



House of Commons  
European Scrutiny Committee

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**Thirteenth Report of  
Session 2022–23**

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Documents considered by the Committee on 25 January 2023

*Report, together with formal minutes*

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## Notes

### Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters C or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

### Abbreviations used in the headnotes and footnotes

|      |                                                                        |
|------|------------------------------------------------------------------------|
| AFSJ | Area of Freedom Security and Justice                                   |
| CFSP | Common Foreign and Security Policy                                     |
| CSDP | Common Security and Defence Policy                                     |
| ECA  | European Court of Auditors                                             |
| ECB  | European Central Bank                                                  |
| EEAS | European External Action Service                                       |
| EM   | Explanatory Memorandum (submitted by the Government to the Committee)* |
| EP   | European Parliament                                                    |
| EU   | European Union                                                         |
| JHA  | Justice and Home Affairs                                               |
| OJ   | Official Journal of the European Communities                           |
| QMV  | Qualified majority voting                                              |
| SEM  | Supplementary Explanatory Memorandum                                   |
| TEU  | Treaty on European Union                                               |
| TFEU | Treaty on the Functioning of the European Union                        |

### Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

### Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": [www.parliament.uk/escom](http://www.parliament.uk/escom). The website also contains the Committee's Reports.

\*Explanatory Memoranda (EMs) can be downloaded from GOV.UK: <https://www.gov.uk/government/collections/explanatory-memoranda-on-eu-documents>. EMs can be searched by Council or Commission reference number. Letters from the Committee and those issued by Ministers can be found in the correspondence section of the Committee's website: <https://committees.parliament.uk/committee/69/european-scrutiny-committee/publications/3/correspondence/>.

Explanatory Memoranda and letters published before 31 March 2022 can be found on the National Archives website—<https://webarchive.nationalarchives.gov.uk/search/>—by restricting searches to <https://europeanmemoranda.cabinetoffice.gov.uk/>

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# 1 Introduction

1.1 The UK/EU Trade and Cooperation Agreement (‘TCA’) establishes a legal framework and institutions for managing the UK’s relationship with the EU following the UK’s exit from the EU on 31 January 2020, and the end of the post-Brexit transition period on 31 December 2020. We took evidence on this framework and these institutions in 2021.<sup>1</sup>

1.2 The Partnership Council sits at the apex of the TCA’s institutional arrangements. It oversees the implementation of the TCA and is supported by a network of Specialised Committees responsible for different aspects of the Agreement. The Partnership Council has two ‘co-chairs’, in most cases, the Foreign Secretary for the UK and a Vice-President of the European Commission for the EU, though it can meet in different configurations. The various Committees sitting under the Partnership Council also have an EU and UK co-chair but operate at official rather than Ministerial level. The Partnership Council and supporting Committees can adopt legally binding Decisions where this is provided for in the TCA and, in some cases, make Recommendations which are not legally binding. Decisions and Recommendations are agreed “by mutual consent” between the UK and EU.

1.3 In this document scrutiny Report, we examine two Decisions taken by the Partnership Council in December 2022. The first establishes a list of arbitrators who can be called on to serve as members of an arbitration tribunal if there is a dispute between the EU and the UK relating to the TCA. The second extends until the end of 2023 the application of interim arrangements enabling the EU and the UK to continue to exchange Passenger Name Record data. Both Decisions were agreed by a written procedure as the Partnership Council did not meet in person in 2022, though the TCA provides that it should meet “at least once a year”. In the absence of a meeting, there is no requirement for the Partnership Council to publish an agenda setting out areas for discussion and decision. This has potential implications for the transparency of decision-making within the Partnership Council and political accountability for decisions taken by it, concerns we have raised with the Government.

1.4 We also consider two Decisions taken by two Specialised Committees, both concerning access to EU IT systems for exchanging information. The first (adopted in November 2022) sets out detailed arrangements for the UK to use the EU’s Internal Market Information System to share information on cross-border road haulage operations. The second provides for the UK to take part in the EU’s system for the Electronic Exchange of Social Security Information, ensuring that information required to implement the TCA Protocol on Social Security Coordination can be shared quickly and securely.

1.5 Finally, we examine a Recommendation to be agreed by the Specialised Committee on Energy to improve the trading of electricity between the UK and the EU.

1.6 There is no formal requirement for the Government to consult Parliament or obtain its approval before agreeing to Decisions or Recommendations in the Partnership Council or joint Committees created by the TCA. On the EU side, the European Commission must seek the formal approval of the EU Council (by means of a Council Decision) for the position it intends to take on behalf of the EU in the Partnership Council and Committees.

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1 See European Scrutiny Committee, [Oral evidence: The institutional framework of the UK/EU Trade and Cooperation Agreement](#), HC 450

Under new scrutiny arrangements in place since October 2022 and set out in our [First Special Report of this Session](#),<sup>2</sup> the Government has made a commitment to deposit for scrutiny, proposed Council Decisions establishing the EU position in these TCA bodies and to provide an Explanatory Memorandum setting out its own position.

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<sup>2</sup> European Scrutiny Committee, [‘Revised EU Scrutiny Arrangements’](#), First Special Report (2022–23) HC 721 (18 October 2022)

## 2 Trade and Cooperation Agreement: UK-EU electricity trading arrangements<sup>3</sup>

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**This EU document is politically important because:**

- it concerns improvements to the trading of electricity between the UK and the EU, which should have both economic and environmental benefits; and
- its consideration has been delayed due to ongoing disagreement between the EU and UK concerning implementation of the Northern Ireland Protocol.

### Action

- Write to the Minister.
- Draw to the attention of the Business, Energy and Industrial Strategy Committee.

### Overview

2.1 The UK-EU Trade and Cooperation Agreement's Energy Title establishes a number of commitments, including the development of post-Brexit trading arrangements for the efficient use of electricity interconnectors between Great Britain (GB), on the one hand, and the EU and the Single Electricity Market on the island of Ireland, on the other (I-SEM).

2.2 While the TCA required the new arrangements to be in place by April 2022, adoption has been delayed, due in part to disagreements around the Northern Ireland Protocol. The [Minutes](#)<sup>4</sup> of the SCE's most recent meeting—of 28 September 2022—recorded the EU's view that the UK-EU energy relationship must be 'based on trust and on the full respect of the agreements concluded by the Parties, in particular the Withdrawal Agreement including the Protocol on Ireland/Northern Ireland and the Trade and Cooperation Agreement.'

2.3 Responsibility for overseeing the implementation and functioning of the Energy Title is delegated to the Specialised Committee on Energy (SCE), comprised of UK and EU representatives. The draft Council Decision submitted for scrutiny establishes the position the EU will take on the SCE's adoption of a Recommendation to both the UK and EU concerning the development of new trading arrangements for the efficient use of electricity interconnectors. This Recommendation has been jointly drafted by the UK and EU to progress implementation of Articles 312(1) and 317(2) of the Trade and Cooperation

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3 Proposal for a Council Decision on the position to be taken on behalf of the European Union within the EU-UK Specialised Committee on Energy established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, concerning the EU-UK electricity trading arrangements; [COM\(22\) 651](#);; Legal base: Articles 194(1) TFEU and Article 218(9) TFEU, QMV; Department: Business, Energy and Industrial Strategy; Devolved Administrations: Consulted; ESC number: 42147.

