



**House of Commons Business and Trade Committee
Call for Evidence on UK Trade with the EU
Bar Council Written Evidence**

About Us

The Bar Council represents approximately 18,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

Executive Summary

1. The Bar Council welcomes the opportunity to contribute to this important and timely discussion on UK Trade with the EU.¹ Many of the questions posed merit greater individual attention and deeper analysis than is possible here. The Bar Council has covered some of them in evidence given to both this House and the House of Lords in the context of Brexit and its aftermath, and even earlier, in the evidence we submitted to the then UK Government's Balance of Competences Review (BoCR).² Though the latter was conducted between 2012 - 2014, the relevant Treaty and international legal architecture is largely unchanged and many of the principles discussed still hold good. We would be happy to explore individual elements in greater depth going forward. For present purposes, our evidence focuses on the headline issues we consider relevant to an appraisal of some of the questions posed, giving our high-level view thereon. It should not be considered comprehensive.

Question 1: Wider Context & the UK-EU Reset (so far):

- What are the core challenges the UK faces in its relations with the EU? Has the reset established the right framework to address them?
- What impact, if any, has the reset had so far? Is it moving fast enough to meet the scale of the UK's economic challenges?
- Can the reset deliver meaningful economic benefits for the UK in the absence of any planned return to the single market, customs union or freedom of movement? What is the value of those benefits?
- What reset objectives should the UK Government prioritise for delivery within the next 18 months, and what would be the expected impact?
- How effectively is the UK Government working across departmental boundaries on UK-EU trade policy?

¹ [Business and Trade Committee – UK trade with the EU](#)

² FCDO "[Review of the balance of competences](#)" 12 December 2012

2. In early 2025 the Bar Council provided written evidence to the House of Lords European Affairs Committee's inquiry into the EU-UK Reset³, which the Committee might consider as background. More than a year on, the timing of the present Call for Evidence overlaps with the run up to the tenth anniversary of the UK referendum on EU membership in mid-June, as well as the fifth anniversary of the entry into force of the EU-UK Trade and Cooperation Agreement (TCA) in early May this year. Many of the challenges currently facing the UK in its relations with the EU have their roots in both, as well as the political context in which they occurred. The Bar Council will not comment on the politics, but what follows is a rapid overview of some of the key factors that shape where we are today.
3. The 2016 UK referendum on EU membership was presented as being, and was in law, non-binding as to its outcome. Governments of member states and the EU institutions were well aware of this, as they had been of the positive conclusions that emerged from the UK Government's BoCR conducted just a couple of years earlier. ⁴ They thus understood that treating the result of the referendum as binding was a political choice, not a legal necessity. Moreover, as an EU member state, the UK had enjoyed special status in several areas including a budgetary rebate; non-participation in the Schengen area and in the Eurozone; far-reaching opt-in/out arrangements for judicial cooperation in both civil and criminal law; as well as an opt-out from the common immigration provisions. Further EU concessions were offered to the then UK Prime Minister before the June 2016 referendum, including an express UK derogation from the Treaty commitment to ever closer union.
4. Despite the above, it was the UK, and not the EU, that imposed the red lines of no Customs Union and no Single Market membership as part of a so called "Hard Brexit", which then limited what could be achieved in the subsequent EU-UK arrangements. This was met with the EU's strict line that there could be no cherry-picking of EU Single Market freedoms, in part in order to discourage any other Member State from following the UK towards the exit. The EU also rapidly imposed, and stuck to, a rigid order of events, whereby the terms of departure would be settled first (resulting in the UK Withdrawal Agreement 2019, with its Protocol on Ireland and Northern Ireland) and only thereafter could negotiations begin on the future relationship - resulting in the TCA. Against this background, UK rejections of successive drafts of these agreements added to the overall sense of mistrust and set the scene for many of the underlying tensions still sometimes apparent today. That is especially true in the corridors of the European Commission (EC), where officials who negotiated the UK's exit and current relationship may yet work in related areas.
5. The EU is an entirely legal construct. It has no entity beyond what has been legally ceded to it in international treaties by its constituent Member States. When the UK formally left the EU at midnight (GMT) on 31 December 2020, it became a "third country". This concept has strong "them and us" connotations, going back to the Bloc's original status as a preferential trading area under the General Agreement on

