

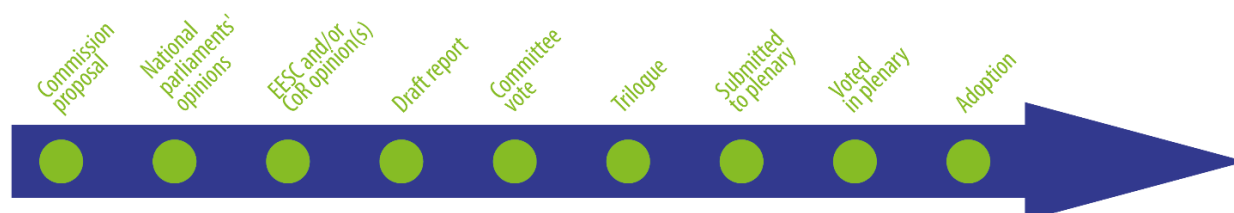
Rules for exercising the Union's rights in implementing and enforcing EU-UK agreements

OVERVIEW

The Withdrawal Agreement (WA) and the Trade and Cooperation Agreement (TCA) between the EU and the UK set the terms for the UK's departure from the Union and a framework for future relations. Tensions surfaced, mainly related to fisheries and the Protocol on Ireland / Northern Ireland (the Protocol), which is a part of the WA. The UK had threatened to take 'unilateral measures' on issues such as border controls. For its part, the EU launched legal actions against the UK for failing to fulfil its obligations. In May 2023, the EU adopted a regulation empowering the Commission to act by means of implementing acts to enforce and implement the two agreements. The new Regulation means that the Commission may impose restrictions on trade, investment or other activities if the UK is in breach the terms of WA and TCA. The new law entered into force in April 2023.

Regulation (EU) 2023/657 of the European Parliament and of the Council laying down rules for the exercise of the Union's rights in the implementation and enforcement of the Agreement on the withdrawal of the United Kingdom from the European Union and the European Atomic Energy Community and of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom, of the other part.

| | | |
|-------------------------|--|---|
| Committees responsible: | Foreign Affairs (AFET); International Trade (INTA); Constitutional Affairs (AFCO) (Rule 58) | COM(2022) 89 11.3.2022 |
| Rapporteurs: | Danuta Maria Hübner (EPP, Poland); Seán Kelly (EPP, Ireland); Andreas Schieder (S&D, Austria) | 2022/0068(COD) |
| Shadow rapporteurs: | David McAllister (EPP, Germany); Pedro Silva Pereira (S&D, Portugal); Charles Goerens (Renew, Luxembourg); Nathalie Loiseau (Renew, France); Francois Alfonsi (Greens, France); Gwendoline Delbos-Corfield (Greens, France); Anna Fotyga (ECR, Poland); Helmut Scholz (The Left, Germany); Idoia Villanueva-Ruiz (The Left, Spain) | Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision') |
| Procedure completed. | Regulation (EU) 2023/657 OJ L 83, 22.3.2023, pp. 1-6 | |



Introduction

On 11 March 2022, the European Commission put forward a [proposal](#) for a [regulation](#) laying down rules for the exercise of the EU's rights in the implementation and enforcement of the agreements between the European Union (EU) and the United Kingdom (UK), namely the Withdrawal Agreement ([WA](#)) and the Trade and Cooperation Agreement ([TCA](#)).¹

The EU-UK WA has ensured an orderly exit of the UK from the EU. It chiefly covers three areas – the financial settlement, the rights of citizens in the territory concerned at the time of withdrawal, and the establishment of a special status for Northern Ireland enshrined in the Protocol on Ireland/Northern Ireland (the [Protocol](#)). The post-withdrawal EU-UK relationship is also governed by the EU-UK TCA, which chiefly [covers](#) the area of trade in goods, as well as energy, transport and fisheries. It also includes extensive chapters to ensure a '[level playing field](#)' in the areas of State aid, labour law and environmental law, which remains a [contentious issue](#). Although disputes in certain domains are to be settled separately by the parties by means of arbitral tribunals, the single dispute settlement framework permits retaliatory measures, in case of disagreements affecting the domains covered by the TCA ('horizontal dispute settlement').

