DYNAMIC ALIGNMENT WITH THE EU: HOW TO MAKE IT WORK

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PROCEEDINGS

Alan Dashwood and Jonathan Faull are the co-authors of the Background Paper entitled "The Anatomy of Dynamic Alignment", which was circulated to those invited to the 4 June Seminar.

Their presentations introducing the Seminar apply, with more specific reference to the United Kingdom's current dynamic alignment obligations, themes developed in that Paper in the light of EEA and EU/Swiss precedents and should be read in parallel with it.

CHAIR:

Professor Eleanor Spaventa

Eleanor Spaventa is Professor of European Union Law at Bocconi Law School, Milan. She previously held academic appointments at the Universities of Durham, Birmingham and Cambridge (UK). She is currently Director of the Bocconi Lab in European Studies (BLEST), a member of the Management Committee of the Institute for European Policymaking @ Bocconi University (IEP), Visiting Professor at the College of Europe in Bruges, and a member of the Editorial Board of the Common Market Law Review.

PRESENTERS:

Professor Sir Alan Dashwood KCMG CBE KC

Alan Dashwood is Emeritus Professor of European Law and Emeritus Fellow of Sidney Sussex College at the University of Cambridge. He was formerly a Director in the Legal Service of the Council of the EU. He practised for many years, specialising in EU law, as a Barrister at Henderson Chambers, where he is now an Associate Member

Sir Jonathan Faull KCMG

Jonathan Faull is Chair of European Public Affairs at the Brunswick Group. He was formerly a Director General in the European Commission. He is a co-editor of a leading work on European Competition Law.

DISCUSSANT:

Professor Emily Lydgate

Emily Lydgate is a Professor of Law at the University of Sussex. She is the Co-Director of the UK Trade Policy Observatory and Deputy Director of the Centre for Inclusive Trade Policy. She is an Associate Fellow of Chatham House and was a Specialist Adviser to the UK House of Commons from 2021-2024.

Can "decision-shaping" make dynamic alignment with EU Law more democratic, painless and acceptable?

Jonathan Faull

In the current political climate it is hard to tell what the final destination might be, but the direction of travel seems clear: some rapprochement between the UK and the EU is on the cards, driven by a sense of economic decline and geopolitical turmoil. Once again, the UK would be moving closer to Europe at a low ebb, not out of a desire to join a "project" but for pragmatic reasons.

Perhaps today's EU will be more receptive to pragmatism than the very different EEC was in the 1960s and 70s. The messianism inherent in what were once the dominant political forces of Christian and Social Democracy seems to be dormant if not dead in continental Europe. Unity is needed; "ever closer union" can be left for future generations to debate. Some may regret this lack of far-sighted European ambition; others will welcome concentration on finding answers to the challenges and perils of the day.

In certain sectors, open access to the EU's single market will take place on the basis of alignment with its rules, present and future. Assurances about mutual recognition between like-minded countries are not enough. The whole EU experience shows that an international single market needs rules, often detailed. Europeans trust each other to a certain extent but, to share a market, they want to be sure that partners' goods and services are made to the same standards as theirs. It was once hoped that mutual recognition would be enough: if it's good enough for me, it's good enough for you. To take a famous example from the late 1970s, if the French could buy and drink a blackcurrant liqueur known as Cassis de Dijon, German law should not stop it reaching German shops and lips because it failed to meet a certain alcohol level prescribed in German law.

But the ECJ's seminal Cassis de Dijon judgment did not lead to a free-for-all in which it was sufficient for a product to be lawfully marketed in one member state for it to be sold freely in all the other. It was followed by decades of painstaking rule-making to create common standards and mutual confidence. On fruit-based liqueurs themselves, for example, there is now very detailed legislation. In the words of one of its recitals, "in the interests of consumers, this Regulation should apply to all spirit drinks placed on the Union market, whether produced in the Member States or in third countries. In order to maintain and improve the reputation on the world market of spirit drinks produced in the Union, this Regulation should also apply to spirit drinks produced in the Union for export."

Rules are therefore important. So is the way they are applied across the continent, which has the EU at its centre. The EU has many different types of relationships with other European countries, but perhaps the era of Mr Barnier's staircase with its neat categories of past relationships and the EU's aversion to mixing them up and cherry-picking is coming to an end. Precedents are useful sources of knowledge and analysis in international relations but they are not binding. *Stare decisis* does not apply there.

The UK has to imagine and then find a new a new place for itself in its continent. The EU also has to be imaginative in creating new structural relationships. Dealing with Ukraine and the UK, to name but two alphabetical neighbours, cannot rely on the practices of the last century.

One persistent reality unlikely to be abandoned is the demand that the British set out clearly in advance of any serious negotiation what they want, why they want it and what they are prepared to give to get it. In Brussels (and Paris) this is often expressed in the hackneyed phrase: *Messieurs les Anglais, tirez les premiers*[1]. The Commission is likely to hold back its request to Member States for a negotiating mandate until it is satisfied on this point. It will say, not unreasonably, that it cannot draft a mandate before knowing what it is intended to cover. That said, informal talks between London and Brussels and/or national capitals can take place much earlier and should be well under way already.

There is nothing new about countries doing some things in or with the EU and not others. The UK functioned as a member state of the EU with opt-ins and outs. Hard work, clever lawyering and nimble diplomacy enabled the UK to stay outside Schengen while exchanging data with its members and participating in related security policies. The UK also declined to join the euro, while maintaining the City of London as the leading financial centre of the EU's nascent banking and capital markets unions and having considerable influence over financial regulation in Europe and beyond, particularly in the crisis which broke out in 2007. Other member states declined to join the euro: Denmark has kept its national currency by virtue of a legal opt-out, while Sweden, despite not having an opt-out, has not joined the euro after holding a referendum on the issue in 2003.

