



OFFICIAL REPORT  
AITHISG OIFIGEIL

# Constitution, Europe, External Affairs and Culture Committee

Thursday 14 March 2024

Session 6



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Pàrlamaid na h-Alba

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**Thursday 14 March 2024**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1</b>
<b>DEPUTY CONVENER .....</b>	<b>2</b>
<b>REVIEW OF THE EU-UK TRADE AND CO-OPERATION AGREEMENT .....</b>	<b>3</b>

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**CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE**  
**7<sup>th</sup> Meeting 2024, Session 6**

**CONVENER**

\*Clare Adamson (Motherwell and Wishaw) (SNP)

**COMMITTEE MEMBERS**

- \*Neil Bibby (West Scotland) (Lab)
- \*Keith Brown (Clackmannanshire and Dunblane) (SNP)
- \*Kate Forbes (Skye, Lochaber and Badenoch) (SNP)
- \*Mark Ruskell (Mid Scotland and Fife) (Green)
- \*Alexander Stewart (Mid Scotland and Fife) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Joël Reland (UK in a Changing Europe)  
Jannike Wachowiak (UK in a Changing Europe)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

The Robert Burns Room (CR1)



## Scottish Parliament

### Constitution, Europe, External Affairs and Culture Committee

*Thursday 14 March 2024*

*[The Convener opened the meeting at 09:37]*

#### Decision on Taking Business in Private

**The Convener (Clare Adamson):** Good morning, and a warm welcome to the seventh meeting of the Constitution, Europe, External Affairs and Culture Committee in 2024. Our first agenda item is a decision on taking business in private. Are members content to take item 4 in private?

**Members** *indicated agreement.*

**The Convener:** Thank you very much.

## Deputy Convener

09:37

**The Convener:** Our next item of business is to choose a deputy convener. The Parliament has agreed that only members of the Scottish Conservative and Unionist Party are eligible for nomination as deputy convener. I understand that Alexander Stewart MSP is the party's nominee. Does any member disagree with that nomination? I see no disagreement from members, so I congratulate Alexander Stewart on his appointment as deputy convener of the Constitution, Europe, External Affairs and Culture Committee.

*Alexander Stewart was chosen as deputy convener.*

## Review of the EU-UK Trade and Co-operation Agreement

09:38

**The Convener:** The next item is the committee's on-going inquiry in relation to the review of the European Union-United Kingdom trade and co-operation agreement. We are joined virtually this morning by our panel members and I ask them to introduce themselves.

**Jannike Wachowiak (UK in a Changing Europe):** Good morning. Thank you for the invitation. I am a researcher at the UK in a Changing Europe think tank.

**Joël Reland (UK in a Changing Europe):** Morning, everyone. I am a research associate at UK in a Changing Europe.

**The Convener:** A very warm welcome to you both. Thank you very much for your report, which the committee members were all made aware of before today's session. You suggest in the report that two key factors will shape the TCA review. The first is political will, which we talk about quite a lot in this committee, and the other is the process of how the review will take place. Which do you think will be the more dominant factor in terms of how things are likely to go, given the election cycles and everything else? Jannike Wachowiak, do you want to go first?

**Jannike Wachowiak:** At the end of the day, the politics will probably shape the process, so I think that the more important factor is the politics. The wording of the review clause in the TCA is very vague, so it is up to the two parties to decide how they want to conduct the review. All we know is that it is a review of the implementation of the agreement and not a review of the agreement itself. We know the timing, which is 2026—five years after the agreement entered into force. We know that there is no agreed process, so the choice of what process to use will be important. Our report outlines three options in relation to how the review could unfold, but in terms of choosing one of those options, I think that the politics will be very important.

**Joël Reland:** I agree with Jannike Wachowiak. It is ultimately about the politics. As she says, we have the broad outlines of how a review could take place, but it is up to both sides jointly to agree—that is the key point. Both sides need to be in agreement, so it is about where you can find a political middle ground.

It is also worth saying that the review is only be as useful as either side wants it to be. For example, if there is a scenario where both the UK Government and the European Commission want

to substantively review the terms of the TCA, they do not have to use the review. There are a number of different ways that they could go about it. They could pursue ad hoc agreements to deepen what is there or to add a new element to the TCA.

On the point about the review only being as useful as either side wants it to be, you could say, "Okay, we will take this point in 2026 as a political moment, so to speak, around which we will structure our negotiations," but it does not have to be done that way. At the moment, it feels as though the review is being used in political discourse as a way to point to the future horizon, with particular parties saying, "We want to deepen the relationship and the review will be an opportunity to do that," but no one has really thought about the detail. It is still a political instrument for demonstrating will and no one has got to the point of thinking, "Okay, if we want to go deeper, do we need to use the review or do we want to pursue it through other forms?"

**The Convener:** We saw that some of these issues were resolved after the Windsor agreement—in terms of horizon funding, for example. As you say, we did not have to wait for the review to go through that process.

We had the farming sector in last week and they think that trying to resolve the sanitary and phytosanitary issue and veterinary agreements will be quite time-consuming and quite difficult to do. You mentioned the phrase "Brexit fatigue" in the report a few times. Do you think that any of the big substantive issues which are still a key concern from the UK point of view having traction in Europe before the review cycle?