³ Lords European Affairs Committee Inquiry into the UK-EU reset – [Bar Council Written Evidence](#) – 7 March 2025

⁴ See, e.g.: European Parliament "[The Balance of Competences Review in the United Kingdom, 2012-2014](#)" 2016 and "[The British Review of the Balance of Competences](#)" 19 February 2014

Tariffs and Trade (GATT) Article XXIV. The EU 27 (as it now is) would have expected the UK, having been on the inside for nearly 50 years, to fully understand what this change in legal status meant. Instead, many on the UK side continued to think the UK would always be afforded a “special” status in its dealings with the EU, even after Brexit. However, as explored further in our responses below, only EU membership or, failing that, an “EEA-type” binding arrangement, will provide the legal certainty and trading benefits which economic operators seek to secure through the current reset of the EU-UK relationship. That said, whilst EEA membership would give more scope to the UK to “shape” EU law and policy and to decide which rules to implement domestically, only EU membership itself guarantees, in the context of the current Treaty architecture, the right to instigate, tailor and ultimately vote on a measure. The various engagement models therefore distinguish between being a “rule-maker” as opposed to a “rule-taker”.

6. None of the above seeks to downplay the very real progress made in terms of EU-UK cooperation over the five years since Brexit took effect, especially in areas where interests are aligned and best pursued together, such as standards in food hygiene, medicines, chemicals and in broader security and defence cooperation. Both the EU and the UK recognise the common threats that they together face in the current global environment. Nonetheless, the EU’s approach to relations with the UK is informed by the experiences summarised in the preceding paragraphs, as well as obligations and constraints imposed by international law and its relations with other third countries. The EU and its member states continue to follow UK domestic developments closely too. They are aware of the continuing influence of Euroscepticism on UK politics, and the possibility that that might once again inform government policy in the short to medium term. Thus, while relations continue to improve, when it comes to the letter of the law, the UK can expect the EU to be guarded in its ambition and demanding in the conditions it imposes and the safeguards it seeks, in any and all future agreements with the UK, especially those giving access to the EU’s Single Market.
7. The core challenge is therefore to establish an agreed framework for focused, improved EU-UK trade, where that makes sense for both sides, against the backdrop outlined above. The reset/ Strategic Partnership that has taken shape over the past year or so is a step in the right direction, though there are certainly areas where greater ambition and urgency would be welcome, including as regards trade in services and judicial cooperation. We examine these themes in a little more detail below and/or in earlier evidence / submissions referred to above.

Question 2: Other Models of UK-EU Alignment and Cooperation

- What economic sectors are most affected by UK-EU regulatory divergence? What (a) benefits and (b) costs has this divergence created for UK businesses and trade flows?
- What sectors would a) benefit and b) lose out most from deeper regulatory alignment with the EU, and where should the UK retain regulatory flexibility? Should alignment, where pursued, be based on the principle of dynamic alignment (that is, automatic alignment with future EU regulatory changes)?
- What further (a) cooperation options or (b) divergence options should government consider with its current framework?

- Are there other areas where the UK and EU should consider further cooperation, such as customs arrangements, trade facilitation and the border, or digital trade? What would the benefits and trade-offs be? Should the UK actively explore the same border and trade digitalisation tools as the EU to align systems?
8. The Bar Council provided written evidence to the recent House of Lords European Affairs Committee Inquiry into Dynamic Alignment, in which we explored our understanding of the nature and limitations thereof.⁵