4 HM Government, '[Specialised Committee on Energy—Minute of the Meeting of 28 September 2022](#)'.

Agreement (TCA) concerning electricity trading. The Decision will give the European Commission the mandate it needs to agree to the adoption of the Recommendation by the SCE.

2.4 In his [Explanatory Memorandum](#) (EM), the Minister of State for Energy and Climate (Rt Hon. Graham Stuart MP) recalls the UK's continued concern about delays to the implementation of new electricity trading arrangements. He notes that the draft Recommendation has been jointly drafted by the UK and the EU.

2.5 We welcome the EM, including the approach that the UK is taking to energy relations with the EU. We are writing to the Minister raising outstanding questions concerning the interaction between the new trading arrangements and offshore renewable energy cooperation in the North Sea.

### The draft Recommendation

2.6 One effect of the UK's withdrawal from the EU was to decouple GB's electricity market from that of the EU. A coupled market makes greater use of an interconnected market, reduces day to day price volatility and should—through a more efficient market—keep the costs of energy down. The EU and UK agreed in the TCA to introduce 'multi-region loose volume coupling' (MRLVC), where electricity and cross-border transmission capacity on an interconnector are auctioned together on a 'day ahead' timeframe. The TCA tasks transmission systems operators (TSOs, such as the National Grid) with formulating the details of the MRLVC, which would re-couple, at least partially, GB's market to that of the EU, while remaining outside the internal energy market.

2.7 The new mechanism should have been in place by April 2022, but that deadline was missed. The respective TSOs had previously commissioned a [Cost-Benefit Analysis](#) (CBA) of certain possible MRLVC designs, published in April 2021. The CBA identified a number of benefits but also presented challenges.

2.8 At the March 2022 [meeting](#) of the SCE, the Parties agreed that the SCE should prepare and adopt a Recommendation to the TSOs and respective regulators that they prepare a further analysis to address outstanding queries. That analysis was to be delivered within two months of the Recommendation and the SCE was to consider the analysis by the end of 2022. None of those steps took place on the intended timescale. Following the September 2022 meeting of the SCE, the Parties have finalised a draft Recommendation, requesting further information from TSOs regarding the costs and benefits of more efficient trading arrangements, in particular exploring how the challenges identified in the initial CBA can be mitigated.

### UK Government position

2.9 In his [EM](#), the Minister identifies some of the benefits arising from the new mechanism. He notes that, according to the CBA, these included €36–74 million every year out to 2025 in GB consumer welfare benefits, increased renewable energy output and decreased fossil fuel generation.

2.10 The Minister also notes that the arrangements will be important for deploying and maximising the benefits of Multi-Purpose Interconnectors (MPIs) in the North Sea. MPIs combine the connection of offshore wind with links to other markets, reducing the overall amount of infrastructure required and making more efficient use of offshore wind.

## Our assessment

2.11 The proposal for a Council Decision is uncontentious, as is the jointly-prepared draft Recommendation from the Specialised Committee on Energy. The issues on which further information is requested reflect the findings of the Cost Benefit Analysis.

2.12 We note that the CBA identified benefits, but also challenges. Among those are important challenges concerning how the benefits arising from North Sea offshore renewable energy cooperation are realised. This is important as a Memorandum of Understanding<sup>5</sup> has just been signed between the UK and the North Sea Energy Cooperation group of countries. The CBA concludes:

The development of an efficient commercial and regulatory framework is an essential precursor for the major investment needed to develop the North Sea. It should be a priority to consider the implications of MRLVC on this framework, and to identify if any modifications may be needed. There are potentially a range of options for how MRLVC and SDAC<sup>6</sup> interact to manage capacity allocation in a North Sea grid, and some may require modifications to the MRLVC design.

2.13 We note the CBA's conclusion that some of the design limitations are elements of the TCA (Annex 29), notably provisions on data access, and that options for improvement would include relaxing those data access restrictions. We will press the Minister on whether he agrees with the CBA that: a) the commercial and regulatory framework for the North Sea needs to be considered alongside the MRLVC; and b) that the limitations set out in Annex 29 of the TCA on the design of MRLVC could ultimately limit the effectiveness of North Sea offshore renewable energy cooperation. Noting that the Specialised Committee on Energy has the power under Article 329 TCA to amend Annex 29, we will ask the Minister to what extent the Government would be willing to consider changes to the Annex to maximise the effectiveness of that cooperation.

## Action

2.14 We have written to the Minister as set out below.

2.15 We are drawing this document and our letter to the attention of the Business, Energy and Industrial Strategy Committee.

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5 [UK Government, 'Memorandum of Understanding on offshore renewable energy cooperation between the participants of the North Seas Energy Cooperation \(NSEC\), of the one side, and the United Kingdom of Great Britain and Northern Ireland, of the other side', 18 December 2022.](#)

6 [Single Day Ahead Coupling—the single pan European cross zonal day-ahead electricity market \(which GB left when it withdrew from the EU\)](#)

***Letter from the Chair to the Minister of State for Energy and Climate (Rt Hon. Graham Stuart MP)***

We considered your Explanatory Memorandum of 13 December 2022 on the above document at our meeting of 25 January 2023.

We welcome the positive developments in this area, which have been regrettably delayed by the disagreements between the UK and EU over the implementation of the Northern Ireland Protocol.

The Cost Benefit Analysis (CBA) on possible designs of the ‘multi-region loose volume coupling’ (MRLVC) mechanism identified a benefit as being to support the development of an offshore renewable energy grid in the North Sea. We consider this to be an important benefit given the recent signing of a Memorandum of Understanding between the UK and the North Sea Energy Cooperation group of countries. Noting some of the points arising from the CBA, we would welcome your responses to the following questions:

- Do you agree that a commercial and regulatory framework for a North Sea offshore renewable energy grid needs to be considered alongside the MRLVC, so that any necessary modifications can be made to the MRLVC?
- Do you agree that the data access limitations set out in Annex 29 of the TCA on the design of MRLVC could ultimately limit the effectiveness of North Sea offshore renewable energy cooperation?
- To what extent would you support amendments to Annex 29 to maximise the effectiveness of North Sea offshore renewable energy cooperation?

We look forward to a response to our queries within ten working days.

### 3 Trade and Cooperation Agreement: exchange of information on UK-EU road haulage<sup>7</sup>

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**This EU document is politically important because:**

- it establishes arrangements for the mandatory submission of documentation by UK hauliers when they transport goods by road within the EU under the terms of the Trade and Cooperation Agreement, and gives the UK authorities access to information on EU drivers carrying goods within the United Kingdom.

#### **Action**

- Draw to the attention of the Northern Ireland Affairs Committee, the Scottish Affairs Committee, the Transport Committee and the Welsh Affairs Committee.

