EU/UK Mind the / Gap

A report by LOWcounsel
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LOW

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Executive Summary

Because the UK's relationship with the EU is now that of a third country, albeit with a TCA, the gap between UK and EU standards and regulation is likely to grow. To the costs of not being in the customs union will be added the risks and costs of regulatory divergence over time.

It is in the interests of both UK and European businesses to influence policymakers in both jurisdictions to limit the extent of the gap, and to recognise the economic benefits of substantial alignment.

UK and EU institutional arrangements under the TCA are not a sufficient basis for promoting the alignment in policies needed to maximise trade. UK business and interests need to adapt to life as a third country.

The example of the United States shows how significant are the ways in which non-governmental and business interests may be presented to EU policymakers by a major third country partner.

UK businesses' participation in European associations is a necessary but not a sufficient means of securing intelligence and influence in EU policy making.

Case studies in relation to key industry sectors illustrate the economic importance of bilateral EU – UK trade and the risks of divergence.

Many, but not all, British businesses are aware now that they need to act independently in relation to EU policy making as the political and governmental environment is focused on divergent policies; it is important for the business activity to be seen as enlightened self-interest in the future environment, not as a "Remoaner" desire to revisit past debates.

The LOWcounsel team's research and interviews with stakeholders and experts have elicited a series of proposals for strengthening the voice and impact of independent UK businesses and organisations in relation to EU policy making.

Despite the lack of trust between UK and EU negotiators in the political and institutional sphere, especially as regards the Northern Ireland protocol, there is a sustained level of interest and possible engagement available to UK businesses, NGOs, and Universities.

The 'Mind the Gap' analysis defines the problem. The report's section on 'Bridging the Gap' provides some of the solutions. LOWcounsel proposes fourteen practical methods that UK businesses and organisations should employ now to a) engage more directly with EU policy making; b) build networks; and c) secure long-term relationships with our closest and most economically significant partners.

The conclusions and proposals in this report are commended to UK and EU audiences, and we welcome their responses and resulting actions.

LOW is a Brussels-based strategic communications agency. Founded in 2009 by Sally Low and her business partner Brendan Bruce, we create and implement innovative and effective communications campaigns for corporate and public sector clients using custom-built teams of experienced and creative strategic thinkers.

This report has been developed within one of our services – LOWcounsel.

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If you would like to know more about how LOWcounsel could help you achieve your objectives, please contact Karen Clements at karen.clements@loweurope.eu.

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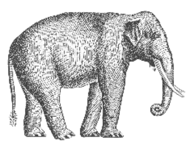

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Introduction

The UK's status as a third country in relation to the European Union (EU) is presenting challenges to businesses and organisations in the UK and across Europe. The Trade and Cooperation Agreement (TCA) is a means to resolve (or at least discuss) institutional and regulatory alignment (or divergence) but it is not intended on either side to incorporate the practical objectives of UK and EU business, trading and third sector interests.

The experience of those engaged in EU-UK trade is already that it entails additional cost and complexity. Managing this will be more achievable if the relationship quickly becomes stable. But, for the moment, it isn't stable and there are continuing signs that the divergences between EU and UK standards, regulations and policies will increase over time. There is no policy impetus towards alignment. The gap has opened up between the EU single market and the UK internal market. UK businesses and others need to 'mind the gap.'

The purpose of this research report, produced by the team at LOW, is to look at the experience of the 'gap,' particularly as observed by those engaged in three key sectors – Pharmaceuticals, Food & Drink, and Creative Industries – and to assess how UK interests can seek to take their own actions to 'bridge the gap.' In doing so, the example of how US business interests have addressed their own situation as a third country in relation to the EU will be described and assessed for relevant examples and guidance.

Over the last 20 years, US business interests, research and teaching institutions, think tanks, trade bodies and NGOs have successfully created networks and relationships which enable them to understand, interact with and to influence EU institutions (and EU member states) policies and actions.

The UK Government has sought to strengthen the UK Mission in Brussels to respond to the need for monitoring and responding to issues as they arise; but most recent evidence is that this is now being reduced, partly in recognition of the limitations of the UK Government's role in relation to EU policymakers.

Put frankly, the TCA (or the Withdrawal Agreement) sets out the mechanisms for liaison and there is little appetite outside that for EU policymakers to be receptive to the representations of the UK Government. A central rationale for this report is therefore that EU policy making is interested in British businesses' views and wants to see trade between the EU and UK recover and be stronger in future. To mobilise that, British business needs now to establish its own independent relationship with EU policymakers.

This report consequently makes a number of initial proposals for how UK non-governmental interests should seek to 'bridge the gap.' The LOW team intend in the months ahead to work with clients and key Brussels-based organisations, to develop the means to bridge the gap and to create the sustainable relationships with policymakers in EU institutions which are clearly sought on both sides, but which are not presently being created from the TCA framework

The Trade and Cooperation Agreement (TCA)

The UK's relationship with the EU will now be governed by the terms of the Withdrawal Agreement (WA) and the Trade and Cooperation Agreement (TCA). This is not, however, an association agreement, but a dissociation agreement. Its structures are not intended to facilitate convergence but to manage divergence. It reflects the stressed character of its origins, in including an explicit provision calling on the parties to act in good faith and in accordance with the Vienna Convention on the Law of Treaties. It includes a 'nuclear' option, to permit parties to end the agreement with just a year's notice; and it includes an unprecedented measure relating to the "level playing field", a rebalancing mechanism, which can be applied after four years to apply counter-vailing measures if the divergence creates a non-level playing field.

The TCA and WA are Treaties between States. They do not confer individual rights, nor can individuals or businesses directly access their structures. The TCA left unfinished business. This includes the nature of the structured regulatory cooperation on financial services, the adequacy of data protection regimes and on UK participation in EU programmes, namely Horizon Europe, EURATOM Research and Training and Copernicus. There are also further negotiations, on Fisheries each year, and on the recognition of professional qualifications. And there are areas of the TCA which are effectively transitional and depend upon further negotiations, such as on energy, where the Title VIII will cease to apply on 30 June 2026, but may be extended.

When the UK was a member state, the UK's participation in these policy issues was accessible and accountable. These policy debates will not now be accessible to any significant extent. If they lead to UK legislation, their effects will be clearer and democratically accountable. But as far as UK businesses or individuals are directly affected in their cross-border activities, as will be commonplace, wide-ranging, and substantial for UK businesses, the content of these discussions within the TCA governance will not be transparent.

In this respect, UK business and organisations will be in a comparable position to other "third countries" in relation to the EU. The UK has, and will need to, beef up its diplomatic representation in Brussels, as is the case for Switzerland and Norway, for example. But the range, depth, and complexity of UK interests within the EU 27 are such that no amount of diplomatic activity by UK officials can do more than scratch the surface of the intelligence and influence which is needed to promote UK interests.

As with the TCA itself, we start with UK businesses fully engaged in the EU. But they cannot rely on the TCA to support future engagement. The TCA is geared to handling divergence, not managing day-to-day policy alignment. It will not enable UK businesses to influence EU regulatory choices. The effect of lobbying within Brussels by UK officials may even be counter-productive, at least in the short-term.

European organisations are very likely to continue to include UK membership. When it comes to lobbying on EU legislation, however, UK interests may well not be taken into account in determining their objectives, and the UK businesses do not have their own route to the Council, Parliament or Commission.

Just as the TCA is about managing (and from some perspectives, minimising) divergence, so the question is how far that gap will also manifest itself for UK businesses? As the policies diverge, so might the influence of UK businesses in relation to the regulatory environment in their largest market. How do we manage that gap? How do other major trading partners do this? With one foot in the UK and the other in the EU, how do we mind this gap? Better still, what are the bridges we can build, beyond the official governance structures, to maintain convergence and open accessible markets, not simply ameliorate divergent systems?

