Written evidence

Prof. Adam Łazowski, Westminster Law School, University of Westminster, London

1. Following the withdrawal from the European Union, the United Kingdom no longer participates in the institutional framework of the EU. This has consequences at many levels. On the one hand, it follows the Brexit desideratum of taking back control of our laws. On the other hand, it translates into a significant loss of influence in Brussels. With no access to EU decision-making, or even decision-shaping,[1] the United Kingdom has lost several institutional outlets permitting it to have an impact on the final shape of EU rules. In broader terms, it no longer participates in the political life of the European Union. *Prima facie*, this may seem to be a moot point, bearing in mind that the United Kingdom is no longer a part of the EU legal order.[2] However, one needs to acknowledge that many a time EU rules produce an impact going beyond its borders, and thus they also affect the United Kingdom, its business community, and ordinary members of the public. To give this argument merit, it is enough to mention the EU *acquis* on, for example, customs, external trade, competition, financial services, data protection, environmental protection, and transport. Any developments in these areas may have a knock-on effect on the UK. This is notwithstanding the simple fact that thousands of EU legal acts remain in the UK legal orders as retained laws. Bearing this in mind, it is quite clear that the United Kingdom should not lose interest in developments in EU law. The question is whether the institutional framework envisaged in Articles 7-14 of the Trade and Cooperation Agreement (TCA) is fit for purpose.[3] A number of pertinent points and recommendations have already been made in the House of Lords Report of March 2021 (hereinafter: the Report).[4] Thus, the purpose of this submission is not to rehearse them again, but rather to offer additional arguments to the debate.

2. With Brexit, the United Kingdom has positioned itself at the receiving end of the EU external relations regime. Any institutional platforms for UK-EU dialogue and governance of the new relationship had to be anchored not in the models known from EU membership but rather from EU agreements concluded with its neighbouring countries. A *tour d'horizon* of the latter demonstrates that there is no-one-size-fits-all approach, yet many synergies between different models employed in neighbourhood agreements remain. The rule of thumb is: the closer economic and legal integration is, the more developed institutional platforms for bilateral cooperation are. The general pattern, especially in the case of the EU association agreements, is straightforward: the main institutions are bilateral councils, which are supplemented at a more technical level by committees. In many cases, they are joined by compulsory parliamentary committees.[5]

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[1] The notion of decision-shaping was coined in relation to the EEA-EFTA countries, and Switzerland. While neither participates in EU decision-making, in some instances civil servants have the right to participate in various EU working groups at the technical level, thus in the early stages of law-making procedures.

[2] Except for Northern Ireland, to which many pieces of EU secondary legislation continue to apply, *qua* the Protocol annexed to the EU-UK Withdrawal Agreement (Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, [2020] OJ L29/7).

[3] 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 [2021] OJ L149/10.

[4] European Union Committee, *Beyond Brexit: the institutional framework* (2019-21, HL 246).

[5] Association Agreement between the European Union and the European Atomic Energy Community and its Member States, of the one part, and Ukraine, of the other part [2014] OJ L161/3; Association Agreement

3. The main bilateral UK-EU institution envisaged in the TCA is the Partnership Council. As per Article 7 TCA, 'it shall comprise representatives of the Union and of the United Kingdom'. It has been noted in the Report that one of the striking features of this solution is the lack of 'direct involvement of the Member States'.[6] I have the misfortune to disagree with this interpretation of Article 7 TCA. Firstly, such wording should not come as a surprise bearing in mind that the TCA falls within EU exclusive competences. Put differently, it is not a mixed agreement, hence the Member States are not parties to it. Secondly, the notion of 'representatives of the Union' is broad enough to accommodate not only members of the European Commission but also the Council of the European Union (in particular, a Member State holding the six-month rotating presidency). Thirdly, precisely the same wording was employed in Article 164 of the EU-UK Withdrawal Agreement, governing the composition and powers of the Joint Committee. It did not stop the EU Member States from being represented at several meetings. For instance, during the second meeting of the Joint Committee held on 12 June 2020, fifteen Member States were duly represented.[7] It is true, however, that the composition of the Partnership Council seems to exclude meetings at the highest political level. The caveat laid down in Article 7(2) TCA takes away some flexibility. It provides that on the EU side, the meetings are co-chaired by a Member of the European Commission. This may amount to a regular commissioner in charge of EU neighbourhood relations, or a commissioner whose portfolio is trade. At the same time, this may include the High Representative for Foreign Affairs and Security Policy or the President of the European

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between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part [2014] OJ L260/4; Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part [2014] OJ L261/4; Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Former Yugoslav Republic of Macedonia, of the other part [2004] OJ L84/1; Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part [2009] OJ L107/116; Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part [2010] OJ L108/3; Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part [2013] OJ L278/14; Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part [2015] OJ L164/2; Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part [2016] OJ L71/3; Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part [2000] OJ L70/2; Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part [2006] OJ L143/2; Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part [2005] OJ L265/2; Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part [2004] OJ L304/39; Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part [2002] OJ L129/3; Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part [1997] OJ L187/3; Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, [2000] OJ L147/3; Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part [1998] OJ L97/2.

[6] n (4) 22.

[7] Press statement by Vice-President Maroš Šefčovič following the second meeting of the EU-UK Joint Committee, Brussels, 12 June 2020 < https://ec.europa.eu/commission/presscorner/detail/en/statement_20_1055> accessed 30 July 2021.