Summary of key points on dynamic alignment

9. Regulatory alignment as apparently envisaged in the agreements currently under negotiation, or to be concluded in the future, should give the UK scope to “shape” EU law and policy in the areas concerned. Drawing comparisons with existing EU arrangements with the EEA and EFTA states, and assuming that the UK implements the sort of recommendations that we and other stakeholders have put forward, including by significantly increasing the UK’s capacity to provide useful expertise and experience on EU issues, both in and aimed at Brussels, this may lead to the UK taking part in key policy discussions in those areas. However, nothing short of EU membership will give it a vote (or veto) at Council meetings.
10. We flag, but have not as yet explored, the legal issues that could arise in the context of such agreements once secured, both during the course of their implementation, and following their entry into force, e.g. the repercussions of potential future regulatory divergence in areas where the EU and UK have committed to align dynamically.
11. The Bar Council leaves it to individual sectors to describe their experience of the effects of regulatory divergence and to assert whether theirs is an area where greater regulatory alignment with the EU should be sought. The independence of the legal profession, coupled with the fact that competence for its regulation is fragmented across different regulatory bodies at national and sometimes regional level within individual states, sometimes with differing standards, means that the legal sector is not one that easily lends itself to alignment. There is no common set of harmonised requirements. Rather, we continue to explore opportunities for mutual recognition of professional qualifications and market access, which is a matter for a different forum.
12. That said, in terms of identifying areas where Government could seek closer cooperation within the existing framework, the Bar Council has asserted since the Brexit vote, and remains of the view that the UK should explore closer regulatory and judicial cooperation with the EU.

Regulatory Cooperation

13. Some degree of regulatory cooperation (e.g. in areas such as competition, aviation, transport, pharmaceuticals, environment and climate change) is important as a means to alleviate the resource burden involved in enforcement for regulators on both sides.

⁵ House of Lords European Affairs Committee Inquiry into Dynamic Alignment - [Bar Council Written Evidence](#) – 5 May 2026

By way of example of what is possible, the new EU-UK Competition Cooperation Agreement is to be welcomed.

Judicial cooperation in criminal matters

14. The TCA Part Three established a framework for law enforcement and judicial cooperation in criminal matters. It recognised the need for close cooperation between UK national law enforcement and judicial authorities and their EU counterparts, in particular as regards the fight against, and prosecution of, cross-border crime and terrorism. That includes through the exchange of DNA, fingerprint and airline passenger information. Over the years since the TCA entered into force, cooperation between UK and EU law-enforcement agencies has been quite successful.
15. Fundamental to this cooperation is the fact that the UK signed up to express guarantees of respect for democracy and the rule of law and the effective protection of the fundamental rights and freedoms of individuals, including those enshrined in the European Convention on Human Rights (ECHR). There are specific provisions on the suspension of cooperation in the event of serious and systemic failures in the implementation of any of these safeguards, as well as a specific dispute settlement mechanism.
16. The TCA arrangements in this area only go so far, however. Importantly for present purposes, upon Brexit the UK lost membership of both Europol⁶ and Eurojust⁷, and also left the Schengen Information System (SIS - the conduit for real time police alerts). In addition, several police / prosecutorial instruments that had been widely used pre-Brexit, such as on Joint Investigation Teams (JITs) and procedures for the cross-border enforcement of fines and prison transfers, were not replaced. As regards extradition, the TCA provided for similar cooperation to that between the EU and Norway and Iceland but did not replicate the provisions of the European Arrest Warrant (EAW).
17. The Bar Council notes the commitment set out in the Common Understanding reached at the EU-UK Summit last May⁸ to reinforce “cooperation through quicker, better and deeper implementation of Part Three of the Trade and Cooperation Agreement and by fully exploiting and building on its potential”. We further note that the TCA Part Three itself provides a foundation for the EU and UK to agree supplementary arrangements to fill some of the gaps outlined at paragraph 16 above. The Bar Council continues to call for, and support, efforts to do so, provided always that all necessary procedural safeguards are included.

