



THE EU-UK TRADE AND CO-OPERATION AGREEMENT:

# WHAT DOES IT MEAN FOR PUBLIC HEALTH?

EPHA BRIEFING

September 2021

## About EPHA

EPHA is a change agent – Europe's leading NGO alliance advocating for better health. We are a dynamic member-led organisation, made up of public health civil society, patient groups, health professionals, and disease groups working together to improve health and strengthen the voice of public health in Europe.



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## Introduction

The EU-UK Trade and Cooperation Agreement (TCA) was finalised on 24 December and signed on 30 December 2020, just in time to enter provisional application on New Year's Day 2021. The agreement has since been approved by the European Parliament and entered into force officially on 1 May 2021.<sup>1</sup>

Despite this agreement being reached, EU-UK relations have been far from cordial during the early part of 2021, with particular disagreement emerging over the interpretation of the Northern Ireland Protocol, which was established to safeguard the 1998 Good Friday (Belfast) Agreement, avoid a hard border on the island of Ireland and protect North-South cooperation.

In the broader context of EU-UK relations, public health has received little attention, as the European Public Health Alliance (EPHA) has previously documented.<sup>2</sup> This briefing provides an update on how both public health and healthcare have been included, and neglected by the deal. Firstly, the broader connections between trade and public health are summarised (section 2), before the TCA itself is examined (section 3). Then the governance of the TCA is considered, before a number of health themes that are covered by the agreement are explained (3.1-3.8), before concluding (section 4).

## Trade and Public health: a summary

*EPHA's previous papers focusing on the liberalisation of Free Trade Agreements (FTAs) have identified the connections between trade and health,<sup>3</sup> and these are summarised in table 1. Not all of these are relevant in the context of the TCA, which is about managing decreased economic integration between the EU and UK.*

Area	Detail
Investor-state dispute settlement provisions	Investor-state dispute measures can lead to foreign investors challenging public health promoting legislation, again potentially restricting government space to regulate.

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1 [https://ec.europa.eu/info/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement\\_en](https://ec.europa.eu/info/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en)

2 <https://epha.org/brexit-trade-remains-impervious-to-importance-of-public-health-on-both-sides-of-la-manche/>  
<https://epha.org/protecting-public-health-in-eu-and-post-brexit-trade-agreements/>  
<https://epha.org/report-navigating-the-health-implications-of-brexit-for-the-uk-and-europe/>

3 <https://epha.org/protecting-public-health-in-eu-and-post-brexit-trade-agreements/>

<b>Unhealthy commodities: energy-dense, nutrient poor foods</b>	Trade and investment agreements can affect the relative price and availability of certain goods (including products such as processed foods high in fat, sugar or salt, sugar-sweetened beverages, animal products, alcohol and tobacco) which are often still subject to high levels of protection (in the trade sense), by reducing tariffs and non-tariff barriers, and barriers to foreign investment
<b>Unhealthy commodities: tobacco</b>	As above
<b>Unhealthy commodities: alcohol</b>	As above
<b>Antimicrobial resistance (AMR) and (food safety</b>	Problems can emerge when fast import/export procedures are prioritised over food safety and minimising AMR.
<b>Industry Involvement</b>	Corporate interests such as big tobacco, alcohol, food and pharmaceutical companies and other health-harmful industries have opportunities to influence trade deals, through regulatory cooperation and “Good regulatory practices”.
<b>Labelling schemes</b>	Dietary labelling schemes can be affected by Technical Barriers to Trade chapters
<b>Procurement schemes</b>	Procurement schemes favouring healthy diets or local foods can be threatened by trade procurement measures
<b>Access to medicines</b>	New trade deals often promote stronger intellectual property rules, restricting governments’ ability to take decisions on pricing and reimbursements.
<b>Services of General Interest and Health services</b>	Trade deals can lead to liberalisation of health and other important services (social, education and water) and/or limit the space of governments to legislate in these areas.

