Subject: EMPL recommendations on the Decision on the conclusion, on behalf of the Union, 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 Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (2020/0382(NLE))

Dear Chairs,

Under the procedure referred to above, the Committee on Employment and Social Affairs has decided to submit an opinion to your committees in the form of a letter.

The Committee on Employment and Social Affairs considered the matter at its meeting of 1 February 2021. At that meeting, it decided to convey its opinion to the Committee on Foreign Affairs and the Committee on International Trade, as the committees responsible.

Yours sincerely,
Lucia Šuriš Nicholsonová
SUGGESTIONS

A. whereas the withdrawal of the United Kingdom of Great Britain and Northern Ireland (‘UK’) from the European Union (‘EU’) and the European Atomic Energy Community affects millions of citizens – both UK citizens living, travelling or working in the Union and Union citizens living, travelling or working in the UK, as well as people other than Union and UK citizens;

B. whereas third countries, which are not subject to the same obligations as Member States, cannot have the same rights or enjoy the same benefits as a Member State; whereas, on the other hand, it is in the EU’s and the UK’s mutual interests to pursue an ambitious, wide-ranging and balanced relationship through the Trade and Cooperation Agreement (TCA) and other possible agreements;

C. whereas, since 2008, the EU has included provisions on labour standards in the Trade and Sustainable Development chapters of its trade agreements with third countries;

D. whereas the Political Declaration that accompanied the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland (UK) from the European Union (EU) and the European Atomic Energy Community of 19 October 2019 and the Protocol on Northern Ireland (‘the Withdrawal Agreement’) set out the framework for the future relationship between the EU and the UK by establishing the parameters of an ambitious, broad, deep and flexible partnership across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement (FTA) at its core;

E. whereas Article 184 of the Withdrawal Agreement provides that the EU and the UK are to use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the Political Declaration and to conduct the relevant procedures for the ratification and conclusion of those agreements, with a view to ensuring that those agreements apply, to the extent possible, as from the end of the transition period;

F. whereas the European Council adopted its negotiating guidelines with a view to the opening of negotiations on the overall understanding of the framework for the future relationship that was to be elaborated in the Political Declaration;

G. whereas, given the geographic proximity and economic interdependence and connectedness of the EU and the UK (the Parties), as well as the large number of EU citizens living in the UK and UK citizens living in the EU, the partnership between the EU and the UK should be comprehensive, encompassing an FTA as well as wider sectoral cooperation where this is in the Union’s interests;

H. whereas this partnership should, in particular, aim to establish an FTA that ensures no tariffs, no quotas and no dumping, including as regards social and employment standards, through robust commitments;

I. whereas these commitments should prevent distortions of trade and unfair competitive advantages so as to ensure a sustainable and long-lasting relationship between the
Parties; whereas the partnership should therefore be based on high standards and a balance of rights and obligations which will ensure the indivisibility of the four freedoms and guarantee a level playing field that will stand the test of time;

J. whereas, to that end, the partnership should uphold common high social and employment standards and correspondingly high standards developed over time, with EU social and employment standards and rights as a reference point;

K. whereas the partnership should commit the Parties to an ongoing improvement of their respective levels of protection, with the goal of ensuring correspondingly high social and labour standards in order to maintain a level playing field;

L. whereas in light of the level playing field committed to in the Political Declaration, the partnership should, in particular, ensure that the level of labour and social protection provided by laws, regulations and practices is not reduced to below the level provided by the common standards applicable within the EU and the UK at the end of the transition period in at least the following areas: fundamental rights at work; occupational health and safety, including the precautionary principle; fair working conditions and employment standards; information, consultation and rights at company level, and restructuring; whereas the partnership should also protect and promote social dialogue among workers and employers, their respective organisations and governments, and should encourage dialogue with civil society;

M. whereas in this regard the principle of non-regression of the current and future levels of labour and social protection is essential; whereas under Articles 6.1 and 6.2 of the TCA neither Party is allowed to lower labour and social standards applicable at the end of the transition period in a manner affecting trade or investment between the Parties;

