2020/2023(INI)

7.5.2020

DRAFT OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Foreign Affairs

and the Committee on International Trade

on recommendations on the negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland (2020/2023(INI))

Rapporteur for opinion: Loránt Vincze
SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Foreign Affairs and on the Committee on International Trade, as the committees responsible, to incorporate the following suggestions into their motion for a resolution:

A. Content of the envisaged agreement, core values and governance

1. Welcomes the draft text of the Agreement on the New Partnership with the United Kingdom published by the European Commission on 18 March 2020, which proposes a comprehensive agreement encompassing all areas of cooperation and an overarching institutional framework; reiterates its position that a final agreement should have a single, consistent governance framework, which should include effective enforcement and a robust dispute settlement mechanism, thus avoiding a proliferation of bilateral agreements;

2. Stresses that the envisaged partnership must be based on the shared values and principles of democracy, the rule of law and respect for human rights, which should be expressed in binding political clauses; stresses that, while the EU will remain bound by the Charter of Fundamental Rights of the European Union, the agreement on the future relationship must incorporate the United Kingdom’s continued commitment to respect the framework of the European Convention on Human Rights (ECHR);

3. Welcomes the provisions of the draft text of the Agreement on the preservation of the autonomy of the EU legal order and the role of the Court of Justice of the European Union (CJEU) as the ultimate institution for interpreting EU law; insists that accepting such a role is a necessary condition for the future cooperation;

B. Progress of the negotiations

4. Expresses concern about the progress of negotiations, including the cancellation of two negotiation rounds planned during the COVID-19 confinement period as well as the resumption thereof as of 20 April; notes, that, according to the information received from the European Commission’s Task Force for Relations with the United Kingdom, despite a first exchange on the issues of security, law enforcement and judicial cooperation in criminal matters, data protection and citizens’ rights, as well as irregular migration and asylum, that took place during the second round of the negotiations, no significant progress has been achieved; recalls that, pursuant to Article 132 of the Withdrawal Agreement, the transition period may be extended by a single decision of the Joint Committee before 1 July 2020; takes into account that the UK government, during the second negotiation round, stressed its intention not to request an extension of the transition period; is deeply concerned about the chances of finalising negotiations on all the essential matters at stake by the end of the year, in view, notably, of the current context of the COVID-19 pandemic and the slow progress achieved so far; calls on the negotiating partners to make every effort to advance on all areas of the negotiations in parallel, including the most difficult areas, and to adopt a comprehensive negotiating strategy;
C. Citizens’ rights and mobility arrangements

5. Takes note of the discussions taking place in the EU-UK Joint Committee established under the Withdrawal Agreement and the upcoming meeting of the specialised committee on citizens’ rights; calls on the co-chairs of the Joint Committee to actively involve citizens and civil society organisations in this regard; requests that Parliament be fully informed of all the discussions held and decisions taken by the Joint Committee; is concerned that, according to the latest EU Settlement Scheme Statistics¹, published by the UK Home Office on 16 April 2020, of the total number of 3.4 million (3 468 700) applications received up to 31 March 2020, only 58 % were granted settled status and 41 % were granted pre-settled status; reiterates the Parliament’s call², with regard to resident status schemes both in the UK and in the Member States, that these schemes be non-discriminatory, user-friendly and transparent, and free of charge, that they have a declaratory nature and grant a physical document as proof of status; recalls that EU citizens holding pre-settled status should be treated equally with UK citizens under the Withdrawal Agreement, including with regard to access to benefits; calls on the Joint Committee and the Commission to monitor relevant developments; notes that little progress has been achieved regarding Parliament’s call to address issues with regard to the EU Settlement Scheme, notably in relation to the accessibility of the application, the independence of the Monitoring Authority, and the possible consequences for Union citizens of not meeting the deadline, as well as the applicability of the UK’s EU Settlement Scheme in relation to EU-27 citizens in Northern Ireland who have not sought UK citizenship under the terms of the Good Friday Agreement, and the need to fully respect the Good Friday Agreement in all its parts as stated in the Withdrawal Agreement; urges the UK authorities to ensure that there is no diminution of rights for citizens in Northern Ireland; stresses that these issues would need to be fully addressed and evaluated by the end of the transition period as a pre-condition for a future agreement;