**Joël Reland:** Do you mean the SPS issue specifically?

**The Convener:** SPS is an example. It is one of the areas that is of real concern here in the UK, but it may not have any traction in terms of what is happening in Europe.

**Joël Reland:** In the review, we make it clear that, for the most part, the EU is quite satisfied with the agreement as it is. The trade friction that is being created by the TCA falls more heavily on the UK because it is more dependent on the EU market than vice versa. European businesses can divert their trade to other parts of the single market where they do not face those barriers to trade. There is more incentive for the UK to try to gain new elements, such as an SPS agreement.

That brings us back to the point about the need for both parties to take part in the review. For the UK to get the EU to listen to these things, it needs to think about incentives. We have heard a lot about what the UK wants—the potential additions and deepening of the TCA that could take place—but the question is how to bring the EU to the

table. The UK needs to give the EU something that it is also interested in negotiating. The two most obvious examples are a mobility agreement—we know that it is a point of quite significant regret for a lot of member states that their young people can no longer so easily come here to study, to work or to live—and a foreign security agreement. The UK is quite a significant player on that front and that is an issue that has risen in salience over the past couple of years, since Ukraine.

That is also potentially an argument for using a review because, in terms of trade-offs, if the UK says, “We would like an SPS agreement,” it needs to offer something else in return. If the UK pursues an SPS negotiation in isolation, there is less incentive for the EU to conclude it than if the UK says, “Okay, this agreement is contingent upon us also finalising the terms of the mobility agreement.” That is one of the strongest arguments for having some kind of review or structured negotiation rather than just pursuing ad hoc individual amendments to the TCA.

09:45

**Jannike Wachowiak:** I agree with everything that Joël Reland has outlined. In terms of the EU’s position, I think that the EU very rarely thinks about its relationship with the UK these days, as it has lots of other pressing issues, and of course it has its own elections this year.

Even though we have said that any amendments or additional negotiations do not have to wait for the TCA review, the caveat is that this year it will be very difficult to have any of those discussions. Even if there is a new UK Government that wants to have those discussions, we have European Parliament elections in June and afterwards there will be quite a lengthy process of reorganising the institutions and finding new leaders for the top jobs. If we look at how they go about it when it comes to the European Commission, which at the end of the day manages the day-to-day relationship with the UK, it usually has commissioner hearings throughout October and at the last election in 2019, I think that the new commission was only in place at the end of November 2019. That process will make it very difficult to have any substantive discussions this year, which probably means that those discussions will not take place before 2025.

I also agree with Joël Reland that the UK needs to think carefully about incentives. The EU published its annual TCA implementation report in March last year. The report states that this is a very good agreement for the EU and it is fairly happy with it. Another factor is that the TCA very carefully balances the interests of the 27 member states and to reopen discussions and risk

upsetting that balance is difficult for the EU, particularly when it comes to the trading agreement in the TCA. Once you get into those discussions, there are 27 individual economic interests that will have to be balanced. That is why the incentives for the EU are low at the moment.

On the SPS deal in particular, another important point to keep in mind is that as long as the UK has not yet fully implemented border controls at the UK border, the incentive for the EU is quite low in this area because although UK farmers have had to deal with border controls since January 2021, that has not been the case for EU farmers due to delays on the UK side. Of course, we know that physical controls will be implemented fairly soon—from the end of April. It will be interesting to see how that goes and whether that goes ahead as planned, because I think that once the EU experiences those border controls, it might have more of an incentive to have discussions about an SPS deal.

**The Convener:** Thank you. We move to questions from other committee members.

**Mark Ruskell (Mid Scotland and Fife) (Green):** I want to ask about your views on the carbon border adjustment mechanism. From reading your report, I know that there is an option for greater alignment between the UK and EU emissions trading schemes. It would be useful to get your view on the current challenges, whether the two schemes are moving away from each other in relation to carbon price, and how easy it would be, practically, to bring them together. Joël Reland is nodding.

**Joël Reland:** I am happy to answer that. The immediate answer is that, in some senses, it is relatively easy for the UK, compared with other countries in the world, to align, but, in another sense, it is still difficult, because there would need to be a technical negotiation, which would not be simple.

I will deal with the easy point first. The UK was formerly part of the EU’s emissions trading scheme, so the UK’s emissions trading scheme, to a large degree, resembles the EU’s in relation to its scope and how it works. There has been some divergence in price. That divergence was significant for a while but is now narrowing again. Relative to most countries in the world, the UK is quite highly aligned. However, the situation is evolving, because both sides are updating their schemes over time and the EU is looking to introduce new elements relating to transport maritime emissions. Over time, the schemes will diverge to a greater extent so, if we want to align, there is an incentive to do so sooner rather than later, before the differences become too significant.

The more difficult part is that, even if both sides sit down and say, “Okay, we want to try to link our emissions trading schemes under the TCA,” given that Nord Stream 2 is a possibility, it would still be a technical process. I would invite you to read an article on our website, written by Sam Lowe in September 2023, that explains in more detail how that could work.

There is more than one option for how to link the schemes. There could be full alignment, with the UK having to accept quite a large degree of EU autonomy over how our emissions trading scheme worked and what could be done with the revenues that were generated, but there would be a potential political challenge relating to how much sovereignty would be given up and how much alignment there would need to be with EU regulations. Alternatively, there could be a partial linking, with distinct markets but fluidity of credit between the two. The schemes would be less interlinked so there might not be as many benefits, but it would perhaps be easier to conclude the discussion.