#### **Overview**

3.1 Title I of Heading 3 of the [EU/UK Trade and Cooperation Agreement](#) (TCA), which covers transport, includes binding obligations between the two sides with respect to road haulage operations from the UK to the EU and *vice versa*, which allow for unlimited rights to carry goods between the UK and the EU.<sup>8</sup> This section of the TCA also provides for limited ‘cabotage’ and ‘cross-trade’ rights for UK road transport operators within the EU, where cabotage refers to the ability of a commercial driver from the UK to carry goods between two points within the EU within a single EU Member State, and cross-trade to a similar journey between two Member States.<sup>9</sup> According to the Department for Transport, “nearly all international commercial road transport involving the UK [is] operated under the relevant terms of the TCA”.<sup>10</sup>

3.2 In return for this liberalised road transport regime, the UK accepted under the terms of the TCA that it would continue to apply the substance of many EU road transport laws

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7 Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Specialised Committee on Road Transport as regards the technical and procedural specifications of the use of the Internal Market Information System (‘IMI’) by the United Kingdom and the contribution to its costs; COM number: COM(2022) 363; Legal base: Article 218(9) TFEU; Department: Transport; Devolved Administrations: Consulted; ESC number: 42113.

8 Road transport operations for the carriage of passengers between the UK and EU are governed separately under Title II of Heading 3 of the TCA.

9 Department for Transport, ‘[Guidance: International road haulage: jobs inside an EU country or between EU countries](#)’ [accessed 21 December 2022]. Under [Article 462 of the Agreement](#), UK hauliers can undertake up to two additional laden journeys within the European Union after having made a laden international journey from the UK to a destination within the bloc, one of which can be cabotage (i.e. between two points in a single Member State) except in Ireland, where two such journeys are allowed. These cabotage and cross-trade arrangements are less generous than those UK haulage firms [enjoyed within the EU](#) prior to Brexit. Even so, they are well above the previous ‘no deal’ baseline for cross-border road transport services.

10 Department for Transport, [Explanatory Memorandum](#) accompanying the Drivers’ Hours and Tachographs (Amendment) Regulations 2020. The UK also [unilaterally granted](#) EU hauliers more expansive cabotage rights in 2021 and early 2022 to ease supply chain pressures, but this was discontinued in April 2022.

after Brexit.<sup>11</sup> This commitment notably covers a requirement to implement significant portions of the EU’s 2020 ‘[Mobility Package](#)’,<sup>12</sup> a collection of EU laws covering a variety of road transport policy issues.<sup>13</sup> Among other things, the Mobility Package introduced new requirements for ‘posted drivers’ from one EU country carrying out cabotage operations in another. Typically, they are now subject to the labour laws of the EU Member State where they are carrying goods, rather than the one where their company is registered (for example with respect to the applicable rules on their minimum wage).<sup>14</sup> This arrangement resulted from political concerns in EU countries with higher wages, that their drivers were being ‘undercut’ by cheaper competition from other parts of the EU.<sup>15</sup> To help enforce this, haulage companies in the European Union must provide information about upcoming cabotage trips via the EU’s [Internal Market Information system](#) (IMI), which can then be accessed by the relevant public authorities across the bloc.<sup>16</sup>

3.3 The Trade and Cooperation Agreement broadly speaking also applies the same arrangement to relevant UK-EU road transport operations. In particular, since February 2022 the Agreement has required that UK drivers carrying out cabotage or cross-trade within the EU must submit a posting declaration via the EU’s IMI system “in the same way as EU hauliers do”.<sup>17</sup> The relevant authorities in the EU can then request further assistance from the British authorities relating to vehicles used for cabotage or cross-trade operations, and the UK can do likewise in respect of EU drivers carrying out cabotage in its territory.<sup>18</sup> The Department for Transport has [proposed](#) introducing a specific offence in British law if an operator fails to provide the UK authorities with this information, once requested from the EU authorities.<sup>19</sup>

3.4 It should be noted that unlike the EU, the UK for its part does not appear to have yet made it compulsory under its domestic legislation for EU hauliers to submit posted driver declarations when undertaking cabotage operations in the UK. The Department for Transport [consulted](#) in summer 2022 on a proposed policy to create a “statutory

11 Department for Transport, ‘[Changes to the UK operator licensing regime and arrangements for the temporary posting of workers in the UK and EU: request for evidence](#)’ [accessed 8 December 2022]. Under the TCA, the UK agreed to implement the substance of new EU laws on HGV operator licensing, maximum driving times and recording equipment (tachographs) in relation to haulage operations between the UK and EU. For example, section 2 of Appendix 31-B-1–2 to Annex 31 of the TCA, on “Driving times, breaks and rest periods” mirrors the EU Regulation 2020/1054 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods (adopted as part of the 2020 Mobility Package).

12 European Scrutiny Committee, Thirtieth Report of Session 2017–19 (HC 301–xxix), [chapters 8 and 9](#) (6 June 2018).

13 The Mobility Package laws were adopted by the EU in mid-2020 when the UK had already left the bloc, and took effect well after EU transport legislation ceased to apply. The UK participated in the negotiations leading to the adoption of the Mobility Package as a Member State, but did not have a vote on their formal adoption as this took place in April 2020, after the UK’s formal withdrawal from the European Union on 31 January 2020. As such, these rules are not “retained EU law” on the UK statute book.

14 See Directive 96/71/EC, Directive 2014/67/EU and Directive (EU) 2020/1057.

15 See for example S&D Group, ‘[S&Ds vote down attempts to undermine workers’ rights in the road transport sector](#)’ (4 July 2018).

16 This information must include, for example, the identity of the driver, the intended start and end date of the posting and the number plates of the motor vehicle or vehicles being used.

17 Article 6(1) point (a) of Section 2 of Part A of Annex 31 to the TCA. See: Department for Transport, ‘[Guidance: International road haulage: jobs inside an EU country or between EU countries](#)’ [accessed 19 December 2022].

18 The IMI was established by Regulation (EU) No 1024/2012.

19 If a UK driver is stopped by an EU Member State’s enforcement authorities and is unable to produce their Posting Declaration, the EU country’s authorities can request the information from the operator. If an operator fails to provide this evidence within eight weeks, the EU country’s authorities can request this information from the UK Driver and Vehicle Standards Agency (DVSA), who then work in conjunction with the Office for the Traffic Commissioners (OTC). The UK is required by the TCA to support any enforcement efforts and so the UK would attempt to seek this information from the operator.

requirement in Great Britain for EU operators to have completed the Posting Declaration processes” for “all cabotage transports by EU operators within Great Britain or between Great Britain and Northern Ireland”. The outcome of that consultation process has not yet been published as of 25 January 2023.<sup>20</sup> The issue of cabotage by EU drivers within the UK has also generated controversy in the past, in particular when the Government [unilaterally relaxed](#) cabotage restrictions in 2021 and 2022 to ease supply chain pressures.<sup>21</sup>

3.5 As regards the requirement for posting declarations under the TCA, there have been recent developments to formalise that arrangement. The UK authorities—in particular the [Office for the Traffic Commissioners for Great Britain](#) (OTC)—lost access to information submitted via the IMI system automatically when the UK left the Single Market at the end of the post-Brexit transition period. While UK haulage operators have been able to submit posting declarations through the system since this became a requirement in February 2022, this was an informal arrangement. To put the UK’s use of the IMI in relation to cabotage on a solid footing, the TCA empowers the EU/UK Specialised Committee on Road Transport, a technical body composed of UK and EU officials, to set the “technical and procedural specifications of the use of the IMI by the UK”. This would then formally give UK operators and authorities access to the system, as well as establishing a (modest) financial contribution by the Government towards the operation of the IMI.<sup>22</sup>

