

## **Submission to the Consultation on Dynamic Alignment April 2026**

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This submission reflects the views of the authors, who are leading scholars in the fields of EU and EEA Law.

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April 2026*

### **1. What is dynamic alignment? How does dynamic alignment operate under EU agreements with non-EU countries other than the UK?<sup>1</sup>**

*SUMMARY: The EEA Agreement is an example of a particularly robust dynamic alignment, with its own institutional pillar and procedures for continuously aligning the rules with EU law, in principle, without or only minimally transferring sovereign powers. While the process is complicated, it has not led to any serious difficulties in practice. The complexity is due to a balance struck between achieving homogeneity without or only minimally transferring sovereign powers. Specific provisions in the EEA Agreement are of special importance to the process of aligning EEA law to EU law. Decision-making according to the EEA Agreement is mirrored by a specific decision-making process by the Icelandic government according to Icelandic laws and procedures. Debates arise in countries party to the EEA Agreement on passive decision-taking and active decision-shaping.*

#### Dynamic alignment under the EEA Agreement

1.1 The EEA Agreement is an example of a particularly robust dynamic alignment, with its own institutional pillar and procedures for continuously aligning the rules with EU law, in principle, without or only minimally transferring sovereign powers.

1.2 Three EFTA states, i.e., Iceland, Norway, and Liechtenstein, are also contracting parties to the Agreement on the European Economic Area (hereafter the EEA Agreement). Switzerland is an EFTA state but not a contracting party to the EEA Agreement. The relationship between

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<sup>1</sup> Questions 1 and 2 are answered from the perspective of EEA law, with a special focus on the experience of Iceland.

Switzerland and the EU is governed by multiple bilateral agreements, which are not made within the context of the same institutional structure and procedures as laid down in the EEA Agreement, and, therefore, less robust. References below to the EFTA states in the context of the EEA Agreement are to the three contracting parties but not Switzerland.

1.3 One of the main purposes of the EEA Agreement is to create a homogenous area, and, thereby, extending, among other things, the internal market to the EFTA states. While the process is complicated, it has not led to any serious difficulties in practice. The complexity is due to a balance struck between achieving homogeneity without or only minimally transferring sovereign powers. The same purpose and balance lie behind the so-called two pillar structure. The EFTA states have their own institutions, namely the EFTA-court and ESA (the EFTA Surveillance Authority), which can be thought of as a 'sister' institution of the Commission. Generally speaking, decision-making powers are not transferred to EU institutions and the institutional arrangement in the EFTA pillar is organized around the principle of not or only minimally transferring sovereign powers. As a result, the institutions in the EFTA pillar do not have all the same powers as their counterparts in the EU.

#### The process of aligning rules to EU law

1.4 A few provisions of the EEA Agreement are of special importance to the process of aligning EEA law to EU law.

1.5 According to Article 7 of the EEA Agreement, the contracting parties are bound by acts that are (a) referred to in the annexes to the Agreement or (b) in the decisions of the EEA Joint Committee and shall be made a part of their internal legal orders in a specific way. The former acts are those that were already in force when the EEA Agreement was originally made. The Agreement has multiple annexes and each annex refers to numerous acts. The list has only grown due to later-day acts, which are adopted according to a procedure designed to *continuously update the EEA Agreement* in light of new relevant EU acts according to the Agreement.

1.6 Article 102 of the EEA Agreement lays down a duty to adopt EU acts that fall within the ambit of the Agreement as soon as possible. The EEA Joint Committee performs this task. The Commission informs the EFTA states in the EEA Joint Committee about acts that are deemed 'EEA relevant', which are most of the acts on, for instance, the internal market. The Committee, then, decides whether the acts shall be incorporated into the EEA Agreement through one of its annexes. The list of acts in the annexes is, therefore, dynamic.

1.7 The so-called Permanent EFTA Committee in Brussel assists in the preparation of the process, including negotiating adaptations. Adaptations are either general for all acts or special to the act in question. General adaptations are determined by Protocol 1 to the Agreement. Special adaptations can be technical or substantive. They can, for example, include exceptions, special solutions, extended deadlines and when an act enters into force.

1.8 Once an EU act has been adopted by the Committee, the act becomes an EEA act and a part of EEA law (international law). It is the role of the Committee to continuously modify the EEA Agreement and, thereby, achieve dynamic alignment with that part of EU law that falls within the ambit of the Agreement. The Committee is assisted in this task by four sub-committees. Detailed rules and thorough preparations are made before the Committee eventually makes its decision on adopting an act. The decisions are published in the EEA Supplement to the Official Journal of the European Union.