Either way, the discussion would be quite difficult politically and quite tough technically to conclude. There are clear potential benefits to alignment—it would avoid bureaucracy and the tariffs that could be levied under the EU CBAM, so there is a strong incentive among traders to have those links—but the UK Government would have to put a lot of work into it.

**Mark Ruskell:** On timescales, you indicated that it took, I think, 10 years for Switzerland to strike a similar agreement with the EU to link their two schemes together. It feels like only yesterday we were in the EU ETS, so would it really take 10 years to conclude a negotiation, or would it be a lot quicker than that, given our current alignment?

**Joël Reland:** It could be a lot quicker than that. With the EU, political will is always important. Part of the reason why it took 10 years with Switzerland was not because there were 10 years of administration to work through but because of the politics around the issue. The EU’s other agreements with Switzerland are constantly being turned on and off, so they have quite a fraught relationship.

If there was good political will and good political relations on both sides, you could expect the negotiation to be concluded a lot more quickly. To a certain extent, the example of 10 years is expectation management. That is how long the negotiation could take, but it could be done a lot more quickly. The fact that the UK was previously in the EU ETS is another reason why things could go faster. Of course, if the UK introduced its CBAM at about the same time—I think that 2027 is currently earmarked as the date—and EU businesses would suffer from it, there would be an

incentive for the EU to conclude the negotiations on linking the emissions trading schemes.

**Mark Ruskell:** How much lobbying is there from particular sectors that would be disadvantaged by the CBAM? Is there a particular drive in Brussels from sectors that would have huge costs imposed on exports to the EU? I am not sure where the political drive is for linking the schemes as a priority.

**Joël Reland:** I understand that a study showed that, as it stands, about 6 per cent of UK exports by value would be subject to the EU CBAM. Peter Foster talked about that in his weekly column in the *Financial Times* last Thursday. The sector that is likely to be particularly affected and is probably most vulnerable to the effects of the CBAM is steel. Obviously, some other sectors will be affected, but I think that steel is the biggest one. The steel sector has already criticised the UK Government for being too slow in implementing its own CBAM, so an active process is clearly ongoing with that particular industry.

**Mark Ruskell:** Thank you.

**Kate Forbes (Skye, Lochaber and Badenoch) (SNP):** I have a question about the evidence base that would be used to advise on the nature of any review. In your report, you emphasise—this is pretty obvious to all who have been watching the evolution of the TCA—that there is massive tension between political imperatives and what politicians feel under pressure to do, nearly always from their voter base, and a general civic position on the best way to drive reforms. I think that the horizon programme came out of that but, equally, it would not have happened without political pressure. This is obviously a big year from a political perspective. Where do you see the potential for the evidence base to inform change, rather than straight-up politics?

We have spoken to various stakeholders, as you will have done. Members of the farming and agriculture community, for example, have a list as long as their arms of changes that they want to see. What do such stakeholders need to do in order to progress those changes? Do they need to develop evidence, or would doing so be moot and irrelevant because, at the end of the day, changes will result from political pressure? I am sorry—that was almost an essay of a question.

**Jannike Wachowiak:** One way to feed in evidence on things that are not working well or not working as intended in the implementation of the TCA is to use the governance framework that underpins it. For example, the two sides meet in various specialised committees, including trade specialised committees. At the moment, those committees meet about once a year, but there have been suggestions from the House of Lords



European Affairs Committee that that frequency is not sufficient and that the two sides should meet more often. From what I know, there are usually discussions with stakeholders ahead of the specialised committee meetings. That provides an opportunity to feed in any concerns. Civil society can also raise concerns in fora such as the parliamentary partnership assembly and the civil society forum.

Using the governance framework a bit more than it has been used so far is one thing that could be done. That might feed through into the annual implementation report that the EU publishes—I think that the UK publishes such a report every other year. That could be a useful way of feeding in evidence.

We have seen that lobby groups in general can be effective. You mentioned the horizon programme. Another good example relates to the rules of origin for electric vehicles. At first, the EU was very hesitant about amending the rules that were going to change from 2024. It took almost a year to come to an agreement to delay that until 2027. A huge factor in that decision was pressure from industry on both sides, which was key in that there was clear mutual interest and benefit; it was not just one-sided. In relation to civil society and lobby groups, having joint forces might be an effective approach.

10:00

**Joël Reland:** I agree with what Jannike Wachowiak has said. I will echo my opening point: the process is fundamentally political. We are not talking about a structured negotiation that is set in stone. It is not like the TCA negotiations, for which there was a fixed deadline and a fixed number of files that you needed to conclude or at least try to discuss. This process is almost entirely ambiguous, so it will fundamentally be driven by politics, not by policy. That is what will shape the scope of any review that takes place.

On the EU side, the limiting and restraining factor is the lack of appetite for deep negotiation, because the focus is on other things. That constrains what can be done. On the UK side—we are assuming that there will be a Labour Government in this scenario, because it is more likely to pursue a deep review—there will be capacity constraints because an incoming Labour Government will want to do lots of things on the domestic front. Such negotiations require a lot of administrative bandwidth in themselves, and a Labour Government will be limited in how much it can put into a TCA review because it will want to do lots of other things in other parts of politics at the same time.