While the UK enjoyed and contributed greatly to the Schengen system without joining it; Switzerland took a different path. Although not a member state of the EU, it joined the Schengen area[2]. A glance at a map is enough to understand why: Switzerland is landlocked inside Schengen, all its neighbours having joined the system, and shares airports and lakes with Schengen countries. As the Schengen system became part of the EU's normal business [3], Switzerland's status was accommodated through a system of mixed committees[4] and it follows all its rules.

Decision-shaping

A familiar objection to dynamic alignment is that the third country concerned becomes a "rule-taker", obliged to apply rules it had no part in enacting. How can the UK be expected to accept rules decided in its absence? By shaping them before they are decided.

Decision-shaping entails consultation, intelligence, alliance-building, in other words constant and diligent involvement throughout the EU's gestation and legislation processes. British experts, from Government, business, unions and other stakeholders, should be active at all stages of a proposal's life until it becomes law, and thereafter in subsequent implementing acts.

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[1] According to Voltaire, an invitation issued at the beginning of the Battle of Fontenoy on 11 May 1745 (Précis du règne de Louis XV, 1769).
[2] As did *de jure* the EFTA EEA members Norway, Iceland and Liechtenstein and *de facto* the "micro-states" Andorra, Monaco, San Marino and the Holy See.
[3] *Communautarisation* in the French jargon.
[4] Amusingly known as Comix (*comités mixtes*).

The main elements of a decision-shaping system are:

- At the preparatory stage in the drafting of a proposal for an EU law, the Commission informally consults the third country concerned in the same way as it consults those from the EU Member States. The third country's representatives are placed on an equal footing with those from Member States.

- Once the Commission has formally submitted its proposal to the European Parliament and the Council, at the request of either the third country or the EU, a preliminary exchange of views takes place within a Joint Committee established under the agreement in question. Further exchanges may occur, if requested by either Party, within the Joint Committee at important moments in the phase preceding the adoption of the law.

- The third country's representatives participate in the preparation of acts implementing EU legislation in the field covered by the agreement, with a view to their adoption under so-called "comitology" procedures. In practice, EEA experts have been invited to attend meetings of the relevant committees, to receive documents and to contribute to discussions.

How effective could decision-shaping be in providing a realistic opportunity for the UK to influence future EU legislation in areas of particular concern to its national interests? The best prospect of influencing the shape of EU rules is through the contribution that well qualified and respected national experts are able to make at the preparatory stage, before the Commission's proposal has crystallised.

The UK should have the self-confidence to bring its experience and skills to bear on the EU's processes. It will need to gather intelligence, form coalitions with like-minded countries, win support by contributing constructive arguments and showing an understanding of the trade-offs needed in all international relations. It will find that its erstwhile friends among member states are still there and receptive to its insights and outlook in discussions that still take place largely in English.

It will be important to anticipate policy developments in the EU by following the evolution of relevant EU policies, expressed in Green or White Papers or less formally in speeches, reports and other statements. That will be principally a task for the UK Mission in Brussels, although domestic ministries, trade associations, civil society groups, law firms, consultancies and think tanks of all sorts are inveterate Brussels watchers.

Uniquely among third countries, the UK has a sizeable territory closely linked to the EU by law and in daily practice: Northern Ireland. The success of decision-shaping and the familiarity it breeds (or rather resuscitates) would help consolidate and perhaps improve the special arrangements already in place there. The same may be said for Gibraltar. More broadly, the UK as a whole stands to gain greatly from the untrammelled access to the single market opened up by following a common set of rules and regulations. This would be only in the economic sectors agreed in advance and from outside the customs union. In the fullness of time those "red lines" could be reconsidered, but that is for another day.

The machinery of dynamic alignment with EU law: Integration of EU acts into the governing agreement, their incorporation into UK law and dispute settlement

Alan Dashwood

Introduction

A general point, by way of an introduction. It is important to be clear that the position of the United Kingdom as a non-EU member implementing dynamic alignment obligations under a small bundle of international agreements is fundamentally different from its old position as a Member State. It's easy to fall into the trap of thinking of the UK as becoming a kind of partial EU member.

The EU's relationship with its Member States is constitutional. EU law applies within the Member States on its own terms.[5] The interplay between EU law and the national law of Member States is governed by EU concepts and principles. These include the principles of the direct effect of EU law and its primacy over conflicting national law. And Member States and the EU have a mutual duty of sincere cooperation.

None of that will apply to the UK under the future agreements governing its cooperation with the EU in the areas of SPS, emissions trading and the electricity market. The EU/UK relationship will be purely contractual. The mutual obligations defining that relationship which result from the governing agreements will be those undertaken by the Parties respectively in the agreements, nothing more nor less. They will be international law obligations and binding only on the UK and the EU.

My talk this evening is about practical aspects of implementing the UK's dynamic alignment obligation. You'll have to forgive me if it gets a bit technical in places.

The integration of EU law into the governing agreements

My first topic is the integration of relevant EU acts into the agreements governing the three areas of cooperation where the dynamic alignment obligation will apply. I call these "the governing agreements", for short.