6. Calls on the negotiating parties to fully respect and implement the citizens’ rights guaranteed under the Withdrawal Agreement for both EU and UK citizens and their families; urges the negotiating parties to strive towards a high level of mobility rights in the future agreement; regrets the fact that the UK has so far shown little ambition with regard to citizen’s mobility, which the UK and its citizens have benefitted from in the past; stresses that any future mobility arrangements, including visa-free travel for short-term stays, should be based on non-discrimination between the Member States and full reciprocity; considers, more generally, that further concretisation of citizens’ rights through legally binding provisions must constitute a cornerstone and an indivisible part of the text of a future international agreement between the EU and the UK, including the situation of cross-border workers, whose freedom of movement should be guaranteed, based on non-discrimination and reciprocity; considers that conditions for entry and stay for purposes of research, study, training, voluntary service, pupil exchange schemes or educational projects, au pairing and voluntary service in the

European Solidarity Corps should be part of the future agreement and not be left to domestic regulation, stressing the need for a coordinated approach from the side of the Union and its Member States; emphasises that equality of treatment between citizens of all EU Member States in this regard must be fully guaranteed; recalls that the COVID-19 crisis has shown the dependence that vital sectors in the UK, such as public health or agriculture, have on EU workers, including seasonal workforce;

D. Data protection

7. Recalls its position\(^3\) that, ‘according to the case law of the CJEU\(^4\), in order for the Commission to declare the adequacy of the UK data protection framework, it must demonstrate that the UK provides a level of protection “essentially equivalent” to that offered by EU legal framework, including on onward transfers to third countries’;

8. Recalls that the UK Data Protection Act provides for a general and broad exemption from the data protection principles and data subjects’ rights for the processing of personal data for immigration purposes; is concerned that, when non-UK citizens’ data are processed under this exemption, they are not protected in the same way as that of UK citizens; is of the view that this exemption would be in conflict with the GDPR; is of the view, furthermore, that the UK legal framework on the retention of electronic telecommunications data does not fulfil the conditions of the relevant EU acquis as interpreted by the CJEU,\(^5\) and does not, therefore, currently meet the conditions for adequacy; is deeply concerned about the UK Prime Minister’s written statement of 3 February 2020 on UK/EU relations\(^6\), declaring that the UK would in future develop separate and independent policies in areas such as data protection;

9. Underlines that the Directives for Negotiation adopted by the Council on 25 February,\(^7\) clearly set out that the future partnership ‘should be underpinned by commitments to respect fundamental rights including adequate protection of personal data, which is a necessary condition for the envisaged cooperation’ and ‘provide for automatic termination of the law enforcement cooperation and judicial cooperation in criminal matters if the United Kingdom were to denounce the European Convention of Human Rights (ECHR)’ and ‘for automatic suspension if the United Kingdom were to abrogate domestic law giving effect to the ECHR’, while stressing that ‘the level of ambition of the law enforcement and judicial cooperation envisaged in the security partnership will be dependent on the level of protection of personal data ensured in the United Kingdom’ (paragraph 118);

---

\(^3\) European Parliament resolution of 12 February 2020, cited above.