The politics will constrain what is achievable. It will be down to both sides to find the middle ground. There is no deadline—there is no point by which they need to get a review done—so, if they are serious about getting anything out of a review, they will have to get their heads together and have lots of candid discussions on the margins of events in order to test out each other's perspectives, build relations and create trust. All this stuff is fundamentally political. That is the substance of what will make or break any review.

**Kate Forbes:** Thank you.

**Alexander Stewart (Mid Scotland and Fife) (Con):** Thanks for the comments so far. As you have identified, this review gives us a chance to take stock of where we are, the deadlines that are coming up, some of the processes and the whole idea of governance and enhanced co-operation. Elements need to be looked at and could be expanded, but if that is to happen, there needs to be agreement once again about structures and commitments. That agreement could be quite limited in some respects, but it could be quite wide-ranging in others.

Jannike Wachowiak, you talked about dates and timescales around the elections and the time that it takes to make things happen. Once again, there will be a gap between where we are and what will eventually become the norm from 2025 onwards, in reality. Things might be slightly different to how they are now in many respects, depending on the political will and the level of involvement.

It would be quite good to get a flavour from you of whether you see there being barriers to enhanced governance or co-operation in the future or whether there will be some opportunities? I do not mind who answers first.

**Jannike Wachowiak:** I am happy to go first. Brexit is a process and implementation of the TCA is on-going. A good sign is that, since the Windsor framework agreement, the EU and the UK have been clear that they are committed to fully implementing the agreement and maximising its potential.

As part of, or maybe before a review that is perhaps not overly ambitious but more moderate, the two sides could easily look at what we have already agreed on but not implemented yet. There are various things like that in the TCA. For example, dialogues on security matters are encouraged and, given the security context in which we find ourselves, that would seem to be quite pertinent. Two of those dialogues—cybersecurity and counter-terrorism—have been implemented but three more that are suggested in the TCA have not yet been implemented.

There is also a broader article—article 770—on global co-operation, which lists various areas for

dialogue, including peace and security, sustainable development and climate change. The two sides could look at those and say, “There is already a hook here in the TCA. Could we have more dialogue on that?”

You mentioned the importance of the governance of the TCA and the governance framework that we have. The partnership council, for example, has the power to add new specialised committees to the governance framework or to change the tasks of the specialised committees and the areas that they look at. As members might be aware, a proposal was made in one of the discussions at the parliamentary partnership assembly that there should be a new specialised committee on net zero.

Those are things that are probably fairly uncontroversial, and if there is momentum and willingness on both sides, the two sides could look at them.

A more ambitious review could add new things to the TCA such as an SPS deal or something on mutual recognition of professional qualifications. That will necessarily be a more difficult process because this will require negotiation and the Commission is likely to need a new mandate to negotiate such things on behalf of member states, which will take more time. You also touched upon questions of alignment, which might be significantly difficult for the UK side. When it comes to those things, the timeframe is a bit longer, but things could be done to act on as yet unfulfilled commitments in the TCA and to look at how we can use the framework that we have as best as possible.

**Joël Reland:** The spirit of co-operation that has been created since the Windsor agreement is good if you want to optimise the TCA and the current agreement, but it is not particularly good if you want to enhance and deepen it. To give examples of that, as you said, horizon Europe and some other things that were contained and committed to in the TCA have now been pursued and completed because relations are unfrozen. You can build upon those things that are already provided for, sit down in your committees and work through them at a quite technical level until you reach a conclusion and you implement. We have had agreements on financial services and there is also a memorandum of understanding on co-operation on competition matters.

However, if you want to push the envelope and go into areas that are not necessarily already provided for, the current structure of the co-operation is still quite constraining because the TCA provides for a number of technical committees, but they really are quite technical. For example, you could get stuck in the policy detail around the methods you can use to enhance your

energy trading provisions. That is official level work. There are no politicians in the room who might sit down over a drink at the end of the day and say, “Is this really where we want to be or do we want to take it that bit further and enhance the scope of imagination?”

The 27 member states still meet regularly to discuss UK relations, but again that is done in quite a structured and staid environment, where everyone wants to put their point across officially on the record, but there is not a softer and more candid space. To give some examples of the limitations of that, the Home Office and the EU’s Frontex recently signed a deal on co-operation on the policing of regular migration. Operational co-operation is going on now, and we are a little bit closer in terms of speaking to one another, but there is no real substantial new legal obligation to one another. There is no returns agreement, which is being spoken about as an interest from the UK side.

To do that, you really need to show more political trust. You need to sit down in different rooms, not just technical committees, where you can look someone in the eyes and say, “What can we actually do here? What do you need from me?” and you go ahead and you work from that. That is what is missing in the relationship.

How you create that is ambiguous, but broadly speaking there needs to be more regular dialogue. There need to be more regular political level summits between leaders or other forums and more dialogue that brings politicians together. There is a role for diplomats there. The UK mission in Brussels regularly invites member states to events, getting to know and understand people. That softer world of the relationship can be significantly deepened and is a prerequisite to having a much more ambitious relationship with the EU.