3.6 On 28 July 2022, the European Commission published a [draft Decision of the Specialised Committee](#) on the UK’s use of the system for monitoring of road cabotage operations, as part of a [formal proposal](#) to the EU Member States in the Council of Ministers for authorisation to approve such a Decision jointly with the UK. The substance of the Commission proposal in essence mirrors the relevant aspects of EU law on use of the IMI as it applies to its Member States,<sup>23</sup> adapted to the specificities of the UK-EU relationship under the TCA. With respect to the financial contribution, the Commission proposed the UK pay a one-off development fee of €232,835 (approximately £200,000), as well as an annual inflation-linked contribution of €86,204 (£75,000).<sup>24</sup>

3.7 The EU Member States in the Council of Ministers [approved](#) the proposal on 8 November 2022, at which point the European Commission was authorised to sign the Decision on the EU’s behalf. With the UK Government’s agreement, the Decision was adopted in the form proposed by the EU, without any amendments, at the [annual meeting of the Specialised Committee on Road Transport](#) on 21 November 2022 (including the amount of the UK financial contribution).<sup>25</sup> This sequence of events indicates the substance had already been agreed at technical level between the UK and the EU, and its formal approval by the Specialised Committee was, effectively, a rubber-stamping exercise.

20 Department for Transport, [‘Consultation: Posting of Road Transport Workers and Additional Operator Licensing Changes’](#) (June 2022).

21 Road Haulage Association, [‘Cabotage: RHA makes urgent call to hauliers on further consultation’](#) (9 March 2022).

22 That contribution would previously have been included in the UK’s overall contribution to the EU budget as a Member State.

23 Namely Commission Implementing Regulation (EU) 2021/2179.

24 [In chapter four of this Report, we are also reporting on a similar draft Decision of the EU/UK Specialised Committee on Social Security established under the TCA, which is considering a similar issue in relation to exchange of information between the EU and UK—in that case on individuals’ social security entitlements—via another EU system in return for a UK financial contribution.]

25 The intention had been for the Decision to be in place for February 2022, when the new ‘posted driver’ requirements took effect within the EU itself. However, this was delayed by a number of months while the technical details were negotiated and the EU completed its internal processes for approval of the arrangement.

3.8 On the UK side, no prior parliamentary consultation or approval was required before the Government could agree to the Decision. However, the Department for Transport did submit an [Explanatory Memorandum](#) on the draft Decision relating to the UK's use of the IMI system on 28 November 2022, after it had been formally approved by the Specialised Committee.<sup>26</sup> In the Memorandum, the Minister for Roads (Richard Holden MP) said the Government considered that the terms proposed by the EU were “workable and fair”, describing the fact that UK hauliers will have to provide the same information in the same format as EU hauliers as “a reasonable approach”.<sup>27</sup> If the Government introduces domestic legislation to make postings requirements a condition of cabotage undertaken by EU hauliers within the UK, the EU IMI system will be used for such cases as well.

## Conclusions

3.9 The Decision on the UK's access to the IMI system for cabotage and cross-trade haulage operations is a technical matter, and not controversial. We have nonetheless decided to report it to the House given it reflects the significant changes that occurred in cross-border road transport between the EU and the UK after Brexit; the political sensitivities around competition from EU drivers carrying out cabotage for the UK haulage sector; and the wider relevance of smooth cooperation in road transport policy as part of the new EU/UK trading arrangements. The [minutes](#) of the 2021 EU/UK Specialised Committee on Road Transport also indicate the two sides are still considering a number of other issues in relation to the TCA's provisions on haulage, notably as regards exchange of information on registered road transport operators and the use of ‘tachographs’ to record drivers’ working hours.<sup>28</sup> Further Decisions of the Specialised Committee may therefore follow in 2023 and beyond, and we will scrutinise those separately in due course.

3.10 We draw our assessment of the UK's connection to the EU Internal Market System for posted driver declarations to the attention of the Northern Ireland Affairs Committee, the Scottish Affairs Committee, the Transport Committee, and the Welsh Affairs Committee, in particular in the context of the Department for Transport's recent consultation on making it a legal requirement under UK law for EU hauliers to submit such declarations when undertaking cabotage within the United Kingdom.

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26 Under the new EU parliamentary scrutiny arrangements, the formal scrutiny of joint UK/EU Decisions under the Trade and Cooperation Agreement by this Committee only commences with the publication of a relevant proposal by the European Commission. There is no obligation on the Government to provide information to Parliament on such draft Decisions before they are published by the Commission, even if the Government has already informally discussed or even agreed their substance with the EU in advance.

27 With respect to the UK's financial contribution to make use of the EU's IMI system, the Government “accepts this amount is an appropriate and reasonable share of the total system costs”, adding that the “exchange rate to be used is subject to confirmation”. The Minister also notes the reciprocity inherent in the mechanism, as “participation in the IMI system allows UK authorities to check the compliance of EU hauliers operating cabotage within the UK with certain UK labour laws including minimum wage provisions”.

28 [Minutes](#) of the 1st meeting of the EU/UK Specialised Committee on Road Transport on 24 November 2022 [accessed 20 December 2022].

## 4 Trade and Cooperation Agreement: exchange of social security information between the UK and EU<sup>29</sup>

**This EU document is politically important because:**

- it provides the basis for exchange of information on individuals' social security and benefit entitlements in the EU and the UK if they have moved between the two after Brexit.

Action

- Draw to the attention of the Work and Pensions Committee.

### Overview

4.1 Prior to Brexit, the UK was part of the EU's legal system for the coordination of social security rules. This determined, for example, which national government is responsible for providing benefits for EU residents who move between different Member States, like access to public healthcare or unemployment benefit.<sup>30</sup> Following its withdrawal from the EU, the UK automatically left that system. However, the 'Citizens' Rights' section of the [Withdrawal Agreement](#), which (broadly speaking) covers individuals who exercised their free movement rights to move between the EU and the UK prior to 31 December 2020, maintains the direct application of EU social security coordination law to those individuals in scope of its provisions.<sup>31</sup>

4.2 For people who have moved between the UK and EU since 1 January 2021 (and who are not in scope of the Withdrawal Agreement), the new UK/EU [Trade and Cooperation Agreement](#) (TCA) also contains an extensive [Protocol on social security coordination](#) (the 'SSC Protocol'). This sets out a detailed framework on "social security and healthcare protection for individuals moving between the UK and the EU",<sup>32</sup> determining for example whether such an individual is entitled to access benefits in the UK or an EU Member State. According to evidence submitted to the House of Lords EU Environment Sub-Committee in February 2021, the provisions of the Protocol largely mirror the substance of the EU's

29 Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Specialised Committee on Social Security Coordination established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, as regards the use of the Electronic Exchange of Social Security Information for the transmission of data between institutions or liaison bodies; COM number: COM(2022) 683; Legal base: Article 218(9) TFEU; Department: Work and Pensions; Devolved Administrations: consulted; ESC number: 42150.

30 For more information on the EU's system of coordination of social security, please see the European Scrutiny Committee's Sixty-Second Report of Session 2017–19 (HC 301–lx), [chapter 11](#) (3 April 2019).

31 Department for Work and Pensions, '[Guidance relating to the UK's operational implementation of the social security coordination provisions of Part 2 of the EU Withdrawal Agreement: Citizens' Rights](#)' [accessed 20 December 2022].