The context

Since the EU-UK WA entered into force on 1 February 2020, the EU-UK relationship has seen noteworthy [friction](#) regarding the application and implementation of the (Northern Ireland) Protocol. First, the UK [tabled](#) the Internal Market Bill in 2020, which would have given the UK government the possibility to take 'unilateral measures' to dis-apply articles of the Protocol. In response, the EU launched [legal action](#) against the UK and sent a letter of formal notice on 15 March 2021 for breaches of substantive provisions of EU law concerning the movement of goods and pet travel made applicable by virtue of the Protocol on Ireland and Northern Ireland. That procedure was [suspended](#) in July 2021 to leave room for negotiations. Following [riots](#) in Northern Ireland, which were partly in protest against the Protocol, the UK argued that there were grounds for invoking [Article 16](#) of the Protocol, for instance in its [Command Paper](#) published in July 2021.² Article 16 of the Protocol envisages that a party 'may unilaterally take appropriate safeguard measures' if the application of the Protocol leads to 'serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade'. Additional significant issues have surfaced in other areas, covered by the TCA, such as [fisheries](#).

More recently, the UK government tabled the [Northern Ireland Protocol Bill](#) on 13 June 2022, which would allow the UK to dis-apply articles of the Protocol in major areas, such as customs and border controls, State aid, and the jurisdiction of the Court of Justice of the EU (CJEU). In reaction to the bill, the EU has [decided](#) to take the [infringement](#) procedure launched on 15 March 2021 to its second stage, by issuing a reasoned opinion. If the UK government were not to reply within two months, i.e. by 15 August, the Commission would consider taking the UK to the CJEU pursuant to Article 12(4) of the Protocol.

On the same day, the Commission also decided to launch two new infringement proceedings against the UK for:

- failing to carry out its obligations under the EU's sanitary and phytosanitary (SPS) rules. In particular, the UK was not carrying out the necessary checks, and was failing to ensure adequate staffing and infrastructure at border control posts in Northern Ireland. It had also issued guidance that had the effect of dis-applying EU law;
- failing to provide the EU with certain trade statistics data in respect of Northern Ireland, as required under the Protocol.

Existing situation

The WA and the TCA encompass dispute settlement chapters that rely on international arbitration, with the exception of the Northern Ireland Protocol, for which [EU law is applicable](#) to the UK in relation to Northern Ireland in the areas of State aid and customs in particular.³

Parliament's starting position

In its [resolution](#) of 28 April 2021 on the outcome of EU-UK negotiations, the European Parliament welcomed the governance and institutional framework enshrined in the TCA, which ensures a 'common coherence, link and enforcement between all chapters'. This provides 'legal certainty and robust guarantees of compliance by the parties'.

In a [statement](#) after a meeting with Commission Vice-President Maroš Šefčovič on 14 June 2022, [UK Contact Group](#) co-chairs [David McAllister](#) (EPP, Germany), [Bernd Lange](#) (S&D, Germany) and [Nathalie Loiseau](#) (Renew, France) expressed deep concerns regarding the UK's Northern Ireland Protocol Bill, and supported the Commission's approach to securing the implementation of the Protocol through reacting proportionately to the UK government's unilateral action, while continuing to engage with people and businesses in Northern Ireland to find practical solutions. In order to have a 'positive and stable relationship', the EU and the UK must comply with the provisions of the two agreements.

Council starting position

In its [Decision](#) 2021/689 of 29 April 2021 on the conclusion of the TCA, the Council set out that, in order to enable the EU to take rapid and effective action to protect its interests in accordance with the TCA, and until a specific legislative act regulating the adoption of remedial measures, the 'Commission should be empowered to take remedial measures, such as the suspension of obligations ..., in cases of breaches of certain provisions of the TCA, or non-fulfilment of certain conditions, in particular with regard to trade in goods, the level playing field, road transport, aviation safety, fisheries and Union programmes ... as well as to take remedial measures, rebalancing measures and countermeasures ([recital 7](#)).