Judicial cooperation in civil and commercial matters

18. In contrast to the arrangements in the criminal law sphere as outlined above, the TCA is effectively silent regarding potential judicial cooperation on the civil law side, including family law. The May 2025 Common Understanding,⁹ referred to above, was also disappointing in its lack of ambition in this area, merely pointing to the then

⁶ EU agency that supports the EU Member States in preventing and combating all forms of serious international and organised crime, cybercrime and terrorism: <https://www.europol.europa.eu/about-europol>

⁷ EU Agency for Criminal Justice Cooperation <https://www.eurojust.europa.eu/about-us/what-we-do>

⁸ Cabinet Office “[UK-EU Summit - Common Understanding](#)” 22 December 2025

⁹ Ibid

imminent entry into force of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters 2019 (Hague 19).¹⁰ Though welcome, Hague 19 is of little assistance in several areas where citizens and businesses face difficulties in cross-border litigation. There are several reasons for this. Whilst it does carry across some of the provisions of the seminal EU Regulation No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Recast), it does not contain any jurisdiction provisions. In addition, the exclusions from scope of application of Hague 19 include those in Brussels I Recast (including arbitration, insolvency, maintenance obligations) but also go further into more technical fields e.g. Intellectual Property, defamation, carriage of passengers and goods, antitrust, as well as arbitrations and “related proceedings”.

19. Following Brexit, the Bar Council encouraged the parties to conclude a separate agreement on civil judicial cooperation, which might have enhanced access to justice for, for example, consumers seeking compensation for a ruined holiday on EU territory; a claimant seeking maintenance in a cross-border family law dispute; or one injured in an accident while abroad; or SMEs suing for damages for non-delivery of materials from an EU supplier. No such agreement was reached. Moreover, in the area of family law, our practitioners continue to deal with cases where the absence of clear EU-UK agreements has made recognition of divorce and other family law judicial and non-judicial decisions, including concerning the welfare of children and maintenance orders, so slow and expensive as to frequently deny them the remedy sought. A parent seeking an order for the return of a two-year old child removed from the jurisdiction by an estranged spouse, for example, can hardly be said to have obtained justice if the reunion only takes place when the child is eight or ten and a virtual stranger.
20. The law and practice has evolved in these areas both on the EU and UK sides over the past decade, and some of the gaps we originally identified have since been partially filled by international instruments. Nonetheless, there remains scope for greater EU-UK cooperation here, though it would be necessary to revisit what would now best serve practitioners and their clients. The Bar Council stands ready to explore that in more detail.

Other potential areas of cooperation

21. The Bar Council’s ongoing dealings with the Bars of EU member states underline the many other areas where we face similar challenges and seek similar solutions. Not all of these can or ought to be the subject of additional EU-UK level agreements. Nonetheless, areas worth examining further could include a long-term agreement on data protection¹¹; the digitalisation of justice; the regulation and use of AI; public procurement, including UK inclusion in the SAFE Regulation (in defence

¹⁰ [Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters](#)

¹¹ The Bar Council has long sought an agreement securing long-term arrangements for the free flow of data between the EU and UK, removing reliance on unilateral grants of data adequacy. The legal uncertainty and avoidable cost that stakeholders experienced in December 2025, in having to prepare for a possible cliff-edge pending the last-minute confirmation of the six-year extension to the EU’s 2021 Adequacy Decisions, amply illustrates why such an arrangement would be welcome.

procurement) and within the definition of “Made in Europe” such as in the proposed Industrial Accelerator Act; as well as cooperation in the area of asylum, immigration and border control, including in elements of the EU’s new strategy and successors to the Dublin Convention (which the UK left upon Brexit) that would strengthen the UK’s ability to exercise control over its borders and set an effective policy in respect of irregular migration. Again, we stand ready to consider these areas in more detail.

Question 3: Future Cooperation Frameworks and Free Trade Agreement Compatibility

- Are there comparator country models (for example Switzerland, Norway and others) for greater UK-EU alignment that the UK Government should consider? What are the advantages and disadvantages of each? What are the implications of these models for migration policy, business mobility, work visas, UK financial contributions to EU funds, and other free trade agreements signed since Brexit and the deals we expect to sign?
- Should the UK consider association to one or both of the European Free Trade Area (EFTA) and/or the European Economic Area (EEA)? How would the UK begin this process? What would the pros and cons of this approach be? Should this be considered in parallel to ongoing work with the EU?
- What future cooperation options between the UK and EU should the Government consider beyond the current reset framework, such as (a) a customs union (b) rejoining the single market (c) creating single markets in defined sectors? Or (d) reining back economic cooperation and increasing economic divergence?
- For each of these options please detail your views on (a) the expected benefits (b) the expected costs including predictable EU demands (c) compatibility or adjustments required to new free trade agreements signed since Brexit (or deals we expect to sign this year) and (d) the speed with which you forecast agreement might be reached.