The UK as a third country in relation to the EU

Our series of interviews with senior figures and social listening evaluations across a number of sectors tells us that UK businesses are only now coming to grips with the realities of the UK's third country status. For the largest businesses, as is the case for multi-national US businesses, their scale and presence in many markets, including subsidiaries, gives them a handle on policy making in the EU. Often, it can include significant influence in one or more EU member states. For example, in our focused sectors (see more detail below), the influence of Astra Zeneca in Sweden, or Unilever in the Netherlands, enables them to secure a hearing in EU policy. But for the great majority of UK businesses, their direct knowledge of, or influence in making, EU policy was formerly through UK Government, UK Parliamentarians, or their membership of European Trade Associations. In fact, through social listening analysis of statements and our interviews that were published in European news outlets since the referendum vote, we found that the largest entities across our focused sectors hardly, if ever, broached the topic of UK businesses becoming a third country to the EU, and only rarely discussed changes in EU legislation, and how it might impact their business and respective sectors (see annex 2 for more details).

In the future, none of these will operate in ways with which UK businesses are familiar. The TCA processes will not be transparent to UK interests. The UK Government's lack of direct participation in EU policy making will mean it cannot be relied upon to give warning of changes to EU legislation, even less to influence it. The UK's position is not analogous to that of Norway, who can use their EEA relationship as a basis not only for consultation, but also for a voice directly and via other member states.

Although there will be a dialogue between the European Parliament and the Westminster Parliament, this cannot be expected to impinge on day-to-day legislation. Nor will the scrutiny processes, especially in the House of Lords, enable forthcoming EU legislation to be accessible to UK interests.

> ***Looking ahead we are investing more in bilateral relations with the other EU member states and focusing on how we can work together to keep our economic and trading links as strong as possible***
>
> **/ Sean McGuire, Director, CBI Brussels**

The particular position of Northern Ireland can and should mean that the interest of businesses there are taken into account in framing Single Market legislation. The Withdrawal Agreement mechanisms are not yet being deployed positively for this purpose, but are being focused on the transitional measures and the management of border issues. The views of NI businesses need to be separately represented. While the CBI Northern Ireland and Ibec, the Ireland Business organisation, have a joint business council, the latter, Ibec, will seek to position themselves as the voice of business for Ireland in Brussels and they will have the access to support this.

The participation of UK businesses in European trade associations has continued post-Brexit. This does not, however, mean that UK interests continue to be represented to EU policymakers. At a basic level, meetings with senior EC officials will not include UK executives. The lobbying strategies of the Associations will use the arguments and influence of businesses in EU member states to reach MEPs from their countries, to reach their Permanent Representation in the Council, and to support their case with the EC officials. UK companies may be informed about the development of EU policies, but they will not be able to influence it.

This does not lessen the case for UK participation in European Associations. Indeed, it may increase it, as the opportunity to highlight the importance of bilateral trade and how it can be enhanced can put UK business in a position of 'honest broker' trying to mitigate divergences and secure alignment where practicable. To do this, a space which is informed by both sides' positions can have an impact on regulatory discussions. This will be especially true where there is nearer 'equality of arms' between the EU and UK, as is the case in financial services, digital services or the creative sector.

> ***When we were in the EU, we watched every rule and regulation. We now have to prioritise.***
>
> **/ Sean McGuire, Director, CBI Brussels**

In these early days after Brexit, there is an apparent lack of trust between EU and UK negotiators. And, at least on the UK side, an ideological push towards independent policy making and in some respects, a wish to diverge from the status quo ante-Brexit. EU policymakers know, however, that they have substantial economic interest across the EU in their trade with Britain. They know that most British businesses, even if they divided at a personal level on the Leave/Remain debate, were firmly in the camp of a continuing UK participation in the Customs Union and, for many, the Single Market as well. So, EU policymakers have much less disposition against British businesses. They can be listened to. They have to find the right argument and press the right buttons, but they will not be dismissed in the way UK political views might be dismissed.

So, the objective on the part of UK businesses should be to deploy their company and sector influence across their European markets, to identify the interests which are shared by British businesses and their EU counterparts in relation to bilateral trade, and to establish in Brussels their capacity to create sustainable relationships with policymakers, especially those looking to the longer-term need to work together. And they will need to do this while not being characterised in Britain as 'Remoaners' who want to re-run the Referendum debate, or are unwilling to accept the result

> ***We have to change our messaging in the way we represent UK plc. In our representations we have to focus on how much our members invest, employ and trade with EU and how a change in rules can make a difference to those bottom-line figures.***
>
> **/ Sean McGuire, Director, CBI Brussels**

In respect of the kinds of representation and approaches needed in Brussels, the demands of US interests in relation to the EU are as large-scale and as wide ranging as those of the UK. It may therefore be instructive for UK actors to consider how American interests operate in Brussels.

The US as a third country in Brussels

The relationship between the European Union and US is of critical importance for both parties. In his opening remarks to the Munich Security Conference in February 2021, US President Biden reaffirmed his commitment to this relationship, stating that: "*the partnership between Europe and the United States, in my view, is and must remain the cornerstone of all that we hope to accomplish in the 21st century, just as we did in the 20th century*" (The White House, 2021).

Out of 27 member states of the European Union, 21 are also members of NATO, currently the most powerful and enduring manifestation of this trans-Atlantic partnership. But in reaffirming his commitment to the US-Europe relationship, President Biden was also reflecting the realities of international trade, because the EU represents one of the US's top five trading partners, alongside China, Canada, Mexico, and Japan. So significant is this trading relationship, that in 2019, US goods exported to the EU totalled $267.9 billion, and services $200.3 billion (Office of the United States Trade Representative, 2021).

US-EU diplomatic relations were first established in 1972, when the first US political group met with EU Parliament officials to discuss mutually significant issues. At the governmental level, a significant number of associations and networks have been established to tackle the most mutually significant issue for both parties: trade policy. The Transatlantic Legislators' Dialogue (TLD), established in 1999, has acted as a principal body in facilitating the discussion between the two allies on issues such as tariffs, subsidies, and other general trade initiatives.

Bringing this relationship right up to date, the EU-US Trade and Technology Council (TTC), was launched at the US-EU Summit in Brussels in June 2021. Speaking at its launch, Margrethe Vestager, European Commission Executive Vice-President and Competition Commissioner said: "*We have common democratic values and we want to translate them into tangible action on both sides of the Atlantic. To work for a human-centred digitisation and open and competitive markets. This is a great step for our renewed partnership*".

However, below these vital inter-governmental fora is a dynamic sub-governmental network in Brussels which has developed over the past five decades, and which promotes and protects US interests through engagement with the EU institutions.

The US third country relationship with the EU has obviously been consistent for much longer. The UK-EU post-Brexit relationship is still pressure testing what the agreement does and doesn't allow for.

/ Paul Pacifico, CEO, Association of Independent Music

As of August 2021, and based on declared interests to the EUs Transparency Register, 455 US entities reported their EU-based activities. This includes 101 trade associations, 24 think tanks, 205 corporate entities, and 125 NGOs, together accounting for around four percent of organisations on the Register with non-EU headquarters.

One of the most significant of these entities in establishing and strengthening EU-US relations is the American Chamber of Commerce to the EU (AmChamEU). As the organisation which speaks 'for American business in Europe,' AmChamEU has become pivotal in maintaining this sub-governmental relationship. Today, it is recognised as one of the most important lobbying organisations in Brussels, as evidenced most recently by winning an award for the Best EU Trade Association in 2021.

AmChamEU ensures that EU policy is most effectively understood and implemented on both sides of the Atlantic. This has real world implications for both the US and EU because US businesses invested more than €3 trillion in the EU in 2019. AmChamEU plays a critical role in ensuring that US investors seeking opportunities in the EU remain correctly informed and well-versed in the latest EU policy, research, and development.