Moreover, in the same Council decision, [Article 3](#) states that any decision by the EU to take measures in some domains relating to the TCA should be taken by the Commission until a specific legislative act regulating the adoption of the measures enters into force. The Commission should fully inform the Council in a timely manner of its intention to adopt such measures, with a view to allowing a meaningful exchange of views in the Council. One or more Member States may request the Commission to adopt such measures as well, and, if the Commission does not respond positively to such a request, it should inform the Council in a timely manner of its reasons.

According to the decision, the articles of the TCA that are involved concern the following areas:

- [Trade – Trade in goods](#) and [Level playing field](#)
- [Aviation safety](#)
- [Road transport](#)
- [Fisheries](#)
- [Participation in Union programmes, sound financing management, and financial provisions](#)
- [Dispute settlement and horizontal provisions](#)

The changes the proposal would bring

Both the TCA and the WA offer dispute settlement mechanisms. Parties may also resort to various measures before the dispute settlement process: remedial measures, rebalancing measures, and safeguard measures. The TCA also offers the possibility of countermeasures pursuant to [Article 411](#) [Rebalancing] and suspension of its obligations.⁴ Consequently, the proposed regulation empowers

the Commission to adopt the measures referred to above, as well as to amend, suspend or repeal them as appropriate, by means of implementing acts. The regulation also kicks in if effective recourse to a binding dispute settlement under the TCA and the WA is not possible because the UK does not cooperate in making such recourse possible.

In further detail, the proposal contains six articles laying down the 'rules and procedures to ensure an effective and timely exercise' of the EU's rights in 'enforcing and implementing' the WA and the TCA ([Article 1\(1\)](#)).

[Article 2](#) of the proposal envisages that the Commission would be 'empowered by means of implementing acts' to adopt the measures provided for by the TCA and WA provisions and referred to by the regulation. It also allows the Commission to impose 'restrictions on trade, investment or other activities' where the measures consist of the suspension of an obligation. Furthermore, Member States may request the Commission to adopt measures, and if the Commission does not respond positively to such a request it will inform the Council of the reasons. In addition, [Article 2\(5\)](#) allows Member States to request the Commission to activate the review of divergences in the areas of labour, social, environmental and climate protection as well as State aid, as provided for by [TCA Article 411\(4\)](#). The Commission would examine the request and consider bringing the matter to the TCA [Partnership Council](#) in accordance with the TCA provisions, and would inform the Council of the reasons if it does not.

The scope of the regulation covers specific provisions of the TCA and the WA, involving EU measures in response to breaches and actions by the UK ([Article 1\(2\)](#)) as detailed in Table 1.

Table 1. Scope of the proposal

| Trade and cooperation agreement | |
|---|---|
| Part Two [Trade, transport, fisheries and other arrangements] | Heading One [Trade] |
| | a) Title I [Trade in goods] |
| | Chapter 1 [National treatment and market access for goods] : the suspension of the relevant preferential treatment of the product(s) concerned as set out in Article 34 [Measures in case of breaches or circumventions of customs legislation]; |
| | b) Title XI [Level playing field] |
| | Chapter 3 [Subsidy control] : the application of remedial measures and the suspension of obligations as set out in Article 374 [Remedial measures]; Chapter 9 [Horizontal and institutional provisions] : the application of rebalancing measures and countermeasures as set out in Article 411 [Rebalancing]. |
| | Heading Two [Aviation] |
| | a) Title I [Air transport] |
| | Article 434(4) [Aviation safety]: provides for 'corrective measures' in case the other party does not effectively maintain safety standards in certification of airworthiness, certificates of competency and licences (434(2)); Article 435(12) [Aviation security]: permits a party to take action to refuse, revoke, suspend, impose conditions on or limit the operating authorisation and technical permissions of an air carrier of the other Party to ensure compliance (with aviation security); |
| | b) Title II [Aviation safety] |
| | Article 457 [Suspension of reciprocal acceptance obligations]. |
| | Heading Three [Road transport] |
| | Article 469 [Remedial measures]. |

