

CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE

13th Meeting 2021, Session 6

9 December 2021

**The Scottish Government's International Work**

1. As part of its inquiry into the Scottish Government's international work, the Committee is looking at how the Scottish Government engages internationally and what it wants to achieve from this work. This includes both its EU and wider international engagement, its support for international development and how its external affairs policies interact with UK government policies in these areas.
2. This is the second evidence session covering this topic. At this meeting the Committee will take evidence from two panels of witnesses who will join the meeting remotely—

**Panel 1**

- Dr. Fabian Zuleeg, Chief Executive and Chief Economist, European Policy Centre
- Anthony Salamone, Managing Director, European Merchants

**Panel 2**

- David McAllister MEP, Chair, Foreign Affairs Committee, European Parliament

3. Members can find the written submission from Mr Salamone in **Annexe A**.
4. SPICe has also provided a briefing on the European Parliament's role in scrutinising the operation of the TCA in **Annexe B**.

Committee Clerks  
December 2021

Written submission from Anthony Salamone, Managing Director, European Merchants

### **The Scottish Government's European and International Relations**

1. This written evidence considers the European and international relations of the Scottish Government. The following sections examine: (1) principles for European and international engagement; (2) realities of post-Brexit EU engagement; (3) the relationship of Scottish Government engagement to UK Government foreign policy; (4) assessment of government engagement; and (5) avenues for parliamentary scrutiny. This evidence reflects the state of affairs as of October/November 2021.
2. The author wrote a commissioned report for the previous committee: [Scotland's Engagement in the European Union: Insights from Third Countries and Regions](#). Its executive summary is reproduced with this evidence as an annex. The author also draws attention to the latest European Merchants Insight Report: [Scotland's Global Standpoint: Strategic Principles for Scotland's European and International Relations](#).

### **Section 1: Principles for European and International Engagement**

3. Whatever Scotland's constitutional future, it is sensible for Scottish institutions to interact with the European Union and the wider world. Given that most policy fields have European and global dimensions, it makes sense for the Scottish Government to engage with EU and international colleagues. At present, however, the state of affairs in Scotland on European and international relations is strained. It is defined by the persistent lack of Europeanisation of Scottish politics and a growing lack of consensus on the Scottish Government's engagement in this domain. Such factors have fostered increasing political polarisation on the extent and depth of European and international engagement. This consequential policy domain is often conflated with the independence debate. Scotland currently lacks a sufficient policy culture on European and international relations, which hinders effective policy and debate.
4. While the Scottish Government should pursue EU and international engagement, it equally has a responsibility to structure that engagement on the basis of Scotland's current constitutional position. The Government presently lacks requisite strategy to undertake successful post-Brexit engagement with the EU and the wider world. In its Programme for Government, the Government commits to producing a new Global Affairs Framework. The creation of that framework is a vital opportunity to establish strategic direction and greater coherence for the Government's European and external relations. The author's *Scotland's Global Standpoint* report presents a number of recommendations on the design of credible and effective strategy for European and international engagement. The envisaged Global Affairs Framework should define primary principles and objectives for European and external relations which are values-based, ensure alignment between domestic policy and external action, and correspond to Scotland's current constitutional circumstances.

5. The framework should have a defined long-term lifespan – such as the rest of this decade, from 2022-2030. The Government should then produce regular five-year or ten-year strategies for European and external relations. Such strategy should serve as the foundation for all Government engagement in this domain, and policy plans should accord with it. Strategy should minimise Scottish constitutional affairs and promote purposeful separation of European and international relations from the independence debate. It should facilitate cross-party engagement in this field, with meaningful avenues for all-party cooperation. Given Scotland's political, economic, social and geographical position, the Scottish Government should pursue a Europe First Strategy, in which relations with the European Union – the EU institutions and the Member States at all levels – receive the greatest attention, investment and engagement. Considering that the Scottish Government does not have the powers or resources of a state, the balance of its engagement should be notably in favour of European relations, with international relations strategically targeted.