Dynamic alignment involves both an initial and a continuing alignment obligation. The initial obligation is that UK rules on SPS, electricity and emissions trading comply with the relevant EU acts applicable in those areas at the time when the governing agreements are signed. The continuing (or dynamic) obligation is that the UK rules be amended, as and when necessary, to reflect changes in the relevant EU rules, including any new developments extending their scope.

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[5] The EU is a self-referential legal order. In other words, what counts as a valid rule of EU law is determined exclusively by the criteria of the EU legal order itself. This was established as early as 1970 in Case 11/70, *Internationale Handelsgesellschaft*, ECLI:EU:C:1970:114.

There's a well-honed technique for integrating relevant EU acts into the agreement governing a given area of cooperation. This consists of listing the relevant acts in an annex to the governing agreement, with integrative language in the body of the agreement; and amending the annex from time to time, as and when a listed act is amended, or new acts relevant to the area of cooperation are adopted by the EU. The significance of listing is that it engages the dynamic alignment obligation of the third country concerned in respect of the listed acts.

Compiling the original lists of relevant EU acts to be annexed to the governing agreements is part of the process of negotiating the governing agreements. It is an important exercise, since the number and range of listed acts will determine the extent of the UK's future dynamic alignment obligations. Clear definition of the scope of cooperation in the governing agreement, and hence of potentially relevant EU acts, will help to avoid future disagreement that can lead to delays in alignment.

As you know, negotiations are already under way.[6] Indeed, DEFRA has already published an interim list of legislation it considers to be in scope of the SPS agreement.[7]

The negotiations provide an opportunity for the UK to seek adaptations to the EU acts proposed for listing. Technical adaptations (such as references to competent UK bodies) will be readily agreed to. It will be much trickier to secure substantive changes to EU acts, in order to accommodate specific UK concerns that EU Member States don't share.

Once the SPS, emissions trading and electricity agreements have entered into force, new EU legislation that amends or supplements any act listed in their annexes, or that further develops EU law relevant to one of the areas of cooperation they cover, will have to be integrated into the agreement concerned by amending the appropriate annex. The established procedure is for such amendments to be adopted by consensus between the EU and the third country concerned within a Joint Committee of the Parties. If the Commission gets its way, this will take place within the committee structure of the Trade and Cooperation Agreement (TCA). This may need to be gingered up by arranging meetings more frequently than hitherto, in order to ensure expeditious alignment.

In that future scenario, under the decision-shaping mechanism Jonathan has described, the UK might have been able to influence, at the preparatory stage, some elements of the legislation subsequently adopted by the EU. The integration process would give the UK a final chance to seek further adaptations to the act as adopted. But EEA experience suggests that, unless these are purely technical, they have little hope of success.

A not so good lesson from the EEA is that, because consensus is needed to amend the annex to an agreement, the UK could hold up the integration of a new piece of legislation it finds politically problematic, by withholding its agreement. There are examples of Norway having taken years to consent to the integration of an EU measure into the EEA Agreement, most notoriously the Directive on deposit guarantee schemes, adopted in 2009 and subsequently

[6] See the EU Council Decision of 13 November 2025 authorising the opening of negotiations on the SPS and emissions trading agreements (Council Decision (EU)2025/2468) and the equivalent Decision of 30 March 2026 (Council Decision (EU) 2026/813) on the electricity agreement.
[7] See GOV UK news item dated 9 March 2026, "UK-EU SPS Agreement - Legislation in scope".

amended in 2014, which I understand Norway still hasn't consented to. However, Norwegian contacts have warned us that the Commission is unhappy with this aspect of the functioning of the EEA Agreement and the UK is unlikely to get away with similar behaviour.

Lastly on this topic, a word about Parliamentary scrutiny of new EU legislation before its integration. Emily Lydgate is going to say more about this crucial issue, so I can be brief.

The role of Parliamentary scrutiny will evidently be different from when the UK was an EU Member State, when we had Minsters at the Council table speaking and voting. It needs to be matched to the ability of the UK to influence the content of EU acts through the decision-shaping mechanism and through adjustments to EU acts, once adopted, prior to their incorporation. There should be an opportunity for scrutiny, I would suggest, at two different points, at least. First, at the decision-shaping stage, once the Commission has come forward with a proposal. That would be the moment to identify elements of the proposal raising political concerns, which the UK Government might be persuaded to take up with the Commission and perhaps with like-minded EU Member States, in the hope of securing an amendment. The other key moment will be after an EU act has been adopted, when the Government is preparing its position on the Joint Committee decision to integrate the act into the relevant annex. Parliament must be given a final opportunity to scrutinise the act before the UK accepts international responsibility for giving effect to it in UK law, by agreeing to the integration of the decision. A strong political reaction by the scrutiny body, and possible referral to Parliament itself, might conceivably strengthen the Government's hand in looking for an adaptation or exemption as a condition of its agreement.

Incorporation of relevant EU acts into UK law

My next topic is the incorporation into UK law of the relevant EU acts listed in annexes to the future governing agreements. The method of incorporation is a matter to be determined by the EU and the UK under those agreements.

There are two main possibilities. Either the decision to list an EU act could cause its automatic incorporation into UK law, through a direct effect mechanism established by the agreement. Or the incorporation of every such act could require the systematic adoption of legislation by the UK.

It seems clear from what we were told about the European Partnership Bill in the King's Speech that HMG has gone for the second option of incorporation by legislation – not a surprise – and that it will seek powers to do this by secondary legislation. That seems sensible, including the Henry VIII power, though it's provoking a fuss.[8] It would cause inordinate delays in alignment if every listed EU act, or even a significant proportion of them, had to be incorporated into UK law by statute. The only thing I would say is that it should be stated somewhere that statute may be the appropriate incorporation method in particular cases, e.g. where a novel or far-reaching piece of EU legislation has to be implemented.