32 *ibid.*

legislation on coordination of social security (although the Protocol’s legal effects in terms of creating directly enforceable rights for individuals as regards access to benefits and healthcare are very different from EU law).<sup>33</sup>

4.3 To aid the implementation of the substance of the SSC Protocol, the UK and EU Member States are required to “provide or exchange all data necessary for establishing and determining the rights and obligations of persons” to whom the Protocol applies. To facilitate such data exchanges, the TCA foresees the UK being given access to the EU’s [Electronic Exchange of Social Security Information](#) (‘EESSI’), in return for a financial contribution.<sup>34</sup> EESSI is an IT system operated by the European Commission that helps approximately 5,000 social security institutions across Europe—for example, the Department for Work and Pensions—to exchange information related to the different types of benefits covered by the EU’s laws on coordination of social security.<sup>35</sup> Its purpose is to enable “faster and more efficient exchanges between social security institutions” which in turn “allows them to handle individual cases more quickly, improves the accuracy of such data exchanges owing to the use of standardised electronic documents and procedures, encompasses safeguards against fraud and error, and ensures the secure handling of personal data through a common secure infrastructure”. The UK was fully connected to the EESSI while it was a Member State of the EU and retains partial access to it for the purposes of implementing the social security rights of those covered by the ‘Citizens’ Rights’ provisions of the Withdrawal Agreement (see above).

4.4 For the UK to also be able to make use of the EESSI for the purposes of the TCA’s Social Security Protocol, the Agreement requires a formal Decision by the EU/UK Specialised Committee on Social Security (a technical body composed of UK and EU officials).<sup>36</sup> On 2 December 2022, the European Commission published a [draft Decision](#) to that effect, and requested [approval](#) by the EU’s Council of Ministers to formally adopt it with the UK within the Specialised Committee.<sup>37</sup> The legal text is straightforward, stating that “the transmission of data between the [...] Member States and the United Kingdom shall be carried out via the Electronic Exchange of Social Security Information”.<sup>38</sup> After the EU Member States in the Council of Ministers approve the proposal, the Commission

33 House of Lords EU Environment Sub-Committee, Evidence submitted by Mark Dayan, Nuffield Trust; Nicholas Fahy, University of Oxford; Tamara Hervey, University of Sheffield; Martha McCarey, Nuffield Trust; Matthew Wood, University of Sheffield ([EEH0007](#)) (February 2021).

34 Article SSCI.71(4) of the Social Security Protocol.

35 European Scrutiny Committee, Sixty-Second Report of Session 2017–19 (HC 301–lx), [chapter 11](#) (3 April 2019).

36 We consider a similar joint UK/EU Decision, on the UK’s access to the EU’s Internal Market Information system in respect of road transport cabotage operations under the TCA, in a separate chapter of this Report.

37 Joint UK/EU Decisions taken by the bodies created under the TCA are legal acts that, once adopted, have the same force as the Agreement itself.

38 The Decision itself does not establish the size of the UK’s financial contribution towards the use of the EESSI under the TCA. This cost from 2023 onwards will be calculated based on the UK’s usage of the system as a percentage of total usage and applying that share to the EESSI’s running costs as paid for from the relevant EU budget line.

will be authorised to sign the Decision on the EU’s behalf. The intention is for the Decision to be formally approved by the UK and the EU in the Specialised Committee by written procedure in early 2023, after the EU has completed its internal approval processes.<sup>39</sup>

4.5 On the UK side, no prior parliamentary consultation or approval is required before the Government can agree to the Decision to use the EESSI under the TCA. However, the Minister for Employment at the Department for Work and Pensions (Guy Opperman MP) submitted an [Explanatory Memorandum](#) on the draft Decision on 20 December, as part of our new EU parliamentary scrutiny arrangements agreed in October 2022.<sup>40</sup> The Memorandum expresses the Government’s support for the use of the EESSI to implement the Social Security Protocol, citing the text of the European Commission’s proposal in arguing that it “enables faster and more efficient exchanges between social security institutions, which allows them to handle individual cases more quickly”. The Minister notes that, “if we do not opt into this system, cases processed under the SSC Protocol [would] either need to be dealt with clerically (which is not in the spirit of the TCA, where States should look to exchange data electronically wherever possible) or they will need to be exchanged on a new system”.

## Conclusions

4.6 Given the technical nature of these developments, we have no further questions for the Minister about the UK’s connection to the EESSI system for the purposes of smooth implementation of the Social Security Protocol with the European Union under the TCA. We have nonetheless decided to report it to the House as politically important: the need for this Decision and the Protocol to which it relates reflect the significant changes brought by Brexit to the rights of those who move between the UK and the EU, and the need for accurate exchange of information with the EU to determine individuals’ access to benefits in the UK under these new arrangements. We therefore also draw these developments to the attention of the Work and Pensions Committee.

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39 The [minutes](#) of the second meeting of the EU/UK Specialised Committee on Social Security on 30 June 2022 note that “both co-chairs emphasised the practical importance of the EESSI and their commitment to adopting the envisaged Specialised Committee Decision by written procedure as soon as possible”. As we have seen with other joint UK/EU Decisions under the TCA as discussed in this Report, this sequence of events indicates the substance had already been agreed at technical level between the UK and the EU by the time it was published in draft by the European Commission, and its formal approval by the Specialised Committee will, effectively, be a rubber-stamping exercise.

40 Under the new EU parliamentary scrutiny arrangements, the formal scrutiny of joint UK/EU Decisions under the TCA by this Committee commences with the publication of a relevant proposal by the European Commission. There is no obligation on the Government to provide information to Parliament on such draft Decisions before they are published by the Commission, even if the Government has already informally discussed or agreed their substance with the EU in advance.

## 5 Trade and Cooperation Agreement: EU position on list of independent arbitrators to resolve disputes<sup>41</sup>

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**This EU document is politically important because:**

- it sets out the EU’s position on the adoption of lists of arbitrators who can be called upon to form a panel under the Trade and Cooperation Agreement’s dispute resolution procedures;
- the subsequent decision adopted by the TCA Partnership Council on 21 December was only made by written procedure as no meeting of the PC took place in 2022, though the Government says the next meeting is scheduled for early January 2023; and
- the role of arbitrators could become important should the Government ever wish to progress to arbitration a future dispute under the TCA.

### Action

- Write to the Minister with responsibility for UK-EU relations (Leo Docherty MP) for an update on the dispute, the scheduling of PC meetings and the use of written procedure for the adoption of PC decisions.
- Draw this chapter to the attention of the International Trade Committee, the Science and Technology Committee and the Business, Energy and Industrial Strategy Committee.

### Overview

5.1 The Trade and Cooperation Agreement ([TCA](#)) contains a formal system of dispute resolution where either the UK or EU considers that the other party is not correctly implementing the treaty.

5.2 This requires the two sides first seek to resolve any disputes politically in good faith through consultations in the TCA’s Partnership Council (PC).