## Section 2: Realities of Post-Brexit EU Engagement

6. Now that Brexit is realised, and Scotland is outside the EU, the Scottish Government faces significant challenges to conducting successful engagement and acquiring actionable influence within the EU. As the author has identified in [other work](#), the Scottish Government is confronted with three principal challenges. First, its access to EU institutions, policies and programmes has been reduced and is dependent on the minimal EU-UK relationship. Second, its relevance in Brussels has decreased given that Scotland is neither part of the EU (with a right to participate in EU affairs) nor part of the EEA (with political legitimacy to participate). Third, it is associated with the UK Government's approach towards the EU to some extent, even though it does not wish to be so, since Scotland is part of the UK. Credible strategy should acknowledge these realities and structure engagement in response to them.
7. Scotland's relationship with the EU remains a matter of notable public interest, and it is an integral aspect of the independence debate. Government strategy, however, should recognise that, whatever its constitutional future, Scotland will most likely not be part of the EU for the rest of this decade. The author's [analysis](#) demonstrates that Scotland's EU accession process, as an independent state, could reasonably take 44-78 months, and probably 48-60 months, from the point of application to the point of accession. If a hypothetical referendum agreed by the Scottish and UK Governments were held in September 2023, with a result for independence, an independence transition of 36 months and an application preparation period of 3 months, Scotland could become an EU Member State between December 2030 and December 2031. If the voters rejected independence, or an agreed referendum did not happen, Scotland would not join the EU. Government strategy should assume that, in any event, Scotland will not be part of the EU through at least 2030.
8. With Brexit concluded, the Scottish Government should recognise that its central message to EU actors since the 2016 referendum – that Scotland did not support Brexit – is no longer relevant. As the author has [established](#)

[elsewhere](#), EU relations should be founded on two pillars. The first is practical cooperation with EU actors on areas of mutual interest. The second is strategic participation in major debates on the future of Europe. In that regard, it is regrettable that the Scottish Government has apparently not sought to participate in the Conference on the Future of Europe.

### **Section 3: Relationship to UK Foreign Policy**

9. It is evident that the current Scottish and UK Governments have contrasted policies on European and international relations. In respect of the EU in particular, they have completely opposite positions. Their relationship is presently antagonistic, driven by the fact of Brexit, the matter in which it was conducted and the shape of the new EU-UK relationship. In this domain, the two sides share little common ground – and they appear uninterested in finding more. This situation is unfavourable generally for the conduct of public policy. However, it is particularly negative for the Scottish Government, as such discord reduces its ability to engage productively with EU and global actors, due to their desire to avoid involvement in the UK's internal politics. The state of Edinburgh-London relations affects the former's external action.
10. In general, the Scottish Government's European and international engagement and the UK Government's foreign policy are now separate endeavours, underpinned by different priorities and competing aspirations. Nevertheless, the two governments should strive for better cooperation in this area. A new concordat on international relations could support such efforts. The current international relations concordat dates to 2013 and the EU relations concordat was rendered obsolete with Brexit. A new agreement could broaden the terms of sanctioned engagement to include political dialogue with states, the EU institutions and international organisations, codifying the Scottish Government's actual practice. It could also better delineate the operation of Scottish offices within the premises of UK diplomatic missions.

### **Section 4: Assessment of Government Engagement**

11. Like all policy domains, European and international engagement should be subject to assessment and evaluation. Moreover, through its Programme for Government, the Scottish Government has made clear its ambition to increase its global profile even further. The programme contains a series of pledges which, if realised, could expand the Government's EU and global engagement. Assessment should focus, in the first instance, on the design and content of Government strategy. The future Global Affairs Framework should establish a post-Brexit, long-term vision. Credible and effective strategy should articulate substantive principles and objectives for European and external relations. Objectives should be specific and suit Scotland's current circumstances. 'Protecting Scotland's place in Europe', for instance, where not otherwise defined, means little. Assessment should consider the operation of Government engagement, including the extent to which it accords with strategy.