Complementary to these influential sub-governmental networks focusing on trade and trading policy, is the immense expertise and influence from US digital companies, such as Google, Facebook, Microsoft, and Apple. Because of both the global power of these companies and the influence of EU regulation in the EU and around the world, five of the top ten corporate lobby organisations in Brussels in 2021 are US based entities (three were EU based, one was British, and one was Chinese). In Brussels, and largely through the influence earned from their lobbying endeavours, these US entities have made themselves thought leaders in the EU's digital sector, a position that cannot be maintained without winning and maintaining generally (if not invariably) trusting relationships with the EU institutions (The Economist, 2021). This comes at a cost of course. The most recent Transparency Register data reveals that Google's public affairs operation in Brussels had a budget of €5.75 million to fund its lobbying operations, followed by Facebook with a budget of €5.50 million.

From our interviews with experts across various sectors, it is clear that the networks of influence which US entities have constructed over previous decades, represent a model which comparable UK entities should seek to emulate. Susan Danger, the widely respected head of AmChamEU, told us that now the UK is a third country to the EU, albeit with a TCA, UK businesses must demonstrate that they are committed to building trusting and profound relationships with the EU institutions. In her view, US entities have been able to do this through "*demonstrating a clear commitment to the overall goals of the EU and because they bring invaluable sectoral expertise, knowledge and data to the EU institutions who are regulating their sectors and industries*". Ms. Danger also highlighted the need for corporate and other non-governmental interests to be able to operate in Brussels independently of the inter-institutional political and diplomatic relationships as "*these may not always be in alignment and operating in the best interests of business*". Ms. Danger emphasised the importance of building trusted relationships in Brussels – an effort that takes significant time and focused effort to develop. What the EU institutions need to perceive is commitment over time, and a collaborative approach to problem-solving based on constructive partnerships.

A senior director of a global drinks corporation had a related observation when we spoke to him recently. He believed that the current political climate would not make life easy in Brussels for UK business and other non-governmental entities but hoped that this would improve moving-forward. He summarised this issue, by explaining that: "*If you're a British company and a British national, you won't have the entry points to the institutions you had before Brexit. You will need a spread of nationalities in your staffing to get access*".

What is very clear is that the US corporate and non-governmental world has spent many decades and considerable amounts of money working out how to build relationships and wield influence with the EU institutions. Over time they have understood the return on investment of doing this with both strategic intent and commitment. The message from the US public affairs community in Brussels appears to be that this experience is one that needs to be mirrored, at least to some extent, by the UK's business and non-governmental sectors who wish to remain successful operators in the European Union.

Case Studies: Key Industry Sectors

FOOD AND DRINK

Trade in food and beverages between the EU and the UK has been one of the leading components of trade in both directions. Prior to COVID-19 and Brexit, total UK exports of food and drink were £23.6bn, of which some 60% (€16.3bn) went to other EU member states (FDF, 2020). EU exports of food and drink in 2019 to the UK were €41bn, forming a major segment of the EU's trade surplus with the UK (CBI, 2021). By September 2021, reporting on trade in the first half of 2021, the Food and Drink Federation (FDF) in the UK reported that non-EU exports for the sector had recovered almost to pre-COVID levels. By stark contrast, exports to the EU were down by more than a quarter compared to H1 2019. This included falls of near to a half to Germany, Spain and Italy and a reduction in sales to Ireland of £0.5bn (FDF, 2021). Imports from the EU to GB were down by near 15%, particularly products of animal origin for use in UK manufacture. There will have been significant substitution of EU imports from UK supplies manufacture and to a lesser extent from non-EU imports, which have increased in 2021 relative to 2019 (FDF, 2021). The Food and Drink Exporters Association said, commenting on these half-year statistics, that "*There is growing evidence that the complexity of trading with the EU has led to businesses moving operations into Europe and of importers looking for alternative suppliers*".

The friction in cross-border trade between the EU and UK is set to increase in 2022, as full border controls on imports to the UK come into force. The ambition on the part of the UK was for equivalence in sanitary and phytosanitary standards between the EU and the UK, but this did not form part of the TCA. The first meeting of the TCA Specialised Committee on SPS only took place on 22-23 September 2021 and included cooperation on SPS-related issues, such as animal welfare and anti-microbial resistance, as well as certification issues, and issues raised by the UK, regarding such issues such as seed potatoes, live bivalve molluscs and chilled meats. The first meeting of the Partnership Council in June 2021 illustrated the issues well, in that it reported the UK Minister as saying "*a number of trade restrictions for UK exporters were unnecessary and disproportionate…and called for an SPS equivalence agreement*" (EC, 2021). The EU representative was reported as saying that "*some friction in trade is inevitable as the UK is now outside the Single Market and the Customs Union…that equivalence in the SPS area was not an option for the EU and that the waiving of controls can only be achieved by alignment*". UK exporters are nonetheless noting that the frequency of checks on imports to the EU of SPS products can be as low as 1% for those coming from New Zealand, but as high as 30% on some UK exports.

The UK government has played down statistics that trade has been hit, while simultaneously offering educative webinars on exports, implementing advice helplines, offering support from trade advisors, and allocating a £20 million Brexit support fund to SMEs (Gov.uk, 2021). The industry has itself looked to step up sales initiatives in EU markets and the need to promote UK products in European markets and vice-versa, combatting the supply and border difficulties. The desire on the part of the sector is to achieve much less friction in this trading relationship, the loss of which is hitting both UK and EU producers. Mella Frewen, Director General of Food Drink Europe, in describing this atmosphere, indicated that "*businesses on both sides of this relationship are much more intent on making it work than some of our politicians are*". Similarly, Ian Wright, Chief Executive of the UK's Food & Drink Federation, outlined how "[our industry] *needs institutions that treat us as a Third Country to begin pretty quickly*".

> ***...at a scientific and regulatory level, we are still fully engaged with the EU and are not insulated from EU affairs.***
>
> **/ Ian Wright, Chief Executive, Food & Drink Federation**

The risks to the sector are not confined to the implementation of the TCA. It is clear that divergence in SPS standards or in relevant legislation could lead to import bans. For example, as UK Ministers look to revise regulations relating to genetically-modified foods, this may have a significant impact on the trade in products made, for example, from GM soya [This is, of course, without taking a position on the merits of a change in these regulations] And the evidence of onshoring production on both sides of the Channel may lead to significant changes to the value chain which were formerly across the EU Single Market. Given the relative sizes of the EU and UK markets the impact on UK-based producers may be considerably greater in having to restructure production for the UK market. But the effect on EU producers of import substitution in constraining EU food and beverage exports to Britain could also be substantial, given the scale of the EU surplus in trade in this sector. And there are some indications that on both sides of this trade, there is a degree of diversion of trade away from past patterns. So, it is understandable that the sector is looking to enhance its marketing activity in these markets.

> ***The important thing is that UK businesses understand where EU legislation is going; and vice versa; what the new rules, standards, and norms will be, which is particularly important as, the more divergence we see in standards and norms, the more difficult this trade relationship is going to be.***
>
> **/ Mella Frewen, Director General of Food Drink Europe**

The uncertainties facing the sector are considerable. The impact on EU producers may be proportionately less than for UK producers, but is nonetheless substantial. As with other sectors, large multinationals may have much better options for restructuring supply chains, holding onto market share and influencing specific regulations. But for medium-sized and smaller businesses, of which this sector has many, the need for collaboration in representation and the benefit of working together in European associations to promote less friction in trade and more alignment in standards, are increasingly vital.