**Alexander Stewart:** You have said that the two sides seem to have more success in coming to an agreement when there is a little bit of a lighter touch in the dialogue, rather than the formal objections and obligations, because they are much more strained at times. The lighter touch seems to work for both sides and we manage to get a better understanding or even a slightly better process out of all that. Having other individuals in the room who have a role to play—the diplomats and others that you indicated—rather than just the politicians, seems to have more success. Do you see that as being one of the major features going forward?

**Joël Reland:** To be clear, the co-operation that has been built up in the past 12 months is not a bad thing if you want a closer relationship with the EU. It is a prerequisite to any kind of enhancement of the relationship. If you cannot even talk to each

other at a technical and operational level, there is absolutely no hope of doing anything beyond that.

The analogy that I use is that relations were subterranean for a good while after the TCA was concluded and then we had the impasse over the Northern Ireland protocol. We have now come back above ground and the aeroplane has taken off and is gradually gaining height, but I think that the cruising level where you want the relationship to be on a regular basis has not yet been found. There is a question of the altitude at which you want to cruise, to really torture the metaphor, but that is where we are.

**Neil Bibby (West Scotland) (Lab):** Good morning to the panel and thank you for your report. I particularly note what you said about the contrast and the key differences between the Conservative Government's approach and that of a potential future Labour Government to veterinary standards, mutual recognition of conformity assessments, professional qualifications, more flexible labour, mobility arrangements for short-term trips and UK association with EU programmes. I also note what you said in your report and again this morning about the significant challenges in making changes and the potential political costs. As a starting point, to what extent are those differences and that contrast understood in European capitals?

You have made the point that the EU would have to trust that future UK Governments, which could be far more Eurosceptic, will uphold such agreements. What can be done to address those concerns?

**Jannike Wachowiak:** I will start with the extent to which the differences of preference in UK politics are well understood in the EU. On the one hand, I think that we have already made the point that the relationship with the UK is not a priority matter for the EU. If you look at the agenda for next week's European Council meeting, you will see that it will discuss things such as Ukraine, the middle east, enlargement and a new defence industrial strategy. Those are its priorities and what it wants to drive forward, rather than improvements to the TCA.

10:15

At the same time, there are still structures in the EU institutions that are quite similar to what they were during the Brexit negotiations and still very closely monitor what is happening in the UK. In the European Commission, in the external action service and also in the working group on the United Kingdom in the Council, which still meets twice a week, there is a very good understanding of the political situation in the UK and what is happening and what the potential positions might

be. This is maybe slightly anecdotal now but, from working as a think-tanker, I think that there is definitely a feeling that there is interest in the institutions in what people in the Labour Party in particular are thinking and what they might want to do if Labour wins the next general election.

**Joël Reland:** Building on Jannike Wachowiak's point, I agree that the EU definitely understands that Labour has an interest in deepening relations and understands the differences between the Labour Party and the Conservative Party on that front. The two ambiguities that remain are the extent of Labour's understanding of European politics and the extent of its handle of the policy detail.

To take politics first, it is a widely held assumption that you turn up in Brussels with a smiley face and suddenly everyone wants to talk to you because you are not the Eurosceptic party that has been in government but, obviously, there is a lot more to it than that. There are many vested interests among the 27 that need to be balanced. You have to understand that, if you push on one thing, that will potentially upset particular member states, so it is about how you find a compromise that will work for everybody.

That leads into the policy question. Does Labour just say, "We want an SPS deal," or, "We want mutual recognition of professional qualifications"? That can take a number of different forms and it is not clear that that detail has been fully outlined or thought through yet. To give an example, with SPS there is a big difference between Swiss-style alignment and New Zealand-style alignment. The Swiss model involves dynamic alignment with EU regulation and then you remove more or less all bureaucracy around it, or you can have a more limited New Zealand form of alignment, where you do not have all the regulatory dynamic alignment, but there is some recognition of standards that allows for some minimisation of bureaucracy.

Putting those clear asks on the table will be the key thing, first to show that you are a serious negotiator and you understand what you are talking about, because these are technical negotiations that take time and the EU will not want to sit down with a party unless it really has a handle on the detail. We saw in the previous negotiations over the TCA and the withdrawal agreement that there was a massive difference in world view between the UK and the EU on these matters and a general perception the UK did not necessarily always understand exactly what it was getting itself into. Showing that proficiency in detail is vital.

It is also important that—again, if it wins—the Labour Party understands the trade-offs that come with that. If you are signing up to a Swiss-style veterinary agreement—is it Switzerland or

Norway? I am worried that I am getting the country wrong, so apologies if I am. No, I think that I mean Norway—sorry. Whichever one you are aligning with, you need to understand the political trade-offs that come with that, the amount of alignment that you will have to do and, again, the domestic political ramifications if a Government aligns with a number of EU regulations. I think that the example that I am thinking of is Switzerland. Again, the politics that would come into that are another important feature. It is not clear at the moment that Labour is exactly clear on the precise details of the proposals that it would like to bring forward and the consequences that come from that.

**Neil Bibby:** Thanks very much for that answer.

As was mentioned earlier, it is a big year for politics and elections, with a UK general election and European elections. The election in the United States has been referenced as a potential external factor that might drive changes in the relationship between the UK and the EU. We have heard about foreign security agreements and a desire from the EU to work on that as well. Do you have any thoughts on factors relating to the US election and how that could impact on foreign security issues and anything else, for that matter?