12. The Scottish Government's network of representative offices located in the EU and the wider world (sometimes called 'Innovation and Investment Hubs') is often the focus of political attention when assessing Government engagement. This network is, however, only one component of its European and external relations. In [written evidence](#) to the previous committee, the author defined five criteria for evaluation of the Government's representative offices: (1) the work and performance of each office; (2) relationships and connectivity between the offices; (3) relationships and connectivity between the offices (collectively and individually) and Edinburgh; (4) policy strategy and direction in Edinburgh; and (5) learning and future development, including expansion of the network. The operations of these representative offices should be fully integrated into Government strategy, forming a coherent network.
13. In terms of premises and personnel, the majority of this representative network is located within the EU – with offices in Brussels, Berlin, Paris and Dublin. It has been clear for some time that the Scottish Government would expand its network further, and, in the Programme for Government, it pledges new offices in Copenhagen and Warsaw. While purposeful expansion of the network is reasonable, in proportion to Scotland's current constitutional position, it should be based on defined strategy. These new locations were announced before work on the Global Affairs Framework had ostensibly begun. To date, the Scottish Government has offered no substantive rationale for the selection of these locations. If its objective were to build strategic connectivity in the EU, Rome, Madrid and The Hague would be the logical choices. Given that Poland is currently a politically isolated EU Member State in conflict with the EU institutions, the selection of Warsaw is a strange allocation of resources.

## **Section 5: Avenues for Parliamentary Scrutiny**

14. Given that the Scottish Government aims to increase its European and international engagement, it would be logical for the Scottish Parliament to intensify its scrutiny of the Government in this field. The Parliament could scrutinise the design, content, implementation and evaluation of Government strategy on European and external relations, considering the central role which strategy should occupy. It could review the balance of engagement to ensure that the Government's activity is focused on Europe and does not expand into new geographical areas without a strategic basis. It could assess the extent to which the Government's plans and initiatives accord with its strategy, and the degree to which its bilateral and multilateral engagements align with its principles and objectives. Such scrutiny could be conducted regularly.
15. Compared to the UK's former membership, the Trade and Cooperation Agreement is a remote and minimal relationship with the EU. Since the Parliament scrutinised the Brexit process throughout its duration, it is natural that it should scrutinise the operation of the new EU-UK relationship. In the design of such scrutiny, it would be advisable to recognise the relatively limited scope to influence the UK Government, the European Commission and the EU-UK bilateral institutions. Much greater scope exists to assess and influence the work of the Scottish Government connected with the EU-UK relationship. By enhancing its scrutiny of all dimensions of the Scottish Government's European

and external relations, the Parliament could ensure that the Government faces more robust and substantive challenge in an area into which it is expanding on the basis of manifest, but often undefined, ambitions.

ANNEX: SUMMARY OF COMMISSIONED REPORT FOR THE PREVIOUS COMMITTEE

[Scotland's Engagement in the European Union: Insights from Third Countries and Regions](#) – by Anthony Salamone

EXECUTIVE SUMMARY

This report analyses how third countries and regions engage and influence in the European Union. It considers their EU strategies and engagement in Brussels and in EU member states, assessing innovations in their approaches to European relations and deriving lessons which Scotland could take to develop its own EU strategy and engagement. The report features six case studies of third countries and regions – Norway, North Norway, Geneva, Quebec, the Basque Country and Bavaria. These territories have different relationships with the EU, through the EEA, EFTA, international agreements and EU membership itself, and since they are not principal EU decision-makers they must pursue alternative means to shape the EU's policies. The report is based on interviews with senior officials in the EU institutions, EU permanent representations, third country missions and regional offices, supplemented by further stakeholder discussions.

In their EU engagement, third countries and regions must take account of their formal relationship with the Union, whether with 'decision shaping' rights as an EEA state, participation in the Committee of the Regions as an EU region, or no defined access to EU policy-making. States must complement their diplomacy, and regions their paradiplomacy, with strategies that translate their soft power strengths into narratives that support their objectives and create influence in the EU. In Brussels, third countries and regions advocate their interests at the centre of EU decision-making, interacting with the EU institutions, member states and a multitude of business, NGO and civil society organisations. They work to build influence with EU actors and take advantage of the openness of the EU policy environment to ideas and evidence from EU and non-EU sources. In the member states, third countries and regions pursue their interests in national capitals and cities, where they must decide how to prioritise direct bilateral issues and EU policy questions. Third countries normally have greater resource to operate a larger network than regions, which usually have a smaller, more targeted presence. While the benefits of EU engagement are often intangible, influencing the course of EU decision-making can prove crucial for serving national or regional strategic interests.