CREATIVE INDUSTRIES

The UK has a dynamic and vibrant creative economy which, before the Covid-19 pandemic, represented 1 in 11 of UK jobs, and was the UK's fastest-growing sector. London was particularly renowned on the global stage as a creative hub, given that some of the greatest names in the Arts were born and trained in the UK, Naturally, the benefits from the creative sector are not solely economic, but also represents a central element to 'soft power' and global cultural influence. Creative skills are also not exclusive to this sector, with over one million people using their design-related skills in non-design industries in the UK in 2016. Most significantly in this sector, Brexit has resulted in a loss of the right to freedom of movement. From our interviews with the sector's stakeholders and experts, this was the most frequently cited issue to be impacting the sector, with experts indicating that the post-referendum period has been particularly unclear, as both the UK government and their EU counterparts are unaware as to the correct regulation which is required for working in both areas. This has had catastrophic consequences for professionals who, while trying to obtain visas for work in the UK or Europe, have either been denied travel, or had to pay extortionate fees (anecdotally on occasion over £600) to perform in the EU.

Independent artists, labels, publishers (indies), are particularly susceptible to the negative effects of Brexit as a result of having less capital and market power.

/ Ger Hatton, Strategic Advisor to the Creative Industries in Europe

This issue was particularly distressing to the UK-based professional cellist, Adrian Brendel, whose career has seen him perform in some of the most prestigious music venues across Europe and beyond. In exploring this point during his interview, he stressed that for professionals at the early stage of their career, this was having devastating consequences. He believes that the failure of the Brexit negotiations to include sensible solutions for the creative industries has been "*a crippling blow that will kill off opportunities for up-and-coming musicians for some time to come*". Moreover, Mr. Brendel revealed that the music education sector was also being further hampered by the ending of the Erasmus programme, and that globally-renowned musical institutions, such as the Royal Academy of Music (where he is a Visiting Professor of Chamber Music), are suffering from being unable to support EU-based talent in their studies at the Academy.

> **For all musicians, Brexit is a real disaster. What I find amazing is the UK government's complete indifference to the music industry. As well as the economic impact it's a massive loss of soft power.**
>
> **/ Adrian Brendel, internationally renowned professional cellist, and visiting Professor, the Royal Academy of Music, London**

A second element central to this issue is the effect on the workforce in the creative industries, who are crucial to the day-to-day running of the sector, while also contributing international talent and creative inspiration. Statistics indicate that in 2019, 6.7% of the workers in this industry were from the EU, alongside 6% from outside the EU, and certain roles are more impacted than others; 25% of architects in the UK and 30% of visual effects workers, for example, were of non-EU UK origin. Alongside these creative thinkers, are staff who are critical to the maintenance and security of creative spaces. For example, in 2019 as many as 15% of the workforce in large national museums were (non-UK) EU citizens.

> **Almost a third of EU member states, have rules in place that render what were previously profitable tours expensive and, in some cases, simply not viable at all.**
>
> **/ Ger Hatton, Strategic Advisor to the Creative Industries in Europe**

Changes in regulation are also causing considerable shockwaves through the sector. In the broadcasting industry, for example, the EUs 'Country of Origin' regulations used to support the broadcast of UK content overseas, including half Ofcom's 2,200 channels which were broadcast to Europe. The UK's new status as a third country also means that UK programmes and institutions are no longer eligible for EU-funding programmes such as Creative Europe, which pre-Brexit had supported investment in EU-based creative projects. This lack of funding is particularly distressing to SMEs, who constitute a considerable proportion of the UK's Creative Industry. Paul Pacifico, CEO of the Association of Independent Music, stressed this point, outlining how SMEs are impacted disproportionately by these issues. Ger Hatton, Strategic Advisor to the Creative Industries in Europe, similarly reaffirmed this aspect, asserting that "*the EU was a popular market for first-time exporters and particularly valuable to smaller micro businesses who make up a large part of the UK creative sector (approximately 94%)*".

> **...from a practical, commercial perspective, the pain of that fractious relationship actually falls to businesses and disproportionately to SMEs who don't have the satellite offices or the scale of balance sheet to weather that storm...**
>
> **/ Paul Pacifico, CEO, the Association of Independent Music**

Echoing this point, Marcus Fairs, Founder and Editor-in-chief of Dezeen, the first digital journalist to be awarded an Honorary Fellowship of the Royal Institute of British Architects, gave us an overview of the impact that leaving the single market has had on creative professionals such as designers, craftspeople, and architects, many of whom, as small business owners, "*have given up trading with the EU*". Moreover, by leaving the EU, the UK also left the digital single market, which is governed by the Audio-visual Media Services Directive (AVMSD) alongside EU competition rules.

By stepping away from this prescribed legislation, the UK industry effectively has lost the benefits from this involvement, which included a minimum standards level for production and labour force, as well as a 'level playing field' for a common audio-visual production and distribution market.

A further issue central to this sector is of copyright and copyright enforcement, specifically for the protection of UK creative productions in the future. Brexit poses considerable challenges to the enforcement of such copyright, given that the UK's current copyright enforcement was, but is no longer, conducted by Europol.

PHARMACEUTICALS

The Pharmaceuticals sector is of great importance to future economic performance in both the UK and EU. The UK industry is its third largest sector; it exports over €11bn a year to the EU, and the supply chains can be substantially enmeshed between European countries. For example, the Active Pharmaceutical Ingredients (API) may be produced in one country, the formulation and manufacture in another, the packaging take place in a third, the distribution based in a fourth. This means that the Mutual Recognition of Good Manufacturing Practice and the recognition of each other's batch approvals is a key element in the continuation of supply chains. This has been a key 'ask' of the industry from the EU-UK negotiators.

This does not mean, however, that the industry had a fully functioning single market pre-Brexit. Beyond the authorisation for all markets through the European Medicines Agency (EMA), the health technology appraisals (HTA) varied country-by-country, the pricing was country-specific (or in consortia purchasing as pioneered by the Benelux countries) and the timing of launch into country markets consequently varied. The EU has sought to harmonise HTA, but this has not substantially been achieved beyond the scientific dossiers.

> **There is no mechanism by which the voice of those companies can be effectively transmitted to the people who, without switching on the politics, are connected to the economy of the EU and what's of interest to it.**
>
> **/ Leslie Galloway, Chairman of the Ethical Medicines Industry Group**

The EU needs to adapt to a significant divide in European Board-level decision-making between EU-based companies (e.g. Sanofi, UCB, Bayer, Novo Nordisk, and Merck) vis-à-vis those in Europe but not in the EU (e.g. Roche, GSK, Novartis, and Astra Zeneca). The reality is that these large multinational companies, and their American counterparts working globally, are all plugged into the national markets and have the capacity to reach into the policy making at national level, and into the EU institutions. They are all aware of the transitional problems arising from Brexit and the longer-term risks. But they are also aware that the UK is only 3% of the global pharmaceuticals market. Of more significance to major Pharma companies is the UK's potential for innovation. Britain has historically generated 10% of medicines-related discoveries, e.g. the work on monoclonal antibodies. The environment for research and innovative high-tech businesses has depended on collaborative international projects, including the Horizon programme, and on building international research teams within UK Universities and Research Institutes. Access to Horizon Europe needs to be resolved, while the recruitment of international researchers to the UK remains difficult. Unfortunately, innovation is not a zero-sum game. Less in the UK will not mean more elsewhere in Europe; and if the focus shifts, it may as likely shift to the US or Asia. So, the EU has an interest in creating sustainable research collaborations across Europe.

As implied above, much of the dynamics of the Pharmaceutical industry depends on smaller and medium-sized businesses, particularly those start-ups focused on one key innovation. They do not enjoy the reach and influence of the major companies. They look to their representative organisations and to Government. As discussed in this report, they need these representative organisations, straddling the 'gap', to create the bridges and mutual recognition and cooperation which enables them to work across European markets.