**Joël Reland:** I will go again and then hand over to Jannike Wachowiak, who might be a bit more across the foreign security stuff. The political context has changed even since we wrote our report six months ago in terms of the likelihood of a second Trump presidency and the extent to which the EU is now linking economic policy to security policy and the extent to which its industrial strategy is linked to security in a more unstable global environment. There is a desire to pursue more domestic manufacturing and industrial capacity in renewables and critical minerals and to form agreements with other like-minded partners to help that transition to being less dependent on countries such as China, so those questions are fundamentally interlinked. That is a fundamental difference that did not exist in 2020 when the TCA was previously negotiated. That is potentially an area to examine and deepen, because it is a new question that has come on to the agenda.

Is it possible that the EU, again with its interest in de-risking around China, is looking for other potential partners that are closer to home and share its values? Could the UK be one of those partners? Is there more co-operation that could be built in that area? It also depends on UK interest in having a similar form of industrial strategy. At the moment, it is a little bit unclear exactly what the current UK Government's strategy is. It feels as if we get occasional mentions of it, but it ends up on ice, so if the Government of either party after the next election should come forward with a clearer vision for what it wants to do on those questions,

there is potentially room for co-operation with the EU. However, it is very much dependent on the politics of the next Government.

**Jannike Wachowiak:** I will add to what Joël Reland said. It is interesting that, if you look back at the Brexit negotiations, as you know, there is no foreign security defence chapter in the TCA. Even though there was quite a detailed proposal for that in the political declaration that outlined a joint vision for the future of the relationship and was signed by both sides, the idea of a chapter on this area was later rejected by the Boris Johnson Government. I think that the EU side was quite shocked by that and thinks that that was a missed opportunity, so I think that there would definitely be interest in that on the EU side.

Of course, we know that Labour is talking about the idea of a security pact with the EU, so there is interest from both sides in doing more together. The question is just what that will look like. On foreign policy, it will probably mainly be around having more political dialogue. The EU has political dialogue with almost all its key partners and it has also committed to the strategic compass, which is the EU's foreign affairs strategy, which was released in 2022. In that strategy, the EU has committed to having a greater focus on foreign security and defence in its dialogue with key partners and it now also has a trade and technology council with the US. In a way, the UK is the odd one out by not having such a dialogue. That would be a fairly obvious thing to do, which both sides might be interested in.

Labour has also said that it is interested in a more formalised relationship on sanctions. The two sides are already working very closely on sanctions in response to the Russian war in Ukraine, but they could think about having a more structured dialogue to maintain the level of engagement beyond the space of the war. That is the foreign policy side.

When it comes to defence, the EU has certain instruments that the UK could participate in, for example the EU's civilian and military missions. The UK used to lead some of those, for example the one in Somalia, the anti-piracy mission and the one in the western Balkans. There is a possibility for the UK to return to some of those missions, albeit in a different role because, as a non-member state, the UK would no longer have any decision-making capacity in contributing to those missions.

There are other things that the EU is doing in defence. It has developed lots of new instruments and innovated in response to Ukraine but also in response to Brexit. There are the permanent structured co-operation—PESCO—defence projects; the UK has already applied to participate in one project on military mobility, which is about

moving troops and equipment across borders in the EU. As I understand it, that is currently being held up by disagreements with one member state but, hopefully, that will come to fruition at some point in the future.

Where it gets very tricky—and this is the most important area on which to respond to the potential of a second Trump presidency—is defence industrial co-operation. The EU published a new defence industrial strategy just last week. If you look at that strategy but also at existing funds such as the European defence fund, which is funded by the EU budget and is €8 billion over seven years, you will see that, at the moment, the UK is excluded from these developments because the focus is on enhancing the competitiveness of the single market. Only single market members—members states and Norway—can meaningfully participate in those instruments at the moment. It is currently also carving out some exceptions for Ukraine, for good reasons, but it will be difficult for the UK to participate in those things.

A Labour Government that wants a security pact will have to be aware of the constraints that it has to navigate as a third country that is not in the single market. That will be important, but I agree with Joël Reland that the international context—and if Trump is re-elected—will be a driver for at least having something symbolic quite quickly if Labour comes into government.

**Keith Brown (Clackmannanshire and Dunblane) (SNP):** Thanks very much for your contributions so far.

I was interested to hear what Joël Reland had to say about the administrative bandwidth constraints on political ambitions. However, I think that it is also true, certainly in my experience, that politics drives those things. On the idea that the EU is a rules-based institution that slavishly follows the rules—we were discussing animal feeds and so on—Brexit happened and blew all that away.

On the accession of an independent Scotland, it will be politics that drives it, not any rules. Ukraine has climbed up the league table very quickly to accession status, which is a response to the politics rather than to anything else. Could you say a bit more about that?

Neil Bibby quite rightly asked about a Trump presidency. It would be interesting to know whether a future UK Government would stick with a Trump presidency that was encouraging Russia to attack a European state. Would the UK Government be driven to work more closely with Europe?

I will mention two other things. First, in relation to the European Parliament elections, can you see anything on the political horizon that might make it more difficult to effect changes to the TCA—for

example, a particular party in any country having a very strong view on something that might impact on the TCA? I know that that will require a little bit of crystal-ball gazing.