22. There are very broad issues at play here, much of which is political rather than legal. We again refer to our evidence to the House of Lords Inquiry on dynamic alignment, which explores some of these questions in more depth.

Switzerland

23. A bespoke reset through bilateral agreements may confer some of the benefits enjoyed by Switzerland. However, as discussed in our House of Lords evidence, at the end of 2024 the European Commission and the Swiss government concluded negotiations on a new package of separate agreements, each with built-in institutional provisions, which individually and collectively establish clear conditions for granting privileged Single Market access to Switzerland. These new EU-Swiss arrangements are not yet in force and are thus untested. In any event, it appears from developments so far that the UK reset will be more fragmented and incremental, and the costs of sectoral access to different EU programs may end up being more expensive in the long run. It is also important to note that the Swiss arrangements envisage free movement of persons, albeit with certain exceptions and specific safeguards.

The EEA

24. Access via the EEA would provide more comprehensive economic benefits in terms of access to the Customs Union and Single Market, covering both goods and services. There would need to be compromise over incoming migration (where some domestic controls would be permitted) with trade-offs and upside benefits for UK citizens and businesses, such as removing the 90-day limits for UK travellers, including students, consumers and the self-employed; improving market access, recognition of qualifications and fly-in/fly-out trading rights. The UK would retain control over non-EU migration. The EEA structure allows for some degree of domestic sovereignty as there is no automatic direct effect of EU law within the national legal system, though in practice the legal and procedural checks and balances that govern implementation of said laws result in an arrangement akin to dynamic alignment. And again therefore, EEA membership, without that of the EU, does not confer voting rights in Council.
25. It should be noted that membership of the EEA would not (as matters currently stand) permit the UK to engage in its own independent free trade agreements. The EU Commission maintains sole competence for negotiating and agreeing the terms of FTAs between members of the Customs Union and third states. In practice, the terms of the UK FTAs so far agreed have largely been modelled on EU FTAs on a roll over basis, so the distinction may not be that large - it is more a question of optics and sovereignty than substance. The EU has also signed up to new FTAs and is in the process of concluding others. In examining all of these questions, the UK may want to assess the volume of trade secured with different counterparties under its own arrangements and compare the terms and extent of trade that might be available as part of a larger trading bloc.
26. Thus, in our view, it makes sense to consider potential EEA and other similar arrangements in parallel, bearing in mind that the arrangements briefly referred to in the preceding sub-paragraphs have evolved in the context of relationships enjoying a long period of mutual trust and stability. Any EU-UK reset arrangements may be a sub-set or variant of other models, i.e. draw on select elements of those arrangements where in the interest of both the EU and the UK, whilst being tailored to what is compatible with the UK's position trading with, but not in, the EU. As such, the UK will remain a third country and still subject to the constraints which govern that status. Over time, if there is further economic and growth disparity between the EU27 and UK, the UK may want closer rapprochement.

Question 4: Defence and Economic Security

- What are the priorities for building UK and European NATO capabilities? How should the UK and EU collaborate in building a shared defence industrial base to support these capabilities? What could best be achieved through bilateral partnerships with NATO partners in the EU?
- What opportunities does the evolving UK-EU relationship offer to strengthen economic security? What opportunities might lie in cooperating in critical mineral security, deterring economic coercion and ensuring a level playing field in trade and competition? Should both sides look to agree joint mechanisms to act in unison on these areas?

27. In so far as there is overlap, we refer you to our response to question 3 above on Part Three of the TCA. Beyond that, this question is best left to those in the relevant industries.
28. In partial response to the second sub-paragraph, the Bar Council repeats our endorsement of the recently concluded Competition Cooperation Agreement as an example of what can be achieved here. Beyond that, we have been tracking the evolution of EU trade measures such as the 2024 Anti-Coercion Regulation; proposals to update the existing framework for the screening of Foreign Direct Investment in the EU; and the late 2023 “Defence of Democracy” package, including the proposal to introduce common transparency and accountability requirements for interest representation carried out on EU territory on behalf of third countries. The UK, or as relevant, UK economic operators, are not generally the main targets for such instruments. Nonetheless, as a third country, the UK or UK businesses may be caught by them unless exceptions can be made. Beyond that, it may be worth exploring potential cooperation in the face of such broader external challenges.