## The EU-UK Trade and Cooperation Agreement

It is important to note that the EU-UK negotiations and their outcome are unique in many ways: while most trade negotiations seek to increase economic integration and market liberalisation, the EU and the UK are already highly economically integrated. As such, many of the problems faced in negotiations (and those that may arise from the process of implementation) result from the difficulties of economic disentanglement. Therefore, some of the areas listed in table 1 are not directly relevant, or the risks in that area will come not from increased market access but from regulatory divergence between the UK and the EU. Furthermore, areas of regulation which are beyond the strict scope of trade policy – such as immigration policy – are affected by Brexit and will impact upon public health in both the EU and the UK. They are therefore also considered in this briefing – this section first considers the TCA's governance structure, before turning to health-relevant themes, both within and beyond trade policy.

### Governance

The TCA's governance structure consists of the overarching Partnership Council, co-chaired by the EU and the UK at ministerial level, which oversees implementation of the agreement. The Council is supported by a number of specialised committees: ten related to trade, and eight others. (see summary in Figure 1).

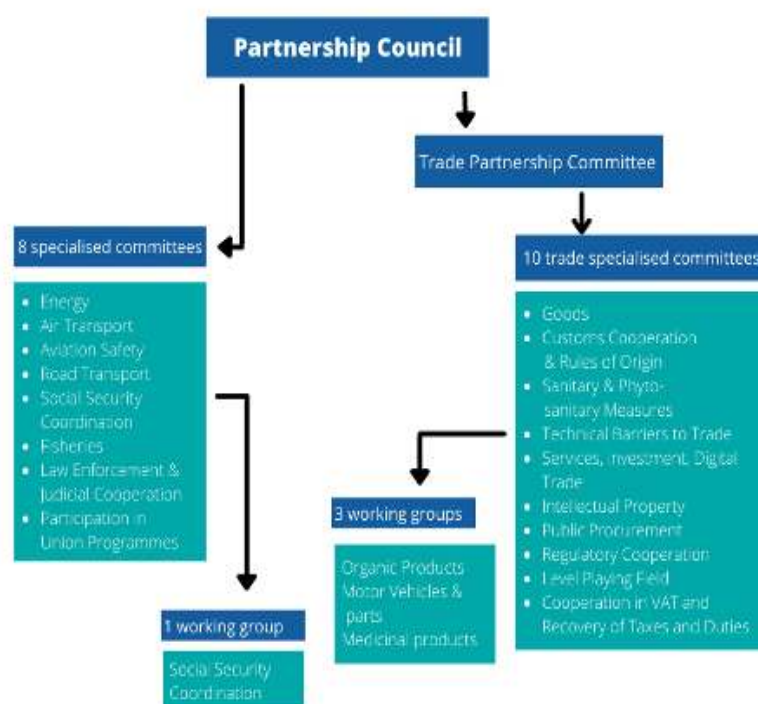


Figure 1: TCA Governance structure.

Source: [https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/679071/EPRS\\_IDA\(2021\)679071\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/679071/EPRS_IDA(2021)679071_EN.pdf)

Many of these committees are potentially relevant for public health, including:

- energy,
- participation in Union programmes,
- sanitary and phytosanitary measures,
- technical barriers to trade,
- intellectual property,
- public procurement,
- regulatory cooperation,
- level playing field.

The Working Group on Medicinal Products is also particularly relevant. The establishment of these bodies was delayed due to the period of provisional application.<sup>4</sup>

All committees will be composed of EU and UK officials.<sup>5</sup> Domestic advisory groups and a joint civil society forum will be established to enable civil society participation,<sup>6</sup> but there is no indication these will be directly involved in meetings of the specialised committees. These bodies have not yet been established. There is currently no committee specifically on public health but such a new committee could be created if the Partnership Council decided to do so.

Disputes between the two parties will be settled via arbitration tribunals. Within 180 days after the TCA enters into force, the Partnership Council will establish a list of 15 experts who would serve as members of an arbitration tribunal. This list is to be composed of two sub-lists of five individuals appointed by each party, respectively, and one sub-list of five experts, nationals of neither the EU nor the UK (non-nationals sub-list). A tribunal would be composed of three arbitrators.<sup>7</sup> This mechanism is yet to be tested, but in the context of the current relations between the two parties, we can expect that it will be at some point, and that the decision may have some relevance for public health (for example regarding level playing-field or non-regression clauses). The Agreement also establishes a Parliamentary Partnership Assembly with representatives from the European Parliament and the UK Parliament which may request information from the Partnership Council, be informed of the latter's decisions and recommendations and make its own recommendations to the Partnership Council, allowing for further opportunities for oversight of the TCA, although it remains to be seen what level of influence this body might have, and if health issues might be one of their concerns.