N. whereas the partnership should ensure the effective enforcement of the UK’s commitments and of its laws, regulations and practices that reflect those commitments, through adequately resourced domestic authorities, an effective system of labour inspections and effective administrative and judicial proceedings;

O. whereas mobility arrangements should be based on non-discrimination between the Member States and full reciprocity; whereas the partnership must also provide for extensive and profound social security coordination;

P. whereas the partnership should include appropriate arrangements for dispute settlement and enforcement, and should in particular establish a governing body responsible for managing and supervising the implementation and operation of the partnership, facilitating the resolution of disputes; whereas it is important that the social partners are, where appropriate, involved in the dispute settlement process;

Q. whereas the European Parliament has insisted throughout the negotiations that the Court of Justice of the European Union should remain the sole arbiter of Union law;

R. whereas before adopting the European Union (Withdrawal Agreement) Act 2020, the UK Government deleted clauses which would have provided some limited domestic legal protection for EU-derived workers’ rights, and committed itself to re-introducing these provisions in a forthcoming Employment Bill; whereas this Bill has not yet been
General comments

1. Welcomes the EU and UK negotiators’ intense and successful efforts to reach a Trade and Cooperation Agreement (TCA) between the Parties, thus preventing the disastrous consequences of a no-deal scenario for millions of citizens and businesses; deplores the fact that the last-minute nature of the agreement did not allow for proper parliamentary scrutiny before the end of the transition period, and strongly regrets once again that the UK Government did not allow for a smoother transition through extension of the deadline to reach an agreement; regrets that the last-minute nature of the deal has had an immediate and negative impact on citizens and businesses who have to cope with, and adapt to, new rules affecting their livelihoods and day-to-day life;

2. Recalls the unique nature of the TCA which, while similar to other free trade agreements in that it sets out the conditions under which products conforming to different regulations can be accepted and sets up mechanisms to harmonise these regulations and to encourage convergent approaches to future regulation, also has to address the loss of long-standing established rights, such as the right to free movement, and of social security coordination; recalls that, unlike other trade agreements, the Parties are starting off with extensively harmonised regulatory frameworks, common rights and deeply integrated markets, and the TCA aims to control the way in which these may diverge in the future and to limit the impact on citizens, society and the economy resulting from that divergence;

3. Welcomes the fact that, despite some shortcomings in the TCA, the European Parliament’s priority of safeguarding citizens’ rights has in most cases been achieved, but regrets that the free movement of persons between the EU and the UK ended on 1 January 2021, that all movement is now subject to EU and UK immigration legislation applicable to third-country nationals, and that citizens’ rights and protection deriving from social security coordination will be reduced; recalls, however, that persons who were or had already been in a cross-border situation between the EU and the UK before 1 January 2021 are covered under the Withdrawal Agreement, which allows for their continued right to remain or work, ensures non-discrimination and protects their social security rights; notes that it is possible for certain types of travel, including short-term business trips and visits for other purposes (such as intra-company transfers of up to three years’ duration), to remain visa-free;

4. Regrets that the Court of Justice of the European Union (CJEU) will not be the jurisdiction interpreting any principle included in the TCA that derives from Union law, and that CJEU case-law may be deviated from in the future by the UK supreme and appellate courts;

5. Stresses that access to justice is essential for the implementation and enforcement of citizens’ rights; recalls the direct immediate impact of the TCA on citizens’ rights, especially for those EU citizens residing or living in the UK and UK citizens residing or living in the EU; calls on both Parties to the TCA to provide citizens with access to justice and legal protection as regards their rights before UK and EU courts;

6. Regrets the fact that the UK Government has not yet fulfilled its commitment regarding
a new Employment Bill; recalls that social and labour standards in the Employment Bill should not be static, but should directly follow any improvements made to social and labour standards in the EU, in order to ensure a level playing field between the Parties;

7. Recalls that under the TCA any lowering of social and labour standards by the UK in a manner that affects trade or investment, including by failing to effectively enforce its law and standards, constitutes a breach of the non-regression principle and of the level playing field provisions;