> **Cooperation must happen a level down from the official because the officials are not properly engaging. It must be trade bodies but also companies who are getting involved and working with each other: companies who work together and sell each other products, companies that represent each other in different countries.**
>
> **/ Leslie Galloway, Chairman of the Ethical Medicines Industry Group**

In the UK Government, efforts are being made to enable UK businesses to access international markets which EU policies may have inhibited. For example, the UK has joined Project Orbis, a six-nation approach to the joint evaluation of new cancer medicines, led by the FDA in America. This points the way again to the opportunity for international efforts to harmonise the scientific evaluation of new medicines and medical devices, which the EU is seeking to achieve within the Union, but which could be the precursor to wider global efforts.

The British Government is also seeking to establish UK distinctive approaches to medicines and medical device regulations, based in part on the Task Force on Innovation, Growth and Regulatory Reform (TIGRR). The sector is welcoming the opportunity for reduced regulatory constraints or costs, but must weigh in the balance the risks and costs of divergence from EU regulations, especially given the supply chain issues referred to earlier.

Over the same period, we will see the introduction of revisions to EU legislation for medicines, and medical devices. And in the EU (and other countries) the lessons of the Pandemic-induced supply constraints, will lead to an impetus towards supply chain resilience and autonomous supply, located within the EU.

The risk of divergent approaches impacting on the supply of medicines and the supply chains across Europe, and between Great Britain and Northern Ireland in particular, call for the pharmaceutical sector to work together to promote the benefits of shared approaches to the authorisation of medicines and medical devices, open and collaborative approaches to innovation and research, and mutual recognition of GMP, testing and batch approval.

The Gap

British businesses are used to aligned regulations and open borders in Europe. They increasingly understand that border controls are leading to higher transaction costs, more trade documentation, labour market shortages and cost. They are concerned that this will be compounded by divergent standards and legislation between the UK and EU. They hear the UK Government declare, as an objective of policy, that it will look to replace retained EU law and seek actively to reduce the cost of compliance with EU-derived regulation. The prospect of increased divergence between UK and EU regulations will impact on supply chains and manufacturing costs. Mutual recognition (or lack of it) will impact on manufacturing and services significantly if it is not achieved.

The 'gap' therefore is set to widen. This will be anomalous in a world in which trade agreements (cf. CPTPP) are looking to align regulatory environments, create open digital markets, and adopt shared environmental, labour market & animal welfare standards.

For British business, this is not an insignificant risk. The EU is the UK's largest and closest market. Exceptionally large increases in UK trade volumes in other markets will be needed to offset the possible loss of market share in the EU. Within the EU, pressure for 'strategic autonomy' in key industries may also lead to key manufacturing activities being located within the EU. Post-COVID issues in global supply chains are leading to onshoring of industry to the EU, which will not include the UK.

Closing the gap is not a realistic aspiration, given the political impetus to exploit economic sovereignty in the UK. There are potential changes in UK regulations: for example, in relation to genetic modification of crops, or cell or gene-based therapeutics, which could provide a UK comparative advantage and where there may be a case for the EU to move to align with UK, not the contrary. But there are political and ideological pressures within the EU too, and one cannot envisage a return to alignment akin to that in the Single Market.

This does not mean, however, that the gap is set only to grow. As time goes on, opportunities for alignment will be offered: for example, through plurilateral trade agreements, aligned carbon trading systems, by the use of international standards, through digital markets and as the EU and UK enter into further trade agreements with other countries, with the US in particular.

British businesses' interests in many of these debates are consonant with those of EU businesses. In their participation in European business groups, these perspectives will be shared. But often it will be in the interests of British business to be informed early about EU legislation, to be able to make their specific representations to EU policymakers, to seek and mobilise shared interests in EU member states (and beyond, as accession states and other trading partners are relevant) and to carry this intelligence back to inform UK policy formation.

This action will call for UK business and organisations to create or build on their independent representation. For business, the presence of the CBI, of the FSB (Federation of Small Businesses) and the Chambers of Commerce in Brussels are all of potential importance, but need to be strengthened. In the research sector, the role of the (UK Research Office) in Brussels also should be beefed up. In many key sectors, the representative organisations will need to supplement their membership of European organisations with an independent capacity to operate and build long-term relationships with policymakers in EU institutions; and in the representation of EU member states.

In our discussions with representatives in a number of sectors, and within both UK and EU bodies, we have found agreement about this analysis, a recognition of the need for action, and that this is often now under active consideration. In support of this, we make a number of practical proposals in our next section, “Bridging the Gap”.

Bridging the Gap

As discussed above, there is a need for British businesses to take measures independent of, even if complementary to, those of the UK Government to engage EU policymakers.

In this section, based on our interviews with key business leaders in the UK and Brussels, we list fourteen key actions and approaches which should be pursued in Brussels by British business.

1. Maintaining and maximising participation in European Trade Associations and coordinate the intelligence-gathering and lobbying efforts of major British companies across the sectors through the CBI in Brussels;
2. British NGOs should seek to maximise their role in their European partner organisations;
3. Support the strengthening of the representation in Brussels from the leading British business organisations, including the CBI, British Chambers of Commerce, FSB, Institute of Directors, Make UK, and City UK; these should have regular coordination meetings to review current issues;
4. Strengthen participation in, and the representational capacity of, the British Chamber of Commerce EU and Belgium, in the way demonstrated by AmChamEU;
5. CBI and Ibec to work with the Northern Ireland Chamber of Commerce and the Office of the Northern Ireland Executive in Brussels, to represent the interests of NI business in the Single Market;
6. Business leaders in UK should seek a series of bilateral relationships with their counterparts in those countries who have the greatest interests in the trade relationship between Britain and the EU, including The Netherlands, Belgium, Denmark, France, and Germany.
7. UK trade associations and business organisations should be independently represented in Brussels and should actively consider using Brussels-based advisers who are themselves experts in EU policy and legislation;
8. The representatives of British businesses and bodies in Brussels should seek to meet regularly with other major third country representatives, including US, Canada, Norway, and Switzerland, to discuss trade and single market issues.
9. In relation to key sectors, e.g. in relation to Financial Services, Creative Industries, Research, Digital Services, Life Sciences, Food and Drink, the leading UK organisations should regularly create "showcase" events in Brussels, which include networking opportunities with EU policymakers and presentations on forward-looking aspects of international standards;
10. Where the UK continues to be in membership of European organisations that include EU member states, for example in the European Space Agency or WHO Europe, these should be prioritised for UK Government actions, and for broad collaborative discussions;
11. British government and business, in collaboration with the British Standards Organisation, should support an enhanced programme for the development of

International Standards, to form the basis of common approaches to standards in trade agreements;

12. UK universities and the UKRO should build on the collaborations that are already in place (e.g. between Birmingham University and European counterparts) to develop opportunities for research and academic collaborations in Horizon Europe and in other programmes, again with showcase events and a representational capacity in Brussels;
13. British-based think tanks should be encouraged to conduct research and to hold events which are directed to the interface between UK and EU policy making, or which are international in scope. This is already well-developed in foreign and defence policy contexts, but needs now to be built up in areas of future economic importance, including environmental policies, trade, competition policy, digital markets, financial markets, energy, and future transport. The think tanks should hold events more regularly in Brussels, and launch reports here as well as in London;
14. The UK Mission should deploy its resources to support this range of activities undertaken by UK businesses, universities, NGOs, and think tanks, and should meet regularly with their representatives and advisers based in Brussels.

Conclusion and Summary

The gap between UK and EU standards and regulation is likely to grow. To the costs of not being in the Customs Union will be added the risks and costs of regulatory divergence over time.