Commission. *Prima facie*, it seems to exclude the President of the European Council. On the UK side, the meetings are co-chaired by a representative at ministerial level. Again, this may be read as excluding the political top, that is, the Prime Minister. Analysis of other EU neighbourhood agreements demonstrates that necessary flexibility is often available. For instance, the EU-Albania Stabilisation and Association Council meets 'at an appropriate level at regular intervals and when circumstances require to examine any major issues arising within the framework of this Agreement and any other bilateral or international issues of mutual interest'.[8] Thus, meetings of the SAA Council traditionally involve the EU High Representative, a member of the European Commission and the Prime Minister of Albania.[9] It is a paradox that meetings of the most important bilateral bodies are held at a higher level with EU neighbours who are only aspiring to become EU members but not with a former Member State. The lack of bilateral summits at the highest political level is perplexing in equal measure.

4. Only in a handful of cases are regular bilateral summits envisaged in EU neighbourhood agreements.[10] Such gatherings at the highest political level can also happen *ad hoc*, outside a formal treaty framework. In past years, this has happened several times in EU-UK relations, although in all instances it has been a part of damage control exercises, not regular dialogue. Lord Frost, in his submission to the European Union Committee, seemed to downplay the lack of EU-UK summits in the text of the TCA.[11] This is not a point of view I can happily subscribe to for the following reasons. Firstly, a formal treaty-based requirement to hold bilateral summits at the top level provides a framework for regular contacts between persons at the apex of the political and governance hierarchy. As proven by the emergence of the European Council in the EU, many a time meetings held at lower levels may not bear fruit due to the limited political mandate of their participants. In other words, some key decisions need to have political backing coming from the very top. Furthermore, regular meetings at higher levels give the chance, but not a guarantee, of building good rapport between the interlocutors, and thus facilitating compromise. Secondly, the existence of a formal requirement to hold summits makes it more difficult for either side to ignore requests for meetings at the highest level. Thirdly, such summits, when formally incorporated into the institutional fabric of a bilateral institutional framework, may have more leeway over the lower tiers of governance, thus paving the way for decisions of the councils. Fourthly, as the evidence of EU-Ukraine summits shows, they serve as platforms for developing future steps in bilateral relations.[12] For the United Kingdom, regular meetings between the Prime Minister and Presidents of the European Council and the European Commission could be the ideal structures to rebuild lost trust and to shape the steps ahead. Put differently, EU-UK summits should become regular features on the political agenda, and not only serving as proverbial 'firefighting' exercises.

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[8] Article 116 of the EU-Albania SAA.

[9] Joint press statement following the 11th meeting of the Stabilisation and Association Council between the EU and Albania, Brussels, 1 March 2021 < https://www.consilium.europa.eu/en/meetings/international-ministerial-meetings/2021/03/01/> accessed 30 July 2021.

[10] See, for instance, Article 460(1) of EU-Ukraine Association Agreement: '1. The highest level of political and policy dialogue between the Parties shall be at Summit level. Summit meetings shall take place in principle once a year. The Summit shall provide overall guidance for the implementation of this Agreement as well as an opportunity to discuss any bilateral or international issues of mutual interest'.

[11] n (4) 22.

[12] See Joint statement following the 22nd EU-Ukraine Summit, Brussels, 6 October 2020 <https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1849> accessed 30 July 2021.

5. As the House of Lords aptly noted in the Report, the creation of a Parliamentary Partnership Assembly is merely optional, and the legal basis is very vague. It should be noted that such parliamentary committees are envisaged in most of the EU neighbourhood agreements, thus the solution envisaged in Article 11 TCA is an anomaly, not a norm. The Draft Agreement presented by the European Commission in March 2020 made the creation of the parliamentary committee compulsory, which was subsequently watered down during the negotiations. The experience proves that the existence of parliamentary committees is rather useful. Firstly, they create important platforms for regular dialogue between the legislatures of the neighbouring countries and the EU legislature. They may also serve as vehicles for building of trust, or pushing agendas serving the interests of the parties. For instance, in the case of the United Kingdom, the Parliamentary Partnership Assembly would be a useful platform to alert the European Parliament of the rights of UK citizens residing in the European Union. For those who exercised their free movement rights prior to the expiry of the Transition Period, adequate levels of protection and procedural guarantees are provided in the Withdrawal Agreement. However, those who migrate after 1 January 2021 fall under national and EU immigration rules only. Furthermore, the TCA - in general terms - does not produce direct effect. Paradoxically, citizens of Russia or Turkey have a higher level of protection from discrimination in the European Union than UK citizens (former EU citizens). Finally, UK citizens and UK businesses face a tsunami of obstacles and difficulties triggered by Brexit. Again, the Assembly would be a good point to raise the European Parliament's awareness of these matters. It should be remembered that over the years the European Parliament has emerged from being merely an advisory body to become an important political actor and law-maker.

6. There is no doubt that the institutional dimension of post-Brexit UK-EU relations is slowly being put into action. Everyday practice will verify whether the framework envisaged by the TCA is fit for purpose. Apart from the discussed deficiencies, the multifarious committee structure is unprecedented, and it may in itself be a source of problems. Such complex designs may prove to be resource thirsty and require solid coordination efforts. Until all EU-UK committees and working groups are fully operational, this is merely speculation. However, it is certainly worth bearing it in mind.