### **Investor-state dispute mechanism and the level playing-field**

*Unlike many comparable free trade agreements, the TCA does not include any arbitration mechanism for foreign investors to challenge either the UK or an EU*

<sup>4</sup> <https://committees.parliament.uk/publications/4775/documents/48216/default/> ; [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/963820/CDL\\_to\\_Maros\\_Sefcovic.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/963820/CDL_to_Maros_Sefcovic.pdf)

<sup>5</sup> [https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/679071/EPRS\\_IDA\(2021\)679071\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/679071/EPRS_IDA(2021)679071_EN.pdf)

<sup>6</sup> <https://www.thirdsector.co.uk/civil-society-forum-set-part-brexit-deal/policy-and-politics/article/1703612> ; [https://ec.europa.eu/info/sites/default/files/slides\\_on\\_governance\\_and\\_enforcement\\_1.pdf](https://ec.europa.eu/info/sites/default/files/slides_on_governance_and_enforcement_1.pdf)

<sup>7</sup> [https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/679071/EPRS\\_IDA\(2021\)679071\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/679071/EPRS_IDA(2021)679071_EN.pdf)

*member state*.<sup>8</sup> This conforms with the EU's desire to move away from investment arbitration in favour of a multilateral investment court in which disputes should be resolved. However, other recent EU agreements such as CETA with Canada or the Comprehensive Agreement on Investment (CAI) with China provide for further negotiations on such investment courts.<sup>9</sup> Beyond the TCA, the UK still has 11 bilateral investment treaties with EU member states, which investors could use to challenge government decisions.<sup>10</sup> Arguably, this was less important in the TCA as investors are perceived to be well protected in both jurisdictions.

Further, investor rights are quite limited within the TCA, and the agreement includes a broadly drafted right to regulate. The first chapter explicitly declares that right to regulate in order to achieve legitimate policy objectives which include the protection of public health, safety, the environment and climate change, social or consumer protection, privacy and data protection, but also social services, public education, public morals, or the promotion and protection of cultural diversity.<sup>11</sup> This further limits the opportunity for private interests to challenge public health policy. The 'precautionary approach' (principle) for the environment and human health is also acknowledged, and the parties explicitly commit to climate neutrality by 2050.<sup>12</sup> This broad right to regulate can be seen as a substantial positive for public health.

Additionally, the TCA establishes level playing-field provisions which constrain the parties to maintain at least the same level of standards as prevailed on 1 January 2021, in the social, labour, and environmental areas (non-regression), and establish rebalancing mechanisms whenever significant divergences in these areas lead to 'material impacts' on trade or investment.<sup>13</sup> This creation of a regulatory floor should benefit health by safeguarding environmental and social regulations which have a positive impact on public health, such as EU climate change, air pollution and working time regulations. However, room for interpretation remains in the definition of "significant divergences" and "material impacts", meaning that implementing and enforcing this commitment may not be straightforward, while the focus is on preventing perceived unfair competition rather than aligning labour and social standards for mutual benefit<sup>14</sup>

### **Trade in food, alcohol and tobacco, and AMR**

The House of Lords EU Environment sub-committee has found that UK food producers are facing new trade barriers in the form of sanitary and phytosanitary (SPS) measures, extra paperwork, increased haulage costs and outright export bans on some products as a result of the TCA.<sup>15</sup> The TCA is unlikely to have a significant effect on the price and availability of unhealthy commodities, as these are already widely available and affordable in both the EU and the UK. How the

8 <https://www.dlapiper.com/en/spain/insights/publications/2021/01/investment-protection-falls-victim-to-brexite>

9 <http://arbitrationblog.kluwerarbitration.com/2021/01/09/investment-protection-in-the-eu-uk-trade-and-cooperation-agreement/>

10 <http://arbitrationblog.kluwerarbitration.com/2021/05/20/lidw-2021-challenges-and-opportunities-in-investor-state-dispute-settlement/>

11 <https://www.dlapiper.com/en/spain/insights/publications/2021/01/investment-protection-falls-victim-to-brexite/>