Question 5: Business and Stakeholder Engagement

- Has the UK Government engaged businesses and stakeholders sufficiently during the reset process? How clearly have reset objectives and their potential impacts been communicated?
 - How well-prepared are UK businesses for the outcomes of the reset so far, and what more do they need from Government to plan effectively for future changes in the UK-EU trading relationship?
29. The Bar Council is looking forward to examining the Government and EU proposals for the new agreements envisaged under the May 2025 Common Understanding, in order to assess their implications as a compromise post Brexit. Whilst the broad parameters of some of these agreements have been outlined in various fora, we have not yet seen any detail.
30. We call on the Government to consult and inform stakeholders such as us about Government perception of its goals as elements of the Strategic Partnership evolve. Again as noted in our evidence to the House of Lords, the Bar Council would like to see greater transparency and stakeholder engagement by all EU-facing government bodies, whether that be ministries, embassies or, for example, bodies set up under the TCA - with a greater willingness to consult and involve expert stakeholders and brief them, both on broad policy objectives and before and during and after negotiations in pursuit thereof.
- a. As regards structural preparedness at Government level, there remains a perception that EU-facing Government activities are too centralised. There was perhaps a policy imperative informing this in the immediate post-Brexit phase, but several years on, we would favour greater involvement of experts in ministries that handle the issues on the ground. As things stand, it can be difficult to identify who is responsible for which files. We also note a sometimes exaggerated degree of caution around “live” negotiations. Whilst

some caution with detail on sensitive issues can be understood, if in a meeting with key stakeholders under Chatham House rules, it should be possible to share some level of detail around issues that are arising and possible obstacles, in the negotiations. Indeed, the stakeholders present may be best placed to advise on how to overcome them, or to offer ideas as to alternative solutions.

- b. UK officials sometimes also appear to lack awareness of the background as outlined in paras 3-5 above, which informs the EU approach to its relationship with the UK. The body of work contained in the BoCR (see reference above) is just one example of the many valuable resources to be found on these questions.
- c. Bodies such as the UK Domestic Advisory Group (DAG), created under the TCA, and of which the Bar Council is a founding member, tend to be rather siloed and unnecessarily restricted in their scope. Whilst we understand that the competence of the DAG is defined in the TCA, it does bring together a diverse and representative set of stakeholders from across the whole of the UK, who are engaged in the detail, and whose knowledge and experience could be put to greater use.
- d. We would also like to see greater flexibility as to the number of meetings of the various trade committees set up under the TCA, and any that will be created going forward. Minutes should be circulated promptly, and stakeholders engaged before, during and after such technical meetings. UK stakeholders continue to call for the limited review foreseen, for example, in the TCA, Article 126 as regards professional mobility. Beyond the Dedicated Dialogue that took place in May to discuss this issue, which appears not to have advanced the discussion, there is little clarity as to how, when or even if this will be pursued further.
 - i. On the preparedness of UK business, we defer to input from individual sectors. At a general level, we note that improvements to stakeholder engagement and transparency of the sort outlined in preceding paragraphs above, would certainly assist in this regard.
 - ii. We also note that in some sectors, businesses and/or their regulators may take matters into their own hands as regards adapting to the evolving EU-UK relationship. Thus, as noted in our evidence to the House of Lords on Dynamic Alignment, it is our understanding that some regulators (such as the CMA (competition), sectoral regulators (CAA, Ofcom, DfT), OPSS (product safety) and DVSA (emissions) have already decided, as a matter of policy, to align with EU standards and post Brexit CJEU case law going forwards. Further, businesses (particularly the larger multi-national groups) are already choosing to align on EU standards for economic reasons and legal certainty.

**Bar Council
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