[8] The so-called "Henry VIII power is a power conferred by statute that enables provisions contained in statutes to be amended or repealed by secondary legislation.

There are special arrangements under the EEA Agreement and the recent EU/Swiss package to provide some leeway for the third country concerned, when the incorporation of an EU act calls for the fulfilment of constitutional requirements. For instance, Switzerland is given a two-year time-limit to satisfy such requirements and a further year in cases where a referendum procedure is launched. I hope and expect that the UK has asked for some similar mechanism to be included in the three governing agreements, to cater for possible delays of incorporation that may occur under the devolution settlement. Worth recalling that international responsibility for any delays will fall on the UK Government, not the devolved Governments. Emily Lydgate will say something more about the involvement of the devolved Governments in the implementation of listed EU acts.

What of the situation post-incorporation? Based on the model of the recent EU/Swiss package, I expect the governing agreements with the UK to require the EU acts listed in their annexes, and provisions of the agreements themselves insofar as their application involves the application of EU law concepts, to be interpreted and applied in accordance with the case law of the CJEU.[9] That will be an obligation of international law for the UK, to take the steps necessary to ensure that courts are guided by CJEU case law, when interpreting and applying the legislation incorporating those acts or provisions into UK law. To fulfil that obligation, legislation will be needed requiring UK courts to treat relevant CJEU case law as, not necessarily binding, but at least strongly persuasive. Brexiters needn't panic, however. UK courts are not being brought back into dialogue with the CJEU, as they were in the days of our membership, through the preliminary ruling procedure.[10] There will be no similar procedure allowing UK courts to refer questions of interpretation to the CJEU, even on novel points where no case law is available. More's the pity, some might think.

Dispute settlement

Moving on to my third and final topic: the settlement of disputes arising out of the UK's dynamic alignment obligations.

How might such disputes arise? Here are some examples:

- The UK and the EU (in practice, the Commission) might not be able to agree within the Joint Committee established under the governing agreement in question whether a particular EU act is relevant to the area of cooperation and should, therefore, be listed in that agreement.

- Or the Commission may take the view that a listed EU act is being applied by UK courts without giving sufficient weight to relevant case law of the CJEU and that the judicial hierarchy in the UK is failing to resolve the matter satisfactorily.

[9] See, e.g., the EU/Swiss Protocol establishing a Common Food Safety Area, Article 17 (2).
[10] See Treaty on the Functioning of the European Union, Article 267.

- Or provisions of a listed EU act on which there is no available guidance in the CJEU's case law may have been given an interpretation by the Supreme Court of the UK that the Commission considers aberrant.

According to the Common Understanding of May last year, there will have to be provision in each of the three governing agreements for a dispute settlement mechanism in the form of an independent arbitration panel that must ensure the ultimate authority of the CJEU on all questions of EU law.

Once again, the reference to the CJEU shouldn't frighten the horses. What is contemplated appears to be a standard type of international law mechanism for arbitration-based dispute settlement, with the role of the CJEU confined to ruling on questions of EU law, should any arise in the arbitration proceedings. A model for such a mechanism is found in the recent EU/Swiss package.[11]

Assuming that model is followed, I expect each of the governing agreements to provide for a dispute settlement mechanism with these features:

- The procedure could be triggered only by the EU and the UK, as Parties to the agreement.
- A compulsory first step would be the holding of time-limited consultations within the Joint Committee. If no solution were reached within the time limit, either Party would have the right to request that an arbitral tribunal settle the dispute.
- The arbitral tribunal would be required to refer to the CJEU any question on the interpretation or application of listed EU acts, or of provisions of the governing agreement insofar as their application involved EU law concepts, that were raised by the dispute, and needed to be resolved to enable the tribunal to reach a decision.
- The Cout's ruling on the question(s) referred to it would be binding on the arbitral tribunal, which would be required to apply the ruling in deciding the dispute.
- The decision by the tribunal would impose on the EU and the UK an international obligation to take all the measures necessary to comply with it in good faith. Failure to comply by the Party found by the tribunal to be in default would give the other Party the right to adopt proportionate compensatory measures.

A dispute-settlement mechanism of that kind would meet the requirements of the May 2025 Common Understanding, including as regards the CJEU. It would preserve the international law character of the EU/UK relationship. And it would maintain the separation between UK courts and the CJEU that has existed since Brexit.

[11] See, e.g., EU/Swiss Protocol establishing a Common Food Safety Area, Article 20.

Conclusion

It's fairly clear what the UK has to do to implement its dynamic alignment obligation in the three areas of SPS, emissions trading and the electricity market. And the process of implementation seems, as far as one can judge, to be going forward purposefully.

Looking ahead, I believe the UK's next aim in rebuilding our relationship with the EU should be to obtain access to the internal market for the production and procurement of defence equipment. In these dangerous times, that would be as great a benefit to EU partners as to us. However, there are members of the Government going further and proposing that the UK accede to the internal market as a whole, and also to the customs union. I support that ambition. But I don't think the people of this country would put up with our being a permanent rule-taker across such a wide spectrum of economic and social life, even with the mitigation of decision-shaping. I agree with Jonathan that an imaginative re-think is needed of how close neighbours and allies of the EU (like the UK, Norway and Ukraine) that, for one reason or another, are unwilling or unable to become full EU members in the immediate or perhaps even the medium term, might be permitted a deeper involvement in its decision-making processes. In the past, the EU has shown surprising willingness to adapt old orthodoxies to hard political reality. Never has such intellectual and ideological agility been needed as much as it is now.