8. Expresses concern, in this regard, about reports in recent weeks that a package of deregulatory measures is being considered by the British Business Department as part of a post-Brexit overhaul of the UK labour market, with the UK Secretary of State for Business, Energy and Industrial Strategy confirming that the UK Government is reviewing EU-derived employment laws, some of which – in particular the Working Time Directive – could be discarded; recalls that such measures could, if adopted, dramatically lower the rights of workers in the UK, but may also have a substantial material impact on the level playing field foreseen by the agreement for open and fair competition and sustainable development between the Parties; emphasises that such measures would be in contradiction with the withdrawal agreement and the TCA;

9. Deplores especially, in this regard, that recently adopted Union legislative acts, whose transposition deadlines fell during the transition period, such as the Directive on work-life balance for parents and carers and the Directive on transparent and predictable working conditions in the European Union, have not been transposed in the UK; deplores that although the UK was obliged under Article 127 of the Withdrawal Agreement to transpose the abovementioned directives during the transition period, it has not taken the necessary steps to transpose them into national law and has thus deprived UK citizens of certain newly established rights;

10. Encourages the UK to continue to participate as a third-country observer with no decision-making role in the agencies which are within the remit of Parliament’s Employment Committee, such as the European Foundation for the Improvement of Living and Working Conditions (based on the model for Norway¹), as this would allow both Parties to share data, best practices and methodologies; also strongly encourages the UK to cooperate with the European Labour Authority (under Articles 17(6) and 42 of Regulation 2019/1149) in order to ensure effective application and enforcement of Union and UK law related to labour mobility, and with the Administrative Commission under Regulation 883/2004/EC; regrets that such cooperation is not foreseen in the TCA and that the UK has, so far, not expressed an interest therein;

11. Deeply regrets that following the EU-UK Withdrawal Agreement, the UK will not continue to participate in the Erasmus exchange programme for the 2021-2027 period,

¹ Norway has a bilateral agreement with Eurofound and pays to be included in the European Working Conditions Survey, participating since 2000 (previous four editions). It also participated in the second edition of the European Quality of Life Survey in 2007–2008. Norway also acts as observer for the European Free Trade Association (EFTA) on Eurofound’s Governing Board. Furthermore, Eurofound maintains a Network of European Correspondents covering all EU Member States plus Norway, which provides expert national input relevant for the European debate. Via the network, Eurofound’s European Restructuring Monitor also monitors the employment impact of large-scale restructuring events, restructuring support instruments and restructuring-related legislation in the EU Member States and Norway.
depriving both EU and UK students of valuable study and work experience abroad; notes that mobility actions covering higher education students and vocational education (VET) will offer the possibility to undertake mobility in third countries, including the UK; strongly encourages the UK to reconsider its approach in this regard and to participate in Erasmus in the future in accordance with Part V of the agreement, including its financial conditions;

12. Deplores the UK’s discriminatory decision to apply different fees for work visas for citizens of certain EU Member States as regards, for instance, seasonal work visas and health and care worker visas; emphasises the importance of guaranteeing equal access to the UK’s labour market for EU citizens and the need to apply the same fee for all EU nationals;

13. Recalls the importance of mechanisms established by both Parties to monitor changes and difficulties that may be experienced by EU Member State citizens living in the UK and UK citizens living in the EU, with the aim of identifying and resolving situations of legal uncertainty; welcomes the establishment of domestic advisory groups and the Civil Society Forum in this regard;

Level playing field

14. Recalls that, in general, convergent trends in regulation even out competitive conditions, while divergent trends can give rise to relative changes in competitive conditions;

15. Recalls that, in view of the geographic proximity and economic interdependence of the Parties, the EU’s guiding principle throughout the negotiations was to underpin the TCA with robust legal commitments that ensure a level playing field for open and fair competition, including, among others, on labour and social standards, in order to avoid a ‘race to the bottom’ and unfair competitive advantages obtained through undercutting levels of protection or other regulatory divergence;

16. Notes the main elements of the ‘toolbox’ agreed with the UK as regards labour and social matters, in particular (1) the explicit reference to the European Social Charter and the ILO Conventions, (2) the role of domestic enforcement for non-regression commitments, and (3) the system of rebalancing measures to deal with future divergence;