1.9 Essentially, the EEA Joint Committee is empowered to *change an international agreement*, i.e., the EEA Agreement by adding to or removing acts from the annexes. Once the Committee has decided to adopt an act, it follows from Article 104 of the Agreement that it is binding on contracting parties, and the EFTA states are required to implement it according to Article 7. Importantly, EEA law does *not have direct effect* or *direct applicability*. The EEA acts must be implemented for them to have legal effects internal to the legal order of those EFTA states that are dualist (Iceland and Norway). While there is no principle of primacy, Protocol 35 requires the EFTA states to enact rules that ensure that implemented EEA rules take precedence in case of a conflict with (other) national law. Additionally, the EFTA-court has recognised unwritten general principles, including a duty to interpret national law in conformity with EEA law and state liability.

#### The Constitutional Provisio

1.10 Article 103 of the EEA Agreement states that decisions of the EEA Joint Committee are only binding on the EFTA states after the fulfilment of the constitutional requirements and the date of which the decision enters into force depends on whether and when a state has notified other parties that the constitutional requirement has been fulfilled. In practice, the Committee makes the 'constitutional proviso', i.e., the proviso that national parliaments of one or more of the EFTA states need to accept the decision and that affects when it enters into force, when a decision raises questions according to their constitutional law.

1.11 It follows from the above, that three questions must be answered: (1) Is the EU act of EEA relevance? (2) Does the EU act require an adaptation? (3) Is there a need to make a constitutional proviso to the Committee's decision?

#### A duty to implement

1.12 As previously stated, EFTA states are bound by a decision of the EEA Joint Committee, which is essentially a robust mechanism for them to change their international agreement. They are, therefore, bound *according to international law*, namely EEA law. They are under a duty, according to Article 7, to implement EEA acts. Those EFTA states that are dualist, i.e., Iceland and Norway but not Liechtenstein, must, then, implement EEA acts for them to become part of their domestic law.

#### Implementing regulations and directives

1.13 Article 7 of the EEA Agreement requires acts corresponding to regulations and directives to be implemented in a specific way. Acts corresponding to regulations shall be implemented *as such* while acts corresponding to directives shall leave the authorities of the contracting parties a choice of form and method of implementation. Article 7 is shaped by Article 288(2) and (3) TFEU, taking into account that acts corresponding to regulations are not directly applicable according to EEA law but need to be implemented.

1.14 In practice, implementing acts corresponding to directives has not raised problems. After all, the EFTA states have a choice as to form and method of implementation just as EU member states. Acts corresponding to regulations raise questions of legislative technique because they must be implemented *as such*, i.e., in their entirety and without changing their content. Historically, the Icelandic legislature has implemented many regulations by using the *reference method*, i.e., to refer to the regulations as being implemented. However, some regulations require further national laws, such as designating or establishing an authority responsible for enforcing the act. Recently, the Icelandic legislature has started to use a new technique. The Data Protection Act is an example of that. The bill has provisions aimed at substantively mirroring the General Data Protection Regulation. Since there is a standing possibility that the legislative provisions deviate from the regulation, as it is interpreted by the EFTA court, which takes notice

of how it is interpreted by the Court of Justice of the European Union, the regulation is published in an annex to the bill and, hence, has the force of law. The bill states that it incorporates the accompanying regulation and in case of conflict the regulation shall prevail over the rules in the main body of the bill. This legislative technique requires lawyers to consider two provisions, i.e., the legislative rule and the corresponding rule in the regulation, resulting in longer legal citations. Nonetheless, it has not yet raised any serious problems.

#### The decision-making process in Iceland

1.15 The discussion above focuses on decision-making *at the EEA level* (or according to the EEA Agreement). At the same time, a decision-making process occurs on the Icelandic government's side (or according to Icelandic laws and procedures), to which now we turn to get a fuller picture of how the process works in practice.

1.16 The Icelandic Parliament (*Alþingi*) has laid down rules on parliamentary procedures concerning EEA acts (2018). A few points deserve to be highlighted. According to the rules, the Ministry of Foreign Affairs shall consult with the Committee on Foreign Affairs and submit a list of all upcoming acts that will require parliamentary approval. The list also includes those acts that will be very costly to implement. The Ministry shall notify the Committee whether (a) an act raises a constitutional issue, (b) whether the government will seek an adaptation of it, such as an exception or a special solution, and (c) if an act does not require an adaptation. If an act raises constitutional issues, the Constitutional and Surveillance Committee of Parliament may be consulted as well. If the government will seek an adaptation, the relevant parliamentary committees considering the subject matter of the act, may be consulted as well. Once the consultation process is concluded, the Committee on Foreign Affairs notifies the Ministry.