12 [https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/679071/EPRS\\_IDA\(2021\)679071\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/679071/EPRS_IDA(2021)679071_EN.pdf)

13 [https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/679071/EPRS\\_IDA\(2021\)679071\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/679071/EPRS_IDA(2021)679071_EN.pdf)

14 <https://www.instituteforgovernment.org.uk/publication/future-relationship-trade-deal/level-playing-field>

15 <https://committees.parliament.uk/committee/444/eu-environment-subcommittee/news/153000/eu-environment-subcommittee-report-on-the-trade-and-cooperation-agreement-published/>

UK may regulate in these areas post-Brexit, or the impact of new-trade deals and UK Internal Market Act for policies such as Scotland's alcohol minimum unit pricing, remains to be seen. One study has indicated the potential for post-Brexit UK agriculture policy to boost fruit and vegetable intake, and therefore reduce both cardiovascular disease mortality and inequalities. However, the omission of health as an explicit goal in the new UK agriculture bill suggests this opportunity may not be realised.<sup>16</sup>

The SPS chapter of the TCA also establishes a framework for cooperation on the fight against antimicrobial resistance, protecting animal welfare and sustainable food systems,<sup>17</sup> but the focus is limited to encouraging cooperation and exchange of information, without any binding commitments.

### **Good regulatory practices, labelling and procurement**

Despite its unique status, the TCA does include many standard characteristics of modern trade agreements: a standard good regulatory practice chapter is included, which emphasises the right of private interests to contribute to regulatory processes, as well as attempting to prevent limits being placed on the right to regulate. Boilerplate language is used regarding labelling stating that only information “relevant for consumers or users of the product [...] or to indicate the product's conformity with the mandatory technical requirements”<sup>18</sup> may be required which, as EPHA has previously highlighted, raises the risk that labelling schemes to promote public health may be challenged under the trade agreement.<sup>19</sup> In the procurement chapter health is excluded from the list of considerations which procuring entities can take into account in their procedures.<sup>20</sup> However, the absence of an arbitration mechanism for foreign investors reduces these risks substantially.

### **Access to medicines and medical devices**

The trade part of the TCA agreed zero tariff trade for all products, including medicines and medical devices. Intellectual property measures are not of relevance for restricting access to medicines between the EU and the UK, as high levels of intellectual property protections (going beyond the World Trade Organisation minimum) are already in place in both. However, trade barriers will emerge in the form of customs checks (as the UK is no longer part of the EU Customs Union) and in the potential for regulatory divergence in this area.<sup>21</sup>

The UK is a net importer of medicines from the European Economic Area (EEA), and due to it being outside the European Medicines Agency (EMA) and the EU Customs Union, extra checks and paperwork are now required to import and export goods between the EEA and the UK. The TCA does include mutual recognition of good practice in medicines manufacturing. However, this is not the same as mutual recognition of each other's regulatory processes as it only covers the quality of manufacturing premises. The implementation of the UK's new Border Operating Model is being staggered to minimise disruption, but the risk still remains in the future, including for example for COVID-19 vaccine imports.<sup>22</sup>

<sup>16</sup> <https://nutrition.bmj.com/content/3/1/3>

<sup>17</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/962125/TCA\\_SUMMARY\\_PDF\\_V1-.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962125/TCA_SUMMARY_PDF_V1-.pdf)

<sup>18</sup> [https://ec.europa.eu/info/sites/default/files/draft\\_eu-uk\\_trade\\_and\\_cooperation\\_agreement.pdf](https://ec.europa.eu/info/sites/default/files/draft_eu-uk_trade_and_cooperation_agreement.pdf)

<sup>19</sup> <https://epha.org/protecting-public-health-in-eu-and-post-brexit-trade-agreements/>

<sup>20</sup> [https://ec.europa.eu/info/sites/default/files/draft\\_eu-uk\\_trade\\_and\\_cooperation\\_agreement.pdf](https://ec.europa.eu/info/sites/default/files/draft_eu-uk_trade_and_cooperation_agreement.pdf)

<sup>21</sup> <https://www.kingsfund.org.uk/publications/articles/brexit-end-of-transition-period-impact-health-care-system>