**Norway** is an EEA country and that status provides a degree of structure to its relationship with the EU. While it participates in EEA decision shaping and joint institutions such as the EEA Council, most of Norway's EU engagement is concentrated on building indirect influence in EU policy-making. Norway dedicates significant resource to these efforts as part of its wider foreign policy, and its ministry of foreign affairs is well-funded. Its mission in Brussels is its largest diplomatic representation, and it has an embassy in nearly every EU member state. It engages with the full range of EU actors in Brussels and national capitals, and benefits from particularly strong relationships with the Nordic EU member states. Norway's

international profile as a peace-builder and mediator is an important part of its contribution to its bilateral EU relationship, providing additional avenues for engagement. However, Norway is realistic about its inevitably limited influence as a non-member state. While on occasions Norway can shape the edges of EU policies, rarely does it set their tenets.

**North Norway** pursues the representation of its strategic interests on the Arctic as its primary EU focus. While regions currently have limited powers in Norway, Norwegian counties operate on a regional basis in Brussels through membership-based offices. The North Norway European Office engages extensively with the EU institutions and member states to attempt to shape the EU's Arctic policy and related measures. Its priorities include advocating the region's point of view on balancing economic development and environmental preservation, and socialising EU actors to the modern Arctic economy and lifestyle. The office also supports its members in accessing EU programmes – and the balance between these roles differs across the Norwegian regional offices. North Norway works closely with its fellow regions and the Norwegian mission in Brussels, forming a 'mini Norway' system that coordinates EU engagement.

**Geneva** is a principal proponent among the Swiss cantons of a close relationship between Switzerland and the EU, supporting reform of the EU-Swiss institutional structure and the continued free movement of people. Along with its cantonal counterparts, Geneva does not have a distinct external presence in Brussels or elsewhere in Europe. Instead, it contributes to Switzerland's federal EU and foreign policies through the Conference of Cantonal Governments and other domestic avenues. While Geneva has extensive connections with France and particularly its Auvergne-Rhône-Alps region, their cooperation is concentrated on managing their extensive cross-border activity rather than EU policy. Switzerland itself is excluded from EU decision-making, with the exception of Schengen where it has decision-shaping rights, as a country outside both the EU and the EEA.

**Quebec** focuses its relationship with the EU, as part of an international third country, on building trade, research and innovation partnerships, rather than attempting to shape the EU's economic rules like the non-EU European states. CETA is a major focus for Quebec in its EU work, and the agreement is already deepening Canada-EU relations. Quebec engages strategically with the EU on its priority area of artificial intelligence, interacting with the EU institutions, undertaking ministerial visits to Brussels and participating in EU expert groups, in recognition of the EU's global role as a regulatory power. It maintains an extensive international footprint, with offices in a number of EU member states, focused primarily on building bilateral political, economic and cultural relations. It also engages with EU institutional and member state actors in Ottawa and Montreal. Quebec works collaboratively with Canada on EU affairs, including during the CETA negotiations and on Quebec's research, trade and investment priorities.

The **Basque Country** recognises the importance of European integration to its strategic interests and incorporates EU engagement across its government programme and strategies. It considers itself a constituent of the European project, and recently published a proposal on its vision for the future of Europe. In its EU relations, the Basque Country prioritises efforts to enhance the innovation and competitiveness of its highly industrialised economy. Its delegation office in Brussels



brings local stakeholders together in a unified regional presence. The government's trade and investment architecture, including Basque Trade and Investment, takes a holistic approach to internationalisation and concentrates on improving the region's strengths in advanced manufacturing and Industry 4.0. The Basque Country forms strategic partnerships with other EU regions and actors, including through the Vanguard Initiative. It showcases its best practice to the EU institutions, such as in vocational education, becoming recognised at European level as a leader in its fields of excellence and building influence in Brussels.