DISCUSSANT

Decision-making on dynamic alignment: Parliamentary scrutiny and the involvement of the devolved nations

Emily Lydgate

As set out above, the dynamic alignment the UK will be required to accommodate will most likely consist of updates to covered EU legislation set out in annexes. Many of these updates will be technical in nature: for example, changes to taxonomy or nomenclature, or updates to guidance, databases or certificates. However, some updates to legislation which are in scope of dynamic alignment could have significant impacts in the UK: for example, a decision to ban a pesticide active substance. Alternatively, the EU might argue that an amendment of existing EU covered legislation, or a new EU Directive or Regulation, is relevant and the UK should align, while the UK disagrees. An example would be a compositional requirement for spirits that is inconsistent with the product specification for Scotch Whisky and could weaken its protected geographical indication status. It is also possible that the UK will have the ability to propose additional exceptions beyond those initially agreed.

These are all scenarios in which the UK government would wish to amend or exempt EU legislative updates from dynamic alignment obligations. The treaty-based consequences of such a decision are considered elsewhere in this briefing. Here we consider how the UK, domestically, proposes to decide.

Dynamic alignment decision-making

The Common Understanding, which sets out the aim of concluding agreements in the areas of SPS, ETS linkage and energy, permits the UK to follow its own domestic constitutional and parliamentary procedures with respect to dynamic alignment in these areas.[12] The UK government has some discretion in determining these procedures. Dynamic alignment decisions made via UK-EU Trade and Cooperation Joint Committee do not neatly fit in any existing category of treaty scrutiny, suggesting the need for bespoke arrangements in some cases, and better resourcing and repurposing of existing structures in others.

The following sections examine the procedures and/or structures that currently exist, and their adequacy for managing dynamic alignment going forward. It then offers some reflection on potential arrangements to manage dynamic alignment going forward.

The role of Parliament

Parliament has limited oversight over the treaties and legislation that set out how dynamic alignment

[12] UK-EU Common Understanding, May 2025.

structures will operate. [13] More specifically, pursuant to the Constitutional Reform and Governance Act 2010, the treaty or treaties that the UK negotiates with the EU will be laid before the UK parliament for at least 21 parliamentary sitting days prior to ratification.[14] If Parliament wants to amend provisions on, for example, how the UK will participate in EU decision-shaping, or what constitutional arrangements govern its dynamic alignment processes, it will not have scope to do so. It cannot vote for or against the treaty. It can only delay ratification.[15]

Individual UK-EU Joint Committee decisions that govern dynamic alignment are not covered by the CRaG Act 2010. Where a treaty requires changes to UK domestic primary legislation, the UK is required to pass an implementing act to bring those changes into law.[16] The UK has already indicated that this process will be managed through a European Partnership Bill. Media reports suggest that the UK wishes to pass dynamic alignment decisions into law using so-called secondary legislation or Henry VIII clauses.[17] Such an approach would entail very little Parliamentary scrutiny. Secondary legislation is made by Ministers rather than Parliament, cannot be amended, is generally not debated, and is approved by a Joint Committee in a process that is semi-automatic.[18] Implementing dynamic alignment decisions solely through secondary legislation is not the only way of doing so; indeed, this would be an outlier in terms of curtailment of scrutiny. There are other models, including in operation already in the UK, addressed further below.

The role of devolved nations

As trade policy is a reserved area, while environment and agriculture are devolved, there is potential for tension in these areas in dynamic alignment decision-making. It seems likely that impacts of dynamic alignment will be felt asymmetrically in UK nations, both because of the differing economic importance of affected products in each nation but also because of their differing environmental conditions. For example, the wetter climate in Scotland and Wales makes it more difficult to adapt to stricter requirements on mycotoxins and limits on fungicides. These considerations mean that it is important that devolved nations have a role in decision-shaping and meaningful input in whether or not to align dynamically with a particular regulation.

The CRAG Act (2010) does not require that devolved nations consult on UK negotiating objectives with the EU. Post-Brexit, the UK Government has established new structures for information-sharing

[13] See Hestermeyer and Horne, Treaty Scrutiny: The role of Parliament in UK Trade Agreements, CITP Briefing Paper 18, 2024. See also, Dynamic alignment, European Affairs Committee, House of Lords, Oral evidence sessions on 9 June 2026, and 19 May 2026.
[14] CRaG Act, 2010: s20.

[15] The UK government committed to enhanced scrutiny of Free Trade Agreements (FTAs) to increase scrutiny and transparency in a series of letters with the International Trade Committee in 2022. For SPS regulation, there is an additional requirement that both government and a bespoke Trade and Agriculture Commission examine whether an FTA lowers UK levels of statutory protections. These enhanced FTA scrutiny commitments will not be applicable to new dynamic alignment treaties (as they are not full FTAs), nor subsequent Joint Committee decisions on dynamic alignment.
[16] There is some ambiguity regarding the extent to which the covered areas for dynamic alignment will necessitate changes to primary legislation. As we have documented in the past with respect to SPS, many of these laws take the form of so-called assimilated law, and were passed into UK domestic law in the form of secondary legislation. See Lydgate and Anthony (2022), 'Brexit, Food Law and the UK's Search for a Post-EU identity, Modern Law Review, 85(5).
[17] See, eg: PM embraces Brexit divisions as he seeks closer ties with Europe, BBC News, 13 April 2026.
[18] https://publiclawproject.org.uk/content/uploads/2020/10/201013-Plus-ca-change-Brexit-SIs.pdf

and consultation including an Interministerial Group on Trade.[19] There is also a more recently established Interministerial Group on UK-EU relations.[20] A series of Common Frameworks govern legislative cooperation between UK nations, and cover many of the same areas that dynamic alignment addresses, particularly for SPS regulation. However, many of these remain incomplete and underutilized. [21]