The second matter relates to defence and security. Again, are there things in that respect that might happen that would have a substantial impact? It is obviously difficult to say how things in the middle east or further developments in Ukraine will play out in relation to the EU's response. Can you see on the horizon any defence and security developments that might impact on the ability to change the terms of the TCA in relation to the interests of one or more of the 27 member states? That is for Joël Reland, first.

10:30

**Joël Reland:** We could try to forecast an almost infinite number of things. I will pick a couple that I think are salient; one is political and the second is more policy-based.

An important recent political development has been the shift in the European People's Party in the European Parliament, which is Ursula von der Leyen's bloc, around asylum and migration politics and the discussion of a potential Rwanda-style scheme for irregular migration being implemented at Europe level. That might change the framework for dialogue around migration in the future. If the UK looks less like an outlier in respect of its current approach to dealing with English Channel crossings and asylum seekers, that will potentially open the door to closer co-operation and to a more formalised returns agreement that would probably involve the UK taking in asylum seekers from the EU, perhaps in exchange for returning to the EU people who have crossed the Channel. That is an area in which there is perhaps growing alignment of political attitudes that could create room for dialogue, but that will depend very much on the identity of the UK Government and the Commission after the next elections.

The second matter is slightly more prosaic and more technical. It is the on-going EU policy-making process, in particular around green matters. There are a number of big files on the agenda at the moment. For example, there have been quite significant changes to rules on packaging waste and on eco-design, which relates to sustainability of products, and to supply chain regulations, in respect of links to forced labour, deforestation, human rights and environmental abuses.

All those could create quite significant new trade bureaucracy between the UK and the EU, given the protocol and the Windsor framework between Great Britain and Northern Ireland. It is very technical stuff and no one is really paying attention

to it. Actually, industry is paying massive attention to it and is across it, but at the political level we are not paying much attention to it.

There is a slow drip of issues that will create new regulatory barriers, which is a political problem, at the end of the day. As the issues grow and grow, there will be a stronger imperative for a UK Government that wants to improve its trading links with the EU to nullify the effects. That will mean either alignment with EU regulation or finding another way of getting around issues. I do not know what that would be.

I can imagine this being a matter that does not really drop off the agenda, especially because of the sensitivities relating to Northern Ireland that it risks creating. It is not something that the UK Government can afford to avoid.

**Jannike Wachowiak:** I agree with Joël Reland. It is interesting to think about how the European Parliament elections might impact on priorities in the EU. At the moment, we are expecting an increase in seats for the far right groups. The European Conservatives and Reformists Group and the Identity and Democracy Group, which are on the far right of the Parliament, are expected to gain seats, while groups like the Greens, for example, are expected to lose seats. The grand coalition in the European Parliament between the centre right, the centre left and the Liberals is expected to hold, but it is expected that it will be smaller than it currently is.

That means that there is a bit of a question about coalitions in the European Parliament—in particular, in relation to green and environmental files and whether the EPP groups or the centre right might be inclined to work with the ECR group on those issues, which will make it much harder to get green deal legislation through the European Parliament. That might also have an impact on what the EU wants to do with external partners.

We will see how the next Commission and Ursula von der Leyen position themselves in relation to defence and competition, which is of interest because, at the moment—as I said in my previous contribution—it does not look as if a space has been carved out for UK participation in the defence and industrial strategies.

If Donald Trump is re-elected and withdraws the security guarantee for Europe, and if Russia were to test the North Atlantic Treaty Organization solidarity clause, there would be a very strong incentive for the two sides to fundamentally rethink their security relationship, and for the EU to move on that. We are currently in the slightly paradoxical situation of the UK being a unique partner for the EU in Europe, in that it has strong military capabilities, but because of how the EU works and the distinction that it draws between member

states and non-member states it does not currently have the tools to acknowledge that. It will be interesting to see how that could be driven by external developments.

**Mark Ruskell:** I will ask about EU electricity market reform, which aims to stabilise electricity prices across the EU, especially after the disruption from the war in Ukraine. I note that your report talks about some tensions within the EU, in particular in relation to whether contracts for difference for French nuclear power constitute subsidy to a major form of energy generation, and economic advantage to France. Does that have implications for the TCA and whether there is a level playing field?

**Joël Reland:** I think that Jannike Wachowiak will not mind if I take this one.

There are two implications. Again, as in my previous answer, one is a policy implication and one is a political implication. I will start with the policy element.

The TCA includes a commitment to improving the flow of energy between the UK and the EU because the UK is no longer part of the single electricity market in the EU. That means that there are slightly more technical procedures related to energy trading on the daily markets. That is not a significant hindrance, but it has an administrative cost that is adding perhaps a couple of per cent to overall energy prices, or perhaps less than 1 per cent—people are undecided on that. However, there is a small but not totally insignificant cost to the disruption that that creates.

The UK and EU are currently talking about how to get around that under the TCA at a technical level in committee, but agreement has not yet been found. Very few people understand energy policy and how that would work, in great detail—how we would create a new mechanism that would allow more fluid trading. That is ongoing, but it is a struggle to make progress. There is frustration on many sides about how long it is taking, which also relates to the point that I made—that when there is not much political engagement things can get a bit mired in the details and forward movement can be slow.