1.17 Before and after the consultation, experts in the ministries will work on the matter. In the weeks leading up to the meeting of the EEA Joint Committee, its draft decision will be submitted to the Icelandic Parliament. The representatives of Iceland in the EEA Joint Committee may not, according to these rules, decide on behalf of the Icelandic government without prior consultation with the Committee on Foreign Affairs if the act will require parliamentary approval, concerns substantial interests of private persons or is very costly to implement. Essentially, the rules are meant to ensure that the Icelandic Parliament is consulted *early* in the stage and *before* any decision is made by the EEA Joint Committee. They are meant to ensure that the executive branch cannot agree on a decision without Parliament's involvement.

1.18 Once the EEA Joint Committee has decided, the act becomes part of EEA law (international law) just as a bilateral agreement would. The process can be seen as a robust and efficient mechanism to make bilateral agreements within an existing institutional structure and procedural framework. The act becomes binding upon the EFTA states, according to Article 104, and they are required to implement it, according to Article 7. According to the EEA Agreement, no further decision on the EFTA states' side to trigger the bindingness of the act and the implementation duty in international law unless the constitutional proviso has been made according to Article 103. In practice, the constitutional proviso is made for those EEA acts that will require legislative change. When the constitutional proviso has been made, it is up to the Icelandic Parliament to lift it, in so far as it pertains to Iceland, and, once it has done so, notify the EEA Joint Committee.

1.19 The decisions of the EEA Joint Committee are international agreements according to Article 21 of the Icelandic Constitution and, therefore, must be approved by the President of the Republic. That is a requirement of Icelandic constitutional law, not of the EEA Agreement. In

practice, when the constitutional proviso has been made, the president approves the decision before Parliament lifts it.

#### Transfer of sovereign powers

1.20 The Icelandic Constitution does not have a provision explicitly authorising transfer of sovereign powers. For the purpose of the discussion there, sovereign powers are legislative, judicial or executive powers and will also be referred to here as decision-making powers which have effect in Icelandic law. Nevertheless, a constitutional convention or custom, which is a legal but not merely a political convention, has formed concerning curtailed and well demarcated transfer of power to international institutions, which is not considerably burdensome for private persons. Both the conditions and scope of the convention have been subject to much academic and professional debate. Every now and then, issues concerning the convention's conditions and scope arise, namely when an EU act, which is EEA relevant, requires decision-making powers of international institutions, especially EU institutions. As previously stated, EFTA has its own institutional pillar with the EFTA-court and ESA.

1.21 Several acts have tested the limits of the convention and raised constitutional concern. Among them is the regulation on ETSs (EU Emission Trading Schemes). A compromise was reached where, among other things, ESA was given the power to reject some of the Commission's decisions.

1.22 Adding a constitutional provision on transfer of sovereign powers has long been discussed in Iceland. Some scholars have considered it to be less than fortunate that transfer of sovereign powers relies on an unwritten convention the scope and conditions on which leading legal scholars disagree.

1.23 Contrary to the Icelandic Constitution, the Norwegian Constitution explicitly discusses transfer of sovereign powers in Article 115. According to the provision,  $\frac{3}{4}$  of members of parliament must approve the transfer and the transfer can only be to international institutions of which Norway is a member. Issues have arisen in Norway concerning acts where EU institutions are granted decision-making powers for Norwegian persons since Norway is not a member of those institutions. Norway, as the other EFTA states, is a member of the institutions belonging to the EFTA pillar. On the face of it, such acts seem to contravene the wording of the constitutional provision. The Norwegian government has navigated the issue in two ways. First, it has considered that some transfer of power to EU institutions is 'inconsiderable' or only minimally impacts sovereignty. There is some academic basis for considering minimal transfer to be in accordance with the Norwegian constitution. Secondly, when the transfer is not inconsiderable, the Norwegian government, usually alongside the Icelandic one, have insisted upon an adaptation to the act in question.

#### Formal or substantive sovereignty – decision-shaping

1.24 A clear tension is discernible in Iceland between two views. One view criticises the current arrangement based on lacking substantive sovereignty because EFTA states are, more or less, *passive recipients* of acts, which they are required to implement. Substantive sovereignty requires participating in the decision-making process. The other view is formal sovereignty. Even though Iceland is required to implement acts, decided by someone else, formally speaking, they have a veto power in the EEA Joint Committee and, theoretically, could refuse to implement them. These formal safeguards have been considered essential in assessing the constitutionality of membership to the EEA Agreement. Three points are worth mentioning in this context.