Regarding individual dynamic alignment decisions made through the Joint Committee, the Sewel Convention requires that the UK government obtain consent for changes to legislation in devolved nations. However, this requirement does not apply to secondary legislation, the means through which the UK government will likely implement dynamic alignment decisions.[22]

Northern Ireland already dynamically aligns with the EU in the covered areas, so the impacts of dynamic alignment will be very different than for Scotland and Wales. New UK-EU agreements bring the rest of the UK regulation closer to that of Northern Ireland. The Common Understanding makes clear that new UK-EU Agreements will co-exist with the bespoke treaty structures that govern relations between the UK, Northern Ireland and the EU. This raises a set of specific questions regarding the interaction of these structures and consultative bodies.

Beyond secondary legislation: models for managing dynamic alignment

Existing legislation requires little Parliamentary oversight of dynamic alignment decision-making. Regarding devolved nations, there are existing fora that could structure consultation regarding dynamic alignment decisions, at the decision-shaping, Joint Committee and domestic implementation stages, but there is no information in the public domain regarding how, and whether, these fora will be used for this purpose.

The UK government must consult with devolved nations, including on how dynamic alignment will take place, but their consent is not required for changes to secondary legislation under existing applicable legislation. This suggests the need for bespoke arrangements for scrutiny and consultation regarding dynamic alignment decisions.

Within the UK, there are existing models of EU dynamic alignment. The UK Withdrawal from the EU (Continuity) (Scotland) Act 2021 is one such example, but applied unilaterally, rather than in order to implement a treaty. It provides that Scottish law can continue to keep pace with EU regulation in areas that fall within Scotland's devolved powers, primarily environmental standards, consumer protection, and aspects of employment law. It includes criteria to determine whether alignment will be beneficial for Scotland, including the effects on Scotland's resources and relationships with the rest of the UK, the impact on trade, and whether the regulations would contribute to maintaining and advancing standards. Scottish Ministers must publish annual reports on how they have used the

[19] Whitten, L C (2024) *Trade and Devolution,* CITP Briefing Paper 18. See also the Concordat on International Relations, pp. 52-60, and HM Government, Processes for making free trade agreements after the United Kingdom has left the European Union, February 2019, pp. 8-9.
[20]https://www.gov.uk/government/publications/interministerial-group-on-uk-eu-relations-terms-of-reference--2/interministerial-group-on-uk-eu-relations-terms-of-reference
[21]Common Frameworks: An unfulfilled promise? https://committees.parliament.uk/publications/23089/documents/169122/default/
[22] Sewel Convention, UK Parliament.

powers to align with EU law, which are laid before the Scottish Parliament. This enables Parliament to question Ministers on how powers are being used.[23]

The Northern Ireland Protocol and Windsor Framework also outline procedures for dynamic alignment with new EU legislation, as well as modifications to existing EU legislation.[24] The integration of new EU regulation is addressed in the Northern Ireland Protocol. Before the Joint Committee agrees that a new EU law should apply in Northern Ireland, the Northern Ireland Assembly must pass an 'applicability motion' that indicates its support for the new law to be added to the Framework. However, the Government may still agree to the law applying in Northern Ireland if it considers that there are exceptional circumstances or the law does not create a regulatory border between Great Britain and Northern Ireland. In this circumstance, it must make a statement to Parliament and the Northern Ireland Assembly. [25]

Pursuant to Article 13(4) of the Northern Ireland Protocol, the Joint Committee that governs the Protocol can decide to adopt a decision adding the new EU act into the Protocol, but can also examine all further possibilities to maintain the good functioning of the Protocol.[26]

With respect to modification of existing legislation, pursuant to the Windsor Framework, adoption can be blocked if a cross-party group in the Northern Ireland Assembly agrees to apply the so-called 'Stormont Brake'.[27] The Stormont Brake, rather than an applicability motion, triggers further scrutiny processes outlined above. This provides some scope for parliamentary oversight over dynamic alignment.[28]

The European Partnership Bill and accompanying mechanisms

In the examples above, dynamic alignment is not automatic. There are guiding criteria accompanied by Parliamentary oversight. The powers introduced by the forthcoming European Partnership Bill are open-ended, such that it will be extended to future areas for dynamic alignment.[29] Therefore this Bill will act as a cross-cutting legislative framework that will guide domestic implementation going forward.

While not treating each area comprehensively, the following section outlines some features that would underpin effective scrutiny and consultation to inform decisions on dynamic alignment.

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[23] EU (Continuity) (Scotland) Act 2021

[24] For an overview, see J Curtis, *The Northern Ireland Protocol and Windsor Framework* (House of Commons Library, 1 February 2024).

[25] Applicability Motions, Northern Ireland Assembly.

[26] For example, Decision No 3/2020 of Joint Committee established by Agreement on the withdrawal of the UK from the EU and the EAEC of 17 December 2020 amending Protocol on Ireland and N Ireland to the Agreement UKTS No 14/2020.