- It is in the interests of both UK and European businesses to influence policymakers in both jurisdictions to limit the extent of the gap, and to recognise the economic benefits of substantial alignment.
- UK and EU institutional arrangements under the TCA are not a sufficient basis for promoting the alignment in policies needed to maximise trade. UK business and other interests need to adapt to life as a third country.
- The example of the United States shows how significant are the methods in which non-governmental and business interests may be presented to EU policymakers by a major third country partner.
- UK businesses' participation in European associations is a necessary but not a sufficient means of securing intelligence and influence in EU policy making.
- Case studies in relation to key industry sectors illustrate the economic importance of bilateral EU – UK trade and the risks of divergence.
- British businesses are aware now that they need to act independently in relation to EU policy making as the political and governmental environment is focused on divergent policies; it is important for the business activity to be seen as enlightened self -interest in the future environment, not as a "Remoaner" desire to revisit past debates.
- The LOWcounsel team's research and stakeholder interviews have elicited a series of practical proposals for strengthening the voice and impact of independent UK businesses and organisations in relation to EU policy making.
- Despite the lack of trust between UK and EU negotiators in the political and institutional sphere, especially as regards the Northern Ireland protocol, there is a sustained level of interest and possible engagement available to UK businesses, NGOs, and Universities.
- 'Mind the Gap' defines the problem; 'Bridging the Gap' is the solution. This report makes a series of proposals for how UK business, and wider interests, can now engage more directly with EU policy making, how to build networks, and to secure the longer-term relationships which are needed by British interests in relation to our closest and most economically significant partners.

The conclusions and proposals in this report are commended to UK and EU audiences, and we welcome their responses and resulting actions.

Annex I: Methodology

To ascertain how our chosen sectors have reacted to Brexit and sought to adapt their activities since becoming a Third Country to the EU, we used a combination of research methods to draw our conclusions.

REPRESENTATION DATA

We began by undertaking detailed scrutiny of where and by whom UK entities were represented across these sectors. This research was undertaken on UK and US trade associations, businesses & organisations, NGOs, and think tanks who had declared themselves on the EU Transparency Register. We analysed the number of meetings undertaken by these entities, with assistance from Transparency International's platform, Integrity Watch EU. This resulted in a long list of 975 UK records and 455 US records (as of August 2021) for which we researched whom each entity related to through their membership affiliations.

DATA ANALYSIS

From this long list, we next explored how the largest entities in each of the three sectors were engaging and investing in EU activities. We drew up shortlists of the entities spending the most on representation, as indicated by the Transparency Register (across the three sectors, in both the UK and US). We used the lower bracket of the declared 'estimate of the annual costs related to activities' section to calculate these statistics, which we see as indicative of their levels of activity.

Using trade data from 2019 we converted all the statistics into euros using the average conversion rate from 2019 for GBP to EUR and USD to EUR respectively[1] (Exchange Rates UK, 2021). We then used the trade and representation figures to ascertain certain data sets, such as representation as a percentage of the total value of EU exports for a specific industry.

More generally, we also used financial figures and statistics published by the UK Government, EU Commission and other institutions, and other reputable statistical bodies, to explore how much the UK was spending on representation in the EU, and likewise the corresponding spending allotted by the US. We drew on data from 2019 which, although before the 2020 TCA signing, was data not impacted by the unprecedented events of the Covid-19 pandemic. While there is no doubt that the impact of the pandemic has been immense economically, we decided it would not be a fair evaluation to base our research on data from 2020, given that the pandemic's disruption of the economy means makes it impossible to draw conclusions from the trade data and behaviour of the last two years.

[1] US average conversion rate dollars to euros (2019): **0.8931 EUR**
UK average conversion rate pounds to euros (2019): **1.1405 EUR**

SOCIAL LISTENING

Using the shortlists of the largest UK and US entities in these sectors, we then used the media monitoring software, Meltwater, to undertake a range of 'social listening' evaluations (social listening is the process of monitoring media channels for mentions of brands, companies, organisations etc.). We searched across all online news and media outlets from the respective countries to illustrate how these organisations were publicly discussing a selection of relevant issues. We selected a few key topics[2], and then analysed the frequency and nature of these topic 'mentions' in the media across these news outlets. From this data, we were able to ascertain how our shortlisted entities were discussing – or were not discussing – these topics in the post-referendum period. Graphical representations of our findings can be found in Annex 2.

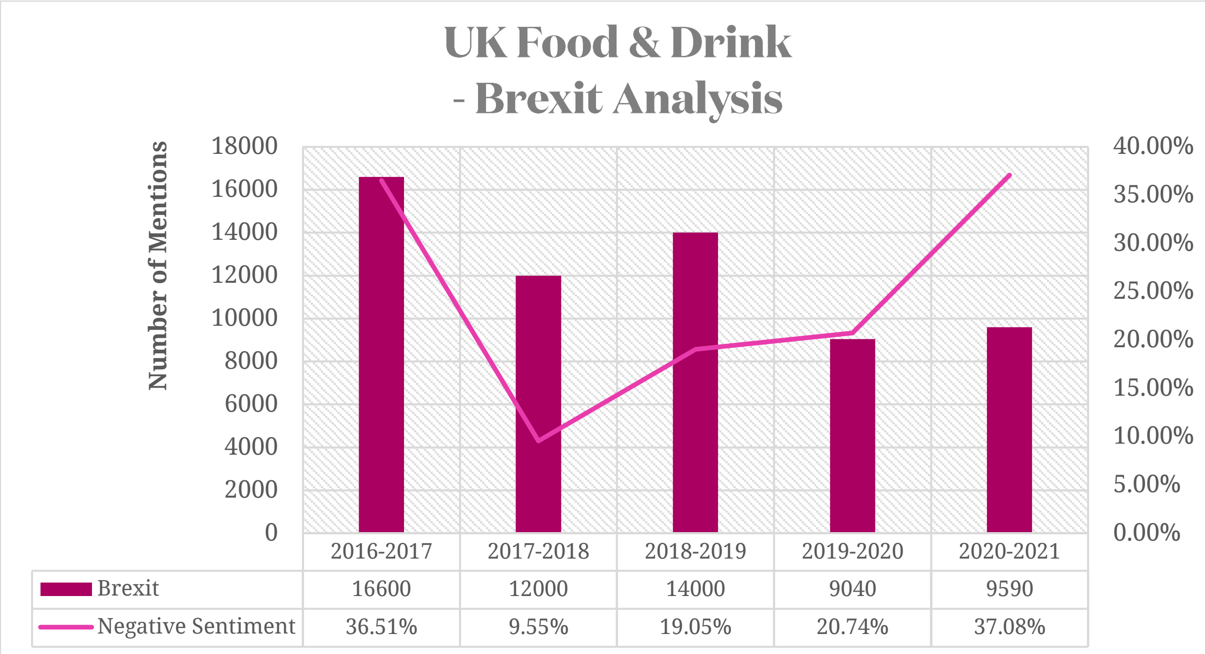
INTERVIEWS

Finally, to discover how these issues in practice were impacting individuals and organisations in these sectors, we carried out an extensive series of telephone interviews with central figures in each industry and country. Through these interviews, we asked questions which were framed to outline (not exclusively) the impacts of Brexit on the interviewee's industry, but concurrently illuminate the experience of being a Third Country to the EU (as in the case of the US) or how the interviewee felt their industry was adapting to the UK's new status of being a Third Country. In sum, these interviews sought not to solely reveal the gaps caused by Brexit, but the opportunities for resolution moving forward.