| | |
|---|--|
| | <p>Heading Five Fisheries</p> <p>Article 501 [Compensatory measures in case of withdrawal or reduction of access];</p> <p>Article 506 [Remedial measures and disputes resolution].</p> |
| Part Five [Participation in Union programmes, sound financing management, and financial provisions] | <p>a) Chapter 1 [Participation of UK in Union programmes and activities]</p> <p>Article 718 [Suspension of the participation of the United Kingdom in a Union programme by the Union];</p> <p>Article 719 [Termination of the participation of the United Kingdom in a Union programme by the Union].</p> |
| Part Six [Dispute settlement and horizontal provisions] | <p>a) Title I [Dispute settlement]</p> <p>Article 749 [Temporary Remedies]: sets out an offer or acceptance of temporary compensation or the suspension of obligations in the context of compliance following an arbitration or panel of experts procedure;</p> <p>b) Title III [Fulfilment of obligations and safeguard measures]:</p> <p>Article 773 [Safeguard measures]: sets out the safeguard measures and rebalancing measures.</p> |
| Withdrawal Agreement | |
| Part Six [Institutional and final provisions] | <p>Title III [Dispute settlement]</p> <p>Article 178: sets out the suspension of obligations in the context of compliance with an arbitration panel ruling.</p> |
| Northern Ireland Protocol | <p>Article 13: sets out remedial measures;</p> <p>Article 16: sets out safeguard measures and rebalancing measures.</p> |

Other provisions

In addition, [Article 3](#) of the proposal establishes the UK Committee, which would assist the Commission. The committee would be established within the meaning of Regulation No [182/2011](#) of 16 February 2011, which lays down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (comitology). The Regulation provides that the committee shall be composed of representatives of the Member States, and shall be chaired by a representative of the Commission. The chair shall not take part in the committee vote, and shall submit to the committee the draft implementing act to be adopted by the Commission (Regulation No 182/2011, [Article 3](#)).

Moreover, [Article 5](#) of the proposal envisages a review of the regulation five years after its entry into force. On this occasion, the Commission would present a report to the European Parliament, the Council, the European Economic and Social Committee (EESC) and the European Committee of the Regions on the application of the Regulation.

Stakeholder consultations and impact assessment

In its proposal, the Commission argues, given that the proposal is of a procedural and institutional nature, that the Commission need not consult stakeholders. Furthermore, the reason why an impact assessment has not been carried out is twofold. Firstly, there are no policy options available to the Commission, because: 1) the envisaged proposal organises how measures already agreed are taken; and 2) the Commission had already committed to submit a proposal for this legislative act to the

European Parliament and the Council. Secondly, no identifiable impacts are expected, given the procedural nature of the regulation.

Advisory committees

In its [mandatory opinion](#) adopted on 15 June 2022, the EESC supports the proposed regulation for the following reasons. Firstly, it agrees that initiation of any action should be taken at EU level, with recourse to comitology procedures. In addition, it agrees that the EU needs an 'agile and effective procedure' in the event that the UK does not comply with the agreements and that the recourse to comitology is fully justified, in accordance with the principles of proportionality and subsidiarity. The EESC also welcomes the proposal to review the regulation five years after its entry into force, and notes that this would be in line with similar provisions in the relevant EU-UK agreements. Furthermore, it maintains that this is an excellent interinstitutional compromise to deal with any eventualities arising from a breach of, or non-compliance with, the EU-UK agreements.

National parliaments

The deadline for the submission of reasoned opinions on the grounds of [subsidiarity](#) was 9 May 2022. No subsidiarity concerns were raised.