1.25 Firstly, while the EFTA states do not participate in the *decision-making*, they have some leeway in *decision-shaping*, as recognised by the EEA Agreement. Article 99 places the Commission under a duty to informally seek advice from experts of the EFTA states in the same way as it seeks advice from experts in the EU member states for the elaboration of its proposal. Moreover, a consultation process takes place preceding the decision of the Council of the European Union. The EFTA states can submit their opinion through the EEA Joint Committee, but they do not enjoy any formal participatory powers in the process before the Commission or the Council.

1.26 Secondly, concerning the practical veto power in the EEA Joint Committee, it is worth noting that if the Committee cannot reach an agreement to adopt an EEA relevant act, Article 102(5) states that ‘the affected part’ of the Agreement ‘is regarded provisionally suspended’. It is unclear how to interpret exactly what is meant by the ‘affected part’. What is clear, though, is that not adopting an EEA relevant act can have legal and practical consequences. Moreover, if the Committee does not adopt an EEA relevant act, further action can be taken. Article 111 has a mechanism for the settlement of disputes and Article 112 lays down safeguard measures. These can be activated if the Committee does not adopt an EEA relevant act. If the Committee would, in practice, often not adopt an act, the entire Agreement could quickly unravel.

1.27 Thirdly, concerning the decision whether to implement an act, if Iceland would not implement an EEA act in a timely manner, ESA can pursue an infringement proceeding before the EFTA-court.

## **2. Are there lessons that the UK should draw from (a)... the EEA/Iceland experience?**

*SUMMARY: An international agreement, setting up procedures and possibly even institutional structures, is a prerequisite to ensure that dynamic alignment between UK with EU law will be robust. A robust framework is required for national decision-making and shaping. There are several important factors to consider when setting up such a framework.*

2.1 Without an international agreement, setting up procedures and possibly even institutional structures, the dynamic alignment of the UK with EU law will be less robust than the one pursued by the EFTA states through the EEA Agreement. More likely it will be in the form of a web of bilateral agreements akin to the relationship between Switzerland and the UK, for instance. It should also be noted that the EU has recently (2023) concluded negotiations with Andorra and San Marino on an association agreement.

2.2 Nevertheless, some lessons can be drawn from the experience of the EEA Agreement and, more specifically, Iceland’s experience. To the extent that there will not be an international framework agreement between the UK and the EU for adopting bilateral agreements, perhaps some of the institutional or procedural mechanisms in the EEA Agreement can be used as an inspiration for creating a framework according to national law. It should be noted that both the Icelandic and Norwegian acts implementing the EEA Agreement are short but key provisions for updating the Agreement are found in the Agreement itself. Irrespective, several issues arise when considering a bill for a dynamic alignment with EU law:

2.3 On the *domestic side*, it is vital to ensure that the executive branch cannot make an international agreement with the EU without consulting Parliament first. Entrenching the consultation process, including which issues shall be the subject matter of consultation, can be helpful. Before 2018, the Icelandic Parliament was not consulted enough or too late in the

process resulting in the Icelandic Parliament having little say on e.g., adaptation and constitutional issues. As noted above, that issue has now been solved and the Parliament is now consulted on constitutional issues and adaptations.

2.4 On the *international side*, it is important to seek to influence the EU act *as early as possible*. *Decision-shaping* does not work well late in the process. Once a proposal has been submitted by the Commission, the chances of shaping it are slim. Therefore, it is better to try to influence it earlier, for example, when the Commission presents its white and green papers. That is one of the lessons to be learned from the EEA and Iceland's experience.

2.5 It is likely that some acts will require some decision-making powers by international institutions or that it will at the least be suggested by the EU. Hence, it is sensible to consider how to address that issue beforehand. That may include how a purely national institutional solution would work.

2.6 Relatedly, since the issue of transferring some decision-making powers to international institutions will foreseeably arise, it is sensible to lay down clear boundaries for such transfer in domestic law.

2.7 A bill which is intended to address general issues concerning agreements mirroring EU acts, may have to address the following issues: (a) Should there be a duty to interpret a bill, which implements an agreement mirroring an EU act, in accordance with EU law? (b) How should conflicts of law between such a bill and other national laws be solved? (c) Should courts in the UK be allowed to interpret such bills in light of the jurisprudence of the Court of Justice of the European Union? (d) Should state liability for breaches of such a bill be similar to state liability in EU law?

2.8 It may be worth considering how best to implement agreements that mirror EU regulations.

2.9 There are many written and unwritten principles in both EU law and EEA law, for example, the principles of sincere cooperation, the principle of equivalence and the principle of effectiveness. EU acts are enacted within the context of the entirety of EU law, including such principles. They may 'piggy-back' on the general framework. Therefore, not every issue or detail needs to be addressed in each EU act. The issue may arise in the future whether an agreement with the EU will require similar principles or extended negotiations on how exactly the UK will ensure the effectiveness of the negotiated rules. A bill of law that lays down a general framework or structure within which international agreements are and bills implanting them operate, can be efficient.