5.3 However, if a resolution is not reached in this way, either party can request the establishment of an arbitration panel under Article 740 of the TCA to consider the dispute (for example to determine whether one side has not fulfilled its legal obligations under the Agreement). The tribunal shall be composed of three arbitrators (including a chairperson),

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41 Proposal for a Council Decision on the position to be taken on behalf of the European Union within the Partnership Council established by the TCA between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, as regards the adoption of a decision establishing a list of individuals who are willing and able to serve as members of an arbitration tribunal under the Agreement ; Council and COM number: [15401/22 + ADD 1](#), COM (22) 589; Legal base: Article 217 TFEU, in conjunction with Article 218(9) TFEU; Department: Foreign, Commonwealth and Development Office; Devolved Administrations: Consulted; ESC number: 42141.

to provide a final and binding ruling on the issue. The arbitrators must endeavour to make their rulings by consensus and only by majority vote where necessary.<sup>42</sup> The tribunal's ruling is binding on both sides.

5.4 As set out in Article 752 of the TCA, the PC was meant to establish the list by 30 June 2021 but has been delayed until now.<sup>43</sup> This [proposal](#) from the European Commission seeks a Decision from the Council of the EU on the position to be adopted on behalf of the EU in the PC with regard to establishing a list of at least 15 persons who are willing and able to serve as members of an arbitration tribunal.

5.5 The [decision](#) was adopted by the EU Council on 19 December. It was then followed by a joint EU/UK [decision](#)<sup>44</sup> establishing the list of arbitrators under the TCA. This was adopted by the TCA PC on 21 December.

5.6 This completes the process for listing arbitrators for the TCA. Under the Withdrawal Agreement, lists of arbitrators for dispute resolution were [decided](#)<sup>45</sup> by the Joint Committee in December 2020. Since then one [amendment](#)<sup>46</sup> to the EU list was made in 2022 to replace an arbitrator who had been subsequently appointed as an Advocate General to the Court of Justice of the European Union (CJEU).

## Requirements for arbitrators and arbitration panels

5.7 The TCA requires arbitrators to have demonstrated expertise in law and international trade, including on specific matters covered within the TCA.<sup>47</sup> Chairpersons must also have experience in dispute settlement procedures. All arbitrators must possess the qualifications required for appointment to high judicial office in their respective countries or be “jurisconsults<sup>48</sup> of recognised competence”.

5.8 Arbitrators also cannot be affiliated with or take instruction from either the EU or UK and shall serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute. Their independence must be “beyond doubt”.

42 The Government invited [expressions of interest](#) for the UK list on three occasions in 2022. The Commission also issued a [call for applications](#) which expired in February 2021. In the absence of an agreed list, the TCA provides that “the arbitrators shall be selected by lot from the individuals who have been formally proposed” by the UK or the EU in accordance with [Annex 48 of the Agreement](#) (see Article 754 TCA). We considered the delay in agreeing lists of TCA arbitrators in our Thirteenth Report HC 121–xii, [chapter 3](#), (1 December 2021). In response to our [letter](#) to the then Minister of State at the Cabinet Office (Rt. Hon. Lord Frost CMG) of 1 December 2021, the Foreign Secretary (Rt. Hon James Cleverly MP) responded on 31 March 2022.

43 In accordance with Article 752 TCA.

44 Decision No 3/2022 of the Partnership Council established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part and the United Kingdom of Great Britain and Northern Ireland of the other part of 21 December 2022 establishing a list of individuals who are willing and able to serve as members of an arbitration tribunal under the Trade and Cooperation Agreement.

45 Decision of the Withdrawal Agreement Joint Committee on establishing a list of 25 persons who are willing and able to serve as members of an arbitration panel under the Agreement, 17 December 2020.

46 Decision 2/2022 of the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

47 See Article 741 of the TCA.

48 Jurisconsult is not defined in the TCA. Legal dictionaries state that a jurisconsult is an individual qualified to give advice on the law, particularly international and public law.

5.9 The function of the arbitration tribunal, in accordance with Article 742 of the TCA, is to make an objective assessment of the relevant dispute. It must also set out the findings of facts, law and reasoning behind its decisions. The tribunal must consult regularly with the UK and EU and provide adequate opportunities for a mutually agreed solution.

## The Government's view

5.10 In an [Explanatory Memorandum](#) of 1 December 2022, the Minister for Europe (Leo Docherty MP) tells us that the UK and EU have each selected six individuals available to serve as members of an arbitration tribunal and a further four each who may serve as chairpersons. Both sides conducted independent selection processes, before nominating candidates for the other to consider. The UK nominations were decided by Ministers after recommendations from a senior official selection panel that reviewed and sifted applicants who had applied through its Expression of Interest Campaign.

5.11 The final selection of 20 individuals agreed by the parties in the Annex to the proposed Decision is as follows:

- Chairpersons: Leora Blumberg, Gavan Griffith, Campbell McLachlan, Christopher Thomas, Thomas Cottier, William J. Davey, Valerie Hughes and Penelope Jane Ridings.
- EU nominated arbitrators: Laurence Boisson de Chazournes, Irina Buga, Michael Hahn, Crenguta Leaua, Helene Ruiz Fabri and Peter Leo Henri van den Bossche.
- UK nominated arbitrators: Jean Kalicki, Lawrence Collins, Janet Whittaker, Surya Subedi, Lorand Bartels and David Unterhalter.

5.12 The Minister also tells us that:

We expect the Council to formally adopt the Commission's proposal in early December. A joint decision to establish the list will then be taken by the Partnership Council via written procedure shortly thereafter. Reaffirmation and reference to this decision will then be noted at the Partnership Council meeting currently scheduled for early January.

## Our analysis

### *Importance of arbitration to the UK for any future disputes under TCA*

5.13 The appointment of arbitrators is politically important, not least because of the possible need to establish a panel to resolve any future dispute the UK has with the EU under the TCA.

5.14 We note that the UK has recently [initiated](#)<sup>49</sup> a dispute under the TCA concerning UK participation in the EU sciences programmes, such as Horizon. At the time of writing, there is no indication that the Government has progressed the dispute to the stage of requesting independent arbitration

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49 Foreign, Commonwealth and Development Office, 'UK launches formal consultations with EU over access to scientific programmes', 16 August 2022.

5.15 By way of background to that ongoing dispute, after Brexit the UK negotiated continued participation in several EU funding programmes related to science and space until 2027 under the EU/UK Trade and Cooperation Agreement. In return, it would have to make a £17bn gross contribution to the EU budget.<sup>50</sup>

5.16 While the TCA states the UK “shall participate in and contribute to the Union programmes”,<sup>51</sup> the EU refused to formalise UK participation in response to the Government’s decision not to fully implement the (legally separate) Northern Ireland Protocol. Talks on resolving the conflicting positions on the Protocol stalled in February 2022. This situation has left UK scientists and organisations unable to access EU funding they have provisionally been awarded, with some moving their research to the EU instead to secure the funds. It also means UK companies are barred from bidding for tenders related to the EU space programme.

5.17 On 16 August 2022, in her then-capacity as Foreign Secretary, Rt Hon. Elizabeth Truss MP, formally requested consultations with the EU on the matter, the first stage of dispute resolution. Talks then took place between EU and UK officials on 22 September, but the EU again refused to approve the UK’s participation. There has been no progression yet by the UK to the second stage of dispute resolution under the TCA: referring the matter to independent arbitrators under Article 740 of the TCA. The adoption of a decision listing arbitrators by the PC on 21 December would make the process of establishing an arbitration panel more straightforward.