[27] HM Government, Decision on the Withdrawal Agreement Joint Committee on laying down arrangements relating to the Windsor Framework (24 March 2023) at <https://www.gov.uk/government/publications/the-windsor-framework>.

[28] See also B Melo Araujo, 'The Windsor Framework and its impact for Northern Ireland and EU-UK relations', in F Fabbrini (ed), *The Law & Politics of Brexit: Volume V: The Trade and Cooperation Agreement* (OUP 2024).

[29] Prime Minister's Office, The King's Speech 2026.

Information sharing

The basis of scrutiny is the timely sharing of relevant information with Parliament and devolved nations. As the Foreign Affairs Committee has pointed out, information-sharing with Parliament regarding negotiating progress on new UK-EU agreements has thus far been poor. [30] With respect to dynamic alignment, Parliament and devolved nations should ensure that government shares policy proposals from the European Commission. Parliament should also receive proposed UK Joint Committee decisions in advance, and the UK statutory instruments that implement EU legislative updates.

Select Committees provide an important structure for scrutiny of dynamic alignment. There are currently sectoral Select Committees in the House of Commons who could assume the responsibility of receiving and scrutinizing this information. However, this is a time-intensive task on top of existing scrutiny commitments, so arguably a bespoke House of Commons European Scrutiny Committee should be restored for this purpose.

Consultation and decision-shaping

Devolved nations and Parliament should also have a role in dynamic alignment decision-making. This could take the form, for example, of approval motions for Joint Committee decisions, similar to the Northern Ireland Protocol.

Another option would be for devolved nations, and/or a critical mass of MPs, to be able to trigger a higher level of scrutiny for a particular dynamic alignment decision. The government has suggested that dynamic alignment will be based on the 'national interest', though it remains unknown how the national interest will be defined and interpreted, and by whom.[31] More specific criteria would help provide a legislative basis for sorting routine technical updates from ones that have significant impacts. Criteria risk appearing meaningless if interpreted and applied by government ministers alone.

Implementation

Dynamic alignment Joint Committee decisions will most likely be implemented by secondary legislation, often in the form of statutory instruments (SI). As set out above, existing scrutiny of SIs is very weak, and dynamic alignment will introduce a significant additional volume of legislation. There is an argument for establishing a new joint Commons-Lords sifting committee which reviews dynamic alignment SIs. As ratification is late in the process to raise concerns, this sifting committee could also be utilized at the upstream stage to feed into Parliamentary scrutiny of decision-shaping and Joint Committee decisions.

Alongside legislative arrangements sit consultative structures that provide stakeholder input and direct engagement between UK and EU stakeholders and Parliament. These will likely need re-envisioning, and/or better resourcing, as well.

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[30] 'From a Common Understanding to Common Ground: Building a UK-EU Strategic Partnership fit for the future', Foreign Affairs Committee, HC 857, para 204-208.
[31] Above n. 29.

Conclusion

How the UK government takes dynamic alignment decisions, and the degree to which they are perceived as being dictated by Brussels, may shape the extent to which the UK public will continue to re-litigate, in the court of public opinion, the legitimacy of Brexit. Introducing robust scrutiny and consultation would provide a useful narrative for UK government when explaining how these new agreements relate to our former status as an EU member state. Such mechanisms would also likely lead to better informed decision-making.

QUESTIONS, COMMENTS AND RESPONSES

Interventions by members of the audience were made under Chatham House rules.

Questions and comments

- The acceptance by the UK of an obligation of dynamic alignment, while remaining outside the single market, outside the EEA and outside the EU, could be seen as anti-democratic, raising concerns that are not only principled but also practical. The fact that UK representatives will not be in the room when legislation is being debated and eventually passed means that the UK may need to work even harder than if we were a Member State, to ensure that new EU legislation, which we will have to apply, meets our national needs. We can see from various online divergence trackers that in areas in which the UK is aligning unilaterally, we are diverging by mistake. It will be even more difficult when we are getting calls from Brussels every week saying you haven't updated X legislation or Y legislation. My question is: Is the UK's system up to the task?

- Alan, you made an interesting point about how the future EU-UK relationship under dynamic alignment will be contractual, and quite different from membership. My question is: how does that stack up to reality? Can a system of dynamic alignment work without supremacy?

- I would like to ask about free movement of people. Both the Swiss and Norwegian relationships with the EU accept free movement of people. One could imagine that a future UK relationship with the EU would be difficult without an acceptance of free movement of people, because if the UK get what they want without having to accept free movement of people, the Swiss and Norwegians will question their own relationships. It would be awkward to undermine that?

- As things stand, the current proposal for dynamic alignment is on three niche areas of alignment, SPS, electricity markets and carbon trading. Would it not add to the political appeal to add into dynamic alignment something that people see a tangible benefit from, for example pet passports? In order to sell dynamic alignment in this country, there will need to be something beyond technical areas such as those proposed.

- I have spent the last two years working on diesel vehicle legislation, and in the car manufacturing industry there is a huge cry for alignment. The area is highly technical and often only understood by those already within the industry. Would it not be possible for there to be alignment agreed upon by industry bodies?

- I am interested in how dynamic alignment will sit with other treaties. in particular,I how dynamic alignment fits in with the devolution agreements, as SPS is an area in which much of the legislation has been devolved. The Windsor Framework already provides a level of protection for the Northern Ireland assembly (the Stormont Brake), in which there is dynamic alignment and supremacy of CJEU case law.