## **8. What are the implications of the three prospective agreements with the EU, and of the Government's general policy of dynamic alignment with the bloc, for the UK's trade relations with countries outside the EU—with respect especially to the United States, and the UK's membership of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).**

*SUMMARY: Dynamic alignment has internal and international consequences. As the EU is increasingly interested to work with the CPTPP, dynamic alignment with the EU should not jeopardise future agreements pursued by the UK with countries beyond the EU. On the contrary, dynamic alignment could be used strategically to develop the role of the UK in global relations – as the only European country in the CPTPP, the UK can bring the EU closer to the CPTPP and countries beyond Europe closer to the EU. This is a key geo-*

*political opportunity for dynamic alignment with the EU to strengthen the position of the UK in the EU and in countries beyond the EU.*

8.1 Dynamic alignment has internal and international opportunities. The internal opportunities are discussed under Question 9. This section focuses on the international context, or UK trade relations with other third countries outside of the EU.

8.2 The international context cannot be ignored as the UK considers its future policy of relations with the European Union (EU). Dynamic alignment with the EU does not take place in a vacuum – it comes at a time when the international post-WWII institutional settlement is being re-configured at monumental speed and military action emerging at a similar pace in various places around the world is re-calibrating global relations.

8.3 As this consultation takes place, tensions in the Middle East continue to escalate, endangering access to the critical resources that are required to support everyday life as well as the continued growth foreseen in the UK industrial policy (IP) adopted in November 2025. The IP sets out a bold and ambitious plan to drive economic growth across the UK in 8 core sectors (IS-8) and identifies 8 ‘foundational’ industries that are key to strengthening the resilience of the IS-8.

8.4 Against this shifting backdrop, targeted dynamic alignment should first be understood within the broader context of strategic alignment with the UK internal agenda for growth. There is much overlap between the IP IS-8 and the priority areas identified for dynamic alignment as part of the reset of UK-EU relations. This makes the pursuit of closer co-operation with the EU – for example in relation to access to critical raw materials - an action which is strategically aligned with the national interest.

8.5 However, the second more relevant question to be discussed further below is how dynamic alignment with the EU can impact UK trade relations with other countries beyond the EU – for example, does dynamic alignment with the EU preclude the conclusion of bilateral trade agreements elsewhere? This contribution suggests that dynamic alignment with the EU in at least the three targeted areas will make a significant contribution to the geo-political position of the UK internationally as a valued partner both in Europe and with countries beyond the EU.

8.6 Since leaving the EU, the UK has signed a number of bilateral trade deals with countries outside of Europe<sup>2</sup> including Australia, India, New Zealand, Singapore. These are all countries with which the UK has had longstanding relations, historically through colonisation and Empire, and more recently through the Commonwealth Organisation.

8.7 Beyond these bilateral agreements, one of the most significant trade agreements that the UK has signed with other countries outside of the EU is the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The CPTPP is a free trade agreement between 12 countries - Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the UK and Vietnam.

8.8 The CPTPP is an international agreement facilitating economic integration. The agreement covers almost all aspects and sectors of trade (including agriculture, technology, financial services and manufacturing). It removes over 99% of tariffs on the movement of goods and services between the signatory countries. It therefore overlaps with some areas of common interest for the UK-EU reset and dynamic alignment.

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<sup>2</sup> <https://commonslibrary.parliament.uk/research-briefings/cbp-9314/>

8.9 In terms of purchasing power parity (PPP), the CPTPP represents around 13-15% of global GDP.<sup>3</sup> As of 2025-26, the EU represented around 13-14% of global GDP, ranking third in the world after the USA (14-15%) and China (19-20%).<sup>4</sup>

8.10 Like the EU, the CPTPP creates a free-trade area of over 500 million persons. The CPTPP also encourages co-operation on regulation: it sets common standards in areas including intellectual property, e-commerce and labour laws.

8.11 The UK is the first and only European country to sign the CPTPP. The UK already had bilateral trade agreements with 9 of the CPTPP countries - signature of the CPTPP created new relationships with just two new countries (Malaysia and Brunei).<sup>5</sup> In signing the CPTPP, the UK did not join an entity like the European Union.

8.12 It is important to note that the CPTPP is not a customs union like the European Union – there is no common customs policy and no internal market. It offers removal of tariffs at the border to allow goods to enter into the signatory states. Lower tariffs are important – they make the markets of the signatory states more accessible for export, reducing entry costs and ameliorating risk in supply chains.

