rare.
20. What is needed is a clear route such that when issues arise that can benefit from mediation through the Partnership Council, these can be identified and escalated easily. From the perspective of the accountancy profession, ICAEW is keen to maintain dialogue with the Government to achieve this.
21. The Government should also be mindful that many interactions will take place either organically or more productively at bilateral level with individual member states. We appreciate that such interactions, of which there could be many, may fall outside the scope of this exercise on TCA implementation, but a degree of awareness of matters arising and of how feedback mechanisms might be used to escalate issues, could help make these interactions more fruitful.