\(^4\) Case C-362/14 Maximilian Schrems v Data Protection Commissioner, ECLI:EU:C:2015:650


\(^6\) Written statement - HCWS86 setting out ‘the Government’s proposed approach to the negotiations with the EU about our future relationship’, https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-02-03/HCWS86/

\(^7\) Directives for the Negotiation of a New Partnership with the United Kingdom of Great Britain And Northern Ireland, 5870/20ADD 1 REV 3, 25/02/2020.
10. Reiterates that the abovementioned directives for negotiation also lay down that, ‘the security partnership should provide for close law enforcement and judicial cooperation in relation to the prevention, investigation, detection and prosecution of criminal offences, taking into account the United Kingdom’s future status of a non-Schengen third country that does not provide for the free movement of persons’ (paragraph 117);

11. Is concerned about the fact that, during the first round of negotiations (2-5 March 2020) for the future partnership agreement, the UK stated that, as regards judicial and police cooperation in criminal matters, it will not commit to enforcing the European Convention of Human Rights, nor will it accept the jurisdiction of the CJEU; depletes the fact that the latter position has been maintained during the second round of negotiations; fully endorses the declaration made by the EU negotiator Mr Barnier that, if this position is maintained by the UK, this will have immediate and practical consequences for the cooperation between the EU and the UK, which will remain possible on the basis of international agreements but will not be very ambitious8; takes note also of the declarations made by the EU negotiator Mr Barnier further to the second negotiation round, stating that, during this second round, the UK refused to provide firm guarantees on fundamental rights and individual freedoms and insisted on lowering current standards and deviating from agreed mechanisms of data protection, thus creating serious limitations for our future security partnership9;

12. Considers it necessary to pay particular attention to the legal framework in the UK in the fields of national security or processing of personal data by law enforcement authorities; recalls that mass surveillance programmes might not be adequate under EU law; advocates taking into consideration CJEU case law in this field, such as the Schrems case as well as ECtHR case law;

13. Calls on the Commission to take the abovementioned elements into consideration when assessing the adequacy of the UK legal framework as regards the level of protection of personal data, and to ensure that the UK has resolved the problems identified in this resolution prior to possibly declaring UK data protection law adequate in line with Union law as interpreted by the Court of Justice; calls on the Commission to also seek the advice of the European Data Protection Board and the European Data Protection Supervisor, providing them with all the relevant information and appropriate timelines to fulfil their role; stresses that an adequacy decision may not be the object of negotiation between the UK and the EU since it refers to the protection of a fundamental right recognised by the ECHR, the Charter and the EU Treaties;

E. Security, law enforcement and judicial cooperation in criminal matters

14. Regrets that the negotiations in the area of security, law enforcement and judicial cooperation in criminal matters have not made significant progress during the second round that took place in April; reiterates that tangible progress in this area should be achieved at the next round of the negotiations in order to allow for an agreement for comprehensive and efficient cooperation to be reached;

15. Reiterates its call that, in view of the geographical proximity and the shared threats the

---

EU and the UK are confronted with, the negotiating parties should endeavour to maintain effective arrangements for law enforcement cooperation that is effective and mutually beneficial for the security of their citizens, taking into account the fact the UK is now a third country and may not, therefore, enjoy the same rights and facilities as a Member State; underlines the fact that separate stand-alone agreements would undermine legal consistency in the areas of law enforcement and judicial cooperation in criminal matters; urges the Commission to adhere to its negotiating directives and strive to negotiate a single comprehensive agreement;

16. Is deeply concerned about the UK’s request to receive direct access to the EU data information systems in the field of Justice and Home Affairs and to retain a status in the Justice and Home Affairs agencies close to that enjoyed by the Member States; stresses once more in this regard that the UK, as a non-Schengen third country, cannot have direct access to EU information systems data or participate in the management structures of the EU agencies in the area of Freedom, Security and Justice; cautions that any sharing of information, including personal data, with the UK should be subject to strict safeguards, audit and oversight conditions, including an equivalent level of protection of personal data to that provided by Union law;

17. Recalls that the Schengen Information System (SIS) was created as a compensatory tool to remedy the lifting of border controls in the Schengen area; points out that the SIS legislation explicitly forbids the access of third countries to the system; underlines that, as a third country, the UK cannot have access to the SIS; recalls that, in 2015, the UK started applying certain provisions of Schengen acquis related to the SIS in the area of police cooperation and that serious deficiencies in its application by the UK were identified and have still not been remedied; considers that future cooperation between the EU and the UK in the area of law enforcement and judicial cooperation should be based on mutual trust; considers, therefore, that the arrangements for the future cooperation between the EU and the UK in the area of law enforcement and judicial cooperation should be dependent on those deficiencies being remedied; underlines, in this regard, the importance of robust rules on data protection in both negotiating parties;