8.13 In order to evaluate the impact of the CPTPP and other trade agreements signed by the UK on future dynamic alignment with the EU, it will be important to consider for each area of negotiation the *depth* of integration as well as its *scope*.

8.14 However, it is unlikely that UK partnership in the CPTPP would act as an impediment to dynamic alignment with the EU: the EU also already holds bilateral free trade agreements with 9 of the 12 CPTPP signatories – this facilitates import of goods into the CPTPP and export to the EU, as long as there is compliance with EU regulations.

8.15 In addition, the EU launched in 2025 a trade and investment dialogue with the CPTPP focusing on digital regulation (common rules on e-commerce, data flows and storage) and supply chain resilience. Finally, a joint EU-CPTPP statement released in March 2026<sup>6</sup> also suggests that UK partnership in the CPTPP would not undermine dynamic alignment with the EU. On the contrary, the UK could use its role in the CPTPP to support the EU agenda.

8.16 Dynamic alignment with the EU should therefore not jeopardise future agreements pursued by the UK with countries beyond the EU. On the contrary, dynamic alignment could be used strategically to develop the role of the UK in global relations – as the only European country in the CPTPP, the UK can bring the EU closer into the CPTPP: as noted above, the EU is increasingly interested to work with the CPTPP. The EU focus at present is on strategic alignment in digital governance but this could develop into other areas core to UK and EU industrial policy such as access to critical raw materials.

8.17 Similarly, dynamic alignment can create opportunities for the UK to use its unique position in the CPTPP to bring countries beyond Europe – in particular those that cannot join as member

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<sup>3</sup> <https://www.weforum.org/stories/2023/04/cptpp-trade-tariff-brexite-uk/#:~:text=keen%20to%20join?-.What%20is%20the%20CPTPP?.world's%20largest%20free%20trade%20deal>

<sup>4</sup> [www.imf.org](http://www.imf.org)

<sup>5</sup> <https://commonslibrary.parliament.uk/research-briefings/cbp-9121/>

<sup>6</sup> Antonia Wunnerlich, 'Trade Explainer: EU-CPTPP Cooperation and the search for new coalitions' April 2026 (German Marshall Fund, gmfus.org)

states - closer to the EU. This is the key geo-political opportunity: dynamic alignment with the EU could strengthen the position of the UK in the EU and in countries beyond the EU.

8.18 Finally, there is a purely practical dimension to consider. Dynamic alignment with the EU will ease the burden of negotiation upon the UK – it could reduce the number of trade deals which civil servants must negotiate bilaterally. At present, the expertise of UK trade negotiators is spread over many areas: beyond the EU, negotiations are (or were until recently) underway with Canada, Greenland, the Gulf Co-operation Council (GCC), Israel, Mexico, Switzerland, Turkey and the USA.<sup>7</sup>

8.19 Trade negotiations take significant amounts of time; the more negotiations that are conducted, the fewer the number of negotiators available to work on each one. The longer the negotiation, the greater the cost to the public purse. Dynamic alignment with the EU will make the UK a more effective negotiation partner - the ability to focus expertise more closely on fewer negotiations will enable the UK to be more strategic in its pursuit of trade deals. This will save time and create capacity to pursue domestic goals and policies in a more efficient way.

8.20 In conclusion, an enlightened approach to dynamic alignment will serve the UK well as it pursues its internal industrial policy and its international trade policy. These are of course linked: it is realistic to assume that the UK will attract investment from beyond the EU, the greater its dynamic alignment with the EU.<sup>8</sup>

8.21 The government would be wise to grasp any opportunity that helps it to secure this. The challenge therefore is for the UK government to reflect upon how best to design its reset policy to create realistic opportunities for internal and international strategic alignment as it pursues dynamic alignment with the EU.

## **9. What issues does prospective UK dynamic alignment raise for the UK's devolved administrations and legislatures? How should the UK Government and Parliament engage with the devolved administrations and legislatures in a system of dynamic alignment?**

*SUMMARY: The re-set of relations with the EU according to a model of dynamic alignment should be understood as a means to address the frictions caused by the UK's withdrawal from the EU not only to patterns of trade between the UK and the EU but also to patterns of trade within the UK. Dynamic alignment with the EU's rules should be a UK-wide project. All four constituent elements will benefit from dynamic alignment. Consequently, in developing the re-set, the UK Government and Parliament should engage with the devolved administrations and legislatures in a spirit of partnership, co-operation and mutual respect.*

9.1 The United Kingdom's withdrawal from the European Union created problems for the distribution of powers within the United Kingdom which prior to withdrawal did not exist or existed in only marginal and manageable niche areas. In short, the problems created were those associated with the risk that different parts of the United Kingdom might choose to regulate in different ways, with consequent harm to the integrity of the UK's internal market.