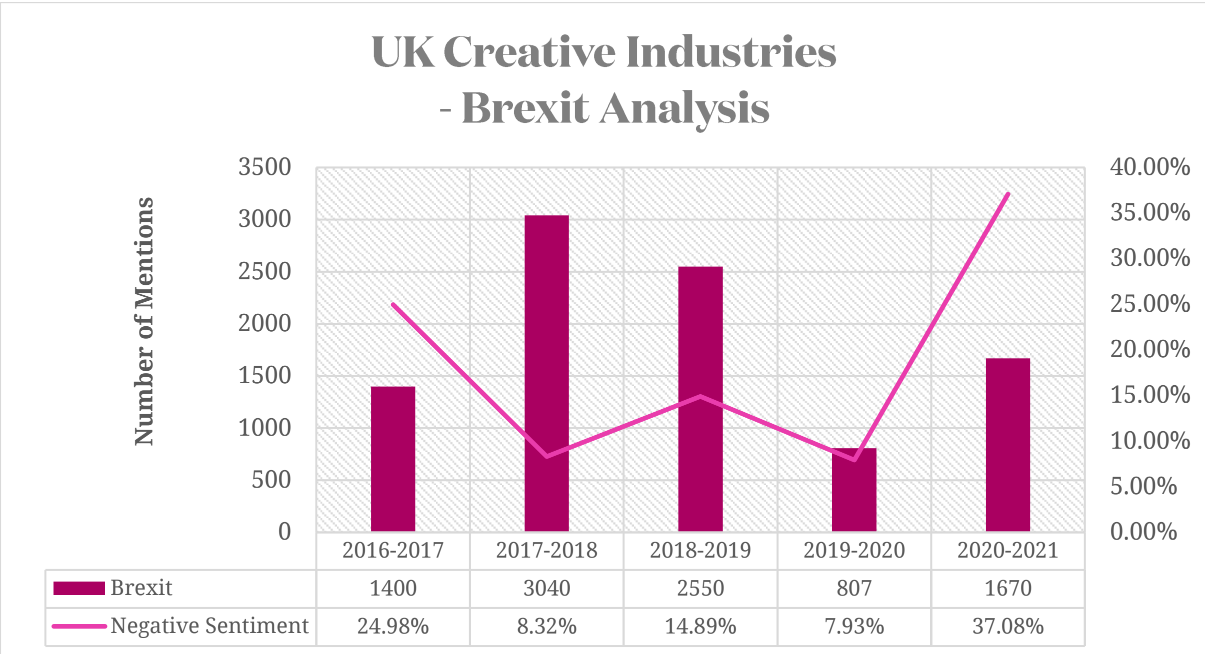
[2] The specific terms we searched for were: 'Brexit', 'EU legislation', 'EU regulation', 'EU rules', 'EU-UK', 'UK-EU', 'Third Country'

Annex 2: Social Listening Data

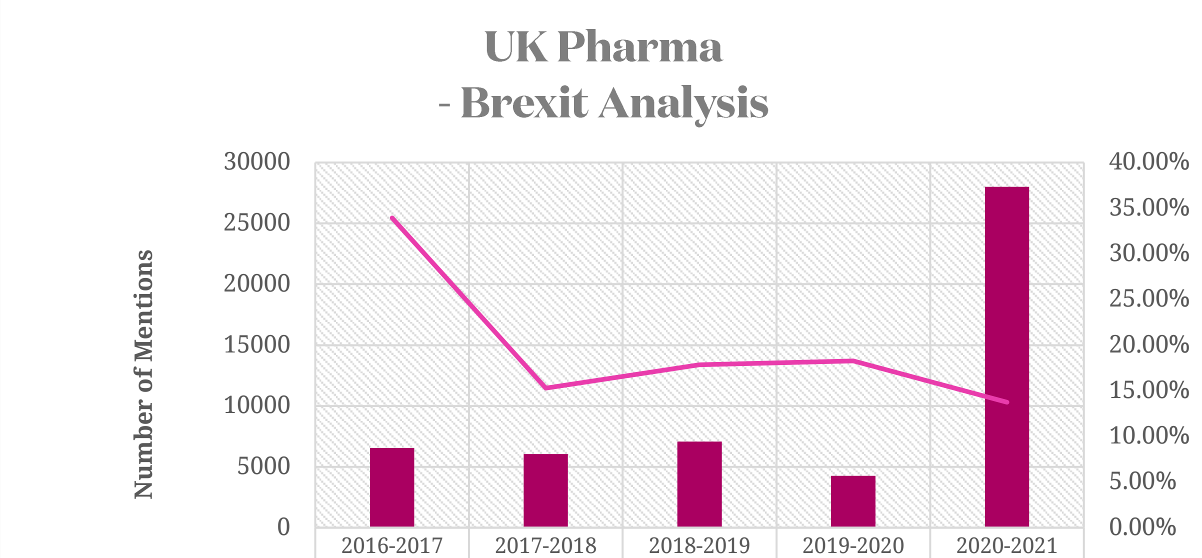
These graphs offer a visual representation of the annual number of mentions of Brexit in relation to our shortlisted entities in each sector since the 2016 referendum. They indicate that overwhelmingly, Brexit has been considered a negative to these industries through their public statements, and that, for the Food & Drink and Creative Industries sectors, sentiment considerably worsened as time got closer to the TCA agreement being signed.



	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
Brexit	16600	12000	14000	9040	9590
Negative Sentiment	36.51%	9.55%	19.05%	20.74%	37.08%



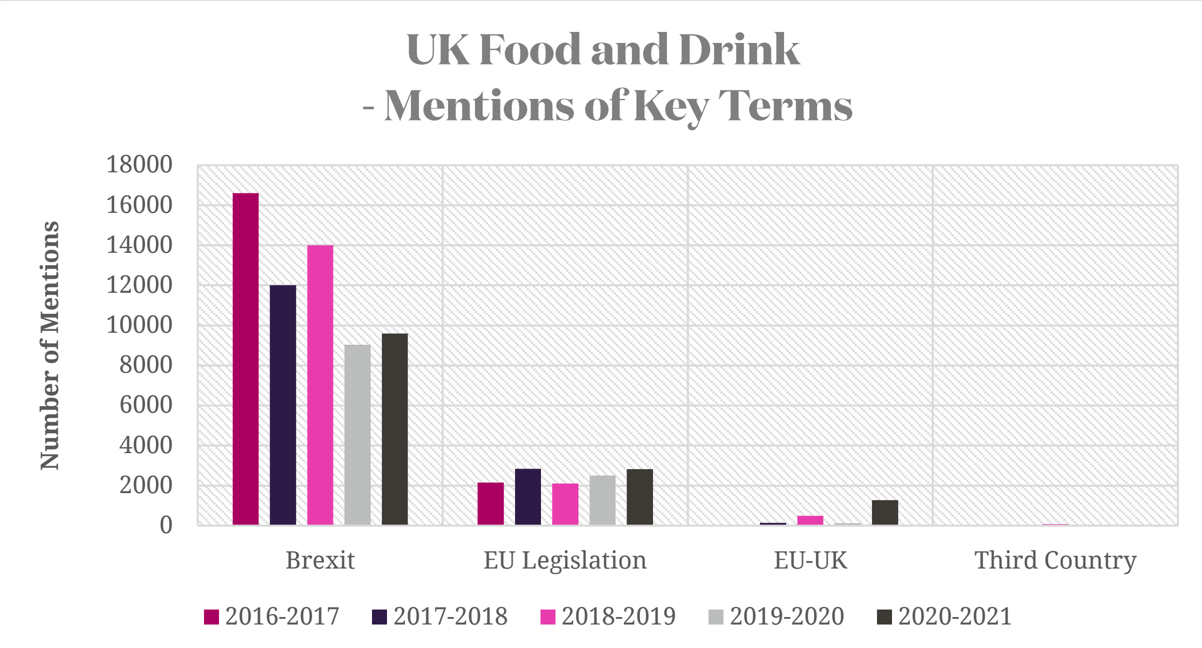
	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
Brexit	1400	3040	2550	807	1670
Negative Sentiment	24.98%	8.32%	14.89%	7.93%	37.08%