**Bavaria** operates at state, federal and European levels to actively shape EU policies, and its approach reflects the substantial internalisation of the EU into domestic politics. Its extensive European policy includes positions on the internal market, euro, external migration and foreign policy, exemplifying the reality that it is possible to articulate detailed perspectives on EU issues even without direct competence on them. In its EU engagement, Bavaria advocates its interests across this wide range of issues, and pursues its objectives for changing the EU, including increasing the input of regions in EU policy-making and strengthening the application of the principle of subsidiarity. Within the German federal system, Bavaria works with other regions and interacts directly with the federal government to shape Germany's EU policy. In Brussels, Bavaria engages extensively with the EU institutions and has built a profile as an influential convener and regional actor. Drawing on its geography, it concentrates its presence in EU member states in central and eastern Europe, and styles itself as a bridge between east and west.

In practice, third countries and regions generally focus their EU networking, lobbying and influence building in Brussels. Most make a priority of establishing relationships with the European Commission, while also interacting with the EU's large membership of 28 states and the European Parliament. They often gravitate towards those member states with which they already share connections, whether through geography, culture, language or history. Regions also engage indirectly through their national governments, depending on the domestic constitutional context. Where they are able to contribute to the national EU policy and work collaboratively with the state in Brussels, both sides benefit from the productive synergies. In the EU member states, third countries incorporate EU matters into their bilateral relations, to influence EU policies from different national angles, while most regions concentrate on bilateral issues such as trade and investment rather than direct EU affairs. Third countries and regions also work with other state and non-state actors through alliances, associations and partnerships to build their profile in Brussels and achieve policy impact. The most successful states and regions channel their soft power through international profiles, based on expertise, innovations, values or natural characteristics, to simultaneously make themselves unique and offer inspiring solutions to global concerns. Where astutely connected to the EU's ongoing debates, such profiles can create opportunities for cooperation and avenues for influence, sustaining meaningful relations with EU actors over the long term.

The **Principal Conclusions**, situated at the end of this report, set out how Scotland could enhance its EU engagement by learning from and building on the strategies, policies and innovations of these six countries and regions. With the EU's new institutional cycle beginning this autumn, the timing is opportune to reflect on the



direction, priorities and strategy of the Union. Although Scotland's future relationship with the EU is unclear, Scotland can and should form part of the debate on the future of Europe. Scotland will equally have to consider its European strategy going forward, despite the uncertainties of Brexit. It should ensure that its EU priorities are clear and focused, and grounded in a vision of the kind of European Union that Scotland wants to see in the years ahead. | The full report is available on the [Scottish Parliament website](#).

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

**13<sup>th</sup> Meeting, 2021 (Session 6), Thursday, 9 December**

### **European Parliament scrutiny of the EU-UK Trade and Cooperation Agreement**

#### **Context**

David McAllister MEP is chair of the European Parliament's Foreign Affairs Committee and co-chairs the European Parliament's UK Contact Group.

Today's evidence session is an opportunity for the Committee to discuss how the European Parliament will scrutinise the operation of the EU-UK Trade and Cooperation Agreement and the EU-UK relationship as a whole. It provides an opportunity for the Committee to understand what information in relation to the operation of the TCA, the European Parliament expects to receive. It may also allow the Committee to explore what role the Scottish Parliament should have in scrutinising the operation of the TCA, what information is available to support that scrutiny and how the committee might be able to work with the European Parliament on this.

In relation to the Scotland-EU relationship following Brexit, the evidence session provides an opportunity for the committee to hear whether the TCA will affect how the Scottish Government engages with the EU's institutions, how the Scottish Government's policy on EU alignment might evolve and how the Scottish Parliament can continue to track EU policy and legislative developments. Finally, it provides an opportunity to discuss how the Scottish Government might engage with the EU following Brexit and what the Scottish Government might seek to achieve from its engagement.