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<sup>7</sup> Dominic Webb, 'Progress on UK Free Trade Agreement Negotiations' (Feb 2026). Online at: <https://commonslibrary.parliament.uk/research-briefings/cbp-9314/>

<sup>8</sup> Research from Kings College London demonstrates the impact of Brexit on investment in the UK. Online at: <https://www.kcl.ac.uk/news/new-research-finds-uk-investment-up-to-18-per-cent-lower-as-a-result-of-brexite>. On the outward movement of financial services see: <https://www.economicsobservatory.com/how-has-brexite-affected-uk-financial-services>

9.2 When the UK was a member of the EU the emergence of such problems was largely suppressed by mandatory compliance with common EU rules applicable across all four constituent elements of the UK. So the rules of the EU's internal market acted not only as the basis for the good functioning of the EU's internal market but also as a means to ensure the good functioning of the UK's internal market. The removal of that common blanket of EU rules has generated not only friction in trade between the UK and the EU but also potential friction in trade between the four constituent elements of the UK.

9.3 The nature of that friction within the UK is asymmetric and idiosyncratic, in line with the general pattern of asymmetric and idiosyncratic federalism found today in the UK. The position of Northern Ireland is unique, most of all because of the constitutional commitments made in the Good Friday (Belfast) Agreement and recognised too in the special terms devised in what is now the Windsor Framework. So trade between Great Britain and Northern Ireland is regulated quite differently to trade within Great Britain. But trade within Great Britain, today regulated according to the United Kingdom Internal Market Act 2020, is not based on a homogenous model, but rather reflects the different patterns and intensity of the Scottish and Welsh devolution settlements.

9.4 The re-set is a welcome opportunity to re-visit and to improve the current arrangements. To be explicit in answering the question posed - UK dynamic alignment raises key issues for the UK's devolved administrations and legislatures, and, in developing the re-set, the UK Government and Parliament should engage with the devolved administrations and legislatures in a spirit of partnership, co-operation and mutual respect.

9.5 That might sound obvious – but such a spirit very much has *not* characterised the process so far. The United Kingdom Internal Market Act 2020 significantly weakens the powers of the devolved administrations and legislatures in practice, by depriving them in almost all circumstances of the power to apply their regulatory standards to non-complying goods and services sourced from elsewhere in the UK.

9.6 This substantive choice, detrimental to the regulatory aspirations of the devolved administrations and legislatures, was accompanied by an arrogant tone, in which the Conservative administration which shaped the 2020 Act showed scant respect for the concerns expressed by the devolved administrations and legislatures.<sup>9</sup> Relations have been more cordial since the change of government in 2024, and so far the 2020 Act has generated no major political or legal turbulence in its practical effects, but the re-set of relations with the EU should be seen also as an opportunity to re-set the substance and the tone of the relationship between London and the devolved administrations and legislatures.

9.7 Dynamic alignment with the EU's rules should be a UK-wide project. All four constituent elements will benefit from dynamic alignment. It should be pursued comprehensively, with the institutional and financial support which is necessary to achieve the closest possible relationship with the EU internal market. Pursued by the UK Government and Parliament in a spirit of partnership, co-operation and mutual respect with the devolved administrations and legislatures, such a re-set can improve the economic performance of the UK both by securing access to the benefits of the EU's market but also by improving the basis of trade between the four constituent elements of the UK.

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<sup>9</sup> M Keating, 'Taking Back Control? Brexit and the territorial constitution of the United Kingdom' (2022) 29 *Journal of Common Market Studies* 491; S Weatherill, 'Comparative Internal Market Law: The UK and the EU' (2021) 40 *Yearbook of European Law* 431, at 459-461, 467-469.

9.8 Such a re-set founded on dynamic alignment with EU rules would greatly reduce the practical significance of the United Kingdom Internal Market Act 2020 (2020 Act). That statute addresses problems to trade within the UK (GB, in fact) caused by regulatory divergence between the practice of the constituent elements of the UK. There would be much less scope for such divergence should a comprehensive re-set involving alignment with EU law across all parts of the UK be adopted.

9.9 Nevertheless the opportunity should be taken within the re-set to amend the 2020 Act. The Act prevents the devolved administrations and legislatures from applying their regulatory standards to non-complying goods and services sourced from elsewhere in the UK other than in exceptional circumstances. It is much less tolerant of regulatory diversity than is primary EU law.<sup>10</sup> This model of limited availability to protect local regulatory autonomy over unrestricted intra-UK trade pays little regard to sensitivities in Scotland and Wales, while the position of Northern Ireland is different but also uncomfortable.