### *Frequency of meetings of the PC and use of written procedure*

5.18 We note the Minister’s view that the PC decision to which this EU proposal corresponds would be made by written procedure. Also, that the next PC is currently scheduled for early January 2023.

5.19 Article 7(2) of the TCA provides that the PC “...shall meet at the request of the Union or the United Kingdom, and, in any event, at least once a year, and shall set its meeting schedule and its agenda by mutual consent”.

5.20 The first and last time that the PC [met](#) was on 9 June 2021. This means that there has been no meeting of the PC in 2022, despite Article 7(2) stating that it “shall” meet “at least once a year”.

5.21 Rule 9 of Annex 1 of the TCA states “In the period between meetings, the Partnership Council may adopt decisions or recommendations by written procedure”.

5.22 Infrequency of PC meetings, especially below the annual frequency set out in Article 7(2) of the TCA, could mean an increased reliance on adopted decisions by written procedure. It seems therefore reasonable to consider whether this approach, if continued, could have any implications for transparency of decision-making, accountability of the Government and levels of engagement between the UK and EU on the TCA.

50 The Treasury has estimated gross UK contributions would be approximately £17 billion over the 7 years (i.e. not taking into account any EU funding being awarded to UK beneficiaries from these schemes). A [letter](#) dated 25 May 2021 from the then Minister for Science Research and Innovation (Amanda Soloway MP) to us refers to £15 billion estimated gross contributions for Horizon alone.

51 This commitment applies to Union programmes/activities that are listed in Protocol 1 to the TCA, a draft of which was included but remained to be agreed by the EU and UK.

## Conclusions and action

5.23 The substance itself of the proposed Decision is not controversial, and we are content to now complete our scrutiny of it.

5.24 However, given the potential importance of the arbitration procedure for any future disputes the UK may have with the EU under the TCA, we write to the Minister to welcome this development. We also ask him to explain why no PC was held in 2022 and about the infrequency of PC meetings and reliance on written procedure to adopt decisions.

5.25 . A copy of that letter is included below.

### *Letter from the Chair to the Minister for Europe (Leo Docherty MP)*

Thank you for your Explanatory Memorandum of 1 December 2022 concerning the EU’s proposed position on a future Decision of the UK/EU Partnership Council to agree lists of arbitrators for the purpose of dispute resolution under the Trade and Cooperation Agreement (TCA).

We welcome agreement on lists of arbitrators as it might make establishment of a panel easier should the UK ever want to progress to arbitration a future dispute with the EU under the TCA.

You anticipate that the Partnership Council decision corresponding to the EU’s proposal will be made by written procedure. Although you say that the next meeting of the Partnership Council is scheduled for early January 2023, we note that no meeting of the Partnership Council took place in 2022. This is despite Article 7(2) TCA stating that the Partnership Council “shall meet... at least once a year”.

We would be interested to learn why it was not possible to hold a Partnership Council in 2022. What implications, if any, are there for transparency of decision-making, the accountability of the Government and EU-UK engagement on the TCA of infrequent meetings of the Partnership Council and reliance on written procedure to adopt decisions?

## 6 Trade and Cooperation Agreement: Partnership Council Decision on Passenger Name Record Data<sup>52</sup>

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**The proposed EU Council Decision is politically important because:**

- it sets out the position to be taken by the EU in the Partnership Council established by the EU/UK Trade and Cooperation Agreement; and
- it signals the EU's agreement to the continuation of exchanges of Passenger Name Record (PNR) data between the EU and the UK, pending technical adjustments to the UK's systems for processing PNR data which must be completed by 31 December 2023.

### Action

- We have written to the Security Minister (Rt Hon. Tom Tugendhat MBE VR MP) requesting further information. We have also drawn this chapter to the attention of the Home Affairs Select Committee.

### Overview

6.1 This [proposal for a Council Decision](#) concerns the provisions in Part Three of the EU/UK Trade and Cooperation Agreement (TCA) which enable the EU and the UK to share Passenger Name Record ('PNR') data relating to individuals travelling by air between countries in the EU and the UK. PNR data refers to information such as contact details, travel itineraries and payment information provided by passengers when booking their flights which is held in their air carriers' passenger reservation systems.<sup>53</sup> PNR data received from air carriers may be shared with law enforcement authorities for the purposes of preventing, detecting, investigating or prosecuting terrorist or other serious criminal offences or, where necessary and in exceptional cases, for protecting an individual's "vital interests".<sup>54</sup>

6.2 Since leaving the EU, the UK no longer participates in the EU PNR Directive which regulates the exchange of PNR data amongst EU Member States. The TCA establishes a new legal basis and conditions for the exchange of PNR data between the EU and the UK as a third country. One of these conditions is that the UK must delete PNR data it has received from EU countries once passengers have left the UK unless there is objective

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52 Proposal for a Council Decision on the position to be taken on behalf of the EU in the Partnership Council established by the EU/UK Trade and Cooperation Agreement regarding the extension of the interim period referred to in Article 552(11) of that Agreement during which the UK may derogate from the obligation to delete Passenger Name Record data of passengers after their departure from the UK; COM(22) 646; Legal base—Articles 16(2), 87(2)(a) and 218(9) TFEU, QMV; Home Office; Northern Ireland Executive and Scottish Government consulted; ESC number 42143.

53 The specific categories of PNR data that can be exchanged are listed in Annex 40 to the TCA.

54 The examples given in Article 544(2) of the TCA are to protect against a risk of death or serious injury, or a significant public health risk.

evidence to suggest that specific individuals pose a risk of terrorism or other serious crime.<sup>55</sup> Implementing this condition requires technical adjustments to the UK’s automated PNR processing systems which the UK was unable to put in place before the TCA entered into force.<sup>56</sup>

6.3 As an interim solution, the TCA sets out some additional safeguards to ensure that PNR data which should have been deleted to comply with this condition are not used by UK authorities. The UK must provide the Specialised Committee on Law Enforcement and Judicial Cooperation—an official-level body responsible for monitoring and reviewing the implementation of Part Three of the TCA—with a report from an independent administrative body in the UK and verified by the UK’s Information Commissioner confirming that these additional safeguards have been applied effectively. The UK must also provide its assessment of the progress being made in adapting its automated PNR data processing systems to ensure that the relevant data are deleted.

6.4 Based on this information, the EU/UK Partnership Council (chaired by the Foreign Secretary for the UK and the European Commission Vice-President for the EU) is empowered to adopt a decision extending the period during which the UK may continue to apply these interim arrangements. It agreed on an initial one-year extension (ending on 31 December 2022) in December 2021.<sup>57</sup> The latest proposal for a Council Decision would authorise the EU’s representative in the Partnership Council to agree to a second and final extension ending on 31 December 2023. After that, the UK will need to ensure that its automated PNR data processing systems comply fully with the requirements set out in the TCA. A failure to do so would put the UK in breach of the Agreement. As the failure would relate to the protection of personal data, it could lead to the suspension of PNR exchanges between the EU and the UK or jeopardise the UK’s data adequacy decisions which are based on the European Commission’s assessment that the level of protection for personal data in the UK is essentially equivalent to that provided by EU law.<sup>58</sup>

6.5 The recitals to the proposed Council Decision indicate that the independent report and assessment of progress required by the TCA were considered by the Specialised Committee on Law Enforcement and Judicial Cooperation on 13 October 2022. The UK is considered to have made “substantial progress” in updating its PNR processing systems to include a capability (now being tested) to delete the PNR data of individuals when they leave the UK and in developing an automated risk assessment process to determine whether the PNR data of certain individual should be retained even though they have left the UK because they present a terrorist or other serious crime risk. In light of the progress made, the proposed Council Decision instructs the European Commission (representing

55 Article 552(4) TCA. This specific condition stems from a judgment of the EU’s Court of Justice in [Opinion 1/15](#) (26 July 2017) on the EU’s proposed PNR Agreement with Canada.