18. Points out that the automated exchange of DNA data with UK under the Prüm Framework was launched only in 2019 and that the Council is about to adopt an implementing decision which would allow the UK to take part in automated exchanges of dactyloscopic data; reminds the negotiators that the Council decisions authorising these automated data exchanges will expire at the end of the transition period; stresses the need for a timely agreement on new arrangements for the future relationship, given the importance of information exchange in the fight against serious and organised cross-border crime and terrorism; considers that the future relationship should not be predetermined by the rules applied during the transition period; believes that the agreement should be based on the principle of full reciprocity; strongly urges the UK, therefore, to reconsider its position not to disclose data of suspected persons, failing which, exchanges under Prüm between the EU and the UK will have to remain limited;

19. Is concerned that the UK negotiating mandate lacks ambition in important areas of judicial cooperation in criminal matters such as anti-money-laundering provisions;

insists that a level playing field on anti-money laundering is essential for a final agreement; believes that a solution allowing for a more ambitious cooperation than the one under the Council of Europe convention on extradition could be found by the negotiating parties;

**F. Irregular migration, asylum and border management**

20. Stresses the need to agree the terms of cooperation on the irregular migration of nationals other than those of the two parties, recognising the need to protect the most vulnerable; reiterates its call that such cooperation should, at the very least, contain arrangements that enhance safe and legal pathways to access international protection, including through family reunification;

21. Stresses the need for strong cooperation between the parties in order to combat human smuggling and trafficking in human beings, in line with international law, which will remain applicable to the border between the UK and the EU; calls on the negotiating parties to clarify the potential role Europol and the European Border and Coast Guard could have in enabling such cooperation;

22. Takes note of the Commission’s statement on asylum (Annex D to the Council decision authorising the opening of negotiations), according to which the Commission will consider, if requested by the United Kingdom, and if in the EU’s interest, to engage in a dialogue with the United Kingdom on cooperation regarding asylum, after seeking guidance from Coreper; insists that the UK cannot cherry-pick which elements of the EU asylum and migration acquis it would like to keep;

23. Stresses once again the need for the adoption of a plan on family reunification, which should be ready to enter into force at the end of the transition period, in order to avoid any gaps with humanitarian impacts and to respect the right to family life of asylum seekers in accordance with Article 8 of the ECHR, which remains applicable in both the UK and the EU;

24. As part of such a plan, and also more generally, the Parliament reminds the negotiators of the obligation of both the EU27 and the UK to protect all children on their territory, regardless of their status, relationship or family connections, including unaccompanied minors, and to safeguard all children’s access to their right to protection, family life and well-being in light of their best interests, in line with the United Nations Convention on the Rights of the Child 1989 (UNCRC); takes note of the UK’s commitment to negotiate a plan on family reunification for asylum-seeking minors; calls on the Member States, once concrete proposals are made by the UK, to give a mandate to the Commission to negotiate a plan on family reunification for asylum seekers;

25. Stresses the importance of a coordinated approach by the EU on all these issues, as bilateral arrangements between the UK and individual Member States on issues such as family reunification for asylum seekers or refugees, relocation or readmission arrangements, risk having negative consequences for the coherence of EU asylum and migration policy; calls both negotiating sides to strive for a balanced and constructive approach in all those matters, including legal pathways and readmission agreements for
third-country nationals, prioritising the need to provide international protection to those in need of it and to pay particular attention to the most vulnerable, an approach to which both sides have committed;

G. Cooperation with Justice and Home Affairs Agencies

26. Reiterates its call to clarify the future practical cooperation between the UK authorities and the EU agencies in the field of Justice and Home Affairs, taking into account the status of the UK as a non-Schengen third country.