## **The Scottish Parliament's interest in the Trade and Cooperation Agreement**

The Trade and Cooperation Agreement's governance arrangements provide wide-ranging powers for the European Commission and the UK Government in the management of the TCA. In some areas, these powers enable the UK Government and EU to agree between them to change the original terms of the TCA.

Whilst the Trade and Cooperation Agreement includes a number of provisions in policy areas of devolved competence, there are no formal arrangements in place for scrutiny by either the UK Parliament or the devolved legislatures. This includes no formal processes for scrutiny of the binding decisions which can be taken by the Partnership Council in areas of devolved competence and the UK Government's actions as co-chair of the Partnership Council.

## **The European Parliament and the TCA**

The European Parliament has a role in scrutinising the ongoing operation of all the European Union's trade agreements. This includes the EU-UK Trade and Cooperation Agreement (TCA).

The EP's role is primarily to scrutinise the work of the European Commission which oversees the operation of the TCA and the Withdrawal Agreement. The Foreign Affairs and International Trade Committees will have responsibility for leading the European Parliament's scrutiny of the TCA whilst a number of different committees will have a role in scrutinising particular aspects of the TCA.

The governance arrangements for the TCA also provide a role for the European Parliament in receiving information about the work of the Partnership Council and the Specialised Committees which sit beneath it through the Parliamentary Partnership Assembly which will be formed by the European Parliament and the UK Parliament.

## **The European Parliament UK Contact Group**

During the negotiations on the Withdrawal Agreement and the Future Relationship between the EU and the UK, the European Parliament set up the [UK Coordination Group \(UKCG\)](#). This group was set up to track the future relationship negotiations and liaise with the European Commission's Task Force for Relations with the United Kingdom and to influence the negotiations through resolutions. The UKCG then supported the European Parliament's consideration of the new Trade and Cooperation Agreement on which it had to give consent.

With the TCA now operational, the Coordination Group has evolved into the European Parliament's UK Contact Group. Like the UKCG, the Contact Group is co-chaired by David McAllister MEP in his role as Chair of the Foreign Affairs Committee and Bernd Lange MEP in his role as Chair of the International Trade Committee. The role of the Contact Group is to gather representatives from all

political groups to scrutinise EU-UK relations and coordinate Parliament's position in response.

## The role of the Foreign Affairs Committee

Following the TCA coming into force, the Foreign Affairs Committee has largely focussed on non-Brexit related matters. However, in recent months much of the Committee's and the Committee Chair's focus in relation to the EU-UK process has been on ensuring the successful operation of the Northern Ireland Protocol.

A key element of the European Parliament's engagement with the TCA is likely to come through the Parliamentary Partnership Assembly. This is because the Parliamentary Partnership Assembly has the power under the TCA to request relevant information about the implementation of the agreement.

## The Parliamentary Partnership Assembly

On 5 October 2021, the [European Parliament decided](#) to establish a standing delegation to the EU-UK Parliamentary Partnership Assembly, as well as the number of MEPs that will sit on it. On the creation of the EU delegation, [David McAllister tweeted](#):

"I am convinced that well framed inter-parliamentary relations can help us to build trust and a mutually beneficial dialogue with our #UK counterparts. A strong parliamentary dimension is crucial for shaping the implementation of the EU-UK Trade and Cooperation Agreement."

The Parliamentary Partnership Assembly (PPA) will consist of members of the European Union Parliament and the Parliament of the United Kingdom as a forum to exchange views on the EU-UK partnership. The EU-UK Parliamentary Assembly shall include 35 members each from the European Parliament and the UK parliament (70 in total).

The role of the PPA is set out in Part 1 Title III Article 11:

- It may request relevant information regarding the implementation of this Agreement and any supplementing agreement from the Partnership Council, which shall then supply that Assembly with the requested information;
- Shall be informed of the decisions and recommendations of the Partnership Council; and
- May make recommendations to the Partnership Council.