56 The EU and the UK reached an agreement on their future relationship on 24 December 2020. The agreement was signed on 30 December 2020 and applied provisionally from 1 January 2021 pending formal ratification and entry into force on 1 May 2021.

57 See [Decision 2/2021](#) of the Partnership Council adopted 21 December 2021.

58 For the purposes of PNR data exchanges between the EU and the UK, the adequacy decisions adopted by the European Commission under Directive (EU) 2016/680 (the Law Enforcement Directive) and Regulation (EU) 2016/679 (the General Data Protection Regulation) are both relevant—see Article 693(3) of the TCA.

the EU in the EU/UK Partnership Council) to support a second and final extension of the interim arrangements until 31 December 2023. The Council adopted the [Decision](#) on 19 December 2022.<sup>59</sup>

## The Government's position

6.6 In his [Explanatory Memorandum dated 6 December 2022](#), the Security Minister (Rt Hon. Tom Tugendhat MBE MP) welcomes the proposed Council Decision, noting that the instruction it would give to the European Commission to support a second and final extension of the interim arrangements until 31 December 2023 would “be in line with the position the UK will take in the Partnership Council”. He adds that the Partnership Council Decision will need to be taken “before the end of the year” and will be by written procedure.

6.7 The [Partnership Council Decision](#) was formally adopted on 21 December 2022.<sup>60</sup>

## Action

6.8 We have written to the Minister for Security asking him:

- whether he is confident that the UK will complete all the technical adjustments needed to ensure the continuation of PNR data flows beyond the end of 2023; and
- what (if any) contingency planning the Government is putting in place to prevent or mitigate any security risk to the UK if it is unable to do so in time.

## ***Letter from the Chair to the Security Minister (Rt Hon. Tom Tugendhat MBE VR MP), Home Office***

We have considered your [Explanatory Memorandum dated 6 December 2022](#) on a proposed Council Decision which would authorise the EU representative on the EU/UK Trade and Cooperation Agreement (‘TCA’) Partnership Council to agree a second and final extension of the period during which the UK can apply interim arrangements while it adapts its automated PNR data processing systems to meet the requirements for the deletion of PNR data set out in Article 552 of the TCA. We note that the Partnership Council Decision granting the extension was formally adopted on 21 December 2022.

There can be no further extension of the interim arrangements provided for in Article 552 TCA. This means that the UK will need to comply fully with the obligation to delete the PNR data of passengers arriving by air in the UK from an EU country as soon as they leave the UK unless a risk assessment based on objective evidence establishes a need to retain the data in individual cases. Are you confident that the UK will complete all the

59 Council Decision (EU) 2022/2574 on the position to be taken on behalf of the Union within the Partnership Council established by the TCA between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, as regards the extension of the interim period referred to in Article 552(11) of that Agreement during which the United Kingdom may derogate from the obligation to delete PNR data of passengers after their departure from the United Kingdom.

60 Decision No 2/2022 of the Partnership Council as regards the second and last extension of the interim period during which the UK may derogate from the obligation to delete PNR data of passengers after their departure from the UK.

technical adjustments needed to fulfil this obligation by the end of 2023? If the UK is unable to do so, what consequences might there be for exchanges of PNR data with EU partners beyond 2023 and what (if any) contingency planning are you putting in place to prevent or mitigate any security risk to the UK?

I look forward to receiving your response by the end of February.

# Annex

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## *Documents drawn to the attention of select committees:*

(‘SNC’ indicates that scrutiny (of the document) is not completed; ‘SC’ indicates that scrutiny of the document is completed)

**Business, Energy and Industrial Strategy Committee:** EU position on list of independent arbitrators to resolve disputes under the Trade and Cooperation Agreement (TCA) [Proposed Council Decision][SC]; Trade and Cooperation Agreement: UK-EU electricity trading arrangements [Proposed Council Decision][SNC]

**Home Affairs Committee:** Trade and Cooperation Agreement: Partnership Council Decision on Passenger Name Record Data [Proposed Council Decision][SC]

**International Trade Committee:** EU position on list of independent arbitrators to resolve disputes under the Trade and Cooperation Agreement (TCA) [Proposed Council Decision][SC]

**Northern Ireland Affairs Committee:** Trade and Cooperation Agreement: exchange of information on UK-EU road haulage[SC]

**Science and Technology Committee:** EU position on list of independent arbitrators to resolve disputes under the Trade and Cooperation Agreement (TCA) [Proposed Council Decision][SC]

**Scottish Affairs Committee:** Trade and Cooperation Agreement: exchange of information on UK-EU road haulage[SC]

**Transport Committee:** Trade and Cooperation Agreement: exchange of information on UK-EU road haulage [Proposed Council Decision][SC]

**Welsh Affairs Committee:** Trade and Cooperation Agreement: exchange of information on UK-EU road haulage[SC]

**Work and Pensions Committee:** Trade and Cooperation Agreement: Exchange of social security information between the UK and EU [Proposed Council Decision][SC]

# Formal Minutes

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**Wednesday 25 January 2023**

**Members present:**

Sir William Cash, in the Chair

Mr John Baron

Jon Cruddas

Margaret Ferrier

Mr Marcus Fysh

Mr David Jones

Adam Holloway

Craig Mackinlay

Gavin Robinson

Greg Smith

Document scrutiny

Draft Report, proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 6 read and agreed to.

Annex agreed to.

*Resolved*, That the Report be the Thirteenth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

**Adjournment**

Adjourned till Wednesday 1 February 2023 at 1.45 pm

## Standing Order and membership

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The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers—

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

**Current membership**

[Sir William Cash MP](#) (Conservative, Stone) (Chair)

[Tahir Ali MP](#) (Labour, Birmingham, Hall Green)

[John Baron MP](#) (Conservative, Basildon and Billericay)

[Jon Cruddas MP](#) (Labour, Dagenham and Rainham)

[Geraint Davies MP](#) (Labour, Swansea West)

[Allan Dorans MP](#) (Scottish National Party, Ayr Carrick and Cumnock)

[Richard Drax MP](#) (Conservative, South Dorset)

[Margaret Ferrier MP](#) (Independent, Rutherglen and Hamilton West)

[Mr Marcus Fysh MP](#) (Conservative, Yeovil)

[Dame Margaret Hodge MP](#) (Labour, Barking)

[Adam Holloway MP](#) (Conservative, Gravesham)

[Mr David Jones MP](#) (Conservative, Clwyd West)

[Stephen Kinnock MP](#) (Labour, Aberavon)

[Craig Mackinlay MP](#) (Conservative, South Thanet)

[Gavin Robinson MP](#) (Democratic Unionist Party, Belfast East)

[Greg Smith MP](#) (Conservative, Buckingham)