Legislative process

In the European Parliament, the proposal was [referred](#) to the Committees on International Trade (INTA), on Foreign Affairs (AFET), and on Constitutional Affairs (AFCO) jointly under Rule 58. The rapporteurs were [Seán Kelly](#) (EPP, Ireland) for INTA, [Andreas Schieder](#) (S&D, Germany) for AFET, and [Danuta Maria Hübner](#) (EPP, Poland) for AFCO. The committees from which opinions were requested were Industry, Research and Energy (ITRE), Internal Market and Consumer Protection (IMCO), Transport and Tourism (TRAN), Agriculture and Rural Development (AGRI), Fisheries (PECH), Legal Affairs (JURI). The Chair of IMCO, [Anna Cavazzini](#) (Greens/EFA, Germany) delivered an opinion on behalf of that committee. The rapporteurs for opinion were [Petar Vitanov](#) (S&D, Bulgaria) for TRAN and [Pierre Karleskind](#) (Renew, France) for PECH. AGRI, JURI and ITRE decided not to give opinions.

In June 2022, the Council adopted its [general approach](#) on the proposed regulation. It demanded to be continuously informed on a permanent and regular basis of the implementation of the two Agreements (WA and TCA), including all difficulties that may arise, in particular possible breaches of the Agreements and other situations that may give rise to measures taken pursuant to the proposed Regulation. In this regard, the Council also asked to be duly informed in a timely manner of possible responses at the disposal of the Union as well as of the follow-up to any measures taken.

The [report](#) was adopted in the [joint meeting](#) of the INTA, AFET and AFCO committees on 10 October 2022, and the Parliament confirmed its decision to enter into interinstitutional negotiations during the October II plenary session. Following a [trilogue meeting](#) on 30 November 2022, a compromise was reached. The EP negotiators secured stronger involvement of the Parliament in the procedure. The agreed text specifies that the European Parliament should be fully informed in a timely manner, on a par with the Council, of all difficulties in implementation of the WA and the TCA. This concerns, in particular, possible breaches of the Agreements and other situations that might result in measures being taken, as well as of any intention of the Commission to adopt any enforcement measures under the Agreements and of the follow-up to any measures taken. This would enable a meaningful exchange of views when action is required. The negotiators made sure that the European Parliament has the possibility to express its opinion to the Commission, which the Commission should consider before it adopts any enforcement measures. Also, when the Commission submits its annual reports to the European Parliament and to the Council on the implementation and application of the Trade and Cooperation Agreement, it shall also include an overview of any complaints as well as the follow-up to such complaints.

The agreement was approved by the joint committee on 8 February 2023, and adopted in plenary on 14 February 2023. The [final act](#) was published in the Official Journal on 22 March 2023, and the regulation entered into force on 11 April 2023.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

European Parliament [Legislative Train Schedule](#).

EPRS, [EU-UK Trade and Cooperation Agreement: an analytical overview](#), In-depth analysis, February 2021.

EPRS, [The level playing-field for labour and environment in EU-UK relations](#), Briefing, November 2021.

EPRS, [Implementation of the EU-UK Withdrawal Agreement: Financial provisions, citizens' rights and the Northern Ireland Protocol](#), In-depth analysis, January 2022.

OTHER SOURCES

[Union's rights in enforcing and implementing the UK Withdrawal Agreement and the EU-UK Trade and Cooperation Agreement](#), Legislative Observatory (OEIL), European Parliament.

ENDNOTES

- ¹ The Withdrawal Agreement entered into force on 1 February 2020. The Trade and Cooperation Agreement was provisionally applied on 1 January 2021, and entered into force on 1 May 2021 after Parliament's consent.
- ² For further details about Article 16 of the Protocol, see [Box 3](#) in EPRS, [Implementation of the UK Withdrawal Agreement: Financial provisions, citizens' rights and the Northern Ireland Protocol](#), 2022.
- ³ For details of the arbitration arrangements under the WA, please refer to the [Kluwer International Arbitration](#) blog. For details about dispute settlements envisaged by the TCA in the level playing field for labour and environment, see EPRS briefing, [The level playing-field for labour and environment in EU-UK relations](#), 2021.
- ⁴ Article 411 provides that, if material impacts on trade or investment between the parties are arising as a result of significant divergences between the parties in the areas of labour and social, environmental or climate protection, or with respect to subsidy control, either Party may take appropriate rebalancing measures to address the situation. Article 411(4) also provides that either Party may request, no sooner than four years after the entry into force of the TCA, a review of the operation of these areas (so-called 'review clause').

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