That is linked to energy market reform. The UK and EU doing something dramatic in terms of energy market reform seemed likely for a while, but it now seems to be increasing unlikely, as the disruption that has been caused by the war in Ukraine settles down. However, there was talk for a while of quite radical reform to de-link renewable energy prices from fossil fuel energy prices. Were something radical to happen, that could complicate the process of trying to improve efficiency in trading, but I think that that is a diminishing risk, for the time being. The issue is

really political will and getting an agreement over the line. Of course, in 2026 the TCA chapter on energy has to be renewed, so that might be a point for more critical reflection on whether enough is being done.

My second point is around the level playing field. I would not say that it is an elephant in the room, but it is interesting how unacknowledged is the fact that since Russia's full-scale invasion of Ukraine in 2022 we have seen significant EU subsidies to support energy manufacturers and heavy industry, which relies on massive use of energy. The subsidies are, to an extent, distortive in terms of their effect within the EU single market. Germany's and France's capacity to levy national level subsidies is significantly more than that of countries such as Slovakia or Slovenia. That, arguably, creates an unlevel playing field within the European market and—it could be said—between the UK and the EU, in terms of the level playing field provisions in the TCA.

Neither side has really wanted to raise or address that question, it seems. I do not know what is going on behind closed doors, but publicly it has certainly not been widely raised. There is a question. If things were to come to the point of a review of the TCA, or if there were wider discussions on altering the state of the relationship, the level playing field issue could be raised. As a potential negotiating card, the UK could say, "Look—we've given you a bit of allowance here. We haven't raised any issues, so you need to give us something in return" or it could use a stick and offer more of a threat. The issue is sitting there simmering and has not been fully discussed.

**Mark Ruskell:** Thanks for that. I suppose that politics comes into whether there is an appetite within Europe to push through major radical reforms that might end up stretching the relationship.

I have a final question. You set out three particular types of improvements and talked about examination, exploitation and expansion of the TCA. If we were to expand the TCA and change it significantly, do you foresee the discussion about our exclusion from the single market coming back to the table, or is the review so tightly constrained that it is unimaginable that such a thing could be entertained?

It feels to me as though there is an inevitable logic about where we will end up. It might take five years, 20 years or 30 years, but all the models are about removing barriers, closer integration and deeper co-operation. It feels as if that will go only in one direction. Surely there can be only one end point, which would be our re-joining the single market. I do not know whether it just fantastical to

even suggest that right now. Does Jannike Wachowiak want to come in?

**The Convener:** I think you might be stretching the crystal balls, but we will have a go. Jannike, please come in.

**Jannike Wachowiak:** The TCA review will take place in 2026. I think that it is very unlikely that single market membership will be on the table. It will not be on the table unless the UK makes a political decision to change its red lines, but at the moment the Labour Party is saying that it is committed to the red lines that were set by Theresa May back in 2017—no single market, no customs union and no freedom of movement. Unless those red lines are changed, that will not be on the agenda for the 2026 review.

In a way, that would also clash with what the EU imagines the review will be, because it obviously sees it as a very technical exercise. Even the idea of using the review to build in a sanitary and phytosanitary deal or other additions is not what it has said—publicly, at least—that it has in mind. The expanded model that we outlined in the report, which is not a wholesale renegotiation of the TCA, is just basically a look at what is working and what is not working, and at what we could add. At the end of the day, the TCA is a dynamic framework agreement into which new things can be slotted if that is wanted. That is probably the maximalist version of what we could see in 2026.

Of course, further down the line that situation might change, but that will depend on politics. It will probably depend more on politics on the UK side than on politics on the EU side, although there is something of a caveat to be made. On the EU side there is no appetite for a conversation about single market membership unless it can be sure that there is broad consensus in UK society and UK politics that that is where the UK sees itself being in the long term. The EU would not want to engage in a negotiation on single market membership that would be overturned by a future UK Government.

10:45

**Joël Reland:** I absolutely agree with Jannike Wachowiak on the EU's position. In an extreme hypothetical scenario, were the UK to say, "We want to rejoin the customs union and the single market," that clause in the TCA review would be null and void anyway because that would not require a review of the TCA, but abandonment of it in favour of a fundamentally different relationship. At that point, we would not be in the realm of a review, which is why the three models of the TCA review are the constraints on how it could be used. Basically, deepening of the existing treaty in those ways would be as far as we could take it. To do

something fundamentally different would go beyond a review and would require new mandates, new negotiations and so forth.

Again, to echo Jannike Wachowiak's point, that would be politically unfeasible because even if the UK said that it wanted to do that, the EU would not sign up to it because there would be a lack of trust in the UK's commitment to fulfilling all the obligations that it would have as a member of the single market, whether under the current Government or a future Government, which might be more Eurosceptic and might simply renege on obligations. Any progress towards rejoining a single market, which would be far from guaranteed, would come first through steadily building on the existing TCA.

**The Convener:** Thank you. That has exhausted our questions. You have been with us for a long time this morning: thank you so much for your contributions, which have been very informative. I thank Jannike Wachowiak and Joël Reland individually, but I also thank UK in a Changing Europe for engaging with the committee in our inquiry.

10:47

*Meeting continued in private until 11:02.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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