<sup>22</sup> <https://www.kingsfund.org.uk/publications/articles/brexit-end-of-transition-period-impact-health-care-system>



Now outside the EMA, the UK could begin to diverge from the EU on medicines policy. However, many expect this to be prevented by the technical annexes of the trade deal, the Northern Ireland Protocol and the UK Internal Market Act.<sup>23</sup>

1. The technical annexes include a range of measures to encourage both the UK and the EU to minimise any regulatory divergence and to follow agreed international standards as closely as possible. For example, both sides must carry out a full impact assessment of any changes to technical regulations and notify the other party of their decision including setting out their reasons for doing so.
2. The Northern Ireland Protocol guarantees that Northern Ireland should not diverge from the standards applied in the Republic of Ireland, and therefore the EU/EMA.
3. The UK Internal Market Act establishes consistent market access principles across the UK so that any good imported to any part of the UK can be supplied or sold in any other part of it. This means that regulatory standards applied in Northern Ireland should apply across the rest of the UK.

The opportunity for divergence on medicines policy may therefore appear limited within the current framework of the deal, but ongoing disagreements between the UK and the EU over the interpretation of the Northern Ireland Protocol suggest that there is certainly potential for divergence if either party reneges on aspects of the agreement. At time of writing, a number of UK medicines look set to be withdrawn from sale from Northern Ireland because of the lack of agreement on resolving the practical effects of the operation of a different regulatory regime in the province to the United Kingdom.<sup>24</sup>

In any case, manufacturers wishing to trade in the UK now require a licence from the Medicines and Healthcare products Regulatory Agency (MHRA), with some fearing this could lead to the UK being de-prioritised as a country in which to introduce new medicines and devices. Clinical trials will also be subject to dual regulatory processes going forward, which is likely to create additional bureaucracy.

### Healthcare services

The UK healthcare system may suffer workforce issues due to the removal of free movement for EEA citizens, while 5.6% of National Health Service (NHS) staff and 7% of those in social care are from EEA countries.<sup>25</sup> The UK's new immigration system does make exceptions for most healthcare professions, and offers specific fast-track visa routes for both health and care workers, but does not make exceptions for other social care roles. The mutual recognition of professional qualifications ends with Brexit, though the UK has said it will continue to recognise EEA qualifications for at least 2 years. It remains too early to say whether these measures will be enough to maintain the UK's healthcare workforce, already facing demographic challenges. The level-playing field stipulations of the TCA do maintain the EU's working time regulations in the UK, which represents an important legal protection for workers. How this will work in practice (regarding inspections for example) remains to be seen.

<sup>23</sup> <https://www.kingsfund.org.uk/publications/articles/brexit-end-of-transition-period-impact-health-care-system>

<sup>24</sup> <https://www.bbc.com/news/uk-northern-ireland-57941657>

<sup>25</sup> <https://www.kingsfund.org.uk/publications/articles/brexit-end-of-transition-period-impact-health-care-system>

Lastly, the Withdrawal Agreement guarantees reciprocal healthcare for UK citizens legally resident in the EEA before the end of the transition period, and vice versa. For those moving after that point, rights of access to health care are being decided independently by each member state and will differ substantially between them. EEA citizens who move to the UK to work or study from 1 January 2021, for more than six months at a time, will need to complete the relevant visa application and pay a surcharge in order to access NHS services. For travellers, reciprocal healthcare for urgent and routine medical treatment will continue using the European Health Insurance Card (EHIC) system, although these will be replaced by the Global Health Insurance Card for UK nationals<sup>26</sup> (so-called even though the GHIC will only be accepted in EU member states, and not the four EEA-only members).

### Research, health security cooperation and data sharing

The new TCA is accompanied by the Joint Declaration on Participation in Union Programmes, which confirms the UK will continue to participate in Horizon Europe, alongside other programmes.<sup>27</sup> Therefore the UK and the EU will continue to benefit from collaboration and sharing expertise. However, questions remain regarding the health research workforce situation in the UK post-Brexit. Concerns centre on the ability to attract EEA researchers to work in the UK, and this remains unclear.