17. Recalls that the non-regression clause in Article 6.2 is subject to a trade-distortion test and provides that neither Party may weaken or reduce their levels of labour and social protection below the levels existing at the end of the transition period ‘in a manner affecting trade or investment between the Parties’; regrets in particular the very high threshold in this regard (‘in a manner affecting trade’);

18. Insists that full and strong non-regression on labour and social standards is paramount, as is the close monitoring by both Parties of possible future divergence, and calls on the Commission to fully enforce this provision, to closely involve the social partners in the procedures to check compliance, and to keep the European Parliament and the Council informed as co-legislators;
19. Stresses in this context the importance of the correct implementation and effective domestic enforcement of the non-regression principle by both Parties, and calls on the Commission to closely monitor developments in this regard; notes that enforcement of the implementation of such levels of protection is foreseen through domestic enforcement and dispute settlement provisions; recalls that, in the event of a dispute between the Parties regarding the application of the labour and social standards chapter, the Parties have recourse exclusively to the procedures established under Articles 9.1, 9.2 and 9.3 of Title XI or Part Two derogating from Title I of Part Six on dispute settlement and horizontal provisions; further notes, as regards the rebalancing measures under Article 9.4, that these will only be triggered where material impacts on trade or investment between the Parties arise as a result of significant divergences; is concerned, however, about how a future possible unilateral lowering of social and labour standards by the United Kingdom would be addressed and contested under the TCA, particularly when it comes to demonstrating that trade or investment between the Parties has been affected; reiterates once again that any unilateral lowering of social and labour standards at the expense of European workers and companies must be swiftly addressed and remedied in order to maintain a level playing field;

20. Notes with concern that a review of these rules will take place only after four years or if the rebalancing measures have been used too frequently and if divergence has persisted over a period of 12 months; insists that the European Parliament and social partners be closely involved in the review process;

21. Calls on the Parties to negotiate additional joint interpretative instruments to clarify the chapter on the level playing field in general and the role of Parliament and social partners in its monitoring and implementation in particular, including the possibility for social partners to make formal complaints beyond the submission of an amicus brief to the panel of experts; calls, furthermore, for sufficient resources and a permanent secretariat for the Domestic Advisory Group;

**Mobility and social security coordination**

22. Recalls that UK citizens residing in the EU and EU citizens residing in the UK were covered and protected until 31 December 2020 by social security coordination rules regarding sickness benefits, maternity and equivalent paternity benefits, invalidity benefits, old-age benefits, survivors’ benefits, benefits in respect of accidents at work and occupational diseases, death grants, unemployment benefits, pre-retirement benefits and family benefits under the Withdrawal Agreement;

23. Notes that, according to the TCA, the current provisions for necessary or emergency healthcare will ‘in principle’ continue to apply for temporary stays in the UK and the EU;

24. Welcomes the fact that the new cooperation mechanism as regards social security coordination is close to existing rules under Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004; welcomes, in particular, the fact that EU provisions on non-discrimination, equal treatment and the aggregation of periods are safeguarded in the TCA;
25. Regrets, nevertheless, the restrictions on the material scope and, in particular, that family benefits, long-term care and non-contributory cash benefits and the exportability of unemployment benefits are not included;

26. Regrets also that the TCA does not foresee any dynamic alignment with the evolution of EU legislation on the coordination of social security systems, especially in the context of the current revision of Regulations 883/2004 and 987/2009; calls on the Parties to immediately provide citizens affected by restrictions to free movement with solid and reliable information regarding their rights to residence, to work and to social security coordination;

27. Acknowledges that, under the TCA and under certain conditions, workers posted to or from the UK may be subject to the host country’s legislation as regards social security; stresses that this may have a negative impact on their social security biography; welcomes in this regard the transitional provision whereby Member States may request, upon notification to the European Commission, the continuation of the posting system as it existed on 31 December 2020 for a period of up to 15 years;

28. Encourages proper and consistent application of the social security coordination protocol in the Member States to guarantee the same rights for all citizens concerned;

**Conclusion**

29. Recommends that the European Parliament gives its consent to the TCA, but insists that annual reports on its implementation be presented to the European Parliament, especially as regards the level playing field issue concerning social and labour standards;