9.10 The exceptional circumstances recognised by the United Kingdom Internal Market Act should be broadened, and should mirror the justifications available under EU internal market law for measures that restrict trade. This would show enhanced respect for the choices made by the devolved administrations and legislatures, in line with the objective of the re-set to improve both the substance and the tone of the relationship between London and the devolved administrations and legislatures. In short: ‘Collaborative working across the four administrations – with the engagement and oversight of the four parliaments – is key to securing consent for the way ahead’<sup>11</sup>

9.11 It should be openly admitted that this proposed model for a re-set would deprive the devolved administrations and legislatures of the regulatory autonomy that they acquired after the obligation to follow the entirety of the EU acquis was lifted in consequence on the UK having left the EU; and moreover, taking that same point on to a wider scale, it should be openly admitted that such a re-set trends in the direction of achieving – de facto if not de jure – a return to the position which prevailed before the United Kingdom left the European Union.

9.12 This should be admitted – and embraced. This is precisely what is proposed and precisely what is required to achieve a re-set which is an improvement in both substance and in tone. The point is that the regulatory autonomy of the devolved administrations and legislatures would be confined under the conditions of such a ‘re-set’, but that regulatory autonomy is in any event of minimal practical value. In part this is because, as explained, the terms of the United Kingdom Internal Market Act constrain the practical worth of that autonomy.

9.13 But even were the Act amended, as advocated above, in order to loosen the constraints on the practical utility of the regulatory autonomy enjoyed by the devolved administrations and legislatures, any such initiative would inevitably be only of niche importance and could not possibly compensate for the loss caused by continuing exclusion from the EU internal market. Exactly this same point explains why on the wider scale, aiming towards – de facto if not de jure – a return to the position which prevailed before the United Kingdom left the European Union is to be embraced, not treated as a source of criticism. It is the means to restore the huge economic advantages of active participation in the EU internal market.

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<sup>10</sup> S Weatherill, ‘Comparative Internal Market Law: The UK and the EU’ (2021) 40 Yearbook of European Law 431, at 450-458; M Dougan, J Hunt, N McEwen and A McHarg, ‘Sleeping with an elephant: devolution and the United Kingdom Internal Market Act 2020’ (2022) 138 Law Quarterly Review 650, at 670-675).

<sup>11</sup> <https://ukandeu.ac.uk/westminster-rules-the-united-kingdom-internal-market-act-and-devolution/>

9.14 Plainly the views of the Scottish Parliament and the Welsh Senedd on this shift should be sought in the specific context of the currently proposed re-set, but it seems likely that this is the path they would advocate. After all, in Scotland the *UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021*, an Act of the Scottish Parliament, already provides a power to make regulations to keep Scots law aligned with EU law in some devolved areas. The matter has been considered, though not subjected to such a strong steer, in Wales too.<sup>12</sup> Moreover, recent research has revealed how, as the terms of the UK's withdrawal were negotiated and applied, Scotland and Wales sought to maintain closer alignment with EU rules than the UK government preferred.<sup>13</sup>

9.15 In its overall shape and ambition, the re-set, then, should be treated in the same way in application to the internal arrangements within the UK's internal market as in application more broadly to the UK's relationship with the EU's internal market. It is more than ten years since the referendum, and the economic arguments against Brexit have been shown to carry all the weight their advocates predicted while the economic arguments in favour of Brexit have been tested to destruction. The case in favour of the re-set should not be shy of painting this big picture. According to the most reliable recent estimate, departure from the EU has reduced UK GDP by 6% to 8%, with the impact accumulating gradually over time,<sup>14</sup> while the benefits of regulatory autonomy have been shown to be minimal, if even identifiable at all, largely because unilateral choices made by the UK have no influence on the regulation of transnational markets.

9.16 If the UK chooses to apply standards different from the EU it simply imposes costs on its own traders. Here, then, is how the re-set should be framed. Rule-making by the EU is not a restriction on commercial freedom. It is quite the reverse. Common EU rules facilitate trade by eliminating the fragmenting effects of diverse regulatory eccentricities at national or local level. For the devolved administrations and legislatures, as for the UK generally, choosing dynamic alignment with EU rules is a means to increase trade and thereby to improve economic performance. The opportunity should be seized.

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<sup>12</sup> e.g. <https://research.senedd.wales/research-articles/to-align-or-not-to-align-wales-eu-question/>

<sup>13</sup> R Minto, C Rowe and E Royles, 'The Dynamics of De-Europeanisation in a Multilevel Context: Resistance and Power Politics in Scotland and Wales' (2025) 63 *Journal of Common Market Studies* 1845.

<sup>14</sup> N Bloom et al, 'The Economic Impact of Brexit' <https://www.nber.org/papers/w34459>