The UK has left the European Centre for Disease Prevention and Control (ECDC) and the public health early warning response system, but can request access on a case by case basis. Data sharing and adequacy was not included in the TCA, but the EU decided in June that the UK's regime is sufficient, which will enable data to be moved between the two areas by health and care provider organisations, medicines and medical devices manufacturers.<sup>28</sup>

### Economic impacts

*The adverse economic impacts of Brexit, particularly in the UK, may have significant consequences for health, as it contributes to increased inequality, and impact public investment in health-related industries and public health. In November 2020, the Office for Budget Responsibility (OBR) predicted that leaving the single market with a trade agreement would lead to a permanent 4% reduction in productivity compared to the status quo before 1 January 2020, increasing pressure on income and employment and driving up food prices.<sup>29</sup> UK funding for public health is already decreasing and this will likely only be exacerbated by Brexit.*

Both the UK and the EU will also agree new bilateral trade agreements with third countries in the future, and public health and health services are unlikely to be primary concerns in those agreements, which may result in divergence between the two blocks. However, it remains too early to say what the impacts might be.

## Conclusion

Although an agreement has been reached, much remains to be settled – both

<sup>26</sup> <https://www.gov.uk/global-health-insurance-card>

<sup>27</sup> <https://www.gov.uk/government/publications/agreements-reached-between-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-european-union/summary-explainer#part-5--participation-in-union-programmes>

<sup>28</sup> <https://ec.europa.eu/transparency/comitology-register/screen/documents/074379/1/con-sult?lang=en> ; <https://drive.google.com/file/d/1mOKOalIVivsGnefp37a-CUK-lw8dg5JL/view>

<sup>29</sup> [http://cdn.obr.uk/CCS1020397650-001\\_OBR-November2020-EFO-v2-Web-accessible.pdf](http://cdn.obr.uk/CCS1020397650-001_OBR-November2020-EFO-v2-Web-accessible.pdf)

because aspects of the TCA remain to be fully clarified, and because the effects of such a large structural change will take time to fully emerge and become visible at the level of population health.

As a FTA, the TCA introduces significant barriers that did not previously exist, notably a customs border, exhaustive regulatory paperwork due to the end of the UK's participation in the Single Market, and the potential for future divergence. That said, a number of drastic breaks are prevented, maintaining tariff-free trade of medicines, medical devices and food, and EU-UK cooperation on health research, as well as maintaining reciprocal healthcare and displaying a welcome intention to cooperate on addressing climate change and monitoring cross-border health threats. However, it does create parallel regulatory processes on medicines, medical devices and clinical trials. Medicines regulation could be the subject of future regulatory divergence, but the extent to which that is borne out in practice remains to be seen.

The broadly-defined right to regulate and the lack of any investor arbitration mechanism are considerable positives for public health. Similarly, the level-playing field clauses should provide some fundamental basis for environmental and social policy, which will impact health, but how the two diverge going forward remains unclear. Despite the lack of any arbitration clause, investors and private interests will still be able to influence policy making through good regulatory practice stipulations.

The UK Government still needs to implement a great many new systems and bodies which will have significant impacts for public health and the delay in appointing TCA committees is only extending the uncertainty. It is also unclear how much oversight there will be of joint committees involved in implementation issues and making potential changes to the TCA; ultimately this represents moving from the EC system of governance of the Single Market/customs union to something more akin to empowering executive actors. The TCA provides the governance structure for changes and improvements to be made in the future, but it is incontrovertible that the creation of new barriers in EU-UK relations is a fundamental part of Brexit, some of which are structural and long-term.

In short, the EU-UK Trade and Cooperation Agreement is a net loss for public health, particularly in the UK, but also in the EU. A number of defensive victories have been secured, where conditions will remain largely and/or for the foreseeable future the same as when the UK was a member of the EU. But many aspects of health will suffer, and the primarily trade-based focus of the current and future relationship may squeeze out consideration of public health cooperation going forward. The institutional framework of the deal does offer the potential for increased cooperation on these issues in the future, but that change will not happen in the absence of public health advocates in both Unions pushing their governments to prioritise health in the EU-UK relationship.<sup>30</sup>

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<sup>30</sup> <https://epha.org/protecting-public-health-in-eu-and-post-brex-it-trade-agreements/>; <https://epha.org/brexit-trade-remains-impervious-to-importance-of-public-health-on-both-sides-of-la-manche/>



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