The European Parliament recently [agreed membership of its delegation to the PPA](#). It includes David McAllister MEP. On his inclusion in the EU delegation, [David McAllister tweeted](#):

"I am looking forward to be a part of establishing a mutually beneficial cooperation with our UK counterparts through the EU-UK Parliamentary

Partnership Assembly. Building trust will be key for a successful implementation of the EU-UK TCA.”

The PPA has yet to be formally established and meet.

## The Friends of Scotland Group

Following EU Exit, the Scottish Government established the [‘European Friends of Scotland’ friendship group](#). According to the Scottish Government, the group:

“serves as an informal network of MEPs representing different political groups of the European Parliament with the objective of helping to facilitate dialogue on specific areas of mutual interest, and to ensure as close a relationship as possible between Scotland and the EU now that the UK has left the European Union.”

The Scottish Government’s Brussels Office based in Scotland House provides a secretariat function to support the running of the group.

The aims of the group are:

- promoting stronger economic, social and cultural relations between the EU and Scotland
- encouraging cooperation and understanding in key areas that relate to both the EU and Scotland such as climate change, the green deal, wellbeing economy, international development/SDGs, the Arctic, etc. and the future EU-UK relationship
- helping to maintain links between elected Members of the Scottish Parliament (MSPs) and MEPs
- facilitating links between the EU and Scottish Civil Society

## Scottish Government engagement with the EU

Following the UK’s departure from the EU there is no longer a requirement to continue to comply with EU law. However, Scottish Ministers have indicated that, where appropriate, they would like to see Scots Law continue to align with EU law. As a result, it will be important that both the Scottish Government and the Scottish Parliament continue to maintain awareness of legislative developments in the EU.

The UK-EU Trade and Cooperation Agreement does not contain dynamic alignment measures (i.e. that the parties to the agreement maintain equivalent regulatory standards to each other in future). However, the Northern Ireland Protocol does require dynamic alignment in Northern Ireland with certain EU regulations and directives covered by the Protocol.

Instead of a commitment to dynamic alignment, the level playing field provisions in the Trade and Cooperation Agreement aim to ensure that the standards which

applied at the end of the transition period in the areas of labour and social standards, environment, and climate cannot be lowered (so-called non-regression) by either the UK (including by the devolved authorities) or the EU in a way which impacts on trade and investment. In addition, the level playing field provisions mean that if either side seeks to reduce or increase their labour or environmental standards unilaterally, the other party could seek to impose trade restrictions such as tariffs to ensure that no competitive trading advantage can be gained.

As a result of the Scottish Government's commitment to EU alignment and the commitments in the TCA including the level playing commitments, this arguably means awareness and scrutiny of EU legislation is more important than ever. This is because the opportunities for alignment with, or divergence from EU law are greater post exit.

On 13 October, the [European Commission committed to setting up a website](#) that "would in a clear and comprehensive way show the EU legislation applicable in Northern Ireland". This approach is because the "EU is aware that transparency is a crucial element for building trust in Northern Ireland" with regard to the operation of the Protocol.

Outwith the operation of the Trade and Cooperation Agreement, a significant focus for the Scottish Government is developing Scotland's post-Brexit relationship with the European Union.

In January 2020, the Scottish Government published [The European Union's Strategic Agenda 2020-2024: Scotland's Perspective](#). This set out why the Scottish Government thinks the EU's priorities are of importance to Scotland and how Scotland can contribute to their delivery.

The Scottish Government suggested there are opportunities for Scotland in engaging with the EU's work in the following priority areas:

- promoting progressive, democratic values on the world stage
- addressing the challenges presented by the global climate emergency
- promoting the wellbeing of all of society
- creating smart economies which thrive by the intelligent and humane use of new technologies.

The Scottish Government set out the ways in which it would seek to work with the EU following Brexit including:

- proactive and constructive engagement with the EU institutions and other multilateral organisations
- active bilateral collaboration with member states.
- robust and constructive engagement with the UK Government and the other devolved governments to protect Scotland's interests and shape the UK Government's approach to influencing the EU and future international activity.

**Iain McIver, Senior Researcher, SPICe Research**  
**1 December 2021**

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