- I am interested in the Swiss relationship. The consolidated package of agreements is not in force. At the moment, the system is one of unilateral alignment in Switzerland. In Switzerland,

this is very easy because of direct democracy, as technical legislation can be voted on as they arise, without the intervention of their Parliament, with oversight by the Swiss federal court. I fear that in a new dispute settlement system, excluding national courts, that exposure to political debate can be negative.

- Isn't it all well and good talking about a legal framework but if there is no political buy-in, how can it work?

Responses

Emily Lydgate

Regarding whether the UK is up to the task of engagement in decision-shaping: ironically (for the Brexit debate), what Brexit has led to is an expansion of government. Some regulatory functions will again contract in the aligned areas. For example, risk assessment underlying new SPS regulation was undertaken by the European Food Safety Authority (EFSA), then post-Brexit repatriated to the Food Standards Agency, Food Standards Scotland, and the Health and Safety Executive. Now they will be taken up by EFSA again. While this frees up capacity in some areas, in other areas considerably more resources will be needed. In order to influence EU regulatory developments as effectively as possible, the UK will need to resource its regulatory diplomacy far more intensively, track EU legislative developments proactively, and build an evidence base from stakeholders. The risk is that the UK government won't invest enough in this, and therefore won't get the best outcomes.

As for the devolution question, Northern Ireland is a special case. The Windsor Framework and Northern Ireland Protocol remains in place. Having the UK, alongside NI, dynamically aligning with the EU is good for NI in the sense that the entire apparatus of the UK government will be more focused on representing UK interests in the relevant areas. There are unanswered questions regarding governance structures; for example, how will the UK-EU Joint Committee of the Northern Ireland Protocol that implements dynamic alignment interact with the Joint Committee (likely of the UK-EU Trade and Cooperation Agreement, though to be confirmed) that implements dynamic alignment for the rest of the UK? But the fact that UK regulation is coming closer to that of Northern Ireland's will overall ease border frictions; indeed, this is one of the motivations for concluding these agreements.

Alan Dashwood

I am not as gloomy as the first questioner about the capacity of the UK government to stay abreast of developments in EU legislation pursuant to our dynamic alignment obligation. It will require a very considerable effort of organisation, but we have a civil service capable of rising to the challenge, as it did during our EU membership. Political buy-in is needed but I believe we already have it with the present Government. The relationship which is envisaged (closer and deeper but not amounting to membership of the EU single market or customs union) is the model for which Labour campaigned in the 2024 General Election.

It's true that decision-shaping, as a substitute for direct participation in decision-making, isn't an easy sell. However, there's a clear trade-off. If the UK wants renewed access to the EU's single market in economic sectors which have been damaged by Brexit, we have to align with the EU legislation governing those sectors; though, by making the most of decision-shaping opportunities, we can

avoid becoming decision-takers pure and simple. An important element in the calculation must surely be that, in the three areas of cooperation that will be subject to dynamic alignment initially, especially SPS, UK Industry is very keen to align.

A questioner with experience of the motor industry noted that there is similar keenness for alignment in that sector. So, let's go for it. As to whether, given the technicality of the motor vehicle sector, the task of alignment might perhaps be entrusted to industry bodies, my view is that legislation is the only practical way of achieving EU-wide (plus EEA , EU/Swiss and UK) alignment. Though industry (including in the UK) should be closely involved in designing the legislation.

I would add that, in extending the dynamic alignment areas incrementally, it would make sense to choose some in which the advantages would be obvious to the general public. And pet passports would be a good start.

There are bound to be some politically sensitive issues (though not any of those presently contemplated) on which alignment will raise hackles. However, Switzerland has shown that the EU may be capable of a surprising degree of flexibility on such issues, if a genuine case for exceptional treatment is made effectively. A notable instance was that of national servicemen being permitted to carry weapons on public transport.

Turning to the question of supremacy. The UK's international obligation to ensure that EU acts are applied and CJEU case law is followed in the areas of dynamic alignment can only be enforced by way of the dispute settlement mechanism of the relevant governing agreement. Within the UK, it will be for the national courts and authorities to interpret and apply the national rules designed to fulfil that obligation. There will be no judicial machinery enabling the national courts to obtain direct and binding rulings from the CJEU as to how they should do so. The UK will be free to decide whether our courts should be required to treat CJEU case law, when available, as having binding or merely persuasive authority. And if the Government, or the courts, get something wrong, that will be the subject of an international dispute with no direct impact within the UK's legal order.

Jonathan Faull

If the UK gets single market access without free movement of people, would that tempt, say, Norway and Switzerland to ask for something similar? Or an existing member state to leave the EU and ask for the same deal as the UK? This concern is at play in the Commission's and many member states' reluctance to allow the UK to "pick'n'mix". On the other hand, the convulsions which the UK, a country much admired for its political stability and maturity, has gone through in the last decade have dampened secessionist ambitions elsewhere. As what used to be considered extremist political parties have assumed or neared power, one by one they have abandoned promises to leave the EU or the euro. It is also the case that most countries do not share the UK's inability or unwillingness to distinguish EU free movement from immigration from the rest of the world. Even radical anti-immigration parties in EU countries concentrate their invective on non-Europeans; they may have little affection for their fellow-Europeans but they seem willing to tolerate them.

If dynamic alignment settles down and survives a change of government or two, and all the various actors in the process get used to it, it could well be extended to other areas. Pet passport holders of the world unite, or at least write to your MPs!

*Note of Discussion by **William Moody**, Barrister, Henderson Chambers*

IEP Bocconi does not express opinions of its own.

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