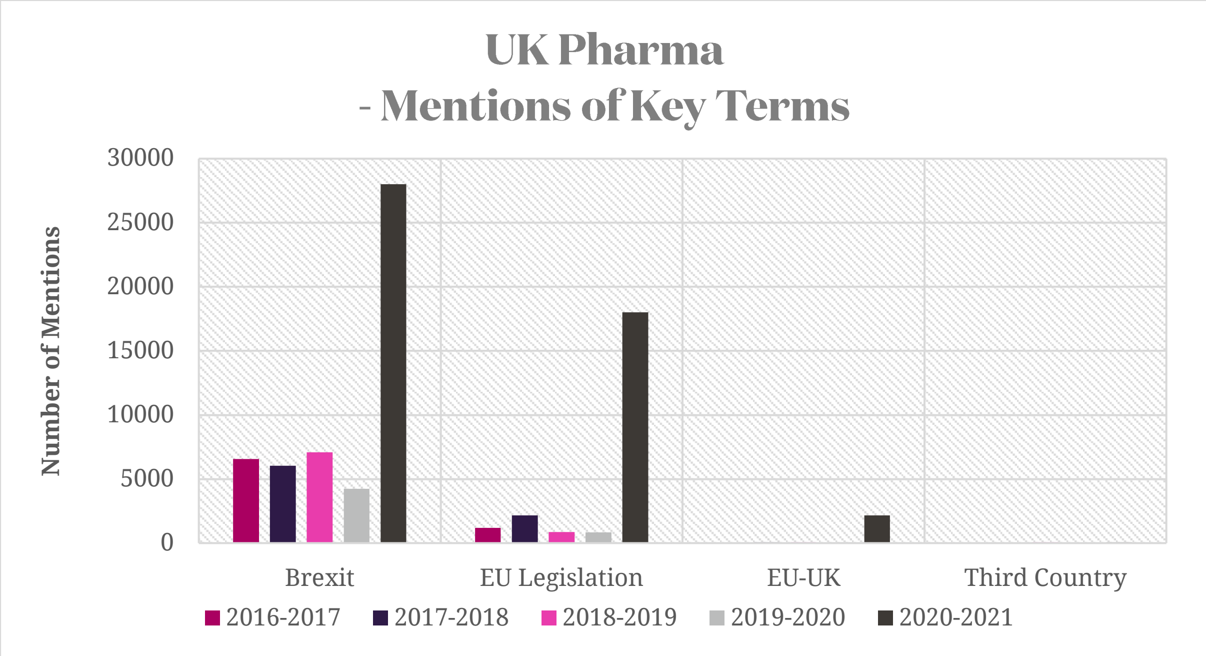


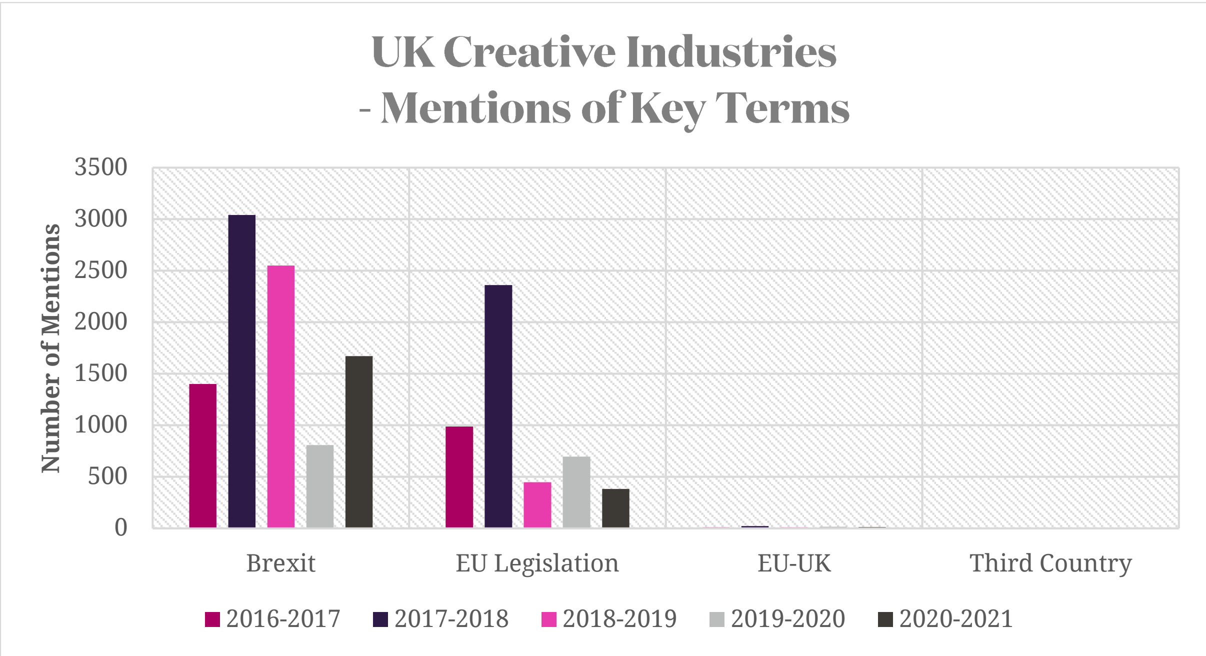
	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
Brexit	6560	6050	7080	4250	28000
Negative Sentiment	33.93%	15.29%	17.85%	18.28%	13.74%

The following graphs illustrate the total number of mentions, over five years, of four central topics to this issue, across the three sectors. What they reveal, in conjunction with further exploration into the samples of new reports and interviews, is that Brexit as a broad topic was discussed relatively frequently by the largest entities in each sector. By comparison, the issues pertaining to the future of the UK's relationship to the EU – of EU legislation, the EU-UK/UK-EU relationship, and the topic of being a third country – was not publicly discussed by these organisations.

What we can infer from this is that UK businesses are only now coming to grips with the realities of the UK's third country status, and that the reality of the experience of being a third country to the EU was not fully understood.




UK Pharma
- Mentions of Key Terms
Number of Mentions
30000
25000
20000
15000
10000
5000
0
Brexit
EU Legislation
EU-UK
Third Country
2016-2017
2017-2018
2018-2019
2019-2020
2020-2021


UK Creative Industries
- Mentions of Key Terms
Number of Mentions
3500
3000
2500
2000
1500
1000
500
0
Brexit
EU Legislation
EU-UK
Third Country
2016-2017
2017-2018
2018-2019
2019-2020
2020-2021

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Susan DANGER, CEO of American Chamber of Commerce to the European Union

Marcus FAIRS, Founder and Editor-in-chief of London-based Dezeen, the world's most popular and influential architecture, interiors and design magazine, with over three million monthly readers and six million social media followers

Mella FREWEN, Director General of FoodDrinkEurope. FoodDrinkEurope represents Europe's largest manufacturing industry and coordinates the work of more than 700 experts though its Committees and Expert Groups

Leslie GALLOWAY, Chairman at the Ethical Medicines Industry Group (EMIG) a UK trade association that represents the interests of small to medium-sized pharmaceutical companies, with over 300 members

Ger HATTON, Strategic Advisor to the Creative Industries in Europe

Sean McGUIRE, Director, CBI Brussels

Paul PACIFICO, CEO of the UK's Association of Independent Music (AIM), which represents over 800 UK independent music companies

Paul SKEHAN, Senior Director of EU Policy at PepsiCo and previously Director General of spiritsEUROPE

Helen SMITH, Executive Chair of IMPALA Music - Independent Music Companies Association, a pan-European organisation with a scientific and artistic purpose, dedicated to small, micro and medium sized music companies and self-releasing artists with over 5000 members

Ian WRIGHT, Chief Executive of the Food & Drink Federation. The voice of the UK food and drink industry, FDF represents companies and trade associations which make up the UK's largest manufacturing sector

EU UK Mind the / Gap

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